



# Women's Economic Security Package

## Small claims property pilots

November 2018

### What is the measure?

- The Australian Government will provide \$5.9m in additional new funding to the federal family courts and the Attorney-General's Department (AGD) to conduct a two year trial of a simpler and faster process for dividing property between separated couples.
- The pilot will be run mostly by court Registrars and targeted at small value property pools of up to \$500,000, excluding debt. The location of the pilots will be identified in consultation with the courts, based on locations with the greatest need.
- Separated couples who can't reach an agreement between themselves, and therefore need to use the court to make a decision on dividing basic assets such as houses, cars and superannuation, will be able to use the new process. Under the model, it is hoped that couples will have their cases resolved faster and with less expense, and judges will be freed up to deal with more complex family law matters.
- The pilots will include two options for separating couples with small value property pools:
  - 'Registrar-led resolution'- a Registrar can assist the couple to prepare and lodge enforceable consent orders with the court, reflecting the agreement reached between them.
  - 'Judge-led resolution' – if the couple can't reach an agreement between themselves, the matter will be allocated to a judge to determine the property division using a short form process, which may include dealing with the matter without a hearing.
- The pilot will run from January 2020 to December 2021.

### Why is the Government funding this?

- Property cases make up more than half of all new cases filed in the Family Court, and over a third of all new family law cases filed in the Federal Circuit Court, each year (Annual Report, 2016-17).
- A recent study conducted by the Australian Institute of Family Studies (AIFS) involving 10,000 separated parents, indicated that 57.5% of property matters have asset pools of less than \$500,000. The AIFS study also showed the average time to finalise property arrangements is 15 months.
- Currently, the same process applies irrespective of the size of the asset pool (that is, regardless of whether the property is worth \$10,000 or \$10,000,000).
- This 'one size fits all' approach is seeing unnecessary complexity and procedural obligations being applied in straightforward cases, and is adding to the time, cost and stress of many separating couples. It is also placing a heavy burden on the courts.
- In some cases, the legal costs associated are outweighing the value of the property settlement. In a recent study, the Women's Legal Service of Victoria found that the cost of legal fees can be between 50% and 126% of the value of the asset pool in small claims cases.

- The pilots respond directly to recommendations made by the House of Representatives' Standing Committee on Social Policy and Legal Affairs; Women's Legal Service of Victoria reports; and proposals put forward by the Australian Law Reform Commission (ALRC) in its family law Discussion Paper.

## What is the expected impact of the measure?

- The pilots will reduce the cost to families, leaving more in the asset pool to be distributed between the parties after separation.
- The pilots will also reduce the number of new cases coming before the courts. By facilitating faster and cheaper decisions for families, the pilots support the Government's proposal for structural reform of the family law courts which are targeted at reducing the time families spend in court.
- The courts will benefit from new funding for six additional registrars and six legally qualified support staff to implement the pilots.

## Case study

Jayne and Alex have separated after six years, and need to divide the small amount of assets from their relationship. They have an apartment, a car, some savings and superannuation totalling less than \$500,000 in value (not including their mortgage on the apartment). They have no children or complex financial assets or trust arrangements. Jayne wants to resolve the matter quickly, so she can get a steady job and gain some financial independence. She is worried about the cost and time involved in going to court, and has heard that after paying legal fees, she may not have much, if any, money left from her share of the relationship assets. Court staff tell Jayne that an experienced court Registrar can help her and Alex to agree on, and prepare, consent orders to divide their assets, which will be lodged with the court. If they can't reach an agreement between themselves, their matter can be decided by a judge using a quicker and less complex process, saving them both time and money.