

Separation



What is separation?

If you are unhappy in your marriage or relationship you can separate at any time you choose.

Separation occurs when at least one person makes the decision to separate, acts on that decision and tells the other person. The other person doesn't have to agree with your decision to separate.

If you or your children are at immediate risk of harm, contact the police. In an emergency call 000. If it is not urgent that you leave the home immediately, you should get legal advice about your rights before you separate.

Separation and leaving home

There are no legal requirements to separate. You don't need to fill in any forms, apply to a court or any government organisation to separate, but you may need to tell certain agencies like Centrelink, the Child Support Agency and Medicare that you have separated.

When you separate, it is best to get legal advice as soon as possible about your rights, including arrangements for children, child support and any property. If you're new to Australia or are worried that separation may impact your visa or residency, get legal advice.

Can we be separated but living together?

You're separated once you stop living together as a couple. You can still be separated but live together in the same house. This is called 'separation under the one roof'.

If you are applying to Centrelink, you may need to prove to them that you are in fact separated under the one roof. They will consider whether:

- you sleep in the same bed;
- you and your former spouse have a sexual relationship;
- how you share meals and domestic duties in a different way to when you were married;
- you share money and bank accounts;
- your family and friends think of you as separated;
- you socialise or go out together.

No single factor is determinative.

Do I or my ex-partner have to leave our home?

You may not have to leave, even if your ex-partner refuses to leave the home (or owns the home in their sole name). If you leave your family home you do not lose your right to make a legal claim to the home or other property, but you should get legal advice about how you can protect your interest in the home.

What if my ex-partner and I can't agree on who should leave the home?

In most cases, you and your ex-partner can decide who will leave the home. If you can't agree, you can apply to a court to seek that you have the sole use and occupation of the home, forcing the other person to leave the home. If your ex-partner has been violent towards you, you may be able to seek a domestic violence order including an 'ouster' condition which forces the other person to leave.

These types of orders are only made in special circumstances, and you should get legal advice before applying for this type of order.

What if my ex-partner and I are living in a rental property?

If you are renting your home and the lease is in your ex-partner's name, and you are experiencing or have experienced domestic violence, you may be able to apply to be recognised as the tenant instead of your ex-partner. It may also be possible for the lease to be changed to one of the party's name with the consent of the owner of the property. You should get legal advice about the best options for you.

What if I am named on the home loan?

After separation, you will continue to be responsible for rent or mortgage payments if you are named on the home loan. If the loan is in joint names, both parties are legally responsible for payments regardless of who is living in the property. It is important to consider your financial position when planning to move. If you have decided to leave, you may be able to make arrangements with the mortgage lender regarding payments. It may be possible to apply to a court to seek that your partner be solely responsible for repayment of the mortgage, however it is important to legal advice.

After I have left, can I go back to the house to collect my belongings?

You have the right to your personal possessions. If the house is owned jointly or is in your name, you can go back to the house. You should consider whether there is potential for violence from your partner.

If the locks have been changed you should get legal advice about how to get your belongings. It is not advisable to break into a house, even if your name is on the title or lease.

If the house is in your partner's name, you should get legal advice before going back to the house and collecting your belongings.

If you think there is a possibility of violence or harassment when you attend the house, the police can accompany you to remove your personal possessions. The police are there only to protect you from violence or harassment, and they will not carry things from the house for you. If there is a dispute between you and your partner about who owns what, the police will not assist you.

If there has been domestic violence, you may be able to seek a domestic violence order including a condition that allows you to return to the house to collect your belongings either with or without the police attending with you.

What can I take when I leave?

Identification, documents, money

It is a good idea to take money and at least three forms of identification with you when you leave. You will need the original documents as photocopies are not usually acceptable.

Identification is important as you need identification to apply to Centrelink, to open new bank accounts or even to join a library.

If possible, take the following with you:

- Current Australian Passport, yours and your children's
- Birth certificate or birth extracts, yours and your children's
- Bank books and cards including those for joint accounts
- Driver's licence (showing a current address)
- Car registration papers (showing a current address)
- Credit cards (showing name and signature of holder)
- Marriage certificate
- Health care cards
- Citizenship papers
- Title Deeds to any property that you and your partner own
- Tax file number
- Documents related to both business and personal finances (including a copy of any financial agreement, superannuation details, mortgage or bank loan documents, tax returns and assessments, and insurance policies)
- Your Will

You may also need:

- Any available cash
- Car and house keys
- Your address book
- Jewellery
- Personal items, such as photographs and anything of sentimental value
- The children's special possessions

What if I don't have a place to stay?

If you need to go to a refuge, telephone DV Connect on **1800 811 811**.

This is a toll-free call available 24 hours.

To access a hostel, call the Homeless Hotline on **1800 474 753**.

To obtain public housing, contact or visit your local **Housing Service Centre**.

This factsheet includes general information only and is not a substitute for legal advice.