



Family Law Newsletter

April 2009

This edition of the Coleman & Greig client update deals with the sometimes confusing issue of which Court should be hearing a case in a family or relationship breakdown.

Until recently, different courts have been used to determine any settlement and parenting issues following the breakdown of a marriage versus a de facto relationship. What's more, in some instances there is even a choice of which court to lodge matters with, which can lead to more confusion for people who are already dealing with a difficult situation.

This newsletter provides an overview of the options and recent changes to the system, but the best advice is always to speak to a family law specialist early in the process who can guide you in the right direction. If you need help or advice please don't hesitate to call our experienced Family Law solicitors on phone 02 9635 6422.

>>Which Court does what?

For many people who have experienced family breakdown, navigating around a confusing two court system adds to the stress and uncertainty surrounding the process of resolving family law disputes that involve children and property.

At the moment, both the Federal Magistrates Court and the Family Court deal with family law matters. Both are federal courts operated by the Commonwealth



government that apply only federal law, such as family law. The Federal Magistrates Court also deals with limited administrative, bankruptcy and immigration matters as well. The "Family Courts" have a single registry for filing of documents, and now use the same Court forms.

Somewhat confusingly, the Local Court can also deal with some family law issues. Usually, the local court will transfer matters to either the Family or Federal Magistrates Court as it does not have the capacity or expertise to deal with complex or ongoing family law matters.

The Family Court and the Federal Magistrates Court presently undertake very similar work. Because of this, there is a significant "doubling up" of court services. This, in combination with

a shortage of Judges and Federal Magistrates, and ongoing funding problems, has contributed to very lengthy delays in the courts being able to hear cases.

Because of these problems, a review was recently undertaken by the Commonwealth government and a report was released in late 2008. Unsurprisingly, the report recommended that the two courts be combined to prevent this “doubling up” of services to the public. It may be some time before this change is implemented, and it is likely to attract significant media attention when this occurs.

In the meantime, for separated couples who need Court assistance to solve a family law problem, choosing which Court to approach

can depend on the type of issue involved and its complexities. Having the right advice as to which forum is more suitable and the relative delays in each (depending on the type of application to be made) can mean the difference between a resolution sooner rather than later. An experienced family law practitioner can assist you by advising early on which court is more appropriate - before any proceedings have been commenced. This may in the long run end up saving you both time and money.

If you, or someone you know, is facing a family breakdown it will help to speak to a family lawyer in the early stages to ascertain the best option moving forward.

>>Family Court now deals with De Facto relationships

New legislation dealing with de facto relationships came into effect on 1 March 2009. These changes now mean that when a relationship breaks down, either between married persons or de facto couples, the Family Court deal with all aspects of parenting issues, property settlement and spouse maintenance.

The biggest change under the new regime is that the principles applied to determine property settlement and spouse maintenance under the Family Law Act will now apply to de facto couples. These provisions are more generous than the old state laws that used to apply when de facto relationships broke down.



In practical terms, it means that a person in a de facto relationship who has made a greater non-financial or homemaker contribution to the relationship is now likely to receive a greater benefit if the relationship breaks down. This may produce an undesirable result for someone in a de facto relationship who is concerned with protecting their assets or financial position.

A de facto relationship is one in which the parties' in question live together on a “genuine domestic basis”. A range of different factors such as having a “common residence” (that is, living together), sharing finances, use and acquisition of property and sexual relations are examined when trying to work out whether a de facto relationship existed. A de facto relationship includes both opposite and same-sex relationships.

>>Family Court now deals with De Facto relationships cont.

Under the new laws, the Family Courts can make orders about de facto property and spouse maintenance issues where:

1. The parties have been in a relationship for at least 2 years; or
2. There is a child of the relationship; or
3. One of the parties made substantial financial or non-financial contributions to a property, or made a substantial contributions as a homemaker or parent such that an injustice would be done if an order was not made; or
4. The de facto relationship has been registered in a State or Territory having laws that allow for registration.

A complicating element to the new scheme is that it does not apply to couples who live in Western Australia or South Australia.

Because of the way in which the legislation has been drafted, only those relationships that break

down after 1 March 2009 will be dealt with under the new scheme. Any relationships that broke down before this time will be dealt with under the previous state-based regime. This will mean that couples who separated before 1 March 2009 must continue to approach state courts for assistance in solving a property or maintenance issue.

For those couples who do not want the new regime to apply to them, it is possible for them to make a private agreement about their financial affairs. This type of agreement is similar to what is commonly described as a financial agreement or "pre-nuptial" agreement. Both parties need independent legal advice before an agreement like this can be finalised.

If you, a friend or work colleague needs advice about a de facto relationship or financial agreement, contact our family law accredited specialists for an initial consultation.

>>For further information on any Family Law issues contact:



Susan Warda, Principal
Accredited Specialist - Family Law
Phone: 02 9895 9296
Fax: 02 9689 3983
Email: swarda@colgreig.com.au



Amanda Parkin, Consultant
Accredited Specialist - Family Law
Phone: 02 9895 9224
Fax: 02 9689 3983
Email: aparkin@colgreig.com.au



Celia Oosterhoff, Solicitor
Phone: 02 9895 9212
Fax: 02 9689 3983
Email: coosterhoff@colgreig.com.au



Antoni Mrdjen, Solicitor
Phone: 02 9895 9205
Fax: 02 9689 3983
Email: amrdjen@colgreig.com.au