

Short Minutes Transcript: Uncertain Terms – Financial Agreements

Lawcover sees a number of family law claims relating to financial agreements and the recent decision of *Warrick & Mia* has again highlighted the need for care to be taken when drafting the agreements.

The parties entered into a financial agreement during their marriage and upon breakdown disagreed on one of the key provisions within the agreement. This provision provided that jointly owned property acquired by the parties during their marriage should be divided between them on a 'contribution basis' upon the breakdown of the marriage. No further definition of 'contribution basis' was provided.

The Court found that the phrase 'contribution basis' was imprecise and incapable of definite or specific meaning. The court was unable to attribute to the parties any particular contractual intention in relation to the Agreement and it was set aside.

Although the parties themselves may be clear as to the intent and meaning of the agreement, care needs to be taken to draft with clarity. Failing to do so may lead to the agreement being set aside if a dispute arises.

As the Court commented, if parties intend to include or exclude non-financial contributions, a 'simple stroke of the pen' can make that clear.

When drafting financial agreements solicitors should:

- Use terms that clearly and precisely express the intentions of the parties
- Use terms that have a clear meaning under the Family Law Act or that are clearly defined in the agreement
- Be aware that the agreement is subject to general principles of contract law and equity
- Be aware of your own limitations and assess the risk of taking on matters that may be outside your regular practice

I'm Jen McMillan