# Index

## Volume 13 Numbers 1-4

All references are to page numbers

A

### Abortion Law Reform Bill 2008 (Vic)

Passed in LA on conscience vote, 179-180

#### Adequacy of reasons

for child's residence, 220-223 on issues pursuant to s 75(2), 231-234

### Adoption

local adoption, 202-219

### Adult child maintenance - see Child support

ALRC 107 - Privilege in Perspective: Client Legal Privilege in Federal Investigations (2007), 86-88, 90

Alternative dispute resolution - see also Family Dispute Resolution

current climate in family law, 14-19 Law Council of Australia to encourage, 5

### Appeals

bona fides of, and security for costs, 228-229 principles where no different outcome would result, 169-172 rehearing or re-exercise of discretion, 231-234 rights to affected by delay in publishing reasons for judgement, 162-165

### Arbitration – see also Alternative dispute resolution

renewed focus on in Reform Act, 18

Artificial conception – see Assisted reproductive technology

### Assault - see Domestic (family) violence

### Assessment Act – *see* Child Support (Assessment) Act 1989 (Cth)

### Assisted reproductive technology

changes to recognition of lesbian parents, 123-124 new laws proposed on cloning and research, 180 parenting orders and, 23-26

(2008) 13 CFL 241

posthumous conception, 58 sperm and ova donor registers, 7 Victorian laws on to be amended, 58-59, 180

### Australian Institute of Family Law Arbitrators and Mediators

Melbourne Project, 5

Australian Law Reform Commission – see ALRC

#### B

### Benefits

binding financial agreements not allowed with, 65

Best interests of the child - see Children

Binding financial agreements – see Financial agreements

#### С

Change of circumstances – *see* Rice and Asplund rule

### Child abduction

parenting orders, risk of harm, and imposition of conditions, 27-29

### Child abuse

compulsory family dispute resolution attendance and, 15

### **Child Protection Commission (NSW)** to improve DoCS services, 5-6

I ,

### Child support, 62-63, 127-128

adult child maintenance for educational expenses, 155-156 amendments, including new formulae, 59-60, 127 binding and limited agreements, 59-60 departure applications, whether special circumstances and adequate reasons, 30-33 departure prevention orders and, 60

### Child support - continued

international maintenance obligations, 62-63

- power of SSAT regarding departure applications, 95-97
- reforms regarding parental income and step-children, 127-128
- "resident children", in child support departures, 183-184

whether departure was "just and equitable", 224-226 whether judge erred in failing to take into account

incomes of parties and payment of school fees, 154-155

whether level was "just and equitable", 30-33

### Child Support Agency (CSA)

applications to court for declaration of entitlement to assessment, 63

demands for documents by, and legal professional privilege, 83-90

resources from, for legal profession, 128 SSAT reviews of decisions by, 12-13

### Child Support (Assessment) Act 1989 (Cth)

different financial criteria to Family Law Act, 33

- Pt 6A, whether SSAT had power to deal with matter under, 95-97
- s 117, departures from administrative assessment, 30-33, 183-184
- s 117, necessary steps in decision-making, 32, 224-226

#### **Child Support Registrar**

appeal from decision of Social Security Appeals Tribunal, 95-97

### Child Support (Registration and Collection) Act 1988 (Cth)

s 110B appeals, 12-13

### Children

application for school reports of, 112-116

applications regarding in India and Australia, 107-111

assisted reproduction and rights of, 58-59

best interests of, in allowing litigation, 112-116

- best interests of, in posthumous conception, 58 best interests of, in relocation, despite parent acting
- unilaterally, 162-165 best interests of, in relocation order, 100-103

best interests of, in residence with mother then father, 220-223

consent to adoption, 211-212

of de facto relationships, 200-201

### donor-conceived, right to know parents, 7

interim orders for care by grandparents, 149-151

local adoption, 202-219 One Chance at Childhood project, 7

oral application for an independent children's

- lawyer, 47-49
- support services for, after parental separation, 178-179
- whether miscarriage of justice due to manner in which wishes of children were dealt with, 154, 157

### **Children's Contact Centres**

scheduled for opening, 60

#### **Children's Contact Services**

A Guideline for Family Law Courts and Children's Contact Services released, 10-11

#### Civil partnership laws

commence in ACT, 122-123

### **Client legal privilege**

demands for documents by CSA and, 83, 85-87, 89

Close personal relationships

not covered in amendment Bill, 197

### **Cohabitation** – *see* **De facto relationships**

**Collaborative lawyering** alternative dispute resolution using, 18-19

### **Commonwealth Ombudsman**

report on marriage-like relationships, 7-8

### Conciliation

difference from mediation, 18

### Consent to adoption, 209

### Contributions – see Property proceedings, assessment of contributions in

#### Costs - see also Security for costs

appeal allowed due to error regarding stay of proceedings, 107-111

appeal because denied opportunity to make submissions on costs, 30-33

- claim for costs relating to subpoena, 104-106
- Family Court rules on, 55

order for costs, and application for security for costs in appeal proceedings, 41-42

Counselling - see Family Relationship Centres

### Court system

therapeutic jurisprudence, 6

Crimes (Domestic and Personal Violence) Act 2007 (NSW) commencement and objects of, 55-56

Crimes Act 1958 (Vic) abortion decriminalised under, 179-180

### D

De facto relationships - see also Same-sex relationships call for national relationship register, 57 children of, 200-201 close personal relationships not covered in amendment Bill, 197 Commonwealth Ombudsman's report on, 7-8 "de facto financial cause", 198 definitions, 200 disappointed reliance and expectation interests, 131-134 included or excluded in amendment Bill, 196-197 initial contributions, in property proceedings, 144-146 "just and equitable" orders including post-separation needs, 131-134 "needs and means" as "subsidiary" factors, 134-136 pension rights for partners of judicial officers, 57 property Bill introduced, 121-122 proposed federal legislation regarding, 195-201 relationship contributions causing "lost opportunities", 129-136 Relationship Register in Victoria, 56-57

### Definitions

family dispute resolution, 16 member of the family, 23 parent, 23, 25-26 relative, 23

### Delays

between making parenting orders and delivering reasons for judgement, 162-165

### Department of Child Safety (Qld)

One Chance at Childhood project, 7

**Department of Community Services (DoCS)** Child Protection Commission and, 5-6

### **Departure prevention orders**

child support debts and, 60

### Discretion - see Exercise of discretion

### Discrimination

gender equality in treatment of contributions, 137-138

NSW Acts to be amended to remove discrimination against same-sex couples, 123-124

#### **Divorce** – see also Separation

applications in India and Australia, 107-111 automatic revoking of wills in WA upon, 57-58 decline in rate of in 2007, 177

### Documents

demands for by CSA, legal professional privilege and, 83-90

### Domestic (family) violence

compulsory family dispute resolution attendance and, 15 new legislation in ACT, 181 new legislation in NSW, 55-56 reforms to protect victims of economic abuse, 8

### Domestic Violence and Protection Orders Act 2008 (ACT)

passed, 181

## Drug use by parents

when child in care, 220-223

### Е

### Economic abuse

reforms to protect victims of, 8

#### Education

shared parental responsibility in, 34-37

# Equal shared parental responsibility – *see* Shared parental responsibility

#### Equality – see Discrimination

Evidence Act 1995 (Cth) legal privilege under, 83, 85-87

# Exercise of discretion

appeals against, 231-234

### Index

### Exercise of discretion - continued

in assessment of contributions in property proceedings, 137 in relation to procedural matters, 47-49

### F

### Families

assisted reproduction and rights of, 58-59

### Family consultants

function of, 16-17

### Family Court of Australia

changes in fees payable, 8-9, 125 costs rules, 55 Forbes, Judicial Registrar retires from, 61 Fowler, Stuart appointed to, 10 future structure of, 124-125 Kay, Justice retires from, 61 privacy statement on website, 181 therapeutic jurisprudence, 6

### Family Court of Western Australia

Crooks, Stephen appointed to, 10

### Family dispute resolution

compulsory attendance at, 14-19

defined, 16

FDR certificates, exceptions to requirement for, 14-15

FDR certificates, Practice Direction 1 of 2008 on, 55 FDR certificates, requirement for, 14-17 practitioners in, 16 precondition for relisting matter, 223

- Family Law Act 1975 (Cth)
  - Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 (Cth), 121-122, 136

Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 (Cth), changes introduced in, 177, 195-201

Family Law (Child Abduction Convention) Regulations 1986 (Cth), risk to child, and alleviation of risk, 28-29

- Family Law Legislation Amendment (Superannuation) Act 2001 (Cth), effect of changes to, 70-82
- Pt VII, Div 12A, interim proceedings, 93
- Pt VII, compulsory family dispute resolution attendance orders, 14-19

Goode, 149-151
Pt VII, parenting orders and non-parents, 20-26
Rice and Asplund rule, relevance to, 158-159
s 60, child's best interests, 21-22
s 60, whether presumption of shared parental responsibility applies, 149-151
s 60CC, relationship with siblings, 220-223
s 60H, amendments to regarding children of same-sex relationships, 178
s 60I, compulsory family dispute resolution

Pt VII, legislative pathways as outlined in Goode v

- attendance, 14-19 s 60I, exception regarding FDR certificate requirement revoked, 182
- s 61, shared parental responsibility, education and, 34-37
- s 65, equal shared parental responsibility, 101, 103, 162-165
- s 69ZQ(1)(f), family dispute resolution recommended, 223
- s 72, threshold requirement for spouse maintenance, 170
- s 75, trends in treatment of contributions under, 137
- s 75(2), adjustment based on superior earning capacity, 38-40
- s 75(2), disparity in assets after contributions assessed, 43-46
- s 75(2), estranged children and higher earning capacity, 98-99
- s 75(2) factors, inadequate reasons given, 231-234
- s 75(2) factors, relevant factors not considered, 231-234
- s 75(2), potential liabilities as a factor, 43-46
- s 75(2), relationship contributions in de facto relationships, 129-136
- s 75(2), responsibility to care for children of new relationship, 44
- s 79, costs and, 41-42
- s 79, different financial criteria to *Child Support* Assessment Act, 33
- s 79, exercise of discretion under, 137
- s 79, superannuation amendments and, 77-78
- s 79, trends in treatment of contributions under, 137
- s 79, whether change in children's residence "circumstances of an exceptional nature", 153-154
- s 79, whether change in children's residence made orders impractical, 153-154
- s 90, effect of superannuation amendments on property adjustments, 70-82
- s 90, on financial agreements, 64-69, 185-194

### Family Law Act 1975 (Cth) - continued

s 114, requirement that there be a "matrimonial cause", 169-172

s 117, on security for costs, 41-42, 227-230

### Family law council

Annual Report 2006-2007, 6 Wade, Professor appointed as chairperson, 10

### Family Law Courts - see also Family Court of Australia; Federal Magistrates Court

A Guideline for Family Law Courts and Children's Contact Services released, 10-11 Proposed merger of, 124-125

#### Family law regulations

family dispute resolution practitioners, 16

### Family law rules

meaning and validity of r 22.03, providing that appeals to be filed within 28 days, 91-94

### Family Law Rules 2004 (Cth)

Family Dispute Resolution certificate requirement under, 14-16

Pt 19.2, r 19.05(2), on security for costs, 227-230

### **Family Relationship Centres**

25 new, 60

### Family violence - see Domestic (family) violence

### **Federal Magistrates Court**

Baker, Barbara appointed to, 182 Bender, Evelyn appointed to, 182 Cassidy, Margaret appointed to, 10 Cole, Peter appointed to, 182 Demack, Anne appointed to, 182 Dunkley, David appointed to, 182 fee increases, 125-126 future structure of, 124-125 McGuire, Terry appointed to, 182 Monahan, Geoff appointed to, 182 new divorce forms, 181 Orchiston, Jillian appointed to, 10 Practice Direction 1 of 2008 on FDR certificates, 55 Practice Direction No 2 of 2008 published, 182 trial of electronic filing of supplementary documents, 182 Walker, Judith appointed to, 182

### Federal Magistrates Court Rules 2001 (Cth)

application to have proceedings summarily dismissed on a "threshold basis", 49

on timing of judgements and orders, 163-164

#### Fees

Family Law Courts, changes to, 8-9, 125-126

### **Financial agreements**

binding, by de facto couples, 121-122 binding and limited, 128 Certificate of Independent Legal Advice, correct approach to, 65-69 challenges to, 186-187 de facto relationships, 195, 197 drafting of effective, 64 practical tips for practitioners, 191-193 precedent documents, 68-69 prenuptial, 64, 68-69 risks, responsibilities and rewards, 64-69 strict construction approach (full compliance), 65-69, 185-194 State and federal provisions for, 198-199 superannuation agreements, 80-81 valid, 187-191

### G

Government benefits - see Benefits

Guideline for Family Law Courts and Children's **Contact Services** 

released, 10-11

**Hague convention** 

### Н

removal of child to Australia and, 28

#### Hearings

Income

exercise of discretion in relation to procedural matters, 47-49

whether apprehended bias and prejudgement, 160-161

whether performed in an appropriate manner for a "pro se litigant", 156

"Helping courts" - see Therapeutic jurisprudence

#### I

evidence for determination of, 224-226

### India

as competing jurisdiction, 107-111

### Information

access to adoption information, 215-219 demands for by CSA, legal professional privilege and, 83-90 photocopied or electronic transcripts, 227

#### Interest

valuation of interest in discretionary trusts, 38-40

#### Interim orders

best interests of child in relocation, despite parent acting unilaterally, 162-165 LAT process, and time spent by children with parents, 91-94 parenting orders, 149-151 preferred to further hearing, 223 spouse maintenance, after payment of interim property order, 169-172

### J

Judgments delay in publishing reasons for, 162-165

#### Judicial officers

pension rights for partners of, 57

### Jurisdiction

overseas child support, 62-63

regarding injunction for wife to stay away from third party's residence, 169-172

stays of proceedings when courts of competing forums have jurisdiction, 107-111

### L

### Law Council of Australia

Melbourne Project for ADR, 5

### Lawyers

oral application for an independent children's lawyer, 47-49

technical errors by solicitors in drafting financial agreements, 65-69

### Legal professional privilege

demands for documents by CSA and, 83-90 dominant v sole purpose and, 84-86

Less Adversarial Trial process approach to interim proceedings in, 91-94

Limited financial agreements – see Financial agreements

Litigants self-represented, 47-49

Location – see Residence

### М

Maintenance – see Child support; Spousal maintenance

### Marriage

long duration of, and property expectations, 142-144, 166-168

short duration of, and property expectations, 138-142

Marriage-like relationships – see also De facto relationships

Commonwealth Ombudsman's report on, 7-8

### Mediation

difference from conciliation, 18

Medically mediated reproduction – see Assisted reproductive technology

### N

## National Alternative Dispute Resolution Advisory Council (NADRAC)

Alexander, Nadja appointed to, 10

### 0

### Overseas travel

departure prevention orders and child support debts, 60

### Р

Parenting orders, 25-26, 100-103, 160-161 – see also Shared parental responsibility

### Parenting orders - continued

application to vary, to include access to school information, 47-49 best interests of child to live with mother then father, 220-223 conditions on return order after child abduction, 28 delay between making orders and delivering reasons for judgement, 162-165 donor-conceived children, 23-26, 26 interim orders for care by grandparents, 149-151 less adversarial trial process, and time spent by children with parents, 91-94 non-biological parents and non-parents, 20-26 requirement for relocation of parents, 100-103 Rice and Asplund rule in consideration of, 112-116, 158-159 sole parental responsibility, and entitlement to receive school reports, 112-116 weight given to prior parenting arrangements, 149-151 Parents

consent to adoption by, 209-215 criteria for adoption by, 204-205

### Pensions

for partners of judicial officers, 57

### Personal protection

injunction for wife to stay away from third party's residence, 169-172

### Posthumous conception - see Assisted reproductive technology

#### Precedents

practical tips on financial agreements, 191-193

### Prenuptial agreements, 64, 68-69 - see also **Financial agreements**

#### **Procedural matters** – see also Hearings

exercise of discretion in relation to, 47-49

### Professional privilege - see Legal professional privilege

### **Property proceedings** – see also **De facto** relationships; Financial agreements

application to set aside subpoena, 104-106 applications in India and Australia, 107-111 assets "quarantined" as acquired post separation, 231-234

claim dismissed as no pool of assets to be divided, 34-37 large matrimonial pool, and long marriage, 43-46 liabilities included in, 98-99 net asset pool, effect of realisation costs and taxes on, 43-46 notional "add-back" of post-separation expenditure, 38-39 treatment of superannuation in, 76-80 variation sought, as parenting roles changed, 152-157 whether orders "just and equitable", 231-234 Property proceedings, assessment of contributions in division of large asset pools, 142

en globo v asset-by-asset approach, 140-142 "homemaker" style contributions, and gender equality, 137-139, 141-142 inheritances and debts in, 166-168 initial contributions, 98-99, 143-148 intangibles of youth and companionship, 141-142 long marriages, 142-144, 166-168 negative contributions, assessed at 100:0 in favour of wife, 231-234 post-separation property, and failure to call de facto to give evidence, 166-168 short marriages, 138-142 superannuation amendments and, 77-80 trends in treatment of contributions, 137-148

### R

#### Re Mark (2003)

application relating to parental responsibilities, 23-24

Re Patrick (2002) parenting orders and non-biological parents, 24-26

**Reasons** - see Adequacy of reasons

### Registration and Collection Act - see Child Support (Registration and Collection) Act 1988 (Cth)

#### **Relationship Registers**

ACT. 122-123 call for national, 57 Victoria, 56-57

### Index

### Relationships Bill 2007 (Vic)

tabled in Parliament, 56-57

# Reproduction – see Assisted reproductive technology

#### Residence

adequacy of reasons, 220-223 applications in India and Australia, 107-111 best interests of child in relocation, despite parent acting unilaterally, 162-165 coercive impact of relocation orders, 100-103 habitual, and child abduction regulations, 27-29 interim orders for, in care of grandparents, 149-151 introduction of overnight time, 160-161 relocation orders to ensure equal time, 100-103 "resident children", in child support departures, 183-184 Rice and Asplund rule in application to substantially vary consent orders, 158-159 scope of restraint on place of, 160-161 whether change in children's residence "circumstances of an exceptional nature", 153-154 whether miscarriage of justice due to manner in which wishes of children were dealt with, 154, 157

### **Restraining orders**

injunction for wife to stay away from third party's residence, 169-172

### **Rice and Asplund rule**

change in circumstances required before further application, 112-116 parenting orders and, 158-159

### S

### Same-sex relationships – see also De facto relationships

children of, 200-201 criteria for adoption, 206 NSW Acts to be amended to remove discrimination against, 123-124 pension rights for partners of judicial officers, 57 property Bill introduced, 121-122 Relationship Registers, 56-57 second stage of Bill on introduced into federal Parliament, 177-178

### **School reports**

best interests of children in allowing litigation regarding, 112-116

### Security for costs

application for, in appeal proceedings, 41-42 financial circumstances, and bona fides, 227-230 respondent parties seeking security in differing amounts, 227-230

#### Self-represented litigants

problems with, 49

#### **Separation** – see also **Divorce**

counselling at Family Relationship Centres, 60 support services for children after, 178-179

### Separation declarations

for binding financial agreements, 65 for superannuation agreements, 81

### Shared parental responsibility – see also Parenting orders

best interests of child to live with mother then father, 220-223 one parent sole responsibility for education, 34-37

relocation orders and equal time, 100-103 time spent by children with parents, 91-94

### Social Security Appeals Tribunal (SSAT)

appeal by Child Support Registrar to clarify powers of, 95-97

departure applications and, 224-226 first reported appeal in Child Support Jurisdiction, 12-13

### Solicitors – see Lawyers

# Spousal maintenance – see also Financial agreements

ability to obtain employment and, 34-37 de facto relationships, 121-122, 198 dismissed based on lack of need, 98-99 financial agreements and, 66, 68 interim applications, after payment of interim property order, 169-172

### SSAT -see Social Security Appeals Tribunal

### Stay of proceedings

when courts of competing forums have jurisdiction, 107-111

### Subpoenas

application to set aside, and claim for costs relating to, 104-106

### Superannuation

base amounts, 71, 73 capital value v cash stream, 76-77 compassionate grounds and, 73 effect of amendments on property adjustments, 70-82 flagging orders, 71-72, 77 payments v interests, 71-74 post-separation contributions, 79 potential future taxation liability, 38-40 reversionary beneficiaries (children), 73 splitting, 71-74, 77, 121 types of assets in different asset pools, 76-80 unsplittable interests, and binding financial agreements, 193-194 valuing interests in, 74-76

### Support services

for children, after parental separation, 178-179

### Surrogacy

NSW to commission report on laws on, 180-181 Victorian laws on to be amended, 58-59, 180

Т

### Taxation

debts for in property proceedings, 166-168 liability on future drawdown of superannuation entitlement, 38-40 potential liabilities as a factor in assessing net asset pool, 43-46 superannuation amendments, 72

### Termination of pregnancy – *see* Abortion Law Reform Bill 2008 (Vic)

### Therapeutic jurisprudence

Family Court, 6

### Third parties

injunction for wife to stay away from third party's residence, 169-172 procedural fairness to trustees in superannuation assessments, 71

#### Transcripts

photocopied or electronic, 227

(2008) 13 CFL 241

### Transfer of proceedings

application for transfer to another Registry, 47-49

### Trusts

Wills

valuation of interest in discretionary trusts, 38-40

### V

## Victorian Law Reform Commission

report on assisted reproduction and adoption, 58-59

Violence in the home – see Domestic (family) violence

#### W

automatic revoking of in WA upon divorce, 57-58