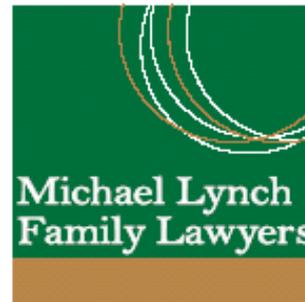


# family flyer



## 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:

- Staff Appointments
- What is
- New Child Support Treaty:
- Children - Relocation:
- Child Support - Income Earning Capacity:
- Superannuation - New Changes:
- Superannuation - Trustees:
- New Legislation - Domestic Violence:
- Contact - Children's Wishes:

## STAFF APPOINTMENTS

We are pleased to announce recent staff movements at our office:

- **Susan Moore** has been appointed Senior Associate. Susan has over 10 years experience in Family Law and is an Accredited Specialist.
- **Susan Lockie** has been appointed Associate. Susan practices solely in Family Law and is experienced in Property and Children's matters.
- **William Schoenmaker** is a Solicitor with over 15 years experience. He also practices exclusively in Family and Defacto relationship matters.

## WHAT IS

The Full Court of the Family Court delivered a decision in late February, redefining the meaning of "man" in the Marriage Act to include "a post-operative transsexual".

The Court stated that procreation was not a principal purpose of marriage and confirmed that a marriage did not need to be consummated to be valid.

It is understood that the Federal Government is considering a High Court challenge.

## NEW CHILD SUPPORT TREATY:

Australia and the United States have entered into a treaty for reciprocal recognition and enforcement of Child Support Maintenance arrangements.

Australia has had non-treaty arrangements with most US States since 1994, but these require a Court Order or a Court registered agreement before Maintenance or Child Support could be collected in one country for a payee in the other.

The new treaty allows Australian Child Support Assessments to be recognised and enforced in the United States.

## CHILDREN - RELOCATION:

The ability for a Resident Parent to relocate with a child of the marriage was recently considered by the High Court.

That case involved a Mother with Residence of a child seeking to relocate from Australia to India.

The Full Court of the High Court determined that:

- the Court must consider the parties' competing proposals and not overly focus on whether the Resident Parent should be allowed to leave the country;
- the Family Court should focus their attention on the long term welfare for the child, rather than the short term welfare;
- the Court should consider Australia's international treaty obligations;
- the Court should give proper balance to the desirability of optimising Contact as opposed to the Resident Parent achieving a stress free lifestyle.

The High Court held that the Family Court's primary objective is to achieve the child's best interests.

## CHILD SUPPORT - INCOME EARNING CAPACITY:

The Federal Magistrates Court has recently considered a Father's Application to set aside a Child Support Agreement on the basis that his income had reduced.

At the time of signing the Child Support Agreement the Wife was unemployed and the Husband had an annual income of \$169,000.00. Approximately three (3) weeks after signing the Child Support Agreement the Husband changed his employment. The new employment paying a total package payment of \$81,000.00 per year.





The Court stated that to set aside the Child Support Agreement the Court had to be satisfied that special circumstances exist that the change would be just and equitable as regards the child and that it would be otherwise proper to make a new Order.

The Court determined that there was not a voluntary cessation in the Husband's employment and having regard to his expenses and commitments, a continuation of the Child Support payments in accordance with the Agreement would be inequitable.

The Court had to consider the Husband's capacity for earning an income and was satisfied with the change of employment, that that capacity no longer existed.

### **SUPERANNUATION - NEW CHANGES:**

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The amendments to the Family Law Act with respect to Superannuation commenced on the 28th of December, 2002.

As reported in previous editions of the Flyer the amendments have dramatic effect, including, i.e.:

- a detailed regime for the valuation of Superannuation interests;
- scope for Superannuation policies to be "split" (i.e. divided between parties) or "flagged" (i.e. to enable splitting at a later date);
- a Form for the obtaining of detailed information from the Superannuation Trustee;
- a new Form for the obtaining of detailed information from the Superannuation Trustee;
- a new form of Family Court "Consent Order", for the more detailed Superannuation information.

The effect and detail of the Superannuation amendments is extensive and specific legal advice should be sought regarding it.

### **SUPERANNUATION - TRUSTEES:**

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One (1) important aspect of the Superannuation reforms is that Court Orders regarding the splitting of Superannuation will now bind third party Trustees. Once the Trustee is served, the Trustee must comply with Court Orders.

### **NEW LEGISLATION - DOMESTIC VIOLENCE:**

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New legislation commenced on the 10th March, 2003, with respect to Domestic Violence.

Previously, Domestic Violence Orders could be obtained only by people in married or de-facto relationships. The changes will extend to anyone in intimate, personal, family or informal care relationships, regardless of gender.

The legislation will also ensure that any one with a weapons licence would lose it if an Order is taken out against them.

Parents will be unable to apply for an Order against violent children aged under 18 years.

Children cannot take out Domestic Violence Orders against their parents, but will be able to get protection from violence in intimate or personal relationships or against abusive information carers.

### **CONTACT - CHILDREN'S WISHES:**

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The Full Court of the Family Court has recently considered a Father's Application for Contact.

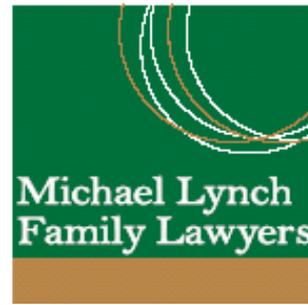
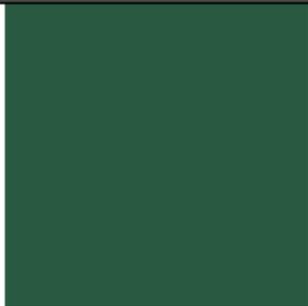
There were three (3) children of the marriage, all living with the Mother. The eldest child was 14 years and expressed a wish to no longer see the Father. The Father reluctantly accepted that situation. The youngest child, a boy aged 9 years, continued to see his Father on a regular basis.

The second child, an 11 year old girl, also expressed a wish not to have Contact with the Father.

At Trial, the Mother submitted that the 11 year old girl's wishes should be respected. The Trial Judge was critical of the Mother's attitude to Contact.

The Trial Judge found that the wishes of the child were not soundly based or founded upon mature and independent considerations. The Court found the child had a fond and loving relationship with the Father. Orders for Contact were made.

On appeal, the Full Court supported the Order, saying that the expert evidence had been undermined by the Mother being present during the interviews and furthermore, the Court must take the children's wishes into account, but is not bound by them.



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Issue #15

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