



# 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:

- Welcome to the new look flyer
- Guide to Family Law - Everyday Answers
- Leading Specialist Firm
- A Presumption of Shared Care?
- Binding Property Agreements
- Child Support Assessment - Termination Payments
- Contempt of Court - Imprisonment
- How Confidential is Counselling?
- Property Settlement - Expectation of Inheritance

## WELCOME TO THE NEW LOOK FLYER

Welcome to the new look Family Flyer. We have been producing the Family Flyer for many years to an ever increasing audience. We have now enhanced its look and we are keen to also enhance its method and speed of delivery to you.

If you would like to receive the Family Flyer by email, please contact us at [law@mlynch.com.au](mailto:law@mlynch.com.au)

## GUIDE TO FAMILY LAW - EVERYDAY ANSWERS

It is here! The Guide is our easy to read Family Law information booklet. It has been updated and re-printed and is back from the printer.

The Guide is our flagship publication that we have produced for many years for clients and other interested readers.

It is available free of cost. If you have not received a copy please contact us and we will be happy to provide you with a copy.

## LEADING SPECIALIST FIRM

We are pleased to announce the recent commencement of a new Accredited Family Law Specialist with our team.

Ms Lyn Galvin comes to us with over 15 years experience specialising in Family Law, most of which is as a Principal in private practice.

We are proud to say that Michael Lynch Family Lawyers has now grown to be one of the largest and most respected Specialist Family Law practices in Queensland having three Accredited Family Law Specialists and a total of six professional staff.

## A PRESUMPTION OF SHARED CARE?

After six months of community consultation, the House of Representative's Standing Committee on Family and Community Affairs tabled its report into child residence and the Family Law Act on

The recommendations are extensive. Set out below are some of them:

- That there should be shared parenting in children's matters, except in "inappropriate cases" i.e. where there is entrenched conflict, family violence, substance abuse or child abuse.
- That children's relationships with their grandparents be directly taken into account in determining children's best interests.
- That a new government Family Law assistance service be established, enabling people to initially seek Family Law assistance at a "shop front" (e.g. possibly attached to a Medicare or Centrelink office).
- Parents be screened to determine if their matter is "inappropriate" and if so, provided with referral to Court if the matter is urgent, or to the Families Tribunal for investigation of allegations.
- That a Families Tribunal be established and it have the power to decide children's matters.
- That parties before the Tribunal have no right to legal representation.
- The Family Court's role be limited to cases involving entrenched conflict, family violence or child abuse.

The report also makes recommendations for significant reform of Child Support.

We will outline the recommendations further, in subsequent editions of the Flyer.

## BINDING PROPERTY AGREEMENTS

A couple that are about to marry or have married are able to document how any potential property division in the future will be determined by completing a Binding Financial Agreement. One such example of such an Agreement is a





A defacto couple wanting to document how any possible property division in the future will be determined can enter into a "Recognised Agreement".

The legal requirements for completing such documents are strict and independent legal advice should be sought.

### CHILD SUPPORT ASSESSMENT - TERMINATION PAYMENTS

Termination Payments often present a difficulty in determining Child Support Assessments. 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.

### CONTEMPT OF COURT - IMPRISONMENT

The Family Court recently imprisoned a husband for non-compliance with Court Orders.

After lengthy Property Settlement proceedings, including Applications for Discovery the Court found that the husband had not retained a valuable car collection. The husband had also failed to produce documents by way of discovery.

The failure to discover was the combination of a long series of failures by the husband to make proper discovery. The husband was imprisoned for four months.

### HOW CONFIDENTIAL IS COUNSELLING?

The Family Law Act requires the Government to publish an annual list of "approved Counselling organisations". As there is no publicly available list, it would seem that the list of Commonwealth funded organisations satisfies the requirement. If an organisation is not in that list the Counselling is not confidential under the Family Law Act. This means that the Counsellor's notes may be obtained by Subpoena.

### PROPERTY SETTLEMENT - EXPECTATION OF INHERITANCE

The Full Court of the Family Court recently considered a case where the husband 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 and that the contributions were equal, but made an adjustment of 40% in favour of the Wife for her future needs.

The Court specified that the factors were that the husband had an earning capacity of \$150,000 per year and had Superannuation of \$112,000, compared to the wife's \$37,000. 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.

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