FAMILY LAW GUIDE

SOUTH GELDARD LAWYERS

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Family Law Guide

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Contents

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ABOUT THIS GUIDE

This guide provides general information only to assist you in gaining a basic understanding of areas that are applicable to most Family Law matters. This guide is not intended to give any specific legal advice. Every Family Law matter is unique and determined on its own specific facts and circumstances. You should obtain specific advice about your own circumstances. South Geldard will not accept any liability or responsibility for loss occurring (including negligence) as a result of any person or entity acting or refraining from acting in reliance on any material contained in this publication.

ABOUT SOUTH GELDARD

South Geldard is a full service law firm based in Rockhampton that has been servicing Queenslanders for over 60 years. The Family Law Team at South Geldard Lawyers, developed under the stewardship of one of the Firm's Principals, Vicki Jackson, has the experience to provide easy to understand legal and practical advice tailored to your particular circumstances.

In what can be a very personal and often emotional time, our sensitive and discrete team is able to provide honest and comprehensive advice. Our experience extends to complex litigations where clients receive the benefit of our firm's full service approach and commercial background. We promote a conciliatory approach to resolving disputes by encouraging negotiation processes to assist in achieving early and cost effective resolutions that are best for clients and their family.

The South Geldard Family Law Team is lead by an Accredited Family Law Specialist with the Queensland Law Society, who is recognised as having demonstrated ability and experience in a complex area of law, having proven expertise in Family Law by successfully undertaking an advanced study program and examinations.

SEPARATION AND DIVORCE

Separation occurs when one person communicates to the other by words or actions that the relationship is at an end and there is no prospect of reconciliation. Couples can still be separated even though they maintain the same residence under the one roof.

Separation itself involves no legal process, but there are several significant consequences that flow from the date of separation. Seeking advice prior to, or immediately following, separation is recommended to ensure you protect yourself in navigating your way through property settlement, parenting arrangements and divorce (where applicable).

Divorce is the legal end of a marriage. While some people may be separated for years without actually getting a divorce, it is important to understand that your marital status can affect your legal rights and responsibilities.

Australia has "no-fault" divorce laws. The only ground for divorce is that you have been separated for 12 months and the marriage has irretrievably broken down with no likelihood of reconciliation.

You can solely apply for a divorce, or jointly with your former spouse. To take the stress out of it and ensure it is done properly, we can advise you on the best approach, draft the documents and represent you in Court, if required.

DIVORCE MYTHS

Divorce Myth 1

Your spouse must agree to the divorce in order for you to proceed.

Reality: You do not need the other parties' consent or cooperation to obtain a divorce. There are a couple of different ways to initiate divorce proceedings in Australia. You and your spouse can do so together by filing a joint Application, or you can file an Application on your own. There are only limited circumstances where a person can file a Response contesting an Application for Divorce; examples include where parties have been separated for less than 12 months or if a valid marriage never existed.

Divorce Myth 2

The reason for your marriage breakdown, such as infidelity, is relevant to your divorce proceedings.

Reality: Australia has "no-fault" divorce laws, which means the reason for the marriage breakdown is not relevant.

CHANGING YOUR NAME

Following separation, having the last name of an ex-partner may be a painful reminder of difficult times or perhaps even prevent you, mentally, from moving on. If you find yourself trying to make a new life, or even just return to an old one, reclaiming your last name may be a good place to start.

Name Change Documents

If you choose to re-adopt the original name on your birth certificate, there is no need in Australia to formally register your name change. The requirements of each organisation you deal with (be it a bank, government agency, transport authority, etc.) may vary, so check with them as to what is required. Unless you filed an official Application for a name change, most organisations will require only your Marriage Certificate, or the Divorce Order. Some may also require your Birth Certificate to provide evidence of the link to your birth name.

Start with Your Driver's Licence

The most efficient and convenient way to change your name is to begin by changing your name on your driver's licence as the stringent requirements to do so, plus the resulting photo ID, means that generally, it will be accepted by many other organisations.

The only document that is actually required in order to change your name on your licence is a copy of your Marriage Certificate. The best way to do this is have a couple of copies made of the certificate, certified by a Lawyer or Justice of the Peace, so that you will be able to leave a copy after showing the original version.

You will need to complete an Application form and, in Queensland, visit a Transport and Main Roads Customer Service Centre with the completed form, your driver's license, and the certified copies of your Marriage Certificate. If you do not bring your current driver's licence, you will still be able to change your name but you will be required to pay a replacement fee. After completing all of the necessary paperwork, your new driver's licence will be sent to you by mail. Once you have your new driver's license with the correct name, you can take it (along with your Marriage Certificate), to amend your details at the bank, for example.

Changing the Name on Your Passport

Similar to the process for changing the name on your Driver's Licence, you will find it easier to change the name on your passport after changing your licence. It is possible to do it with just a Marriage Certificate, however, and is free to do if your passport does not expire for at least two years.

Are There Restrictions On Changing Your Name?

There are some fairly consistent rules about officially changing your name, including:

- ✔ your new name must not be a prohibited name (e.g. a name that is obscene, offensive, too long or not in the public interest);
- ✔ you can only change your name once every 12 months;
- ✔ you must give a reason for your change of name;
- ✔ if you're in the custody of Corrective Services, you must get written approval from the Chief Executive before applying to change your name—if you don't, this is a criminal offence;
- ✔ you're not allowed to change your name for criminal purposes (e.g. fraud).

UPDATING YOUR WILL

One of the key priorities after a couple separate is to review the terms of their estate plans. This can mean updating wills, powers of attorney, superannuation beneficiaries, life insurance policies and even advanced care plans, to reflect their new circumstances.

The reason for this is that failure to do so potentially leaves your ex-partner in a position to inherit and/or influence all – or a large portion of – your estate should you unexpectedly die before updating these documents. This can be the case even where there is no will in place, as until there is an effective divorce order intestacy rules will favour your ex-partner in terms of your estate.

Which specific issues do I need to address?

Many couples during their relationship make reciprocal wills and appoint each other as power of attorney. These are not revoked after separation so will need to be reviewed after the break-up and amended if you do not wish your ex-spouse to inherit your estate in the event of your death or making decisions for you if you become incapable. This can be the case even if there was an agreement on a property settlement but there has been no divorce and no updated will.

First priority, therefore, is preparing a new will which appoints someone other than your ex-spouse as the executor of your will and beneficiary.

In Queensland, it should be noted, if you divorce after separation, then a power of attorney in favour of your ex-spouse is rendered invalid. But in any event, if your estranged spouse is already appointed as your power of attorney, you should revoke these documents after separation otherwise until there is a divorce order they can make important financial decisions on your behalf should you lose the capacity to manage these affairs yourself.

CHILDREN AND PARENTING ARRANGEMENTS

Under the Family Law Act ("the Act"), children have the right to know, be cared for by and spend regular time with both parents.

The Court applies a presumption that both parents of a child have "equal shared parental responsibility" ("ESPR"), but may not apply in cases involving family violence, abuse or neglect.

Parental responsibility covers major long-term decisions (such as education, religion, health, etc), as well as day-to-day decisions (such as bedtimes, meals, attire, etc). Parents do not generally have an obligation to consult or agree in relation to day-to-day decisions concerning the child. Parents have ESPR in relation to major long term decisions concerning their child which means they must consult one another and make these decisions jointly.

In the event that the Court determines ESPR does apply, it must then consider making an order that the children spend "equal time" with both parents if that is in the children's "best interests" and is "reasonably practicable".

If the Court does not determine equal time as being appropriate, it must then consider making an order for a parent to spend "substantial and significant time" with the children, if that is in the children's "best interests" and is "reasonably practicable". "Substantial and significant time" is defined in the Act to mean a combination of school days (mid-week time) and non-school days (weekends), holidays and non-holidays, as well as time which allows the parent to be involved in the child's routine and occasions/events that are of particular significance to the child and each parent.

If the Court determines that neither equal time nor substantial and significant time is appropriate, then the Court has the discretion to make whatever orders they consider to be in the child's best interests.

Best Interests of Child

The paramount consideration in determining parenting arrangements is what is in the best interests of the children. When assessing their best interests, the Court will consider the relevant primary and secondary considerations which are set out in section 60CC of the Act.

In determining what is in a child's best interests, the Court must primarily consider the benefit of the child having a meaningful relationship with both parents and the need to protect the child from any risk of harm (being the most important consideration).

Secondary considerations that the Court takes into account include:

1. Any views expressed by the child (depending on their maturity and level of understanding);
2. The willingness of the parents to encourage and facilitate a relationship between the child and the other parent;
3. The nature of the relationship of the child with each of the child's parents and other people,
4. such as grandparents and other relatives;

5. The likely effect of any changes in the child's circumstances;
6. Any practical difficulty and expense of a child spending time with and communicating with a parent;
7. The capacity of each parent to provide for the needs of the child;
8. The right of the child to enjoy his or her culture with other people who share that culture;
9. The attitude of both parents to the child and to the responsibilities of parenting;
10. Any family violence and family violence orders that apply to the child or a member of the child's family;
11. The extent to which each of the child's parents has fulfilled, or failed to fulfil, their obligations to maintain the child or failed to take the opportunity to spend time with or communicate with the child or participate in making major long term decisions.

The Court has the discretion to take into consideration any other fact or circumstance that the Court thinks is relevant when determining the children's best interests.

Formalising Parenting Arrangements

Parenting arrangements can be resolved either by:

1. The parties reaching agreement about the arrangements for the children and parental responsibilities which is documented by

    a. the parents signing a Parenting Plan which is not legally enforceable but simply is evidence of the parents' intention; or

    b. the parents asking the Court (by a written application) to make orders by consent in the terms of your agreement which will then become legally binding. This is called a Consent Order.

2. Where there is no agreement reached, either parent can apply to the Court to have a Judge determine what arrangements are appropriate for the children on a final basis.

Family Dispute Resolution

Before you can file proceedings in Court seeking parenting orders, parents are required to have attended upon a family dispute resolution practitioner to make a genuine effort to resolve their parenting dispute and obtain a section 60I certificate demonstrating that attendance.

There are limited exceptions to the requirement to attend family dispute resolution mediation, such as where a matter is urgent or where there are allegations of domestic violence or child abuse.

PARENTING MYTHS

Parenting "Custody" Myth 1:

I do not need permission to take the children out of the country.

Reality: If you want to take your child/children overseas during school holidays or for any other reason, you should always get permission from the other parent. Specifically, you must get the written consent of the other parent where you have existing Orders relating to parenting, even if the trip is in your allocated time with the children. Absent written agreement from the other parent, you must apply for an order from the Court that allows you to do so. Failure to do so can carry serious penalties including imprisonment.

Parenting "Custody" Myth 2:

The children can live with whomever they please.

Reality: A child's wishes are not determinative. When assessing whether to give any weight to a child's wishes, the Court must consider the maturity of the child and whether they understand the implications of their wishes. The Court will make its decision based on the best interests of the child and wishes are only one factor to which the Court may (or may not) give weight.

Parenting "Custody" Myth 3:

One parent or the other will always have limited time with the children.

Reality: The Court's primary concern in parenting matters is what arrangement is in the best interests of the child. There are a wide range of considerations the Court must take into account ("equal time", "substantial and significant time" and "domestic violence" form part of these considerations). There is no guarantee that you will have equal shared care (previously called "equal custody and/or visitation"). If it's not reasonably practical or possible for your child/children to spend equal time with each of you, or if it is not in their best interests, the Court will look at other arrangements.

It is important to understand that the arrangements will be what is best for your child and will not be what might be fair to the parents or the ill-conceived view of what is a 'Parents right'.

PROPERTY DIVISION

Deadlines and Formalising Agreements

One of the first and most important things to keep in mind if you are getting separated or divorced is that you can, and should, resolve your property and financial matters as soon as possible.

A property settlement can be done any time after separation. However, time limitations apply if you need to bring an Application in Court for property settlement:

1. For married couples, you must apply within 12 months of a Divorce Order becoming final;
2. For defacto couples, you must apply within 2 years from the date of separation.

If you fail to initiate proceedings within the time limitations, then you can still ask the Court for permission to commence proceedings which is referred to as "obtaining the leave of the Court". However, this process involves you in additional legal fees and there is no guarantee that the Court will grant leave.

It is very important therefore, to seek proper advice early from a qualified Lawyer about the property settlement process. Even if you and your former partner have reached an agreement, you should consult a Lawyer to review it and advise you how to ensure it is legally binding and enforceable.

If you do not finalise your agreement by way of a Consent Order or financial agreement, you risk your former partner still seeking further property from you. It is important to understand that the property available for division between each of you is not the property which you owned at separation (although still relevant) but is the property owned by each of you or any entity which either one of you control or in which you have an interest. The property is valued at the time you do the settlement. The values are not backdated to the date of separation.

Defacto Relationships

The Court will find that a person is in a defacto relationship with another person if:

a. The persons are not legally married to one another;
b. The persons are not related by family; and
c. Having regard to the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

The factors the Court will look at to see if two people have been living together on a genuine domestic basis include:

1. The duration of the relationship;
2. The nature and extent of their common residence;
3. Whether a sexual relationship exists;
4. The degree of financial dependence or interdependence and any arrangements for financial support between them;
5. The ownership, use and acquisition of their property;
6. The degree of mutual commitment to a shared life;
7. The care and support of children; and
8. The reputation and public aspects of their relationship.

A defacto relationship can exist even if one of the parties is legally married to someone else or is in another defacto relationship.

Gateway Requirements

1. That the period, or total periods of the defacto relationship is at least 2 years; or
2. That there is a child of the defacto relationship; or
3. That:

    a. The party to the defacto relationship who applies for the order made substantial contributions whether financial or non-financial; and

    b. A failure to make an order would result in serious injustice to the applicant; or

4. That the relationship is or was registered under a prescribed law of a State or Territory (not applicable in Queensland).

Couples only qualify under the Family Law Act as a defacto relationship if they separated after 1 March 2009.

Disclosure in Financial Matters

You need to be aware that you and your former partner must disclose to each other all relevant financial information to assist in negotiating an agreement. Failure to make a full and frank disclosure is against the law and risks any agreement or Order being set aside by the Court at a later date.

Working out how Property should be divided

The process of working out how property is divided upon separation is complicated. Despite commonly held beliefs, there is no law prescribing an equal split as every case is determined on its own specific facts. Essentially, there needs to be:

- ✔ An assessment of whether there should be any alteration of property interests at all;
- ✔ An identification and valuation of assets, liabilities and financial resources;
- ✔ Consideration of the financial and non-financial contributions that have been made by each spouse (including initial contributions, homemaker/caregiver contributions, lump sums);
- ✔ Consideration of each spouse's "future needs" and any other relevant factor the Court needs to contemplate (including the ages and health of parties, care of children, earning capacities); and
- ✔ Consideration of whether the proposed split is "just and equitable" in the circumstances.

Property is broadly defined to capture anything of value and commonly includes:

- ✔ House, land;
- ✔ Cars, boats, motorcycles, etc.;
- ✔ Household furniture;
- ✔ All bank accounts;
- ✔ Superannuation;
- ✔ Shares and other investments;
- ✔ Intellectual property with market value (such as a patent, trademark, copyright);

- Unused annual leave and long service leave entitlements in some cases;
- Businesses (partnerships/companies/trusts);
- Tools of trade or other equipment; and
- Anything else that has a monetary value.

Methods of Resolution

Ways in which agreement can be negotiated include:

- Discussions between you and your spouse if you are able to communicate effectively and respectively;
- Correspondence between your respective Lawyers;
- A round table conference between each of you and your respective Lawyers; or
- A mediation where each of you and your respective Lawyers attend with a mediator who is an independent third party who assists you to broker an agreement.

If any of these methods are successful, your Lawyer will prepare a written document to ensure that your agreement is legally binding and enforceable. The written document can be Terms of Settlement which are filed in the Court with an Application for a Consent Order. If the Court considers that your agreement is fair and equitable, it will make the order. Alternatively, you can finalise your agreement by way of a financial agreement.

Going to Court in Property Matters

When all else fails and you have not been able to reach an agreement, the only option is to seek Court intervention. To do so, your Lawyer will file an Application in the Family Law Court Registry.

Your Lawyer will prepare an Application, a Financial Statement or a Financial Questionnaire, as your case may require.

Your Application sets out what you seek by way of a division of property.

Your Financial Statement must truthfully reflect your income, expenses, assets, superannuation, liabilities and any other interests such as an interest in a Trust or an expectation to receive some money such as a damages claim or inheritance.

Your Affidavit sets out relevant evidence (facts) to prove your contributions and other relevant factors in support of any interlocutory orders which you are asking the Court to make.

The Court will provide a date upon which the Application will be listed usually for a directions hearing. You will need to attend Court with your Lawyer. Usually your Lawyer and the Lawyer representing your partner are able to agree on the directions to be made for the further conduct of your case.

The fact that you have needed to file an Application to bring the matter to a head does not necessarily mean that you will find yourself in Court giving evidence before a Judge for his/her determination about a division of your property. In most cases, once the Application is filed, with the assistance of your respective Lawyers and an agreement can be reached either before or at a Dispute resolution event and finalised by way of a Consent Order. Overall, there are very few property matters which require a Judge's determination.

If your case does need to go to a final hearing, the Judge will read the evidence contained in your Affidavit and those of your witnesses prior to the trial, which can be up to 12 months or more after you file your Application (depending upon the number of cases to be heard in the particular Court).

The Judge will also hear you (and any other witnesses who have filed Affidavits) being asked questions by your partner's legal representative about the evidence you have set out in your Affidavit. Similarly, your legal representative will ask your partner (or their witnesses) questions. This is called cross examination.

After the evidence is finalised by way of Affidavits and cross examination, your respective legal representatives will make submissions to the Judge to persuade the Judge that the evidence supports the orders which you are seeking. The Judge will then give his or her judgment. Usually the judgment is not given on the spot but rather the Judge will take time to further read the Affidavits and a transcript of the oral evidence and consider the matter carefully before giving a judgment.

FINANCIAL AGREEMENTS

Financial Agreements (sometimes referred to as "pre nuptial agreements" if prepared before marriage or cohabitation) are private agreements that do not need the review of the Court. These agreements deal with how a couple intends to divide their property and superannuation in the event of separation or after separation has occurred. They can also include any agreement reached regarding spouse maintenance.

Financial Agreements are regularly associated with the rich and famous. However, they can be a very practical step to protect the assets of the parties' entering a marriage or a defacto relationship, in the event of a relationship breakdown.

A Financial Agreement can be entered into:

- Before marriage or before living together;
- During marriage or during a defacto relationship;
- After separation; or
- After divorce.

Financial Agreements are very complex legal documents and can only be completed with Lawyer involvement, as they require certificates of legal advice to be executed by the Lawyer on behalf of each party.

When a Financial Agreement is drafted and entered into correctly, it will be considered binding and the setting aside of such an agreement can be a difficult and usually expensive process.

PROPERTY SETTLEMENT MYTHS

Property Settlement Myth 1

When your marriage ends, your property is divided equally between you.

Reality: The Court assesses each case on its own facts and there is no rule about a 50/50 split. The Court considers numerous factors when determining how much each spouse receives. This includes assessing each party's:

- financial contributions to the acquisition or preservation of property;
- non-financial contributions including as a parent and homemaker;
- other factors relating to your future needs like age, health, income, care of children.

Property Settlement Myth 2

You must wait until after you get a Divorce to negotiate a property settlement.

Reality: You can negotiate your property settlement at any point after you are separated and prior to Divorce. However, you should be aware that once you are divorced, you only have one year in which to resolve any outstanding property matters.

Property Settlement Myth 3

We have an agreement and wrote it down so he/she cannot go back on that now!

Reality: In both parenting and property settlement matters, it is not enough to put an agreement in writing if you want to ensure the agreement is binding and avoid one party changing their mind. For it to be legally enforceable, you must have the agreement enshrined into a Consent Order made by the Court or a Financial Agreement.

SPOUSE MAINTENANCE

The Court has the power to make a separate order for the maintenance of one of the parties ("spouse maintenance")

The maintenance is either paid on a periodic basis or calculated as a lump sum to be incorporated in a property settlement.

Spouse maintenance will only be paid or ordered by the Court to be paid if one spouse is unable to support themselves in circumstances where the other party is able to provide support.

The law places a positive obligation on the lower income earner to mitigate their needs by pursuing gainful employment, as their circumstances allow. There are some limited circumstances (e.g. a primary caring parent with pre-school age children) where a parent may not be expected to immediately seek full-time employment, particularly where child care costs mean it is not worthwhile.

The Court considers a number of factors when determining whether to make an order for spouse maintenance and each case is determined on its own facts.

It is preferred that spouse maintenance be met from the higher income earner's income, however, there are limited examples of where such orders have included the use of property or other financial resources to pay maintenance.

Spouse maintenance may be paid for a short "interim" period of time before final property settlement is negotiated. Final orders for indefinite spouse maintenance are uncommon.

For a final spouse maintenance order, the Court will have regard to the monetary value of the property that the party seeking maintenance has retained by way of final property settlement and the extent to which that property will permit them to derive an income to support themselves.

The law promotes the "clean break principle" so that, as far as practicable, final orders end the financial relationship between the parties and avoid any further proceedings. As a consequence, the Court's preference is to finalise any spouse maintenance by way of a lump sum payment within the final property settlement, if possible.

An Application for spouse maintenance must be filed in the Court no later than 12 months after a divorce order takes effect, or within 2 years after separation for defacto couples.

In some cases, depending on the unique facts of a case, the Court may grant leave (permission) to bring an application out of time.

CHILD SUPPORT AND ADULT CHILD MAINTENANCE

Child support payments are payments made by one or both parents to cover the costs of caring for the child/children (usually until they finish high school or turn 18).

Commonly, parents apply for child support through the Department of Human Services (previously referred to as "the Child Support Agency"). The Department of Human Services ("DHS") issue child support assessments based on various criteria.

In the event either parent is not satisfied with an Administrative Assessment, it may be altered in certain circumstances by:

- ✔ Application to the Registrar of Child Support for a Departure (a review of the Administrative Assessment); and then
- ✔ An Objection to the Registrar regarding the Decision in relation to the Department; and then
- ✔ A Review of the Registrar's Decision upon Application to the Administrative Appeals Tribunal (AAT); and then/or
- ✔ By a Court.

Parents are able to seek from the Federal Circuit and Family Court of Australia, an Order for a Departure from the Administrative Assessment as made by the CSA, where the Court is satisfied that special circumstances exist that warrant the making of such an Order and further it is satisfied grounds for a Departure exist.

Depending on your unique circumstances, it may be advantageous to enter into a private child support agreement with your child's other parent (being either a "Limited Child Support Agreement" or a "Binding Child Support Agreement"). These types of agreements can provide for the payment of additional expenses such as medical, school fees and costs of extra-curricular activities. Our Family Lawyers are experienced at drafting such agreements to ensure they are legally binding and enforceable.

We can also advise you on the circumstances in which Adult Child Maintenance may apply for children over the age of 18 years. The *Family Law Act* does give the Court the power to make such Orders on a case by case basis.

CHILD SUPPORT MYTH

I don't have to pay child support because my spouse and I have equal shared care.

Reality: Unless you have a Binding Child Support Agreement completed by Lawyers, the amount of child support each of you must pay is determined by Services Australia originally referred to as "the Child Support Agency"). The Department uses specific criteria when carrying out the assessment including your respective incomes. Even where you have equal care, if there is a significant income disparity between the parents, there is likely to still be a child support assessment payable via the higher income parent to the other.

With so much misinformation readily available through social media, pop culture and even the mainstream media, it's important to get proper legal advice pertaining to your specific circumstances following separation. To schedule an appointment to learn more about how we can help, contact our Family Lawyers Rockhampton today.

DOMESTIC VIOLENCE

Domestic violence is governed in Queensland by the *Domestic Violence and Family Violence Protection Act 2012 (Qld)*.

The definition of "domestic violence" in Queensland is particularly wide and encompasses not only physical violence but also verbal abuse, harassment, property damage as well as intimidation. Specifically, domestic violence includes being:

- physically or sexually abusive;
- emotionally or psychologically abusive;
- economically abusive;
- threatening;
- coercive;
- in any other way controlling or dominating the other person and causing the other person to fear for that person's safety or wellbeing or that of someone else.

A non-exhaustive list of examples is provided in the legislation which includes, but is not limited to, the following:

- causing personal injury to a person or threatening to do so;
- coercing a person to engage in sexual activity or attempting to do so;
- damaging a person's property or threatening to do so;
- depriving a person of the person's liberty or threatening to do so;
- threatening a person with death or injury or of the other person a child of that person or someone else;
- threatening to commit suicide or self-harm;
- causing or threatening to cause death of, or injury to, an animal whether or not the animal belongs to the person to whom the behaviour is directed;
- unauthorised surveillance of the person; and
- unlawful stalking.

To make an order the Court must be satisfied:

- a relevant relationship exists between the Aggrieved (the person against whom the domestic violence has been committed) and the Respondent (the person whom it is alleged is causing the domestic violence);
- the Respondent has committed domestic violence against the Aggrieved; and
- the Protection Order is necessary and desirable to protect the Aggrieved.

If a Protection Order (often referred to as a Domestic Violence Order "DVO") is made (whether on a temporary or final basis) the mandatory conditions on every order are that the Respondent be of good behaviour to the Aggrieved and must not commit acts of domestic violence or associated domestic violence. Orders can include other additional provisions depending on the circumstances of the case, such as preventing contact or not going within a certain distance of the Aggrieved, etc.

A DVO will usually include exceptions in relation to spending time with or communicating with a child where there is a written agreement or Court Order.

A DVO is not a criminal matter, but a breach of a Protection Order is a criminal offence and the Respondent can be charged.

One of the effects of a final DVO is that the Respondent's weapons licence is revoked under the *Weapons Act* (if they have one). Ordinarily the Respondent is not able to apply for another weapons licence until 5 years from the date the order was made.

South Geldard can assist in:

- ✔ Filing or responding to an Application for Domestic Violence Protection Order ("DVO");
- ✔ Negotiations on your behalf after an Application for Domestic Violence Protection Order has been filed; and
- ✔ Legal representation in Court.

All Lawyers at South Geldard are experienced in representing parties at mediations to resolve disputes in a timely and cost effective way,

MEDIATION/FAMILY DISPUTE RESOLUTION

Vicki Jackson OAM is also a Nationally Accredited Mediator with over thirty years practical experience as a Mediator assisting in resolving disputes in Rockhampton, Rural and Regional Queensland and Brisbane.

Mediation is an informal process where an independent third party (called "the Mediator") assists parties in dispute to reach agreement.

Mediators are trained in being a neutral facilitator who explores options with the parties to find solutions.

Mediation can be an important and effective tool in achieving an outcome within a short timeframe and at much less cost than going to Court.

Even if you do not require the assistance of mediation to negotiate an agreement about your property, it is recommended that parents attend family dispute resolution ("FDR") with a qualified counsellor. FDR assists parents to either reach an agreement as to arrangements for children or at the very least to learn about how parents can effectively parent apart in the best interest of their children.

The preliminary requirement before going to Court, subject to some exemptions, is for parents to attend FDR with a practitioner qualified to issue a Section 60I certificate in the unlikely event that the parents have not reached agreement. The FDR practitioner must be qualified to issue the necessary certificate which the Court requires (subject to some exceptions) before a Parenting Application can be filed in Court.

It is important to seek specific advice regarding your circumstances as this fact sheet provides general information only and does not constitute legal advice.

USEFUL RESOURCES AND WEBSITE LINKS

Federal Circuit & Family Court of Australia:
http://www.fcfcoa.gov.au

Australian Government – Family Law Information:
https://www.australia.gov.au/information-and-services/public-safety-and-law/family-law

Child Support:
https://www.australia.gov.au/information-and-services/public-safety-and-law/family-law

Phone Number: 131272

Domestic and Family Violence Help in Queensland:
https://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/domestic-family-violence

Family Relationships Online:
https://www.familyrelationships.gov.au/

Relationships Australia:
https://www.relationships.org.au/

Phone Number: 1300 364 277

Centacare CQ
https://www.centacarecq.com/

Phone Number: 1300 523 985

Queensland Births, Deaths and Marriages – Divorce and Separation
https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/ending-a-marriage-de-facto-relationship-or-civil-partnership

Counselling
Domestic Violence line: 1800 811 811
DVConnects Mensline: 1800 6000 636
Kid's Help Line: 1800 551 800

FAMILY LAW GUIDE

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