



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Legislation Committee report:
Family Law Amendment Bill 2024

JANUARY 2025

| MAJORITY COMMITTEE RECOMMENDATIONS | |
|---|--|
| <p>Recommendation 1(a) The committee recommends that:</p> <ul style="list-style-type: none"> proposed paragraphs 79(6)(b) and 90SM(6)(b) be amended to replace ‘sold’ with ‘rehome’. | <p>Accepted in principle. The <i>Family Law Amendment Act 2024</i> includes amendments introduced by the Government, and passed by the Parliament, that permit the family law courts to transfer a companion animal to a person or entity who has consented to the transfer. Under the Family Law Act, family law courts are empowered to make orders altering interests in property. The ordinary meaning of ‘rehome’ does not necessarily require a transfer of ownership (for example, the companion animal’s residence has changed, but their ownership has not). Using ‘transfer’ rather than ‘rehome’ permits the broadest range of orders to be made about a companion animal.</p> |
| <p>Recommendation 1(b) The committee recommends that:</p> <ul style="list-style-type: none"> proposed subsections 79(6) and 90SM(6) be amended to clearly state that the court has the power to make interim orders with respect to companion animals. | <p>Accepted. The <i>Family Law Amendment Act 2024</i> includes amendments introduced by the Government, and passed by the Parliament, to clarify that the family law courts are able to make interim orders with respect to companion animals. This is consistent with the court’s powers in respect to other types of property.</p> |
| <p>Recommendation 2 The committee recommends that in developing the Accreditation Rules for Children’s Contact Services, the Commonwealth government consults with relevant stakeholders and gives serious consideration to introducing accreditation obligations at the organisational level.</p> | <p>Noted. The Attorney-General’s Department is currently preparing an impact analysis for the new regulatory measures. The outcomes of the Impact Analysis and associated consultation processes will guide the development and establishment of the accreditation rules for CCS.</p> |
| <p>Recommendation 3 The committee recommends that subsection 44(1B) of the Family Law Act 1975 is repealed thereby removing the requirement that couples must undergo counselling before applying for divorce if they have been married for less than two years.</p> | <p>Accepted. The <i>Family Law Amendment Act 2024</i> includes amendments introduced by the Government, and passed by the Parliament, that will repeal subsections 44(1B) and 44(1C) to remove barriers to divorce for parties married for less than two years. These provisions require parties to show they have considered reconciliation with the assistance of a professional, such as a marriage counsellor, and to seek leave from the court to file an application for divorce. This creates additional stress, costs and risk to the safety of victim/survivors of family violence. The requirement that a couple must be separated for 12 months before applying for a divorce order, irrespective of how long they have been married, will remain.</p> |
| <p>Recommendation 4 The committee recommends that Schedule 3, Part 5 of the Bill, which deals with protected confidences, is amended to require</p> | <p>Accepted in part. The Government does not agree with the Committee’s proposal to create a leave requirement</p> |

| | |
|--|--|
| <p>that the party seeking access to a protected confidence is required to show they are relevant to, and necessary for, the proceedings prior to their production.</p> <p>The committee recommends that in relation to Schedule 3, Part 5 of the Bill, the following safeguards in relation to seeking access to a protected confidence be developed:</p> <ul style="list-style-type: none"> • having the Attorney-General’s Department work with courts to ensure appropriate awareness of the measure is achieved through education and information given to parties; • having the Explanatory Memorandum clarify what constitutes a specialist service; and • expanding the consent provision to make it clear consent can be given in relation to all or part of the records. | <p>for parties seeking access to a protected confidence to show they are relevant to, and necessary for, proceedings prior to their production.</p> <p>A test for relevance prior to the production of a subpoena is unlikely to provide protection for confiders in the way intended by this recommendation as it would necessarily involve a much lower threshold than the court being asked to determine whether the desirability of the evidence outweighs the likely harm to the confider or a child.</p> <p>In addition, the resource impost on parties and the courts would be considerable, resulting in delays to parties seeking outcomes in the family court system.</p> <p>The Government agrees with the Committee’s recommendation in relation to education and awareness, and will commence work on this. The Government agrees with the recommendation to clarify what constitutes a specialist service, and tabled an addendum to the explanatory memorandum to achieve this. The Government also agrees, and the Parliament passed, amendments to expand the consent provision in the Bill to make it clear that consent can be given in relation to all or part of the records.</p> |
| <p>Recommendation 5</p> <ul style="list-style-type: none"> • Subject to the preceding recommendations, the committee recommends that the Senate passes the Bill. | <p>Noted.</p> <p>On 28 November 2024, the Senate passed the Bill with Government amendments. Following passage of the Bill through Parliament on 29 November 2024, the <i>Family Law Amendment Act 2024</i> received the Royal Assent on 10 December 2024.</p> |

SENATOR PAUL SCARR'S RECOMMENDATIONS

Recommendation 1

It is recommended that the government should carefully consider the concerns raised during this inquiry in relation to the operation of the protected confidence provisions. If practical, further urgent consultation should occur with relevant service providers and stakeholders who have raised concerns with respect to the protected confider bearing the onus of proof, including the practical obstacles to a protected confider making the relevant application to the court. Subject to the results of such consultation, the Bill should be passed.

Noted.

The Government has given further consideration to the issues raised by the inquiry, including by proposing a number of further amendments to strengthen the provisions.

The issues raised by stakeholders in relation to the onus of proof in relation to protected confidences applications have been well ventilated, including in response to:

- the Exposure Draft of the Family Law Amendment Bill 2023, and
- further consultation in relation to the Family Law Amendment Bill 2024.

As such, the Government does not agree that urgent further consultation on the issue of the onus is required at this stage.

The Government acknowledges the practical obstacles a victim-survivor, or person with limited capacity, may face in making an application to the court to protect their information. However, there are also significant risks with an alternative approach which would place an automatic restriction on protected confidences evidence.

The Attorney-General's Department will undertake education and awareness raising of this measure, with a particular focus on ensuring it is easy for a litigant to understand when an application can be made, and how to undertake the process.

Recommendation 2

Following passage of the Bill, the government should implement a programme of real time review of the operation of the protected confidence provisions having regard to the concerns raised during this inquiry.

Accepted in principle.

The Government agrees that it will be important to monitor and review the implementation of these provisions, particularly in relation to their accessibility and any unintended impacts on providers of health and specialist sexual and family violence services. The Attorney-General's Department will engage relevant stakeholders, including from the family law services and health sector, in an interim review of the implementation of the provisions 12 months after their commencement.