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FUTURE NEEDS STRIKES BACK?
**ASSESSING THE CONSEQUENCES OF CONTRIBUTIONS TO A
DE FACTO RELATIONSHIP**

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I INTRODUCTION

While Australia awaits a national regime for property adjustment following the breakdown of a de facto relationship, there has been an interesting development in the assessment of the contributions made by a de facto party which are to the detriment of that party's skills development and career advancement. In the 2005 decision of *Howlett v Neilson*,¹ the NSW Court of Appeal, after acknowledging that the state legislation does not authorise 'a future needs' adjustment, commented that it does permit an examination as to whether the contributions made by a party were made to the detriment of that party's future interests. This interpretation also has implications for Victoria, South Australia and the Northern Territory as their respective legislative regimes, like NSW, omit any reference to prospective considerations that would enable a court to take account of a party's 'future needs'. This deliberate omission arguably indicates a legislative intention to draw a clear legal distinction between marriage and other relationships based on cohabitation. While previous judicial attempts to interpret the NSW legislation as allowing some prospective considerations to be considered for 'justice and equity' reasons have failed, this recent decision promises some hope for a party who makes significant contributions to the relationship to the detriment of his or her skills development and career advancement.

The paper will consider this development and its implications for family law.

A 'Sleeping with the past': the current statutory approaches to 'contributions'

Since the mid-1980s all the states and territories have enacted legislation to provide de facto couples (and more recently same-sex de facto couples) with rights and

¹ (2005) 33 Fam LR 402.

responsibilities following the breakdown of the relationship.² The court's powers of adjustment are wide and the exercise of discretion is the basic theme. It appears accepted that the law should follow the regime for property adjustment following the breakdown of a marriage and consequently it plays a protective role in adjusting the assets of the de facto couple in relationship in a 'just and equitable' way.³ However, the discretion is not without limits and statutory factors govern its exercise. Two different approaches have been adopted on the face of the statutes, although, as will be seen, some judicial interpretation has attempted to soften the distinction between them. However, this interpretation has been neither consistent nor universally accepted, with resulting uncertainty in the case law. Inconsistencies of approach are arguably evidence of continuing ambivalence in relation to the appropriate policy to be adopted towards relationships outside marriage.

The state and territory legislation directs the court to have regard to the parties' contributions to the relationship and resembles s 79(4)(a)-(c) of the *Family Law Act* 1975 (Cth) (eg both financial and non-financial property contributions and family

² *Property (Relationships) Act 1984* (NSW), formerly *De Facto Relationships Act 1984* (NSW) (commenced 1 July 1985), as amended by the *Property (Relationships) Legislation Amendment Act 1999* (NSW) (since 28 June 1999 the Act covers same-sex de facto relationships); *Property Law Act 1958* (Vic), as amended by the *Property Law (Amendment) Act 1987* (Vic) (commenced 1 June 1988) and as further amended inter alia by the *Statute Law Amendment (Relationships) Act 2001* (since 28 June 2001 the Act covers same-sex relationships); *De Facto Relationships Act 1991* (NT), as amended by the *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2004* (since 17 March 2004 the Act covers same-sex de facto relationships); *Domestic Relationships Act 1994* (ACT) (commenced 11 July 1994); *De Facto Relationships Act 1996* (SA) (commenced 16 December 1996); *Property Law Act 1974* (Qld), as amended by the *Property Law (Amendment) Act 1999* (Qld) (commenced 21 December 1999); *Family Court Act 1997* (WA), as amended by the *Family Court (Amendment) Act 2002* (WA) (commenced 1 December 2002); *Relationships Act 2003* (Tas) (commenced on 1 January 2004 and repealed the *De Facto Relationships Act 1999* (Tas)).

³ *Property (Relationships) Act 1984* (NSW) ss 14, 20; *Property Law Act 1958* (Vic) ss 279, 285; *De Facto Relationships Act 1991* (NT) ss 13, 18; *Domestic Relationships Act 1994* (ACT) s 15; *De Facto Relationships Act 1996* (SA) ss 9-11; *Property Law Act 1974* (Qld) ss 282-6, 291-309; *Family Court Act 1997* (WA) s 205ZG; *Relationships Act 2003* (Tas) ss 36, 40.

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contributions must be considered).⁴ The obvious omission in the legislation that currently exists in NSW, Victoria, South Australia and the Northern Territory is any express reference to prospective considerations which would enable a court to take account of the parties post-separation needs and means and the way in which the relationship has affected their respective financial positions. This omission was deliberate and indicated a legislative intention to draw a distinction between marriage and other relationships.⁵ It appears that attempts by some judges to interpret the legislation as allowing some prospective considerations to be considered for justice and equity reasons have failed.⁶

Prospective needs and means considerations must be considered in the Australian Capital Territory, Queensland, Western Australia and Tasmania. The relevant provisions in Queensland and Western Australia mirror s 79(4)(d)-(g) of the *Family Law Act 1975* (Cth).⁷ The provisions in the Australian Capital Territory and Tasmania require the court to consider ‘the nature and duration of the relationship’⁸ and the ‘matters’ relevant to the award of personal maintenance (eg mirroring s 75(2) of the *Family Law Act 1975* (Cth)).⁹

⁴ Indeed the relevant Western Australian provision is identical to the relevant Commonwealth provision: *Family Court Act 1997* (WA) s 205ZG(4). In Victoria, the court must also have regard to ‘any written agreement entered into by the domestic partners’: *Property Law Act 1958* (Vic) s 285(1)(c). There is a similar provision in South Australia: *De Facto Relationships Act 1996* (SA) s 11(1)(c); See also s 11(1)(d) (the court ‘may have regard to other relevant matters’). In the Northern Territory the court also considers the context of the family contribution in a family constituted by the partners and ‘any person dependent on the partners who has been accepted by the partners or either of them into the household of the partners’: *De Facto Relationships Act 1991* (NT) s 18(1)(b)(iii). In Queensland, the court must also consider the property and family contributions made by a ‘child of the de facto partners’ providing such contributions are ‘substantial’: *Property Law Act 1974* (Qld) ss 291-2. The ‘nature and duration of the relationship’ is also a factor that the court must consider in Queensland, Tasmania and the Australian Capital Territory: *Property Law Act 1974* (Qld) s 305; *Relationships Act 2003* (Tas) s 40(1)(d); *Domestic Relationships Act 1994* (ACT) s 15(1)(a).

⁵ New South Wales Law Reform Commission (NSWLRC), *De Facto Relationships*, Report No 36 (1983), [5.67, 9.30] (NSWLRC reports may be accessed via the NSW Law Link website <<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R36TOC>> at 20 February 2007); See also Attorney-General, Daryl Manzie, ‘Second Reading Speech’ (Speech delivered at the Legislative Assembly, Northern Territory, 8 May 1991); Quoted in *Kemp v King* (1995) 20 Fam LR 265; FLC 92-672, 274-5 (Murray J); *D v J* [1996] DFC 95-175 (Nicholson CJ).

⁶ *Wallace v Stanford* (1995) 19 Fam LR 431; DFC 95-165; *Evans v Marmont* (1997) 21 Fam LR 760; DFC 95-184.

⁷ *Property Law Act 1974* (Qld) ss 293-309; *Family Court Act 1997* (WA) s 205ZG(4)(d)-(g).

⁸ *Domestic Relationships Act 1994* (ACT) s 15(1)(a); *Relationships Act 2003* (Tas) s 40(1)(d).

⁹ *Domestic Relationships Act 1994* (ACT) s 15(1)(a) (read together with s 19(2)); *Relationships Act 2003* (Tas) s 40(1)(e) (read together with s 47).

B *'The end of the rainbow': a just and equitable adjustment?*

Some judges have attempted to fill the gap constituted by the expressed omission of 'prospective' element from the legislation in the relevant states by creative judicial interpretation of the statutory power to make such order as is 'just and equitable'. It has been held that this terminology permits the court to take account not only of contributions, but also of disappointed reliance and expectation interests, and more generally, any injustice arising from the relationship, permitting in certain circumstances a further award on top of that which represents recognition of past contributions. The origins of this interpretation lie in the decision of the majority in the NSW Court of Appeal in *Dwyer v Kaljo* ('*Dwyer*').¹⁰

In *Dwyer*¹¹ the applicant's claim for property adjustment was based principally on her non-financial contributions to the welfare of the family, as homemaker and de facto stepmother. Handley JA (with whom Priestly JA agreed) held that the trial judge was wrong in law in confining the award under the relevant section to the provision of adequate compensation for contributions.¹² Rather, the section, in permitting a court to make such order 'as to it seems just and equitable', also allowed consideration of disappointed reliance interests and expectation interests. More precisely, the majority held that the section authorises the court to remedy any injustice a claimant would otherwise suffer because of his or her reasonable reliance on the relationship, or due to the expectations arising from the relationship.¹³ Reference was also made to the power to make orders restoring to a claimant benefits rendered to the other partner (the so-called 'restitution interest').¹⁴ Because of this error of approach, the trial judge's order was found by the majority to be insufficient in quantum. This approach

¹⁰ (1992) 15 Fam LR 645; DFC 95-127. In this case the trial judge (Hodgson J) doubted the Ms Dwyer's entitlement at all, but said that he felt constrained to apply the terms of the legislation, and awarded her A\$50 000. On appeal the majority (Handley and Priestley JJA, Mahoney JA dissenting) increased the award to A\$400,000 with costs. Special leave to appeal to the High Court was subsequently refused (but interestingly the High Court did not expressly support the views of Handley JA).

¹¹ *Ibid.*

¹² *Ibid.* 659.

¹³ *Ibid.*

¹⁴ *Ibid.*

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by the majority on appeal was certainly of note given that it was based on concepts which did not find precise expression in the wording of the statute but which were inferred from the general term 'just and equitable'. In his dissenting judgment, Mahoney J held that the relevant NSW provision only required an evaluation of contributions to the relationship. Such an evaluation is to be approached by the court on the particular facts of each individual case and without any prior assumptions as to respective values.¹⁵

For a time the approach of the majority in *Dwyer*¹⁶ was followed in subsequent decisions.¹⁷ Where it was adopted, it had the effect of producing awards substantially larger than the predominantly non-financial contributor would achieve if only contributions were considered by the court.¹⁸ In 1995's *Kemp v King*¹⁹ Murray J, in an application under s 18 of the Northern Territory legislation (but heard in the Family Court pursuant to the cross-vesting scheme), cited *Dwyer*²⁰ and stated:

... the contribution made by the mother to the mortgage payments on the home ... has ... raised in her an expectation of the continued provision of a home for her and the children ... I note the disparity between the parties' means and resources and find it was thus at the commencement of the cohabitation. There is no evidence to suggest that the disparity was increased by reason of the cohabitation. Nevertheless, in order to do justice and equity to both parties as the legislation requires ... I must have regard to those means and resources ...²¹

¹⁵ (1992) 15 Fam LR 645, 648-9.

¹⁶ Above n 10.

¹⁷ See eg *Williamson v Williamson* (1992) 15 Fam LR 739; *Parker v Parker* (1993) 16 Fam LR 863; DFC 95-139; *Hughes v Curwen-Walker* (1995) 18 Fam LR 625; *Grubnic v Healey* (1994) 18 Fam LR 617; [1995] DFC 95-158; *Lesiak v Foggenberger* [1995] DFC 95-167; *Kemp v King* (1995) 20 Fam LR 265; *King v Kemp* (1996) 20 Fam LR 280; DFC 95-171.

¹⁸ See, eg, 1993s *Parker v Parker* (1993) 16 Fam LR 863; DFC 95-139 in which the female partner's share was assessed at A\$275 000 when applying *Dwyer v Kaljo* (1992) 11 Fam LR 785, 793, whereas it was estimated she would have received only A\$95 000 on the law as it stood before that decision.

¹⁹ (1995) 20 Fam LR 265.

²⁰ Above n 10.

²¹ Above n 19, 278.

The female partner was subsequently awarded 37.5 per cent of the value of the parties' total assets, a proportion which, on appeal, was held to be within the proper exercise of discretion.²² To an extent, this interpretation of the legislation permitted the court to make some adjustment for the disparity in the parties' respective financial positions produced by the relationship. However, this approach was also problematic. It was certainly not an easy task to identify the precise basis or content of the so-called 'expectation/reliance' interest. In some cases the court held that there was no relevant expectation or reliance interest, because the claimant was no worse off financially through the existence of the relationship and its breakdown than if she or he had remained single.²³ More generally, some judges voiced considerable unease with the approach of the majority in *Dwyer*²⁴ and were reluctant to follow it even while acknowledging its then binding force as a precedent. Indeed in 1993's *Parker v Parker*²⁵ Young J 'venture[d] to say that':

... no one contemplated that the temporary partner of a millionaire might employ the Act to leave the relationship with a percentage of his fortune. Yet *Dwyer*²⁶ itself was a case where the majority of the Court of Appeal seemed to say that if a millionaire uses his wealth as an inducement to a woman to enter a relationship and to support that relationship while it lasted, it is reasonable to make a substantial order in favour of the woman to allow her to continue that lifestyle.²⁷

In 1995's *Green v Robinson*²⁸ Cole JA refused to consider matters other than contributions,²⁹ as did Mahoney J (not surprisingly) in *Wallace v Stanford*.³⁰ In the latter 1995 case Sheller JA observed:

I should say, however, that, with respect, I have difficulty with the conclusion expressed by Handley JA at NSWLR 744 that the power under s 20(1) of the *De Facto*

²² *King v Kemp* (1996) 20 Fam LR 280; DFC 95-171 (Baker, Lindenmayer and Bulbeck JJ).

²³ *Brownlee v Stamford* (1993) 16 Fam LR 820; *Partridge v Caruso* (1995) 18 Fam LR 731.

²⁴ Above n 10.

²⁵ *Parker v Parker* (1993) 16 Fam LR 863; DFC 95-139.

²⁶ Above n 10.

²⁷ *Ibid* 869.

²⁸ (1995) 18 Fam LR 594; DFC 95-195.

²⁹ *Ibid* 610.

³⁰ (1995) 19 Fam LR 430; DFC 95-165.

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(Relationships) Act 1984 to make a just order authorises orders to remedy any injustice the applicant would otherwise suffer because of his or her reasonable reliance on the relationship or his or her reasonable expectations from the relationship. These doubts spring from the more limited power described in the section when compared with s 79 of the *Family Law Act 1975* (Cth) (see *Black v Black* (1991) 15 Fam LR 109 at 113) and the choice of language in the section which derives or accords with the United Kingdom Law Commission Report on Financial Provision in Matrimonial Proceedings (1968–69) para 69 directed to the law's inability to correct the imbalance which may be found to exist in property rights as between husband and wife: *Pettitt v Pettitt* [1970] AC 777 at 811. The emphasis is on adjusting interest of the partners having regard to their contributions related either to their property or welfare. On its face the section seems to have nothing to do with compensating one partner for the consequences and of the failure of the relationship. If such compensation is covered by the section, justice and equity, it seems to me, would require a balancing of the loss suffered by each party not just one.³¹

Given this degree of conflicting opinion, an opportunity arose for an enlarged five-member bench of the NSW Court of Appeal to reconsider these issues in the 1997 case of *Evans v Marmont*.³² The majority (Gleeson CJ and McLelland CJ in Equity; Meagher JA agreeing)³³ followed the majority decision in *Wallace v Stanford*³⁴ and refused to follow the majority decision in *Dwyer*.³⁵ In other words, the deliberate non-inclusion of any prospective considerations means that any property adjustment is limited to an assessment of contribution considerations only. In reaching their decision the majority observed that:

Community attitudes towards de facto relationships have changed significantly in recent decades, and the process of change is still going on. There may be some who think that the policy which was adopted by the New South Wales Parliament in 1984 does not go far enough to make appropriate provision with respect to de facto partners.

³¹ Ibid 449.

³² (1997) 21 Fam LR 760; DFC 95-184.

³³ The minority (Mason P and Priestly JA) supported the broader view expressed by the majority in *Dwyer v Kaljo* (1992) 15 Fam LR 645; DFC 95-127.

³⁴ Above n 30.

³⁵ Ibid 770.

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There may be others who think that it goes too far. The role of the court, however, is to interpret and apply the 1984 legislation. One thing is clear. It was not the intention of the New South Wales Parliament in 1984 to equate de facto relationships with marriage, or to make the same provisions with respect to de facto partners as the *Family Law Act*, at the time, made with respect to married people.³⁶

The majority also observed that that there is no mention in the NSW Act of matters ‘relevant to means and needs’, as is found in the *Family Law Act 1975* (Cth).³⁷ Consequently, their Honours held that:

The concept of remedying an injustice the applicant would otherwise suffer because of his or her reasonable reliance on a relationship or his or her reasonable expectations from the relationship seems to us, with respect, to involve a major shift in the focus dictated by s 20, as does the notion of importing, by analogy, the principles according to which equity awards compensation for breach of equitable duties. This appears to us to broaden the scope of the enquiry well beyond that contemplated by the legislature. It is pertinent to note that recovery of damages for breach of promise to marry was abolished by statute in 1976: *Marriage Act 1961* (Cth) s 111A.³⁸

Subsequent NSW cases have, not surprisingly, followed the majority decision in *Evans v Marmor*³⁹ and have limited their assessment to contribution considerations where the relevant legislation does not specifically authorise an assessment of prospective considerations.⁴⁰ This issue has also arisen under the relevant legislation in Victoria. In the 2004 case of *Giller v Procopets*⁴¹ the Victorian Supreme Court

³⁶ Ibid 767.

³⁷ Ibid 768.

³⁸ Ibid 768-9.

³⁹ Above, n 32.

⁴⁰ See, eg, *Fuller v Taaffe* (1998) 23 Fam LR 702; DFC 95-198 (Family Court pursuant to then cross-vesting jurisdiction); *Flett v Brough* [1999] DFC 95-211; *McKean v Page* (1999) 25 Fam LR 15; DFC 95-218 (Family Court pursuant to then cross-vesting jurisdiction); *McDonald v Stelzer* (2000) 27 Fam LR 304; DFC 95-233; *Jones v Grech* (2001) 27 Fam LR 711; DFC 95-234; *Matheson v Wallis* (2001) 28 Fam LR 290; *Beattie v Reid* (2002) 31 Fam LR 204; [2003] DFC 95-264; *Powell v Supresencia* (2003) 30 Fam LR 463; DFC 95-275; *Howlett v Neilson* (2005) 33 Fam LR 402; DFC 95-321.

⁴¹ [2004] VSC 113.

(Gillard J) drew upon the majority judgment in *Evans v Marmont*⁴² and stated that ‘their reasons ... apply equally to the Victorian legislation’. His Honour specifically quoted from the judgment of Meagher J:

Section 20 (s 285) enables the Court to ‘make such order adjusting the interests of the partners in the property as it seems just and equitable having regard to’ two specified factors. Those two factors both relate to the contributions, direct and indirect, made by each of the partners to either the property or the welfare of them both. As a matter of English that can only mean that the Court may have regard to each of the two factors and not to any other factors. In particular it precludes the Court, in a s 20 (s 285) application, from having any regard to fault, needs, maintenance, compensation, expectation damages, reliance damages or quasi-equitable damages.⁴³

C ‘Opportunities lost’: the general relevance of ‘needs and means?’

Despite the rejection of a ‘prospective’ interpretation in cases like *Evans v Marmont*,⁴⁴ the majority of the NSW Court of Appeal did confirm that the ‘needs and means’ of the parties will have general relevance, as ‘subsidiary factors’, in relation to the question of what is just and equitable having regard to the respective contributions made to the ‘financial circumstances of the parties’. Their Honours⁴⁵ approved of the following comments made by the trial judge (Hodgson J) in the case of *Dwyer*⁴⁶:

In my view, if one considers the plaintiff’s contributions and nothing else, this cannot conceivably lead to any view of what is just and equitable in the circumstances. However, it seems to me that the other factors can have no independent bearing on what is just and equitable. Their relevance is only by reason of such relevance as they may have to the question: what is just and equitable having regard to the plaintiff’s contributions? In my view, some other factors will be relevant in this way in all cases. One such factor arises from the question whether the contributions of the plaintiff have been sufficiently compensated ... This in turn requires the court to reach some view of

⁴² Above n 32.

⁴³ [2004] VSC 113 [102] (citing *Evans v Marmont* (1997) 21 Fam LR 760, 786).

⁴⁴ Above, n 32.

⁴⁵ Ibid 786 (Meagher JA, in a separate judgment, agreed with the majority but did not comment on this point).

⁴⁶ (1992) 11 Fam LR 785; DFC 95-127.

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the value of the contributions of the plaintiff, and some view of the value of what the plaintiff has received in return.

In most cases, I think the financial circumstances of the parties will be relevant. Certainly, it is necessary for the court to ascertain what the property of the parties comprises at the time of the hearing, because it is to this that any adjustments of interest have to be made. Further, I think that in most cases the needs and means of the parties will have general relevance, as subsidiary factors, to the question of what is just and equitable having regard to the plaintiff's contributions ...

Other circumstances which may be relevant include such matters as the length of the relationship, any promise or expectations of marriage, and also I think opportunities lost by the plaintiff by reason of the plaintiff's contributions. This is by no means intended to be exhaustive. I do not think any limit can be set on what circumstances may be relevant, remembering always that the relevance must be to the question, what is just and equitable having regard to the plaintiff's contributions?⁴⁷

In the 2005 New South Court of Appeal case of *Howlett v Neilson*,⁴⁸ Hodgson JA (with Ipp and McColl JJA agreeing) expanded upon his earlier comments in *Dwyer*⁴⁹. His Honour commented that while the relevant NSW provision does not authorise the making of orders by reason of perceived needs of a party to a de facto relationship, it does permit:

... the evaluation of contributions having regard not merely to the benefit of the contributions to the relationship and to the property of the parties, but also having regard to the cost of each contribution to the person making it. If, in a relationship involving the financial parameters indicated above, the woman spends the 10 years as a homemaker rather than in developing skills and advancing a career, this may indicate that her contribution, although equal to that of the man in terms of benefit to the relationship and to the property of the relationship, is such as to make a substantial order just and equitable because of what it has cost the woman in terms of loss of

⁴⁷ Above n 44, 764 (citing *Dwyer v Kaljo* (1992) 11 Fam LR 785, 793).

⁴⁸ (2005) 33 Fam LR 402.

⁴⁹ Above n 10.

opportunity for development of skills and advancement of a career. It is for reasons such as those that I believe that the result reached by the Court of Appeal in *Dwyer v Kaljo* ... (substantially increasing the amount awarded by me at first instance) was correct, even though the principle on which the court then acted was rejected in *Evans v Marmont* ...⁵⁰

This qualified approach to the assessment of contributions has been applied in cases in Victoria⁵¹ and South Australia.⁵² In *Findlay v Besley*⁵³ the Victorian Supreme Court (Morris J) summarised the position under s 285 of the Victorian legislation as follows:

In considering whether or not to make an order adjusting the interests of domestic partners in the property of one or both of them, the Court must have regard to, and only to, the financial and non-financial contributions made by each of them of the type referred to in para (a) and para (b) and to any written agreement entered into by the domestic partners. However, in considering what is just and equitable having regard to these factors, the Court will ordinarily have to consider them in context. Contextual matters might include the financial circumstances of the parties, the length of the relationship, the extent to which the financial affairs of the parties have been integrated, and opportunities lost by a party by reason of their contributions. Another important contextual matter will be the consumption enjoyed, by or on behalf of a domestic partner, by reason of the financial and non-financial contributions. However these contextual matters are just that: they are not criteria to which reference should be had in determining what is just and equitable. Further, the word 'contributions' is a flexible one: it could even embrace negative contributions (for example, where property was diminished by a partner); and there is a need to have regard to benefits enjoyed by a domestic partner as a result of a contribution.⁵⁴

⁵⁰ Above n 48, 410.

⁵¹ *Findlay v Besley* [2003] VSC 247

⁵² *H v G* (2005) 34 Fam LR 35.

⁵³ *Findlay v Besley* [2003] VSC 247.

⁵⁴ *Ibid* [56].

II CONCLUSION

It is somewhat ironic that this recent clarification by the NSW Court of Appeal has come at a time when a national legislative regime is within reach. Certainly the decision is welcome in the sense that it clarifies that while the relevant legislation omits any reference to prospective considerations that would enable a court to take account of a party's 'future needs', it does acknowledge a party who makes significant contributions to the relationship to the detriment of his or her skills development and career advancement.

In the writer's opinion, the preferable means of doing justice in the light of the effect the relationship has had on the parties' financial positions is for the legislation itself to specify that prospective factors are relevant to the exercise of the court's discretion to adjust property rights. The approach of the Western Australian legislation (which simply mirrors the approach in s 79(4)(a)-(g) of the *Family Law Act 1975* (Cth)) may be best way to proceed, despite mixed views on the broader availability of personal maintenance for de facto partners. It will be interesting to see if the proposed federal legislation (expected shortly) will follow this broader approach. Nevertheless, there is some appeal to the concept of viewing lost opportunity as a relationship contribution, perhaps even for disputes considered under the current *Family Law Act 1975* (Cth).