

Article

Family Law



Proposed Amendments Incorporating Domestic Violence Factors into Financial Settlements in Family Law Matters

By Joanne Cliff

To continue with changes recommended in 2021 by the Australian Law Reform Commission review into Family Law in Australia, the Federal Government published, on 18 September 2023, draft amendments to the *Family Law Act 1975* [the **FLA**], the impact of domestic violence and economic abuse on financial settlements. This is a further demonstration by the government of its recognition of the effects of domestic violence in the community.

The purpose of the amendments is to define the factors to be taken into consideration when considering a financial settlement as they relate to incidents of domestic violence and economic abuse.

There are still four principles when considering a financial settlement as follows:

1. Identifying the existing legal and equitable rights and interests in liabilities of the parties to any property.
2. Consider each party's respective financial and non-financial contributions to the property of the relationship, whether married couples or de facto couples.
3. Consider the parties' current and future considerations (needs).
4. Determine whether it is just and equitable to make an order to alter the parties' interests in property.

The draft deals in particular with the second and third principles; namely, the Court will have regard to ascertaining each party's contributions to the property pool by taking into account the effect of family violence and financial and economic abuse on a party's contributions. While it has always been open to a Court to consider these factors, the FLA does not explicitly state how domestic violence is to be considered when assessing financial contributions by each party.

Concerning domestic violence, a Court would have to consider whether a party may have had a reduced ability to contribute financially to any property owned by the parties to the relationship due to domestic violence. For example, when someone is unable to work or has limited ability to work due to injury (physical or psychological) caused by domestic violence.

In relation to considering the parties' current and future needs, the effect of family violence may cause a party to have greater financial needs in the future.

Similarly, the proposed amendments allow a Court to consider the effect of any financial or economic abuse by one party on the other. This could include controlling behaviours such as controlling or denying access to money, finances or information about finances and undermining a party's earning potential by limiting access to employment, education or training.

The issue of blame or fault for the breakdown of a relationship has never been part of the FLA since its

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commencement in 1975. Does this mean that domestic violence and economic abuse as a concept of fault will be introduced? We assume that the emphasis will be on how any abuse has resulted in reducing one party's ability to make financial contributions. This issue may become clearer during the consultation process.

The consultation process will continue until 10 November 2023.



[MORE INFO](#)

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