

FAMILY Flyer



THIS ISSUE -

No. 261

- Women's Legal Service – Christmas appeal
- Child alert request
- 10 quick tips brochure – free to order

- Determining defacto – is this a shared life?
- How long for spouse maintenance?

WOMEN'S LEGAL SERVICE – CHRISTMAS APPEAL

Some of our staff (Belinda, Amy, Emma and Polly) contributed generously last week to the Women's Legal Service Christmas gift appeal (now in its second year).

The project involves donating wrapped toys for children whose mums are clients of the service. The majority of the mums supported by the service experience domestic violence and are on a limited income.

The Service notes that having a gift under the Christmas tree can make a huge difference to these children, for many the reality is that the tree was going to be bare.

Well done team!

CHILD ALERT REQUEST

If a parent is concerned that the other parent may obtain an Australian passport for a child, a 'child alert request' form can be completed. This request acts as a warning to the Department of Foreign Affairs and Trade (DFAT) that there may be circumstances that prevent the issue of an Australian passport or other travel documents.

A request is valid for 12 months.

The request does not stop a child from travelling if they already have a passport. If there is a risk that a parent may unilaterally remove a child from Australia, then a parent should urgently seek legal advice (contact us on ph. 3221 4300). For more information see our article "[Airport watchlist](#)".

10 QUICK TIPS BROCHURE – FREE TO ORDER

If you work in accounting, legal or counselling industries, it is likely that you have had someone who is separated, ask you for advice.

Did you know what to say? Quite right, you're not meant to – but wouldn't it be great if you could help?

To help you in these situations, we have developed a brochure you will find useful – "[10 Quick Tips on Family Law](#)".

The brochure has proven to be very popular and has now been re-printed – if you would [like a bundle](#) of the "10 Quick Tips" brochure for your reception call us now on (07) 3221 4300 or email law@mlynch.com.au.

DETERMINING DEFAC TO – IS THIS A SHARED LIFE?

Mr N was a man of substantial financial means. He had been separated from his wife for a couple of years, but not divorced, when he met Ms L in 2007. Ms L left the relationship she was in in 2007 shortly after meeting Mr N.

An intimate relationship commenced in 2007.

In 2008, Ms L moved into a rented apartment near Mr N. He paid for the rent and gave her an allowance of \$2,000 per month. He also gave her other amounts of money and in 2009 bought her a car.



From 2009 until the trial, Ms L obtained 'newstart' allowance. In the newstart 'application form', to the question "Do you have a partner?" she answered, 'no'.

In 2010, Mr N bought a unit which Ms L then lived in. In 2011, Mr N bought the unit next door which he moved into. The parties did not live together. The relationship ceased in 2012. With that Ms L made a court application claiming a 'defacto' relationship existed and sought a property settlement.

The court held that it is the 'nature of the relationship which is relevant to determining the relationship rather than the quantification of the time the parties actually spent together'.

The significant finding was that there was no 'mutual commitment to a shared life' as each party was committed to a 'different relationship'. The court explained that Ms L was committed to a life where she and Mr N would eventually live together once they married and Mr N was committed to an arrangement whereby he and Ms L enjoyed an intimate and social relationship and he financially supported her.

The application for a declaration as to the existence of a de facto relationship was dismissed

HOW LONG FOR SPOUSE MAINTENANCE?

The length of time that spouse maintenance payments are provided for usually depends upon the time required for the lower income earner to re-train and re-establish themselves into paid employment.

Consequently, the length of time is usually not very long. In a recent case, the trial judge limited the wife's entitlement to spouse maintenance from the husband for 4 years.

The wife appealed, saying there should be no time limit. The Appeal Court agreed with her.

Facts:

- They had been in a relationship for 23 years during which the husband "suffered from alcoholism".
- 1 year after separation, the husband claimed and began receiving payments for severe depression under a disability insurance policy.
- The husband received \$135,000 as a lump sum and thereafter \$3,756 a week which could "continue up to the age of 70, but the insurer could cease the payments if it determined that the husband was only partially disabled or was able to resume work".
- The wife obtained a court order that the husband pay her spouse maintenance of \$534 a week for 4 years. Those payments being conditional upon the husband continuing to receive disability payments.

Appeal:

- The Full Court removed the 4 year time limit stating that "It was appropriate for the trial judge to make the order conditional upon the husband receiving his payments, however there was no basis on the evidence to terminate the maintenance in any event after 4 years".
- There was no evidence to suggest that the wife's needs would be any different in 4 years' time or that the insurance payments were likely to cease in 4 years' time.
- The joint contribution to the events that entitled the husband to the insurance payment did not suggest that it was unjust for the wife to continue to receive part of that income whilst it was available.

Copyright 2011

This document contains general comments and should not be relied upon as specific legal advice. Readers should contact this Office for advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to anyone acting in reliance on this document shall be accepted by this Office. No part of this document may be reproduced without our written approval.

Principal: Michael Lynch*
*Queensland Law Society
Accredited Family Law Specialist



CONTACT:
Telephone: 07 3221 4300
Address: Level 6, 193 North Quay
Brisbane QLD 4000
Website: www.mlfl.com.au

