

# FAMILY LAW REVIEW

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## ARTICLES

### **If You Want a Picture of the Future, Imagine Mandated Pre-action Procedures, Registrar Case Management and Information Sharing – Judge Joe Harman**

Delays with the family law system are well known, so much so that they are the subject of media comment on a near weekly basis. In September, 2017, then Attorney-General announced an Australian Law Reform Commission review of the family law system with extensive terms of reference including a focus upon the ability of parties “to resolve their family law disputes quickly and safely while minimising the financial burden”. The Federal Circuit Court, as the Commonwealth’s first instance trial Court, hears the majority of family law matters. The intent of this paper is to explore a number of contributors to delay in cases before the Federal Circuit Court and to comment upon contributors to those delays and potential means of addressing those delay. .... 179

### **Accommodating Family Law and Culture in a Diverse Society: The Injunction Power and the Jewish Experience – Graham Segal OAM**

In Jewish law (known as Halakah” or “Halacha”) parties remain married unless and until a document of divorce (known as a Gett) is delivered by the husband to the wife. Jewish ecclesiastical courts (known as a Beth Din, Batei Din- plural) may in appropriate cases order a party to give or receive a Gett. However, outside of Israel its writ does not run. In Australia s 114 of the Family Law Act (the injunction power) has been called in aid so as to require the recalcitrant party to attend a Beth Din and abide its orders. The “availability” of such injunctions, more than their use, has proved valuable. The availability of such remedy has recently been denied in recent decisions of the Family Court. Issues concerning the construction of that provision, s 116 of the Australian Constitution and matters of legal policy are engaged by those decisions. .... 196

### **Certain Unions Are Not Marriages: Predicting Outcomes on Separation for Same-sex Couples Married Overseas – Louise Cooney and Eliza Tiernan**

This article, written at the time of the 2017 postal survey on the definition of marriage in Australia, considers the status of marriage in Australia at that point in time. It concludes that the narrowly targeted effect of amendments made to the Australian *Marriage Act 1961* (Cth) in 2004, which specified that marriages between same-sex partners would not be recognised in Australia, had far-reaching and potentially unforeseen consequences. Further, it considers the potential consequences of any change to Australian law that would legalise marriage between same-sex partners and, by implication, would be likely to render overseas marriages between same-sex partners valid in Australia. It is noted some of the issues raised have been addressed in consequential amendments contained in the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth). .... 207

**Family Law Property Settlements: An Exploratory Quantitative analysis – Christopher Turnbull**

There are few studies of first-instance judgments under s 79 of the *Family Law Act 1975* (Cth). This article examines the results and reasoning processes of a sample of 200 first-instance property settlement decisions, in cases there are children of the marriage or de facto relationship. This article suggests that, subject to the sample’s limitations, and despite multiple variations in reasoning processes, patterns of distribution emerge. These include near equality of contribution-based entitlements, a tendency of adjustments under s 75(2) of the *Family Law Act 1975* (Cth) to mothers, and an overall transfer of wealth from fathers to mothers. .... 215

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**Post-separation Inheritances: Calvin v McTier [2017] FamCA 125 – Anna Parker and Amanda Pearson**

The recent decision of the Full Court of the Family Court of Australia in *Calvin v McTier* addressed the treatment of post-separation inheritances in family law property disputes. This article discusses that decision and other cases regarding the treatment of inheritances in family law matters, and considers the question of whether post-separation inheritances are likely to be available for distribution between the parties to a marriage or de facto relationship that has broken down, and the factors that are likely to be relevant to a determination of that question. .... 231

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