



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:

- Recent Changes in Child Support
- Court Counselling - Confidential
- Child Support - an Issue in the Family Court
- Freedom of Movement - Details
- Child Support - Employer Deductions
- Family Violence and Property Settlement
- Maintenance - Adult Children

RECENT CHANGES IN CHILD SUPPORT

In September 1997 the Federal Government outlined proposed changes to the Child Support legislation. These proposed changes, are as follows:-

- To introduce a minimum payment of \$5.00 per week, regardless of unemployment.
- Net rental property losses and exempt foreign income will be included as income to determine a Child Support liability.
- In attempting to address payer parents who now have second families the "exempted income component" of the payer's income will be increased by 10%, for example in 1997/1998 this component for a single payer would increase from \$9,006.00 to \$9,907.00 a year.
- Payers with a second family will be able to claim 50% of any Child Support paid as a deduction from the household income which is used for determining the family's entitlement to Family Payment and child care assistance.
- The payee "disregarded income" level will be reduced, for example in 1997/1998 from \$37,424.00 to \$29,598.00 (but people receiving this amount will be able to reassess where they actually incur high child care costs).

Administrative reforms will include:-

- Allowing parents by agreement to change from Agency collection to private collection.

- Requiring parents to shift to private collection once the Agency is satisfied that regular payments are likely to continue. The Agency will provide a safety net if the new arrangements fail.
- The Agency will introduce new services including mediation, shelf help packages and payer support programs.
- Making the start date of liability, the date of lodgement of an application, rather than back dating it for 28 days.
- Providing all Agency clients with the right to object to an Agency decision. Currently many decisions by the Agency can only be reviewed by a Court.

COURT COUNSELLING - CONFIDENTIAL

A recent Family Court decision found that the *Freedom of Information Act* did not apply to a Court Counsellor's handwritten notes as the notes were documents of the Court.

CHILD SUPPORT - AN ISSUE IN THE FAMILY COURT

Family Law Act has been amended to enable the Family Court to take into account a paying parent's potential Child Support liability in Property and Spousal Maintenance proceedings, even if the absence of an assessment under the *Child Support Act*.

FREEDOM OF MOVEMENT - DETAILS

In the last "Flyer", we mentioned a recent decision of the Full Court which received significant media exposure which related to a resident parent wishing to relocate from Cairns to Bendigo.





The Trial Judge and the Full Court allowed the mother to move.

Significant interest has been raised in relation to this case. By way of assistance, we note the following:

- The recent Full Court decision does not set a general rule for relocation cases.
- The test to be applied by the Court in making such decisions is "what is in the best interests of the child". The outcome of each matter will therefore vary from case to case, depending on the facts.
- The case was more than just a determination as to whether the mother could relocate. The Court considered for the first time, the interpretation of key sections of the recent Family Law amendments.
- That the "best interests of the child are the paramount consideration" for the Court in making parenting Orders was reaffirmed.
- The principal of a child's "right to have contact, on a regular basis, with both parents and with the other significant people" was accepted by the Court as providing guidance in determining "the child's best interests". The Court stressed that decisions of the Court are not based on general notions of "children's best interests" but must be made in the best interests of "the particular child in the particular circumstances".

CHILD SUPPORT - EMPLOYER DEDUCTIONS

The *Child Support Act* has been amended to allow existing or future payers to make an election to make payments directly to the Agency. The Agency will accept this election if satisfied that the payer is likely to make timely payments.

If a payer defaults, the Registrar will be able to require payments to be deducted from the payer's wages and the payer will be unable to lodge another election for six months.

FAMILY VIOLENCE AND PROPERTY SETTLEMENT

In a recent decision of the Full Court, it was stated that "where there is a course of violent conduct by one party towards the other during the marriage, which is demonstrated to have had a significant and adverse impact on the party's contribution to the marriage, this is a factor which a trial Judge is entitled to take into account in assessing the parties contributions".

The law is that in a "claim for damages" for a series of incidents involving Domestic Violence, the claimant is required to prove each individual assault. The Court is not entitled to reach a general conclusion.

MAINTENANCE - ADULT CHILDREN

The *Family Law Act* provides that a Court must not make a Child Maintenance Order in relation to a child who is 18 years or over, unless the Court is satisfied that the provision of the maintenance is necessary to enable the child to complete education or because of a mental or physical disability of the child.

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