



In this issue

- ✦ Important Changes – the Family Court’s Rights over Third Parties in Property Settlements Soon to be Expanded
- ✦ An Update on Changes to Shared Parenting Laws
- ✦ Recent Developments at Hartley Family Law Services

Welcome

Welcome to our December 2004 issue of ‘Hartley Family Law Services Newsletter’.

The purpose of this newsletter is to keep you informed of developments in family and defacto law, which are of interest to you. We aim to keep you up-to-date on the law and the services provided by Hartley Family Law Services.

In this issue we cover:

- ✦ Important Changes – the Family Court’s Rights over Third Parties in Property Settlements soon to be expanded
- ✦ An Update on Changes to Shared Parenting Laws
- ✦ Recent Developments at Hartley Family Law
 - ✦ Two New Family Law Solicitors appointed – Sarah Minnerly and Sherika Ratneser
 - ✦ Web site award
 - ✦ Conferences we have spoken at & our Published Works
 - ✦ Christmas Message

Important Changes – the Family Court’s Rights over Third Parties in Property Settlements Soon to be Expanded

Important Changes

Significant and important changes are about to commence in relation to the rights of Third Parties (i.e. not parties to a marriage) in Family Court property proceedings.

The *Family Law Amendment Act 2003* made some significant changes to the rights of Third Parties and the Family Court’s powers to make Orders binding upon Third Parties in property proceedings. The Sections relating to Third Party rights commence on 17 December 2004.

These amendments will substantially enlarge the power of the Family Court to make Orders directly against Third Parties and in some cases Orders that substantially affect the rights of Third Parties in property settlement proceedings.

Up until now a Family Court’s jurisdiction to make Orders against Third Parties was limited by the High Court case in *Ascot Investments -v- Harper* (1981)148CLR337, where the High Court expressly stated that the Family Court had no right to make any Orders that affected the substantive rights of parties who are not parties to the marriage in any Family Law property proceedings.

The Family Court’s jurisdiction against Third Parties is limited to the following instances:

1. Applications pursuant to Section 106B of the *Family Law Act*;
2. Declarations sought against Third Parties pursuant to Section 78 (although there is some debate about whether that is a valid source of power). In any event it is only a declarative power and one which does not substantively affect rights of Third Parties;
3. The exercise of accrued jurisdiction (i.e. where there is one (1) single justiciable issue in dispute and it is proper for that dispute to be determined in the Family Court and as part of determining the whole dispute, the rights of Third Parties also need to be determined).

Brett Hartley has recently presented a seminar paper discussing the jurisdiction of the Family Court in particular the accrued jurisdiction of the Family Court. A copy of this paper can be downloaded from the Hartley Family Law website at www.hartleyfamilylaw.com.au.



continued...

continued from previous page...

Important Changes

Under the new amendments, the definition of “property” and “matrimonial causes” has been expanded (supposedly to give constitutional validity to the amendments) so that a debt owed by a party to the marriage is to be treated as property for the purpose of defining a matrimonial cause and further the definition of property now includes a debt owed by a party to the marriage. In property settlement proceedings between spouses, the Family Court will have additional powers to make one or more of the following Orders:

- ✦ An Order directed to a Creditor of the parties to the marriage to substitute one party for both parties in relation to the debt owed to the Creditor;
- ✦ An Order directed to the Creditor of one party to the marriage to substitute the other party or both parties to the marriage for that party in relation to a debt owed to the Creditor;
- ✦ An Order directed to a Creditor of the parties to the marriage that the parties be liable for a different proportion of a debt owed to the Creditor than the proportion the parties are liable to before the Order is made;
- ✦ An Order directed to a Director of a company or to a company to register a transfer of Shares from one party to the marriage to the other party.

Further, in proceedings for property settlement, the Family Court may make any other Order that:

- (a) Directs a Third Party to do a thing in relation to the property of a party to the marriage; or
- (b) Alters the rights, liabilities or property interests of a Third Party in relation to the marriage.

There are some limits set out in the legislation as to when the Court can make such Orders and as to what matters the Court should take into account when making such Orders. However, the ramifications in relation to Third Parties (especially Third Party Creditors of spouses) is concerning.

In Brett Hartley’s opinion, some examples of Orders that may be sought in the Family Court pursuant to this new legislation could include the following:

1. An Order that a Husband be solely responsible for a debt owed to a financial institution (despite the fact that the other party is jointly liable for that debt primarily or by way of guarantee);
2. Orders against a privately owned company in which a spouse holds a minority Shareholding. For example, the Court may Order that the company register a transfer of Shares from the Husband to the Wife in that company (despite anything in the company’s Articles to the contrary) by way of enforcement of a Family Court Order;
3. Orders directed to a Corporate Trustees of a Family Trust (even where minority Third Party Director/Shareholders/Beneficiaries are involved) in order to give effect to the terms of an Order. For example, Orders compelling the Trustee to distribute capital and/or income from a Family Trust to a spouse in satisfaction of an Order.

The new legislation also states that it has effect despite anything to the contrary in any other law (written or unwritten of the Commonwealth, State or Territory) and despite anything else written in any Trust Deed or any other instrument.

It is our intention to provide a more comprehensive briefing to Commercial Lawyers, Accountants and Financial Advisors and Financial Institutions concerning the impact of these changes to the Family Court’s powers. If you wish to be included in these briefings, please contact Catherine Hartley by her email address at catherine.hartley@hartleyfamilylaw.com.au.

It is our opinion that such changes are concerning in their breadth and apparent applicability.

An Update on Changes to Shared Parenting Laws

The Federal Government has recently released a discussion paper entitled “*A New Approach to the Family Law System – Implementation of Reforms*” which is a paper outlining the proposed changes to the laws pertaining to children.

The Government has fallen short of its previous intentions to bring in a compulsory shared parenting (equal time) system into the *Family Law Act*. Instead, the proposed changes will make it compulsory for a Court to substantially consider equal parenting time when one party seeks either sole Parenting Orders or shared care. Further, the Objects of the Act will be amended so as to place more emphasis on children spending equal time with their parents, however there will be no presumption of shared time or automatic right of a parent to have equal time with their child after separation.

The Government does propose however, to amend the law relating to important decisions concerning the long term welfare of children. In that regard, the Government proposes that parenting decisions

relating to issues such as education, health and religion (or any other long term welfare decision) be made jointly by both parents and equally rather than be made by one or the other parent. This is a significant change to the law and will require parents to actually consult and make a decision before implementing a decision about child welfare matters including for example, which school a child is to attend.

The Government also proposes to introduce a number of Family Relationship Centers (eventually 65 around Australia) which separating parties will be able to visit and obtain a wide range of advice on all issues regarding separation with the particular focus of the Centers being to help parents resolve disputes regarding their children and to enter into Parenting Plans for their children without Court intervention.



Recent Developments at Hartley Family Law Services

We now boast seven Family Law Solicitors as part of our specialist team

We are pleased to announce that Sarah Minnery joined our firm in July 2004, and Sherika Ratneser will commence with us from January 2005, bringing the number of our Family Law Solicitors to seven.

Sarah holds degrees in Law (with Honours) and Business Accountancy. Sarah practices exclusively in Family Law with a particular interest in Alternative Dispute Resolution. Sarah is currently completing a Masters in Law specialising in Litigation and Dispute Resolution.

Sherika holds degrees in Arts and Law. She completed her Graduate Diploma in Legal Practice in 2004 and was admitted to Practice in October 2004. Sherika is a junior Family Lawyer, previously an Associate of the Family Court of Australia to the Honourable Justice Boland (Judge of the Appeal Division) in Sydney.

Hartley wins 2004-05 Internet Marketing Attorney (IMA) web site award

In the IMA 2004-05 International Firm Reviews, Hartley Family Law Services was the only Brisbane based law firm to win in the International Law Firm Web Site Review Category – for firms outside the United States.

Only four national/international Australian Law Firms featured in the IMA awards and Hartley Family Law Services was the only small Australian Law Firm to feature in the International Web Site Awards for 2004-05. Hundreds of law firms around the globe were nominated. IMA picks 25 to mention and provides awards to the top 15.

Hartley Family Law Services was awarded 1st place in the prestigious Gold Category and 6th place overall internationally.

For more information, please refer to our website:

www.hartleyfamilylaw.com.au

Conferences we have spoken at and our Published Works

Our Solicitors are nationally recognised as leading Australian Family Law Practitioners and are often invited to speak at conferences, author papers and present seminars as well as comment in the media on current Family Law issues.

Following is a list of Conference and Publishing works we have performed in 2004 and our engagements planned at this stage for 2005. Details of these Conferences and the papers we presented are available on our website (www.hartleyfamilylaw.com.au):

Date	Organisation	Speaker	Topic
05/05	LexisNexis – Family Law Master Class QLD	Brett Hartley	“Effectively Dealing With Discretionary Trusts and Hidden Assets”.
12/04	LexisNexis	Sarah Minnery	Sarah has been invited to chair the LexisNexis, Essentials of Family Law Seminar in December 2004.
10/04	Women’s Legal Service Inc 2004 National Conference	Sarah Flower	“Shared Residence and the Current pressures in Family Law”.
09/04	Securities Institute	Brett Hartley	In September 2004, Brett authored the Update for the Superannuation in Family Law Module for their Advanced Diploma in Financial Services.
09/04	25th Australian Family Therapy Conference in September 2004	Sarah Flower	“Shared Parenting and the Family Court”.
08/04	Brisbane Lawyer Magazine	Brett Hartley	Brett Hartley was interviewed by Sandra Kafrouni in the Brisbane Lawyer August 2004 edition. The article details the changes in the legal industry and how in Family Law there is an increasing number of specialist family law firms.
07/04	Family Law Master Class	Brett Hartley	“The Family Court’s treatment of third party interests in property settlements”.
07/04	Legalwise Seminars	Brett Hartley	“Third Party and Property Applications – The Practical Guide”.
07/04	Proctor	Sarah Minnery	In the July 2004 Issue of the QLD Law Society members’ publication, Proctor on Alternate Dispute Resolution.
05/04	Qld Law Society Family Law Intensive	Joe Healy	Joe Healy authored a paper that dealt with the power of the Court to vary or set aside property orders pursuant to Section 79A.
03/04	The Australian Newspaper	Joe Healy	Joe Healy was interviewed by Michael Milne for an article that was published in The Weekend Australian Newspaper 17/03/04. The article was titled “Money Matters in Family Feuds” “Careful planning can take the financial sting out of Divorce”.
03/04	LAAMS Seminars	Brett Hartley	“Recent changes to Family Law Court Rules and Current Issues in Family Law”.

Christmas Message

The holiday season is almost upon us however our office will be fully functional during the Christmas/New Year period.

We would like to take this opportunity to wish you all a very happy and safe Christmas and a prosperous new year. We thank you for your support during 2004 and look forward to continuing to grow our service offerings to you.



Brett Hartley
Chief Executive Officer



Level 15, Brisbane Club Tower,
241 Adelaide Street, Brisbane QLD 4000
GPO Box 678 Brisbane QLD 4001
Telephone 07 3220 1299 Fax 07 3220 1277
Website www.hartleyfamilylaw.com.au
Email: brett.hartley@hartleyfamilylaw.com.au

Our Staff

Brett Hartley – Chief Executive Officer & Accredited Family Law Specialist
Bruce Provan – Accredited Family Law Specialist
Joe Healy – Accredited Family Law Specialist
Sarah Flower – Accredited Family Law Specialist
Beata Leszczuk – Family Law Solicitor
Sarah Minnery – Family Law Solicitor
Sherika Ratneser – Family Law Solicitor
Catherine Hartley – General Manager
Wendy Kordic – Office Manager
Di Scott – Financial Controller
Maree Dinnar – Senior Legal Assistant
Kimberley Molloy – Senior Legal Assistant & Receptionist
Kirsty Murphy – Senior Legal Assistant
Narelle McCarty – Senior Legal Assistant
Samantha Farnes – Office Junior

DISCLAIMER:

The HARTLEY FAMILY LAW SERVICES NEWSLETTER has dealt with matters of a technical nature in general terms only. Clients should contact the firm for detailed information on any of the items in the newsletter. No responsibility for loss incurred by any person acting or refraining from action in reliance upon any material in this update will be accepted by the principal or staff of the firm.

PRIVACY

Hartley Family Law Services uses your personal information to represent and advise you. We may use it to tell you about changes in the law and our practice. It is only used for other purposes if we are legally required to do so or with your consent.

If your name or contact details have changed or if the information we hold is inaccurate please contact us. You may have your name removed from our communication list or update your details by contacting us on 07 3220 1299 or email catherine.hartley@hartleyfamilylaw.com.au.