



family flyer

Michael Lynch
Family Lawyers

Issue # 98

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:

- Are we Separated?
- New Consent Orders are here!
- Child Support – Salary Sacrifice
- What is a ‘Meaningful Relationship’?
- Relocating with a Sick Child
- ‘Close-up’ Series

ARE WE SEPARATED?

The date that a couple separates is the cornerstone to all legal proceedings that may follow.

The importance and accuracy of the date has recently been brought into sharp focus with the new de facto property settlement laws that commenced on 1 March, 2009. For more information: see [Special Edition #94](#).

To prove separation there are certain elements that must be fulfilled under the *Family Law Act*.

For a separation to exist, the following must occur:

- The couple no longer live together as spouses
- One spouse has an intention to end the relationship.
- The intention to end the relationship is communicated from one spouse to the other

Can you be separated under the same roof?

Yes, however (particularly in a divorce application) one of the spouses must provide evidence to the Court, including:

- An explanation of the reason for the shared living circumstances, and
- Showing that there has been a change in the relationship.

If this is not shown, the Court can decide not to grant a divorce.

NEW CONSENT ORDERS ARE HERE!

If you are in the process of finalising a Family Court Consent Order, ensure that you have completed the correct form.

Due to the new de facto legislation (effective on 1 March, 2009), significant changes have been made to the Application for Consent Orders Form.

The new form includes a new financial section for de facto arrangements.

The Court is allowing the old form to be filed until 1 June, 2009.

CHILD SUPPORT – SALARY SACRIFICE

Starting from 1 July, 2009, salary sacrificed superannuation contributions will be included when calculating child support payments.

This will not include compulsory superannuation contributions made by an employer, only voluntary contributions.

WHAT IS A ‘MEANINGFUL RELATIONSHIP’?

The *Family Law Act* requires that the Court must make all best efforts to ensure that there is a ‘meaningful relationship’ between both parents and child.

This concept was recently considered in a Court hearing.



The Court found that a ‘meaningful relationship’ was a relationship that is important, significant and valuable to the child.

This included spending quality time with the child and was not based on the quantity of time spent with the child.

The Court found that there were many ways to develop a ‘meaningful relationship’. One such way was to spend time with the child in a mix of settings where experiences could be shared and bonds could be developed.

RELOCATING WITH A SICK CHILD

The Court recently had to decide whether to allow a Mother to relocate further away with her son who needed medical treatment.

Facts:

- The Mother, aged 44 and the Father, aged 46, had a 7 year old son.
- The child suffered from a condition that affected his kidneys. He had not recovered well from his surgery and experienced social, emotional and developmental difficulties.
- After separation the Mother lived in Brisbane, but she was now wanting to relocate to Adelaide. The Father lived in Rockhampton.
- The Mother wanted an Interim Order that allowed the child to relocate and live with her in South Australia until the Final Hearing. She also wanted to have sole responsibility for making

decisions about the medical treatment for the child.

- The Mother proposed the child continue to see the Father for half of his school holidays.
- The Father opposed the child relocating and did not want the Mother to have sole responsibility for the care of the child.
- The Father proposed that the child spend time with him one weekend each month.

Court Order:

- The Mother was allowed to relocate with the child.
- The Father spend time with the child on a monthly basis and for half of the child’s holidays.
- If the child needs surgery, the Father must be given 7 days notice, unless the surgery is urgent.

‘CLOSE-UP’ SERIES

One of the key components in determining a child’s arrangements is to consider the child’s ‘best interests’. What are they? This edition’s ‘Close-up’ article looks at what the Family Law Act says the ‘best interest’ factors for a child are. To read more:

www.mfl.com.au/media/articles.

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