



**NICHOLLES**  
Family Lawyers

The Nicholes Newsletter.  
[www.nicholeslaw.com.au](http://www.nicholeslaw.com.au)

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## News & Events:

NFL PROVIDES FRONT COVER  
FEATURE ARTICLE REVIEWING NEW  
PARENTING LAWS FOR THE LAW  
INSTITUTE JOURNAL OF VICTORIA  
2006 (OCTOBER EDITION)

Sally Nicholes was requested to write a paper published in the October 2006 edition of the Law Institute Journal reviewing the new children's laws. **“Sharing the care, The new parental responsibility and child support regimes”**, was published as the front cover story of the Law Institute Journal. The article summarised and assessed the federal governments **Family Law Amendment (Shared Parental Responsibility) Act** introduced in July this year relating to the **Family Law Act 1975 (Cth)**, the **Child Support Assessment Act 1989 (Cth)** and related legislation. Sally was also interviewed for a further article, **“Minority groups ignored by new family laws”** (pg. 20), also in reference to the federal governments **Family Law Amendment (Shared Parental Responsibility) Act** introduced in July this year. These article are available on our website [www.nicholeslaw.com.au](http://www.nicholeslaw.com.au).

NATIONAL FAMILY LAW CONFERENCE  
- PERTH, OCTOBER 2006:

Nadine Udorovic and Sally Nicholes attended the National Family Law Conference in Perth during late October. Sally also gave a paper in Margaret River on the new Children's Laws following the conference which was attended by various other Legal Practitioners and Registrars of the Family Court.

# New Developments in the Law

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## THE GOVERNMENT HAS PUBLISHED ITS NEW ATTEMPTS TO TARGET PARENTS WHO ARE AVOIDING THE PAYMENT OF CHILD SUPPORT

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On 18 October 2006 the Federal Government put out an announcement that they are targeting parents who are avoiding paying child support and quoted that 125,000 people are under investigation by the tax office.

A four (4) year program costing \$168,000,000 is expected to bring in five (5) times the number of referrals to the Australian Taxation Office. The Child Support Agency and the Australian Taxation office have joined forces in a new tax return lodgement program, targeting parents who are avoiding paying child support. The Government has reported that three (3) months after the program began, the Child Support Agencies already referred 125,000 people to the Australian Taxation Office who had not lodged their personal tax returns. As tax returns are the “first point of call” for calculating the amount of child support the parent must pay, the Government is attempting to track down parents who “dodge their child support responsibilities” by failing to lodge tax returns.

The tax return lodgement program is part of the Government’s intense compliance reforms to the child support scheme.

## ANNULMENT OF A BANKRUPTCY IN FAMILY LAW

A person seeking an Order of Annulment of a bankruptcy must apply to the Court following the procedure laid down in the Bankruptcy Rules (Part 7 division 7.1).

An Application for Annulment may be made to the Federal Court or the Federal Magistrates Court if the bankruptcy is claimed to have been an abuse of process designed and for Family Law proceedings by the bankrupt spouse. Also, under Section 35(1) of the Bankruptcy Act, the Family Court has jurisdiction in bankruptcy where the trustee is a party to a property settlement or spousal maintenance proceedings as defined in the Family Law Act, where the Federal Court has referred the matter to the Family Court under Section 35 of the Bankruptcy Act. Once matters are transferred to the Family Court, that Court is bound to give full force and effect to the provisions of the Bankruptcy Act.

## SUPERANNUATION

Two (2) recent cases in respect to the amount of superannuation referable to a marriage, (T & T 2006, FAMCA 207)

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and (M & M 2006, FMACA 913) have seen the demise of the “West and Green” approach and a move toward providing more considered evidence to substantiate the amount of superannuation referable to a marriage.

“West and Green 1993 FLC 90-647” saw a formula developed to give a spouse an amount of money once their former spouse being a member of a superannuation fund had retired as it was not possible to split the superannuation interests. Today the “West and Green” formula is no longer used as superannuation can now be split.

In M & M the Full Court when looking at an invalid Police Officer’s superannuation interest valued at \$1,100,000.00 with a marriage of thirteen (13) years compared to the Police Officer’s fund membership of twenty (20) years, the Full Court stated “all that is required is that the contributions of the parties be valued in relation to superannuation as they are of any other assets. Further there may be real injustice in doing so as there is frequently far less contributed to a fund in the early years of the membership compared to later years. A formulaic approach does not take account of the years in which greater contributions were made, often later in marriage, nor the effect of contributions over many years of marriage which may have diluted initial contributions”.

T & T also involved an invalid New South Wales Police Officer who had superannuation interests valued \$1,900,000.00. In both cases the main issue was how to account for the value of the superannuation that was brought into the marriage when the period of fund membership was significantly greater than the period of marriage. In both cases the Courts had little alternative but to make a considered estimate as to the amount of superannuation referable to the marriage.

Today Practitioners are required to obtain Family Law valuations as at the date of marriage to ascertain the member’s superannuation entitlements to be able to compare the superannuation interests from the date of marriage and then at the end of the marriage. Most superannuation funds allow for members to be able to obtain figures dating back to the early 1990’s although it is still highly unlikely that records can be obtained prior to such date. The other alternative is to make estimates based on the likely range of salary that the member would have received comparable to the superannuation history during this period.

What both T & T and M & M show is that now a more considered approach is required to substantiate the quantum of superannuation referable to a marriage.



# What's New:

## NEW ASSOCIATE - MIKE WELLS

NFL welcomes a new Associate Mike Wells.

Mike has had a significant background in social science and more recently has worked as a lawyer in both private practice and for the Duty Lawyers Scheme at the Family Court of Australia.

Mike commences his role with NFL on 18 December 2006.

## GERMAN INTERN/LEGAL STUDENT

We have a further but temporary addition to our Firm. On 15 January 2007 we are excited to have a German intern, Dennis Becker from Würzburg, Germany work for the Firm for three months. Dennis has worked as an administrative judge in Germany and has an expertise in international tax and family law.

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*If you have any family law queries or questions arising from this Newsletter, please do not hesitate to contact our office.*

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## PROJECTS & INITIATIVES:

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NFL prides itself on the Firm's commitment to pro bono work and Pro Bono/Foundation work including the World Congress on Family Law and Children's Rights [www.lawrights.asn.au](http://www.lawrights.asn.au); Children's Rights International [www.childjustice.org](http://www.childjustice.org) and the Lasallian Foundation [www.lasallianfoundation.org](http://www.lasallianfoundation.org).

When the doors of NFL opened we aimed to have 15% of our time spent on foundation and pro bono work and this challenge has been met.

Pro bono projects run by NFL this year included:

- Amendments to the laws relating to case guardians.  
NFL ran a pro bono project on behalf of States Trustees to change the Family Law Rules to support some of our most disadvantaged in the community by making access to the Family Court less cumbersome and importantly less expensive. As a result of this submission by NFL, the Family Law Rules have been amended to accommodate represented family law litigants.
- A Sub-Committee formed in respect of special medical procedures.