

PROVIDING YOUR

10

CPD UNITS

10TH ANNUAL MELBOURNE FAMILY LAW CONFERENCE

The Value of Discretionary Trust Entitlements in Property Settlements

BFA Protection Strategies for New Relationships

Superannuation and Relationship Breakdown: Cracking Open the Nest Egg

Parenting Arrangements: A New Pathway or Stuck on the Same Old Road?

Has Varying Final Parenting Orders become a lot more Difficult?

Family Law and the Relocation of Children

Child Support Departures: Has the bar been set too High?

Disclosure and Publication Challenges under the new Family Law Regime

When Coercive Control meets Family Law

The National Contravention List: Its Impact and Outcomes

PROFESSIONAL SKILLS: Hand in Hand:

The Evidence Act and Family Law Proceedings

PRACTICE MANAGEMENT: Dealing with Data,

Document Destruction and Data Breaches in an Increasingly Cyber World

ETHICS: How To Effectively (and Ethically) Communicate with Clients

A Two-day Conference

Thursday 6 & Friday 7 March 2025

Crown Melbourne or Online

Feedback from last year's conference:

- “ I found all of the presentations to be of excellent quality - the substance of the presentations was comprehensive useful to everyday family law practice. I appreciated the option of attending the conference electronically. Overall, the conference is great value for money, covering all CPD requirements for the year.”
- “ I felt the topics were relevant and interesting. The speakers were very engaging and overall, I felt that this was one of the best conferences I have attended in a while.”
- “ Always a great conference, interesting topics rather than the usual “case update” etc that one tends to get at other conferences.”
- “ Thank you for such detailed and relevant topics and each speaker's detailed papers and relevant case references.”



The Professional Development Specialists

DAY 1: THURSDAY 6 MARCH 2025

CHAIR DAY 1: CATHERINE DEVINE, BARRISTER, MEDIATOR, ARBITRATOR, FOLEY'S LIST, MELBOURNE, VIC

MORNING THEME: DIVING INTO THE ASSET POOL AND FINANCIAL MATTERS

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: A Moveable Feast: The Value of Discretionary Trust Entitlements in Family Law Property Settlements

Trusts are increasingly a target for consideration in family law property claims. The nature and value of a beneficiary's entitlement in a discretionary trust has been the subject of a number of decisions since *Kennon & Spry* and still remains in contention. This session will take a deep dive into the issues surrounding the treatment of discretionary trusts in family law, including:

- Revisiting the discretionary trust structures and legal issues
- *Kennon & Spry* [2008] HCA 56 as the starting point of trust consideration under s79
- The impact of recent decisions including *Rigby & Kingston* (No 4) [2021] FamCA 501 and *Woodcock & Woodcock* (No 2) [2022] FedFCFamC1F 173 and *Owies v JJE Nominees Pty Ltd* [2022] VSCA 142
- Current status of the *Woodcock* case and expert evidence concerning the valuation of beneficiary's right to due consideration under a discretionary trust
- Issues in joining third parties to litigation
- Strategies for proactive protection of trust property and rights.

Speaker: Olivia Grobtuch, Partner, Kennedy Partners, Melbourne, Vic

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Everlasting Love? BFA Protection Strategies for New Relationships

Family law practitioners have traditionally been sought out for the bad endings rather than the happy beginnings, but with the rise of serial monogamy and later in life relationships where the parties arrive with assets in hand, there is a shifting focus on proactive protection. This session will examine the role binding financial agreements can play at the start of new relationships, in order to prevent messy litigation once a relationship runs its course. It covers:

- Drafting strategies – what's in and what's out?
- Determining content – property, financial issues, liabilities, proposed division, spousal maintenance claims, children and pets
- Incorporating additional complexities, such as family businesses, and blended families
- When financial agreements may be vulnerable to attack on account of content
- Are binding financial agreements worth the paper they are written on? What are the courts telling us?
- Making sure the stars align in BFAs and wills

Speaker: Cathie Blanchfield, Principal, Blanchfield Nicholls, Sydney, NSW

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

11.25am - 12.10pm

Session 3: Superannuation and Relationship Breakdown: Cracking Open the Nest Egg

Superannuation is often one of the most valuable assets held by each party, and comes with its unique challenges and complexity when it comes time to dividing up the asset pool. This session will provide a guide to some of the more problematic issues when it comes to dealing with superannuation, including:

- Asset valuations in SMSFs – tips and traps to consider
- Should the SMSF be split or members remain with separate accounts? What if there are multiple members of a fund?
- Warning signs to consider whether an SMSF is non-compliant
- Options for recording agreement over super splitting including consent orders and binding financial agreements
- Recent developments in superannuation law and taxation of fund property
- Spotlight on CGT issues the parties will need to navigate
- Practical case studies

Speaker: Peter Crump, Senior Consultant, Private Wealth, BDO, Adelaide, SA

12.10 - 12.20pm Panel Comments and Questions

DAY 1: THURSDAY 6 MARCH 2025

AFTERNOON THEME: PARENTING ARRANGEMENTS AND FAMILY VIOLENCE

12.20 - 1.05pm

Session 4: Family Law Parenting Arrangements: New Pathway or Stuck on the Same Old Road?

The significant changes to the Family Law Act have brought into sharp focus the best interests of the children and have removed the presumption of shared parental responsibility. This session will examine recent parenting cases under the new laws and provide guidance to practitioners on the impact of the changes and what the decisions tell us about the application of the new tests, including:

- Are there any discernible trends?
- Strategies for presenting evidence as to “best interests”
- Does the approach to litigation need to be reconsidered?
- How have the processes changed? Do family reports need to be updated? Are family report writers making different recommendations?
- A guide to the way forward

Speaker: Jacky Campbell, Partner, Accredited Family Law Specialist, Forte Family Lawyers, Melbourne, Vic

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

2.15 - 3.00pm

Session 5: Has Varying Final Parenting Orders become a lot more Difficult?

The addition of a second limb to the test in *Rice v Asplund* [1979] FL90-725 adds a new challenge to applicants wishing to amend final parenting orders. This session will explore the new legislation with a view to determining how the outcomes for children and parents may change going forward, including:

- A re-examination of the *Rice v Asplund* test and the background to its codification
- Why the change?
- The new second limb “best interests” requirement and its application
- Will the change make it more difficult to bring fresh proceedings?
- What involvement will the children have in the process?
- Even where both parents consent to changes to their final parenting orders, will both limbs need to be satisfied?
- Does the previous case law still provide a precedent to application of the test?
- Applying for a variation of orders made prior to the amendments removing the presumption of shared parental responsibility – how to apply the amendments
- What recent cases tell us

Speaker: Adam Cooper, Principal, Cooper Family Law, Spring Hill, Qld

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Coercive Control and the New Family Law Amendment Bill: What Family Lawyers Need to Know

Domestic violence comes in many forms, including the growing recognition of coercive control. This session will explore the nature of coercive control, the impact of the new Family Law Amendment Bill 2024, and the role family law practitioners need to play in its identification and relevance to their clients’ respective family law dispute, including:

- The origin and meaning of “coercive control” and identifying relevant behaviours
- State legislation and coercive control – definitions and offences
- How does the Family Law Act take into account of behaviour which can be described as coercive control?
- A discussion of indicative behaviours and examples, including the cases of *Hannah Clark* and *Preethi Reddy*
- Is withholding a child from seeing the other parent coercive control? *Carter & Wilson* [2023] FedCFamC1A 9
- The intersection of family law and coercive control and the obligations of legal practitioners
- How the courts are dealing with coercive control, including The Lighthouse Project
- The role of the National Principles to Address Coercive Control in Family and Domestic Violence (Commonwealth) and potential federal and State legislative reforms
- The impact of coercive control in relation to property settlements as a result of recent reforms through the Family Law Amendment Bill 2024

Speaker: Stephen Page, Family Law Accredited Specialist; 2023 Queensland Law Society President’s Medal Recipient, Director, Page Provan, Brisbane, Qld

3.55 - 4.05pm Panel Comments and Questions

DAY 2: FRIDAY 7 MARCH 2025

CHAIR DAY 2: GERRY HOLMES, BARRISTER, ACCREDITED MEDIATOR AND ARBITRATOR, HOLMES LIST, MELBOURNE, VIC

MORNING THEME: FAMILY LAW IN THE COURTROOM

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 7: Loose Lips Sink Ships: Disclosure and Publication Challenges Under the New Family Law Regime

The recent amendments to the Family Law Act will have a significant impact on the disclosure and use of information in disputes and proceedings, and not necessarily for the better. This session provides a deep dive into the new provisions and how they will affect all aspects of a practitioner's work, including:

- The ALRC recommendations and background to the new provisions
- What constitutes a "communication" and when is it prohibited?
- Exclusions and limitations in the new provisions
- How will contravention be enforced?
- Details of the enhanced information sharing scheme and the new national framework
- The scope, safeguards and exclusions of the new orders and restrictions on issuing of subpoenas
- The practical implications of the new process – for better or for worse?
- Tips and traps for practitioner compliance
- What should you be telling your client?

Speaker: Barry Berger, Principal, AIFLAM Accredited Mediator and Arbitrator, Collaborative Lawyer, Accredited Family Law Specialist, dignity.edr ffl dignity.legal, Melbourne, Vic

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 8: Up, Up and Away: Family Law and the Relocation of Children

The movement of children, both domestically and internationally, poses significant challenges when opposed or undertaken without the consent of a parent. This session will explore the law, legal considerations and application process in cases involving the relocation of children, and how these processes have changed in light of recent amendments. It covers:

- The perils and pitfalls of applications for relocation
- How to apply for a location order or a recovery order
- Applications for return under the Hague convention and otherwise
- The impact of risk on judicial determinations
- Expected evidentiary changes following the recent parenting amendments
- Criminal consequences of abduction and breach of orders
- Dealing with international jurisdictions, conventions and authorities
- Recent cases and examples – how are matters being decided differently following recent legislative reforms?

Speaker: The Hon. Justice Suzanne Christie, Federal Circuit and Family Court of Australia, Sydney

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 7 MARCH 2025

11.15 - 12.00pm

Session 9: The National Contravention List: Its Impact and Outcomes

The introduction of the National Contravention List was a response to the increasing non-compliance with both parenting and financial orders. Several years on, has this new process led to better outcomes for families? This session will examine the operation and outcomes of the NCL through a study of cases and examples, including:

- The key objectives on establishment
- The pro's and con's of the process
- What has been the impact of the NCL rules on the bringing of contravention applications?
- Are instances of serious non-compliance being appropriately dealt with?
- What constitutes a reasonable excuse?
- Are threatened costs orders modifying lawyer behaviour?
- Are the remedies and orders of the Court achieving the desired practical outcomes for families?
- Are contravention applications the best way to remedy ongoing compliance issues or are there more effective and less costly alternatives?

Speaker: Senior Judicial Registrar Ann-Maree McDiarmid, Federal Circuit and Family Court of Australia, Brisbane, Qld

12.00am - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: 3 COMPULSORY CPD TOPICS

1.10 - 2.00pm

Session 10: Professional skills

Hand in Hand: The Evidence Act and Family Law Proceedings

The laws of evidence can be complex, and their application to family law matters can sometimes provide challenges to practitioners seeking to argue their client's case in a detailed and personal manner. This session will examine some of the key evidentiary issues in family law and provide a best practice guide to practitioners in preparing and submitting evidence, including:

- The application of the Evidence Act to family law disputes
- Conflicting provisions and how they are managed
- The rules of evidence for child-related proceedings
- Legal professional privilege and waiver issues – revisiting Strahan
- The use of secretly recorded evidence and the court's discretion
- Self-incriminating evidence in family law and the use of s128 certificates
- Social media posts as evidence
- Cases and examples

Speaker: Adrian Stone, Principal, Gold Stone Family Lawyers, Malvern, Vic

2.00 - 2.10pm Panel Comments and Questions

DAY 2: FRIDAY 7 MARCH 2025

2.10 - 3.00pm

Session 11: *Practice management & business skills*

Seek and Destroy: Dealing with Data, Document Destruction and Data Breaches in an Increasingly Cyber World

Up until recently, it was considered prudent for a law firm to retain a file (physically and electronically) where there was doubt as to whether it could (or should) be destroyed. This all changed with the data breach amendments to the Privacy Act and the string of high-profile data breaches that have followed in recent years including Medibank, HWLE Ebsworth, and Ticketmaster. It is clear that in this increasingly cyber-world, the retention of electronic data of itself increases risk for family lawyers. Taking a practice management perspective, this session shall:

- Revisit legal obligations to retain information and documents and how these may be discharged safely with regard to privacy and data breach obligations - how to identify what information you have and understand what must be retained (and if so, how to do safely)
- Discuss risk minimisation strategies for preventing data breaches, including destruction of data as part of a risk reduction strategy and role of personal data audits
- Consider what a modern approach to document review, culling and destruction practices and procedures looks like in an increasingly electronic world for family lawyers, with ever increasing volumes of data and information
- Provide a best practice guide to destroying physical and electronic data - how is electronic data destroyed, what methods are available, when can data still be recovered and what obligations does the firm have to verify destruction of electronic documents outsourced to IT providers
- Examine the issue of data and document ownership with electronic files - what belongs to the firm vs the client? How do liens work when dealing with easily copied electronic documents or information? What if a client requests their file? Or a copy of the file to facilitate an urgent transaction? When might withholding data give rise to a claim?
- Look at the steps for dealing with a data breach - what tools should family lawyers have in your arsenal, what does a best practice response look like, what are the minimum expectations and examples of more proactive/novel approaches

3.00 – 3.10pm Panel Comments and Questions

3.10 – 3.30pm Networking Break and Afternoon Tea

3.30 – 4.20pm

Session 12: *Ethics*

Talk To Me: How To Effectively (and Ethically) Communicate with Clients

The most effective risk management strategy for a family lawyer is having a good, trusting, working relationship with their clients. Communication is absolute key to establishing such a relationship. This session shall look at the skills involved with good client communication and how this assists to discharge the ethical obligations a lawyer has to their client and to others. Specifically, this session shall:

- Summarise the ethical duties and obligations a lawyer has which may be breached through poor communication, including from lapses into informality
- Look at recent case studies which have attracted criticism of the courts and regulators and workshop how improved communication practices could have prevented these
- Consider the different reasons for communication, the level of formality required in certain situations and how to ensure all staff maintain appropriate ethical standards when communicating to court and on behalf of the firm
- Look at the practical issues and risks associated with the use by lawyers or firm of messaging apps

Speaker: Evelyn Young, Principal, AccS(Fam), Lighthouse Family Lawyers, Melbourne, Vic

4.20 - 4.30pm Panel Comments and Questions

4.30pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days are included for delegates attending the face to face event.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers: 10 CPD units/points

(7 x substantive law, 1 x ethics, 1 x professional skills and 1 x practice management & business skills).

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Crown Towers Melbourne

8 Whiteman Street, Southbank

Discount Delegate Accommodation at Crown

Crown is offering 10% to 15% discount for conference delegates. You can book directly using the Crown Direct website.

<https://www.crownhotels.com.au/crown-direct/login>

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

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 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
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