



SEPARATE STARTS

Your guide to separation

Welcome to HONAN FAMILY LAW

GUIDING YOU AND YOUR FAMILY TOWARD A BRIGHTER TOMORROW.

If you're seeking a family lawyer, it's likely one of the most challenging times in your life. At Honan Family Law, we're here to help you move forward. Founded by Accredited Family Law Specialist Amy Honan, our firm offers a supportive, collaborative and resolutions-focused approach.

OUR APPROACH: CLARITY, SOLUTIONS, COLLABORATION

Navigating family law can feel overwhelming, especially if it's your first contact with the legal system. Honan Family Law strives for clear communication, free from legal jargon, to help you feel informed and empowered in making decisions about your future. We aim to achieve resolution efficiently, using a collaborative approach whenever possible to reduce emotional strain and avoid drawn-out litigation.

WHAT YOU CAN EXPECT FROM HONAN FAMILY LAW:

- » **Solution-focused:** We work towards resolutions allowing families to move forward with less stress.
- » **Plain language communication:** We break down complex information into clear, straightforward terms.
- » **Creative problem solving:** We think outside the box, focusing on holistic, practical solutions.
- » **Collaborative resolution:** Our mediation-first approach minimises trauma, especially for children.

ABOUT AMY HONAN

Amy Honan supports clients through dispute resolution and mediation, believing that empowerment through knowledge leads to better outcomes.

An active member of the Family Law Practitioners Association of Queensland, Amy has been recognised multiple times as a leading lawyer in family and parenting matters. She contributes regularly to professional publications and presents seminars to enhance understanding of family law principles across industries.

Amy brings personal experience and empathy to her practice, valuing the joy of blended families. Her commitment to her clients and her passion for family law is the heart of Honan Family Law.





Tips

PREPARING FOR SEPARATION: WHEN TO SEEK PROFESSIONAL SUPPORT

Considering separation? Here's a guide to when you can handle things yourself – and when to seek legal support from a family law specialist.

COMMUNICATING WITH YOUR CO-PARENT ABOUT EVERYDAY MATTERS

Direct communication with your co-parent is often best for daily issues involving your children, like coordinating school pickups or health reminders. Managing these small tasks keeps legal costs down and demonstrates to the court that you can effectively co-parent.

If communicating is difficult, consider family support options or apps like Our Family Wizard, Cozi, or 2Houses to streamline conversations.

When to seek legal support:

When creating or reviewing parenting plans or orders, legal guidance ensures your co-parenting agreements are clear and structured to prevent future conflicts

ORGANISING FINANCIAL DISCLOSURE

During separation, both parties must provide financial details, including recent tax returns, bank statements, and superannuation policies. You can often handle this initial gathering of documents on your own or with assistance from a trusted family member or accountant.

When to seek legal support:

A lawyer can verify that your financial disclosure meets all requirements. Complete, accurate documentation helps avoid delays and potential penalties and protects the integrity of your case.

DECIDING WHICH ASSETS BEST SUPPORT YOUR FINANCIAL FUTURE

While emotional ties to assets are common, a financial planner can help you determine which assets truly support your long-term financial goals. Reallocating or selling certain properties can sometimes set you up for a stronger future.

When to seek legal support:

Understanding your full entitlements in a property settlement is essential. Your lawyer provides the guidance you need to make confident financial choices aligned with your future needs.

Tips

SEEKING PROFESSIONAL SUPPORT?

HERE'S HOW TO PREPARE FOR AN INITIAL CONSULTATION



Make the most of your initial consultation with Honan Family Law. Use these five tips to help you prepare for when we meet.

GATHER KEY FINANCIAL INFORMATION

Come prepared with a rough overview of assets, liabilities, and superannuation held by you and your former partner, along with any relevant court orders, financial agreements, or parenting plans. This information helps your family lawyer provide tailored advice.

Determine what you each held at the start of your relationship and think about if there were any monetary windfalls (e.g. inheritances, or compensation payments) and how those funds were used.

It's not necessary to bring statements or other documents to verify your estimates of your initial consultation (although your family lawyer will likely request document copies as your matter progresses).

If you seek advice regarding a protection order, you should also bring a copy of any application.

CONSIDER BRINGING SUPPORT

Consider bringing a trusted friend or family member for support and to take notes, helping you absorb important details during the meeting.

ARRANGE CHILDCARE

To shield children from adult discussions and allow you to focus, arrange childcare if possible. If not, ask the office about possible accommodations.

SEEK FINANCIAL ADVICE

If property settlement is a concern, consult a financial planner or mortgage broker beforehand to understand re-finance options and asset retention possibilities.

KEEP AN OPEN MIND

Each case is unique. Come ready to listen and consider your lawyer's expert advice for the best outcome.

NEED SUPPORT NAVIGATING YOUR NEXT MOVE?

Book your initial consultation to find out where you stand. We'll help you move forward with grace and confidence. Book online or phone us on (07) 3185 2167.

COMMON TERMS AND THE FAMILY LAW ACT

Get familiar with the common terms we use and the governing law that guides our resolution pathways.

PROPERTY SETTLEMENT

The separation of property owned by parties jointly and separately following the breakdown of a relationship.

DIVORCE

A divorce is a legal severance of your marriage.

EX-SPOUSE

Refers generally to the party from whom you have separated and includes de facto spouses, parties who have separated but are not yet divorced and divorced parties.

FINANCIAL AGREEMENT

Also referred to as a 'Binding Financial Agreement' or 'BFA,' this is a contract between parties about financial matters to avoid a Court Ordered Decision and can be entered during the relationship, before marriage or upon separation.

THE FAMILY LAW ACT

The Family Law Act 1976 provides a legal framework for resolving issues, including separation, divorce, property settlements, and parenting arrangements. The Act prioritises children's best interests and outlines property division principles, considering each party's contributions and future needs.

To encourage amicable resolutions, the Act emphasises mediation and negotiation before any court proceedings, helping families navigate separation with agency and where possible, letting families make decisions.



Navigating RESOLUTION PATHWAY

At Honan Family Law, our focus is to support you towards your desired resolution as smoothly and fairly as possible. This process is your guide to navigating the resolution pathway.

NEGOTIATION

STARTING POINT FOR RESOLUTION

Negotiation is often the first step in resolving family law issues, aiming to reach a mutually agreeable solution. While the goal is to find a resolution, the process can vary. Negotiations might involve direct discussions between parties or through their solicitors, or a combination of both. The effectiveness of negotiations depends on several factors, including the thorough exchange of information and the willingness of both parties to explore various outcomes.

MEDIATION

SUPPORT FOR FINDING RESOLUTION

Mediation is a collaborative process guided by an impartial mediator. Unlike a court decision, mediation encourages parties to come to a consensus voluntarily.

WHEN MEDIATION IS REQUIRED

Mediation becomes mandatory if the parties cannot agree on a parenting arrangement or property orders and a court application is to be made. We'll help you decide which form of mediation best suits your situation.

PREPARING FOR MEDIATION

To be effective, each party should provide full disclosure of their financial information and any relevant factors before the session. Parties should also enquire about the practicalities of their proposal, for example do they have the capacity to retain the house or has their work approved flexible work arrangements to accommodate care commitments for parenting proposals.



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AGREEMENTS

REACHING AND DOCUMENTING AGREEMENTS

The ideal outcome in any family law matter is reaching an agreement. If an agreement is achieved, consult your family solicitor to ensure it is properly documented.

PARENTING AGREEMENTS

PARENTING PLAN

A flexible, non-binding agreement signed by both parents that reflects the parents' understanding. It doesn't require court involvement but can serve as evidence of agreed terms.

CONSENT ORDER

A formal, binding agreement that is enforceable and difficult to change. Lodged with the court, it ensures clarity and accountability.

PROPERTY AGREEMENTS

When you and your ex-partner reach an agreement in relation to property settlement, there are two ways of documenting (or finalising) the agreement under the *Family Law Act*.

1. A consent order incorporates the agreement in orders which are made by the Federal Circuit and Family Court with the consent of both parties.
2. A financial agreement deals with property settlement and/or maintenance and is not filed with the Court.

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WHEN AGREEMENT ISN'T POSSIBLE

If negotiations or mediation do not result in an agreement, you have two options to seek a binding resolution:

ARBITRATION VOLUNTARY AND BINDING

Arbitration is a voluntary process in property matters. Similar to a court hearing, arbitration offers a binding resolution with the same legal weight as a court order, made by an Arbitrator rather than a judge. It is often more cost-effective and quicker than a court proceeding.

COURT PROCEEDINGS THE FINAL OPTION

If all other methods fail, court proceedings may be necessary. Although rare, a final hearing can be time-consuming and costly due to court delays. Specialist Family Law advice is essential if you are facing a final court hearing.

PROPERTY SETTLEMENT FOR MARRIED AND DE-FACTO COUPLES

UNDERSTANDING PROPERTY SETTLEMENT

Property settlement is the formal division of assets following the breakdown of a relationship. Property settlement can happen at any time following separation, and the law applies almost the same to married and de facto couples.

This 5-step process is adopted by the Federal Circuit and Family Court of Australia.



STEP 1 - ESTABLISHING JURISDICTION

- » The first step to a property settlement is to determine whether it is just and equitable for there to even be a property settlement at all.
- » In most cases this criteria is quickly satisfied in longer relationships, where there are children involved, or relationships where parties have intermingled their finances or purchased assets together.



STEP 2 - IDENTIFY AND VALUE ALL PROPERTY

- » Identify all interests in property that you and your ex-partner have currently.
- » You must agree on a value or have valuations conducted.
- » If you own it, or part of it, it goes into the asset pool.



STEP 3 - ASSESS YOUR CONTRIBUTIONS

- » The Court will assess and evaluate the contributions by you and your ex-partner.
- » Contributions can be both direct and indirect, financial and non-financial.
- » Considered are contributions to the welfare of the family, as a homemaker or a parent.



STEP 4 - CONSIDER YOUR FUTURE NEEDS

Assess the future needs of both parties, including age, health, earning capacity, and child care responsibilities.



STEP 5 - DETERMINE THE JUST AND EQUITABLE NATURE OF PROPERTY DIVISION

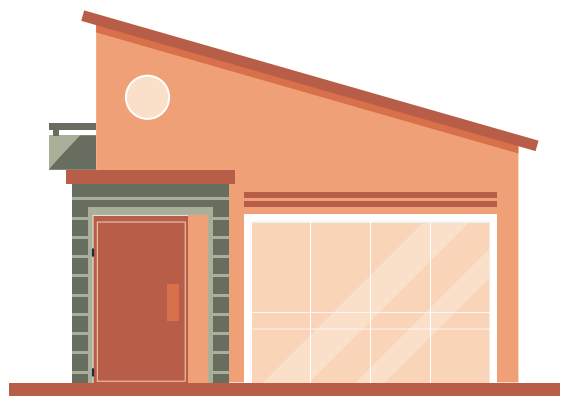
Ensure the proposed settlement is just and equitable toward both parties.

FORMALISE YOUR SETTLEMENT

To make your property settlement official, it needs to be documented with either a Consent Order through the court or a Financial Agreement under the *Family Law Act*.

FINALISE YOUR SETTLEMENT

- » For married couples: Apply within 12 months of the Divorce Order.
- » For de-facto couples: Apply within 2 years of separation.



SPOUSAL MAINTENANCE

POST-SEPARATION

WHAT IS SPOUSAL MAINTENANCE?

Spousal maintenance is financial support paid from one party to another following a relationship breakdown. It can apply in both marriages and de facto relationships, and normally involves the payment of money in a lump sum or in periodic payments.



WHY DOES IT EXIST?

It exists to ensure the financially weaker party of a relationship can support themselves following separation.

WHO IS ELIGIBLE?

Spousal maintenance is not automatic after separation. It is payable to a spouse or de facto partner where they are unable to support themselves adequately, primarily due to age, health, income disparity, care of children or any other adequate reason.

IS THERE A TIME LIMIT?

For married couples, you must apply within 12 months of divorce. For de facto couples, within 2 years of separation. Extensions may be granted in cases of hardship.

COURT CONSIDERATIONS

- » Income, financial resources, and ability to obtain work.
- » Financial needs and obligations.
- » Eligibility for social security payments.
- » Age and health.
- » Dependent children under 18 years.
- » Length of the relationship.
- » The terms of any property settlement.
- » Any other relevant factor.

CAN I PREVENT A CLAIM AGAINST ME?

The only way to extinguish your ex-partner's application against you, is by having a Financial Agreement in place in relation to spousal maintenance. This agreement removes the court's jurisdiction over future spousal maintenance requests.

HOW LONG IS A SPOUSAL MAINTENANCE ORDER VALID?

A spousal maintenance order ceases upon the death of the payer or recipient, the recipient's marriage, or change of financial circumstances. Unless the Court makes a continuation order, which is rare.

PARENTING ARRANGEMENTS POST-SEPARATION

If you have children and are separating from your partner (your children's parent), it is vital to ensure they are well cared for.

You can work through parenting and children issues with your ex-partner and formalise those arrangements with an experienced family lawyer, or you can seek help from family law professionals if you can't agree.

THE FAMILY LAW ACT

Parenting arrangements are made under the *Family Law Act*, with the most recent changes taking effect on 6 May 2024. The *Family Law Act* states:

- » a decision in relation to the child(ren)'s care arrangements is made in the best interests of the child(ren).
- » Child Support arrangements are dealt with separate to parenting arrangements.



DOCUMENTING YOUR PARENTING AGREEMENT

Parenting agreements can provide stability and clarity for everyone involved. There are three options available to reflect your agreement.

NOT DOCUMENTED

INFORMAL AGREEMENT

This can be a verbal agreement or a written agreement that isn't signed by both parents. An informal agreement is not enforceable if a parent does not follow it.

DOCUMENTED

PARENTING PLAN

A flexible, non-binding agreement signed by both parents that reflects the parents' understanding. It doesn't require court involvement but can serve as evidence of agreed terms.

CONSENT ORDER

A formal, binding agreement that is enforceable and difficult to change. Lodged with the court, it ensures clarity and accountability.

WHAT HAPPENS IF AN AGREEMENT CAN'T BE REACHED?

If parents cannot agree, the court may need to intervene. Before applying to the court, a mediation certificate (Section 60I) is usually required to show an attempt at resolution through mediation.



KEY CONSIDERATIONS FOR YOUR AGREEMENT

DETERMINING THE CHILD'S BEST INTEREST

From May 2024, the considerations determining the child's best interest under the *Family Law Act* were simplified to six factors for all children plus an additional factor for Aboriginal and Torres Strait Islander children.

The six factors include:

1. What arrangements promote the safety of the child and the child's carers, including safety from family violence, abuse, neglect or other harm.
2. Any views expressed by the child.
3. The developmental, psychological and emotional needs of the child.
4. The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological and emotional needs.
5. The benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so.
6. Anything else that is relevant to the particular circumstances of the child.

PRACTICAL CONSIDERATIONS

Successful parenting arrangements need to be reasonably practicable, considering:

- » **Geographical distance:** How far apart the parents live from each other.
- » **Implementation capacity:** Each parent's ability to follow through with the arrangement.
- » **Communication skills:** The ability of parents to communicate and collaborate effectively.
- » **Child impact:** Evaluating the arrangement's potential effects on the child.

PARENTING PLAN INCLUSIONS

Parenting Plans can include a wide range of issues regarding a child's day-to-day and long-term care, such as:

- » Where and with whom a child will live.

- » With whom the child will spend time.
- » With whom the child will communicate and how.
- » Where a child will go to school.
- » The allocation of parental responsibility (e.g. school, religion).
- » The form of consultation parents will have with each other regarding decisions to be made concerning a child's care, welfare and development.
- » The process of dispute resolution between parents and of varying a Parenting Plan, if and when necessary.
- » Issues regarding Child Support.

DETERMINING TIME WITH EACH PARENT

Prior to recent changes in the *Family Law Act*, the Courts worked on the presumption that it is in the child's best interest that the parents have equal shared parental responsibility. Now, there is no longer a "starting point" for what care arrangements are in a child's best interest.

Determining how much time a child should spend with each parent is essential to their wellbeing. Here are some options to help create a supportive environment for your child:

- » **Equal time arrangements:** Ideal when both parents can equally participate in the child's life, ensuring a balanced upbringing.
- » **Substantial and significant time:** This alternative arrangement may include time beyond weekends and holidays, allowing participation in daily routines and events that are significant to both the child and the parent.

DECISION MAKING: WHAT IT MEANS

Unless the Court makes an order for sole decision making, parents share the responsibility for their child's care, welfare, and development.

Both parents have a say in long-term care issues such as education, health, name, religious and cultural upbringing and where a child lives when a change to their living arrangements will make it more difficult for a child to spend time with the other parent. Day-to-day care that relates to a child's daily needs (such as bedtimes, meals, etc.) are not required to be a joint decision.

Navigating CHILD SUPPORT POST-SEPARATION

Child support ensures that children receive the financial support they need after the separation or divorce of their parents.

The amount of child support you may receive or pay is calculated based on your individual circumstances and the time children spend in your care.

Child support is generally administered by Services Australia or you have the option to make private or informal agreements between parties.



WHAT ARE MY OBLIGATIONS?

- » Your child support obligations depend on your individual circumstances.
- » You can apply for a child support assessment from Services Australia. They use a complex formula to determine the amount of child support to be received or paid.
- » If amicable, you may choose to enter into a private child support agreement. We recommend seeking legal advice to ensure you aren't left financially burdened.
- » You can calculate an estimate of the child support by using an online calculator available on the Services Australia website.
- » Honan Family Law can advise on your individual and unique circumstances.

HOW DO I ARRANGE CHILD SUPPORT?

There are a number of options to the way you may receive or pay child support.



1. SERVICES AUSTRALIA

- » Child support is generally administered by Services Australia.
- » If you choose to go through Services Australia, they will collect and distribute the money from and to parties, ensuring payments are made and received.



2. PRIVATE AGREEMENT

- » If you remain amicable with your ex-partner, you may wish to enter a formal or informal private agreement.
- » Both parties agree on the amount and in what form it is to be paid. This may be regular cash payments or payment for services that benefit the child (eg health insurance or school fees).
- » Monies are transferred directly between parties, bypassing Services Australia.
- » Option for a Limited Child Support Agreement (LCSA) offering specific conditions for clarity and accountability. This requires an existing administrative assessment.
- » Option for a Binding Child Support Agreement (BCSA), requiring legal advice and compliance.

Tips

PRACTICAL SPOUSAL MAINTENANCE

Under the Family Law Act, a spouse may seek maintenance from the other party after separation if they are unable to support themselves due to factors such as age, health, caring for children under 18, or other valid reasons.



COURTS CAN ORDER:

- » Lump-sum payments;
- » Periodic payments (weekly, monthly, or yearly); or
- » Transfer of property or assets.

SEEKING SPOUSAL MAINTENANCE

- » **Assess financial needs:** Provide a detailed breakdown of your financial situation, including weekly expenses, assets, liabilities, and future needs such as education or training costs.
- » **Gather evidence:** Collect receipts, invoices, and financial records to support your claim. Use card payments wherever possible to track spending.
- » **Request disclosure:** Seek the other party's financial documents (e.g., tax returns, bank statements, payslips) and any additional evidence of their capacity to pay.
- » **Address barriers to work:** Submit evidence, such as medical reports, to show any limitations on your ability to support yourself. Submit evidence, such as medical reports, to show any limitations on your ability to support yourself.
- » **Seek advice:** Consult a financial planner or an accountant to assist you in the calculation of your weekly expenses.

OPPOSING SPOUSAL MAINTENANCE

- » **Evaluate your financial position:** Prepare a detailed assessment of your own expenses, debts, and obligations to demonstrate limited capacity to pay, if applicable.
- » **Request full disclosure:** Ask for evidence of the other party's financial needs, assets, and job-seeking efforts to evaluate their claim.
- » **Challenge claims:** Identify any inconsistencies or exaggerated expenses in the application and request supporting evidence.
- » **Propose alternatives:** Offer lump sums or asset transfers if ongoing payments are impractical or unaffordable.
- » **Be commercial:** Consider making an offer. The costs that you may pay in defending a spousal maintenance application may be greater than the spousal maintenance you may be assessed to pay.

PRE-SEPARATION CHECKLIST

When anticipating separation there are steps you can take to help the process. Please note that the following list assumes there are no immediate safety concerns to you. Where there are immediate safety concerns, Honan Family Law recommends seeking advice from a solicitor and contacting the police service in your state or territory.

CHANGING PASSWORDS

Change your passwords and ensure appropriate security settings (i.e., you do not have security questions set to which your former spouse or partner would know the answer). It is also wise to conduct an audit of your social media accounts, Apple ID/iCloud, email, and banking accounts.

CHECK ANY LOCATION TRACKING TECHNOLOGY

Audit your technology to ensure no location-sharing services are on, including Find My iPhone, Snapchat Maps and location-sharing through messaging platforms such as WhatsApp, Facebook Messenger and iMessage.

LEAVING THE HOME

Before leaving the family home, seek independent legal advice from a specialist family law solicitor on the effect vacating the family home will have on your rights to return.

Take any items with sentimental value to you that would be difficult or impossible to replace, as there is no guarantee that once you have left home you can recover those items, including heirlooms, photos, hard drives, etc.

JOINT BANK ACCOUNTS

Where you and the other party have joint account/s containing significant funds, change the account to joint signatories so that any transfers out of the account require the consent of both of you. Note that advance notice to the other party of your intention to do so may trigger that party to take funds out of the account before you have a chance to action the joint signatories, and this option is not a 'one size fits all' approach. Therefore, seek independent legal advice from a specialist family law solicitor before actioning, where possible.

ENGAGING A SPECIALIST FAMILY LAW SOLICITOR

Meet with a specialist family law solicitor and develop a plan before communicating the separation with your partner. Often, the decisions made or not made early on in a separation can have a big impact on the course of the separation overall.

FREQUENTLY ASKED QUESTIONS

PROPERTY & FINANCE

Is superannuation included in a property settlement?

Yes, superannuation is part of the property pool available for division.

If one parent worked while the other cared for the children, does the earning parent get more assets?

Not necessarily. Contributions by a stay-at-home parent can offset financial contributions from income, with all factors considered in asset division.

We don't have joint property; do we need a property settlement?

Technically, no, but without formalising your financial separation, your ex-spouse may seek a property settlement later.

Must we document our property settlement agreement?

Formalisation is required for superannuation splits or to claim transfer duty exemptions. Otherwise, finalising your financial relationship helps prevent future claims.

Will an online Financial Agreement be binding?

No. To be binding, a Financial Agreement must meet *Family Law Act 1975* (Cth) requirements, including independent legal advice for both parties.

If we've agreed on settlement terms, do we need a lawyer?

Yes, one of you should seek legal advice to document the settlement formally.

Will a family loan be repaid?

A loan must be acknowledged by both parties or documented in a formal loan agreement to be recognised.

Do I have to disclose my bank account to my ex-spouse?

Yes, if relevant. Both parties must provide full financial disclosure.

Is a pre-nup available in Australia?

While Australia doesn't have "pre-nups," you can enter a Financial Agreement before marriage or during your relationship.

PARENTING

Does the other parent have a right to 50% custody?

No. Parental rights are not guaranteed; arrangements depend on what's best for the child.

Can I change my child's school without the other parent's consent?

Education is a major long-term issue, so parents should consult each other if safe and possible.

If my child doesn't want to see the other parent, must I encourage it?

Yes, unless there's a risk of harm, children should be encouraged to have a relationship with both parents.

Will my child's wishes be considered?

Yes, though the weight given to their wishes will depend on the other evidence to be considered.

Can I record my child's statements about the other parent?

Legally, yes, if you're part of the conversation, but it's better to document the child's words.

GENERAL

If my ex-spouse and I aren't speaking, must I contact them to apply for a divorce?

No, a sole Application for Divorce can be made.

Is my ex-spouse's infidelity relevant?

No, Australia's "no-fault" system doesn't consider the reason for separation, except in cases of family violence.

Can I record my conversation with my ex-spouse?

Yes, in Queensland, if you're part of the conversation, but laws vary by state.

Will my matter go to court?

Court is a last resort only after attempting the Pre-Action Procedure Process or if urgent issues arise.

Can we share custody of our pet?

No, pets are considered property; only one person will retain the pet in the settlement.

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