

## FAMILY COUNSELLORS AND THE FAMILY LAW ACT

Separation is a stressful and emotional time. If you are considering separation or are currently going through the process of separation, it is important that you look after your emotional health and try and keep your stress levels to a minimum.

In order to achieve that, you may wish to consider family counselling. The purpose of this Article is to outline what the *Family Law Act* says about family counselling.

### WHAT IS FAMILY COUNSELLING?

Family counselling is the process where a 'family counsellor' assists one or more people to deal with issues relating to marriage, personal issues or issues relating to the care of children. Those people can include children who are affected or are likely to be affected by separation, or divorce.

### WHO ARE FAMILY COUNSELLORS?

A 'family counsellor' is a person who:

- is an accredited counsellor; or
- is a person authorised to act on behalf of an organisation designated by the Minister (such as Centacare or Relationships Australia); or
- is authorised as a Court employee, to act as a family counsellor.

### WILL THE COUNSELLING BE CONFIDENTIAL?

Generally, yes. A family counsellor must not disclose a communication made to them during family counselling, unless they are required to or authorised to under the *Family Law Act*. This is a significant and somewhat unique protection that the *Family Law Act* offers.

It is important to note that a lot of "Counsellors" will not come within the *Family Law Act* definition and therefore will not have the protection of "confidentiality", as provided under the *Family Law Act*

A family counsellor under the *Family Law Act*, **must** disclose a communication made during family counselling if they reasonably believe that it is necessary in order to comply with a law of the Commonwealth, or a State or a Territory, e.g. Child protection laws.

A family counsellor **may** disclose a communication made during family counselling in the following circumstances:

- If they have the consent of the person who made the communication. If the person is under 18 years, the counsellor must have the consent of the people who have parental responsibility for that child;
- If the disclosure is to protect a child from the risk of physical, emotional or psychological harm;
- If the disclosure is to prevent or lessen a serious and imminent threat to:
  - (a) the life or health of a person, or
  - (b) the property of a person;

- If the disclosure is to report the commission or to prevent the likely commission of an offence:
  - (a) Involving violence; or
  - (b) a threat of violence to a person; or
  - (c) involving intentional damage to property; or
  - (d) a threat of damage to property;
  
- If the disclosure is to assist an Independent Children’s Lawyer to properly represent a child’s interests.

### ***WILL THINGS THAT I SAY IN COUNSELLING BE ADMISSIBLE IN COURT?***

If the counsellor comes within the *Family Law Act* definition then, generally, no. However, again, note that a lot of “counsellors” will not come within this definition. Evidence of anything said or any admission made in front of a “family counsellor” who is conducting family counselling, will not be admissible in any court proceedings. Also, if a family counsellor refers a person to another professional for medical or other professional consultation, anything said or any admission made during the carrying out of those professional services will not be admissible. If your family counsellor refers you to another professional, they have a duty to make them aware of the rules about admissibility of evidence.

This is the case even where the counsellor has been allowed to disclose a communication because of the circumstances set out above.

The only time that evidence of something said in family counselling will be admissible is where:

- (a) an admission by an adult indicates that a child under 18 years has been abused or is at risk of abuse; or
- (b) a disclosure by a child under 18 years indicates that the child has been abused or is at risk of abuse.

However, even in those circumstances the Court can rule the evidence of the family counsellor inadmissible if there is sufficient evidence available from other sources.

### **TIPS/WARNINGS**

If you are looking for family counselling, we recommend that you follow these simple guidelines:

- Clarify if the person that you are seeing for family counselling is a ‘*family counsellor*’ as defined by section 10C of the *Family Law Act*. The counsellor should be able to tell you if they are an approved or accredited counsellor.
- Be aware of the exceptions to the confidentiality rule as outlined above;
- If your family counsellor refers you to another professional, make sure they are aware of the rules relating to admissibility of communications;
- Always seek Specialist Family Law advice from a Solicitor prior to entering into any discussions or negotiations about your family law matter.