

family law

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children's & parenting issues

Amendments to the *Family Law Act 1975* were passed during 2006. The reforms are referred to as *The Family Law Amendment (Shared Parental Responsibility) Act 2006*. The reforms have resulted in a change in approach to parental responsibility, parenting orders and Court procedures in parenting cases.

From 1 July 2007 it will be compulsory (other than in cases of urgency, abuse or violence) to obtain a certificate from a Family Dispute Resolution Practitioner stating that there has been a 'genuine effort' to resolve issues before parenting proceedings can be commenced in a Court.

The children's best interests are the paramount consideration when the Court is making a parenting order. There is a presumption that (in most cases) "equal shared parental responsibility" is in the best interests of the children.

Shared parenting does not necessarily mean the children spend equal time with each parent. An order for shared parental responsibility imposes an obligation on parents to consult on long term issues. Long term issues can include a change of: name, education, religion, health and living arrangements that make it significantly more difficult for the child to spend time with the parent.

An order for equal shared parental responsibility imposes an obligation on a Court to consider ordering equal time or substantial and significant time. The Court must consider whether each parent is likely to facilitate a close relationship between the child and the other parent and whether each parent has in the past fulfilled his or her responsibilities as a parent.

There are a myriad of factors that a Court takes into account when it makes parenting orders. It is not a simple task to decide what is in the child or children's best interest.

child support

In most cases, support for children under 18 is determined outside the Court system by administrative assessment under the *Child Support (Assessment) Act 1989*. The amount of support is determined in accordance with a fixed legislative formula based on the income of each of the parents. Parents are obliged to financially support their children.

The Act provides for a departure from administrative assessment in a range of circumstances. In those cases a parent is usually required to first make an application for change of assessment to the Child Support Agency. Some decisions can be reviewed independently by appealing to the Social Security Appeals Tribunal (SSAT), the Administrative Appeals Tribunal (AAT), or a Court, depending on the circumstances of the case.

property settlement

As a result of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act*, de facto couples (heterosexual and same sex) in Australia can have their property and maintenance matters dealt with under the Act. This only applies to couples who separated after the 1 March

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property settlement continued...

There are four steps in determining entitlements of parties to a property settlement pursuant to the *Family Law Act 1975* (Cth) (Act).

1. **Identifying and valuing the property of the parties to ascertain the net asset pool.** It is irrelevant under the Act whose name the property is registered to. Other assets may include, but are not limited to, superannuation, jewellery, art, cars, furniture, gifts and inheritances. All assets must be disclosed.
2. **Assessing the parties direct and indirect financial and non financial contributions to the acquisition, conservation and improvement of any property of the parties as well as their contribution to the welfare of the family.**
3. **Considering what adjustments, if any, should be made on account of the future needs of the parties.** Some of the factors the Court may take into consideration in relation to adjustments are the parties ages, health, property, financial resources, commitments, duty to maintain children under 18 years, standard of living and child support being paid by one parent to the other.
4. **An assessment of whether the end result is just and equitable to both parties.** The Court must not make an order for property settlement unless it is satisfied that it is just and equitable to do so.

financial agreements

Financial Agreements can be entered into before or during marriage, after separation or after divorce. They deal with property, financial resources, and/or spousal maintenance of the parties or issues incidental to those matters. There are circumstances whereby financial agreements may be set aside by the Courts.

In Victoria there is no legislative provision for de facto partners to enter into cohabitation agreements, however they will be taken into account by the Court when dividing property and finances.

On 1 March 2009 Victoria handed over jurisdiction of de facto legislation to the Commonwealth. As a consequence de facto couples can now also enter into Binding Financial Agreements (BFA) prior to, during and after separation.

divorce

There is just one ground for divorce which is the irretrievable breakdown of a marriage. However, the parties must be separated for a continuous period of not less than 12 months immediately preceding the date of filing an application for divorce. This prerequisite may also be satisfied if the parties have been living separately under one roof.

A divorce order does not end the marriage. One month and one day after the divorce order is made a divorce certificate will be issued by the Court. This is when the divorce order takes effect and one is free to remarry if they so choose.

Service upon the respondent must be proved for a divorce order to be granted by the Court. If service cannot be proved the application may be adjourned so that service can be effected and proved to the Court. Other matters such as arrangements for the children of the marriage, property settlement, spousal maintenance, adult child maintenance and child support are independent of a divorce.

Proceedings for property settlement and spousal maintenance must be initiated within 12 months of the granting of a divorce unless the Court grants leave to do otherwise.