



## Recommendations addressed in the Family Law Amendment Bill 2024

The Family Law Amendment Bill 2024 (Bill) addresses the following recommendations:

- **ALRC** – 2019 Australian Law Reform Commission's Final Report No. 135: *Family Law for the Future - An Inquiry into the Family Law System* (Recommendations 11, 18, 20, 26, 29, 36, 37, 54)
- **JSC** – Joint Select Committee on Australia's Family Law System (Recommendations 9, 22, 23 of the Second Interim Report)
- **Henderson Inquiry** – 2017 Standing Committee on Social Policy and Legal Affairs Parliamentary inquiry into a better family law system to support and protect those affected by family violence (the Henderson Inquiry) (Recommendations 9, 13, 18)
- **Dowry Abuse Inquiry** – 2019 Senate Legal and Constitutional Affairs References Committee report on the Practice of dowry and the incidence of dowry abuse in Australia (Recommendations 1, 3)
- **Senate Legal and Constitutional Affairs Legislation Committee** – 2023 report on the provisions of the Family Law Amendment Bill 2023 (Recommendation 7)

Provisions in Bill	Inquiry recommendation or related issue	Amendments
<p><b>Schedule 1, Part 1:</b> <b>Family Violence definition – economic or financial abuse (including dowry abuse)</b></p>	<p><b>Dowry Abuse Inquiry</b> <b>Recommendation 1:</b> The Committee recommends that the term 'economic abuse' is included as a form of family violence in subsection 4AB(2) of the Family Law Act 1975, and the subsection provide a non-exhaustive list of examples of economic abuse, including dowry abuse.</p> <p><b>Recommendation 3:</b> The Committee recommends that the Australian Government give further consideration to legal and decision making frameworks to ensure that victims of dowry abuse are not disadvantaged in family law property settlements, given the community concerns about inconsistent approaches under the current family law framework.</p>	<p><b>Expressly recognise economic or financial abuse as family violence</b></p> <ul style="list-style-type: none"> <li>• List 'economic or financial abuse' as an example of family violence in the non-exhaustive list of examples of family violence in subsection 4AB(2) of the Family Law Act</li> <li>• Include a new provision with a non-exhaustive list of examples of behaviour that might constitute 'economic or financial abuse': <ul style="list-style-type: none"> <li>○ relocate the existing example related to 'unreasonably withholding financial support'</li> <li>○ expand and relocate the existing example of 'unreasonably denying a family member financial autonomy'</li> <li>○ include new examples of dowry abuse related conduct.</li> </ul> </li> </ul> <p>Note: This will complement the amendments below, to more expressly enable dowry abuse to be considered, where relevant, in a family law property settlement.</p>
<p><b>Schedule 1, Part 1:</b> <b>Family violence - property framework</b></p>	<p><b>Henderson Inquiry Recommendation 13</b> 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"> <li>• the impact of family violence to be taken into account in the court's consideration of both parties' contributions; and</li> <li>• the impact of family violence to be specifically taken into account in the court's consideration of a party's future needs.</li> </ul> <p><b>JSC Recommendation 23 (Second Interim Report)</b> 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><b>New contributions and current and future circumstances factors - effect of family violence</b></p> <ul style="list-style-type: none"> <li>• The court may take into account the <i>effect</i> of any family violence to which one party to the relationship has <i>subjected or exposed</i> the other party on: <ul style="list-style-type: none"> <li>○ the ability of the other party to make financial and non-financial contributions, and</li> <li>○ 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.</li> </ul> </li> <li>• This approach allows for the <i>effect</i> of family violence to be considered as an overarching factor where relevant to the court's consideration of the other factors. <ul style="list-style-type: none"> <li>○ 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.</li> </ul> </li> </ul>
	<p><b>No specific recommendation</b> Family violence – spousal maintenance.</p>	<p><b>New spousal maintenance factor – effect of family violence</b></p> <ul style="list-style-type: none"> <li>• The court may take into account the <i>effect</i> of family violence, to which one party to the relationship has subjected or exposed the</li> </ul>

		<p>other party, including on any of the other matters that can be considered when assessing an application for spousal maintenance.</p>
<p><b>Schedule 1, Part 1: Property</b></p>	<p><b>ALRC Recommendation 11</b> The Family Law Act should be amended to:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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.</li> </ul>	<p><b>Codify the property decision-making framework</b> 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> <ul style="list-style-type: none"> <li>• identify the legal and equitable rights and interests of the parties in property, and the existing liabilities of the parties</li> <li>• consider each party’s contributions to the property of the relationship</li> <li>• consider each party’s current and future circumstances, and</li> <li>• only make an order if it is just and equitable in all the circumstances.</li> </ul> <p>Note:</p> <ul style="list-style-type: none"> <li>• The court would not be required to take these steps in a particular order.</li> <li>• The just and equitable consideration is an overarching consideration that permeates the whole decision-making process.</li> </ul>
	<p><b>ALRC Recommendation 18</b> The Family Law Act should be amended so that:</p> <ul style="list-style-type: none"> <li>• the spousal maintenance provisions and provisions relating to the division of property are dealt with separately under the legislation.</li> </ul>	<p><b>Remove cross-reference to spousal maintenance provisions</b> Maintain the list of ‘contributions’ to be considered in a property settlement but have a co-located, standalone list of ‘current and future circumstances’ that will also be considered in a property settlement.</p>
	<p><b>No specific recommendation</b> <u>Caselaw principles of ‘liabilities’ (‘debt’) and ‘wastage’</u> As evidenced in current practise in case law, debt and wastage can be considered by the courts under the current catchall future needs factor (paragraph 75(2)(o)).</p>	<p><b>New current and future circumstances factors – liabilities and wastage</b> Include new factors to codify existing case law concepts which may be considered by the court when assessing the respective current and future circumstances of the parties:</p> <ul style="list-style-type: none"> <li>• consider any liabilities incurred by either or both of the parties to the relationship, including the nature of the liabilities and the circumstances relating to them, and</li> <li>• consider the effect of any material wastage, caused intentionally or recklessly by a party to the relationship, of property or financial resources of either or both parties.</li> </ul>

	<p><b>No specific recommendation</b> <u>Housing needs of children</u> The Family Law Act does not currently explicitly refer to the housing needs of children as a matter that might be relevant in property or spousal maintenance matters.</p>	<p><b>Amendment existing factors to refer to the housing needs of children</b></p> <ul style="list-style-type: none"> <li>Amend an existing factor relating to the care of children in the spousal maintenance list, to refer to the need to provide appropriate housing for a child of the relationship under 18 (and make minor amendments to modernise language).</li> <li>Amend the equivalent, col-located factor in the property framework (new current and future circumstances list).</li> </ul>
<p><b>Schedule 1, Part 1: Pets</b></p>	<p><b>No specific recommendation</b> <u>Companion animal amendments</u> Responds to an April 2024 Australian Institute of Family Studies Policy and Practice Paper <i>Violence Against Animals in the Context of Intimate Partner Violence</i>, that examined intersections between intimate partner violence and animal abuse.</p>	<p><b>New companion animal amendments</b></p> <ul style="list-style-type: none"> <li>Provide a specific framework for determining ownership of the family pet following separation in property proceedings.</li> </ul>
<p><b>Schedule 1, Part 2: Principles for conducting property or other non-child-related proceedings</b></p>	<p><b>Henderson Inquiry Recommendation 18</b> 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><b>ALRC Recommendation 20</b> The Family Law Act should be amended to extend section 69ZX to property settlement proceedings.</p>	<p><b>Expand less adversarial approach to all matters</b> Create a new Division containing Principles for conducting property or other non-child-related proceedings, as an expansion of existing Division 12A (Principles for conducting child-related proceedings). This will:</p> <ul style="list-style-type: none"> <li>provide the court with duties and powers to use less adversarial processes for proceedings that do not involve children’s matters, and</li> <li>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 as possible.</li> </ul>
<p><b>Schedule 1, Part 3: Duty of Disclosure in Financial Matters</b></p>	<p><b>JSC Recommendation 22 (Second Interim Report)</b> 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"> <li>the cost consequences for a failure to disclose financial information, and reflect that non-disclosure of financial</li> </ul>	<p><b>Elevate the duty of disclosure in financial matters to the Family Law Act</b></p> <ul style="list-style-type: none"> <li>Codify the existing (rules-based) 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 party.</li> <li>Extend the disclosure duty to apply when parties are preparing to start proceedings.</li> </ul>

	<p>information may be taken into account in apportioning the property pool, and</p> <ul style="list-style-type: none"> <li>an application of this provision beyond court proceedings to include alternative dispute resolution.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<p><b>Schedule 1, Part 3: Arbitration</b></p>	<p><b>ALRC Recommendation 26</b></p> <p>The Family Law Act and the <i>Child Support (Assessment) Act 1989</i> (Cth) 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"> <li>relating to enforcement;</li> <li>under sections 79A or 90SN of the Family Law Act (subject to limitations); and</li> <li>where a litigation guardian has been appointed.</li> </ul>	<p><b>Consolidate lists of matters that may be arbitrated</b></p> <ul style="list-style-type: none"> <li>Create one consolidated list of financial and property matters that can be arbitrated, regardless of whether the arbitration is court-referred or privately arranged.</li> <li>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 mixed stakeholder views.</li> </ul>
	<p><b>ALRC Recommendation 29</b></p> <p>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>	<p><b>Expanded powers in arbitration framework</b></p> <ul style="list-style-type: none"> <li>Empower arbitrators to make an application to the court for directions to facilitate the efficient conduct of an arbitration.</li> <li>Empower a court to terminate an arbitration on the application of a party or arbitrator.</li> </ul>
<p><b>Schedule 2: Children’s Contact Services</b></p>	<p><b>ALRC Recommendation 54</b></p> <p>The Family Law Act should be amended to:</p> <ul style="list-style-type: none"> <li>require any organisation offering a Children’s Contact service to be accredited; and</li> <li>make it an offence to provide a Children’s Contact Service without accreditation.</li> </ul> <p><b>JSC Recommendation 9 (Second Interim Report)</b></p> <p>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>	<p><b>New framework for accrediting Children’s Contact Services</b></p> <ul style="list-style-type: none"> <li>Authorise Government to develop regulations which provide accreditation standards and requirements for government-funded and private Children’s Contact Services.</li> <li>Provide that operating a CCS without accreditation is a strict-liability offence.</li> </ul> <p><b>Note:</b> <i>The Family Law Amendment Act 2023</i> (Cth) included a framework for establishing standards and requirements for family report writers.</p>

	<ul style="list-style-type: none"> <li>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</li> <li>Children’s Contact Services.</li> </ul>	
<p><b>Schedule 3, Part 5: Protected Confidences</b></p>	<p><b>ALRC Recommendation 37</b> The Family Law Act 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"> <li>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</li> <li>ensure that in parenting proceedings, the best interests of the child is the paramount consideration when deciding whether to exclude evidence of protected confidences.</li> </ul> <p><b>Senate Legal and Constitutional Affairs Legislation Committee</b> 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><b>Henderson Inquiry Recommendation 9</b> The Committee recommends that the Attorney-General develops stronger restrictions in relation to access by other parties to medical records in family law proceedings.</p>	<p><b>New power to safeguard protected confidences</b> Safeguard evidence of ‘protected confidences’, such as records or accounts of medical treatment or counselling in family law proceedings.</p> <p>The proposed legislation will allow a court to make a direction that evidence not be adduced in proceedings where the harm that might be caused to a party, or a child involved in proceedings, outweighs the desirability of the evidence being available to the court. In making such a determination, the legislation provides that the best interests of the child is the paramount factor.</p>
<p><b>Schedule 4, Part 1: Costs Orders</b></p>	<p><b>ALRC Recommendation 36</b> Section 117 of the Family Law Act should be amended to:</p> <ul style="list-style-type: none"> <li>remove the general rule that each party to proceedings under the Act bears his or her own costs; and</li> <li>articulate the scope of the courts’ power to award costs.</li> </ul>	<p><b>Clarify court’s power to award costs</b></p> <ul style="list-style-type: none"> <li>Provide greater clarity about the scope and application of the courts’ power to order costs, without limiting the breadth of the existing power.</li> <li>The general rule has not been removed.</li> </ul>