

Summer '08

# FAMILY LAW NEWSMATTERS

Welcome to the Summer 2008 Edition of our Newsletter.

In this edition:

- Changes to de facto laws
- Breaches of parenting orders
- School Holiday information
- Avoiding Christmas trauma



## *Put your family first – find out what's fair at Family Law Matters*

At Family Law Matters, we have dedicated ourselves to the practise of Family Law. Antonella Sanderson established the firm in 2002, originally named Sanderson Partners Lawyers.

Antonella recognised a need in the community for a practical and sensitive approach to Family Law. Our philosophy is that it is in our client's interests to settle their matter in a way that is fair, reasonable and realistic, and that their legal costs reflect this manner of settlement.

We achieve this by approaching each matter in a sensitive and practical

way, by empowering our clients with the knowledge of their rights and responsibilities, and securing a cost-effective, sensible result.

Our Head Office is located in Penrith. Additionally, we have facilities to see clients at the following locations:

- Sydney CBD
- Miranda
- Rockdale
- Katoomba

If you need some advice about your rights and responsibilities, call us on **1300 FAM LAW** for a free telephone consultation.



It has been almost six months since the changes to the Child Support formula. The Child Support Scheme did need amending – lets face it, the old Scheme was developed some 20 years ago. But will the new Scheme fix the old problems, or just serve to create new ones? On 7 August 2008 the Australian Government issued a media release indicating that of the 691,000 child support cases analysed, most parents would see a change less than \$20.00 per week. I am interested to hear from you – how have the Child Support amendments affected you? I am compiling a paper to present to my local Federal Member addressing the real effect the changes have

had to members of our community. Please let me know about your experience – email me on [antonella@familylawmatters.com.au](mailto:antonella@familylawmatters.com.au) – there is a prize for the best entry received by 28 February 2009.

On a lighter note, I would like to take this opportunity to wish you and your family a safe and happy Christmas, and all the best for the New Year. We will close our office at 5pm on 22 December 2008 and re-open at 9am on 5 January 2009. If an urgent situation arises over the holiday period please ring our office number and leave a message, as we will check the voicemail over the break

*Antonella*



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**Kara Jones**  
Receptionist

We take this opportunity to welcome Kara to our team. Kara commenced working with us in late November 2008 as our full-time Receptionist. This will allow Kristy Hislop, the usual voice on the end of the telephone line, to move into a Client Relationship Manager role. Kara is undertaking a Traineeship in Business Administration over the next 12 months. In continuing with the sporty theme amongst our staff, Kara is a keen netballer and touch-football player – even at her tender age she has already played at Representative levels in both sports. Next time you visit or give our office a call, please take some time to introduce yourself to Kara.

### **Bon Voyage, Kate!**

Kate O'Grady, our dedicated solicitor, is taking a period of leave for three months early next year to travel around South America. In particular, Kate is visiting her friend in Peru who runs an orphanage.

We are making arrangements for another solicitor to fill Kate's shoes for that time, we will contact our clients with those details shortly. Antonella remains familiar with all Kate's clients and their files, and will continue being responsible for supervising those cases.

If you have any queries about the carriage of your matter in Kate's absence, please do not hesitate to contact Antonella on (02) 4722 6716.

## SUMMER SCHOOL HOLIDAYS

There is often much debate amongst parents about how to calculate the half-way point in the school holidays, and the Summer Holidays seem to be the most contentious. We receive many calls from confused and distressed parents when change-over plans fall apart.

According to the NSW Board of Studies website, the last day of term 4 is Friday 19 December 2008 and the first day of term 1 is Tuesday 27 January 2009 (given that 26th January 2009 is Australia Day and accordingly a Public Holiday). If your children attend a private school, their holidays may be different. You should always check with the school. Your Orders or Parenting Plan may define a different method for how the holiday should be arranged. If they don't, we offer this by way of assistance:

- Assuming the holiday period starts on and includes Saturday 20 December 2008 and finishes on and includes Monday 26 January 2009, this gives a total of 38 days for this holiday.
- The half-way point, being day 19, is Wednesday 7 January 2009.
- You may wish to discuss change-over to occur at about 5:00pm on 7 January 2009.

However if there are Orders in place, you should make sure you comply with the Order in relation to the half-way point and change-over.

If you are not sure what to do about school holidays, you should contact us to seek some advice. Applications for Contravention of Orders are commonly filed against a parent who has not properly complied with school holiday provisions.

## CHRISTMAS

When negotiating parenting arrangements a lot of parents agree to share time in the school holidays but forget to specifically negotiate special holidays such as Christmas. This can make Christmas time a very stressful period for all involved.

Try and remember that Christmas is about making an enjoyable and memorable experience for the children.

If possible, you should try and negotiate plans that work well for everyone, particularly the children. The last thing you want to do is arrange times that effectively mean the children have to rush between households and won't get to sit down and enjoy a family Christmas lunch at either home.

Some important things to consider when negotiating Christmas time include:

- where each parent plans to spend Christmas and what this means in terms of travelling for the children,
- whether any special arrangements have been made such as family members attending for lunch that the children may not have seen for a long time, and
- special customs that may have significance for one particular party or the children. For example, it is customary for some cultures to celebrate Christmas on Christmas Eve, rather than the actual day.

An example of an arrangement that could work for Christmas time may be:

- One parent spends from 4:00pm on Christmas Eve to 4:00pm on Christmas Day allowing them to have proper time for a Christmas Lunch, and
- The other parent spends from 4:00pm on Christmas Day to 4:00pm Boxing Day.

This arrangement could then swap for the following year to ensure the children have the opportunity to experience a full and relaxed Christmas with each of their parents.



## DE FACTO RELATIONSHIP

It may come as a surprise to many readers that de facto couples are treated differently in relation to financial issues arising from the breakdown of a relationship dependent upon the State in which they live. Different principles are applied in different States.

The Federal Government has now introduced to the Parliament new legislation which will apply the same principles to all couples, whether they are married or not, in relation to financial disputes arising from the breakdown of their relationship. This development is a major change; meets the needs of modern society, and the needs of couples and families. The change is a direct response to the modern concept of family.

The new legislation will remove the inequalities and inconsistencies which currently exist between the States.

These changes also impact on same-sex couples when relationships break down and a Court is called upon to resolve financial issues. Principles which are applied to married couples will now consistently be applied to all couples whether they are opposite-sex or same-sex couples. This is a massive change but consistent with the modern meaning of family.

All financial issues arising from the breakdown of relationships will now be determined in the Family Court or Courts applying the Family Law Act. This has been the case in children's issues for many years. However, financial issues could not be dealt with in the Family Court unless the parties were married. Now the specialist Family Court familiar with the difficulties of family dispute will be available to couples for all family issues, both children and financial. All modern families

will soon have access to the same resources and the same dispute principles will apply.

The definition of a de facto relationship requires the couple to live together for a period of two years, or there needs to be a child of the relationship, before an application can be made to the Court in relation to financial issues. Casual relationships will not qualify.

The new law will provide for Superannuation entitlements to be split between de facto couples. Although this has been available to married couples under the Family Law Act, it had not been available to de facto couples. That is about to change and is a very important change indeed.

These coming amendments to the Family Law Act will be supported by the majority. However, there are those who will not be happy. They may feel they are being forced to be married couples when they have specifically chosen not to marry. However, they can secure their current financial arrangements with the assistance of specialist Family Law advice and formal agreements. This assistance should be obtained sooner rather than later.

Different principles will be applied by a different Court to resolve financial disputes between de facto couples and there will be different results to the results of the past. We live in interesting and changing times.

These legal reforms in relation to de facto couples are not to be feared by couples but they do require preparation and thought. Call us for advice about how these reforms might affect you, discuss your options, and have peace of mind moving forward.

# FAMILY LAW: CHRISTMAS AND FAMILY VIOLENCE

The very concept of Christmas being linked to family violence is, to say the least, shocking.

Currently in the national media there is criticism of the amendments to the Family Law Act requiring parents to participate in mediation when there has been family violence. This criticism is not really justified. Family violence, or the risk of violence, is an exception to the requirement to attend mediation prior to making an application to the Court.

Experts in the social science field are saying that family violence makes mediation impossible. They also say, in an abbreviated fashion, that children living with family violence are caught in a war zone.

It is true that many children are exposed to family violence. It is equally true that many parents have no concept that their behaviour fits into the definition of family violence and has a damaging effect on their children.

"I am not violent. I have never hit the other parent." This is a common defence and statement.

Family violence obviously includes hitting, but it also includes conduct that causes the other parent or the children to fear for their wellbeing or safety. This is a very broad consideration which goes far beyond hitting.

Christmas is a time for Lawyers and parents to reflect on what is happening to children when they are exposed to conduct which causes them to be fearful for their personal wellbeing.

When mum collects the children from dad and speeds away from



the changeover point, what are the children thinking? When dad collects the children from mum and lets his feelings and aggression towards mum be known to the children, what are the children feeling?

Christmas gives us the opportunity to look at what rights the children have as opposed to what rights the parents have. Children do have a right to live safely and securely with parents and to be shielded from adult anger. Sometimes we see children who are required to manage the very poor conduct of their parents. "Settle down mum. Don't get upset." Should the child have that responsibility? Should they be counselling dad or mum?

An experienced Family Lawyer must not only accept the instructions of their clients, but assist their clients to recognise conduct that is

unacceptable. It is often easier for the Lawyer to ignore the conduct of their client and let the Court make a determination that the conduct is appalling. It is difficult to tell people their behaviour is wrong. But if it is left to the Court to tell them it results in their receiving an enormous shock at the end of an expensive Court case. "Why didn't you tell me?"

There is no substitute for courageous legal advice.

This Christmas it would be a great Christmas present to all children if parents look at their conduct and provide their children with a safe and secure life so they can really celebrate Christmas.

As Lawyers it would be a great Christmas present to the community if we helped our clients to identify behaviour that is damaging to their children.



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This newsletter is designed to provide information, not legal advice. Please note the people and examples used in this newsletter are fictional characters. You should ensure you obtain legal advice as the law applies to individual situations in different ways.

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1300 FAM LAW • [www.familylawmatters.com.au](http://www.familylawmatters.com.au)

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