

Praise for *Splitting Up Together*

“An easy to understand practical how-to guide on amicably divorcing. A must read for anyone in the process of or thinking about splitting up”

“This book goes to show that divorce doesn’t have to become ugly and complicated. There is a clear simple, process that can be followed to avoid ending up in court fighting”

“A ripper of a book that deserves a place in bookstores everywhere”

“Many people out there will benefit hugely from such straightforward and clear writing”

“A very practical, helpful useful book that fills a gap in the marketplace”

“I found it to be thought provoking; answering questions that I didn’t even know I had. It made me consider my relationship in a different light. I’d recommend this book to anyone who is thinking about divorce or who is going through one”

Splitting Up Together

The How-to Handbook for
an **AMICABLE** Divorce

Siobhan E Mullins

Published by Separate Together Pty Ltd 2019

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National Library of Australia Cataloguing-in-Publication details:

Author: Mullins, Siobhan Elizabeth Mary

Title: Splitting Up Together: The How-to Handbook for an AMICABLE Divorce/Siobhan Mullins

Subjects: Law, self-help & personal development, separation, divorce

Book cover design and formatting service SelfPublishingLab.com

First edition 2019

ISBN 978-0-9876326-0-9 (pbk)

ISBN 978-0-9876326-1-6 (e-bk)

Currency

The author and publisher intend that the law and commentary is current at 31 December 2018.

Ready to separate?

To get advice or help preparing your
separation agreement paperwork, visit:

separatetogether.com.au

or call

(02) 6100 3629

Dedicated to:

My biggest supporter, my brother,
Liam Mullins, for everything.

My grandfather, whose eyes lit up when we
talked about my business and whose 'why-
not' attitude continues to encourage me.

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Foreword

When Siobhan told me that she was writing a book for people facing separation and the prospect of litigation to resolve issues arising from it, I was intrigued. When I received the initial draft 100 page manuscript, and finished reading it, I was confident that the book would provide a much needed plain English guide to assist people get through their separation and finalise the legal aspects of the termination of their relationship.

I have practised in family law, equity/trusts and guardianship and protected estates since 1976, the year in which the Family Law Act (Cth) 1975 came into force. The Act first made provision for counselling services and conciliation as means to resolve family law disputes without the need to resort to a contested hearing by the Courts. The Courts have increasingly encouraged parties to disputes to resolve them by alternative dispute resolution, which now includes mediation in addition to the original means of counselling and conciliation. In circumstances

where Australia's family law system and the legislation applying to it are being reviewed, this book is a timely reminder about the need to emphasise dispute resolution as an alternative to contested court proceedings.

Siobhan's goal to empower readers by educating them about the need to know information about the legal system is readily fulfilled by the contents of this book. It provides necessary information for someone who is contemplating separation or who has separated, with appropriate encouragement to readers to seek from professionals further specific advice and strategy relevant to them, whether that advice be legal, psychological or financial.

This book balances legal information with practical guidance about separation—the consequences, the logistics and the practical emotional and financial aspects of separation.

Noteworthy is the breakdown of seemingly complex legal concepts into easy to understand plain English, thereby allowing readers to follow the book and avoid feeling overwhelmed.

Siobhan has clearly written this book with the reader in mind. The book's structure builds on the foundational layers of information established as one reads through the book and with Siobhan's use of language and turn of phrase, you could say it's almost like having a conversation with Siobhan in person.

FOREWORD

In writing this book, Siobhan has clearly drawn on her experience as a lawyer and from her successful business, *Separate Together*, applying her knowledge of the law, her understanding of the problems people face even before separating and her appreciation of their need for assistance at a difficult time of their lives. Every effort is made to inform the reader and give them confidence in their ability to take control of their relationship and to identify and resolve the issues surrounding its termination.

Included throughout is some commentary from clients and case studies that apply the point that is being made to effectively convey the message to the reader.

Siobhan raises the importance of getting a reality check on one's expectations from qualified professionals as part of the process. This is important because inadequate or misleading advice can contribute to people proceeding to litigation with the associated delays, cost and anxiety, which could have been avoided by well-informed decision making.

Splitting Up Together is a worthwhile read for anyone who wants to know more about the legal separation process, one's options when it comes to remaining together or separating, what the law says in general terms about appropriate family law outcomes and ways to avoid contested litigation.

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This handbook will answer more questions than it raises and is the starting place for someone who is contemplating separating or who is anywhere along the divorce journey.

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Acknowledgements

My brother, Liam, has been my biggest cheerleader and supporter. I don't have enough words to thank Liam for all he has done for me.

Thank you to my mum and dad, who've instilled in me my work ethic and shown me how one can make a career out of a passion for helping people. I wouldn't be where I am today without either of them.

Thank you to my brother, Sean, for his never-ending encouragement and patience. Thank you to my brother, Patrick, and my sister-in-law, Kate, for all the laughs and their support in this journey.

Thank you to Julian Millar, whose support, intellect, dedication and passion for family law I am in awe of. Thank you to Norm Green, for his business insight, words of wisdom and support.

Thank you to the KPI community—in particular Brigid for her contribution—for making this book all the more human and relatable.

Thank you to my best friends, and to those family lawyers I also call friends, who have supported me in what I set out to do.

Lastly, thank you to my clients from whom I've learnt so much.

Introduction

Who this book is for

Are you thinking of separating, or are you recently separated? Are you feeling overwhelmed, like you don't have control? Don't know what to do next?

Then this book is for you.

Splitting Up Together isn't a touchy-feely emotional book. It is a book for those who want to learn how the legal separation process works, the steps that are involved and the way separate to minimise fees, conflict and reduce lawyer involvement, all the while avoiding court. *Splitting Up Together* is for those who aspire to have an amicable separation and want a roadmap of the separation journey ahead.

There are plenty of wishy-washy self-help and legalese books on breakups, but until now there has been no plain-English, easy-to-understand handbook on the practical stuff to do and think about before and after separation.

How this book will help you

Couples who end up in court are there because they've been unable to reach an agreement together about the split of their finances, parenting, child support or maintenance, and they need a judge to make a decision for them. The way to avoid court, lawyers and expensive legal fees is to reach an agreement with your partner, but this can be hard.

Knowing where to begin even before you've separated, and understanding the legal process and what your next steps should be to reach an agreement can be confusing and daunting. I believe that only with the right information and attitude can you and your partner commit to having an amicable separation. By providing the right information, this book will up skill, and educate you to reach a separation agreement. After reading it, you will feel empowered and in control of your separation so that when or if the decision to separate is made you'll know exactly what to do.

You'll notice that throughout this book I refer to your 'partner', not your 'ex', and not 'the bastard' or 'the witch'. Now you might have a new partner, boyfriend or girlfriend, but the reason I refer to your ex as your 'partner' is because you both need to remain and work as a team in order to finalise your separation quickly.

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You and your partner don't have to be amicable to finalise your separation quickly and easily. All you need to do is use my AMICABLE method, which is a process methodology stepping out the typical steps that you'll go through as part of your separation journey.

AMICABLE is an acronym that stands for:

- *Acceptance*: Accepting that the relationship is over.
- *Momentum*: The practical things you need to do in order to reach an agreement with your partner.
- *Interests*: Identify interests; the needs, goals and priorities that will help you and your partner reach a final agreement.
- *Consideration*: Consider your backup plan if you and your partner don't reach a final agreement.
- *Advice*: Counsel from a professional to give you a reality check about your expectations.
- *Brainstorming*: Brainstorm potential agreement outcomes with your partner that, with some improvement, could lead to a final agreement outcome that satisfies your and your partner's interests.
- *LEADR to yes*: A structured framework for your agreement discussion that stands for listen, express, acknowledge, discuss, repeat.
- *Endorse*: Make your agreement official.

After reading *Splitting Up Together* you will be armed with the following knowledge:

- What to consider when separating
- Definition of the term ‘legally separate’
- Changes to expect after separation
- Common mistakes people make when separating and how to avoid them
- Whether you need to see a lawyer, and the tasks you can complete yourself that don’t require a lawyer
- What the law says in general terms about divorce, child support, maintenance, financial splits and parenting after separation
- Advice you should consider getting from different professionals and why
- The different ways you can make your separation agreements official
- How, by following my AMICABLE method, you can reach a separation agreement

My story

Growing up, I wanted to be a teacher—and I’d be lying if I said it wasn’t in part because I liked kids and the

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idea of regular holidays. Basically, I saw (and still see) education as a way of helping and empowering people through knowledge.

With a keen interest in wanting to help people, I initially began studying social work at university, before then transferring and finishing with a degree in social science and following this up with a law degree.

My first legal job was working as a paralegal at a small family law firm, before becoming a lawyer. Aside from a brief three-month stint in the public service, I've worked exclusively in family law since 2011.

It's been the crossover between my passion for wanting to help people through education and me having always been a little bit different to my peers (which my mum calls unique) that led to me establish my family law firm, *Separate Together*.

Separate Together is different from traditional family law firms in its area of speciality—being to help separating individuals and couples prepare the paperwork to make their separation agreements official. *Separate Together* is an online firm that does not go to Court, instead focusing on educating people about how to make their separation agreements official. The firm's integration of technology facilitates people preparing their own draft paperwork at affordable fixed prices, where lawyer involvement is optional.

Family law is typically perceived as doom and gloom but I'm fortunate to work in a space where I see positive divorce and separation stories. The individuals and couples who I work with inspire me daily with their attitude and commitment to set aside their differences to prioritise their health, their emotional and financial well being and their children in order to successfully separate, but together.

Why I wrote this book

Even before making the decision to separate, people often face the problem of not knowing where to start, they perceive the separation process to be too hard and too complicated and that they have to use a lawyer—which they want to avoid because of expensive legal fees and conflict, and their deep fear that they'll end up in court.

I wrote this book because I wanted to try and alleviate people feeling too overwhelmed, stressed and not in control. I believe:

- You deserve a simple, easy to understand how-to roadmap about the legal separation process.
- You deserve an unbiased, no nonsense handbook that focuses on the practicalities of separation,

your options when it comes to staying together or separating, how you can reach an agreement, your options when it comes to make that agreement official and how you can reduce lawyer involvement.

- You can benefit from me sharing the knowledge that I have about the law, my observations as a divorce lawyer and about people's experience

I want to empower people who are going through or considering separation through education with the right information to then enable them to make informed decisions. Doing so can help shape people's attitudes and approach to their own separation, helping them to commit to an amicable separation.

Getting the most out of this book

Splitting Up Together is the culmination of my experience as a divorce lawyer working with family law clients representing them at court, mediation, negotiating and collaborating on their behalf, drafting legal documents and providing legal advice. This book is the result of what I know about the law, what I've learnt and my interactions and observations of people as a divorce lawyer over the years.

If you're at the point of trying to make a decision about whether to separate or not, you need only read chapter 1. The point of chapter 1 is to give you some practical things to consider as part of your decision process, your options when it comes to staying together or not, and to provide a high level overview about the legal separation process—what the law says in general terms, your options to reach an agreement together and how to make it official.

When you feel ready, then I encourage you to read the whole book, which goes into more detail about the legal separation process.

Take your time to familiarise yourself with the book from start to finish. Don't over think or get ahead of yourself. I intend for this book to be a practical resource for you to go back to, write notes and do the exercises. It's completely up to you whether you do them as you go through the book or whether you wait until you're ready or have read the entire book.

By the end, you'll see how everything pulls together and how the exercises will help you. By committing to having an amicable separation, and by doing the practical exercises, the AMICABLE method can work for you, just as it has for many others.

I have used legal terms that are referred to in the legislation, namely the *Family Law Act 1975*. I've unpacked

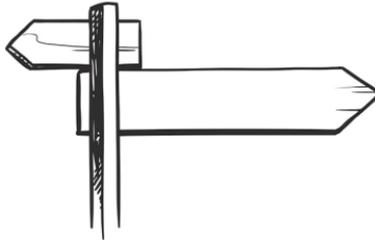
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what the legal terms mean where appropriate, but have not referenced specific sections of the law. I have used quotation marks with these words and phrases but have not added a reference.

I have sought to achieve a balance between appropriate referencing and readability by referring to sources within the text. Full details of the sources referred to are provided in the Bibliography.

Chapter 1

Making the Decision to Separate



If you've picked up this book, you might be considering separation, or you and your partner have already separated, whether one or both of you have made that decision.

You needn't read the entirety of this book to get a complete understanding about the immediate need-to-know information because in this chapter I will cover several important areas. You'll therefore have a high level understanding

about each of these areas, enough to feel reassured about the separation process and the potential journey ahead. I'll go into more detail about each of these areas in the later chapters so that you have a more complete understanding:

- Making the decision to separate
- Your options, whether separating or staying together
- The meaning of the term 'legally separate'
- Who to tell if you separate
- Changes to expect after you separate
- How and where to get advice
- The legal separation process explained

You can see that you'll probably learn more from this chapter alone about the legal separation process and the practical things you want to think about when separating than you would if you were to meet with a divorce lawyer and pay them several hundred dollars. Consider your money in buying this book well spent!

Making the decision to separate

Making the decision to separate requires some reflection on your part. The first thing to work out is whether you're

in the right headspace to be making any life-changing decisions right now.

The decision to separate can be an easy one for some people, particularly if there are complex issues like violence, lies, infidelity or other deep-seated problems. But even without these sorts of issues, it can be an extremely hard decision to make, let alone have imposed on you. It can be particularly difficult if you have children because you probably want what is best for them, and working out what that means may not be easy.

Life events, and sometimes life in general, can lead us to question our relationships with significant others, friends, family and work colleagues. The first exercise I want you to do is to simply sit for a moment and reflect. Then read through this list and decide whether you or your partner have experienced any of these events in the last eighteen months that could be affecting your headspace:

- Miscarriage
- Pregnancy and/or birth
- Physical or emotional cheating
- Physical violence/verbal abuse
- Career change (change of job, termination)
- Death of a family member or friend
- Gambling/addiction issues

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- Criminal offence/victim of crime
- Moved interstate or overseas
- Car accident
- Mental-illness diagnosis/suspicion of you/your partner (including depression)
- Diagnosis of a mental illness or depression-like symptoms

It could be a combination of one or more of the above, or none. You and your partner could simply have a lot going on at the moment in your life, whether it's work, the kids, sick parents, or you just aren't getting on.

Do you need a break to have time to think about your relationship? If yes, what are you going to do about it? It is important to tap into the reasons behind the question mark over your relationship.

‘ I ended up speaking with a counsellor, who really helped me to understand what was going on. My ex and I got together when we were in our early twenties; we had two boys together, and, in hindsight, got married for the wrong reasons. As we got older, we grew up. We both changed and came to realise that we wanted different things in life. ’

The next part of this exercise involves getting out your phone and going into the notes app, or grabbing a pen and paper. Write down the top five things that keep you awake at night. Which of these top five things do you believe are caused—directly or indirectly—by your partner? Write them down. Are any of them deal-breakers? Is there anything that could be fixed?

Now put your notes to one side and have a think about your relationship. The point of this next exercise is to help you reflect on whether the relationship is going through a rough patch that you could possibly work through together, or if separating is the right decision for you.

It can take weeks, months or even years to make the decision to separate, and it can represent a massive change in your life, so be patient. I've worked with people who have come to see me for initial advice well before they making the final decision to separate.

Here are a few suggestions that might help you in your soul-searching when it comes to making that decision:

- Consider your values and attitudes about family, career, money, parenting, children. What are your partner's values and attitude towards these things? Are your values and attitudes consistent with one

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- another or different? Do any differences need to be worked through? Can they be worked through?
- Do you and your partner share any common goals? What are they?
 - Identify your physical, intellectual, emotional and psychological needs (for example, physical intimacy, intellectual stimulation, emotional support, affection).
 - Which of those needs does your partner currently satisfy?
 - Which of those needs do you want or need your partner to satisfy?
 - Identify your partner's physical, intellectual, emotional and psychological needs.
 - Which of your partner's needs do you think you satisfy?
 - What can you see your life looking like five years from now if you separate from your partner?
 - What can you see your life looking like five years from now if you are still together?

Writing down your answers to the above questions may help with your reflection and consideration of the relationship.

Interesting facts

- In a 2011 survey by Relationships Australia, respondents cited four main reasons for their relationship ending: being financial stress, communication difficulties, different expectations and values, and a lack of trust.

According to this survey, fewer people are getting married these days and more people are living together before they marry, if at all. Perhaps unsurprisingly, the survey identified that more people are having children together and not marrying.

- The Australian Bureau of Statistics (2016) identifies that in 2016, the median age of men and women marrying for the first time was 31.9 years and 29.9 years respectively. The 2016 data identifies the median length of a marriage from the date of the marriage to separation was 8.4 years and that the median age of divorce for males and females in 2016 was 45.5 and 42.9 years respectively.
- A key finding in relation to marriage breakdown is that women are twice as likely to initiate separation than their male counterparts (Hewitt 2008, p. 25).

Your options, whether separating or staying together

You can choose to explore separating or staying together in several different ways before actually making the decision:

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- **Do it yourself:** You and your partner can try communicating with one another, reading the self-help books, having date nights, or going on romantic trips or couples' retreats with professionals to see if these things improve your relationship.
- **Individual counselling:** You can have one-on-one sessions with a counsellor, psychologist or psychiatrist to work on yourself, any perceived deal-breakers, the relationship; or examine your decision about whether to separate or stay together.
- **Couples counselling:** You can both go to counselling to work on the relationship, discuss your value alignment, reconcile, or get help working through the process of separating together.
- **Workshops:** You can participate in a communication course or workshop with or without your partner to see what affect, if any, it has on your relationship and your decision to separate or stay together.

As much as you both may try, however, the deep soul-searching, weekends away and date nights may still be a flop. There might be nothing left in the relationship tank; perhaps it has holes that just can't be mended, and no matter how much you keep refilling it, it continues to leak.

The pit in your stomach when you think about separating—the impact on your kids, friends, extended family and your partner, and your financial position—is understandable. Separation is scary. But you will get through this, because I will help you when or if you make the decision to separate.

The meaning of the term ‘legally separate’

The legal definition of separation involves any couple in a romantic relationship (being two people, whether the same or different sex) that has been ‘brought to an end by the action or conduct of a person to the relationship’. Basically, one of you has put an end to you being a romantically involved couple. It’s important to note that you can be separated while still living together under the same roof.

You or your partner might decide that you’ll continue living under the same roof until you sort out how you’ll split your finances or arrange for your children’s care. There can be pros and cons to moving out or staying in the same house together (which I cover in a later chapter).

‘My ex and I decided that we’d keep living together under the same roof after we separated until we worked out the kids’ custody and how we were going to split our assets. It was good on the one hand because it meant that the kids still had stability in seeing us both every day, and we kept our finances the same as before so we didn’t have to pay for two households immediately. It was a bit uncomfortable at times having to be around one another, but we made it a priority to work together and put on a brave face for the kids.’

Who to tell if you separate

Aside from telling your partner that you want to separate, you may want to consider the following:

- You’re not required to sign or lodge any documents with the court to let them know that you’ve separated.
- If you receive Centrelink entitlements (for example, family tax benefit, family assistance, childcare subsidy, schoolkids bonus, youth allowance, AusStudy), you are obligated to tell Centrelink about the change in circumstances of your relationship. If you have kids,

Centrelink may automatically issue a formal child-support assessment.

- If either you or your partner is on a visa in Australia, you are required to tell the Department of Home Affairs about the change in your relationship status.
- It may be in your interests to let your accountant, financial advisor/planner and bank know that you have separated.
- You may want to consider letting your GP, counsellor, psychiatrist or psychologist know so they can support you appropriately.
- You may want or need to tell your child's daycare, babysitter or school so your kids can be appropriately supported in that environment, too.

Changes to expect after you separate

After the decision to separate has been made, you might experience immediate day-to-day physical changes:

- **Changes to your living situation:** You might move out of the home you share with your partner, your partner might move out, or one of you may begin sleeping in separate bedrooms or in different parts of the house if you haven't already.

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- Changes to your career/work hours: You may need to increase your work hours to make ends meet financially, or reduce your work hours in order to care for your kids.
- Changes to your finances: You may decide to separate your finances, which could increase or decrease your living or household expenses.
- Changes in the time you spend time with your kids: You and your partner may need to decide whether you will spend time with the children one on one separately and apart from the other parent, or whether the children will live primarily with one of you and spend time with the other parent.

The immediate intangible things that you may experience:

- Feeling that an emotional weight has been lifted
- A sense of freedom when you and your partner speak or interact with each other
- Fights, arguments, silent treatment, depression or tears
- Relief, a sense of freedom and/or happiness
- Feelings of dread, regret, depression, anger or sadness

Thinking longer term, separation will inevitably affect both of your lives. I often encourage my clients to look beyond the next twelve months and think longer term; specifically, how life is inevitably going to change. Having some foresight and understanding about life ahead means that you can ‘try on’ separation—see what it might look like—before you commit to it.

There are several things that you need to be aware of:

- **Two households requiring financial support:** Your pie (your joint assets and debts, including superannuation in joint names and separate names combined) may not stretch to financially supporting two households at the standard of living you’re used to.
- **Financial care of children:** Your ability to financially provide for your children may be limited. You might not be able to afford the same opportunities you would have if you’d stayed together, for example, private-school fees, extracurricular activities, overseas holidays and medical expenses.
- **Maintenance:** Depending on your financial circumstances, you might be entitled to receive maintenance from your partner, or required to pay maintenance to your partner.

- **Living arrangements:** There will likely be changes to your children's living arrangements. This could see you spending more or less time with your children than you currently do. You and your partner may decide to see your children on birthdays and other milestones, graduations, Christmases, weddings and the like separately. You might go weeks at a time not seeing your kids because they are with your partner.
- **Care of sick children:** Depending on the children's ages and your support network—people who can care for them when sick or during the school holidays—you may have to take unpaid leave from work, purchase additional leave, or use up your annual, long-service or sick leave entitlements to care for them.
- **Financial support:** You may need to re-enter the workforce or increase your work hours to support yourself financially. You may also need to undertake further study or gain qualifications, which could take time.

How and where to get advice

Getting advice and information from a professional early on, before you separate, is a good idea because you can get

perspective and a reality check about what your life could look like after separation. Professionals you could consult include a:

- Mortgage broker, who could talk to you about your borrowing capacity, and your ability to service a loan when it comes to buying or keeping a property
- ‘Numbers person’ (financial planner, advisor or accountant), who could talk to you about managing money, your budget, expenditure, re-establishing yourself financially after separation, funding your children’s expenses, and preparation for retirement
- Child psychologist, who could talk to you about how to meet your children’s needs now and going forward if you do separate
- Family lawyer, who could talk to you about what would be an appropriate outcome for you in relation to a financial split, parenting, child support, maintenance and divorce

The legal separation process

It can be difficult knowing where to start and what to do once the decision to separate has been made. But your end goal is to reach an agreement with your partner and

consider making it official. Couples that end up in court are there because, for whatever reason, they've been unable to reach an agreement together, and one of them has asked the court for a judge to make a decision for them.

Parenting matters: Let's say you and your partner have kids together and you can't reach an agreement about their care arrangements. You would normally be required to attend mediation first to try and reach an agreement before either of you can ask the court for a judge to make a decision.

If you go to mediation and can't agree, or mediation isn't appropriate for whatever reason, or you or your partner refuse to participate, then you can ask the court for a judge to make a decision for you without going through mediation, which they will do in the form of a parenting court order (more about this in a later chapter).

In very broad general terms, to get the court involved you both have to prepare paperwork that sets out what you want as a final parenting outcome, and gives evidence justifying your desired outcome. This paperwork is submitted to the court, and you and your partner then have to attend a court hearing, where a judge may make court orders that are intended to help steer you in the direction of a decision about your children's care arrangements.

Often the court will require you, your partner and your children (and potentially any other significant person in your children's lives) to meet for an interview with a child expert (a court-appointed family consultant). The child expert will provide a written report with recommendations regarding your children's care.

Many parents use this report to reach an agreement together without having to go to trial and have a judge make a decision for them. For those parents who are unable to agree, the judge will consider the expert's report, together with evidence from each parent, and make a decision that leads to a parenting court order.

Financial matters: Let's say you and your partner can't agree about the split of your finances. Before asking the court to make a decision for you, you have to exchange your financial documents (this is covered in chapter 3).

Before starting the court proceedings, 'all genuine efforts to resolve the matter [must] have failed'.

Similar to parenting disagreements, in order to get the court involved, you and your partner have to prepare paperwork that sets out what you want as a financial split, and provides evidence justifying your outcome. This paperwork is submitted to the court.

You and your partner then have to attend a court hearing date, where a judge makes orders intended to steer

you in the direction of a decision being made about an appropriate financial split.

The court may order that you and your partner attend a financial mediation. Where this financial mediation is to occur before a registrar (being a lawyer of the court), it is called a conciliation conference.

According to the Federal Circuit Court's 2017–18 Annual Report, 36 percent of the registrar-facilitated conciliation conferences settled—meaning 36 percent of those separating couples who had initially asked for a judge to make a decision for them—managed to reach an agreement about their financial split at their conference.

If you don't reach an agreement, usually you have to return before a judge who'll make orders listing your matter for trial in twelve-plus months' time.

Different types of agreements

Matters that generally need to be worked out after you and your partner separate may include:

- If you have children together, an agreement about your children's care arrangements and all

things relating to them, including child support (periodic and non-periodic expenses, for example, extracurricular activities, medical and dental)

- The split of the pie: assets, debts and superannuation (formally called your ‘property settlement’)
- Maintenance: ongoing financial support
- Applying for divorce

The AMICABLE method

You don’t have to be that couple that can’t reach an agreement. Do you remember Gwyneth Paltrow and Chris Martin deciding that they would ‘consciously uncouple’? A lot of us divorce lawyers cringed at this term, but the principle is a good one. What if you could separate but still be able to talk to your partner? Well, you can.

Without the mung beans and kale, I have developed the AMICABLE method. This method identifies the steps that will help you reach an agreement with your partner after separation. Sounds good, right? Let’s get to it.

As explained in detail in chapter 1, AMICABLE is an acronym that stands for acceptance, momentum, interests, consideration, advice, brainstorming, LEADR-to-yes, and endorse.

Options for reaching an agreement

You and your partner don't have to go to court. You can choose to reach an agreement in a variety of ways:

- Get together and talk: Follow my AMICABLE method and have kitchen-table negotiations. Simply get together, talk and reach an agreement without involving a third person
- Mediation: Participate in mediation through a mediation service or a third person (for example, a trusted friend, family member or professional mediator).
- Consult a professional: Speak with a professional to help you agree. You could speak with your trusted accountant, financial advisor/planner about finances. You could speak with a child psychologist or counsellor about your children's care arrangements.
- Solicitor-aided mediation: This is where you both have your own lawyer and participate in mediation.
- Lawyer letter-writing negotiation: Engage a lawyer to write and respond to your partner on your behalf, putting forward different agreement proposals.
- Parenting agreement: You can participate in child-inclusive mediation, which assesses and incorporates children's views as part of the mediation.

Another option is collaborative family law. Collaborative family law is where you and your partner each have a lawyer and everyone works together as one team to achieve an agreement outcome that is consistent with your interests. It is a process whereby you negotiate on interests (needs, goals, priorities) rather than a traditional positional bargaining approach.

You both sign a legally binding contract saying that you won't go to court or use threats of going to court. If you go through the collaborative-family-law process and don't reach an agreement, you cannot use your lawyers in court proceedings. (There is the obvious financial incentive of sticking with the collaboration so you don't waste money having to engage new lawyers).

Making the agreement official

I believe that making your agreement official is probably the easiest part in a separation because you've already done the hard work in reaching an agreement together. There are different ways you can make your agreement official:

- **Parenting separation agreement:** You can make the agreement official in a parenting plan or parenting consent orders.

- **Financial separation agreement:** You can make the agreement official in a binding financial agreement or financial consent order. If you're wondering about statutory declarations, deeds and napkin agreements, they don't cut it. They're not legally recognised and they're not binding. Why? Because the law simply doesn't recognise agreements in that way. The court doesn't get to see the agreement, and the people signing up to the deal aren't required to have independent legal advice.
- **Child support:** You might choose to leave this as assessed by the child-support agency, include in a parenting plan or make it official in a limited child-support agreement or a binding child-support agreement.
- **Maintenance agreement:** Whether there will be ongoing financial support, or no ongoing financial support, you can make the agreement official in a binding financial agreement.

I go into more detail about these agreements in chapter 9.

Applying for divorce

To apply to the court for a divorce order, you and your partner have to be separated for more than twelve months.

There is some additional paperwork to do if you've been living separated under one roof in the twelve months leading up to applying for divorce, or, if you've been married for less than two years, there are additional steps you have to do first before you can apply.

Time limits

There are important time limits to consider:

- De facto couples have two years from the date of their separation to make their financial separation agreement official.
- Married couples have twelve months from the date of their divorce to make their financial separation agreements official.
- There are no time limits when it comes to parenting and child-support matters.

Bibliography

- Australian Bureau of Statistics 2016, *Marriages and divorces, Australia 2016* Cat. no. 3310.0, Australian Bureau of Statistics, Canberra, accessed 28 October 2018 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3310.0>>
- Australian Psychology Society 2015, *Stress and wellbeing: How Australians are coping with life*, accessed 28 October 2018 < https://www.headsup.org.au/docs/default-source/default-document-library/stress-and-wellbeing-in-australia-report.pdf?sfvrsn=7f08274d_4>
- Caruana, C., Ferro, A., Smyth, B., Weston, R., Whitfield, C., Wolcott, R. & Qu, L 2004, *Parent-child contact and post separation parenting arrangements*, Research Report No. 9 Australian Institute of Family Studies, Melbourne
- Family Court of Australia 2018, *Annual Report 2017–2018*, Canberra
- Family Law Act 1975 (Cth)
- Federal Circuit Court of Australia 2018, *Annual Report 2017–2018*, Canberra

- Fisher, R. & Ury, W 2012, *Getting to yes: negotiating an agreement without giving in*, 3rd edn, Random House Business Books, London
- Hewitt, B 2008, *Marriage breakdown in Australia: social correlates, gender and initiator status*, no. 35, Department of Families, Housing, Community Services & Indigenous Affairs, Canberra
- Relationships Australia 2011, *Issues and concerns for Australian relationships today*, Canberra, accessed 28 October 2018 < <https://www.relationships.org.au/what-we-do/research/australian-relationships-indicators/relationships-indicator-2011>>