



family flyer



Issue # 90

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 De facto legislation Coming Soon!
- Podcast Coming Soon!
- Grandparents and the *Family Law Act*
- Child Support – Retrospective Departures
- Swapping Primary Parental Care
- Enjoyed this Newsletter? Forward it to a Friend!

NEW DE FACTO LEGISLATION COMING SOON!

As we have previously mentioned (edition 88), there are new laws coming that will dramatically change how property division will be determined for de facto couples.

The new laws have been approved by the Federal Government, however the laws are not yet operative. The laws must commence by no later than May 2009, although the Attorney-Generals Department indicates it may commence in March 2009.

The date of separation for a de facto couple will determine what law applies to their situation.

The current law and the new laws are significantly different and will affect some people more than others.

We urgently recommend that anyone in a de facto relationship that is considering getting legal advice – obtain it, NOW!

To discuss your situation in a fixed-fee initial consultation, call us NOW on 3221 4300. Don't delay!

PODCAST COMING SOON!

Learn helpful tips about Relationship law and surviving separation from our PODCAST - coming soon to our website in early February 2009.

Keep a look out for the new Podcast – we will be the first Family Law firm to do this!

The Podcast will include easy-to-understand tips on divorce, separation and a number of other issues. The recorded interview is with Accredited Family Law Specialist, Michael Lynch, who has over 18 years

experience in Family Law. This will make useful advice, only a click away.

GRANDPARENTS AND THE FAMILY LAW ACT

Grandparents of a child are able to file an Application seeking a Parenting Order in relation to their grandchild (Section 65C).

CHILD SUPPORT – RETROSPECTIVE DEPARTURES

From 1 January 2007 a departure from a Child Support Assessment can only be made for a period of up to 18 months prior to the Application (Section 98S of the *Child Support Act*), unless a Court grants leave, in which case a retrospective change may be made for up to 7 years before the Application was made depending on the specific period for which the Court has granted leave.

SWAPPING PRIMARY PARENTAL CARE

The Court recently had to consider whether it was in the best interests for 2 children to change their primary residence from one parent to the other parent.

Facts:

- The Mother and Father lived together for 4 years and had 2 children, aged 5 and 3 years.
- During the relationship, the Father worked and the Mother was the primary carer for the children.



- The Mother wanted to return to the workforce, so before the separation she asked her first (former) Husband whether he would look after her younger children, as he already cared for her 2 eldest children.
- When the children were aged 3 years and 11 months old the parents decided to move to a new flat however, the Mother told the Father she was not moving with them and he should look after the boys.
- Since the parents had separated, the children had primarily lived with their Father.
- The Father gave up his full-time job and became primary carer of the children.
- There were months where the Mother did not see the children or saw them infrequently. Over the past year, however, the Mother had spent time with the children regularly.
- 2 years after separation, the Mother proposed that the children live with her. The Father opposed this.

Court Findings:

- The Father had been the children's primary carer for 2 years and the children were used to being in the Father's primary care.
- It was not ideal for the Mother to take on primary care of the children as she lived in a 1 bedroom flat, whereas the Father lived in a 3 bedroom flat. The Mother also worked evening shifts.

- If the children moved to live with their Mother, it would be a substantial change to their daily routine.
- The Mother left her first 2 children in the care of her first Husband while she went away for 6 months.

Court Order:

- The children were doing well in the Father's care and the Father was available to care for them during the day and at night.
- It was Ordered that the Father continue to be the children's primary carer and the Mother have the children during the day Wednesday, if she worked evenings or overnight Wednesday to Thursday, if she worked day shifts.

ENJOYED THIS NEWSLETTER? - FORWARD IT TO A FRIEND!

Sharing up-to-date information in Family Law has never been easier. You can select any edition of the Family Flyer online and forward it instantly to a friend.

If you have comments regarding the Family Flyer, whether it is in response to articles, or to provide suggestions for new articles, we'd love to hear from you. Please email us by visiting www.mlfl.com.au/contact.

Issue # 90

Contact details

Michael Lynch Family Lawyers

Principal

Michael Lynch*

Senior Associates

Helen Bryden*

Associates

Kirstie Colls

Elizabeth Millar

Solicitors

Amelia Gaffy

Leanne Schmetzer

*Queensland Law Society
Accredited Family Law Specialists

Telephone: 07 3221 4300
Facsimile: 07 3221 9454
Email: law@mlynch.com.au
Web: www.mlfl.com.au

Address: Level 6
193 North Quay
Brisbane QLD 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



Copyright 2008

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for a 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.