

MACROSSAN & AMIET

S O L I C I T O R S

FAMILY LAW INFORMATION BOOKLET

**Just separated or
thinking about separating?**

*Our Family Law information booklet is a great place
to find practical information about what to do next.*

We answer the most frequently asked questions that come across
our desk regarding Family Law in Australia.

The contact details of any third party organisations referred to in
this booklet can be found in our Local Services Guide.

This booklet is not intended to give you legal advice, but a basic
understanding of what to expect when you are separating.



ABOUT US

With a long history dating back to 1895, Macrossan & Amiet Solicitors is a full service leading law firm in Regional Queensland who provide advice and support to the local community and beyond when it's needed most. When you need legal advice or representation, whether it be business or personal, the legal team at Macrossan & Amiet Solicitors, including our seven Directors, have the experience and knowledge you want on your side. We are committed to providing an exceptional level of service to all our clients and we welcome you to contact us today to discuss how we can help.

WHY CHOOSE US

We understand that the goal is to get an outcome as quickly and efficiently as possible for you regardless of which service you require, while also keeping you advised along the way. We form a partnership with our clients and build a relationship, and because we're invested in the relationship and care about the outcome, we work hard for you and will get you the best outcome possible!

As one of the oldest and most respected law firms in Mackay, you can rest assured you are in good hands when you choose us.



OUR FAMILY LAWYERS



Pat Carroll | LLB - Director

Pat was born in Mackay and has lived in Mackay all of his life apart from 4 years spent at Queensland University. He commenced working at Macrossan & Amiet in 1976 as an Articled Clerk. He obtained his Bachelor of Laws from University of Queensland on 21 April 1977 and was admitted as a Solicitor of the Supreme Court of Queensland on 26 April 1978.

Pat is married with three children. He has a keen interest in all sport and is a regular swimmer. He is a devout Cowboys supporter.

Samantha Sticklan | LLB, Acc. Spec (Fam. Law) - Senior Associate

Samantha grew up in Northern NSW, relocating to Brisbane to attend boarding school and later obtaining her law degree at Griffith University. In 2004 Samantha relocated to Mackay to take up employment as an Articled Clerk. Samantha was previously employed by another local practice for 14 years, during which time she was successful in obtaining recognition as an Accredited Family Law Specialist by the Qld Law Society. She commenced with Macrossan & Amiet in February 2018.

Samantha is a mother and wife, and an active member of the Mackay Community, currently volunteering with Artspace Mackay Foundation, the Mackay Community Legal Centre and the BMA Mackay Marina Run.



GETTING STARTED

We have created a “to do” list to help you get started:

☐ GIVE COUNSELLING A GO

Relationship counselling is a must for anyone considering separation. Your family situation may benefit from counselling for yourself, your children or together as a family unit.

☐ MAKE A PLAN FOR THE CHILDREN

Now that your relationship is over - what are your plans for your children?

☐ GATHER YOUR FINANCIAL DOCUMENTS

Under the *Family Law Act 1975* any party to a separation is obligated to make full financial disclosure to the other. Documents that you will need include, but are not limited to, bank statements, taxation returns, pay slips, settlement statements from the sale and purchase of property etc.

☐ OBTAIN LEGAL ADVICE

You need to know where you stand having regard to your circumstances. All property settlements and parenting arrangements are different. The outcome for your neighbour, for example, in a property settlement may not be the same outcome for you. Getting good legal advice early and throughout a separation can save you thousands of dollars and time.

☐ CONSIDER MEDIATION

Sometimes an independent third party is all you need to get an agreement across the line.

☐ PREPARE A BUDGET

You are most likely going from two incomes to one - a budget is essential. It is also important to track how much you are spending on rent, mortgage, food, children, schooling etc. Consider making a spreadsheet of your weekly spending.

☐ PROTECT YOURSELF

Cancel access to credit cards and bank accounts and change passwords to those accounts. Change passwords to emails and social media accounts. If you can bear it limit your access to social media until your matter has been resolved and be very mindful about the posts that you make.

☐ OBTAIN FINANCIAL ADVICE

It may be the case that fighting to keep the family home is not in your best interest. Get advice about what is the best thing for your financial future.

☐ UPDATE YOUR SUPERANNUATION BENEFICIARY

You can do this at any time, there is no need to wait to be divorced or to finalise your property settlement.

☐ PLAN WHERE YOU'LL LIVE & WHAT POSSESSIONS YOU'LL TAKE

Make sure you take sentimental items with you if/when you leave the former home as you may not have the opportunity to return.

☐ OBTAIN A NEW WILL AND EPOA

Separation does not void a Will or Enduring Power of Attorney. If you do not want your former spouse receiving your assets when you pass away, or controlling your finances should you lose capacity, these documents need to be updated immediately.

☐ KEEP CENTRELINK & THE CHILD SUPPORT AGENCY UP TO DATE

Your living arrangements and those of your children may change throughout your separation. To avoid going into debt, keep those organisations up to date.

☐ KEEP A DIARY

It's a good idea to keep a diary of any incidents that relate to children if you are having parenting issues.

☐ LOOK AFTER YOU!

Separation can be hard and it is important to remember to look after yourself both mentally and physically. Find a hobby and surround yourself with people that care.



FREQUENTLY ASKED QUESTIONS

We have an amicable separation - do I have to go to court?

Most matters resolve without the need to utilise the court system to reach a decision regarding parenting and/or property. These matters are resolved by “consent”. Consent can be reached through a variety of processes.

Counselling

Counselling can assist to work through matters relating to parenting and other issues arising from separation. Counselling is sometimes used to assist parents to ascertain the views of the children about living arrangements, or to help separating parties talk through the practicalities of separating assets.

Negotiation

Can occur informally by discussing settlement options with the other party directly, or through lawyers. Negotiation can involve communication via written correspondence or telephone with the aim being to resolve the matter without the need to proceed through the court system.

Mediation

A mediator is an independent third party who is “neutral”. Mediators can be engaged directly by you or engaged through a lawyer - meaning that your lawyer will also attend the mediation. If your lawyer does not attend the mediation you can contact them following the mediation and advise them of the result - engaging them to draft up the agreement so that it can be formalised.

How do we formalise an agreement?

There are different methods of formalising agreements depending on what the agreement relates to. In family law, the most common types of agreements that we see are:

- Children - Consent Order or Parenting Plan;
- Property settlement and/or spouse maintenance - Consent Order or Binding Financial Agreement; and
- Child Support - Child Support Agreement.

You need to ensure that any agreement is formalised using a method that is recognised by the *Family Law Act 1975*. Should you not formalise the agreement it is unlikely that the court will enforce it, even if you have taken steps in accordance with what the agreement states.

When can I get Divorced?

Under the *Family Law Act 1975*, a court cannot grant a divorce unless it is satisfied that your marriage has irretrievably broken down. The “irretrievable breakdown” of a marriage is proven by having been separated for 12 months. In marriages where there are children under the age of 18, the court must also be satisfied that appropriate arrangements have been made for the care of the children.

It is possible to remain living under the one roof and still satisfy the court of the 12 month separation requirement as long as you can demonstrate to the court that you are separated under the one roof.

Divorce applications are dealt with in the Federal Circuit Court. Once your divorce order becomes final you have 12 months to commence court proceedings if your property settlement has not been resolved. If this time limitation passes you must seek the leave of the court to “proceed outside of time” and if such leave is not granted you will lose your rights to seek a property settlement.

What if I’m defacto?

A defacto relationship does not have to be formally terminated in the same way that a marriage does. Defacto couples have two years from the date of separation to finalise a property settlement or commence court proceedings. Aside from this difference defacto couples are dealt with under the *Family Law Act 1975* in the same way as married couples.

What about the children?

The law says that the paramount consideration when determining where children should live is that any decision made is in the best interests of the children. Normally this means that the living arrangements for children should result in them being able to have a meaningful relationship with both parents.

While equal time is not always in the children’s best interests, if there is an absence of domestic violence this should be the first consideration of the parents, though it is not always reasonably practicable.

Arrangements should be reached having consideration to the circumstances of each individual family unit.

Unless there is urgency in a matter, parents seeking the assistance of the court for parenting matters must first attempt mediation with a Registered Dispute Resolution Practitioner.

Can I relocate, take my child overseas or change my child’s name?

Most parents have what we call joint parental responsibility when it comes to decision making concerning their children. This means that decisions regarding the long-term care, welfare and development should be made by the parents jointly. This includes the decision to relocate, take a child overseas (even for a holiday) and change a child’s name. If you have trouble reaching agreement regarding these issues you should attempt dispute resolution with a registered provider. As a last resort, if an agreement cannot be reached you can seek a decision from the court. Legal advice should be obtained regarding the issue as each circumstance has a different set of facts and therefore a different result.

What if I’m having trouble communicating with the other parent?

Good communication is the key to a successful co-parenting relationship and therefore in the best interests of your children. If you are struggling with communication, there are services available that run post separation parenting courses to assist with this very issue. Check out our local services guide at the back of this booklet for more details.

How is child support assessed and paid?

Child support is assessed using a formula that takes into consideration the age and number of children in care, the number of nights that the children spend with each parent and the income of each parent. Child support is assessed by the Child Support Agency (“CSA”). This assessment may be departed from in special circumstances including:

- The children have special needs;
- The children are attending private school;
- There are significant transport costs involved in spending time with the child; and
- Either parent’s income cannot easily be calculated.

FREQUENTLY ASKED QUESTIONS CONT.

You can agree to a child support arrangement outside of the assessment. An arrangement of this nature is usually documented in a Child Support Agreement. There are two types of child support agreements as follows:

- a. A Binding Agreement - must be signed by a solicitor giving independent legal advice and can only be terminated by a further agreement or Order of the court.
- b. A Limited Agreement - does not need a solicitor's certificate, however there must be a formula assessment already in place and the amounts payable under the agreement must be equal to or greater than the formula assessment.

The CSA is usually responsible for collecting payments unless you elect for private collection. It is possible to enforce non-payment through the court. If your payments fall behind, the agency has the power to take the money from your wages, take the money from your taxation returns, prevent you from overseas travel, and/or enforce non-payment through the court.

How will our property be divided?

The *Family Law Act 1975* sets out how property is to be divided for married and defacto couples. In simple terms the court follows the four step process:

1. Assessment of the property pool - that being all assets and liabilities of the parties, regardless of how those assets are held.
2. Consideration of the financial and non-financial contributions of the parties throughout the relationship.
3. Assessment of the future position of the parties considering the obligations to children, financial capacity/situation and health.
4. Finally the court must consider whether the orders it proposes to make after completion of the previous steps are just and equitable.

To get the best out of any legal appointment it is important to turn your mind to the above four considerations prior to your appointment.

What are my disclosure obligations?

Under the *Family Law Act 1975* any party to a separation is obligated to make full financial disclosure to the other. Having a full and proper understanding of the other party's financial situation is imperative to ensuring you reach a settlement that you are entitled to. Further, having easy access to your financial documents and disclosing them quickly can assist to resolve matters expediently. The obligation of disclosure continues until the property settlement has been resolved. Documents that you will need include, but are not limited to, bank statements, taxation returns, pay slips, settlement statements from the sale and purchase of property etc.

Take a look at our disclosure "shopping list" at the back of this booklet.

What if we don't agree on the value of property?

The first step in negotiating a property settlement is assessing the value of the property pool. If you are not in agreement with the other party as to the value of assets the usual course is to appoint an independent third party to act as a joint expert to value an asset. If you are still unsatisfied with the value legal advice should be obtained about the steps taken throughout the court process when expert evidence is in dispute.

What about superannuation?

Superannuation is an asset that can be divided and is part of the property pool. A superannuation split is when an order is obtained to "split" or otherwise transfer a portion of one parties superannuation fund to the nominated fund of the other party.

LOCAL SERVICES GUIDE

Legal

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|-------------------------------------|---------------------------|
| • Family Court | familycourt.gov.au |
| • Federal Circuit Court | fedcourt.gov.au |
| • Legal Aid Qld | legalaids.qld.gov.au |
| • Mackay Community Legal Centre | (07) 4953 1211 |
| • Domestic Violence Resource Centre | (07) 4957 3888 |
| • Child Support Agency | childsupportaustralia.com |
| • Centrelink | centrelink.gov.au |

Counselling & Community Organisations

- | | |
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| • Bernadette Stein - Social Worker | 0400 231 595 |
| • Uniting Care - Post Separation Parenting Courses & DV Counselling (Man's Assist) | uccommunity.org.au |
| • National Debt Helpline | 1800 007 007 |
| • Relationships Australia | relationships.org.au |
| • George Street Neighbourhood Centre - Financial Assistance/Advice/Counselling | (07) 4957 2626 |
| • Family Relationship Centre | 1300 783 544 |

For You

Separation sometimes means that you need to take time to rediscover who you are, meet new friends and find new activities to do. Here are some local groups that might be able to assist:

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|--------------------------|--------------------------|
| • Lazy Runners | lrcrunningclub.com |
| • Yoga | 8limbyoga.com.au |
| • Artspace Volunteer | artspacemackay.com.au |
| • Approach Adventure | approachadventure.com.au |
| • MAD Mountain Bike Club | madmtbc.net |

IMPORTANT DETAILS

Other Party Details:

Other Party's Lawyer's Name & Address:

Accountant:

Financial Planner:

Medical Practice:

Children's Names & Ages (if applicable):

School (if children):

SCHEDULE OF ASSETS & LIABILITIES

[illegible][illegible]

DISCLOSURE SHOPPING LIST

Documents required to be disclosed in property settlement matters:

- ☐ Last three individual Tax Returns
- ☐ Last three Notices of Assessment
- ☐ Evidence of current wages; e.g. payslip
- ☐ Last three superannuation statements for all superannuation funds
- ☐ If self-managed super fund, financial statements for last three years
- ☐ Evidence of shareholdings currently held in public companies
- ☐ If director of a company, last three financial statements/ tax returns for the company
- ☐ If owner of a business, last three financial statements/ tax returns for business
- ☐ Bank statements for all personal and business accounts held for last three financial years
- ☐ Current market appraisal of any real estate owned
- ☐ Details of any vehicles, boats, caravans, etc. that are owned
- ☐ Details of any life insurance policies
- ☐ Any other documents relevant to your financial position



We trust that this booklet has answered some questions you may have regarding Family Law. One thing to remember is advice specific to your circumstance is crucial. Contact our office today to speak with one of our Family Law experts.

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