



family flyer

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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:

- Successful Seminar Series
- What Super do you have?
- Q & A
- 'Disney Dad'
- DNA Problems

SUCCESSFUL SEMINAR SERIES

Welcome to new readers of the Family Flyer who have joined after attending our recent public Seminar Series. The fortnightly Family E-flyer is now read by over 5,000 people.

The Seminar Series was well attended and provided a great opportunity to not only give practical legal information but to also answer lots of audience questions.

WHAT SUPER DO YOU HAVE?

Superannuation is property and therefore each spouse's superannuation forms part of the combined pool of property.

Determining a value for superannuation can be challenging. Different types of superannuation have different methods of valuation, so annual 'Member Statements' should not always be relied on for the true 'Family Law' value of the fund. So what Super do you have?

Accumulation interest fund – this is the most common and simplest form of superannuation. It is where the member is entitled to an amount accumulated in the member's account. The total represents the contributions made by the employer, as well as the employee, together with interest earned, minus any taxes or charges. In this fund the 'Member Statement' value can be relied upon.

Defined benefit fund – this is where the benefit is calculated by a formula usually using the final salary and the years of service. The employer carries the investment risk and if the investment returns are low, the employer may need to increase contributions to allow the fund to meet the entitlement. A lot of large public sector funds are defined benefit.

Q & A

Q: When can I get divorced?

A: You cannot apply for a divorce until you have been separated for at least 12 months. There is no time requirement before parties can finalise children's arrangements or property settlement.

'DISNEY DAD'

When a separated parent wants to take the children on a holiday, it can often be a battle to get the other parent's permission to allow the holiday. The Court recently had to consider a case where the Father sought an Order to enable him to travel to Disneyland, with his twin daughters, for 7 days. Did the Court allow the request?

The Facts:

- The Father and Mother had been together for 10 years and had twin girls, aged 12.
- The twins lived with each parent on a 'week about' basis.
- The Mother opposed the Father's holiday application and argued that she was supporting the twins' wishes and said that they did not want to travel to Disneyland.
- The Mother had wanted to take the twins to Bali the previous year, however the Father did not agree, saying that there was a dangerous situation in that country, at that time. However, he used the proposed Bali trip to support his view that the children wanted to travel overseas.



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- The children were reluctant to travel overnight by air, although they had previously travelled from Tasmania to Queensland by plane and they were going to travel by plane to Canberra for a school trip at the end of the year.
- The Family Report confirmed the twins' wishes, that they were reluctant to go because it was "too far away" and they felt "sad" when there was a physical distance between them and their Mother. The children had also been reluctant to go on the Canberra trip, however they were persuaded by a trusted teacher.

Court Found:

- The children's concerns about travelling to Disneyland were real and their wishes should be given weight.
- The probable negative consequences of the children travelling to Disneyland outweighed the possible positive benefits.

Court Order:

- The Father's travel application was dismissed.

DNA PROBLEMS

What happens when a Father who is involved in a Court case for children's arrangements is confronted with DNA evidence saying that he is not the Father?

As distressing as such a revelation can be for a man who has been the Father figure for a child –

it raises the 'legal' question of – what rights does a non-biological parent have regarding the care arrangements for a child they believed was biologically theirs?

Recently, the Court considered a case, where a Husband was told by his former Wife that their son (then aged 5) might not be his son at all.

When the son was a few years old, the Wife went overseas with the boy and did not return. The Wife contacted the Husband to let him know the marriage was over and she was moving to the US.

Following a successful Hague Application for return, the Wife later returned with the son to Australia. Legal proceedings by the Husband resulted in Interim Orders being made for the shared care of the boy. The Wife later told the Husband that he was not the biological Father and this was confirmed by a DNA test.

The Mother wanted to return overseas, however the Husband pressed his case, opposing the move. The Trial Judge Ordered against the Husband, saying that the boy's happiness depended on the Mother being allowed to return to her home country.

The Husband Appealed to the Full Court. The Husband's Appeal succeeded, with the Full Court overturning the original decision and finding that the boy's right to a relationship with the man he had considered to be his Father had not been adequately considered. The Father was granted shared care.

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