



## Editorial with news from Australia

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EDITORIAL



## Editorial with news from Australia

At the time of writing Christmas celebrations are being overtaken by the coming of the New Year with hope for greater wisdom in the domestic political setting, and more restraint and political skill in the war torn international context of Eastern Europe and the Middle East. Happy New Year seems rather an optimistic phrase. . . . perhaps good wishes for a calmer safer 2024 are more appropriate, together with thanks to our contributors who as ever have produced articles and information covering a wide range of geographical and subject areas.

We begin with Elizabeth Dalgarno and colleagues report of their qualitative study of gender based violence against mothers in Brazil, examining Court based and Perpetrator induced trauma, including the weaponisation of the” pseudo concept” parental alienation. This paper was published online a little earlier, in response to the urgent need to highlight the importance of strengthening human rights protection for women and children in this area. We are pleased that it will now also available in print in this issue.

This is followed by work drawing on research at the other end of the age range in Israel, where Mickey Schindler and Sara Alon are looking at the impact of adult children on negative aspects of care of the elderly where disturbed adults inflict abuse on their elderly relatives. They offer a distressing account, but also a careful and important report of a research investigation.

Our third article from Robert George and Robert Marsh asks whether family justice needs physical courts drawing on empirical data from the covid period, and stressing the range of court activities including not only adjudication but also support and negotiation where the impact of being in person can be clearly seen.

In our final article Rachel Blakey assesses the availability of legal support through the Help with Family Mediation legal aid scheme.

In the new administrative justice system section we welcome an important contribution from Lee Marsons, the section editor, who has provided a comprehensive review of the recent development of the use of human rights by ombudsmen in different settings, focussing on the work of the Local Government and Social Care Ombudsman, an exciting and important area to watch.

We have case notes on the obligation of the state to recognise and support same sex relationships, the role of administrative law values in dealing with homelessness, and the vexed question of whether The Charter applies to people with pre settled status.

And finally we include reviews of two exciting new books.

Oliver Gilman has provided an excellent review of Brian Tobin’s work on “The legal recognition of same sex relationships in Ireland, drawing on comparisons with other common law countries particularly Australia, and England and Wales and Scotland.

Belinda Fehlberg strongly recommends the work of Emilie Biland entitled ‘Family Law in Action’, bringing together political concerns for gender equality and the problems of

economic gender based inequality between partners after separation. The author was able to carry out research and compare the findings in Quebec and France, and the volume has been translated from the French. Meanwhile may this editor recommend attention to the recent work supported by Nuffield in this field and published in 2023 entitled 'Fair Shares? Sorting out money and property on divorce' by Emma Hitchings, Caroline Bryson, Gillian Douglas, Susan Purdon and Jenny Birchall. This important study of the divorced population as a whole complements studies of those who experience dispute by showing that a third of couples make no financial arrangements, and of those who do half were made by the couples themselves, 17% with the help of a solicitor in negotiation, and 13% with the help of mediation.

Finally, at the time of writing we are still awaiting the outcome of the government's review of the case for mandatory family mediation in this jurisdiction. We do have the report of the review of mediation in civil cases, published in December 2023, supporting a requirement to mediate in specific cases. But this is a very different context for mediation, where parties are to be given a free hour of phone mediation with no penalty for failing to agree. . . and there are no vulnerable third parties (ie children) involved. . . We are hoping that the differences in context and need for family mediation are considered and understood. A great deal of the enthusiasm in this jurisdiction for Mandatory Family Mediation was stimulated by developments in Australia. In the hope of balancing enthusiasm for family mediation with knowledge based understanding of process and impact this editorial has an attachment in the form of a note from Professor Belinda Fehlberg of Melbourne University, a member of our editorial board, with Professor Richard Ingleby of the Victorian Bar. They describes the recent developments in this area in Australia where the move to Family Dispute Resolution has recently been discussed in the Attorney General's comprehensive Review of Family Law (reminiscent in scope of our review led by David Norgrove) published in 2021, which no longer recommends moving in only one direction, towards requiring more Family Dispute Resolution. Instead the discussion arising from the Review recommends looking at what people fight about and whether law reform could help to clarify issues and in that way help to avoid disputes and the need for their resolution. The new Family Law Reform Act Australia 2023 removes the equal parenting presumption, and moves towards a presumption that a marital property will have been purchased with equal contributions from both parties. . . a fiction perhaps . . . but a clever way of reducing costly conflict on financial issues? Professor's Fehlberg's account certainly offers food for thought . . . and Rachel Blakey's in our final article addresses the current need for and availability of legal support in this jurisdiction in the context of legally aided mediation.

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Stop press: January 24 "Supporting earlier resolution of private family law arrangements", Ministry of Justice, available at <https://consult.justice.gov.uk>