



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: WINTER 2017

Welcome to Bernadette Johnston

"... effective Family Law practise must combine technical expertise with the ability to identify and solve issues efficiently and with sensitivity."



We are delighted to announce that Bernadette Johnston has merged her practice with Berry Family Law and will be working in our Melbourne office. It's like welcoming back a family friend because our connection to Bernadette goes way, way back.

Bernadette is a highly experienced family lawyer with a pragmatic approach. She graduated from the University of Melbourne in 1989 and has spent the last 28 years either practising in a Family Law firm, caring for children, or both.

After years of working as a Family Law Specialist and as the managing partner in a city firm dealing exclusively in Family Law, Bernadette believes that having an office with a Persian rug on the floor or a stunning view doesn't help clients who simply want

sensible, practical advice. She listens to the concerns and priorities of her clients and helps them achieve the best result possible so that they can get on with their lives.

Bernadette has served on the Education sub-committee of the Law Institute of Victoria Family Law Section and has lectured at the Law Institute of Victoria and the Leo Cussen Institute of Continuing Legal Education. It is her view that effective Family Law practise must combine technical expertise with the ability to identify and solve issues efficiently and with sensitivity.

Bernadette is currently Vice Chair of the Family Law Courts Practise Committee and a member of the Family Law Executive Committee.



Berry Family Law

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Why is an Independent Children’s Lawyer sometimes appointed in parenting disputes?

In difficult cases the Family Law Courts may appoint an Independent Children’s Lawyer when hearing a dispute about parenting matters. This may be upon the request of a party to the proceedings or independently by the Court.

The most common circumstances when the Court may make an Order for the appointment of an Independent Children’s Lawyer were expressed in the case of *Re K* (1994).

This includes but is not limited to:

- where there are allegations of child abuse;
- where there are issues of significant mental illness of a parent, significant other persons, or a child; or
- where there is manifest continuing hostility between parents and the child is being used by either or both parties to hurt the other.

An Independent Children’s Lawyer’s role is to represent and promote the best interests of the child or children in the case. Amongst other things, they will usually:

- carefully consider all of the Court documents that have been filed by the parties;
- gather independent information about the child, parents or other significant persons (such as school reports, Police and mental health records) and develop an independent view about that evidence;

- bring any important evidence to the attention of the Court; and
- make submissions to the Judge about what independent reports should be obtained (such as psychiatric reports of the parties, a paediatric report of a child, or a family report); and
- make submissions on what arrangements should be put in place for the child on a short term or long term basis.

Often when it is appropriate to do so, the Independent Children’s Lawyer will meet with the child. They will explain their role and invite the child to express their views, to enable the Independent Children’s Lawyer to inform the Court of this. This does not mean that the Independent Children’s Lawyer acts on the child’s instructions or will automatically support the wishes expressed by the child. The Independent Children’s Lawyer may assess that a different arrangement is in the child’s best interests.

While parties may support or oppose the appointment of an Independent Children’s Lawyer in their case, it is important to note that such an appointment is not intended to criticize those parties. It is an important mechanism that is used by the Court in certain circumstances to ensure that it makes an appropriate decision and aims to ensure that a child’s best interests are met.

Changes to the Assisted Reproductive Treatment Act 2008

Since 1 March 2017 the Victorian Assisted Reproductive Treatment Authority (“VARTA”) has managed the Central Register which records information about donor treatment procedures. Previously it was managed by the Registrar of Births, Deaths & Marriages.

The information held in the Central Register is prescribed by the Assisted Reproductive Treatment Act and includes identifying information such as the names and dates of birth of all parties. It may also contain additional non-identifying information about the donor such as their physical attributes (eg. blood group, hair and eye colour).

Previously, a person born as a result of a donor treatment procedure would need the consent of the donor before the release of any identifying information. The changes allow identifying information to be provided to a person born as a result of a donor treatment procedure without first obtaining the consent of the donor. However, prior to the release of such information, the applicant must attend upon a counsellor who must then notify VARTA that the person “is sufficiently mature to understand the consequences of the disclosure”.

If you would like to know more about VARTA, surrogacy or the legal impacts of donor treatment procedures please call Ben Smith on 9397 2488.

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