



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:

- What is a Child Representative?
- A No Contact Order
- Childrens Passports - New Rules
- Binding Financial Agreements - What Are They?

WHAT IS A CHILD REPRESENTATIVE?

A Child Representative is an experienced Solicitor who is appointed by the Court to represent a child.

They are not appointed in every case.

The Full Court of the Family Court has set out what the role of the Child Representative is and what criteria applies for that appointment.

The Child Representative should act as an "honest broker" between the parties. The criteria for appointment broadly involves cases, where;

- There are allegations of child abuse
- There is intractable conflict between the parents
- The child is alienated from one or both parents
- There are real issues of cultural or religious difference affecting the child
- The sexual preferences of either or both of the parents are likely to impinge on the child's welfare
- The conduct of either or both of the parents is alleged to be anti-social to the extent that it seriously impinges on the child's welfare
- There are issues of significant, medical, psychiatric, or psychological illness in relation to either party
- Neither parent seems a suitable custodian
- A child of mature years is expressing strong views, the result of which would be to change a long standing custodial arrangement or deny Contact
- A child is to be permanently removed from the jurisdiction
- It is proposed that siblings be separated, or

- (In residence proceedings) neither of the parties are legally represented

A NO CONTACT ORDER

The Court recently considered a Father's Application for Contact to his (3) children, aged 12, 9 and 8 years.

The facts were:

- The parties married in India in 1986, separated in May 2000, divorced in October 2001, although the parties lived under the same roof until July 2001.
- The Mother was the resident parent
- The Mother alleged a history of verbal and physical abuse by the Husband. Domestic Violence Orders were obtained in September 2002
- The Mother stated her marriage was arranged by her family and she was estranged by her family since separation.
- The Father said that he had had Contact with the children 8 times during 2003. The Mother said that Contact had only occurred 3 times over the 2002/2003 period. Furthermore, she said the children would return from contact concerned and distressed and it was difficult to settle the children's behaviour down following these periods.
- The Mother said the children did not want to see their Father.
- In 2003 the Mother re-married and applied to the Court to change the children's surname.
- The Father had not had contact with the children for 18 months, prior to the Hearing





Michael Lynch
Family Lawyers

The Court found that the Mother did not recognise a benefit in the relationship between the children and their natural Father. This was reflected by the Court Counsellor stating that "the children had adopted their mother's attitude showing a polarised disdain of their Father and their need to vehemently reject him".

The Family Report Writer further stated that "she did not believe it would be healthy for the children to have Contact that was forced and she was at a loss to see how such Contact could work in the best interests of the children". Her view was the same in respect of each of the children.

It was also noted that the children would not accept any gifts offered to them by the Father and they responded to him in a "curt, dismissive, monosyllabic way and avoided eye contact".

The conclusion reached was that "whatever may have been the impetus, the level of hostility standing in the way of contact now makes it difficult to make contact even operational".

The Court Ordered that it was in the children's best interests that each of the children have Contact with the Father only in accordance with the children's expressed wishes. Furthermore, that the Father only be permitted to send parcels and letters to the children and the Mother must ensure that the children acknowledge in writing to the Father the receipt of such parcels or letters.

CHILDRENS PASSPORTS - NEW RULES

On the 1st July 2005 the new Australian Passports Act came into force.

It provides that,

- Children cannot be included in an adults passport
- Every infant must be issued with their own passport

- Before a passport can be issued to a child the written consent of all people with parental responsibility for the child is required (i.e. both parents)

The Passports Office has the discretionary power to issue a passport for a child if it is satisfied there are "special circumstances". In exercising this discretion the Department Officers will make enquiries which may include, writing to the other person, advising them an Application has been lodged and seeking their consent.

Where one parent believes a passport may be issued without their consent they can lodge a Child Alert with the Federal Police and seek a Court Order to restrain the other parent from removing the child from Australia.

BINDING FINANCIAL AGREEMENTS - WHAT ARE THEY?

In 2000 the Family Law Act was amended to introduce "Binding Financial Agreements".

The Agreements are not filed in the Court, but are enforceable, provided they are completed correctly.

The introduction of Binding Financial Agreements enables married couples to enter into Agreements before marriage (i.e. prenuptial agreements), during a marriage or after separation.

There are strict requirements as to how these documents are to be prepared and finalised therefore Specialist Family Law advice should be obtained when considering these documents.

For more information, visit us at www.michaelynychfamilylawyers.com.au

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.michaelynychfamilylawyers.com.au

Address: Level 6
193 North Quay
Brisbane Qld 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



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