
2025 PROPERTY AMENDMENTS TO THE FAMILY LAW ACT

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Topics Covered



Legislative Overview and Recent Changes



Family Violence Laws and Legal Considerations



Principles for Conducting Property and other non-child related proceedings




Evidence and Case Management under Part XI Division 4



Implications for Practice and Duty of Disclosure



Property Settlement Changes and Revised Sec 79 & 90SM



Companion Animals and New Process for Contributions



Court's Discretion, Impacts on Lawyers, and Conclusion

Legislative Overview

Background to the Family Law Act amendments.

RECENT PROPERTY CHANGES

OVERVIEW

Recent amendments to family law impact property division and parenting arrangements.

Parenting amendments commenced on 6 May 2024

Property amendments commenced on 10 June 2025

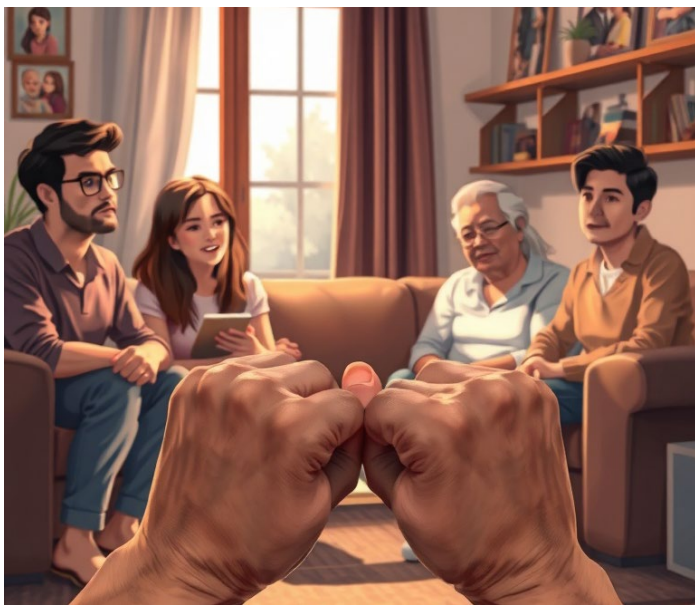
IMPACT

These changes introduce new considerations for legal practitioners, requiring adjustments to advice for clients navigating the family law system. Practitioners need to rethink how they approach property and spousal maintenance cases.

FUTURE DIRECTIONS

It is necessary to understand and apply new legal principles. These have replaced and modified the law which has evolved and been applied since 1976. It may look the same, but there are differences.

Family Violence Provisions



UNDERSTANDING FAMILY VIOLENCE

CONTEXT

Societal perceptions of family violence often stigmatize victims, emphasizing shame and secrecy. Clients seem to think that family violence is limited to assaults and serious injury. They are surprised when the full description is explained to them.

DEFINITION

Family violence encompasses physical, emotional, financial and psychological abuse. Statutory examples include spousal abuse, child neglect, and coercive control, illustrating the complex nature of these violations within familial contexts. Section 4A of the Act provides a comprehensive definition. The Full Court in *Pickford* (2024) FLC ¶194-230 adopted an expansive definition of Family Violence which did not limit the scope to the statutory definition



LEGAL CONSIDERATIONS

STATUTORY DEFINITION

See section 4AB of the Act
See also the evolving authorities

TAKING INSTRUCTIONS

Need to take full instructions at an early stage from both the client victim and the alleged perpetrator.

COURT APPROACH

The Act has now mandated that family violence be taken into account both in property and spousal maintenance applications. The “exceptional case” limitation described in Kennon and Kennon is no longer applicable.



Principles for Conducting non Child Related Proceedings

Sometimes referred to as the Less Adversarial Procedures

Application of Part XI Division 4

Applies to child related proceedings

Applies to child and non-child related proceedings heard together if by consent or court order

Applies to no-child related proceedings if the parties consent or the court so orders



APPLICATION

Some of these apply when the court considers whether to apply Part XI Division 4.

When Division 4 applies, all the principles apply.

FIVE PRINCIPLES

- Consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings
- The court is to actively direct, control and manage the conduct of the proceedings.
- The proceedings are to be conducted in a way that will safeguard the child and the parties concerned from being subjected to, or exposed to, abuse, neglect or family violence;
- The proceedings are, as far as possible, to be conducted in a way that will promote cooperative and child-focused parenting by the parties.
- The proceedings are to be conducted without undue delay and with as little formality, and legal technicality and form, as possible.

EVIDENCE AND COURT MANAGEMENT OF PROCEEDINGS

CONTROL POWERS

This section explores the judicial control over proceedings, defining when intervention is necessary to maintain order and fairness.

It is only relevant when Division 4 of Part XI applies.

COURT STRATEGIES

We will examine effective strategies courts can employ to manage evidence, when Division 4 applies.

BEST PRACTICES

Legal practitioners need to abandon previous methods and strategies for preparing and running property and spousal maintenance cases. These processes have been applied to parenting cases since 2006 and they have not impeded the just disposition of those cases.

UNCERTAINTY OF APPLICATION

POTENTIAL ISSUES

The discretionary application of Division 4 under the Family Law Act can lead to significant unpredictability in legal outcomes. Division 4 can apply on application of one or both parties or on the court's own motion.

To overcome unforeseen problem late in the proceedings the matter needs to be considered, and an application made for the Division to apply.

There is no order that can be made for Division 4 not to apply. The trial judge can invoke it at any time.



Power to Limit Evidence and Process

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When Division 4 applies rules of evidence do not apply. The court can give such weight as it considers appropriate to evidence admitted by virtue of the Evidence Act not applying

The Court can control the litigation process.

- which of the issues in the proceedings require full investigation and hearing and which may be disposed of summarily;
- the order in which the issues are to be decided;
- give directions or make orders about the timing of steps that are to be taken in the proceedings;
- in deciding whether a particular step is to be taken—consider whether the likely benefits of taking the step justify the costs of taking it;
- make appropriate use of technology;
- if the court considers it appropriate—encourage the parties to use family dispute resolution
- deal with as many aspects of the matter as it can on a single occasion;
- deal with the matter, where appropriate, without requiring the parties' physical attendance at court.

IMPLICATIONS FOR PRACTICE

STRATEGIC PLANNING

Develop effective strategies to navigate the ongoing changes in family law regarding property amendments. Come to grips with the processes and learn to work within their confines.

ADAPTATION

Recognize the vital need to adjust current practices in response to the 2025 legislative changes.

CLIENT CONSULTATION

Ensure that consultations with clients thoroughly address the impacts of the new Family Law Act provisions.



Impact on Family Violence- Proof



Effect of Family Violence

Proof

The legislation requires a finding

- That family violence occurred
- The effect of family violence on contributions made by the victim – were they more difficult to make
- The effect of family violence on the current and future circumstances of the victim

LEGAL IMPLICATIONS

Proving family violence is difficult. If the application of the family violence is to have any beneficial effect the simplified procedures prescribed by Part XI Division 4 will need to be invoked. Many avenues for proof are available. For example, adult children should not have to give evidence. For an example of the problem see *Dajani and Dajani* .

Duty of Disclosure

Honoured in the breach – elevated to statutory obligation



RESPONSIBILITIES

Parties must adhere to responsibilities dictated by the Family Law Act during property cases right up to final judgment. This includes disclosing income, assets, liabilities and financial resources at an early stage and in a timely manner to ensure fairness in negotiations. The obligation encompasses information as well as documents.

SCOPE OF DUTY

DEFINITION – Section 71B

The scope of duty encompasses

- Preparation for proceedings;
- Extends to third parties to the extent of issues raised in the proceedings

The duty applies to

- Financial matters
- Proceedings for setting aside a BFA under sec. 90K
- Superannuation proceedings under Part VIIIB
- Proceedings in relation to vested bankruptcy property
- Child Support proceedings

PRACTITIONER RESPONSIBILITIES

GUIDANCE

The legislation requires practitioners to inform their clients of the client's disclosure obligations and potential consequences of non-compliance.

Practitioners must also encourage their client to take all necessary steps to comply with the duties.

ETHICAL OBLIGATIONS

The statutory obligation on practitioners must be read together with ethical obligations applying to all legal practitioners. These include;

- Not misleading the court
- Not misleading the other party
- Knowingly allowing a client to mislead the other party.
- If a claim of privilege is made it must be resolved by the court .

DOCUMENTATION

Proper documentation of the advice given is crucial protection for when subsequently the client alleges that "my solicitor told me I didn't have to disclose this document"

Sanctions and Consequences

No sanctions in the Act

A reminder of what the court may do if non-disclosure is proven.

Property Settlement Changes

REVISED SEC 79 & 90SM

KEY REFORMS

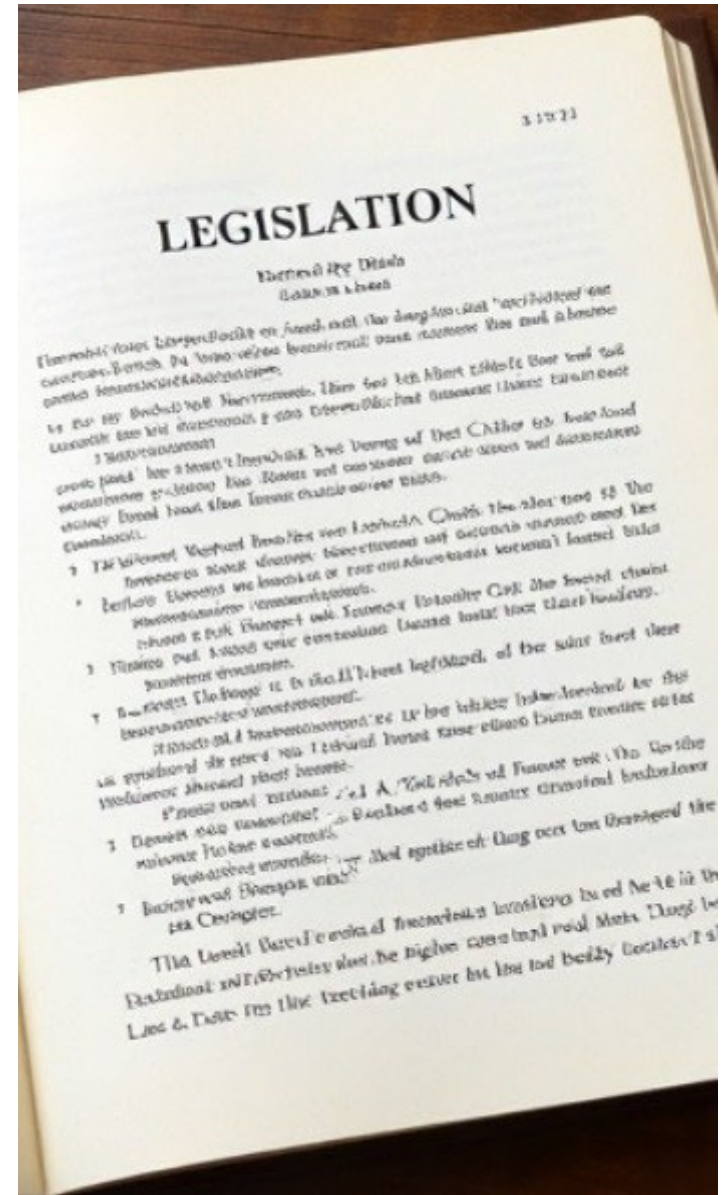
The amendments try to explain the property division processes to the uninitiated, ensuring equitable resolution of disputes and enhancing procedural fairness for litigants.

IMPACT ANALYSIS

These updates are poised to significantly alter the handling of property cases, aiming for swifter resolution. Whether that is achieved must await the passage of time.

CASE REFERENCE

Recent cases, such as Shinohara and Shinohara [2025] FedCFamC1A 126 showcase how the revised sections influence judicial decisions.





CONSIDERATIONS RELATING TO COMPANION ANIMALS

OWNERSHIP ORDERS

The court may determine the ownership, transfer, or sale of companion animals in property settlements.

COMPANION ANIMALS

A Special Class of Property

THREE TYPES OF ORDER ALLOWED	DESCRIPTION
Ownership	Ownership goes to one party.
Transfer	Animal transferred to a consenting third party.
Sale	Animal must be sold.



FACTORS IN COMPANION ANIMAL ORDERS

KEY CONSIDERATIONS

Key factors for orders regarding companion animals include acquisition circumstances, care provided, any history of violence, and emotional attachments to the animal by both parties or children.

FACTORS FOR PET CASES

ACQUISITION CIRCUMSTANCES

Consider how the pet was obtained, whether through purchase or rescue, impacting ownership claims during disputes.

CARE RESPONSIBILITIES

Identify who took primary responsibility for the pet's care, feeding, and medical needs during the relationship.

ABUSE HISTORY

Examine any history of family violence. If the pet has been abused, that will be significant.

New Process & Considerations

Section 79 (3) – what the court needs to consider

CONSIDERATIONS RELATING TO CONTRIBUTIONS

FINANCIAL CONTRIBUTIONS

Assess financial contributions made directly or indirectly to property acquisition or enhancement.

NON-FINANCIAL CONTRIBUTIONS

Evaluate non-financial contributions impacting property or the family's welfare.

WELFARE CONTRIBUTIONS

Consider contributions to the family's welfare, such as caregiving or homemaking.

IMPACT OF FAMILY VIOLENCE

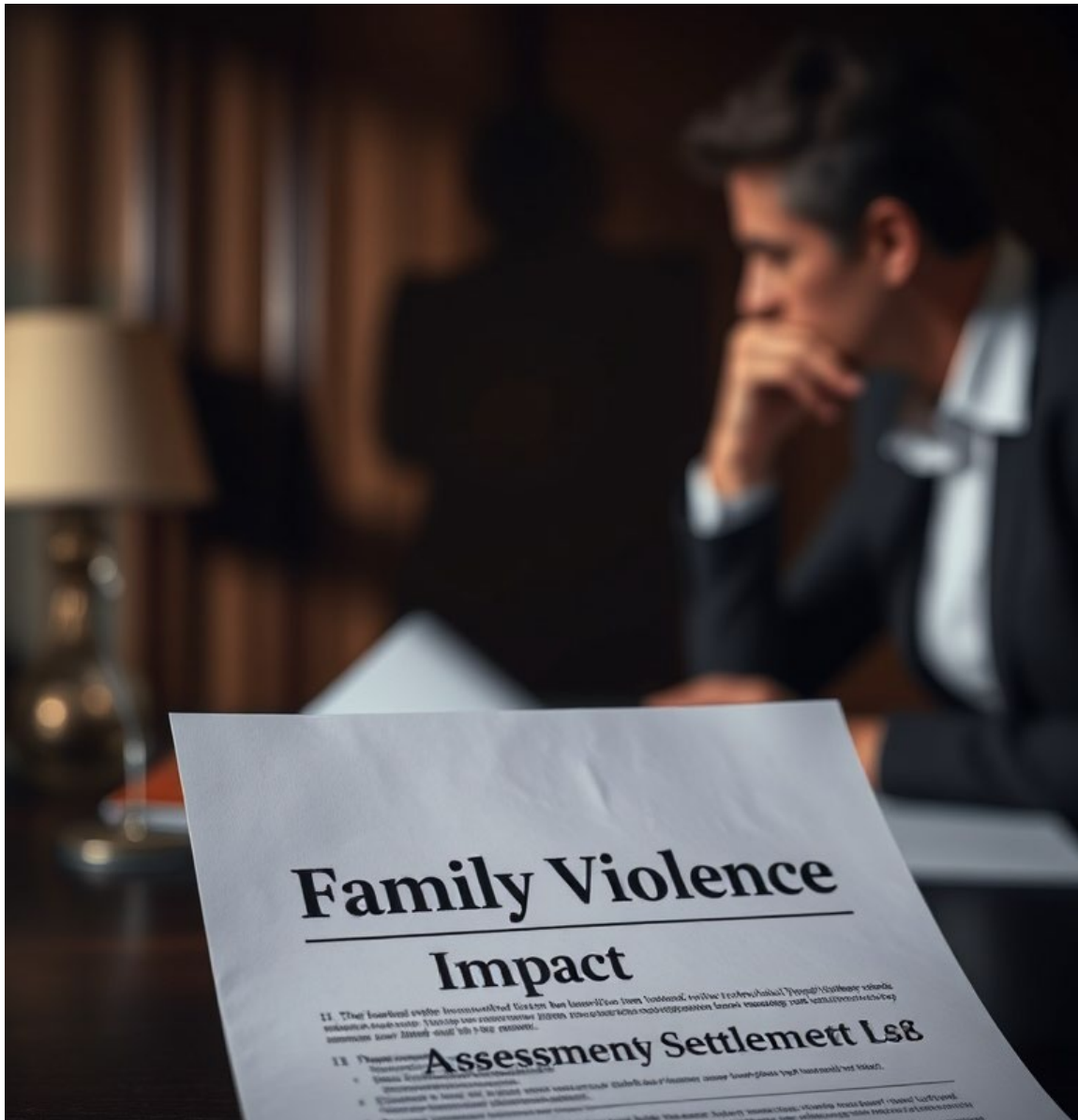
Assess how family violence may influence a party's ability to contribute.

IMPACT OF FAMILY VIOLENCE

CONSIDERATION IN ORDERS

Family violence influences the court's assessment of financial contributions and the parties' current situations in property settlement proceedings.

It is likely to add significantly to the award for the victim, when compared to assessments prior to the amendments.



IMPACT OF WASTE & LIABILITIES

TREATMENT OF WASTAGE

Waste is now specifically identified in the sec. 79(5) factors. It will have an affect on the outcome, but the mandate to treat the assessment holistically will usually deprive the innocent party of a 100% adjustment.

LIABILITIES CONSIDERATION

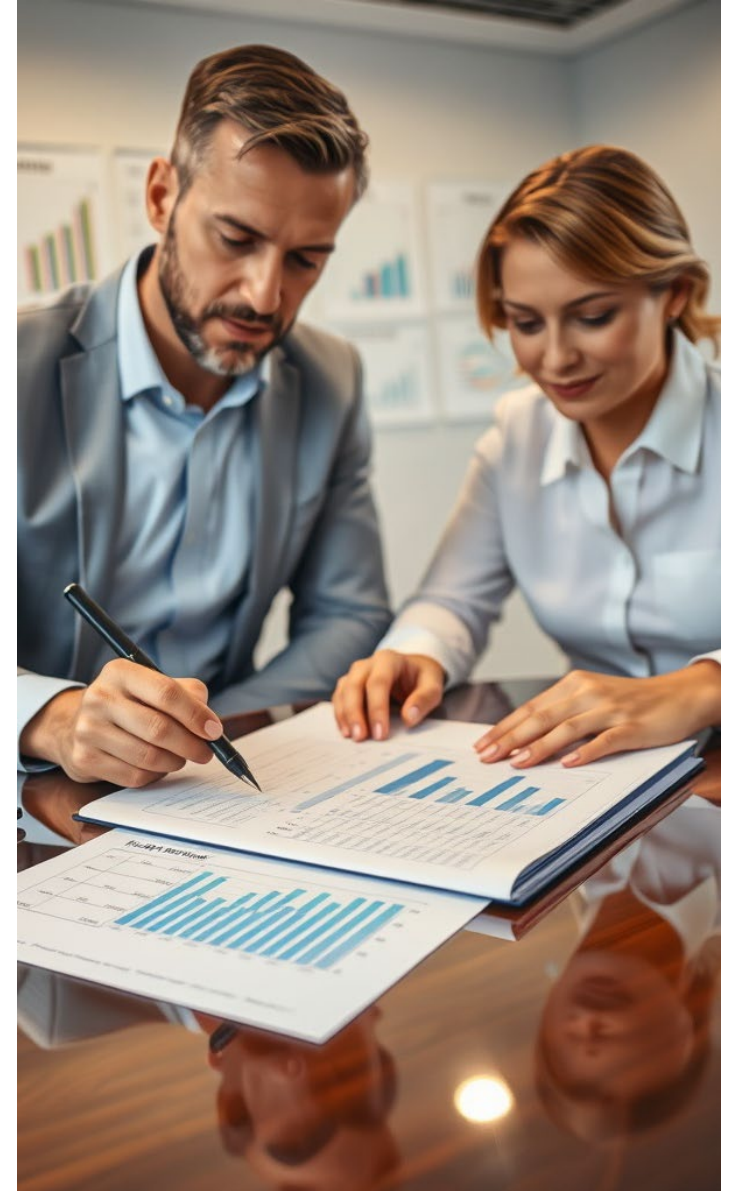
Liabilities now appear at sec 79(3) as matters which the court must identify for the assessment of assets liabilities and resources. They are also considered under sec 79(5) in relation to current and future financial circumstances.



FINANCIAL RESOURCES

EVALUATING RESOURCES

Assess the income, property, and financial resources of each party in property settlement proceedings.



ADJUSTMENTS – “ADD BACKS”

Now considered under Contributions and/or Current and Future Financial Circumstances

ADJUSTMENT TYPE	DESCRIPTION
Interim Property Settlements	Account for interim distributions.
Legal Fees	Include paid legal fees as a consideration.
Litigation Funding	A liability of the assisted party – how is it treated

Summary & Conclusion



Summary of Key Points

The 2025 amendments under the Family Law Act redefine handling of property and family violence in legal proceedings. These changes aim to enhance fairness and safety for involved parties.

Family violence legislation broadens the definition to better reflect real-world occurrences. This brings new legal considerations affecting evidence collection and court proceedings.

Court powers now include limiting evidence and managing proceedings more effectively. This enhances judicial control, aiming for swifter resolutions in complex cases.

Summary & Conclusion



Summnes Ino Key Points

Property proceedings see significant updates, including revised approaches to contributions and liabilities assessments. These changes aim to assure equitable distribution.

Lawyers must adapt strategies to comply with new disclosure duties and evidentiary limitations. The amendments demand heightened awareness and readiness for procedural changes.