

Family Law

Specialised family law services
throughout New South Wales



Turner
Freeman

Lawyers

GREAT PEOPLE. GREAT RESULTS. GREAT VALUE.

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Ring our toll free number to be connected to your nearest Turner Freeman office **1800 088 677**

Introduction

Turner Freeman provides a comprehensive range of family law advice and assistance, whether you are married or in a de facto relationship, or considering either, including a same sex relationship. Or, you may not have been in a relationship at all but you may require legal advice or assistance, for example because you have a child from a casual affair.

We will assist you with

- Personal consultations whenever required, but be available electronically if you are unable to see us in person;
- Completing all forms and applications and evidence on your behalf, when required;
- Drafting all agreements negotiated by you and on your behalf;
- Liaising with everyone important to your case, whether it be your partner and their lawyers, doctors and other experts, barristers, counsellors, mediators, witnesses, and the Courts;
- Meeting all procedural requirements and deadlines;
- Appearing with you when required, in mediation, with other lawyers and experts and at Court.

Range of Services

Turner Freeman can assist you with all of your legal issues, including

- Dispute resolution options, as an alternative to going to Court, including counselling, mediation and arbitration;
- Children's issues, including decision about where they will live, their contact and communication with their parents and other important people in their lives such as grandparents and other extended family, and other specific issues about their upbringing and development such as their education, health, religion, sport and other activities, etc;
- Court orders and parenting plans for your children;
- Relocation of children;
- Enforcement of parenting orders, including locating and recovering children;
- Child support;

- Dealing with family violence and child abuse;
- Property settlements, including arrangements required to be made concerning real estate, investment properties, shareholdings, trusts, companies, partnerships, businesses, farms and superannuation;
- Financial Agreements; before you marry or live together, or after you get married or start to live together, and after you have separated;
- Enforcement of Financial Agreements;
- Spouse maintenance;
- Divorce and separation.

Because Turner Freeman is a “full service law firm”, with over 50 lawyers nationally advising and acting in all areas of legal practice, we can advise and assist you on all related issues that may arise. These can include:

- Preparation of a Will;
- Administration of and claims upon, an Estate;
- Financial and estate planning;
- Conveyancing;
- Company, business and partnership, and other commercial disputes;
- Bankruptcy and other arrangements with creditors;
- Debt recovery;
- Employment claims;
- Criminal charges and proceedings.

How does it work?

CHILDREN

■ Family dispute resolution

In nearly all cases, proceedings cannot be commenced in a Court involving children unless you first participate in family dispute resolution. This is the process of mediation to help separating parents settle their differences concerning their children.

If you agree in this way, as most separating parents do, then you can either formalize your agreement through Consent Orders made by a Court, or you can have an informal agreement such as a parenting plan (which is not enforceable by a Court if it is breached).

Turner Freeman has one of the few family law specialists in New South Wales who is also registered by the Federal Government to provide Family Dispute Resolution Mediation services, in Les Stubbs. In addition, Les is a qualified member for all aspects of legal dispute, whether involving children property, maintenance of any other issues.



Family dispute resolution, or mediation, is a non-court based process aimed at assisting parents to come to an agreement about how they will co-parent their children in the future

The Court must always hold the best interests of the child as the most important consideration



■ Shared parental responsibility

It is important to understand that unless there is significant violence, abuse or neglect from which a child needs to be protected, the Court must apply a presumption that it is in a child's best interests for the parents to have equal shared parental responsibility.

“Parental responsibility” means all of the duties and responsibilities that parents have in relation to their children. When the Family Law Act refers to “equal shared parental responsibility”, it's referring to two parents sharing these responsibilities equally between them, so that both parents decide significant, long term issues such as schooling, living arrangements, name changes and medical treatment.

If the Court decides that it will apply the presumption of equal shared parental responsibility, it must consider whether spending equal time with both parents is in the child's best interests. If the Court decides that an order for equal time is not in the child's best interests and reasonably practicable, the Family Law Act says that it must then consider whether making an order for substantial and significant time to be spent with both parents is both in the child's best interests and reasonably practicable.

Substantial and significant time has a special meaning in the Family Law Act: it involves a child spending time with both parents across the range of weekends, weekdays and holidays, so that each parent gets to be involved in the child's daily routine and on occasions that are significant to the child and each parent, such as birthdays, mother's day and father's day.

In deciding these parenting issues, the Family Law Act sets out the following important principles:

- Children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together;
- Children have a right to spend time on a regular basis with and communicate on a regular a basis with, both their parents and other



Children have the right to know and be cared for by both their parents

people significant to their care, welfare and development (such as grandparents and other relatives);

- Parents jointly share duties and responsibilities concerning the care, welfare and development of their children;
- Parents should agree about the future parenting of their children;
- Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

In deciding parenting matters, the Court must always hold the best interests of the child as the most important consideration.

So how does the Court work out what those best interests might be? This is a two-stage process. The primary consideration of the Court is the right of a child to a meaningful relationship with both parents. Against this, the Court must also balance the need to protect children from violence, abuse and neglect. In balancing these primary considerations, the Court also examines a number of other issues, which though important, are not given anything like the same weight as the primary consideration. These other considerations include, among other things:

- Any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the child's views;
- The nature of the relationship of the child with:
 - Each of the child's parents; and
 - Other persons (including any grandparent or other relative of the child);
- The willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent;
- The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - Either of his or her parents; or
 - Any other child or other person (including any grandparent or other relative of the child), with whom he or she has been living;



All people, including children, have the right to live free from threatened and actual physical, emotional and economic abuse

- The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child’s right to maintain personal relations and direct contact with both parents on a regular basis;
- The capacity of:
 - Each of the child’s parents; and
 - Any other person (including any grandparent or other relative of the child);

To provide for the needs of the child, including emotional and intellectual needs;

- The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child’s parents, and any other characteristics of the child that the court thinks are relevant;
- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child’s parents;
- Any family violence involving the child or a member of the child’s family;
- Any other fact or circumstance that the court thinks is relevant.

At each step of the way in resolving a dispute between parents, the court will measure the alternatives against this “best interests of the child” principle.

If there is sufficient urgency in your case (for instance because your child is at risk of violence or abuse, or because the other parent has abducted



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the child), the Court will accept an application even though you have not attended family dispute resolution. If the other parent has not returned your child, it is possible to seek a recovery order which will direct the Federal Police to collect the child. If you are concerned that the other parent will take your child overseas, it is possible to have the child placed on the Federal Police watch list, which will prevent the child from passing through any international seaport or airport in Australia.

■ Child support

Parents have a responsibility to financially support their children in priority to every other obligation they may have. The Child Support Agency is the government department charged with ensuring that parents understand and meet their obligations to support their children after separation, and will assess the parents' child support liability and if necessary recover child support from a parent. If you don't agree with a child support assessment, there are processes for making a challenge within the Child Support Agency, through the Social Security Appeals Tribunal or through the Family Court.

In resolving a dispute between parents, the Court will measure the alternatives against this 'best interests of the child' principle



PROPERTY SETTLEMENT

If you cannot agree on a property settlement with your former partner, then you must commence any proceedings in Court seeking orders within either 1 year of you becoming divorced, or within 2 years of you separating from your de facto partner if you were not married.

The Court allows a four-step process in resolving property disputes. These steps are as follows:

- The Court firstly identifies and values the net property (including superannuation) of the parties (in other words, all property of the parties after debts have been taken into account);
- The Court then considers the contributions that each party has made to that property;
- The Court next examines the parties' present and future needs; and
- Finally, the Court is only permitted to make an order that is just and equitable in all the circumstances.

■ Contributions

In examining contributions, the court looks at three things;

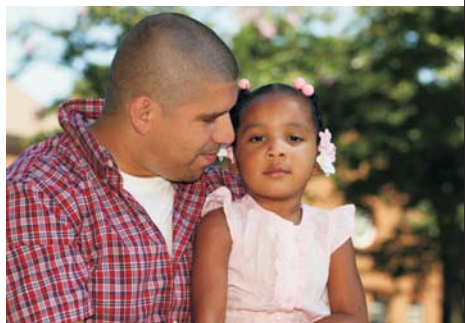
- The direct and indirect financial contributions the parties have made to the acquisition; conservation or improvement of the property;
- The direct and indirect non-financial contributions the parties have made to the acquisition, conservation or improvement of the property; and
- The contributions made to the welfare of the family including in the capacity of homemaker or parent.

■ Present and future needs

As well as contributions, the Court looks at a whole range of factors set out in s.75(2) of the Family Law Act that focus on the parties' present and future needs. Issues such as health, carer responsibilities, relative earning capacity and so on are relevant here. Some of the more significant s75(2) factors are as follows:

- The age and state of health of each of the parties;
- The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

- Whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;
- The responsibilities of either party to support themselves and anyone else, including children;
- The eligibility of either party for a pension, allowance or benefit;
- Where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable;
- The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself;
- The effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant;
- The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- The duration of the relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- The need to protect a party who wishes to continue that party's role as a parent;
- If either party is cohabiting with another person – the financial circumstances relating to the cohabitation;
- Any child support that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage;
- Any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.



Parents have a responsibility to financially support their children in priority to every other obligation they may have

■ Disclosure

There are stringent rules that apply to the disclosure of parties' financial affairs, and which generally require that parties make full and frank disclosure of all of their financial interests before proceedings are commenced. The Court expects that parties will seriously embark on this process of sharing complete and accurate financial information at an early stage. If the Court believes that a party to the family law proceedings has concealed assets or income, the court can impose harsh penalties, including making orders that give the lion's share of the property that the Court knows about to the other party.

■ Spouse maintenance

Sometimes one of the parties to a relationship needs assistance with living and other expenses after separation. The Family Law Act provides for the payment of spousal maintenance where one party has the required level of need and the other party has sufficient means to pay. The availability of spousal maintenance is in addition to the availability of child support payments, so it is possible that a party with sufficient means may be required to pay both child support and spousal maintenance to their former partner.

Spousal maintenance orders tend to be relatively short term, and are often focussed on assisting the recipient to retrain so that they can re-enter the workforce.

■ Urgency

Just as the Court has powers to deal with urgent issues around children, it also has extensive powers to make urgent orders in relation to property, particularly where there is a risk that property of the relationship might be sold, concealed or dissipated. These powers include:

- The power to stop a party from disposing or otherwise dealing with property;
- The power to compel one party to continue to make mortgage payments;
- The power to compel the sale of a property (for example, if one party will not cooperate with a sale, but also refuses to pay the mortgage, thus placing the parties at risk of a mortgage repossession);
- The power to exclude one party from the home, particularly where there is a risk of family violence;

- The power to compel one party to pay urgent spousal maintenance to the other.

Quite apart from these Court-based remedies, it is also possible for a party who is concerned that real estate might be disposed of to lodge a caveat preventing the sale of the property. Because caveats do not have the status of Court orders, the person lodging a caveat can be compelled to remove it by an administrative process allowed for by the Department of Lands. Nevertheless, a caveat can provide some useful breathing space while you consider whether or not to seek the assistance of the Court.

■ Financial Agreements

If you plan to marry or live with someone in a regular or “serious” relationship, then you should consider how your property will be divided if you separate in the future. It is not pessimistic to think that your relationship or marriage may not last, any more than it is pessimistic to consider that your car may be damaged or stolen, or your home may be burgled – it is simply “insurance”.

A Financial Agreement sets out what will happen to your finances if you separate in the future, whether you are already married, or get married, or not, and even if you are in a same sex relationship.

Such an Agreement can commonly deal with issues such as

- Dividing or transferring real estate, investment properties, shares, bank accounts, jewellery, furniture, etc;
- Splitting superannuation funds;
- Quarantining or dividing inheritances, gifts, or other lump sum amounts;
- Quarantining or dividing an interest in a trust fund;
- Spouse maintenance;
- Determining the ownership, management and control of a business or company;

A Financial Agreement can therefore be important to protect

- Assets which you already own;



The Court expects that parties will seriously embark on this process of sharing complete and accurate financial information at an early stage

- Assets which you expect to receive later, such as an inheritance, gifts, compensation monies, etc;
- Interests in a business or a company;
- Your income;
- Exposure to debts;
- Your children and other people who are financially dependent upon you.

■ Divorce

If you are married, you can end your marriage by obtaining a divorce from Court, but only after you have been separated from your spouse for a continuous period of at least 12 months. Applying for and obtaining a divorce is usually a relatively simple procedure. However, there may sometimes be complications such as whether you have physically separated or have continued to live in the same home during your period of separation, whether you have reconciled during the 12 month period of separation, and whether arrangements have yet been made for the physical and financial care of your children.

Alternatively you may wish to oppose a divorce being made, on one of the bases.

If so, you may require legal assistance to prepare and file your documents correctly, and to attend at Court with you, to ensure that you will obtain your divorce.

■ A new Will

If you have separated, and especially if you have divorced, you should seriously consider making a new Will. It is most likely that you will have then changed your mind as to whom and how your property is to be distributed if you die. You should ensure that you have a valid Will at all times, which properly and clearly expresses your wishes for what is to happen to your property if you die.

Contact us

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Les Stubbs is the head of the family law practice at Turner Freeman. He is an Accredited Specialist in Family Law and was one of the first solicitors ever to be accredited in NSW. He has practised extensively in the area for over 25 years.

Les is viewed as one of the most experienced and senior family lawyers in Sydney, who excels in complex and “tough” cases. Les provides honest, accurate advice to solve relationship problems. His practice deals with all matters in relation to the breakdown or formation of a marriage or relationship.

He advises clients on a full range of family related matters:

- Divorce
- Defacto relationships
- Dispute resolution
- Domestic violence
- Child custody disputes
- Litigation and Court appearances
- Child support and parenting issues
- Financial support
- Property matters
- Superannuation

In cases where problems arise related to any family matters, Les is experienced and effective in using the most appropriate alternative dispute resolution techniques and negotiating settlements. He specialises in family litigation and has a long record of success in some of the most challenging family problems. Les is also a qualified mediator, who can assist in resolving disputes in a formal or informal mediation.

Les’ vast experience in family law, property, conveyancing and financial matters, enable him to help his clients find viable, cost effective solutions to their problems.

Professional & association memberships

- Accredited Specialist in Family Law with the Law Society of NSW
- Member of the Family Law Section of the Law Council of Australia
- Member of the Law Society for New South Wales
- Qualified Mediator
- Registered Family Dispute Resolution Practitioner, by the Australian Government

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