



# Family and domestic violence legislation in Australia

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# Introduction

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This paper summarises the current primary family and domestic violence legislation in operation in each Australian jurisdiction (1975 to 2016). For each Act, it provides an overview of how family and domestic violence is defined, the orders provided, and the related offences and penalties.

See: ACT **p. 15**; Cth **p. 2**; NSW **p. 7**; NT **p. 8**; Qld **p. 13**; SA **p. 12**; Tas **p. 5**; Vic **p. 10**; and WA **p. 4**.

## Background

There is currently no nationally consistent legislative definition of family and domestic violence.<sup>1</sup>

In Australia, the Commonwealth shares responsibility with the states and territories for the laws in place to address family and domestic violence.<sup>2</sup> While the Commonwealth has scope under federal legislation to respond to cases of family and domestic violence, most cases are dealt with through state and territory laws and court systems.<sup>3</sup>

Under the relevant legislation for each jurisdiction, the courts are empowered to make orders (such as protection orders) to assist victim-survivors of family and domestic violence or those at risk of violence.<sup>4</sup> Though these orders exist under civil law, breaching an order is usually a criminal offence.

A **National Domestic Violence Order Scheme** is in place, meaning that all domestic violence orders issued in an Australian jurisdiction (since 25 November 2017) are automatically recognised and enforceable across the country.<sup>5</sup>

## Terminology

According to the Australian Institute of Health and Welfare, the term **family violence** refers to violence that occurs between family members—for example, between parents and children, siblings, and intimate partners.<sup>6</sup>

The term **domestic violence** describes a type of family violence, relating specifically to violence that occurs between current or former intimate partners. It is sometimes called ‘intimate partner violence’.<sup>7</sup>

The term **sexual violence** refers to sexual behaviours that are carried out against a person’s will. Sexual violence can occur in the context of family or domestic violence; it can also be perpetrated by others known to the victim-survivor or by strangers.<sup>8</sup>

**Please note:** *This publication should not be considered a complete guide to the subject.*

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<sup>1</sup> Australian House of Representatives Standing Committee on Social Policy and Legal Affairs (2021) *Inquiry into family, domestic and sexual violence*, final report, Canberra, The Committee, p. 11.

<sup>2</sup> Australian Senate Finance and Public Administration References Committee (2015) *Domestic violence in Australia*, final report, Canberra, The Committee, p. 111.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*, p. 112.

<sup>5</sup> Attorney-General’s Department (date unknown) ‘[National Domestic Violence Order Scheme](#)’, AGD website.

<sup>6</sup> Australian Institute of Health and Welfare (2020) ‘[Health impacts of family, domestic and sexual violence](#)’, AIHW website.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*



## Commonwealth

Legislation:  
*Family Law Act 1975*

### Definition

The *Family Law Act 1975* is the main Australian legislation relating to marriage and divorce—covering property settlement, maintenance, and parenting arrangements after separation—and includes provisions for family and domestic violence.<sup>9</sup>

The Act defines **family violence** as:

...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.<sup>10</sup>

Under the Act, examples of the types of behaviour that may constitute family violence include, but are not limited to:

- (a) an assault; or
- (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) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; 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.<sup>11</sup>

### Orders

In order to assess the urgency and priority of proceedings—and to help facilitate case management—the Act provides for a 'family safety risk screening process' to occur.<sup>12</sup> The screening process seeks to determine if there are:

- any persons at risk of being subjected to family violence;
- any children who are at risk of being subjected to, or exposed to, abuse, neglect or family violence; and/or

<sup>9</sup> Family Court of Australia (2016) '*The Family Law Act 1975 (Commonwealth)*', FCA website.

<sup>10</sup> *Family Law Act 1975* (Cth), s 4AB(1); emphasis in original.

<sup>11</sup> *ibid.*, s 4AB.

<sup>12</sup> *ibid.*, s 10T.

- any risks to the safety of persons.<sup>13</sup>

Under the Act, the relevant court can make a range of different orders, including financial orders and parenting orders.<sup>14</sup> When making a parenting order, the court must:

- consider the risk of family violence;
- ensure that the order is consistent with any existing family violence order made under state or territory legislation; and
- ensure that it does not expose a person to an ‘unacceptable risk’ of family violence.<sup>15</sup>

In certain circumstances, the court can also grant an injunction if deemed appropriate for the welfare of a child.<sup>16</sup>

If allegations of child abuse and family violence are made, the court must take prompt action to address them—this may involve making an appropriate order or granting an injunction.<sup>17</sup>

The Act also legally recognises family violence orders made in a state or territory jurisdiction, and makes provision for any inconsistencies to be resolved.<sup>18</sup>

## Penalty

There are a number of penalties available to the court if an order under the Act is contravened (breached).<sup>19</sup> Many of these are civil penalties.

Where a parenting order has been made that provides for a child to spend time, live or communicate with a person, or that a person is to have parental responsibility for a child, then it is an offence under the Act for the child to be taken, sent, or kept outside Australia without a court order or the written consent of the person in whose favour the order has been made.<sup>20</sup>

The penalty for doing so is three years’ imprisonment.<sup>21</sup>

If an injunction is in force under the Act and the person against whom it is made breaches the injunction, then a police officer can arrest that person without a warrant.<sup>22</sup>

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<sup>13</sup> *ibid.*

<sup>14</sup> Family Court of Australia (2016) ‘[What are court orders?](#)’, FCA website.

<sup>15</sup> [Family Law Act 1975](#) (Cth), s 60CG.

<sup>16</sup> *ibid.*, s 68B.

<sup>17</sup> *ibid.*, s 67ZBB; see also s 68B.

<sup>18</sup> *ibid.*, ss 68N–68R.

<sup>19</sup> *ibid.*; see, for example, Division 13A.

<sup>20</sup> Federal Circuit Court of Australia (2014) ‘[Compliance with parenting orders](#)’, FCCA website.

<sup>21</sup> [Family Law Act 1975](#) (Cth), ss 65Y–65ZAA.

<sup>22</sup> *ibid.*, s 68C.



## Western Australia

Legislation:  
*Restraining Orders Act 1997*

### Definition

Under the *Restraining Orders Act 1997*, **family violence** means:

- (a) violence, or a threat of violence, by a person towards a family member of the person; or
- (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.<sup>23</sup>

Under the Act, examples of the types of behaviour that may constitute family violence include, but are not limited to:

- (a) an assault against the family member;
- (b) a sexual assault or other sexually abusive behaviour against the family member;
- (c) stalking or cyber-stalking the family member;
- (d) repeated derogatory remarks against the family member;
- (e) damaging or destroying property of the family member;
- (f) causing death or injury to an animal that is the property of the family member;
- (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
- (ha) coercing, threatening, or causing physical abuse, emotional or psychological abuse or financial abuse, in connection with demanding or receiving dowry, whether before or after any marriage;
- (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
- (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
- (k) distributing an intimate image of the family member without the family member's consent, or threatening to distribute the image;
- (l) causing any family member who is a child to be exposed to behaviour referred to in this section.<sup>24</sup>

### Orders

Under the Act, a court can make a family violence restraining order (FVRO) if it believes that a person has committed family violence and is likely to do so again, or if there is a reasonable belief that a person will commit family violence.<sup>25</sup>

<sup>23</sup> *Restraining Orders Act 1997* (WA), s 5A(1).

<sup>24</sup> *ibid*, s 5A(2).

<sup>25</sup> *ibid.*, s 10(D).

A court can also make a behaviour management order, which may include an assessment of whether a person is eligible to attend a behaviour change programme, and may require a person to attend that programme.<sup>26</sup>

The Act also allows for a police officer to make a police order, if the officer reasonably believes that family violence has occurred or may occur.<sup>27</sup>

## Penalty

Under the Act, it is an offence to breach a FVRO or a police order, attracting a penalty of up to two year's imprisonment and/or a fine of \$10,000, with higher penalties for subsequent offences.<sup>28</sup>

Additionally, the *Family Violence Legislation Reform Act 2020* amended the Criminal Code in Western Australia to introduce the crime of 'persistent family violence'.<sup>29</sup> Under this Act, a person is deemed to have engaged in persistent family violence if that person 'does an act of family violence on 3 or more occasions each of which is on a different day over a period not exceeding 10 years against the same person'.<sup>30</sup>

The penalty for persistently engaging in family violence is 14 years' imprisonment; for a summary conviction the penalty is three years' imprisonment and a fine of \$36,000.<sup>31</sup>



## Tasmania

Legislation:  
*Family Violence Act 2004*

## Definition

Under the *Family Violence Act 2004*, **family violence** means:

(a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:

- (i) assault, including sexual assault;
- (ii) threats, coercion, intimidation or verbal abuse;
- (iii) abduction;
- (iv) stalking and bullying within the meaning of section 192 of the Criminal Code ;
- (v) attempting or threatening to commit conduct referred to in subparagraph (i) , (ii) , (iii) or (iv) ; or

(b) any of the following:

- (i) economic abuse;
- (ii) emotional abuse or intimidation;
- (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO; or

<sup>26</sup> *ibid.*, Part 1C.

<sup>27</sup> *ibid.*, s 30A.

<sup>28</sup> *ibid.*, ss 61–62.

<sup>29</sup> *Family Violence Legislation Reform Act 2020* (WA), s 6, proposed new sections 299–300.

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

- (c) any damage caused by a person, directly or indirectly, to any property –
- (i) jointly owned by that person and his or her spouse or partner; or
  - (ii) owned by that person's spouse or partner; or
  - (iii) owned by an affected child.<sup>32</sup>

The Act goes on to define conduct that constitutes **economic abuse** to include:

- coercing a spouse or partner to relinquish control over assets or income;
- disposing of an affected child, spouse or partner's property without their consent;
- preventing a spouse or partner from participating in household expenditure decisions;
- preventing a spouse or partner from accessing joint financial assets to meet normal household expenses; and/or
- withholding, or threatening to withhold, financial support for a spouse, partner or affected child.<sup>33</sup>

The Act defines **emotional abuse or intimidation** as a course of conduct that a person knows, or ought to know, is 'likely to have the effect of unreasonably controlling or intimidating or causing mental harm, apprehension or fear' in their spouse or partner.<sup>34</sup>

This includes 'limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation'.<sup>35</sup>

## Orders

The Act provides for certain authorised police officers to issue a police family violence order (PFVO) to a person, if they believe that person has committed, or is likely to commit, a family violence offence.<sup>36</sup>

Under the Act, a court can make a family violence order (FVO) if it is satisfied that a person has committed family violence and may do so again.<sup>37</sup> A court can also issue an interim FVO.<sup>38</sup>

## Penalty

Under the Act, it is an offence to contravene a PFVO or an FVO, attracting a penalty of up to 12 months' imprisonment or a fine of up to \$3,460, with higher penalties for subsequent offences.<sup>39</sup>

The Act also establishes the offences of economic abuse and emotional abuse or intimidation. These offences attract a penalty of two years' imprisonment, or a fine of \$6,920.<sup>40</sup>

<sup>32</sup> [Family Violence Act 2004](#) (Tas), s 7.

<sup>33</sup> *ibid.*, s 8.

<sup>34</sup> *ibid.*, s 9(1).

<sup>35</sup> *ibid.*, s 9(2).

<sup>36</sup> *ibid.*, s 14.

<sup>37</sup> *ibid.*, s 16.

<sup>38</sup> *ibid.*, s 23.

<sup>39</sup> *ibid.*, s 35. The current value of a penalty unit in Tasmania for FN 2021–2022 is \$173; see: Department of Justice (date unknown) '[Value of Indexed Amounts in Legislation](#)', DOJ website.

<sup>40</sup> *ibid.*, ss 8–9; see: Department of Justice (date unknown) *op. cit.*





## New South Wales

Legislation:

*Crimes (Domestic and Personal Violence) Act 2007*

### Definition

A parliamentary committee in 2021 found that New South Wales is the only jurisdiction in Australia that does not have a definition of domestic violence in its domestic violence legislation.<sup>41</sup>

The *Residential Tenancies Act 2010* (NSW) defines **family violence** as having ‘the same meaning as it has in the *Family Law Act 1975* of the Commonwealth’.<sup>42</sup>

In 2014, the NSW Government agreed on a shared definition of domestic and family violence as part of the development of its Domestic and Family Violence Framework for Reform.<sup>43</sup> Under the Framework, ‘domestic and family violence’ is defined as:

...any behaviour, in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear. It is usually manifested as part of a pattern of controlling or coercive behaviour.<sup>44</sup>

In NSW, domestic and personal violence offences are addressed through the *Crimes (Domestic and Personal Violence) Act 2007* (**CDPV Act**). Under the CDPV Act, a **domestic violence offence** is defined as:

...an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—

(a) a personal violence offence, or

(b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or

(c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).<sup>45</sup>

Under that definition, ‘offence’ includes any offence under the *Criminal Code Act 1995* (Cth).<sup>46</sup>

The CDPV Act also defines what is meant by **intimidation** and **stalking**.<sup>47</sup>

<sup>41</sup> Parliament of NSW Joint Select Committee on Coercive Control (2021) *Coercive control in domestic relationships*, Report 1/57, Sydney, The Committee, p. 4.

<sup>42</sup> *Residential Tenancies Act 2010* (NSW), s 105A.

<sup>43</sup> New South Wales Government (2020) *Coercive control: Discussion paper*, Sydney, NSW Government, p. 10.

<sup>44</sup> New South Wales Government (2014) *It stops here: Standing together to end domestic and family violence in NSW*, Sydney, NSW Government, p. 7.

<sup>45</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 11.

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*, ss 7–8.

## Orders

Under the CDPV Act, a court can make an apprehended domestic violence order (ADVO) if it believes that a person who has (or has had) a domestic relationship with another person fears that a domestic violence offence may be committed against them, or that they may be intimidated or stalked by that person.<sup>48</sup>

A court may also make an interim ADVO if it deems it necessary or appropriate to do so.<sup>49</sup>

In certain circumstances, a police officer is required to apply for an interim ADVO, if the officer believes that a domestic violence offence has been committed, is imminent or is likely to be committed.<sup>50</sup>

## Penalty

Under the CDPV Act, it is an offence to stalk or intimidate another person with the intention of causing that person to fear physical or mental harm, attracting a maximum penalty of five years' imprisonment and/or a fine of \$5,500.<sup>51</sup>

It is also an offence to contravene an ADVO, attracting a maximum penalty of two years' imprisonment and/or a fine of up to \$5,500.<sup>52</sup>



## Northern Territory

Legislation:

*Domestic and Family Violence Act 2007*

## Definition

Under the *Domestic and Family Violence Act 2007*, **domestic violence** is defined as:

...any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:

- (a) conduct causing harm;
- (b) damaging property, including the injury or death of an animal;
- (c) intimidation;
- (d) stalking;
- (e) economic abuse;
- (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).<sup>53</sup>

<sup>48</sup> *ibid.*, s 16.

<sup>49</sup> *ibid.*, s 22.

<sup>50</sup> *ibid.*, s 27.

<sup>51</sup> *ibid.*, s 13.

<sup>52</sup> *ibid.*, s 14. A penalty unit is currently \$110; see *Crimes (Sentencing Procedure) Act 1999* (NSW), s 17.

<sup>53</sup> *Domestic and Family Violence Act 2007* (NT), s 5.

The Act defines **intimidation** of a person as:

- (a) harassment of the person; or
- (b) any conduct that causes a reasonable apprehension of:
  - (i) violence to the person; or
  - (ii) damage to the property of the person, including the injury or death of an animal that is the person's property; or
- (c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.<sup>54</sup>

**Stalking** is defined, as:

...engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person:

- (a) intentionally following the person;
- (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity.<sup>55</sup>

Additionally, **economic abuse** includes any of the following conduct (or combination of them):

- (a) coercing the person to relinquish control over assets or income;
- (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;
- (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;
- (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.<sup>56</sup>

## Orders

Under the Act, a domestic violence order (DVO) can be made by an issuing authority, which includes a Court, a registrar, or an authorised police officer.<sup>57</sup>

The issuing authority may only make a DVO if satisfied that there are reasonable grounds for a protected person to fear that domestic violence will be committed against them.<sup>58</sup>

If the protected person is a child, the authority may make a DVO if it fears that the child will be exposed to domestic violence through a domestic relationship.<sup>59</sup>

## Penalty

<sup>54</sup> *ibid.*, s 6.

<sup>55</sup> *ibid.*, s 7.


<sup>56</sup> *ibid.*, s 8.

<sup>57</sup> *ibid.*, ss 18, 28, 41.

<sup>58</sup> *ibid.*, s 18.

<sup>59</sup> *ibid.*

Under the Act, it is an offence to contravene a DVO. For an adult, the penalty is two years' imprisonment, or a fine of \$62,800.<sup>60</sup> For a young person, the penalty is detention or imprisonment for two years, or a fine of \$62,800.<sup>61</sup>

	Victoria
	Legislation: <i>Family Violence Protection Act 2008</i>

## Definition

Under the *Family Violence Protection Act 2008*, **family violence** is defined as:

- (a) behaviour by a person towards a family member of that person if that behaviour—
  - (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person;or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).<sup>62</sup>

Examples of 'behaviour' given in the Act include, but are not limited to:

- (a) assaulting or causing personal injury to a family member or threatening to do so;
- (b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;
- (c) intentionally damaging a family member's property, or threatening to do so;
- (d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;
- (e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.<sup>63</sup>

The Act defines **economic abuse** as:

...behaviour by a person (the **first person**) that is coercive, deceptive or unreasonably controls another person (the **second person**), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

<sup>60</sup> *ibid.*, s 121. The current value of a penalty unit in the Northern Territory for FN 2021–2022 is \$157; see: Department of the Attorney-General and Justice (2021) 'Penalty units', DAGJ website.

<sup>61</sup> *Ibid.*, s 122.

<sup>62</sup> *Family Violence Protection Act 2008* (Vic), s 5(1).

<sup>63</sup> *ibid.*, s 5(2).

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.<sup>64</sup>

**Emotional or psychological abuse** is also defined, as 'behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person'.<sup>65</sup>

## Orders

Under the Act, a police officer who responds in-person to an incident involving family violence can apply to another officer (rank of Sergeant or higher) for a family violence safety notice (FVSN), if the police officer believes that the FVSN is necessary to ensure the safety of the affected family member, preserve any of the affected person's property or to protect a child who has been subjected to family violence.<sup>66</sup> The FVSN may include a number of conditions to prevent the respondent from committing family violence against a protected person.<sup>67</sup>

The Act also makes provision for a family violence intervention order (FVIO). Under the Act, an application for an FVIO must be made at the relevant court (Magistrates' Court or Children's Court) by a police officer or an affected family member—or someone with the written consent or authority under the Act to apply on that person's behalf.<sup>68</sup> An FVIO might include conditions to prevent further abusive behaviour, communication or contact between the parties involved.<sup>69</sup> The Court may also make an interim order.<sup>70</sup>

Under the Act, an FVSN is taken to be an application for an FVIO.<sup>71</sup>

## Penalty

It is an offence under the Act to contravene either an FVSN or an FVIO, attracting a penalty of up to two years' imprisonment and/or a fine of up to \$43,617.<sup>72</sup>

It is also an offence to contravene an FVSN or an FVIO with the intention either to cause physical or mental harm, or to cause apprehension or fear in the protected person for their own safety or the safety of another person. The offence attracts a penalty of up to five years' imprisonment and/or a fine of up to \$109,044.<sup>73</sup>

Additionally, an offence also exists for a person who persistently contravenes an FVSN or an FVIO, attracting a penalty of up to five years' imprisonment and/or a fine of up to \$109,044.<sup>74</sup>

<sup>64</sup> *ibid.*, s 6; emphasis in original.

<sup>65</sup> *ibid.*, s 7.

<sup>66</sup> *ibid.*, s 24.

<sup>67</sup> *ibid.*, s 29.

<sup>68</sup> *ibid.*, ss 42, 45.

<sup>69</sup> *ibid.*, s 81. See also: Magistrates' Court of Victoria (2021) '[Family violence intervention orders \(FVIO\)](#)', MCV website.

<sup>70</sup> [Family Violence Protection Act 2008](#) (Vic), ss 53–53AB.

<sup>71</sup> *ibid.*, s 31.

<sup>72</sup> *ibid.*, ss 37, 123. The current value of a penalty unit in Victoria for FN 2021–2022 is \$181.74; see: Department of Justice and Community Safety (2021) '[Penalties and values](#)', DJCS website.

<sup>73</sup> [Family Violence Protection Act 2008](#) (Vic), ss 37A, 123A.

<sup>74</sup> *ibid.*, s 125A.



## South Australia

Legislation:

*Intervention Orders (Prevention of Abuse) Act 2009*

### Definition

Under the *Intervention Orders (Prevention of Abuse) Act 2009*, **abuse—domestic and non-domestic** is defined as:

- (1) **Abuse** may take many forms including physical, sexual, emotional, psychological or economic abuse.
- (2) An act is an **act of abuse** against a person if it results in or is intended to result in—
  - (a) physical injury; or
  - (b) emotional or psychological harm; or
  - (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or
  - (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.<sup>75</sup>

The Act defines **emotional or psychological harm** as ‘(a) mental illness, and (b) nervous shock, and (c) distress, anxiety, or fear, that is more than trivial’, and provides numerous examples of what that behaviour could look like in practice.<sup>76</sup>

The Act also defines a non-exhaustive list of what constitutes ‘unreasonable and non-consensual denial of financial, social or personal autonomy’.<sup>77</sup>

### Orders

Under the Act, certain police officers can issue an interim intervention order.<sup>78</sup>

An intervention order can also be sought from the Court by a police officer, a person who may be the subject of an act of abuse, a child who may be exposed to an act of abuse, or someone with authority under the Act to apply on another’s behalf.<sup>79</sup>

If an intervention order addresses a domestic violence concern, the issuing authority must declare that to be the case when the intervention order is issued.<sup>80</sup>

### Penalty

It is an offence to contravene an intervention order and the maximum penalty for doing so is \$10,000 or two years’ imprisonment, with higher penalties for subsequent offences.<sup>81</sup>

<sup>75</sup> *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s 8; emphasis in original.

<sup>76</sup> *ibid.*, s 8(4).

<sup>77</sup> *ibid.*, s 8(5).

<sup>78</sup> *ibid.*, s 18.

<sup>79</sup> *ibid.*, s 20.

<sup>80</sup> *ibid.*, s 15A.

<sup>81</sup> *ibid.*, s 31.



## Queensland

Legislation:

*Domestic and Family Violence Protection Act 2012*

### Definition

Under the *Domestic and Family Violence Protection Act 2012*, **domestic violence** is defined as:

...behaviour by a person (the **first person**) towards another person (the **second person**) with whom the first person is in a relevant relationship that—

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.<sup>82</sup>

'Behaviour' is defined under the Act and includes, but is not limited to:

- (a) causing personal injury to a person or threatening to do so;
- (b) coercing a person to engage in sexual activity or attempting to do so;
- (c) damaging a person's property or threatening to do so;
- (d) depriving a person of the person's liberty or threatening to do so;
- (e) threatening a person with the death or injury of the person, a child of the person, or someone else;
- (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
- (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
- (h) unauthorised surveillance of a person;
- (i) unlawfully stalking a person.<sup>83</sup>

The Act defines **economic abuse** as:

...behaviour by a person (the **first person**) that is coercive, deceptive or unreasonably controls another person (the **second person**), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

<sup>82</sup> *Domestic and Family Violence Protection Act 2012* (Qld), s 8(1); emphasis in original.

<sup>83</sup> *ibid.*, s 8(2).

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.<sup>84</sup>

The Act also defines **emotional or psychological abuse**, as ‘behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person’.<sup>85</sup>

## Orders

The Act allows for two kinds of domestic violence orders to be made—either a protection order or a temporary protection order.<sup>86</sup>

Under the Act, a police officer, an aggrieved person, or someone authorised to act on the aggrieved person’s behalf, can apply to the Magistrates Court for a protection order.<sup>87</sup> A court may then make the order if it is satisfied that domestic violence has occurred and that the order is necessary or desirable to protect the aggrieved person from domestic violence.<sup>88</sup>

A temporary protection order is an order made in the period before a court decides whether to make a protection order, and the Act lists circumstances when this may occur.<sup>89</sup>

Where the court makes or varies a domestic violence order, it can also make an intervention order (with the respondent’s agreement) that requires the respondent to attend an approved intervention program and/or counselling.<sup>90</sup>

Additionally, the Act provides a police officer with the power to issue a police protection notice in certain circumstances.<sup>91</sup>

## Penalty

It is an offence under the Act to contravene a domestic violence order or a police protection notice. The maximum penalty for doing so is three years’ imprisonment or a fine of \$16,542.<sup>92</sup>

If, within the five years prior, the person has previously been convicted of a domestic violence offence, the maximum penalty for contravening a domestic violence order is five years’ imprisonment, or a fine of \$33,084.<sup>93</sup>

<sup>84</sup> *ibid.*, s 12; emphasis in original.

<sup>85</sup> *ibid.*, s 11.

<sup>86</sup> *ibid.*, s 23.

<sup>87</sup> *ibid.*, s 32.

<sup>88</sup> *ibid.*, s 37.

<sup>89</sup> *ibid.*, ss 23, 44.

<sup>90</sup> *ibid.*, s 69.

<sup>91</sup> *ibid.*, s 101.

<sup>92</sup> *ibid.*, ss 177–178. . The current value of a penalty unit in Queensland from 1 July 2021 is \$137.85; see: Department of State Development, Infrastructure, Local Government and Planning (2021) ‘[Value of a penalty unit](#)’, DSDILGP website.

<sup>93</sup> *ibid.*, s 177(2).





## Australian Capital Territory

Legislation:

*Family Violence Act 2016*

### Definition

Under the *Family Violence Act 2016*, **family violence** is defined as:

- (a) any of the following behaviour by a person in relation to a family member of the person:
  - (i) physical violence or abuse;
  - (ii) sexual violence or abuse;
  - (iii) emotional or psychological abuse;
  - (iv) economic abuse;
  - (v) threatening behaviour;
  - (vi) coercion or any other behaviour that—
    - (A) controls or dominates the family member; and
    - (B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or
- (b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.<sup>94</sup>

The Act defines examples of family violence to include, but not be limited to:

- (a) sexually coercive behaviour;
- (b) damaging property;
- (c) harming an animal;
- (d) stalking;
- (e) deprivation of liberty.<sup>95</sup>

The Act defines **economic abuse** as:

...behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member—

(a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or

(b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.<sup>96</sup>

<sup>94</sup> *Family Violence Act 2016* (ACT), s 8(1).

<sup>95</sup> *ibid.*, s 8(2).

<sup>96</sup> *ibid.*, s 8(3).

The Act also defines **emotional or psychological abuse**, as ‘behaviour by a person that torments, intimidates, harasses or is offensive to the family member including by the person’s exploitation of power imbalances between the person and the family member’.<sup>97</sup>

## Orders

The Act provides for two main types of family violence orders—a protection order, or an after-hours order.<sup>98</sup>

Under the Act, a police officer, an affected person, or someone with authority to act on their behalf, can apply to the Magistrates Court for a protection order.<sup>99</sup> A court must consider a number of factors when deciding whether to make an order.<sup>100</sup> In certain circumstances, a court can also make an interim order.<sup>101</sup>

Outside the business hours of the Magistrates Court, a police officer may apply to a judicial officer for an after-hours order.<sup>102</sup> The judicial officer may then make that order if satisfied that there is a risk of family violence to an affected person and that the order is immediately necessary.<sup>103</sup>

## Penalty

It is an offence under the Act to contravene a family violence order, attracting a maximum penalty of five years’ imprisonment and/or a fine of \$80,000.<sup>104</sup>

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<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.* s 3.

<sup>99</sup> *ibid.*, s 16.

<sup>100</sup> *ibid.*, s 14.

<sup>101</sup> *ibid.*, ss 21–22.

<sup>102</sup> *ibid.*, s 99.

<sup>103</sup> *ibid.*, s 100.

<sup>104</sup> *ibid.*, s 43. The current value of a penalty unit in the Australian Capital Territory is \$160; see: [Legislation Act 2001 \(ACT\)](#), s 133.

# References

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## Legislation

- [Crimes \(Domestic and Personal Violence\) Act 2007](#) (NSW)
- [Crimes \(Sentencing Procedure\) Act 1999](#) (NSW)
- [Domestic and Family Violence Act 2007](#) (NT)
- [Domestic and Family Violence Protection Act 2012](#) (Qld)
- [Family Law Act 1975](#) (Cth)
- [Family Violence Act 2004](#) (Tas)
- [Family Violence Act 2016](#) (ACT)
- [Family Violence Legislation Reform Act 2020](#) (WA)
- [Family Violence Protection Act 2008](#) (Vic)
- [Intervention Orders \(Prevention of Abuse\) Act 2009](#) (SA)
- [Legislation Act 2001](#) (ACT)
- [Residential Tenancies Act 2010](#) (NSW)
- [Restraining Orders Act 1997](#) (WA)

## Other sources

Attorney-General's Department (date unknown) '[National Domestic Violence Order Scheme](#)', AGD website.

Australian House of Representatives Standing Committee on Social Policy and Legal Affairs (2021) [Inquiry into family, domestic and sexual violence](#), final report, Canberra, The Committee.

Australian Institute of Health and Welfare (2020) '[Health impacts of family, domestic and sexual violence](#)', AIHW website.

Australian Senate Finance and Public Administration References Committee (2015) [Domestic violence in Australia](#), final report, Canberra, The Committee.

Department of Justice (date unknown) '[Value of Indexed Amounts in Legislation](#)', DoJ website.

Department of Justice and Community Safety (2021) '[Penalties and values](#)', DJCS website.

Department of State Development, Infrastructure, Local Government and Planning (2021) '[Value of a penalty unit](#)', DSDILGP website.

Department of the Attorney-General and Justice (2021) '[Penalty units](#)', DAGJ website.

Family Court of Australia (2016) '[The Family Law Act 1975 \(Commonwealth\)](#)', FCA website.

Family Court of Australia (2016) '[What are court orders?](#)', FCA website.

Family Court of Australia (2021) '[What is family violence?](#)', FCA website.

Federal Circuit Court of Australia (2014) '[Compliance with parenting orders](#)', FCCA website.

Magistrates' Court of Victoria (2021) '[Family violence intervention orders \(FVIO\)](#)', MCV website.

New South Wales Government (2014) [It stops here: Standing together to end domestic and family violence in NSW](#), Sydney, NSW Government.

New South Wales Government (2020) [Coercive control: Discussion paper](#), Sydney, NSW Government.

Parliament of NSW Joint Select Committee on Coercive Control (2021) [Coercive control in domestic relationships](#), Report 1/57, Sydney, The Committee.

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