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## Chapter 4

# Defining Family Violence and Family Member

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## INTRODUCTION

4.1 In this chapter we discuss the definition of ‘family violence’ which should be included in the new Family Violence Act. The definition is based on recognition of the broad nature of family violence discussed in Chapter 2.

4.2 The chapter also discusses the definition of ‘family member’ in the Crimes (Family Violence) Act and proposes its expansion to ensure a broader range of family relationships, particularly those in Indigenous and CALD communities, are covered by the new legislation. Because research shows that people with disabilities are particularly vulnerable to abuse by their carers, we propose an extended definition of family member to cover these relationships. The overall objective of these recommendations is to increase the protection provided by the family violence legislation.

## DEFINING FAMILY VIOLENCE

4.3 The Crimes (Family Violence) Act does not include a definition of family violence. Instead, section 4 of the Act sets out three main areas of behaviour which constitute grounds to obtain an intervention order:

- the respondent has assaulted a family member or caused damage to his or her property and is likely to do so again;
- the respondent has threatened to assault a family member, or to cause damage to his or her property and is likely to carry out the threat; or
- the respondent has harassed, molested or behaved in an offensive manner towards a family member and is likely to do so again.

## PROBLEMS WITH THE CURRENT GROUNDS AS A DEFINITION

### TOO VAGUE

4.4 These grounds for obtaining an order have been criticised for several reasons, but particularly for their lack of clarity and overall lack of effectiveness in providing protection from a wide range of violent behaviours. Many people and organisations find the grounds simply ‘too vague’ to be of sufficient use in deciding whether an intervention order should be made or if a person can apply for such an order.

Some of the provisions [of the current definition] are arguably undesirable because of their

vagueness—specifically the terms ‘molest’ and ‘behave in an offensive manner’. I do not know what is, or is meant to be, encompassed by these expressions.<sup>299</sup>

This leads to confusion about the scope of protection provided by the Act.

## NARROW APPLICATION

4.5 Although the Crimes (Family Violence) Act provides that an order may be made for non-physical violence, including threats and verbal harassment, victims and support workers have found that the legislation is applied restrictively by some magistrates and police so that, in practice, protection is only provided against a narrow range of violent behaviour. In particular, many submissions mentioned that the courts and police apply the Act only to physical forms of family violence. The commission was told that it is common for some police, registrars and other court staff to tell victims they cannot obtain an order unless they are at risk of physical violence. When victims do apply for an intervention order for protection from non-physical violence, some magistrates refuse to make an order.

In our experience, many magistrates hearing matters will not consider the provisions of the CFVA [Crimes (Family Violence) Act] to be enlivened in situations where there is no evidence of physical harm.<sup>300</sup>

The CFVA currently provides that an order may be made on the basis of non-physical violence, including threats and verbal harassment. Despite this, there has arisen a process of gate keeping which results in very few applications in relation to non-physical forms of family violence. It is very rare for Police to pursue orders where there has been no serious criminal assault or for them to recommend to people experiencing non-physical violence to apply for an intervention order ... There is often an implied precondition of at least one incident of physical violence or property damage. This gate keeping results from an insufficient and incomplete understanding of the spectrum of behaviours that combine in relationships where people experience violence.<sup>301</sup>

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299 Submission 65 (Associate Professor John Willis, La Trobe University).

300 Submission 64 (Federation of Community Legal Centres (Vic)).

301 Submission 28 (Murray Mallee Community Legal Service).

## REASONS FOR A NEW DEFINITION

### GREATER CLARITY

4.6 Submissions and consultations supported inclusion of a definition of family violence in the Act to clarify the behaviour which is covered. A definition of family violence could provide the basis for training of police and court staff about the dynamics of family violence and could assist people seeking intervention orders.

Defining family violence in legislation should assist court staff, lawyers and police to have a better understanding of the nature of family violence and should make it clearer for them to understand in what situation the legislation should apply.<sup>302</sup>

If terms such as ‘family violence’ are defined, there is a lesser likelihood of a victim’s application being struck out or rejected on the basis of a magistrate’s restricted, artificially narrow or outdated view of what constitutes ‘family violence’.<sup>303</sup>

The definition we propose also includes behaviour not adequately covered in the current legislation.

### GREATER ACCESS

4.7 Defining family violence in the legislation could also encourage people to seek orders. We were told that making it clear what family violence is and what behaviour the Act provides protection against, could encourage greater use of the Act by certain marginalised groups, including Indigenous Australians.<sup>304</sup>

### SYMBOLIC AND EDUCATIVE ROLES

4.8 Explicitly defining family violence would educate those using and administering the Act about the range of behaviour included in family violence. It could also have a preventative effect by educating potential perpetrators and the public about the nature of family violence.

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302 Submission 30 (Violence Against Women Integrated Services).

303 Submission 64 (Federation of Community Legal Centres (Vic)).

304 Submission 75 (National Network of Indigenous Women’s Legal Services).

4.9 Defining family violence rather than simply listing the specific forms of behaviour which constitute grounds for an intervention order<sup>305</sup> also has a symbolic purpose. As submissions put it:

We believe that it is preferable to define ‘family violence’ *for the purposes of the Act* [their emphasis] ... It is important symbolically to say that a person who has been subjected to ‘family violence’ can apply for an intervention order. Currently, when explaining the entitlement to seek intervention order protection, the formulation of the Act is meaningless to lay people—essentially that a person can seek an intervention order if they have been subjected to the ‘conduct in s 4 of the Act’.<sup>306</sup>

The grounds for obtaining an intervention order should recognise the damage that psychological, emotional and verbal abuse can cause.<sup>307</sup>

4.10 Legislation in Queensland, the ACT and New Zealand contains various definitions of ‘family violence’ or ‘domestic violence’.<sup>308</sup> Explicitly defining family violence in the Act was almost unanimously supported in submissions:

We believe that it is essential to define family violence in legislation.<sup>309</sup>

[We] support the inclusion of a definition of ‘family violence’. We believe that clarity and certainty about the parameters of unacceptable behaviour is essential for applicants, respondents, the Courts and police.<sup>310</sup>

The grounds for obtaining an intervention order are not adequate, and, further, the definition of family violence should be expanded.<sup>311</sup>

In conclusion, the commission believes that a section defining family violence should be included in a reformed Crimes (Family Violence) Act.

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305 This is the case in the South Australian legislation. However, it should be noted that as well as listing various types of behaviour constituting grounds for a restraining order, it also includes ‘other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear’: *Domestic Violence Act 1994* (SA) s 4(2).

306 Submission 75 (National Network of Indigenous Women’s Legal Services).

307 Submission 79 (Department of Human Services).

308 See paras 4.44–4.46.

309 Submission 48 (Coburg–Brunswick Community Legal and Financial Counselling Centre).

310 Submission 41 (Victoria Legal Aid).

311 Submission 69 (Victorian Community Council Against Violence).

## ! RECOMMENDATION

7. 'Family violence' should be defined in the new legislation.

### NEW DEFINITION

#### NON-PHYSICAL FORMS OF FAMILY VIOLENCE

4.11 The current grounds for obtaining an intervention order do not adequately recognise non-physical forms of family violence. As we have already mentioned in this report,<sup>312</sup> non-physical forms of family violence are often not perceived by the community as family violence, although they may be the cause of severe and long-lasting harm. As one submission pointed out:

Many of the respondents to our study did not report physical violence, or occasional instances of it. But all of them reported on-going emotional and psychological abuse as the background to the financial abuse, and this continued, in many cases, long after the relationship ended:

'A lot of times there is hardly any marks on you. The physical marks are not really as bad as the emotional. The physical, you get used to it, emotionally it takes away from yourself. Financial is tied to the emotional. The physical parts stops [sic] at a certain point—they won't hit you for a week or so—emotional and financial goes on, it doesn't let up'.<sup>313</sup>

4.12 The definition of family violence should clearly extend to non-physical forms of abuse, particularly because non-physical family violence is rarely a crime. Emotional violence can include extreme acts of control, yet it may not come within the behaviour covered by the current legislation:

I worked with a woman who had been in a relationship where she was threatened and physically abused. In addition she was not allowed to look sideways, and had to have her head down, (because she might be looking at another man). He changed his name to hers so he could open her mail, he then disappeared for one year without a word, only to reappear and take her to court for child contact saying she had stopped him from seeing his child (and won the usual contact). Even now the relationship has ended, he rings her five times a day, and if she doesn't comply by speaking to him, he threatens to see his child, in who he otherwise shows no interest. Was this a crime? What could he possibly be charged

312 See paras 2.3, 2.6–2.17.

313 Submission 48 (Coburg–Brunswick Community Legal and Financial Counselling Centre).

with that begins to meet the devastation that he has caused in the lives of this woman and her child.<sup>314</sup>

4.13 As submissions have pointed out, not including non-physical forms of family violence in legislation perpetuates community views that it is not as serious as physical violence, despite research consistently showing it can have severe effects on victims (see paragraph 2.6–2.17).

There is mounting evidence to demonstrate the significant negative impact on women and children of not only physical violence, but also psychological, emotional and verbal abuse. There is a perception in the community that these forms of violence are not ‘real’ or ‘serious’, and if legislation does not include them then it is also perpetuating that perception.<sup>315</sup>

4.14 Non-physical forms of family violence can also be a prelude to, as well as a part of, physical violence. It is particularly important for people who recognise the ‘warning signs’ of emotional violence, such as service providers, to be able to ensure a victim gets protection before physical or other harm occurs:

Protection should be available to them *before* there has been [physical] violence.<sup>316</sup>

Property damage is also another signal to us that a woman is in danger from the violent perpetrator even though he may not have physically attacked her.<sup>317</sup>

4.15 The most strongly expressed view in submissions was that non-physical forms of family violence should be explicitly included in a definition.

It needs to be made clear that non physical violence is covered by the Act.<sup>318</sup>

Family violence ... should include assaults on the integrity of the person. Verbal, emotional, financial, spiritual, social and mental abuse need to be recognised as forms of family violence and the law should develop ways to address these, including the use of IO's.<sup>319</sup>

[T]he definition] should include reference to forms of abuse other than threatened or physical abuse.<sup>320</sup>

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314 Submission 22 (Kim Robinson, social worker).

315 Submission 45 (Rochelle Campbell, women's health resource worker).

316 Submission 74 (Women's Legal Service Victoria).

317 Submission 33 (Women's Domestic Violence Crisis Service).

318 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

319 Submission 63 (Darebin Family Violence Working Group).

320 Submission 46 (Royal Children's Hospital).

[We] support the New Zealand definition, which includes non-physical abuse.<sup>321</sup>

[The definition] should be expanded to encompass more than physical assault, ie emotional, financial, verbal, social and/or psychological violence should be added.<sup>322</sup>

The grounds for obtaining an intervention order should include non-physical violence. On our assessment we include social abuse (being discouraged or stopped from seeing other people eg family or friends), and verbal, emotional, financial and sexual abuse.<sup>323</sup>

Consideration should be given to including ‘intimidation’ as in the NSW and South Australian legislation that recognises the impact of threatening and violent behaviour on ‘any family member’ (including children). The definition should contain references to non-physical forms of violence including but not limited to verbal abuse (threats and insults), financial abuse (controlling money and work), psychological abuse (eroding self esteem), and isolation from community and family. The New Zealand definition is our preferred comparator model.<sup>324</sup>

4.16 One submission objected to the inclusion of non-physical forms of family violence in the legislation:

greater emphasis ... on preventing non-physical violence ... will ... expand the amount of police and Court work. These consequences will possibly occur at the cost of responding quickly to calls from women who face immediate danger and require their safety needs to be met. VALS believes that there is a problem in trying to extend the reach of the Act further in the direction of non-physical violence when there is so much that remains to be done in terms of reducing the incidence of physical violence.<sup>325</sup>

4.17 The commission disagrees with this view. Given the extent of the harm that non-physical forms of family violence can cause, we believe such behaviour should be included in the Act, even if it will expand the amount of police and court work. Responding to non-physical violence may also help to reduce the incidence of physical violence and cannot be disconnected from it.

4.18 We recommend that non-physical violence, including psychological, emotional, verbal and financial, should be included in the definition of family violence.

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321 Submission 41 (Victoria Legal Aid).

322 Submission 40 (Whittlesea Domestic Violence Network).

323 Submission 33 (Women’s Domestic Violence Crisis Service).

324 Submission 28 (Murray Mallee Community Legal Service).

325 Submission 57 (Victorian Aboriginal Legal Service). The original comment was primarily concerned with criminalisation of non-violent behaviour.

**! RECOMMENDATION**

8. The new definition of family violence should explicitly include non-physical forms of family violence.

**RECOGNISING THE NATURE, TIMING AND PATTERN OF FAMILY VIOLENCE**

4.19 There is also a need for greater recognition in the legislation of the nature, timing and pattern of family violence. In applying the law, police and judicial officers need to be aware that seemingly ‘minor’ or ‘trivial’ behaviour can constitute an important part of the dynamics of family violence; that a regular pattern or repeated behaviour does not have to be established, a single incident is ‘enough’; and, that if violence has not recently happened, victims may still have a justifiable fear it will occur again. These three points are based on our understanding of the dynamics of family violence and were frequently raised in submissions.

4.20 Under the current Act, it is difficult to gain protection from behaviour which appears to be ‘minor’ or ‘trivial’ but, viewed in the context of a pattern of abusive behaviour, may be extremely controlling and harmful. As one submission said: ‘A client’s partner was carrying out daily checks on the odometer on her car as a means of monitoring her movements’.<sup>326</sup>

4.21 Submissions suggested the inclusion of provisions about such behaviour be included in the Act:

We consider that there should be a provision specifying, in accordance with the New Zealand *Domestic Violence Act 1995* that ‘apparently minor conduct’ can be taken into consideration as grounds for an order if it is part of a pattern of abuse from which the applicant requires protection. In our experience magistrates’ lack of understanding of the significance of apparently minor events as part of the pattern of power and control in violent relationships is a significant contributor to bad decisions in cases mainly involving non-physical violence.<sup>327</sup>

Victoria Police would support the broadening or expansion of the grounds for applying for an intervention order, specifically to address issues that may demonstrate patterns of

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326 Submission 64 (Federation of Community Legal Centres (Vic)).

327 Submission 74 (Women’s Legal Service Victoria). Submission 78 (Department of Victorian Communities) also supported the New Zealand legislation.

behaviour. Such patterns of behaviour may be seen in pet abuse, social isolation, and severe economic control.<sup>328</sup>

4.22 This issue has been effectively addressed in the New Zealand legislation, which states:

[A] number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some of those acts, when viewed in isolation, may appear to be minor or trivial.<sup>329</sup>

The dynamics of family violence discussed in Chapter 2 support the need to follow the New Zealand legislative approach. Some submissions explicitly supported the New Zealand definition.

4.23 The legislation should also make it clear that abusive behaviour does not necessarily have to happen repeatedly to amount to family violence. As one submission put it:

[We] oppose the suggestion, given some credence in the current legislation, that ‘if it has only happened once, it is unlikely to happen again’. This is not in accordance with community expectations and is not a sound principle of law. It needs to be made clear in the legislation that one incident is one too many, and that there need not be evidence of repeated past behaviour for a person to have the benefit of legislative protection.<sup>330</sup>

Each incident of family violence is unacceptable, and this needs to be made clear in the legislation.

4.24 It is important that the legislation shows an understanding of the nature and dynamics of family violence, which can occur in a disjointed and unpredictable way, as well as in a ‘regular pattern’. For example:

‘We also believe that it may be appropriate to specify in the Act that the mere fact that conduct has not happened recently does not mean, in and of itself, that it is unlikely to happen again. In our experience, magistrates have little understanding of the potential for lulls in violent behaviour’.<sup>331</sup>

A magistrate tried to discourage our client, Stephanie, from proceeding with her application for an intervention order because her partner John had left the home 10 days

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328 Submission 72 (Victoria Police).

329 *Domestic Violence Act 1995* (NZ) s 3(4b).

330 Submission 64 (Federation of Community Legal Centres (Vic)).

331 Submission 74 (Women’s Legal Service Victoria).

earlier and had not made contact with her since then. This was despite allegations of very serious violence and the threat John made on leaving that he would ‘come back with a bunch of mates and bash’ Stephanie.<sup>332</sup>

4.25 It is essential that victims can be protected from threatened violence from a family member who has previously been violent, even if they have not recently experienced violence. This is important where the victim has had an intervention order and wishes to renew it. A person should not have to prove a breach of an intervention order to renew it.

#### ! RECOMMENDATION

9. The legislation should allow an intervention order to be renewed without the applicant having to prove that further family violence occurred during the period of an intervention order.

4.26 Similarly, if perpetrators have been prevented from causing violent behaviour because they have been in jail, it should be possible for victims to obtain an intervention order on the perpetrators’ release from jail if they still fear for their safety. As one submission commented:

These changes could also address the issues that sometimes arise in cases where the respondent has actually been unable to access the person in need of protection for some time, eg because they have been in prison, and that is the real reason there have not been recent [violent] incidents.<sup>333</sup>

#### EXPOSURE OF CHILDREN TO FAMILY VIOLENCE

4.27 The close correlation between child abuse and family violence has already been discussed at paras 2.23–2.29. It is now recognised that even if a child has not been the specific target of violence, indirect exposure to family violence is so harmful that it may constitute a form of child abuse in its own right.<sup>334</sup> A large body of research has

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332 Ibid.

333 Submission 74 (Women’s Legal Service Victoria).

334 Partnerships Against Domestic Violence (2003) above n 121, 42, 44; John Fantuzzo and Wanda Mohr, ‘Prevalence and Effects of Child Exposure to Domestic Violence’ (1999) 9 (3) *The Future of Children* 21,

documented the detrimental effects on children who are exposed to family violence, including poor health, difficulty sleeping, diminished self esteem, aggressive behaviour, anxiety and depression. In adolescents the effects can include fear and trauma akin to post-traumatic stress disorder, adjustment difficulties such as health problems, cognitive deficits and aggression, as well as injury resulting from attempts to intervene to protect the non-violent parent.<sup>335</sup>

4.28 The Crimes (Family Violence) Act allows children to be included on another person's intervention order, or have an order made to protect them, if the court is satisfied that they are a family member of the defendant or the victim and have been subjected to, heard or witnessed violence by the defendant and are likely again to be subjected to, hear or witness such violence.<sup>336</sup>

4.29 The commission received a particularly strong response from submissions endorsing the increased protection of children from exposure to family violence through legislation.<sup>337</sup> Some submissions pointed out that the Act's current provisions are not being taken into account sufficiently or are being interpreted too narrowly by some magistrates. For example, some magistrates are not willing to make an order where a child has 'only' witnessed violence,<sup>338</sup> orders are not granted for children unless there was physical violence against them,<sup>339</sup> and some magistrates believed that orders for children were only sought by mothers 'to gain a family law advantage'.<sup>340</sup> Submissions also pointed out inconsistent decision making in protecting children from exposure to family violence through intervention orders.

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26–28; Joy Osofsky, 'The Impact of Violence on Children' (1999) 9 (3) *The Future of Children* 33; World Health Organisation, *World Report on Violence and Health* (2002) 103.

335 World Health Organisation (2002) above n 334, 89.

336 *Crimes (Family Violence) Act 1987* s 4A(3).

337 See, eg, submissions 58 (Family Court of Australia), 46 (Royal Children's Hospital), 36 (Paediatric Division, Australasian College of Physicians), 53 (Women's Electoral Lobby, Victoria), 69 (Victorian Community Council Against Violence), 27 (Robinson House BBWR).

338 Submission 8 (Werribee Legal Service).

339 Submission 30 (Violence Against Women Integrated Services).

340 *Ibid.* Recent research has found that this is largely a myth. Certainly, Family Court proceedings are often accompanied by allegations of domestic violence and the use of protection orders. However, research has found that this reflects the fact that family violence often escalates at the time of separation: Michael Flood, *Fact Sheet #2: The Myth of Women's False Accusations of Domestic Violence and Misuse of Protection Orders* (March 2005) <[www.ncsmc.org.au/docs/False%20Accusations%20DV.pdf](http://www.ncsmc.org.au/docs/False%20Accusations%20DV.pdf)> at 21 December 2005. The reality is that women living with family violence often do not take out intervention orders and often do so only as a last resort after being subjected to repeated and serious victimisation: Angela Melville and Rosemary Hunter, 'As Everybody Knows: Countering Myths of Gender Bias in Family Law' (2001) *Griffith Law Review* 10(1) 124–38.

**! RECOMMENDATION**

10. Provisions should be included in the new legislation to enable an intervention order to be made for a child who has been subjected to, heard, witnessed or otherwise been exposed to family violence.

**INCLUDING VIOLENCE AND ABUSE SPECIFIC TO CERTAIN GROUPS**

4.30 In defining family violence it is important to recognise forms of family violence which are peculiar to particular groups in the community. For example, as mentioned in Chapter 2, homosexual people can suffer specific forms of family violence:

Threatening to or ‘outing’ their partner to friends, family, employer, police, church or others in the wider community; Telling a partner that no-one will help because the police and the justice system are homophobic; Telling a partner they deserve it because they are homosexual—this type of behaviour is indicative of internalised homophobia or self hatred by an abuser; Telling a partner that they are not a ‘real’ homosexual because they used to relate to men or women, have male or female friends, or prefer certain sexual practises or behaviours.<sup>341</sup>

4.31 Family violence towards Indigenous Australians could include the regular denigration of their spiritual beliefs. A person with a disability could be threatened with removal of their physical aids. Similarly, elderly people may have the withdrawal of their care or removal of their accommodation continually threatened, as one submission notes:

There is also a need to reflect the diverse experiences of particular population groups ... Equivalent legislation in Queensland refers to the inclusion of specific examples of violence which includes ‘threatening an aged parent with the withdrawal of informal care’.<sup>342</sup>

**! RECOMMENDATION**

11. The new definition of family violence should be broad enough to include abuses specific to certain groups in the community.

341 Submission 31 (Senior Constable Lisa Keyte, Gay and Lesbian Liaison, Victoria Police).

342 Submission 78 (Department of Victorian Communities).

## INCLUDING VIOLENCE TOWARDS PETS AND OTHER ANIMALS

4.32 The use of animal abuse as a form of family violence has been acknowledged in recent years. A Victorian study compared female pet owners who had experienced family violence with those who had not. Of women who had experienced family violence, 46% reported that their abusive partner had threatened pet abuse and 53% reported that their partner had hurt or killed a pet. This compared with 6% and 0% respectively in the community sample.<sup>343</sup>

4.33 Research has found that victims of family violence may be particularly affected by pet abuse:

The importance of these human–animal relationships for people is often increased by social isolation or the onset of physical and emotional distress, as these relationships tend to improve people’s physical or emotional well-being and assist them in dealing with stress and adjusting to life transitions. Thus, threats of animal abuse and killing of favourite pets are powerful tools by which abusers can perpetuate the context of terror for victims and their children even after they have left the relationship.<sup>344</sup>

4.34 Abuse of animals needs to be seen as a form of violence, and a form of control, in family violence situations. It can literally prevent a victim from leaving a violent relationship and cause great trauma to all involved:

We have seen many situations both where women will stay with a partner who is violent because of fear of revenge against their pets, or where women and children have been extremely traumatised because of violence towards a pet.<sup>345</sup>

Actual or threatened abuse to animals should be included in the grounds for obtaining an intervention order. The purpose of family violence is to maintain power and control over family members. Abusing animals or threatening to is another mechanism for control just as is other forms of family violence. Harming animals or threats to harm animals could be included in the definition of family violence.<sup>346</sup>

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343 Eleonora Gullone, Judy Johnson and Ann Volant, *The Link Between Animal Abuse and Family Violence* (2004) 7–8.

344 Nicholas R Fawcett, Eleonora Gullone and Judy Johnson, ‘Domestic Violence and Animal Abuse: Encouraging Collaborative Relations between Animal Welfare and Human Welfare Agencies in Australia’ (April 2002) *InPsych* 37.

345 Submission 39 (Royal Women’s Hospital).

346 Submission 30 (Violence Against Women Integrated Services).

Other abusive, controlling behaviours other than physical or threatened physical abuse must be recognised. Many abuses of family members and pets are discounted and must be given equal standing as the effects of other forms of abuse can be long lasting and affect people's ability to function adequately.<sup>347</sup>

4.35 Other states have included injury to pets in their legislation. ACT legislation includes in its definition of 'domestic violence' conduct which:

is directed at a pet of a relevant person and is an animal violence offence; or is a threat, made to a relevant person, to do anything to a pet of the person or another relevant person that, if done, would be an animal violence offence.<sup>348</sup>

4.36 The Western Australia legislation states that an 'act of family and domestic violence' and 'act of personal violence' includes: 'Damaging the person's property, including the injury or death of an animal that is the person's property'.<sup>349</sup>

4.37 Under the Crimes (Family Violence) Act, pet abuse will sometimes provide a ground for obtaining an intervention order. If the pet is owned by the family violence victim, threatened injury to the pet will come within section 4, which refers to 'damage to a family member's property'. However, it should not be necessary for victims to show that the pet is their property if the perpetrator is threatening to kill, injure or torture it as the following example demonstrates:

Mary J shot her husband as he entered their trailer, in fact blew the top of his head off. Why? Not because he hit her. He did. Not because he was mean to the children. He was. Not because he had isolated her from her family and friends in a small trailer miles from anything. He had. No, she killed him because he told her he was going to bring home another puppy for her to hold down while he had intercourse with the animal.<sup>350</sup>

4.38 This view is supported by the Model Domestic Violence Laws,<sup>351</sup> which specifically state that pet abuse should be included as a form of family violence, even if the pet or animal does not belong to the victim: 'Causing or threatening to cause the

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347 Submission 14 (Anonymous).

348 *Domestic Violence and Protection Orders Act 2001* (ACT) ss 9(f),(g).

349 *Restraining Orders Act 1997* (WA) s 6(c).

350 Eleonora Gullone, Judy Johnson and Ann Volant, 'The Relationship between Animal Abuse and Family Violence' (2002) *Winter DVIRC Newsletter*, 4.

351 Domestic Violence Legislation Working Group, *Model Domestic Violence Laws Report* (1999). This report was prepared by a working group of Commonwealth, state and territory officials and details a model for domestic violence legislation to improve consistency in laws across Australia.

death of, or injury to, an animal, even if the animal is not the protected person's property'.<sup>352</sup> Our recommendation reflects a similar view.

## ! RECOMMENDATION

12. Causing or threatening the death, torture or injury of an animal should be included in a definition of family violence, even if that animal is not the property of the family violence victim.

### EXPLICITLY INCLUDING SEXUAL VIOLENCE

4.39 As was pointed out in Chapter 2, sexual forms of family violence are an unrecognised form of family violence. Victims report that sexual forms of family violence, such as rape or other forced sexual acts, are particularly difficult to talk about, even when other violence has been disclosed.

4.40 There is relatively little research on intimate partner sexual violence and social norms do not yet regard it as unacceptable or as a crime.<sup>353</sup> A community attitudes study conducted in Australia in 1995 shows that few respondents spontaneously identified sexual assault or rape as an element of domestic violence.<sup>354</sup> Verbal, emotional, psychological, and child abuse, which are under-recognised by the community, policy makers and legislators as family violence, were still recognised to a greater extent in this study than sexual forms of family violence:

Ultimately, people surveyed were more likely to describe domestic violence as being constituted by verbal abuse, mental abuse and violence against children before they turned their minds to the possibility of sexual assault.<sup>355</sup>

4.41 Sexual assault and family violence service providers are generally separated, making it difficult for service providers to recognise and respond adequately to the needs of victims who experience sexual forms of family violence. Victims report that this form of family violence can be the most damaging and harmful:

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352 Ibid 18–23.

353 Melanie Heenan, *Just 'Keeping the Peace': A Reluctance to Respond to Male Partner Violence* (March 2004).

354 Office of the Status of Women, *Community Attitudes to Violence Against Women: Detailed Report*, in Melanie Heenan *Just 'Keeping the Peace': A Reluctance to Respond to Male Partner Violence* (March 2004).

355 Ibid.

The physical abuse was horrible, but it was something I could get over. It was like a sore that heals. When he forced me to have sex with him, that was more than just physical. It went all the way down to my soul. He abused every part of me—my soul, my feelings, my mind ... and I don't think there is anything worse than that.<sup>356</sup>

4.42 Current family violence legislation tends to mimic dominant community norms about sexual forms of family violence. Tasmania is the only state which explicitly mentions sexual forms of family violence in its legislation. Including sexual violence would ensure that victims can be protected by an intervention order. Tasmanian legislation defines 'family violence' as including assault, including sexual assault.<sup>357</sup> New Zealand legislation also includes sexual abuse in its family violence definition.<sup>358</sup>

4.43 Including sexual forms of family violence in the definition serves two main purposes. First, it makes it clear to family violence victims that they do not have to endure sexual assault, that it is not considered acceptable in our society and that legal protection is available. Secondly, it educates the community about sexual violence within family relationships and that it is unacceptable. Sexual forms of family violence should be explicitly recognised in the definition of family violence.



## RECOMMENDATION

13. The new definition of family violence should include specific reference to sexual forms of family violence.

## EXAMPLES OF DEFINITIONS

4.44 Australian states have taken a variety of approaches to defining 'family violence' or 'domestic violence'. Generally, the most recent legislation lists specific behaviour and also includes a broader provision to cover behaviour not included in the specific list which causes 'apprehension' or 'fear'.<sup>359</sup> South Australia's legislation states at the end of a list:

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356 Heenan (2004) above n 353.

357 *Family Violence Act 2004* (Tas) s 7(a)(i).

358 *Domestic Violence Act 1995* (NZ) s 3(2)(c).

359 *Domestic Violence Act 1994* (SA) s 4(vi).

The defendant engages in other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear.<sup>360</sup>

4.45 Queensland's legislation sets out broad categories of conduct and includes examples of forms of family violence under some of these categories, including abuse specific to particular groups. The definition of 'domestic violence' includes:

(c) intimidation or harassment of the other person;

Examples of paragraph (c)—

1. Following an estranged spouse when the spouse is out in public, either by car or on foot.
2. Positioning oneself outside a relative's residence or place of work.
3. Repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night).
4. Regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent's fortnightly pension cheque.

4.46 Some definitions of family violence emphasise apprehension or fear but do not mention unreasonable control or domination. This approach ignores the fact that the exercise of power and control is central to family violence. It could also result in excessive emphasis being placed on threats of physical violence. By contrast, Tasmania's legislation specifically mentions a 'course of conduct' that is likely to have the effect of 'unreasonably controlling or intimidating, or causing mental harm, apprehension or fear, in his or her spouse or partner' under a definition of 'emotional abuse'.<sup>361</sup> Western Australia's legislation also includes 'emotional abuse'. In our view, the exercise of domination and control over the victim should be mentioned in the legislation.

#### RECOMMENDING A DEFINITION

4.47 Finally, in recommending a definition of family violence we have taken account of the definitions which have been adopted by key policy groups in Victoria.

4.48 The Women's Safety Strategy (2002) uses the following definition:

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360 *Domestic Violence Act 1994* (SA) s 4(vi).

361 *Family Violence Act 2004* (Tas) s 9(1).

Violent, threatening, coercive or controlling behaviour that occurs in current or past family, domestic or intimate relationships is called family violence. This encompasses not only physical injury but direct or indirect threats, sexual assault, emotional and psychological torment, economic control, property damage, social isolation and behaviour which causes a person to live in fear.<sup>362</sup>

4.49 The Victorian Indigenous Task Force uses the following definition:

An issue focused around a wide range of physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that occur within families, intimate relationships, extended families, kinship networks and communities. It extends to one-on-one fighting, abuse of Indigenous community workers, as well as self-harm, injury and suicide.<sup>363</sup>

This is sometimes supplemented by the following phrase:

Domestic violence is the patterned and repeated use of coercive and controlling behaviour to limit, direct and shape a partner's thoughts, feelings and actions. An array of power and control tactics is used along a continuum in concert with one another.<sup>364</sup>

We endorse both of these definitions and believe they should be incorporated as far as possible in a definition of family violence in Victorian legislation.

**! RECOMMENDATIONS**

14. The new legislative definition of family violence should be:

- Family violence is violent or threatening behaviour or any other form of behaviour which coerces, controls and/or dominates a family member/s and/or causes them to be fearful.
- Family violence includes causing a child to see or hear or be otherwise exposed to such behaviour.

15. The definition of family violence may include, but is not limited to:

362 Office of Women's Policy [Victoria] (2002) above n 5.

363 Victorian Indigenous Family Violence Task Force (2003) above n 13, 123.

364 Rhea V Almeida and Tracy Durkin, 'The Cultural Context Model: Therapy for Couples with Domestic Violence' (1999) 25(3) *Journal of Marital and Family Therapy* 313.

**! RECOMMENDATIONS**

- assault or personal injury to a person;
- sexual assault and other forms of sexually coercive behaviour;
- damage to a person's property;
- kidnapping or depriving a person of her or his liberty (eg forced social isolation);
- emotional, psychological and verbal abuse (see definition of 'emotional abuse');
- economic abuse (see definition of 'economic abuse').

16. 'Emotional abuse' and 'economic abuse' should be defined as follows:

- emotional abuse includes:
  - (i) behaving in a manner that is intimidating or offensive or harassing towards a person;
  - (ii) causing or threatening to cause the death of, or injury to, an animal whether or not the animal is the applicant's property;
  - (iii) repeatedly using other coercive or controlling behaviour not included in (i–iii) including verbal abuse;
  - (iv) using other incidents of emotional and psychological torment not covered by (i–iii) above. For example: threatening to 'out' homosexual partners to their friends and/or family when they do not wish to be 'outed'; threatening to withdraw the care of an elderly person; or threatening to withdraw a visa application to coerce a person.
- economic abuse includes:
  - (i) coercing a person to relinquish control over assets or income;
  - (ii) disposing of property owned by a person or owned jointly with a person against that person's wishes;



## RECOMMENDATIONS

- (iii) preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses, or withholding or threatening to withhold the financial support reasonably necessary for meeting normal living expenses for a person or a person's and their children;
- (iv) coercing a family member to claim social security payments; or
- (v) coercing a family member to sign a contract for the purchase of goods and services, for the provision of finance, loans and/or credit, for a contract of guarantee, or any legal documents for the establishment and operation of businesses.
- (vi) otherwise controlling access to money or finances.

## DEFINING FAMILY MEMBER

4.50 Whether someone is able to obtain an intervention order to protect themselves from family violence depends on whether they have been subjected to the violence by someone who falls under the definition of a 'family member'. 'Family member' is currently defined in the Act in the following way:

'family member' in relation to another person means—

- (a) the spouse or domestic partner of that person;
- (ab) a person who has or has had an intimate personal relationship with that person;
- (b) a person who is or has been a relative of that person; or
- (ba) a child who normally or regularly resides with that person; or
- (cc) a child of whom that person is a guardian; or
- (c) another person who is or has been ordinarily a member of the household of that person.<sup>365</sup>

4.51 Relatives include parents, grandparents, step-parents, children, grandchildren, stepchildren, siblings, half-siblings, uncles, aunts, nephews, nieces and cousins.

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365 *Crimes (Family Violence Act) 1987* pt 1, 3(1).

Relatives also include people who are relatives through past and present marriages as well as past and present same-sex and opposite-sex domestic relationships.

4.52 This definition is broad, and consultations and submissions support its continued use because of its inclusiveness. It is important to ensure, however, that everyone needing protection from family violence is able to obtain an order under this definition. Some victims of violent relationships in a family or domestic setting are not covered under the Act. This has led to calls for an expanded definition, to encompass a broader range of relationships.

It is important that the issue of eligibility under the Act is addressed as a matter of urgency, and amended so that all forms of intimate domestic relationships are covered, and so that the Act is indeed accessible to everyone who needs protection within their domestic situation.<sup>366</sup>

The definition of family member is not currently broad enough. Clients come to us who would not fit this definition. We agree that for aboriginal and non-English speaking women the definition is not inclusive enough ... Although we generally like the Northern Territory definition of 'a relative according to ... contemporary social practice' we also caution against 'de-genderising' family violence, almost all of which is committed by men against women.<sup>367</sup>

For example, a person's new de facto partner and some other extended relationship and cultural family members are required to use the stalking provisions (s21A of the Crimes Act) as adopted into the Crimes (Family Violence) Act to seek an intervention order based on the same set of circumstances or conduct as a family member uses.<sup>368</sup>

We are aware of court staff opinion that a relationship between teenage boyfriend and girlfriend is not covered by the legislation and that an ex boyfriend constantly text messaging his ex girlfriend is not family violence and therefore an intervention order is not appropriate. More detailed definitions about the kind of relationships and behaviours covered by the legislation would assist women to obtain an intervention order in these circumstances.<sup>369</sup>

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366 Submission 49 (Domestic Violence and Incest Resource Centre).

367 Submission 33 (Women's Domestic Violence Crisis Service).

368 Submission 86 (Magistrates' Court of Victoria).

369 Submission 30 (Violence Against Women Integrated Services).

## INCLUDING BROADER KINSHIP AND FAMILY RELATIONSHIPS

4.53 The definition in its current form does not reflect the extent of kinship and family relationships within Indigenous communities and therefore prevents some Indigenous people who experience family violence from accessing protection under the Act.<sup>370</sup> Similar issues also apply in certain CALD communities,<sup>371</sup> where situations of extended family, clans or tribe may mean that someone not directly related by marriage or blood is still nonetheless considered to be a member of the family.

4.54 To address this situation submissions generally supported the Northern Territory definition of family relationship, which includes: ‘a relative according to Aboriginal tradition or contemporary social practice’.<sup>372</sup>

4.55 Legislation in other states leaves it open for other people to be defined as family members, in accordance with victims’ cultural backgrounds. For example, the ACT legislation states that a ‘relative’ includes: ‘anyone else who could reasonably be considered to be a relative of the original person’.<sup>373</sup>

4.56 The legislation then includes the following ‘examples’:

1. if the original person is an Aboriginal and Torres Strait Islander, the following people:
  - (a) a person the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person’s Aboriginal and Torres Strait Islander community;
  - (b) a person who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person’s Aboriginal or Torres Strait Islander Community
2. a person regarded and treated by the original person as a relative, for example, as an uncle or aunt.<sup>374</sup>

4.57 Legislation in Queensland also has a provision that takes account of the broader conception of ‘family’ which exists in some CALD communities:

- (a) a person whom the relevant person regards or regarded as a relative;

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370 Consultations 22 (Indigenous Family Violence Action Group, Murray Mallee), 24 (legal workers, Murray Mallee), 28 (Indigenous Family Violence Action Group, Grampians).

371 Consultations 12 (service providers and legal workers, Melbourne), 32 (service providers, police, legal workers and court personnel, Melbourne East).

372 *Domestic Violence Act (NT)* s 3(2)(vii).

373 *Domestic Violence and Protection Orders Act 2001 (ACT)* s 10A(c)(ii).

374 *Domestic Violence and Protection Orders Act 2001 (ACT)* s 10A(c)(ii).

(b) a person who regards or regarded himself or herself as a relative of the relevant person.

*Examples of people who may have a wider concept of relative—*

1. Aboriginal people;
2. Torres Strait Islanders;
3. Members of certain communities with non-English speaking backgrounds; and
4. People with particular religious beliefs.<sup>375</sup>

4.58 The Victorian Act should include a definition of ‘family member’ which is broad enough to provide protection under the Act to people of diverse cultural backgrounds.

### INCLUDING CARERS OF PEOPLE WITH DISABILITIES

4.59 In Chapter 2 we discussed the heightened vulnerability of people with disabilities to abuse by family members. In addition to partners and other family members, people with disabilities may have paid and unpaid carers on whom they depend for intimate physical care, practical and emotional support, and social interaction.

4.60 Research has found that an unacceptably high proportion of women with disabilities experience violence and abuse by carers, both in institutionalised and domestic settings.<sup>376</sup> Many people with intellectual disabilities, for example, live in institutions, group homes or other forms of supported accommodation where they experience violence.<sup>377</sup> Similarly, many women with physical disabilities have experienced abuse by carers and personal assistance attendants:<sup>378</sup>

It is clear that violence against women with disabilities may be perpetrated not just by an intimate partner or spouse but by relatives, caregivers (paid and unpaid), co-residents, residential and institutional staff, other service providers. For some women with

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375 *Domestic and Family Violence Protection Act 1989* (Qld) s 12B(4)(a)(b).

376 Carolyn Frohmader, *There’s No Justice—There’s Just Us: The Status of Women with Disabilities in Australia* (2002) 22; Laurie Powers et al, ‘Barriers and Strategies in Addressing Abuse: A Survey of Disabled Women’s Experiences—PAS Abuse Survey’ (2002) 68 (1) *Journal of Rehabilitation* 10.

377 Anne Lawrence and Sally Robinson, ‘Access to Injustice? Domestic Violence and Women with Intellectual Disabilities in Australia’ 8(1) *Polemic* 34.

378 Mary Ellen Young et al, ‘Prevalence of Abuse of Women with Physical Disabilities’ (1997) 78 *Archives of Physical Medicine and Rehabilitation* S34, S37; Powers et al, above n 376.

disabilities, their ‘place of residence’ may be a community based group home or residential institution, a boarding house, psychiatric ward, or nursing home.<sup>379</sup>

Women with disabilities, who live in group homes and other similar ‘domestic’ settings, have a right to be protected from violence and abuse. Women with disabilities have a right to the same protection by domestic/family violence laws against the violence perpetrated in their domestic situations as much as the rest of the community.<sup>380</sup>

The Royal Women’s Hospital supports the expansion of definition of family members to include carers, paid and unpaid, in homes and institutions, where a woman is dependent on a carer, for example in cases of a physical or intellectual disability.<sup>381</sup>

4.61 Men with disabilities are also vulnerable to violence from their carers and other people. Formal and informal care arrangements may make people with disabilities particularly vulnerable to violence from carers, with the violence forming a dynamic identical or very similar to family violence. As one submission put it: ‘People with disabilities may not be living in a ‘traditional’ family situation, but their home and carers are as a “family” for them’.<sup>382</sup>

Their disability and care arrangements may also make it difficult for people to leave the care situation, making it particularly important for legislation to cover them.

4.62 Other Australian jurisdictions have provided for protection from violence by carers. Queensland’s legislation contains a detailed section on ‘what is an informal care relationship’ which includes examples of these activities. The NSW legislation refers to a person who: ‘has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person’.<sup>383</sup>

## OTHER RELATIONSHIPS

4.63 A person affected by violence may wish to obtain an order against the new partner or an associate of the respondent. We discuss this at paragraphs 8.30–8.38.

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379 Submission 49 (Domestic Violence and Incest Resource Centre).

380 Ibid.

381 Submission 39 (Royal Women’s Hospital).

382 Submission 46 (Royal Children’s Hospital).

383 *Crimes Act 1900* (NSW) s 562A(3)(e).

## ! RECOMMENDATION(S)

17. The current definition of ‘family member’ should be amended to include the following relationships:
- ‘a relative according to Aboriginal tradition or contemporary social practice’;
  - ‘a relative according to any other traditional or contemporary social practice’;
  - ‘a person who has or has had a relationship with the original person involving the original person’s dependence or partial dependence on that person for paid or unpaid care’.
18. Examples of specific family relationships should be added to the legislation to clarify its scope.

### GROUNDS FOR GETTING AN ORDER

4.64 Following recommendations 14–17 regarding definitions of ‘family violence’ and ‘family member’, we also recommend changed grounds for getting an order. In the current Act, the grounds for obtaining an order are:

- (1) The Court may make an intervention order in respect of a person if satisfied on the balance of probabilities that—
- (a) the person has assaulted a family member or caused damage to property of a family member and is likely to again assault the family member or cause damage to property of the family member; or
  - (b) the person has threatened to assault a family member or cause damage to property of a family member and is likely to assault the family member or cause damage to property of the family member; or
  - (c) the person has harassed or molested a family member or has behaved in an offensive manner towards a family member and is likely to do so again.<sup>384</sup>

4.65 If an explicit definition of family violence is included in a new Act, as recommended, there will need to be a corresponding change to the grounds for getting

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<sup>384</sup> *Crimes (Family Violence) Act 1987* pt 2, 4(1).

an order. The commission recommends the following grounds for an intervention order be included in a new Family Violence Act.

!	<b>RECOMMENDATION(S)</b>
	<p>19. The grounds for getting an intervention order should be:</p> <ul style="list-style-type: none"><li>• the respondent has committed family violence against a family member and is likely to do so again;</li><li>• the respondent has threatened to commit family violence against a family member and is likely to do so again.</li></ul>