

# Family Law: Changes to the Family Violence Provisions



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Kate Duffy, Solicitor, Women's Legal Services NSW on 23 October 2012. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

- The Family Law System
- Background information on the *Family Law Act*
- Social Science Research
- New Family Law Amendments
- New definitions of Abuse and Family Violence

## Family Law System

- Family law includes:
  - Divorce
  - Children
  - Financial matters
- These are all dealt with separately under the law
  - Family law includes married and de facto relationships
  - Includes non-court based services like Family Dispute Resolution

## Impact of Family Violence

- Family violence has a large impact on parenting matters, that is, family law matters involving children
- Decisions about children are to be made by considering what is in the best interest of the children

## Background on the *Family Law Act 1975*

### 1975 – 1990s:

- The *Family Law Act* was introduced in **1975** and originally had no specific mention of family violence
- In the **1990s** the family law system started connect the impact of family violence and parenting
- In **1991** a National Committee on Violence Against Women recommended the need for a definition of family violence in the *Family Law Act*

### Legislative Reform:

Key periods of reform to the *Family Law Act 1975*:

- **1995** - right to contact with both parents
- **2006** - shared care, friendly parents and false allegations
- **2012** - recognition of the widened scope of family violence and abuse, extending to cruelty to pets

## Social Science Research supporting Legislative Reform

- Children who had rigid parenting schedules expressed the greatest level of unhappiness (Social Policy Research Centre, UNSW, 2010)
- Children who felt they had some say in the arrangements were happiest with the arrangements than those who had not (Bragshaw et al 2010)
- Children who were not happy with the share arrangements pointed to the difficulties of living unsupervised with the parent who was unpredictable or violent and frustrated that their safety concerns had not been listened to (Bragshaw et al 2010)
- Detrimental outcomes were identified for infants under 2 years. Higher irritability than infants in primary residence arrangements (Mcintosh et al May 2010)



- Forced ceasing of breast-feeding to align with shared care arrangements despite benefits to development, good nutrition and health (Baxter and Smith, AIFS, 2009)
- It was not unusual for shared care as 'agreed' to between parents following mediation to revert to arrangements in place before mediation (Mcintosh et al May 2010)
- Half of the family law cases contain allegations of family violence
- In 70% of cases where family violence or abuse was alleged shared care was still an outcome (Australian Institute of Family Studies Evaluation of 2006 reforms)
- One in five parents reported safety concerns with ongoing contact with the child's other parent (AIFS evaluation of 2006 reforms)
- The overlap between woman abuse and child physical and sexual abuse is between 30%-60%

### New Family Law Amendments

- **The family violence amendments apply for all matters filed on/after 7 June 2012**
- Inclusion of international obligations:
  - A new object refers to Convention on the Rights of the Child (CROC)
  - CROC can be used where there is ambiguity to interpret, but is not law
- More weight given to safety of children over meaningful relationship with both parents
- Broader definition of abuse and family violence
- Removing 'friendly parent' provision
- Removing costs order for 'false allegations'
- Broader scope to consider interim, consent and past AVOs as well as final and contested

### New Definitions

#### Abuse of a child:

- Much broader definition specifically including psychological abuse and neglect

#### Family violence:

- Makes specific mention of coercion and control
- Gives examples of behaviour that may constitute family violence
- Clearly states that a child themselves is a victim of family violence if exposed to family violence

### Definition of Abuse

#### Old definition – abuse, in relation to a child means:

- An **assault**, including a **sexual assault**, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or*
- A person involving the child in a **sexual activity** with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person*

#### New definition – abuse, in relation to a child, means:

- An **assault**, including a **sexual assault**, of the child; or*
- A person (the first person) involving the child in a **sexual activity** with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or*
- causing the child to suffer **serious psychological harm** including (but not limited to) when that harm is caused by the child being **subjected to, or exposed to, family violence**; or*
- serious neglect of the child***



### Old definition – family violence:

- Family violence means **conduct, whether actual or threatened** by a person towards, or towards the property of, a member of the person's family that **causes** that or any other member of the person's family **reasonably to fear for**, or reasonably to be apprehensive about, **his or her personal wellbeing or safety**.
- Note: A **person reasonably fears** for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances **if a reasonable person in those circumstances would fear for**, or be apprehensive about, his or her personal wellbeing or safety.

### New definition:

- (1) For the purpose 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 cause 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 dependant 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 or his or her **liberty**.
- (3) For the purpose 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.