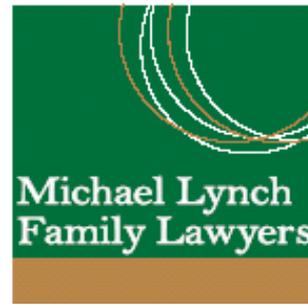


# family flyer



### 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:

- New Location
- Marriage lasts longer
- Pets in Family Law
- Enrolment for School
- Changes in Child Support - Continue
- Paternity Fraud

### NEW LOCATION

The move to our new premises is now completed. We are delighted with the additional space and client facilities that the new North Quay office provides.

We are now next door to the Family Court on North Quay. Our address and contact details are:

Level 6, 193 North Quay  
 Brisbane Qld 4000  
 (Cnr North Quay & Herschel Street)  
 PO Box 12027, George St, Qld, 4003  
 Tel: (07) 3221 4300  
 Fax: (07) 3221 9454  
 Email: [law@mlynch.com.au](mailto:law@mlynch.com.au)

### MARRIAGE LASTS LONGER

A recent study by the Australian Institute of Family Studies showed that:

- The Australian divorce rate has stabilised however, the number of defacto couples who separate is increasing; and
- In the 1970's, couples in a defacto relationship were 63% more likely to marry however, in the early 1990's approximately 43% of defacto couples were likely to marry.

### PETS IN FAMILY LAW

The Family Law Act has no specific provisions as to what should happen with family pets upon the breakdown of a couples relationship.

The Family Law Act in Australia sees pets as "property".

Thankfully, the issue of pet ownership is usually resolved by agreement between the parties going through a separation, and not the Court.

It is probably no great surprise that in the United States there have been numerous Court Hearings regarding pet ownership. The law in the United States is not applicable in Australia.

As odd as it may seem to some, for couples who are entering a relationship and considering a Pre-Nuptial Agreement if there is a much-loved family pet, its future ownership may be a worthwhile consideration in the preparation of such an Agreement.

### ENROLMENT FOR SCHOOL

With the start of a new school year it is timely for schools to be aware of their position regarding accepting new student enrolment applications, where parents have separated.

Under the "Shared Parenting" amendments to the Family Law Act (which commenced on 1 July 2006) despite a couple being divorced or separated, both parents have complete parental responsibility for their child, jointly and severally.

This means that either parent can make the decision to enrol their child at a school independently of the other parent. Accordingly, the signature of only one parent to the enrolment application is all that is necessary.

From a practical point of view however, it is in the schools interests to ensure both parents consent to the enrolment of the child at the school.

It is therefore worthwhile that schools advise parents that the child will not be enrolled unless either, they both sign the enrolment form or the school obtains a copy of the Court Order or signed Parenting Plan that specifies which parent has the right to choose the child's school.

### CHANGES IN CHILD SUPPORT - CONTINUE

Stage 2 of the new Child Support changes commenced on 1 January 2007.

Stage 1 of the radical Child Support overhaul commenced on 1 July 2006 and included:

- The maximum annual income threshold for the paying parent being reduced from \$139,000 to \$104,000;





- Minimum payments being increased from \$5 per week to \$6 per week; and
- Fairer arrangements introduced for assessing the capacity of parents to earn income.

- In 1995 the Husband learnt that the second child may not have been his as a result of a sexual relationship the Wife had had with another man during the marriage however, that she had kept secret from the Husband;

**Contact details**  
Michael Lynch Family Lawyers

**Principal**  
Michael Lynch\*

**Senior Associates**  
Helen Bryden\*

**Associates**  
Emily Wood  
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



Copyright © 2007

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.

- The Stage 2 changes include:
- Independent reviews of Child Support Agency decisions being done by the Social Security Appeals Tribunal; and
  - The Court now having power to enforce Child Support debts.

- The Husband fell into substantial Child Support arrears over the following years;
- The parties divorced in 1998 and in 2000 DNA testing established that the Husband had fathered neither the second nor the third child;

- The Husband successfully applied to the Child Support Agency and was "credited" for past over-payments of Child Support in respect of the 2 children who were not his. He was therefore not out-of-pocket regarding Child Support payments;

- In 2001, the Husband commenced civil Court proceedings against the Wife claiming damages for personal injury (including anxiety and depression, as well as financial loss);

- The County Court awarded the Husband \$70,000 (consisting of \$30,000 for pain and suffering, \$35,000 for past economic loss and \$5,000 for future economic loss);

- The Court of Appeal reversed that decision on the basis that the Husband had failed to establish the essential elements of "deceit";

- The matter was appealed to the High Court where it was unanimously determined that the Husband was not entitled to civil damages.

Even though civil damages were not available, the question remains open however as to whether "paternity fraud" could be an element to be considered in a matrimonial property settlement.

Stage 3, (which will be the most significant change in the series of Child Support changes) is scheduled to commence in July 2008 and will involve a new Child Support formula being introduced.

## PATERNITY FRAUD

The High Court has recently considered a Husband's Application for damages for (alleged) personal injury (by way of anxiety and depression) resulting from his former Wife's fraudulent misrepresentation regarding the paternity of 2 of their 3 children.

The facts were:

- The parties married in 1988;
- During the marriage the Wife had 3 children and the Husband was present at the birth of each. The Father was noted on the Birth Certificates as the Father of each;
- The Husband had no reason to suspect that he was not the Father;
- The couple separated in 1992 and the Husband paid Child Support for the children pursuant to a Child Support Agency assessment;