

LAUNCHING CALLEY FAMILY LAWYERS

Welcome to the first edition of Family Law Solutions, the official newsletter of Calley Family Lawyers.

Calley Family Lawyers practice exclusively in family and de facto relationships law and maintain offices in Collins Street, Melbourne and on the Mornington Peninsula. Calley Family Lawyers carries on the legacy of its founding Principal, Richard Calley.

Establishing Australia's first exclusive family law practice in 1980, the firm has grown from strength to strength and is now reputed as one of the nation's leading family law firms.

Following Richard's recent retirement in 2014, the firm previously known as Richard Calley Family Lawyers has undergone a transformation under the leadership of Vic Rajah, the firm's Principal and Managing Partner. A Law Institute of Victoria Accredited Specialist in the field of family law, Vic trained under Richard and remains committed to the excellence instilled by his mentor.

As stated by Vic, "the mantra of Richard guides me in the way in which I conduct my practice. He was a stickler for the quality of the work we produce, the professionals we collaborate with and the outcomes we achieve for our clients. He was firm in his view that 'if you want the best, you have to talk to a specialist'".

Many exciting changes have occurred at Calley Family Lawyers over the course of the past 6 months. A new branding strategy has been implemented resulting in a new name and logo equipped with a fresh green colour scheme.

The firm's new and modern website has launched. We encourage you to take a look at the website located at www.calleyfamilylaw.com.au. A Facebook page has also been created with topics of interest updated on a daily basis. Like the Calley Family Lawyers page to obtain access to the daily feed.

Vic Rajah and Kathryn Downs, Accredited Family Law Specialists spearhead the legal team which has been strengthened by the appointment of Dr Fiona Kelly as an Honorary Consultant. Fiona is the Senior Lecturer in Family Law at La Trobe University and boasts an international reputation as one of family law's rising academic authorities.

As one of Australia's pre-eminent academics in the field of same-sex parenting and assisted reproduction, Fiona adds gravitas to the team at Calley Family Lawyers which is proud to be the only family law practice in Victoria to have a serving academic on staff. Faye Dowber, the firm's junior practitioner completes the legal team which caters for a wide cross-section of clients based throughout Victoria, interstate and overseas. Over the course of the next few months, Calley Family Lawyers will commence presenting seminars to many of its collaborative partners including financial advisors, accountants, counsellors, medical

practitioners and teachers.

Topics will be of interest addressing the inter-relationship of family law and the partner's chosen field. If you are interested in hosting one of the firm's complimentary presentations, please contact the practice's Business Manager, Libby VandenBerg.

A key priority of Calley Family Lawyers is to ensure that clients receive top shelf service and the support required to negotiate the often challenging nature of family law situations.

Every case is different and tailored advice and strategies recognise each client's diverse needs and expectations. A dedicated Client Liaison Manager, Sharon O'Toole has been appointed to handle client enquiries and the firm's Business Manager and Managing Partner are readily available to discuss any issues of note in line with the firm's guiding principles of professionalism, quality, respect and service.

Family Law Solutions will be published on a quarterly basis to provide you with insights into topics of interest and developments within the sphere of family law.

Your support and ongoing confidence in Calley Family Lawyers is greatly appreciated and in line with the firm's focus of developing and re-kindling collaborative partnerships, Vic and his team hope to meet with many of you over the course of the next few months.





SELF-MANAGED SUPER FUNDS

When a separating couple divides their property, it is often necessary to split entitlements held in a superannuation fund. While the rules for doing so are well defined, self-managed superannuation funds (SMSF) raise some unique issues. There are specific rules for valuing most types of superannuation funds, however, the diverse nature of SMSFs makes it impossible to prescribe a standard valuation regime. Instead, SMSFs are usually valued with the assistance of an expert such as an accountant or independent property valuer. Some SMSFs run reserve accounts, where typically investment earnings are stored from the good years to hand out in the not so good years. The value of the fund includes the value of these reserve accounts.

After an agreement or order of the Court has been made, the spouse receiving funds will generally have three options. Firstly, they may roll over the benefits into a different super fund which is the most common approach. Secondly, they may withdraw the entitlements if they have satisfied a condition of release and thirdly, in exceptional cases they may create a new interest in the existing fund.

It is possible to apply to a court or to enter into an Agreement with the other spouse preventing trustees from making any payments from the fund (Flagging Orders / Agreements). This option can be useful if there is some risk that a spouse may try to withdraw benefits while negotiations are taking place or if valuations are uncertain. Flagging usually occurs when a release of superannuation benefits is imminent due to a condition of release being met.

If both spouses are members of the same SMSF, it is very likely they will want to effect financial separation by having one member transfer their full super balance together with any split amount to a new fund. The receiving fund can be another SMSF or an industry or retail fund or an Eligible Rollover Fund.

Capital gains tax (CGT) concessions for the transfer of underlying assets from one fund to another may apply. Rollover relief may be possible to defer payment of capital gains tax until the transferred assets are disposed of. Deferral of tax consequences may seem like a good idea at the time of negotiation, however it is important to consider the effect of CGT is taken into account when negotiating any splitting agreement. It is also worth noting that no such relief is available if assets are liquidated in the accumulation phase (i.e. assets are realized in the first fund to effect a transfer of a member's benefits in cash).

After dividing superannuation assets, in rare cases it may be necessary to restructure the SMSF. As most SMSF have a corporate trustee, the transferring spouse may need to resign as an office holder and or shareholder of the trustee company. If one spouse is the only individual trustee left in the fund, it will be necessary to either appoint a corporate trustee or find another person willing to act in the role of the individual trustee.

Expert legal advice is needed when dividing a SMSF. At Calley Family Lawyers, our team of experienced lawyers, often working closely with accountants and financial advisors can provide the expertise you need.



PARENTING ORDERS AND YOUNG CHILDREN

The period from birth to four years old is an important developmental stage for any child. When parents of a young child separate, difficult decisions may need to be made concerning how care arrangements are to be structured to meet the child's unique developmental needs.

When making parenting orders for children aged between 0 to 4 years, the Family Court is often concerned with 'attachment theory'. Attachment theory suggests that children develop best when they have at least one adult to whom they are primarily attached and who provides the child with a sense of security and comfort. While the primary attachment figure can be a parent, a grandparent or foster carer, it is usually the child's mother.

Research by Australian clinical psychologist, Dr. Jennifer McIntosh published in 2010, suggested that young children should not spend significant amounts of time away from their primary attachment figure. The study found that infants under two who spent one night or more a week and toddlers who spend 10 days a month of overnight time in their non-primary caregiver's care are more irritable, more severely distressed and insecure in their relationships with their primary parent, less persistent at tasks, and more physically and emotionally stressed. Dr. McIntosh's research has been extremely influential in Australia and abroad.

The use of Dr. McIntosh's research to influence family law decision-making has been challenged in recent years, most particularly by Dr. Richard Warshak, an American clinical psychologist. Dr. Warshak has attempted to discredit Dr. McIntosh's findings, as well as those who have used them to support limiting overnight visits for young children with their fathers. In contrast to Dr. McIntosh, Dr. Warshak advocates for a shared care model.

It is not entirely clear what impact these academic debates have had on the Family Court. Those who favour shared care have argued that Dr. McIntosh's research has come to dominate the Court's decision-making, limiting the amount of overnight access for fathers with their young children. Though judges are certainly cautious when ordering overnight care for young children, case law suggests a more complex dynamic.

It is apparent that the Family Court will prioritise arrangements that allow the child to spend regular time with both parents to preserve or build attachment relationships. For example, in the 2010 case of *Sheehan v Parke*, there was an appeal of the decision of a Federal Magistrate who was accused of over-emphasizing the importance of the primary attachment involving a 9 month old child who was breast feeding. On appeal, the Family Court upheld the judgement of the Federal Magistrate which enabled the child to have frequent and regular visits with his father, increasing to overnight visits when the child turned 15 months old however the child remained in the primary care of the mother. Making parenting arrangements for a young child can be complex and each case is unique. At Calley Family Lawyers, we can provide expert advice for your specific situation.

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