

National NSW [Family law](#)

Who gets the pet – and other big changes for divorcing couples



Michaela Whitbourn

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Separating couples fighting in court over the family pet and the division of assets face a new legal landscape following landmark changes that elevate the status of companion animals and recognise the financial consequences of family violence.

The changes to the [Family Law Act](#), which started on Tuesday, apply to all former couples about to commence or at the start of proceedings in the Federal Circuit and Family Court, unless the final hearing is under way.



Michael Tiyce, pictured with his schnauzer Ferdinand, said the family law changes applied to all current court disputes except those at the stage of a final hearing. STEVEN SIEWERT

Companion animals

Michael Tiyce, principal of Sydney law firm Tiyce & Lawyers, said the law was now “a lot clearer” about how the court would approach a dispute over the ownership of a pet in the context of a wider property fight between a former couple.

The court must consider a range of factors before making orders about pets, including who had looked after the animal, bonds of attachment – including between the pet and the parties’ children – and demonstrated ability to provide care.

Crucially, family violence must also be considered, including “any history of actual or threatened cruelty or abuse by a party towards the companion animal”.

Melbourne-based family law expert Jodylee Bartal, a partner at Schetzer Papaleo Family Lawyers, said the changes “elevate the treatment of animals to reflect the important role that they play in some families”. The laws applied to family pets rather than other animals such as working dogs.



Jodylee Bartal, partner at Schetzer Papaleo Family Lawyers. JASON SOUTH

Bartal said the court could only grant ownership of the pet to one party, order that it be sold, or order that its ownership be transferred to a third party if that person consented. It could not make an order for shared custody of pets, but the parties could agree to this.

Pets were still treated as property under the law but were now “their own category of property”, she said.

Tiycce said the fact the court did not have the power to make orders for shared custody of pets would be an incentive for some clients to avoid a court process.

“My practice is in the eastern suburbs of Sydney – we’ve been sharing custody of dogs and cats for decades because very often there aren’t children,” Tiycce said.

“A court’s not going to be involved in those sorts of arrangements. Most family lawyers nowadays rarely see the inside of a courtroom, except in the most extreme cases, because most matters settle. It’s too expensive [and] it takes too long.”

How the changes work

Before the changes, Tiycce had a case where his client’s ex-partner asserted he had been granted ownership of a “quite old and unwell dog” under an ambiguous court order.

His client had been the dog’s long-term registered owner and carer, and had stronger emotional ties to the pet.

Tiycce eventually succeeded in securing ownership of the dog for his client, but he had to rely on technical legal arguments. The new laws would have made this process easier.

Family violence and property

Tiycce said the most important change codified principles in the 1997 case of *Kennon v Kennon*, where family violence was considered in a dispute over the division of property.

“The new amendments will basically mean a court must take into account the economic effect of family violence where it’s making orders about property and finances,” he said. This is relevant to the court’s assessment of a party’s future needs but also to examining any obstacles they might have faced to contributing to the relationship, financially and otherwise, before the breakup.

Family violence or coercive control could have a long-term financial impact, Tiycce said, including if a spouse was blocked from taking a promotion or attending an educational institution to retrain.

“Also, if you’ve got costs of rehabilitation, if you’ve got PTSD as a consequence and you’ve got to get therapy, then those are also costs that a court can take into account,” he said.

Jodylee Bartal said the changes made clear “how the economic consequences of family violence would be addressed by the court” when considering how assets would be divided. Family violence might have made a spouse’s contributions to the relationship and its asset pool “all the more arduous”, she said, such as if they worked full-time and cared for children while experiencing relentless abuse.

Bartal said the law included an expanded definition of family violence, which encompasses economic and financial abuse.

Financial abuse included forcing a spouse to take on debt or accumulating debt in their name without their knowledge, such as “applying for a credit card in that person’s name”.

Dowries, which are gifts or cash paid in some cultures by a wife’s family to her husband upon their marriage, are also explicitly recognised in the law as a potential source of economic or financial abuse, such as if a husband demanded further payments after the wedding.

Financial transparency

Tiye said there was also a clearer inclusion in the law of the duty former couples had to provide all financial documents to each other and to the court, clamping down on parties trying to hide assets.

“The nature of the duty is the same, but I think the fact they’re now centred within the Family Law Act probably means that people should be taking them a bit more seriously,” he said.



Michael Tiye and his schnauzer Ferdinand.
STEVEN SIEWERT

