

## **Marriage Agreements and the New Family Law Act**

### **WHEN, HOW AND WHY ARE THEY USEFUL?**

When two people enter into a marriage there have often been previous relationships including previous marriages where property and debt are brought into the new marriage or there are young children from previous relationships or marriages that are now going to be part of the family unit. One spouse may bring in much larger assets than the other and want to ensure a separate property regime in this regard.

The same two people may also wish to discuss how they are going to share the future acquisition of property and debt, wanting some certainty in this regard. The terms of a Marriage Agreement, properly drafted and executed, will survive a separation, divorce or death of a party.

A Marriage Agreement is a binding, legally enforceable document in which both parties have exchanged relevant financial and other information and have had the opportunity to obtain independent legal advice. The new Family Law Act specifically allows married or to be married parties to enter an Agreement which deals with the division of property. This Act permits parties to contract out of the equal sharing provision. The new Family Law Act changes the focus from "property used for a family purpose" to simply "family property". There are provisions which allow an exemption from division of an inheritance as well as the value of property brought into the relationship, called Excluded Property.