

The Family Law Handbook

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THIRD EDITION

Chapter 1 The family law system

LAWBOOK CO.

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The family law system

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The big picture

[1.10] The end of a relationship is a process, not a moment. There are stages of separation, and different aspects of wellbeing – emotional, physical, financial, children’s – to monitor and manage along the way. There may be steps forwards and backwards, and different routes to choose between at certain junctures. Sooner or later, though, most people reach a point where they can see that their own life is effectively disengaged from their former partner’s, and that new financial and parenting arrangements are effectively in place. It is only at this point that the process of separation is complete.

The most important thing at the start is to understand the landscape in which this journey to “separateness” takes place. Read the first few chapters of this book. Get some legal advice. Then take some time to think. The decisions you make at the outset may greatly affect the difficulty and duration of your separation experience. You need to plan the most effective and least “costly” way through.

If you have not yet decided about separation ...

[1.20] If you have not yet firmly decided to separate from your partner, then this is your only task for the moment. Don’t sit down to calculate possible property settlement results if your relationship still hangs in the balance. You owe it to yourself (and to your children) to take whatever time and energy are required to work out the value of the entire relationship to you in personal terms – without the confusion of financial ramifications. This personal decision is tough enough in any case.

So don’t put the cart before the horse. If you are not yet settled in your own mind about whether to continue in a personal relationship, do sort this out first. Talk with your partner. See a counsellor, together or separately. (For details about how to find a counsellor, see [3.110].)

Decisions at separation

[1.30] If you really have decided to separate, you have three main groups of decisions before you.

Practical arrangements

You need to decide who is going to move, where to, and when; how to finance the move; and what interim income, expense and debt management arrangements you can make, including Centrelink payments. These matters are discussed in detail in chapter 2.

Parenting arrangements

For couples with children, perhaps the most important task is the design of workable, cooperative post-separation parenting arrangements that meet the needs of the children in the new circumstances of the family. See chapter 6 for detailed information about this.

Property settlement

Initially, all you need to do is set the wheels in motion. It is often better not to push to settle on property issues too soon after separation. But it is useful to get some idea of what the law would decide was a fair distribution of assets in your circumstances, and to plan the process for the smartest possible resolution of the issue at the right time. See chapter 7 for a description of the property settlement process; and seek legal advice.

Dispute resolution strategies

[1.40] You are no longer “of one mind” with your former partner, and yet you still have to make many joint decisions to achieve separateness with minimum damage to each other and to the children. How are you going to manage this? You know yourself, your partner and your conflict resolution capacity well. See chapter 3 for a detailed discussion of various dispute resolution strategies. Try to *jointly* decide an approach to resolving the issues if you possibly can.

Keeping sane

[1.50] The process of resolving parenting, property and financial conflict at the end of a relationship is almost inevitably a very stressful experience – whether you achieve the resolution by private negotiation, family dispute resolution or litigation. There is, firstly, the discomfort of a (perhaps non-private) discussion of highly sensitive personal issues, and the stress of trying to address those issues unemotionally. Second, parties on both sides are often still trying to come to terms with major and grievously unhappy changes in their life circumstances. They may not be in the best possible frame of mind for dealing with a dispute.

If you become over-stressed you are in danger, at the very least, of making poor decisions in settlement negotiations.

So it’s important to plan seriously to take care of yourself. You will need a regular exercise regime, and someone outside the process – a professional or a friend – to talk to about what’s happening. You need to try to maintain a life outside your family law dispute. Eating, thinking and breathing your dispute will lead to poor decisions and poor outcomes.

The trend away from litigation and towards dispute resolution

[1.60] There are many different strategies available to separating couples seeking settlement of their property, parenting and finance issues. These include private negotiation (face-to-face, by telephone, or by correspondence); a specialised form of mediation known as “family dispute resolution” (face-to-face, by telephone, in “shuttle” mode); joint counselling; negotiation assisted by lawyers; arbitration; and legal action (with self-representation, or legally-aided or privately funded representation).

All these options are open to some people. The more expensive ones are not open to many. But decades of experience in the family law system have convinced

community service workers, counsellors, the courts themselves and many lawyers that court action is not the most effective way – for anyone – to resolve a dispute about property, money or, especially, parenting.

Australian society is changing. More people are agreeing to work privately together to resolve their disputes than ever before, and the trend is confirmed and encouraged by government policy. Major changes to the family law system in 2006 entrenched the requirement for parties to make a genuine attempt to resolve their disputes without a court decision, and provided for the processes and structures within the system to assist them to achieve this.

Behaviour check

[1.70] Losing your cool at the wrong time can result in the total waste of your hard-won progress in negotiation to date (as you watch your partner charge down the street to the solicitor’s office). If it happens in court, your case before a particular judicial officer might be irretrievably damaged.

The stress of relationship breakdown and conflict over important matters leads many of us into exhibitions of our least appealing character traits. Unfortunately, this is a time when you can ill afford to lose control. Despite reforms to the system, the process of separation continues to be a fertile breeding-ground for abuse, hysteria, violence, irresponsible behaviour and substance abuse.

You *must* ensure that your language and behaviour towards your children and former partner remain moderate and proper at all times – in private and public situations. Take particular care not to denigrate (criticise or tear down) your former partner in the presence of your children. If you fail to control your behaviour on any occasion, and you end up in court, you can expect to find the details (of what might have been a momentary lapse) most unflatteringly detailed in the other party’s evidence.

Children are not property

[1.80] Public policy officially discourages an approach to settling parenting arrangements by “fairly dividing” the child between parents, like an asset to be distributed. By various reforms to family law, parliament has worked hard in recent years to change parents’ attitudes about what they might consider are their “rights” to their children, encouraging instead the idea that it is the children who have rights (such as to be safe, and to be able to be with, and be cared for by, both their parents).

It is difficult for many parents to see their child’s interests as separate and perhaps different from their own, especially when the pain of even a short-term separation from the child seems unbearable. But this is exactly the task for a separating parent. And although parents themselves are not legally bound to prefer their children’s best interests to their own, many mediation organisations require parents to consider the children’s best interests as a condition in their family dispute resolution agreements. Furthermore, if the dispute does reach a court, the court

will determine an objective picture of what is in the child's best interests, and may retrospectively assess whether the behaviour of parents indicates a similar orientation.

See chapter 6 for a full discussion of the "best interests" principle.

"Winning" and "losing"

[1.90] It is easy for participants in a family law dispute to be drawn into a false idea of winning and losing. Many people find that "winning", in the end, is not the same thing as achieving the outcome they originally set out to obtain. They discover that winning is more about moving forward into the future with a sustainable lifestyle, good relationships, good health and a positive self-image.

If you have "won" in a court process at the expense of your health, your conscience, the good opinion of your children, or the ability to make cooperative decisions with the other parent, you may find, in the longer term, that you have "lost" – and that, in fact, you have lost a great deal.

On the other hand, if you settle your dispute early (or even, by your own estimation, you "lose" or "give in" in family dispute resolution or at court) you may well be able to re-establish workable relationships to return fairly soon to a state of personal equilibrium, and retain the potential, in parenting matters at least, to negotiate more satisfactory arrangements later on.

It's important to get a realistic idea of your prospects on the legal issues from a lawyer at an early stage. Pursuing small differences over months of haggling may be a waste of legal fees, and of emotional and relationship resources. Settling early – and making some concessions – could be your most productive way out of a process that doesn't in itself produce too many true winners.

Is it worth it?

[1.100] Damage to your, and your children's, emotional state and recovery prospects accrues for every week that your legal dispute goes on and on, and the destructive communications that seem to characterise the process continue. Many people spend literally years of their lives in dispute about property settlements and parenting arrangements. They lose much of their settlement in legal fees and career impetus; they suffer from depression and ill-health; and their children are sad, tired and disturbed.

Remember that it is open to you, at any point, to choose not to be one of them. You can close the deal on the best terms available to you *right now* – and then get on productively with your new and real life.

Community-based support services

[1.110] Feeling lost and confused – about how to sort everything out, what to do first, how to cope – is absolutely normal. Many people find that it can be worthwhile to connect at an early stage with people other than lawyers who are familiar with the landscape of family breakdown and who can provide much-needed specialised information, support and encouragement.

The services available are many and varied. For contact details of services in your area, of any of the types listed below, see Family Relationships Online at <http://www.familyrelationships.gov.au> or call the Family Relationship Advice Line on 1800 050 321 for a referral.

Counselling

[1.120] After separation, you may experience the extremes of anger, sadness and worry. You may feel dislocated, or lacking in control. Many people involved in the separation process have found that visiting regularly with a professional counsellor around the time of separation can be enormously helpful in coming to terms with the emotional issues, even if they have never considered counselling in the past. Counselling is conducted by community-based, government-funded and private practitioners. Some are psychologists. See [3.110] for more about counsellors.

Family dispute resolution

[1.130] Family dispute resolution is a form of mediation adapted specifically to the Australian family law system. It is conducted by an independent family dispute resolution practitioner who aims to help parties to resolve disputes by agreement instead of by going to court.

See [3.160] – [3.180] for more about family dispute resolution and about finding a *registered* practitioner, see [3.220].

Children's Contact Services

[1.140] Children's Contact Services are community-based services assisting the children of separated parents to establish and maintain a relationship with the parent with whom they don't reside.

The services provide a safe, neutral place for the management of the changeover of children between parents. They also provide "supervised contact" services.

Eligibility requirements and waiting lists may apply.

Parenting Orders Program

[1.150] The community services operating under the Parenting Orders Program (PoP) assist separating families in high conflict with their parenting arrangements. Case workers engage intensively with parents in raising awareness about the effect of their conflict on their children.

As part of a PoP service, family members, including children, may have access to a range of services such as counselling, family dispute resolution and group work education.

Post Separation Cooperative Parenting

[1.160] Post Separation Cooperative Parenting (PSCP) services help high-conflict separated parents learn how to re-focus on the needs of their children.

A PSCP program addresses parents individually. It may involve education, counselling or individual support as appropriate in each case.

PSCP services are located regionally.

Supporting Children After Separation Program

[1.170] The Supporting Children After Separation Program (SCASP) assists children to deal with issues arising from family breakdown, recover and maintain family relationships, and to participate in decisions that affect them.

Other family services

[1.180] There is a great range of funded community services addressing specific needs in the family relationship area, including the needs of men, indigenous people, teenagers, people of non-English speaking background, and victims of family violence.

Finding the relevant law

[1.190] Even if you decide to try to come to agreement with your former partner on property, parenting and financial matters privately, it is important for both parties to understand the range of results they might expect in court if their dispute resolution efforts fail. If both parties understand and accept their legal rights and responsibilities there is likely to be a quicker settlement, and a more sustainable long-term agreement.

You need to understand both the overall legal framework, and the legal factors relevant to your particular circumstances.

A brief description of the overall legislative framework follows. Don't try to read and absorb great quantities of legislation. It is more important to know where to look for points of law and procedure when you need to.

All the legislation referred to is available online. Some relevant web addresses are listed in the "Contacts and resources" section of this book.

The Family Law Act (Commonwealth)

[1.200] The *Family Law Act 1975* is the cornerstone of the Australian family law system. It is a Commonwealth Act, and it establishes an area of federal law that is exercised by a number of

different courts. It applies in all Australian States and Territories. In Western Australia, however, it is applied in relation to married or previously married parties only.

The Federal Magistrates Court Act/Federal Circuit Court

[1.210] The *Federal Magistrates Court Act 1999* created the Federal Magistrates Court. This court was established, originally, to fast-track some of the more routine matters covered under the *Family Law Act* as well as other areas of federal law, such as bankruptcy.

In November 2012, the Attorney-General confirmed that the name of the Federal Magistrates Court was changed by legislation to the “Federal Circuit Court of Australia”.

It is important to recognise that there are significant differences in the way a family law matter is handled in the Family Court and in the Federal Circuit Court. You need to understand these differences before you begin a case. They are discussed in detail in chapter 4.

The Family Court Act 1997 (Western Australia)

[1.220] Western Australia has for many years maintained its own family law system, integrating both the federal and non-federal areas of concern around legal issues related to the family. Unlike the Family Court of Australia and the Federal Circuit Court and the various other State and Territory courts around Australia, the Family Court of Western Australia has power to deal with, say, adoption and surrogacy issues (areas of State-based law), as well as with divorce and parenting orders (areas of federal law).

The combined functioning, however, does involve some complexity in the Western Australian legislation. As it is essentially a State-based law, the detail of the differences between the *Family Court Act 1997* (WA) and the Commonwealth *Family Law Act*, as well as all of the differences in practice, cannot be comprehensively explored in this book, although the more important areas of difference will be highlighted. Go to <http://www.familycourt.wa.gov.au> for direction to more information about the operation of the Western Australian family law system.

As a general rule, the Family Court of Western Australia applies the federal *Family Law Act* in matters related to currently or formerly married parties (parenting and property cases) and Western Australia’s own *Family Court Act 1997* in relation to parenting and property issues for de facto or unmarried parties.

In relation to parenting matters, the provisions of the Western Australian Act are substantially similar to the Commonwealth Act. At the time of publishing, however, the Western Australian Parliament had not introduced legislation to mirror the changes introduced in the federal Act in 2012. See [6.100], [6.280], [6.320] – [6.380], [6.590] for more detail about these amendments.

The law in relation to distribution of property cases for former de facto couples, covered by the Western Australian Act in Western Australia, differs significantly from the Commonwealth scheme, particularly in relation to eligibility. Go to the Western Australian Act itself or see <http://www.familycourt.wa.gov.au> for details.

Legislation about court rules and procedure

[1.230] The *Family Law Rules 2004* provide the detail of the main aspects of practice, procedure and evidence in a case before the Family Court of Australia.

The *Family Law Regulations 1984* set out details for a range of matters including fees, parentage testing, and overseas orders.

The *Federal Circuit Court Rules 2001* set out the rules of procedure and forms that apply in the Federal Circuit Court.

The *Federal Circuit Court Regulations 2000* deal with fees in the Federal Circuit Court.

The *Family Court Rules 1998* (WA) largely mirror the Commonwealth's *Family Law Rules 2004* with some important exceptions. For example, they do not include the changes made in 2009 to the Commonwealth rules.

The *Family Court Regulations 1998* (WA) deal with fees in the Western Australian Court and matters related to parentage testing (in Western Australia).

Child support legislation

[1.240] The *Child Support (Assessment) Act 1989* sets out the law about eligibility to receive, and liability to pay, child support. It also establishes the authority of the Child Support Agency.

The *Child Support (Registration and Collection) Act 1988* sets out the law about registration requirements for paying maintenance of various types, including child support, and the means by which the Child Support Agency can enforce payment.

Legislation about family violence

[1.250] Although the *Family Law Act* recognises family violence as a relevant factor in family law matters and offers certain protections, the *illegality* of family violence, and other specific forms of protection against it, are issues principally dealt with under the following State and Territory legislation:

- ▶ Australian Capital Territory – the *Domestic Violence and Protection Orders Act 2008*
- ▶ Northern Territory – the *Domestic and Family Violence Act 2007*
- ▶ New South Wales – the *Crimes (Domestic and Personal Violence) Act 2007* and the *Property (Relationships) Act 1984*
- ▶ Queensland – the *Domestic and Family Violence Protection Act 1989*
- ▶ South Australia – the *Intervention Orders (Prevention of Abuse) Act 2009*
- ▶ Tasmania – the *Family Violence Act 2004* and the *Justices Act 1959*
- ▶ Victoria – the *Family Violence Protection Act 2008*
- ▶ Western Australia – the *Restraining Orders Act 1997*.

De facto property legislation

[1.260] De facto property law is different in each State and Territory. Because this is not Commonwealth law, it is largely beyond the scope of this work. See chapter 7 for more information.

The relevant statutes are:

- ▶ Australian Capital Territory – the *Domestic Relationships Act 1994*
- ▶ Northern Territory – the *De facto Relationships Act 1991*
- ▶ New South Wales – the *Property (Relationships) Act 1984*
- ▶ Queensland – Part 19 of the *Property Law Act 1974*
- ▶ South Australia – the *Domestic Partners Property Act 1996*
- ▶ Tasmania – the *Relationships Act 2003*
- ▶ Victoria – the *Property Law Act 1958*
- ▶ Western Australia – *Family Court Act 1997*.

Where to find the legislation

[1.270] For easy access to the full text for all family law legislation, see the Australasian Legal Information Institute’s website at <http://www.austlii.edu.au>. You can also find copies in most major public libraries. One of the easiest sources to use is the looseleaf CCH publication *Australian Family Law and Practice* in five volumes. Another very useful looseleaf publication is *Australian Family Law and Reports*, published by LexisNexis Butterworths.

Case law

[1.280] Law is made by parliaments in the form of legislation, but it is also made by judges in the courts. This judge-made law is referred to as “case law” or “the common law”. The common law system applies in the United Kingdom, in the countries of the Commonwealth (including Australia), and in the United States. Common law principles grow and develop on a case-by-case basis.

Much less of our everyday law is decided solely on the basis of the common law than was once the case. The main role for the common law now is to expand our understanding of legislation, and to apply it to fit the many different fact situations that arrive for decision in the courts.

A court hearing a case is generally bound to apply the existing case law (that is, the judge-made law from previous similar cases), unless there are special difficulties in applying it to the new facts. If this occurs, the case may become a major or landmark case. The court reinterprets the relevant legislation, and then updates or clarifies the existing case law to explain its decision in the new case. This is how the common law changes.

The common law is actually written down only in the reported judgments in major cases. If more than one judge hears a case, the case law that arises from it consists of the principles expressed by the majority (as opposed to the dissenting judges, if any – those who came to a different conclusion).

Summaries of common law are published in looseleaf publications and in legal textbooks. But be careful when researching case law in textbooks. Case law tends to change much faster than textbooks are updated.

Cases in family law

[1.290] There are many important cases in family law; some are cited in this book.

But the common law grows and changes all the time, and it can be enlightening to check how the courts are applying the law in the latest cases, especially those similar to your own. Particularly if your dispute goes to court and you are self-represented, you should spend some time before your hearing or trial reviewing the major cases dealing with the issues in dispute in your case. A librarian should be able to help, but you may wish to start with one of the regularly-updated family law looseleaf publications referred to in the box above, see [1.270].

Alternatively, if you know that your case turns on the court's interpretation of a particular section of the legislation, or on how the section might be applied to your circumstances, you can find the text of recent cases that have referred to that legislative section using the "Noteup" function, once you have opened the law (and the relevant section) on the AustLII website at <http://www.austlii.edu.au>.

Getting legal advice

[1.300] Even if you have agreed to try to resolve your parenting and property issues privately, it is important that each party has a realistic understanding of their position at law. This is not gained by extrapolating from the results achieved by "helpful" friends and relatives, or from gossip at the coffee-machine or pub. Every person's circumstances are unique. A unique result can be expected when the law is applied to them.

As helpful as the legislation itself and other written resources (including this book) might be, it is almost impossible for a lay person to be confident about their legal position without the advice, initially at least, of a legal professional.

Rather than feeling threatened, then, by your former partner making an appointment to see a solicitor, you should positively encourage it, and do the same yourself. Seeing a solicitor in the early stages is about getting information. It does *not* mean that legal action is imminent.

See chapter 3 for information on strategies for dealing with solicitors and obtaining their assistance, not only for representation in court but for help in the early resolution of the dispute.

Sources of free legal advice

[1.310] Even if you are not going to have an ongoing representative, there are a number of sources of free legal advice available to you. You can access many of them more than once.

Legal Aid

Advisory services

[1.320] Even if you are not likely to be eligible for ongoing Legal Aid (see [1.620]), you can still attend the regular free family law advice service run by the various Legal Aid agencies in metropolitan and major regional centres. Telephone your local Legal Aid office to make an appointment.

Legal Aid agencies usually provide other forms of family law assistance, such as telephone helplines, fact sheets, divorce classes and other self-help workshops.

Duty lawyers

[1.330] Legal Aid duty lawyers are “lawyers-on-the-spot” at court who can assist unrepresented people, help with preparation of court documents and provide information and referrals. They can be found at most courts, including local (magistrates) courts. The service is available to everyone, provided there is no conflict of interest (that is, provided that Legal Aid has not previously seen or is not seeing the other party in the same or a related matter).

As you can normally see a duty lawyer only on the day you are due to appear in court, there is often little time to explain a complex family law situation. There may also be a queue. So try to be efficient and concise in your description of the dispute.

Keep in mind also that a duty lawyer is unlikely to be able to retain contact with your case on an ongoing basis.

A new Legal Aid (NSW) Family Law Early Intervention program provides assistance to parties in court in the earliest stages of a family law matter. As the service is separate from the Legal Aid legal practice, the usual conflict of interest rules don't apply.

Community legal centres

[1.340] Some community legal centres will advise and assist people who are not eligible for legal aid in a family law dispute, up to the point where a case starts in court. Other centres simply provide advice sessions.

They are listed on the National Association for Community Legal Centres website at <http://www.naclc.org.au>.

The Family Relationships Advice Line

[1.350] The Family Relationships Advice Line (1800 050 321) run by the Commonwealth Attorney-General's Department, provides free information about family law issues and advice on parenting arrangements after separation.

Family Relationships Online

[1.360] The Family Relationships Online website contains a vast amount of information about separation and parenting after separation. It will also provide Australia-wide referral details for

local services able to provide legal and other assistance in relation to dispute resolution, counselling, family violence and other family services. See <http://www.familyrelationships.gov.au>.

Free first consultation with a solicitor

[1.370] Many law firms have a “free first consultation” policy. Even if you ultimately decide not to engage a lawyer, you can learn a lot about your case and your options for dispute resolution in a first consultation.

Don’t be embarrassed to ask, when you initially contact the firm, about whether it charges for its “first consultations”. (This is a real “frequently asked question”.)

Advice booklets

[1.380] Useful booklets and factsheets to help separating families are published and available from the Child Support Agency (at <http://www.csa.gov.au>), Family Relationships Online (at <http://www.familyrelationships.gov.au>) and the Department of Families, Housing, Community Services and Indigenous Affairs at <http://www.fahcsia.gov.au/our-responsibilities/families-and-children/publications-articles>, at the various Legal Aid offices and websites and at public libraries.

Choosing a lawyer to advise and assist

[1.390] Although the Law Society or Law Council in each State or Territory can help find “a lawyer near you” who does family law work, it should be the quality of the lawyer’s experience in family law rather than their physical location that determines your final choice. Good family law expertise is worth a lot of extra inconvenience in travel time.

A “family law only” firm may provide the most cost-effective range of services. These firms often employ less senior (therefore, usually, cheaper) solicitors who nevertheless have very good experience and skills in family law. They also contain the accredited family law specialists and reputed “big hitters”, who are said to be worth their higher hourly rates.

It is important that you feel personally comfortable with your legal representative. If you are planning to engage a lawyer on an ongoing basis, you might wish to consult two or three before making a choice. You may find, for example, that you feel more comfortable with a lawyer of your own sex.

To get a relatively unbiased view about who’s who in family law in your area, try asking another type of professional – a doctor or an accountant, the coordinator of a local community services organisation, or, perhaps, a publicly funded lawyer at either the local Legal Aid office or a community legal centre.

Dispute resolution

Policy change shifts emphasis out of court

[1.400] Australian family law changed significantly in 2006 with a Commonwealth Government policy initiative encouraging more cooperative parenting after relationship breakdown, and a

shift away from litigation (taking a case to court), towards private decision-making and dispute resolution with regard to parenting and property matters.

The new policies included:

- ▶ establishment of Family Relationship Centres around Australia, which provide:
 - access to free family dispute resolution and counselling services;
 - referrals to other family services agencies to assist and support people with specific needs; and
 - information and education about the family law system and the benefits of dispute resolution processes;
- ▶ tougher rules about engaging in family dispute resolution processes before court action commences;
- ▶ provisions in the *Family Law Act* encouraging or requiring parents to establish cooperative, shared post-separation parenting arrangements;
- ▶ a prominent role for “family consultants” in court cases; and
- ▶ increased funding for community-based family services agencies to assist in family dispute resolution.

Coming to agreement without going to court

[1.410] There can be no doubt about the benefits of early resolution of disputes between separating couples without final orders from a court – both for our community as a whole, and for the adults and children involved. These include advantages of cost, time, health, certainty, self-determination and many additional benefits for children.

As mentioned earlier in this chapter, a separating person faces a set of decisions. One of the most important is planning a dispute resolution strategy appropriate to the people concerned and the circumstances of the case. Your strategy may contain only a few elements. It is unlikely, however, that court action should be the first, or even the main, strategy, though it is certainly true that there are a number of special circumstances – such as serious concerns about safety, or the recovery of a child who has been removed – that require early and firm intervention through the courts. In most cases, however, a genuine effort directed towards the containment and finalisation of disputes and then for agreement with the other party, at least in the first instance and as difficult as this might sometimes seem, should produce the optimum outcomes overall.

The 2006 reforms to the Australian family law system set out to establish and encourage the use of a range of processes designed to help people reach their own agreements about post-separation property and parenting arrangements. It is now the case that, if one option (say, private negotiation) fails, it is possible to move to another (say, family dispute resolution or assisted negotiation). See chapter 3 for more detail and discussion about different types of non-litigious dispute resolution processes. If all relatively private efforts of dispute resolution fail, however, the option of court action remains (though the focus on encouraging agreement does not stop at the door of the court).

Moving to court action

[1.420] Notwithstanding these options, however, many people still find they need the help of the courts to resolve their family law dispute. Commencing family law litigation is a big decision to make. Before you start a family law case, you need to clearly understand the possible cost and time involved.

You also need a broad understanding of the role of the several Australian courts and registries involved in family law matters.

The Family Court of Australia

[1.430] The Family Court of Australia is the court of principal authority in Australian family law. It is a federal court with a national support office in Canberra, but also with permanent locations in each of the Australian capital cities except Perth (as to why this is the case, see *The Family Court of Western Australia* at [1.470]).

Under changes in 2009 to the *Family Law Act*, the court can now also hear property cases between de facto couples, as well as their parenting disputes, provided that certain qualifying criteria are met (see [2.130] for more detail about the eligibility requirements for de facto couples under the *Family Law Act*).

The Family Court has delegated many of its powers to the Federal Circuit Court which can undertake a range of family law matters. At the time of publishing, all cases for final family law orders should be filed, initially at least, in the Federal Circuit Court *unless* the case involves:

- ▶ international child abduction;
- ▶ international relocation;
- ▶ disputes as to whether a case should be heard in Australia;
- ▶ special medical procedures (of the type such as gender reassignment and sterilisation);
- ▶ contravention of parenting orders made by the Family Court (some cases only);
- ▶ serious allegations of sexual abuse of a child;
- ▶ serious allegations of physical abuse of a child;
- ▶ serious controlling family violence;
- ▶ complex questions of jurisdiction or law;
- ▶ likelihood of a lengthy hearing;
- ▶ adoption;
- ▶ validity of a marriage;
- ▶ validity of a divorce.

These arrangements may be varied on a case-to-case basis and depending on resources of the courts from time to time. In any case, the two courts work closely together and it is not uncommon for cases commenced in one court to be transferred to the other.

The Family Court hears an application for divorce only in exceptional cases.

The Family Court also has authority as a court of appeal against decisions of the Federal Circuit Court.

The Federal Circuit Court

[1.440] The Federal Circuit Court is located in all the capital cities, and in some regional centres as well. It was established to provide more efficient access to all types of federal law – regionally and in the urban areas -- so it also hears cases in areas such as administrative law, consumer law, anti-discrimination and bankruptcy as well as in the areas of family law delegated to it by the Family Court.

It is important to understand that, although they work in similar areas of family law, the Family Court and the Federal Circuit Court often use different forms and have different rules for proceedings. See chapter 4 for details of the differences.

Family Law Courts in regional Australia

[1.450] The Family Court has a number of permanent registries in major regional centres around Australia. The Federal Circuit Court operates visiting circuits, taking in many regional centres throughout Australia. Call your capital city Federal Circuit Court registry for details of the nearest circuit program, or check the Federal Circuit Court website for dates and locations.

Circuit sittings of the Federal Circuit Court often take place in the local courthouse on a day when the regular court is not sitting.

Family law registries and advice line

[1.460] The court *registry* is the centre of administration, management and client enquiry for all family law cases at both the Family Court and the Federal Circuit Court. Where the two courts hear family law cases in the same city, they share a registry.

Registries in different cities may have different programs and services, different workloads, and a few special practices of their own. Generally speaking, however, they run in the same way – implementing the provisions of the *Family Law Act* and managing cases in accordance with the Rules and Regulations of the two courts.

The Family Law Courts National Enquiry Centre is available on 1300 352 000 and by email at enquiries@familylawcourts.gov.au to answer queries about family law court processes, forms, fees and to provide referrals to other useful services. (Queries in Western Australia should be directed to the Family Court of Western Australia.)

The Family Court of Western Australia

[1.470] Western Australia has separate arrangements for dealing with family law. Unlike the Federal Circuit Court and the federal Family Court, it can deal with matters under both State and federal jurisdiction.

If you live in Western Australia, the Family Court of Western Australia is a one-stop shop for all family law matters, for both married and de facto relationships, including:

- ▶ divorce;
- ▶ property;

- ▶ parenting matters;
- ▶ maintenance;
- ▶ surrogacy and
- ▶ adoptions.

As a general rule, the Family Court of Western Australia applies the federal *Family Law Act* in matters related to currently or formerly married parties (parenting and property cases) and Western Australia's own *Family Court Act 1997* in relation to parenting and property issues for de facto or unmarried parties.

The District and Supreme Courts

[1.480] Except in Western Australia, if the circumstances of a de facto couple don't satisfy the eligibility requirements for their property case to be dealt with under the Commonwealth's *Family Law Act*, they may still have recourse to legal remedies under State legislation which applies more generally to property disputes between people who are not married to each other, including de facto couples. The detail in this legislation varies considerably between the States and Territories (see the list of relevant legislation at [1.260]).

All property disputes between de facto couples heard under State or Territory legislation are heard in either the District Court or the Supreme Court (depending on the dollar value of the claim) in the relevant State or Territory.

Local and Magistrates Courts

[1.490] The Local or Magistrates Courts or Courts of Petty Sessions (the name depends on which State you live in) in each State or Territory operate as sub-registries for the Family Court and the Federal Circuit Court. This means that you can obtain or lodge forms locally for family law matters.

The local courts also have limited powers to hear and determine certain matters under the family law legislation. These matters are mostly *interim applications* – applications for a type of stop-gap order for matters requiring immediate decision. This type of order is called an *interim order*.

But the local courts do also have authority under the *Family Law Act* to make *final* orders (if the court is willing and able to hear and make them):

- ▶ for property cases where the total value of the property is less than \$20,000 (or more, if both parties agree);
- ▶ about parenting issues, if both parties agree;
- ▶ that revive, vary, discharge or suspend certain *existing* parenting orders to resolve inconsistency with a family violence order; or
- ▶ if the case is about formalising an agreement already reached by the parties (called “consent orders”)

The power of local courts to hear and make final orders in family law matters is an important one for Australian conditions. In a remote location, this might be the only practical way of resolving a dispute.

How long will it take?

[1.500] The time it takes for even a simple family law matter to be resolved once a case is commenced in court varies greatly. A lot depends on how willing the parties are to compromise and to reach a negotiated solution. But there are, potentially, years between some of the milestones in the full, formal process.

Divorce

[1.510] If there have been no conditions imposed or other complications, a divorce application filed in the Federal Circuit Court may be finalised – that is, the divorce certificate issued – after three or four months (see [2.690] – [2.840] for discussion on divorce).

Temporary (interim) orders: child and property applications

[1.520] The most urgent applications in relation to both child and marital property matters can be heard in both the Family Court and the Federal Circuit Court at very short notice: perhaps in one or two days, or even in the middle of the night in the most extreme circumstances (such as if a child is about to be taken out of the country).

Most applications for interim (temporary) orders in relation to children or property, however, are listed for hearing two to six weeks from the date the papers are filed. You should make known any concerns or constraints you have about the timing when you file your documents.

Final orders

[1.530] Depending on whether your application in a disputed case is filed in the Federal Circuit Court or the Family Court, your matter is likely to be resolved in a final hearing or trial somewhere between about eight months and two-and-a-half years after the date of the application (with most much nearer the shorter time).

However, the vast majority of such applications will settle (that is, the parties will reach agreement) privately before the date for a final hearing.

How much will it cost?

[1.540] The costs of participation in the family law system can be divided into three categories:

- ▶ court fees;
- ▶ legal fees; and
- ▶ disbursements (expenses).

Court fees

[1.550] Quite apart from fees you pay to your lawyer, you must pay a fee for each application you make to the court unless your circumstances meet the (quite generous) criteria for exemption or waiver of the fee (see either the relevant court website or registry to obtain exemption or waiver application forms).

The fees are not exorbitant. A divorce currently costs \$577 in the Federal Circuit Court (July 2012). Be ready to pay the whole amount yourself if you file for divorce independently of your spouse. (Alternatively, you could file jointly with your spouse and agree to pay half each.)

New applications for final orders in relation to children or property in the Family Court, and in the Federal Circuit Court, currently cost \$255. The fee for listing a case for final hearing, and then per hearing day, is \$638 in the Family Court, and \$466 in the Federal Circuit Court.

Legal fees

[1.560] There are many variables that will affect the size of the bill from a family law solicitor, including:

- ▶ the length of the case (including the negotiation period);
- ▶ the complexity of the case;
- ▶ the jurisdiction of the case;
- ▶ the attitudes of the parties to resolving the dispute;
- ▶ the seniority of the lawyer;
- ▶ the size (and other characteristics) of the law firm you engage; and
- ▶ your location.

Most family law solicitors charge between \$300 and \$600 for each hour, with pro rata fees for shorter periods. Any part of an hour spent by the lawyer working on your case – including reading an incoming letter (“perusing”) or talking to you on the telephone – will be recorded and added to the total time for which you will be billed.

Doesn't the “loser” always pay legal costs?

[1.570] Parties usually pay their own costs in the Family Court, in contrast to the practice in other civil courts. But a costs order (which means that one party has to pay the other’s legal costs) will be made against a party in a family law matter if the court thinks it appropriate on the basis of such considerations as:

- ▶ the parties’ financial circumstances;
- ▶ their behaviour in the course of the proceedings; and
- ▶ the legal merit of the application in the first place.

The 2012 amendments abolished the controversial section 117AB of the *Family Law Act* under which a costs order can be used as a form of penalty for “knowingly” making false allegations against another party.

Disbursements

[1.580] Disbursements are all the costs of running your case apart from the professional time of your lawyer. Besides such expenses as photocopying, if your case proceeds to litigation you will begin to incur third-party expenses in relation to the collection and presentation of evidence. Medical, psychological and other expert reports to support your case are likely to cost upwards

from about \$1,000 each. Valuation reports on various matrimonial assets – you may need several – will cost more than \$700 each. Expert witnesses will probably charge appearance fees at an hourly rate, and include waiting and travelling times. Finally, you may require a barrister to present your case in the final hearing, who will charge between \$3,000 and \$8,000 per day over, perhaps, two days.

No really, how much will it cost ...?

[1.590] The range of hourly legal fees is so wide, and there are so many variables between cases, that it is impossible to make accurate generalisations about what you should expect to pay. On the other hand, this is exactly what you should ask your lawyer to do in relation to your particular case and circumstances.

You should insist that your lawyer explain in detail the likely range of legal fees and disbursements before you commence litigation. Don't be fobbed off with generalities. Emphasise that you would like to be kept informed of changes to the cost regime advised. Don't give instructions for the solicitor to commence any work on your behalf until you have made the costs agreement, which should include a Statement of the scope of work you wish the solicitor to undertake.

Realistically you should expect that, if you engage a solicitor, you are unlikely to get any result at all – either by negotiation or by order – for under \$5,000 unless the matter resolves quickly after an exchange of letters, and the agreement reached does not need to be prepared for filing in court. Matters that proceed to or near to a final hearing routinely cost between \$40,000 and \$100,000 per party.

Getting an estimate and agreeing on costs

[1.600] Legal costs sound dramatic, and they are. Most people simply cannot afford to litigate in family law. If you have a property settlement coming up you may be able to negotiate payment to the solicitor on a deferred payment basis – that is, to pay when money from the sale of the property becomes available under the settlement. This arrangement is unlikely to include disbursements, however, and you need to be ready to pay these along the way.

The difference between divorce and other types of family law application

[1.610] Many people, if not most, now handle their divorce without a lawyer. There is little scope for legal argument and evidence-gathering in a modern divorce, which now is really more about filling in forms correctly (see [2.700] – [2.720]). During divorce proceedings, however, the court will not make any rulings about maintenance, child support, property or parenting arrangements. If these issues are in dispute and not resolved, they must be pursued under separate applications to the court.

Getting legal aid

[1.620] Legal aid is financial assistance or direct legal help provided through Legal Aid commissions or offices funded by the States and Territories. Grants are subject to stringent eligibility tests.

The policies applying to grants of legal aid differ between States and Territories. Generally speaking, however, aid is not available for the litigation of property matters, or divorce, although aid may be provided for family dispute resolution in property settlement matters. Aid for child support issues may also be limited.

There are many excellent family lawyers in Legal Aid offices around Australia. Private lawyers may also act for clients on a legally-aided basis, although fewer private family lawyers are still prepared to work in this way.

Unfortunately, legal aid is very difficult to obtain if you are not receiving an income-tested Centrelink benefit.

Legal aid eligibility tests

[1.630] The provision of aid is subject to the satisfaction of both a *means test* and a *merit test*. The means test is divided into separate sub-tests for income and assets, and both must be passed.

The means test

Your net income after the deduction of certain living expenses (not all of them) must be very low to pass the legal aid income test. Only rarely will a person earning more than a Centrelink benefit qualify (and a benefit recipient can miss out because their expenses are too low!).

A common difficulty in relation to the assets test is ownership of investments – investment property, term deposit accounts and shares.

The merit test

The merit test requires you to demonstrate that:

- ▶ there are reasonable prospects for success in your application to the court; and
- ▶ a “prudent self-litigant” would risk their money on such proceedings; and
- ▶ your claim is not trivial or otherwise unworthy of public expenditure.

Rejections on merit are frequently overturned when more information is given to Legal Aid in a letter appealing against a negative assessment.

How to apply for legal aid

[1.640] You can get a Legal Aid application form from your local courthouse or download an application from the website of your local commission. You can call in at, ring or email a Legal Aid office, or consult a lawyer who does family law work on a legally-aided basis (check by phone first) for help with your application. Bring a Centrelink statement of benefit, and a copy of your bank account statements for the last three months, to the interview.

Representing yourself in court

Reasons for self-representation

[1.650] You will not be alone if, after investigating your eligibility for legal aid or your ability to pay a lawyer, you decide to represent yourself in court action. Around 30 per cent of cases commenced each year involve parties who represent themselves.

Most people who choose to represent themselves do so because they are not eligible for legal aid and cannot afford to pay a lawyer.

Should I try to avoid self-representation?

[1.660] Although changes to the *Family Law Act* in 2006 make self-representation in parenting cases a little easier, in most cases a party would be unwise to choose self-representation in a family law case (apart from a divorce) for any reason other than lack of funds.

This is mainly because self-represented litigants are likely to face a lawyer on the other side. The disadvantages of being up against a lawyer are considerable.

A self-represented person with a lawyer on the other side is, in many respects, out-gunned from the outset. Little things go the way of the represented party simply because the lawyer knows how to use the system to their client's advantage. Though it is not true to say that parties who represent themselves always lose their cases, it is the case that the legal knowledge and experience on the other side is likely to be reflected, to a greater or lesser extent, in the final result.

There is also a personal toll in terms of the stress of the unfamiliar process of managing litigation (filing all the relevant forms in good order and time, for instance), and of feeling constantly on the back foot and suspicious of the strategic moves and overtures of the other party.

These particular disadvantages disappear if the parties agree that *neither* will be represented. But there is no guarantee that the agreement will be honoured throughout the process. Even if it is, differences in the parties' capacities – to manage the litigation, cope under stress and present an effective case – are likely to have a significant impact on outcomes.

Anyone who knows they might need to represent themselves if the case goes to court should make the greatest possible effort in dispute resolution processes before commencing formal litigation.

On the positive side, if you find that you must venture into the family law system without a lawyer, you will learn a great deal – about the law, certainly, but also about yourself. Many people have felt empowered to make more of their lives as a result of the greater confidence, self-control and skills gained through managing the conduct of their own legal case.

Options for partial representation

[1.670] The “unbundled” provision of legal services is a slowly developing phenomenon. Under unbundled arrangements with your lawyer, you do most of the work yourself, using the lawyer's services only occasionally.

Your lawyer might, for example, set out for you in stages what you should do. Then you might need to consult the lawyer from time to time, to check and finalise a document for filing, for instance, or to advise you on what to do next. You might engage a lawyer just to prepare your initial application for filing, or to stand up for you in court on important occasions. You might take the matter as far forward as you can yourself and then hand it over to a lawyer in good time for preparation for the hearing.

But it can be difficult to find a solicitor willing to act on an irregular basis. There are complex questions of professional liability involved in moving into and out of a case not wholly controlled by the solicitor. On the other hand, it should be possible to engage a lawyer to perform certain discrete tasks (such as commencing or concluding your action). Your local Legal Aid office or community legal centre should be able to steer you towards any lawyers in your area with this type of flexibility.

The tenor of family law litigation

[1.680] Despite continuing efforts in family law reform, our court system still sets one adversary against another.

Lawyers are an integral part of the adversarial system. They are engaged to assist their client through the maze of procedures, forms and events involved in family law litigation. It is their task to attempt to ensure that the case is “won” – that the best possible deal is extracted – *for their client*.

The quality of the rest of their client’s life and future relationships – and certainly of the other party’s life and relationships – are *not necessarily relevant* to the solicitor’s sense of his or her responsibilities, even though these may be strongly affected by the solicitor’s actions, and by the litigation culture itself.

Lawyers almost always adopt an oppositional tone in dealing with the “other side”. They may sound aggressive, critical, sarcastic, cynical or personal. Many people are highly offended by this when they first come into contact with it. But though the statements made by the other party’s lawyer (say, in correspondence) may seem designed to upset, the lawyer does not necessarily believe them. Unpleasantness, sometimes, is strategy. It could be viewed as part of the lawyer’s job, as distasteful as this might seem.

Recent reforms use the threat of costs orders to encourage solicitors and parties to use moderate language in settlement negotiations and in court. But it is still the case that many people find themselves badly hurt in family law litigation. Lawyers play hard, and clients do lie, recording the worst possible allegations about each other in writing and publicly. If you think you might be vulnerable to behaviour of this sort, think again about settling the matter sooner rather than later – even if this means accepting less than what you regard as ideal.

What help can I expect?

[1.690] Self-represented litigation has been recognised as a feature of our family law system that is here to stay; and there is now more public funding to support self-represented litigants with programs and materials. The various family law court websites have been revised to form a valuable plain-English resource full of information and materials, including downloadable court forms.

The courts have also worked to reform their internal culture to be more supportive of self-represented litigants, who should now find that registry staff are accustomed to providing information about what forms to fill out and how, and about questions of procedure.

Court staff may provide information and assistance only. They cannot provide legal advice. See [1.310] – [1.380] for sources of free legal advice, and ask at the registry about the availability of local pro bono (free) legal services. The resources you can assemble yourself are discussed below.

A self-represented litigant's toolkit

[1.700] Hunt down access to, set up or collect as many of the following as you can.

A computer, printer and internet connection

It is almost impossible to manage a family law case if you do not have access to or cannot use a computer and the internet. If you don't have your own, you should become familiar with the public facilities at the court itself, at a public library, or at an internet café. Fax facilities are also extremely useful.

A brochure collection

The Family Court, the Federal Circuit Court and Family Relationships Centres maintain an extensive collection of very useful brochures about various aspects of family law and procedure, and also about helping yourself and your children through relationship breakdown. Collect these documents from your local family law registry or Family Relationships Centre, download them from the family law courts website or Family Relationships Online, or ring the court and have them sent out. Then make sure you read them!

Some homemade letterhead

You will write many letters in the course of your legal case. Create a letterhead template in Word containing your contact details. It doesn't have to be fancy – just your name with address, phone, fax and email details will be fine. You might also want to gather and electronically store the contact details of regular addressees for your correspondence to save constant re-keying.

Family law websites

Bookmark the websites of the Family Law Court at <http://www.familylawcourts.gov.au> and Family Relationships Online at <http://www.familyrelationships.gov.au> – you will find them indispensable. The stages of

the court process are simply described, and all court forms can be downloaded along with instructions for their use. You can also identify referral sources for personal assistance, download do-it-yourself kits for the preparation of some of the more common sets of documents, and check daily court lists in each capital city.

A desktop legislation collection

Collect the legislation relevant to your case as shortcuts on your computer desktop for easy access.

A looseleaf service

If you ever want or need to undertake more detailed research into the relevant issues, procedures or case law, you will find the looseleaf services mentioned at [1.270] – *Australian Family Law and Practice* and *Australian Family Law and Reports* – comprehensive and invaluable resources. They are continually updated, and are available in public libraries around the country.

Changes in 2012

[1.710] In June 2012, a new set of changes to family law in Australia came into effect with the commencement of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*. As the title of the amending Act indicates, the principal thrust of the changes is to strengthen the Act so as to reduce the incidence of family violence in separating families.

At the time of publishing, these changes have not been mirrored in Western Australia's *Family Court Act*. They may still apply in that State, however, in relation to married or formerly married couples at least.

Details of the changes appear throughout this book in the chapters to which they individually apply. The principal changes are here summarised, however, in the following ten categories:

New definition of family violence

[1.720] The definition of family violence has been changed with the addition of a new section 4AB in the main body of the Act. (Previously, the definition was contained within the more general definitions section at sub-section 4(1).)

The new definition removes the requirement that a person “reasonably” fears for their safety, re-asserting an objective test, and considerably extending the definition to encompass circumstances of control or coercion.

For clarity, a second new sub-section, sub-section. 4AB(2), provides an open list of the types of circumstances that may constitute family violence under the Act.

For further details, see [4.540].

New definition of child abuse

[1.730] The newly-strengthened definition of child abuse at sub-section 4(1) encompasses four, rather than the former two, possible alternative heads of action:

- ▶ where the behaviour amounts to assault;
- ▶ if the child is used as a sexual object and there are unequal power relations between the child and the perpetrator;
- ▶ action causing a child “serious psychological harm” and expressly including subjection or exposure to family violence (new);
- ▶ serious neglect (new).

Exposure to family violence is explained further at sub-sections 4AB(3) and (4).

For further details see [4.550].

Reconciling the order of precedence of “the twin pillars”

[1.740] The 2006 amendments divided the Act’s specified children’s “best interest” considerations into two levels: primary and secondary (sub-section 60CC(2)). The only two primary considerations – the so-called “twin pillars” – were, the benefit to a child of having a relationship with *both* parents, and the need to protect a child from harm. The 2011 amendments (new sub-section 60CC(2A)) explicitly confirm that the need to protect a child from harm should carry more weight than the relationship factor in the court’s considerations – that is, it must effectively “trump” the relationship factor in circumstances where the court is forced to weigh one consideration against the other.

For further discussion see [3.1210], [6.280] – [6.650], [8.620].

The “friendly parent” provisions repealed

[1.750] The 2006 revision of the Act included, at sub-sections 60CC(3)(c), (4) and (4A), the then new provision that the best interests of a child were to be determined inclusive of considerations about the extent to which a parent had facilitated good relationship and involvement between the child and the *other* parent. In the 2011 amendments, this contentious measure, since known as the “friendly parent” provision, has been removed. An entirely new sub-section 60CC(3)(c) gives arguably increased prominence to the balance of the old sub-section (4), being measures of the extent of “active parenting”.

For further details see [6.280], [6.480], [6.710], [6.1640], [6.1930].

Relevance of family violence orders in best interests factors reframed

[1.760] The previous version of the Act required the court to consider any final, or previously defended, family violence order in relation to a child or a member of the child’s family when

considering the best interests of a child in an application for parenting orders. Under the 2011 amendments, the new para (k) of sub-section 60CC(3) attempts to be more specific about the type of consideration that must be applied, requiring that the court must only consider “relevant inferences” from the order considering such matters as the circumstances at the time and the evidence in the proceedings. The limitation of application of the provision to “final or defended” matters has been removed, opening the way to consideration of interim and consensual family violence orders when assessing a child’s best interests.

New machinery for informing the court about child welfare matters

[1.770] New sections 60CGH and 60CI improve processes for provision of information to family law courts about welfare care arrangements, and notifications to and investigations by a State or Territory agency. Parties to a case who are aware of such matters *must*, and any other person who is not a party *may*, inform the court of the care arrangement, notification or investigation.

New mandatory content for an adviser's advice: best interests of the children

[1.780] A counsellor, dispute resolution practitioner, solicitor or family consultant person who is an “adviser” under the Act must now, in the course of provision of their advice to any person in relation to parenting proceedings, inform the person that they should consider the best interests of the child as a paramount consideration, and suggest that action in the best interests of the child would include the “twin pillars” – the benefit to a child of having a relationship with both parents, and the need to protect a child from harm, weighing the second of these more heavily than the first: new section 60D.

Firmer rules about notification – and court action upon notification – about family violence and child abuse

[1.790] Under the pre-2012 regime, some of the provisions about notifications of allegations of violence and abuse were somewhat buried in the *Family Law Rules*. Under the new amendments, at section 67ZBA of the main Act, “interested persons” in a case who allege actual or the risk of family violence or child abuse by one of the parties to the case must file a prescribed notice to the court.

A new section 67ZBB requires that if such a notice has been filed, the court must specifically consider whether interim or procedural orders should be made, make the orders if appropriate and otherwise act “expeditiously” in relation to the matters raised in the notice.

A new *Family Law Rule* 10.15A requires that, when applying for parenting orders by consent, each party must declare whether they consider that the party themselves or a relevant child has in

the past been, or is currently, at risk of subjection or exposure to family violence or child abuse. This affects the written certification required for annexure to draft consent orders.

Court in child-related proceeding must enquire about family violence and child abuse

[1.800] New provisions in the 2011 amendments require pro-active action on the part of a court involved in child-related proceedings to enquire as to the existence of any “concerns” of the parties in relation to family violence or child abuse: sub-paragraph (aa) of sub-section 69ZQ(1).

Costs penalty for false allegations abolished

[1.810] The controversial section 117AB, inserted in the 2006 legislation, that positively required a court to make a costs order against a party who “knowingly made a false allegation or Statement in the proceedings” has been removed in the 2011 amendments.

There were also a number of miscellaneous *Family Law Rule* amendments including changes to rules dealing with the recording of court events and suppression of publication of judgments.