

FAMILY Flyer



THIS ISSUE -

No. 179

- Public Seminar Series – Book Now!
- Who can Apply for a Divorce in Australia?
- Quick Q & A – Child Support
- There's no Automatic 50/50 in Property Settlement
- Contravention of Orders – Positive Obligation

PUBLIC SEMINAR SERIES – BOOK NOW!

The next public seminar series starts soon! For only \$20, you will receive a 1 hour information session, and have the opportunity to ask questions. Michael Lynch, Accredited Family Law Specialist, presents these topics in an easy to understand way, ensuring you get the most out of the session. Read some recent [feedback](#) on the website.

"Separation and Children"

- [Sunnybank](#): 6:00pm – 7:00pm – Tuesday, 21 August, Sunnybank Community and Sports Club, Cnr Granadilla & McCullough Streets, Sunnybank.
- [Chermside](#): 6:00pm – 7:00pm – Tuesday, 28 August, Kedron Wavell Services Club, 375 Hamilton Road, Chermside South.

"Separation and Property"

- [Oxley](#): 6:00pm – 7:00pm – Wednesday, 22 August, Oxley Golf Club, 290 Boundary Road, Oxley.
- [Brisbane City](#): 1:00pm – 2:00pm – Monday, 27 August, The Sebel Suites, Cnr Albert & Charlotte Streets, Brisbane.
- [Wynnum](#): 6:00pm – 7:00pm – Wednesday, 29 August, Wynnum Manly Leagues Club, 92 Wondall Road, Manly West.

To register, call (07) 3221 4300 or email law@mlynch.com.au. **BOOK NOW!** - Seating is limited!

WHO CAN APPLY FOR A DIVORCE IN AUSTRALIA?

Not everyone can file an Application for Divorce in Australia.

In order to attract the Australian jurisdiction, either you or your spouse must:

- Regard Australia as his/her home and intend to live indefinitely in Australia; or
- Be an Australian citizen by birth or descent; or
- Be an Australian citizen by grant of Australian citizenship; or
- Ordinarily live in Australia and have done so for 12 months immediately before filing an Application for Divorce.

QUICK Q & A – CHILD SUPPORT

Q: What happens when parents lodge their tax return?

A: If you have an Administrative Assessment lodged with the CSA and either parent lodges a tax return, the CSA may calculate a new child support assessment and then issue a new Notice of Assessment to the parties.

THERE'S NO AUTOMATIC 50/50 IN PROPERTY SETTLEMENT

One of the most common Family Law myths is the belief that the act of marriage automatically entitles each party to a



50%/50% distribution of their combined property in the event of separation – it doesn't!

The process is quite complex and will have a different impact for everyone.

When determining the percentage split, the Family Law Act in Australia requires the Court to take into account a vast array of "elements of contribution", these are broadly summarised in 4 main categories, i.e.:

- Initial contributions (i.e. at the date of cohabitation);
- Financial contributions made by a party, e.g. income, inheritances, redundancies etc.
- Non-financial contributions made by a party e.g. as parent and homemaker, any renovation works undertaken to property owned by the parties etc.; and
- The "future needs" position of each spouse, e.g. employment prospects, health etc.

There is no presumption of equality as a starting point in respect of contributions. Each matter is to be determined upon consideration of the unique and particular circumstances of the case – so don't follow the example or experience of someone else!

It is important to obtain independent legal advice from an experienced family law solicitor to determine your likely property settlement entitlement.

CONTRAVENTION OF ORDERS – POSITIVE OBLIGATION

As outlined in our 'close-up' article – "[Does Contact need to be Encouraged](#)" the law imposes a positive obligation on a parent to facilitate the time a child 'spends with' the other parent, making all "reasonable attempts" to comply with a Court Order. A recent case highlighted the "positive

obligation" a parent has, and looked at what will constitute a "reasonable excuse" for contravention of a Court Order. Interestingly, the Court found a distinction between "telephone call" contact and "physical time".

The Facts:

- Final parenting orders were made in July 2010, for the 13 and 11 year old children.
- The father alleged the mother had contravened the Orders on several occasions by not facilitating telephone calls (2 alleged breaches) and not ensuring the children spend school holiday time with him (3 alleged breaches).
- There was evidence that the 2 children had become very resistant to phone calls and visits, and one of the children was receiving counselling for suicidal thoughts.
- The mother argued that she had a "reasonable excuse" for not sending the children for a visit.

Court Found:

- The mother had an obligation to do all that was reasonable to facilitate telephone calls with the father.
- It was insufficient for the mother to say she tried, but the children did not want to speak to the father. The law imposed a positive obligation, which required the mother to actively encourage the children to have a conversation with the father.

Court Held:

- The mother contravened the Orders in regards to telephone contact with the father (2 breaches).
- The mother had reasonable grounds for not sending the children to the father for holiday time, as she believed that forcing the children to spend time with the father would be detrimental to their health and safety.

Copyright 2011

This document contains general comments and should not be relied upon as specific legal advice. Readers should contact this Office for advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to anyone acting in reliance on this document shall be accepted by this Office. No part of this document may be reproduced without our written approval.

Principal: Michael Lynch*
*Queensland Law Society
Accredited Family Law Specialist



CONTACT:
Telephone: 07 3221 4300
Address: Level 6, 193 North Quay
Brisbane QLD 4000
Website: www.mlfl.com.au

