

FAMILY Flyer



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No. 172

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NEW SEMINAR SERIES - STARTS SOON!

Our next public seminar series starts on 28 May! These popular seminars are presented by Accredited Family Law Specialist, Michael Lynch, and offer invaluable information on children, property and separation. There are 2 topics to choose from, "Separation and Children" or "Separation and Property".

Upcoming dates are:

- Monday, 28 May 2012 – [Arana Hills](#)
- Tuesday, 29 May 2012 – [Albany Creek](#)
- Tuesday, 5 June 2012 – [Redland Bay](#)
- Wednesday, 6 June 2012 – [Holland Park](#)
- Tuesday, 12 June 2012 – [Brisbane City](#)

For complete details, check out our [website](#).

"CLOSE-UP" EDITION

When considering parenting cases, the Court starts from a position that the parents have "shared parental responsibility". Each case will be decided on the individual circumstances and ultimately, the Court will make a decision as to what is in the child's "best interest". Read "[When does Sole Parental Responsibility Occur?](#)" for a detailed look at parental responsibility, and how it might be rebutted.

FREE BOOK – "A GUIDE TO FAMILY LAW" – ORDER NOW!

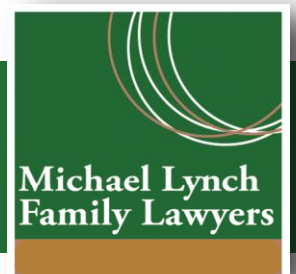
We have had a fantastic response from readers of the Flyer to the launch of the 2012 update of our popular book – "[A Guide to Family Law – Everyday Answers](#)". This book provides information on children's arrangements, child support and property matters and is a MUST for anyone going through separation, or for organisations dealing with separated couples.

If you have been thinking about ordering this book – you will not be disappointed! The book is FREE and is an invaluable resource, order one or multiple copies for you or your organisation – phone (07) 3221 4300.

STATISTICS IN SOCIAL TRENDS

Recent information from the Australian Bureau of Statistics (ABS) (for 2010) states that:

- The average length of marriage before separation is 8.8 years (up from 7.5 years in 1990).
- 22% of people aged 20 – 29 are living in a de facto relationship (up from 10% in 1992).
- 79% of married couples live together before getting married, compared with 56% in 1992.



- The average age of marriage for women is 27.9 years, compared to 24.3 years in 1990.
- The average age of marriage for men is 29.6 years, compared to 26.5 years in 1990.
- The average age for first time mothers is 28.9 years, compared to 27.5 years in 1990.
- The overall divorce rate has dropped from a peak of 2.9 divorces per 1,000 people in 2001 to 2.3 divorces per 1,000 in 2010.

FINALISING SPOUSE MAINTENANCE

Spouse maintenance arises where there is an income difference between spouses and the lower income earning spouse is unable to meet their "reasonable financial needs" (for details see our previous article – "[Am I Entitled to Spouse Maintenance?](#)").

If an agreement is reached for spouse maintenance, either as a periodic payment or a lump sum, it can be documented either as a Consent Order or as a Financial Agreement.

As much as both of these are "final", the only way for parties to permanently contract out of spouse maintenance is to enter into a Financial Agreement. It is therefore important that a Financial Agreement is completed correctly.

In a recent case the Court dealt with an application to sever a spouse maintenance provision from a Financial Agreement.

The Facts:

- The de facto wife sought an Order that the spouse maintenance part of the Agreement should be removed as it was invalid.
- The Agreement provided that neither party would, at any time, make any claims upon the other for

spouse maintenance.

- The wife said that the provision did not meet the requisite legal requirements as it did not say who it applied to, or state the amount or value of the property attributable to spouse maintenance.
- She sought that the rest of the Agreement remain and that she then be entitled to pursue a claim for spouse maintenance of \$500 per week.
- Both parties accepted that the Agreement did not technically comply with the Act.
- The husband argued that as the formal requirements of the Agreement had been complied with, the wife was prevented from belatedly claiming the defect.

Court Found:

- The wife's claim of \$500 per week was reasonable and the husband had the capacity to pay.

Court Ordered:

- The spouse maintenance provision was void and was severed from the Agreement.
- The husband pay the wife \$500 per week as interim spouse maintenance.

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If you have comments regarding the Family Flyer we would love to hear from you. Please email us at law@mlynch.com.au.

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