

FAMILY Flyer

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NEW SEMINAR SERIES – “SEPARATION & PROPERTY” – STARTS 19 AUGUST!

Our next public seminar series is starting on 19 August 2014. These popular seminars are presented by our Principal and Accredited Family Law Specialist, Michael Lynch, and provide you with important separation advice, but without the legal jargon.

For ONLY \$20, you will receive a 1 hour information session with handouts and have the opportunity to ask questions. There will also be a **Special Offer** for all attendees. The topic is “Separation and Property”:

- **North Lakes**: 19 August 2014, 6pm – North Lakes Golf Club, 1 Bridgeport Drive
- **Brisbane City**: 26 August 2014, 6pm – The Sebel Suites, 95 Charlotte Street

Seating is limited so register now by calling (07) 3221 4300 or email law@mlynch.com.au.

QUEENSLAND HAS HIGHEST DIVORCE RATE

A 10 year study has recently found that Queensland has the highest divorce rate in Australia.

The AMP NATSEM Modern Family Report found 25 in every 1000 marriages statewide broke down in the decade to

2011. The report states that it is not known why there has been a drastic jump in Queensland as the national divorce rate dropped. By comparison, in Victoria, there was a much lower marriage rate, much lower than the national average, but the divorce rate there was also the second highest in the country.

The report also shows that there has been a big rise in the number of same gender couples in Queensland. The report found the number has increased by more than 100% since 2001, largely because these couples are now willing to report their relationship. (ABC News).

CHILD SUPPORT GUIDE

The Department of Human Services (DHS) has advised that the Child Support Guide (“the Guide”) has been moved from their website to the Department of Social Services (DSS) website. The Guide is an online legal resource for anyone dealing with child support, which sets out government policy regarding the Child Support Scheme and its administration.

The new link to the Child Support Guide is <http://guides.dss.gov.au/child-support-guide>.

HECS DEBT IN A PROPERTY SETTLEMENT

A recent case has considered an application in a property settlement for one spouse to assist in the payment of a HECS debt that was accrued during the marriage: -



- The wife was 38 and had an annual income of \$40,000. The husband was 45 and had an income in excess of \$100,000. He said he now had depression and would need to move to unpaid sick leave. He did not present any medical evidence to the court regarding his condition. In any event, he also said he was going to study for the next 5 years and would receive an Austudy benefit.
- The wife sought that each of the parties retain their respective assets and liabilities in addition to her getting a superannuation split from the Husband's superannuation fund.
- The husband sought an order for the wife to pay 70% of the 'matrimonial debt' which he alleged to consist of \$57,172 of credit card debt and \$87,177 of overdraft loan and student loan debt. He otherwise proposed that each of them retain their assets and superannuation.
- The husband throughout the proceedings had alleged that his HECS debt was in excess of \$50,000. It was only at the trial that he produced evidence that the debt was approximately only half of that, being \$26,406 and had only been a maximum of \$42,000 at the time of separation. The husband also omitted until trial that he had paid off \$11,692 of a previous HECS debt during cohabitation.
- The court found that it would be unjust to require the wife to make any contribution to the repayment of the husband's current HECS debt, particularly when she had already assisted in paying his first HECS debt.
- The court was critical of the husband's presentation of the debt in his evidence and ordered that the parties retain all assets, liabilities and superannuation policies in their respective names.

WHAT IS AN ICL?

An Independent Child Lawyer is an experienced solicitor who

is appointed by the court to represent a child. Their role is to assist the court in reaching a decision in the best interests of the child.

They are not appointed in every case.

Case law sets out what the role of the ICL is and what criteria applies for that appointment.

The ICL should act as an "honest broker" between the parties. The criteria for appointment broadly involves cases, where:

- There are allegations of child abuse
- There is intractable conflict between the parties
- The child is alienated from one or both parents
- There are real issues of cultural and religious difference affecting the child
- The sexual preferences of either or both of the parents are likely to impinge on the child's welfare
- The conduct of either or both of the parents is alleged to be anti-social to the extent that it seriously impinges on the child's welfare
- There are issues of significant, medical, psychiatric, or psychological illness in relation to either party
- Neither parent seems a suitable custodian
- A child of mature years is expressing strong views, the result of which would be to change a long standing custodial arrangement or deny contact
- A child is to be permanently removed from the jurisdiction
- It is proposed that siblings be separated, or
- Neither of the parties are legally represented

The actual appointment of a solicitor as an ICL is co-ordinated by and funded by the Legal Aid Office (Qld). Legal Aid request parties contribute to the ICL costs.

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