



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SPRING 2015



I strive to bring the legal component of a break-up to a speedy and reasonable conclusion, while focusing on the issues which are a top priority.

Introducing you to Timothy Byrne

Timothy was admitted as a lawyer in 1999 and has practised solely in family law since then, receiving Accreditation as a Family Law Specialist in 2005. He joined Berry Family Law in 2005 and became a partner of the firm in July 2010.

Timothy has served on the Education Committee of the Family Law Section of the Law Institute of Victoria, and has presented numerous papers and seminars for organisations such as the Leo Cussen Institute, the Law Institute of Victoria, LAAMS Publications and the Australian Property Institute.

Timothy's areas of particular interest include the presentation of expert evidence and the interstate or international relocation of children.

He has had extensive experience with other complex matters relating to children and property, including corporate valuations, high asset pools, child abuse allegations and bankruptcy matters.

Tim reflected that he practises in the area of family and divorce law because no other area of the law has such a connection with people at a time when they need professional assistance. He uses his best endeavours to bring the legal part of the issues arising from separation to a reasonable, speedy and cost effective solution, while ensuring that the matters that are important to each client are given the highest priority.



Berry Family Law

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Parenting Plans

If parents reach an agreement in relation to parenting arrangements there are two ways the agreement can be formalised – by Court Orders made by consent or by entering into a Parenting Plan.

A Parenting Plan is a written agreement about children that is signed and dated by the parents, which deals with any of the following issues: who the child will live with, communicate or spend time with; sharing of parental responsibility; maintenance of the child; the process to resolve disputes or change the plan; any aspect of care of the child.

Parenting Plans are not enforceable in Court if they are breached. However, the Court will “take account” of a Parenting Plan if proceedings are commenced after the Plan has been signed. In most cases, Consent Orders, which can be enforced are preferable. For an agreement to be a Parenting Plan it must be made free from any threat or coercion.

Parenting Plans can deal with child support but they must comply with the formalities for a Child Support Agreement to be effective in relation to child support.

Advantages of Parenting Plans

Parenting Plans suit situations where the parents are on amicable terms and are able to reach an agreement regarding the children. They are particularly useful in situations where children are very young and the arrangements are likely to change significantly over a short period of time. They are more flexible than Consent Orders and can be changed with minimal expense.

Disadvantages of Parenting Plans

If a Parenting Plan is breached there are not the same potential penalties as there are with a breach of Court Orders.

Discovery and Disclosure

There is an obligation upon family law property litigants to disclose to their opponent all documents which are relevant to an issue between them. This obligation arises both in the pre-action stage and during litigation. It ends only when the case does.

The Rules of each of the Family Courts require disclosure of documents relating to a party’s assets, liabilities, income, expenses, superannuation and financial resources.

In **Owens and Owens (3)**, Federal Magistrate Walters Held, *“you give until it hurts...” and if there is any piece of paper that you look at or you think about and you ask yourself, “is this relevant?” the answer is inevitably and always “yes, I disclose it,” unless it is blindingly obvious that it has absolutely nothing to do with your financial position, your brother’s financial position, your father’s financial position or anything to do with the case at all.”*

If a document is relevant, a party is required to produce that document or information if it is in their power, possession and control. A party must do all acts and things reasonable to produce that document, unless it is privileged. Documents are rarely privileged and it is beyond the scope of this paper to discuss the exceptions.

Non compliance with disclosure is often the main reason a matter is not resolved in a timely, and cost effective manner.

The documents specifically referred to in the Family Law Rules are a guide to the type of documents required to be disclosed rather than an exhaustive list.

It is a good idea for a litigant to commence collating documents as soon as practicable and continue to do so until the conclusion of the matter. It is best practise to prepare a folder of documents with an index identifying each document which is added to as the need arises. The documents can then be produced at any point in an organised and easy to use form.

If a party fails to make proper disclosure, the other party may be permitted to issue a subpoena to obtain the necessary evidence. If a party is required to issue a subpoena due to the failure of one party to make disclosure, costs can be awarded.

Failure to comply with the requirement to make disclosure can have significant implications for a party such as the exclusion of evidence that is not disclosed, the Court drawing adverse inferences or punishment for contempt of Court.

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