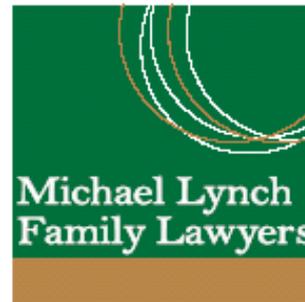


family flyer



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:

- Property Settlement - Expectation of Inheritance:
- Want some Statistics?:
- Deadline - Court Applications:
- Immigration - Detention
- Child Support - Education Costs:
- Child Support Assessment - Termination Payments:
- Expert Witnesses - New Guidelines:
- Superannuation Splitting - Valuations:
- Childrens' Counselling:
- Defacto Relationship Law Reform in Queensland:
- Revised Guide:

PROPERTY SETTLEMENT - EXPECTATION OF INHERITANCE:

The Full Court of the Family Court recently considered a case where one of the parties had an expectancy to inherit his parents' substantial estate.

The parties were married for 16 years with two children. The Trial Judge determined that the property pool was valued at \$864,000.00 and that the contributions were equal, but made an adjustment of 40% in favour of the Wife, pursuant to the Section 75(2) factors (i.e. future needs).

The relevant Section 75(2) factors were that the Husband had an earning capacity of \$150,000.00 per year and had Superannuation of \$112,000.00, compared to the Wife's \$37,000.00. The Husband also had an expectancy to inherit his Parents' estate valued at approximately \$2.8 million.

The Husband's Appeal against this decision was dismissed.

WANT SOME STATISTICS?:

Statistical information from the Australian Bureau of Statistics and Relationships Australia shows that:-

- In Australia in 2000 there were 113,400 marriages, a decrease of 900 marriages from the year before.

- In the year 2000 there were 49,000 divorces in Australia. This was a decrease from 1999, but was 10,600 more than 1980.
- The proportion of people who will never marry is increasing.
- 46% of marriages end in divorce. In the year 2000, 17% of divorces occurred within the first five years of marriage and 26% occurred in the following five year period.
- In the year 2000, 71% of couples indicated they had cohabited prior to marriage, compared with 29% in 1980.
- 10% of couples seek counselling before they divorce.

DEADLINE - COURT APPLICATIONS:

The Family Court has fixed a National Filing Deadline for Interim Contact Applications that relate to the 2003/2004 summer school holiday period.

For Applications filed by the deadline, the Court anticipates allocating Interim Hearing dates prior to Christmas.

The closing date is 4pm on Monday, 10 November 2003.

IMMIGRATION - DETENTION

The Full Court of the Family Court has recently held that the Court has the power to order the release of children from Immigration Detention in the event that such detention was seen to be "indefinite" and thus "unlawful".





The Minister for Immigration has Appealed the decision to the High Court. The Full Court has declined to "stay" the Order pending the Appeal. The Appeal is to be heard at the end of September 2003.

CHILD SUPPORT - EDUCATION COSTS:

The Child Support legislation states that the Agency must accept an application either orally or in writing for the child's Child Support if the child has turned 18 years of age, while he or she is in full-time secondary education and to continue the assessment until the last day of that secondary school year.

CHILD SUPPORT ASSESSMENT - TERMINATION PAYMENTS:

Termination Payments often present a difficulty in determining Child Support Assesments. An application of the formula would in many cases ignore the nature of payments.

Accumulated holiday leave, long service leave and accumulated sick leave are earnings, as these payments ordinarily form part of the taxable income for child support assessments when the leave is taken.

Redundancy payments are usually calculated to represent a number of weeks earnings. They are paid in recognition of the likely difficulty of the employee obtaining alternative employment. As the payments represent income, they are usually included as income in a child support assessment.

With Superannuation, the Court has found that where it is capital accounted for in the property settlement and converted from one form of capital to another it ought to be quarantined and excluded from any child support assessment. However, where capital is accounted for in a property settlement and is applied to day to day expenses, it may be assessed for child support.

EXPERT WITNESSES - NEW GUIDELINES:

A Family Court Practice Direction commenced on the 1st August 2003. It sets out the steps to be undertaken by Expert Witnesses and those instructing them, in cases in which an Expert Witness has been engaged.

The Guidelines are intended to facilitate compliance with the provisions of Order 30A of the Family Law Rules.

SUPERANNUATION SPLITTING - VALUATIONS:

The Family Court has held that before making a Superannuation "Splitting" Order, the Court must make a determination of the value of an interest in accordance with the regulations or by such other method as the Court considers appropriate.

CHILDRENS' COUNSELLING:

A useful website for Children's Counselling Services is www.kidshelpline.com.au

DEFACTO RELATIONSHIP LAW REFORM IN QUEENSLAND:

Amendments to the *Property Law Act* 1974 (Qld) commenced on 1st April, 2003. The changes mean that people in the same sex defacto relationships will be treated before the Law in the same way as heterosexual defacto couples.

REVISED GUIDE:

This office produces a free publication called, "A Guide to Family Law".

Due to the popularity of the "Guide" stocks have been depleted. We are preparing a "Revised - Guide to Family Law". that shall cover the many recent changed in Family Law.

We shall keep readers informed as to when the new publication is ready for release.

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