



A Submission by Divorce Partners to The Parliamentary inquiry into a better family law system to support and protect those affected by family violence

This submission consists of an analysis of how the family violence order system impacts upon the Family Court and proposes a mechanism to:

- allow the victims of family violence to recover financially;
- reduce cost pressures on the courts; and
- deliver faster resolution to distressed families

at nil cost to the taxpayer.

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Senate Submission

The Structure of this Submission:

- A. Synopsis
- B. Communications are limited by a violence order
- C. What the data shows and what the data just does not show
- D. A systemic solution that triages disputes early
- E. Benefits of an alternative pathway
- F. Implementation Details



A Synopsis

Divorce Partners addresses one specific term of reference of the Committee:

4. "how the family law **system can better support people** who have been subjected to family violence **recover financially**",

http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Terms_of_Reference

This submission shows how interaction between the two systems (state based family violence orders and federal litigation over property disputes in separation) contributes to problems for courts and families.

It proposes clear legislative changes that would substantially reduce these problems and create better public policy outcomes.

The appendix contains a draft suite of legislative changes that could be enacted and implemented within months.

The problem that is identified

1. State violence orders are growing faster than the growth rate of the general population - and no-one is quite sure why.
2. A noble objective of those orders is to preclude most communication between angry spouses, but those prohibitions on communication also deter the resolution of disputes.
3. Federal family courts have been overwhelmed with family violence issues, creating more frustration and thus a further negative round of conflict / violence.
4. Costs for the courts are consequently under additional pressure.

The solution that is proposed

Divorce Partners proposes a structural, not a taxpayer funded, solution to take effect as follows:

1. High conflict spouses are obliged to solve their dispute by paying sums that are undisputed, promptly.
2. Spouses must communicate through a mediator or 3rd party, and not directly.
3. If the couple can't agree and pay within 90 days, an assessor (such as a retired judge or registrar) issues an interim financial assessment that obliges them to pay up.

Solvency won't cure all family violence problems but it should markedly reduce underlying tensions, and deliver justice to battlers.



This plan can be implemented at no cost to the federal treasury, and may give rise to:

- Possible cost savings by changing the economic incentives, and encouraging early financial rehabilitation; and
- A marked reduction in the number of self-represented litigants, thus fewer spouses being cross-examined by their former partners; and
- Facilitating the just, prompt, and cheap resolution of their finances, enabling expenditure on THE most important issue: parenting.

Who are we?

Divorce Partners is a low cost negotiation service that operates across all states and territories. We are the only nationwide firm of divorce solution providers. Divorce Partners provides online tools, videos, and data so that folks don't need to wait in line for the delays in government funded services. We specifically assist Australian battlers to settle financial aspects of their separation.

We frequently provide a cheap and efficient communications conduit between former partners who struggle to communicate civilly or who are precluded by a Family Violence Order from communicating directly and efficiently. In those circumstances negotiations involve sequential email, video and telephone contact across a 3-week period with each party separately. Rational decision making ensues. Over 92% of all couples we deal with achieve financial and parenting settlements within 3 weeks.

B. Communications are limited by a violence order

Family violence orders can freeze both good and bad communications

- State Family Violence Orders most frequently prohibit ALL communications between former spouses. The ambit of the orders and FVO legislation was described by a leading NSW judge as "incredibly vague" (P E v M U [2010] NSWDC 2, per Williams DCJ)). The reality is that no-one knows what is permitted and what is forbidden.
- Mindful that a blanket ban is problematic under Section 109, some magistrates do grant a carve-out for discussions to occur only via a family lawyer - but the carve-outs are haphazard and only provide for communications via solicitors – ie only an adversarial option is permitted.
- In fact, less than 40% of Australians resolve divorce issues using solicitors' services. Thus the magistrates' carve-outs solely for communicating via a solicitor apply to less than half the population.
- But when one of them (usually the wife) seeks a Family Violence Order the order most often ***prohibits communication between the couple, forcing the couple into the family law legal system.***
- *So the couple is effectively forced to enter into litigation as the only available means to get a resolution. Or engage in self-help remedies, creating more conflict.*
- In addition, for the 30% of cases in which parties are self-represented, solicitors are not ethically obliged to engage in communications. In addition, even where funds lie idle in a bank account and

are not in dispute, judges do not automatically appoint counsel or release uncontested money to enable litigants to use their own money to resolve the dispute.

- Experience shows that dispute maximisation causes difficult problems to become intractable ones. At a time when communications are especially poor anyway, the system dictates that communications become gladiatorial, expensive and inefficient.

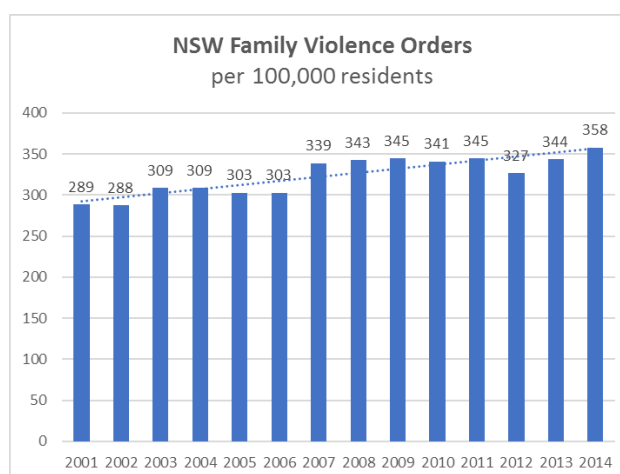
Financial outcomes

- According to The Australian Institute of Family Studies 2014 report, **98.5% of all divorce outcomes result in a payment to the wife of between 48% to 65% of family wealth**. A payment of more than 65% to wife is an outlier because, in a long relationship, one spouse getting more than twice what the other receives is, on its face, lopsided. It can happen in short marriages or where someone does a runner, or earns a mega salary, but it's an outlier.
- The current system denies **liquidity to the entirety of a couple's financial assets**. Thus additional and unnecessary financial pressure is imposed on a couple at exactly the worst financial time. All other Australian courts try to limit the dispute as early as they can: they don't have queues.
- If one of the couple applies for an interim release of funds, it's a perfect opportunity for the other side to exploit the situation – they oppose the interim release in order to increase financial pressure. Blocking such appeals is vindictive, exploits the system, costs the parties more in legal fees and chews up publicly funded resources.

C. What the data shows and what the data just does not show

Firstly, the **number of family violence orders** being issued by Magistrates Courts in the states and territories of Australia is **steadily increasing**, even though divorce rates remain stable (around 50,000 married couples per annum and 14,000 de facto couples).

Here is a snapshot of what's happening in one state alone - NSW - per 100,000 residents. This is a count of only FINAL Apprehended Violence Orders, and excludes the many interim orders that lapse.



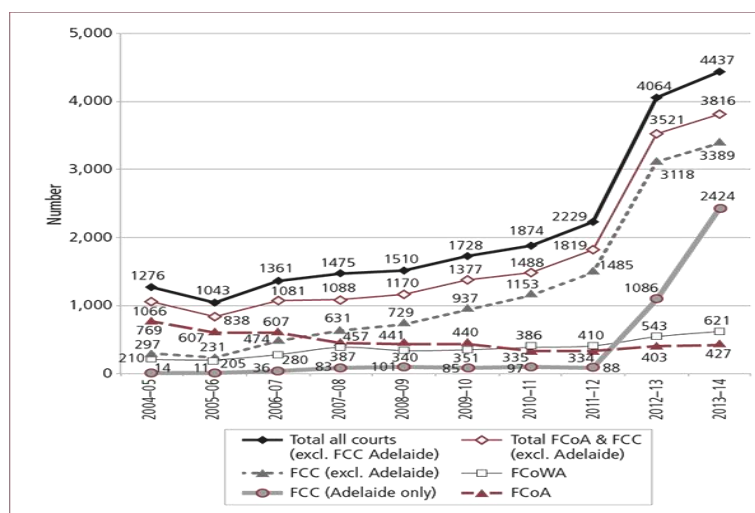
This shows a 2.9% a year average increase when holding population growth constant.

Source: <http://www.bocsar.nsw.gov.au/Documents/RCS-Quarterly/Domestic%20Violence%20Statistics.xls>

Secondly, the time taken to resolve family separation disputes via the court system is growing exponentially. In the Paramatta Federal Circuit Court, for example, it now takes 36 months just to set a hearing date.

Source: <http://www.dailytelegraph.com.au/newslocal/parramatta/shortage-of-family-court-and-federal-circuit-judges-in-parramatta-leading-to-delays-of-up-to-three-years/news-story/ea365d5f4319d098062bb6b7bc1fe4f0>

This is what happened after Parliament last made more rules about family violence orders in 2012 – the workload of Courts spiked with no appreciable benefits to victims of violence.



Source: <https://aifs.gov.au/publications/court-outcomes-project/export>

Thirdly, unlike other countries who are also currently dealing with the issue of family violence, Australian states do not know what categories of family violence orders are increasing most quickly:

- Physical abuse
- Yelling at each other
- Emotional abuse
- Physical threats
- Financial abuse
- Orders without admission of facts
- Multiple orders against the same spouse or where an order applies to both spouses

Source: <http://www.legislation.govt.nz/bill/government/2017/0247/latest/DLM7159450.html>

So evidence of cause and effect remains anecdotal. Based on our experience at Divorce Partners in assisting “battlers” to achieve settlements, **we contend that:**

- there is a strong link both ways between financial distress and the growth in family violence orders;
- solving separation problems is made unnecessarily complex by the terms of these state based orders; and
- The Family Law Act is increasingly being used to create further stress and leverage.

A smarter idea would be to treat the violence through state courts, **but create a way to get an interim financial solution that reduces tension between the couple**. We don’t envisage changing substantive rules. We do propose that substantive justice be delivered 1002 days earlier than is currently the case.



So we outline *a highly focused legislative change* that would:

- reduce the intensity of the dispute between the couple as early as possible;
- reduce the frequency of family violence;
- free up substantial resources; and
- speed access to justice for many families

WITHOUT ANY INCREASED TAXPAYER FUNDING, and potentially with the possibility of very significant gains for taxpayers.

D. A systemic solution that triages disputes early

Our solution to this cause and effect scenario is focussed on those couples where a family violence order has been issued. We propose that for these couples there is:

1. ***Mandatory release of 35% of net wealth to each party immediately.*** This is money not in dispute in the vast majority of separations.
2. ***Mandatory mediation*** within a set time frame – like filing a tax return on time. Not mediation together but rather an inexpensive conduit between the parties.
3. ***Mandatory financial assessment*** if the couple don't get there via mediation.
4. ***Payment within 90 days*** - that's 1002 days earlier than family violence victims are paid in the Federal Circuit Court in Paramatta if they start today.

E. Benefits of an alternative pathway

Many benefits should flow from this approach:

- Releasing funds automatically gives each of the couple cash flow. It immediately reduces their actual financial stress. Reduced financial stress for couples will ASSIST (not cure) the reduction of further conflict between the parties.
- Financial resolution, even if not precise, immediately reduces dependency on the other. It allows for physical separation if that has not already occurred. It helps people re-start their lives earlier.
- Mediation of the financial dispute is mandatory, just as The Productivity Commission recommended in its 2014 report on the justice system. For high conflict divorces this will also reduce the workload on courts. And best of all for taxpayers, the couples themselves incur the cost of resolving their dispute.
- By immediately narrowing the amount of money rationally in dispute, the economics of fighting over the allocation of the 30% "delta" in court are very different from fighting over 100%. In any event, most of that 30% is solved in mediation, and an approximate result, often financially better for each of them and their children, is achieved.
- A move towards a system of assessment subject to time-lines has worked exceptionally well in other public policy areas when there has been legal system failure. Income tax assessment and building disputes are the most notable examples. There is very good reason to think a similar approach will also work with financial payment issues arising between spouses.



F. Implementation Details

We attach some draft legislation to be added to the Bill under consideration. It has been drafted by people with experience as Parliamentary counsel.

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DRAFT BILL

Explanatory Memorandum and Guide

Divorce Partners proposes that couples to whom a family violence order applies should not have their situation exacerbated by financial distress.

We suggest a financial triage occurs at the commencement of their separation hearings, in the form of an interim financial solution.

Over 98% of divorce outcomes fall within a defined band of 48-65% of net wealth in favour of the wife. Outcomes outside of this band are outliers, with very unusual circumstances. Therefore, in the vast majority of situations, a minimum of 35% of wealth will end up being allocated to each of the parties.

We propose that in respect of a family violence order, this minimum 35% be allocated to each of the couple, that further mandatory mediation occurs thereafter in respect of the balance, and that an interim assessment then be made if necessary for the balance.

The result of this strategy will be that:

- the scope of the underlying argument shrinks, quickly; and
- the Family Law Act itself is not used to entrench further conflict; and
- money becomes available to allow the couple to deal with the more important matter - in particular parenting; and
- no taxpayer funding is required.

Draft legislative amendments to achieve these aims are provided on the following pages. The proposed sections achieve these goals by enacting a new Section 26 to the Bill, creating a new Division 11 A of Part VII of the Act, to fall after the existing Family Violence Provisions. The amendments provide as follows:

- New Section 68Q sets out the statutory purpose of early dispute triage.
- New Section 68R creates an obligation that where a family violence order of any state or territory is operative, that the spouses pay each other 35% of their joint net household wealth within 90 days of getting a payment notice. However:
 - those couples who put their house on the market may delay payment itself (but not the obligation to pay);
 - couples can always otherwise agree some other deal – quickly;
 - in respect of the “outliers”, the person who seeks to resist payment must justify their position.
- New Section 68S obligates each spouse to make an offer for the remaining 30% of their household wealth, and undertake mediation if there is still a gap between them - but not face to face.

- New Section 68T is a backstop for couples who argue incessantly – in that case they are to pay for an interim financial assessment made by a retired judge.
- New Section 68U clarifies existing practice so that Violence Orders issued by State Courts do not inadvertently undermine the family law process.
- Section 68U sets out the penalties for people who refuse to pay up and other mechanical issues

(An alternative would be to place the wording in a new Division at the end of PART VIIIAA)

Section 27 suggests a few new statutory dictionary definitions to make it all work.

Family Law Amendment (Family Violence and Other Measures) Bill 2017: Exposure draft provisions

Divorce Partners suggested additional amendments

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26. New Division 11 A

Insert

Division 11 A – Interim Financial Solutions in situations of family violence

FAMILY LAW ACT 1975 - SECT 68 Q

Section 68 Q What this Division does

- (1) This Division deals with resolving interim financial issues between high conflict couples such that:
 - (a) Those spouses each receive a prompt interim distribution of property, consistent with Parliament's desire that justice must not be delayed in a manner that means it is effectively denied; and
 - (b) There is an effective statutory mechanism to resolve interim payments in relation to a couple's property.
- (2) This Division does not limit:
 - (a) the right of a person to make a claim for a final order in respect of property capable of allocation under section 79 or 75 of the Act; nor
 - (b) the right of any Court to make an alternative disposition of property at a final hearing; nor
 - (c) the rights of third persons.
- (3) The purpose of this Division is to ensure that property available for division allocation under Section 79 is allocated as inexpensively, simply, and speedily as an interim measure, as is consistent with justice.

Cf Section 3 Building and Construction Industry Security of Payment Act 1999 NSW;

Section 1N Property (Relationships) Act 1976 (NZ)

FAMILY LAW ACT 1975 - SECT 68 R

Immediate financial independence

- (1) Where an interim or final family violence Order has been issued, or has at any time within the last three years been sought, that person and their former partner are each obliged to:
 - (a) **Disclose** to each other, and without waiting for reciprocity:
 - i. Details of all their assets and liabilities by completing the Balance Sheet set out Schedule 2 of this Amendment Act; and

- ii. All details of property as if litigation between them had already commenced and The Family Law Rules 2001 then applied; and
 - iii. Upon reasonable request being made, such further disclosures in a manner that is sufficiently detailed and omits no assets, liabilities or earnings and whether or not the property in question will itself be divided but rather whether it is owned, controlled or benefits a spouse; and
 - iv. in a manner that does not involve engaging in conduct which is either misleading or deceptive; and
 - v. in a manner as if the couple were joint owners of all of the property and were the other's most trusted financial adviser, thus making disclosures with the upmost faith and candour; and
 - vi. in a manner that is courteous and complies with subsection 6.
- (b) **Pay or transfer or a sum not less than 35%** of the market value of the net equity of the Family Home, and discharge the relevant financings associated with the same within 90 days of a notice being given under this section, unless within 40 days of that Notice a person gives written notice that they will not pay the sum demanded because of an exception provided for in this Division; and
 - (c) **Pay to each other such other sums** as are agreed or deemed to be agreed pursuant to this Division, releasing each other from liabilities or transferring title or record of ownership as may be required or agreed; and
 - (d) **Engage in such conduct as required** by any assessment made or mediation certificate given under this Act
- (2) The **payment of a sum equal to 35%** of the net equity value of the couple's matrimonial home or the proceeds thereof is due and payable 90 days from the day a notice is given substantially having the effect of, even if not the precise form, specified in the First Schedule, save that this obligation to pay may only be reduced in respect of one of the spouses if:
- (a) One spouse **seeks to retain the family home**, in which case, simultaneously with the receipt, the recipient of the monetary payment shall be taken to have agreed to relinquish an interest in that home for value in the same amount and to sign such documents as any Australian Bank may reasonably require in relation to that transfer and to effect the discharge of that person's indebtedness associated with that property; or
 - (b) **Both spouses seek to retain the family home**, in which case the spouse residing inside the family home shall be the spouse who is entitled to purchase the home, or if they are both still living in the house by the spouse who pays more to their spouse on the 90th day after the Notice has been given; or
 - (c) The spouses have been in a **relationship of less than (5) years**, there are no children of the relationship and based on a legal opinion

given to their spouse regarding the sum a Court should award, that other sum so specified has been paid; or

- (d) The family home compromises a **working farm** and based on a legal opinion given to their spouse regarding the sum a Court should award that sum has been paid; or
- (e) One of the partners or one of the **children of the relationship suffers from a life-threatening illness**, and in the honest written opinion of an Australian Medical Practitioner additional financial provision should be made in respect of the treatment of that illness or palliative care, then to the extent that such provision is first deducted then any residue shall be split as to 35% to each of the spouses; or
- (f) One of the partners is, in the honest opinion of an Australian Medical Practitioner **mentally or physically incapacitated at the time a notice is given**, in which case the payment obligation shall be suspended for a further 60-day period during which the incapacitated person must appoint a representative under this section having full authority to negotiate and transact and execute documentation for those purposes and make the payment within that extended period; or
- (g) An accredited family lawyer certifies that there are **reasonable grounds to suspect that fraud has occurred** and that a Court applying this Act would not make a final distribution until further disclosure has been made; or
- (h) The family home is owned by or is **owned jointly with a third person** or was inherited by one of the spouses and a bona fide and reasonable written offer has been to settle the matter in relation to all the property of the spouses and to discharge or defease related debts and payment under that offer has been made within the 90-day period by way of a cheque made payable by an Australian Bank; or
- (i) An **accredited family law specialist provides a written opinion** before a payment is due specifying a sum that a Court applying this Act should, in that person's opinion, make as a lesser final payment assuming the Court were only to rely upon the sworn evidence of the person who sought the opinion, and in that event, the payment specified in that opinion is paid within the 90-day payment period; or
- (j) The spouses have each already signed a Binding Financial Agreement and all payments thereunder have been made; or
- (k) The spouses otherwise agree in writing that a different interim or final financial settlement shall occur; or
- (l) The spouses agree in writing not to separate as a couple; or
- (m) The spouses have agreed to postpone for a period of no more than 90 days by giving an extension of time notice in the manner set out in the Third Schedule.

- (3) A **payment may be delayed to both spouses** under this section if:
- (a) Sale of the former family home is, on the date that payment is due, either listed for public auction or sale, or is already subject to a binding sales contract to a bona fide purchaser for value, which contract:
 - i. has been disclosed to the other spouse; and
 - ii. payment is due no later than a further 60 days from the date the contract was signed by the first of those parties; and
 - iii. if one spouse remains in the former matrimonial home and earns a higher salary than the other, then the spouse remaining in the home shall pay the other spouse sum of \$500 a week until the sales proceeds are paid to that person; or
 - (b) The spouses agree in writing to another method by which they will realise their assets or that a payment delay is acceptable in the prevailing circumstances; or
 - (c) An assessor, within the meaning of section 68T, has so ordered.
- (4) A payment due shall be **delayed to one of the spouses** under this section if:
- (a) The former partners or one of them own or control, and whether directly or indirectly, a **business and no independent valuation** of the same has been made before the payment is due, in which case the spouse who wishes to retain the business shall not receive a payment under this section until an independent valuation of that business has been given to an assessor and an assessment has issued under section 68T and been paid, save that a business need not be valued if it employs or subcontracts only the personal services of the spouse who seeks to retain it, and has no subsidiaries.
 - (b) That spouse is the registered owner of **non-Australian property** likely to be valued more than \$35,000 in which case the spouse who wishes to retain the foreign domiciled property shall not receive a sum hereunder until an interim assessment has been issued in respect of it.
- (5) A payment due under this Division **may not be made to either spouse if**:
- (a) Either of the couple are subject to a Proceeds of Crime Order; or
 - (b) The making of the payment would defeat the interests of a creditor of either of the spouses; or
 - (c) A Court so orders in exceptional circumstances.
- (6) **All communications by the Named Person** made under this Division shall, unless the Protected Spouse consents in writing, not be made directly by the Named Spouse but shall be communicated via or to a representative of The Protected Spouse, such as a solicitor, mediator or friend, or where no such person has been nominated may be

communicated to the Protected spouse via any other representative; save that such a representative may not be a person who:

- (a) is a business associate or a sibling, new partner, spouse, relative or child of either spouse where that spouse or that a person has a criminal conviction; or
- (b) has been specifically named or designated in any family violence order as a person who should not engage in conduct involving the making of communications; or
- (c) is engaging, or has engaged, in behaviour against the Protected Spouse person and any state or Federal Police officer or child welfare officer so orders otherwise in writing; or
- (d) a person who has been convicted of a criminal offence in respect of which that person has been incarcerated.

Cf Section 17 definition Domestic Violence Act 1995 (NZ) definition of "associates ". Under state law any person, except a solicitor, is often not inclined to intervene. Because 60% of Australians can't afford a family lawyer the vague language of state law has the effect of freezing solutions available under family law

- (7) Where both spouses do not own real estate then the notice referred to in subsection 1 may designate any other asset for division.
- (8) Where a payment is made or to be made under this section:
 - (a) Any debt facility including any home loan for which both spouses are liable may not be drawn upon nor used for the purposes of effecting the payment without the written consent of both persons; and
 - (b) If one spouse is retaining the property that loan shall be refinanced in the name of the spouse retaining the property and the other spouse who is receiving payment shall engage in such conduct as an Australian Bank requires permitting new indebtedness and security in respect of the property on such terms as the Bank may require.

FAMILY LAW ACT 1975 - SECT 68 S

Couples must communicate via a trusted intermediary to resolve their financial issues

- (1) Where a claim has been made under section 68R ***the Protected Spouse shall nominate any independent mediator*** for the purposes of this section, where the mediator is a person or firm employing or subcontracting persons who habitually carry on the business of mediating financial disputes between spouses, and includes any person who is a retired solicitor, retired judge, retired registrar of any Federal Court, except if the person nominated is an associate of any representative of either of the spouses.
- (2) ***Before the mediation commences*** each spouse must make a ***written offer sent to the mediator offering to settle*** with their spouse all residual items of property and cancel any relevant indebtedness and that offer must meet each of these criteria:

- (a) Be in writing, made in the English language, and worded in a clear, concise and effective manner; and
 - (b) Specify the value of all property as asserted by that person, and percentage of the payment each spouse will receive, and the precise dollar amount to be paid, or where a formula is used leaves the only variables being market value of any item of property or an independently assessed value; and
 - (c) Be open for acceptance for a period of not less than 30 days beginning on the day it is made; and
 - (d) Payments pursuant to that offer must not occur beyond 5 years from the date it is made or approved; and
 - (e) Is not more than 4,000 words long in either the offer or any associated explanation or document; and
 - (f) Contains no conditions which are arduous or unconscionable, unduly complex, uncertain, irrational, frivolous, or are not reasonably necessary for the purposes effecting a financial settlement; and if they are such conditions shall be ignored; and
 - (g) Does not involve matters relating to any parenting dispute, other than in relation to the payment of private school fees; and
 - (h) Must contain no more than 3 material conditions that are preconditions to or restrict payment thereunder; and
 - (i) Where payments are deferred include details of legal security and credit risk assumed; and
 - (j) Where a company or business is sought to be retained the offer does not contain a condition that would be Defeating Condition within the meaning of The Corporations Act, as if the person seeking to retain the shares or equity in the business in question was making a takeover bid for interests of their spouse as a minority shareholder; save that a condition to the effect that information be provided to and is satisfactory to an accountant is not a defeating condition; and
 - (k) Is in the good faith opinion of that person and if the person has made due inquiry in their circumstances and any legal representative, an outcome that on the facts known to them would be a just and equitable outcome should the matter ever to proceed to a substantive hearing and regardless of any legal fees or costs, charges, advantages of delays, and the like that would thereby be incurred; and
 - (l) Is an open communications settlement offer; save that nothing in this subsection shall operate as a waiver of the privilege of any legal communications between the client and their advisers; and
 - (m) Is not misleading nor deceptive in whole, nor in part.
- (3) Mediation is:
- a) to be at the joint cost of the spouses; and

- b) to commence within 30 days of a notice being given under section 68R and finish no later than 50 days of a notice being given under section 68R; and
- c) to be held at such times and in the manner specified by the mediator shall be compulsory unless subsection 4 applies; and
- d) to be undertaken by a person nominated by the Protected Spouse but if the Protected Spouse has not appointed such a person within 45 days of the Notice being given under subsection 1 then the Named Spouse may nominate a mediator in writing; and
- e) if either spouse seeks to be excused from mediation that person may reschedule the mediation at their cost within the next 30 days and must appoint a person with full authority to negotiate, conclude, document and execute hereunder on their behalf if that person:
 - i. is hospitalised; or
 - ii. suffers from mental or physical illness which in the bona fide opinion of an Australian Medical Practitioner recorded in writing that person would be excused from participation; or
 - iii. resides in assisted living arrangements.

Cf Section 60I (9) of The Principal Act. this draft removes the "spouses otherwise agree" rule in that section. That is because agreement is frequently coerced. And, much more importantly, other taxpayers have a stake in ensuring efficient dispute resolution, not delay. In addition, the "" serious disregard" rules are picked up by giving the mediator the authority to refer matters to assessment, rather than having the matter litigated.

- (4) Mediation is not to be undertaken but rather an assessment issued under section 68T at any time after a Notice is given under section 68R if either spouse:
 - (a) has been **convicted of assault** in relation to their partner or any of their former domestic partners or family member and whether that charge arose in Australia or any other country; or
 - (b) is then **incarcerated or has been convicted** of any offence that either involves causing harm to a person or animal, or has threatened to cause harm to either or to any offence that is, punishable by imprisonment for more than 7 years or that person has been incarcerated in any state, federal or foreign prison; or
 - (c) has been charged with a breach of any Family Violence Order by any state territory or federal police officer; or
 - (d) has been issued a Family Violence Order in relation to any other former relationship partner; or
 - (e) is in an intimate partner relationship with any person where that other person has or has had at any time a similar Family Violence order currently or previously made against them and any of the matters specified in the preceding sub paragraphs would have applied to that person has they been the Named Spouse at the relevant time; or
 - (f) an urgent application is made to a Court administering this Act and at the conclusion of that interim hearing the Court shall give

instructions as to how the matter is to be dealt with under this Division by mediation or by assessment.

(5) A mediator, if she thinks fit, may direct that an assessment under section 68T shall be made, without the need for mediation if the mediator is of the view that:

- (a) one of the spouses has been less than effusive in making disclosures under this Act; or
- (b) one of the spouses has made a settlement offer that does not reasonably comply with either or both of the substance and spirit of subsection 2; or
- (c) there is discernible imbalance of power in the negotiations that impacts one spouse's ability to reach a fully informed and non-coercive arrangement; or
- (d) the spouses' ongoing relationship does not involve, or may not involve an ongoing parental responsibility for children and the character of one of or both persons involved is unsuitable for a mediated outcome; or
- (e) one of them has shown a serious disregard for their compliance obligations under this Act or in relation to in relation to The Protected Person or any former relationship partner; or
- (f) the mediator is concerned about the mental health or stability of one of the spouses; or
- (g) one of the spouses has failed to return the Schedule 2 declaration within 30 days of being requested to do so; or
- (h) child support has been outstanding at any time for a period of more than 60 days in relation to that spouse or in relation to any former partner in a sum greater than \$3,000; or
- (i) for any other good reason.

(6) ***Property in dispute smaller than the cost of intervention*** - Where any person is the subject of a Family Violence Order; and

- (a) After making the distribution contemplated by or made under section 68S the amount remaining in dispute is less than \$ 20,000; and
- (b) the children of the relationship are under the age of 18 and are residing with the Protected Spouse at the time of the Order,

then an assessor shall issue a certificate that any property which has not been transferred or paid under section 68R on the due date shall be transferred to the Protected Spouse as an interim financial settlement without the need for mediation or an assessment being made.

(7) A mediator shall issue a certificate under this section either:

- (a) recording the consensus reached in respect of each material item of property such that the certificate creates an obligation to pay in accordance with its terms; save that if a spouse disagrees with any

matter set out in the certificate that person may at their cost seek an assessment within 21 days; or

- (b) If the mediator concludes that no consensus is reached in respect of all such matters the mediator shall record the disagreement and shall appoint an assessor for the couple.

FAMILY LAW ACT 1975 - SECT 68 T

Interim assessment if no quick agreement

- (1) **Assessment to be carried out quickly** – If the spouses fail to reach an outcome by mediation within 30 days of the appointment of the mediator under section 68S then the mediator shall refer the matter to an assessor.
- (2) **An assessor** – The only person who may make an assessment under this section shall be any person who is or has been:
 - (a) at any time, a Judge or Magistrate of any federal or state Court; or
 - (b) at any time been a Registrar or Deputy Registrar of The Family Court or The Federal Circuit Court; or
 - (c) Any person currently practising as a Queens Counsel or Senior Counsel whose specialty is the practice of family law.
- (3) **Duty of the Assessor** - It is the overriding duty of any assessor appointed under this section, any Court interpreting or applying this Act, any and all spouses or claimants, and any professional adviser or person providing services concerning a family law dispute to ensure that at all times outcomes under this Act should be resolved as inexpensively, simply, and speedily as is consistent with justice.

Cf s 56 CIVIL PROCEDURE ACT 2005 NSW

- (4) **What an assessor may do** - Any person appointed as an assessor under this section may, at their own discretion and in good faith, engage in any one or more of the following courses of conduct:
 - (a) Require in writing that either or **both spouses make a further interim payment of a sum** or transfer property to allocate all or some of the property in dispute or make payments in relation to the same; or
 - (b) Issue an assessment notice, including directing either or both spouses and any affiliated person under the control of the same to pay sums or **transfer property**, or engage in, or refrain from engaging in conduct, as that person thinks would most efficiently conclude the dispute or reasonably limit the scope of the dispute either completely or to the real issues in contention; or
 - (c) Direct the **setting aside in an Australian Bank account of a sum** of money, or an amount calculated as the residue of a property sale,

or otherwise under a formula, ***until any parenting matters are resolved*** or are not pursued or otherwise in respect of a date or event as specified by that assessor; or

- (d) Deal with some property and not all property, or with some liabilities and not all liabilities, or deal with either as or both as a pool of assets, or on an asset by asset basis, as that assessor sees fit, to obtain a just and quick outcome; or
- (e) Direct any spouse to ***engage in any conduct*** not especially specified above, as that assessor sees fit, including the giving effect to the sale of real estate, the making of repairs or capital expenditure, or incurring expenses prior to sale, or directing the execution of all and any documents, the transfer of sums from bank accounts or such other actions as the assessor in good faith believes will as soon as soon as possible in all the prevailing circumstances, and regardless of legal form or formality achieve an outcome which is just and equitable in all the circumstances; or
- (f) Direct that any Registrar sign any such documents to give effect to the same if a spouse refuses to sign or to engage in relevant conduct; or
- (g) If a spouse gives a prior written notice that they may seek to contest an adverse assessment, consider whether there are valid concerns about the other person's creditworthiness and ability to pay a sum should a court reach any alternative conclusion at a final hearing and if so consider making a payment to a jointly controlled bank account in respect of a designated sum of money or joint ownership of property for a period if and until litigation does ensue or as the assessor thinks otherwise ; or
- (h) Set aside a sum to cover sports or recreational fees or school or educational expenses, where a child or children under the age of 18 years are already attending a privately funded educational facility; or
- (i) Direct that any valuation be carried out prior to or after an assessment is made and in a manner directed by and on terms determined by that assessor; or
- (j) Order the legal or economic defeasance of debts on such terms and in such time as is just and equitable; or
- (k) Order that property be sold or auctioned; or
- (l) Determine such issues as are habitually seen in a Property Consent Order or which a court may order under this Act or which are in the bona fide view of the assessor necessary for giving effect to the statutory purpose of this division; or
- (m) Specify a default rate of interest for the consequences for non-performance or for an event such as a forced auction to occur on a specified date; or
- (n) If the assessor believes there is a material lack of evidence, order the production of further documents or ensure the property or

proceeds be placed under joint control or security or ownership until the time the matter can be resolved.

Cf Section 21, 23, 29, 30, 32 Building and Construction Industry Security of Payment Act 1999 NSW;
Section 56 Civil Procedure Act 2005 NSW

(5) **An assessment.** An assessor must:

- (a) issue a first written notice of the assessment made under this section no later than 30 days after their appointment, even if other issues or any challenge to the process or the appointment or the assessment are otherwise being determined; and
- (b) not exceed 2,000 words of explanation in their assessment and need not give written reasons; and
- (c) not charge the couple more than \$4,000 for an assessment and at all times strive to deliver an outcome is a just, quick and cheap resolution of the real issues in dispute; and
- (d) issue an assessment even if a spouse has failed to make a submission or comment within time or to otherwise comply with the assessment process.

(6) **The assessor's role is an administrative and is not a judicial task-**

Where an assessor or mediator engages in any of the conduct permitted by this Division that person:

- (a) Is not obliged to act judicially, or take into account all considerations relevant in a Court of law, nor rely on evidence which is duly probative nor admissible in a Court, nor afford any person any right of natural justice or due process; and the assessment issued is not in any way invalidated by the failure of either or both spouses to make a submission or comment within time or to otherwise comply.
- (b) Shall consider the creditworthiness of the spouses and their payment history or any flight risk when making an assessment, and shall seek always to obtain a clean break between the spouses that is prudent in the circumstances; and
- (c) Is not liable to any person for a sum greater than the fee received by them nor liable in civil or criminal proceedings; and
- (d) Shall enjoy immunities as if that person were a judge exercising any power under this Act; and
- (e) Need not consider each point raised in any such submission and is encouraged to focus upon the real and substantive issues in any dispute, or otherwise to narrow the gap between the spouses; and
- (f) May receive and issue one or more administrative assessments under this Division to cure defects in, or clarify any prior assessment given, or to make it more efficient for a just and equitable outcome to arise, as that person honestly sees fit.

Cf FAMILY LAW ACT 1975 - SECT 10P Immunity of arbitrators; Section SECT 67ZB

(7) **What an assessor may not do -** An assessor may not issue an assessment or require a payment to the extent that it:

- (a) Establishes obligations on any person other than a spouse or an entity owned or controlled by either or one them, to engage in any conduct or be effected by the assessment unless that person agrees in writing to be bound by the assessment; and
 - (b) Relates to a Binding Financial Agreement; or
 - (c) Makes an assessment for spousal maintenance or any matter better dealt with in a parenting order; or
 - (d) Imposes an obligation for spousal maintenance, but may make an order for other periodic payments by or guaranteed by a spouse.
- (8) Where an assessor has reasonable cause to believe that a person (“the defaulting spouse”) has:
- (a) failed to make disclosures required of them by law; or
 - (b) refused to pay or has not paid sums due under this Act under The Child Support (Assessment) Act 1989, in an amount of more than \$2,000; or
 - (c) refuses to participate in a mediation or provide required information for assessment

then unless an assessor thinks otherwise in the particular circumstances, the assessor shall issue an assessment certificate transferring all of the property in dispute, other than all of the superannuation, to the other spouse as an interim measure and shall cancel all obligations arising under this Division to pay money to the defaulting party.

FAMILY LAW ACT 1975- SECT 68 U

Ambit of state based family violence orders to assist in the resolution of disputes arising under The Family Law Act

- (1) For the avoidance of doubt any family violence order including any interim order or any directive of any Court, other than a Court administering this Act shall not operate to limit, nor inhibit, nor attempt to regulate, any of the following activities:
- (a) Correspondence only from or only to any independent or professional person in relation to any matters arising under this Act; or
 - (b) Any form of alternative dispute resolution or arrangements for the same or reasonably incidental thereto made by a person who is not named in any such an Order and which does not involve direct contact between the spouses; or
 - (c) Any written communications made in accordance with this Division or otherwise in accordance with this Act in a manner that does not involve a threat against the person or vitriolic language.

State law Family Violence Orders are based on an "incredibly vague law" (P E v M U [2010] NSWDC 2per Williams DCJ). Cf S 109 of The Constitution.

Parkinson and Cashmore "Post-Separation Conflict and the Use of Family Violence Orders", (2012) 33 Sydney LR 1

<http://www.austlii.edu.au/au/journals/SydLawRw/2011/1.pdf>

- (2) A family violence order or the existence of violence in and of itself is not to be considered in determining contributions to, nor a just adjustment in respect of property to be transferred under this Act or when making any order under sections 75 nor 79 unless:
- (a) The violence resulted in physical conviction for harm or breach of a Family Violence Order; and
 - (b) The contributions of one spouse to children of the relationship or to wealth was thereby impaired; and
 - (c) the conduct was gross and palpable and significantly limited the extent of the positive contribution of the other spouse or value of the property.

Judges currently disagree: Cf Kennon v Kennon [1997] Fam CA 27 and Palmer & Palmer [2010] FMCA 999; Hoffman & Hoffman [2012] FMCA 1061

Cf section 18 A "Effect of misconduct of spouses or partners"

<http://www.legislation.govt.nz/act/public/1976/0166/latest/whole.html#DLM441170>

Recommendation:

1. *There are few decided cases in which family violence has impacted the financial allocation.*
2. *Nonetheless making a statement is politically potent but has negligible effect on real economic welfare*
3. *However, much court time has been taken up on debating what Kennon means and what its ambit may be, or not be*
4. *One argument is that the ruling in Kennon can enable the return of fault based divorce*
5. *We therefore suggest that the matter be resolved by statute. The marginal financial impact is negligible, and we suggest the New Zealand legislative wording be adopted to resolve the matter and curtail time spent on the debate.*

- (3) A Family Violence Order is not breached if any conduct is:
- (a) reasonably necessary in any emergency or exigent circumstances for the protection of a child or elder; or
 - (b) permitted under any order or written parenting agreement relating to the role of providing day-to-day care for, or contact with, or custody of any child in accordance with an Order of any Court administering this Act; or
 - (c) necessary for the purposes of attending any mediation or the making of communication required by this Act
 - (d) necessary to attend any court proceeding, or to attend to any other matter that is associated with a court proceeding or mediation

Cf Proposed Section 20B, *Family and Whanau Violence Legislation Bill 2017 (NZ)*, not yet enacted

<http://www.legislation.govt.nz/bill/government/2017/0247/latest/DLM7159427.html>

- (4) Any barrister or solicitor proving services in accordance with this Act must deal with an unrepresented person in the same manner as they must deal

with a fellow practitioner unless the unrepresented person is incarcerated or the solicitor has reasonable concerns for their safety.

FAMILY LAW ACT 1975 - SECT 68 V

Compliance with this Division

- (1) Each spouse:
 - (a) named in any Certificate issued by a mediator under Section 68S;
and
 - (b) named in an assessment issued under section 68T; and
 - (c) obliged to make a payment under section 68Rand who refuses to comply with any obligation thereunder in the time specified or if not specified within 42 days of any request to pay shall pay:
 - i. ten penalty units for each week of delay to The Commonwealth; and
 - ii. the default rate of interest as calculated pursuant to The Family Law rules 2004 on the unpaid sums to their spouseunless that person's penalty is altered by a Court within 30 days of receipt of a demand to pay by their spouse.
- (2) Where a spouse fails to make a payment due under this Division by a due date the other spouse may at any time thereafter:
 - (a) register a certificate provided by any assessor or any mediator in the registry of any Court administering this Act, together with a statutory declaration setting out the noncompliance, and posting notice of the same to the defaulting spouse's last known place of abode, whereupon the Court shall issue a default judgment; and
 - (b) thereupon be deemed to have an Order of The Court made in respect of that sum and may recover the unpaid portion of the claimed amount from the defaulting spouse as a judgement debt due to the claimant; and
 - (c) assign the debt due to any debt collector or third party on such terms as they see fit; and
 - (d) as the owner of the sum due be paid without further delay provided that the defaulting spouse is not, in any proceedings in relation to the judgment debt, entitled:
 - i. to bring any cross-claim against the claimant in respect of the sum due; or
 - ii. to raise any matter to negate payment including any netting set off or counter claim for any sum or obligation whatsoever, other than providing evidence of compliance.

Cf Section 15 Building and Construction Industry Security of Payment Act 1999 NSW;

- (3) A spouse who 40 days after receiving a notice under section 68R fails to disclose any item of property that person owns, or controls, or benefits from, and whether that property may be distributed under this Act or which would have been considered by a Court making an Order under the Principal Act, shall:

- (a) forfeit the property in question and hold all sums arising from the same for the benefit of the other person with effect from the day a notice was first given under section 68R; and
- (b) pay interest from the date from the day a notice was first given under section 68R in respect of the value of the property was not disclosed until the date the property is registered in the name of their spouse; and
- (c) pay actual legal costs reasonably incurred by their former partner in relation to the discovery and recovery of amounts due; and
- (d) pay The Commonwealth 100 penalty units

unless those payments or obligations are reduced by a Court within 30 days of notice being given by any person to the person who failed to make adequate disclosure

- (4) From no later than the time a notice is given under section 68R each spouse has a protected equitable interest in the family home or the proceeds thereof and accordingly:

- (a) the protected interest of a spouse or partner is not liable to be applied for the unsecured debts of the other spouse or partner, other than an unsecured debt incurred by the spouses or partners jointly; and
- (b) any subsequent disposition, mortgage, hypothecation, pledge, lien or other security or encumbrance of property or alienation made after a Claim is made under section 68R is given is of no effect between the spouses unless it is given with the express written consent of both spouses; and
- (c) the property may only be sold with the written consent of each spouse, other than arising upon a default under a loan from an Australian Bank.

- (5) Pursuant to Section 125 of the Act the Governor General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Division including more especially for:

- (a) the purposes of specifying the manner or requirements of any mediation, or the conduct of any mediators; or
- (b) detailing matters in relation to the assessment process, or the conduct of assessors; or
- (c) for the further protection of the Second Spouse; or

- (d) providing for persons whose first language is not English; or
 - (e) regulating the activity of any person, including any professional person providing services for about any matter detailed in this Division; or prescribing the manner, and mode of more efficient enforcement of any basement or Order made; or
 - (f) prescribing or limiting fees which may be charged or are payable; or
 - (g) providing for an officer of a court executing any document or agreeing to any matter to give effect to the statutory propose of this Division; or
 - (h) for dealing with a spouse whose whereabouts are unknown; or
 - (i) otherwise giving effect to the purposes of this Division.
- (6) ***Dispute over final sums***: A person who is dissatisfied with an assessment made must:
- (a) Pay the sum so ordered and only then commence proceedings within 90 days of the date of receipt of a first payment made under this section, and if no such proceedings are commenced the interim assessment shall be treated as if it were a Final Order of a Court administering this Act in respect of the property dealt with under the Order, save that in all instances the Court may grant leave in exceptional circumstances such as inordinate delay, undue reliance, coercion, duress or fraud; and
 - (b) If that person is in receipt of or has been offered but failed to accept payment of or has taken ownership of or been credited with value a sum of more than \$35,000 under section 68R then that spouse may not cross examine their spouse other than with leave of the Court having regard for the need to regulate its procedure and its inherent powers including the need to determine which persons should be permitted to appear before it, and the efficient conduct of its business and deployment of its scarce resources.

Drafting Note; in economic effect this stops spousal cross examination. If you have the money, hire a solicitor to cross examine your spouse. See otherwise Report of Mr. Justice Cobb Review of The UK family Court. Of 18 November 2016. <https://www.judiciary.gov.uk/wp-content/uploads/2017/01/PD12J-child-arrangement-domestic-violence-and-harm-report-and-revision.pdf>

<https://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/739/739vw09.htm>

- (7) ***Systemic integrity measures*** - A Court is not bound by any certificate or assessment made under this Division but shall nonetheless consider the need:
- (a) of our community for most disputes regarding property to be determined in a non-combative, early and efficient manner; and
 - (b) for similar treatment of citizens in similar situations; and
 - (c) for justice to be delivered not delayed; and
 - (d) to limit the duration of financial disputes for the benefit of any children and all other taxpayers; and

- (e) consider any amount paid or not paid when making any order under sections 75 or 79; and
- (f) consider the effect of delays, including any use of an asset during a period and the time value of money; and
- (g) ensure that the Court assists in promoting the integrity of the assessment process itself to enable as many distressed members of our community to receive payment without undue focus on form or process but instead so as to achieve the just, quick and cheap resolution of the real issues in the proceedings.

This regime does not seek to confer a judicial power upon assessors. It merely seeks to set a precondition on where the asset resides before any matter is finally determined by a Court- R v. TPT; Ex p. Tasmanian Breweries Pty Ltd (1970) 123 CLR 361: Harris v Calladine (1991) 172 CLR 84.

(8) ***Judicial review not available even for jurisdictional error-*** Any person who:

- i. objects to the appointment of any person as an assessor or wishes them to behave in a different manner; or
- ii. objects to any conduct engaged in or to be engaged in by the assessor, or
- iii. objects to the assessment or certificate, or to any conclusion reached on either substantive merits, or any matter of form; or
- iv. seeks to challenge the assessment or the assessors conduct on procedural grounds,

prior to taking any legal action must:

- (a) pay the sums due and comply with the terms of any certificate issued; and
- (b) engage in all such conduct including the doing of acts, and the refusal to engage in conduct, to give full effect to the interim payment obligations and other obligations; and
- (c) not petition any court or administrative review body or any other person to claim jurisdiction or power or to entertain any question as to the administrative law effects of, nor validity or correctness of any such assessment, or to question, or to set aside, even for jurisdictional error that assessment or payment obligation, until a Court administering this Act hears the matter afresh on its merits and substitutes its own decision; and
- (d) no assessment or certificate may be disputed in any Court or on any grounds whatsoever until a hearing made by a Court administering this Act, save if a Court administering this Act determines that the matter should be determined before it because a prima facie case of actual fraud has been made out in relation to the assessor.

Cf S 5 TAXATION ADMINISTRATION ACT 1997

27. Insert

Section 4 of the Principal Act is amended by inserting in alphabetical order these new definitions:

“Australian Accountant” means a member of the Institute of Chartered Accountants, whose primary business involves the carrying on of a professional service business for a period of not less than 5 years, as partner or director of an accounting practice.

“Accredited Family Lawyer” means a person designated as such by a legal professional body recognised by the Professional Standards Council where:

- (a) the number of such accreditations do not enable that status to be obtained without significant prior experience and further educational and empathetic competencies displayed; and
- (b) those people are monitored by their association to the satisfaction of the Professional Standards Council; and
- (c) those people do not issue certificates for clients of their own firm nor habitually for clients of any other firm nor practitioner; and
- (d) there is no professional complaint that has not been thoroughly and expeditiously investigated and adequately resolved in respect of that person.

“Australian Medical Practitioner” means a person who:

- (a) is licensed by or pursuant to powers the Medical Board of Australia or a Competent Authority pathway; and
- (b) whose primary role is to diagnose physical and mental illnesses, disorders and injuries and prescribe medications and treatments that promote or restore good health; and
- (c) Primarily practices traditional medicine, and not any other alternative form of healing.

“Bank” means any person regulated by The Australian Prudential Regulatory Authority to carry on a banking business through branches located in Australia.

“engage in conduct” has the same meaning as in Section 4 (2) of The Australian Consumer Law.

“The Named Spouse” in relation to Division 11 A means a person whose conduct is, or is sought to be, subject to any restraint or conditions as prescribed in a family violence order.

“The Protected Spouse” in relation to Division 11 A means a person who is protected by or sought to be protected by the same family violence order

First Schedule:

Payment Notice

Dear INSERT NAME

This notice is given in respect of our home in accordance with section 68 of The Family Law Amendment Act 2017. I require that you make an interim settlement of 35% of its value no later than INSERT DATE.

STRIKE OUT WHAT DOES NOT APPLY

- A. As the house has already been sold I require payment of the sum of \$INSERT immediately.
- B. If you wish to retain the house I ask that you:
 - 1. Notify me of the same within 30 days in writing attaching a letter from a bank which is supporting that proposal. You do not have my consent to draw down on the existing home loan.
 - 2. Pay based in accordance with a valuation prepared by a valuer selected by The President of The Australian Property Institute.

Payment is due on INSERT 90 days from the date of delivery of this notice.

- C. If you seek to pay from other resources you must clarify those sources and proposed timing of payment thereof, in writing to me within 30 days of the date of delivery of this notice.

You should seek legal advice if you don't wish to pay, as you must ascertain whether you have any basis for resisting this statutory demand notice.

I attach my disclosure of assets and liabilities. You must return your disclosures by email to this address within 30 days.

As a family violence order applies I elect to have all correspondence directed to:

INSERT Name of person to whom the correspondence is to be directed
INSERT Email address

Regards

INSERT NAME OF PARTNER OR ADVISER TO PARTNER

Second Schedule:

Initial Disclosure Forms

Asset	Details	Value
Property: Family Home		
Joint Bank Accounts Bank Accounts Nominate for each account whether held jointly or separately	Account numbers	Balances
Cars Include Registration Numbers		
Shares	Names	Value
Company Ownership		
Other Assets List assets of greater than \$10,000 value		

Liabilities	Details	Value
Mortgage Nominate for each account name the lender (eg bank) and whether held jointly or separately		
Credit Cards Nominate for each account whether held jointly or separately		
Loan For each account list name of borrower and amount owing		

Superannuation	Details	Current balance
Super Fund Names	Details for each account	

Other information		
List any major inheritances, gifts, compensation payments received		
Child maintenance List any amounts received by one party from the other party. List amounts and frequency		
Current yearly salary Amounts should be listed as annual before tax earnings, including fringe benefits and bonuses		

Third Schedule:

Notice of Extension

INSERT DATE OF THIS NOTICE

Dear INSERT NAME OF PARTNER

This notice is given in accordance with Division 11 A of The Family Law Act.

INSERT NAME proposes an extension of time for payment. The new date for payment is no later than 90 days from the date of this Notice.

The original date for payment was: INSERT.

The new date for payment is INSERT.

The extension is conditional upon INSERT CONDITIONS.

Regards

INSERT NAME OF PARTNER OR ADVISER TO PARTNER