



# 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:

- Getting a Will - Making it Easier
- Your Will - Special Offer
- Nullity or Divorce?
- Figures on Domestic Violence - Qld
- Does Final Mean Final?
- New Laws for Splitting Annuities
- Merry Christmas!

## GETTING A WILL - MAKING IT EASIER

The majority of Australian's don't have Wills.

This is particularly concerning when you consider that in not having a Will you have no say in many crucial decisions, including:

- who should care for your children; or
- how your property gets distributed.

To help remove the mystery and simplify the process of getting a Will, we have developed a short (1 page) form on our website for you to set out your basic Will details.

It is your choice how much detail you provide, but once completed you can automatically (e-mail) submit the details to us. On a no obligation basis to you we will then contact you to discuss the details and advise you of the cost of immediately preparing your Will.

Most Wills are standard and have a set cost of \$275.00 (including GST).

## YOUR WILL - SPECIAL OFFER

To ensure you achieve your New Year's resolution of getting your new Will prepared, or getting your old Will up to date, we are making a special offer.

Until the end of January, 2005 the cost of a standard Will is only \$220.00 (including GST).

Now you have no excuse! Visit our website at [www.michaelynchfamilylawyers.com.au](http://www.michaelynchfamilylawyers.com.au) and submit your details.

## NULLITY OR DIVORCE?

A divorce is legally defined as a dissolving of a marriage. The legal requirement for a divorce is 12 months separation.

A nullity of a marriage, is totally different.

A nullity is an Order of the Court that a marriage never existed.

Court Orders for nullity of a marriage are rare as there are only limited circumstances in which they can occur. Besides fundamental issues, such as duress or fraud, it usually requires that the marriage ceremony has been conducted incorrectly or that the person conducting the ceremony is unqualified.

## FIGURES ON DOMESTIC VIOLENCE - QLD

A recent Queensland Police Annual Report shows that in the last 12 months Queensland Police responded to nearly 43,000 domestic violence calls, equal to 5 an hour.

75% of these calls were determined to be genuine calls for help.

The Report showed that there has been a dramatic increase in the number of Domestic Violence Orders made since the Queensland Domestic Violence legislation was amended in March, 2003. The amendments allow anyone in intimate, family or informal care relationships to take out Domestic Violence Orders.

Previously, only people who were married or in defacto relationships could apply for the Orders.



## **DOES FINAL MEAN FINAL?**

The Family Court recently considered an Application by a Father to vary an existing Final Court Order regarding his son. The facts at Trial were:

- The Parents lived together for 5 years, had a 5 year old child and separated in 2001. The child then lived with the Mother.
- The parties had previously been involved in a Family Court dispute regarding the child;
- In September, 2003 the parties signed Final Terms of Consent Order resolving the matters in issue between them;
- The Court Order provided that the child would live with the Mother and the Father would have Contact;
- The Order set out a detailed regime of Contact including, alternate weekends, school holidays, Christmas, birthdays, Mother's Day, Father's Day and telephone contact and other specific Orders.

In June, 2004 the Father filed a new Application seeking to vary some of the Orders that were made in the earlier Order. The Orders he sought included:

- day to day care of the child;
- having the Father's surname on the child's Birth Certificate;
- varying the Contact Orders so the Father's Parents may have Contact with the child;
- defining the times of Contact; and
- varying the Order for telephone contact to include e-mail or webcam contact.

The Mother agreed with the Orders regarding day to day care and change of name however, not the variation of Contact

The law regarding variation of Final Court Orders is well established and provides that before a Court re-opens Parenting Orders it must be satisfied that there has been such a change in circumstances that re-opening the question is justified. The Court found that the threshold requirements for such a change had not been met. The Father had not shown any change of circumstances sufficient to justify varying the arrangements for parental responsibility or Contact.

The only variation of the Orders made by the Court was slight and that was so as to provide clarity in order to avoid the risk of Contravention proceedings in the future.

## **NEW LAWS FOR SPLITTING ANNUITIES**

A Bill to allow certain annuity products to be split upon marriage breakdown in the same way as Superannuation has been passed by Federal Parliament.

Annuities are a financial investment product designed to provide retirement income and represent about 2.3% of all Superannuation assets.

The Federal Government has stated that the amending legislation will provide certainty and consistency in the treatment of these Superannuation-type products and will enable more flexibility in the settlement of property division when marriages break down.

## **MERRY CHRISTMAS!**

We advise that this office will be closed from 12.00pm Thursday, 23rd of December, 2004 and will re-open at 8.30am on Tuesday, 4th of January, 2005.

Seasons Greetings and Best Wishes for the New Year from all of us at Michael Lynch Family Lawyers.

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Approved  
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