

The Child Support Agency and Parentage (Part One)

By Nigel Harden*

The issue of parentage of a child is one often raised by one or both parties to a child support assessment with the Child Support Agency (CSA). This paper in two parts will discuss the provisions of the *Child Support (Assessment) Act 1989* (the Assessment Act) that apply to parentage and CSA's policy in administering that legislation. It will also discuss who is an eligible carer and how the Child Support Registrar (the Registrar) determines whether or not the respondent to an application is a liable parent.

Relevant definitions

In addition to satisfying CSA that the carer of a child is an eligible carer and that the child is an eligible child, that applicant must establish that the person from whom child support is sought is a person from whom the carer is entitled to obtain child support.

An **eligible carer** is a person who has either sole, principal or at least major care of the child, shares that care equally with another person, or has at least substantial contact with the child (section 5). In addition, the applicant must not be living with the person from whom child support is sought as their partner in a genuine domestic basis (subsection 25(2)(c)). An eligible carer is not necessarily a parent of the child, although special provisions apply in this situation.

An **eligible child** is one who was born after 1 October 1989 or whose parents separated on or after 1 October 1989, or who is the sibling of an eligible child (sections 19, 20 and 21 respectively).

Additional meanings of the term "**parent**" are prescribed in the Assessment Act (section 5). A parent includes an adoptive parent of a child and, where the child is born as a result of artificial conception, a person who is a parent under the provisions of section 60H of the *Family Law Act 1975*. This section provides various presumptions of parentage in matters involving artificial conception procedures.

Tests to establish parentage for administrative purposes

While CSA is required to establish that the liable parent to a child support assessment is a parent, there is no authority to make a final finding on the matter. The Assessment Act provides

for an administrative process whereby the Registrar may be satisfied that a person is the parent of a child on the basis that one of the tests that establish parentage are met (subsection 29(2)). CSA is not required to conduct an investigation into the information supplied by the applicant, and may proceed on the basis of that information (subsection 29(1)). In fact, where two or more presumptions might exist which conflict with each other, the Registrar may rely on whichever appears to be most likely to be correct (subsection 29(3)).

The Registrar can only be satisfied that a person is a parent of a child if:

- * the child was born during the marriage of the person to the other parent;
- * the person's name is recorded as a parent of the child in a register of births kept under a law of the Commonwealth or a state or territory or a prescribed overseas jurisdiction;
- * a federal, state or territory court, or a court of a prescribed overseas jurisdiction has found that the person is a parent of the child, or has made orders that could only be made if the person were a parent;
- * the person has made a sworn declaration under the law of the Commonwealth, a state or territory or a prescribed overseas jurisdiction stating that they are a parent of the child;
- * the person has legally adopted the child;
- * the person is a man who was married to the mother of the child who was born within 44 weeks of the marriage being annulled;
- * the person is a man who was married to but separated from the mother, where the couple resume cohabitation but separate again

within three months, and the child is born within 44 weeks of the second separation;
the person is a man who cohabited with the mother at any time during the period starting 44 weeks before the birth of the child and ending 20 weeks before the birth, and there was no legal marriage between the couple for any part of the period of cohabitation.

These tests to establish parentage are comparable to those provided in Subdivision D, Division 12 of Part VII of the *Family Law Act (1975)*.

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Who's sorry now?

In last month's *Balance* Councillor Little cited "Who shot the Sheriff?" as the tune that best summarises her with "apologies to Chris Cox" (Sheriff of the Supreme Court).

Those apologies have been now withdrawn after Chris Cox, who also deputises as a Darwin City Council traffic inspector for the Supreme Court complex, issued Councillor Little with a parking infringement notice outside the court.

Dust up in the Dustbowl

Last month saw the inaugural DPP vs CAALAS ten pin bowling championships in Alice Springs at the Alice Springs Dustbowl.

Representing their respective teams was Glen "Kingpin" Dooley and Steven "Gutterball" Geary for the DPP and Stewie O'Connell and "Todd" Woodroffe for CAALAS.

After a first round win to the DPP lads there was a thrilling comeback by CAALAS to trounce the DPP by two rubbers to one.

Highlights included a triple strike by Stewart O'Connell.

A disappointed Glen Dooley presented the trophy to the CAALAS players who have vowed to hold it for many years to come.

Golf day victors

The young 'uns got the better of the barristers at the NTBA's 3rd Annual Quixotic Challenge Golf Day.

Law student Timothy Bradley (who summer clerks at Ward Keller) and Ward Keller's Christopher Booth were unavoidably a team of two when two of their colleagues could not make it at the last moment.

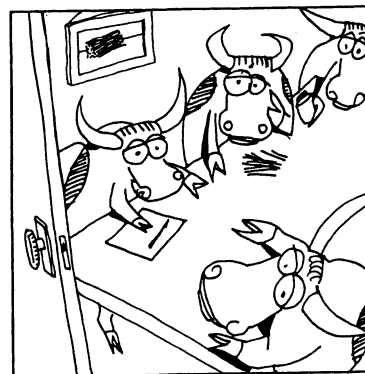
After some debate and a brief vote, the barristers determined it was okay to accept the lads' scores in the nine hole Ambrose.

Ultimately though, the winning score was determined by the roll of two huge fluffy(!) dice. Tim and Chris scored 10, which was then taken from their score. And even though the William Forster team scored the highest gross score, they didn't get there after their dice roll. Thus the lads won the perpetual trophy. See their victory photo on page 23.

Movers and Shakers

Chris Cox is the Director of Courts

The Muster Room



Administration from 28 October for six months. Peter Wilson is acting Sheriff.

John Lawrence is leaving James Muirhead Chambers for John Toohey Chambers.

Collette Dixon has left Hunt & Hunt and gone to the Commonwealth DPP. Charles Yuen is the chair of a new association called LawShield. His contact number is 8942 0682.

Admissions...

..to the Supreme Court in early October were: Fiona De Graaf, Roman Micairan and Helena Blundell.

Tax seminars: for LSNT members

The Territory legal profession will hear the latest about taxation issues in three exclusive workshops to be hosted by the Law Society of the Northern Territory and the Australian Taxation Office. The workshops – one in Alice Springs and two in Darwin – will take place in mid November.

CSA, from previous page

However, the Family Court makes a final determination of parentage where CSA does not.

If the application is properly made and the Registrar is satisfied that the liable parent is a parent of the child under one or more of the points above, then the application must be accepted and an assessment of child support issued.

In the next instalment the paper will look at conflicting evidence, and how parentage may be proved or a presumption challenged. ①

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The topics of the workshops have been presented interstate to other Law Societies and professional bodies and have been received well.

In Alice Springs, the ATO will present a workshop *Business Tax Reform and Rural Issues* on Tuesday 12 November, 5.30pm to 7.30pm.

It will focus on issues for rural Australia including: Alienation of personal services income, non-commercial losses, sale of farmland, sale of a going concern and farm management deposits.

The venue for the workshop is to be advised.

In Darwin, the ATO will present two workshops.

The first, *Is supply of a going concern GST free?*, will be on Wednesday 13 November from 5.30pm.

"The ATO has published its views on when a business can be sold as a going concern and therefore be treated as a GST-free transaction," the ATO's Norman Kochanek said.

"The seminar will discuss the ATO's views as expressed in the Public Ruling and discuss members' concerns."

The second workshop, *Issues for primary producers, margin scheme and commercial premises (in addition, new residential premises)*, will be on Thursday 14 November from 5.30pm.

Both Darwin workshops will be at the Jury Muster Room, Supreme Court.

Those attending must register by COB Friday 1 November.

Registration forms and further information can be obtained from the Law Society on 89815104 or email lfonglim@lawsocnt.asn.au ①