



STEPS TO RESOLVING MOST FAMILY DISPUTES AND THE FAMILY COURT PROCESS

1. Negotiate a Settlement

This can be by:

- Counselling
- Mediation - Via Legal Aid Queensland or Private
- Between solicitors or a third party or directly with your spouse
- Arbitration

Over 50% of matters settle before people go to court.

Is the matter settled? Yes - go to step 8

No - go to step 2 or give up

2. Going to Court

Documents to be prepared include an Application and supporting Affidavits. Once these are filed in a **children's matter** you will have to go to **compulsory mediation**. You must also attend a **Family Court Information Session**.

In children's matters an *Interim Application* is normally filed and sometimes also in property matters too. This often leads to a quicker but more expensive result. The delay between filing the Application and the first appearance in Court can be between 2 to 8 weeks.

If an *Interim Application* is filed, some different principles may need to be considered by the Court (as opposed to the principles used on a final hearing).

Is the matter settled? Yes - go to step 8

No - go to step 3

3. First appearance in Court

Over 50% of matters settle by the first appearance in court.

You are required to appear. This will either be at an **Interim Hearing** (if you are seeking Interim Orders) or a **Case Conference** & Information Session and/or a **Directions Hearing** (if you are just seeking Final Orders).

An **Interim Hearing** is where a Judge, Judicial Registrar or Registrar makes orders "*for the interim*" i.e. until some later point and it may be until the trial.

A **Case Conference** provides you with an early opportunity to reach an agreement with the other party (your former spouse). It entails 3 stages:

Stage 1 - Assessment

In brief, the Deputy Registrar chairing the Case Conference, will firstly assess the main issues in dispute and the brief facts of the case, and where appropriate will recommend other services such as further mediation. If either or both parties are legally represented, the Solicitors will also take part in the conference. The Deputy Registrar will enquire as to whether the matter can be settled and how far the parties are apart.



Stage 2 - Negotiation

This stage involves a consideration of each party's proposal to settle the matters in dispute. The Deputy Registrar cannot give legal advice (that is what your Solicitor must do). The Deputy Registrar does not make any ruling and certainly does not force a final decision upon the parties. Agreement is only reached with the consent of all the people involved in the Conference.

Stage 3 - Directions Hearing

If the matter cannot be settled, this stage is a formal process setting the matter down in the Court listings and making procedural orders called **directions**. Many matters often settle before or at a Directions Hearing. Usually in property matters, the *directions* will include obtaining a valuation or appraisal of property, or each party showing the other side some important documents (this is called **discovery**) and the holding of a mediation conference (called a **Conciliation Conference**). In children's matters there will usually be a *direction* that the parties attend mediation with a counsellor and that a *Pre-Trial Conference* be held. We are required by the Court Rules to advise you of the costs incurred by you up to this stage and to give a copy to the other lawyers (and to disclose the source of the money that you have spent on legal fees.

Is the matter settled? Yes - go to step 8

No - go to step 4 or 5

4. Property Matters

The next stage is a Conciliation Conference. You are required to attend.

This is a conference to see if the matter can be settled and is presided over by a Deputy Registrar or another lawyer who will attempt to narrow the issues between the parties and, if there is an outstanding dispute, often give the parties his or her view as to the possible outcome. If they have not settled before this, most property matters settle at this stage.

If you have not settled at the conciliation conference, a compulsory offer may have to be made.

5. Children's Matters

The next stage is more Family Court mediation and/or another court appearance if a lawyer has been appointed to represent your children (a Children's Representative).

Is the matter settled? Yes - go to step 8

No - go to step 6



7. Trial

Only 3-5% of matters going to Court need a Judge to decide the result.

The next stage is a Trial before a Judge, Federal Magistrate (or Judicial Registrar). Usually you will be represented by us as well as an experienced family law barrister (briefed by us). Evidence will be by Affidavit with witnesses to be cross-examined.

We are to give you another costs advice at this stage.

At the conclusion of the trial, the matter is concluded by the handing down of the judgment (which details the judge's findings and reasons) and final orders are made.

Sometimes the trial judge will reserve handing down judgment for several weeks (depending on their workload and the complexity of your case).

Go to step 8.

8. Resolution of a Dispute

Is the dispute now resolved? Yes - see over page

No - go to step 9

A dispute may be resolved by:

- (a) A Court Order by agreement (**a Consent Order**) for all matters except some child support and child issues (generally recommended);
- (b) **Binding Financial Agreement** that is used sometimes for property matters. There are sometimes tax difficulties using these. Sometimes they should be used together with a Consent Order.
- (c) **Child Support Agreement** for child support disputes (sometimes recommended);
- (d) **Court Order** after an Interim Hearing or Final Trial;
- (e) Informal settlement or you or the other party giving up (generally not recommended);
- (f) Court Undertaking and/or Notice of Discontinuance (sometimes recommended).

9. Enforcement or Appeal

Do not assume that because the dispute has been resolved that it is at an end.

Too many times we have acted for clients who have either acted for themselves or have other solicitors acting for them where their agreement or consent orders are inadequate and need to be changed.

Sometimes the other party will not comply with the terms of the agreement or order and the terms may need to be altered. Sometimes the judge's findings appear to be incorrect and an appeal may be recommended. If not resolved, the options include going back to court, giving up or starting court proceedings (including lodging an appeal).





BENNETT CARROLL

Established in April, 1974, Bennett Carroll is well known as one of the largest law firms outside of the Brisbane CBD. Our well-balanced practice has over 30 years' experience in many areas of specialty including Commercial Law, Conveyancing, Family Law, Estates, Planning and Environment Law, Litigation and Personal Injury. We dedicate ourselves to quality work in these diverse areas and make a point of being accessible to our clients.

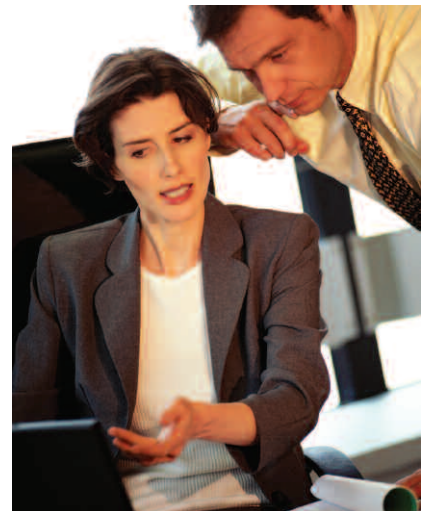
As the preferred solicitors for several National and International companies, we represent well known financiers and developers and hold a reputation for reliability that we intend to keep. Bennett Carroll prides itself on being prompt, accessible, and dealing with you in a language that you can understand; demystifying the law.

Bennett Carroll is in the process of expansion with continued focus on hands-on, up-front problem-solving.

We have offices at Upper Mt Gravatt, Stafford and Kawana.

We pride ourselves in being the market leaders in state-of-the-art technology combined with old-fashioned client service.

The solicitors in our family law section are Warren Tegg, Kate Murphy and Joanne Bennett



Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.



We can assist you with

- Commercial Law
- Business Advice
- Planning and Environment
- Conveyancing
- Litigation
- Family Law Matters
- Injury and Accident Claims
- Criminal Law
- Wills and Powers of Attorney
- Estate Planning

**Offices at Upper Mt Gravatt, Stafford and Kawana
Call us now for advice on 1300 334 566**