

Can family violence change the way my property is split after separation?

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Significant changes to the Family Law Act 1975 (Cth) ('the Act'), effective from 10 June 2025, reshape how the law determines property settlements in cases involving family violence. These reforms aim to provide fairer outcomes for survivors of family violence by acknowledging and addressing the long-term, ongoing effects of family violence.

These changes will apply to both married and de facto separating couples and new and ongoing proceedings (except where a final hearing has commenced).

Recognition of economic and financial abuse under the law

Under these new changes, the law now more clearly recognises economic and financial abuse under the definition of family violence (s 4AB of the Act), making it a stand-alone provision that encapsulates and expressly specifies a wider range of financially abusive behaviours (e.g., dowry abuse).

Some examples of economic or financially abusive behaviour that are expressly identified in the Act include:

- Unreasonably denying a family member the financial autonomy that they otherwise would have had (e.g., controlling access to their superannuation, preventing them from working, sabotaging a family member's employment, forcing a family member to take on debt or accumulating debt in a family member's name (without that family member's consent);
- Unreasonably withholding financial support needed to meet the reasonable living expenses of a family member or their child;
- Coercing a family member to give or seek money, assets or other items as dowry (a cultural practice whereby a gift is given by the bride's parents to the groom or groom's family before or after a marriage), or to do or agree to things in connection with a

practice of dowry; or

- Hiding or falsely denying things done or agreed to by a family member in connection with a practice of dowry (e.g., hiding or falsely denying the receipt of money).

Family violence as a relevant factor when determining property settlements

Prior to these amendments, references to the effect of family violence in property settlements were limited under the Act, which meant consideration of case law was relied upon to help with Court determinations in these matters.

The June 2025 changes clarify the process of determining property settlements through the legislation, requiring the Court to take into account the long-term effects of family violence in a relationship as follows:

Contributions where there is family violence

The legislation now stipulates that the Court will need to consider the impact of family violence when assessing contributions in a relationship.

For example, the Court will need to assess whether family violence committed by one partner has negatively impacted the ability of the other partner to make financial or non-financial contributions to the family. This consideration may allow the Court to adjust property entitlements in favour of a victim-survivor of family violence when assessing both parties' contributions.

The existence of family violence in a relationship will not automatically entitle one party to an adjustment in their favour – the Court will instead assess the impact and effects of this violence.

This approach codifies existing case law, such as in *Kennon &Kennon*, where the Full Court of the (then) Family Court of Australia (now the Federal Circuit and Family Court of Australia) expressed 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 … that is a fact which a trial judge is entitled to take into account in assessing the parties' respective contributions'.

In codifying this principle in legislation, family violence as a consideration when assessing contributions can be more consistently and clearly applied to matters.

Consideration of current and future circumstances

The Court will usually consider the parties' current and future circumstances as part of a property settlement and may adjust parties' entitlements based on this if it would be just and equitable to do so.

Amendments to the Act have introduced new factors the Courts will consider under s 79(4) of the Act when assessing these circumstances, such as:

- **Family violence:** Where there was family violence in a relationship, the Court can consider the impacts of the violence on the current and future circumstances of the victim-survivor. For example, if a party was unable to pursue employment due to controlling behaviours or psychological harm endured.
- **Wastage:** Where there was any material (meaning significant or substantial) wastage (either intentionally or recklessly) caused by a party, the Court can consider the effects of that wastage in assessing the current and future circumstances of the parties. Examples of material wastage include gambling losses, destruction of property or excessive spending.
- **Liabilities:** Where any financial liabilities, such as debts, have been incurred by a party, the Court can assess the nature, circumstances and impact of these liabilities on their financial future.
- **Housing needs:** Where there is a child under the age of 18, this factor expands the Court's ability to consider the need for either party to provide appropriate housing for that child.

Implications of family law property changes from June 2025

These reforms acknowledge the far-reaching impacts of family violence and aim to provide greater support under the law for vulnerable parties. It helps ensure that victim-survivors of family violence, coercion and/or financial/economic abuse aren't left financially disadvantaged after a separation.

It's important to note that while these changes allow for the Court to consider family violence in determining property settlements in a greater range of matters, the family law courts themselves cannot sentence someone for committing family violence (as that is a criminal matter). Nor can they order or vary family violence intervention orders (as such orders are made by state or territory courts, like the Magistrates' Court).

Get help from a family lawyer

The Family Law system in Australia is complex and ever-changing. If you are going through a separation where there has been family violence in the relationship and are concerned or unsure about how these changes might affect your property settlement, it's important to seek legal advice from an experienced family lawyer.

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