

Chapter 1: Introduction to domestic violence

What is domestic violence?

Domestic violence occurs when one person tries to dominate and control another person in a family-like or domestic relationship. Domestic violence involves an abuse of power and can take the form of:

- ▶ physical violence;
- ▶ sexual abuse;
- ▶ emotional or psychological abuse;
- ▶ verbal abuse;
- ▶ stalking and intimidation;
- ▶ social and geographic isolation;
- ▶ financial abuse;
- ▶ cruelty to pets;
- ▶ damage to property; or
- ▶ threats to be violent in these ways.

Domestic violence usually features a repeating pattern of behaviour with the dominant purpose of controlling the other person. The major impact is fear.

Domestic violence is predominately perpetrated by men against women. However, women can be perpetrators of violence in both heterosexual and LGBTIQ relationships. In this publication we refer to victim-survivors as women, which reflects the social science evidence and statistics.

Forced marriage, when a person gets married without freely consenting because they have been coerced, threatened or deceived is another form of domestic violence, as is reproductive coercion where control or pressure is used to determine contraception or pregnancy outcomes (See **Chapter 9** for more detail).

What is the difference between 'domestic violence' and 'family violence'?

The terms 'domestic violence' and 'family violence' are often interchanged. They both generally refer to

violence between two or more people who are in a domestic relationship.

The terms 'domestic violence' and violence in a 'domestic relationship' are used in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (CDPVA), the legislation that deals with apprehended violence orders (AVOs). The CDPVA defines 'domestic relationship' broadly. The *Family Law Act 1975* (Cth) (FLA) refers to 'family violence'. This definition of family violence in the FLA changed in 2012 and includes a wide range of types of abuse.

The term 'family violence' is preferred by many Aboriginal and Torres Strait Islander people, reflecting an understanding of family violence beyond that between intimate partners and conceptualising violence against women within extended families and the wider community. Some Indigenous women prefer the term domestic violence as it differentiates violence in intimate relationships from that in the wider community. For more about this distinction, see the ANROWS (Australia's National Research Organisation for Women's Safety) paper on 'Existing knowledge, practice and responses to violence against women in Australian Indigenous communities'.¹

The Coalition of Australian Governments' National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan) defines domestic violence as:

acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal. Domestic violence includes physical, sexual, emotional and psychological abuse. (Council of Australian Governments, 2011, p 2)

The term domestic violence is used throughout this guide to refer generally to domestic or family violence, unless the legal context requires specific reference to either domestic or family law.

1 http://media.aomx.com/anrows.org.au/s3fs-public/FINAL%202012.16_3.2%20AIATSIS%20Landscapes%20WEB.pdf

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

While not separately defined, refer to sections 9 and 11 of the CDPVA for the meaning of domestic violence.

Section 9 Objects of Act in relation to domestic violence

(3) In enacting this Act, Parliament recognises:

- (a) that domestic violence, in all its forms, is unacceptable behaviour, and
- (b) that domestic violence is predominantly perpetrated by men against women and children, and
- (c) that domestic violence occurs in all sectors of the community, and
- (d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and
- (e) that domestic violence occurs in traditional and non-traditional settings, and
- (f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and
- (f1) the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities, and
- (g) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.

Family Law Act 1975 (Cth)

Section 4AB Definition of family violence

- (1) For the purposes of this Act, family violence means 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.
- (2) Examples 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.

(3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

Prevalence of domestic violence

Australia's National Research Organisation for Women's Safety (ANROWS) examined the health outcomes of intimate partner violence against women in its *State of knowledge* paper (March 2016, page 4) and identified that:

- ▶ one in six women in Australia reported having experienced physical or sexual violence by a current or former cohabiting partner;

- ▶ the prevalence of domestic violence appears to be substantially higher among Aboriginal and Torres Strait Islander women;
- ▶ domestic violence has a range of health consequences for women, particularly mental and reproductive health problems;
- ▶ children exposed to domestic violence are more likely to have a range of health, development and social problems and are at higher risk of perpetrating or being victims of domestic violence, which is a significant contributor to intergenerational cycles of disadvantage;
- ▶ domestic violence is a contributor to poverty, housing insecurity, social isolation and education and employment difficulties;
- ▶ violence against women costs the nation \$13.6 billion each year and is expected to rise to \$15.6 billion by 2021.

Context and causes

Many people believe alcohol, drugs, stress, or mental illness causes domestic violence. While these may be contributing factors, the National Survey on Community Attitudes to Violence Against Women 2009 found that:

the pervasiveness of violence against women across boundaries of culture, race, class and religion indicates that above all it has foundations in gender power imbalances and violence-supportive norms ... key determinants of violence that include the following factors: the unequal power relations between men and women; social norms and practices related to violence in general; and a lack of access to resources and systems of support ... At the individual level, the most consistent predictor of the use of violence among men is their agreement with sexist, patriarchal, and/or sexually hostile attitudes. (page 14).

For Aboriginal and Torres Strait Islander women, the intersection of gender and racial inequality creates conditions for high rates of violence against them. The continued impacts of colonisation, dispossession and the loss of family and culture through the stolen generations can mean that the trauma experienced is intergenerational and complex.

Complexity of need

Women experiencing domestic violence very often have a range of other issues that they need assistance with, including physical and mental health, accommodation, employment, social security, their children's education, immigration and visa status,

state and federal police involvement, and child welfare involvement.

In addition, clients often have to deal with three or more different courts and different legal representation if there are AVO, criminal law, child protection or family law proceedings.

Complexity of system responses

Clients who have experienced domestic violence can be caught between what appear to be conflicting values in different parts of the legal system, and these may send her conflicting messages about her decision to stay in an abusive relationship or go.

On the one hand, Family and Community Services (FACS) may be pressing the mother to leave because of domestic violence and child protection concerns. However, leaving the relationship opens up the potential for family court proceedings and the likelihood that the father will be ordered to spend some time, even if supervised with the children.

According to an Australian Institute of Family Studies (AIFS) report, over 50% of parenting matters in the family law courts involve serious allegations of family violence and/or child abuse.² It is often the case that women who don't qualify for legal aid, but who cannot afford a private lawyer, are left with the choice of negotiating directly with their former partners on the courthouse steps or agreeing to attend family dispute resolution (FDR), where their chances of getting a safe and just outcome can be compromised.

Protective practices such as lawyer-assisted mediation and strategies for developing safe outcomes in agreements reached at FDR are important responses to these realities.

Women who have experienced domestic violence may find it harder than others to negotiate a fair property settlement. In a study reported in 2000, women who experienced severe abuse were about three times more likely than women who reported no physical abuse to indicate that they had received less than 40% of the total property pool.³

2 L Moloney et al., *Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-reform Exploratory Study*, Research Report No. 15. Melbourne: Australian Institute of Family Studies, 2007

3 G Sheehan and B Smyth, 'Spousal Violence and Post-separation Financial Outcomes' (2000) 14 *Australian Journal of Family Law*, 102, 112

Resources

It is important for you to develop a comprehensive understanding of domestic violence, its dynamics and impact. You can stay informed of current research and information about domestic violence through well-regarded publications and bodies such as the Australian Institute of Family Studies (AIFS) or ANROWS.

AVERT Family Violence is a free online training course that was developed with funding from the Australian government in 2010.⁴

4 www.avertfamilyviolence.com.au