

Need Help After a Family Breakup?

FREE FAMILY LAW INFORMATION SESSION

Riccarda Stock, an Accredited Specialist in Family Law, will share her 25 years' experience and knowledge covering areas such as dividing assets, including superannuation and self-managed super funds, protection from debt, children's arrangements, legal costs and how to minimise these and much more.

In addition, you will receive a COMPLIMENTARY VOUCHER FOR A ½ HOUR FREE CONSULTATION with one of our Family Law lawyers, completely obligation free.

Seats are limited so make sure you RSVP early!

DATE	26 July 2018
TIME	6.30 pm
WHERE	Level 2 12 Central Road Miranda
	Drinks & nibbles will be provided
RSVP	9540 4111 or admin@solariandstock.com.au



NEW CHANGES TO THE FAMILY COURT SYSTEM

Australia's current Family Court system is in crisis as it is a lengthy and costly process. Currently, parties can be forced to wait up to 3 years before a final hearing, leaving many families in limbo in relation to arrangements for their children and their financial situation.

On 30 May 2018 the Australian Government announced that from **1 January 2019** the *Family Court of Australia (FCA)* and *Federal Circuit Court of Australia (FCCA)* will be combined forming the *Federal Circuit & Family Court of Australia (FCFCA)*.

The Australian Government has combined these Courts in an attempt to reduce the inefficiencies, confusion, delays, costs and unequal experiences for families.

The FCFCA will have a single federal point of entry for all family law matters. Urgent and high-risk cases will continue to be prioritised and each case will be allocated, at the earliest possible point, to the relevant judge and division with the right expertise and capacity.

Additionally, the FCFCA will operate under the leadership of one Chief Justice, with the support of one Deputy Chief Justice. It is expected that the appointment of a single Chief Justice and Deputy Chief Justice will allow for more effective allocation of cases between the two divisions and enable the Court to operate under a common case management process, with a view to being more efficient, consistent and cost effective.

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Our team of experienced lawyers can provide you with expert legal advice for all your legal needs including

- Business & Commercial Law
- Leases – Commercial, Industrial
- Sale & Purchase of Businesses
- Litigation
- Franchising
- Environmental & Local Government Law
- Family Law
- Property & Parenting Settlements
- Divorce
- De Facto Relationships
- Spouse Maintenance
- Child Support
- Estate Planning
- Wills, Powers of Attorney & Enduring Guardianships
- Deceased Estates
- Property Law & Conveyancing

Transitional arrangements will be put in place for proceedings already before the Courts, at the time of commencement of the reforms, to ensure that matters at that time are dealt with as effectively and efficiently as possible and with a minimum of inconvenience and delay.

At Solari & Stock we have a team of four experienced and dedicated Family Law Lawyers, including two Accredited Specialists in Family Law, who can assist our valued clients in guiding them through this often difficult and confusing process.



Roberta Allen

Ricki Stock

Nicole Quirk

NEW DOWNSIZER CONTRIBUTION WHEN SELLING YOUR HOME

From 1 July 2018, you may be able to put some of the sale proceeds of your home (even if you're no longer working) into super if you are over 65 years of age.

The benefit of this is that each person who is over 65 (or turns 65 within 3 months of selling their home) can contribute the proceeds of sale, up to \$300,000 per person, into their superannuation fund.

This is commonly known as the '*downsizer contribution*' but you don't have to be downsizing (buying a property of less value than the property you are selling) and you don't even have to be buying a replacement home.

There are significant benefits in being able to move some of the proceeds of sale of your home (which can include a property that at one point in time has been your home but at other times has been an investment) into super.

The downsizer contributions can be separated from the normal cap which applies in relation to your superannuation entitlements.

In the event that you are selling your home (or a property that has been your home at one point in time) and you are approaching, or are over, 65 then you may need to give serious consideration as to whether you should pay part of the proceeds of sale into superannuation rather than leaving them outside of super which would be less tax effective. You would need to seek advice from a financial advisor as to whether this is appropriate in your circumstances but it could have significant financial benefits to you if you fall within the qualifying age requirements.

MARRIAGE AND DIVORCE – Some Interesting Facts

The Australia Bureau of Statistics has released its latest figures with respect to marriage and divorce and from the data researched figures showed that more Australians are living together before marriage, are marrying later in age and are divorcing less, compared to statistics obtained over 20 years ago:

- the number of couples living together before marriage has risen to 80% which is an increase of around 16%
- the age of couples marrying for the first time has risen over the past 20 years:

Year	Male Age	Female Age
1996	27.6 years of age	25.7 years of age
2016	30.3 years of age	28.7 years of age

- religious marriage ceremonies have decreased and couples legalising their relationships as a registered relationship has more than doubled
- divorce rates have decreased by 16%, people are staying married longer
- the average lifespan of a marriage is around 12 years.



Vicki-De-Bonis

CHANGES IN THE LAW REGARDING LANDLORD AND TENANT OF COMMERCIAL PREMISES

Many commercial leases make provisions that in the event the tenant goes into liquidation, or enters into any form of administration, the landlord has an automatic right to terminate the lease.

Effective from **1 July 2018** if the tenant goes into voluntary administration and a managing controller (*which includes a receiver and manager*) is appointed, or if the tenant publicly announces it will be making an application to enter into a *scheme of arrangement* for the purpose of avoiding being wound up in insolvency, any provision in the lease which gives the landlord an automatic right to terminate cannot be enforced.

These changes will not apply in the case of a company going into liquidation or if the reason for enforcing any right to terminate the lease after the appointment of an administrator or managing controller is for a reason other than the appointment for example the non-payment of rent.

WORKPLACE BULLYING – *What a stink!*

On a slightly more light-hearted note than many of our articles, a recent case in the Victorian Supreme Court ruled that farting was not workplace bullying.

Workplace bullying is usually found where one worker is the target of unreasonable or intimidating conduct, often creating risk to health and safety, including mental health.



In a case that took 18 days in the Victorian Supreme Court (with a lot of hot air expended) brought by a Mr Hingst the Court found that his complaint, that he was subject to workplace bullying by his supervisor

farting around him, did not constitute workplace bullying. The Court found that the supervisor's conduct was simply mucking around and that Mr Hingst had participated in that by giving the supervisor the nickname of 'Mr Stinky'. This isn't to say that being farted on would never amount to workplace bullying.

However, persons may need to exercise some caution in bringing claims for bullying in the workplace and it should be particularly noted that this case took 18 days of hearing time in Court which would have been extremely expensive to all parties concerned.

Our commercial team can assist you in relation to any employment issues (however, if you have a problem with flatulence then we recommend you see a doctor).



Brian Maker

Michael Solari

IS 'EQUAL SHARED PARENTAL RESPONSIBILITY' THE SAME AS 'EQUAL TIME'?

People often get confused between the two but the short answer is No! Equal shared parental responsibility and equal time are separate and distinct from one another. In fact, equal shared parental responsibility comes first before an Order for equal time is even considered.

Under the *Family Law Act* **parental responsibility** is defined as 'all the duties, powers, responsibilities and authority which, by law, parents have in relation to children'. When making any Parenting Order the Court's paramount consideration is whether it is 'in the best interests of the child'.

There is a presumption that it is in a child's best interests for their parents to have **equal** shared parental responsibility. In the case of *Goode & Goode* (2007) the presiding Judge stated, 'From the children's perspective, I can only see good will come from their parents jointly exercising parental responsibility'.

Therefore, in the absence of Court Orders, parental responsibility is deemed to be shared equally between parents, meaning parents must consult one another and make joint decisions in relation to major long-term issues affecting a child, including:

- where a child goes to school
- what surname a child has
- what religion a child practices
- what medical treatment a child with major health issues is provided; and
- changes to a child's living arrangements

All other day-to-day issues, such as what a child eats at mealtimes or whether they attend school excursions, do not require parents to consult one another.

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IS 'EQUAL SHARED PARENTAL RESPONSIBILITY' THE SAME AS 'EQUAL TIME'? cont ...

Although in an overwhelmingly majority of cases an Order for equal shared parental responsibility is made there are certain circumstances where the Court may decline to do so. The Court will not make an Order for equal shared parental responsibility if:

- there has been abuse of a child; or
- family violence; or
- the Court deems it not to be appropriate in the circumstances of that particular case for example where the conflict, or lack of communication between parents, is so bad that there can be no hope that they could effectively communicate to discuss major long-term issues surrounding a child.

After considering equal shared parental responsibility the next step for the Court is to consider whether parents having equal time with a child is *'in the best interests of a child'* and *'reasonably practicable'*.

Equal time refers to parenting arrangements for separated parties whereby a child spends the same amount of time with each parent. There are many ways in which parents can divide the time evenly (depending on the parents' and the child's circumstances), however this is often on a *'week about'* basis, meaning that during school term time the child spends one week with one parent and the following week with the other parent.

In determining whether equal time is suitable, the Court looks at all of the *'best interests of a child'* factors contained in Section 60CC of the *Family Law Act*. Some of the various considerations include:

- the benefit to the child of having a meaningful relationship with both parents
- the need to protect the child from family violence, whether exposure or abuse
- the nature and history of the relationship of the child with each parent and other important persons for example siblings and grandparents
- the child's views
- the likely effect of any changes in the child's circumstances and separation from a parent or other child or relative; and
- the practical difficulty or expense of a child spending time with a parent.

Coming to an appropriate resolution of the parenting arrangements for children of separated parents can be difficult, both practically and emotionally. The Solari & Stock family law team with our many years of experience can assist. Please feel free to give us a call.



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If you'd like to save paper by receiving our newsletter via email, just contact us on admin@solariandstock.com.au and register your email address.

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