



Family Law

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Married or De facto

Since 1 March 2009, the Family Law Act 1975 (Commonwealth) generally governs the matters of parties both married and de facto, once their relationship has broken down.

Divorce

This is the formalising of the breakdown of a marriage. The parties need to be separated for at least 12 months before they can apply for a divorce.

If at that time they have been married for less than 2 years, they will also be required to undergo marriage counselling.

The Family Court will need to be satisfied that the proper arrangements have been made for any children under the age of 18 years old. You do not require any Court orders to this effect.

You do not have to have finalised any property settlement prior to seeking a divorce, however, when the divorce becomes final you have 12 months to either reach an agreement or commence proceedings in the Family Court.

Duty of Disclosure

The parties are required to disclose all information and documents relevant to their property or parenting matter.

Property

Parties can finalise a property settlement as soon as they separate, however in the case of married parties, they should not leave it longer than 12 months after they are divorced, and in the case of de facto parties not longer than 2 years after they separate.

The process generally involves 4 steps:

- Ascertaining the asset pool and value;
- Considering the contributions of the parties, financial, non-financial and as homemaker and parent;
- Taking into account any financial resources of the parties and various factors relevant to the particular parties, such as who has the primary care of the children, income disparity, and health and ages of the parties;
- That the result is just and equitable.

Property pre-action procedures

Generally, there is a requirement for parties to attempt to negotiate a property settlement using dispute resolution services, such as mediation, conciliation or arbitration. There are some exceptions such as in the case of urgency.

If negotiations fail, then the parties can have recourse to the Family Court to decide their entitlements.

Parenting Matters

The best interests of a child is the paramount consideration. Primary considerations are the benefit of a child having a meaningful relations with both parents and the need to protect a child from abuse, neglect or family violence. There are other considerations.

There is a presumption that parents have equal shared parental responsibility for their child but the Family Court can rebut this presumption if it would not be in the best interests of the child.

Parenting Orders could cover issues such as:

- Living arrangements for a child;
- Time spend & communication with a child;
- Parental responsibility for a child;
- Any other aspect of the care, welfare or development of a child, such as religion, education, medical and travel.

Children pre-action procedures

There is a requirement that parties attend upon a Family Relationship Centre or other recognised family dispute resolution practitioner to try and resolve and agree on parenting matters. If that fails, then the parties can have recourse to the Family Court. In case of urgency, child abuse or family violence an exemption can be sought.

Agreements

Parties may amicably agree on a property settlement, spousal maintenance and/or parenting matters.

An agreement as to property settlement and spousal maintenance can be documented in Consent Orders made by the Family Court or a Financial Agreement.

A Financial Agreement pursuant to the *Family Law Act 1975* is an agreement that parties can enter into, before, during or after divorce or breakdown of their relationship. Strict requirements apply to such agreements.

Agreed parenting matters can be documented in a parenting plan or by Consent Orders made by the Family Court.

Spousal Maintenance

A married or de facto spouse may have a claim for spousal maintenance. They would need to show that their income (excluding Centrelink benefits) is not enough to support themselves adequately, and that their married or de facto spouse has the capacity to pay.

Such a claim should be brought within 12 months of divorce in the case of a married couple, and within 2 years in the case of a de facto relationship breakdown.

Child Support

Child Support is governed by Child Support legislation. The underlying principal is that both parents have a duty to financially support their children.

Child Support is usually determined administratively by the Child Support Agency, and the level of child support will depend on the parent's income, the amount of time they each have the children for and the age and number of children.

Child Support matters can also be agreed between the parties and documented in a Child Support Agreement, subject to certain requirements.

Our Fees

Solicitors are required to provide their clients with cost information at the start of and during any proceedings.

Carmel Torney is an Accredited Family Law Specialist and her rate is \$418 per hour including GST.

However, Torney Legal provides fixed fees for most matters, which will provide you certainty as to your legal costs before you incur them, they are based upon the work undertaken not the time which amongst other advantages allows you better communication with us.

Disbursements and Office costs are charged as they arise.

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