



# family flyer

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Family Lawyers

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## 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:

- “Close-up” Edition
- Indefinite Supervised Contact
- What is an Offer to Settle?
- A Complicated Family Tree – Who has Standing?

## “CLOSE-UP” – EDITION

For most people, Christmas is a happy time - for separated families where the children’s arrangements are in dispute, Christmas can be a time of disappointment and disagreement.

In the lead up to the Christmas holiday period, this edition’s “close-up” article is entitled [“Coping with Christmas – Timely Tips for Separated Mums and Dads”](#). On-forward it to anyone you feel would benefit from it!

## INDEFINITE SUPERVISED CONTACT

If a potential child safety risk exists, the Court will usually Order that a parent’s contact time be supervised by another adult.

The Court’s position has historically been that supervision is only a temporary arrangement, not long-term and not indefinite.

In a recent case, the Father Appealed against an Order for indefinite supervised time with his children.

### The Facts:

- The Mother was born in Ireland and aged 40. The Father was born in Queensland and was aged 43. The parents lived in Australia and had 2 children aged 8 and 6.
- 3 years earlier the Mother left Australia with the children to live in Ireland and the Father began Hague Convention proceedings. The Mother was Ordered to return to Australia with the children.
- The Mother still wanted to relocate to Ireland with the children.

### Trial Judge Ordered:

- The Mother had significant extended family in Ireland and the Father had the financial means to visit the children.
- The Mother have sole parental care for the children and be permitted to relocate to Ireland. The Father spend indefinite supervised time with the children during the holidays. There were no Orders made stating when the Father could have unsupervised contact with the children.

### The Appeal

- The Father argued that the Trial Judge failed to give consideration to a “meaningful relationship” with both the children’s parents.
- The Trial Judge should have made Orders which would allow for a review of the unsupervised time arrangement in the future.

### Court Order:

- Although the Trial Judge should have included an option to review the Father’s supervised contact with the children, the Appeal was dismissed as the Father needed to demonstrate a better understanding of his violent and controlling behaviour.



## **WHAT IS AN OFFER TO SETTLE?**

Many couples in dispute can negotiate and reach an agreement without going to Court. Settlement is often achieved by making “Offers to Settle”.

The Rules of Court set out a formal process as to how this occurs:

- A party can make an offer to the other party (or their lawyer) by serving an Offer to Settle Form any time before the Court makes an Order to dispose of the case.

If a party receives an Offer to Settle and chooses to accept that offer, written notice must be given to the party who made the offer.

If an offer is not accepted and the Court ultimately makes an Order that is not as high as the offer, then it is open to the Court to make a Costs Order against the ‘refusing’ party in the sum of the ‘offering’ party’s costs, as incurred from the date the offer was made.

## **A COMPLICATED FAMILY TREE – WHO HAS STANDING?**

The *Family Law Act* says that “any person connected with the care, welfare or development of a child” can apply to the Court for a Parenting Order. That may seem straight-forward, but some cases can get very complicated. Recently, the Court had to decide a complex case involving 2 same-sex couples.

### **The Facts:**

- The female partners, X and Y, lived in a same-sex relationship, they each had a child. X had a child aged 7 and Y had a child aged 3.

- The children had no biological connection.
- After the female partners separated, both children spent time with each other every weekend.
- Partner X had conceived her child through artificial insemination from a male friend, who was also in a same-sex relationship. The Father of partner Y’s child was not known.
- Partner Y wanted to relocate with her daughter and live with family members. Partner X and her male friend (the Father of X’s child) opposed the relocation.
- The male friend opposed it even though he was not biologically related to the child, but he said he had a connection with the child.

### **Court Found:**

- Partner X and the male friend were both involved in the parenting of the (2) children.
- The children referred to them also as “Mummy” and “Daddy” and they spent time with them on occasions and events as well.
- They were listed as their emergency contacts.

### **Court Order:**

- Partner X and the male friend had standing to apply for a Parenting Order, preventing Partner Y from relocating.

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