



# family flyer



## 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:

- Parentage
- Property Settlement - Contribution
- Child Support - Commitment to Adult Child
- Pre-Child Support Agency
- Court Fees Disallowed
- Child Support - Election
- Contravention - Long Term Care
- Possible Amendment to the Family Law Act

## PARENTAGE

The Family Court has recently found that a husband who did not consent to his wife continuing with a fertility program which involved her being inseminated with donor sperm, was not the father of the child born as a result of the insemination. The Court dismissed the husband's application for the child to have contact with him.

## PROPERTY SETTLEMENT - CONTRIBUTION

In determining a Property Settlement, one of the relevant aspects the Court must consider are the respective "elements of contribution" by each party.

The Court recently held that the provision of rent-free accommodation to the parties for 17 years by the wife's parents should be treated as a contribution made on behalf of the wife.

The Court said that in determining the intention of the parties in providing a benefit, the Court can take notice of the fact that parents frequently make provision for their children in a manner which does not necessarily involve an intention to benefit their own child or both parties to the marriage.

In this case the Court found that the wife's parents made a generous provision to the parties which they intended to benefit their daughter and which they were aware would also benefit the husband.

## CHILD SUPPORT - COMMITMENT TO ADULT CHILD

The Family Court recently dismissed a father's Application for reassessment of Child Support. The basis of the father's Application was that he argued that because he had an obligation to support his older child, an 18 year old student, that his child support obligation to his younger child should be reduced.

The Court held that the *Family Law Act* imposes an obligation on parents to support children. The legislation does not differentiate between children who are under 18 or over 18 years of age. The Court did say that what the child is doing once he or she turns 18 years may be relevant.

The question in this case was whether the eldest child's dependency was such that it reduced the father's capacity to pay Child Support as assessed. The Court found that it did not.

## PRE-CHILD SUPPORT AGENCY

Those parties who separated or had children born prior to October 1989, will have Child Maintenance determined pursuant to a Court Order. Those that separated or had children born after October 1989, will have Child Support assessed by the Child Support Agency.

Pre-Child Support Agency cases are known as "Stage One" matters. In these cases the formula of the Child Support Agency does not apply and the Court has a discretion as to how it determined the appropriate Child Maintenance liability.

In making this assessment, the Court has historically had two methods of assessment available to it. These are known as the "Lee Scale" and the "Loving Scale".

The Court prefers the "Lee Scale" form of assessment as it refers to the "costs of a child". In a 1994 case, the Family Court found that the "Lee Scale" provided a more realistic reflection of the "costs of a child", rather than the "Loving Scale".

The "Lee Scale" uses an "expenditure survey" approach, whereas the "Loving Scale" relates to the costs involved in raising children based upon a "basket of goods" approach, that is, how much is spent if the child enjoyed the "contents of the basket", e.g. food, clothing, footwear, fuel, schooling, entertainment, pocket money, etc.





That method does not include costs such as housing, transport, school fees, holidays, medical expenses, etc.

**COURT FEES DISALLOWED**

In July 1997, the Family Court regulations were amended by the Federal Government to provide for fees to be payable for voluntary use of the Court's counselling and mediation facilities.

The Government's proposed amendments were not passed by the Senate and accordingly, there are now, again, no fees payable for voluntary Family Court Counselling or Mediation.

**CHILD SUPPORT - ELECTION**

The Child Support Legislation allows a paying parent to "estimate" his or her income where the income is anticipated to be at least 15% less than the income that would otherwise be used by the Agency to assess the Child Support liability.

The Legislation also allows paying parents to subsequently revoke this election and make a new "estimate" where further changes to income occur.

**CONTRAVENTION - LONG TERM CARE**

The Full Court has recently held that an Order which provided both parents with "joint long term responsibility" for a child may be the subject of a Contravention Application. Before the commencement of the new terminology, the Family Court Orders were typically made appointing a husband and wife as "joint guardians" of their children. Subsequently, the typical Order has been for both parents to have "joint responsibility" for the long term care, welfare and development of children.

The Full Court found that the wife was therefore required to consult the husband on such matters as education, religion and the name of the child.

**POSSIBLE AMENDMENT TO THE FAMILY LAW ACT**

In December the Federal Cabinet approved plans for a Family Law bill to deal with a range of minor changes to the *Family Law Act*.

It is unclear as to what the bill will address, however it is proposed that it will be introduced into Parliament during the Autumn sittings.

It is understood that the Government has yet to formulate final proposals in relation to property law reform and the Attorney-General's discussion paper on the provision of counselling and mediation services.

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