



family flyer

Michael Lynch
Family Lawyers

Issue #106

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:

- Parenting Arrangements for Shift Workers
- “Close-up” – Edition
- CSA and Family Violence
- Understanding Spouse Maintenance

PARENTING ARRANGEMENTS FOR SHIFT WORKERS

Negotiating arrangements for what time children spend with each parent is often difficult – but it gains added complication when parents are involved in shift work.

Often ‘shift rosters’ are not known until a month or even a few weeks in advance.

How can this be overcome?

Parents can arrange for the children to see the shift-working parent on a certain number of days per fortnight, but not specifically allocate which days these will be, until the week prior to the arrangement. The shift-working parent could provide the other parent with their roster and the time can be altered accordingly.

What will the Court do?

If the parents cannot agree on parenting arrangements, the matter may be decided in Court. The Court has found that as a result of a parent’s shift work “equal time” is often not workable, however “substantial and significant” time (for more see [Flyer Edition #44](#)) remains a viable option. This of course will depend on the type of shift work.

An Example:

In a recent case, the Court found that a Father that worked a shift roster with 12 hour blocks during the day or night at a coal mine and a Mother that did not work shift work, would have shared care.

The Court found that the time spent would be 14 to 16 days a month considering the Father’s shift work, therefore it was not technically equal time spent with the children.

To overcome the problem of the Father’s work arrangements, the Court Ordered the Father provide the Mother with his roster or changes to it 7 days in advance.

Tip:

Think creatively, the Court does not have a fixed position.

“CLOSE-UP” - EDITION

A frequently asked question when negotiating parenting arrangements is – What about my child’s wishes? To find out more about when and how a child’s views are considered in parenting arrangements read our latest article – “[What about Children’s Wishes?](#)” This is just one of many “Close-ups” available at www.mlfl.com.au/media/articles.

CSA AND FAMILY VIOLENCE

How does the Child Support Agency treat Family Violence?

Where a parent alleges, or the CSA identifies, Family Violence as an issue, the CSA will refer the parent to one of their Centrelink Social Workers. The parent then has the option to make an application to exempt themselves from seeking child support payments from the other parent. If the exemption is granted, Centrelink will adjust the Family Tax Benefit so it takes into account the fact that child support is no longer being received.

The CSA can also provide referrals to community service organisations that may help the parent with the issues they are experiencing.



UNDERSTANDING SPOUSE MAINTENANCE

There is no formula in the *Family Law Act* that calculates Spouse Maintenance claims – so how does the Court decide whether or not to grant Spouse Maintenance?

The Court looks at the “reasonable financial needs” of the low income spouse and the “financial capacity” of the high income spouse in determining a Spouse Maintenance entitlement.

A recent Court case highlights how important it is that both spouses make full and frank disclosure of their financial circumstances.

The Facts:

- The Wife, aged 40, was a homemaker. The Husband, aged 50, was a self-employed tradesman.
- The couple were married for 4 years and had 2 children, aged 4 and 3 years. The 4 year old child had special needs as a result of health issues.
- The Wife was receiving \$180 per week from the Husband after urgent Spouse Maintenance Orders were made shortly after separation. The Wife then made an Application for a payment of \$896 per week, for her weekly expenses.
- For 9 months the Husband had been paying the Wife, for the benefit of her and the children, \$960 per week.
- The Husband argued he was unable to pay the Wife’s request due to the economic

downturn, which was not providing him enough income from his business to pay more than what he was already paying to the Wife.

- The Husband disclosed that his income was \$1,375 per week from his business.

Court Found:

- From the Husband’s tax statement it was found he earned \$1,807 per week.
- The Husband stated that the combined monthly expenses for himself and his business were \$48,000, however the Court found that the average monthly expenses were \$34,220. The Husband’s evidence about the business’s financial circumstances were incorrect.
- In the month the Husband stopped paying the Wife maintenance, the business made a \$14,780 profit.
- The Wife’s expenses were found to be \$866 per week, the Judge did not think it was necessary to spend \$53 on hairdressing and toiletries per week and instead allowed \$23.

Court Order:

- The Husband pay the Wife Spouse Maintenance of \$866 per week, until the Final Hearing.

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