

Top 5 Family Law Myths (and 2 that are actually true)

1. I have a right to equal care of my child

MYTH – As one of our longer serving Federal Circuit Court judges often said “Parents have no rights under the Family Law Act. Children have rights. Parents have responsibilities.” And he is right.

The Family Law Act makes clear that all parenting orders must be in the best interests of the child. When considering what orders are in a child’s best interest, the court must consider the child’s right to a meaningful relationship with both of their parents, balanced against the need to protect the child from harm. Whilst the court in many cases must consider whether equal time is appropriate, the outcome of that decision will depend on the circumstances of the individual case.

2. I earned more money so I should receive more in the property settlement

MYTH – The Family Law Courts and those working in the Family Law jurisdiction take into account many different things when determining what parties are entitled to in a property settlement. Whilst financial contributions are one of the things taken into account, non-financial contributions including those as a carer and a homemaker are also considered. The Court also considers future factors such as future income earning capacity, health issues, age, care of children and access to financial resources.

3. I have to go to court to sort out my property or parenting matter

MYTH – Most family law disputes settle without going to court. Whether through negotiation or family dispute resolution, the majority of separated couples are able to come to an agreement for property and/or parenting matters without setting foot in court. There are obvious costs savings in this, as well as the benefit of being able to keep some control over the outcome of your matter. You can still get a binding and enforceable court order by consent without needing to actually go to court.



4. We're not separated until someone moves out

MYTH – For a couple to be separated, there needs to be communication from one to the other that the relationship is at an end. This can be verbal or written. There are many reasons why a couple need to remain under the same roof after they separate, however it is important to be aware that the court considers the date of separation to be the date of that communication, as opposed to the date someone moves of the home, when it comes to your limitation periods for a property settlement or filing for divorce.

5. My partner was unfaithful so I should get more in the settlement

MYTH – Australia is a no fault jurisdiction so the conduct of a party makes no difference to the outcome of your property settlement, or your parenting matters either in most cases.

6. I have to continue paying half of the private school fees after separation

This one is actually **TRUE**. Aside from the issue that you likely both signed the payment form at the time of enrolment, if there is a mutual intention prior to separation that the children attend a private school, this can be taken into account by Services Australia – Child Support, in an application for a change of assessment made by the other parent. They can then take into account the cost of the school fees in your child support assessment.

If you no longer agree to the children attending a private school, this is an issue best discussed with the other parent in Family Dispute Resolution.

7. I don't have to engage a lawyer

This is also **TRUE**, though there are often benefits to at least obtaining some advice early on in your separation to understand your rights and obligations, so that you are able to negotiate with your former partner from a more informed position. Engaging an accredited Family Dispute Resolution Practitioner is often a more amicable and cost effective way to come to a agreement that it appropriate for you and your family.

It is also generally a good investment to have a lawyer prepare the documents to formalise your agreement to ensure that everything is covered, and the documents properly reflect your agreement. Of course, a Binding Financial Agreement or Binding Child Support Agreement must only be signed after receiving legal advice.