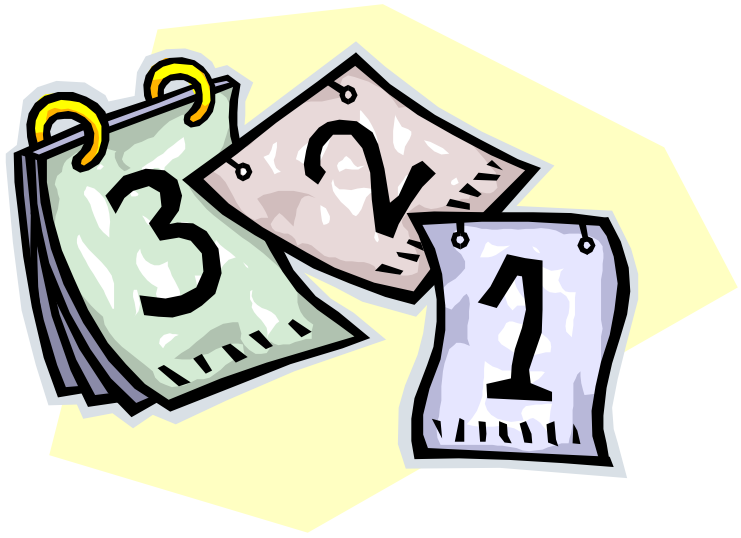
The Year in Review

Surrogacy, Adoption,

Family Violence Provisions, Civil Partnerships,

PPSA & BFAs

Presented by Leith Sinclair of Brisbane Family Law Centre



FLPA IN THE TROPICS – CAIRNS, 19 MAY 2012

TOPICS

Surrogacy, Adoption, Family Violence Provisions, Civil Partnerships, PPSA & Binding Financial Agreements

1. **Surrogacy**
2. **Adoption**
3. **Family violence**
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APPENDICES

A. Legislation

B. Cases

SURROGACY

The *Surrogacy Act 2010* (Qld) repealed the *Surrogate Parenthood Act 1988* (Qld).[1] It was assented to on 16 February 2010, with the bulk of the legislation coming into effect on 1 June 2010.[2]

The purpose of the *Surrogacy Act 2010* (Qld) is, essentially, to enable people to have a child born of a surrogate subject to Parentage Orders. That is, to enable the intended parents to have their parentage reflected on the birth certificate of the child (or, children) born as a result of a surrogacy arrangement.[3] The relevant Court is the Childrens Court.[4]

The wellbeing and best interests of a child born as a result of a surrogacy arrangement are paramount.[5] The autonomy of the adults involved in any surrogacy arrangement is also important.[6] This might be contrasted against the way in which the adults involved in an adoption are treated distinctly differently.

Surrogacy, providing it is altruistic, is now lawful in Queensland. Sections 56 and 57 of the *Surrogacy Act 2010* (Qld) maintain that it is an offence, punishable by up to 3 years imprisonment, to enter into a commercial surrogacy arrangement and/or give or receive consideration in relation to a surrogacy arrangement. Further, persons knowingly providing technical, professional or medical services to anyone involved in a surrogacy arrangement also commit an offence and can face a penalty of up to 3 years imprisonment.[7]

If a surrogacy arrangement fails to meet the legislative requirements, it is unlikely that a parentage Order will be made in the Childrens Court. However, there may be an opportunity to apply for a Parenting Order in the Family Court or Federal Magistrates Court, providing that the Applicant/s can establish that they satisfy the Court that they are a person concerned with the care, welfare or development of the child, pursuant to section 65C(c) of the *Family Law Act 1975* (Cth).

A surrogacy agreement is not enforceable, in terms of the birth mother being compelled to surrender the child.[8] Conversely, though, the intended parents can be forced to pay or

[1] See section 6 1 of the *Surrogacy Act 2010* (Qld).
[2] See Endnotes Part 6 of the *Surrogacy Act 2010* (Qld).
[3] See section 5(a) and Part 3 of the *Surrogacy Act 2010* (Qld).
[4] See section 13 of the *Surrogacy Act 2010* (Qld).
[5] See sections 6(1) and 22(2)(a) of the *Surrogacy Act 2010* (Qld).
[6] See section 6(2)(d) of the *Surrogacy Act 2010* (Qld).
[7] See section 58 of the *Surrogacy Act 2010* (Qld).
[8] See section 15(1) of the *Surrogacy Act 2010* (Qld).

reimburse the birth mother's surrogacy costs,[9] unless the birth mother fails to surrender the child or consent to the Parentage Order.[10]

In terms of the money that can be exchanged without falling foul of the legislation, the scope is quite permissive. Expenses that the intended parents can meet for the birth mother include her "reasonable costs" associated with:[11]

> "(a) becoming or trying to become pregnant;
> (b) a pregnancy or a birth;
> (c) the birth mother and the birth mother's spouse (if any) being a party to a surrogacy arrangement or proceedings in relation to a parentage order."

Costs for the birth mother can include things like health insurance premiums, disability or life insurance, lost earnings (limited to a period of 2 months for the time of birth, or time required to be taken off work on medical grounds),[12] travel and accommodation costs, medical costs not covered by Medicare or private health, counselling costs and legal costs.

The birth mother can manage the pregnancy at her discretion.[13] So, whilst various conditions may be built into a surrogacy agreement, ultimately those conditions are unenforceable.

Until a parentage order is made, the usual parenting presumptions apply to the child, as outlined in the *Status of Children Act 1978* (Qld). Therefore, pending a parentage order, the birth mother is deemed to be the child's mother, irrespective of whether assisted fertility treatment was used for conception or it was a natural conception, and irrespective of whether her ovum was used, or another woman's ovum was used.[14]

Further, her male spouse, if she has one, is deemed to be the child's father, irrespective of whether his sperm was used to conceive the child.[15]

Also, her female spouse, if she has one, is deemed to be the child's other parent, irrespective of whether her ovum was used to conceive the child,[16] and the man who produced the sperm used is specifically deprived of any rights.[17]

If the birth mother's spouse provided consent to the pregnancy, the parenting presumptions under the *Status of Children Act 1978* (Qld) are irrebuttable, subject only to the parentage

[9] See section 15(2) of the *Surrogacy Act 2010* (Qld).
[10] See section 15(2)(b) of the *Surrogacy Act 2010* (Qld).
[11] See section 11 of the *Surrogacy Act 2010* (Qld).
[12] See section 11(2)(f) of the *Surrogacy Act 2010* (Qld).
[13] See section 16 of the *Surrogacy Act 2010* (Qld).
[14] See sections 19(2) and 19E of the *Status of Children Act 1978* (Qld).
[15] See sections 17(2) and 18(2) of the *Status of Children Act 1978* (Qld).
[16] See section 19C(3) of the *Status of Children Act 1978* (Qld).
[17] See sections 19C(2) and 19D(2) of the *Status of Children Act 1978* (Qld).

order being made.[18] The presumptions are rebuttable only if consent was not provided by the birth mother's spouse.[19]

If the birth mother does not have a spouse, the man who produced the sperm, which could be the intended parent, has no rights.[20] Similarly, if the birth mother uses donor ovum, which could be the ovum from the intended mother, the donor woman has no rights.[21]

There are basically 8 steps involved in a surrogacy arrangement, as follows.

1. A medical or social need must exist

Single people, as the intended parent, satisfy the medical and social need pre-requisite for entering into a surrogacy arrangement.[22] So do same sex couples.[23]

A heterosexual couple will only satisfy this element if the woman is unable to conceive, or unable to carry out a viable pregnancy on medical grounds.[24] Those medical grounds are quite serious, and include:

- The woman being medically unable to carry a pregnancy or give birth;
- The woman being unlikely to survive pregnancy or birth, or likely to have significant health consequences if she undergoes pregnancy or birth;
- The child being affected by a genetic condition or disorder attributable to the woman; or
- The child being unlikely to survive pregnancy or birth, or likely to have significant health consequences if she undergoes pregnancy or birth.[25]

At the time an application is made for a parentage Order, an appropriately qualified medical professional must produce an affidavit deposing to the medical need of all women applicants.[26]

2. Independent legal advice provided

The birth mother (and spouse if applicable) must be provided with independent legal advice about the surrogacy arrangement and its implications, prior to entering into the surrogacy agreement.[27]

[18] See section 19F of the *Status of Children Act 1978* (Qld).
[19] See section 19G of the *Status of Children Act 1978* (Qld).
[20] See sections 21 and 22 of the *Status of Children Act 1978* (Qld).
[21] See section 23 of the *Status of Children Act 1978* (Qld).
[22] See section 14(1)(a) of the *Surrogacy Act 2010* (Qld).
[23] See sections 14(1)(b)(ii) and (iii) of the *Surrogacy Act 2010* (Qld).
[24] See section 14(1)(b)(i) of the *Surrogacy Act 2010* (Qld).
[25] See section 14(2) of the *Surrogacy Act 2010* (Qld).
[26] See section 25(j) of the *Surrogacy Act 2010* (Qld).
[27] See section 22(2)(e)(i)(A) of the *Surrogacy Act 2010* (Qld).

The Intended parent(s) must be provided with independent legal advice about the surrogacy arrangement and its implications, prior to entering into the surrogacy agreement.[28]

Whilst the legislation infers that one lawyer could be used by the birth mother and/or her spouse, and a second lawyer could be used by the intended parent/s, the better view may be that some proposed surrogacy arrangements might call for separate lawyers for each individual person committing to the surrogacy arrangement in order to promote the separation and independence of advice required.[29] The lawyers involved are required to produce affidavits at the time the application is made for a parentage Order.[30] There are a number of factors which need to be addressed in the affidavit, but, helpfully, legal professional privilege is specifically preserved.[31]

3. Counselling prior to arrangement

All parties to the surrogacy arrangement must be provided with counselling about the social and psychological implications prior to entering into the surrogacy agreement.[32]

The one counsellor can be used for the counselling prior to the parties entering into the surrogacy arrangement.[33]

Any counsellor involved is required to produce an affidavit at the time the application is made for a parentage Order.[34]

4. Arrangement agreed to in writing

The surrogacy arrangement must be in writing and signed by all parties.[35] The terms of the written surrogacy arrangement are not otherwise prescribed.

The surrogacy arrangement must be produced to Court when applying for a parenting Order.[36]

5. Conception and Birth

6. Counselling following the birth (including a report)

A second, independent counsellor must produce an affidavit[37] attaching a "surrogacy guidance report" at the time the application is made to Court for a parentage Order.[38]

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[28] See section 22(2)(e)(i)(B) of the *Surrogacy Act 2010* (Qld).
[29] See section 30(1)(a) of the *Surrogacy Act 2010* (Qld).
[30] See section 25(1)(g) of the *Surrogacy Act 2010* (Qld).
[31] See section 31(2) of the *Surrogacy Act 2010* (Qld).
[32] See section 22(2)(e)(ii) of the *Surrogacy Act 2010* (Qld).
[33] See sections 25(1)(h) and 31 of the *Surrogacy Act 2010* (Qld).
[34] See section 25(1)(h) of the *Surrogacy Act 2010* (Qld).
[35] See section 22(2)(e)(v) of the *Surrogacy Act 2010* (Qld).
[36] See section 25(1)(b) of the *Surrogacy Act 2010* (Qld).
[37] See section 25(1)(i) of the *Surrogacy Act 2010* (Qld).
[38] See section 32 of the *Surrogacy Act 2010* (Qld).

The "surrogacy guidance report" must include details about the counsellor's qualifications.[39] The particular qualifications required are described in the legislation, and include that the counsellor is quite prescriptive.[40] The definition is:

> "**appropriately qualified** means—
> (a) for a counsellor swearing an affidavit verifying a report prepared by the counsellor, a person who—
> (i) is one of the following—
> (A) a member of the Australian and New Zealand Infertility Counsellors Association;
> (B) a psychiatrist who is a member of the Royal Australian and New Zealand College of Psychiatrists; and
> (ii) has the experience, skills or knowledge appropriate to prepare the report"

7. Court Application

Various documents need to be produced in support of an application to the Childrens Court for a parentage Order, including:[41]

1. the child's birth certificate;
2. the surrogacy arrangement;
3. affidavit/s of the applicant/s;
4. affidavit/s of the birth mother and/or her spouse;
5. affidavit/s of the lawyer/s providing advice;
6. affidavit/s of the counsellor/s providing counselling prior to the parties entering into the surrogacy arrangement;
7. an affidavit of the counsellor providing the "surrogacy guidance report"; and
8. an affidavit from an appropriately qualified medical professional verifying that any and all intended female parents have a medical need.

There are strict timeframes involved. The application needs to be made between 28 days and 6 months after the birth.[42] Further, the child must be living with the intended parents at the time of the application and at the time of the hearing, and must have been living with the intended parents for at least 28 days by the time the application is made.[43]

[39] See section 32(d) of the *Surrogacy Act 2010* (Qld).
[40] See section 19 of the *Surrogacy Act 2010* (Qld).
[41] See section 25 of the *Surrogacy Act 2010* (Qld).
[42] See section 21 of the *Surrogacy Act 2010* (Qld).
[43] See section 22(2)(b) of the *Surrogacy Act 2010* (Qld).

8. Registration of Parentage Order

The Court is **not** to dispense with the requirements that:

- The Order will be for the wellbeing, and in the best interests, of the child;[44]
- The surrogacy arrangement was made with the consent of all parties;[45]
- The surrogacy arrangement was made before the child was conceived;[46]and
- The surrogacy arrangement is not a commercial surrogacy arrangement.[47]

However, in exceptional circumstances, the Court can dispense with the other requirements of the legislation when considering making a parenting Order.[48] For example, if, at the time of the hearing of the application for the parenting Order, one of the parties to the surrogacy arrangement has died or cannot be located after all reasonable enquiries have been made, the Court can dispense with the need to ascertain their consent at the time of the Order.[49] The requirement for the consent to have been provided prior to entering into the surrogacy arrangement is maintained.

Other interesting things to note include:

- Access to the Court record is by way of leave,[50]and it is a closed Court for the hearing of an application;[51]
- It is an offence to publish any identifying information about the surrogacy arrangement without written consent from one of the parties to the surrogacy agreement;[52]
- The *Childrens Court Rules 1997* (Qld) apply at first blush, and the *Uniform Civil Procedure Rules 1999* (Qld) apply in the event the *Childrens Court Rules 1997* (Qld) do not provide for a particular issue;[53]
- The District Court of Queensland fees apply;[54]
- Any medical practitioner providing an affidavit must have qualifications, experience, skills or knowledge appropriate to prepare the report,[55] which infers that it cannot simply be a General Practitioner;

[44] See section 22(2)(a) of the *Surrogacy Act 2010* (Qld).
[45] See section 22(2)(e)(iii) of the *Surrogacy Act 2010* (Qld).
[46] See section 22(2)(e)(iv) of the *Surrogacy Act 2010* (Qld).
[47] See section 22(2)(e)(vi) of the *Surrogacy Act 2010* (Qld).
[48] See section 23 of the *Surrogacy Act 2010* (Qld).
[49] See section 23(3) of the *Surrogacy Act 2010* (Qld).
[50] See section 52 of the *Surrogacy Act 2010* (Qld).
[51] See section 51 of the *Surrogacy Act 2010* (Qld).
[52] See section 53 of the *Surrogacy Act 2010* (Qld).
[53] See section 59 of the *Surrogacy Act 2010* (Qld).
[54] See section 60 of the *Surrogacy Act 2010* (Qld).
[55] See section 19(b) of the *Surrogacy Act 2010* (Qld).

- If there are two intended parents to an application, and one dies, the Court will transfer the parentage Order to the surviving intended parent;[56]
- Applications can be made to discharge a parentage Order by the child once s/he turns 19 years old, any of the birth or intended parents, or the Attorney-General;[57]
- If an application for a parentage Order is refused, appeal is by way of re-hearing;[58]
- The birth mother, or birth parents, are required to register the birth of pursuant to the *Births, Deaths and Marriages Registration Act 2003* (Qld);[59]
- All parties to the surrogacy arrangement must be at least 25 years old when the surrogacy arrangement is made;[60]
- The intended parent/s must be resident in Queensland.[61]

If an application for a parentage Order fails, the intended parents can apply for a parenting Order in the Family Court.

There are several decisions, with mixed results, about surrogacy arrangements that were not necessarily lawful. This paper looks at three decisions by way of example.

Re Michael

In the first decision of Watts, J in *Re Michael: Surrogacy arrangement*,[62]an informal intra-family surrogacy arrangement which was entered into in New South Wales became relevant in terms of the parentage presumptions when the applicants applied to the Family Court pursuant to section 60G of the *Family Law Act 1975* (Cth) for an adoption Order. The intended parents, Paul and Sharon, could not have children as Sharon had suffered cervical cancer. Using an egg harvested from Sharon and fertilised with Paul's sperm, Sharon's mother Lauren carried the baby, Michael. Lauren was happily ensconced in a de facto relationship with Clive.

There was no surrogacy legislation in NSW at the relevant time, and therefore the Court examined the legislative presumptions in the *Family Law Act 1975* (Cth), particularly sections 60H, 60HB and 4. The only relevant NSW legislation was contained in the *Status of Children Act 1996* (NSW), which did not assist Sharon and Paul.[63]

[56] See section 37 of the *Surrogacy Act 2010* (Qld).
[57] See sections 45 to 48 of the *Surrogacy Act 2010* (Qld).
[58] See sections 49 and 50 of the *Surrogacy Act 2010* (Qld).
[59] See section 18 of the *Surrogacy Act 2010* (Qld).
[60] See sections 22(2)(f) and (g) of the *Surrogacy Act 2010* (Qld).
[61] See section 22(2)(g)(ii) of the *Surrogacy Act 2010* (Qld).
[62] [2009] FamCA 691.
[63] See sections 11, 14 and 17 of the *Status of Children Act 1996* (NSW).

The Court also examined sections 69R and 69U(1) as Paul was registered on Michael's birth certificate as Michael's father. Section 60H(1) provided that the ordinary presumption of parentage which arises under section 69R when someone is named on a birth certificate was rebutted because Clive consented to the impregnation of Lauren using Paul's sperm.

Essentially, the Court's view was that sections 60H (1) and 60HB of the *Family Law Act 1975* (Cth) provided an exhaustive list of who could be parents under a surrogacy arrangement, in absence of any State-based legislation to the contrary.

Lauren and Clive were found to be Michael's parents.

Dennis & Pradchapet

In a more recent decision, which is one of two involving the same applicant, the Court again examined an unlawful surrogacy arrangement. Stevenson, J in *Dennis and Anor & Pradchaphet*[64] examined an application made pursuant to section 65C of the *Family Law Act 1975* (Cth).

Mr Dennis and Mrs Dennis were unable to have their own children. They underwent unsuccessful assisted fertility treatment. Eventually, they used donor eggs which were placed into two women in Thailand, using the services of a Thai fertility clinic.

As a result of the surrogacy arrangements entered into in Thailand, three children were born. One child, a son, was born to Ms Pradchapet, and that child was the subject of the application before Stevenson, J.

Mr Dennis was the father on the child's Thai birth certificate. Ms Pradchapet was the mother. Mr and Mrs Dennis had unsuccessfully sought for Australian citizenship by descent. The Thai courts were unable to assist Mr and Mrs Dennis to achieve any change in the parentage of the child, particularly because there is no Thai surrogacy law. Ms Pradchapet was prepared to relinquish any and all of her parentage of the child which was important as only a birth or surrogate mother has any parental rights under Thai law if they are not married. Further, Ms Pradchapet, in so far as she was able to do so, was prepared to assign her parental rights to Mr and Mrs Dennis.

Her Honour found that there was no relevant definition of "parent" in the *Family Law Act 1975* (Cth).[65] He found that under either section 65C or 65G he could make an Order that it

[64] [2011] FamCA 123.
[65] The only definition of "parent" is contained in section 4 of the *Family Law Act 1975* (Cth) which relates to adopted children.

was in the child's best interests for Mr and Mrs Dennis have equal shared parental responsibility for the child, and that the child live with Mr and Mrs Dennis. He discussed whether Mr Dennis was a "parent" which would enable the application to proceed under section 65C(a), and commented that if Mr Dennis was not a "parent", the application could then proceed under section 65G because of Ms Pradchapet's consent.

Dudley and Chedi

In *Dudley and Anor & Chedi*,[66] Mr Dudley is Mr Dennis. He, and Mrs Dennis, applied for parental responsibility Orders.

His Honour Justice Watts examined the now repealed *Surrogate Parenthood Act 1988* (Qld) which was in force at the relevant times in terms of when Mr and Mrs Dennis entered into the surrogacy arrangements. His Honour also considered the *Surrogacy Act 2010* (Qld), and noted that, on any view, Mr and Mrs Dennis had entered into an unlawful surrogacy arrangement because it was a commercial surrogacy arrangement.[67]

His Honour noted the Thai law which dictated that the birth mother, if not in any relationship, was the only person with parental responsibilities, and concluded that on that basis, Mr Dennis could not be the father of the twin boys who were subject of the application. His Honour considered the new *Surrogacy Act 2010* (Qld) and the *Status of Children Act 1978* (Qld) and found that under those State-based acts, Mr Dennis was also precluded from being the father of the boys for different reasons. Under the *Surrogacy Act 2010* (Qld), the non-compliance with various aspects of the legislation, including timeframes and commerciality of the agreement, meant that Mr Dennis failed to establish himself as a father. Under the *Status of Children Act 1978* (Qld), the legislative presumptions relating to the parentage of children born to women who used donor sperm and were partnerless meant that Mr Dennis could not be the father.

His Honour adopted a similar approach to Her Honour Justice Stevenson when examining sections 65C and 65G of the *Family Law Act 1975* (Cth), and he made similar findings in terms of the best interests of the children and the power of the Court to make a parenting Order under section 65G even though the parties and the birth mother had not entirely satisfied the requirements of section 65G in terms of discussing any proposed orders with a family consultant.

However, His Honour also highlighted a concern that the Court should not be seen to condone the unlawfulness of the actions of Mr Dennis because of the commerciality of the

[66] [2011] FamCA 502.
[67] See Watts, J at [19] in *Dudley and Anor & Chedi* [2011] FamCA 502.

surrogacy arrangement. To that end, he directed the Registrar to send a copy of these reasons for judgment to the Office of the Director of Public Prosecutions, Queensland for consideration of whether a prosecution should be instituted against the applicants under s 3 *Surrogate Parenthood Act 1988* (Qld).[68]

[68] See Watts, J at [44] in *Dudley and Anor & Chedi* [2011] FamCA 502.

ADOPTION

ADOPTION IN QUEENSLAND IN 2011

Adoption is not so much an option for people who want children, as it is a means of securing care for children who cannot remain with their birth families.

At the time of its introduction, the Act was designed to fit in with the Government's "One Chance at Childhood" initiative.[69] Hopefully, and unlike the ill-fated "One Chance at Childhood" initiative, the Act will achieve its goals, and stand the test of time.

As lawyers, we are unlikely (insert "almost never") to be asked by a child to make an application to find them adoptive parents.[70] We might, however, be asked by a potential adopter to assist them in making an application to adopt a child. This is particularly so in the case of step-parent adoptions.

For step-parents, an application must first be made in the Family Court pursuant to section 60G of the *Family Law Act 1975* (Cth).[71] Whilst an application for an adoption order by a step-parent requires the child to be at least 5 years old and not more than 17 years old,[72] there is no similar pre-requisite to making the application in the Family Court.[73] Clearly, there is scope for legal representation for those types of applications.

So, how can people adopt, in Queensland, now?

The Act sets out how adoptions are managed in Queensland. It is an offence to privately arrange adoptions.[74] Adoptions **must** be arranged through Adoption Services Queensland (**ASQ**) a faction of the Department of Communities, as the Chief Executive (Child Safety) acquires guardianship of a child whose birth parents have consented to surrendering the child for adoption.[75]

Adoptions are now finalised by way of Order of the Children's Court, rather than the previous regime which saw adoptions finalised administratively.[76] This reform brings the Queensland adoption regime into line with other Australian jurisdictions. It was aimed at providing

[69] See the Second Reading speech of the Hon PG Reeves, Hansard 22 April 2009. http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/090422/Adoption.pdf#xml=http://www.parliament.qld.gov.au/internetsearch/isysquery/6dd7703a-8939-4168-97c1-0d0d79dba345/13/hilite/
[70] Although, see the power of the Children's Court to appoint a lawyer for the child under section 235 purpose of the *Adoption Act 2009* (Qld).
[71] See section 92(1)(d) of the *Adoption Act 2009* (Qld).
[72] See section 92(1)(i) of the *Adoption Act 2009* (Qld).
[73] See the obiter of His Honour Justice Murphy at [19] in *McQuinn & Shure* [2011] FamCA 139.
[74] See section 302 of the *Adoption Act 2009* (Qld).
[75] See the operation of section 57 of the *Adoption Act 2009* (Qld).
[76] See section 174 of the *Adoption Act 2009* (Qld).

certainty to applicants, who previously rushed to have their names registered during the brief and irregular times the Register was open, and to provide the best possible applicants who were ready, willing and able at the time of application.[77]

In relation to inter-country adoptions, the Act does not really deal with overseas adoptions by Queenslanders in any particular, or different, way to dealing with local adoptions. [78]

Inter-country adoption fees are significantly higher than fees for local adoptions. Under the *Adoption Regulation 2009 (Qld), as at 1 July 2011, the fees were as follows:*

a)	For step-parents	$66.00 application fee, and
		$495.05 assessment fee
b)	For local adoptions	$536.10

The Chief Executive (Child Safety)[79] is intrinsically involved in the entire process, but the extent of the involvement of the Chief Executive can differ, depending on the circumstances. For example, the Chief Executive and the birth parent/s of the child can enter into a care arrangement in relation to the child which would see the child removed from the birth parent/s and placed in care until the adoption is finalised. Or, the child can remain with the birth parent/s until the adoption is finalised. [80]

Once consent to the adoption has been given, irrespective of whether there is a care arrangement in place, guardianship of the child is held by the Chief Executive.[81] In some instances, the Court can dispense with the need for the birth parent/s' consent.[82]

The Chief Executive's guardianship of the child ends when a final adoption Order is made,[83] unless the guardianship is terminated by an Order of the Court, or the Chief Executive agrees to someone else having guardianship to give effect to adoption in another jurisdiction.[84]

Prior to the Act, there were blanket bans on the availability of any information which might identify potential adopters, or the adoptee, to the birth family, or birth family to the potential adopters, or the adoptee, until the adoptee was 18 years old.[85]

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[77] See the Second Reading speech of the Hon PG Reeves, Hansard 22 April 2009. http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/090422/Adoption.pdf#xml=http://www.parliament.qld.gov.au/internetsearch/isysquery/6dd7703a-8939-4168-97c1-0d0d79dba345/13/hilite/
[78] See section 14 of the *Adoption of Children Act 1964* (Qld).
[79] Under the *Child Protection Act 1999* (Qld).
[80] See section 50 of the *Adoption Act 2009* (Qld).
[81] See section 57 of the *Adoption Act 2009* (Qld).
[82] See section 39, by reference to section 36, of the *Adoption Act 2009* (Qld).
[83] See section 214(5) of the *Adoption Act 2009* (Qld).
[84] See section 61 of the *Adoption of Children Act 1964* (Qld).
[85] See Division 3 Part 4A of the *Adoption of Children Act 1964* (Qld).

The most revolutionary aspect of the 2009 legislation, which repealed the *Adoption of Children Act 1964* (Qld),[86] is the possibility for all parties associated with an adoption – including the potential adopters, the birth family and the adoptee – to have an ongoing relationship and involvement in each other's lives.[87]

There are potential impacts on Estate law of this new aspect of the legislation. As part of the assessment process, ASQ encourage potential adopters to be willing to facilitate an open adoption. That is, the Act foresees an ongoing relationship between the child and the birth parent/s which is unprecedented in Queensland.

Technically, once the final adoption order is made, the child is no longer a "child" of the birth parent.[88] So, for the purposes of Family Provision Applications,[89] the child is not a child of the birth parent either.

Previously, once the final adoption order was made, that was the end of the legal relationship between the child and the birth parents, except for limited purposes such as prohibited relationships.[90] They could not have anything to do with each other until the child turned 18 years old. And, after the child became an adult, the relationship was one of choice. Now, there is a new concept of "family" in town!

Now, the birth parent (or, both birth parents) can be involved in the child's life on an ongoing basis. If a troubled teenager has a positive relationship with their birth parent, and decides to run away from their adoptive parents' home, isn't it more likely they will run to their birth parent given the option that was not there prior to the new Act? There is arguably the potential for the relationship between the child and the birth parent to develop in such a way that a dependent relationship may be formed[91] despite the lack of legal familial relationship, giving rise to a right for the child to make a Family Provision Application in the event of the death of a birth parent.

Whilst the fresh approach to ongoing relationships between all parties seems like a giant leap, the 2009 Act has been criticised.

Two main criticisms are that it de-legitimises the social effects of adult adoption[92] by preventing adoption of people over 18 years of age,[93] and same sex couples are unable to

[86] See section 329 of the *Adoption Act 2009* (Qld).
[87] See, in particular, section 170 of the *Adoption Act 2009* (Qld).
[88] See section 214(3) of the *Adoption Act 2009* (Qld).
[89] See section 40 of the *Succession Act 1980* (Qld).
[90] See for example section 23(1)(b) of the *Marriage Act 1961* (Cth).
[91] See the definition of "dependent" in section 40(c) of the *Succession Act 1980* (Qld).
[92] See Blore, K "A Gap in the Adoption Act 2009 (Qld): The Case for Allowing Adult Adoption" (2010) 10(1) Queensland University of Technology law and justice journal 62.
[93] See section 10(3) of the *Adoption Act 2009* (Qld).

be named on the register as a couple– even though there is a possibility of a single gay or lesbian person adopting.[94]

Whilst it recognises de facto relationships (providing the relationship has endured for a minimum of 2 years and involves a heterosexual couple), it specifically rejects same sex couples in the eligibility requirements. [95]

As progressive as the Act claims to be, it still prevents same-sex couples from obtaining a parentage Order. The Act specifically states that decisions can be made even if they fail to comply with anti-discrimination legislation.[96]

When the Act was just a Bill, the Anti-Discrimination Commission Queensland (**ADCQ**) made submissions, urging the Scrutiny of Legislation Committee to consider the report by the Victorian Law Reform Commission (**VLRC**) "Assisted Reproduction Technology and Adoption: Final Report (2007)" which demonstrated an inclusivity of same-sex couples.[97] Clearly, the ADCQ were ignored. So were the results of the VLRC report.

Even step-parents of a step-child of their same sex spouse are excluded from the adoption process by reference to the eligibility requirements applied.

When interviewed about what is arguably an omission, then Premier Bligh's explanation was that the extremely limited numbers of babies in Queensland available for adoption justified stringent application measures where only the "best possible" placements would suffice.[98] Without any apparent basis, and despite the finding of the VLRC report, the "best possible" placement option in Queensland is considered by the legislature to be with a heterosexual couple.

Given the extremely wide scope of the assessment criteria, and the commensurate level of discretion afforded to the Chief Executive in the assessment process, it seems clear that even if same sex couples were entitled to register their interest, they would be overlooked in the assessment process in favour of heterosexual couples.

So, what options are available to same-sex couples? A parenting Order in the Family Court could be available, depending on the facts, and that is something of significant familiarity to family lawyers.

Another, quieter, criticism has been levelled at the ability of parties to an adoption to obtain identifying information about other parties. But, this aspect of the Act has also been

[94] See sections 89(6)(c), 152(3), 153, and 180 of the *Adoption Act 2009* (Qld).
[95] See section 77(1)(g)(ii) of the *Adoption Act 2009* (Qld).
[96] See section 8 of the *Adoption Act 2009* (Qld).
[97] See Hansard Submission from the Anti-Discrimination Commission of Queensland in relation to the Adoption Bill 2008 of 14 May 2009 dated 15 May 2009
[98] See "No adoption rights for same-sex couples: Bligh" on ABC News,15 July 2008 available at: http://www.abc.net.au/news/2008-07-15/no-adoption-rights-for-same-sex-couples-bligh/2600480?section=justin

celebrated. Prior to the Act, when its predecessor was being reviewed, a consultation paper was prepared. The paper examined what the public felt was the best way to approach the exchange of information in adoptions. The outcome of the "Balancing Privacy and Access: Adoption Consultation Paper" was significant.[99] Now, the legislation provides for open adoption, enabling the birth parents to be involved in the child's life from day one.

Previously, it was possible for the birth parents and/or the adoptee to block the ability of the other to find out identifying information as an administrative step.[100] That ability has been removed.[101] Further, if a person seeks information about that other party, they are deemed to have consented to their information being released even before the adoptee comes of age.[102] The Chief Executive has the discretion to release identifying information.

An application can be made to Court for a block on the release of identifying information in circumstances where there would be a risk of harm if the information was released.[103] Persons who can make that application to Court include only an adopted person, a birth parent or adoptive parent of an adopted person or the chief executive.[104]

The Chief Executive can gather and provide non-identifying medical information, irrespective of the wishes of the persons involved.[105]

The Act sets up a mailbox service as well, providing for the exchange of information, via the Chief Executive.[106]

The ability to block contact remains, provided the person requesting the block to contact has been interviewed by the Department, and providing the person requesting information about a person with a contact block has been interviewed and signed an acknowledgment that it would be an offence to contact that person once identifying information has been received.[107] It is an offence to contact a person if there is a contact block in place, attracting a penalty of 100 penalty units or 2 years imprisonment.[108]

The statistics for local adoption Final Orders are not as easy to obtain. As at 15 November 2011,[109] ASQ advised that in the 2011 financial year, 1 final adoption order had been made,

[99] See the "Balancing Privacy and Access: Adoption Consultation Paper" December 2008 released by the Minister for Child Safety and Minister for Women, Margaret Keech MP.
[100] See section 39B of the *Adoption of Children Act 1964* (Qld) (repealed)
[101] See section 263 for identifying information to be released to adoptees, and section 265 for identifying information to be released to birth parents, in the *Adoption Act 2009* (Qld).
[102] See sections 256(3) and 257(3) of the *Adoption Act 2009* (Qld).
[103] See section 275 of the *Adoption Act 2009* (Qld).
[104] See section 275(2) of the *Adoption Act 2009* (Qld).
[105] See sections 276 and 277(2) of the *Adoption Act 2009* (Qld).
[106] See section 278 of the *Adoption Act 2009* (Qld).
[107] See sections 269 to 271 of the *Adoption Act 2009* (Qld).
[108] See section 272 of the *Adoption Act 2009* (Qld).
[109] Information Session: "Queensland and Intercountry children's adoption programs", Department of communities, Child Safety Services.

and 7 children were the subject of placement orders. Perhaps the concept of open adoption may make surrendering a child for adoption a more attractive option for birth parents, and the number of available children may increase.

Since the Act's introduction, there have been nine reported decisions about step-parent applications emanating from the Brisbane Registry.[110] In QCAT, where reviews of decisions by ASQ as to an applicant's ineligibility are available, there have been only a meagre number of decisions. The QCAT decisions have focused on the sudden ineligibility of persons under the new Act, when they were previously eligible to apply for adoption, by reason of having in their custody a child under 1 year old.[111] As QCAT's role involves examining the exercise of ASQ's discretion, it is possible that much can be learned by their reported decisions when the body of case law grows and expands beyond the two decisions which focused on technical ineligibility as a result of legislative changes.

Now that final orders are made in the Children's Court, rather than internally in ASQ, we should see a body of case law develop to assist potential clients in determining what particular factors are favoured by ASQ when entertaining applications for adoption.

[110] See *Jones & Blake* [2010] FamCA 161; *Dewart & Zarrah* [2010] FamCA 640; *Milly & O'Loan* [2010] FamCA 552; *Walter & Smith* [2010] FamCA 681; *Blue & Busby* [2010] FamCA 702; *Trafford & Villers; Trafford & Kerwood* [2010] FamCA 891; *Patin & McAlley* [2010] FamCA 890; *McRae & Wheater* [2010] FamCA 889; and *McQuinn & Shure* [2011] FamCA 139.

[111] See *H v Department of Communities (Adoption Services)* [2010] QCAT 684; and AA & AB v *Department of Communities (Adoption Services)* [2011] QCAT 106.

CIVIL PARTNERSHIPS

The *Civil Partnerships Act 2011* (Qld) was passed by the Queensland Parliament in late 2011.[112] It substantially came into effect on 23 February 2012, with the remaining provisions commencing on 2 April 2012.[113] The *Civil Partnerships Regulation 2012* (Qld) also came into effect on 23 February 2012.[114]

A civil partnership is a legally recognized relationship that, subject to the Act, may be entered into by any two adults, regardless of their sex.[115]

For your civil partnership to be legally recognized, there are various eligibility criteria to be met.[116] These criteria include:

a) that the person is not already married, or in a civil partnership,
b) that the person is not in a prohibited relationship, and
c) that one of the parties to the proposed civil partnership lives in Queensland.

The Act provides for people to register their civil partnership, or simply make a declaration that they are in a civil partnership.[117]

In terms of registering a civil partnership, there is an application process set out in the Act.[118]

Prior to applying, a Notice of Intention must be given to a civil partnership notary,[119] who is either the registrar of Births Deaths and Marriages,[120] or a person registered as a civil partnership notary under the Act.[121]

To apply, an application must be completed, as well as:

a) lodging a statutory declaration addressing the eligibility criteria,
b) lodging identifying information,[122] and
c) including anything else prescribed by Regulation. There is nothing else prescribed under the amendment of the C*ivil Partnerships Regulation 2012* (Qld) current at the time of presenting this paper.

[112] See Schedule 2 Part 5 of the *Civil Partnerships Act 2011* (Qld).
[113] See Schedule 2 Part 4 of the *Civil Partnerships Act 2011* (Qld).
[114] See Regulation 2 of the *Civil Partnerships Regulation 2012* (Qld).
[115] See section 4 of the *Civil Partnerships Act 2011* (Qld).
[116] See section 5 of the *Civil Partnerships Act 2011* (Qld).
[117] See section 6 of the *Civil Partnerships Act 2011* (Qld).
[118] See section 7 of the *Civil Partnerships Act 2011* (Qld).
[119] See section 10 of the *Civil Partnerships Act 2011* (Qld).
[120] See section 3 and Schedule 2 of the *Civil Partnerships Act 2011* (Qld).
[121] See section 3 and Schedule 2 of the *Civil Partnerships Act 2011* (Qld).
[122] See part 2, Regulation 3 of the *Civil Partnerships Regulation 2012* (Qld) for the description of documents satisfactory to prove identity for the purpose of the *Civil Partnerships Act 2011* (Qld).

The Notice of Intention must include all of the documents to be included with the application.[123]

There is also a cooling off period.[124]

Once the civil partnership is registered by the registrar, or declared by the registrar, it comes into effect.[125] In terms of a declaration, the registrar cannot make the declaration until at least 10 days after the Notice of Intention of intention, and must make the declaration within 12 months of the Notice of Intention being given.[126]

A civil partnership can only be terminated in one of a few ways.

If one of the parties to the civil partnership dies, or marries, the civil partnership is terminated.[127]

Another way to terminate a civil partnership is by application to the District Court,[128] following the requisite period of separation which is similar to that required for divorce.[129]

The introduction of this legislation has a flow on effect to other areas of the law, such as property, payroll tax, personal injury matters, guardianship matters, succession law and surrogacy to name some.[130]

In terms of succession law, the Act creates a new category of relationship that is legally recognized.[131]

There are also consequentially new categories of relationships that are legally recognized, such as to the definition of "child", which enlarges the categories of persons entitled to apply for a Grant of Representation,[132] or obtain a copy of a Will,[133] or claim for further or better provision out of an Estate,[134] or share in an intestate Estate.[135]

The validity of a Will is also affected by the introduction of this new legally recognizable category of person as the Act amends the *Succession Act 1981* (Qld).[136] A Will becomes

[123] See section 10(2) of the *Civil Partnerships Act 2011* (Qld).
[124] See section 8 of the *Civil Partnerships Act 2011* (Qld).
[125] See sections 12(3) and 13 of the *Civil Partnerships Act 2011* (Qld).
[126] See section 11(2) of the *Civil Partnerships Act 2011* (Qld).
[127] See section 14(1) of the *Civil Partnerships Act 2011* (Qld).
[128] See sections 14(2), 15 and 18 of the *Civil Partnerships Act 2011* (Qld).
[129] See sections 15(1) and 18(1) of the *Civil Partnerships Act 2011* (Qld).
[130] See Schedule 2 Part 6 for amendments to other legislation.
[131] See in particular the definition of "spouse" in the amendment to section 5AA of the *Succession Act 1981* (Qld) and section 36 of the *Acts Interpretation Act 1954* (Qld).
[132] See Chapter 15 of the *Uniform Civil Procedure Rules 1999* (Qld) and section 36 of the *Acts Interpretation Act 1954* (Qld).
[133] See section 33Z of the *Succession Act 1981* (Qld).
[134] See Part IV of the *Succession Act 1981* (Qld).
[135] See Part III of the *Succession Act 1981* (Qld).
[136] See section 86

invalid upon the entry into a civil partnership.[137] Similarly, dispositions in a Will are revoked upon the termination of a civil partnership.[138]

[137] See section 14A of the *Succession Act 1981* (Qld).
[138] See section 15A of the *Succession Act 1981* (Qld).

FAMILY VIOLENCE

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*[139] (**Family Violence Act**) will amend the *Family Law Act 1975* (Cth)[140] to provide better protection for children and families at risk of violence and abuse.

The Family Violence Act responds to reports received by the Government into the 2006 family law reforms and how the family law system deals with family violence.

The reports indicated that the Act fails to adequately protect children and other family members from family violence and child abuse. The reports included the following:

- the *Evaluation of the 2006 family law reforms* by the Australian Institute of Family Studies (AIFS);[141]
- Family Courts Violence Review by the Honourable Professor Richard Chisholm AM;[142] and
- Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues by the Family Law Council.[143]

The key amendments made by the Family Violence Bill will:

- prioritise the safety of children in parenting matters by compelling the Court to give greater weight to section 60CC(2)(b) over section 60CC(2)(a) if there is an inconsistency in the application of both sub-sections;[144]
- change the definitions of 'abuse' and 'family violence' to better capture harmful behaviour;[145]

[139] The Bill is available at: http://www.comlaw.gov.au/Details/C2011B00058 accessed 12 May 2012; and the Act is available at: http://www.comlaw.gov.au/Details/C2011A00189 accessed 12 May 2012.
[140] See Schedule 1, Part 1 Amendments, and Schedule 2, Part 1 Amendments available at: http://www.comlaw.gov.au/Details/C2011B00058/Html/Text#_Toc288549516 and http://www.comlaw.gov.au/Details/C2011B00058/Html/Text#_Toc288549531 accessed 12 May 2012.
[141] Available at: http://www.aifs.gov.au/institute/pubs/fle/ accessed 12 May 2012.
[142] Available at: http://www.ag.gov.au/Documents/Chisholm_report.pdf accessed 12 May 2012.
[143] Available at: http://www.ag.gov.au/Documents/Family_Violence_Report.pdf accessed 12 May 2012.
[144] See section 17 in Schedule 1, Part 1 Subdivision BA—Best interests of the child: court proceedings of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[145] See sections 1 and 8 in Schedule 1—Amendments relating to family violence of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

- strengthen advisers obligations by requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children;[146]
- ensure the courts have better access to evidence of abuse and family violence by improving reporting requirements;[147] and
- make it easier for state and territory child protection authorities to participate in family law proceedings where appropriate by ensuring that they cannot face a costs Order, providing they acted in good faith.[148]

The Family Violence Act retains the substance of the shared parenting laws introduced in the *Family Law Amendment (Shared Responsibility) Act 2006* (Cth) and continues to promote a child's right to a meaningful relationship with both parents where this is safe for the child.

DATE AND OPERATION

Some of the Act came into effect on 7 December 2011. The sections pertaining to family violence will come into effect on 7 June 2012.[149]

Amendments do not give rise to a change in circumstances which would justify the Court reviewing an extant final Order.[150] That is, the amendments in and of themselves do not meet the test in *Rice & Asplund*.[151]

THE CHANGES

- Altering definitions of "abuse" and "family violence" and inserting definition of "exposed".
- Weighting in the primary considerations set out in section 60CC(2):
    - Insertion of (2A): In applying the considerations set out in subsection (2), the Court is to give greater weight to the considerations set out in paragraph 2(b).
- Changes to the additional considerations set out in section 60CC(3):

[146] See section 22 in Schedule 1, Part 1 Subdivision BB—Best interests of the child: adviser's obligations of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[147] See sections 21 and 34 Schedule 1, Part 1 Subdivision BB—Best interests of the child: adviser's obligations of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[148] See sections 39 and 42 of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[149] See section 2 of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[150] See the Note to section 47 of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).
[151] (1979) FLC 90-725.

- Removal of sections 60CC(3)(c) – the “friendly parent” provision requiring the Courts to consider the willingness of one parent towards the other in facilitating a child’s relationship with the parent due to a Report’s findings that this provision can discourage disclosures of family violence and child abuse.
- Sections 60CC(4) and 60CC(4A) substantially reacted into section 60CC(3)(c), but this will not inhibit the courts’ ability to consider events and circumstances since parental separation which may be considered under paragraph 60CC(3)(m).
- Insertion of section 60CC(3)(c): focus on the extent to which each of the child’s parents have taken, or failed to take, the opportunity to participate in long-term decision making, spend time with or communicate with the child.
- Insertion of section 60CC(3)(ca): the extent to which each of the child’s parents has fulfilled, or failed to fulfil, the parent’s obligations to maintain the child.
- Amended section 60CC(3)(k): New paragraph (d) of the definition extends the definition to serious neglect of the child. The meaning of neglect is not defined and therefore takes its ordinary meaning. Neglect encompasses a range of acts of omission including failure to provide adequate food, shelter, clothing, supervision, hygiene or medical attention.

- Increased notification requirements;
  - New section 60CH: requires parties to parenting proceedings to notify the court if the child or another child who is a member of the child’s family is under the care of a person under a child welfare laws and allows a person not a party to the proceedings to advise the Court of same.
  - New section 60CH(3): the validity of any orders made by the court will not be affected by a failure to inform the court about such care arrangements.
  - New section 60CI: requires parties to parenting proceedings to disclose to the Court whether the child has been the subject of a notification or report to, or investigation, inquiry or assessment by,

a prescribed child welfare authority, and similar provisions to the above regarding advices of non-parties to the proceedings – failure to inform the Court about such matters will not affect the validity of orders made.

- Section 60K repealed, replaced with section 67ZBB: the notice itself, not the filing of an affidavit regarding the alleged abuse and/or family violence, will mandate the Court to take prompt action.
- New section 67Z(4) and section 67ZBA: parties and any ICL to file notice of child abuse or risk of abuse or family violence.

- Increasing obligations of advisers;
  - "Advisers" includes legal practitioners, family counsellors, dispute resolution practitioners and family consultants.[152]
  - New Subdivision BB in Division 1 of Part VII which outlines the obligations on advisers when working with parents to reach parenting arrangements for their children – as in section 63DA of the Act, an adviser is a legal practitioner, family counsellor, family dispute resolution practitioner or a family consultant.
  - New subdivision BB directs advisers to focus on the best interests of a child when providing advice about parenting arrangements and other matters relating to that child under Part VII of the Act.
  - Where there is inconsistency in applying the primary considerations of a child's right to a meaningful relationship with each parent and the child's right to be protected from harm, advisers are required to encourage parents to prioritise a child's safety.
- Removing the costs implications set out in section 117AB.

[152] See section 22 of the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

PPSA

The date of commencement for the *Personal Property Securities Act 2009* (Cth) (**PPSA**) was 15 December 2009.[153] However the part which will impact on family lawyers came into effect on 30 January 2012[154] when the *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Cth) came into effect.[155]

From 30 January 2012, any release of personal property is subject to the operation of the PPSA.

The PPSA created a Register,[156] managed by the Registrar of Personal Property Securities which is ITSA.[157]

The first question a family lawyer needs to ask is "is there any personal property in the 'pool' which might be subject to a security?"

What is "personal property" for the purposes of the PPSA?

Personal property is defined as:[158]

> ***personal property*** means property (including a licence) other than:
>
> (a) land; or
>
> (b) a right, entitlement or authority that is:
>
> (i) granted by or under a law of the Commonwealth, a State or a Territory; and
>
> (ii) declared by that law not to be personal property for the purposes of this Act.
>
> Note: This Act does not apply to certain interests even if they are interests in personal property (see section 8).

Section 8 of the PPSA sets out a vast list of what is **not** covered by the PPSA and not able to be registered. Essentially, the only thing missing is land. Land is defined as:[159]

[153] See Note 1 of the *Personal Property Securities Act 2009* (Cth).
[154] See Note 1 of the *Personal Property Securities Act 2009* (Cth).
[155] See section 2 of the *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Cth).
[156] See section 147 of the *Personal Property Securities Act 2009* (Cth).
[157] See section 194 of the *Personal Property Securities Act 2009* (Cth).
[158] See section 10 of the *Personal Property Securities Act 2009* (Cth).
[159] See section 10 of the *Personal Property Securities Act 2009* (Cth).

> ***land*** includes all estates and interests in land, whether freehold, leasehold or chattel, but does not include fixtures.

Fixtures on land, which includes goods, other than crops that are affixed to land,[160] are specifically excluded as well.[161]

So, real property is not included and does not need to be considered in terms of this aspect of secured interests that may affect a property settlement, but lawyers are reminded to consider titles searches to ascertain if any registered encumberance exists, and to otherwise query clients about any potential equitable interests.

In terms of tangible assets, a lawyer should ask whether any of the following exist:

- art
- boats
- caravans
- cars
- crops
- inventory
- livestock
- plant and machinery
- shares
- fish

The PPSA does not provide an exhaustive list of personal property in the definitions, and the subordinate legislation should also be checked for inspiration as it already contains definitions that do not appear in the PPSA, such as helicopters.[162]

And, in terms of intangible assets, a lawyer should ask whether any of the following exist:

- accounts
- intellectual property
- investment instruments
- licences – subject to some exceptions.[163]

[160] See section 10 of the *Personal Property Securities Act 2009* (Cth).
[161] See section 8(1)(j) of the *Personal Property Securities Act 2009* (Cth).
[162] See Part 1 Division 3, Regulation 1.6 of the *Personal Property Securities Regulations 2010* (Cth).
[163] See section 8(1)(k) of the *Personal Property Securities Act 2009* (Cth).

More generally, a lawyer should ask if there is anything that exists, for any party, able to be transferred to another person.

WHAT IS A SECURITY?

The PPSA enables persons who want to secure a debt or other obligation to take an interest in property owned by the person responsible for the debt or obligation.[164] The Register which is created by the PPSA is the forum in which the interest is noted. Registering an interest does not, in and of itself, create an interest. It merely puts a potential transferee on notice that there may be an obstacle to transfer.

Where there is, or is likely to be, any of the following, there may co-exist a registration of an interest on the Register:

- a fixed charge;
- a floating charge;
- a chattel mortgage;
- a conditional sale agreement (including an agreement to sell subject to retention of title);
- a hire purchase agreement;
- a pledge;
- a trust receipt;
- a consignment (whether or not a commercial consignment);
- a lease of goods (whether or not a PPS lease);
- an assignment;
- a transfer of title;
- a flawed asset arrangement;[165]
- the interest of a transferee under a transfer of an account or chattel paper;
- the interest of a consignor who delivers goods to a consignee under a commercial consignment;
- the interest of a lessor or bailor of goods under a PPS lease.[166]

[164] See section 12 of the *Personal Property Securities Act 2009* (Cth).
[165] See section 12(2) of the *Personal Property Securities Act 2009* (Cth).
[166] See section 12(3) of the *Personal Property Securities Act 2009* (Cth).

Note that a licence, in and of itself, is not a security interest.[167] But an interest can be registered against a licence as it is included in the definition of personal property, unless it is a licence granted by or under a law of the Commonwealth, a State or a Territory and declared to be a kind of statutory right not to be personal property for the purposes of this Act.[168]

The second question a family lawyer needs to ask is "can I conduct searches to make sure there are no registered securities against any of the assets in the 'pool'?"

Be aware that there are restrictions in terms of who can search the Register[169] because of the privacy legislation.[170] Items 6(b) and 19 in the table set out at section 172(2) of the PPSA are likely to describe the primary purpose for lawyers to carry out searches for property settlements following the breakdown of a relationship, providing that they can establish that their client – if their client is **not** the owner of the property – has an "interest".

There are fees involved in dealings with the Register,[171] including fees for lodging an interest, and fees for searching to see if there is any interest registered against an asset. It is usually $3.70 per search, providing the search is conducted on-line. Obtaining search results in hardcopy or electronic media will cost $29.50.[172] There are no credit card charges, and VISA, MasterCard and American Express (AMEX) are accepted.

There are also fees for amending information on the Register, which is likely to be something that needs to be considered when advising clients about transfers of assets against which an interest is secured, particularly if that interest is to be transferred unencumbered. It is likely that the transferor spouse will be required to do all things necessary to amend the Register, which will attract a fee, in that instance. Particular forms need to be used, and those forms are located on the ITSA website.[173]

Any person can apply to remove data, or change detail on the Register,[174]but the Registrar's discretion is absolute. If changes or removals are to be done according to a Court Order, copy of the Order must be attached to the form.

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[167] See section 12(5) of the *Personal Property Securities Act 2009* (Cth).
[168] See section 8(10)(k) of the *Personal Property Securities Act 2009* (Cth).
[169] See section 172 of the *Personal Property Securities Act 2009* (Cth).
[170] See the *Privacy Act 1988* (Cth) and the Information Privacy Principles http://www.privacy.gov.au/materials/types/infosheets/view/6541 available at: accessed 13 May 2012.
[171] See section 190 of the *Personal Property Securities Act 2009* (Cth).
[172] See the Personal Properties Securities Register website available at: http://www.ppsr.gov.au/AbouttheRegister/AboutFees/Pages/default.aspx accessed 13 May 2012.
[173] See http://www.itsa.gov.au/dir228/itsaweb.nsf/docindex/About%20Us-%3EPublications-%3EPersonal%20Property%20Securities%20Register%20Forms?OpenDocument.
[174] Use a Form 23 *Application to Remove Data or Correct Registration Errors* available at: http://www.itsa.gov.au/dir228/itsaweb.nsf/docindex/About%20Us-%3EPublications-%3EPersonal%20Property%20Securities%20Register%20Forms?OpenDocument accessed 13 May 2012.

At this time, there is no form available from ITSA that releases a security. But, the Australian Bankers' Association and the Australian Finance Conference have developed a document which ought to be included as one of the documents to prepare in relation to any asset subject to a registered security, whether it is an asset being transferred unencumbered, or whether the transferee spouse is assuming liability for the security over the asset. That document is called the "Release and Undertaking to Amend Registration" and can be located on the Australian Bankers' Association website.[175]

Best practice would suggest that a transferee spouse, particularly if they are to receive transfer of an asset unencumbered, should:

- build into any negotiated settlement a clause requiring the parties, and particularly the transferor spouse, to do all things necessary to apply to the Registrar to change details in relation to any security over the asset to be transferred,
- ensure the appropriate form/s is/are properly completed and properly lodged,
- liaise with the person/entity in whose favour the security is held as they will need to cooperate with lodging a Form 1 Amendment Demand and the "Release and Undertaking to Amend Registration", and the documents will need to be properly lodged with the Registrar, and
- conduct a fresh search contemporaneously with, or shortly after, the transfer occurring to ensure any encumbrance is removed against the asset, or conduct a fresh search contemporaneously with the transfer occurring to ensure any transfer of the security is accurately recorded. The Registrar must register a financing change statement amending the registration, including removing the registration, in accordance with the amendment demand.[176]

[175] Available at: http://www.bankers.asn.au/Submissions/Personal-Property-Securities/Personal-Property-Securities-Information-and-Protocols accessed 13 May 2012.
[176] See section 181(1) of the *Personal Property Securities Act 2009* (Cth).

BINDING FINANCIAL AGREEMENTS

Two recent decisions pull into perspective a crucial issue with Binding Financial Agreements (**BFA**'s): are they a viable alternative to Court?

BFA's are designed to be a viable alternative to Court Order by ousting the jurisdiction of the Court in relation to property settlement matters arising as a result of the breakdown of a marriage, or a de facto relationship.

The Full Court's decision in Black v Black[177] made it clear that full and strict compliance with the legislative requirements was needed.

The Government reacted to the decision in Black v Black by implementing retrospective amendments contained in the Federal Justice System Amendment (Efficiency Measures) Act 2009 (Cth).

The Government's legislative response to the issues raised by the Court in Black v Black watered down the effect of the Full Court decision.

So, as lawyers, we know that in some instances the Court might be persuaded to overlook a technical deficiency in a BFA. The Family Law Act 1975 (Cth), helpfully, sets out the technical requirements for a BFA, and those requirements are not mysterious. But, two recent decisions suggest that the landscape for BFA's has changed, yet again.

Hoult & Hoult

In the recent decision of *Hoult & Hoult*,[178] Murphy, J was faced with a challenge about a financial agreement pursuant to section 90B of the *Family Law Act 1975* (Cth).

The applicant wife sought a property settlement, and that the BFA was not binding pursuant to section 90G of the *Family Law Act 1975* (Cth), or should be set aside pursuant to 90K of the *Family Law Act 1975* (Cth) on the basis of it being unconscionable or vitiated by fraud.

The husband sought to rely upon the BFA.

The facts involved:

1. the parties met and decided to marry;
2. the parties retained lawyers;

[177] (2008) 38 Fam LR 503.
[178] [2011] FamCA 1023.

3. the husband's lawyers prepared a BFA;
4. the wife took the BFA to a lawyer and had a consultation with the lawyer that lasted approximately 50 minutes;[179]
5. the BFA was signed on 17 December 2004;
6. the parties married on 17 December 2004;
7. the parties separated; and
8. the wife commenced proceedings in March 2011.

Other interesting facts include:

1. the net property pool was $31,886,304;[180]
2. English was not the first language of the wife, however her affidavit evidence was comprehensive and produced without the aid of an interpreter;[181]
3. There were earlier draft versions of the financial agreement;[182]
4. The solicitor for the wife gave unsatisfactory evidence,[183]but it was not untruthful evidence;[184]
5. The solicitor for the wife failed to make any file notes, statements, correspondence or anything else in writing in relation to the advice purportedly given to the wife;[185]and
6. The wife received the husband's solicitor's signed certificate, as required by section 90G(1)(ca) of the *Family Law Act 1975* (Cth), more than 3 years after the BFA was signed, but that was not a problem as there is no time limit for the provision of the certificate.[186]

His Honour rejected the submission of the husband's Counsel that the lawyer's certificate in and of itself was evidence of the party receiving advice. His Honour referred to and considered the concept of the presumption of regularity, and rejected it as it might apply to BFA's because of the requirements of section 90G of the *Family Law Act 1975* (Cth).[187]

[179] See Murphy, J at [48] in *Hoult & Hoult* [2011] FamCA 1023.
[180] See Murphy, J at [14] in *Hoult & Hoult* [2011] FamCA 1023.
[181] See Murphy, J at [31] in *Hoult & Hoult* [2011] FamCA 1023.
[182] See Murphy, J at [143] to [151] in *Hoult & Hoult* [2011] FamCA 1023.
[183] See Murphy, J at [43] in *Hoult & Hoult* [2011] FamCA 1023.
[184] See Murphy, J at [47] in *Hoult & Hoult* [2011] FamCA 1023.
[185] See Murphy, J at [43] to [44] in *Hoult & Hoult* [2011] FamCA 1023.
[186] See Murphy, J at [99] in *Hoult & Hoult* [2011] FamCA 1023.
[187] See Murphy, J at [86] to [88] and [93] in *Hoult & Hoult* [2011] FamCA 1023 and His Honour's reference to Fraser, JA in *Dixon v LeKich* [2010] QCA 213 where His Honour said "[t]he presumption of regularity has been described as 'a rule of very general application, that where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act".

His Honour accepted the submission of the husband's Counsel that if there is a dispute about whether a BFA is binding, the parties will share the burden of proof in relation to the different issues.[188]

In terms of section 90G of the *Family Law Act 1975* (Cth), the wife argued that she was not given advice as to the effect of the Agreement on her rights, or the advantages and disadvantages of the agreement for her, at any time.[189] His Honour agreed with this argument.[190] He found that the required advice was not given, and the BFA was therefore not binding.[191]

In relation to the allegation of fraud as a reason to set aside the agreement pursuant to section 90K of the *Family Law Act 1975* (Cth), His Honour found that innocent non-disclosure of a material fact is not fraud within the meaning of the legislation.[192]

In terms of the wife's allegation that the husband engaged in unconscionable conduct, His Honour considered that even though the wife was a weaker party and the BFA finalised at a crucial time in terms of her travelling overseas shortly prior to the wedding, the husband had not taken advantage of any weakness and had not acted unconscionably.[193] His Honour commented that things may have been different if the wife had pleaded undue influence.[194]

His Honour noted that if the bargain reached, by reference to the position of the parties at the time they enter into the BFA, is manifestly unjust and inequitable by reference to section 79 of the *Family Law Act 1975* (Cth), it *may* be that the BFA is unconscionable.[195]

Parker & Parker

In the Full Court decision of *Parker & Parker*,[196] Coleman and May, JJ, upheld the appeal and remitted the matter for re-hearing. Dissenting, Murphy, J, dismissed the appeal.

At first instance before Strickland, J, the husband sought to rely upon a BFA as a complete defence to the wife's application for a property settlement. Included in the wife's application was a request for an Order that the BFA be set aside. The basis for the wife seeking to set aside the BFA was that, on her argument, it was insufficient in terms of section 90G of the *Family Law Act 1975* (Cth).

[188] See Murphy, J at [25] to [26] in *Hoult & Hoult* [2011] FamCA 1023.
[189] See Murphy, J at [57] in *Hoult & Hoult* [2011] FamCA 1023.
[190] See Murphy, J at [91] in *Hoult & Hoult* [2011] FamCA 1023.
[191] See Murphy, J at [102] in *Hoult & Hoult* [2011] FamCA 1023.
[192] See Murphy, J at [125] to [127] and [134] in *Hoult & Hoult* [2011] FamCA 1023.
[193] See Murphy, J at [163] to [166] in *Hoult & Hoult* [2011] FamCA 1023.
[194] See Murphy, J at [137] to [138] in *Hoult & Hoult* [2011] FamCA 1023.
[195] See Murphy, J at [158] and [160] in *Hoult & Hoult* [2011] FamCA 1023.
[196] [2012] FamCAFC 33.

The husband, in his response, sought simply to dismiss the wife's application for a property settlement. Unfortunately, for him, at first instance he did not seek enforcement of the BFA.

The facts involved:

1. the parties separated;
2. the parties retained lawyers;
3. the husband's lawyers prepared a BFA;
4. the husband's lawyers sent the BFA to the wife's lawyers;
5. the wife signed the BFA, with her lawyer contemporaneously signing the certificate of advice;
6. the wife's lawyers sent the signed BFA to the husband's lawyers;
7. the husband made some hand-written amendments, probably of consequence (that issue was to be part of the re-hearing), and he signed the BFA, with his lawyer contemporaneously signing the certificate of advice;
8. the husband's lawyers sent the BFA signed by the husband to the wife's lawyers;
9. the wife and her lawyer initialled the hand-written amendments;
10. the wife's lawyers sent a copy of the BFA, containing the initials of the wife and the wife's lawyers, to the husband's lawyers; and
11. everyone agreed that there was a complete BFA after the husband received a copy of the BFA, containing the initials of the wife and the wife's lawyers.

The issue was whether the wife received sufficient advice at the time she attended upon her lawyer to sign the BFA containing the husband's hand-written amendments. At that time, she and her lawyer initialled the hand-written amendments. But, no changes were made to the wife's lawyer's certificate of advice.

At first instance, Strickland, J, determined that the wife did not receive adequate advice as to the terms of the BFA which included the hand-written amendments made by the husband because there was no certification of the advice provided.[197] Section 90G(1)(b) of the *Family Law Act 1975* (Cth) was unsatisfied and therefore the BFA ought to be set aside.

On appeal, May, J noted that "proper construction of s 90G of the Act is determinative of the appeal".[198] Her Honour found that Strickland, J was correct in finding that there was not sufficient evidence to establish that the wife received adequate advice. But, Her Honour disagreed with Strickland, J that certification of the advice was required.[199] If that is the

[197] See Strickland, J at [88] and [89] in *Parker & Parker* [2010] FamCA 664.
[198] See May, J at [99] in *Parker & Parker* [2012] FamCAFC 33.
[199] See May, J at [123] in *Parker & Parker* [2012] FamCAFC 33.

case, how do practitioners ensure that the practitioner for the other party, or parties, to the BFA is giving sufficient advice?

On appeal, Coleman, J agreed with May, J that the appeal ought to be allowed, and the matter remitted. His Honour agreed with May, J that the presentation of the case at first instance was "unfortunate"[200]because there was no scope for the trial judge to consider enforcing the BFA pursuant to sections 90G(1A)(c), (d), 90G(1B) and/or 90G(1C) of the *Family Law Act 1975* (Cth), after finding non-compliance with section 90G(1)(b).

Essentially, the husband had failed to make an enforcement application in his Response. Coleman, J focused on legislative interpretation, and particularly found that the proper construction of sections 90G(1A), (1B) and (1C) of the *Family Law Act 1975* (Cth) required a remedial or beneficial approach in this matter as that was the intention of the legislature, revealed in the supplementary explanatory memorandum to the amendments to the *Federal Justice System Amendment* (*Efficiency Measures) Bill (No. 1) 2008* (Cth).[201] Coleman, J

On appeal, Murphy, J took, overall, a different approach to Coleman and May, JJ. His Honour agreed with Coleman, J's analysis of section 90G(1B) of the *Family Law Act 1975* (Cth) as a matter of statutory interpretation,[202] being that section 90G(1A) was remedial in nature.[203] Where Murphy, J's approach differed from that of Coleman and May, JJ was in relation to the evidence. After setting out an extremely useful explanation of how the law changed as a result of the *Federal Justice System Amendment* (*Efficiency Measures Act (No. 1) 2009* (Cth),[204]His Honour adopted an approach involving, basically, concepts of contract law.[205] Until the wife received the document that included the husband's hand-written amendments initialled by him and his lawyer (which occurred after he received a document signed by the wife and her lawyer), and communicated back to the husband that she accepted his amendments (by counter-initialling the amendments and sending the document back to the husband's lawyers), there was no agreement.[206]

In Murphy, J's view, anything that occurred prior to that, in terms of sending documents between the parties, occurred in the context of negotiations. His Honour justified his view by noting that the parties intended to enter into an agreement pursuant to section 90C of the *Family Law Act 1975* (Cth). As such, and pursuant to the third type of agreement described

[200] See Coleman, J at [3] in *Parker & Parker* [2012] FamCAFC 33.
[201] See Coleman, J at [5] in *Parker & Parker* [2012] FamCAFC 33.
[202] See Murphy, J at [148] in *Parker & Parker* [2012] FamCAFC 33.
[203] See Murphy, J at [149] in *Parker & Parker* [2012] FamCAFC 33.
[204] See Murphy, J at [152] to [169] and in the Schedule in *Parker & Parker* [2012] FamCAFC 33.
[205] See Murphy, J at [172] in *Parker & Parker* [2012] FamCAFC 33.
[206] See Murphy, J at [178], [180] and [181] in *Parker & Parker* [2012] FamCAFC 33.

in *Masters v Cameron*,[207] they must have intended that any agreement would meet all requirements of section 90G of the *Family Law Act 1975* (Cth).[208]

Because of the effect of the transitory provisions of the *Federal Justice System Amendment* (*Efficiency Measures Act (No. 1) 2009* (Cth) as they related to this particular matter, non-compliance with 90G(1)(c) of the *Family Law Act 1975* (Cth) could not be remedied by section 90G(1A) of the *Family Law Act 1975* (Cth). The wife's lawyer's failure to give advice about the actual agreement – which was the document that included the husband's hand-written amendments initialled by him and his lawyer – meant that section with 90G(1)(c) of the *Family Law Act 1975* (Cth) was not satisfied.

His Honour, helpfully from a practitioner's point of view, noted that advice about financial agreements could be cumulative.[209] But, in this case, there was no evidence establishing that advice had been given about the concluded agreement. There was only evidence that advice had been given about documents forming part of the negotiations leading up to the concluded agreement.

His Honour clearly stated that the advice had to be about the advantages and disadvantages of the agreement, and provided before the party receiving the advice.[210] The mere inclusion of a lawyer's certificate was insufficient to establish that the party received advice of a sufficient quality to satisfy section 90G(1)(b) of the *Family Law Act 1975* (Cth) because a lawyer's certificate simply indicates the fact that advice has been given: it does not speak to the content of the advice.[211]

His Honour noted that if there is a dispute about whether a BFA is binding, the parties will share the burden of proof in relation to the different issues.[212]

[207] [1954] HCA 72; (1954) 91 CLR 353.
[208] See Murphy, J at [182] in *Parker & Parker* [2012] FamCAFC 33.
[209] See Murphy, J at [205] to [208] in *Parker & Parker* [2012] FamCAFC 33.
[210] See Murphy, J at [212] to [206] and [215] in *Parker & Parker* [2012] FamCAFC 33.
[211] See Murphy, J at [214] to [206] in *Parker & Parker* [2012] FamCAFC 33.
[212] See Murphy, J at [221] to [222] in *Parker & Parker* [2012] FamCAFC 33.

APPENDIX "A"

LEGISLATION

1. Surrogacy

- *Surrogacy Act 2010* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SurrogacyA10.pdf
- *Status of Children Act 1978* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/StatusChildA78.pdf
- *Childrens Court Rules 1997* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildrensCtRu97.pdf
- *Family Law Act 1975* (Cth) available at: http://www.comlaw.gov.au/Series/C2004A00275
- *Status of Children Act 1996* (NSW) available at: http://www.legislation.nsw.gov.au/maintop/view/inforce/act+76+1996+cd+0+N
- *Surrogate Parenthood Act 1988* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/S/SurrogParentA88_001.pdf

2. Adoption

- *Adoption Act 2009* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AdoptA09.pdf
- *Adoption Bill 2009* (Qld) available at: http://www.legislation.qld.gov.au/Bills/52PDF/2009/AdoptionB09.pdf
- *Adoption of Children Act 1964* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/A/AdoptChildA64_01_.pdf
- *Child Protection Act 1999* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf

- *Status of Children Act 1978* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/StatusChildA78.pdf
- *Succession Act 1980* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SuccessionA81.pdf
- *Marriage Act 1961* (Cth) available at: http://www.comlaw.gov.au/Details/C2011C00192

3. Family violence

- *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* available at: http://www.comlaw.gov.au/Details/C2011A00189
- *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* available at: http://www.comlaw.gov.au/Details/C2011B00058
- *Family Law Act 1975* (Cth) available at: http://www.comlaw.gov.au/Series/C2004A00275
- *Family Law Amendment (Shared Responsibility) Act 2006* (Cth) available at: http://www.comlaw.gov.au/Details/C2008C00441

4. Civil Partnerships

- *Civil Partnerships Act 2011* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilPartA11.pdf
- *Civil Partnerships Regulation 2012* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilPartR12.pdf
- *Succession Act 1981* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SuccessionA81.pdf
- *Acts Interpretation Act 1954* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/ActsInterpA54.pdf
- *Uniform Civil Procedure Rules 1999* (Qld) available at: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SuprCrtQUCPRu99.pdf

5. PPSA

- *Personal Property Securities Act 2009* (Cth) available at: http://www.comlaw.gov.au/Details/C2012C00151/Html/Text#_Toc315695331
- *Personal Property Securities (Corporations and Other Amendments) Act 2010* (Cth) available at: http://www.comlaw.gov.au/Details/C2010A00096/Html/Text#_Toc265070569
- *Personal Property Securities Regulations 2010* (Cth) available at: http://www.comlaw.gov.au/Details/F2011C00956/Html/Text#_Toc311202062
- *Privacy Act 1988* (Cth) available at: http://www.comlaw.gov.au/Details/C2012C00414

6. BFA's

- *Family Law Act 1975* (Cth) available at: http://www.comlaw.gov.au/Series/C2004A00275
- *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009* (Cth) available at: http://www.comlaw.gov.au/Details/C2009A00122
- *Federal Justice System Amendment* (*Efficiency Measures) Bill (No. 1) 2008* (Cth) available at: http://www.comlaw.gov.au/Details/C2008B00278

APPENDIX "B"

CASES

1. Surrogacy

- *Re: Michael : Surrogacy Arrangements* [2009] FamCA 691 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2009/691.html?stem=0&synonyms=0&query=michael
- *Dennis and Anor & Pradchaphet* [2011] FamCA 123 available at: *http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2011/123.html?stem=0&synonyms=0&query=Dennis%20and%20Pradchaphet*
- *Dudley and Anor & Chedi* [2011] FamCA 502 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2011/502.html?stem=0&synonyms=0&query=Dudley%20and%20Chedi

2. Adoption

- *McQuinn & Shure* [2011] FamCA 139 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2011/139.html?stem=0&synonyms=0&query=title(%222011%20FamCA%20139%22)
- *Jones & Blake* [2010] FamCA 161 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/161.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20161%22)
- *Dewart & Zarrah* [2010] FamCA 640 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/640.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20640%22)

- *Milly & O'Loan* [2010] FamCA 552 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/552.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20552%22)
- *Walter & Smith* [2010] FamCA 681 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/681.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20681%22)
- *Blue & Busby* [2010] FamCA 702 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/702.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20702%22)
- *Trafford & Villers; Trafford & Kerwood* [2010] FamCA 891 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/891.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20891%22)
- *Patin & McAlley* [2010] FamCA 890 available at: http://www.austlii.edu.au/cgi-bin/sinosrch.cgi?method=auto&meta=%2Fau&mask_path=&mask_world=&query=%5B2010%5D+FamCA+890+&results=50&submit=Search&rank=on&callback=off&legisopt=&view=relevance&max=
- *McRae & Wheater* [2010] FamCA 889 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/889.html?stem=0&synonyms=0&query=title(%222010%20FamCA%20889%22)
- *H v Department of Communities (Adoption Services)* [2010] QCAT 684 available at: http://archive.sclqld.org.au/qjudgment/2010/QCAT10-684.pdf
- AA & AB v *Department of Communities (Adoption Services)* [2011] QCAT 106 available at: http://archive.sclqld.org.au/qjudgment/2011/QCAT11-106.pdf

3. Family violence

- *Rice & Asplund* (1979) FLC 90-725 available at: http://www.familylawwebguide.com.au/attachment.php?id=284&keep_session=430588870

4. BFA's

- *Black and Black* [2008] FamCAFC 7; (2008) FLC 93-357 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCAFC/2008/7.html?stem=0&synonyms=0&query=title(%222008%20FamCAFC%207%22)
- *Hoult & Hoult* [2011] FamCA 1023 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2011/1023.html?stem=0&synonyms=0&query=hoult
- *Dixon v LeKich* [2010] QCA 213 available at: http://www.austlii.edu.au/au/cases/qld/QCA/2010/213.html
- *Parker & Parker* [2010] FamCA 664 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2010/664.html
- *Parker & Parker* [2012] FamCAFC 33 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCAFC/2012/33.html?stem=0&synonyms=0&query=title(%222012%20FamCAFC%2033%22)
- *Masters v Cameron* [1954] HCA 72; (1954) 91 CLR 353 available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1954/72.html?stem=0&synonyms=0&query=title(%221954%20HCA%2072%22)