



family flyer

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Issue #13

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:

- Defacto Property - Queensland
- Federal Magistrates Court
- Relocation Cases - Correct Approach
- Family Law Amendments - More Changes
- Interim Residence - Principles
- Child Support Liability Where No Income
- Superannuation Reform Delay
- GST in Family Law

DEFACTO PROPERTY - QUEENSLAND

Defacto Relationship Legislation commenced in Queensland on the 21st of December 1999.

The legislation deals with all property of defacto partners, including financial entitlements.

Highlights of the legislation include, i.e.:

- "defacto spouse", includes same sex spouses;
- the Property division criteria is similar to the criteria in the *Family Law Act*;
- spouses must have lived together for two (2) years;
- an Application for Property Settlement must be made within two (2) years of the end of the relationship;
- there is no provision for Spousal Maintenance;
- Cohabitation and Separation Agreements are recognised;
- Orders regarding defacto relationships can be made in the Magistrates, District or Supreme Courts;
- transfers of property are exempt from stamp duty.

There will initially be one (1) Federal Magistrate appointed in Queensland, ultimately increasing to three (3). It is anticipated that the Magistrates will be concerned with 75% Family Law and 25% Federal Court, Administrative Appeals and Bankruptcy issues.

RELOCATION CASES - CORRECT APPROACH

In a recent Family Court case involving a Mother seeking to relocate with a child from Perth to Hungary, the Court has discussed the approach to be taken in Relocation cases.

The Court has stated that the Court's consideration of the "child's welfare" should be "the paramount consideration".

The Court should ensure that it does not impose upon the freedom of movement of either party any impediment greater than that reasonably required. The High Court has stated that, requiring a parent to demonstrate "compelling reasons" to justify a relocation, is not warranted.

The Full Court has stated that the best interests of the child are to be determined by taking into account considerations including, the legitimate interests of the Resident Parent and the need to ensure the continuation of the relationship with the non-Resident Parent.

FAMILY LAW AMENDMENTS - MORE CHANGES

Family Law Amendments have been presented and read in the House of Representatives. It is expected that the legislation will become law in about June 2000.

The Bill contains 3 Schedules, i.e.:

- Schedule 1 deals with penalties for failing to comply with Orders. A three (3) stage parenting compliance regime is provided.

FEDERAL MAGISTRATES COURT

Legislation for the Federal Magistrates Court Scheme has been passed.

Approximately twenty (20) pieces of legislation will come within the control of the Court, including Family Law, Child Support, Bankruptcy, Human Rights and Workplace Relations.

It is anticipated the legislation will not be fully operational until July 2000.



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- There are new concepts, such as the ability to order parties to participate in a post-separation Parenting Program and for Courts to make a Community Service Order.
- Schedule 2 provides for the recognition of Pre-Nuptial Agreements.
- The agreements will be binding, if:
 - (a) signed by both parties; and
 - (b) if it states that the parties have either obtained independent legal advice and/or independent financial advice on the effect of the Agreement.
- Until this becomes legislation the law in Australia is that Pre-Nuptial Agreements are not enforceable.
- Schedule 3 gives legislative force and effect to arbitration awards, otherwise known as "private judging".

INTERIM RESIDENCE - PRINCIPLES

In a recent Full Court case the Court considered a Mother's appeal against a Court Order allowing a five (5) year old child to live with her Father and to be protected from the risk of the Mother re-absconding with her.

The evidence showed that the child had spent most of her time living with the Mother however, the Mother prevented contact.

The Father suffered from Aids and the Mother referred to the Father as a paedophile. The Father's contact had been supervised.

Following the Mother's absconding with the child after an Interim Contact Order, the

The Court ordered that the child remain with the Father.

CHILD SUPPORT LIABILITY WHERE NO INCOME

The Family Court has said that a man who has no income and who has spent the whole of a personal injuries compensation payment on acquiring a property, still has a Child Support liability.

The Father had a limited earning capacity because of an amputation of his lower left leg and was between jobs. The Father said he could not afford to pay Child Support and keep the property.

The Family Court said that he has available to him in the compensation payment, sufficient capital to meet his modest Child Support obligations. If he had set aside approximately 20% of the compensation payment as a fund upon which Child Support could be drawn down, it would have been adequate to meet his Child Support obligation and he would still have had enough left to put down a significant deposit on a property.

The Court dismissed the Application for reduction in Child Support.

SUPERANNUATION REFORM DELAY

Reforms to Superannuation in Family Law will probably not take effect before 1st July 2001.

A Bill is being prepared by the Government but it is unlikely to be passed by Federal Parliament before the middle of 2001.

The Government has indicated that it will allow a year before commencement to allow the superannuation industry to prepare for the changes.



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GST IN FAMILY LAW

A summary of the GST effects in Family Law is, as follows, i.e.:

- It will (probably) attach where parties have been involved in "business activities".
- The matrimonial home and residential investment properties are not subject to GST.
- The transfer of shares, money in savings, investments and superannuation are not subject to GST.
- The transfer of a business interest is taxable, unless it is transferred as a "going concern".
- In the transfer of any "business interest", an agreement should state if it remains a "going concern" and the seller should receive an indemnity from the purchaser for any possible GST.

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