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# JULY NEWSLETTER

## Family Law

The Honourable Tony Abbott MP has recently made comments suggesting that there be an option made available for couples seeking to divorce to have access to the pre-1975 fault-based divorce laws.

Criticism has been made that the current divorce laws under the *Family Law Act 1975 (Cth)*, do not adequately protect the institution of marriage. The *Matrimonial Causes Act 1959* provided 14 grounds for the grant of a decree of dissolution of marriage, including adultery, cruelty, desertion, imprisonment, insanity and habitual drunkenness. However, hiring a solicitor and obtaining sufficient evidence to prove the fault was not only a long and costly exercise but also caused considerable stress and bitterness for the parties both alleging and those being alleged of fault. By returning to the fault based system there in all likelihood will be a significant strain on our court resources, which understandably need to be focused on more serious cases. Perhaps a pre-action procedure could be introduced, similar to the compulsory mediation in children cases being brought in the family courts, requiring parties applying for a divorce to attend counseling, which is currently only necessary for parties married for less than two years. Abbott's suggestion was made with the announcement of his soon-to-be-released book. *Battlelines*.

## Building & Construction Law

The *Building and Construction Industry Payments Act (QLD)* was enacted in 2004 to provide a regime of rapid adjudication of building disputes outside the Courts by independent Adjudicators.

Statistics published by the Building and Construction Industry Payments Agency indicate that the number of Adjudication Applications lodged under the Act has increased by approximately 88% until the end of June 2009 as compared to the previous year. Disturbingly, 45.75% of these applications were claims where respondents had failed to serve a Payment Schedule within 10 business days after receipt of a Payment Claim under the Act. This comes as quite a surprise as failure to serve a Payment Schedule exposes a party to potential Court proceedings for recovery of the amount claimed as a debt owing (s19(2) of the Act). Under s19(4)(b), a respondent may not bring any counterclaim or raise any defence in relation to contractual matters in such proceedings.

Contractors should remain vigilant and always respond to claims/invoices under the Act (by serving a valid Payment Schedule), as an oversight in this regard may prove costly, should a claimant successfully pursue the claim as a debt owing in Court.

## Interesting stories

- Article: Make it harder to divorce: Abbott – <http://news.ninemsn.com.au/national/836444/make-it-harder-to-divorce-abbott>
- Article: 'Husband-beating' on the rise: – <http://news.ninemsn.com.au/national/828309/husband-beating-on-the-rise>
- Article: Divorced mums forced to stay put – <http://www.theaustralian.news.com.au/story/0,25197,25566547-2702,00.html>
- Article: Agony of children at divorce has clout – <http://www.theaustralian.news.com.au/story/0,25197,25559061-17044,00.html>
- Article: Parent law ties women to men – <http://www.theaustralian.news.com.au/story/0,25197,25554242-17044,00.html>
- Article: Fathers still chasing equal time – <http://www.theaustralian.news.com.au/story/0,25197,25584040-17044,00.html>

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