

## A Child Does Not Equal De Facto

Substantial changes to de facto law were introduced on 1 March 2009. The major change that occurred was that de facto couples would be treated the same way as married couples have been for years. De facto couples in property settlement disputes are now heard in the Federal Magistrates Court of Australia or the Family Court of Australia.

A de facto relationship is a relationship between two people (including same sex couples) who are not married but are living together as a couple on a 'genuine domestic basis'. Fundamentally, to have standing in a de facto property settlement claim, you would have to prove the following elements:

1. a relationship of two (2) years; OR
2. a child of the relationship; OR
3. substantial contributions to the relationship; OR
4. a registered relationship; AND
5. either party being ordinarily resident in a participating jurisdiction when the application was made and both parties were ordinarily resident in a participating jurisdiction when the relationship broke down.

In *Ricci & Jones* [2010], a Federal Magistrate found that the Father had applied successfully for the dismissal of the Mother's de facto property application. "The significance of this decision is that although there is a 'child of the relationship', the Court will not automatically conclude that a de facto relationship exists," says Antonious Abdelshahied, lawyer, **msl | michael sing lawyers**.

The parties in this case never lived together but did have a child. They dated for seven months until the Father ended the relationship when the Mother fell pregnant. The court found that there was no common place of residence, no ownership or use of joint property, no financial dependence or interdependence, the Father never cared for the child, and it was not a sexual relationship until the later part of the relationship. The Federal Magistrate concluded that the relationship was of a 'very limited nature'.

"This very long awaited case has 'limited' the scope of what constitutes a de facto relationship and has essentially created a precedent for parties merely relying on the 'child of the relationship' provision rather than actually satisfying the Court that the parties were living together in a genuine domestic relationship," says Mr Abdelshahied. "At the time of writing, the case was not being appealed. In subsequent proceedings, the Mother was ordered to pay the Father's legal costs totalling \$5,865 for defending the Mother's application that had no prospects of succeeding."

Prior to *Ricci & Jones*, legal practitioners were of the view that a child born from a one-night stand would give either party standing to bring a de facto property settlement claim. *Ricci & Jones* confirms that this is not the case.

"It is strongly recommended that any party who has had a child and who has recently come out of a very short relationship should obtain legal advice about whether they have standing to bring a claim for de facto property settlement or alternatively their prospects of success in defending such a claim" warned Mr Abdelshahied.



### Gold Coast Office

9 Ouyan St  
Bundall QLD 4217  
PO Box 9073 GCMC QLD 9726  
T +61 7 5597 8888  
F +61 7 5597 8899

### Brisbane Office

Level 10, 410 Queen Street  
Brisbane QLD 4000  
PO Box 3246 Brisbane QLD 4001  
T +61 7 3229 6099  
F +61 7 3226 9001