

CONTENTS

Foreword	i
Preface	ix
About the authors	x
Abbreviations	xii
Index	xiii
Case table	xxv

CHAPTER ONE – ESSENTIAL RESOURCES

Introduction	1 – 2
<i>The Family Law Book</i>	1 – 2
Downloading our <i>Online Forms and Precedents</i>	1 – 3
Useful links	1 – 4
Essential resources	1 – 5
Conclusion	1 – 8

CHAPTER TWO – CLIENT PRELIMINARIES

Phone inquiries	2 – 2
Initial consultation	2 – 3
Lawyer-client documentation	2 – 5
The second appointment	2 – 17

CHAPTER THREE – DIVORCE

Jurisdiction	3 – 2
Ground of divorce	3 – 2
Resumption of cohabitation	3 – 2
Meaning of separation	3 – 2
Marriages of less than two years	3 – 4
Divorce order	3 – 4
Section 55A declaration	3 – 4
Effect of divorce on wills	3 – 5
Effect of divorce on property and spousal maintenance applications	3 – 5
<i>Procedure for divorce applications</i>	3 – 7
<i>Court forms</i>	3 – 9
<i>Precedents</i>	3 – 10
<i>Application for divorce</i>	3 – 10
<i>Application for substituted service</i>	3 – 10
<i>Affidavit of applicant for substituted service</i>	3 – 11
<i>Affidavit in case of separation under the one roof</i>	3 – 12
<i>Affidavit of translator of marriage certificate</i>	3 – 13
<i>Affidavit in short marriage where counselling not attended</i>	3 – 13
<i>Response to divorce</i>	3 – 13

CHAPTER FOUR – CHILDREN

Jurisdiction	4 – 4
Obligations of lawyers	4 – 5
Family counselling	4 – 6
Family dispute resolution (FDR)	4 – 7
Interim injunctions	4 – 8
Personal protection	4 – 8
Sole occupancy	4 – 10
Parenting orders	4 – 11
Objects of “Part VII – Children”	4 – 14
Principles underlying those objects	4 – 14
Child’s best interests paramount consideration	4 – 15
Determining child’s best interests	4 – 15
Parental responsibility	4 – 17
Presumption of equal shared parental responsibility	4 – 18
Equal time or substantial and significant time with each parent	4 – 23
Equal time	4 – 26
Substantial and significant time	4 – 29
Research studies	4 – 30
Neither equal nor substantial and significant time	4 – 32
The court’s approach to interim hearings	4 – 33
Strategies for both parents to have meaningful involvement	4 – 35
Section 60CC factors	4 – 36
Major long-term issues for those with parental responsibility	4 – 43
Child’s education	4 – 43
Child’s passport	4 – 43
Change of child’s name	4 – 44
Relocation	4 – 46
Court sanction of special medical procedures	4 – 50
Paternity	4 – 52
Variation of parenting orders	4 – 54
Abduction and recovery of children	4 – 55
Contravention of parenting orders	4 – 71
Family consultants	4 – 73
Independent children’s lawyer	4 – 74
Less Adversarial Trials (LAT) (for child cases in Family Court)	4 – 76
<i>Procedure for child matters</i>	4 – 77
<i>Court forms</i>	4 – 82
<i>Court fees</i>	4 – 85
<i>Precedents</i>	4 – 86
<i>Family dispute resolution (FDR) letter</i>	4 – 86
<i>Pre-action procedure letter (Family Court)</i>	4 – 87
<i>Interim orders</i>	4 – 88
<i>Interim parenting orders</i>	4 – 88
<i>Family report</i>	4 – 88
<i>Appointment of an independent children’s lawyer</i>	4 – 88
<i>Recovery order – child taken in breach of parenting order</i>	4 – 88
<i>Injunction for return of child – where no parenting order</i>	4 – 89
<i>Injunction – where flight risk</i>	4 – 89
<i>Watch List order</i>	4 – 89
<i>Location order (also, publication order online)</i>	4 – 90
<i>Commonwealth information order</i>	4 – 90
<i>Drug testing of a party</i>	4 – 90
<i>Psychiatric assessment of other party</i>	4 – 91
<i>Injunction for personal protection of child or party</i>	4 – 91
<i>Sole occupancy</i>	4 – 91
<i>Costs</i>	4 – 91

CHAPTER FOUR – CHILDREN (CONTINUED)

<i>Applicant's affidavit – for non-filing of FDR certificate</i>	4 – 93
<i>Sample of undertaking</i>	4 – 94
<i>Final orders</i>	4 – 95
<i>Final parenting orders</i>	4 – 95
<i>Variation of parenting order</i>	4 – 99
<i>Paternity testing</i>	4 – 99
<i>Court sanction of special medical procedure</i>	4 – 100
<i>Permission for overseas relocation</i>	4 – 101
<i>Sample affidavits for interim hearings</i>	4 – 105
<i>Affidavit of applicant for recovery order and other interim orders as above</i>	4 – 105
<i>Affidavit of applicant for injunction (flight risk or unilateral relocation)</i>	4 – 108
<i>Affidavit of father seeking interim order for equal or substantial time</i>	4 – 110
<i>Affidavit of mother seeking less ambitious interim order than father</i>	4 – 117
<i>Affidavit of mother for protective injunction and supervision of (or limited) father's time</i>	4 – 124
<i>Sample affidavits for final hearings</i>	4 – 132
<i>Affidavit of father seeking equal or substantial time with his child</i>	4 – 132
<i>Affidavit of mother seeking less ambitious final order than Father</i>	4 – 139
<i>Affidavit of mother seeking supervised (or limited) parenting order</i>	4 – 146
<i>Affidavit of mother seeking to relocate with child (interstate or overseas)</i>	4 – 153
<i>Affidavit of respondent father opposing relocation application</i>	4 – 160
<i>Affidavit of applicant for variation of parenting order</i>	4 – 165
<i>Affidavit of applicant for an order for paternity testing</i>	4 – 166
<i>Affidavit of applicant for court sanction of a special medical procedure</i>	4 – 167
<i>Affidavit of medical or psychological expert as to court sanction of special medical procedure</i>	4 – 169
<i>Parenting plan</i>	ONLINE

CHAPTER FIVE – CHILD SUPPORT AND MAINTENANCE

<i>Introduction</i>	5 – 3
<i>Administrative assessment</i>	5 – 4
<i>Right to apply</i>	5 – 4
<i>The child support formula</i>	5 – 4
<i>The relevant legislation</i>	5 – 8
<i>The exclusion of extra income after separation</i>	5 – 8
<i>Regular care of children</i>	5 – 8
<i>Shared care of children</i>	5 – 8
<i>Child support estimator</i>	5 – 8
<i>Administrative review</i>	5 – 9
<i>Notification by a parent of change to a formula element</i>	5 – 9
<i>Change of assessment initiated by Child Support Registrar</i>	5 – 10
<i>Administrative change of assessment in special circumstances</i>	5 – 10
<i>Objection requiring Child Support Registrar to reconsider</i>	5 – 10
<i>Review by Administrative Appeals Tribunal (AAT)</i>	5 – 11
<i>Administrative forms</i>	5 – 12
<i>Child support and maintenance work still available to lawyers</i>	5 – 16
<i>Paternity disputes</i>	5 – 17
<i>Application to court for a departure order</i>	5 – 21
<i>Application to court for non-periodic child support</i>	5 – 30
<i>Modification of orders for non-periodic child support</i>	5 – 35
<i>Child support agreements</i>	5 – 36
<i>Precedent binding child support agreement</i>	5 – 42
<i>Precedent limited child support agreement</i>	5 – 49
<i>Letter of advice to client as to proposed child support agreement</i>	ONLINE
<i>Application to set aside child support agreement</i>	5 – 53

CHAPTER FIVE – CHILD SUPPORT AND MAINTENANCE (CONTINUED)

Application for a stay of proceedings	5 – 55
Appeal to a court from AAT on a question of law	5 – 56
Application to amend assessment over 18 months old	5 – 56
Child maintenance under the <i>Family Law Act</i>	5 – 57
Maintenance of children over 18	5 – 60
Maintenance of step-children	5 – 62
Child-bearing expenses of unmarried mothers	5 – 63
Other child maintenance provisions	5 – 64
Collection of child support and child maintenance	5 – 65
<i>Court procedure and forms for child support matters</i>	5 – 67
Precedents	5 – 71
Application for s 106A declaration (respondent is child's father) (with sample affidavit in support)	5 – 71
Application for s 107 declaration (applicant is not child's father) (with sample affidavit in support)	5 – 73
Application for departure order (with sample affidavit in support)	5 – 75
Application for non-periodic provision of child support (e.g. school fees) (with sample affidavit in support)	5 – 83
Application for lump sum payment of child support (with sample affidavit in support)	5 – 86
Application to vary order for non-periodic provision or lump sum payment (with sample affidavit in support)	5 – 89
Application to set aside child support agreement (with sample affidavit in support)	5 – 91
Application for a stay of proceedings (with sample affidavit in support)	5 – 95
Appeal to a court from AAT on a question of law	5 – 98
Application for leave to amend an old assessment (with sample affidavit in support)	5 – 99
Application for maintenance of child over 18 (with sample affidavit in support)	5 – 102
Application for maintenance of a step-child (with sample affidavit in support)	5 – 104
Application for child-bearing expenses of unmarried mother (with sample affidavit in support)	5 – 107

CHAPTER SIX – SPOUSAL MAINTENANCE (including de facto maintenance)

Establishing a claim	6 – 2
Time limit	6 – 4
Declaration about existence of de facto relationship	6 – 5
Urgent maintenance orders	6 – 6
Interim maintenance	6 – 7
Maintenance factors	6 – 8
Relationship between spousal maintenance and property orders	6 – 18
Backdated maintenance orders	6 – 18
Lump sum orders	6 – 19
Specification of spousal maintenance component of property orders	6 – 21
Variation of spousal maintenance orders	6 – 22
Effect of death on maintenance proceedings	6 – 23
Cessation of spousal maintenance orders	6 – 24
<i>Procedure for maintenance applications (marital and de facto)</i>	6 – 25
<i>Court forms</i>	6 – 28
<i>Court fees</i>	6 – 31
<i>Precedents (marital and de facto)</i>	6 – 32
Interim orders for spousal maintenance	6 – 32
Final orders for spousal maintenance	6 – 33
Orders sought in Response	6 – 34
Affidavit of applicant for spousal or de facto maintenance (and property orders)	6 – 35
Financial Statement addendum sheet (to be attached to Financial Statement)	6 – 39
Affidavit of medical practitioner (called by applicant)	6 – 41
Affidavit of respondent	6 – 42
Affidavit of job consultant (called by respondent)	6 – 43
Affidavit of medical practitioner (called by respondent)	6 – 44

CHAPTER SEVEN – PROPERTY

Jurisdiction	7 – 3
Time limit	7 – 3
Lawyers' obligations	7 – 4
Parties' duty of disclosure	7 – 4
Partial property settlements	7 – 5
Declaration about existence of de facto relationship	7 – 7
Interim injunctions to preserve property	7 – 8
Alteration of property interests	7 – 14
Factors to be taken into account	7 – 14
The four steps in determining a property dispute	7 – 16
Identify and value the net property	7 – 17
Assess contributions	7 – 26
Assess s 75(2) (or, for de facto claims, s 90SF(3)) factors	7 – 36
Effect of proposed order on a party's earning capacity	7 – 42
Treatment of superannuation (marital and de facto)	7 – 43
What orders should be made for a just and equitable outcome?	7 – 57
Property settlement calculation	7 – 58
Specify spousal maintenance component of property orders	7 – 64
CGT, income tax, GST and stamp duty	7 – 65
Adjournment of property proceedings	7 – 70
Leave to extend time for issuing property (or maintenance) proceedings	7 – 71
Setting aside or varying property orders	7 – 73
Enforcement of property orders	7 – 77
Transactions to defeat claims	7 – 79
Effect of death on property proceedings	7 – 80
Bankruptcy and family law proceedings	7 – 81
Creditors and other third parties	7 – 82
<i>Procedure for property matters (marital and de facto)</i>	7 – 85
<i>Court forms</i>	7 – 92
<i>Court fees</i>	7 – 96
<i>Precedents (marital and de facto)</i>	7 – 97
<i>Family dispute resolution letter (if child matters also involved)</i>	7 – 97
<i>First letter to other party or their lawyer</i>	7 – 98
<i>Letter to your client</i>	7 – 99
<i>Letter to other party or their lawyer as to valuation</i>	7 – 99
<i>Joint letter to valuer (FCC)</i>	7 – 99
<i>Joint letter to valuer (Family Court)</i>	7 – 100
<i>Pre-action letter to other party or their lawyer (Family Court)</i>	7 – 101
<i>Interim orders (marital and de facto)</i>	7 – 102
<i>Consent order for payment to each party towards interim costs</i>	7 – 102
<i>Consent order for a partial property settlement for a party</i>	7 – 102
<i>Interim injunction against disposal of assets</i>	7 – 103
<i>Inspection or seizure of documents or other property</i>	7 – 103
<i>Leave to proceed out of time</i>	7 – 103
<i>Final orders (marital and de facto)</i>	7 – 104
<i>Final property orders</i>	7 – 104
<i>Superannuation orders (courtesy of Stephen Bourke)</i>	7 – 112
<i>Setting aside or variation of property order</i>	7 – 128
<i>Affidavits (marital and de facto)</i>	7 – 129
<i>Financial Statement addendum sheet (to be attached to Financial Statement)</i>	7 – 130
<i>Affidavit of either party seeking marital or de facto property (and maintenance) orders</i>	7 – 132
<i>Affidavit in support of application for leave to proceed out of time</i>	7 – 145
<i>Affidavit in support of application for variation of property order</i>	7 – 151

CHAPTER EIGHT – OTHER ROUTINE PROCEDURES (WITH PRECEDENTS)

Consent orders	8 – 2
Subpoenas to produce documents	8 – 15
Discovery of documents	8 – 21
Request to party to answer specific questions under oath (Family Court)	8 – 28
Offers to settle (Family Court)	8 – 29
Applying for an order for interim costs	8 – 30
Applying for interim or procedural order without notice	8 – 43
Appointment of litigation or case guardian	8 – 45
Appeals	8 – 48
Costs and security for costs	8 – 51
Conflict of interest	8 – 57

CHAPTER NINE – FINANCIAL AGREEMENTS

Introduction	9 – 2
The de facto amendment	9 – 2
A note of judicial concern	9 – 3
Requirements for an agreement to be binding	9 – 4
How to take instructions in relation to a financial agreement	9 – 6
Different scenarios in which your services may be sought	9 – 7
The two main problems with financial agreements	9 – 10
Other disadvantages of financial agreements	9 – 11
When a financial agreement may be appropriate	9 – 12
When a financial agreement may not be appropriate	9 – 13
Grounds on which the court may set aside a financial agreement	9 – 14
Effect of death of party to a financial agreement	9 – 20
Exemption from stamp duty	9 – 20
<i>Precedents</i>	9 – 21
<i>Letter of advice to client as to proposed financial agreement</i>	9 – 21
<i>Sample of simple mutual quarantine of assets</i>	9 – 23
<i>Sample of simple unilateral quarantine</i>	9 – 31
<i>Sample of financial agreement as release of spousal maintenance</i>	9 – 39
<i>Simple mutual quarantine of assets for de facto (incl same sex) relationship</i>	ONLINE
<i>Simple unilateral quarantine for de facto (incl same sex) relationship</i>	ONLINE
<i>Financial agreement as release of maintenance for de facto (incl same sex) relationship</i>	ONLINE
<i>Termination agreement</i>	ONLINE
<i>Part VIIIAB termination agreement</i>	ONLINE
<i>Opting-in statement (de facto relationship broken down pre-1/3/09 (1/7/10 in SA))</i>	ONLINE
<i>Superannuation agreements (spousal and de facto)</i>	ONLINE

ADDENDUM

<i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i>	A – 2
<i>Family Court Act 1997 (WA) and its comparable sections in the Family Law Act 1975 (Cth)</i>	A – 11
<i>Case Management Guidelines (Family Court of Western Australia)</i>	ONLINE
<i>Discount and life tables</i>	A – 22