

COMPANION ANIMALS

Under the Family Law Act 1975 (Cth.)

By Cath Devine

In June 2025, the Family Law Act 1975 was substantially amended, and new provisions included clauses about companion animals – what they are, and what orders can be made about them. Different considerations apply with dealing with companion animals than when dealing with other types of property.

The amendments are part of sweeping reforms that substantially include family violence issues in property settlements, and recognises that one of the reasons a victim of family violence may not leave a relationship is that they are concerned about the welfare and ownership of a pet.

What is a companion animal?

A companion animal is one kept by the parties to a marriage/relationship (or either of them), primarily for the purposes of companionship, but does not include:

- a) An assistance animal within the meaning of the Disability Discrimination Act 1992; or
- b) An animal kept as part of a business; or
- c) An animal kept for agricultural purposes; or
- d) An animal kept for use in laboratory tests or experiments¹.

What are the considerations taken into account by the Court?²

The Court must take into account the following matters:

- a) The circumstances in which the animal was acquired;

¹ FLA s4.

² FLA s79(7) or s90SM(7).

- b) Who has ownership or possession of the animal;
- c) The extent to which each party cared for, and paid for the maintenance of, the animal;
- d) Any family violence to which one party has subjected or exposed the other party;
- e) Any history of actual or threatened cruelty or abuse by a party towards the animal;
- f) Any attachment by a party, or a child of the marriage/relationship, to the animal;
- g) The demonstrated ability of each party to care for and maintain the animal in the future, without support or involvement from the other party;
- h) Any other fact or circumstance which the Court considers the justice of the case requires to be taken into account.

The court can make interim or final orders about companion animals.

What orders can be made with respect to a companion animal?³

There are only three types of orders which can be made with respect to companion animals:

1. That only one party (or a joined party) is to have ownership of the animal; or
2. That the animal be transferred to another person who has consented to the transfer; or
3. That the animal be sold.

In *Davenport & Davenport (No.2)* [2020] FCCA 2766 and in *Castaneda & Castaneda* [2023] FedCFamC1F 1017, orders were sought for shared custody of dogs. Both applications were refused.

Case Law:

Although there are no reported cases on the new legislative provisions, there are some previous cases which have dealt with some of the issues. They include:

³ FLA s79(6) or s90SM(6).

Downey & Beale [2017] FCCA 316

- The Wife sought an order that the Husband transfer the dog to her.
- There was no dispute the Husband had paid for the dog, but this was found not to be determinative of who owned the dog.
- Wife had paid the veterinary bills and items for the dog.
- At the time the proceedings were issued, the dog was not registered.
- The Husband registered the dog 8 months after separation, after the Wife had filed material saying she was the owner of the dog and sought it be returned.
- The Court declared the Wife to be the owner of the dog, and the registration be transferred.

Parkhill & Rayne [2020] FCCA 1989

- The parties owned two dogs; they were obtained from the same breeder, being related to each other.
- They were getting older – but were walked by the Wife three times a day. They had stayed with the Wife and child upon separation.
- The Husband sought the transfer of one of the dogs to him.
- The trial judge held that it was not appropriate for the dogs to be separated, and that the child of the parties was growing up with both the dogs.
- The Husband could adopt a puppy, which could provide a focus for the Husband and the child when the child was spending time.

Grunseth & Wighton [2022] FedCFamC1A 132

- The parties had two dogs: Roxy and Patricia. The Wife had possession of both dogs. Roxy was registered in the name of the Wife.
- The Husband sought the return of Roxy as Roxy had been purchased for his minor daughter from a prior relationship.
- The daughter chose Roxy's name, and collected her with the Wife at the time of obtaining Roxy.
- The trial judge ordered Roxy to be transferred to the Husband or his nominee.

The Wife appealed:

- The Full Court determined that despite mutual intention that Roxy was purchased for the Husband's minor daughter, the daughter had no legal or equitable interest in Roxy, and as the Wife had paid for Roxy and Roxy's ongoing costs, the Wife was to retain Roxy.

The new amendments would have allowed Roxy to be transferred to the Husband's daughter.

So: whilst Sydney the cavoodle is a companion animal; Poppy the Court Dog is not – but the question remains: would Baa the Ram (sadly now deceased) have been a companion animal under the amendments? Only future cases will tell.