



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:

- Big Changes - Coming Soon!
- Newsflash - Special Edition
- Some Recent Statistics....
- Deadline for filing Consent Orders
- Domestic Violence Orders
- How are "gifts" determined in a Property Settlement
- Children's attendance at religious event

BIG CHANGES - COMING SOON!

On 1 July, 2006 the most significant changes in Family Law in the last 30 years shall commence. Over the next few editions of the Family Flyer we will outline those changes, briefly they include:

- The Shared Parental Responsibility Bill; this will introduce a change in terminology in Parenting Orders. There will no longer be "residence and contact" Orders, it will now be "lives with" and "spends time with and communicates with".
- Family Relationship Centres; these advice Centres will be the first "port of call" for any cases (save for some exceptions) that may then proceed to Court.
- The Children's Cases Program; there will be a move away from the adversarial Court process towards a mediation process managed by a Judge.
- Child Support; this is the first step in a 3 step series of changes. It includes strengthening the Agency's ability to investigate the capacity of contact parents to pay, reduce the maximum Child Support threshold and broaden the scope for non Agency payments.

NEWSFLASH - SPECIAL EDITION

In the coming weeks we will issue a "special edition" Family Flyer focussing on the dramatic effect that the Shared Parental Responsibility amendments to the Family Law Act will have for everyone involved in Family Law after 1 July, 2006.

The effect of these amendments cannot be underestimated. It seems likely to result in increased time in Contact Orders and making relocation Applications for Resident parents harder.

SOME RECENT STATISTICS....

- The average length of second marriages in Australia is 14.3 years whereas the average length of first marriages is 8.5 years.
- 70% of couples live together before marrying, this is up from 5% in the 1960's.
- 20% of men in the 18-34 age group do not intend to have children.
- The national birth rate average is 1.75 children.

(MIAESR)

- More than 15% of people applying for Child Support are men who have full-time care of their children. This is an increase of more than 2% since the year 2000.

(CSA)

DEADLINE FOR FILING CONSENT ORDERS

With the imminent changes to the terminology in Parenting Orders on 1 July, 2006, the Family Court has advised that Friday, 9 June, 2006 is the National filing deadline for any "Applications for Consent Orders" seeking Parenting Orders using the current terminology.

DOMESTIC VIOLENCE ORDERS

The Domestic and Family Violence Protection Act in Queensland provides safety and protection for people in domestic relationships who are experiencing domestic and family violence.

Domestic violence is defined as "wilful injury, wilful damage (to property), intimidation or harassment, indecent behaviour or a threat to commit any of the mentioned acts". It also includes asking someone else to do this.





Michael Lynch
Family Lawyers

The Act defines domestic relationships as "spousal relationships, intimate personal relationships, family relationships and informal care relationships".

Domestic Violence Orders aim to prevent domestic and family violence from occurring by restricting the behaviour of the person committing the abuse. This is usually done by imposing a distance provision. It is possible however for an Order to be made (to stop the violence) but for the people involved to continue to have contact with each other and to live in the same household (if that is what they want).

For further advice contact us at www.michaellynchfamilylawyers.com.au.

HOW ARE "GIFTS" DETERMINED IN A PROPERTY SETTLEMENT

While it has been said that parents do not usually have an intention as to who they intend to benefit when they make gifts to their married children, it is essentially the Courts view that if the motivating circumstances leading to the gift was the parent/child relationship, the gift may be regarded as the contribution of the son or daughter and not of the spouse.

If a party claims that the gift was for the benefit of the whole family and should be regarded as a joint contribution by each party, that party must provide evidence to support that argument and clearly identify that position so it can then be determined at Trial.

CHILDREN'S ATTENDANCE AT RELIGIOUS EVENT

The Federal Magistrates Court recently considered an Application by a Mother seeking to prevent the Father from taking the children to Jehovah Witness meetings until they were 10 years old.

The facts were:

- The parties were married for 6 years.

- At the Hearing the children were aged 4 and 6 years.
- A Consent Order was made in 2004 that the children reside with the Mother and have contact with the Father each alternate weekend. Included in the Order was a provision that the Father be prohibited from withdrawing his consent to any medical treatment including blood transmissions, for the children.
- The Husband had remarried, his new Wife was a Jehovah's Witness and the Father became a member.
- The Mother described herself as Catholic, although not strongly religious.
- The Father provided material to the Mother about his belief and invited her to attend a meeting. The Mother did not attend.
- The Mother said she wanted the children to grow up to make their own choices. The relationship between the Mother and the Father was a good one, the only issue was the children's attendance at the meetings.

The Court determined that:

- The evidence did not show a significant risk to the children.
- Court's do not decide whether one religion is preferable to another.
- This is not a case where one parent alleges the other has unbalanced and extravagant beliefs that would damage the child. The Father has shown that he recognises their right to make their own decisions.
- The Father has a close relationship with the children. It is not possible to separate the Father's beliefs from his relationship with the children. It is inevitable that they will be exposed to his beliefs and learn about them.

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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