

Solicitors



Caldwell
Martin
Cox

Your Trusted Advisor

Family Law

Achieving the best outcomes



Why CMC Family Law?

Marriage and relationship breakdown can be complicated minefields where emotions run high. Caldwell Martin Cox works with clients to try to reach a quick and amicable settlement, keeping matters out of the court system where possible.

CMC Family Lawyers draw on life experience, legal experience and professionalism to guide clients through the roller-coaster of separation to get back on track. CMC Family Lawyers are committed to achieving the best outcomes for all parties in all areas of their life.

Clients are always kept informed about their case, they are treated as a partner, not a number, and most importantly they are given realistic expectations rather than false hopes. CMC Family Lawyers treat clients with respect and dignity. They are aware of the hurt and pain that clients go through and they work hard to minimise the impact of a separation on the client and their children.

CMC Family Lawyers are a team, led by an Accredited Specialist in Family Law, and they strive to secure their clients' entitlements in the most sensitive, cost-effective and least destructive way possible.

Achieving the best outcomes

Caldwell Martin Cox Family Lawyers are highly experienced, intuitive and empathetic. CMC Family Law positions compassion at the core of every family law case.

Compassion is about listening to clients' stories, understanding feelings and giving comfort that CMC Family Law is here to guide you through this traumatic time. All matters are handled with confidentiality, respect and the time they deserve.

CMC Family Law is a safe place where people can talk honestly. All clients are given the compassion and knowledge they deserve to give them back the power.



CMC Family Lawyers have extensive experience in helping clients through the difficult time of divorce, separation of a de facto relationship and family law matters.

What is divorce?

Divorce is the process that legally ends a marriage once it has broken down. A party cannot apply for a divorce unless they have been separated for at least 12 months and this can include a separation under the same roof. Whilst a divorce is the final step in ending the marriage, there are many other issues which need to be addressed earlier in the overall process of a separation including:



Parenting

This is by far the most important and emotional of all issues arising in family law. Starting a separation on the wrong foot regarding the children can lead to long-term damage – to parents and children. Seek advice early so you can make the best decisions.



Property

The division of assets and superannuation is a topic of great emotion and anxiety. Over 90% of parties ultimately negotiate a property settlement. It is important to understand your entitlements so you can negotiate from an informed position.



Maintenance

There are two kinds of maintenance – the well-known financial responsibility for 'child support', and the lesser known 'spousal maintenance'. An understanding of these obligations is an essential part of every family law matter.



Estate Planning

Separation and divorce do not revoke pre-existing Wills and Powers of Attorney. The change in your circumstances after separating means that in every case you need to revise your estate planning documents as well as the beneficiaries of your superannuation and insurance policies.

96% of family law matters are settled outside of court.

Parenting

The breakdown of a couple means the breakdown of the family structure, and this can have serious impacts on children – depending on how it is handled.

In the Short Term

It is often the first weeks and months of a separation that are the most traumatic. Emotions are stretched, the future is uncertain and the unknown is frightening. Imagine what this is like for a child. CMC Family Lawyers can give great practical advice as to the steps to take or to avoid just before or just after separating. The impact that a separation has on children depends entirely on how their parents handle it.

In the Longer Term

Once you get through the initial upheaval of a separation you need to put in place longer term arrangements for the children. You should formalise these arrangements by court orders – which are usually arranged by the consent of both parties. In this way, you and the children can have security and certainty into the future. The sorts of arrangements that can be formalised in this way include:

- Who the children will primarily live with
- Who the children will spend time with and when
- How decisions about the children are made, and by whom, on issues such as schooling, religion, health, surname and travel
- Practical arrangements such as: collecting and returning the children, change-over points and sleeping arrangements. In appropriate matters they can also include restrictions on the consumption of alcohol or the supervision of a parent's time with a child.



If you can't agree on parenting matters

Often parents can't agree about the arrangements for the children. Whatever you do, you shouldn't involve the children in these disputes. The damage that this will cause them is not worth any minor "victory" that you might feel you achieve.

If a dispute cannot be resolved between the parties themselves, it is compulsory in most instances to attempt mediation (called "Family Dispute Resolution") before a parent can take the matter to a Court. CMC Family Lawyers can prepare you for this mediation and can assist you to arrange it so as to avoid lengthy delays. Often we can negotiate the settlement of parenting disputes before any mediation is needed.

The Court process is the last resort. In a Court the Judge becomes the "parent" and you lose control over decisions for your children. Everything you do and say before and during the Court process is "under the microscope". If you wouldn't want a Judge to read an SMS or email (or a posting on social media) don't send it. At CMC we will work with you to avoid mistakes along the way, to try to resolve the dispute if possible, to consider all available options, or to present your case in the strongest possible way if Court is the only option.

Still a parent

Divorce is the administrative process that ends a legal marriage. Parenting is a lifelong role. Make sure you don't lose it.



Property

Get legal advice – knowledge is power

The asset pool, contributions and relevant future issues must be identified and assessed before any action in regards to property settlement can be taken.

There are then a number of options available to parties, including:

1) FACE-TO-FACE NEGOTIATIONS

Where the estranged parties negotiate directly with one another.

PROS

- Often a speedy resolution
- Minimal expense

CONS

- Often unequal bargaining power between parties
- Fear and intimidation
- Emotions can cloud realistic expectations
- Legal ignorance or misinformation can unfairly limit one party's outcomes

2) NEGOTIATION VIA A LAWYER

Where a qualified lawyer negotiates on the party's behalf.

PROS

- Advice is based on knowledge of the law and each party's rights and entitlements
- No emotional manipulation or intimidation is possible
- Time to consider the options and get advice before responding
- Awareness of tactics and issues to avoid/manage
- Strengthens your bargaining position
- Having experienced negotiation skills and a legal knowledge guides the best direction
- Someone else is taking the responsibility and pressure

CONS

- Legal fees – although they are usually less than expected

3) COURT PROCEEDINGS

Appropriate when all attempts at negotiation have been unsuccessful or in urgent situations.

PROS

- Achieves an end to the matter
- Can force a party to take the separation seriously for the first time and to start to negotiate
- Parties have court assisted settlement conferences and can resolve the matter at any stage by agreement

CONS

- Can be expensive and lengthy
- Can result in a stranger making a decision about your life.

Court Proceedings

Court proceedings are urgently required when:

- A party occupying the home refuses to meet mortgage and other commitments.
- A party is occupying the home rent and mortgage free and is refusing to join in negotiations.
- A party is disposing of assets without consent.

Consent orders

Consent orders allow parties to settle their own issues rather than have the court impose them. They can enable substantial savings on stamp duty, valuation fees and real estate costs when a party 'buys out' the other from real estate.

Consent orders pave the way for a civil relationship between parties in the future, which is especially vital when children are involved.

Maintenance

Spousal Maintenance

This is a little known area of family law that doesn't arise in all cases.

Whether parties were married or de facto (including same sex) the Family Law Act, 1975, enables spousal maintenance orders to be made. This usually applies in situations where one party has a high income and the other has a very low income or none at all. These orders provide for:

- A payment to the spouse – usually weekly
- The payment to continue for a specified period
- This payment to be in addition to any child support obligations

There are time limits within which you need to apply for spousal maintenance but the closer to separation it is the better the chances of an order being made.

Child Support

- It is advisable to apply to the Child Support Agency (the "CSA") for an "assessment" of child support as soon after separating as you can. You can elect to have the CSA collect it for you or you can arrange payment between yourselves. There should always be a record/receipt kept for any payments made directly.
- It is possible to have the basic assessment varied in certain limited circumstances – for example to take into account private school fees. In this case it is very important that both parents agreed to the private schooling.
- CMC Family Lawyers can assist in negotiating and preparing private agreements – called Binding Child Support Agreements.

Visit our Frequently Asked Questions page

at www.cmcox.com.au for more information about your circumstances, or call our team on 02 4651 4800.



About CMC Family Law

CMC Family Law is the specialist Family Law division of Caldwell Martin Cox. With a number of Family Lawyers headed by Accredited Specialist in Family Law, Bill McGookin, CMC Family Law operates from three locations and services clients across a broad region.

Our Family Law team offers clients the choice of male or female solicitors – all with solid Family Law experience.

CMC Family Law can assist in all aspects of Family Law, including property division, divorce, parenting issues, de facto relationships, pre-nuptial agreements, child support and spousal payments.



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