



BE PREPARED
is DIVORCE what you REALLY
WANT?

Introduction

“The power is on the side of those who are best prepared” Alan Weiss [Aussie Divorce](#)

Australia has one of the highest divorce rates in the world, topped only by those in the United States and Britain. According to a recent Australian Institute of Family Studies report, out of every 1000 Australians of all age groups, 2.3 are divorced. Divorce in Australia or separation affects nearly 50% of all marriages in Australia today. 50,200 divorces were granted in 2010, according to the Australian Bureau of Statistics.

However, many people have thought about divorce and never taken that step. There are many relationships that have tensions, struggles, even despair at times. Yet couples find ways to resolve those struggles. You may have been to marriage counseling or individual therapy to save your marriage. If those strategies (whatever they have been) do not ultimately salvage the relationship and you do decide to divorce, you need to realise what a significant step it is.

Once you or your spouse have made the decision to go ahead, certain events occur whether you want them to or not. It is an extremely stressful phase and to ensure you emerge from this process in as good a shape as you can, you need to pay attention to what you are doing, how you prioritise your activities and what goals you set for yourself in the immediate future and beyond.

When the decision is first made, you may feel that the best way to proceed is to have a dramatic change and ‘sweep clean’ the whole life you and your spouse have built together. But a word of caution. Avoid any dramatic change unless absolutely necessary. Avoid trying to do everything at once. Organise your time so that you do things in small, manageable chunks. Create a set period each day when you do something relaxing. Pay more attention to your needs and to those of your children.

This information will help you prepare your thinking — prior to hiring a lawyer, prior to making other significant decisions that will affect your livelihood and your family’s livelihood forever. You will need to gather a lot of information to put things into place and make decisions in the next short while.

For example, you will probably be going in for your first meeting with your lawyer. You will need to gather detailed information to present to your family lawyer or, later, the courts.

And of course, you should take the time to spell out for yourself exactly what it is you are after in this huge life-changing event.

Goals

Clarity about goals saves a huge amount of energy that can be deployed productively in other areas.

What is your ‘best outcome’ in this divorce? What might your life look like if you ‘win’ your case? Setting goals for yourself will make your passage through this traumatic process a good deal easier than it might be if you are acting spontaneously (or perhaps even erratically). Consider all the issues in your case—the years of marriage, the children, your joint assets and ask yourself what you think would be a ‘win’ for you in each area.

With all the emotional undercurrents that operate in a divorce, it will often be hard to tease out exactly what might constitute ‘winning’. It means different things to different people. Moreover, what constitutes a win may change over time, depending on your emotions or environment or even finances.

That is why allowing your emotions to dictate what you do during your divorce case can be dangerous. If you do not have a focus—and hence a frame of reference against which to measure your progress—you run the risk of having the litigation get out of control, and you will definitely be footing the bill. If you allow your emotions and your reactions to your spouse’s legal strategies to control your decision-making, you may run out of money before you achieve your desired result. In fact, you may be so busy reacting to your spouse that you do not know what your desired result is.

Finding Sanctuary

You must focus on finding a place that can be your sanctuary while the divorce battle plays itself out. Do not overlook the importance of having a place where you can feel safe. Whether that means getting an order to keep your spouse away, going to a shelter, moving in with relatives, renting an apartment, or buying a new house, this is the first issue you must resolve. Until you have a home base, you will be useless to yourself and to your children.

Setting Goals

Make sure the goals you are working for are something you really want, not just something that sounds good. When setting goals, remember they must be consistent with your values. You need to think about your goals in these (and other) areas:

- Family and home life
- Finance and career
- Spiritual and ethical life
- Physical state/health regime
- Social and cultural life
- Emotional wellbeing

Setting goals in each area of life will ensure that you think about and put into practice a more balanced approach to your life.

Integrate Your Thinking

Be aware of having unrealistic wishes as part of your goals; they will sabotage all of the hard work you put into your goals. As you outline each of your goals, strive to eliminate contradictory ideas from your thinking. Setting goals in each area of life helps you eliminate the non-integrated thinking.

Write Down Your Goals

Writing down your goals creates the roadmap to your success. When you write down your goal, phrase it in the positive instead of the negative. Work for what you want, not for what you want to leave behind. Part of the reason we write down and examine our goals is to create a set of instructions for our subconscious mind. The subconscious mind is a very efficient tool; it cannot determine right from wrong and does not judge. It does, however, carry out instructions. So, the more positive the instructions you give it, the more positive will be the results you get.

Although just the act of writing your goals can set the process in motion, it is also extremely important to review them frequently. Remember, the more focused you are on your goals the more likely you are to accomplish them.

You may want to revise a goal as circumstances and other goals change. If you need to change a goal, do not consider that a failure. Rather, consider it a victory that you had the insight to realise something different was needed and the energy to put it into play.

Prioritise Your Goals

Once you have identified your goals and objectives, it is helpful to put them in some kind of order. The order will be whatever you decide, but you should at the very least separate your goals into those you feel are most urgent to achieve and those that you think are long-term goals.

Once you have identified your goals, write down the actions you need to take to achieve them, and assign a timeline for this. Here are some examples of immediate and long-term issues that you need to consider when setting your goals.

Immediate Issues

Parenting Issues

- Do you want the children to live with you or are you happy for them to live with your ex-partner?
- How much contact do you want to have with your children or how much contact do you want your ex-partner to have with your children?
- Ensure the children are not subject to any negative behaviour from your spouse. Write down reasons for your concern and what immediate measures you need to take
- Ensure there is a regime for contact with children.

Property / Financial Issues

- Ensure mortgage repayments continue to be met
- Secure income to meet reasonable day-to-day living expenses for yourself (and children)
- Successful continuation of the business during the phases of a divorce
- Ensure your spouse does not have unchecked access to bank accounts.

Longer Term Issues

Parenting Plan

Often, long term issues in relation to children are not significantly different to the immediate issues. Some issues, which that may not have immediate implications but need to be considered in the longer term, may include :

- Schooling (Private or public? Which school?)
- Religious upbringing
- Long-term health issues
- Contact during school holidays and special days such as Christmas, birthdays etc.

Child Support

The child support regime provides that child support has to be paid by a liable parent according to a formula based on the incomes of the paying parent and the receiving parent. However, there can be a mutual agreement with the other parent that a different amount of child support is more appropriate. Check the child support agency CSA web site for further information: www.csa.gov.au.

Division of Property – Property Settlement

The family home is the asset that most often causes controversy, both before and after a divorce. It is usually the most valuable asset to divide in a divorce. Custodial parents may want to hang onto the home for the sake of the children. Its division is usually fraught with controversy—it may be difficult to value, is not readily converted to cash, costs a substantial amount of money to maintain and has implications for federal and state tax liability.

The timing of the sale of the home and the division of the net proceeds is also crucial. Both events frequently occur sometime after the divorce. Couples seldom plan as well as they should for the payment of household maintenance and upkeep during the divorce proceedings.

As if not all those things were enough, your family's emotional attachment to their real estate, in particular a family or vacation home can cause you to make an irrational or poor decision at the time of the divorce. Your family may be haunted by that decision for years after your divorce. You need to think, and possibly make lists, about the following:

- What property settlement or property orders do you want to receive after the divorce?
- What property you want your spouse to receive after the divorce?
- What property do you believe is yours and should not be divided by the court?
- What property do you believe belongs to your spouse and that should not be divided by the court?
- Are you willing to sell the family home?
- Are you willing and able to keep the home and buy out your soon-to-be ex-spouse, or
- alternatively, how much do you want if your spouse is paying you to buy out your share?

The answers to these questions and others can help you avoid or plan for problems associated with your real estate. At first glance, the family home appears to be the easiest asset to identify and describe. Your ideas about ownership interest in your home and other real estate needs to be carefully thought through.

Learning About the Divorce Process

Once you have established your goals, you should research what you can expect to go through in the divorce process. The Aussie Divorce website is an extraordinarily helpful resource that anyone can access. This world-class, informative tool will help you understand the entire divorce and it is free online.

Gathering Information for Your Lawyer

The efficiency with which your lawyer can advise you will depend a great deal on the facts that you gather, and on your goals. Regardless of who you choose as your lawyer, the work you do before meeting the lawyer will save you hours of legal expenses. If you have not purchased the full copy of my book “This is your divorce not your lawyers”, make notes in a notebook or on your computer and ensure you have a copy to hand over when you meet with your family lawyer.

General Information

Provide full details of yourself and your spouse: full names including any prior names, dates of birth, and places of birth, citizenship, and residential address.

You will need to gather the following information to begin the process:

Employment

- Are you employed? If so, state the name, address and telephone number of your employer.
- How long have you been employed by your current employer?
- What is your title or occupation?
- How frequently are you paid? Attach a copy of your most recent pay statement.
- Do you receive any additional income from your employment? If so, describe the nature of the income and the frequency of your receipt of the income.
- Are you self-employed? If so, describe the nature of your self-employment.
- What has your gross income and net income, before taxes, been in the past five years?
- What benefits do you receive from your employment or self-employment? What are your out-of-pocket costs, if any, for these benefits?
- Repeat all the above details about your spouse.

Marriage Details

- Date and place of marriage
- Have you and your spouse physically separated? (Physical separation is defined as residing in separate households.) If so, when did the separation occur?
- If you and your spouse have not yet physically separated but are living separately under the same roof, describe the living and sleeping arrangements.
- Is this your first separation? If not, state the dates and lengths of time for any previous separations.
- Are there any existing family law orders or proceedings? If yes, provide details including file number.
- Where either of you married before? Provide details including prior spouse’s name(s).
- Have either you or your spouse previously filed for a divorce or family law proceedings in this marriage? Provide details including file number.
- Was the application dismissed or granted? If granted, attach a copy of any court orders you received.

Children Matters

Children Born During this Relationship/Marriage

Provide full details of each child: full name, date of birth, place of birth.

Do your children presently attend day care or public, private, or special school? If so, for each child describe the type of school, name of the school, grade that the child is currently enrolled in and cost of school fees/day care fees.

If your child attends any school other than a public school, did you and your spouse agree to enroll the child in the school?

Describe the arrangements for the payment of the cost of the child's education.

If your child(ren) have special educational needs, describe the reason for the special needs, what the needs are, how the needs have been met in the past and what will be needed in the future.

Children from a Prior Relationship/Marriage

Provide full details of child(ren): full name, date of birth, place of birth, citizenship and current education status.

- Does your previous spouse pay or receive child support?
- What amount of support is paid/received per month?
- Are there any arrears of child support? If so, how much?
- Describe the current residency and contact arrangements.

Spouse's Children from a Prior Relationship/Marriage

Provide full details of child(ren): full name date of birth, place of birth, citizenship and current education status.

- Does your spouse pay or receive child support?
- Amount of support per month
- Is there any back child support owed? If so, how much?
- Describe current residency and contact arrangements.

Special Needs

Do you, your spouse or your child(ren), suffer from any physical, mental or psychiatric illness or disability or need any type of special health care, homecare, accommodation or education? If so, describe the condition and the date of diagnosis of the condition.

Are you, your spouse or your child under the care of a physician, counselor or psychologist for your condition? If so, list the names and addresses of the physicians and the condition you or they are seeing them about.

Are you, your spouse or your child taking any medication, receiving any ongoing therapy or treatment? If so, give details.

Are you, your spouse or your child in need of any additional treatment? If so, give details.

Do you, your spouse or child have health insurance or some other type of insurance coverage for this condition? If so, list the name of the insurance provider, the person who is primarily covered on the policy, the terms of the coverage and the cost of the policy.

Describe the costs incurred (after any insurance payment) for any medication or treatment.

Domestic Violence/Abuse

Domestic violence or abuse can be classified as any behavior that causes actual physical, psychological or emotional harm to another family member or behavior that causes a family member to fear that you will cause him or her to suffer physical, psychological or emotional harm. The behavior can be exhibited through threats, stalking, excessive control over another's life, verbal harassment, coercion by threats against another person or a pet, coercion by threats of mutilation, death or suicide, nonconsensual sex, unwanted sexual demands or causing physical harm to another person's body or property.

Is there a history of domestic violence or abuse in your marriage? If so, describe the general nature of the violence or abuse.

Are you fearful that you or your spouse could become involved in a situation where your child(ren) may become the victim(s) of an incident of domestic violence or abuse if you or your spouse has unsupervised time with the child(ren)?

Have you or your spouse ever been questioned or investigated by any employee of a government agency or law enforcement department for allegations of child abuse, child neglect or domestic disturbances?

If so, state when, where the alleged incident occurred, the agency or department that conducted the investigation and the outcome of the investigation.

Is there physical evidence (i.e. police reports, photographs, witness statements, medical records, etc.) of any incidents of abuse? If so, describe in general terms the type of evidence and the date(s) of the incidents it refers to.

Assets

Real Estate

Gather the necessary documents and records about your real estate assets. Ensure you have copies of documents not only for the registered titled in your name, but for all the property in which you or your spouse have any ownership interest (property that you own in either of your names alone, jointly with another person or property owned by a trust or business in which either of you have an interest).

It is important to establish and document the history of your real estate ownership. For example, the sale of a property may have tax implications that are usually assumed by the person who receives the real estate in a divorce.

The history of the land usage enables you to analyse any financial or environmental risk which you could incur from owning the property.

Prepare a history of your home ownership for each property you have owned, including those that you have sold. Put together any source documents you have to back up your information. Organise your documents so that your history table is the first document in your real estate file. Then attach the supporting documents in some form of order to the file folder. Some of the relevant information you need for each piece of real estate is:

- Address, purchase price and date purchased
- Deposit payment amount and source of funds for the deposit
- Original loan amount and current balance
- If the mortgage has been fully repaid, date of discharged
- List of improvements you have made and their cost
- Insurance proceeds received from any claim
- Costs of repair for any damages or restoration
- Date sold, sale price, costs of sale, amount of net proceeds and how net proceeds were used.

Motor Vehicles/Boats

List the make, year and model, the fair market value and the amount of debt for each vehicle (or boat) you or your spouse own. Give details of the registered owner(s).

Bank Accounts

List the name of the institution, the names on the account, the type of account and the balances.

Securities

List the name of the broker, mutual fund or other institution that holds any investment accounts, the type of account, and the names on the account and a description of the assets held in the account. Include any stocks, bonds, certificates of deposit or other type of security that you or your spouse holds outside of any account.

Future Interests

List all interests you or your spouse have in stock options, options to buy, unfunded deferred compensation plans, or other types of future ownership rights that may or may not be currently vested or valued.

Other Assets

List all other assets that you or your spouse own. Some examples are:

- Partnerships, trusts, collections and antiques
- List all property that you owned before the marriage, inherited, received as a gift or acquired in exchange for any of the previously described property
- List all property that your spouse owned before the marriage, inherited, received as a gift or acquired in exchange for any of the previously described property.

Liabilities

List all debts that you and your spouse are both responsible for paying. Also, list the balance due, the monthly payment and any property that acts as security for any loan.

List all debts that you alone are responsible for paying. Also, list the balance due, the monthly payment and any property that acts as security for any loan.

List all debts that your spouse alone is responsible for paying. Also, list the balance due, the monthly payment and any property that acts as security for any loan.

List all credit cards that either you or your spouse use. For each credit card, list the name of the card, the balance owed, the monthly payment if you carry a balance, and the name of the primary cardholder and any authorised users.

Have you or your spouse borrowed money from a family member or friend? If so, list the details of the loan, the balance owed and the terms for repayment.

Expenses

List the monthly, fixed expenses over which you have little or no control. Examples are mortgages, utilities, loan payments.

List the expenses that vary each month or that you can control. Examples are groceries, recreation, entertainment, vacations, and clothing.

In the above list, include expenses that are necessary for the direct care of you, your spouse or a child. Examples are educational expenses, extracurricular activities, and medical care.

Describe how you and your spouse handle the cash flow in the family. Follow the money from the time it is received into the family until the time it is spent. For example, pay cheques deposited into a joint bank account, one spouse paying the household expenses, other spouse seldom uses the account, but has access to the funds when they want. If you and your spouse use separate banking accounts, describe how each account is used.

Income Tax

Have you or your spouse received any letters or tax assessment from the Australian tax office regarding a prior year's tax return? If so, describe the content of the notification.

Describe how you and your spouse have filed your tax returns during your marriage, i.e. jointly or separately.

Do you or your spouse owe back income taxes at this time? If so, how much and for what years?

Bankruptcy

Have you or your spouse filed for bankruptcy? If so, give details of the type of bankruptcy, date of filing and the city where it was filed.

Businesses Concerns

The dynamics of a business can dramatically change if divorce enters the equation. And with divorce rates steadily rising, increasing numbers of business owners are grappling with the emotional and financial strains that accompany a marriage break-up.

The significant issue is that divorce is a continuing trend. Almost half of all the marriages entered into this year will end in divorce within 30 years and more than one third of couples will not reach their 20th anniversary, according to a report released on April 2005 by the National Centre for Social and Economic Modeling and the

financial services group, AMP. And if divorce continues at present rates, 54 per cent of marriages are likely to end by 2025.

Divorced couples who have business partners will have to deal with a number of different issues. Since December 2004, the Family Court has been given additional powers which allow it to make orders against third parties (business partners) affecting business assets.

That means business partners, family trusts and even the banks are open to court orders being made which can directly affect them. For example, even if both parties to the marriage are jointly liable for a mortgage to a bank, the Family Court can make an order telling the bank that it can go after only one of the parties for money due under the mortgage.

The effects of these changes have yet to be experienced in practice but appear frightening in many respects. Be aware that the law may change and your business partner may be at risk and could be forced to incur huge legal costs.

Other Issues are:

- Ensuring successful continuation of the business during the divorce
- Maintaining smooth daily operations where both spouses are actively involved in the day-to-day management of the business
- Maintaining a level of security and comfort for employees
- Questions about ownership structure and possibly about how the ownership interest was acquired
- Establishing an accurate income figure to use when child and/or spousal maintenance is determined
- Valuation of the business interest
- Taxation issues if a business is going to be sold, or if shares are to be transferred from one spouse to the other spouse or shares are to be redeemed
- Structuring a buyout of one spouse's interest
- Moving the business if it is a home-based operation
- Dealing with other business partners or owners, if there are any
- Managing legal and accounting expenses, which can skyrocket if the divorce process gets out of control.

Self-Employed / Sole Trader Income

Even if you are self-employed, be prepared. Divorce lawyers and accountants hired by both you and your spouse will want to examine a lot of business records and will be looking at a lot of different things. Their aim may be to value the business interest or to come up with a figure for your 'true' income for purposes of determining a child support obligation and your 'net disposable income' for use in setting an amount of spousal maintenance.

Business Document Checklist

- What follows is a list of the basic information relating to your business interests, which will need to be provided to your lawyer:
- Proof of ownership of the business, share certificates
- List of other shareholders and their number of shares
- List of directors and company secretary
- Money owed to shareholders, partners, or owners
- Any trust or other estate planning documents containing information about how you acquired your ownership interest in the business
- Any trust or other estate planning documents showing current ownership structure or future ownership structure
- List of any loans or debts of the business that you or your spouse has personally guaranteed
- List of any benefits that the company provides to you, to your spouse, and to your children or other family members and the cost to the company for providing the benefits
- Income tax returns for the past 3 years
- Financial statements for the past 3 years
- BAS return statements for past 3 years
- Schedule of accounts
- General ledger for past 12 months
- Current accounts receivable
- Current accounts payable
- An inventory of assets and their location and current market value, not depreciated value
- Any business valuations that were done during the past 3 years
- Any Letters of Intent or Purchase Offers that you have received during the past 3 years
- Any Buy-Sell Agreements or Partnership Agreements
- List of customers and the percentage each customer provides of your total sales
- Any special purchasing agreements or service agreements with a vendor
- Details of current contracts with customers.

Warning and Disclaimer

This information sheet by Alan Weiss is a self - help information written from the perspective of the author. Alan's separation and divorce were his impetus to becoming active in helping Australians deal with this emotional and expensive turning point. His advice is based on his own experience and that of many people and legal practitioners he interviewed during his research for this article.

The author does not claim to be a substitute for a lawyer, mediator, financial planner, accountant, or therapist. Nor does he claim knowledge of any individual's situation.

This information does not give legal advice – its aim is to give practical advice about dealing with legal, financial and emotional issues.

You will still need a lawyer for legal advice. You will still need an accountant or financial planner for financial advice. You may still need a therapist or counselling to help you deal with your emotions.

Searching for more information visit [Aussie Divorce](#)

“This Is Your Divorce Not Your Lawyers” By Alan Weiss

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This book, written by the founder of Aussie Divorce, is about doing your divorce 'well'. It demystifies the divorce process and helps you keep an eye on your objectives. www.aussiedivorce.com.au

