

# WOMEN'S LEGAL CENTRE NEWSLETTER

September 09

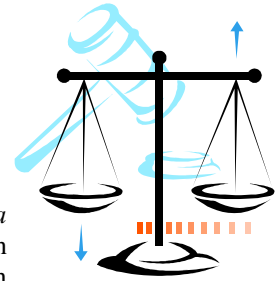
## The *Family Law Act* and Parental Relocation

Since the 2006 amendments to the *Family Law Act* (Cth), there has been a considerable rise in the number of cases dealing with parental relocation. These cases have explored the concept of the 'best interests' of children, particularly in the context of a child's right to have a meaningful relationship with both parents.

In *Sampson & Hartnett* (2007) a father claimed his former wife made no effort to facilitate a relationship between him and his children, particularly the youngest child who was born after the parents' separation. The father sought orders that the children live in Sydney with him, while the mother sought orders that they live in Geelong. The trial judge ordered that the children were to live in Sydney, with the parents to share parental responsibility. While the mother was not explicitly ordered to relocate to Sydney, the orders would be unworkable if she did not. On appeal, the Full Court found that the trial judge had given insufficient consideration to the practicality of the mother relocating to Sydney.



While they concluded that the Act did confer a power to enjoin a parent to relocate, this could only be done if proper consideration had been given to the best interests of the child and the reasonable practicality of equal or substantial and significant time (s 65DAA). The case was remitted back to the trial judge and interim orders were made prior to the final hearing, which is yet to be heard.



The case of *Rosa & Rosa* (2008) also concerned an appeal against relocation orders, by a mother who had been ordered to continue living in a remote Queensland town after separation. She sought orders that she be allowed to live in Sydney, where she had a family support network and better employment prospects.

The trial judge was convinced that a meaningful relationship between parent and child could only be maintained by regular personal contact, and that the father's capacity to provide for the child financially was an important consideration in ordering the child to remain in Queensland. This decision was upheld on appeal, the court finding that the mother had no obligation to remain in Queensland should she not wish to.

The above cases can be criticised as favouring regular physical contact over stability in terms of a child's best interests, as well as placing an undue burden on women who do not wish to leave their children, but who may also be disadvantaged by being effectively forced to relocate. It is interesting to note that, while the child's best interests are the *paramount* consideration, they are often treated by courts as the *sole* consideration, which can have a negative effect on parents.

- Summary of *Family Court Bulletin*, Issue 4 July 2009 page 2-3

## ***Time For Action : The National Council's Plan for Australia to Reduce Violence against Women and their Children 2009-2021***

Rhonda Payget

In May 2008 the Federal government set up an 11-member National Council to reduce violence against women and their children. In March 2009, the Council delivered to government the *Time for Action* report which sets out The National Council's plan for Australia to reduce violence against women and children 2009-2021.

The message is clear:

*"Domestic and family violence and sexual assault cannot be excused or justified under any circumstances. It is wrong, and all victims need compassionate and highly responsive support, and all perpetrators must be held accountable for their violence."* (at p.9)

The Report mapped the size of the problem and looked at the areas for improvement. The starting point is to acknowledge that domestic and family violence and sexual assault are matters of public concern, with serious (and expensive) consequences for families, friends, communities, workplaces and the nation.

The Report argues for a sustained new level of investment in primary prevention and the justice system that will create respectful relationships, safer communities, and fair outcomes for all. The Report addresses six outcomes, each with key strategies:

1. Communities are safe and free from violence
  - ◆ Focus on prevention
  - ◆ Strengthen community leadership, awareness and understanding
  - ◆ Promote positive male behaviours
  - ◆ Enhance women's economic independence
2. Relationships are respectful
  - ◆ Build the capacity for prevention education
  - ◆ Ensure all children participate in respectful relationships education
  - ◆ Support effective parenting
3. Services meet the needs of women and their children
  - ◆ Strengthen service and workforce capacity
  - ◆ Increase access to safe accommodation
  - ◆ Undertake specific responses to ensure equitable access to services
4. Responses are just
  - ◆ Ensure accessible and equitable justice for women and their children
  - ◆ Ensure just civil remedies operate in parallel with criminal law and prioritise safety
  - ◆ Ensure excellence in legal responses to women and children
  - ◆ Ensure judicial officers, law enforcement personnel and other professionals within the legal system have appropriate knowledge and expertise
5. Perpetrators stop their violence
  - ◆ Change behaviours through appropriate programs
  - ◆ Increase access to early intervention initiatives
  - ◆ Sustain behaviour change
6. Systems work together effectively
  - ◆ Ensure governments deliver what communities need
  - ◆ Coordinate responses

There is also a recognition of the need to build the evidence base for each of the outcomes to gain a better understanding of trends in sexual assault and domestic and family violence.

The call is for a long-term, strategic and sustained commitment. It is proposed that the commitment would be effected through a series of three year implementation plans to 2021.

In response the Federal government has committed funding for a new national domestic violence and sexual assault telephone and online crisis service as well as committing funding for primary prevention activities including funding for social marketing focused on changing attitudes and behaviours that contribute to violence. See: [http://www.fahcsia.gov.au/sa/women/pubs/violence/np\\_time\\_for\\_action/national\\_plan/Pages/default.aspx](http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Pages/default.aspx)

## Fair Work Laws

The new *Fair Work Act 2009* came into force on 1 July 2009. The new laws brought in a new workplace relations system, where small businesses are no longer exempt from unfair dismissal claims. Employees with fewer than 100 employees, and small businesses (those with fewer than 15 employees) can now be subject to unfair dismissal claims. However, small businesses can raise as a defence to such claims their compliance with the Small Business Fair Dismissal Code.

Employees who meet certain income requirements can make an unfair dismissal claim to the new industrial umpire, Fair Work Australia, which works in concert with the Office of the Fair Work Ombudsman. Employees working in a small business have 12 months to bring a claim, while other employees have 6 months.

Collective agreements are now called 'enterprise agreements', and can refer to matters regarding: the employment relationship, relations between employees and employer organisations, deductions from wages authorised by the employee and the operation of the agreement.

A new report by the University of Sydney's Workplace Research Centre has found that women may be disadvantaged by the new laws, as they do not engage in collective bargaining, which is a central feature of the new workplace relations system. The report found that the employment of women in service industries may mean that they miss out on pay increases, as these industries encourage award systems rather than collective bargaining.

The old workplace relations system, including the Workplace Relations Act 1996, the Fair Pay Commission and the Industrial Relations Commission, will cease to operate as of 31 December 2009.

For more information on the new Fair Work Laws visit: Workplace Relations Resource Centre – [www.cch.com.au](http://www.cch.com.au)  
- Summary of *CCH WorkAlert*, Issue 6 July 2009



### The 1<sup>st</sup> of September 2009 was Equal Pay Day, an initiative introduced by the Equal Opportunity for Women in the Workplace Agency (EOWA).

Equal Pay Day was marked for the first time on 27 August 2008 – 27 being the number of extra days many women have to work to earn the same as men. This year, that number has increased by 4 days.

#### Some statistics:

- ◆ If current income patterns continue, the average 25-year old male will earn \$900,000 more than the average 25 year old female, over the next 40 years
- ◆ Women are 2 ½ times more likely to live in poverty in their old age than men – by 2019, women will have half the superannuation that men have
- ◆ Female graduates earn on average \$2000 less per annum than male graduates

### Advice Line Details

Our free, confidential telephone advice service is open Monday to Friday 9:30 am - 12:00 noon.



For telephone advice ring:  
from Canberra: 6257 4499  
from outside Canberra: 1800 634 669

**There is no drop-in service.**

Advice at the Centre is by appointment only.

Appointments available Monday to Friday 9am to 5pm and every Tuesday 5:30pm to 7pm.



### Women over 50

Mammograms are the best way of finding breast cancer in women over 50. The earlier cancer is found the better your chance of survival.

To book your **FREE** screening mammogram phone **BreastScreen ACT & SE NSW on 13 20 50.**



## Shared Parental Responsibility

The reforms to Part VII of the *Family Law Act* (Cth) introduced a rebuttable presumption that is in the child's best interests for parents to have equal shared parental responsibility (s 61DA(1)). If the court does not displace the presumption, it must then go on to consider whether 'equal time' or 'substantial and significant time' would be appropriate. The best interests of the child are now determined by looking at Primary and Additional considerations.



The Family Court has conducted an analysis of 2007-2008 shared parental responsibility cases dealing with time. These are some of the statistics:

- ◆ In 60% of litigated cases and 68% of early agreement cases, the mother was given the majority of time (more than 50% of time)
  - ◆ In 15% of litigated cases and 19% of early agreement cases, equal time was granted
  - ◆ In 33% of litigated cases and 40% of early agreement cases, the father was given less than 30% of the time with the children
- In the majority of litigated cases, the reason for this was family violence or entrenched conflict.
- ◆ There were very few cases in which a parent was given no time with the children
- The main reasons for no time were family violence, mental health issues and other issues

## EVENTS FOR YOUR DIARY

Women's Legal Centre  
Would like to invite you to our

### Annual General Meeting & Cocktail Party

**Date:** Monday 16 November 2009  
**Time:** 5.30pm  
**Venue:** Reception Room,  
ACT Legislative Assembly  
**RSVP:** 16 November 2009  
coordinator@womenslegalact.org



Mark your Diaries!  
Women's Legal Centre  
Annual  
Fund-Raising  
Breakfast

**Date:** 25 November 2009  
**Time:** 8.00am  
**Venue:** Havelock House

### WILLING IT AWAY WLC Wills Workshop

Do you have a will? If the answer is no, then join us for this free workshop

- ◆ Testamentary capacity
  - ◆ Family Provision pitfalls
  - ◆ Giving to charities in your will
  - ◆ Enduring Powers of Attorney
- Plus heaps more!



**Date:** Wednesday 28 October 2009  
**Time:** 5.30pm – 7.30pm  
**Venue:** Havelock House – 85 Northbourne Ave, Turner  
**Cost:** Gold Coin Donation  
**RSVP:** Friday 23 October 2009  
coordinator@womenslegalact.org or 6257 4377

### "There's No Place Like Home" Domestic Violence and Tenancy Law in the ACT

*A day-long training program for community workers covering ACT tenancy law and links with domestic violence issues*

**Date:** Thursday 3 December 2009  
**Venue and Cost:** TBA

For more information contact Izzy on 6247 1026 or tuact@bigpond.net.au