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## DIVORCE INCREASING AFTER LONG MARRIAGE

In a report called ‘*Working Out Relationships*’ the Australian Institute of Family Studies (AIFS) has found that more Australians are divorcing after 20 years or more of marriage.

The report reveals that the proportion of divorces ending after 20 years had increased from 13% in 1990 to 28% in 2011.

Another interesting result is that the proportion of divorces involving children under 18 years has declined over the last few decades; suggesting that an increasing number of parents will delay divorce until all of their children are at least 18 years old.

Divorce after fewer than 10 years of marriage remained the most common time for separation. The report also revealed that the wife was more likely to initiate a divorce.

Overall however, the number of divorces are decreasing with 48,935 couples officially parting ways in 2011, down from 55,330 in 2001.

## “CLOSE-UP” EDITION

Making an Application to the Court to resolve a dispute is a statistically less likely course for most people. But, if an Application is made – particularly in a children’s matter – the first Court date will be an Interim Hearing. In this edition we look at [“What is an Interim Hearing?”](#)

## MEDIATION – TIPS – NO. 1

Over the next 4 editions we will dispel some common misconceptions regarding mediation.

**Myth:** “*The myth of justice*” wherein parties refuse to settle because they believe they are right and a Court will determine the matter clearly and definitively the way a party expects.


**Reality:** This is a common defensive position however it misunderstands the limitations of litigation and the Court system, in arriving at a truly just result for both parties. It also underestimates the impact of the loss of control in having a judge determine the outcome of a matter.

## BREASTFEEDING AND SEPARATION

A question we are often asked by people who have recently separated is whether it is okay to remove a breastfeeding child from the Mother so that the child can spend time with the Father.

For parents who are unable to agree on an arrangement for the children, the only alternative may be to have the Court make that decision. To a mother who has not long given birth, this can come as a shock.

Usually shorter visits with the Father scheduled between breastfeeds will not have the effect of premature weaning. However, if the Court decides to allow a child to spend longer time with the Father, it often means forced or premature weaning of a breastfed baby.



There is no specific legal provision which deals with parenting arrangements while breastfeeding and therefore the Court uses its discretion to determine what is appropriate on a “case by case” basis. In decisions made, the Court has upheld the breastfeeding relationship at the expense of time with the Father (particularly with a very young infant) in some cases, and in other cases the Court has forced mothers to wean their child so that overnight time with the Father can be introduced.

## COLLECTING CHILD SUPPORT FROM NZ AND USA

Australia’s Child Support scheme (CSA) provides that child support obligations should be assessed in the country where the receiving parent (primary carer parent) resides and that assessment should be collected in the country where the paying parent resides.

Australia is a signatory to various international conventions regarding arrangements for the collection of child support between countries. Two countries that arise quite frequently for Australia are, NZ and USA.

Australia’s agreement with NZ provides for the collection of child support under a CSA assessment in both Australia and New Zealand and for the collection and enforcement of spouse maintenance obligations. The child support authority in the country where the receiving parent is resident will issue the assessment and the child support authority in the country where the paying parent resides will be responsible for collection. The authority in Australia is the CSA and in New Zealand it is the Inland Revenue Department (IRD).

Since December 2002 Australia has had an agreement with the USA for the enforcement of child support obligations. This agreement replaced earlier non-treaty arrangements

between Australia and certain individual States of the USA.

The USA agreement provides for the enforcement of Court Orders and administrative assessments, as well as each country to assist in locating paying parents, serving notices and providing advice.

If you have a dispute regarding child support contact us for a fixed cost initial appointment on (07) 3221 4300.

## CAN’T FIND YOUR SUPERANNUATION?

In a property settlement separating spouses have a duty to disclose all of their property, both assets and liabilities, this includes any superannuation they have.

In a recent case the Court examined the Husband’s lack of disclosure regarding his superannuation. His ‘Financial Statement’ completed prior to the Court hearing indicated he had superannuation of \$218, despite the fact that his own evidence suggested he had worked for most of the 14 year relationship.

During cross-examination the husband conceded that he should have a “fair amount” of superannuation but did not know where it was, and that he could have had up to 12 different super funds. The Court noted such funds had not been disclosed.

The Court determined that it had the power to make a declaration as to the value of the Husband’s superannuation interest without direct paperwork on it. Accordingly, the Court decided that the husband had a ‘notional’ superannuation interest worth \$40,000. This notional superannuation interest was then included in the property pool of the parties when the Court calculated the division of property between them.

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