

STEP-PARENTS & MAINTENANCE?

September, 2003

With more than 40% of marriages failing and an observed shift from nuclear families to blended families, an interesting issue is whether step-parents should be obliged to pay maintenance for their spouse's children.

The law relevant to this issue is contained in Division 7 of Part VII of the Family Law Act 1975. This division deals with child maintenance and its object is to ensure that children receive a proper level of financial support from their parents.

The Act makes it clear that parents have a primary duty to maintain their children and seeks to ensure that children have their proper needs met from the income, earning capacity, property and financial resources of both parents. Both parents are required to share equitably in the support of their children.

The Act considers the position of step-parents. A step-parent has a duty to maintain a step-child if and only if, a court determines that it is proper for the step-parent to do so. This duty of a step-parent is a secondary duty to the primary duty of the parent to maintain the child.

If a court is asked to make an order that step-parents maintain their step-children it must have regard to certain matters and no other matters in making such an order. These are:

- The length and circumstances of the marriage to the relevant parent of the child.
- The relationship that has existed between the step-parent and the children.
- The arrangements that have existed for the maintenance of the child.
- Any special circumstances which if not taken into account in the particular case would result in injustice or undue hardship to any person.

In determining if a step-parent should make a financial contribution to a step-child, the court is required to take into account the extent to which the primary duty of the parents to maintain the child can be fulfilled. In general, before a court makes a child maintenance order, it must consider both the financial support necessary to maintain the child and the financial contribution that should be made by a party to proceedings towards the support of the child. The latter depends upon a number of factors including the income, earning capacity, property and financial resources of the party, the commitments of that party to support themselves or any child or person that has a duty to maintain, the direct and indirect costs incurred in providing care for the child and any special circumstances which if not taken into consideration would result in injustice or undue hardship to any person.

Special circumstances were relevant in the case of **Keltie & Keltie & Bradford**. This case concerned the maintenance of a child E who was born in January 1983 and who made an application for maintenance against her natural father and her step-father. The child's mother had died in 1997. The step-father had lived with the child's mother from 1991 and they were married in April 1993.

The legislation sets out that a court must not make a child maintenance order in relation to a child who is 18 years or over or extend an order beyond the day on which a child will turn 18 years unless it is satisfied that the provision of maintenance is necessary to enable the child to complete his or her education or because of the mental or physical disability of a child.

This matter came before Federal Magistrate Brewster who requested that the Full Family Court determine if the Act gives the court power to make an order that a step-parent pay maintenance for a step-child who has attained the age of 18 years.

The Full Court held that an order that step-parents pay financial support for a step-child is a child maintenance order and as such can include payment of maintenance to an adult child providing it is satisfied that maintenance is necessary to enable a child to complete his or her education or because of a mental or physical disability of a child. In reaching its decision the Full Court referred to the view expressed by Chisholm J in *Carpenter and Carpenter*. His Honour held that in Division 7 of the Act, the words "child" or "children" refer to relationships rather than age otherwise it would be unnecessary to provide jurisdiction to a court to make a maintenance order for a person over the age of 18 years. The purpose of Section 66L of the Act is to set out the limited circumstances in which adult child maintenance orders may continue or may be made against both natural parents and step-parents.