



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: AUTUMN 2014



Welcome to Lisa Collier – Accredited Family Law Specialist

We are pleased to welcome Lisa to the firm which brings the number of lawyers to 13 and Accredited Family Law Specialists to 8.

Lisa commenced her legal career in 1998 and has practised exclusively in family law since then. Prior to joining Berry Family Law she was a director of a specialist family law firm and Special Counsel at a mid-tier Melbourne CBD commercial firm.

Lisa has built a reputation as a trusted advisor and expert in the field of family law. She combines her high level of legal expertise with an understanding and empathetic approach. She is sensitive to the needs of clients at all times.

Lisa practises in all areas of family law including financial, parenting and maintenance matters. She has a keen interest in assisting clients with wealth and asset protection by way of financial agreements.

Lisa has developed a particular expertise and interest in complex property matters and is known for her forensic and tenacious approach. She promotes cost-effective and negotiated outcomes for all clients but is a forceful advocate, if required, and is an experienced litigator.

Lisa reflected that “I became a family lawyer because I wanted a career where I could genuinely help people”.



Berry Family Law

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International Family Law

Jurisdiction of the Family Court of Australia

The Family Court of Australia (and Federal Circuit Court of Australia) has jurisdiction over all marriage-related cases in all States and Territories of Australia, except Western Australia which has its own Family Court. The Family Court's jurisdiction covers Applications for divorce, de facto matters, property settlement, maintenance, child support, parenting and residence/ living arrangements with respect to children. As long as there is some real connection to Australia, the Family Court will usually exercise its jurisdiction if called upon to do so.

International Property Settlement Jurisdiction

The Family Court of Australia has the power to make decisions about any property that is owned by the parties to the marriage (or de facto relationship), including any property held outside Australia. The Family Law Act provides that parties may commence court proceedings for property settlement in the relevant Australian Family Law Court if either party to the marriage is, at the time of institution of proceedings:

1. An Australian citizen; or
2. Ordinarily resident in Australia; or
3. Present in Australia at the relevant date

Once jurisdiction is established by virtue of the above, the next question to be determined is whether the Australian Court should exercise jurisdiction. A court may decline to exercise jurisdiction in circumstances where an Australian Family Law Court is clearly an inappropriate forum for the subject matter of the proceedings. For example, if both parties are living outside Australia and the only property of the parties consists of real estate in another country it is likely that an Australian Court would decline to exercise jurisdiction as the Court of that country would clearly be the most appropriate Court to deal with the matter.

International Divorce

It is possible to apply for a Divorce in Australia, even if you and/ or your spouse are not currently living in Australia.

You can apply for a divorce in Australia if either you or your spouse:

- regard Australia as your home and intend to live in Australia indefinitely, or
- are an Australian citizen by birth, descent or by grant of Australian citizenship, or
- ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

Child Abduction

If a child or children is 'over-held' by a former partner or spouse in breach of existing arrangements, whether or not those arrangements have been formalised by Court Orders, you should obtain immediate specialist legal advice. This is particularly urgent if you have suspicions that the child or children have been removed to an interstate or international location. It may be necessary for a family lawyer to file an immediate Court application in the Family Court requiring the Federal Police to assist in securing the return of the child. The Court has wide powers to locate and return the child. If a child has been taken and his/her whereabouts are unknown, the Court has the power to order individuals and government departments to search their records and give the Court any details that they have about the location of the child.

If a child is removed from the Australian jurisdiction they become subject to the laws of other countries or subject to international conventions such as the Hague Convention on International Child Abduction. It is almost always preferable to take steps to ensure a child remains within Australia rather than taking action after a child has left the country. Not all countries are signatories to the Hague convention and will not necessarily co-operate with Australian authorities.

Urgent injunctions to restrain departure from Australia may be obtained from the Court. The Family Court has an after-hours emergency phone service which can be used if you become aware of an imminent illegal departure and if, as a result, an urgent Injunction needs to be obtained prior to the Court opening on the next day.

Hague Convention Countries

These are countries that have agreed to be bound by a convention dealing with international child abduction. The main aim of the Hague Convention is to facilitate the prompt return of children wrongly removed to another convention country. Australia is a convention country. If a child is taken from Australia to another convention country there are procedures in place between Governments under the Hague Convention whereby the child may be returned to Australia.

Berry Family Law has dealt with international Family Law cases involving children for a number of years. Our partner, James Turnbull, has extensive experience in these cases.



Berry Family Law

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