

# advisor

PRACTICE MANAGEMENT – REGULATION



## New law binds couples to pre-nups

**Paddy Manning**

**T**he Family Law Amendment Bill 1999 (FLAB), which is currently before the Federal Parliament and is expected to pass in the current sittings, will make pre-nuptial agreements binding for the first time in Australian law, and will be welcomed by older and remarried couples, says Brett Hartley, principal of Brisbane-based Hartley Family Law Services.

"In the past, people may have completed pre-nuptial agreements but they have had no legal force whatsoever. Their only effect has been evidence of the parties' intentions, but they have had no impact on the power of the court to make orders."

In the US, according to Hartley, where pre-nuptial agreements have long been used, the result has been a minefield of endless litigation when ex-partners seek to walk away from their previous agreements.

The Government was keen to avoid this problem by ensuring that agreements entered into were in fact binding, but this led to delay a in Parliament as members

sought to find (through a public inquiry) ways to ensure couples knew what rights they were giving up.

The FLAB proposal is that couples must each obtain independent legal advice before entering into a pre-nuptial contract or binding financial agreement (BFA).

"There is a fairly onerous duty on the lawyer," says Hartley, "but now, finally, there is the opportunity for couples to formally oust the court's jurisdiction.

"Once a BFA is reached, the court will be unable to make orders about property covered by the BFA."

Hartley stresses that the FLAB reforms will only affect property settlements and spousal maintenance. It will not affect child support, which is covered under separate

Commonwealth legislation, the Child Support Act.

"You can't put child support into these agreements. Child support is calculated according to a fixed formula related to taxable income," says Hartley. Child custody issues are also untouched by the law.



Brett Hartley: go the BFA

Hartley says advisors should make their clients aware of the new opportunity, which could have a real bearing on their financial circumstances.

"It will be particularly attractive for older couples or those who have been divorced and have been through the wringer before," says Hartley. "You know: once bitten, twice shy."

An option under the new law is for couples to quarantine certain parts, not all, of their combined assets.

"If you have a couple and they're both bringing assets into the relationship but one partner is bringing a house they want to hang onto, and the other is bringing (say) a block of land, you can set up an agreement that says, 'whatever else happens, this house is mine and that land is yours.'" ■