

# family flyer



## 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:

- Amendments to the Child Support Act
- New Family Court Fees
- Contravention Applications
- Defacto Property Settlements
- Surrogacy
- Defacto Property Settlement - Which Court do you use?
- Interim Residence - Status Quo
- Parents Duties and Priorities - Child Maintenance

## AMENDMENTS TO THE CHILD SUPPORT ACT

Major amendments to the Child Support Legislation which had been expected to commence on the 1st July 1998, did not occur. The passing of the Bill through Parliament has been delayed and it is not known when it will be completed. We understand that it is expected to occur later this year.

## NEW FAMILY COURT FEES

As of 1st July, the Family Court has increased filing fees. They are now as follows:

- Divorce filing fee (Form 4) - \$505.00
- Application for Final Orders (Form 7) - \$152.00
- Hearing fee - \$303.00

## CONTRAVENTION APPLICATIONS

A frequent Application in the Family Court is a Form 49 "Application for Contravention". This Application is typically brought against a Resident parent where a Resident parent does not provide contact.

A Form 49 Application is brought pursuant to Section 112AD of the *Family Law Act*.

The only "defence" that the Act provides for the Residence parent is not providing contact is if there is a "reasonable excuse".

It is a question on the facts of each case as to whether a "reasonable excuse" exists, however if parties find themselves in difficulty or are concerned as to whether contact should proceed, they should act defensively and maintain detailed written records of the events that occur and obtain urgent legal advice, otherwise they may well find themselves exposed to a possible Contravention Order.

The penalties that the Court may impose if a Contravention is established can be quite severe and can include Orders such as compensatory contact, a fine or in extreme cases, imprisonment.

## DEFACTO PROPERTY SETTLEMENTS

The writer recently gave a talk regarding the law in "defacto relationships" particularly considering "defacto relationship property settlements".

Since that talk was given, we have spoken with various other organisations and have received significant interest in providing more information on the topic. This interest has involved requests for talks on the topic, as well as numerous requests for a "brochure" that assist in explaining the law with respect to defacto relationship property settlements.

To those people we have already spoken with, we regret the delay in preparing that brochure however we trust that it will be issued shortly. Due to the positive reception to the proposed brochure we anticipate forwarding copies to all readers.

## SURROGACY

There has been recent media attention given to a decision of the Full Court of the Family Court that involved a residence dispute regarding a surrogacy arrangement.

The case was a non-commercial arrangement entered into between two couples, living in South Australia and Queensland, respectively. Both States prohibit commercial surrogacy arrangements but also render any non-commercial arrangement void and unenforceable.

The surrogate mother was in South Australia and the biological father in Queensland. Difficulties arose when the mother in South Australia travelled to Queensland and advised the father and his wife that she could not abide by her decision to relinquish the child and removed the child from Queensland, taking her back to South Australia.





At the Interim Hearing, the child was ordered to remain with the Queensland couple. At the Final Hearing, the biological mother in South Australia was successful in obtaining residence.

The Trial Judge focused on the "long-term implications for the child" and was conscious of the significant concerns regarding the child's feelings of abandonment and identity.

The Full Court Appeal supported the Trial Judge's decision.

The latest information on this case is that the Queensland couple have refused to hand the child to the South Australian couple, despite the Orders and they are now seeking leave to Appeal to the High Court.

## **DEFACTO PROPERTY SETTLEMENT - WHICH COURT DO YOU USE?**

Each State has responsibility for legislation regarding property settlements in defacto relationships. The legal power governing children of defacto relationships was transferred by all States to the Commonwealth some years ago and that now comes within the jurisdiction of the Family Court.

Despite years of examination, Queensland has failed to introduce any legislation regarding property settlements in defacto relationships.

Defacto property settlements therefore come within the jurisdiction of the "Civil Courts", whether it be the District Court or the Supreme Court is determined by the value of the property in dispute.

Defacto relationship Property Settlements can only come within the Family Court if it can be "cross-vested", that is, if it is able to be transferred from the Civil Court to the Family Court. This can only occur if there is already an existing dispute in the Family

## **INTERIM RESIDENCE - STATUS QUO**

When the Court determines an Interim Residence Application, one of the most significant factors is the "Status Quo" arrangement, that is, where the child has been living in recent time.

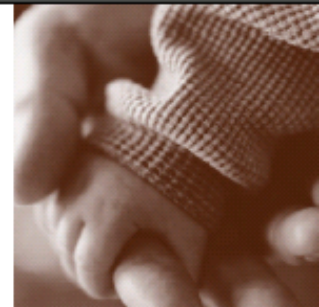
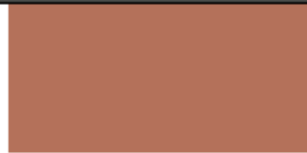
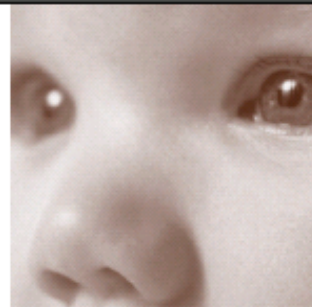
The Court, in holding the best interests of the child as the paramount consideration, is committed to maintaining stability in the child's arrangements.

The Court usually finds that the child's best interests are met by ensuring stability in the child's life pending a Full Hearing of all relevant issues.

In a recent Full court (Family Court) case, the Court examined the notion of "Status Quo" and confirmed that it was necessary for the Court to make some examination of the current arrangements and determine whether the child is living in a well settled environment. In that regard, the Court said that various factors should be considered, such as:

- The wishes, age and maturity level of the child.
- The current and proposed arrangements for the child's day to day care.
- The period during which the child has lived in the environment.
- Whether the child has siblings and where they reside.
- The nature of the relationship between the child, each of the parents, other significant adults and the child's siblings.
- The educational needs of the child.

In the case before the Full Court, the Court was satisfied that although there was a Status Quo arrangement, the child was not



# family flyer

Issue #9

## PARENTS DUTIES AND PRIORITIES - CHILD MAINTENANCE

---

The Full Court of the Family Court recently considered a "stage 1" Child Maintenance Application.

In the process of considering the matter the Court stated that a parents duty to maintain the children of one relationship has equal priority with the duty to maintain children of any subsequent relationship but is secondary to the primary duty of a parent to maintain him or herself.

The Court stated that giving equal priority between dependants does not necessarily equate to an equal division of income and a *pro rata* approach may ensure that there is no discrimination between dependants of a parent with limited resources.

### Contact details

Michael Lynch Family Lawyers

### Principal

Michael Lynch\*

### Senior Associates

Helen Bryden\*

### Associates

Emily Wood

### Solicitors

Elizabeth Millar

\*Queensland Law Society  
Accredited Family Law Specialists

**Telephone:** 07 3221 4300

**Facsimile:** 07 3221 9454

**Email:** law@mlynch.com.au

**Web:** www.michaellynchfamilylawyers.com.au

**Address:** Level 6  
193 North Quay  
Brisbane Qld 4000

**Post:** PO Box 12027  
George St, Brisbane Qld 4003



Approved  
Law Society Mediator

Copyright © 2007

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