



EDITION 2. AUTUMN 2015

WELCOME TO AUTUMN

Happy New Year from the team at Calley Family Lawyers!

We trust that you enjoyed a nice break over the festive period and are recharged for an active and fulfilling 2015.

Calley Family Lawyers practice exclusively in family and de facto relationships law and maintain offices in Collins Street, Melbourne and on the Mornington Peninsula.

Firstly, we would like to salute 2015 Australian of the Year, Rosie Batty. Australians from all walks of life have no doubt marvelled at the strength and bravery shown by Ms Batty following the tragic murder of her son, Luke.

As the premier Peninsula-based family law practice, we were privy to the grief which resonated in the local community following Luke's passing in Tyabb last year. The second edition of Family Law Solutions features a keynote piece highlighting the effects of family violence in Australia and how Rosie Batty has effected positive change in this area.

Relationship and marriage breakdown is prevalent in our society today and with greater economic uncertainty, it is expected that family pressures will increase.

Calley Family Lawyers is committed to ensuring that our 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.

The majority of our client base is derived from a strong referral network. We are regularly presenting complimentary seminars to our referral partners which features leading financial advisors, accountants, counsellors, psychologists, commercial lawyers, medical practitioners and teachers. If you are interested in hosting one of the firm's presentations, please contact the practice's Business Manager, Libby vandenBerg.

Family Law Solutions is published on a quarterly basis to provide you with insights into topics of interest and developments within the sphere of family law. Our current edition includes articles (as requested by key referral partners) discussing the legality of pre-nuptial agreements in Australia, the effects of inheritances in property disputes and what happens when one is served with a subpoena.

Your support and ongoing confidence in Calley Family Lawyers is greatly appreciated. We are always keen to develop and strengthen our referral partnerships and Vic and his team hope to meet with many of you over the course of the next few months.

LESSONS LEARNED FROM ROSIE BATTY - FAMILY VIOLENCE IN FAMILY LAW DISPUTES

We were all moved by the courage shown by 2015 Australian of the Year, Rosie Batty following the tragic murder of her son, Luke last year. The loss of a defenceless youth at the hands of his father has placed community focus on the issue of family violence.

So what is family violence?


According to the Family Law Act 1975 it is violent, threatening or other behavior by a person that coerces or controls a member of the person's family or causes the family member to be fearful. A child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

In large part due to the work of Rosie Batty, Victoria's State government has announced plans to hold a Royal Commission into family violence and has appointed a Minister for the Prevention of Family Violence. The Federal Government has allocated \$100 million towards an action plan to combat violence against women.

Statistics reveal the extent of the problem. One in three women experience violence at the hand of someone they know. On average, one woman is killed every week by an intimate partner. One in four children has been exposed to domestic violence. Family violence consumes forty percent of police work and costs Victoria \$3.4 billion annually. Family violence permeates socio-economic boundaries and is a nationwide problem.

To make a positive change in this area, a coordinated effort is required on the part of a variety of different professionals, including psychologists, counselors, doctors, child protection workers, the police and family lawyers.


Rosie Batty's story demonstrates the complexity of family violence and the importance of a coordinated response. Her case involved more



VIC RAJAH
FIRM PRINCIPAL



KATHRYN DOWNS
CONSULTANT



DR FIONA KELLY
HONORARY CONSULTANT



FAYE DOWBER
FAMILY LAWYER

T : 03 9781 4222
F : 03 9781 3850
E : CALLEY@CALLEYFAMILYLAW.COM.AU
W : WWW.CALLEYFAMILYLAW.COM.AU

CITY OFFICE
LEVEL 17
459 COLLINS STREET
MELBOURNE, VICTORIA 3000

PENINSULA OFFICE
LANDMARK CORPORATE CENTRE
LEVEL 3, 454 NEPEAN HIGHWAY
FRANKSTON, VICTORIA 3199

than ten intervention orders, numerous breaches of those orders, as well as Family Court orders. By the time Luke was murdered, the police had been involved with the family for close to a decade. Yet, despite all of this professional involvement, Luke still died. So what have we learned from Rosie Batty's story and how can we improve the existing system?

Family violence is prevalent in many family law disputes. Often it is present throughout the course of a relationship however it can intensify or emerge as a result of a hostile separation. Studies reveal that the most dangerous time for victims of family violence is at the point of separation. Many victims remain silent through fear however some have the courage to make disclosures to doctors, family therapists, psychologists or even a child's teacher. Each profession has its own practices and procedures for dealing with such legal disclosures.

Victims and their advisors need to be proactive and avail themselves to the protections currently available. Having a legal advocate who can provide prompt and effective advice as well as support throughout the process, can be important to the safety and wellbeing of the victims. It is therefore best practice for medical and social service professionals to refer victims of family violence to an experienced family lawyer.

Some victims of family violence may be reluctant to engage with the law. After Rosie Batty's experience, they may view it as impotent or even inept. Others may be concerned that by invoking the law they might further antagonize their abuser. Others still may be concerned that if they disclose family violence, their children will no longer be able to have a relationship with the violent parent.

While there is some truth to each of these concerns, since the Batty case, concerted efforts have been made to improve processes involving obtaining intervention orders and the police response to breaches of these orders. In addition, two significant amendments to the Family Law Act have been recently made:

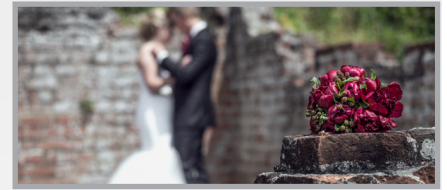
- the definition of family violence has been expanded to include behaviour of a financial, emotional, physical or sexual nature that causes fear to family member; and
- a new section has been included that prioritises children's safety when making a parenting order ensuring that they are not exposed to an unacceptable risk of family violence.

A new Family Violence taskforce has been established linking law enforcement, legal and domestic violence advocacy services. The taskforce has been charged with reviewing family violence services and court processes dealing with this issue. Already the Magistrates Court in December 2014 has implemented a new Practice Direction which will introduce staged fast tracking of the hearing and determination of criminal offences arising out of family violence incidents.

The team at Calley Family Lawyers recognises that family violence is a major problem and needs to be taken seriously. We are able to provide expert assistance to individuals experiencing family violence or those wrongly accused of behaving in that manner. We often guide clients needing to apply for an intervention order in the Magistrates Court and provide tailored advice to those involved in parenting disputes where family violence is an issue. Moreover, through our collaborative partnerships, we are able to refer clients and their children to an expert team of medical practitioners, counsellors and psychologists if and when required.

The efforts of Rosie Batty cannot be underestimated and she is a deserving recipient of our nation's highest honour. Ms Batty has placed the issue of family violence on the national agenda and we all remain hopeful that it will no longer be paid lip service by our legislators.

ARE "PRE-NUPS" BINDING IN AUSTRALIA?



Pre-nuptial Agreements (or Financial Agreements as they are correctly known) have been in existence in Australia for more than a decade and are becoming increasingly more widespread in their use. So what is a "pre-nup"?

A legally-binding agreement that sets out how property will be divided up on the breakdown of a relationship. A "pre-nup" can be made before, during or after the relationship, and can be made by parties involved in a marriage or a de facto relationship. "Pre-nups" can deal with the treatment of cash and real estate, as well as assets such as a family business, trust, investments, entitlement to an inheritance, superannuation or even a pension entitlement. Even debts can be included to define who will maintain responsibility if the parties separate in the future.

Aren't "pre-nups" for celebrities, sports stars, famous musicians and actors and the mega wealthy? Absolutely not. People enter into prenuptial agreements for any number of reasons. Some of the most common are when:

- one person has much more property than the other
- one person is, or may later become, entitled to a substantial inheritance or gift
- one party is moving into a second or subsequent relationship and might wish to protect their assets, particularly if they have children (or have experienced the effects of an unkind property settlement)
- parties want the certainty of knowing the terms of future a property settlement to avoid not ending up in court.

The limits of what can be included in a pre-nuptial agreement are far less clear. So called 'lifestyle clauses' that stipulate behavioral expectations during a marriage (e.g. that the parties will not have children, that they will not cheat on each other, or that they will share housework equally) may be enforceable! It is possible that clauses of this nature would be void due to uncertainty, but the law remains untested at this stage.

The Family Court has taken a strict approach to pre-nuptial agreements and there has been inconsistency as to whether they will be upheld by Courts. "Pre-nups" however remain the strongest legal protection available in warding against the uncertainty of a judicial outcome and one should assume that by entering into a financial agreement, the terms will be binding.

Some legal commentators have questioned the effectiveness of pre-nuptial agreements due to the refusal of the Family Court to grant such Agreements a 'watertight' status. Agreements have been set aside for technical grounds (e.g. they have not been properly executed) or for a number of grounds based on sound principles of contract law or equity (e.g. where a party has exercised duress or fraud over the vulnerable spouse, there has been a failure by one spouse to adequately disclose their financial position to the other, the terms of the financial Agreement are unconscionable or designed to thwart the claim of an arm's length creditor or there is a material change in circumstance attributable to the care of children which causes hardship to a spouse).

The Family Law Act encourages parties however to enter into "pre-nups" to determine how they may wish to divide their property and liabilities (or part thereof) in the future. To ensure that both parties fully appreciate the nature of the proposed arrangements, they must be separately and independently legally represented and their respective lawyers must advise them individually about the effect of the Agreement on their rights and the advantages and disadvantages of entering into the Agreement at the time of doing so.

The team at Calley Family Lawyers are experienced and highly skilled at drafting financial agreements and are able to discuss the requirements of any individual contemplating entering into a "pre-nup".

T : 03 9781 4222

F : 03 9781 3850

E : CALLEY@CALLEYFAMILYLAW.COM.AU

W : WWW.CALLEYFAMILYLAW.COM.AU

CITY OFFICE

LEVEL 17

459 COLLINS STREET

MELBOURNE, VICTORIA 3000

PENINSULA OFFICE

LANDMARK CORPORATE CENTRE

LEVEL 3, 454 NEPEAN HIGHWAY

FRANKSTON, VICTORIA 3199