



## Time Limits in the Family Court - Don't be late!

*When partners separate or divorce, it's best if their financial relationship is also concluded expeditiously.*

### Limitation period for married couples

Section 44(3) of the Family Law Act 1975 provides that ordinarily, property and spousal maintenance applications shall not be filed after the expiration of 12 months after the date on which a divorce order becomes absolute, or the date of making a decree of nullity, except by leave of the court or the consent of the parties.

### Limitation period for de facto couples

Section 44(5) of the Act allows a period of 2 years following the end of a de facto relationship within which to file an initiating property or maintenance application.

### What is the last day I can file?

Given the additional legal, financial and practical impediments of embarking on a property or maintenance claim out of time, it is essential to ascertain the last day upon which an application can be filed within the prescribed periods.

With respect to property settlement and spousal maintenance, section 44(3) provides for married couples that proceedings shall not be instituted after the expiration of 12 months after the date on which the divorce order took effect. The plain meaning of the subsection accords with s 36(1) (item 6) of the Acts Interpretation Act 1901 (Cth), which provides that if the period of time is expressed to begin after a specified day then the period does not include that day.

In relation to an application by a de facto couple under s 44(5) of the Act, the section provides that a party may commence proceedings only if an application is made within the period of 2 years after the end of the de facto relationship. The Family Court of Australia considered this issue in the case of *Madin & Palis* and after referencing s 36 of the Interpretation Act, the court ruled that "the modern rule in relation to a period of time fixed by statute 'within' which an act is to be done after a specified event is that the day of the event is to be excluded; the next day is that first day of the stipulated period and the time expires on the last day of the period, counting from and, of course, including the first day".

However, unlike a divorce order, pin-pointing with reasonable accuracy when a de facto relationship finally ends can often be unclear, and can give rise to argument over whether the period within which filing can occur has expired. Accordingly, filing in such circumstances should not be left until the last moment.



## What can I do if I'm late?

An initiating application may be filed after the prescribed period has elapsed, provided the Court grants leave. The Act provides two alternative preconditions to the grant of leave, the most important of which is that hardship to a party, or a child of the parties, must be established. The second, limited to spousal maintenance applications, is that, at the end of the prescribed period, the applicant would have been unable to support themselves without an income tested pension, allowance or benefit.

If hardship is established, the court must then go on to consider those elements relevant to the exercise of its discretion to grant leave, including the length of the delay beyond the prescribed expiry date and reasons for the delay, the merits of the Applicant's case and prejudice to the Respondent resulting from the delay. While the Family Court always retains discretion to allow property and maintenance applications to be heard out of time, the stress, cost, inconvenience and delay involved in rebutting the prima facie time limit would clearly be better spent on resolving the parties' financial affairs by filing an application well within time.

*If you need help or more information about the time limits that apply to lodging Family Law applications or wish to discuss any family law issue, please feel free to contact [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at [familylaw@batemanbattersby.com.au](mailto:familylaw@batemanbattersby.com.au).*