



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: AUTUMN 2017



Introducing you to Valerie Yiannikopoulos

"I aim to achieve the best possible outcome for my clients in an efficient and dignified manner which enables them to move forward in a positive direction."

Valerie joined our firm in March 2013 having worked in family law for a number of years. She has a background in criminology and psychology and recognized early on that she had a natural flair for family law which encouraged her to practise solely in this area of law.

Valerie has experience in all areas of family law and prides herself on making a very difficult situation manageable by empowering her clients with advice and an understanding of the range of solutions suitable to a client's individual needs.

Valerie has extensive experience in resolving matters in and out of Court. She is able to call upon an extensive range of experts to assist in negotiations. However, she doesn't hesitate to adopt a litigious approach when the need arises and she has experience in complex litigation.

Valerie is committed to providing her clients with advice and guidance that achieves the best possible outcome for them and promotes their interests in a cost effective and efficient manner.

More recently she has gained an understanding of the trials and tribulations of renovating her home!

Valerie's reflections

I view my role as a family lawyer as transforming an emotional and difficult time into one that is manageable and empowering for my clients by removing the stress of the unknown following the breakdown of a relationship.



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 Web site www.berryfamilylaw.com.au

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Custody arrangements for children

Clients often ask for legal advice about “custody” arrangements for children. However, under the Family Law Act 1975 (Cth), the concept of “custody” no longer exists. Instead, when deciding parenting Orders the Family Law Courts must consider the issues of:-

1. the allocation of “parental responsibility”;
2. which person the children should “live” with; and
3. which person the children should “spend time” with.

In all decisions about children, the Court must have regard to the child’s best interests as the paramount consideration.

In determining parenting disputes on a final basis, the Court must first determine the issue of the allocation of parental

responsibility. This is colloquially called “guardianship”. This is the responsibility to make important long term decisions about children, such as decisions about their education, medical treatment, where they live and religious upbringing. Commonly, parents will be ordered to have equal shared parental responsibility with respect to the children, requiring such decisions to be made together. In certain defined circumstances, (including where there is significant domestic violence) the Courts can award one parent sole parental responsibility for the children. This enables that parent to make such decisions about children to the exclusion of the other parent.

Once parental responsibility is resolved the Court must determine who the children should live with. Depending on the individual circumstances of the case, the Courts can

Order that the children:-

1. Are to live with both parents (such as by living with one parent for one week and the other parent for the next week);
2. Are to live with one parent and spend substantial and “significant time” with the other parent (commonly includes every second weekend, half of school holidays and special occasions);
3. Are to live with one parent and spend no time with the other parent. This occurs in very few circumstances.

Given the misconceptions about Family Law in Australia, it is important that parties seek independent legal advice about parenting before formalising any short term or final agreements, or before they commence or respond to Court proceedings.

Children and Overseas Travel

Apart from exceptional circumstances any parent wishing to take their child overseas should obtain the other parent’s consent. If there is a Parenting Order in place or there are pending parenting matters before the Family Court it is a Commonwealth offence to take a child overseas without the consent of the other parent.

If one parent refuses to allow the other to take the child overseas an application can be made to the Court for orders allowing the travel. In determining whether to allow a child to travel overseas the Court will consider what is in the child’s best interests. The Court may consider whether there is any risk that the child will not be returned to Australia. If there is a risk involved the Court can look at implementing safeguards to ensure the child returns.

Does the child have a passport?

Save for exceptional circumstances a child can only obtain a passport with the written consent of both parents. If consent cannot be obtained from one parent an order of the Court permitting the application for a passport will usually be needed.

Where there is concern that one parent may fraudulently apply for a passport for a child

a “Child Alert Request” can be made to the Australian Passport Office. This warns the Australian Passport Office that one parent has not given consent for a passport to be issued for the child. The request will remain on the system for a maximum of 12 months (or until the child is 18 if a Court Order is provided in support). The request is not a complete guarantee that a passport will not be issued but it provides a safeguard to alert a parent if an application is made.

If a child already has a passport (or can obtain a foreign passport) the alert will not stop the child leaving the country.

Storing passports and Watchlist alerts

If a child already has a passport and a parent is concerned about the child leaving the country it is possible to seek that the passport be safely stored (for example by a solicitor).

A parent can also apply for an Order that a child’s name be placed on the Family Law Watchlist. The Australian Federal Police (AFP) maintains a list of names and details of children on a “watch list” who are not permitted to travel overseas. If there is an attempt to take a “Watchlist” child from Australia the AFP will be immediately alerted and border security will not allow the child

to leave without the specific consent of both parents or a further Court Order. There are special procedures to expedite these watchlist matters so the AFP can even be notified prior to the Court deciding the case.

Hague Convention

If a child is travelling overseas with one parent a check should be made that the country they are travelling to is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. This is a treaty signed by Australia and other countries who have agreed to follow a procedure to ensure the fast return of children who have been wrongfully removed (or retained) from their country of habitual residence.

Security

In some cases, a Court may require the parent departing with a child to pay a bond or security to guarantee the return of a child taken overseas.

Seek Advice

When a child is going or has gone overseas and a parent has concerns about their safety and/or return legal advice should be sought immediately from an accredited family law specialist.

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

Andrew Johnston BA LL.B LP Accredited Family Law Specialist

Michael Lipshutz LL.B AIAMA

David Hanlon LL.B

Arna Bingham B.Bus LL.B GDLP

Valerie Yiannikopoulos BA LL.B GDLP

Jessica Black BA LL.B GDLP

