

# WOMEN'S LEGAL CENTRE NEWSLETTER

## Relocation—Case

Recently the High Court made an exciting decision in a relocation case - the Court set aside orders that required the mother (the appellant) to stay in Mount Isa (a remote Queensland mining town) so the 7 yr old child could spend equal time with each parent.  
(*MRR v GR* [2010] HCA 4 (3 March 2010))

The Court held that it was not open to the federal magistrate to find that it was reasonably practicable within the meaning of s65DAA(1)(b) of the Family Law Act for the child to spend equal or substantial and significant time with each parent, and accordingly that it was not open to the Federal Magistrate to consider making an order for equal time (under s65DAA(1)(c)).

The appeal was allowed, orders set aside and the case will be remitted to the Federal Magistrates Court for a new decision.



Equal time parenting would only be possible if both parents remained in Mt Isa, as the father refused to leave Mt Isa under any circumstances. The parties had lived in Sydney for the whole of their relationship, only moving to Mt Isa seven months prior to separation. The mother, under interim orders, returned to Mt Isa

from Sydney. The father was living in the former family home.

In Mt Isa the mother could only find accommodation in a caravan park, and supported herself through casual work and social support payments. In Sydney she had the opportunity for full-time employment with flexible hours. The mother became

“despondent” at this situation. The High Court found that under s65DAA(1)(b), the Federal Magistrate should have made a practical assessment of the feasibility of equal time parenting, taking into regard not only the child’s best interest, but ‘other matters’. As the Federal Magistrate had not done this, there was no power to make the equal parenting order.

## STOP- PRESS

### Ovarian Cancer Breakfast

Once again the Centre held a successful breakfast to raise much needed funds for Ovarian Cancer. The Centre raised \$640 late last year.

The Centre would like to thank everyone who supported this event and especially two young men, Dion and Evan who sold an incredible amount of raffle tickets which boosted the funds raised.

### Position Vacant

We have recently advertised for a family law solicitor. If you would like further information regarding this position please contact the Coordinator on 6257 4377 or by email at:

[coordinator@womenslegalact.org](mailto:coordinator@womenslegalact.org)

## Willing it Away

It is often said that we don't deal particularly well with the reality of death. A good friend who was dying told me, "I can't imagine not being". Realising our mortality is also realising that we will not be around to see what our friends and family are doing. What will the kids be doing? Will our partner re-partner? (and could that mean that someone I don't know will get the kids' inheritance?). Where will the family jewels go? Who will keep the family together, look after the little ones, mow the lawn and help grandma with her shopping?

How we respond to this human condition depends substantially on our culture and our family history.

Death is accompanied by matters of inheritance. Inheritance may mean that physical assets and property are subject to legal or moral rules and procedures. In some countries, such as France, there will be a statutory formula dealing with the passing of assets. Other cultures have matrilineal or patrilineal systems; or property may pass to the oldest son (primogeniture) and he may or may not have a moral obligation to look after everyone else in the family.

In Australia, property passes according to common law legal principles and written laws. Property passes by Will or by statutory formula if there is no Will. It is a simple process to contact a solicitor to make a Will, yet Will making is resisted by a large sector in our community. Why? Is this an issue of cost? (Substantial costs to beneficiaries can be prevented by a modest outlay by making a Will). Perhaps potential Will makers don't think they own anything, or they think (often erroneously) that their partner and the kids will get it all anyway without any fuss. Perhaps they think there is plenty of time because they feel in good health.

I have had clients who resisted signing their Will because they thought it would lead to their imminent demise. Others have waited until they were on their deathbed, thereby raising awkward questions about their capacity to decide anything (especially if there is evidence of dementia). Others also resist thinking about unresolved feelings towards family members whom they do not want to benefit. This can be extremely confronting, but a Will maker can do a great deal to heal rifts within a family by taking care of the legalities in such a way that future arguments are unlikely. Fuelling rifts through favouritism or impulsive actions can set up family



dysfunction for generations. This is not a legacy I would wish to impart.

Horror stories about Wills abound in our community. Families and friends everywhere are titillated, scandalised, thrilled or emotionally gutted by the last words or actions of someone who has died. I say "actions", because not having a Will is an act which can affect those remaining on this mortal coil as much as leaving a Will that is in dispute. I often wonder what the people who have died would think about this brouhaha.

Attitudes and conventions may be and often are in conflict with our legal rules. For example, daughters and young brothers may object to the eldest brother looking after them and, although that might be how it was done a generation ago, they (perhaps with the enthusiastic support of their spouses) can legally overthrow that convention. In my own childhood community, males would often inherit rural property while females were expected to marry well and get their husbands to look after them. And no one was ever supposed to get divorced.

There is often a conflict between testamentary freedom and family provision legislation which says that you are supposed to look after a class of "eligible persons". Matriarchs and patriarchs alike will often declare that "I made the wealth or inherited it myself and therefore I should be able to give it away any way I like". There is a perception in the community that once you raise your children you don't have to provide for them. This is not the case. Adult children are eligible to make claims against an estate and they are likely to do so if they are left out of a Will or treated differently. The general feeling seems to be that money equals love – "if you leave my sister more than me, that means you loved me less". This is a principle beneficiaries seem happy to fight for even at the risk of depleting the estate of all assets.

“Eligible applicants” may challenge a Will. In the ACT they include:

- (a) a partner of the deceased person;
  - (b) a person (other than a partner of the deceased person) who was in a domestic relationship with the deceased person for 2 or more years continuously at any time;
  - (c) a child of the deceased person;
  - (d) a stepchild of the deceased person;
  - (e) a grandchild of the deceased person;
  - (f) a parent of the deceased person.
- (Section 7 *Family Provision Act* 1969)

Will makers need to know that the rules relating to estates are different in every state and territory in Australia. Step children may have more rights in some jurisdictions and there are different rules about giving away property depending on which law applies. Holding even one bank account or one share registered in another state can bring the laws of that place into play.

If a Will has to be a complicated document because of a complicated personal and family situation, or because it will be affecting complicated financial structures, then an expert in the field needs to be consulted. This avoids the expense generated by poor drafting or inattention to taxation and other relevant laws.

If you don't have a Will, your estate is distributed according to the laws of intestacy. In the ACT this means that a partner/spouse gets personal chattels (which includes household goods), the first \$200,000 of the estate and interest of 8% per year from the date of death. If there is one child of the relationship, the partner/spouse will take half the balance of the estate and if more than one child, one third. If there is no partner/spouse and no children, brothers and sister, nieces and nephews, grandparents and aunts and uncles may benefit. (See Schedule 6 of the *Administration and Probate Act* 1929.)

Having advised many people about their testamentary wishes, I recall only one testator telling me that it would be just fine with him if his Will set his beneficiaries at each other's throats. Most people want to be remembered for things other than the provisions in their Wills and they .

are reflective when plainly advised about the law and the administration processes involving estates.

What we will leave behind us is more than the sum of our physical possessions. A good Will takes care of the people the Will maker has an obligation towards and avoids unnecessary hurt or expenses for the living.

**Nena Hicks, Human Rights Solicitor WLC.**

## Congratulations

The Centre would like to congratulate and acknowledge the following worthwhile recipients of Australia Day Honours.

**Ms Rosemary Budavari** the previous coordinator of the Centre received an OAM. Rosemary received this award for the many years of hard work in which she fought for women to receive access to justice.

**Dr Helen Watchirs** the ACT Human Rights Commissioner also received an OAM for her work in the area of human rights.

**Professor Patricia Easteal** received an AM for the considerable contribution to the area of domestic violence.

**Magistrate Karen Fryrar**, received an AM for her service to the community as a magistrate and through contributions to the prevention of family violence.

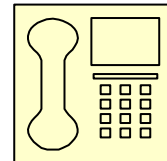


### Staff Update

The Centre recently farewelled Jill Heeley, the principal solicitor, who left Canberra to take up a position in rural Victoria. The Centre is fortunate that Rhonda Payget was able to effortlessly step into the principal solicitor role which has ensured the smooth transition of the Centre's advice service.

The Centre welcomes back Josephine Thomis who is returning to the Centre in a part time role from March.

### 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.

Appointments are available if necessary after speaking to the solicitor on the advice line.

### THANK YOU

The Women's Legal Centre would like to thank Eileen Webb and Meredith Allen for the assistance they gave the Centre by coming in each Friday and helping with the Centre's advice service.



### Annual General Meeting

The Centre held its Annual General Meeting at the end of 2009. The Centre would like to thank the previous board for the guidance, assistance and support during the 08/09 year. In particular the Centre would like to thank Jennifer Wyborn who held the role of secretary. As an experienced employment solicitor Jennifer was a valuable source of information regarding Industrial Relation matters.

The Centre would also like to acknowledge the significant contribution given to the Centre by outgoing member Katie Firster. Katie was an active management committee member for 8 years and assisted the Centre in numerous ways. More recently Katie assisted the Centre by reviewing all of the Centres policies and procedures so that the Centre could "opt-in" to the ACT Human Rights Act.

Katie will be greatly missed but we wish her all the very best with her new role, that of motherhood.

The Centre would like to take this opportunity to welcome the new management committee and hope that their work with the Centre is enjoyable and rewarding.

The management committee for 2009/2010  
**Belinda Barnard**      **Angela Lauman**  
**Yola Melgarejo**      **Ya'el Frisch**  
**Margie Rowe**      **Rachel Harris**  
**Louise Taylor**      **Vera Kurz**  
**Julie Whitmore**

### Things You Need to Know



#### Legal Information for Women over 50 and their Families

The Women's Legal Centre has produced a booklet filled with essential information for women over 50 and their families. Issues covered include:

- ◆ wills
- ◆ power of attorney
- ◆ domestic violence
- ◆ family and matrimonial issues
- ◆ public housing options
- ◆ elder abuse.

If you would like a copy, please contact the Centre on 6257 4377 or email at: [coordinator@womenslegalact.org](mailto:coordinator@womenslegalact.org)

*Produced with support from the ACT Government under the Seniors Grants and Sponsorship Program.*

## Events for Your Diary

**RESPONDING TO FAMILY VIOLENCE**  
**NATIONAL PERSPECTIVES = LOCAL INITIATIVES**  
**6 AND 7 MAY 2010 = NATIONAL CONVENTION CENTRE = CANBERRA**

**CONFERENCE PARTNERS**  
ANU  
AFP  
FCT

**CONFERENCE SPONSORS**  
Domestic Violence Prevention Council  
Legal Aid ACT  
DVCS  
Family Support ACT

**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.**

BreastScreen

*The Women's Legal Centre is funded by the Indigenous Justice & Legal Assistance Division, Commonwealth Attorney General's Department.*

To Register for this conference online:  
<http://law.anu.edu.au/coast/events/fvc.htm>

**Bags 'n' Bling**

Havelock House at Turner will turn into your personal treasure trove on the 6th of April from 5.30pm.

There will be bangles and chains and earrings and beads; formal frocks, bags, scarves and shoes! You might find just the thing to brighten up that new suit or go with that summer frock you've got!

**All proceeds from the evening go to the WLC.**

**A raffle is also being held. 1st prize is a pearl necklace, 2nd prize a bottle of Grange and 3rd is a \$350 Oroton gift voucher. Tickets are \$5 each or 3 for \$10. Tickets are available from the Centre and on the evening of the event.**