



# family flyer

Michael Lynch  
Family Lawyers

Issue # 126

## 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:

- Child Gets Restraining Order Against Parents
- What is a Parenting Plan?
- “Close-up” Edition
- Financial Agreement Set Aside
- Child Support: End of Financial Year Update
- Spouse Maintenance: How Much is too Much?

## CHILD GETS RESTRAINING ORDER AGAINST PARENTS

Can a child take their parents to Court?

We are accustomed to the parent that doesn't want the other parent to take a child out of the country by getting an Airport Watch Order, but what happens if a child doesn't want to go overseas with the parent they live with? Well, that is exactly what the Court had to deal with recently.

### The Facts:

- The child, aged 17, lived with her Mother and Step-Father.
- The child telephoned the Australian Federal Police and told an officer that her Mother and other family members were planning to take her, against her will, to Lebanon to be married.
- The child was aware of the Airport Watch List and wanted to be added to the list so she could not be taken out of the country.
- Her flight was booked and both her Father and Step-Father supported her removal from Australia.
- The Federal Police made a Court Application for the child.

### Court Found:

- Orders should be made so as to protect the child.
- Taking into consideration the child's age and the intervention she had sought from the Federal Police, significant

weight should be attached to her wishes.

### Court Order:

- The Father, Step-Father and Mother were restrained from attempting to remove the child from Australia.
- The child's name be placed on the Airport Watch List.

## WHAT IS A PARENTING PLAN?

Parenting Plans were introduced in 2006. It is an agreement between separated parents, which outlines the ongoing care arrangements for the child. The Plan can include the ongoing care responsibilities of each parent and how the parents will go about making long-term decisions for the child.

There is no standard form for a Parenting Plan but it needs to be in writing. The document must also be signed and dated by both parents.

Parenting Plans are not filed with the Court and are not legally binding, however if a Plan is made after a Consent Order (Court Order) is made, the Parenting Plan will override it.

## “CLOSE-UP” EDITION

Domestic Violence is a serious issue present in many relationships. Its existence can make caring for children, working and contributing to the running of the household more difficult for the victim. Does the Court take this into consideration in a Property Settlement? Read more in: [‘Is Domestic Violence Considered in a Property Settlement?’](#)



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## FINANCIAL AGREEMENT SET ASIDE

If you are considering making a Financial Agreement, whether it be before, during or after the relationship, it is important that all the requirements are met, so it will be legally enforceable!

Full and frank disclosure in a Financial Agreement is essential, otherwise the agreement will not be enforceable. In a recent case the Court set aside a Financial Agreement for this very reason. The Court found that the Wife had failed to disclose in the Agreement, her shareholding in a company, as well as her interest as a discretionary beneficiary in a Family Trust. A month after signing the Agreement, \$431,855 was distributed to the Wife from the Trust.

## CHILD SUPPORT: END OF FINANCIAL YEAR UPDATE

On 1 July 2010, the definition of “assessable income” for Child Support will change. The definition will become wider, thereby increasing assessments.

“Income” now includes taxable income, reportable fringe benefits, foreign income, tax free pensions or benefits, reportable superannuation contributions and total net investment losses.

The lodgment of Tax Returns after 1 July will trigger new assessments.

## SPOUSE MAINTENANCE: HOW MUCH IS TOO MUCH?

Readers of the Flyer will be aware that determining a Spouse Maintenance entitlement is an “inexact science,” however two recent high profile

Australian cases have brought that into sharp focus. The two multi-million dollar cases were reported last week and both involve Applications for Spouse Maintenance and the question of “how much is enough?”

### Case 1:

The Wife had more than \$600 million in assets and an income of \$60,000 per week. The Husband of 23 years, earned \$380 per week as a waiter and argued that he needed \$8,543 per week. The Wife offered to pay \$18 per week, however, the Judge Ordered she pay Spouse Maintenance of \$4,000 per week, saying it was unreasonable for the Husband to work as a waiter at a suburban restaurant.

### Case 2:

The Husband was believed to be worth \$77 - \$110 million, with a weekly income of \$300,000. The Wife claimed their 14 year old son who had autism, needed full-time carers. Three of the carers were the Wife’s sisters and were being paid \$110,000 each, per year. The Wife claimed \$278,000 a month in Spouse Maintenance for herself and her son. The child psychologist described the care of the son to have become a “cottage industry” for the family. The Wife was reported to have spent thousands on balloons and flowers for the son’s birthday and other extravagant expenses. The Court Ordered the Husband pay \$375,000 to the Wife, as a lump sum to last her until the Final Hearing, later in the year.

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