

GLOSSARY OF TERMS – LEGAL JARGON EXPLAINED

Add-back – term used to refer to an argument in litigation that funds or assets taken or disposed of before a final settlement are to be notionally returned to the property pool as being received by a party in a final settlement

Address for service – the address of each party to proceedings where documents can be served, or deemed served

Adjourn or Adjournment – postponing a Court event to another day

Administrative Assessment – assessment of child support obligations and entitlements upon Application by one party, carried out by the Registrar of the Child Support Agency according to the legislative scheme surrounding child support

Affidavit – the legal form used by a party or a witness to provide written and sworn (or affirmed) evidence to a Court

Aggrieved – person intended to be protected by an Application for Protection Order, and thereafter the person protected by a Temporary or Final Protection Order

Airport Watch List – Register maintained by the Australian Federal Police to ensure children are not removed from Australia against a Court Order

Airport Watch List Order – Order sought by a party (and granted by a Court) preventing the removal of children from Australia either absolutely or without authenticated consent or further Order of the Court

Appeal – the formal process of challenging a decision made by a Court

Applicant – the person who is making any Application to a Court

Application in a Case - an Application seeking interim Orders from the Court that in a matter where Court proceedings are already on foot

Arbitration - form of alternative dispute resolution where parties can have their matter determined by an independent third party, called an arbitrator

Associate - the assistant to the Judge

Barrister - legal practitioner admitted to the Bar Association in their relevant State of Territory, usually retained to provide advice on complex issues or to represent a party in Hearing

Best interests of the children - the paramount principle a Court must have regard to when making decisions with respect to children under the Family Law Act

Binding Child Support Agreement - legally binding written agreement between two parents as to the financial support of their children post separation

Binding Financial Agreement - legally binding written agreement between two parties determining their financial affairs before a marriage or de facto relationship, during a marriage or de facto relationship, or after the breakdown of a marriage or de facto relationship

Calderbank Offer - 'Calderbank' is the abbreviated name of a historic Court decision, and a Calderbank Offer is reference to a formal written offer of settlement in a financial matter that is made with a view to such offer being used in any subsequent costs arguments following final determination of the matter

Case Guardian - person appointed by Order of the Court to conduct litigation on behalf of a person suffering from a disability or other impairment such that the person is unable to properly comprehend the proceedings or is unable to provide adequate instructions for conduct of the proceedings

Caveat – registered dealing placed against the title to real property preventing further dealings in the property, usually used in the Family Law context to prevent dealings with property where only one party is on the title to that property and there is a risk of disposal without appropriate measures being put in place

Change of residence – term given to an Order made by the Family Court or Federal Circuit Court to put a child or children in to the primary care of a parent who does not, at the time of the Order being made, have primary care of the children or children

Child inclusive conference – a form of mediation that enables a child's views and wishes to be considered via representation of those from a third party professional who has consulted with the child beforehand

Child maintenance – financial support provided to a child (or that child's parent) over the age of 18, or to a step-child (or that child's parent), post separation

Child support – financial support provided from one parent to the other for the financial support of children post separation

Child Support Agency – the Government agency tasked with administering, assessing, collecting and reviewing child support

CGT – Capital Gains Tax that may be payable upon the sale of assets in a family law matter

Cohabitation – the date parties to a family law matter commenced living together

Conciliation conference – mediation facilitated by a Registrar of the Court to assist parties reach settlement of a financial matter

Conflict of interest – situation where a solicitor or other relevant person has competing interests which prevent them from fulfilling their duties

Consent Order – the general term used to refer to an agreement between two parties with respect to a property settlement and/or children’s care arrangements, once approved by the Family Court of Australia following submission of an Application for Consent Orders and Minutes of Consent

Consent without admission – phrase used in Protection Order proceedings whereby the Respondent consents to an Order being made against them but on the basis that they are not admitting guilt to the allegations put forward by the Applicant

Contravention – the breach of family law Court Orders

Contributions – what is assessed at step two of a property settlement process, being consideration of what each party has contributed to the current property pool of a party

Costs Order – a binding direction of the Court for one party to meet some or all of the other parties’ legal costs in proceedings

Court hearing – the scheduled date and time for a case to be before the Court

De facto – relationship status of two parties if not married but otherwise deemed to be living together in a relationship on a genuine domestic basis

Departure Order – a binding direction of the Court for a decision to be made with respect to child support that is different to the outcome of an Administrative Assessment

Directions – the general name given to procedural Orders made by a Court that direct parties to take certain steps in a matter

Disclosure – the process of exchanging with the other party all financial information and documents to evidence your financial circumstances, whether past or present

Duty lawyer – a solicitor at Court who provides parties with free legal advice and assistance for that Court appearance only

Enforcement Order – an Order of the Court that compels parties to comply with a previous Order or Direction of the Court

Equal Shared Parental Responsibility – the rebuttable presumption that applies in parenting matters under the Family Law Act, where both parents of a child are to make joint decisions about major long-term issues for their child

Ex-parte hearing – a Court hearing where one party has not been given notice of the proceedings and is therefore absent from the hearing (usually reserved for urgent matters)

Family Consultant – a social worker and/or psychologist who specialises in family law parenting matters and who is able to prepare a Family Report

Family Dispute Resolution – mediation with respect to parenting matters facilitated by a registered Family Dispute Resolution Practitioner, mandatory (with exceptions) before a parent is able to commence Court proceedings

Family Dispute Resolution Practitioner – a mediator with additional accreditation to facilitate family dispute resolution conferences and issue section 60I certificates

Family Law Act 1975 (Cth) – the main piece of legislation (law) in Australia that governs family law matters

Family Report – a written document prepared by a Family Consultant to provide a Court (and/or parents privately) with an assessment of, and recommendations as to, what may be in the best interest of a child or children subject of that Report

Filing – the procedure of lodging documents with the Court

Final hearing – the ultimate hearing of a Court case before a judicial office, if unable to be resolved earlier, also known as a trial

Final Order – the final Court Orders in a case that concludes the matter

Financial Statement – prescribed Court Form that must be filed in any matter seeking financial Orders

First Return Date – term given to the very first time a case is before the Court

Four step process – the general term given to the framework for determining a property settlement

Future needs – the general term given to the considerations of a parties' needs and ability to support themselves post separation

Hogan Order – 'Hogan' is the abbreviated name of a historic Court decision, and a Hogan Order refers to the decision of a Court to Order one party to provide or release funds to the other party to enable them to make payment of their legal fees for the conduct of the ongoing Court proceedings

Independent Children's Lawyer – a lawyer who is appointed by the Court to represent a child and/or children's best interests in parenting proceedings

Injunction – an Order of the Court prohibiting or restricting a party from doing an act

Initiating Application – prescribed Court Form that commences family law Court proceedings

Interim distribution – the release of funds to a party in a property settlement matter prior to the ultimate property settlement, that is considered to be an advance on the overall funds or entitlement of the receiving party

Interim Hearing – a Court hearing in proceedings prior to a final hearing, usually set for determination of an important interim matter during proceedings

Interim Order – any Order that is made by a Court during Court proceedings until a final Order is made

Judicial officer – a person appointed to hear and decide Court matters, including a Judge or Magistrate

Judgment – the decision made by the Court after all evidence has been heard

Jurisdiction – the authority that a Court and its' judicial officers are given by legislation to hear and decide matters according to the applicable laws

Just and equitable – the general phrase given to a property settlement outcome that is in line with the principles of the Family Law Act, and the fourth consideration of a Court in determining the outcome of a property settlement

Leave of the Court – permission granted by the Court, at the request of a party, for a party to do an act or proceed in a manner not ordinarily provided for by the rules of the Court

Legal Aid – Government body providing legal assistance to the community

Litigation guardian – person appointed by the Court to manage Court proceedings on behalf of another person with impaired capacity or under a disability

Magistrate – judicial officer who hear and decides cases in a Magistrates Court

Mediation – form of alternative dispute resolution facilitated by an independent third party professional who assist the parties' reach a negotiated outcome

Minutes of Consent – written document outlining the agreement reached between parties with respect to parenting and/or financial matters, subsequently filed with the Court to be made an Order of the Court

Orders – sealed and legally binding document specifying the direction and decision of the Court

Ouster – term given to an Order of the Court that removes a party from a shared property on the basis of family or domestic violence

Parental Responsibility – the responsibility of parents to make decisions as to their children’s care, welfare and development

Parenting Plan – a written document between parents that sets out the agreed parenting arrangements for their child or children, that is not filed in or approved by a Court

Party/Parties – the people (or other legal entities) that are involved in a Court case

Precedent – decisions made by a judicial officer in cases that are then referred to, applied or compared in subsequent cases

Process Server – person who can be engaged to serve Court documents on another party in proceedings

Property pool – the assets and liabilities of a relationship or marriage, whether held by the parties’ individually or jointly, and the items the subject of a family law property settlement

Protection Order – an Order granted by a Magistrates Court, following application by a party and determination by the Court, that protects the Aggrieved person from the Respondent on grounds of domestic or family violence

Recovery Order – term given to an Order made by the Family Court or Federal Circuit Court, upon application, to return a child or children to another parent’s care, in a certain location

Registrar – a lawyer of the Court who has powers delegated to them to carry out certain tasks

Registry – the area at the Court where documents are filed for cases and where the public can obtain information about the Court and its' processes (excluding legal advice)

Relocation Order – term given to an Order made by the Family Court or Federal Circuit Court, upon application, that gives permission to a party to relocate the residence of a child or children to a different location

Respondent – the person responding to any Application made to a Court, other than an Application they have made themselves, to which they are a party

Response – prescribed Court Form that is filed by a Respondent to an Application

Rules – general term given to directions that outline Court procedures and guidelines

Section 60CC – Section of the Family Law Act 1975 (Cth) that outlines the principles that a Court must have regard to when determining the best interests of a child

Service – the formal process of providing Court documents to each other party to proceedings, in accordance with the rules of the Court, after they have been filed in a case

Sole use & occupation – phrase referring to one party being granted permission to be the only party to use and occupy a premises, to the exclusion of the other party

Spousal maintenance – financial support provided by one party to a relationship or marriage to the other party following separation, should one party have a need for financial support and the other party have the capacity to provide financial support

Subpoena – a document issued by the Court, after a request is made by a party, that compels a person (or other legal entity) to produce documents and/or give evidence to the Court

Substantial and significant – phrase used to refer to care arrangements for children where the living arrangements are not equal but do allow for the children to spend time with the non-resident during the week, on weekends and during holidays, for special occasions and at times that allow involvement in the children's ordinary routine

Town Agent – professional (usually a lawyer) who represents a party at Court on a one-off basis if the party is unable to attend in person

Trial – the final hearing of a Court case

Transcript – the formal written record of all spoken evidence in all Court hearings, with the exception of uncontested divorce hearings

Trust Account – bank account held by law firms or other businesses to hold money on behalf (on 'trust') for another party

Undertaking – a promise of one party to do or not do an act, with the option for the undertaking to be provided in a prescribed Court Form and filed with Court

Valuation – expert Report provided a professional opinion on the value of an asset such as real property, motor vehicles or business interests

Wastage – term given to an argument in property settlement proceedings that one party has unreasonably and significantly reduced the funds or interests of the parties



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