

FAMILY LAW REVIEW

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ARTICLES

Children’s rights to culture in Australia: How FDR mediation can support these rights – *Mieke Brandon and Beth Dababneh*

This article identifies the level of cultural sensitivity of family dispute resolution practitioners (FDRPs), in both government and public forums, to the cultural needs of children from diverse cultures. Qualitative interviews were conducted with 30 FDRPs. Despite earlier research showing that FDRPs understand the importance of culture for children, and despite culture being a right granted in Pt VII, Div 12 of the *Family Law Act 1975* (Cth), the interview results indicated that the majority of FDRPs have only a rudimentary understanding of the legislative rights of children to their culture, believing that children’s rights translate to parental prerogative. The article addresses the rationale for incorporating children’s rights to culture into FDR and suggests strategies that FDRPs may adopt to support and facilitate children’s rights to culture during FDR. 77

Restraining legal practitioners – *Michael Kearney SC*

This article examines how the decision of the Full Court in *Osferatu v Osferatu* has clarified the principles to be considered in determining applications for the restraint of legal practitioners from acting for particular clients. 93

Superannuation splitting and family law – *Anne-Marie Rice and Joseph Box*

The introduction, in 2002, of Pt VIII B of the *Family Law Act 1975* (Cth) and the *Family Law (Superannuation) Regulations 2001* (Cth) fundamentally changed the face of property settlements under the *Family Law Act*. Those amendments gave the court power to split interests in superannuation funds between spouses. Since then, superannuation has secured its place as a key asset available for division between separated couples and the superannuation industry has secured its place as a fundamental part of the investment landscape. The splitting of superannuation provides many opportunities for courts and practitioners to justly and equitably divide an asset pool, but the technicalities of both the family law regime and the superannuation industry regulations, particularly in relation to self-managed funds, make this a highly technical, and potentially fraught, area of practice. 101

PROFESSIONAL INSIGHTS

Ethical obligations and duties in family law – *Chris Gunson SC*

This article addresses a number of current ethical issues faced by lawyers in the family law context, in particular: dealing with demanding clients; clients who draft affidavits; and making serious allegations and complaints. Referring to applicable rules of conduct and relevant case authority the article offers observations and suggestions for family lawyers who are faced with such issues. 114

CHILD SUPPORT

The doctrine of set off and child support – *Simon Bacon*

In the case of *Ortleib v Lloyd*, Judge Brewster utilised the doctrine of set off to reduce a payer’s outstanding child support arrears. Is this approach consistent with authority and how broadly does the doctrine behind it apply? 122

PROPERTY AND FINANCIAL ARRANGEMENTS

Comparable cases and the section 79 discretion – *Paul Glass and Anna Parker*

In both the Full Court’s decision in *Fields v Smith* and the High Court’s decision in the criminal sentencing case of *R v Pham*, the use of tables setting out the outcomes of comparable cases was held to have led trial judges into error. This article considers the relevance of previously decided cases to discretionary family law decision-making and the manner in which such cases may permissibly be used to guide discretionary judgments. 127

PRACTICE AND PROCEDURE

Forensic restraint by family lawyers – not an optional extra – *Bridget Cullen*

The recent legal profession disciplinary decision by the Queensland Civil and Administrative Tribunal in *Legal Services Commissioner v Cooper* reminds lawyers of the importance of exercising objective forensic restraint in circumstances where a client proposes a course of action that lacks merit. This article examines that decision and suggests simple steps that legal practitioners can take to avoid losing sight of ethical boundaries and thus avoid the risk of facing disciplinary proceedings. 134

IN THE HIGH COURT

Spousal maintenance and “financial resources”: *Hall v Hall* – *Olivia Rundle*

This High Court matter was an appeal from a decision of the Full Court of the Family Court, which set aside an order for interim spousal maintenance made by a single judge. The dispute was about how a potential financial payment to the wife from a family business controlled by her brothers should be treated in her application for interim spousal maintenance from the husband. Also disputed were the grounds upon which an interim order for spousal maintenance could be discharged. 137

RECENT CASES – *Judge Geoffrey Monahan (Ed) – Dean Foley – Trevor McKenna*

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