

FAMILY LAW REVIEW

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ARTICLES

Applying the s 75(2) factors to the division of family property: A principled approach – *Patrick Parkinson*

This article examines the justification for altering property interests by application of the s 75(2) factors in the light of the constitutional basis for the alteration of property rights. The s 75(2) factors are not at large. The *Family Law Act* needs to be read down to take account of that constitutional context. A disparity in income between the parties, or poor health unconnected to the circumstances of the marriage are not, in themselves, sufficient reasons to alter property interests. It must be shown that a s 75(2) adjustment is required to address circumstances arising out of the marital relationship – in particular the economic consequences of role division – or to help a party manage the transition from sharing in the combined marital resources to a lower standard of living as a single person. The article concludes by considering some practical implications for lawyers in preparing cases where the s 75(2) factors are likely to be a significant issue. 77

Legal capacity and case guardians – Part 2: The institution of proceedings and appointment of case guardians – *Brendan Ashdown*

The question of whether a person lacks legal capacity arises at various junctures within the law, one being a person's capacity to engage in legal proceedings. This was discussed in an earlier article by the author which appeared in *Family Law Review*, Volume 4/1. In this article the author now considers the impact of legal capacity on the invoking of the court's jurisdiction through service of originating process, and the requirements for the appointment of a case guardian. The court's power to subsequently conduct, and determine, such legal proceedings arising from the procedural rules of court, the principles of natural justice and procedural fairness is examined. 90

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