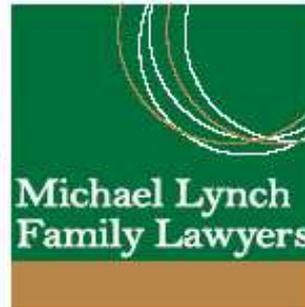


family flyer



Issue #111

Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Successful Seminar Series
- Changes to Surrogacy?
- Close-Up-Edition
- Breaking a Domestic Violence Order
- Watch the Clock!
- Relocating with a Baby

SUCCESSFUL SEMINAR SERIES

Welcome to new readers of the Family Flyer who have joined after attending our recent public Seminar Series. The fortnightly Family E-flyer is now read by over 5,000 people.

The Seminar Series was presented at various venues across Brisbane and was well attended. It provided a great opportunity to not only give practical legal information but to also answer lots of audience questions.

For more information on the seminars we present, visit

www.mlfl.com.au/seminars.

CHANGES TO SURROGACY?

The Queensland Government last week released a draft bill for consultation, regarding the decriminalising of certain surrogacy arrangements.

It is proposed the new laws will allow Queensland women to have children for couples, including same sex partners but that this will only apply to altruistic surrogacy, i.e. where a woman gives birth to another couple's child for no payment.

Currently, Queensland is the only State where altruistic surrogacy is a criminal offence – attracting a \$10,000 fine or three (3) years jail.

CLOSE-UP-EDITION

Quite often there is a significant difference between spouse's incomes when they separate. Addressing that imbalance is called spouse maintenance.

There is no formula to apply in calculating spouse maintenance and regrettably it is not straightforward. Our "close-up" article is "[Am I Entitled to Spouse Maintenance?](#)"

BREAKING A DOMESTIC VIOLENCE ORDER

When a person has a Domestic Violence Order (DVO) against them and they do not comply with the conditions and breach the Order, they are committing a criminal offence!

What happens then? Only the police can deal with a breach of a Domestic Violence Order and they should be contacted as soon as possible. If the Police are satisfied on the evidence that a breach has occurred they can arrest and charge the person allegedly in breach.

If a Court determines that a breach of a DVO has occurred, penalties can be imposed, including;

- For 1 or 2 convictions the maximum penalty is 40 penalty units (\$3,000)
- If a DVO is breached 3 times in 3 years, a maximum sentence of 2 years imprisonment may apply.

WATCH THE CLOCK!

Strict deadlines apply to when a property settlement must be determined. If a deadline is missed, the consequences could be serious.

For a married couple, a property settlement Application to the Court cannot be brought after 12 months after the date of Divorce. For a de facto couple, a property settlement Application cannot



be brought to the Court after 2 years after the date of separation.

The only exception to this time limit is if the Court agrees to grant leave to extend the time. In deciding this, the Court must consider whether hardship would be caused to the Applicant or a child, if the “leave” was not granted or, whether there is an adequate explanation for the delay.

Some lawyers take the view that the Court tends to grant “leave” relatively easily. The Court has recently put paid to that belief.

The Court recently had to decide whether to allow a Husband to bring a property settlement Application, 47 days out of time, (a relatively short period). The Husband said that the delay in bringing the Application was because he had been unable to negotiate a property settlement with his Wife and he believed they had an agreed understanding, however she had made several excuses that had caused delay. No enforceable agreement had been documented.

The Court was not satisfied with the explanation for the delay and did not find that hardship would be caused if leave was not granted.

The Husband’s Application was dismissed.

RELOCATING WITH A BABY

There is always something happening in ‘relocation cases’.

Last month, the Court had to consider an urgent application by a Mother who wanted to relocate from a small country town with her baby, to approximately 1,000 km away.

What was significant was that it was considered by the Court at an Interim Hearing, not a Final Hearing.

Facts:

- The Mother wanted to relocate from the small New South Wales town (population approximately 80-100 people) to Queensland with her 10 month old child. The Father lived in the small town. The Mother proposed the Father spend supervised time with the baby.
- The Mother gave several reasons why she wanted to relocate, but the most important and the most urgent, was in order for her to take up a new job.
- She stated that she needed an urgent hearing to give adequate notice to her new employer.

Court Findings:

- The Mother’s new job offered her a range of opportunities that she did not have in the small country town.
- The baby was dependent on the Mother and had little, if any, relationship with the Father.
- The Father confirmed he had a strained relationship with the Mother but he wanted to spend time with the baby.

Court Order:

- The Mother was allowed to move but was required to travel to the Father’s location 4 times per year in the school holidays and 2 other times in the first 6 months after she relocated.
- The Mother was to pay the costs for 4 out of the 6 trips.

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