

# FAMILY Flyer



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## 'CLOSE-UP' EDITION

Trying to accurately determine the income that a spouse receives through their own business is often a difficult task. What happens when a spouse does not correctly disclose the income received from their business? Read ['Cash Business in the Family Court'](#).

## Q & A

**Q:** If my partner has previously worked overseas and is now back in Australia and receiving a military disability pension does that constitute 'Child Support income' for a Child Support assessment?

**A:** Under the Child Support Assessment Act all pensions are included as taxable income. Your partner's military disability pension will be treated as Child Support income, and should be used by the CSA to assess how much Child Support he will pay.

## CAN THE COURT DISAGREE WITH A FAMILY REPORT EXPERT?

In parenting matters Family Report experts are often engaged to interview the parents and the children in order to make recommendations to the Court about what Orders may be appropriate for the care of the children.

What happens if the Court takes a different view to that of the 'expert'?

In a recent case the Trial Judge's opinion differed from the opinion of the Family Report writer. The case involved a 5 year old child. Following separation, the Father made allegations of sexual abuse against the Mother's new partner which were later found to be fabricated. The child then disclosed in counselling that the Father had in fact abused her, and not her step-father. Following the disclosure the Mother withheld the child from contact with the Father.

In making Orders for the Mother to have sole parental responsibility and the Father to spend no time with the child, the Trial Judge departed from the recommendations of the Family Report. The Report had recommended that some form of contact occur. In the Trial Judge's decision, he noted that, he 'had the benefit of all the evidence in the matter' which the Family Report writer had not.

The Father appealed on the ground that the Trial Judge failed to give appropriate weight to the recommendations of the Family Report writer.

The Full Court disallowed the appeal.

It should be noted that for the most part, the Court does follow Family Report recommendations, however, they are not bound to do so and may depart from the assessments in particular circumstances. Furthermore, the Court does from time to time make 'no contact' Orders.

## TREATMENT OF WORKERS' COMPENSATION PAYMENTS IN PROPERTY SETTLEMENTS

The Appeal Court has recently had to consider what percentage adjustment a spouse should receive for their financial contribution of a workers' compensation claim received late in a marriage.

### The Facts:

- The Husband and Wife were together for 7 years. At the commencement of the relationship the Wife worked as a retail assistant and the Husband was in receipt of workers' compensation payments.
- The Wife continued to be in paid employment during the marriage. The Husband did not attempt to find employment and also regularly took illegal drugs.
- One month prior to the couple's separation the Husband received a lump sum payment of \$250,000 in relation to his workers' compensation claim. At trial the property pool was approximately \$500,000, the Husband's payment therefore represented 50% of the pool.

### Court Found:

- At the trial, the Judge found that the contributions of the Husband and Wife during the relationship were equal, primarily because the Wife had always worked and the Husband had not. The Judge gave the Husband an adjustment for his poor health, awarding him overall 55% of the property pool.
- The Husband appealed on the grounds that his workers' compensation claim substantially outweighed the financial contribution of the Wife through her employment.

### Court Ordered:

- The Appeal Court found that the Judge had erred by failing to give specific recognition to the Husband for his financial contribution from the workers' compensation payment.

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- The Court changed the decision assessing the Husband's contributions at 60% with a further 5% on the basis of future needs, totalling 65%.

## CHANGES TO THE CHILD PROTECTION ACT

On 29 August 2011 various changes were introduced to the Qld *Child Protection Act 1999*.

The changes are substantial and the Government hopes that they will allow the Department of Child Safety and the police to better protect those children who are suspected to be at risk of harm.

Some of the changes include:

- The definition of 'harm' has been extended to include harm caused by a 'a single act, omission or circumstance or a series or combination of acts, omissions or circumstances'. This major change recognises that harm against children can be cumulative and occur over an extended period of time as well as being the result of a single incident.
- The definition of 'parent' now includes a long-term guardian of the child.
- A Temporary Custody Order allows the Department to take a child into care for up to 3 business days, without the need for an assessment.
- Court Assessment Orders – the amendments mean that, for a child that is in the care of the Department, before an Order can be made allowing the child to spend time with their family, the Court must consider the views of the Department about the child's contact with their family, including whether that contact should be supervised and the duration and frequency of the contact.
- Interim Orders – the Court is now able to Order that an authorised officer may have contact with a child who remains in the custody of their parents or relatives, during an adjournment of an application for a Court Assessment Order or Child Protection Order. The Court may authorise those officers to enter and search the premises (in certain circumstances) for the purpose of having contact with the child.

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The logo for Michael Lynch Family Lawyers, featuring a stylized 'M' and 'L' in a circular design above the text 'Michael Lynch Family Lawyers'.

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