RECENT DEVELOPMENTS AND LEGISLATIVE UPDATE

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Date: 18 September, 2018

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Leo Cussen Family Law Conference 2018, RACV Club Melbourne, 18 September 2018

When I first considered the invitation to speak to you today about recent developments, I looked at the range of sub-topics and I thought, "well that will be quite nice, I'll get to lean on the podium and deliver the gossip topic." I looked at the sub-topic on "Pet Nups" and I thought "Even better, I get to lean on the podium and talk about puppies. And kittens." But then the rest of the year happened and the gossip topic in family law has suddenly lots to talk about, not all of it nice, so we have a bit of work to do over the next hour before we get back to the puppies and kittens.

1. Changes to the Family Law Rules

Many practitioners are still coming to grips with rule changes introduced in the Family Court on 1 March 2018 by the *Family Law Rules Amendment (2018 Measures No.1) Rules* 2018.

(1) Exhibits and annexures are no longer to be attached to affidavits (or otherwise filed) after 1 March 2018. Documents that are to be relied on must be referred to in the body of the affidavit and tendered. Hard copies of any document intended to be used in conjunction with an affidavit and tendered, must be served on the other party contemporaneously with the affidavit.

I have seen a few practitioners forget this rule and e-file the affidavit with the "tender documents" attached. Note in particular that hard copies must be served with the affidavit. This means by courier or post – not by email! If there are a number of documents, it is helpful to put them into a folder with numbered dividers so they are easy to find.

The Chair of the Court's Rules Advisory Committee, the Hon. Justice Rees advised the Family Law Section as follows:

1. The ban on annexures to affidavits does not apply to the affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3. Lawyers may still annex those expert's reports to their affidavits. Typically this will include expert reports from valuers and private family report writers.

2. The ban on annexures to affidavits will apply to evidence of other professional witnesses as defined in Rule 15.41(1), such as treating medical practitioners and contact centres. It is open to lawyers to seek directions in anticipation of trial to allow reports from such professionals to be annexed to trial affidavits. But for the purposes of affidavits filed prior to the first return date, the evidence of those professionals will need to be included in the body of the affidavit.

(2) There are now two 'Notice of Risk' forms – a standard one and one to be used for Applications for Consent Orders. The form 'Annexure to Proposed Consent Parenting Order' has been abolished (there is a grace period until 1 January 2019 where old forms can be used).

(3) A Superannuation Information Form is no longer required for consent orders, a alternative document, such a member statement, can be used provided it enables the court to determine the value of the Superannuation interest.

(4) There is now a "Submitting Notice" which can be filed to indicate that a party has been served with an Initiating Application, Response, Reply or Notice of Appeal but does not wish to contest the matter. They submit to the decision of the Court and may elect whether or not they wish to be heard on the question of costs.

(5) There is also a new "Notice of Contention" where the respondent to an appeal does not seek to cross-appeal, but seeks to have the Order affirmed on grounds other than those relied on by the first-instance Court.

(6) Deputy Registrar's powers were increased to allow them to make location orders, appoint case guardian and dismiss cases.

(7) Copy documents may be produced on subpoena and documents may be produced electronically in any form capable of being printed.

(8) No undertaking to file is required when a copy of a current Intervention Order is not available.

(9) "Safety concerns" have been added to the factors to be considered in transfer of venue applications.

(10) Oral undertakings to the Court must be subsequently reduced to writing and filed.

(11) Where an undertaking to pay damages is given, it is taken to mean that the person submits to any order the Court might consider just for the payment of compensation.

(12) Cost Assessment Orders now have the force and effect of an Order of the Court.

(13) Various rules for consistency with changes to child support legislation.

2. Changes to Federal Circuit Court Practice

2.1. Affidavits for interim hearings

Most practitioners are by now aware that Practice Direction No. 2 of 2017 *Interim Family Law Proceedings* brought in new rules about affidavits in interim proceedings which applied from 1 January 2018.

> "6. …unless express leave is granted by the Judge into whose docket the matter has been allocated, affidavit material in support of an interim application must not:
> - exceed 10 pages in length for each affidavit;

- contain more than 5 annexures.

10. Where the respondent seeks interim orders additional to those sought by the applicant, and the applicant opposes the orders sought, the applicant may file a second affidavit in answer, complying with paragraph 6 above, and setting out:
    a. any additional orders sought;
    b. any additional relevant facts relied on in opposition to the respondent's orders.

11. Parties and practitioners should expect that failure to comply with any part of this Practice Note will result in loss of hearing priority, or adjournment of an interim hearing with costs orders.

12. In particular, if a party proposes to rely upon an affidavit which does not comply with paragraph 6 above, parties and practitioners should expect that:
    a. in the discretion of the Judge,
        i. non complying affidavits will not be read; or
        ii. the responsible party will be required to select 10 pages out of their non complying material that they seek to rely upon;
    b. Specific costs orders may be made.

13. Documents filed less than 48 hours prior to hearing (electronically or otherwise) ('a late document') cannot be relied upon at the hearing without leave of the Court. A party or practitioner seeking to rely upon a late document must seek leave to tender a copy of it at the commencement of the hearing.

The ten pages do not include the cover page of the affidavit or the annexures (but remember you are limited to 5 annexures). Don't waste space on reciting previous orders or annexing documents which are already on the Court file. Whilst hearsay is specifically permitted at the interim stage to enable documents to be annexed by the client rather than having many affidavits, do consider whether it is preferable to have the 3rd party swear an affidavit. Note, too, that many documents may be tendered pursuant to the *Evidence Act* 1995 as government or business records and do not need to be specifically identified in the evidence of the deponent of an affidavit.

Note Federal Circuit Court Rule 15.28 about numbering the pages of the annexures and referring to the page numbers in the body of the affidavit -

15.28(4) If there is more than 1 annexure, the pagination must be consecutive until the last page of the annexures and identified by page number in the affidavit.

Example: For an affidavit with 10 annexures totalling 100 pages, the first page of the first annexure is page 1 and the last page of the last annexure is page 100. An annexure would be identified in the affidavit in the following way: 'Annexed and marked with the letter G (pages 72-81) is a copy of the agreement for sale'.

It is also important to note that the requirement for documents to be in a minimum font size of 12pt and at least 1½ spacing still applies.

2.2. Subpoenas and DHHS – Victoria

A new information notice was issued effective 1 January 2018 about how practitioners can seek information from the Department of Health and Human Services.

DHHS also provides a written response to a Notice of Risk that summarises its involvement with the family and the outcome of its investigations. It will also provide documents to the Court by orders pursuant to s 69ZW of the *Family Law Act 1975* (Cth).

The new protocol with the Court recognises that considerable time and work is required on the part of DHHS to respond to subpoenas. The file must be photocopied; all references to the notifier redacted and the file must be reassembled before being produced to the Court.

A request to issue a subpoena against DHHS will be granted only with leave of the Court. Such leave will be granted only where there is a legitimate forensic purpose in seeking more information.

Permission is to be sought by:

i. written request, setting out the documents and information already received from the DHHS, the precise documents sought, the relevance of those documents and a copy of the subpoena; or

ii. oral application in open court, at which time the matters set out in (i) above are to be addressed.

Leave will generally not be granted for the issue of a subpoena:

i. seeking production of the Department's entire file; or
ii. for documents that may be obtained pursuant to s 69ZW of the *Family Law Act 1975* (Cth).

2.3. New practice about mediations for cases with a combined pool over $500,000

This is an interesting new practice as it has never been written into a practice direction or proclaimed as a rule. Apparently the Judges have decided to protect the limited resource of Registrar conducted Conciliation Conferences by requiring all cases with a combined pool of super and property over $500,000 to attend private mediation.

The power to send cases to mediation is probably part of the power of the Court in determining its own procedure but no one seems concerned about the technicalities as the settlement rate in private mediation (in Victoria) is quite high. Technically a party may request an exemption from the requirement to attend a Conciliation Conference in a property matter and one of the grounds for doing so is that the parties prefer to organise a private mediation. The Court has turned this around and now require most cases to attend mediation, leaving only the small pool cases to the Registrars.

It is not clear where the $500,000 figure came from but there is some assistance for parties in the next level of cases up to $750,000 as AIFLAM (Australian Institute of Family Law Arbitrators and Mediators) has a discount fixed fee mediation scheme which pegs the mediator's fee to the first day trial fee on Legal Aid (currently $2,157). Many experienced mediators (myself included) support the discount scheme. A list is on the AIFLAM website.

2.4. New Arbitration push

The summer mediation blitz also saw the Court's attention turned back again to Arbitration. One of the Parramatta Judges was particularly encouraging parties to arbitration and a number took place. There is a reported case called *Braddon & Braddon* [2018] FCCA 1845 where a party applied, unsuccessfully, to set aside the arbitration award.

Next month sees the launch of a new group of Arbitrators at the Bar, VFLAG (VicBar Family Law Arbitration Group) supported by the Court so we might see some real action on Arbitration in Victoria soon. There have been a couple recently that began as arbitrations and settled like mediations. There was a potential arbitration about a family dog but the disproportionate cost of the process seemed to have lead to productive settlement discussion.

Chapter 26B of the Family Law Rules sets out the recently reviewed Arbitration rules with provision for Court support for procedural matters and subpoenas.

3. The ALRC Review of the Family Law System

The referral to the Australian Law Reform Commission for a review of the Family Law System was made last year by the former Attorney-General George Brandis. The ALRC is due to report by 31 March 2019.

The referral was in relation to the following matters:

- the appropriate, early and cost-effective resolution of all family law disputes;
- the protection of the best interests of children and their safety;
- family law services, including (but not limited to) dispute resolution services;
- family violence and child abuse, including protection for vulnerable witnesses;
- the best ways to inform decision-makers about the best interests of children, and the views held by children in family disputes;

- collaboration, coordination, and integration between the family law system and other Commonwealth, state and territory systems, including family support services and the family violence and child protection systems;
- whether the adversarial court system offers the best way to support the safety of families and resolve matters in the best interests of children, and the opportunities for less adversarial resolution of parenting and property disputes;
- rules of procedure, and rules of evidence, that would best support high quality decision-making in family disputes;
- mechanisms for reviewing and appealing decisions;
- families with complex needs, including where there is family violence, drug or alcohol addiction or serious mental illness;
- the underlying substantive rules and general legal principles in relation to parenting and property;
- the skills, including but not limited to legal, required of professionals in the family law system;
- restriction on publication of court proceedings;
- improving the clarity and accessibility of the law; and
- any other matters related to these Terms of Reference.

The ALRC was asked to consider what changes, if any, should be made to the family law system; in particular, by amendments to the *Family Law Act* and other related legislation.

The ALRC was instructed to consult widely with family law, family relationship and social support services, health and other stakeholders with expertise and experience in the family law and family dispute resolution sector.

An Issues Paper was released for comment in March 2018 containing 47 questions with a call for submissions by 7 May 2018. Among the 400 submissions received was made a comprehensive submission on our behalf by the Family Law Section & Law Council of Australia. In addition to receiving submissions, the ALRC conducted 100 public consultations. There will be a further opportunity to respond to the Discussion Paper, which is expected in next month.

Commissioner Professor Helen Rhoades gave a presentation at the August Conference of AIFS (Australian Institute of Family Studies) about the Review.[1] She noted that Ontario and Manitoba in Canada and Scotland were also looking at similar issues.

"It is important to note that policy interest in reducing the costs and adversarial nature of court proceedings is a longstanding one that is not confined to family law proceedings. Over the years there have been a number of law reform inquiries on this topic, across several common law jurisdictions, which have been variously tasked with looking for alternatives to the adversarial model15 and ways of creating a 'simpler, cheaper and more accessible legal system'.16

But, as the Manitoba Family Law Reform Committee's report notes, these questions raise particular issues in the context of a family law system, both because of the potential impact on a family's ability to recover financially from their separation, and because of the potential to compromise wellbeing outcomes for children who may be exposed to ongoing conflict that has been exacerbated by the litigation process."

It is a comprehensive and consultative process in the hands of a noted family law academic. It will be very interesting to see what the ALRC recommends.

4. New Family and Domestic Violence Leave

The Fair Work Commission has updated all industry and occupation awards to add a clause about family and domestic violence leave with effect from the first full pay period after 1 August 2018.

All award employees including legal sector staff and casual staff, but not those on enterprise agreements, are entitled to 5 days unpaid family and domestic violence leave. The employer is entitled to ask for evidence such as a court document, police document or a statutory declaration. Employers have an obligation to take reasonable steps to keep information about the employee's situation confidential.

The awards also don't apply to the Public Service who announced special leave provisions for staff last year.

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[1] Professor Helen Rhoades, *Review of the family law system: Issues and opportunities Presentation to the Australian Institute of Family Studies 2018 Conference* www.alrc.gov.au

5. National Domestic and Family Violence Bench Book

I want to take this opportunity to draw your attention to the existence of the excellent National Domestic and Family Violence Bench Book, which was completed in June 2017. The bench book is a national online resource for judicial officers which promotes best practice and consistency in judicial decision making in cases involving family violence. The bench book is available on the Australasian Institute of Judicial Administration website[2] and is therefore available to the profession and the public.

The Attorney-General's Department has also funded training for judicial officers, to increase their awareness and understanding of family violence, building on the National Domestic and Family Violence Bench Book.

There is a notable difference in response from the Bench based on whether the Judicial Officer has had specialist training. We all know how difficult it is to draft affidavits dealing with the risk of violence, while conscious that the alleged perpetrator will be reading the affidavit. If a judicial officer has had training, he or she will have an awareness of the risk assessment tools and the significance of particular times and particular behaviours in raising the risk profile, for example, violence to the family pet, violence whilst pregnant and risk at separation and court events.

6. National Domestic Violence Order Scheme

There has been a significant change to the fragmented domestic violence protection orders scheme around the country. Domestic violence orders issued from 25 November 2017 are automatically recognised and enforceable in all Australian jurisdictions. Individuals protected by a domestic violence order issued before 25 November 2017 may also apply to any Local or Magistrates' Court in Australia to have it recognised.

[2] dfvbenchbook.aija.org.au

7. Family Violence and Other Measures Act 2018

Date of Assent 31 August 2018

The intention of the *Family Law Amendment (Family Violence and Other Measures) Act* 2018 (No. 97, 2018) is to improve the family law system's response to family violence and the intersection between the federal family law and state and territory family violence and child protection systems.

The Act implements recommendations of expert reports including the Family Law Council's 2015 and 2016 reports on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*.

(1) An increased monetary limit for the property jurisdiction of state and territory courts under the *Family Law Act* can now be set by regulation. The limit will remain at $20,000 until regulations have been made, following consultation with the states and territories.

(2) The court may give short form reasons in interim parenting cases.

(3) Where a Family Court makes an order that is inconsistent with a family violence order that is directed towards a child, the provisions of section 68P requiring the court to arrange for someone to explain the effect of the order to that child do not apply if the Court is satisfied it is in the best interests of that child not to receive such an explanation.

(4) Removes the existing 21 day time limit for the expiration of orders made by state or territory courts which revive, vary, discharge or suspend parenting orders.

(5) A new regime of summary dismissal (in addition to s102Q re vexatious litigants).

Since this has the potential to be quite useful, particularly given the numbers of

self-represented litigants, I have reproduced the new s45A of the *Family Law Act*.

> 45A Summary decrees
>
> No reasonable prospect of successfully defending proceedings
>
> (1) The court may make a decree for one party against another in relation to the whole or any part of proceedings if:
>
> (a) the first party is prosecuting the proceedings or that part of the proceedings; and
>
> (b) the court is satisfied that the other party has no reasonable prospect of successfully defending the proceedings or that part of the proceedings.
>
> No reasonable prospect of successfully prosecuting proceedings
>
> (2) The court may make a decree for one party against another in relation to the whole or any part of a proceedings if:
>
> (a) the first party is defending the proceedings or that part of the proceedings; and
>
> (b) the court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceedings or that part of the proceedings.
>
> When there is no reasonable prospect of success
>
> (3) For the purposes of this section, a defence or proceedings or part of proceedings need not be:
>
> (a) hopeless; or
>
> (b) bound to fail;
>
> to have no reasonable prospect of success.
>
> Proceedings that are frivolous, vexatious or an abuse of process
>
> (4) The court may dismiss all or part of proceedings at any stage if it is satisfied that the proceedings or part is frivolous, vexatious or an abuse of process.
>
> (5) To avoid doubt, proceedings or a part of proceedings are not frivolous, vexatious or an abuse or process merely because an application relating to the proceedings or the part is made and later withdrawn.
>
> Costs
>
> (6) If the court makes a decree, or dismisses all or part of proceedings, under this section, the court may make such order as to costs as the court considers just.
>
> Action by court on its own initiative or on application

(7) The court may take action under this section on its own initiative or on application by a party to the proceedings.

This section does not limit other powers

(8) This section does not limit any powers that the court has apart from this section.

Note: Part XIB also gives courts powers relating to vexatious proceedings.

15 Application of amendments

Section 45A of the *Family Law Act 1975* as inserted by this Part, applies to proceedings instituted before or after the commencement of this Part.

8. Family Violence and Cross-examination of Parties Bill 2018

On 28 June 2018, the Australian Government introduced the *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill* 2018 into Parliament.

The Bill proposes that direct cross-examination will be prohibited in certain circumstances, and will instead be conducted by a legal representative. Where direct cross-examination is not prohibited, the Court will be required to apply other appropriate protections for the victim (such as using video link or screens).

The Bill was been referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 13 August 2018.

The Committee recommendations, which were bipartisan, sought significant increased funding to enable the Legal Aid offices to implement the proposals.

9. Parenting Management Hearings Bill 2017

The Bill would amend the *Family Law Act 1975* to establish the Parenting Management Hearings Panel as an independent statutory authority to provide self-represented litigants with an alternative to the court process for resolving parenting disputes.

The Bill was introduced on 6 December 2017 and referred to Committee by the Senate. It received qualified support from the Senate Committee Report delivered on 28 March 2018. There has been no response from the Government to the Senate Committee Report and nothing further has happened with the Bill.

10. The impact of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* relating to Wills prepared prior to the Act

I don't think anyone in the room would have missed the introduction into law of same sex marriage in Australia but we are still working our way through some of the consequences of the new legislation.

One important impact is in relation to wills. This is because the *Wills Act* 1997 (Vic) provides that marriage automatically revokes a prior will unless it is specifically made in contemplation of marriage.

WILLS ACT 1997 - SECT 13 What is the effect of marriage on a will?

(1) A will is revoked by the marriage of the testator.
(2) Despite subsection (1)—
(a) a disposition to the person to whom the testator is married at the time of his or her death; or
(b) an appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of his or her death; or
(c) a power to exercise, by will, a power of appointment, when, if the testator did not exercise the power, the property so appointed would not pass to the executor or administrator or the State Trustees under section 19 of the *Administration and Probate Act* 1958
— is not revoked by the marriage of the testator.
(3) Despite subsection (1)—
(a) a will made in contemplation of a marriage (whether or not that contemplation is expressed in the will) is not revoked by the solemnisation of the marriage contemplated; and
(b) a will which is expressed to be made in contemplation of marriage generally is not revoked by the marriage of the testator.

So therefore, if you have same sex clients (or friends) who are happily organising their weddings, you need to check whether they have existing wills and offer to make them new ones. That is fairly straightforward.

It gets more interesting when we look at the effect of the same sex marriage laws on same sex marriages conducted overseas prior to 9 December 2017. Couples who have already married overseas in accordance with the marriage laws of those countries will now have their marriages recognised under Australian Law. This is due to the operation of s70(2) of the *Marriage Amendment (Definition and Religious Freedoms) Act* 2017 -

> Part 5—Application and transitional provisions
>
> 69 Definitions
>
> In this Part:
> ***amended Act*** means the *Marriage Act 1961*, as amended by this Act.
>
> 70 Application of amendments
>
> (1) Except as provided by subitem (2), the amendments made by this Schedule only apply in relation to a marriage (within the meaning of the amended Act) that takes place at or after the commencement of this item.
>
> (2) Part VA of the amended Act (recognition of foreign marriages) applies at and after that commencement in relation to a marriage (within the meaning of the amended Act), even if the marriage took place before that commencement.

As the operation of the recognition of foreign marriages was automatic, any same sex couples who had already married in a recognised overseas marriage, woke up on 9 December 2017 legally married in Australia. Any wills made prior to 9 December 2017 were most likely revoked by the recognition of the overseas marriage in Australia. It would be a good idea for these newly-recognised-as-married couples to also make new wills.

The other good news for them is that they are now eligible to get divorced in Australia without having to do so in the overseas country where they married.

11. Proposed merger of the Family Court and Federal Circuit Court

The topic which has overshadowed all, are the Bills before the Federal Parliament designed to collapse two courts into one, the *Federal Circuit and Family Court of*

Australia (Consequential Amendments and Transitional Provisions) Bill 2018 and the *Federal Circuit and Family Court of Australia Bill* 2018.

At first glance, you might think that is not a bad idea. Having two federal courts with overlapping jurisdiction has been occasionally useful but more often frustrating. Practitioners need to decide which court to issue in and cope with two sets of rules. There are significant procedural differences between the two courts and costs for the client will vary widely depending on the choice of court.

A closer look at the proposal reveals that the intention of the restructure is to eliminate the Appellate Division of the Family Court. The proposed amalgamated Court, the Federal Circuit and Family Court of Australia (FCFC) would continue to have 2 divisions but appeals would be dealt with by the "Family Division" of the Full Court of the Federal Court of Australia. Efficiencies would then be gained by the former Family Appeal Court Judges hearing first instance cases instead of appeals.

We can expect that the current Chief Justice of the Family Court would be replaced on his imminent retirement with a Chief Justice of the new Court. Even though the new FCFC will have 2 divisions, Division 1 of Judges currently appointed to the Family Court and Division 2 of Judges currently appointed to the Federal Circuit Court, there is no guarantee that Division 1 Judges will be replaced when they retire. This is a particular issue for Melbourne as we will soon be down to 3 sitting judges – Justices Bennett, Macmillan and Johns.

Effectively then, we are facing the step by step phasing out of the specialist Family Court, which has been the envy of many across the world.

The Bill was introduced into parliament in the middle of the Prime Ministerial re-shuffle on 23 August 2018. Unfortunately it didn't go astray on the day. The Attorney-General's stated goal was to have the new court up and running by 1 January 2019, 3 months before the report is due from the major systematic review of the family law system by the ALRC. The Senate was able to refer the Bill to the

Legal and Constitutional Affairs Legislation Committee for inquiry and report by 15 April 2019, after the ALRC report is due.

Professional Associations are currently calling for your input into submissions to the Committee due by 23 November 2018.

Unfortunately, the discussions around the introduction of the Courts Merger Bill have become very nasty. The new Attorney-General Christian Porter quickly commissioned a limited scope report from PWC to analyse the court statistics and predict some dollar savings in order to support the idea of the merger. The Attorney-General's statistics were surprising but he said he had them from the heads of the 2 Courts. A group of Family Court Judges took the extraordinary step of releasing a statement pointing out some fairly obvious flaws in the figures. Even more surprisingly the Attorney-General responded with a defence of his strange statistics and released a redacted copy of the PWC report. Rumours abound. Each court has been set against the other to defend itself. Judges are announcing their retirement. The Law Council and NSW Bar have come out strongly in support of the one Court being a Family Court, properly resourced. No doubt Pauline Hanson is happy at the chaos.

It's definitely time for us to talk about kittens!

12. Pet Nups

This is a fun little take on a topic which has a serious side. More and more in our society, we are acknowledging the important role animals have in human lives. The problem is that when relationships break down, family law doesn't cater very well for the non-human children.

Pets are property, chattels. To work out who legally owns a pet, we can look to council registration or purchase records, but perhaps the pet was purchased and then gifted. Most children's pets are registered in the name of whichever parent signed the forms and lodged the microchip registration. Whether in a household

with children or without children, pets are often acquired jointly and not notionally any individual's pet.

The patience you receive from the Court in seeking orders about a pet varies from Judge to Judge, so it helps to know who has non-human children forming part of their families! Some judges will be prepared to make injunctive orders under s68 to ensure that pets go with the children, or a particular child. It is rare to get court time for an interim chattel dispute. If both parties are desperate to keep the pet, it can hardly be argued that an interim order is required to preserve the "property" as both of them are going to provide quality care and feed the much loved pet.

I can recall running a property case a few years back where the dispute included the pet snakes. The snakes had definitely belonged to the husband before the marriage broke down and he left to go droving. He held the licence to keep the snakes and he was the only one who loved them. The wife knew that the snakes would need to be fed a few weeks after he left and worked her way through her fear of them to get help and organise a new licence for herself. Eventually, the wife and children all came to love and care for the snakes and benefited therapeutically from their care of the snakes. When the husband resurfaced 18 months later, the wife refused to return the snakes. The case was passionately fought but the Judge agreed with the wife and children keeping the snakes.

This brings us to the question whether there can be a Binding Financial Agreement about a pet. A Pet Nup. The answer is yes there can be.

S90B(2) of the *Family Law Act* provides that people contemplating entering into a marriage may make a written agreement which includes–

> *"(a) how, in the event of the breakdown of the marriage, all or* ***any*** *of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and before divorce, is to be dealt with;"* ***(emphasis added)***

Similar wording applies for BFAs during a marriage (s90C), before entering into a de facto relationship (s90UB) or during a de facto relationship (s90UC).

So are we likely to see a rush on your services for Pet Nups? Probably not. The basic requirement for independent legal advice prior to signing also applies to single issue BFAs and may make the whole exercise far too expensive to attract most customers.

For the rest of us, we will just need to keep an eye on who signs the council registration papers, the microchip forms, whose name is on the vet records and make sure that the pet loves us best so they come when we call!

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September 2018