

Adjusting More Than Percentages:

What Solicitors Need to Know about Mediating Property after the 2025 Family Violence Amendments

Michele Brooks, Barrister
Advanced Mediator (AMDRAS)
Owen Dixon Chambers East
michele.brooks@vicbar.com.au

Emma Swart, Barrister
Advanced Mediator (AMDRAS)
Owen Dixon Chambers East
eswart@vicbar.com.au

1. Overview

The Family Law Amendment Act 2024 (**Amendment Act**) came into effect on 10 June 2025. The Amendment Act made various changes to the Family Law Act 1975 (**Act**). The focus of this paper is to consider changes made to s.79 and related provisions of the Act¹ (**Family Violence Amendments**) which govern the division of property and finances, specifically in cases involving Family Violence (**Family Violence** or **FV**). It is imperative that practitioners are equipped to mediate property settlement cases involving allegations of Family Violence in a safe and effective way, especially given that the Federal Circuit and Family Court of Australia (**FCFCOA**) mandates mediation as a step in the Court's procedural pathway and particularly given that 80% of family law matters now involve FV allegations². This paper includes an overview of the relevant law and the new FV Amendments, plus the authors' 'Top Tips' in relation to mediating property matters under the FV Amendments, including:

- How to understand the shift in the legislative framework and the expanded definition of FV under the Act, as well as changes to the law in relation to disclosure obligations and companion animals, which may be relevant to FV cases;
- How to prepare your client's case effectively for mediation, including provide strong evidentiary support for FV allegations and frame their case to ensure both family violence *and* its economic impacts are properly considered (noting the impact of FV extends beyond contributions to future economic consequences also);
- How to help your clients achieve robust and appropriate outcomes with a mediator who adopts best practice, with a focus on safety, risk-management and trauma-informed processes (and recognise/manage your own client's trauma responses);
- How to get maximum benefit from the Mediator's Pre-Mediation Intake Session, by attending prior to the day of mediation. Early intake helps the mediator better understand your client's situation, interests, values and experiences and build rapport with them. It also helps the mediator identify any FV allegations, as well as any unresolved personal conflict sitting beneath the legal dispute that may be causing parties to feel 'stuck'. The early intake also helps the mediator tailor the logistics of the mediation to suit the needs of each party (including whether to proceed via shuttle or Zoom mediation) and ensure safety for all participants.

¹ Including s90SM for de facto spouses and s.72 and s.90SF (spousal maintenance rights and obligations) between married and de facto spouses.

² FCFCOA Media release in relation Lighthouse Project family violence and safety initiative 5 December 2022 <https://www.fcfcga.gov.au/news-and-media-centre/media-releases/mr051222>

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Michele Brooks, Barrister & Emma Swart, Barrister

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2. The 2025 Family Violence Amendments to the Act

Key aspects of the FV changes are described in the Federal Government's Explanatory Memorandum to the Amendment Act as a "codification" of the common law principle in "Kennon's case"³. However as there are various ways in which Kennon's principle could have been interpreted based the variety of post-Kennon jurisprudence, and the way in which the principle has been shaped, shifted and expanded over time, it could be said that the Amendment Act reflects just one of various possible interpretations of the Kennon principle.⁴ It is important to note, however, that the Amendment Act actually goes a lot further than just codifying Kennon, as discussed further below.

3. Codification of Kennon – same old, same old... or fresh new take?

When the Family Violence Amendments were announced last year as codifying the common law principle in the 1997 case of Kennon, many family lawyers expressed the view that this was "*the end of Mediation in Family Violence cases*", because "*victims of alleged Family Violence will all have to go to trial now to prove Family Violence, if they want a Kennon Adjustment*".

This view was no doubt informed by the fact that all experienced family lawyers know the so-called "Kennon Adjustment"⁵ has rarely been a feature of mediated property settlements, let alone reported cases. Family lawyers also know that parties subject of FV allegations rarely admit to FV in mediation, let alone concede a greater percentage adjustment to the other party on the basis of alleged FV conduct. Moreover, for most of the last three decades, the Kennon principle has featured in such a 'narrow band of cases'⁶ decided by the Court at final hearing, that even experienced family lawyers may not feel confident or optimistic about arguing for a Kennon Adjustment in negotiations. It is therefore not surprising that many family lawyers assumed the FV Amendments codifying Kennon's case would just be the same old "narrow rule" couched in a new format, and that nothing much else would change. Those lawyers may retain a pessimistic view about the chances of the Amendment Act making it easier to bring Family Violence issues to the forefront in property matters and property mediations.

The authors do not share this view. On the contrary, the FV Amendments require family lawyers to take fresh look at the new and expanded property settlement framework under the Act, which now has elements of the Kennon principle 'baked in' to the 'four-step' property adjustment process (with the four-step process itself now also being codified in the Act). Moreover, the Act is now drafted in such a way that the **economic impact of FV is a mandatory factor** to be considered at each of these steps, which means that FV becomes the primary focus of cases (where relevant), not a mere afterthought or something applicable in only a 'narrow band' of cases.

³ *Kennon and Kennon* (1997) FLC 92-757; [1997] FamCA 27.

⁴ "Did Parliament intend to change the law of property division in the Family Law Amendment Act 2024?" Patrick Parkinson AM (article published 8 June 2025)

⁵ It should be noted that the phrase "Kennon Adjustment" is out of favour based on the principle in *Jabour & Jabour* [2019] FamCAFC 78, namely that it is erroneous to segment or compartmentalise contributions and weigh one against another, as all contributions (including contributions made more arduous by FV under the Kennon principle) should be assessed holistically.

⁶ The phrase 'narrow band of cases' was referred to in Kennon and many other earlier cases considering the Kennon principle, such as *Kozovska & Kozovski* [2009] FMCAfam 1014.

A breakdown of the elements of the new property settlement framework in the Act is set out below. It will be seen that evidence regarding alleged FV becomes not only important and fertile ground for negotiation in Mediation, but that the mandatory consideration of FV under the new legislation (and its economic impact upon both contributions and current and future circumstances of a party) throws opens new pathways for FV victims to argue for substantially different and better financial outcomes in property matters involving Family Violence.

Where there is credible evidence of FV, it is anticipated this new framework will empower FV victims to more confidently table that evidence at mediation (given that consideration of FV issues is now mandatory under the Act) and assist their lawyers gain better leverage to negotiate and resolve property disputes via mediation in a more robust, persuasive and frequent manner than before, resulting in less need for litigation. In other words, where FV is alleged, the FV Amendment Act provides a platform for parties to put credible and clearly particularised FV allegations **at the very centre of the property settlement process**, in a manner that has not previously been the case under Australian family law.

Further, if FV allegations are compelling, it is predicted that the leverage this creates for victims (and the corresponding increase in risk it creates for the alleged perpetrator, in terms of an adverse finding if the matter is litigated) will not only see a **rise in successfully mediated outcomes for alleged victims in FV property matters, but also an increase in overall (holistic) percentage adjustments in favour of the alleged victims**⁷.

If this prediction is correct (despite the Attorney General's Department warning to FV perpetrators in its media releases in relation to the FV Amendment Act⁸) it is hoped that the FV Amendment Act will pave the way for more balanced and less damaging outcomes for all parties, not just alleged FV victims, as compared to the alternative pathway of litigation.

4. The fundamental principle in Kennon's case

In the case of **Kennon**, the Full Court contemplated whether family violence could influence the outcome of a property settlement. This was in the context of the wife making a cross-vested claim at common law, in conjunction with her s.79 claim under the Act, "that the husband pay to the wife, as damages for assault and battery the sum of \$50,000 including exemplary damages". The Full court said (**emphasis added**):

"Even in relation to a s.79 claim, it does not follow that the Family Court is obliged to hear the cross-vested damages claim. Whilst in no way attempting to understate the impact of domestic violence and the importance of appropriate remedies, the fact is that in such a situation the s.79 claim should remain the major focus"

⁷ Noting that alleged perpetrators can receive legal advice about how the risk of an adverse finding in relation to FV matters might affect their outcome in a property settlement matter (based on the strength of allegations and evidence in support of the claims) and agree to a greater holistic adjustment to the other party without necessarily admitting to the FV allegations, which reduces cost and risk for that party also.

⁸ The Australian government launched a public awareness campaign in September 2024, featuring Mark Dreyfus, the then-Attorney-General, warning that perpetrators of family violence could lose their homes. This campaign emphasised the new financial consequences of FV under the 2024 Amendment Act, which now allows financial and property decisions to take into account the economic effects of FV, including coercion, control, and fear-based abuse.

in this Court because it is the area in which this Court has direct jurisdiction and particular expertise."

The Full Court went on to examine numerous authorities dealing with the impact of family violence on s.79 claims and made the following statements (**emphases added**):

*"Put shortly, our view is that where there is a **course of violent conduct by one party** towards the other during the marriage which is demonstrated to have had a **significant adverse impact upon that party's contributions to the marriage**, or, put the other way, to have **made his or her contributions significantly more arduous than they ought to have been**, that is a fact which a **trial judge is entitled to take into account in assessing the parties' respective contributions within s.79**. We prefer this approach to the concept of "negative contributions" which is sometimes referred to in this discussion...*

*...There have been **marked changes in perceptions, both legal and social, about domestic violence and its impact in recent times** and it appears to be appropriate to give effect to them: see Nguyen (1989) 169 CLR 245; Farnell (1996) FLC 92-681, and Ivanovic (1996) FLC 92-689.*

*However, it is **important to consider the "floodgates" argument**. That is, **these principles, which should only apply to exceptional cases**, may become common coinage in property cases and be used inappropriately as tactical weapons or for personal attacks and **so return this Court to fault and misconduct in property matters** - a circumstance which proved so debilitating in the past. In addition, there is the risk of substantial additional time and cost.*

*However, in our view, **s.79 should encompass the exceptional cases** which we described above. It would not be appropriate to exclude them as a matter of policy because of this risk...*

*...It is essential to bear in mind **the relatively narrow band of cases to which these considerations apply**. To be relevant, it would be necessary to show that the **conduct occurred during the course of the marriage and had a discernible impact upon the contributions of the other party**. It is not directed to conduct which does not have that effect and of necessity it does not encompass (as in Ferguson) conduct related to the breakdown of the marriage (basically because it would not have had a sufficient duration for this impact to be relevant to contributions)."*

Ultimately it was held that, sections 75 and 79 of the Act empowered the Court to assess the financial consequences of family violence upon satisfaction of three elements:

- A course of violent conduct must be established;
- The violent conduct must have a discernible impact on the victim; and
- The victim's contributions to the relationship must have been made significantly more arduous as a result of the violent conduct.

5. Evolution of the Kennon principle

A narrow approach was adopted in **Kennon** in an attempt to avoid opening the 'floodgates' or undermine the 'no fault' family law system established by the Act in 1975. Indeed, it was not until 2012 in the case of **Baranski & Baranski & Anor** [2012] FamCAFC 18 that the Full Court expanded the Kennon principle to provide that it may apply to post separation FV, not just FV during the relationship.

It is also important to note, in our 'no fault' system under the Act, that a 'Kennon Adjustment' was never intended by the court as a means of compensation, punishment, or deterrence. Kennon's case explicitly recognised that the court was not attempting to make such an adjustment as a substitute for a common law compensation claim. Rather, the adjustment has always been a *"symbolic recognition of the extraordinary efforts of one spouse in persisting with contribution in the face of enormous and unjustified adversity."* See **Kozovska & Kosovski**⁹, per Altobelli J.

The evolving Kennon line of cases underscored the importance of putting evidence before the court in a way that enables the court to quantify the effect of that family violence on a party's capacity to contribute. Indeed, in **Benson & Drury**¹⁰ the Full Court considered the application of the Kennon rule in an appeal by the de facto husband. The husband posed the question, "How should a Court assess the contributions of a party which are made more arduous because of the other party's conduct?". That question was answered by reference to the principle in **Jabour's** case, namely that the legally correct approach is to consider all contributions holistically, including those made more arduous by a course of violent conduct by the other party, and that the court should not [segment or compartmentalise contributions by weighing one against another](#).

It can be seen therefore that the Amendment Act is a progression in a long line of cases showing a jurisprudential trend toward expansion of the Kennon principle to the point of recognising the economic impact of FV in property matters as central to justice and equity. Moreover, the consideration of FV in property matters is now mandatory under the new legislation, not just relevant to a "narrow band" of cases, or "exceptional cases".

6. Explanatory Memorandum - Rationale for Codifying Kennon

The Second Reading Speech of the Bill for the Amendment Act was given by (former Attorney General) Mark Dreyfus MP on 22 August 2024, which included the following statements: (**emphasis** added):

"The bill makes amendments to explicitly allow the court to consider the effect of family violence on the parties' ability to contribute to the property pool of a relationship, and to consider the effect of family violence on their future needs. This may be considered by the court along with a range of other factors to inform its decision about dividing property and finances. The effect of family violence can also be considered by the court in determining an application for spousal maintenance."

This bill sends a strong message to the community that property settlement outcomes should recognise the effect of family violence on individuals, and on

⁹ Op. Cit.

¹⁰ [2020] FamCAFC

the wealth and welfare of the family, where this is relevant. It makes clear to the family law courts, and parties negotiating outside of court, that the economic consequences of family violence are relevant to resolving property and financial aspects of relationship breakdown.”

It was therefore clearly intended by parliament that the new FV factors in the proposed Bill would not only impact property settlement outcomes decided by the court, but also outcome negotiated by parties outside of court. This includes property matters subject of mediation, which are the subject of this paper.

7. The new s.79 framework under the Act and other key changes

See Annexure A **attached** to this paper for the full text of the new section 79¹¹.

In summary, the FV Amendments make the following key changes to the Act which are relevant to all family lawyers undertaking property work including mediations:

- S.79 has been amended to codify the traditional “four step” approach to decision-making in family law property matters and for the first time includes the concept of “liabilities” (as opposed to just referring to the ‘property of the parties, or either of them’). That framework is summarised as follows:
 - s.79(2) – **Step 1A (sometimes referred to as Step 4 / justice and equity)**: the court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order;
 - s.79(3)(a) – **Step 1**: in considering what order (if any) should be made, the court must (as before) identify the asset pool (‘Balance Sheet’) items but this is now specifically defined to include both assets and liabilities:
 - “the existing legal and equitable rights and interests in any **property** of the parties to the marriage or either of them”; and
 - “the existing **liabilities** of the parties to the marriage or either of them”;
 - s.79(3)(b) – the court must take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):
 - s.79(4) - **Step 2**: what used to be referred to in case law as “contributions factors” is now explicitly referred to in s.79(3)(b)(i) as the “**considerations relating to contributions**” set out under s.79(4).
 - Three familiar concepts are retained in s.79(4)(a) to (c):
 - Financial contributions
 - Non-financial contributions
 - Contributions to the welfare of the family including as parent and homemaker
 - However, s.79(4)(ca) introduces a new element, being **codification of the Kennon principle** as discussed above. It does this by way of express reference to the effect of FV on the types of contributions

¹¹ Refer to s.90SM for similar provisions relating to de facto couples

referred to in (a) to (c), which was not previously the case. **This amendment now makes the impact of FV upon a party's contributions a mandatory consideration in every property settlement:**

s.79(4)(ca) *“the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a), (b) and (c)”*

- Subsections 79(4)(d), (f) and (g), relating to consideration of earning capacity; terms of any other court orders; and child support, remain substantively the same (save that the child support consideration now refers only to the past payments not future liability for child support as the future aspect is not dealt with in s.79(5));
- s.79(5) - **Step 3:** the Act now refers in s.79(3)(b)(ii) to “**considerations relating to current and future circumstances**”. Section 79(5) replaces the old s.79(4)(e) that cross-referenced the spousal maintenance factors in s75(2)¹² (often referred to as “future needs factors” in the past);
- Rather than continuing to ‘borrow’ the spousal maintenance factors by cross-reference, these new **considerations relating to current and future circumstances** have been co-located in s.79(5) and the list of factors has been expanded. The following four ‘future factors’ are new / updated:
 - The **first new future factor is Family Violence, inserted at the top of the list**, highlighting the legislative focus on mandatory consideration of FV as a central factor in all property matters, not just in terms of the impact upon **past contributions under s.79(4)**, but in terms of the impact on a party’s **current and future** economic situation:

79(5)(a) The effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection ([s.79(5)]);
 - The **second new future factor is the codification of the common law concept of “wastage”** in accordance with the principle in the case of **Kowaliw**¹³. This new future factor marks a shift away from the old idea of wastage as a past contribution under s.79(4) / step 2 (referred to in the past as a ‘negative contribution’) which often gave rise to a notional addback (‘Addback’) in a Balance Sheet. Instead, it frames wastage as a factor to be taken into account in terms of the impact of such conduct upon the future economic situation of a party;

¹² Refer to s.90SF(3) for similar provisions relating to de facto couples

¹³ Kowaliw & Kowaliw [1981] FamCA 70 – this case sets out the common law principle of wastage as financial loss resulting from a party’s conduct designed to reduce the value of the matrimonial assets; or a party’s reckless, negligent or wanton actions which have reduced the value – per Baker J at [10]

s.79(5)(d) The effect of any material wastage, caused intentionally or recklessly by a party to the marriage, of property or financial resources of either of the parties to the marriage or both of them;

- NOTE: this approach is consistent with the Full Court's recent interpretation of the new s.79(4) in the case of **Shinohara**¹⁴ as only permitting current assets and liabilities in the Balance Sheet - effectively bringing an end to the common practice of Addbacks, even where premature expenditure of joint money was agreed and/or not reckless, e.g. an interim property settlement; expenditure on legal costs; or unilateral withdrawal of funds retained/spent by a party;

- The **third new future factor** repeats this new reference to liabilities, and the circumstances of them, as a future consideration:

s.79(5)(e) any liabilities incurred by either of the parties to the marriage or both of them, including the nature of the liabilities and the circumstances relating to them;

- The **fourth new future factor** introduces the relevance of the housing needs of children into the existing factor relating to the need to consider the arrangements for the care of children under 18 years:

s.79(5)(f) the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

- All other considerations remain the same, e.g.
 - age and health;
 - income, property, financial resources and earning capacity;
 - a party's commitment to support themselves and any other person;
 - eligibility for a pension and the rate;
 - reasonable standard of living;
 - need to undertake further education etc;
 - impact of any orders on creditors;
 - extent of contribution by one party to the income, earning capacity, property or financial resources of the other;
 - duration of marriage;
 - protection of a parent who wish to continue in that role;
 - any new de facto relationship;
 - terms of any other orders or any financial agreement;
 - any child support to be paid now or in future; and
 - any other fact or circumstance which the justice of the case requires to be taken into account.

¹⁴ Shinohara & Shinohara [2025] FedCFamC1A 126

- The Act now defines **companion animals (pets)** as a specific type of property. Section 79(6) empowers the court to make orders providing for only one party to own the companion animal, or for transfer or sale of the animal. Section 79(7) sets out the factors which may apply when determining what order, if any, should be made in relation to the ownership of the companion animal, including considerations of ownership, possession, care history and capacity, family violence between the parties, any history of actual or threatened cruelty or abuse toward the animal by party, and any other fact or circumstance the justice of the case requires to be taken into account;
- The Act now expands on and clarifies the meaning of “**economic and financial abuse**” – see discussion on s.4AB(2A) below; and
- The Amendment Act now inserts the parties’ **duty of disclosure into the Act**. This elevates it from the status of a rule under the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (“the Rules”) and enshrines it in the legislation.

8. Attorney General’s Fact Sheet - Amendment Act

The Attorney General’s Fact Sheet published on 26 February 2025 entitled “**Family law changes from June 2025: Information for family law professionals**”¹⁵ confirms the Attorney General’s view of the new legislative framework as follows (**emphases** and footnotes added):

*“The Amendment Act **codifies aspects of the case law** to clarify the process for determining a property settlement... which involves the following steps:*

- *Identify each party’s **legal and equitable rights and interests in any property, and their liabilities.***
- *Consider what each party contributed to the relationship before, during and after the relationship. The court will then **allocate an overall percentage entitlement to each party based on those contributions.***
- *Consider the parties’ current and future circumstances...and make an **adjustment in favour of one party to account for their current and future circumstances, if it would be just and equitable to do so.***
- ***Determine the final overall percentage split for dividing the property.** Court orders will allocate specific property, finances and liabilities to the parties to implement this split... to achieve a just and equitable outcome...*

Contributions

*The Amendment Act inserts **family violence into the list [of factors] that the court can consider when assessing contributions.** Where relevant, the court will consider the effect of family violence to which one party has subjected or exposed the other*

¹⁵ <https://www.ag.gov.au/families-and-marriage/publications/family-law-changes-june-2025-information-family-law-professionals>

party, on the ability of a party to make financial or non-financial contributions or contribute to the welfare of the family.

Current and future circumstances

The Amendment Act includes a new list of factors the court will consider when assessing the current and future circumstances of the parties... with the addition of the following new factors:

- **Family violence**: Where a party was subjected or exposed to family violence, this factor permits the court to consider the economic effect of any family violence that a party was subjected or exposed to, on their current and future circumstances. This allows for a **broader consideration of family violence than previously provided in case law**.
- **Wastage¹⁶**: Where a party **intentionally or recklessly caused any material wastage** of property or financial resources, this factor permits the court to consider the effect of that wastage in assessing the parties' current and future circumstances.
- **Liabilities¹⁷**: Where the parties incurred any liabilities, this factor permits the court to consider the **nature of the liabilities, the circumstances relating to them and the impact of those liabilities on the financial future of the parties**.
- **Housing needs¹⁸**: This expands an existing factor regarding the care of a child under 18, allowing the court to **consider the need... to provide appropriate housing for such a child**.

Spousal maintenance

The Amendment Act inserts family violence into the list of factors that the court can consider when assessing what order may be proper for spousal maintenance. Where relevant, **the court will consider the economic effect of family violence to which one party has subjected or exposed the other party.**"

9. What is Family Violence? (Definition in the Act)

Section 4AB(1) of the Act contains the definition for **Family Violence (FV)**:

- (1) *For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful."*

Section 4AB(2) provides broad **examples of what may constitute FV** if that conduct meets the definition in s.4AB(1):

- (2) *Examples of behaviour that may constitute family violence include (but are not limited to):*
 (a) *an assault; or*

¹⁶ It is noted that conduct involving material wastage can overlap with conduct that meets the definition of family violence, particularly where there is damage to property, financial control or coercive conduct.

¹⁷ Again, the existence of liabilities and the circumstances relating to them can overlap with family violence conduct, such as one party coercing another party to taking on a debt or liability in their sole or joint names, being debt which that party would not otherwise have agreed to, but for being coerced, and/or from which they obtain no personal benefit. This is now explicitly recognised in examples of FV given in the new s.4(AB)(2A) of the Act.

¹⁸ Family Violence can be relevant here too, for example if one party unreasonably or coercively deprives the other party, who has the care of children, from accessing funds to pay for reasonable accommodation or from remaining in the family home. See the explicit examples of such conduct in the new s.4(AB)(2A)(b) below.

- (b) a sexual assault or other sexually abusive behaviour; or
- (c) stalking; or
- (d) repeated derogatory taunts; or
- (e) intentionally damaging or destroying property; or
- (f) intentionally causing death or injury to an animal; or
- (g) economic or financial abuse; or
- (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
- (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

The Amendment Act expands upon this by **inserting the new s.4AB(2A)** giving specific **examples of the kind of conduct that might constitute economic or financial abuse as referred to in s.4AB(2)(g) (emphases added)**:

- (2A) For the purposes of paragraph (2)(g), examples of behaviour that might constitute economic or financial abuse of a family member include (but are not limited to) the following:
- (a) **unreasonably denying the family member the financial autonomy** that the family member would otherwise have had, such as by:
 - (i) **forcibly controlling the family member's money or assets**, including superannuation; or
 - (ii) **sabotaging the family member's employment or income** or potential employment or income; or
 - (iii) **forcing the family member to take on a financial or legal liability**, or status; or
 - (iv) **forcibly or without the family member's knowledge, accumulating debt in the family member's name**;
 - (b) **unreasonably withholding financial support** needed to meet the reasonable living expenses of the family member, or the family member's child (including at a time when the family member is entirely or predominantly dependent on the person for financial support);
 - (c) **coercing a family member (including by use of threats, physical abuse or emotional or psychological abuse)**:
 - (i) **to give or seek money, assets or other items as dowry**; or
 - (ii) **to do or agree to things in connection with a practice of dowry**;
 - (d) **hiding or falsely denying things done or agreed to by the family member, including hiding or falsely denying the receipt of money, assets or other items, in connection with a practice of dowry**.

10. Family Violence Best Practice Principles - FCFCOA¹⁹

The FV Best Practice Principles summarise the examples of FV set out in s.4AB(2) of the Act and then go on to explain the concept of 'Coercive Control' as:

¹⁹ Fifth edition, published on the FCFCOA website: <https://www.fcfcga.gov.au/pubs/fl/fvbpp>

“...a course of conduct by one person aimed at dominating or exerting power over the other. It can include a pattern of controlling and manipulative behaviours such as (but not limited to):

- emotional manipulation including humiliation²⁰ and threats
- surveillance and monitoring, often carried out online
- isolation from friends and family
- rigid rules about where the person can eat, sleep or pray, and
- placing limits on economic autonomy

The abovementioned Attorney General's Fact Sheet describes the effect of changes to the legislative definitions of FV as follows:

“The Amendment Act more clearly recognises economic or financial abuse as family violence within section 4AB of the Family Law Act. It:

- *moves existing examples of economic or financial abuse into a stand-alone provision*
- *expands an existing example on unreasonably denying financial autonomy*
- *includes new examples of dowry abuse.”*

11. How do the FV Amendments Impact Mediation Practice?

Mediation has long been a preferred method for resolving disputes, particularly in family law matters, as it promotes collaboration and empowers parties to find mutually acceptable solutions.

Disadvantages/ Challenges of the FV Amendments

The introduction of the FV Amendment Act impacts the mediation process in several ways:

- A. Firstly, mediators must undertake safety and risk assessments to identify and manage perceived/alleged risks. They may need to implement safety protocols, such as conduct the mediation by shuttle, and/or have each party in a secure environment (different levels of the same building with separate exits, or via Zoom) to mitigate some of the risks associated with FV coercive control tactics;
- B. Secondly, Mediators must be trained to recognise signs of FV and coercive control. Some clients are ashamed and will not volunteer the FV aspect of their relationship history. On the other hand, coercive control can be subtle and challenging to detect, especially if one party is clever at manipulating the situation. Many mediators have some training in trauma-informed practice and education on recognising coercive control dynamics and its impact on victims. Mediator's skills in these areas become more important with the introduction of the FV Amendments;
- C. Thirdly, FV and coercive control can create major power imbalances between parties. In a mediation, this can undermine clear communication and good decision-making. Skilled mediators will use techniques to ensure both parties have a fair opportunity to express their views and concerns without fear of reprisal;

²⁰ More information about FV terminology can be found in chapter 3 of the National and Domestic Family Violence Bench Book: <https://dfvbenchbook.aija.org.au/>

- D. Fourth, mediators need to be aware of implications arising from obligations of confidentiality when disclosures or admissions are made in relation to FV. This is a particularly sensitive area when an admission in relation to FV or coercive conduct that could amount to a criminal offence, in which case the mediator must navigate the intersection between family law and criminal law, as well as consider exceptions to their obligations of confidentiality if a party is in immediate danger or at risk;

Advantages/Opportunities of the FV Amendments

- E. The FV Amendments now make it mandatory to take into account FV issues in every property settlement. This empowers victim-survivors by providing recognition and validation of their experience and also by providing a supportive environment in which they can have a voice. Mediation is a process through which victim-survivors can assert their rights and make informed decisions about their future;
- F. In giving alleged victims of FV a legal platform to have the impact of FV considered in their property settlement, the FV Amendments have the practical effect of helping victim-survivors hold alleged perpetrators accountable for FV and coercive behaviours. The public policy underpinning the FV Amendments sends a clear message to alleged perpetrators that such conduct is unacceptable. Skilled mediators are able to support and encourage perpetrators to acknowledge their actions and take responsibility for their behaviour. It is noted that:
- a. this accountability may manifest at Mediation as an increased willingness to negotiate 'reasonably' having regard to the likely percentage division (based on their legal advice as to likely range of outcomes) having regard to the FV allegations which they are facing; and
 - b. it may also be reflected in the willingness of an alleged perpetrator to take accountability for their conduct (by seeking help to uncover the reasons they feel the need to use violent and/or coercive behaviour in intimate relationships) and in a willingness to engage in constructive behavioural change;
- G. Whilst the FV Amendments are new, sadly family violence is not new. The presence of FV or coercive control behaviours does not necessarily mean that mediation is an unsuitable method for resolving family law property matters. On the contrary, in most cases mediation remains a better alternative than litigation, especially in FV matters, for reasons including but not limited to:
- a. Helping parties take ownership of their personal and legal dispute in a safe and dignified manner;
 - b. Helping parties manage the complex dynamics of FV in a family law setting in a more sensitive and holistic way than via litigation and helping them promote healing where possible, or at very least supporting them to adopt a less adversarial approach that does not inflame existing power/control dynamics unnecessarily;
 - c. Minimising the chance for the alleged perpetrator of FV to further victimise or control the other party through drawn out litigation or systems abuse; and
 - d. Allowing for trauma informed and FV-sensitive practices that prioritise the wellbeing, privacy and dignity of all parties.

12. Why Pre-Mediation Intakes Prior to Actual Mediation are So Important!

This might come as a surprise to some family law practitioners, but it is the authors' view (one shared by many experienced mediators) that the mediator's confidential Intake Session with each party ahead of the mediation is one of the most important steps in any successful mediation. Pre-mediation intakes are usually Zoom sessions lasting for 30 to 60 minutes, with each party separately. The sessions occur in the few days or, preferably, at least a week prior to Mediation and most barrister-mediators conduct them at no additional cost to the parties. It is usually better for the session to take place before all the documentation for the mediation is ready, to better support the purposes of the intake.

The overarching purpose of the private intake sessions is (put simply) to meet each party; establish familiarity and build rapport; explain the mediation process; outline the importance of confidentiality and cover some basic guidelines. This "meet and greet" session puts everyone at ease and lets parties ask any questions prior to the day, to help them prepare their minds for the mediation event. However, there are also other important reasons for the Pre-Mediation Intake to take place on a day prior to the main event. This is explained below.

Legal Dispute Resolution vs. Conflict Resolution

Legal dispute resolution in family law is mostly about resolving legal and factual disputes. This is the 'tip of the iceberg'. By contrast, personal conflict resolution involves tackling that massive lump of emotional/psychological ice sitting 'beneath the waterline' of the iceberg tip, representing the parties' underlying personal interests. These interests often go unseen by family lawyers, especially if they don't know what they are looking for and/or they are not inclined to ask their clients about personal matters not directly relevant to the legal dispute.

Paradoxically, most experienced family law practitioners are acutely aware that family law disputes are frequently driven by this unseen 'iceberg' (made up of the client's own world view/agenda; their hopes, fears, and personal interests; and their mental/emotional status considering the impact of any hurt/conflict arising from separation and/or any FV involving the other party). This personal iceberg sits under the waterline, beneath the tip of the iceberg (legal dispute) upon which the lawyer is focused. Lawyers usually stick to taking instructions relevant only to the legal dispute, as they do not feel comfortable tackling the non-legal issues beneath the waterline.

This is where the Mediator plays a crucial role. All AMDRAS mediators are trained in the "facilitative" style of mediation. Lawyer-Mediators have skills and experience not only in legal dispute resolution, but specialist training from psychologists in the neuropsychology of conflict²¹. Mediators with this training are skilled in tackling the personal conflict issues 'below the waterline'. This is important as such issues are the ones most often causing parties to remain 'stuck'. Mediators are skilled in helping parties become 'unstuck' before the day of mediation, so they can get the most out of the legal dispute resolution process on the day.

AMDRAS mediators are trained to understand what parties in conflict might be feeling or experiencing and why – including in FV matters. This training includes recognising the ways in which a party might 'act out', deflect, blame or avoid topics that are upsetting for them. Skilled mediators use various 'tried and tested' techniques (including genuine curiosity,

²¹ This is a particular feature of the AMDRAS training offered by AIFLAM (Australian Institute of Family Law Arbitrators and Mediators).

active listening, slowing things down, reframing, acknowledging, summarising, giving feedback, noticing themes and identifying values/underlying interests). These skills are nuanced and FV-sensitive. They are used to support a party to have a voice and feel heard. This process helps parties reflect on 'where they are', versus 'where they want to be'.

Following a Pre-Mediation Intake, a party may start to develop a growing awareness that some form of 'shift' or 'compromise' in their own position might actually be necessary (and indeed in their own interests) especially if they are expecting the other party to do the same. Once a party is supported to come to this realisation of their own accord, they will be more likely to consider a wider range of interests and options for settlement. This can be the 'shift' during mediation which leads to parties finding common ground in a property settlement that did not exist before. In helping parties take control of their own narrative, the mediator helps them become less 'stuck' and better able to deal with the legal issues in front of them.

This can take time, which is why it is so important for the Mediator to meet the parties on Zoom/online, or in person, on a day prior the commencement of the main day of mediation.

13. Top Tips for Applying the New FV Framework in a Property Mediation

1. Understand the Legislative Shift: Consideration of FV Is Now Mandatory
 - As of **10 June 2025**, the Family Law Act 1975 explicitly requires that the **economic effect of family violence** be considered in all property settlement matters—whether in court or in mediation negotiations;
 - This includes **economic or financial abuse**, which is now expressly defined as a form of family violence (insofar as it is one of nine examples of FV set out in s.4AB(2)) and further elaborated upon with its own list of examples in s.4AB(2A) in terms of what might constitute economic or financial abuse; and
 - FV must be considered at both Step 2 (considerations in relation to contributions) and at Step 3 (considerations in relation to current and future circumstances) of the four-step property settlement process.
2. Leverage the Codified Property Settlement Framework to Put FV Front and Centre
 - The FV Amendments now codify the property settlement framework in sections 79 and 90SM, requiring:
 - Identification of legal/equitable interests and liabilities
 - Assessment of contributions
 - Consideration of current and future circumstances
 - Justice and equity
 - When you draft your Outline of Case and make submissions at mediation, ensure that both family violence and its economic impacts are clearly considered within each of these steps;

- Submissions and negotiations at mediation should be aligned with the new legislative framework in order to support outcomes that are likely to be considered just and equitable by the court under the new FV Amendments.

3. Be Familiar with the Expanded Definition / Examples of Family Violence

- The amendments include clear examples of economic or financial abuse, such as:
 - Controlling a party's finances or superannuation
 - Sabotaging employment or income potential
 - Coercing someone into financial liabilities or debt
 - Withholding necessary financial support
 - Dowry abuse
- Family lawyers being able to recognise these behaviours is critical to accurately assessing the impact of FV on financial contributions and future circumstances;
- Checking the definition will assist you identify all possible forms of FV and abuse for the purposes of arguing the relevance of this conduct at applicable each step of the new legislative framework.

4. Help Your Client Establish a Strong Evidentiary Foundation

- In mediation, allegations of family violence must be **substantiated with evidence**. Unsubstantiated claims are not sufficient. Useful evidence includes:
 - Bank statements, employment records, child support objections/arrears etc
 - Evidence of debts and loan applications showing who signed them and the purpose of the finance
 - Medical or counselling records (including letters or reports from treating GPs or psychologists)
 - Police reports, Witness statements
 - Intervention order complaints and any interim or final orders (including evidence of any findings of FV)
 - Documentation of lost income or other economic impacts
- Gather evidence as early as possible. Credible and particularised evidence in relation to FV provides excellent leverage in negotiations and creates a risk-management issue for your opponent;
- If the other party denies FV but their lawyer is presented with compelling and credible evidence of the alleged FV, that other lawyer is much more likely to see their client as being at risk of an adverse finding in relation to FV if the matter were to be litigated to trial. This risk is exacerbated if there is already a finding of FV in some other forum, such as at an intervention order hearing in the state Magistrates' Court. In that situation, the other lawyer is more likely to advise their client of the benefits of trying to resolve the matter in mediation (even if that means agreeing to a higher percentage adjustment to your client, without admission as to the need) as an alternative to risking an adverse finding against them in relation to FV at final hearing and a potentially worse financial outcome overall;

- Although it is not necessary to link a particular act (or series of acts) of violence to a particular form of contribution or a future economic impact, highlighting a **causal link** between the alleged FV and the conduct will strengthen the argument for a greater adjustment in favour of your client, for example:
 - Producing medical evidence of anxiety or depression and evidence that it arose following abusive or violent conduct of the other party that induced fear;
 - Producing evidence of financial hardship or lower earning capacity anticipated to be faced in the future as a result of past FV, such as evidence of (unsuccessful) attempts to secure work due to lack of recent work experience or qualifications, following a relationship characterised by one party refusing to let the other party exercise their earning potential during the marriage; and
- Ensure that your client particularises their evidence about FV, preferably in the form of a sworn affidavit, setting out a detailed chronology of events including details of the alleged FV and any corroborating evidence (police records or diary notes etc) or names and details of any witnesses (who could also be on affidavit). This should be done prior to any mediation involving FV. Consider sworn evidence even in pre-litigation matters or particularise it in the Case Outline. Attach copies of any intervention order complaints or police records, to add weight and credibility to the allegations and ensure that they are properly particularised.

5. Frame the Mediation According to the New Property Settlement and FV Amendments

- Make sure you explicitly raise family violence considerations early in negotiations and the pre-mediation process, as well as in the pre-mediation intake with the mediator;
- Clearly identify your client's FV allegations and the impact of same on the property adjustment outcomes you seek, in your Outline of Case and in any other material that you provide to your opponent and the mediator;
- Aim to position the impact of FV as directly affecting contributions (both financial and non-financial) and shaping current circumstances and future needs; and
- These steps will help ensure that any FV allegations are clearly put and have a decisive impact on settlement negotiations.

6. Watch for Ongoing & Future Economic Consequences of FV

- It is not only past contributions that matter; current and future circumstances, like medical costs, counselling, reduced earning capacity, or housing needs post-separation (including those of children) must now be taken into account; and
- Setting out clear evidence or legitimate concerns about the adverse future economic consequences of FV can support stronger adjustments in favour of your client in mediation and in pre-litigation / pre-trial negotiations generally.

7. Ensure Full and Transparent Financial Disclosure

- Financial disclosure obligations have been elevated from being the FCFCOA (Family Law) Rules 2021 ('FL Rules') to being a statutory obligation in the Amendment Act. The intention of this appears to be to improve transparency and highlight the importance of these enforceable obligations;
- Emphasise the importance of full and frank / complete and honest disclosure to your clients;
- Be wary of partial or misleading disclosures by your own client or the other party, especially when linked to allegations of controlling or coercive practices; and
- Full disclosure supports transparency so as to negotiate for a greater adjustment for you client and it enhances your ability to point to financial conduct which meets the definition of:
 - Wastage;
 - Financial control or coercion
 - FV

8. Do Not Forget to Recognise Companion Animals as Property

- The amendments treat **pets as property** and require courts and parties/mediators to consider:
 - History of abuse/cruelty
 - Emotional attachments
 - Each party's ability to care for the animal
- Options now include sole ownership, transfer, or sale (but not shared care);
- Where pets are part of the family's dynamic (which can be especially relevant in family violence situations) you should anticipate these discussions and prepare supporting evidence to meet the requirements of, or address the issues set out in, the Amendment Act. Doing this will ensure that consideration of pets in any settlement can go some way toward offsetting the negative emotional impact of the separation for your client, and allaying their fears about the safety of their pet, especially if there has been alleged FV.

9. Advocate for a Less Adversarial Approach Where Possible and Safe to Do So

- The Act encourages use of less adversarial trials and less adversarial processes such as mediation and arbitration (only available in property matters);
- Framing the mediation in a way that aligns with less adversarial outcomes. A focus on safety, full disclosure, clear evidence, and the crafting of sensible and well supported proposals is encouraged. This allows the mediator to support the parties and their lawyers to:
 - give genuine and proper consideration to all relevant evidence and legal factors, including alleged FV and its economic impact; and
 - conduct an objective and legally correct assessment as to the range of likely outcomes, to help the parties reach a just and equitable property adjustment.

10. Recognise your client's FV Trauma Response and Adopt Trauma-Informed Practices

- Many clients struggle with trauma from the process of family breakdown and/or separation. This trauma can be exacerbated by Family Violence during the relationship and following separation;
- Trauma can manifest in behaviours which make it more difficult for family lawyers to engage productively with clients and give them advice in relation to property law matters. Trauma may adversely affect a party's ability (and willingness) to communicate with their ex-spouse and may adversely affect their presentation as a witness in court. Here are some behaviours to watch out for which may be associated with trauma and/or FV:
 - Inability to focus/concentrate and absorb information or advice
 - Poor time management / compromised executive functioning
 - Hypervigilance / watchfulness / anxiety / paranoia / walking on eggshells
 - Resist/refuse dynamics or oppositional / argumentative behaviour
 - Using children or friends as a crutch; not able to take ownership of their own situation / issues / shortcomings; not coping with day-to-day responsibilities
 - Inability to obtain or maintain employment
 - Excessively anxious/controlling or fearful behaviours including employing gatekeeping behaviours in relation to children or assets/money
 - Poor recall or events; inability to give coherent instructions; disjointed narratives (all of which might be mistaken for dishonesty when it is really a symptom of trauma - and very common in FV cases)
 - Catastrophising; blaming; helplessness; resignation; 'all-or-nothing' type thinking (lacking nuance / balance)
 - Going into 'fight or flight' mode; or 'freeze' mode when confronted with a difficult situation or decision;
- Trauma-informed practice and a trauma-sensitive approach includes:
 - Building rapport and epistemic trust with a party
 - Supporting a party to get therapy for trauma support where appropriate
 - Using neutral, non-judgemental language
 - Gently identifying and being aware of triggering topics or words
 - Making allowance for trauma-based behaviours without reacting to it
 - Remaining patient and curious and not taking challenging behaviours personally
 - Allowing choice, agency and autonomy for a party in the process
 - Checking in with a party and allowing regular breaks / time to speak with a support person
 - Making accommodations for a party on the day of mediation to support their needs (e.g. snacks, fidget toys, adult-colouring books, extra time/breaks);
- Recognise that economic abuse often leaves parties financially stranded and unable to pay their legal fees. To reduce power imbalances and offset the adverse impact of economic abuse, where appropriate, consider referring clients to Litigation Funders which provide loans based on their likely settlement outcomes rather than based on their income or individual credit capacity; and
- External litigation funding will help your client pursue a fair outcome (including the costs of attending lawyer assisted mediation) without undue financial disadvantage.

14. The Practical Impact of FV Amendments on Family Law Practice

Family law (especially currently) is an evolving space. Parties' legal rights and obligations have changed significantly as a result of the FV Amendments.

- The FV Amendments and **Shinohara's** case have combined to bring about significant practical changes to the way we conduct family law matters, for example:
 - Addbacks to the Balance Sheet are no longer a legally correct approach to dealing with monies that have been prematurely dissipated – even if the money was dissipated by consent (e.g, part property settlement) and/or did not amount to wastage (e.g. used for legal costs); and
 - Addbacks are no longer available in support of Wastage arguments.
- It is anticipated that as a direct result of the FV Amendments, **numerous practical changes will occur to the practice of family law**, including:
 - **Parties will be less likely to agree to partial or interim property settlement orders**, because:
 - the court will no longer allow those interim distributions to be treated as 'Addbacks' to the Balance Sheet on a 'dollar-for-dollar' basis (in the same way they were treated before the Amendment Act, when Addbacks were commonplace); and
 - further, parties cannot now guarantee that any agreement to informally treat those monies as addbacks will be enforceable;
 - **The impact of any monies distributed on an interim basis will now be significantly diluted** insofar as the relevance of same is now just one of many factors under s.79(5) – i.e. one of many current and future circumstances of a party to be considered by the court – meaning:
 - the interim distribution will be taken into account under s.79(5) so as to impact the overall percentage adjustment of the pool between the parties, but it may be significantly diluted; and
 - Depending upon the size of the interim distribution compared to the size of the pool, in terms of the real-world dollar value to a party, prematurely dissipated funds are likely to be reflected in the ultimate percentage adjustment of the pool in favour of a party on a more modest "cents in the dollar" basis than before the Amendment Act (i.e. nowhere near the dollar-for-dollar basis of an Addback).
 - Any interim property settlements going forward, will most likely be mutual so as to minimise the scope for uneven dissipation of the pool pending final hearing, now that parties no longer have legal recourse to Addbacks;
 - In matters involving a disparity in contributions (s.79(4)) and/or current and future circumstances (s.79(5)), (i.e. matters where parties are not likely to receive a 50/50 distribution of the net assets) those parties will be arguing for any interim distributions to be in the proportions of what they consider reflects their ultimate entitlement (in terms of division of the net asset pool on a final basis) so as to minimise the risk of any unfairness that might be caused in favour of one party or the other, by reason of the fact that parties are now unable to adjust on a dollar for dollar basis for overpayments/underpayments via the s.79(5) mechanism at a later date;

- As a result of the increased uncertainty around the option of partial property settlements, it is anticipated that parties in family law matters will now have an added incentive to attend Mediation more urgently (or negotiate and/or mediate at a much earlier date than before) so as to more proactively deal with issues such as release of money to each of them on a final basis as a first resort (if possible) rather than risk the uncertainty of an interim settlement which might not accurately reflect the percentage basis upon which the asset pool is ultimately adjusted; and
- This is particularly so in circumstances where parties do not currently have much guidance from the Court (in terms of jurisprudence) as to how the court will change their approach to current/future need adjustments now that Addbacks are no longer available as a mechanism to deal with interim distributions of income/assets and in light of the new factors under s.79(5) including mandatory consideration of FV.

15. Conclusion

By adapting to the FV Amendment legislative changes and embracing a trauma-informed approach, mediators can play a crucial role in supporting FV victim-survivors and their lawyers to:

- pursue a just and equitable property settlement that takes into account the new and mandatory legislative considerations of FV in property matters (including their economic impact upon past contributions and future circumstances); and
- supports them to safely negotiate a just and equitable settlement all of the circumstances.

On the other hand, mediators can also assist by supporting a fair and balanced process in which alleged FV perpetrators can:

- fully understand the case against them in terms of any FV allegations;
- consider legal advice and manage any risks (including where there are compelling FV allegations that are denied);
- consider all of the factors (for and against their case) which may inform the likely range of outcomes in a property settlement in their favour;
- have the opportunity to take personal accountability (if the FV allegations are acknowledged) or at least agree upon a 'holistic' assessment of the matter (without admission of the allegations).

In conclusion, the new FV Amendment Act not only gives parties an opportunity to continue to engage in mediation so as to achieve just and equitable property settlement outcomes by mutual agreement, but it provides a clear new pathway characterised by a codified version of the familiar four step process with an expanded range of relevant factors to consider, including a codified and expanded version of the Kennon principle taking into account the economic impact of FV on both contributions and future circumstances. Not only does mediation remain a viable, safe and robust method of dispute resolution, arguably there is an even greater imperative than before for parties to adopt a timely and considered approach to negotiating final outcomes in family law property settlements involving FV allegations through mediation, so as to manage the risk, stress, cost and delay of litigated outcomes at both an interim and final level, in this evolving area of family law.

Annexure A

Family Law Act – Section 79

79 Alteration of property interests

Orders in property settlement proceedings

- (1) In property settlement proceedings, the court may, subject to subsection (6), make such order as it considers appropriate:
 - (a) in the case of proceedings with respect to the property of the parties to the marriage or either of them—altering the interests of the parties to the marriage in the property; or
 - (b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the marriage—altering the interests of the bankruptcy trustee in the vested bankruptcy property;

including:

- (c) an order for a settlement of property in substitution for any interest in the property; and
- (d) an order requiring:
 - (i) either or both of the parties to the marriage; or
 - (ii) the relevant bankruptcy trustee (if any);

to make, for the benefit of either or both of the parties to the marriage or a child of the marriage, such settlement or transfer of property as the court determines.

Note: *Subsection (6) relates to property that is a companion animal.*

- (2) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.
- (3) In considering what order (if any) should be made under this section in property settlement proceedings, the court:
 - (a) is to identify:
 - (i) the existing legal and equitable rights and interests in any property of the parties to the marriage or either of them; and
 - (ii) the existing liabilities of the parties to the marriage or either of them; and
 - (b) is to take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):
 - (i) the considerations set out in subsection (4) (considerations relating to contributions); and
 - (ii) the considerations set out in subsection (5) (considerations relating to current and future circumstances).

Note: *See subsections (6) and (7) in relation to orders with respect to property that is a companion animal.*

Considerations relating to contributions

- (4) For the purposes of subparagraph (3)(b)(i), the court is to take into account the following considerations, so far as they are relevant:
- (a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last mentioned property, whether or not that last mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;
 - (b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last mentioned property, whether or not that last mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;
 - (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent;
 - (ca) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a), (b) and (c);
 - (d) the effect of any proposed order upon the earning capacity of either party to the marriage;
 - (f) any other order made under this Act affecting a party to the marriage or a child of the marriage;
 - (g) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided for a child of the marriage.

Considerations relating to current and future circumstances

- (5) For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:
- (a) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - (b) the age and state of health of each of the parties to the marriage;
 - (c) the income, property and financial resources of each of the parties to the marriage and the physical and mental capacity of each of them for appropriate gainful employment;
 - (d) the effect of any material wastage, caused intentionally or recklessly by a party to the marriage, of property or financial resources of either of the parties to the marriage or both of them;
 - (e) any liabilities incurred by either of the parties to the marriage or both of them, including the nature of the liabilities and the circumstances relating to them;

- (f) the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;
- (g) commitments of each of the parties to the marriage that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain;
- (h) the responsibilities of either party to the marriage to support any other person;
- (i) the eligibility of either party to the marriage for a pension, allowance or benefit under:
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;
- (j) if either party to the marriage is eligible for a pension, allowance or benefit as mentioned in paragraph (i)—the rate at which it is being paid to the party;
- (k) if the parties to the marriage have separated or divorced, a standard of living that in all the circumstances is reasonable;
- (l) the extent to which an alteration of the interests of the parties to the marriage in any property would enable a party to undertake education or establish a business or otherwise obtain an adequate income;
- (m) the effect of any proposed order on the ability of a creditor of a party to the marriage to recover the creditor's debt, so far as that effect is relevant;
- (n) the extent to which each party to the marriage has contributed to the income, earning capacity, property and financial resources of the other party;
- (o) the duration of the marriage and the extent to which it has affected the earning capacity of each party to the marriage;
- (p) the need to protect a party to the marriage who wishes to continue that party's role as a parent;
- (q) if either party to the marriage is cohabiting with another person—the financial circumstances relating to the cohabitation;
- (r) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:
 - (i) a party to the marriage; or
 - (ii) a person who is a party to a de facto relationship with a party to the marriage; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);

- (s) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage is to provide, or might be liable to provide in the future, for a child of the marriage;
- (t) the terms of any financial agreement that is binding on the parties to the marriage;
- (u) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage;
- (v) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Considerations relating to companion animals

- (6) In property settlement proceedings, so far as they are with respect to property that is a companion animal, the court may make an order (including a consent order or an interim order):
 - (a) that only one party to the marriage, or only one person who has been joined as a party to the proceedings, is to have ownership of the companion animal; or
 - (ab) that the companion animal be transferred to another person who has consented to the transfer; or
 - (b) that the companion animal be sold.

The court may not make any other kind of order under this section with respect to the ownership of the companion animal.

Note: *For companion animal, see subsection 4(1).*

- (7) In considering what order (if any) should be made under this section with respect to the ownership of property that is a companion animal, the court is to take into account the following considerations, so far as they are relevant:
 - (a) the circumstances in which the companion animal was acquired;
 - (b) who has ownership or possession of the companion animal;
 - (c) the extent to which each party cared for, and paid for the maintenance of, the companion animal;
 - (d) any family violence to which one party has subjected or exposed the other party;
 - (e) any history of actual or threatened cruelty or abuse by a party towards the companion animal;
 - (f) any attachment by a party, or a child of the marriage, to the companion animal;
 - (g) the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;
 - (h) any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.