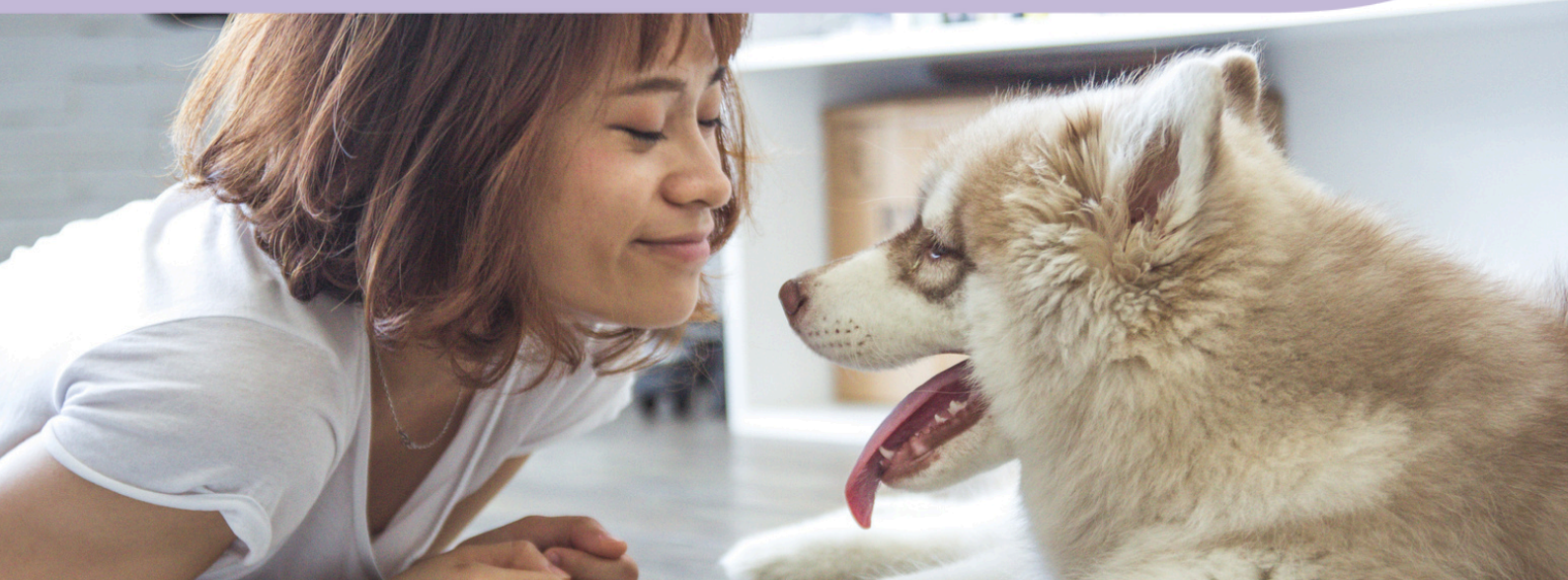




Companion Animals and Property Settlement



How are companion animals (pets) treated in family law matters?

The Federal Circuit and Family Court of Australia, in the context of a separation, will consider and deal with companion animals as property, similar to furniture or a car. This means that if you and your ex-partner are unable to reach an agreement as to who will keep your companion animal, they can be dealt with as part of a property settlement process.

The Family Law Act 1975 defines a companion animal to be an animal kept primarily for the purpose of companionship. This definition is wide and includes traditional companion animals like dogs and cats but can also include other animals. It does not include assistance animals for example, guide dogs.

Animals that are kept as part of a business, for agricultural purposes or for laboratory testing are not considered to be companion animals under the legislation. These animals are primarily used to generate an income (such as livestock or animals used in breeding or racing) and will usually be valued and treated as property. Animals that do not fit within the category of a business asset are not generally considered to have a monetary value within a property settlement.

For animals that meet the definition of companion animal, the court can order that:

- a. one party have sole ownership of the companion animal; or
- b. the companion animal be transferred to another person with their consent; or
- c. the companion animal be sold.

When deciding who the companion animal lives with the court must consider:

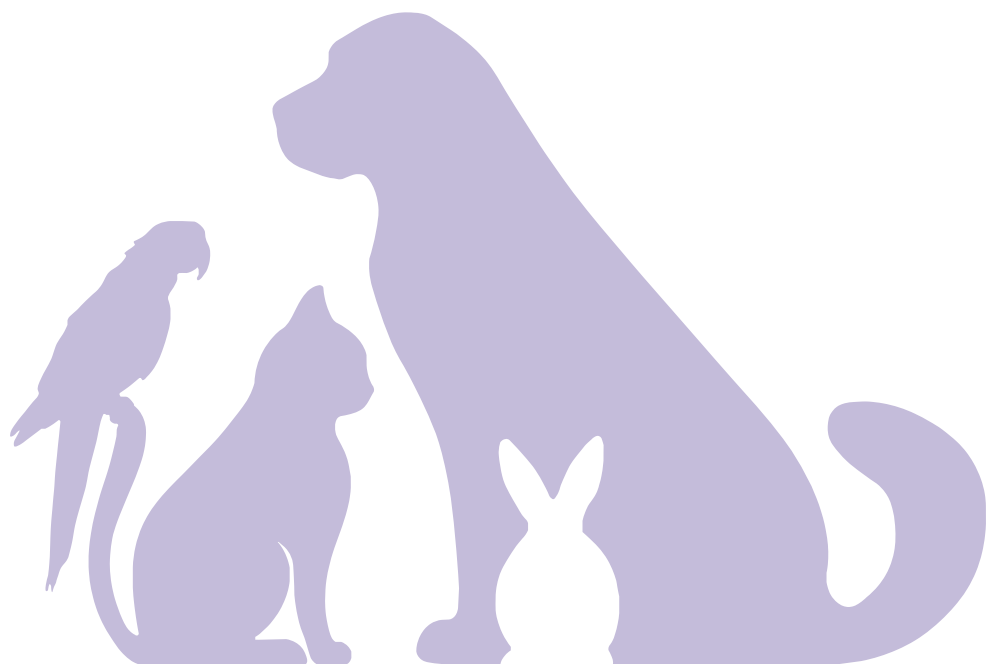
- a. the circumstances in which the companion animal was acquired;
- b. who has ownership or possession of the companion animal;
- c. the extent to which each party cared for, and paid for the maintenance of, the companion animal;
- d. any family violence to which one party has subjected or exposed the other party;
- e. any history of actual or threatened cruelty or abuse by a party towards the companion animal;
- f. any attachment by a party, or a child of the marriage, to the companion animal;
- g. the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;
- h. any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

The court cannot make orders for shared care of a companion animal.

What are your options to resolve a dispute as to where your companion animal should live?

There are a few options to consider when determining how to resolve a dispute pertaining to your companion animal after separation:

1. Work out an agreement with your ex-partner to determine who keeps the companion animal.
2. Come to an agreement with your ex-partner through a dispute resolution process.
3. Commence court proceedings to seek property settlement orders which can include orders as to where a companion animal should live.
4. Agree to share the care of the companion animal .



Agreement

If it is possible and safe to do so, you can come up with an agreement between yourself and your ex-partner about how property should be divided upon a separation. This type of agreement can include provisions which specify who will have ownership of the companion animal. The agreement can either be made formally or informally. Formal agreements, if documented correctly, are legally binding and can be achieved through:

- Consent Orders; or,
- A Financial Agreement.

Consent Orders are an agreement between the parties, approved by the Court and made into a Court order. Consent Orders have the same legal effect as any other Court order.

Alternatively, a Binding Financial Agreement can be made before, during or at the end of a relationship. This type of agreement can deal with a couple's financial and property affairs. For this agreement to have legal effect, it must comply with specific sections of the *Family Law Act 1975* and both parties must obtain independent legal advice before signing a Binding Financial Agreement. WLSQ is unable to provide any further information or legal advice in relation to Financial Agreements. If you require further legal advice or legal representation, please contact the Queensland Law Society for referral to a family law firm in your local area.

Informal agreements are not legally enforceable and are not recognised by the Court.

Family Dispute Resolution

If you and your ex-partner are unable to agree on who retains the care of a companion animal, there must be an attempt to resolve the issue through a dispute resolution process prior to applying to the Court for an order. Family dispute resolution processes may allow you and your ex-partner to discuss and reach an agreement with the assistance of a neutral third party.

Court Order

If the dispute resolution process is unsuccessful or not appropriate, you may be able to file an Initiating Application in the Federal Circuit and Family Court of Australia for an order regarding property settlement, including in relation to the care arrangements for your companion animal

RSPCA Pets in Crisis Program



If you need to leave your home due to domestic or family violence and you do not have safe housing for your companion animal, the RSPCA and DVConnect Pets in Crisis Program may be able to help you: <https://www.rspcaqlld.org.au/what-we-do/save-animals/pet-in-crisis-program>

Victim Assist Queensland and Personal injuries Claims

If you have been the victim of domestic violence, you may be eligible to make claim through the government Victims Assist Queensland scheme or a personal injuries claim. Strict limitation dates apply to both claims:

1. Financial assistance is available through a government program called 'Victim Assist'. The money is available to help pay for your recovery. There is a time limit - if you wish to apply, you must lodge the application within 3 years of the date of the violence. Please contact Victims Assist Queensland for further assistance in making a claim or on 1300 546 587.
2. Separately, if you have suffered personal injuries (including mental or psychological injuries) it may be possible to make a personal injury claim for damages against your former partner. This is separate to any Family Court claim or Victim Assist claim. Personal injuries is a speciality legal area - WLSQ cannot give you advice about this.

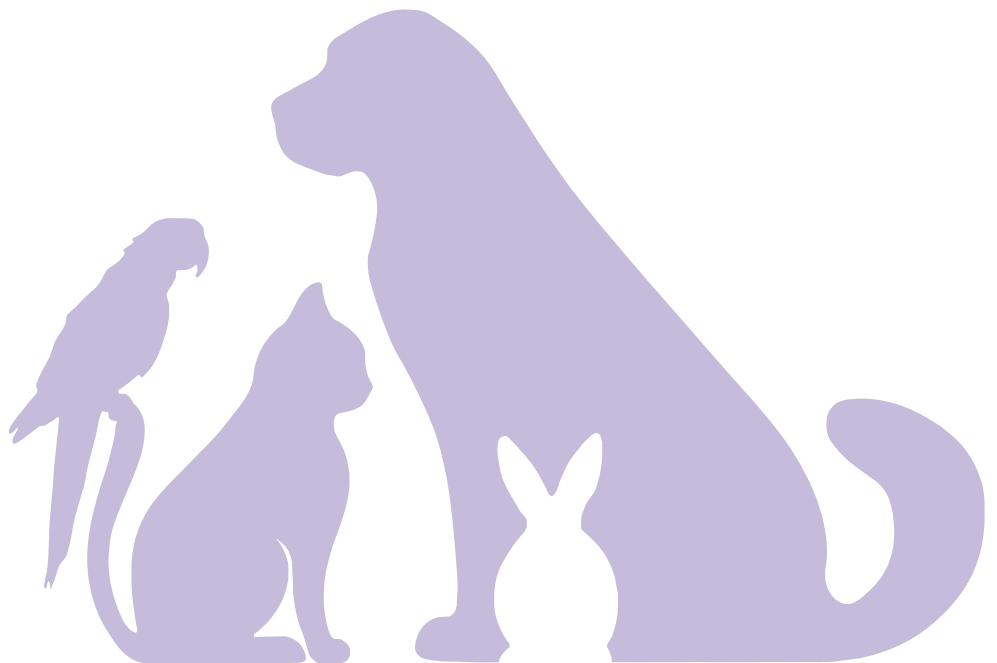
There are strict time limits that apply to personal injuries claims. There is a time limit of 3 years from the date of the injury, together with other time limits relating to the claim process. If you are considering applying, you should contact a private lawyer immediately for advice. There are private lawyers that offer 'no win, no fee' services. You can locate a specialist personal injury lawyer through the Queensland Law Society online search tool.

Property/financial limitation dates

There are time limits on when you can start a case in court to divide property or assets or sort out your finances. The time limits are:

1. If married, an application for property division or maintenance must be made within 12 months of a divorce order becoming final.
2. If de facto, an application for property division or maintenance must be made within two years from when the de facto relationship ends.

If the case is not started in court within the time limit, the court will not allow the case to continue.



This factsheet is not a substitute for legal advice.

WLSQ is unable to provide any further information or advice regarding this legal issue

If you require further legal advice or ongoing representation, please contact the

Queensland Law Society on **1300 367 757** or visit their website at

www.qls.com.au/find-a-solicitor/search