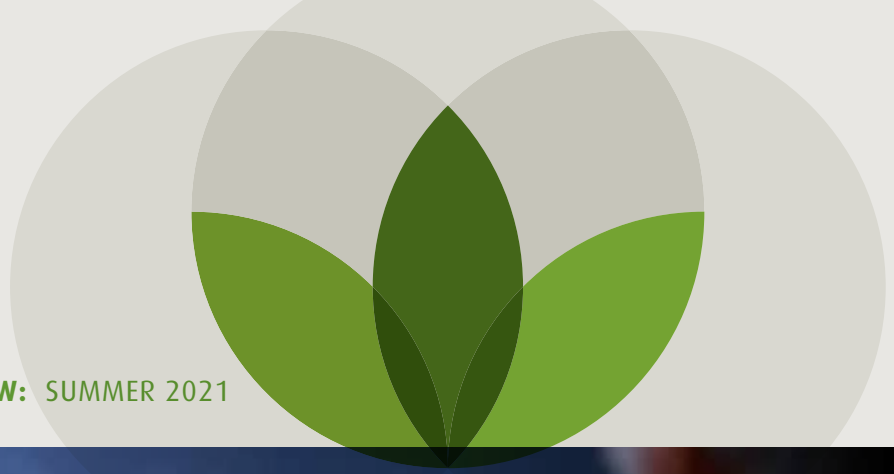


# Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SUMMER 2021



## Meet Radu Catrina

### *Radu's Reflections*

I am passionate about family law and chose to practise in the area because, in my view, it is one of the most critical areas of law. Family law governs fundamental aspects of human life which essentially underpin society. The work we do as family lawyers has far-reaching and significant implications and consequences. I take pride in doing it well and assisting people through what is often a very difficult time.

I am delighted to work for a firm that prides itself on a high standard of work and client service, and to work with colleagues who are dedicated, proficient and eager to assist and help better each other.

Radu has practised in family law since late 2015, and before that worked in government (ASIC) and general practice. In his time as a family lawyer he has worked on a variety of parenting and property matters, and has had experience as an advocate in both the Federal Family Courts and the State Magistrates' Courts.

Radu understands the unique demands of being a family lawyer and seeks to provide clear and illuminating advice to his clients, in order to empower them to make the best decisions they can for themselves.

In addition to his role as a solicitor, Radu is an active member of the Law Institute of Victoria Young Lawyers. He has served as a member of the YL Executive Committee and was Co-Chair of the YL Editorial Committee. He was also a Mentor in the LIV Mentoring Program. He has had articles published in the Law Institute Journal, the Young Lawyers Journal and the Young Lawyers Blog.

Outside of work, Radu enjoys attending live music shows and festivals, a variety of sports (in particular martial arts), playing guitar, motorbike riding and stamp collecting.

[www.linkedin.com/in/radu-catrina](http://www.linkedin.com/in/radu-catrina)

### **Cases that Radu has been involved in:**

Paletta & Quaney [2020] FCCA 1616

### **Published articles:**

#### **A precedent for unprecedented times**

– Law Institute Journal, December 2020

#### **What takes us from merely capable?**

– Law Institute Journal, November 2020

#### **Finding your voice**

– LIV Young Lawyer's Journal, Issue 71 Winter 2018

#### **A bumpy ride ahead? Road rules for cyclists and motorists under review**

– LIV Young Lawyer's Journal, Issue 61 Summer 2015

#### **Mentoring 101**

– LIV Young Lawyer's Journal, Issue 59 Autumn 2015



**Berry Family Law**

Melbourne 552 Lonsdale Street, Melbourne Tel: (03) 9397 2488 Fax: (03) 9399 9006

Williamstown 162 Ferguson Street Williamstown 3016 Tel: (03) 9397 2488 Fax: (03) 9399 9006

Email [admin@berryfamilylaw.com.au](mailto:admin@berryfamilylaw.com.au) Website [www.berryfamilylaw.com.au](http://www.berryfamilylaw.com.au)

Liability limited by a scheme approved under Professional Standards Legislation

# Covid-19 and binding child support agreements

## What is a binding child support agreement?

A Binding Child Support Agreement is a written agreement between parents or carers as to the payment of child support for a child. Both parties are required to obtain legal advice before entering into a binding child support agreement.

## When can a binding child support agreement be terminated?

Typically, a binding child support agreement will continue to operate until the date specified in the agreement. However, a binding child support agreement can be terminated in the following limited circumstances:

1. by entering into a subsequent binding child support agreement that includes a provision to the effect that the previous agreement is terminated
2. by a binding child support agreement drawn specifically to terminate the previous child support agreement
3. by a court order setting aside the child support agreement
4. if a parent entitled to receive child support ceases to be an eligible carer

A person will cease to be an eligible carer if their care of the child falls below 35%.

A binding child support agreement will be automatically terminated if the parent or carer's care level remains below 35% for 28 days, unless there is a contrary clause in the binding child support agreement.

## When should a court application be made?

In some circumstances, a court application can be made to set aside (i.e. terminate) a binding child support agreement.

A parent or carer to a binding child support agreement can make an application to the family law courts to set aside the agreement if the original agreement was improperly obtained by **fraud, duress or failure to disclose** relevant material. This will depend on the specific circumstances surrounding the making of the agreement.

Parties can also apply to set a binding child support agreement aside when '**exceptional circumstances**' arise after the making of the agreement and either the party or child will suffer hardship if the agreement is not set aside.

## Would COVID-19 be considered an "exceptional circumstance"?

The circumstances must be out of the ordinary and not foreseen or envisaged by the parties when the binding child support agreement was entered into. A period of unemployment, whilst causing hardship to a party, is not an 'exceptional circumstance' as a period of unemployment can be expected to occur at some point throughout a working adult's life.

However, in a recent decision of *Martyn & Martyn* [2020] FamCA 526, the Family Court of Australia accepted that the economic effects of COVID-19 can amount to 'exceptional circumstances'. In this case the financial impact of COVID-19 restrictions were so significant that the reduction in sales for the father's business were 90%. The court set aside the binding child support agreement.

**Peter Berry** Consultant

**James Turnbull** Partner LL.B ASLIV B App Sc 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** OAM LL.B AIAMA

**David Hanlon** LL.B

**Valerie Yiannikopoulos** BA LL.B GDLP

**Jessica Black** BA LL.B GDLP

**Radu Catrina** BA (Hons) LL.B GDLP

