



Family Matters

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Introducing you to James Turnbull



I've learned over the years that an advisor in family law must listen carefully as every client has different concerns, priorities and expectations.

James is an Accredited Family Law Specialist who has practised exclusively in relationship and divorce law for over twenty years. James joined Berry Family Law in 2007 and became an equity partner in July 2010.

James was formerly the partner in charge of family law in a mid-sized Brisbane CBD firm and while in Brisbane he was the family law editor of the Queensland Law Society Magazine for six years.

An Accredited Specialist since 1997, James' experience covers the entire field of family law. He has acted for parties whose details have appeared amongst the BRW top 200. Both through operating legal partnerships and through his exposure to complex property matters, James has developed a keen understanding of balance sheets, taxation and financial documentation.

While James now spends more time involved in property matters, he also enjoys the complexity of child related matters, particularly those involving a request for a child to relocate.

James aims to provide pragmatic advice and options in plain English. He has learned over the years that an advisor in family law must listen carefully as every client has different concerns, priorities and expectations.

It gives James personal satisfaction to help clients through their family law matter to a successful outcome.



Berry Family Law

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Am I in a de facto relationship?

In Australia, de facto couples have essentially the same legal rights in relation to parenting and property matters as married couples do.

Many clients believe they must be living with their partner for 2 years before they are considered to be in a de facto relationship. This is not correct.

What does the Family Law Act say?

For the purposes of the *Family Law Act*, a person is in a de facto relationship with another person if:

- The persons are not legally married to each other; and
- The persons are not related by family; and
- Having regard to all the circumstances of their relationship, they have a **relationship as a couple living together on a genuine domestic basis.**

A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

Working out if persons have a relationship as a couple

No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

Those circumstances may include any or all of the following:

- the duration of the relationship; the nature and extent of their common residence (de facto relationships have been found to exist even when the parties do not live together)
- whether a sexual relationship exists;

- the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- the ownership, use and acquisition of their property;
- the degree of mutual commitment to a shared life; whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
- the care and support of children; the reputation and public aspects of the relationship.

A de facto relationship can exist:

- between 2 persons of different sexes; and
- between 2 persons of the same sex; and
- even if one of the persons is legally married to someone else or in another de facto relationship.

Financial Agreements for de facto couples

People in a de facto relationship (or contemplating entering one) can enter into a Financial Agreement (also known as a pre-nup) to set out how their property will be divided in the event of separation.

A Financial Agreement can provide for a person to retain the assets and superannuation they had at the commencement of a relationship.

Without a Financial Agreement, the former de facto partner may be successful in an application for property settlement.

For more information about de facto relationships or any family law issue, call us on 9397 2488

Professional Privilege

An area which can potentially cause great grief to professionals is that of 'legal professional privilege', where an expectation can exist that communications with both in-house and external legal representatives will remain confidential.

The right for legal advice to be maintained as confidential, and excluded from being used as evidence in any Court proceedings, is known as legal professional privilege. However, it is vital that business employees are aware of the numerous ways in which legal professional privilege can be waived, when a waiver (deliberate or not) means that a lawyer's file can be admitted as evidence.

It is generally known that, during the Court process, copies of documents relevant to the issues in dispute must be produced to the other side for inspection and, if appropriate, copying. However, there are a number of precedents for the proposition that, if reference is made in discoverable material to legal advice that the party has received concerning the matter (for example, in the minutes of a director's meeting or an internal memorandum), legal professional privilege has been waived with regard to that piece of advice.

In other words, a casual comment in a discoverable document concerning legal advice can mean that the whole of a solicitor's file can itself become a discoverable document. This is relevant not only in Family Law matters, but also in many commercial disputes, where an ongoing relationship with a solicitor can mean that an enormous amount of material becomes open to inspection by the other side (in the event of a waiver).

We are happy to discuss any queries regarding this area, and the summary in this article cannot be a substitute for legal advice.

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