



Australian Government
Attorney-General's Department

Family Law Amendment Bill (No. 2)

INFORMATION SLIDES

Family Law Branch

FamilyLawAmendmentBillNo2@ag.gov.au

Participants can submit questions during the Webinar
at **slido.com** with **#FLABNo2**

Schedule 1, Part 1: Property Framework

Inquiry recommendation or related issue	Proposed amendments
<p><u>ALRC Recommendation 11</u></p> <p>The Family Law Act should be amended to:</p> <ul style="list-style-type: none">• specify the steps that a court will take when considering whether to make an order to alter the interests of the parties to the relationship in any property; and• simplify the list of matters that a court may take into account when considering whether to make an order to alter the interests of the parties to the relationship in any property.	<p><u>Decision-making framework</u></p> <p>Specify the steps a court will take when considering whether to make an order altering any property interests of parties to a relationship. The steps include:</p> <ol style="list-style-type: none">1. Identify the legal and equitable rights, interests and liabilities, of the parties to property.2. Consider each party's contributions to the property of the relationship.3. Consider each party's current and future considerations.4. Only make an order if it is just and equitable in all the circumstances. <p>Notes:</p> <ul style="list-style-type: none">• The court would not be required to take these steps in a particular order.• The just and equitable consideration is an overarching consideration that permeates the whole decision-making process.

Schedule 1, Part 1: Property Framework

Inquiry recommendation or related issue	Proposed amendments
<p><u>ALRC Recommendation 18</u></p> <p>The Family Law Act should be amended so that:</p> <ul style="list-style-type: none">the spousal maintenance provisions and provisions relating to the division of property are dealt with separately under the legislation.	<p><u>Remove spousal maintenance cross-referencing</u></p> <p>Maintain the list of ‘contributions’ but have a co-located, standalone list of ‘current and future circumstances’.</p>
<p><u>Caselaw principles of ‘debt’ and ‘wastage’</u></p> <p>As evidenced in current practise in case law, debt and wastage can be considered by the courts and treated as a negative financial contribution to the property pool under the current catchall future needs factor (s 75(2)(o)).</p>	<p><u>New contributions factors – debt and wastage</u></p> <p>Include new factors to codify existing case law concepts which may be considered by the court in assessing contributions:</p> <ol style="list-style-type: none">consider any debts incurred by either or both of the parties to the relationshipconsider the effect of any wastage by a party to the relationship, of property or financial resources of either or both parties.

Schedule 1, Part 1: Property Framework – Family Violence

Inquiry recommendation or related issue	Proposed amendments
<p><u>Henderson Recommendation 13</u> The Committee recommends that the Australian Government introduces to the Parliament amendments to the Family Law Act to enable:</p> <ul style="list-style-type: none">• the impact of family violence to be taken into account in the court’s consideration of both parties’ contributions; and• the impact of family violence to be specifically taken into account in the court’s consideration of a party’s future needs. <p><u>JSC Recommendation 23 (Second Interim Report)</u> The Committee recommends that the Australian Government amend the Family Law Act to better reflect the impact of family violence on property settlements.</p> <p><u>Economic and financial abuse</u> Including economic and financial abuse as a discrete factor would recognise and clearly communicate the relevance of these types of abuse to achieving a just and equitable division of property.</p>	<p><u>New contributions and future considerations factors - Effect of family violence</u></p> <ul style="list-style-type: none">• The court may take into account the <i>effect</i> of any family violence to which one party to the relationship has subjected the other party on:<ul style="list-style-type: none">• the ability of the other party to make financial and non-financial contributions, and• on the current and future circumstances of the other party, including on any other matters that can be considered as part of the current and future circumstances.• This approach allows for the <i>effect</i> of family violence to be considered as an overarching factor where relevant to the courts consideration of the other factors.<ul style="list-style-type: none">• For example, the effect of family violence could be relevant to understanding a party’s non-financial, homemaker contributions or may be relevant to the capacity of a party for (future) gainful employment. <p><u>New contributions factor - Effect of economic and financial abuse</u> The court may take into account <i>the effect</i> of any economic or financial abuse to which one part of the relationship has been subjected by the other party.</p>

Schedule 1, Part 2: Principles for conducting property or other non-child-related proceedings

Inquiry recommendation or related issue	Proposed amendments
<p><u>Henderson Recommendation 18</u> The Committee recommends that the Family Law Act be amended to extend sections 69ZN and 69ZX, which requires the court to conduct proceedings in a way which safeguards the parties against family violence in parenting matters, to apply in property division matters.</p> <p><u>ALRC Recommendation 20</u> The Family Law Act should be amended to extend section 69ZX to property settlement proceedings.</p>	<p>Create a new Division containing ‘Principles for conducting property or other non-child-related proceedings’, adapted from existing Division 12A (Principles for conducting Child-related proceedings).</p> <p>This will:</p> <ul style="list-style-type: none">• provide the court with duties and powers to use less adversarial trial processes for proceedings that do not involve children’s matters.• allow the court to actively direct, control and manage the conduct of proceedings; safeguard parties against family violence; and conduct the proceedings without undue delay and with as little formality and legal technicality and form as possible.

Schedule 1, Part 3: Duty of Disclosure in Financial Matters

Inquiry recommendation or related issue	Proposed amendments
<p><u>JSC Recommendation 22 (Second Interim Report)</u> The Committee recommends that the Australian Government consider amendments to the Family Law Act to relocate disclosure duties regarding financial circumstances from the Family Court Rules 2004 and Federal Circuit Court Rules 2001 to the Family Law Act, and to further include:</p> <ul style="list-style-type: none">• the cost consequences for a failure to disclose financial information, and reflect that non-disclosure of financial information may be taken into account in apportioning the property pool; and• an application of this provision beyond court proceedings to include alternative dispute resolution.	<ol style="list-style-type: none">1. Codify the existing disclosure duty on parties to family law financial matters to provide full and continuing disclosure of all relevant financial information to the court and the other party2. Extend the existing disclosure duty on parties to family law financial matters to apply when parties are preparing to start proceedings; and3. Introduce a requirement for legal practitioners and family dispute resolution practitioners to advise parties about their disclosure duty, the consequences of a breach and encourage compliance with the duty.

Schedule 1, Part 3: Arbitration

Inquiry recommendation or related issue	Proposed amendments
<p><u>ALRC Recommendation 26</u> The Family Law Act and the <i>Child Support (Assessment) Act 1989</i> should be amended to increase the scope of matters which may be arbitrated, whether or not upon referral from a court. Those matters should include all financial issues, including child maintenance and child support, subject to limitations. Appropriate occasions for arbitration would not include disputes:</p> <ul style="list-style-type: none">• relating to enforcement;• under sections 79A or 90SN of the Family Law Act (subject to limitations); and• where a litigation guardian has been appointed.	<p>Create one consolidated list of financial and property matters that can be arbitrated, regardless of whether the arbitration is court-referred or privately arranged.</p> <p>The scope of matters which may be arbitrated <u>will not</u> be expanded as part of these amendments, due to a range of complexities and stakeholder views. The intersection between family law and child support legislation is complex, with reform in this space involving a large body of work and engagement with other government agencies.</p>
<p><u>ALRC Recommendation 29</u> The Family Law Act should be amended to provide that upon application by an arbitrator, or by a party to an arbitration, a court has power to make directions at any time regarding the further conduct of the arbitration, including power to make a direction terminating the arbitration (whether or not the arbitration was referred from a court).</p>	<ol style="list-style-type: none">1. Empower arbitrators to make an application to the court for directions to facilitate the efficient conduct of an arbitration, and2. Empower a court to terminate an arbitration on the application of a party or arbitrator.

Schedule 2: Children's Contact Services

Inquiry recommendation or related issue	Proposed amendment
<p><u>ALRC Recommendation 54</u> The Family Law Act should be amended to:</p> <ul style="list-style-type: none">• require any organisation offering a Children's Contact service to be accredited; and• make it an offence to provide a Children's Contact Service without accreditation. <p><u>JSC Recommendation 9 (Second Interim Report)</u> The Committee recommends that the Australian Government lead the establishment of mandatory accreditation, standards and monitoring processes, including complaints mechanisms and ongoing professional development requirements, for:</p> <ul style="list-style-type: none">• family consultants, including family report writers employed by the court and engaged under Regulation 7 of the Family Law Regulations and privately engaged family report writers; and• Children's Contact Services.	<p>Authorise Government to develop regulations which provide accreditation standards and requirements for government-funded and private Children's Contact Services.</p> <p><u>Note:</u> The exposure draft provides the parameters and boundaries of a potential regulatory scheme, but does not prescribe a specific regulatory scheme or approach. This will be set out in future 'Accreditation rules' within the regulations.</p>

Schedule 3, Parts 1-2: Case Management and Procedure

Inquiry recommendation or related issue	Proposed amendments
<p><u>Clarify pre-filing requirements for children’s matters</u></p> <p>Parties are required to attend Family Dispute Resolution and attempt to resolve parenting issues before filing an application for parenting orders. A section 60I Family Dispute Resolution Certificate (FDR Certificate) must be filed, unless an exemption is sought.</p> <p>Based on the current wording of section 60I, courts do not have the power to reject non-compliant applications until <i>after</i> an application has been filed and proceedings have commenced.</p> <p>This is inefficient for both the court and parties.</p>	<p>Enable the court to determine whether an exemption to the mandatory family dispute resolution requirements under section 60I applies <i>prior to</i> accepting filing of a Part VII (Children) application.</p>
<p><u>Empower the courts to determine all applications for divorce in the absence of the parties</u></p> <p>The Family Law Act requires a sole applicant for divorce to attend the court hearing in person, where there is a child of the marriage under 18. This is in contrast to joint applications and undefended sole applications for divorce (where no children are involved) which can be made in chambers without parties attending a hearing.</p>	<ol style="list-style-type: none"> 1. Allow the court to determine sole divorce applications (where there is a child of the marriage under 18) in the absence of parties, and 2. Highlight the requirement for the court to consider proper arrangements for children of the marriage that are under 18 years, when making a divorce order.

Schedule 3, Parts 3-4: Case Management and Procedure

Inquiry recommendation or related issue	Proposed amendments
<p><u>Clarify and expand the scope of Commonwealth Information Orders</u> Section 67N of the Family Law Act empowers the FCFCOA to make Commonwealth Information Orders (CIO) that compel a Commonwealth department or agency (commonly Services Australia and Medicare) to provide information concerning the location of a missing child. This includes any information held concerning actual or threatened violence to a deficiently narrow category of persons: the child, a parent or another person whom the child lives with. This information can facilitate the court making further orders for the recovery of a child, or to allow for the service of a parenting application.</p> <p>The current provisions of the Family Law Act that govern CIO are unclear. Based on the current provisions, there is confusion about whether violence related information must be provided in the absence of location information and whether other secrecy provisions apply if it is not mandatory to provide violence information.</p>	<ol style="list-style-type: none"> 1. Clarify the operation of CIOs, by ensuring information held by a Commonwealth department or agency about actual or threatened violence to a child, a parent or person whom the child lives with is disclosed even in the absence of location information 2. Expand the categories of family members and persons connected to a child about which information about risk or violence to that person must be provided under a CIO 3. Clarify provisions around expiration of orders and periods of searches.
<p><u>Clarify the jurisdiction of prescribed courts</u> Section 69GA is intended to ensure that courts prescribed in the Family Law Regulations can exercise the same jurisdiction under Part VII of the Family Law Act as courts of summary jurisdiction.</p>	<p>Clarify that state or territory courts prescribed under section 69GA are expressly vested with jurisdiction under Part VII of the Family Law Act.</p>

Schedule 4, Part 1: Costs Orders

Inquiry recommendation or related issue	Proposed amendments
<p><u>ALRC Recommendation 36</u> Section 117 of the Family Law Act should be amended to:</p> <ul style="list-style-type: none">• remove the general rule that each party to proceedings under the Act bears his or her own costs; and• articulate the scope of the courts' power to award costs.	<p>Provide greater clarity about the scope and application of the courts' power to order costs, without limiting the breadth of the existing power.</p> <p>It is not proposed to remove the general rule.</p>
<p><u>Clarify cost orders for Independent Children's Lawyers and the definition of 'legal aid'</u> <i>Westwell and Anor & Westwell</i> [2020] FamCA 654 broadly interpreted 'legal aid' in subsection 117(4) to include non-means tested legal aid schemes (including the Family Violence and Cross-Examination of Parties Scheme (the Scheme)). Consequently, the Independent Children's Lawyer (ICL) was barred from seeking costs from a party in receipt of assistance under the Scheme, who had the means to contribute.</p> <p>This was not an intended outcome of the Scheme. Unlike a traditional grant of legal aid, assistance under the Scheme is not means tested and provides no indication that a person is financially disadvantaged and unable to contribute to the cost of the ICL.</p>	<ol style="list-style-type: none">1. Clarify that legal aid commissions can recover the cost of ICLs from parties receiving legal representation under the Family Violence and Cross-Examination of Parties Scheme, and2. Clarify that the court must not make an order for a party to contribute to the cost of an ICL if they are in receipt of 'means-tested legal aid'. <p>These amendments are intended to provide the court with the power to order parties to make reasonable contributions towards the costs of an ICL, unless this would cause financial hardship.</p>

Schedule 4, Part 2: Clarifying Inadmissibility Provisions

Inquiry recommendation or related issue	Proposed amendments
<p><u>Clarify inadmissibility protections</u></p> <p>The Family Law Act contains provisions that protect confidential communications from being admitted as evidence in proceedings before any court, with exceptions for disclosures of child abuse. Some state courts have interpreted these provisions narrowly in favour of admitting evidence in criminal and child protection proceedings.</p> <p>These provisions are vital for encouraging families to fully engage with family dispute resolution and support services without fear of this being used against them in family law proceedings or related proceedings before a state or territory court (e.g. child protection or family violence proceedings).</p>	<ol style="list-style-type: none">1. Clarify that the admissibility provisions in sections 10E, 10J, 10V, 56, 67ZB and 70NEF are intended to apply to all courts, including those not exercising jurisdiction under the Family Law Act.1. Expressly provide that the admissibility provisions do not apply to coronial inquests to ensure an inquest is not impeded when investigating the manner or cause of a death or a suspected death.

Protected Confidences

Inquiry recommendation or related issue	Proposed amendments
<p><u>ALRC Recommendation 37</u> The <i>Family Law Act 1975</i> (Cth) should be amended to provide courts with an express statutory power to exclude evidence of ‘protected confidences’. In determining whether to exclude evidence of protected confidences the court must:</p> <ul style="list-style-type: none">• be satisfied that it is likely that harm would or might be caused, directly or indirectly, to a protected confider, and the nature and extent of the harm outweighs the desirability of the evidence being given, and• ensure that in parenting proceedings, the best interests of the child is the paramount consideration when deciding whether to exclude evidence of protected confidences. <p><u>Legal and Constitutional Affairs Legislation Committee Report on the Family Law Amendment Bill 2023 - Recommendation 7 (August 2023)</u> The committee recommended that the Attorney-General’s Department prioritises its advice to the Attorney-General, to introduce safeguards against the disclosure of ‘protected confidences’ in circumstances where there is no probative value for the disclosure.</p>	<p><i>None yet proposed.</i></p> <p><i>However, stakeholders will be invited to provide further feedback on these issues.</i></p>



Australian Government
Attorney-General's Department

Family Law Amendment Bill (No. 2)

QUESTIONS?

Participants can submit questions
at **slido.com** with **#FLABNo2**