



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:

- Family Law Act amendments - equal shared parental responsibility
- A.C.T to Legislate for Civil Unions
- What is Spouse Maintenance?
- Child Support Assessment - new partners income
- Defacto Relationship Law Update
- Family Relationship Centres - Update
- Children's Case Program
- When can a Divorce Application be made?

FAMILY LAW ACT AMENDMENTS - EQUAL SHARED PARENTAL RESPONSIBILITY

Significant changes to the Family Law Act (proposed by the Federal Government) were presented to Parliament on 8 December, 2005 and are likely to be debated in the Autumn sittings.

Some of the major changes include:

- Removing the terms "residence" and "contact";
- Inserting a (presumption) starting point of equal shared parental responsibility;
- Requiring the Court to consider whether children spending equal time with both parents is practical and in the best interests of the child and if not, then to consider substantial and significant sharing of time;
- Making the rights of children to know their parents and be protected from harm the primary factors when deciding the best interests of the child;
- Better recognising the role of grandparents in raising children after separation; and
- Requiring couples to make a genuine effort to resolve their dispute before applying to a Court for a parenting Order.

A.C.T TO LEGISLATE FOR CIVIL UNIONS

The ACT Government has announced that it will draft legislation to provide for Civil Unions in the ACT, paving the way for same sex couples to have their relationships formally recognised for the first time.

WHAT IS SPOUSE MAINTENANCE?

Following separation three financial matters should immediately be considered, i.e property division, spouse maintenance and child support.

Spouse maintenance is provided for in the Family Law Act. There is no formula to apply in calculating it.

A Spouse maintenance entitlement will exist if there is a (significant) income gap between the parties and the lower income earning party does not have the capacity to meet their own (reasonable) financial "needs". If such a situation exists then, the Court will consider the financial "capacity" of the high income earner to meet the (reasonable) financial "needs" of the low income earner.

Such payments do not continue forever, but for such time as is appropriate for the lower income earning party to financially re-establish themselves, through retraining and/or employment.

Spouse maintenance is only provided for in the Family Law Act and is therefore not available to separated parties of a defacto relationship.

CHILD SUPPORT ASSESSMENT - NEW PARTNERS INCOME

A Mother has successfully sought a small increase in the child support payments made by the Father of her child, on the basis of his new partner's income.

The facts were:

- The Father was assessed to pay \$30 per week in child support.
- The Father remarried and had 2 children with his partner, who worked full-time.





- The Mother sought an increase in the amount of child support to be paid on the basis that the Father had the additional resource of his Wife's income.

The Government has recently indicated that the successful organisations to operate the centres should be announced in March 2006.

CHILDREN'S CASE PROGRAM

Two years ago the Family Court introduced a new program for resolution of children's residence and contact cases. The Children's Cases Program commenced on a trial basis in selected Registry's around Australia.

On 1 January, 2006 the Court announced that the program is anticipated to be fully operational in all Registries by the end of 2006. It is contemplated that it will commence in Brisbane in mid-2006.

The Children's Cases program introduces a fundamental shift in the way in which Courts address disputes in children's matters, by moving away from an adversarial process towards a mediation process managed by a Judge.

WHEN CAN A DIVORCE APPLICATION BE MADE?

A Divorce Application cannot proceed until there has been 12 months separation.

There is no time requirement prior to the commencement of an Application for property settlement or children's matters.

In most cases, once separation has occurred parties will negotiate and seek to finalise property settlement and children's arrangements. More often than not, those matters are finalised within 12 months of separation, (i.e before the Divorce Application is made).

If parties are slow however, in addressing a property settlement, a Divorce Application can proceed and be finalised before a property settlement. In that case, the law provides that no property settlement Application can be filed in the Court (without consent of the Court) more than 12 months after the Divorce Order is made.

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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Law Society Mediator

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The Court upheld the Agency's decision (to increase) stating:

- The Child Support Act creates a duty on parents to maintain their children equally so that the duty to maintain additional children does not reduce an obligation to children from a previous relationship;
- The children of the Father's second relationship enjoyed better financial support than his first child; and
- The Mother demonstrated "special circumstances" and the Father's child support obligation was increased to \$50 per week.

DEFACTO RELATIONSHIP LAW UPDATE

Legislation is planned to be introduced into Federal Parliament in the 2006 Autumn sittings, (regarding amendments to the Family Law Act) to implement the referral of (legislative) power to the Commonwealth by some States and Territories on financial matters arising out of the breakdown of heterosexual defacto relationships.

Further to the referral of power, the Attorney-General's department has reported that draft Federal legislation regulating defacto relationship property division (nationally, instead of State by State) is expected in the second half of 2006.

FAMILY RELATIONSHIP CENTRES - UPDATE

The Federal Government has previously announced the commencement of a number of Family Relationship Centres across Australia.