

New Family Law Risk Management Package

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The Society has recently launched a suite of documents to assist practitioners engaging in Family Law work.

Family Law is an important area of practice for many practitioners and it is also a focus for Law Claims. In the 2016-2017 policy year claims received by Law Claims relating to Family Law matters constituted 15.45% of the total claims for that year, however the cost of those claims is currently 37.14% of the total costs of claims for that year. Claims against Family Law practitioners often concern financial agreements and part of this increase in the cost of claims may be explained by the increase in the value of the assets in dispute, however this fact underlines the importance of keeping claims down.

Good systems and procedures should do a lot to reduce a firm's vulnerability to claims. To this end we have recently entered into an agreement with Lexon (the Queensland legal professional indemnity insurer) to adapt and use some excellent material produced by Lexon in the family law area. This package is a follow-up to the Wills & Estate package launched earlier this year.

As with the Wills & Estate package, the material has been adapted to South Australian Law and practice and the package was launched at the Family Law Risk Management session held on 24 September, 2019.

The package comprises a number of draft letters and comprehensive checklists dealing with Financial Agreements, Pre-Relationship, During Relationship and Post Relationship as well as various checklists for Consent Orders, Mediation, Superannuation Agreements and Verification of Identity. The draft letters are a

- Request for information to be sent to Client prior to initial consultation;
- Letter to Client following initial interview;
- Letter of Advice to Client prior to execution of Financial Agreement;
- Letter to Client following execution of agreement at conclusion of matter;
- and deal with the requirements of sections 90, 90UB, 90C, 90UC, 90D and 90UD of the *Family Law Act 1975*.

These documents are now available through the Society's website to all practitioners insured under the SA Legal Practitioners Professional Indemnity Scheme. The package can be found on the Society's website at <https://www.lawsocietysa.asn.au/RiskManagementPackage>.

Whilst these documents are and are not intended to be a universal panacea to all the problems that arise in family law matters (and they come with the usual disclaimers) they are, hopefully, a very useful starting point for practitioners involved in dealing with family law Financial Agreements. We are hopeful that these documents will assist practitioners carrying out their work in this complex area of law and assist in minimising errors resulting in claims.

Risk Management staff would welcome feedback from and dialogue with practitioners as to any comments practitioners may have as to their experience with using the package.

Please contact Grant Feary, Deputy Director (Law Claims) gfeary@lawclaims.com.au or Gianna Di Stefano (PII Risk Manager) Gianna.DiStefano@lawsocietysa.asn.au with any comments or suggestions.

Beware of overlapping time limits: High Court affirms old rule on limitation of actions

In the recent case of *Brisbane City Council v Amos* [2019] HCA 27 (4 September, 2019) the High Court held that, where limitation

periods overlap, a longer limitation period did not extend or exclude the operation of a shorter time period contained in the same Statute. The Brisbane City Council (BCC) took proceedings against Mr Amos in respect of unpaid and overdue rates pursuant to the Queensland *Local Government Act*, relating to periods going back to 1999. Unpaid and overdue rates are a charge on the land. The limitation period for debts created by statute and secured by charge was 12 years but the limitation period for actions to recover a sum recoverable by virtue of any enactment (e.g. the *Local Government Act*) was six years.

In *Barnes v Glenton* [1899] 1QB 885 the Court of Appeal of England and Wales held that where there were overlapping limitation periods for a personal claim to recover a sum secured by a mortgage or other charge, a longer limitation period applicable to debts created by statute and secured by a charge did **not** extend or enlarge the shorter limitation period.

The High Court held that when Parliament re-enacts provisions with a well-understood meaning, such as those in the 1974 Queensland *Limitation of Action Act* (and the Court held that the rule in *Barnes v Glenton* was well understood) it will generally be assumed that Parliament intended the words to have that meaning.

In the *Brisbane City Council* case, therefore, the shorter time period (six years) for actions to recover a sum recoverable under an enactment, and not the longer time period (12 years) for debts created by statute and secured by a charge, was the applicable period. Much of the BCC's action against Mr Amos was therefore time-barred.

The lesson, as always, is to be extra careful when considering time-limitation issues.