



# Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SPRING 2016

## Introducing you to Arna Bingham



Arna obtained a Bachelor of Laws and Bachelor of Business from the University of Tasmania. After completing a Graduate Diploma in Legal Practice at the Leo Cussen Institute in Melbourne, she chose to specialise in family law. Arna was the first Leo Cussen graduate invited to join Berry Family Law and she has practised exclusively in family law ever since.

The sensitive nature and complexity of family law, particularly when children are involved, requires a careful consideration of the needs of every client. Arna balances a practical and empathetic approach to achieve the best outcome for her clients.

Arna has a particular interest in cases involving the relocation of children - interstate and internationally. In property cases, Arna has focussed on how superannuation and other assets can be affected (and protected) by the *Family Law Act* and Financial Agreements.

- Admitted to practice in the High Court of Australia.
- Admitted to practice in the Supreme Court of Victoria.
- Member of the Law Institute of Victoria.
- Member of the Family Law Section of the Law Council of Australia.

### **Arna's reflections**

Providing realistic and sensible advice to clients from the outset can significantly reduce their financial and emotional costs in the family law process.



Berry Family Law

Melbourne 552 Lonsdale Street, Melbourne Tel: (03) 9397 2488 Fax: (03) 9600 1419  
Williamstown 162 Ferguson Street Williamstown 3016 Tel: (03) 9397 2488 Fax: (03) 9399 9006  
Email [admin@berryfamilylaw.com.au](mailto:admin@berryfamilylaw.com.au) Web site [www.berryfamilylaw.com.au](http://www.berryfamilylaw.com.au)

Liability limited by a scheme approved under Professional Standards Legislation

## Collaborative Practice - *another way*

The court system is supposed to be a place of last resort, especially in Family Law cases where you have subjects that clearly do not belong in a courtroom. All too often private Family Law matters involving children and separating couples assume a threatening tone that is unnecessary and only counter productive to settlement talks. The "threat of litigation" which is unfortunately present in many Family Law matters, adversely impacts the way people approach decisions involving their children and property following the breakdown of a relationship. Inevitably, settlement negotiations are overwhelmed by arguments about the parties "rights" rather than a discussion about their real interests. Collaborative Practice aims to remove this unhelpful element from the process.

### What exactly is Collaborative Practice and is it best for me?

Simply put, Collaborative Practice is an interest-based negotiation process, which involves parties entering into a written agreement not to litigate unresolved matters which form part of the Collaboration. The written agreement or contract sets out a road map for the parties to work through their issues in a transparent and ordered way with a focus on the unique needs of the family involved. The manner and speed of the Collaboration is determined by the parties and not a Judge.

Collaborative Practice requires a level of commitment from both parties to engage in the process entirely. It often involves a team-based approach with the parties meeting and engaging neutral experts such as child psychologists and financial and relationship counsellors to advise them on areas outside the expertise of the lawyers. The lawyers continue to represent only one party but work with all involved in a team-like manner. The lawyers are

trained in the area of Collaborative Practice and bring a different set of skills to the negotiation process. The intention of the Collaborative Practice is to move away from the traditional rights-based adversarial approach. Collaborative Practice is widely practiced in the United States and Canada.

It is not about winning or losing, it is about reaching a mutually acceptable agreement in a respectful way that gives the family what they desire. Some issues might not be legal in nature but form a real part of the Collaborative process discussions. The Law operates more like a guide for the families and less like an "Ass".

If the Collaboration is unsuccessful, each of the lawyers involved agree that they will not continue to act for either of the parties if one elects to commence legal proceedings against the other. If litigation is unavoidable, the outstanding issues to be determined by the court will be significantly reduced as a result of the Collaboration in most cases.

Research shows that parties who participated in Collaborative Practice reported a greater sense of empowerment and "ownership" of the process, in part because they were physically present when procedural and substantive decisions were made.

The Practice may not be suitable where cases involve mental health or abuse issues.

Family and Relationship Law cases rarely involve complex legal matters. The complexity more often than not relates to the parties' post separation relationship, which can be tricky and result in avoidable disputes if they are not managed appropriately. Collaborative Practice offers another way, which may work for you.

Contact Berry Family Law if you would like more information about Collaborative Practice.

## Financial Agreements - Before Marriage

Financial Agreements prior to marriage (often referred to as "pre-nuptial agreements") can be made under section 90B of the *Family Law Act*. This legislation also provides for Financial Agreements to be made prior to the commencement of a de facto relationship under section 90UB of the same Act.

Parties usually seek to enter a financial agreement prior to marriage (or de facto relationship) for the purpose of "protecting" or segregating their separate assets and superannuation. Agreements can deal with such assets in a variety of ways. The monetary value of an asset at the relevant time can be fixed and segregated in any subsequent settlement, or the asset itself can be segregated, including any increases to its value. Careful consideration should always be given to the fact that the length of any relationship may be unpredictable. A Financial Agreement can be prepared on the basis that a marriage (or defacto relationship) can last for different lengths of time. The Financial Agreement may nominate different financial outcomes dependent on the duration of the relationship.

Finally, in discussions with a partner or fiancée about a prospective agreement, it should always be remembered that an agreement prepared to protect one party's assets will, by definition, be financially adverse to the other party. In the context of the legal advice which must be provided for an agreement to be valid, this point will certainly be made. Therefore, it is always advisable to ensure that both parties are aware of the general consequences of any agreement prior to incurring the costs of preparation and formal legal advice.

Berry Family Law can assist with the preparation of and advice involving Financial Agreements.

**Peter Berry** Consultant ASLIV Accredited Family Law Specialist

**James Turnbull** Partner LL.B ASLIV B App Sc Accredited Family Law Specialist

**Tim Byrne** Partner BA LL.B ASLIV Accredited Family Law Specialist

**Ben Smith** Partner LL.B GDLP Accredited Family Law Specialist

**Ernie Woolf** LL.B (Hons) ASLIV Accredited Family Law Specialist

**Sanaz Naimi Roshan** B.Sc LL.B Accredited Family Law Specialist

**Lisa Collier** BA LL.B (Hons) Accredited Family Law Specialist

**Michael Lipshutz** LL.B AIAMA

**David Hanlon** LL.B

**Arna Bingham** B.Bus LL.B GDLP

**Joseph Buckley** LL.B GDLP

**Valerie Yiannikopoulos** BA LL.B GDLP

**Jessica Black** BA LL.B GDLP

