

Welcome to our second edition of our quarterly newsletter for 2008.

In this newsletter we bring you:

- an update on our transition to Family Law Matters
- an example of the 1 July 2008 Child Support changes
- July 2008 School holiday half-way point calculations



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

## ABOUT FAMILY LAW MATTERS

On 1 July 2008 we say “goodbye” to the name Sanderson Partners Lawyers. When Antonella first commenced the business, the name was a selected in keeping with what has long been tradition - with the name of the principal solicitor. There is a better way – by changing our name to Family Law Matters,

we are able to demonstrate what we do and what we believe. Further, in keeping with modern advancements, Family Law Matters is an Incorporated Legal Practice. This will allow some growth on the horizon. We are planning to open a branch office in the St George district in 2009 – watch this space!

### LEGAL LANGUAGE:

## WHAT IS THE “NET ASSET POOL?”

When people start negotiating their property settlement, the focus is usually on the house they own.

Most clients assume that the property should be split “50/50” after separation and often come to us with a proposal to this effect.

The difficulty is that a simple “50/50” split of the property often fails to properly consider the financial and home-keeping / parenting contributions that each party have made during the relationship and that there are almost certainly other assets available for distribution.

When calculating a property settlement, usually all of the assets and liabilities of the parties are included in what is called the “net asset pool.” The net asset pool is calculated at the time settlement is negotiated (or if the matter goes to Court, on the day of Hearing), which is

a very good reason to ensure things are resolved sooner rather than later.

Superannuation is now classed as property for the purposes of Family Law property settlements and is often overlooked by clients involved in the initial stages of property negotiation, despite Superannuation often being one of the larger assets.

As you can see, it is really important to have an idea of the value of the assets and liabilities prior to agreeing to a property settlement, otherwise your “50/50 split of the house” proposal may be grossly unfair.

We start each of our matters by obtaining all of the relevant financial information from our client, and from the other person. This is called full financial disclosure. Once we have the current values of the assets and liabilities of each party, then we can calculate the net asset pool and provide you with specific advice in relation to what you are entitled to receive from any settlement.



## STAFF PROFILE



### Welcome Back, Kristy!

You may have noticed a familiar voice answering the phone at our office – Kristy Hislop is back! After three years of working as a Legal Assistant for other Family Law firms around NSW, Kristy has returned to work with us, back where her career began. We are thrilled to have Kristy return to our team, and invite you to take some time to chat to her as she familiarises herself with our wonderful clients. Kristy has further advanced her career – she is presently 3 years away from becoming a Lawyer! Currently undertaking Legal Profession Admission Board studies, through the University of Sydney, Kristy has her head in the Constitutional Law and Real Property books this term (Kate and Antonella remember those well ... enough said!)

On a more social note, Kristy is an avid gymnast and coaches from time to time at the YMCA at Penrith. And keeping in the "office soccer theme", Kristy's partner of some 8 years is Danny Vukovic, a talented local soccer player heading to the Olympics to represent Australia – so you may well see her in the newspaper cheering him on! We take this opportunity to wish Danny (and the rest of the Australian Soccer team) all the best in China, bring us back some Gold!!

Last month, I was honoured to win the Penrith Local Business Award for Outstanding Professional Service. I like to think that we do things a little differently here, that we provide our clients with a sensitive and personally tailored service. This award confirms I am achieving my goals. Thank you to my clients who took the time to nominate me, and thank you to my wonderful staff who believe in the difference I have set out to achieve.



## OUTSTANDING PROFESSIONAL SERVICES



## JULY 2008 SCHOOL HOLIDAYS

The mid year school holidays are just around the corner again.

Each year there is much confusion about how to calculate the half-way point of school holidays. According to the NSW Board of Studies website, the last school day of Term 2 is 4 July 2008, and the first school day of Term 3 is 21 July 2008 (although some schools will have a Pupil Free Day, making 22 July 2008 the first required day of attendance at school).

If you have parenting Orders in place, or a Parenting Plan, they may well provide a definition on how to calculate the children's time with each parent. If they don't, we offer this guide by way of assistance:

- Assuming that the holiday period starts on and includes Saturday 5 July 2008, and finishes on and includes Sunday 20 July 2008, this gives a total of 16 days for this holiday;
- The half-way point, being Day 8, is Saturday 12 July 2008;
- You may wish to discuss changeover to occur at about 5pm on 12 July 2008.

However, if there are Orders in place, you should make sure you comply with the Order in relation to the half-way point to avoid an Application for Contravention being made against you.

If you are not sure what to do about the school holidays, you should contact us to seek some advice.

## A COMPLETELY NEW REGIME

### Family Law constantly changes

All of those receiving and paying child support will be involved in a major change to come into effect on 1 July 2008.

New formulas will be applied for child support assessments.

The basic formula will be based on two interacting concepts:

1. The combined child support income of the parents; and
2. The amount of care each parent gives to the child.

John and Mary have one child aged 8. John earns \$50,000.00 per year. Mary earns \$30,000.00 per year. Both John and Mary are given an allowance of approximately \$17,000.00 to support themselves. John's income is then reduced to \$33,000.00 per year and Mary's income is reduced to \$13,000.00 per year. The combined child support income for John and Mary is \$46,000.00 per year.

John's child support income of \$33,000.00 represents 71% of the combined child support income. Mary's \$13,000.00 represents 29% of the combined child support income.

John has the child with him each alternate weekend from Friday afternoon to Sunday afternoon and every Wednesday night during the school term. John shares the holidays on an equal basis with Mary. This equates to John having the child for approximately 122 nights per year which is 33.4% of the whole year.

John fits into a bracket of having the child between 14% and 35% of the year. He is allocated a child care percentage of 24% because he fits into this bracket of care.

John is then able to deduct this child care percentage from his percentage of child support income. Remember, John's income percentage was 71%. If his child care percentage of 24% is deducted, then John's child support percentage is 47%.

The new amendments to child support have a scale of costs for the care of children. The application of the formula to this case results in the costs of the child of John and Mary as \$7,405.00 per annum.

John then has a responsibility to pay child support based on the cost of the care for the child at 47%. John will pay to Mary \$3,480.00 per year which amounts to \$67.00 per week.

Mary also deducts the care percentage from her income percentage and the result is a negative figure. Consequently, Mary has no liability to pay child support.

Under the old pre-1 July 2008 formula John had been paying \$124.00 per week.

Mary is dismayed. Notwithstanding she has approximately 70% care of the child, her child support will be reduced by approximately \$57.00 per week.

It is very important to ensure the Child Support Agency have an accurate record of the level of care each parent provides for the child, as the new formula takes a much more aggressive approach to sharing the costs of raising children based on level of care.

Your Family Lawyer cannot change the outcome of child support formulas. However, your Family Lawyer needs to advise you as to what child support you can expect to receive or pay, and advise you on options if you believe the Child Support Agency are using incorrect information to calculate your Child Support Assessment.

These new changes to child support are very important. They will affect many people. You must be aware of the impact the change will have on your life and on your future planning. It is not good enough to just have it creep up on you and your Lawyer. You need a Lawyer who is aware of these changes and who will help you prepare and manage your family law matter in light of these changes.



# BEING A PARENT – IT'S A RESPONSIBILITY, NOT A RIGHT.

Equal shared parental responsibility is a very important term in modern Family Law. This term is the springboard for any application that children spend equal time with separated parents, or substantial time with a separated parent.

The emphasis is on responsibility and not on rights.

In every family there is earnest discussion between parents in relation to the proper management of children's health, education, social and cultural upbringing. Parents have to make decisions in the interests of their children. These decisions are made jointly when parents live together. Joint discussions and joint decisions should not stop because parents no longer live together.

There is a presumption under the Family Law Act that there will be equal shared parental responsibility for children, notwithstanding parents have separated. However, there are times when that presumption is overturned. If it is overturned, there is no requirement for the Court to consider the children spending equal time with each parent or substantial time with a parent.

Barbara and Barry have one child, Byron, aged 8. Byron has lived with Barry for the two years since the marriage has broken down. He spends each alternate weekend with his mother from Friday afternoon after school until the beginning of school on Monday. He is now happy to spend that time with his mother. Initially, he was not. He was somewhat frightened



by his mother and it took time for him to settle in and be comfortable with this program.

Barbara has now made an application to the Court that Byron spend equal time with her and Barry. Barry opposes the application.

Barbara is in a well-paid job but had a significant drinking problem. In the past, when Barbara drank she became very violent towards Barry. This violence was in the front of Byron. Eventually, Barry had to seek the assistance of the Police and Barbara was charged with assault. There is now an Apprehended Violence Order prohibiting Barbara from approaching Barry's home and workplace. She is also on a Bond to be of good behaviour. This has made life very difficult for Byron.

Unless Barbara obtains advice from an experienced Family Lawyer, she

will spend a lot of money on this Court case and fail at the very first hurdle. Family violence overturns the presumption of equal shared parental responsibility for the children. In this case, the difficulty is compounded by the violence having taken place on a number of occasions in front of Byron.

There is little doubt that Barry will mount an argument that the presumption of equal shared parental responsibility for Byron should be overturned. If Barry is successful in his application and argument, then Barbara will have little chance of being successful in her application that Byron spends equal time with each parent.

By seeking legal advice from a Family Lawyer, these parents can avoid unnecessary and expensive litigation.



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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)**

You can find us upstairs in Skiptons Arcade • 541 High Street, Penrith 2750