



family flyer

Michael Lynch
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:

- New Q&A Series
- Lapsed Consent Orders
- “Close-up” Edition
- Relocating Interstate
- What is Meant by a “Conflict of Interest”?

NEW Q&A SERIES

Q: Are all superannuation funds splittable?

A: In Family Law proceedings superannuation funds can be divided like other assets in a property settlement, but not all super funds can be split to make a payment to the other spouse. Funds below \$5,000 are not splittable.

If you have any Family Law queries you would like an answer to – don’t hesitate to email us at law@mlynch.com.au.

LAPSED CONSENT ORDERS

An ‘Application for Consent Orders’ is the most common way that a legally enforceable agreement is documented. So it’s important to get it right! – One trap that does occur from time to time is that the parties delay in lodging the document with the Court.

For an Application for Consent Orders to be accepted by the Court, both parties’ signatures and the filing of the Application must occur within 90 days of the date of the first signature.

“CLOSE-UP” EDITION

When separating, most people decide to end their marriage through the process of a divorce – this is different to declaring a marriage ‘void’ and that it did not exist in the first place. When will a marriage be void or unlawful? To find out the circumstances in which this could be a possibility, read [“When a Marriage is Not a Valid Marriage”](#).

RELOCATING INTERSTATE

Relocation cases always depend on their specific circumstances. Consequently, it is difficult to

make any general statements about whether a parent will be allowed to relocate, or not. In a recent case the Court had to consider whether it would be in the best interests of the young children if the Mother was permitted to relocate away from the Father, to the opposite side of Australia.

The Facts:

- The Father and Mother were together for 6 years and had 2 children, aged 5 and 3.
- Before the children were born the parents had lived together in Western Australia for 3 years. They then relocated to Townsville so the Father could gain qualifications and become registered in his occupation. They lived there for 5 years, prior to separation.
- After separating, the Mother filed an application seeking to relocate with the children from Townsville to Western Australia, where the Mother’s family lived. The Father opposed the relocation.
- The Mother indicated that she and the Father had previously agreed that they would move back to Western Australia, however, the Father denied this. The Mother also argued that it would be of significant importance for the children to be involved with her family, and it would also be important to her.
- The Mother proposed that if she was permitted to relocate, the children could visit the Father once the youngest child was 5 and they could then travel alone and spend 2 weeks per year with him.



Alternatively, she proposed that the Father could visit the children for two, 2 week periods per year, in addition to school holiday periods.

- If she was not allowed to relocate, she proposed the Father spend time with the children from Saturday to Monday and for 3 hours on Thursday for the first week and in the second week, from after school on Monday to before school on Tuesday.
- The Father proposed that the children remain in Townsville, as their memories were not developed enough for them to not see the Father for long periods of time and still keep the Father in mind.

Court Found:

- The relocation would place financial constraints on both parents.
- It appeared that the Mother held her relationship with her family to be of more significance than the involvement of the Father with the children.
- Taking into account the children’s young ages, the children would benefit from significant and close interaction with each parent.

Court Order:

- The Mother was not permitted to relocate with the children, therefore allowing the children to spend time with the Father according to the Father’s gradual increase in time proposal. This arrangement being:
- For 3 nights a fortnight for 3 months.

- For the following 6 months, for 5 nights per fortnight.
- and thereafter, on a ‘week about’ arrangement.

WHAT IS MEANT BY A “CONFLICT OF INTEREST”

A Solicitor has a duty to their client to maintain confidentiality of communications between the parties, as well as not represent anyone involved in their client’s Family Law dispute. This means they must avoid any ‘conflict of interest’ situation. A ‘conflict of interest’ could arise where a Solicitor:

- acts for both the Husband and Wife in Family Law proceedings (this also includes a Solicitor not representing the Husband and Wife in the preparation of a Consent Order);
- has acted for the Husband and Wife in a “non-matrimonial” matter and then later agrees to act for one of the spouses in a “matrimonial matter”;
- acts for one spouse in a firm and then leaves to work for another firm, who is acting for the other spouse to the marriage;
- is related to one of the spouses and so is related by marriage to the other party of the marriage.

This also applies to Solicitors acting for defacto partners. It is up to the Solicitor to ensure that a ‘conflict of interest’ situation does not arise.

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