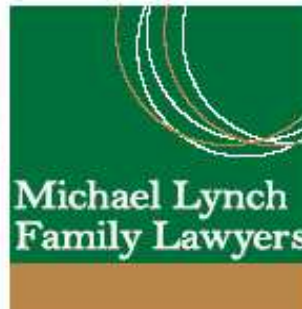


# family flyer



Issue # 134

## 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 Seminar Series
- “Close-up” Edition
- Recording Phone Conversations
- Part 2: Changing Residence
- Declaration of a Defacto Relationship

## NEW SEMINAR SERIES!

Starting Tuesday 26 October, Family Law Specialist, Michael Lynch will be presenting a NEW Public Seminar Series – “Family Law – Explained”.

This is a – **first time** – 2 hour presentation that will provide easy-to understand information about property, parenting and other Family Law issues. Don’t miss it!

Each seminar will provide you with additional information packs and an opportunity to ask questions about any Family Law concerns. For information valued at over \$800 – the attendance cost is ONLY \$30! (Payable at the door).

Be quick – only limited numbers! Call 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au) to book your seat at one of our seminars:

- **Sunnybank** – 6-8pm, Tuesday, 26 October - Palermo Centre, Mains Road, Sunnybank.
- **Redcliffe** – 6-8pm, Wednesday, 27 October - Redcliffe Leagues Club, Cnr Klingner & Ashmole Roads, Redcliffe.
- **Victoria Point** – 6-8pm, Thursday, 28 October - Redland Bay Golf Club, North Street, Redland Bay.

## “CLOSE-UP” EDITION

The Court often refers to the “presumption of shared parental responsibility” – What does this mean? What circumstances can take this presumption away? Find out more in [“Uncovering Parental Responsibility”](#).

## RECORDING PHONE CONVERSATIONS

Most people don’t think twice about whether recording a phone conversation is legal and whether it can in fact be used in Court, as evidence. There are laws which prohibit intercepting telephone conversations, however generally an external recording device used to record telephone conversations of which a person is a party to, will not be illegal. These phone recordings are admissible in Court as evidence, provided they weren’t obtained by intercepting a phone line.

It is recommended, however, that if a parent wishes to record conversations between themselves and the other parent or between the child and the other parent, they inform the other parent that the conversation is going to be recorded. This will eliminate any doubts and present to the Court that the parent is taking a more credible approach.

## PART 2: CHANGING RESIDENCE

Last Edition we looked at a case where the Court Ordered the reversal of “primary care” arrangements from the Mother to the Father. In this second part, we provide a different situation where the Court was prepared to reverse the child’s residence from the Mother, to the Father.

### The Facts:

- The Mother and Father were together for a total of approximately 8 years. They had 2 children, aged 7 and 2 at the time of the hearing.



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Issue # 134

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- The couple lived in South Australia for 3 years and then separated.
- After separation, the Father moved to Darwin. A year later the Mother joined the Father in Darwin. The relationship then came to an end and the Mother moved to Melbourne with the two children, the eldest child had Down Syndrome.
- The parents' relationship was very strained. At one stage, the Mother did not inform the Father when the youngest child almost drowned.
- The Mother sought Orders for the children to live with her in Melbourne and spend time with the Father during the holidays.
- The Father wanted the children to live with the Mother, if she returned to Darwin but if she refused to return, then he wanted the children to live with him and have holiday time with the Mother.
- During the Court hearing the Mother became upset and abusive and stormed out of the Court. The Court was adjourned and the Mother returned. The next day the Mother left during the Court hearing and did not return.

#### Court Found:

- The Mother's anger showed that she did not have the willingness and ability to facilitate and encourage a close and continuing relationship between the children and the Father.

- The Mother did not have the capacity to care for the children emotionally and financially.
- The Father was able to provide for the children's needs.

#### Court Order:

- The children live with the Father and spend time with the Mother during the holidays.
- The Father have sole parental responsibility for the children.

### DECLARATION OF A DEFACTO RELATIONSHIP

The changes to the *Family Law Act* last year had a significant effect on defacto couples. In a raft of new changes, the Court was also given the power to 'declare' whether a defacto relationship exists.

In making such a decision, the Court is required to give careful consideration to a variety of different matters, including:

- The period of the relationship;
- Whether there is a child of the relationship;
- Whether one of the partners made substantial contributions;
- When the relationship ended.

A spouse's request for a 'Declaration' by the Court, as to whether a defacto relationship even existed can now be a 'preliminary' point for determination, before any property settlement or Spouse Maintenance Application begins.