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Welcome

Welcome to our October 2005 issue of 'Hartley Family Law Services Newsletter'.

The purpose of this newsletter is to keep you informed of developments in family and defacto law, which are of interest to you. We aim to keep you up-to-date on the law and the services provided by Hartley Family Law Services.

In this issue we cover:

- ◆ Important Recent Cases regarding the Court's treatment of Superannuation in Property Settlement
- ◆ An Update on Pending Changes to Children's Laws relating to Shared Parental Responsibility
- ◆ An Update on Pending Child Support Changes
- ◆ Recent Developments at Hartley Family Law Services
 - ◆ Including the appointment of Joe Healy as a Partner
 - ◆ Conferences we have spoken at & our Published Works

Superannuation Update

Superannuation is a "different species of asset" and is to be treated separately from other assets of the parties in a property settlement division.

Important Recent Cases regarding the Court's treatment of Superannuation in Property Settlement

The Full Court of the Family Court has handed down a number of very important decisions that impact significantly in the treatment of Superannuation in Family Law property settlements. In particular, the Full Court has overruled an earlier Full Court decision and has now determined that Superannuation is a "different species of asset" and is to be treated separately from other assets of the parties in a property settlement division. This has enormous ramifications for separating couples and for advisors including lawyers, accountants and financial advisors. A more detailed synopsis of our advice of relevant matters to be aware of in relation to these important Superannuation changes can be found in our e-Bulletin on our website (www.hartleyfamilylaw.com.au).

Also, legislation has recently been introduced so that "eligible annuities" are now defined as Superannuation interests under the *Family Law Act* and can be subject to splitting Orders in the same manner as other Superannuation interests. Essentially, "eligible annuities" refers to those annuities purchased with monies rolled over from Superannuation funds (or similar lump sums).



Shared Parental Responsibility

No doubt many of you would have read articles in the media and press relating to pending changes as to how the Family Court decides children's issues. The Family Law Amendment (Shared Parental Responsibility) Bill 2005 is currently before Parliament. It is expected to pass both houses of Parliament without any significant amendment.

It is important to remember that the provisions contained in this Bill are not yet law but some of the important changes that no doubt will occur in the near future include the following:

1. The Government will establish a number of Family Dispute Resolution Centres. It will be compulsory for separating couples to attend sessions at these Resolution Centres to try to mediate their claim before proceeding to Court;
2. The legislation will introduce a presumption of "joint parental responsibility". This does not mean that the children must share an equal amount of time with the other parent, but what it will mean is that the Courts will presume that both parents have an equal and joint

responsibility for the child in relation to long term issues that will affect the child. There is nothing significantly new in this change. Currently, both parents individually have parental responsibility and the change will force parents to consult with each other and exercise their responsibility jointly rather than individually;

3. The Bill also envisages that there will be amendments made so that the Court must consider making Orders that a child spends "substantial time" with each parent. This is the part of the legislation that goes close to bringing about a "shared care" arrangement. It is not known yet at this stage, as to what "substantial time" really means other than the fact that there will be greater emphasis on the Court ordering that children do spend substantial time with the non-residential parent. Our preliminary view at this stage is that it therefore may be easier or more appropriate in certain circumstances to seek Orders for shared care than it was in the past but this will still depend upon how the Courts interpret this legislation.

Child Support

Also, you may have become aware of significant proposed changes to the *Child Support Assessment Act* which is currently in force. The ministerial taskforce on child support have released their recommendation document entitled "In the Best Interests of Children – Reforming the Child Support Scheme" (May 2005).

There are some 30 specific recommendations in the report and it is anticipated that many of these recommendations will become enshrined in legislation in the near future. The key recommendations of the taskforce include the following:

1. The current child support formula is to be altered by working out the costs of children by reference to the combined income of the parents and then distributing those costs in accordance with the parents respective capacities to meet those costs taking into account their share of the care of the children. This is referred to as the "income pool" idea.

2. The meaning of "taxable income" will be broadened to include certain non-taxable payments (such as income support) and income will have the same definition as it does with the family tax benefit.
3. Costs of children will rise with age. Where there are more than three (3) child support children, the costs of the children will be at the amount of three (3) children only.
4. Regular physical contact or shared care will result in the paying parent providing less child support.
5. The Child Support Agency will be given increased resources and tools to investigate self employed parents or parents who organise their financial affairs to avoid paying child support. The Agency will be given greater enforcement powers.

It is anticipated that these changes will significantly reduce the amount paid by liable parents for child support, especially for very young children and in situations where both parties are gainfully employed.

Recent Developments at Hartley Family Law Services

Joe Healy appointed as Partner

We are pleased to announce that Joe Healy has been appointed as a Partner of Hartley Family Law Services as of 1 July 2005. Joe has a Bachelor of Law Degree and a Business Degree and is also an Accredited Family Law Specialist. He has been with Hartley Family Law Services since February 2002.

Joe has practised exclusively in Family Law since 1999 and has extensive experience in Family Law issues with particular experience relating to large property matters and financial settlements.

Prior to being admitted as a Solicitor Joe worked as an Associate to a District Court Judge for 2 years.

Joe possesses the necessary commercial expertise to examine complex financial structures and explore long term consequences with our clients to help them obtain the best possible result.



Conferences we have spoken at and our Published Works

Our Solicitors are recognised as leading Family Law Practitioners and are often invited to speak at Conferences, author papers and present seminars as well as comment in the media on current Family Law issues. The following is a list of Conferences and publishing works we have performed in 2005.

Details of these Conferences and the Papers we have presented are available on our website (www.hartleyfamilylaw.com.au):

Date	Organisation	Speaker	Topic
Jan 05	Sunday Mail	Joe Healy	Doing Divorce on the Cheap.
Apr 05	Legal Wise Seminars	Brett Hartley	Brett chaired the Legal Wise Seminar presented in Brisbane in April 2005.
May 05	Family Law Lexus Nexis – Family Law Master Class Qld	Brett Hartley	Effectively dealing with Discretionary Trusts and Hidden Assets.
May 05	Lexus Nexis – Young Lawyers Day – Family Law Master Class	Sarah Minnery	Sarah chaired the Young Lawyers Day at the May 2005 Family Law Master Class.
Jun 05	The Australian	Joe Healy	Financial Implications of a failed De Facto Relationship.
Jul 05	Securities Institute	Brett Hartley	Brett provided an update to the Superannuation Module for the Advanced Diploma & Financial Services (Financial Planning) with the Securities Institute.
Aug 05	Financial Planning Association	Brett Hartley	Family Law Case Studies – A Practicable Look at the Interaction of Family Law & Financial Planning.

Our Vision

To be recognised by our peers in the professional community as the premier Specialist Family Law firm in Queensland.

Our Core Values

- ◆ **Learning**
To maintain superior technical skills and knowledge in Family Law.
- ◆ **The Best**
To be recognised as the best in Family Law by educating our professional colleagues to assist their clients in relation to matters concerning Family Law.
- ◆ **Fun**
We enjoy Family Law and practise it with passion
- ◆ **Empathy**
A commitment to listen, understand and care for our clients
- ◆ **Honesty and Respect**
To be frank and honest with our clients regarding possible legal outcomes and commercial realities
- ◆ **Business**
To be a professionally run and profitable business that survives long term to look after our client's needs.

Our Staff

Brett Hartley – Partner, Accredited Family Law Specialist
Joe Healy – Partner, Accredited Family Law Specialist
Beata Leszczuk – Family Law Solicitor
Sarah Minnery – Family Law Solicitor
Sherika Ratneser – Family Law Solicitor
Catherine Hartley – General Manager
Di Scott – Financial Controller
Narelle McCarty – Senior Legal Assistant
Chris Harris – Senior Legal Assistant
Tenielle Falcone – Office Junior

Level 15, Brisbane Club Tower,
241 Adelaide Street, Brisbane QLD 4000
GPO Box 678 Brisbane QLD 4001
Telephone 07 3220 1299 Fax 07 3220 1277
Website www.hartleyfamilylaw.com.au
Email: brett.hartley@hartleyfamilylaw.com.au

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PRIVACY

Hartley Family Law Services uses your personal information to represent and advise you. We may use it to tell you about changes in the law and our practice. It is only used for other purposes if we are legally required to do so or with your consent.

If your name or contact details have changed or if the information we hold is inaccurate please contact us. You may have your name removed from our communication list or update your details by contacting us on 07 3220 1299 or email catherine.hartley@hartleyfamilylaw.com.au.