

## Understanding domestic and family violence

### What it is:

There is no uniform legislative definition of domestic and family violence across Australian jurisdictions. While state, territory and federal legislation recognise, in different ways, that domestic and family violence can present in many forms and can occur within a variety of relationships, an Australian review identifies that judicial officers may not have a consistent understanding that it is a pattern of behaviour involving a perpetrator's exercise of control over the victim [Wakefield & Taylor 2015].

Some judicial officers may focus only on recent physical violence and view it as a single incident or as a series of discrete incidents [Westmarland et al 2016], rather than as part of a complex pattern of violent or abusive behaviours [Fehlberg & Behrens 2015] and domination including tactics to isolate, degrade, exploit and control victims [Stark 2007]. Others may perceive the cause of the violence as relationship conflict or couple fighting and, on that basis [Hunter 2006], may, for example: emphasise shared responsibility for children; encourage parties to reconcile; make mutual protection orders for a limited period allowing the parties time to either reconcile or separate; or recommend an exchange of unenforceable undertakings where the parties promise they will be of good behaviour towards one another and not commit domestic and family violence [Jordan & Phillips 2013]. Some judicial officers demonstrate inconsistent approaches to the protection of children exposed to domestic and family violence by including conditions in protection orders allowing perpetrators to exercise child contact, or by granting cross orders applied for by perpetrators in an attempt to ensure that their rights in Family Court parenting proceedings are not prejudiced [Wakefield & Taylor 2015]. These judicial perceptions of domestic and family violence may have the effect of minimising or denying the experience and impact of violence for victims and children and may overlook the risks of future violence.

Over time, judicial understanding of domestic and family violence is developing [Bradley J 2012], and there is growing acknowledgement of its complexity and diversity [Altobelli J 2009]. There is a range of behaviours demonstrating 'significant variables' that may be useful in identifying domestic and family violence. [Altobelli J 2009] While this cannot be a 'one size fits all approach' [Altobelli J 2009], reaching a common understanding of the scope of domestic and family violence is key to developing consistent and effective judicial responses [ALRC/NSWLRC 2010]. This bench book underlines a number of different forms of domestic and family violence. Where a person engages in a pattern of behaviours in order to control another person, this pattern of behaviour may be referred to as **coercive control**. A range of behaviours may underpin domestic and family violence, any of which may be part of a pattern of behaviour: the list is not exhaustive, and some behaviours may overlap or be understood in more than one way and require a range of judicial responses.

Reported forms of domestic and family violence, actual or threatened, include:

- Physical violence and harm
- Sexual and reproductive abuse
- Economic and financial abuse
- Emotional and psychological abuse
- Cultural and spiritual abuse
- Following, harassing and monitoring
- Social abuse
- Exposing children to domestic and family violence
- Damaging property
- Animal abuse
- Systems abuse
- Forced marriage
- Dowry abuse

Who it affects:

Domestic and family violence can affect any person irrespective of age, gender, socio-economic status or cultural background. It is widely acknowledged however that women are significantly more likely than men to experience domestic and family violence [ANROWS 2018].

The **range of relationships** within the legislative scope of domestic and family violence also varies across Australia [The National Council to Reduce Violence against Women and their Children 2009]. In all jurisdictions a relationship includes that between current or former intimate partners, and extends to relationships—more prevalent within Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities—between immediate and extended families and other communal or extended kinship relationships of mutual obligation and support.

The primary role of judicial responses to domestic and family violence is to assess and respond to risk and promote the safety of those at the risk of harm.

Certain groups within the community may be at greater risk of experiencing domestic and family violence, may be more vulnerable to its impacts, and may require different judicial responses according to their specific issues and needs. Some people may belong to multiple groups and, as a consequence, may experience heightened risk or vulnerability. These groups may include but are not limited to:

- Women
- People with children
- Children

Young people

Older people

Pregnant people

People with disability and impairment

People with mental illness

People from culturally and linguistically diverse backgrounds

Aboriginal and Torres Strait Islander people

People living in regional, rural and remote communities

People affected by substance misuse

People who are gay, lesbian, bisexual, transgender, intersex and queer

People with poor literacy skills

Victims as (alleged) perpetrators