



## SUPERANNUATION – FAMILY LAW PROPERTY SETTLEMENT

In determining what is a just and equitable property settlement under the Family Law Act, the Court looks at the value of all property and all financial resources.

One common example of a financial resource is the superannuation entitlements of either party of the marriage.

Presently, under the Family Law Act, superannuation is not treated as property but is simply regarded as a financial resource. The Family Court has no power to divide superannuation. The way the Court treats superannuation at present is to “take it into account” when dividing the matrimonial property (which does not include superannuation but includes such items as the former matrimonial home, bank accounts, household contents and motor vehicles).

Usually in negotiations to settle family law property disputes, superannuation is taken into account by giving the non-superannuated party a greater proportion of the existing items of property.

So for example, where a husband has a large superannuation entitlement but cannot access it until he retires, the wife will more than likely receive a greater portion of the property pool. This has the effect of balancing out the difference between the superannuation entitlements and the portion of the property the wife receives.

Presently, if there is a substantial superannuation fund which is likely to be paid out within 5 years, the Family Court will sometimes make a partial property settlement order and adjourn the proceedings until the superannuation is paid out to the husband.

### Change in Law

Briefly, the new legislation (called The Family Law Legislation Amendment) will allow married couples who are separating to divide their superannuation in the same way as their other assets).

One of the powers under the new legislation is to allow the Family Court to make orders (where appropriate), to divide superannuation entitlements between the husband and the wife. This also allows for couples to agree on how superannuation entitlements will be dealt with

following any marriage breakdown. Such agreement must be put in writing in the form of either a Consent Order or a Financial Agreement.

Apart from the power to split superannuation entitlements, importantly a Court Order or Agreement reached between the parties will be binding on the Trustee of the superannuation fund(s). The Trustee will be obliged to divide the payments when they become payable pursuant to the Agreement or Court Order.

If you are contemplating separation or have actually separated but have not finalised any Family Law Property Settlement, you should take legal advice. More importantly, you should obtain legal advice on your rights under the Family Law Act regarding your property settlement entitlement and any obligations that may be placed upon you under the legislation.

We recommend that you contact **Warren Tegg** at our office for any further information in respect to property settlement and superannuation.





## 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.

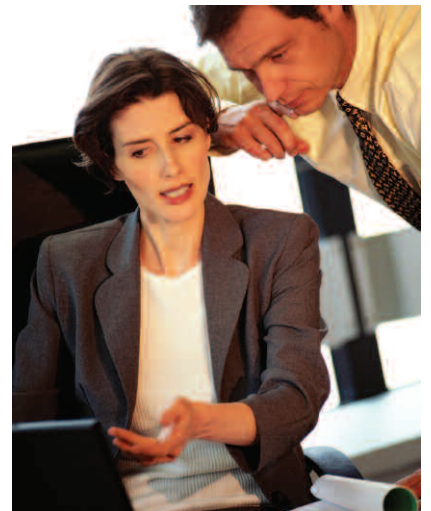
As the preferred solicitors for several National and International companies, we represent well known financiers and developers and hold a reputation for reliability that we intend to keep. Bennett Carroll prides itself on being prompt, accessible, and dealing with you in a language that you can understand;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