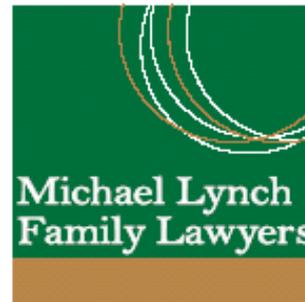


# family flyer



## 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:

- Family Law Superannuation Amendments
- Property Settlement - Factors
- Children's Wishes
- Financial & Non-Financial Contributions in Property Settlements
- Family Court - Publication
- Federal Magistrates - Fees
- Paying Maintenance for Step-Children Over 18 Years
- Family Court - Fees
- Child Support - Enforcement
- Referrals

## FAMILY LAW SUPERANNUATION AMENDMENTS

Legislation expected to come into effect in late December, 2002 allows benefits in Superannuation funds, approved deposit funds and retirement savings accounts (RSA's) to be included as marital property. This will allow Superannuation entitlements to be divided on marriage breakdowns. Note that the legislation is only applicable to individuals who are married, it is not applicable to people in defacto or same sex relationships.

Generally, the legislation provides for the splitting of Superannuation entitlements following either an agreement between spouses, or if they cannot agree, a Court Order. In both cases the instructions will be binding on the Trustee or an RSA provider.

Other actions can also be undertaken by a spouse or by the Court using prescribed forms including:

- obtaining information regarding a Superannuation interest of a spouse; and
- the temporary flagging of an interest to prevent some forms of payment being made.

## PROPERTY SETTLEMENT - FACTORS

The Full Court of the Family Court has recently re-stated the Court's approach in Property Settlement matters.

The Court has stated that the task of the Court in determining a Property Settlement is not akin to an accounting exercise and the Court is not required to assess the contributions of the parties with mathematical precision.

## CHILDREN'S WISHES

The Family Law Act provides that in determining Residence and Contact arrangements the Court must take into account "children's wishes".

In a recent Family Court Hearing the Mother maintained that the child's wishes were that the child did not want to have Contact with the Father and that those wishes should be respected. The Father argued that the child's wishes had been brought about due to the behaviour of the Mother and therefore should not be given the weight that would normally be attached to them.

The Trial Judge found that the Mother had not encouraged the child to have Contact with the Father and had not positively promoted the advantages of Contact. Ultimately, the Court found that the wishes of the child were not soundly based upon mature and independent considerations.

The Court ordered that there be a staggered re-introduction of Contact. The Mother appealed.

The Full Court dismissed the Mother's Appeal stating that the principle was clear that the Court must take the children's wishes into account but is not bound by them.

## FINANCIAL & NON-FINANCIAL CONTRIBUTIONS IN PROPERTY SETTLEMENTS

The Full Court of the Family Court has recently considered a Property Settlement "Appeal" in which the property pool was \$22.5 million.

The property was largely derived from an inheritance received by the Husband, six (6) years into the ten (10) year relationship.

The Trial Judge awarded the Wife \$600,000.00 for her contributions during the marriage and \$500,000.00 with respect to her "future needs" component.





On Appeal the Court re-exercised the discretion awarding the Wife \$2.5 million. In giving the decision the Full Court reiterated that, i.e.:

- Proper weight needed to be given to the contributions of both parties and that marriage is and should be regarded as a genuine partnership to which each brings different gifts. The fact that one (1) is productive of money in large quantities is no reason to disadvantage the other.
- There does not need to be a nexus between the indirect (homemaker and welfare) contribution by a Parent and the property acquired.

### **FAMILY COURT - PUBLICATION**

The Family Court has recently produced a book that has been written for separated parents who spend most of their time away from their children.

The text is entitled "Me and My Kids". The Court states that the publication seeks to provide assistance on how to minimise the impact of divorce on children and to encourage a healthy relationship between children and both Parents.

### **FEDERAL MAGISTRATES - FEES**

The following fees apply in the Federal Magistrates Court from 1 July, 2002, i.e.:

- Dissolution of Marriage - \$273.00;
- Initiating Application or Response - \$109.00;
- Hearing fee - \$327.00.

### **PAYING MAINTENANCE FOR STEP-CHILDREN OVER 18 YEARS**

The Full Court of the Family Court has recently considered whether the Court has jurisdiction to make an Order that a Step-Parent pay Maintenance for a Step-Child who has attained the age of 18 years.

The background of this matter concerned an Application for Maintenance of a child who had reached the age of 18 years.

The child filed an Application for Maintenance against the natural Father seeking \$150.00 per week. The Application was resolved by consent with the natural Father paying the child \$50.00 per week. In addition, the child sought financial support from the Step-Father in an amount of \$150.00 per week. The Step-Father had lived with the child's Mother from 1991 until the Mother's death in 1999 and he had married the Mother in 1993.

The Step-Father contended that the legislation did not provide for such a situation.

The Court found that such an Application could be pursued.

### **FAMILY COURT - FEES**

The following fees apply in the Family Court from 1st July, 2002, i.e.:

- Application for Divorce - \$574.00;
- Hearing fee - \$344.00;
- Application for Final Orders or Response - \$172.00.

### **CHILD SUPPORT - ENFORCEMENT**

The Child Support Agency is established for the purposes of effecting assessments between parties and attending to collection.

The methods of enforcement of such payments at the disposal of the Child Support Agency are, as follows, i.e.:

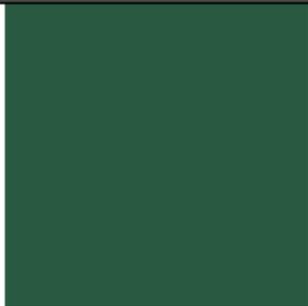
- The Child Support Agency is able to gather information from either party, in person (as well as requiring documents) and obtaining protected information held by the Commissioner of Taxation.
- Deduction from wages.
- Tax refund interception.
- Deductions from Centrelink entitlements.
- Collection from third parties.
- Collection from Family Tax Benefits.
- Offsetting debts between Parents.
- Departure (from Australia) Prohibition Orders.

### **REFERRALS**

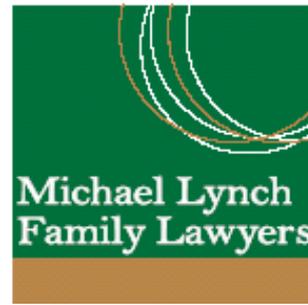
Family Law is best left to the experts. That's the message we receive day in and day out from our clients and the friends and family they refer to us.

If Michael Lynch Family Lawyers can help one of your friends, tell them to get in touch with us.

We would welcome the opportunity to meet them and offer assistance where appropriate. If you do refer a client to us please be sure to let us know, so we have an opportunity to acknowledge you.



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