dealing *with* divorce

Dealing with the challenges of a **relationship breakdown**

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in australia end in divorce

Every year almost 50,000 marriages in Australia end in divorce, and an even greater number of relationships break down.

A relationship breakdown can be one of the most stressful events in a person's life, particularly if it is not amicable and there are children involved. It can leave you completely mentally and emotionally drained. Having to sell a beloved family home is an added emotional stress and you can find yourself in the middle of a nightmare.

The laws around property settlement in these types of situations can be quite complex. In addition, there have been changes to the Family Law Act 1975 (the Act) that can impact the final outcome of a property settlement.

So where do you start?

The future definitely belongs to the prepared. A leading Australian family law solicitor, Geoff Brazel from Brazel Moore Family Lawyers in Gosford, has come to the rescue. In this booklet, Geoff answers the most commonly asked questions about divorce, defacto relationships, property, children, court proceedings, costs and Wills.

Geoff has been in legal practice since 1979, and says, "The law is full of mystery. People are often very afraid of going to see a lawyer to seek out advice. There are lots of bush lawyers around and my advice to anyone would be to get proper advice about your own particular situation rather than relying on general advice from friends or relatives".

The advice provided here is general in nature and is intended as a broad guide. The advice should not be regarded as legal, financial or real estate advice. You should make your own inquiries and obtain independent professional advice tailored to your specific circumstances before making any legal, financial or real estate decisions.

The legal framework for divorce

Since the introduction of the Act in 1975, there is no longer any fault associated with divorce.

The grounds for divorce are that the marriage has broken down irretrievably, which is evidenced by the parties to a marriage being separated for a period of not less than 12 months. Separation can involve one party leaving the home, but can also be a couple living separate and apart under the one roof as, quite often, economic circumstances necessitate a couple continuing to live together although the relationship has broken down.

There's no time limit on divorce. People can live separate and apart for many years and some people never even bother to get divorced. Divorce itself is a legal process whereby the marriage is terminated; in other words, the marriage is brought to an end. Just to reiterate - the sole grounds for divorce is an irretrievable breakdown of the marriage evidenced by a 12-month separation. Actions such as adultery and desertion are no longer grounds for divorce.

Determining the separation date?

If you are living together, how do you determine the date the separation started?

Prior to the Act, you could obtain a judicial decree of separation before the 12-month time period in which to divorce had commenced. These days it is only necessary to swear an affidavit (an oath to promise to tell the truth) in which the date of separation is sworn. Any dispute between the parties as to the actual date of separation can affect any future property settlement and property division, because this date is often relevant to those issues. Essentially, it is for the parties to agree on the date of separation.

If the parties are living separately and apart under the one roof, there is a requirement by the court for them to provide additional evidence to show that they are no longer presenting to the world as a couple. The court will normally require somebody from outside the relationship (for example, a friend) to swear an affidavit in court which states, "Yes, I visited Mary and Joe Bloggs, and they were living in separate bedrooms. They weren't going out together as a couple. They're receiving their mail separately". Anything to support that the parties are no longer living together as a couple.

Make sure you are divorced before you marry again

It sounds illogical, doesn't it, but sometimes it does happen. However, the parties must be divorced before remarrying. Occasionally when people separate from each other they form new relationships, and simply forget to legally dissolve the previous relationship. When parties divorce, the court issues what used to be called a 'decree nisi', which states in effect that, "Yes, this marriage will be terminated, but there is a one month delay before this decree becomes absolute". To make your life easier, just ensure when you are planning your next wedding, that you have divorced your previous partner.

The disadvantages of not making a divorce official

Failing to legally dissolve a marriage can have consequences, and the biggest disadvantage can most likely occur with property proceedings. There have been some fairly high-profile cases involving lottery wins and inheritances of couples who have failed to divorce. In one particular case on the NSW South Coast, a married couple with a small child and very few assets, separated. A few years later the husband was lucky enough to win a fairly substantial amount in Lotto. They had never divorced and the wife made an application for property orders. Because she had the care of a child under 18 years of age, the court had no difficulty making an award of property to her based on the money that the husband had won.

Keep proper records

It's very important to keep proper records about everything. Before parties can apply for property orders, the court has in place what are called pre-application procedures, which are all about disclosure. You need to disclose all the assets you have, such as property, bank accounts, superannuation and shareholdings. If you have all these records handy for disclosure, it will make things much easier for both you and your lawyer, rather than having to reconstruct some events that have occurred over the years.

Defacto relationships

Prior to 1 March 2009, defacto relationships were regulated by state laws. Each state had its own laws about the way children and property of defacto relationships were dealt with. However since 1 March 2009, New South Wales in particular referred its constitutional powers for defacto relationships to the Commonwealth, and now all issues arising out of defacto relationships are dealt with under the Act in the same manner as issues which arise out of marriages and consent. When the state courts were dealing with defacto relationships, very different principles often applied to children's issues and also to property issues in particular. Often decisions were made by judges who were not specialists in family law, so there was sometimes inconsistency in some of the judicial decisions that were made.

These days, complex cases are dealt with by the Family Court, and what is now known as the Federal Circuit Court of Australia deals with the less complicated property applications. A complex matter, for example, may involve a relationship where there may have been domestic violence throughout the marriage. In certain circumstances, if a woman has been the victim of mistreatment, she may be entitled to a greater share of the matrimonial assets by way of compensation for the criminal assaults that may have been committed upon her during the course of the marriage. In any event, defacto relationships and marriages are dealt with in exactly the same way.

What is the definition of a defacto relationship?

A defacto relationship involves two people living in a bona fide domestic relationship. For the court to have jurisdiction to deal with that relationship, one of the following three things must apply:

- The parties need to have lived together for a period of not less than two years, or
- There has to have been a child of the relationship. Even though the parties may not have been living together for two years, a child of the relationship creates a jurisdictional ground for the court, or
- If one of the parties has made a substantial financial contribution to the assets of the relationship. A significant financial contribution would be if the couple purchased a home together and both made a substantial contribution towards the deposit, not necessarily equally, and each signed up for the mortgage repayments.

One of these three grounds will give the court jurisdiction to hear a matter involving a defacto relationship. Again, regardless of whether or not the parties are married, if they are deemed to be in a defacto relationship the family law courts handle the matter in the same way as a marriage.

What you need to know about property applications

A property application is a written application filed in court to seek orders that, for example, the house be sold and that a percentage of the proceeds of the sale be paid to you.

Whatever it is that you request of the court is set out in that document.

However, before you get to that stage, there is a requirement under the Act that parties comply with what are called pre-application procedures. These procedures involve full disclosure by both parties of all the assets they have, such as real estate, motor vehicles, boats, investment properties, shares and superannuation. Property is everything the couple owns and all these things need to be properly disclosed.

Part of the documentation filed in court will be a document that certifies that those disclosures have been made to the other side, and that the parties have been involved in genuine attempts to try and resolve the matter before proceeding to court.

There are time limitations in relation to applications for property.

For a married couple, the limitation period does not commence until they become divorced. If they never seek to divorce, the time limit will never start to run. If they are divorced, they must apply for property orders within 12 months of the granting of divorce. If not, they must seek permission from the court to bring their application out-of-time, and it cannot always be guaranteed that they would succeed in having the time limit extended.

For defacto couples, the time limit starts from the time when they separate from each other, and they have two years to make an application to the court. However, in essence, it is a two-year separation for both married and defacto couples. Married couples have the added advantage that the time limit does not commence until they've been divorced for 12 months.

What about same sex relationships?

Same sex relationships are also dealt with in the same way as defacto relationships and marriages, that is, the same issues around children and property apply.

What if the total asset base is in debt versus profit?

You can sometimes find yourself in debt. For example, floods or cyclones could hit and a property that was purchased for $680,000 is now reduced to $440,000. This would be a negative equity situation that would need to be dealt with and split that way.

The parties are entitled to the net assets if they're in surplus. However, they're also obligated in relation to any matrimonial debts that arise. If, in effect, they are insolvent and their debts are more than their assets, then the argument will be, "What is their respective liability in relation to those debts?"

Superannuation, sole property, joint property – how complicated is it

It can become very complicated. Time and effort needs to go into finding out what all the assets are, and getting a complete history of the financial relationship of the parties. Looking at future needs, particularly one party who has the ongoing care of children, takes time.

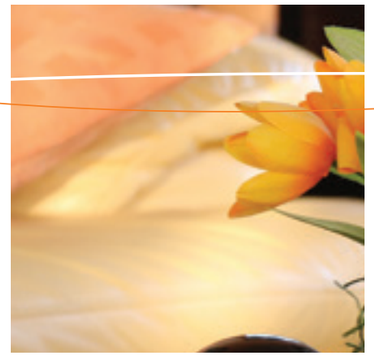
Statistically, 90 per cent of all matters settle and only 10 per cent of matters go to court. Solicitors actually play a very important role in gathering the information together and giving people a range of possible outcomes; however, they cannot say that, "This is definitely what your result will be if you go to court".

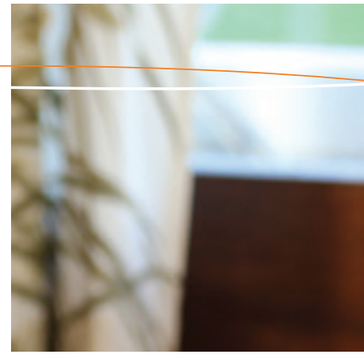
What we do is give people a range of possible outcomes. Goodwill on both sides goes a long way. Most lawyers are experienced and expert enough to know from previous cases what the likely outcome of a matter would be if it did go to court, so the negotiations are around somewhere between the lower range and the upper range. Hopefully, parties will meet somewhere in the middle.

It doesn't have to go to court

The ideal and most effective way is to strive for resolution. Court is the last resort. When family law matters go to court, and the court makes a ruling, it can ask one party to pay the costs of the other party.

However, when matters do go to court, the court is structured in such a way that it can try and force the parties into situations where they negotiate.





There will be an initial directions hearing

When an application is filed in court, a return date will be allocated. When you go to court, the Court Registrar will encourage the parties to discuss their positions and to come to a resolution.

If resolution is not reached a conciliation conference, which is very much like a structured settlement conference, will then be held. The Court Registrar acts as a mediator to try and bring the parties together to make their own decision.

One of the things that the Court Registrar will do at a conciliation conference is impress upon the parties that the costs that they will incur from this point will increase exponentially unless they can reach a settlement. It is not financially viable to argue for an extra $10,000 more than they think the other side is prepared to offer them, when they could end up paying $30,000-$40,000 more on legal fees.

The Court Registrar will impress that upon the parties, and the solicitors will do their best to try and negotiate and reach some common ground. If the parties can agree, the Court Registrar will make orders there and then, and the matter is concluded. Many matters do end at conciliation conferences.

If the parties cannot agree and the matter does not settle, it will be adjourned again for what is known as a pre-trial conference to be held usually around six months after the conciliation conference. At the pre-trial conference, the Court Registrar will examine what other parties may want to produce in evidence, so they may need to discuss preparing, filing and serving valuations and issuing subpoenas, among other things.

The matter will be allocated a hearing date and directions will be given for the filing of affidavits. Each party completes an affidavit, which sets out the evidence to substantiate the orders that the court is being asked to make on their behalf. Each party files their affidavits, the other evidence is filed, and then the matter is adjourned for hearing. The hearing date is set depending on how long it is anticipated the matter might run.

If all else fails and the matter doesn't settle and goes to court, usually a lawyer would make what is known as an offer of compromise to the other side, which sets out the orders the lawyers want for the client.

If the matter goes to court and the judge ultimately makes a decision which closely resembles the offer that has been made, the general rule that each party pays their own costs is disregarded, and an application can be made for the party that was unreasonable in refusing that offer to pay the costs of the party who has won.

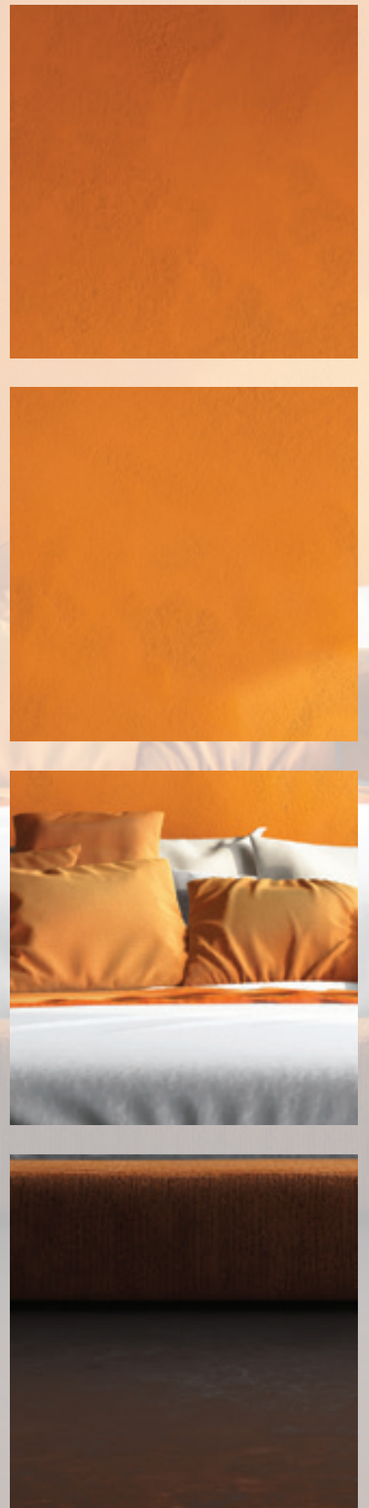
If you receive an offer of compromise, you need to be reasonable in considering that offer. If it is rejected unreasonably and the judge grants the other party roughly what the offer was, then you could find yourself on the wrong end of a costs order. From the time you file your application until the day you attend court for a defended hearing can be 18 months to two years, depending on a number of factors.

It does not happen overnight, and that in and of itself is often an incentive for parties to settle their matters. Apart from the costs issue, you need to wrap this up and put it behind you, rather than have it hanging over your head for another 18 months to two years.

At the defended hearing, the parties will be in the witness box and be cross-examined on their affidavits. Other witnesses may be called, and eventually the judge will make a decision and hand down a judgement. It is not uncommon for a judge to make a decision that neither party is happy with, and that's all the more reason for parties to give serious consideration to settling their matter well before a defendant hearing. At least if they didn't get the property orders they wanted, they have compromised and agreed to something they can live with.

Judges don't take kindly to people wasting the court's time. However, there are always two sides to a story and some people just want their day in court.

Before proceedings have even started, solicitors will do their very best to get all the information together and give the parties advice on what the possible outcomes might be. There are at least two occasions in the court process itself (the initial case conference and the conciliation conference) for the Court Registrar to try and encourage the parties to reach agreement. Sometimes the parties have entrenched positions, even if a case is completely unmeritorious, and still want to go to court.



Consider participating in mediation to try and reach your own agreement

The art of settlement is all about compromise. If you can do that and walk away with a deal that you can live with, you will save yourself probably tens of thousands of dollars in legal costs and a year of your time that you'll never get back.

Once you've reached agreement, consider entering into what are known as consent orders, a parenting plan, or even a binding financial agreement.

A breakdown of a marriage is a very emotive time and can generate bitterness. You will save yourself a lot of grief, money and time if you are prepared to compromise.

What happens when one party withdraws from the process?

If one party will not engage in the pre-application procedures and genuine efforts to resolve a matter, that doesn't mean that you can't apply for court orders. You would file your application, and you would file a document to indicate that you have unsuccessfully made a reasonable attempt to conciliate and mediate the dispute.

Your application will be served on the other party, and if they still refuse to cooperate the court will hear the application in the absence of that party. Orders will be made without the other party taking the opportunity to submit their own circumstances and point of view to the court, so putting your head in the sand is not a solution.

Typically in a property matter, a lawyer will obtain all the information about assets of the marriage and the financial history. The lawyer would then write to the other party setting out the brief history that has been received from the client and the orders that the client is seeking to obtain. The other party is required to respond within 14 days. If no contact is made by the other party within that time, usually a follow-up letter would be sent.

If nothing is heard from the other party after a month, instructions would be sought from the client about commencing court proceedings.

Many people ignore those initial letters from a solicitor, but very few people ignore a court application. Once a party is served with a court application, they have obligations under the ongoing pre-application procedures to make disclosure.

Sometimes parties hide assets from their partner or do not disclose all of them. If hidden assets are revealed later on the party can be charged with contempt of court, which can result in fines, gaol time, or a good behaviour bond. It is very important to properly engage and to comply with the pre-application procedures and make a full disclosure of your assets.

How do you search for assets if someone doesn't disclose?

It's fairly easy to investigate property, because it's all on the public record. The best way to search for other financial assets is usually by way of a subpoena. There have been situations where somebody has moved on, re-partnered, and purchased a property with their new partner, but in their disclosure documents they swore that they had virtually nothing. A lawyer may subpoena the bank records to see the loan application, which will set out all the assets for the loan. This is often a very fertile area to harvest information about what assets parties might really have and if they might be hiding something.

mediation

A **checklist** for a property application

The rules of the court require a number of things, as follows:

- ✓ Bank statements for the previous twelve months
- ✓ The last three year's tax returns
- ✓ Real estate agent market appraisals for any property
- ✓ The value of any cars and motorbikes (can be downloaded from the internet at redbook.com)
- ✓ Details of shares and investments
- ✓ Interests in any business that either of the parties might be operating
- ✓ Recent superannuation statements
- ✓ Any documentation related to the value of all property, whether in joint names or individually
- ✓ All property in an individual's name will be regarded as matrimonial property. There is a requirement to disclose all property, irrespective of whose name it is in.

What is the four-step process for a property application?

When solicitors take instructions from clients, they gather all the details of their financial history. These details are considered and eventually form the basis of an advice as to what the solicitor thinks the outcome might be.

four steps

The **four-step** process that a court takes is to:

1. Identify the assets

All assets that are owned by either party, no matter whose name those assets might be in, can include inheritances and money that one party might have received by way of compensation, for example, worker's compensation.

2. Contributions that the parties have made

These can be financial or non-financial contributions, and can be direct and indirect contributions. If a party is a homemaker and a parent, their contribution is just as important in the eyes of the law as direct financial contributions. A couple will meet and marry, and they start their lives together with nothing. They will jointly acquire assets during the course of the marriage. When they decide to have a family, usually one party gives up their employment, stays at home to look after the children, and takes care of the household. The other spouse may go out to continue to earn money, and that money may pay for mortgage repayments and also for household expenses.

The contribution of the party as a homemaker and a parent is just as important as the contribution of the spouse in a direct financial sense, that is, the contribution of both parties will be considered equal. If the couple has come together, started off with nothing, and acquired assets together, everything is regarded as a 50-50 joint contribution. There may be adjustments around future maintenance needs. For example, the rule of thumb is that the care of a child under 18 years of age adds another 5 per cent to that party's entitlement to matrimonial property.

If a party (the carer) has three children after separation, 5 per cent per child gives them 65 per cent of the net asset pool, and the spouse 35 per cent. The carer my also have given up their career and be disadvantaged in the labour market because they have the ongoing care of the children, so they may be entitled to another 5 per cent. They start off with a 50-50 contribution-based assessment, and then the future needs of one party may increase it to a 70-30 split between both of them.

3. Maintenance factors or future needs

For example, the carer who has the ongoing care of children under 18 years of age will need additional property to accommodate those children. Again, it is not uncommon for one party to give up a career path in order to support their spouse in their career path. Those disadvantages of the employment market and ongoing care of children are maintenance factors that also need to be taken into account and may add to the share of the property that the carer may obtain.

4. Just and equitable approach

This is where the court examines the assets and the contributions the parties have made to the acquisition and preservation of assets, and looks to future maintenance factors. If there is only a very small pool of assets for example, the court may decide that it is just and equitable that the carer who has three children to look after gets the lot, and the spouse doesn't get anything because they have a job and can earn an income and re-establish their life. A just and equitable approach is the wildcard and is a reason to avoid going to court. It is difficult to anticipate what a judge will decide is a just and equitable outcome.

What happens if a party is taking care of stepchildren?

Taking care of stepchildren in a marriage is a contribution that will be taken into account, because they are not that person's children. The step-parent may feel a moral obligation to care for those children, but they don't have a legal obligation. The fact that the step-parent is making an additional contribution to care for and support the children will be taken into account by the court.

What happens if you don't have funds for legal costs?

Depending on the circumstances, and even before the property application, it is possible for a party to make an application for spousal maintenance to ensure that they have the necessary income to support the household. If one party is in a position to do so, orders can be made for that party to pay a lump sum on an interim basis, even to cover the other party's legal costs.

What about alterations and additions to a property?

Alterations and additions to a property that will increase the value of that property, such as building retaining walls, maintaining the property, building alterations and new rooms, can be taken into account and may add to the entitlement of the party who has done the work.

Let's look at an example

A couple bought a house, one of the parties contributed 90 per cent to the property, and then within two years they have separated.

The court would proceed through the following four-step process:

The first step is to identify the assets.

The second step is to look at the contributions each party has made, either to the acquisition or the preservation of assets.

If one party had 90 per cent of what was required to purchase the property, then that 90 per cent contribution will be in their pool, and the other 10 per cent perhaps to the other party.

If they separated within a very short period of time then the party who made that 90 per cent contribution will get most of that back. However, the benefit of that contribution will dissipate over time. For a lengthy marriage of, say, 20 or 30 years, the contribution may only be worth a few percentage points at the end of a 30-year relationship, compared with recouping it all if they were to separate after only, say, two years.

What about gifts or loans from parents?

Over time, the benefit of a gift will dissipate. However, a loan has to be repaid in full upon separation, whether it's after two years, 10 years, or 15 years.

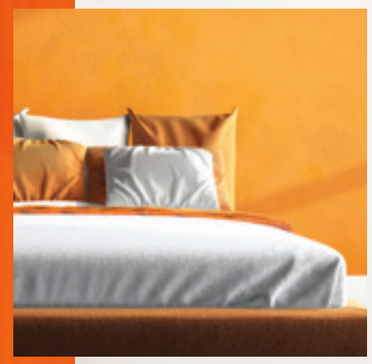
After a lengthy relationship breaks down, people may often try and argue that the money that was received from a parent was a loan, and not a gift. Unless the amount has been properly documented as a loan, it's more likely to be regarded as a gift.

If a parent is considering advancing money to a child and the child's spouse, and they expect to have the full amount paid back to them should the relationship break down, the money should be properly documented as a loan and not just given to the child. Otherwise, it might become part of the pool of matrimonial assets.

A **checklist** for maintenance factors

This list is not exhaustive, but can include things such as:

- ✓ The length of the marriage
- ✓ The age of the parties
- ✓ Health issues - if one party is in bad health and unable to work, then they might be entitled to a greater share
- ✓ The earning capacity of the parties and disparity of incomes and financial resources, which can include future inheritances
- ✓ Personal injury compensation - is not regarded as property for the purposes of being divided by the court, but a court can certainly take it into account. If a party had a major accident and has been awarded several hundred thousand dollars in compensation, that is a financial resource that they have the benefit of. The court might award more of the percentage of present-day assets to the other party
- ✓ The ongoing care of children
- ✓ A reasonable standard of living - if parties are used to a particular standard of living, or the children are attending private schools, the court will also take that into account.



Children

The very first thing that parties should bear in mind is that the court will regard the best interests of the child as the paramount consideration in determining issues around where the child might live and who the child might spend time with.

Generally, people use legal terms such as custody, access or contact, and guardianship.

Those terms are no longer used in family law, and are referred to instead as who a child might live with instead of custody, and who a child might spend time with instead of access or contact. There are also other terms, such as who a child might communicate with and issues around parental responsibility, which is the old concept of guardianship.

What are the objectives of the Family Law Act?

The best interests of the child are paramount. The court will make orders that will enable meaningful involvement of the birth parents in a child's life. The Act also seeks to protect children from physiological or psychological abuse, helps them to achieve their full potential, and encourages parents to meet their responsibilities of care, welfare, and development of the child.

Parental responsibility and shared care - what happens?

There is an assumption that each parent is entitled to shared responsibility. Terms such as guardianship, custody and contact are no longer used. Parental responsibility is a similar concept to what people previously understood as guardianship - the right to have input into the major decisions of a child's life, such as education, religious training and consents to medical procedures.

In principle, both parties are entitled to shared parental responsibility and, unless there are allegations of abuse, that will most likely be granted by the court.

The issue of shared care, however, is quite a different issue. Shared care basically means that the child lives equally with both parents. Because around 90% of cases settle, it is preferable for the parents to come to their own agreement about shared care.

For those matters that go to court because the parents cannot agree, a court is very unlikely to order shared care in those circumstances.

At what age does a child have the right to have a say as to where they want to live?

It used to be that the court would not regard the interests or the wishes of a child until they were 12 years of age, but this is now no longer the case. The court will consider the interests of a child of any age; however, obviously the younger or the more immature the child is, the less weight a court will attach to those wishes being expressed by the child.

The court will order that the family attends a family consultant, who is usually a trained psychologist. That family consultant will prepare a report for the court, which will set out the wishes of the child as they've been expressed. The report will also contain some comments on the parenting skills of both the parties. That is often a very important component of the report, as it will have an impact on the court's ultimate decision.

In circumstances where there are allegations of child abuse, in addition to the child's wishes being expressed via the family consultant's report, the court can also order that the child be separately represented by a solicitor.

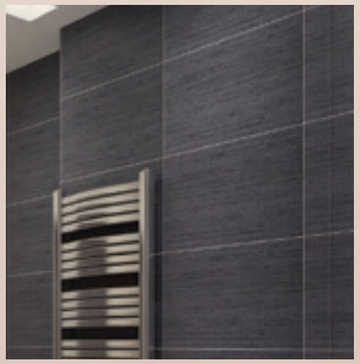
In those circumstances, the children's representative is obligated to produce to the court all information relevant to the interests of that child. Our court system is an adversarial system in which parties sometimes decide what evidence they will use, and what evidence they won't use. Generally, parties won't use anything that is to their disadvantage. Having an independent children's representative means that those situations will be avoided. If there is information that parents may not want the court to know about, the children's representative will ensure that the court does know. The family consultant will also refer to it in their report.

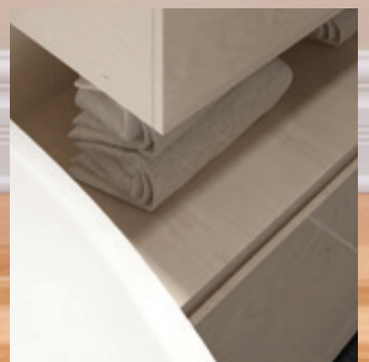
There's a difference between a child going to see a child psychologist for genuine therapeutic reasons, and a parent who sends a child to a child psychologist for the sole purpose of obtaining a report that is going to try to give them some advantage in the children's court proceedings. There is a court rule that prohibits that from being done, and it may amount to contempt of court for a parent to tender such a report.

If there is an allegation of sexual abuse, report it to the police as soon as possible. The police will then consult with DoCS, which will make an investigation into the allegation. They may or may not decide to take any further action, depending on what evidence is available for them to corroborate and prove that allegation.

If a party becomes aware of a sexual assault on a child and they don't report it, and then a year or two later when they're in court they suddenly raise these allegations, it could appear that the allegation was raised to give them some advantage in those court proceedings, rather than being a genuine concern.

If you have a genuine concern about your child, you should be taking the appropriate steps to alert the authorities as soon as possible.





What if one party wishes to move away?

These are referred to as relocation cases. If a parent is seeking to move a child out of the state or to some other region away from where the child has grown up, a range of things need to be examined. The court will assess the effect that a move will have on the child because of severance from the parent with whom the child is spending time, other extended family relationships, and contact arrangements. For example, seeing one parent every fortnight and half the school holidays may be reduced to just half the school holidays, which may have an adverse impact on the child.

One particular case a few years ago involved a mother who was living in Queensland and who wanted to relocate with her new partner to Melbourne. The child had been raised in Queensland and the father was in Queensland, but all the mother's support and her extended family were all in Victoria. On balance, the court considered that it was better for the mother to have support around her so she could properly care for the child, rather than refuse her permission to relocate the child to Victoria.

Relocation can be a very complex issue, and some situations are not straightforward.

What happens if a parent fails to return a child?

The law is very clear - the court will issue a warrant for the child to be taken into custody and returned to the parent with whom the child was living. The police can also issue a warrant for the arrest of the parent who has removed the child. It is unlawful to collect and then fail to return a child. Some criminal charges can be laid against a parent for kidnapping their own child.

Wills

If you are separating from somebody and you have already made a Will which leaves your entire estate to them, you might consider changing your Will to leave your estate to your children.

Divorce does not revoke a Will. However, it nullifies a gift to your divorced partner. If you have a Will that states, "I leave all of my estate to my spouse, but if my spouse dies before me, then to my children", a divorce has the same affect as if the spouse has died. Therefore, the gift to the spouse is nullified, and the estate will pass directly to the children.

In addition, if you intend to re-partner again, marriage does revoke a Will entirely. If you have separated from your spouse, made a new Will that gifts your estate to your children, re-partnered, and then decide to marry again, the new marriage will revoke the Will that you made. Instead of your estate going to your children, your new spouse will then have certain succession rights in relation to your estate.

It is advisable to seek advice from a solicitor to make a proper Will, and not try to do it yourself. There are issues around challenging Wills that relate to blended families in particular. If a person dies without having made a new Will, they are said to have died intestate. The new spouse will be entitled to a greater share of the estate, and the children from the first marriage may inherit less than what was originally intended.

Remember - the future definitely belongs to the prepared!

As family law expert Geoff Brazel says, "The law is full of mystery. People are often very afraid of going to see a lawyer to seek out advice. There are lots of bush lawyers around and my advice to anyone would be to get proper advice about your own particular situation rather than relying on general advice from friends or relatives".

the art of settlement is

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