

Law Council of Australia

# Model Definition of 'Family Violence'

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Law Council  
OF AUSTRALIA

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**<s> Meaning of family violence**

- (1) For the purposes of this Act, family violence is—
- (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).

**Examples**

- 1 The following behaviour may constitute family violence under paragraph (a)—
- using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage;
  - using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.
- 2 The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—
- overhearing threats of physical abuse by one family member towards another family member;
  - seeing or hearing an assault of a family member by another family member;
  - comforting or providing assistance to a family member who has been physically abused by another family member;
  - cleaning up a site after a family member has intentionally damaged another family member's property;
  - being present when police officers attend an incident involving physical abuse of a family member by another family member.

- (2) Without limiting subsection (1), family violence includes the following behaviour—
- (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;
  - (f) threatening a person with the death or injury of the person, a child of the person, or someone else;
  - (g) unauthorised surveillance of a person;
  - (h) unlawfully stalking or cyber stalking a person;
  - (i) attaching a tracking device to a motor vehicle;
  - (j) using without consent an application or device to track a person's phone usage (calls and text messages, location data, internet history, etc.); and
  - (k) taking without consent or distributing without consent an intimate image of the family member, or threatening to distribute the image.
- (3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

**<s> Meaning of economic abuse**

- (1) For the purposes of this Act, economic abuse is 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
- (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.

**Examples include but are not limited to—**

- preventing a person from having access to financial assets, including but not limited to preventing a person from having control over income and assets
- coercing a person to relinquish control over assets and income;
- removing or keeping a family member's property without permission, or threatening to do so;
- disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse;
- without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;
- preventing a person from seeking or keeping employment;
- creating, or causing to be created, a debt in a person's name without permission;
- coercing a person to claim social security payments;
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;
- coercing a person to sign a contract for the purchase of goods or services;
- coercing a person to sign a contract for the provision of finance, a loan or credit;
- coercing a person to sign a contract of guarantee;
- coercing a person to sign any legal document for the establishment or operation of a business.

## **<s> Meaning of emotional or psychological abuse**

- (1) For the purposes of this Act, emotional or psychological abuse means behaviour by a person towards another person that torments, coerces, intimidates, harasses or is offensive to the other person.

### **Examples include but are not limited to—**

- repeated derogatory taunts, including racial taunts;
- threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;
- threatening to disclose personal information to a person's employer or at a person's workplace;
- threatening to withhold a person's medication;
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;
- threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person;
- following a person when the person is out in public, including by vehicle or on foot;
- remaining outside a person's residence or place of work;
- repeatedly contacting a person by telephone, SMS message, email or online or social networking site without the person's consent;
- giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;
- taking an invasive image of the person and threatening to distribute the image without the person's consent;
- publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;
- driving a vehicle in a reckless or dangerous manner, or otherwise acting in a reckless or dangerous manner, while the person is a passenger in the vehicle;
- threatening to institutionalise the person;
- threatening to withdraw care on which the person is dependent;
- preventing the person from entering the person's place of residence.

**<s> Meaning of family member**

- (1) For the purposes of this Act, a **family member**, in relation to a person (a **relevant person**), means—
  - (a) a person who is, or has been, the relevant person's spouse or domestic partner; or
  - (b) a person who has, or has had, an intimate personal relationship with the relevant person; or
  - (c) a person who is, or has been, a relative of the relevant person; or
  - (d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or
  - (e) a child of a person who has, or has had, an intimate personal relationship with the relevant person.
- (2) For the purposes of paragraphs (1)(b) and (1)(e), a relationship may be an intimate personal relationship whether or not it is sexual in nature.
- (3) For the purposes of this Act, a **family member** of a person (the **relevant person**) also includes any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship, including the following examples—
  - (a) the nature of the social and emotional ties between the relevant person and the other person;
  - (b) whether the relevant person and the other person live together or relate together in a home environment;
  - (c) the reputation of the relationship as being like family in the relevant person's and the other person's community;
  - (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;
  - (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;
  - (f) any financial dependence or interdependence between the relevant person or other person;
  - (g) any other form of dependence or interdependence between the relevant person and the other person;
  - (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person;
  - (i) the provision of sustenance or support between the relevant person and the other person.

**Example**

A relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members.

- (4) For the purposes of subsection (3), in deciding whether a person is a family member of a relevant person the relationship between the persons must be considered in its entirety.
- (5) For the purpose of this section, examples of people who may have a wider concept of a family member include:
  - (a) Aboriginal and Torres Strait Islander people;
  - (b) members of certain communities with non-English speaking backgrounds; and
  - (c) people with particular religious beliefs.

**<s> Meaning of domestic partner**

- (1) For the purposes of this Act, ***domestic partner*** of a person means—
  - (a) a person who is in a registered relationship under a prescribed law of a State or Territory as a prescribed kind of relationship; or
  - (b) an adult to whom the person is not married but with whom the person is in a relationship as a couple where one or each of the persons provides personal or financial commitment and support of a domestic nature for the support of the other person; or
  - (c) an adult providing or who has provided ongoing paid or unpaid care upon which the other person has been dependent.
- (2) For the purposes of subsection (1)(a), (b) and (c), the following are irrelevant—
  - (a) the gender of the persons;
  - (b) whether or not the persons are living under the same roof.
- (3) Also, for the purposes of subsection (1)(a), (b) and (c), a person is not the domestic partner of another person merely because they are co-tenants.
- (4) Two persons may be domestic partners for the purposes of this Act if they have both been a domestic partner with the same person pursuant to subsection (1)(a) or (b).
- (5) In deciding whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including:
  - (a) the duration of the relationship;
  - (b) the nature and extent of their common residence;
  - (c) whether a sexual relationship exists;
  - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
  - (e) the ownership, use and acquisition of their property;
  - (f) the degree of mutual commitment to a shared life;
  - (g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
  - (h) the care and support of children; and
  - (i) the reputation and public aspects of the relationship.

**<s> Meaning of relative**

- (1) For the purposes of this Act, a relative of a person—
  - (a) means any of the following, whether of the whole blood or half-blood or by marriage, and whether or not the relationship depends on adoption of the person—
    - (i) the person's father, mother, grandfather or grandmother, step-father, step-mother, father-in-law or mother-in-law;
    - (ii) the person's son, daughter, grandson or granddaughter, step-son, step-daughter, son-in-law or daughter-in-law;
    - (iii) the person's brother or sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law;
    - (iv) the person's uncle or aunt, uncle-in-law or aunt-in-law;
    - (v) the person's nephew or niece;
    - (vi) the person's cousin; and
  - (b) for an Aboriginal or Torres Strait Islander person—includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative.
- (2) For domestic partners, a **relative** includes a person who would be a relative if the domestic partners were married to each other.