



But who gets the dog? Do we finally have an answer?

For the longest time, I referred to my beloved dog as my first child. I know I am not alone in this sentiment. For many Australians, our pets are more than just something we need to feed and clean up after, they are a part of our family. It is therefore not surprising that when parties separate, conflict can often arise around who is going to retain the family pet.

Up until recently, pets were not provided for under the *Family Law Act 1975* and there was no legislation or Court rules relating to pets. This often made it difficult for family lawyers to provide advice and clear guidance to their clients on this issue. This all changed on 10 June 2024 with the introduction of the *Family Law Amendment Act 2024* which now recognises the role that pets play in our daily lives and reflects the changes in our modern society.

What are the changes?

Amendments to the *Family Law Act 1975* (the Act) see the inclusion of a definition of 'companion animal' in section 4 of the Act to mean "*an animal kept by the parties to a marriage or either of them, or the parties to a de facto relationship or either of them, primarily for the purpose of companionship*". There are specific exclusions for assistance animals, animals kept as part of a business, for agricultural purposes or for laboratory testing which are not intended to be captured by the Act. The family dog, cat, bird and usual household pets are therefore all covered by this definition.

The amendments also saw the new powers provided to the Court under section 79(6) and 79(7) of the

Act which allows the Court to make orders in relation to the ownership of companion animals which includes orders which transfer ownership and orders in relation to the sale of companion animals.

In considering what, if any, order to make in relation to companion animals, the Court is required to take into account the following:

- The circumstances in which the companion animal was acquired;
- Who has ownership or possession of the companion animal;
- The extent to which each party cared for and paid for the ongoing costs of the companion animal;
- Any family violence that a party may have been exposed to by the other party;
- Any history of cruelty or abuse to the companion animal by a party;
- Any attachment by a party or child of the parties;
- The ability of each party to care for the companion animal in the future without the support of the other party.
- Any other fact or circumstance that in the opinion of the Court is required to ensure justice of the case.

Does this mean the Court will make a custody order for my pet?

No. The family pet or companion animal is not a child (even though we may treat them like one) and therefore the Court does not have the power to make an order for shared care or any type of custody orders in relation to pets.

I am the one who always takes our dog for walks, does that matter?

Yes. This would be covered under section 79(7)(c) of the Act, as would other matters such as who fed the dog, who cleaned up after the dog, who bought and paid for the dog's food and who took the dog to the vet and paid for any vet expenses.

I have a bigger backyard and more time to care for the dog, does this matter?

Again the answer is yes. This would be covered under section 79(7)(g) of the Act in relation to each party's ability to provide for the dog in the future.

If you are going through a separation and have questions about your furry friend and what will happen to them or want some further advice on the new amendments surrounding companion animals and how it may impact you, get in touch with one of our local family lawyers at Andersons Solicitors.