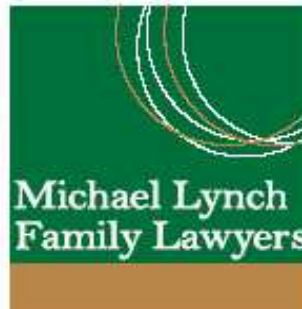




family flyer



Issue # 91

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:

- Plenty of Valuable Tips!
- Podcast
- Paternity Issues and the Child Support Agency
- Family Violence and the *Family Law Act*
- Who Has a Right to Spend Time With a Child?

PLENTY OF VALUABLE TIPS!

This year launches an exciting new addition to the fortnightly Family Flyer.

Not only will we continue to provide you with up-to-date topical and interesting news regarding Family and Relationship Law, but added to that, each edition will contain a link to a more detailed article on our website. The articles will provide valuable ‘tips’ on topical and challenging areas current in Family and Relationship Law.

We are excited to provide this added FREE service to you and trust it will prove to be of valuable assistance to you with any questions that you may have during the year.

NEW: PODCAST LAUNCH!

Learn tips about Relationship Law and surviving separation from our new FREE downloadable Podcast coming to our website on 3, February 2009.

We are the only Family Law firm to provide this added service.

The Podcast will include easy-to-understand tips on divorce, separation and a number of other issues. The audio interview is with Accredited Family Law Specialist, Michael Lynch, who has over 18 years experience in Family Law. More interviews are to come, with useful advice and suggestions only a click away.

PATERNITY ISSUES AND THE CHILD SUPPORT AGENCY

When a separated parent wants to register an application with the Child Support Agency, if there is insufficient evidence of parentage then the Agency will refuse the Application.

If the Agency accepts the Application but the assessed party disputes it, then that matter must be resolved by the Court.

Paternity disputes are determined by the Court.

FAMILY VIOLENCE AND THE FAMILY LAW ACT

Family Violence is a serious matter at any time, however it has special legal significance when it arises between a couple that has separated.

In Queensland, the Domestic Violence Protection legislation provides a wide definition for what constitutes “domestic violence”. It includes not only physical violence but also damage to property, intimidation and harassment and the threat of such matters.

Domestic Violence Orders are made in the Queensland State Magistrate Courts on a regular basis and the majority of these are made without a contested final hearing. Most are finalised “by consent” on a “without admission” basis.

Under the *Family Law Act*, “Family Violence” is the only exception to the presumption of shared parental responsibility in the determination of children’s arrangements.

If the Family Court finds that Family Violence exists then it is not required to proceed through the compulsory consideration of “equal time” or “significant and substantial time”.

The definition of “Family Violence” in the *Family Law Act* imposes a higher threshold test than that required under the State Domestic Violence legislation. The *Family Law Act* imposes an objective test (i.e. determination by a “reasonable person”).



The *Family Law Act* definition is therefore not satisfied simply by the existence of a Domestic Violence Order.

Cases of Family Violence must be considered extensively and early in any separation. For further assistance contact us on (07) 3221 4300.

WHO HAS A RIGHT TO SPEND TIME WITH A CHILD?

A number of difficulties arise when parents raise a child that is only the biological child of one of the parents and the non-biological parent goes to Court to continue contact with the child. The Court recently had to consider the rights and obligations of a parent and the other person in such a situation:

Facts:

- The Mother was the biological parent of the daughter, aged 8. The biological Father of the child had not been involved in her life.
- The Mother and her partner had been in a de facto relationship for 5 years and commenced the relationship when the child was 8 months of age. The partner became the Father figure of the child.
- The child called the partner 'daddy' and had the partner's surname at day care.
- The couple had separated and by the time of the trial the partner had married.
- The Mother did not want the partner to have anything to do with raising her child.

- The child said she did not want to spend any time with the Mother's former partner.

Court Findings:

- The Mother's partner should not be regarded as a parent, as under the *Family Law Act* a parenting order may be applied to a parent, which is defined as a biological parent.
- The definition of a step-parent provides that the partner had to have married the parent of the child to be regarded as a step-parent, in this situation the partner was in a de facto relationship.
- Any benefit that the child might have out of an ongoing relationship with the partner would be outweighed by the stresses involved, as the Mother was unwilling to facilitate any relationship between the child and the partner.

Court Order:

- The application for parenting Orders was dismissed as it would not be in the best interests of the child.
- The applicant could send the child cards on occasions, however no Orders were made that required the Mother to provide any cards to the child. Such an Order would be unenforceable.

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