



# 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:

- Re-Appointment as Child Representative
- Shared Residence - Relevant Factors
- New Court Fees
- Setting Aside a Property Settlement - Duress
- No Unsupervised Contact for Violent Father
- Family Flyer

## RE-APPOINTMENT AS CHILD REPRESENTATIVE

Mr Michael Lynch has recently been re-appointed for a further three (3) year term to the panel of Solicitors able to be appointed by the Court as a Child Representative.

Child Representatives are appointed by Order of the Court in complex cases. The criteria for such appointment includes factors such as, intractable dispute and proposed separation of siblings etc.

## SHARED RESIDENCE - RELEVANT FACTORS

The Court has recently considered in detail what it will take into account in looking at a potential shared Residence arrangement. It includes:-

- The parents capacity to communicate on matters regarding the child.
- The physical closeness of the two households.
- Are the homes close enough for the child to maintain friendships in both homes. Have the parties previously demonstrated that they can implement an equal shared Residence arrangement.
- Whether the parties agree on the child's day to day care issues, such as discipline, homework, health etc.
- The likelihood that the parties can compromise on areas of disagreement.
- Do the parents share similar ambitions for the child, e.g religious adherence, cultural identity and extra-curricular activities.
- Do the parties respect each other as parents.
- The child's age.
- The child's wishes.

The Court has stated that this list is not exhaustive

## NEW COURT FEES

As of the 1st July 2004, fees for the Family Court and Federal Magistrates Court have increased. The new fees are:-

### Family Court

- Form 1 (Application) - \$181.00
- Form 1A (Response) - \$181.00

### Magistrates Court

- Application for Divorce - \$288.00
- Application - \$115.00
- Response - \$115.00

## SETTING ASIDE A PROPERTY SETTLEMENT - DURESS

Setting aside a Family Court Property Settlement Order is difficult. Duress, is one of the limited grounds that the Court will consider.

In one recent case, the parties had been married for 20 years and had two (2) children. Following separation, the parties entered into Terms of Consent Order. The Terms of the Order were favourable to the Husband.

The Wife sought to set aside the Consent Order on the basis that the Husband suffered from a post-traumatic stress disorder from the Vietnam War. She stated that throughout the marriage he was overbearing and dominating towards her.

The Wife stated that after she left the family home the Husband harassed her, telephoning her and her new partner endlessly, at home and at work. This harassment did not end until the Wife obtained a Domestic Violence Order.

The Husband also involved the eldest son in the negotiation process.





Michael Lynch  
Family Lawyers

The Wife had one 20 minute conference with a lawyer before she signed the Consent Orders. The Trial Judge preferred the Wife's evidence and accepted medical evidence supporting her allegations about the Husband's mental health and behaviour.

The Full Court determined that the Husband's conduct was insufficient to establish duress. The Court held that it was not reasonably open to the Trial Judge to find that the Wife's will was overborne and that her consent was not a true consent.

A significant factor in this case was that the Wife had received legal advice, was living in a defacto relationship and had various means of support.

### **NO UNSUPERVISED CONTACT FOR VIOLENT FATHER**

The Court recently considered a case regarding Contact for two (2) children, aged four (4) and two (2) years.

The Parents had had a turbulent relationship, during which the Father was once charged with assaulting the Mother who had also obtained a Domestic Violence Order.

After separation, Interim Orders were ultimately made for the Father to have supervised Contact with the children. The Mother then suspended Contact because she felt it was having an unsettling effect on the children.

At Final Hearing the Mother opposed any Contact, based upon the alleged violence and abuse by the Father against one of the children and herself (including biting the child to stop him crying) and regular abuse of marijuana.

Prior to the Hearing the parties reached an agreement leading to the Father having unsupervised Contact. This included Undertakings by the Father that he would not consume alcohol or marijuana, nor use physical discipline on the children and would attend an Anger Management Course.

The Court refused to make the Orders requested by the parties on the basis that there would be an unacceptable risk to the children if unsupervised Contact took place. The Court cited studies carried out on the harmful effects of Domestic Violence on children.

The Court considered that the Undertakings provided by the Father were completely inadequate to address the risk of harm to the children from unsupervised Contact.

On the proposal to undergo an Anger Management Course the Court considered that the Father should have at least already attended such a Course and provided some evidence of the benefits derived from it and not just promise future attendance.

Furthermore, the Court found that the Father's behaviour required a more profound and therapeutic treatment than Anger Management.

Regarding the Father's drug use, the Court found the Father would need to demonstrate, by some objective measure, such as Controlled Pathology Analysis (i.e. drug testing) that he was no longer abusing drugs, before unsupervised Contact could be contemplated.

### **FAMILY FLYER**

If you know anyone who might like to receive the Family Flyer, forward the Flyer by clicking on the link below.

If you wish to unsubscribe at any time please click the "unsubscribe" link at the bottom of the Flyer.

**Contact details**  
Michael Lynch Family Lawyers

**Principal**  
Michael Lynch\*

**Senior Associates**  
Helen Bryden\*

**Associates**  
Emily Wood

**Solicitors**  
Elizabeth Millar

\*Queensland Law Society  
Accredited Family Law Specialists

**Telephone:** 07 3221 4300  
**Facsimile:** 07 3221 9454  
**Email:** law@mlynch.com.au  
**Web:** www.michaellynchfamilylawyers.com.au

**Address:** Level 6  
193 North Quay  
Brisbane Qld 4000

**Post:** PO Box 12027  
George St, Brisbane Qld 4003



Approved  
Law Society Mediator

Copyright © 2007

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.