

Issues Relating to Family Law

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

At Butlers we understand that many issues arise which are often very stressful and difficult for the parties concerned when a relationship breaks down. We strongly believe in negotiation between the parties and endeavour to resolve all areas of conflict amicably, quickly and without Court proceedings. We understand the value of an approach which is likely to avoid potentially lengthy and expensive litigation. We have set out in this information sheet a brief summary of the main issues which may need to be considered:-

Divorce

The only ground now available for divorce is *irretrievable breakdown of marriage*. The Family Law Act sets out certain criteria which must be satisfied before a divorce is granted:-

1. You must be separated for a continuous period of 12 months and you must have decided that your marriage is at an end.
2. You must be either domiciled in Australia, hold Australian citizenship or be resident in Australia for a minimum of 12 months before the application is filed.
3. Where there are children of the marriage, the Court must be satisfied that proper arrangements have been made for the children, particularly in relation to housing, education, financial support, supervision and health.

It is not necessary to have the consent of your spouse to apply for a divorce. The application may be made by you solely, or jointly with your spouse. Currently there is a filing fee in the Family Court for applications of \$550. The fee can be reduced if financial hardship can be shown or you hold certain government concession cards.

Children

It is important that proper arrangements are put in place and a routine established for children as soon as possible after separation. Parties are required to attend mediation with a Family Dispute Resolution Practitioner to try to resolve issues, unless there is urgency or safety issues. If the parties cannot come to an amicable agreement in relation to the arrangements for the children, the Court has the power to make decisions regarding issues such as:-



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- a) the day to day responsibility for the care of the children;
- b) the long term responsibility for major decisions such as their education;
- c) where the children will live; and
- d) periods of contact with each parent.

Child Support

The Child Support Agency, which is directly linked to the Australian Taxation Office, was established on 1 October 1989 and is involved where any child was born, or any parents separated on or after that date. The function of the Child Support Agency is to assess the amount of support (previously maintenance) to be paid by the liable parent which will be in direct proportion with their income and, where necessary, the Agency will arrange for the collection of this money. It is possible to agree an amount of child support which is to be paid between you, and have this agreement documented. If either the child was born, or the parents separated before 1 October 1989, it is necessary to apply to the Court for an order for maintenance. As much information as possible regarding the income and commitments of both parents will need to be supplied to the Court. Where the parent with whom children are living is receiving a pension or benefit there are restrictions on any agreement they can make.

Property Settlement

There are many factors which need to be taken into consideration when calculating a fair and equitable property settlement for both parties. Considerations include assets or liabilities which were acquired prior to the marriage by each party, the duration of the marriage or any period of cohabitation prior to the marriage, the income earning capacity of both parties; superannuation entitlements, future inheritances and the future needs of both parties, particularly where children are involved. Another important factor which is to be considered is the non-financial contributions made by either party to the marriage. This includes domestic chores such as house maintenance or one spouse ceasing work to stay at home to care for the children. If agreement regarding division of property is reached between the parties, it is advisable to seek legal advice before signing any papers. Once the Court makes an order regarding property settlement it is normally extremely difficult, if not impossible, to alter. Another important factor to note is that you **must** apply for any property settlement not later than 12 months from the date the Court issues a divorce order, or within 2 years of the end of a defacto relationship.

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Spousal Maintenance

Spousal maintenance is different from child support, in that it is money which is paid by one spouse to another to support them. In many cases one spouse has ceased working to care for the children and does not have the necessary skills to re-enter the workforce. The amount of spousal maintenance to be paid is usually negotiated at the time property settlement is calculated as the issues to be considered are similar. An application for spousal maintenance **must** also be filed no later than 12 months from the date the Court issues a divorce order. If the party receiving the spousal maintenance remarries, or their financial circumstances change, the payments will normally cease.

Defacto Relationships

It is a growing trend for couples to acquire joint assets and live in a defacto relationship. If you are considering acquiring any major assets together, eg real estate, it is advisable to seek legal advice as to your rights and entitlements should the relationship fail. Property settlement issues between defacto couples are also heard in the Family Court of Western Australia. We are able to advise you in relation to Binding Financial Agreements which can be entered into before you live together, during the relationship, or after the relationship ends.

Butlers

At Butlers we pride ourselves on being "The Personal Law Firm". Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family's accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if we may be of any assistance.

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