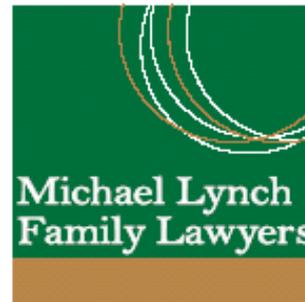


# family flyer



## 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:

- Website - New Articles
- What is Marriage?
- Defacto Property Settlements in the Family Court?
- Not Forcing Children Into Contact
- Principles of Property Settlement
- Service of a Subpoena
- Initial Contribution - What Is It Worth?

## WEBSITE - NEW ARTICLES

Our website at [www.michaelynchfamilylawyers.com.au](http://www.michaelynchfamilylawyers.com.au) contains a wealth of information.

Not only does it include a complete copy of our book "A Guide to Family Law - everyday answers", it also includes all previous issues of the Family Flyer.

Nine (9) new Articles have now been added.

We invite you to visit us.

## WHAT IS MARRIAGE?

On the 16th of August, 2004 the Federal Government (for the first time) amended the Marriage Act giving a statutory definition for "marriage".

In providing the definition the Government clarified that gay marriages made abroad must not be recognised in Australia.

The new definition of marriage is:

- "Marriage: means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life".

## DEFACTO PROPERTY SETTLEMENTS IN THE FAMILY COURT?

The Federal Government has prepared draft legislation for debate when Parliament next sits that will give effect to the reference of powers from the States and Territories to the Commonwealth, to enable defacto Property Settlements to be dealt with by the Family Court.

## NOT FORCING CHILDREN INTO CONTACT

The Full Court of the Family Court recently considered a case where a Father sought a Contravention Order against a Mother for the Mother's contravening of a Child Contact Order.

The facts were:

- the Court Order for Contact had been in operation for over a year and allowed the Father Contact on alternate weekends and intervening Friday nights, plus half school holidays and half Christmas Day;
- the Father argued that the Mother should have continued to make the child available for the weekend Contact during the Mother's school holiday periods;
- the Father did not have Contact on Christmas Day and the Mother stated that she had actively encouraged Contact but the child refused to go.

The Full Court found that:

- The Father's argument that weekend Contact should occur during the Mother's school holidays was absurd and confirmed that as a matter of common sense, daily and alternate weekend Contact is suspended during school holiday periods.
- With respect to the child refusing to go on Contact the Court stated "although a Resident Parent" (as the Mother is) has a positive obligation to provide Contact for a child to the other Parent, it is not reasonable that that Parent forcibly put a child in a position where they are resisting.





- The Court found that it would have been unreasonable for the Mother to have taken further steps to require the child to attend Contact.
- The Father's Appeal was dismissed.

### INITIAL CONTRIBUTION - WHAT IS IT WORTH?

The Full Court of the Family Court has recently considered the significance to be given to parties' initial contributions in determining a matrimonial Property Settlement. The facts of the case involved:

- A marriage of 10 years;
- The Husband brought into the relationship \$226,000.00 and the Wife \$10,000.00;
- 4 years into the relationship the couple purchased a property for \$235,000.00 to which the Husband contribution \$200,000.00 and the Wife \$10,000.00;
- At separation the entire matrimonial pool was worth \$320,000.00, of which the house represented \$260,000.00.

The Trial Judge made a 5% adjustment in favour of the Husband for his initial contribution.

The Husband appealed and the Full Court granted the Husband's Appeal stating:

- In considering the weight to be attached to the initial contribution regard must be had to the use made by the parties of that contribution (in the present case, that use was a substantial contribution to the purchase price of the home);
- The Husband's initial contribution was revised to an adjustment of 20%.

### PRINCIPLES OF PROPERTY SETTLEMENT

The general rule in dealing with matters of matrimonial Property Settlement as established by a long line of authorities is that the Court should:

- identify the assets and liabilities and their value at the time of Trial;
- determine the respective contributions of both financial, non-financial, direct and indirect nature during the course of the relationship to Trial (pursuant to Section 79(4)); and
- consider any relevant future needs (i.e. Section 75(2) factors).

As a final over-arching principle, the Court needs to be satisfied that the nature of the Order is just and equitable to the parties.

### SERVICE OF A SUBPOENA

A Subpoena for production of documents must be served by hand at least seven (7) days before the Court date. The named person must be served with the Subpoena, the Subpoena information brochure and conduct money.

**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



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