

Family Law

What is "Family Law"?

In simple terms, the concept of family law covers divorce, arrangements for children's care and property settlement in both marital and de facto relationship breakdowns. It also looks at child support and domestic violence. It is also the negotiation of pre-nuptial and cohabitation agreements.

What is the legislation?

Before 1975, when the *Family Law Act* was enacted by federal parliament, the principles of property distribution on the break down of a marriage were governed by the *Matrimonial Causes Act*. Under that system, fault had to be shown before you could obtain a divorce.

Upon the commencement of the *Family Law Act* fault was removed from proceedings and the requirements for obtaining a divorce were simplified. Then, as now, parties must be separated for at least 12 months, have lived separately and apart, have no prospects of reconciliation and, where appropriate, have made proper arrangements for the welfare of the children of the marriage.

The *Family Law Act* 1975 continues in operation today and is the legislation we turn to when looking at children's interests, marital property settlement or the preparation of pre-nuptial or marital agreements.

Since late December 1999, the *Property Law Act* 1974 (Qld) has operated to look after property settlement matters when parties decide to live together and want an agreement setting out how the financial contributions are to be handed over or a de facto relationship breaks down.

Which Court?

Since July 2000, there has been another Court to choose from. Principally marital matters proceed through the Family Court of Australia and the Federal Magistrates Court (FMC). The FMC was developed to take the pressure off the Family Court and to handle the less complex children's and property settlement matters.

Application can also be made to the local Magistrates Court.

If you have been involved in a de facto relationship and you are seeking property settlement, the District and Supreme Courts of Queensland have jurisdiction provided Queensland has been your principal place of residence in recent years.

Do I have to go to Court?

The path a matter takes depends upon the willingness and ability of each party to be involved in negotiating a satisfactory settlement for all involved. After obtaining advice as to the possible outcome of your matter, negotiations can be opened with the other party. Your matter can be settled at any stage. If this is the case, a formal agreement is prepared and registered with the Court – you don't have to go to court.

The agreement can cover children's interests as well as property settlement. It is registered with the Court to protect your interests.

If agreement cannot be reached, there are other options such as mediation and arbitration. These processes involve an independent third party to either negotiate and open discussion or to judge the matter on material that is supplied.

If agreement still cannot be reached, then an application may need to be made for the Court to provide guidance and ultimate resolution of the application by way of a Court Order.

When do I make my Application?

If you are separated and not yet applied for, or been granted, a divorce there is no time limit. If you have been granted a divorce, application needs to be made within 12 months of the date of the divorce. Outside that time, you need the permission of the Court to make the application.

If your de facto relationship has ended, you need to commence proceedings within 2 years of the date of separation.

Children

The best interests of the child is the guiding principle under the *Family Law Act*. This is worked out by reference to the child's wishes, relationship with each parent, maturity of the child, the capacity of the parents to provide for the child emotionally, physically and financially, and the need to protect the child from physical or psychological harm together with the difficulty and expense of contact.

Each case is different. What works for one case may not work for yours. There are no presumptions that one parent is better than the other or that time spent by the parents with the child should be equal.

Property Settlement

The objective of property settlement is to identify and value the property pool, examine the financial and non-financial contributions made by each party, consider any needs or other requirements they may have and then to try and determine what a just and equitable arrangement is. Like children's matters, property settlements are approached case-by-case and each is individual.

In working out the property pool, we need to know what interests you have in residential and investment property, motor vehicles, bank accounts, investments, shares, furniture, collectibles and antiques, businesses and companies, trust distributions or control, anything of monetary value as well as mortgages, loans, credit card debts and other liabilities.

Child Support

Child Support in Australia is governed by the *Child Support Assessment Act*.

The Child Support Agency (CSA) is the body which assesses the rate that is payable by the non-residence parent for the support of the child/ren of the marriage.

Child support is payable monthly, upon issue of an assessment, and become a debt to the Commonwealth of Australia if it is not paid. Like the taxation system, penalties can also be charged for late payment.

A formula applies to the assessment of child support and can vary if you are required to support other children or another person.

Domestic Violence

The *Domestic and Family Violence Protection Act* 1989 applies to applications for Domestic Violence Orders. The purpose of the act is to provide for the safety and protection of a person where they have suffered violence from another during a domestic relationship. This includes those who are engaged, living together, married, carers or relatives.



The Application can be made by the Police or by application filed at the Magistrates Court. Interim Orders are made where there are concerns for safety, and a final hearing convened at a later date.

The Order can be that one party be of good behaviour towards the other or it can go further and require that there be no contact, that they not come within a set distance of the applicant, and reference to the protection of other persons close to the applicant, who have also been affected by the behaviour of the other party, can be made.

What to do now?

Make an appointment with our Family Law Solicitor to discuss your options or simply to obtain advice regarding your situation.

To assist us, please bring with you as much information as you can regarding employment history for yourself and your former partner, taxation documentation, details of any Centrelink benefits you may be receiving, any Child Support Assessments that have issued, copies of your bank statements and investments and any other paperwork that relates to your financial situation.

Further assistance

This time is often very stressful.

Sometimes it is helpful to obtain counseling at this time. If you do not know where to turn to for help, we can provide you with details of suitable organisations that provide these services.

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