

# CONSENT ORDERS

RESOLUTION WITHOUT CONFLICT



**KATE AUSTIN**  
Family Law



Hi and thanks for downloading your guide to Consent Orders. We hope that the information below is useful for you and sheds some light on the area of consent orders, which can sometimes be a bit tricky to navigate.

To begin with, we've provided some details about our principal solicitor Rachel, so that you can be assured that the information contained in the guide can be relied on. It's not legal advice per se, and if you want to find out how the information applies to your particular set of circumstances we'd be happy to help.

We otherwise wish you all the best in achieving a satisfactory outcome for your case.

## PROFILE – **RACHEL STUBBS**

Rachel is the Principal Solicitor of Kate Austin Family Lawyers. She has practiced in the area of family law almost exclusively for her entire career, having been admitted to practice in 2000. She has been an accredited specialist in the area of family law for over ten years, having achieved this qualification in 2007

Rachel is also a qualified family dispute resolution practitioner, qualified by the Attorney General's Office to issue Section 60I Certificates, having obtained this certification in 2009. She is also a certified collaborative law practitioner.

Rachel obtained a law degree with the specific goal of practicing in the area of family law. Family law is a very particularized area of the law, but a solid knowledge base must be matched with a personality suited to clients going through one of the most difficult periods of their lives. A good family lawyer not only knows all the important parts of the law, but they can also articulate it in a way people can understand.

They have social intelligence, bringing the right approach at the right time. They can communicate effectively, tailoring their language depending on whether they're talking to a client, an opponent,

or a judge. They're also able to empathise and be a solid support for their clients, providing not only legal advice, but strength, direction and guidance throughout.

To Rachel, these factors are every bit as important as knowing the law.

Rachel is a member of the Queensland Law Society and the Law Council of Australia as well as the Family Law Practitioners of Queensland.

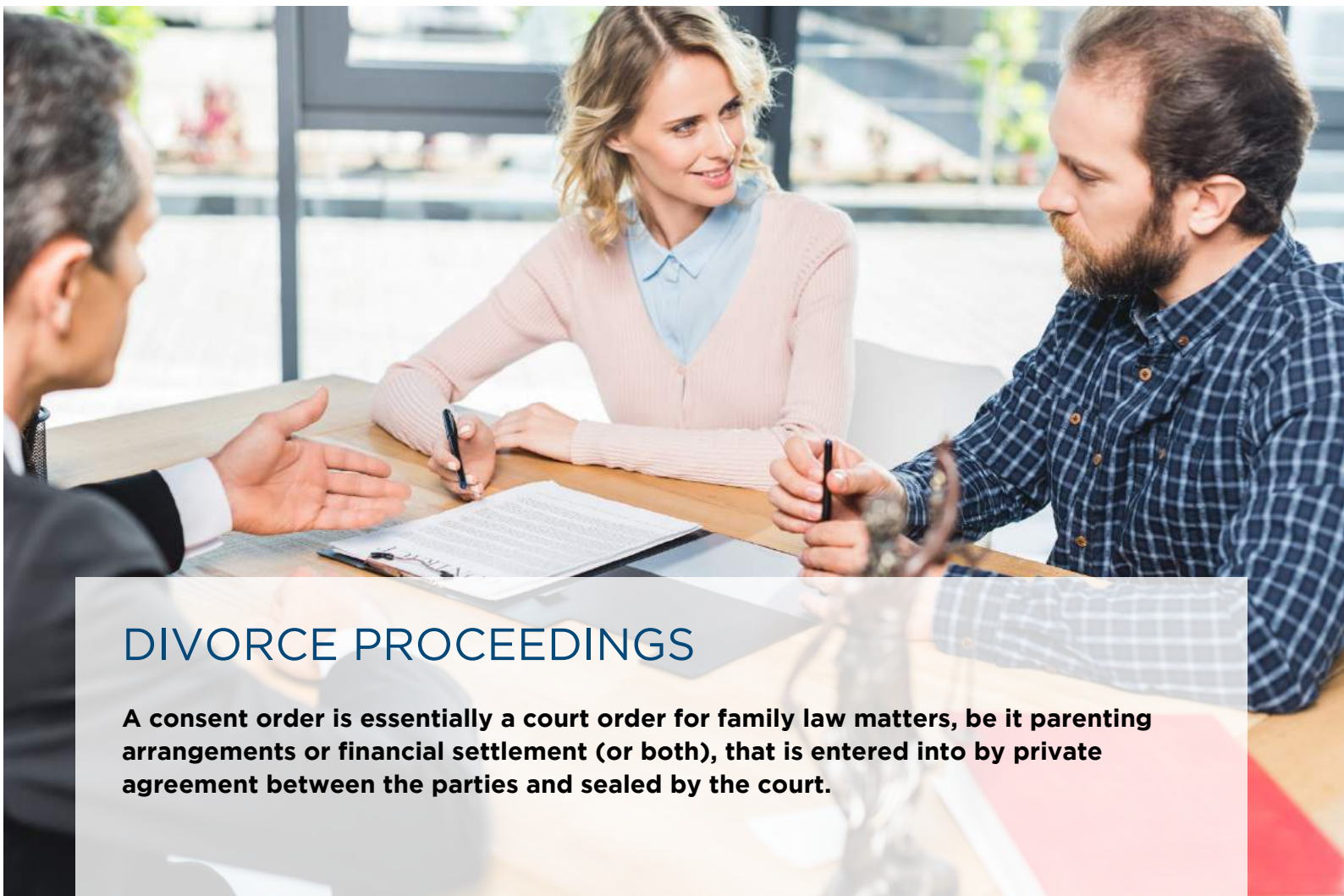
Historically, Rachel has been the principal solicitor of her own firm for over 14 years, retaining up to 29 staff across three offices, however her current focus is to run a far smaller practice, so as to enable her to really focus attention on a very small client base, and to ensure for clients the very best service available. 273762

Rachel is married with two children and in her spare time enjoys competing in triathlons, obstacle courses and going out to dinner with family and friends.

# TABLE OF CONTENTS

DIVORCE PROCEEDINGS .....	4
FIVE GOOD REASONS TO GET CONSENT ORDERS.....	6
THE DIFFERENCE BETWEEN CONSENT ORDERS AND A BINDING FINANCIAL AGREEMENT .....	9
HOW DOES THE PROCESS WORK AT KATE AUSTIN FAMILY LAWYERS? .....	10
PREPARING FOR YOUR TELECONFERENCE WITH US.....	12
OBTAINING FIXED FEE CONSENT ORDERS WITH KATE AUSTIN FAMILY LAWYERS - WHAT'S INCLUDED AND WHAT'S NOT.....	13
INSTRUCTIONS ON SIGNING THE DOCUMENTS TO BE FILED WITH THE COURT .....	16
CONSENT ORDER CASE STUDIES.....	18
CONSENT ORDERS VS PARENTING PLANS .....	28
HOW LONG WILL THIS APPLICATION FOR CONSENT ORDERS TAKE?.....	29
WHAT IF THE CONSENT ORDERS AREN'T FOLLOWED? .....	29
FAMILY COURT CONSENT ORDERS AND MEDIATION .....	31
WHAT HAPPENS IF THEY WON'T SIGN THE APPLICATION FOR CONSENT ORDERS? ..	32
DO WE BOTH NEED INDEPENDENT LEGAL ADVICE FOR CONSENT ORDERS IN QLD & NSW? .....	33
WHAT IF THEY TAKE THE CHILDREN WITHOUT CONSENT AFTER THE FAMILY COURT CONSENT ORDER IS MADE?.....	34
CONSENT ORDERS - ARE WE IN AGREEMENT?.....	35
CONSENT ORDERS - HAVE WE DISCLOSED EVERYTHING TO EACH OTHER?.....	37
CONSENT ORDERS - DOES THIS ACTUALLY FINALISE OUR MATTER? .....	39
APPLICATION FOR CONSENT ORDERS - WHEN THINGS GO WRONG CASE STUDIES...	40
MAKING CONSENT ORDERS QLD AND NSW .....	44
FAMILY COURT CONSENT ORDERS - HOW IS THE COURT INVOLVED?.....	46
SAMPLE CONSENT ORDERS - PROPERTY SETTLEMENT .....	47
CONSENT ORDER EXAMPLE 1.....	48
CONSENT ORDER EXAMPLE 2 .....	49
CONSENT ORDER EXAMPLE 3 .....	49
OUR PRACTICE - WHO WE ARE.....	52





## DIVORCE PROCEEDINGS

**A consent order is essentially a court order for family law matters, be it parenting arrangements or financial settlement (or both), that is entered into by private agreement between the parties and sealed by the court.**

What this means is that, rather than two people arguing their issues before a judge and allowing that judge to make a decision as to what happens to them, those people make an agreement with which they are both satisfied, and apply for a consent order to reflect their wishes. It is not only a quicker and more cost effective way to resolve issues at separation, but it is more likely to see a better outcome for all involved.

By its very name, a consent order is indeed an order made by the consent of the parties entering into it. This means that the people involved have entered into their agreement freely and voluntarily and consent to the order being made. For this reason, the court is usually inclined to make the orders for which parties have applied, on the basis that the parties themselves have considered their agreement to be just and equitable, and/or in the best interests of their child or children.

A consent order does not need to be drafted by a solicitor. The Family Court of Australia website provides free DIY kits to assist people to make these applications themselves. Many people opt to have a solicitor do the application, however, as they can ensure that the application is compliant, truly reflects the wishes of the parties, and has the expected legal effect and practical consequences desired. We are regularly approached by separating couples who have filed an application with the court and it has been dismissed. The court will not explain why it has been dismissed, but it is often due to lack of disclosure in the application itself, *or* most commonly, poorly drafted orders in the

Minute of Consent Order. As much as the system attempts to be accessible to self-represented parties, solicitors have endured many years of study and practical experience to be able to draft these orders, and their assistance in these matters can be invaluable.

At Kate Austin Family Law we offer a low cost fixed fee consent order service, so as to make this assistance more accessible to those who need it. We are highly experienced and can ensure that your orders not only see you with the outcome you want, but cover all the things you haven't even thought of, with our documents being drafted and filed in a timely manner.

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## FIVE GOOD REASONS TO GET CONSENT ORDERS

**So you've reached an agreement for your property settlement, or in relation to the future care arrangements for your children. You know you could get it formalised, but that'd mean getting a lawyer involved, and that'll cost money.**

It's taken a while to get to an agreement with your ex, you're busy and you just don't want to think about it anymore.

There's a few things that you might not have thought of, but which might make you give this decision a bit of further thought:-

1

**If you're proposing to transfer the house from joint names to just one party's names, did you know that there are stamp duty implications?** If you try to do this, the Office of State Revenue will charge you stamp duty on half the value of the property, being the half that's going from one person to the other. If your house is worth \$500,000.00, that's going to cost you about \$8,750.00. If you have your agreement formalised by way of consent orders, you get an exemption from the payment of stamp duty. If you come to us, we'll charge you \$990.00 to draft up all the documents you need to get consent orders made without going to court. That's a pretty big difference.

2

**If you're proposing to split up one party's superannuation, so that some of one party's super goes into the other party's account, you can't just agree to that and ask the fund to sort it out.** They'll want to see a court order which sets out how the superannuation split will be done, and in fact, they have to

consent to that order being made. There's no point reaching an agreement about something like this if you then find you can't get the super fund to implement it for you. If you have your agreement about a superannuation split formalised by way of consent orders, the fund will sort out the split with no problems. If you come to us, we'll charge you \$880.00 to get the super fund's consent, and then draft up all the documents you'll need to get consent orders made without going to court. You've done the hard work by getting to an agreement. Don't let something like this get in the way of getting everything finalised smoothly and promptly.

3

**You've spent ages to-ing and fro-ing and you've finally been able to get to an agreement with your ex that you can both live with.** That's the hardest part done. If you don't formalise your agreement, there is little to stop one of you coming back, maybe in a few years' time and seeking a formalised property settlement. The whole thing has to get reopened. Any assets you've acquired post-separation are in the property pool and available for distribution between you. Your previous agreement might be relevant, but there might be reasons why the court is happy to revisit everything that you thought already finalised your property settlement. Formalising your property settlement finalises it. Everyone knows where they stand. Everyone gets to get on with their lives without wondering if assets they accumulate after separation will be divided again later on. We can formalise, and finalise your property settlement for \$990.00. It's worth considering for your peace of mind.

4

**You and your ex have worked hard and spent more hours than you remember working out an arrangement that you think will work well for your kids into the future.** Maybe you went to mediation and sorted it out that way. You're pretty amicable and you don't believe that formalising your agreement is really necessary. But what if things change? What if you're the one doing all the drop off's and pick up's and then your former partner goes and moves ten suburbs away? What if your former partner re-partners and all of a sudden, they want to change the weekends around so that your kids spend time with the new partner's kids? What if your ex wants to move away with the kids? It's great when things are amicable and you're working together, but sometimes things get in the way of that. If you've had your agreement formalised into consent orders, then any changes to the orders have to be negotiated. You're going to get a say in that.

One party can't just unilaterally change the orders and the kids' routine without consulting you, like they can if it's an agreement. We can formalise the future care arrangements for your kids for \$880.00. Yours or the kids' circumstances might still change in the future. But any changes made to the orders as a result are made with your input.



## 5

**You've got your agreement and everything is going well.** You've divided up your property like you agreed you would and the kids are settling into the new routine. What if something then arises that you didn't think of? What if a debt that you forgot about suddenly surfaces. It's in your name, but you both accumulated it. Or you want to take the kids on an overseas holiday, but your agreement doesn't cover that sort of thing. When you get a lawyer to put together your agreement, they think of things like this. They make sure that no assets or liabilities are left out or forgotten about. They draw your attention to things that you might not have thought about, but which might arise down the track with your kids. We can formalise an agreement for a property settlement or for the future care arrangements for your kids, all the while ensuring that nothing gets left behind or not considered.

We charge just \$880.00 to draw up consent orders for either a property settlement or for future parenting arrangements (or \$1,320.00 for both). We think it's the best price going around, but we know it's a lot less expensive than having to get a lawyer involved if you're having trouble trying to sort out things like this down the track.

So if this has given you a reason to re-think your decision not to formalise your agreement, you might want to take the next step and [give us a call](#). We can talk you through the process, confirm the price is what we've said it's going to be here, and get you started. If you'd like more information about our [fixed fees](#), just click on the link.

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**We can formalise an agreement for a property settlement or for the future care arrangements for your kids, all the while ensuring that nothing gets left behind or not considered.**





## THE DIFFERENCE BETWEEN CONSENT ORDERS AND A BINDING FINANCIAL AGREEMENT

**Like Consent orders, Binding Financial Agreements set out how property and financial resources are to be divided upon the breakdown of the relationship.**

The advantage of a BFA is that it can be entered into prior to marriage, during a marriage, or after a divorce order is made, unlike consent orders which can only be entered into following separation.

The disadvantages however are as follows:-

- As the BFA is not required to be submitted to the Court for approval, if one party wishes to contest it at a later date, there is greater potential for the Court to declare the Agreement non-binding, or to set it aside.
- There are strict rules associated with Binding Financial Agreements, non-compliance with which can render the agreement unenforceable.
- The approach of the courts to the relevant provisions of the Family Law Act which govern BFA's and how they might be varied or set aside, remains in a state of evolution. There are areas where clarification will only be known by ultimate rulings from the Full Court of the Family Court or the High Court of Australia.
- There is the continuing possibility of further amendments to the legislation governing Financial Agreements. Again, the form and effect of any such future change is not presently known and is impossible to predict.

It is accordingly the practice of our firm not to recommend Binding Financial Agreements where Consent Orders can be prepared as an alternative.



## HOW DOES THE PROCESS WORK AT KATE AUSTIN FAMILY LAWYERS?

**There are two main things that we will need from you before we can progress your matter:-**

1. **We require funds in trust**, including the filing fee required by the Court, to be deposited into our trust account.
2. **Please also complete this intake form** and return it to us.

Once these steps have been completed, we will contact you to schedule a convenient time for a 20 to 30 minute telephone conference during which we will obtain some further information from you, as well as the precise details of the agreement that you've reached.

Once the conference has taken place, we will generally have all of the information that we need in order to prepare the documents that the court will require in order to make consent orders for you.

We will then put together two documents on your behalf, which are:-

1. **Draft Consent Orders** – This document sets out the agreement that you've reached along with the mechanics of how each order will be implemented where applicable.
2. **Application for Consent Orders** – This document sets out for the Court relevant background information designed to assist the Court in verifying that the Orders proposed to be made are fair and equitable. For a property settlement, all of your

assets and liabilities are set out, even if they don't form part of the agreement. As well, the Application sets out in mathematical terms what the orders say in words and sets out the proposed percentage split. For children's matters, the Application provides background information in relation to the children.

Both these documents must be filed with the Court. They must meet with the approval of a judge, who will then, assuming the proposed orders are found to be just and equitable, make legally binding court orders in accordance with the agreement that you have reached.

Once drafted, both documents are forwarded to you, so you can make sure all the details are correct. You will then need to print off, sign and scan back to us by email signed copies of:-

- **The draft consent orders.** Each page of the draft consent orders must be signed by each of you.
- **The Statement of Truth of Applicant and Statement of Truth of Respondent.** The Applicant's statement is attached to the draft Application for Consent Orders. The Respondent's statement will be sent separately.

Once the scanned and signed documents have been returned to us by email we will file all the documents.

It usually takes around two to four weeks for court orders to be made in accordance with the agreement that you've reached. You are not required to attend court. The case is considered by a Judge in Chambers.

Once the orders have been made, a sealed copy of the Orders typically becomes available via the court portal. We will obtain a sealed copy of the Orders that have been made and forward them to you.

The process of taking instructions from you, putting together the draft documents, having them filed and then having orders made in accordance with the agreement that has been reached usually takes around one month.

Sometimes the matter doesn't conclude at this point. Commonly, one party is transferring their interest in a property to the other and there is a refinance process that must now take place. We are able to assist with the implementation of orders, and arrange the refinance on your behalf for an additional fixed fee. This process generally takes around six weeks to complete.

If you have any other questions, you might like to have a look at our [FAQ's page](#) on fixed fee consent orders. To find out more information about who we are and what we do, click on this [about us link](#).





## PREPARING FOR YOUR TELECONFERENCE WITH US

**In preparation for our conference you will need to provide to us the following details:-**

1. The date you got together, the date you married, if applicable, the date you separated and the date you divorced, if applicable.
2. Details of all of your assets and all of your liabilities, and their approximate values.
3. The BSB and account details for all accounts that you and your former partner have an interest in, either separately or together.
4. The make, model and registration of any cars that you own.

As well, we will also require the following documents from you before the telephone conference can go ahead:-

- An up to date superannuation statement.
- A Council Rates notice, showing the lot and DP for any real estate owned by you.



## OBTAINING FIXED FEE CONSENT ORDERS WITH KATE AUSTIN FAMILY LAWYERS – WHAT’S INCLUDED AND WHAT’S NOT

**The fixed fee consent orders process that we provide is designed to assist parties who might feel as though in general, they don’t really need orders, but they’re getting them for specific reasons. Some reasons why parties who are separating amiably might want court orders are:-**

- To avoid the stamp duty implications associated with having a property transferred from joint names to one party’s name;
- To ensure that the financial relationship between the parties is at an end and there is no scope for either party to pursue a further property settlement at some future date; or
- To ensure certainty for the future care arrangements for their children.

At Kate Austin Family Lawyers, we do provide the full range of family law services, however the specific option that you have chosen here is geared towards formalising agreements that have already been reached in a simple, quick and easy way for a specific reason.

What the fixed fee includes:-

- Taking instructions from you, typically by way of a telephone conference, in relation to the agreement you've reached, and filling in any gaps in relation to matters that you might not have thought of.
- In order for the court to make orders in accordance with the agreement that you've reached, we then prepare two documents:-
  - **Draft Consent orders** – this document sets out the agreement you've reached in a format that is legally binding and enforceable and in a way that the court will accept.
  - **An Application for Consent Orders** – For property settlement matters, this document sets out all of the assets and liabilities of the parties, and then sets out in mathematical terms what the draft consent orders say in words. It also provides the court with other information about the parties' relationship and sets out the proposed percentage split of the asset pool. For children's matters, details about the parties' relationship and the arrangements for the children are set out.

We get all the information we need to prepare these two documents from you and then we prepare the documents for you to review.
- We send the completed documents to you for execution and once you return them to us, we file them with the Court.
- Obtaining court orders in accordance with the agreement you've reached, and then forwarding them to you.

What the fixed fee **does not** include:-

- The fixed fee **does not** include negotiating an agreement between you and your former partner. We're happy to help you negotiate an agreement, if you don't already have one, however this doesn't fall within the scope of our consent orders fixed fee, as this works on the basis that you and your former partner have already reached an agreement.
- Subject to the comments below, the fixed fee **does not** include the provision of independent legal advice. Again, we're happy to do this, if you'd like independent advice on the agreement you've reached, however it doesn't fall within the scope of the consent orders fixed fee. Providing independent legal advice requires us to obtain a detailed history of your relationship, dating back to prior to its commencement and dating forward beyond the date of separation and projecting into the future. This takes considerable extra time.

On occasion, the agreement you've reached may, in our view, be something that the court is unlikely to make orders in accordance with. This doesn't generally happen, but can happen if the agreement, on the face of it, seems heavily skewed in favour of one party. In such a case, we will advise you about the best way of presenting the agreement so as to ensure that wherever possible, the court will make orders in accordance with the agreement reached, if there are valid reasons why it might be skewed in favour of one party. We will also advise you if we think that orders are unlikely to be made in accordance with your agreement, so that you have the



opportunity to withdraw your instructions, or to go back to your former partner and re-negotiate terms that are more likely to be acceptable.

- The fixed fee **does not** include the implementation of the orders once made. Most commonly, property settlement orders make provision for the property owned by the parties to be transferred from joint names to one party's name only, as having consent orders made enables the parties to avoid the stamp duty implications that otherwise arise when properties are transferred. We are happy to undertake this process for you for a fixed fee, however this fee is separate and additional to the fixed fee associated with the preparation of consent orders for you.

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## INSTRUCTIONS ON SIGNING THE DOCUMENTS TO BE FILED WITH THE COURT

Following the preparation of the documents, we send them to you for your review and consideration.

The documents include the following:-

1. Draft Application for Consent Orders including Statement of Truth of Applicant;
2. Draft Consent Orders;
3. Statement of Truth of Respondent.

As well, we include a link to the Family Court brochure entitled [“Marriages, Families and Separation”](#), which we are required to provide to you.

From here:-

- If there are any changes required to either of these documents, please [click on this link](#), which will take you to a page where the changes can be set out by reference to the question in the Application, or the clause number in the draft Orders. Once completed, please email this document back to this address.
- If (or once) no further changes are required, we ask that you print off all three documents and follow the following instructions for their execution:-
  - Apart from the last page, the draft Application for Consent Orders does **NOT** need to be signed. Please just keep a copy for your records.

- On the last page of the Application for Consent Orders, you will find a page entitled "Statement of Truth of Applicant". This needs to be signed and dated at the bottom by the Applicant. The Applicant will also need to tick all of the boxes that apply. For example, if parenting orders are being sought, tick box 8. if financial orders are being made, tick box 9, as per the below.

8. ☐ **For parenting orders** – I have read and considered sections 60B, 60CA, 60CC, 60CH, 60CI, 61DA, 64B, 65DAA, 67Z and 67ZBA of the Family Law Act.
9. ☐ **For financial orders** – I have read and considered in the case of a marriage section 72, section 79, and subsection 75(2) and where there is a superannuation interest, Part VIIIB of the Family Law Act and in the case of a de facto relationship section 90SF, section 90SM and where there is a superannuation interest, Part VIIIB of the Family Law Act.

If you have not read and considered the relevant sections of the Family Law Act, please click on [this link](#), which will take you to the *Family Law Act*, 1975.

- a. The Statement of Truth of Respondent must be signed and dated at the bottom by the Respondent. Again, the Respondent will also need to tick all of the boxes that apply.
- b. Both parties must then sign and date each and every page of the draft consent orders at the bottom of each page, wherever there is space. Both parties must sign the same document. You can however have one party sign it, and then email it to the other for signature, just as long as there is one document submitted with both parties' signatures on it.

For your reference, here is a [link to the sections of the Family Law Act](#) to which the Statement of Truth makes reference, if you are not already familiar with these provisions.

Once you have signed the draft consent orders, and the two Statements of Truth, you need to scan and email the signed documents back to us.

We will then collate all the documentation and submit it to the Family Court for the consideration of a Registrar in Chambers.





## CONSENT ORDER CASE STUDIES

### SHORT MARRIAGE: JAMES & EMILY

James and Emily got married in 2012 and separated in 2016. They had a daughter Erin, who was three years' old when they separated. Emily wasn't working when she and James separated, and she was worried about how she was going to be able to cope financially after James moved out. She had a friend who'd gone to mediation which resulted in an agreement being reached and consent orders being made and she was hoping for a similar way forward. She and James had been fighting a lot, but she also knew that with Erin being so young, they'd have to find a way to stop the fighting if they were going to be able to be good parents for her for the next fifteen years.

Emily figured she needed to know where she stood legally, so she sought out some legal advice. When she spoke with our team, she made it clear that she wanted to find an amicable outcome, even though at that time, it seemed impossible.

As it turned out, James was motivated by wanting to have a relationship with his daughter and he was worried that Emily might try to stand in the way of that. Despite their differences, he could see that Emily was a good mother and that it wouldn't be

good for Erin if Emily was forced to go back to work full time. He was willing to help out financially if it meant that Emily would be open to facilitating his relationship with Erin.

Consent Orders made sense for both James and Emily, because they gave them both certainty in relation to the things they were each worried about losing. Emily wanted the consent orders to refer to regular payments being made by James to support her for the period leading up to Erin starting school, after which time she planned to return to work. James wanted the security of consent orders because it assured him that the time he was able to facilitate having Erin in his care could not be changed later on.

Consent Orders give parties certainty about the future. There is no doubt that an agreement can be hard to get to. However, ending up in court is likely to push the possibility of consent orders further away from reach than ever, so it's worth looking at, even if you think yours is a case where an agreement could never be reached.

## **A LONG MARRIAGE WITH KIDS: SOPHIE & LUKE**

Sophie and Luke were together for 22 years. They'd raised two kids together called Freya and Jade who were 17 and 15 when they separated. Unfortunately, in that time, they'd had a failed business venture, so that by the time they separated, there was a lot of debt and not too much else. The bank was threatening to foreclose on the mortgage over the house and the financial pressure on them was overwhelming. Sophie desperately wanted to hold onto the house for the sake of the kids, who'd grown up there. They were in high school close to home and the older son Max was in year 12. The successful completion of the boys' HSC was really important to the whole family.

Sophie had started her own business about three years prior to the separation, so while it was still early days, the business was showing signs of being quite profitable. The problem was that currently, the bank wasn't willing to loan her enough money to buy Luke's interest in the house. He didn't want to keep the property, so it looked like it was going to have to be sold.

The financial pressure that Sophie and Luke had been under had really taken its toll on their relationship, however they both saw some sense in one of them trying to hold on to the property, both for the sake of the boys, but also because by the time they paid commission on the sale, and then split what was left over, neither of them were going to be in a position to buy elsewhere.

We spoke to Sophie about consent orders as a way of resolving their property settlement. She knew that Luke was entitled to be paid for his share of the property, so a proposal was put together, which had regard to the following:-

1. That Sophie couldn't currently refinance, however it was likely she'd be able to at some stage in the relatively near future;
2. That Luke was entitled to a share of the value of the property and that he shouldn't have to wait forever for that share to be received.

Property prices were going up in the area in which Sophie and Luke had bought their property, so they both stood to benefit if they could keep hold the property. Sophie would be able to refinance and pay Luke if he was prepared to wait another twelve months to receive his entitlement. Luke would get a share of the value of the property based on what it was going to be worth in twelve months' time, so there was some incentive for him to wait a little while.

Drafting up consent orders gave both parties certainty about their agreement. As well though, it meant they avoided paying stamp duty on the transfer of the property from joint names into Sophie's sole name, a saving of around \$12,000.00. Getting to an agreement and finalising it by way of consent orders also meant they could both get on with their lives and it lessened the conflict between them.

## **A DEFACTO RELATIONSHIP: JACK & SARAH**

Jack and Sarah were in a de facto relationship for eight years. They didn't have any children, however they'd bought a house together and each had accumulated some superannuation. Jack didn't want to get any legal advice as he took the view that he didn't want to waste money on lawyers. However he was motivated to reach a quick agreement with Sarah so he could move on. He came up with a proposal for a property settlement, drew up an agreement based on one he'd found on the internet and gave it to Sarah to sign. Sarah wasn't that happy with it, however Jack kept pestering her about it, over and over, and in the end she gave in, and just signed the document he'd prepared. They divided what they had, and went their separate ways.

Six months later, Jack landed himself around \$600,000.00 when he purchased a winning lottery ticket. Shortly after that, he received a letter from Sarah's solicitors, seeking a share of the windfall as part of an overall formalised property settlement.

Jack obtained his own legal advice and learned that the agreement he'd put together himself wasn't going to carry any weight. While the matter didn't end up in court, both Jack and Sarah ended up spending many months providing instructions to their lawyers whilst the lawyers wrote letters back and forth to each other, trying to get a resolution.

In the end, they were able to reach an agreement and draft consent orders were drawn up by Sarah's lawyers, which Jack ended up signing. He ended up having to pay Sarah a lot more than he'd banked on, and the fees he paid to his solicitor were far greater than they might have been if an agreement had been reached and consent orders had been put together from the outset.

## **A RELATIONSHIP UNDER FINANCIAL PRESSURE: SEAN & CATHERINE**

Sean and Catherine had a very acrimonious separation. Their relationship was characterised by financial pressure, which had turned a happy relationship into one characterised by bitterness and resentment. Sean ran his own business from home, repairing electronic equipment, and it had never really got off the ground. He probably always knew it was never going to be enough, but it was work he enjoyed and he resisted Catherine's increasingly frequent suggestions that he obtain full time employment.

Catherine had done the bulk of the work raising the children, and then found herself having to work increasingly lengthy hours in order to meet the financial needs of the household and the children's extracurricular activities. In the end, she figured she was better off without him, so she left.

They had a house, which had been purchased many years before, so it had increased a lot, simply by virtue of time. Catherine was desperate to hold onto the house, but unfortunately, so was Sean. He wanted it because his business was run from the house. There were bits and pieces of equipment strewn all over the house – another source of contention between them – and it would have taken some doing to move it all elsewhere. Catherine wanted it because it was the children's home. Even though they were almost adults, and likely to leave home in the next few years anyway, she had a strong sentimental attachment to it that she couldn't see beyond.

Catherine and Sean ended up in court. Lengthy affidavits were prepared by each of them, each supporting their respective cases for retaining the house and buying the other one out. The case wore on for around 18 months. Barristers were briefed for the hearing, which ran for two days. At the conclusion of the second day, when the case was finished, the Judge indicated his intention to prepare a judgment, which might become available in the next few months. So the parties faced a further period of waiting, their lives in limbo pending the judgment being handed down on some future date yet to be set down.



Both Sean and Catherine left the court building that second day with their respective lawyers, and Sarah was sitting with her lawyer in a coffee shop when Sean walked in and made her an offer. Sean still desperately wanted to keep hold of the house, but he knew that if Catherine did too, the offer he had to make her had to be pretty good and he knew he'd have to pay her more than he wanted to.

The deal was struck the same day. Consent Orders were prepared and signed within two days and both parties walked away with an agreement they could live with. They achieved in less than forty-eight hours what they'd been unable to achieve in the preceding eighteen months. Once they sorted out the agreement about the house itself, most of the other issues about who would retain what fell into place with little effort and their consent orders finalised and formalised everything.

## **OLDER PARENTS: ALEX & ELIZABETH**

Alex and Elizabeth had one child together, a daughter Allannah, who was 10 when they separated. They were older parents, and both considered it was unlikely that either of them would have another child. Allannah meant the world to them and they both desperately wanted to ensure that she stayed in their respective custody. After they separated, Alex moved only a few streets away, so he'd be able to continue to spend as much time with Allannah as possible. Allannah's school was just around the corner, and his employer was pretty flexible, so he was able to work from home regularly, and therefore able to collect Allannah from school and drop her off most days.

Elizabeth was a school teacher, so her hours more or less ensured that she was able to care for Allannah outside of school hours. She didn't need Alex's help with Allannah and certainly didn't want it.

Both parties retained lawyers soon after Alex moved out. They attended private mediation almost immediately, which was unsuccessful. Both were issued section 60I certificates and court proceedings were commenced within a short period.

The allegations made by each against the other came thick and fast and affidavits let fly with accusations ranging from leaving Allannah in the care of people she hardly knew to a failure by one party to notify the other when Allannah had an accident at school and ended up with concussion. But the letters exchanged between the parties' lawyers raised a myriad of other things, and few days would go by without correspondence going between the parties, via their respective lawyers.

Alex wanted a week about arrangement and Elizabeth asked the court for orders that Allannah spend only alternate weekends with her father, with maybe one afternoon a week otherwise. Each put lengthy affidavits before the court in support of their respective positions. A further mediation was attempted without success. A family

report ended up being prepared, which cost the parties around \$8,000.00. They each spent in excess of \$40,000.00, gathering evidence to put before the court, and having their lawyers write and respond to letters to each other.

In the end, the judge made orders for Allanah to spend nine nights with her father and five nights with her mother out of every fortnight. Neither party got what they wanted and both were extremely disappointed with the outcome.

The option of consent orders was not one that ever seemed feasible, although Elizabeth and Alex had participated in two mediations. The reality however was that by the time they'd spent eighteen months gathering and throwing mud at one another, the possibility of an agreement being reached and consent orders being made became more and more remote. Their relationship, certainly difficult when they separated, deteriorated considerably during the next eighteen months and no doubt the impact on Allanah, well and truly caught in the middle, was not insignificant.

## **PARENTS RELOCATING: CONNER & BRITNEY**

Conner and Britney separated when their twins Ashley and Ryan were eight years old. It was a relatively amicable separation and before long, they came up with an agreement about who would care for the twins at what times. Both Conner and Britney were employed full time, but they lived pretty close to one another and they worked out a way that each of them could be home for the kids on different days and the kids got used to the new routine relatively easily. Conner could leave early most days and this worked in well with Britney's roster which she was largely able to control herself. They didn't seek any legal advice and whilst they knew about the option to get consent orders formalising their agreement, there didn't seem any point as they both figured things were fine.

About twelve months after separation, Britney met someone else and they started dating. Tom had two children from a previous relationship who lived in Perth. Tom and his former wife had had a difficult separation, and he'd ended up not seeing his children outside the school holidays. When a job opportunity came up in Sydney, he took it and that's how he met Britney.

Six months later, Tom's wife became quite ill and she needed Tom to go back to Perth to help take care of the children. He and Britney were talking about getting married, and Britney wanted to go back with him to Perth. She wanted to take Ashley and Ryan with her.

The proposed relocation turned the agreement between Conner and Britney on its head. Britney became more and more adamant she wanted to go to Perth and Conner became more and more desperate to ensure that didn't happen. When Britney

threatened to go to Perth with the children anyway, Tom found himself having to get a lawyer and trying to obtain urgent court orders to ensure she didn't just up and leave.

Their informal agreement meant that Tom had nothing formal to rely on to prevent Britney from leaving, and consent orders, made when the parties were amicable, would have ensured she remained in Sydney. The absence of consent orders meant that Britney could, in theory, have just left and gone to Perth, although that might decision was likely to be problematic. Having consent orders might however have forced the parties to try to work something out, rather than enabling Britney to be in a position where she thought she could simply leave if she wanted to. Instead, court proceedings ensued, at the expense of both their relationship and their finances.

## **SIMPLE PROPERTY SETTLEMENT: STEPHANIE & CHARLIE**

Stephanie and Charlie bought a modest townhouse in Brisbane and had owned it for about eight years when they separated. The property had increased in relative value quite a lot over that time, but they were both in secure jobs and each was in a position to buy the other one out. As it happened, Charlie had met someone else, and he and his new partner Hannah planned to move in together. Hannah didn't want to live where Charlie had lived with Stephanie, so this made the decision pretty easy.

Charlie and Stephanie didn't have too many other things to divide. They each had a car and some superannuation. Charlie had some shares and Stephanie had an investment left to her by her father, so they were able to work out their agreement pretty quickly. Neither of them saw any value in getting any legal advice. They'd reached an agreement they were both happy with and it just seemed like a waste of time and money.

Charlie was keen to get everything squared away pretty quickly and the money Stephanie was going to pay him, coupled with some savings that Hannah had, was going to enable the two of them to purchase elsewhere. When Stephanie went to refinance, she found out that there was a stamp duty liability associated with the transfer of the property from joint names into her sole name. She went to Charlie on learning this news, but again, neither of them wanted to get any legal advice, and thought it easiest just to pay the stamp duty and get on with it. So they went halves in the cost, which was about \$5,000.00 each.

What they didn't realise, but found out later, was that if they'd obtained consent orders, reflecting in a formal way the agreement they'd reached, they would have received an exemption from the payment of stamp duty. Getting legal advice and having their already reached agreement drawn up into consent orders might have cost them some money, but it would have been significantly cheaper than paying the stamp duty. However once it was done, it was done and there was nothing they could do to reverse the transaction.

## EMPTY NESTERS: RUBY & MAX

Max and Ruby had been married for 35 years. They'd raised four children together and had seven grandchildren and counting. Ruby said, in the end, that they'd just grown apart. She had a few girlfriends who were going to travel overseas together, and she decided it would be nice to go along too. They owned their own home and had an investment property as well. Ruby had taken a number of years out of the workforce to care for and raise their four boys and had intermittently worked part time, leaving Max the main breadwinner throughout the relationship.

As a result of their respective roles, Max had accumulated considerably more superannuation than Ruby had but he recognised her contribution to the family and understood that it was only fair for some of his superannuation to go to her.

Both the properties were worth a similar amount in the end, and since Ruby wanted to live next to the ocean where she'd grown up, it was decided that she'd retain the investment property near the beach and Max would keep the house in the city.

In order for there to be a division of Max's superannuation, there had to be court orders obtained from the Family Court and the Trustee of Max's superannuation fund had to approve the proposed orders before they were made. Also, Max and Ruby wanted to avoid the stamp duty implications that would otherwise have arisen when the city house was transferred from joint names to Max's sole name and when the beach house was transferred from joint names to Ruby's sole name.

It made sense then to get consent orders, even though Max and Ruby were amicable and reached a ready agreement about how things should be divided. They saved an enormous sum of money in stamp duty and had their agreement quickly and efficiently made into court orders in the space of less than a month. It took only a further month to get the property transfers completed and Ruby was on her way overseas.

## YOUNGER CHILDREN: DECLAN & TAYLOR

Taylor and Declan's children were five and three when they separated. Following the separation, Taylor went back to live at home with her parents, and Declan stayed in their rental property, about twenty minutes' drive away. Declan wanted to keep seeing the kids, but it was tricky. Taylor's parents never liked him much and weren't really happy about the fact that he was going to still be around. Despite her feelings toward Declan, Taylor admitted he was a good Dad and that the girls adored him.

Shortly after separation, Declan arranged family dispute resolution, and the two of them were able to reach an agreement about the ongoing care arrangements for



Alexia and Ella. Whilst Taylor was happy with the agreement, she wasn't that keen to see it formalised into consent orders.

In the meantime, Declan too was happy with the agreement, but he'd had a mate James who'd also gone to Family Dispute Resolution with a similar situation. He'd told Declan that his former partner talked him into not having the agreement formalised, telling him she was happy with the agreement and happy to follow it informally, and that there was nothing he'd have to worry about.

Declan said that it hadn't worked out and that James and his ex partner had ended up in court, starting all over trying to reach agreement again.

This made Declan a bit nervous. He waited for a few months and then approached Taylor about formalising their agreement, even telling her about what had happened with his friend James. As it happened, Taylor knew James as well, and had some sympathy for his situation. She and Declan agreed to have their agreement formalised into consent orders. As it turned out, there were a few scenarios they hadn't turned their mind to, like what might happen if one parent wanted to take the children interstate or overseas, and how the changeover arrangement might change once both kids were at school, so this was able to be incorporated into their agreement while they were amicable enough to decide these things together.

## ENOUGH COURT TIME: ROB & AMY

Amy and Rob had a difficult separation and had trouble reaching agreement on anything at all. They had a property, and other assets, like cars, bank accounts, a sum of money invested, superannuation, and some artwork they'd purchased some time ago. Rob was self employed and had his own car repair business and Amy was convinced he was squirrelling away money so she couldn't access it as part of their property settlement.

They also had three children. They could not agree about anything and were miles apart in their expectations. They couldn't agree on the value of anything they owned, much less agree on how it should be divided. They couldn't agree on where the children should attend school, and whether they should attend counselling, or even what sort of haircuts were appropriate for their children.

The matter ended up in court before too long. The parties spent a lot of money having their affidavits prepared, issuing subpoenas in relation to Rob's business and in relation to counselling the kids had had over the last few years, seeking interim orders for disclosure of information and parenting arrangements.

Part way through the proceedings, and shortly after the interim hearing, they both realised they'd spent a lot of money. A friend of Amy's had said to her something along the lines of "All that money could've been spent on your kids".

One afternoon Amy rang Rob and asked if they could talk. Their discussion resulted in a round table conference taking place and Rob providing the information that Amy needed in order to properly assess the parties' financial position. Once they became more transparent about the property matters that had been outstanding, and started to find some common ground, a small amount of faith was restored.

They weren't able to resolve everything straight away, but actually came back for a second round table conference a short while after the first. After two settlement conferences, some draft consent orders were tentatively put together. It still took a few more months for all of the issues to be addressed and for the agreement to be finalised, but both parties agreed that coming to their own agreement and having it formalised by way of consent orders resulted in a far more satisfactory outcome than they felt that the court proceedings were going to give them.



## CONSENT ORDERS VS PARENTING PLANS

**For many parents, one of their first steps in making arrangements for the care of their children, following separation, may be via a parenting plan.**

This is often made because the parents have approached an organisation like Relationships Australia, who may have assisted the parties through a mediation, or at least guided the parents towards making a parenting plan between them.

Parenting plans are an informal agreement made between parties for the ongoing care arrangements for their children. What is important to consider, however, is that parenting plans *cannot* be enforced by a court if one party decides that they don't want to follow the plan anymore. That is to say that, unlike a consent order, they are *not* legally binding.

By contrast, a court order *can* be enforced. This does not mean that the parties need to go through the excruciating, costly and stressful process of having a court determine the care arrangements for their children, however. In fact, you can voluntarily enter into a consent order, which can reflect the terms of the parenting plan, and have this sealed by the Family Court of Australia so that it *does* have legal affect.

It can be easy, when in agreement with the other parent, to think that a court enforceable order is not necessary. We often hear from parents that they 'don't need it', or maybe they 'don't want to cause dramas' with the other party. This is also, usually, what we hear from the parent getting the 'short end of the stick', someone that is maybe grateful that they have been allowed time with their children and is concerned that the suggestion of a court order *may* trigger the other party to stop them seeing their children altogether.

Whilst we understand this concern, our experience is that most requests to enter into a consent order are agreed to, as this also provides certainty to the other party and should ultimately reflect their wishes too.

If you are considering entering into a parenting plan with the other parent, we suggest discussing formalising this plan through a consent order, which we can do at a fixed fee to provide *you* with certainty too.

## HOW LONG WILL THIS APPLICATION FOR CONSENT ORDERS TAKE?

As soon as our office receives your completed Application for Consent Orders questionnaire form, and payment of your fees, we will telephone you to arrange a mutually convenient time to obtain, by telephone, any outstanding details from you and, in particular, your instruction as to the agreed division of your assets or arrangements for the children.

In most instances, we will have the initial Application for Consent Orders drafted within seven (7) business days, and if any amendments are required, we will provide you with a second and final draft within a further seven (7) business days along with the completed Application form for final review.

Once we have filed the Application for Consent Orders with the Family Court of Australia, they will usually have the order sealed within one (1) month. If the court is not satisfied with the Application for Consent Orders for any reason, they may send us a letter and this could delay the process. Sometimes the court may have an issue with the 'paperwork' and require some small amendment, which can usually be done quite quickly, other times the court may be unwilling to make the orders filed and this can take some time to resolve.

For this reason, we suggest that parties who are unsure, for any reason, that the agreement they have made is a good agreement, and would be considered by the court to be 'just and equitable', that they arrange to obtain their own independent legal advice. A court will be less likely to question the agreement made when it has been entered into by parties under the advice of a lawyer. We offer free 15 minute telephone consultations which may be a good opportunity to discuss your proposed agreement, or alternately you may wish to complete a comprehensive 45 minute initial consultation for a fixed fee of \$175.00 inc GST, in which we can consider your full financial situation and discuss the range of outcomes which would be considered just and equitable for you *before* you make your Application for Consent Orders.

## WHAT IF THE CONSENT ORDERS AREN'T FOLLOWED?

The benefit of a consent order is that it is legally binding and *can* be enforced by a court. Whilst most diligent people will do as they are ordered, sometimes people will start to bend and stretch the rules, particularly when they think the other party *won't* argue with them over the variation.



A consent order in property matters is usually followed, as the parties are inclined to end their ties to each other financially and tend to action things sooner than later. A parenting consent order, on the other hand, is an ongoing agreement between the parties which may or may not truly allow for changes in circumstances, the parties' evolving wants and needs, and even the children's social and personal circumstances as they age.

When considering a parenting consent order, the parties will likely need to be prepared to be somewhat flexible. A consent order provides a guide to the parents and children as to the time and contact they will have with each other, which offers certainty and clarity for everyone moving forward. Sometimes, however, a child may fall ill, or a parent may have to go away for work, and the orders may not be appropriate. In most instances, this will be a one off and the parties will have to find a way to accommodate. Other times, however, this may become a regular issue, and what could be considered a breach or 'contravention' of the consent order.

If this occurs, the parties will have two options. The first is to simply make new orders. A new Application for Consent Order can be made by agreement and sealed by the court due to the material change in circumstance, such as a parent changing work hours, or having to move away, making the prior order impractical. This is the preferred option to resolve the issues should they be ongoing, and are the cheapest and most effective outcome for both parties.

Alternately, if one person is regularly acting against the consent orders, and is unwilling to consider a better or more suitable agreement between the two of you, it may be necessary to apply to the court for a contravention order. This will allow the court to not only enforce that the other person comply with the order, but they may be penalised for failing to do so, penalties which may include fines or even time in custody!

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**When considering a parenting consent order,  
the parties will likely need to be  
prepared to be somewhat flexible**



# MEDIATION

## FAMILY COURT CONSENT ORDERS AND MEDIATION

**Some people will use a mediation to reach an agreement so that they may to enter into Family Court consent orders.**

Others will enter into Family Court consent orders to *avoid* mediation which would be required if they made a court application for care arrangements of their children.

Mediation can be a cost effective and time saving method by which to reach an agreement with your former partner. To enter into Family Court consent orders, the parties have to be entirely in agreement with each other and the proposed orders. Mediations are often the solution to those parties who are ever so slightly 'apart' in their expectations of what is a just and equitable outcome for their family law matters. They allow the parties to come together and share their viewpoints on the issues in question, and most importantly have such perspectives objectively communicated to the other party via a third party, the mediator.

Sometimes, the ability for each party to see a third person, the mediator, separate their emotion from the facts, can be enough to close what is potentially a superficial 'gap' between the expectations of the separating partners. The mediator is trained to facilitate the resolution of these types of disputes and, as they act independently of anyone else, can help everyone to 'see the forest for the trees'. Many people take their solicitor with them to mediation so that, should they reach agreement, the Family Court consent order can be drafted immediately for signing.

This doesn't mean that the orders *must* be done on the day, however. Our fixed fee Family Court consent orders are well priced and can be done very quickly once you and your former partner have reached an agreement.

## WHAT HAPPENS IF THEY WON'T SIGN THE APPLICATION FOR CONSENT ORDERS?

An Application for Consent Orders needs to be made by *both* parties, meaning that both yourself and your former partner must be willing and able to sign it. The idea of the Application for Consent Orders is that the court is being advised that the parties have reached agreement, and these are the orders that simply need to be made and sealed by the court, in order to have legal effect. It would otherwise be the case that you apply to the court for orders you are seeking, and your former partner would be given the opportunity to respond and assist the court in deciding on the orders.

So the simple answer to this question is that, if the other person will not sign the Application for Consent Orders, then they are unable to be filed with the court and you would need to make a separate initiating application for your orders.

Although our fixed fee consent orders require both parties to be in full agreement about what their proposed financial settlement or parenting arrangements are, we offer traditional legal services to assist others to *reach* this agreement, whether it be by written negotiation, or attending a mediation with our clients. We are able to provide you with comprehensive and experience based advice as to your expected range of outcomes and whether we believe you are in the position to reasonably negotiate and file an Application for Consent Orders, or whether we believe you are in the position of needing to utilise the court to make a final decision.

There are many options to achieve your desired resolution, but we certainly encourage our clients and any other separated couples, to reach a private agreement and simply formalise it by way of an Application for Consent Orders.



## DO WE BOTH NEED INDEPENDENT LEGAL ADVICE FOR CONSENT ORDERS IN QLD & NSW?

**Consent orders in QLD and NSW can be done privately between two people without any intervention by solicitors.**

This means that you can draw up the documents yourselves and file them with the Family Court of Australia, without having to obtain independent legal advice as to the effect of the orders.

In our experience, however, we have found that many separating couples benefit from obtaining independent legal advices for a number of reasons. The first one being that to make an application for consent orders QLD or NSW you need to ensure that the orders are written clearly, and to the satisfaction of the court. This might sound like an easy requirement, but we often have parties come to us for assistance to re-draft their minutes of consent order, as the court has rejected it.

Other times we are approached because the court has rejected even a well written minute because they do not see it as being just and equitable to both parties. This is another reason for independent legal advice. Sometimes parties are able to reach an agreement which may, on paper, look to be somewhat unjust to one of the parties. All the same, the two people may be voluntarily willing and very much happy to agree to the orders they have decided upon, and by showing the court that they are fully aware of the legal effect of their decision by way of receiving independent legal advice, the court is more likely to grant their application for consent orders in QLD or NSW.



A final reason to seek independent legal advice before entering into consent orders in QLD or NSW is to ensure that you are fully aware of your rights and obligations under the *Family Law Act* as well as what you would reasonably be entitled to whether you had made an agreement with your former partner or not. In most instances, or opinion does not change the outcome of the agreement between the parties, but at the very least you can finalise your matters knowing that you have been fully informed and are comfortable with the decision you have made.

## WHAT IF THEY TAKE THE CHILDREN WITHOUT CONSENT AFTER THE FAMILY COURT CONSENT ORDER IS MADE?

The benefit of entering into Family Court consent orders for the care arrangements of your children are that, unlike informal parenting plans, they are a legally binding document and can be enforced by the Federal Circuit Court or Family Court of Australia. As Family Court consent orders are usually entered into by agreeable parties, it is not common for one of the parties to act in breach of the orders, however if they do there are certainly actions you can take to have the orders enforced.

Depending on when, where and how the children have been taken, and certainly whether they have been returned to your care, you can seek one of two actions from the court. The first and probably most common is applying for a recovery order. This order may be necessary if the other parent has moved interstate or overseas and taken the child or children with them, without your permission. Such applications can be made urgently, particularly if there is concern that the child or children are at risk.

The second is to apply to the court for a contravention of the Family Court consent orders. These are usually appropriate in cases of frequent or repeated breaches of the orders you have agreed to, such as failing to keep the other parent updated as to current address and contact phone numbers. Whilst it may be petty to apply to the court for contravention if the other party arrives a few minutes late to drop off every now and again, if they were constantly 30 minutes to an hour late, it may be a necessary evil to encourage them to comply with the orders or potentially lose the time they are getting with the child or children. When Family Court consent orders are contravened, the court may seek to penalise the other party by way of fines, or even time in prison if it were a serious enough breach or series of breaches.

Essentially, a Family Court consent order is an order of the Family Court of Australia, and as such must be complied with no different to any other law under which an individual may be governed. Failing to comply, including taking of children without consent, can result in very serious penalties.



## CONSENT ORDERS – ARE WE IN AGREEMENT?

**The most important part of applying for consent orders is that the parties have very clearly reached an agreement.**

This can seem terribly tedious, but it is the responsibility of the separating couple to have clearly identified exactly what each party is to retain, and anything that needs to be transferred. We sometimes have parties come to us with an agreement to 'split everything 50/50' which is fine in essence, but does not account for *how* their assets are to be split. If you are seeking detailed advice as to how best to divide your assets, particularly if you are not really sure what is a 'fair' split, it may be a good idea to book an initial consultation, or even a quick 15 minute *free* phone discussion. For many people, the 15 minute discussion is all they need to be able to go away and return to us with a well thought out and final separation of their financial situation.

Another thing to be wary of is 'how' you are going to split things, practically. It can seem perfectly acceptable that two people 'equally divide the household furniture between them', but how does this really look to each of you? Have you both agreed as to who gets the big screen television? Or who will get the master bedroom suite? As much as we would love to imagine things are even and equal in this world, the truth is this is rarely the case, and we suggest more detail rather than not enough. In many instances, the parties have already physically separated, and are likely to simply retain the furnishings and personal belongings they already have. However, a consent order is the means by which you can ensure that you have and receive everything you are expecting to. Just because your former partner says you are welcome to the kayak *and* the stand up paddle board, it

is always a good idea to ensure that those particular, big ticket, items are specifically listed in the consent order. The same goes for liabilities, as more and more couples are setting up their homes and lives on 'interest free', it is very important to know who will retain the liability for this *as well as* the relevant assets secured against it.

If you have not reached clear agreement, we are here to help, and can provide you with advice or assist to negotiate your consent order under our regular legal services.

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**The most important part of applying for consent orders is that the parties have very clearly reached an agreement.**



## CONSENT ORDERS – HAVE WE DISCLOSED EVERYTHING TO EACH OTHER?

**We often have parties come to us to assist with re-writing their Application for Consent Orders when their application has been dismissed by the court.**

The court will not tell the parties, however, *why* their application for a consent order was dismissed. This can make it really tricky for non-lawyers to work out exactly what they need to fix, and how they need to fix it.

One of the most common issues we see with dismissed applications is a lack of 'disclosure'. Under the *Family Law Act 1975*, each party to a property proceeding must provide full and frank disclosure of their assets and liabilities. In simple terms, both people need to provide the full details of any assets they own, on their own or in joint names, including the current value of the asset, and the same for any liabilities such as loans, credit cards or other debts. A consent order, although made by private agreement, is still an order of the court and as such the court needs to be satisfied that they are fully aware of the financial situation of both parties.

This means that, even though the asset or liability may have *nothing* to do with the relationship or the division of the assets between the parties, it *must* be disclosed in the Application for Consent Order. This assist the court to ensure that the division results in a just and equitable split between the parties, and that the calculated split is correct. Moreover it shows to the court that the parties have fully disclosed everything **to each other** and that they are making their agreement on this basis.


When you come to us for your fixed fee consent order, we ask that not only have you provided full and frank disclosure to each other in reaching your decision, but that you have all details of assets and liabilities for *both* parties ready and available for us to draft your documents.

It can be incredibly frustrating for all involved when the documents need to go 'back and forth' to amend and correct details of assets and liabilities, rather than having the full information prepared at the beginning. This is also often the biggest contributor to delays in filing applications and can easily be avoided.

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**When you come to us for your fixed fee consent order, we ask that not only have you provided full and frank disclosure to each other in reaching your decision, but that you have all details of assets and liabilities for both parties ready and available for us to draft your documents.**





## CONSENT ORDERS – DOES THIS ACTUALLY FINALISE OUR MATTER?

**Parties may use consent orders to formalise parenting arrangements.** Ultimately, whilst you have dependent children, under the age of eighteen, such orders are unlikely to ever be truly final.

In saying this, many families will opt to draft orders which provide for the children as they grow older and change from day care, to primary school, to high school, catering for their every changing needs. There is potential, therefore, for a parenting order to be as final as it can be, although it may not really end until the children are themselves adults.

A financial consent order, on the other hand, is preferred by the courts to be very definite, and very final. Ideally it should provide for the complete division and distribution of all the assets between the parties, so that they no longer have any financial links to one another and are free to move forward in their independent lives.

The benefit of finalising your financial matters by way of a consent order through the Family Court, is that it is, indeed, a final decision. There are limited circumstances in which a party can come back to court and seek different orders, and as such it is the most certain way of allowing each party to move on separately. Without having a consent order in place, it can be risky entering into new financial obligations and responsibilities, such as buying a new home, or starting a business. Without the consent order being made, you are leaving these new assets open to inclusion in the property pool belonging to yourself and your former partner, and there may be scope for them to seek some interest in your newly accumulated wealth.

For this reason, we highly recommend that you enter into a consent order sooner than later, so as to allow you the freedom to move forward *without* the risk of your former partner coming after your newly acquired assets.



## APPLICATION FOR CONSENT ORDERS – WHEN THINGS GO WRONG CASE STUDIES

### BOB & SANDY

Bob came to us and told us that he and Sandy had an agreement. In fact, they had drawn up this agreement in a template they found online. It was quite a simple template, and although it had a lot of information missing from it, we had a pretty good idea of what Bob and Sandy had in mind.

So Bob instructed us to draw up a proper Application for Consent Orders to file with the Family Court of Australia. This seemed pretty straight forward, and with a little more detail about some of the other assets involved, we were able to get this done quite quickly.

Then we sent it to Sandy. As it turned out, Sandy was *not* so agreeable to this proposal. She told us that this was *not* the cash payment amount they had agreed on, and in fact it was \$5,000 more. So we fixed it and sent it back to Bob to check.

Bob wasn't happy about this, but for the sake of finalising things, he agreed to it. So we sent it back to Sandy to sign.

Sandy didn't sign. Instead she went through a few more orders we had included, and asked that they be amended, ever so slightly, as she didn't feel comfortable with the way we had worded it. Within reason, and without changing the legal effect of the orders, we complied with her requests. Bob really didn't care as it had no practical implication for him, so we returned it to Sandy once more to sign.

Sandy told us she needed some time to consider it before signing, so we allowed her a week. After the first week, she told us she was seeing a solicitor for independent legal advice and would come back to us once she had seen them. A further week passed before Sandy confirmed she was seeing a solicitor 'very shortly'. Another week passed and the solicitor confirmed she had engaged them to act for her and they would review the document shortly.

Some month after sending this final document to Sandy to sign, her solicitor returned a newly drafted Application for Consent Orders, with further amended orders, for *us* to review, for Bob. Once again, the orders had been changed, and once again to suit Sandy. Bob was agreeable if only because he was fed up with arguing and wanted his Application for Consent Orders filed urgently so he could finalise the matter and move on.

The moral to this story is to ensure that both parties are in *full* agreement to the proposed orders and the practical implications and requirements, prior to having a solicitor commence drafting. Our fixed fee Application for Consent Orders service provides for some amendments, but certainly not the scope which may be required to make ongoing negotiations on your behalf.

## JACK & DIANNE

Dianne came to see us about arranging an Application for Consent Orders, for an agreement she had made with her husband, Jack. Jack and Dianne had been through a very bitter separation, but they had come to an agreement which saw Jack retain the family home, and Dianne be paid a cash sum. In fact, they had already attended to the practicalities of transferring this property, and simply wanted it drawn up in an Application for Consent Orders to 'seal the deal'.

Dianne had met a new partner, and they had bought a new home together. Dianne did not want Jack to know about this, and particularly worried that he would find out where the new home was located.

This made things a little tricky for us, as Dianne did not want to disclose her true financial situation to Jack. With some substantial reassurance, however, we were able to obtain all of Dianne's asset and liability details to draw up the Application for Consent Orders, and sent them through to Jack to review.

Jack, however, was not happy. Although the Application for Consent Orders were completely reflective of his wishes, and the details were drawn up correctly, he did not like the percentage split which had been calculated, which saw him receiving approximately 80% of the property pool, while Dianne only received 20%. Jack contacted us directly, and asked us to 'change the asset values' so that it looked like more of a 50/50 split between himself and Dianne.

We explained to Jack that the figures could not simply be manipulated to 'pretend' that the parties had divided their assets in equal shares. This was not the case. It was important, however, that the parties both agreed on the value of the assets as entered in the Application for Consent Orders. Although we couldn't fudge the figures as a means of making things look equal, we could certainly discuss amending the asset values to reflect a true, agreed, estimation of each asset's worth.

It is crucial that, not only do both parties provide full and frank disclosure of their assets and liabilities, but that they have agreed on the valuations which will be used in the Application for Consent Orders. Failing to agree to the values will mean that the documents cannot be signed and filed.

## WILLIAM & KATE

William and Kate had been happily married for many years and bought a beautiful family home together to raise their children. When their relationship broke down, William didn't want to disrupt the family any more than necessary, and allowed Kate and the children to remain living in the home.

Kate, however, wanted to ensure that she *could* remain in the house, with the children, until she no longer wished to live there. She came to us and asked us to draw up an Application for Consent Orders to the effect that she would continue living there, with the children, and William would remain on the mortgage *but* Kate would attend to the repayments. Kate had been to the bank to see if she could refinance the property into her sole name, and the bank was unable to do this due to her fluctuating income, which could not be guaranteed as she was a casual employee.

The problem with this situation, was that William was expected to remain on the mortgage indefinitely, until such time as Kate were in a position with her employment that the bank would be ready, willing and able to provide her with a loan sufficient to take over the mortgage herself.

William was also happy to make an Application for Consent Orders, and he was even happy with the proposed course of action. So in order to make the plan come to fruition, and to satisfy the court that this was a good Application for Consent Orders that they should grant, we suggested that Kate provide a time frame in which she

believed she could obtain suitable employment and be in a position to take over the mortgage. This would also allow her to forward plan, so that if she foresaw being unable to take over the mortgage, she could at least plan alternate accommodation for herself and the children.

We were able to draft the orders in such a way that, if Kate was unable to refinance the mortgage into her sole name within 24 months of the orders being made, the house would be sold and any equity payable to her to assist with new accommodation.

When considering the transfer of property in an Application for Consent Orders, we highly recommend speaking with a bank or financier *prior* to making an commitment to taking over a mortgage, or paying out your spouse. What may seem like a simple and solid plan can very easily come undone if you are not in a financial position to satisfy your proposed orders.





## MAKING CONSENT ORDERS QLD AND NSW

**To make consent orders QLD or NSW you need to reach an agreement with your partner either as to how you will each have time with your children, and/or how you wish to divide your assets and liabilities.**

The basis of the order is that it is made with the consent of both the parties and does not require the court to intervene and make decisions on their behalf. For this reason, for us to draw up your consent orders QLD or NSW, you *must* have reached a full and final agreement with your former partner.

Before you contact us to draft your consent orders QLD or NSW, we offer the following tips:

- If you haven't reached a final agreement, but are *really* close, we suggest arranging a private mediation session. Often, by having an independent third party facilitating your discussions, former partners can bridge the small gap which may stand between their individual expectations and a mutually acceptable outcome. You can contact Relationships Australia for more information, or Google 'family law mediator' for a practitioner near you.
- If you *have* reached an agreement, put it in writing. This might be as simple as taking a photo of the agreement written on the whiteboard at your mediation, or an email to your former partner confirming the terms of your agreement. It can seem unnecessary, and some people may feel reluctant to push for it to be made in writing at risk of upsetting their former partner and causing them to change their mind. However the risk is much more costly if you have paid to have the order drafted up and *then* your former partner changes their mind.

- Make sure your former partner is willing and able to disclose full details of their assets and liabilities, whether they are relevant to the division of your property or not. When applying for consent orders QLD, you will need to provide the court with a clear picture of the assets and liabilities belonging to both parties.

Even if you have reached agreement as to assets to be distributed, if you or your former partner are unwilling to disclose the details of your other assets and liabilities, the court will not accept your application.

Our fixed fee consent orders QLD or NSW offer you a great value service to finalise your family law matters, and in conjunction with a mediation session may be a very cost effective and timely means by which to finalise your family law matters without going to court.

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## FAMILY COURT CONSENT ORDERS – HOW IS THE COURT INVOLVED?

**Family Court consent orders are an agreement made privately between two separating parties, that are submitted to the Family Court of Australia to be considered and, hopefully, granted or *made*.**

Once the order is made and sealed by the Family Court, they have the same legal effect as if they were decided by the court themselves, only without the time, cost and stress of you having to endure the court process, and with you still retaining control over the outcome of your matter.

The role of the court is, therefore, to ensure that the Family Court consent orders being made are just and equitable. In parenting matters, the court will consider the best interests of the child, however as the agreement has been made between the parents voluntarily, the court will generally consider the order to be acceptable to all parties involved. If there is any concerns over safety or abuse, a Notice of Risk must be filed with the orders, and this may explain why the parties have decided on an unusual arrangement for the child or children, such as sole parental responsibility to one party, or supervised time only to the other party. It would be very unusual for parties to enter into such a consent order, as it is rare that a parent would willingly agree to relinquish their parental responsibility or have limited time with their children. In any case, the court would have this information to hand so as to be in a position to make the order with full disclosure of relevant circumstances.

In financial matters, full and frank disclosure of *all* assets and liabilities of the parties is required. This allows the court to see the current financial position of each party to the matter, and what their position will be once the order is made. The court is then in a position to determine whether the outcome is just and equitable although, once again, will likely consider that the parties have entered into the agreement voluntarily and are therefore content that the order is so. In matters where there may be a very significant difference in the split to one party, it is recommended that the parties obtain independent legal advice on their family court consent orders so that the court may be satisfied that they are fully aware of their legal rights and position in respect of the settlement.

In simple terms, the court is the final decision maker in applications for Family Court consent orders, but the benefit of making the orders yourselves is that you save the time, cost and stress of going through the court process, and you maintain the power and control of the decision between yourselves.

## SAMPLE CONSENT ORDERS – PROPERTY SETTLEMENT

Consent orders can be tricky things to write and that is why people usually engage a solicitor to do it. This doesn't mean that you *can't* write them yourself, but with low cost, fixed fee services now available, it is often worth having a solicitor do this for you, quickly and easily.

We sometimes have clients come to us with orders that have been rejected by the court, although they appeared to be legitimate looking orders. They had searched for 'sample consent orders property settlement' online, and found some piecemeal orders which looked legally sound, and put these together. Sample consent orders for a property settlement might include something like:

***“That the wife shall pay to the husband the sum of \$25,000.00 within thirty (30) days of the date of these Orders and simultaneously the husband shall do all acts and things and sign all such deeds, documents and instruments as may be necessary to transfer to the wife all his right, title and interest in the property located at 1 Smith Street, Brisbane in the State of Queensland.”***

This appears to be a clear and technical sample consent order for property settlement, and without years of experience as a solicitor would easily seem appropriate to use. It simply says that the wife pay the husband \$25,000.00, and he gives her the house.

What this order fails to cover is any number of possible issues, including:

- Where does the \$25,000.00 come from?
- What if she doesn't pay the husband the money?
- What if he doesn't sign over the house?
- What if they don't action everything within thirty days?

A court will find issue with sample consent orders for property settlement like this, being used, as they are ambiguous, and can lack finality as they do not provide 'default orders' to cover situations where the order is not fulfilled. For example, in this instance, it would usually be drafted that if the wife were unable to pay the cash sum of \$25,000.00, that the house be sold so that this money can be paid to the husband from the sale proceeds.

This is not to say that a non-lawyer is incapable of drafting up these orders, and in fact there are many DIY kits available to purchase online which provide template orders for use. It can still be prudent and ultimately time and cost saving to simply engage a solicitor. If you have to pay a few separate filing fees at \$160 each time, you may have already spent what it would have cost to have a solicitor do it in the first place.

## CONSENT ORDER EXAMPLE 1

Whilst it is prudent and valuable to have a solicitor write your orders in their entirety, consent order examples are useful insofar as providing ideas as to what you truly need to cover in your Application for consent orders. A consent order example which may be useful in parenting arrangements can be as simple as:

***“That the mother and father not consume alcohol in the presence of the children or be in any way affected by alcohol whilst the children are in the mother or father’s care or control.”***

When parties are making an Application for Consent Orders for parenting arrangements, they are often under the impression that the orders are for the purposes of stating who the child or children will live with, and when they will spend time with each parent. In fact, parenting orders can provide for any number of things with regard to the children, the responsibilities and authority of the parents, and obligations that can be imposed such as to refrain from drinking alcohol or being under the influence of drugs whilst around the children.

Another consent order example may be that neither parent may denigrate the other parent in front of the children, including calling the other parent names, or exposing the children to arguments between them. In many cases, a solicitor will include orders like this as standard, but where any parent has a concern about certain actions or behaviours of the other, very specific orders can be included to protect the children from this.

Although unlikely to appear in a consent order, a consent order example might also be that one party undergo regular drug testing. Whilst this is usually an order made by a judge, sometimes a party will voluntarily agree to do this simply to appease the other parent who may have concerns about illicit drug use and would otherwise not allow the other parent to spend time with the children but for such testing being undertaken.

If you have any particular concerns, we are able to assist you to draft orders to cater for almost any situation.



## CONSENT ORDER EXAMPLE 2

A consent order example, whilst perhaps not so useful for drawing up the orders yourself, can still be very useful to provide ideas as to what to include. Such a consent order example for a parenting order might include:

***“The parties are to maintain a ‘communication log book’ in the child’s overnight bag for the purpose of communicating with one another as to issues concerning the child’s health and welfare, including but not limited to... etc”***

This can be a handy order to get around issues of conflict between the parents, and may even offer the parties a safeguard against abuse from the other parent which might be suffered if communication is made directly via phone or email. Communication books which are accessible by the children subconsciously force the parents to be mindful of what they write and how they write it, because their child or children might read it. Also, as it is a written medium, they are likely to consider the implications of their words being used as evidence in court of inappropriate behaviour, should the need arise.

As far as a consent order example goes, they can always be used as a template and expanded or elaborated on to suit the parties involved. The important thing, from a court perspective, is that they are clear and unambiguous. A poor consent order example would be something like ‘changeover is to occur at a location agreed to by both parents’. This does not provide any Plan B or default order if the parents *don’t* agree on a location. A court may be willing to accept such an order on the basis that the parties are amicable and they do not foresee there being any issue, but if anything were to indicate otherwise they may be just as inclined to dismiss the entire application.

It must be noted that if the court considers even *one* of the orders to be unacceptable, they are at liberty to dismiss the entire application, as they cannot simply delete the order they don’t accept. Just to add insult to injury, the court will not tell you why they dismissed the application and you may end up resubmitting the same ‘faulty’ order again!

## CONSENT ORDER EXAMPLE 3

A common question regarding property settlement is who is to be held responsible for outgoing costs of the former matrimonial home, pending sale or finalisation of property transfer into a sole name. A consent order example in such a situation may be:

***“That pending completion of the sale, the wife have the right to occupy the property to the exclusion of the husband subject to the wife keeping the property tidy, clean and in repair (having regard to its present condition), permitting inspection by agents and prospective purchasers at all reasonable times and paying the following payment as and when they fall due...”***

This consent order example provides the wife with the security of remaining the sole occupant of the property and maintaining this accommodation until such time as she has funds from the sale to obtain new accommodation, and protects the husband from the liabilities of the property to allow him to pay rent in his new home.

Although only a consent order example, it can be a good template and basis for something further, and can be made to be very particular to the parties. Such an order could provide that the wife pay for some expenses, but the parties be jointly liable for others. In some cases, the husband may have substantially greater income and wish to continue paying the mortgage pending sale, as his children remain living in the property also.

Financial consent order examples are usually the biggest pitfall of parties wishing to write up their own orders without the assistance of a solicitor. Courts require clarity and finality to orders, as well as default clauses to ensure that if a financial separation cannot be resolved as the parties prefer, that there is a 'backup plan' provided with a very specific timeframe for action. In this case, the property is required to be sold, and usually this would be ordered to be done within a specified period i.e six months from the date of the orders.

A default order would be included, then, that if it is *not* sold within that time, it is to be listed for auction within, say, six weeks of this time. The auction order would set down the requirements of each party and further default orders if it does not sell at auction, usually being that it will continue to be listed for auction until such time as the reserve price is reached and the property is finally sold.

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## DISCLAIMER

The material contained in this e-book remains the property of Kate Austin Family Lawyers. It has been prepared to provide general and basic information only and does not constitute legal advice. Any material obtained on this e-book or from our website should not be relied upon as a substitute for detailed particularised advice from a qualified lawyer.

For more information on your particular circumstances, please feel free to contact us, request a call, or visit our website [www.kateaustinlaw.com.au](http://www.kateaustinlaw.com.au).

Kate Austin Family Lawyers is a specialised boutique Family Law firm. Our head office is in the Brisbane CBD and we also have an office in the Sydney CBD. Kate Austin Family Lawyers act in all Family Law matters however we specialise in fixed fee matters for clients all over Australia who have reached an agreement with their former partner and wish to see it documented.

You can obtain a quote from our website if you're interested in obtaining a Divorce, or obtaining consent orders.

## OUR PRACTICE – WHO WE ARE

### **Kate Austin Family Lawyers specialises and practises only in Family Law.**

Our expertise and experience is in litigation relating to complex, complicated and difficult cases in the Family Court and Federal Circuit Court systems. But our priority, wherever possible, is to try to work with you and your former partner so that you can reach an agreement on all the issues that matter to you and your family, so you can get through this process as smoothly as possible.

Our practice's main focus and experience lies in the financial aspects that arise as a result of a separation, whether the parties were married or in a de facto relationship. We can answer your questions about:-

- Long and short relationships
- High income or significant contribution cases
- Superannuation
- Inheritances
- Spousal maintenance
- Child support.

If there are children involved, we also have substantial experience in complex cases relating to children. We can answer your questions about:-

- Equal time applications
- Cases involving domestic violence.
- International and domestic Relocation applications.
- Hague convention related matters.
- Alienation cases.

Because we concentrate on just one area of law, our knowledge base is second to none.

No matter what your case involves, what difficulties you are experiencing, or what questions you have, we will be in a position to help you.

Our aim in running such a niche practice is to enable our clients to receive the personal care, attention and expertise that they need during what is often the most difficult period of their life. We are about listening to you, providing expert advice and knowing our trade, however as importantly, we pride ourselves on being available to you so you have absolute confidence, and peace of mind, every step of the way.

## INITIAL CONTACT

We are happy to have an initial informal chat with you on the telephone without obligation or you might like to email us using the [‘contact us’ link](#) on our website. We can establish if your case is suitable for our practice and you can get a feel for whether we would suit you and your matter. If you decide to retain us, we can have a chat about what to bring to your initial consultation.

## INITIAL CONSULTATION

We have a flat rate of \$275.00 inclusive of GST for your initial consultation, which generally goes for about an hour, although it can take longer for matters of more complexity. During your initial consultation, you'll get the opportunity to ask any questions you like. Bring a support person if it'll make you feel more comfortable.

As well as answering all your questions, our goal from the initial consultation is to provide you with a strategy for how best to proceed in your matter. We aim to have you leave your consultation feeling far more in control and far more at ease than when you first walk in.