

**IN THE FAIR WORK COMMISSION**

*Fair Work Act 2009*

s.156 – Four Yearly Review of Modern Awards

AM2015/1

**UNPAID FAMILY AND DOMESTIC VIOLENCE LEAVE  
SUBMISSIONS IN REPLY, AND RESPONSE TO BACKGROUND PAPER,  
OF THE AUSTRALIAN COUNCIL OF TRADE UNIONS**

**DATE:** 2 October 2017

**D No:** 113/2017

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## Introduction

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1. These reply submissions are filed in accordance with the orders of the Full Bench dated 3 August 2017, and pursuant to the Background Paper published by the Fair Work Commission (**FWC**) on 15 September 2017. The Background Paper identified five key elements to be considered in the preparation of a model term, and proposed three model terms for family and domestic violence leave. The parties are asked to address nine questions in the Background Paper, and to provide comments on the proposed model terms.
2. The five elements identified in the Background Paper overlap with several of the issues between the parties as set out in the primary submissions of the Australian Industry Group (**AIG**), the Australian Chamber of Commerce and Industry (**ACCI**) and the Australian Meat Industry Council (**AMIC**).<sup>1</sup> Accordingly, in these submissions, the ACTU:
  - (a) first addresses the employer parties' submissions on the question of whether there should be a clause in modern awards providing unpaid leave for family and domestic violence, and the question from the FWC as to which elements should be included in the term;
  - (b) second, addresses the questions arising in respect of each of the five elements identified in the Background Paper, and replies to matters raised by the employer parties which are relevant to each element.

### **The overarching question: should there be a modern award clause providing for unpaid family and domestic violence leave?**

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3. The ACTU relies on its earlier submissions, including those dated 1 September 2017, in support of its position that there should be a modern award clause providing for family and domestic violence leave.
4. In *4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause* [2017] FWCFB 3494 (**Majority Decision**), the Full Bench made a number of findings as to the inadequacy of the existing safety net for employees experiencing family and domestic violence, and then expressed a preliminary view that there should be an entitlement to unpaid family and domestic violence leave in modern awards.

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<sup>1</sup> As to the submissions of the National Road Transport Association, see paragraph 7 below.

5. While confirming that the views expressed in the Majority Decision are not consistent with their submissions made during the hearing, the employer parties have nonetheless addressed the content of any unpaid family and domestic violence leave term.
6. However, the AIG submitted that the provision of assistance to employees affected by family and domestic violence is a matter more appropriately dealt with at the enterprise level. This submission fails to address how leaving such matters to bargaining is consistent with the findings of the Majority Decision that the safety net is not currently meeting the needs of employees. The ACTU agrees with the submission made by ACCI that it is not appropriate that the (newly constituted) Full Bench undertake a rehearing of the matters on which the Majority Decision based its preliminary opinion.<sup>2</sup>
7. The National Road Transport Association (**NRTA**) has made submissions opposing the inclusion of unpaid family and domestic violence leave in either the *Road Transport and Distribution Award 2010* or the *Road Transport (Long Distance Operations) Award 2010*. The ACTU understands that the Full Bench will first determine whether a model term should be inserted into all modern awards, and then deal with any applications to exclude the model term from specific awards in “further proceedings after the resolution of a model term”.<sup>3</sup> The ACTU reserves its rights to address the submissions of the NRTA with respect to the relevant awards following the determination of any model term.

#### ***Jurisdiction to extend the NES entitlement***

8. At Part B of its submissions dated 1 September 2017, the ACTU set out its view that the Full Bench does not have jurisdiction to extend the NES entitlement to personal/carer’s leave to incorporate family and domestic violence leave. This view appears to be unanimously held by all parties who filed submissions addressing this question on or before 1 September 2017.<sup>4</sup> For these reasons, we have not addressed those parts of the model terms or Background Paper which relate to the proposed extension of the NES entitlement to personal/carer’s leave to family and domestic violence leave. Further, because the model terms were drafted on the assumption that the FWC has jurisdiction to extend the NES entitlement, we have not addressed the model terms themselves, but have addressed the elements of the terms in the body of these submissions.

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<sup>2</sup> ACCI submissions, [11].

<sup>3</sup> [2017] FWCFB 4047, [18].

<sup>4</sup> Dr Paul Harpur and the Australian Public Service Commission filed submissions on 14 August 2017 and 31 August 2017 respectively, but did not address this question.

***Question 1: Do the elements set out by the FWC at paragraph 5 of the Background Paper cover the elements necessary for a model term to give effect to the preliminary views? Are there any additional elements that should be considered for inclusion in a model term?***

9. The ACTU agrees that the elements set out by the FWC in the Background Paper cover the elements necessary for a model term to give effect to the preliminary views.

**Element 1 The definition of ‘family and domestic violence’**

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10. A model award term should contain a definition of family and domestic violence. While family and domestic violence clauses without any definition have been operating in workplaces for some time, the inclusion of a definition in a model award term is appropriate and necessary to provide clarity to both employers and employees.
11. The definition of ‘family and domestic violence’ needs to be carefully delineated. Paragraph 12 of the Background Paper conflates questions about the definition of family and domestic violence with questions about eligibility and access to the entitlement. These are related but separate matters. For example, the question of whether or not leave should be limited to circumstances dealing with the ‘immediate impact’ of violence is more appropriately addressed under Question 3, which deals with the purpose for which leave may be taken.

***The comments by the Full Bench in the Majority Decision***

12. In the Majority Decision, the Full Bench expressed some concerns about the scope of the ACTU’s definition of family and domestic violence. Those concerns can be categorised as follows:
- (a) The need for the definition to include reference to the impact or effect of family and domestic violence on employees;
  - (b) The extension of the clause to conduct perpetrated against employees by non-resident family members and/or household members who are not related to the employee;
  - (c) The availability of the entitlement to employees who are subjected to one-off instances of family or domestic violence.
13. These matters are addressed below.

(a) The need for the definition to include reference to the impact or effect on employees of family and domestic violence

14. The ACTU maintains that it is not necessary to specify the need for an impact or effect of family and domestic violence on an employee, because the relevant impact or effect for the purposes of the entitlement is evidenced by the need for leave. However, the ACTU acknowledges that most (but not all) existing workplace and legislative definitions considered in this submission include reference to the impact or effect of family and domestic violence on a person. An amendment in the following or similar terms to the ACTU draft clause would address this issue:

*... any violent, threatening or abusive behaviour used by a person ~~against~~ to control or dominate a current or former partner or member of the person's family or household.*

15. This formulation is simple, easy to understand, and consistent with other concise definitions already operating in workplaces.

(b) The extension of the clause to conduct perpetrated against employees by non-resident family members or by household members who are not 'related' to the employee

16. As set out in the ACTU's submissions dated 1 September 2017, there is no justification for excluding employees subjected to violence by non-resident family members, or by household members who are not 'related', from accessing a new modern award entitlement to leave. Such limitations would be inconsistent with well-established and widely accepted definitions of family and domestic violence.

*Non-resident family members*

17. As stated in the Commission's Background Paper at paragraph 10, 'family' violence is often identified by reference to the relationship between the perpetrator and the person subjected to the violence, and 'domestic' violence is identified by the living arrangements of the people involved.

18. The Australian Bureau of Statistics noted in 2013:

The types of relationships [in which family violence occurs] also vary and can include family and co-habitation, while some are specific to family violence legislation, such as spouse and de-facto relationships. These definitions can be extended to include other relationships such as cultural and kinship relationships, foster care relationships, *blood relatives who do not co-habit* or care

situations, such as elder abuse. This publication includes recognition of these different facets of behaviour and relationships that comprise family and domestic violence.<sup>5</sup>

19. No state or territory legislation requires a family member perpetrating violence to be resident with the person subjected to the violence.

*Non-related household members*

20. The ACTU's proposed definition is intended to cover household members who are not related to the employee, including those in cultural or kinship relationships, foster care relationships or informal care relationships. Many state and territory laws extend to such relationships (see Attachment A) and a number of enterprise agreement clauses (see for some examples the table at paragraph 29 of these submissions) extend to violence perpetrated by one household member against another.
21. The amendment to the ACTU's definition proposed at paragraph 14 may address the Full Bench's concern in this regard, because it clarifies that the household member must be using violent, threatening or abusive behaviour *to control or dominate* another member of their household. There is no reason why an employee subjected to violence in such a situation should be prevented from accessing family or domestic violence leave to deal with the consequences of such violence.

(c) The extension of the entitlement to employees who are subjected to one-off instances of family or domestic violence

22. It is not fair or reasonable to exclude one-off instances of family or domestic violence from the scope of the model award term. Part of the purpose of any entitlement to leave is to support employees affected by family and domestic violence to seek assistance including by removing themselves from contact with the perpetrator. It would be a perverse outcome if *repeated* violence was a prerequisite to the entitlement to take leave. For example, it would clearly not be fair or reasonable to prevent an employee from accessing leave to make safety or relocation arrangements where the first violent incident experienced was at the more extreme or dangerous end of the scale – such as physical harm or threats to kill.
23. Moreover, there are real and practical problems with the supervision and enforcement of any such limitation. Employers and employees cannot be expected to know if the violence will be repeated or was a one-off incident.

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<sup>5</sup> ABS, 4529.0 – Defining the Data Challenge for Family, Domestic and Sexual Violence, 2013. Emphasis added.

24. While family and domestic violence is often a repeated pattern of conduct, this is not always the case. No existing legislative or industrial definition limits family and domestic violence to repeated conduct to the ACTU's knowledge, and a number of definitions in the criminal and family jurisdiction expressly include one-off incidents in their definitions of family and domestic violence.<sup>6</sup>

***Question 2: Are there any other definitions of family and domestic violence that the Commission should consider?***

25. The Background Paper correctly observed that there is currently no single agreed national definition of family and domestic violence. As noted in the Background Paper at [15], in 2010 the Australian Law Reform Commission (ALRC) proposed a common definition for Commonwealth laws affecting people experiencing family and domestic violence.<sup>7</sup> To date this recommendation has not been implemented. However, despite the lack of a single agreed set of words, there are a number of common elements that appear in the various definitions of family and domestic violence across different Australian jurisdictions.<sup>8</sup>
26. In addition to the definitions in Victorian, Queensland, and Commonwealth legislation considered in the Background Paper, the ACTU recommends that the FWC consider:
- (a) Definitions contained in private sector industrial instruments, at paragraphs 27 to 30 below;
  - (b) Definitions contained in public sector industrial instruments, at paragraphs 31 to 37 below;
  - (c) Definitions contained in state and territory criminal and family legislation as set out in **Attachment A**.

(a) Definitions in private sector instruments

27. There are a number of existing definitions of 'family and domestic violence' in current enterprise agreements and workplace policies which are already operating to provide employees with access to family and domestic violence leave and other support. A number of these were tendered in the hearing of this matter.

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<sup>6</sup> For example, s 4AB of the [Family Law Act 1975](#) (Cth) includes "**an** assault" or "**a** sexual assault"; and s 8 of the [Intervention Orders \(Prevention of Abuse\) Act 2009](#) (SA) provides that "**An act** is an act of abuse against a person if it results in or is intended to result in— ..." (emphasis added).

<sup>7</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response (ALRC Report 114)*, 11 November 2010.

<sup>8</sup> [Australian Government Solicitor, Domestic Violence Laws in Australia \(2009\)](#), at [1.15] and [1.22].

28. All of the clauses and policies before the Full Bench contain broad definitions of family and domestic violence. No evidence was put before the Commission to suggest that broad definitions of family and domestic violence were unworkable, and there was no suggestion that the clauses in operation were not operating effectively. In fact, the only employers to appear during the hearing gave evidence to the Full Bench that the clauses were workable and appropriate.<sup>9</sup> As such, the Commission should give careful consideration to these terms.
29. A table setting out the operational clauses in evidence before the Commission and the definitions of family and domestic violence they adopt is set out below:

Enterprise Agreement/Policy	Clause wording
<p>PWC – Family and Domestic Violence and Sexual Assault Support Policy 10 days paid leave for all but casual employees</p> <p><i>Annexure to Statement of Debra Eckersley - Exhibit S1</i></p>	<p><i>For the purposes of this policy <b>family and domestic violence</b> means behaviour by your current or former intimate partner (of the same or opposite sex) or a current or former relative towards you that is physically, sexually, emotionally, psychologically or economically abusive, threatening or coercive or in any other way controls or dominates you and causes you to fear for your safety or wellbeing or the safety or wellbeing of another person.</i></p> <p>[Note the Policy also covers sexual assault, which is a defined term in the policy.]</p>
<p>Spotless Group Holdings Limited – Domestic Violence Policy Access to flexible work</p> <p><i>Annexure to Statement of Brad Gandy – Exhibit B10</i></p>	<p><b>Domestic Violence</b> refers to any acts of violence which occur between people who have, or have had, an intimate relationship. The term domestic violence is used to cover a range of behaviours used to exert power and control over others which cause the victims to live in fear. It may include physical, sexual, emotional or financial abuse, forced isolation, control, intimidation, threats or stalking. Examples of acts which may be considered domestic violence include:</p> <ul style="list-style-type: none"> <li>• Controlling or limiting a partners finances or how they spend their money;</li> <li>• Controlling or limiting the contact a partner has with family, friends or colleagues;</li> <li>• Forced or unwanted sex, whether married, living together or living separately;</li> <li>• Forced or unwanted sex, whether married, living together or living separately;</li> <li>• Threatening to harm children, pets or property;</li> <li>• Verbal abuse, including constant criticism, put-downs or insults;</li> <li>• A single act of hitting, slapping punching, pushing or shoving;</li> <li>• Stalking;</li> <li>• The perpetrator interfering with the victim’s work by</li> </ul>

<sup>9</sup> See evidence of Debra Eckersley, Transcript 17 November 2016, PN1898, PN1854, and PN1926; Witness Statement of Debra Eckersley dated 20 June 2016, at [33]; Submissions of the Victorian Government, Transcript 1 December 2016, PN2773–2775.



Enterprise Agreement/Policy	Clause wording
	<p><i>contacting the workplace or bothering colleagues.</i></p> <p><b>Family violence</b> is the broader term used to describe the same kind of behaviours as domestic violence between family members as intimate partners.</p>
<p>Australian Defence Apparel Pty Ltd Enterprise Agreement 2015 (AG2015/812) – Clause 28</p> <p>5 days FDV leave</p> <p><i>Annexure to Statement of Michelle O’Neil – Exhibit B14</i></p>	<p>As defined in the <b>Family Violence Protection Act 2008 (Vic)</b> as amended from time to time.</p>
<p>Geofabrics Australasia Pty Ltd (South Queensland Manufacturing) Enterprise Agreement 2015 (AG2016/225) – Clause 6.5</p> <p>5 days leave - 2 paid and 3 unpaid</p> <p><i>Annexure to Statement of Michelle O’Neil – Exhibit B14</i></p>	<p>As defined in the <b>Domestic and Family Violence Protection Act 2012 (Qld)</b> as amended from time to time.</p>
<p>Blundstone Australia Pty Ltd (Melbourne Site) – TCFUA Enterprise Agreement 2015 (AG2015/3583) – Clause 25</p> <p>10 days paid leave</p> <p><i>Annexure to Statement of Michelle O’Neil – Exhibit B14</i></p>	<p>As defined in the <b>Family Violence Protection Act 2008 (Vic)</b> as amended from time to time.</p>
<p>Blundstone Australia Pty Ltd (Hobart Site) – TCFUA Enterprise Agreement 2015 (AG2015/3710) – Clause 24</p> <p>10 days paid leave</p> <p><i>Annexure to Statement of Michelle O’Neil – Exhibit B14</i></p>	<p>As defined in the <b>Family Violence Protection Act 2008 (Vic)</b> as amended from time to time.</p>
<p>These local government agreements provide access to 20 days paid leave and define family and domestic violence in a similar manner:</p> <p><a href="#">Surf Coast Shire Council Enterprise Agreement No.7 2010-2013</a> (AG2010/19899) – Clause 4.3</p> <p>Alpine Shire Council Enterprise Agreement 2013 (AG2013/12733) – Clause 35</p> <p>Ballarat City Council Enterprise</p>	<p><i>The Council accepts the definition of Family violence as stipulated in the <b>Family Violence Protection Act 2008 (Vic)</b>. The definition of family violence includes physical, sexual, financial, verbal or emotional abuse by a family member.</i></p>

<b>Enterprise Agreement/Policy</b>	<b>Clause wording</b>
<p>Agreement No.6, 2013 (AG2014/4093) – Clause 31</p> <p>Casey City Council Enterprise Agreement 2013 (AG2013/9539) – Clause 19</p> <p>Greater Bendigo City Council Enterprise Agreement (AG2015/3476) – Clause 9.17</p> <p>City of Greater Geelong Enterprise Agreement (AG2015/40) – Clause 6.12</p> <p>Hobsons Bay City Council Enterprise Agreement (AG2013/11010) – Clause 17</p> <p>Loddon Shire Council Enterprise Agreement No.7 – 2014 (AG2014/5932) – Clause 10.9</p> <p>Manningham City Council Enterprise Agreement 6, 2014 (AG2014/10524) – Clause 4.20</p> <p><i>Agreements listed at Annexure 1 to Statement of Michelle Jackson – Exhibit B8</i></p>	

30. There are also a number of other private sector enterprise agreements or workplace policies which include a short and simple definition of family and domestic violence for the purposes of providing an entitlement to leave or other support. The ACTU provides the following by way of example:

<b>Enterprise Agreement/Policy</b>	<b>Definition</b>
<p><a href="#"><u>UNSW Australia (Professional Staff) Enterprise Agreement 2015</u></a> – Clause 39.4 (b)</p> <p>10 days paid leave</p>	<p>The University recognises that domestic violence includes physical, financial, verbal or emotional abuse by a current or former family/household member.</p>
<p>Telstra – <i>Family and Domestic Violence Support Policy</i></p> <p>10 days paid leave</p>	<p>For the purpose of this policy, family and domestic violence is defined as violence by a family member or current or former intimate partner (of the same or opposite sex). This may involve attempts to gain and/or maintain power and control over another through a range of abusive behaviours (including, but not limited to physical, sexual, emotional or psychological abuse).</p>
<p><a href="#"><u>ABC Enterprise Agreement 2016-2019</u></a> – Clause 41.1.6(b)</p> <p>7 days paid leave</p>	<p>"Family violence" is abusive and/or violent behaviour used by one person to control and dominate another person or persons within a domestic relationship and may include physical, sexual, financial, verbal or emotional abuse by a family or household member.</p>

Enterprise Agreement/Policy	Definition
<a href="#">Mission Australia Service Delivery Enterprise Agreement 2016-2019</a> – Clause 67 3 days paid leave	For the purposes of this section, domestic or family violence is defined as any violence between family members or where there is an interpersonal relationship, including current or former partners, whenever and wherever the violence occurs ("Domestic and Family Violence"). Such violence may include physical, sexual, emotional, financial, psychological or spiritual abuse.
<a href="#">Xavier College Enterprise Agreement 2016</a> – Clause 23 5 days paid leave	For the purpose of this clause, family and domestic violence is defined as any violent, threatening or other abusive behaviour by a person against a member of the person's family or household (current or former).

(b) Definitions in public sector instruments

31. The Commission should also have regard to existing terms providing family and domestic violence leave to state and territory public service employees. The governments of the ACT, South Australia, Victoria, Queensland and Western Australia provide access to varying amounts of paid leave to public sector employees for family and domestic violence purposes. All jurisdictions except for South Australia define family and domestic violence by direct reference to the relevant legislation in that state or territory.
32. A formal entitlement to 20 days/shifts of paid leave for domestic violence purposes was included in *ACT Public Service Enterprise Agreements* from 2013.<sup>10</sup> An example can be found at clause F.22 of the [ACT Public Sector Health Professional Enterprise Agreement 2013-2017](#). For the purposes of the entitlement, the Agreement adopts the definition of domestic violence in the *Domestic Violence and Protection Orders Act 2008* (ACT).
33. From 4 February 2013, the Tasmanian Government authorised State Service officers and employees 'experiencing family violence' to access paid personal leave for matters arising from family violence, as well as other support. The types of conduct and relationships covered for the purpose of eligibility are defined by reference to the *Family Violence Act 2004* (Tas) and the *Relationships Act 2003* (Tas).<sup>11</sup>
34. From 25 November 2015, the Queensland Government provided 10 days paid leave for public service employees affected by domestic and family violence. A Directive of the Commission Chief Executive gave effect to the announcement<sup>12</sup> and an amendment to the [Industrial](#)

<sup>10</sup> [ACT Government, Leave for domestic violence purposes advice in the ACT Public Service, 8 August 2016](#), at [2].

<sup>11</sup> Tasmanian Government, [Employment Direction No. 28, Family Violence – Workplace Arrangements and Requirements, 4 February 2013](#).

<sup>12</sup> Queensland Government, [Directive 4/15 - Commission Chief Executive Directive: Support for employees affected by domestic and family violence, 25 November 2015](#)

[Relations Act 2016 \(Qld\)](#) passed on 30 November 2016 made the entitlement law.<sup>13</sup> Under the Directive and the Act, domestic violence is given the same meaning as it has in the *Domestic and Family Violence Protection Act 2012* (Qld).

35. In November 2015, the South Australian Government announced a whole of government policy facilitating the provision of up to 15 days special leave with pay for domestic/family violence purposes. Guidelines issued by the Commissioner for Public Sector Employment define domestic/family violence in the following way:

*“Domestic/family violence” is a pattern of abusive behaviours by one person against another, within an intimate relationship such as marriage, domestic partnerships cohabitation, dating or within a family including across generations. Domestic/family violence takes many forms including physical and sexual violence, verbal abuse, threats and intimidation, emotional and social abuse, economic deprivation and property damage. The abusive pattern of behaviour is aimed at power and control through fear.*<sup>14</sup>

36. In August 2015, following the findings of the Victorian Royal Commission into Family Violence, the Victorian Government announced that a ‘best practice model clause’ providing 20 days paid family violence leave would be developed for inclusion in all Victorian public sector enterprise agreements. The provision was included in the [Victorian Public Service Enterprise Agreement 2016](#), which commenced operation on 18 May 2016. The provision adopts the definition of family and domestic violence in the *Family Violence Protection Act 2008* (Vic).

37. On 18 August 2017, the Premier of Western Australia announced that a new model clause providing 10 days paid family and domestic violence leave would be incorporated into public sector industrial instruments as they are replaced.<sup>15</sup> Clause 1.4 of the model clause defines family and domestic violence as follows:

*The meaning of family and domestic violence is in accordance with the definition in the Restraining Orders Act 1997 (new Section 5A) as amended by the Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016.*

*(b) To avoid doubt, this definition includes behaviour that:*

*(i) is physically or sexually abusive; or*

*(ii) is emotionally or psychologically abusive; or*

*(iii) is economically abusive; or*

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<sup>13</sup> Division 7, ss 6 and 52-54

<sup>14</sup> [Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave, 1 July 2016](#), p 73; [Government of South Australia, Guideline of the Commissioner for Public Sector Employment - Domestic and Family Violence, 10 August 2016](#), p 4.

<sup>15</sup> [Government of Western Australia, Premier’s Circular: Family and Domestic Violence – Paid Leave and Workplace Support, 18 August 2017](#).

*(iv) is threatening; or*

*(v) is coercive; or*

*(vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or*

*(vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.*

***Conclusions on the definition of ‘family and domestic violence’***

38. A model term should include a definition of family and domestic violence, but it is not necessary that the definition be lengthy or complex. The definition should be broad and inclusive, consistent with existing widely accepted, well-established and workable definitions of the types of conduct and relationships that characterise employees’ experiences of family and domestic violence.
39. While various inquiries and organisations have discussed some complexities involved in defining family and domestic violence for various purposes, including the ALRC and the ABS, it is important to recognise that these challenges were raised in particular contexts; namely, the difficulties of achieving statistical rigour in the case of the ABS, and the need to achieve consistency and clarity for the purposes of various criminal and family law regimes in the case of the ALRC. The Commission does not confront these particular challenges. The definition in the modern award need only be simple, workable, easy to understand and not unreasonably burdensome on workplaces.
40. It is important to keep in mind that the purpose of a definition of family and domestic violence in a model award term is simply to provide access to authorised leave in certain circumstances.<sup>16</sup> Employers should not be required to conduct an investigation into an employee’s personal circumstances by reference to a complex definition in order to determine eligibility for leave.
41. The definition proposed at paragraph 14 above is appropriate for inclusion in a model award term because it is easy to understand and consistent with other concise definitions already operating in workplaces.
42. Alternatively, the Commission could give consideration to defining ‘family and domestic violence’ by reference to an existing legislative definition of family and domestic violence, ‘as amended from time to time’, as a number of state, territory and local governments have

done in enterprise agreements and policies, as opposed to including a lengthy, modified legislative definition in the text of the clause itself.

43. A further option is the amended *Family Law Act 1975* definition proposed by the AMIC. While this approach has some merit, the ACTU suggests the following amended wording:

*Family or domestic violence means violent, threatening or other abusive behaviour by a person that coerces or controls a current or former member of the person's family (~~the family member~~) or household (the family or household member), or causes the family or household member to be fearful.*

44. A model term with a broad and inclusive description of 'family and domestic violence' is workable, simple, and easy to understand. By way of analogy, there is no detailed definition of 'personal illness', 'personal injury' or 'unexpected emergency' in Division 7 of the National Employment Standards, which provides access to 10 days paid personal and carer's leave for certain purposes. There is no requirement for an employer to investigate the nature of an employee's personal illness or injury. On the contrary, laws and policies generally protect the privacy of employees in this regard. Instead, the NES entitlement relies on the provision of reasonable evidence to confirm an employee's eligibility for personal/carer's leave, and guard against misuse. Access to family and domestic violence leave should operate in the same manner. An employer who questions the legitimacy of an employee's request for leave should be entitled to request reasonable evidence confirming that the leave is for an activity that meets the requirements of the clause. An extensive and detailed definition of family and domestic violence is not necessary to facilitate such a process.

## **Element 2 The purpose for which leave is taken, and who may access leave**

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### *The purpose for which leave is taken*

45. At paragraph 11 above, the ACTU expressed the view that the definition of 'family and domestic violence' is related to but separate from the question of whether leave should be limited to circumstances dealing with the immediate impact of violence. This issue was described in the submissions made during the hearing of this matter as the 'causal' or 'connection' requirement.
46. In the Majority Decision, the Full Bench addressed the casual or connection point by stating that "the leave must be necessary to dealing with the family and domestic violence", and that "the provision of leave for family and domestic violence should be limited to dealing with the immediate impact of such violence such as finding alternative accommodation or attending

urgent court hearings”.<sup>17</sup> ‘Immediate impact’ in this context was used in recognition of the fact that exposure to violence can have short and long-term consequences that require assistance.

47. In response to these comments, the ACTU accepted in its submissions dated 1 September 2017 that there must be a connection between the employee’s experience of family and domestic violence and the requirement for leave during working hours.<sup>18</sup> The ACTU proposed a form of words to the effect that the employee’s entitlement to leave is triggered by there being a *requirement* to take leave for the specified purposes. Forms of words such as ‘urgent’ and ‘immediate’ ignore the temporal lag between a person’s experience of violence and the availability of services in respect of that violence and may have unintended consequences. For example, an employee making an application for an intervention order may not have her application listed in Court for several weeks. The employee clearly has a legitimate *requirement* to take leave, even though the hearing is not ‘immediately’ connected to her experience of violence.
48. The ACTU maintains its position that it is appropriate and sufficiently clear that the model term state that the employee must *require* leave for the purposes set out in the clause, in order to be eligible to take leave. However, a useful example of an alternative approach is that taken by the Western Australian government. The Model Clause<sup>19</sup> provides:

***Access to family and domestic violence leave***

*In accordance with the following subclauses, an employee, including a casual employee, may make application for leave to deal with activities related to family and domestic violence. The employer will assess each application and give consideration to the personal circumstances of the employee seeking the leave.*

*Such activities related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and **other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.***

***Interaction with NES entitlement to paid personal/carer’s leave***

49. The employer parties submit that unpaid family and domestic violence leave should not be available where paid personal/carer’s leave, or unpaid carer’s leave, can be accessed.<sup>20</sup>

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<sup>17</sup> Majority Decision, [114].

<sup>18</sup> See ACTU submissions dated 1 September 2017 at [28] and proposed form of words at [22].

<sup>19</sup> See note 15 above.

<sup>20</sup> AIG submissions, [20] and [31]; ACCI submissions, [36].

50. The ACTU maintains its position that access to family and domestic violence leave should be in addition to existing entitlements, and there should be no requirement to exhaust existing entitlements, where available, before being able to access unpaid leave. The purpose of an entitlement to family and domestic violence leave is at least in part to empower employees subjected to family and domestic violence to manage their financial situations as they see fit. Providing employees with a choice as to which form of leave they can use does not disadvantage employers, and enables those employees with paid leave to manage their leave balances in a manner appropriate for their circumstances.

***Question 3: Parties are asked to consider whether a list of situations in which an employee may access family violence leave should be included in a model term, and if so, which circumstances might be included in such a list?***

51. A model term should include a list of situations in which an employee may access family and domestic violence leave. The inclusion of a list of situations serves two purposes. First, a list will clarify for employees and employers the circumstances in which the entitlement is available. Second, a list will contribute to employers and employees' understanding of why such an entitlement is necessary.
52. The circumstances that should be included in such a list are those at paragraph 22 of the ACTU's submissions dated 1 September 2017, which cover legal proceedings, seeking professional or government help, housing and relocation matters, and other relevant circumstances. There appears to be consensus among those parties who have expressed a view that any list of circumstances should include at least attendance to legal matters including police, court hearings, and meetings with lawyers; some interaction with service providers such as government services; and to meet housing needs. However, in order for the entitlement to be properly responsive to the needs of employees, it is important that the list not be exhaustive, because the needs of people subjected to family and domestic violence can be unpredictable. The inclusion of a catch-all provision in the list of situations in which leave can be accessed can be balanced by appropriately framed definitions and eligibility requirements.

***Question 4: Parties are asked to give consideration to the most appropriate terminology for inclusion in the model term***

53. Consistent with the findings of the United Nations agencies group, the appropriate terminology for inclusion in the model term is "person [employee] who has experienced violence". 'Victim' should not be used.



**Question 5: The model terms have been drafted on the basis that the perpetrators of family violence would not be entitled to take family violence leave. Does any party take a different view?**

54. The ACTU's position is that family and domestic violence leave should be available only to employees subjected to family and domestic violence, not those perpetrating it.

**Question 6: If the entitlement under the NES to paid personal/carer's leave is extended to allow employees to use it if they are experiencing family violence, should casual employees be able to access this entitlement? Should casual employees be able to access unpaid family violence leave?**

55. The ACTU's position, consistent with the submissions of the employer parties, is that the FWC does not have jurisdiction to extend personal or carer's leave to incorporate family and domestic violence leave. Accordingly, we have directed our answer only to the second part of Question 6.
56. Unpaid family and domestic violence leave is properly characterised as an authorised absence from work in specific circumstances. This characterisation is a complete answer to the concerns of AMIC about the unpredictability of the casual roster.<sup>21</sup> Regardless of the *ad hoc* nature of some casual employment, casual employees do receive some notice of when they are required for work. Access to unpaid FDV leave allows casual employees in very limited circumstances to be absent from work on an authorised basis.
57. The AIG rely on the casual loading as justification for excluding casual employees from unpaid family and domestic violence leave.<sup>22</sup> The casual loading compensates casual employees for paid leave and other entitlements with a monetary value.<sup>23</sup> It is not relevant to the question of unpaid leave. The ACTU agrees with the submissions of ACCI that casual employees are entitled to statutory unpaid leave, for there is little in this case to justify a departure from the norm.<sup>24</sup> This is particularly so given that 51 per cent of award-covered women (who are more likely than men to access family and domestic violence leave) are employed on a casual basis.<sup>25</sup>

### **Element 3 Quantum and accrual**

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58. Unpaid family and domestic violence leave should be responsive to the needs of employees dealing with matters arising from their experience of family and domestic violence. It is a

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<sup>21</sup> AMIC submissions, [95]–[101].

<sup>22</sup> AIG submissions, [26].

<sup>23</sup> See *Re Metal, Engineering and Associated Industries Award*, 29 December 2000, Print T4991 at [198]–[199]; followed in *Award Modernisation* [2008] AIRCFB 1000, [49] and see *Annual Wage Review 2009–10* [2010] FWAFB 4000, [398].

<sup>24</sup> ACCI submissions, [54].

<sup>25</sup> See ACTU submissions dated 28 November 2016, [143]–[144].

needs-based entitlement. In this regard, the ACTU agrees with the characterisation by ACCI in its submissions of various unpaid leave entitlements in the *Fair Work Act 2009* (Cth) as ‘event-based’,<sup>26</sup> and that the unpaid leave provisions in the Act are an appropriate guidance as to the correct characterisation of unpaid family and domestic violence leave.

59. The ACTU accepts that an industrial entitlement of this nature should be properly framed, but refers to and relies on its submissions dated 1 September 2017 that eligibility, notice, and evidentiary requirements function as appropriate parameters.
60. The AIG submits that unpaid leave should be limited to two days per year for full-time employees with a pro rata entitlement for part-time employees. Similar proposals are made by ACCI<sup>27</sup> and the AMIC.<sup>28</sup> In support of this proposal, the AIG rely on the two day entitlement to unpaid carer’s leave in s 102 of the FW Act. However, the AIG fail to acknowledge that this entitlement is supplementary to, and only available after the full use of, ten days paid personal or carer’s leave. Further, the two day unpaid carer’s leave entitlement in s 102 of the FW Act is a *per occasion* leave, and not capped at two days per annum as proposed by the AIG. The AIG also refer to the two day entitlement to compassionate leave in s 104 of the FW Act. As with unpaid carer’s leave, this entitlement is calculated on a per occasion basis, not a per annum basis. Further, compassionate leave is paid leave per s 106 of the FW Act.
61. ACCI states in their submissions at paragraph 35(a) that statutory unpaid leave is “overwhelmingly limited in quantum”. This is not an accurate assessment. Of the four forms of leave referred to ACCI’s submission (carers leave, adoption leave, community service leave and unpaid parental leave) one is limited to two days per occasion, one is limited to two days per year, one is unlimited, and one is a 12 month period of leave or longer by agreement.
62. The AIG refer to research cited by the ACTU in its outline of submissions filed on 1 June 2016 which found that the average time off for unpaid family and domestic violence leave was 19 hours. The AIG state that this research, should it be relied on by the FWC, “does not support a finding that any unpaid leave entitlement should exceed two days per annum”.<sup>29</sup> In fact, the research appears to support a finding that the average time required by persons surveyed was over two days. And given the high rates of part-time work among women,<sup>30</sup> on the AIG’s proposal such employees would be entitled to one day or less per year, which is not supported or borne out by any evidence cited by the AIG.

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<sup>26</sup> ACCI submissions, [35] (and prior paragraphs).

<sup>27</sup> ACCI submit that “up to 2-3 days per annum” is appropriate: see [38].

<sup>28</sup> AMIC submit that between one and two days per year of employment is appropriate: [47].

<sup>29</sup> AIG submissions, [15].

<sup>30</sup> See *Re Fire Fighting Industry Award 2010* [2016] FWCFB 8025, [52]–[53] and the citations thereto.

63. The AIG state that a leave entitlement of more than two days per annum “cannot be seen as necessary to meet the modern awards objective”,<sup>31</sup> and “should not apply for an employee with less than 12 months of service”.<sup>32</sup> Both statements are bare assertion, unsupported by evidence or submissions. We note that the AMIC agree that any unpaid leave should be available at the start of the employment year, for reasons of consistency and fairness.<sup>33</sup>
64. The submissions of the AMIC in support of their proposal that leave be capped at one or two days do not assist the Commission. They are discursive rather than analytical, unsupported by any evidence, and fail to address the extensive evidence and literature on these matters that was tendered during the proceeding (including, for example, the findings of the Victorian Royal Commission into Family Violence). It is not necessary to address every point made; two examples will suffice:
- (a) It is not a safe assumption that lawyers will be able to offer appointments outside of rostered hours.<sup>34</sup> Community legal centres have limited resources and are unlikely to be able to see clients at any hour of the day. Similarly, lawyers in private practice may not be available after business hours due to family commitments.
  - (b) The statement that “alternative accommodation issues could be set in motion in less than a day”<sup>35</sup> is completely divorced from the actual experiences of women who need to leave home (with their children) with almost no notice. Anyone who has ever looked for housing, emergency or otherwise, will know that arranging accommodation in a day is, at best, aspirational.

***Question 7: Should a term providing for employees to take unpaid family violence leave include a cap on the quantum of such leave? Should it accrue from year to year?***

65. The ACTU repeats its submission that unpaid family and domestic violence is a needs-based entitlement and should not be capped. Because unpaid leave is needs-based, it is not necessary to make provision for the accrual of unpaid leave. The parties appear to be in agreement, albeit for different reasons, on this point.

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<sup>31</sup> AIG submissions, [16].

<sup>32</sup> AIG submissions, [23].

<sup>33</sup> AMIC submissions, [87].

<sup>34</sup> AMIC submissions, [50].

<sup>35</sup> AMIC submissions, [53].

#### **Element 4 Evidentiary matters**

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##### ***Question 8: Are there any other types of evidence that the Commission should consider?***

66. The comments in the Background Paper concerning an evidentiary requirement are directed to the provision of evidence where the NES entitlement to personal/carer's leave is available for persons wishing to take family and domestic violence leave. Nevertheless, the ACTU has proceeded on the basis that an evidentiary requirement would apply to a model term providing for unpaid family and domestic violence leave. The ACTU has proposed wording in its draft determination. The ACTU suggests that this issue is one that may be particularly amenable to resolution at the conference to be held on 11 and 13 October 2017.

#### **Element 5 Privacy considerations**

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67. The employer parties assert that the additional confidentiality obligations proposed by the ACTU are unnecessary and unreasonable because:
- (a) The *Privacy Act 1988* (Cth) already places confidentiality obligations on many employers;
  - (b) The effective administration of personal and other forms of leave has not required specific confidentiality obligations;
  - (c) Employers 'generally' or 'typically' maintain appropriate levels of confidentiality regarding personal information provided to them by employees;
  - (d) There is no evidence that additional privacy obligations in awards are necessary;
  - (e) The proposed confidentiality provisions will be burdensome and unworkable.

##### ***Obligations under the Privacy Act 1988***

68. Employers regularly collect, use, disclose and store highly sensitive personal and health information about their employees for various purposes. It is correct that many employers are already subject to various legal obligations in relation to the handling of this information, including under the *Privacy Act*, as well as state and territory laws and internal policies and procedures. However, these obligations are not uniform or consistent.
69. In particular, there is little protection for private sector employees' personal information under federal workplace relations or privacy law. This is largely because of the 'employee records' and 'small business' exemptions in the *Privacy Act*. The handling of an employee's

employment record by a private sector employer is exempt from the *Privacy Act* if it is directly related to the current or former employment relationship between the organisation and the individual. This means that a private sector employer does not need to comply with the Australian Privacy Principles when it handles current and past employee records for something directly related to the employment relationship. It also means that an employer does not have to grant an employee access to their employee records under the *Privacy Act*.

70. In 2008, the ALRC tabled a report on Australian privacy law and practice, concluding that there was no sound policy justification for retaining the employee records exemption and recommending its removal. As at the date of these submissions, the exemption remains in place.<sup>36</sup>
71. There is also a general exemption from the *Privacy Act* for small businesses with an annual turnover of less than \$3 million.
72. For the above reasons, it is unsatisfactory to rely on the *Privacy Act* to protect highly sensitive information about an employee's experiences of family and domestic violence.

***The effective administration of personal and other forms of leave has not required specific confidentiality obligations***

73. The administration of family and domestic violence leave raises unique and pressing confidentiality concerns which do not apply to other forms of leave.
74. It is correct that highly sensitive employee health information may be collected and stored in the case of applications for personal/carers leave. As stated by ACCI at paragraph 57, the inappropriate handling of such information could cause serious anxiety to an employee. It could also cause harm and reputational damage. It is correct that similar risks are also present in relation to the handling of information about an employee's experience of family and domestic violence. However, there is an additional factor present in relation to information disclosed about an employee's experience of family and domestic violence; namely, there is a real safety risk to an employee if personal information is not handled confidentially by an employer. For example, evidence provided by an employee to an employer for the purposes of applying for leave could reveal the location of emergency shelters or schools. The disclosure of such information could result in a very real safety risk for an employee and/or their family members.

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<sup>36</sup> ALRC, *For Your Information: Australian Privacy Law and Practice (ALRC Report 108)*, 12 August 2008.

75. This is supported by evidence submitted to the Royal Commission into Family Violence, explaining that “a failure to share information properly or to protect the security of information can actually increase the risk of family violence—for example, if information is inappropriately disclosed to a perpetrator or to someone who might tell the perpetrator.”<sup>37</sup>
76. For this reason, it is imperative that a clause providing access to family and domestic violence leave ensure the confidentiality of sensitive personal information disclosed.

***Employers ‘generally’ or ‘typically’ maintain appropriate levels of confidentiality regarding personal information provided to them by employees***

77. The employer parties assert that employers generally maintain appropriate levels of confidentiality regarding personal information provided to them by employees. The ACTU does not dispute that a number of employers have rigorous processes and procedures which are applied consistently. However, the employer parties’ assertion ignores evidence suggesting that concerns about the handling of employee records are widespread. For example, in 2005/2006, the Office of the Privacy Commissioner reported to the ALRC that 860 of 2,000 enquiries received in that year related to employee records. In the same year, Privacy NSW reported to the ALRC that 10 per cent of internal review applications conducted related to employee records, and 4.5 per cent of complaints and 5.5 per cent of enquiries received related to employee records.<sup>38</sup>
78. While a number of employers clearly handle the personal information of employees appropriately, statistics such as those quoted above confirm that the collection, storage, use and disclosure of employment records remains a significant area of concern for many employees.

***Workability***

79. The employer parties have raised a number of concerns about the operation of the ACTU’s proposed confidentiality provision. These concerns are overstated and unsupported by the evidence.
80. As with existing confidentiality obligations, the ACTU’s proposed clause simply places an obligation on employers to disclose sensitive personal information about an employee’s experience of family or domestic violence strictly on a ‘need to know basis’, to store and handle the information securely and to use it only for the purpose it was provided.

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<sup>37</sup> Royal Commission into Family Violence: Report and Recommendations, Volume 1, Chapter 7, 160.

<sup>38</sup> ALRC Report 108, at [40.43].

81. The table below shows that all but three of the 18 enterprise agreement clauses or workplace policies referred to in this submission contain confidentiality clauses, including all the state and territory government provisions. The FWC was not presented with *any* evidence during the hearing suggesting that confidentiality provisions are unmanageable in practice. This is unsurprising in light of the existing privacy obligations on many employers (as discussed above) and their familiarity with handling sensitive employee information. There is no basis to conclude that placing a confidentiality obligation on employers which is similar to many existing obligations and which contains reasonable exemptions would cause either operational difficulties or undue regulatory burden.
82. This is particularly so given that a number of existing provisions go further than the ACTU clause and require that leave is recorded in a confidential manner. For example, under PWC’s policy, an employee’s request for leave is processed outside of normal payroll systems to prioritise confidentiality, and an employee is permitted to record their leave as ‘Other Paid Leave’. Further, the recording of material on an employee’s file without their express written permission is prohibited.
83. During the hearing, the Commission heard from two employers with experience of administering family and domestic violence leave clauses with confidentiality provisions.
84. Ms Eckersley from PWC explained in detail the practical operation of PwC’s confidentiality provision, including the anonymous recording of leave and the non-disclosure of confidential information.<sup>39</sup> Ms Eckersley explained that the terms of the policy gave PWC “*the flexibility to disclose either internally to the right people, if we were worried about co-worker safety or our assets...*”.<sup>40</sup> The only operational challenge identified by Ms Eckersley related to limitations on PWC’s ability to monitor in detail the effectiveness of the policy, in light of the confidentiality surrounding its use.
85. The Victorian Government explained that confidentiality provisions had been included in the Victorian Government Enterprise Agreement family and domestic violence leave clause because, “*it is apparent that unless there is provision for treating disclosure of a person’s experience of family violence in strict confidence, that will be a barrier for employees seeking to access the leave...*”.<sup>41</sup> Part of addressing these concerns involved ensuring that the Victorian Government implemented “*processes and procedures about how [an employee’s]*

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<sup>39</sup> Transcript, PN1907-PN1921.

<sup>40</sup> Transcript, PN1912.

<sup>41</sup> Transcript, PN2740.

*disclosure will be treated and setting out that obligation in the clause for the employer is a useful way to convey that to employees who may need to access the leave”.*<sup>42</sup>

86. The Victorian Government explained further that it had “*received no feedback from any department or agency that this [confidentiality] obligation has created any practical impediment or issues for managers who are responsible for administering this new form of leave. Instead it would appear that discretion is being exercised in requesting employees to provide documentation in support of their requests. Subject to a department or agency's particular payroll system, the leave can simply be noted as special leave or similar and only those staff members who need to know the reason for the leave are informed and that is usually limited to the manager of the particular employee.*”<sup>43</sup>
87. ACCI raised a concern about the interaction between mandatory reporting obligations and a confidentiality obligation in a model award term. It is correct that certain employers may have a legal responsibility to report suspected violence, harm or abuse to the relevant authorities. Mandatory reporting obligations would fall within the exemption in the ACTU’s proposed clause, which allows disclosure where it is required ‘by law’ or to ‘prevent a serious threat to the life, health and safety of any individual’.

#### *Evidence*

88. It is not accurate to state that there is no evidence justifying the need for a confidentiality provision in a clause providing access to family and domestic violence leave. On the contrary, there is a substantial amount of evidence before the Full Bench regarding the privacy concerns of people subjected to family and domestic violence, and the real and significant barrier that privacy concerns place in the way of access to support, including family and domestic violence leave entitlements. The ACTU has previously set out this evidence in detail.<sup>44</sup> We note that the operational need for these provisions is further supported by the decision of employers to include confidentiality clauses in the majority of industrial instruments referenced in this submission, including all of the state and territory governments mentioned. These clauses are set out in the table that follows. Further, in relation to the provision of family violence leave to public sector employees, the Royal Victorian Commission recommended that the Victorian Government ensure that “*employees’ confidentiality is maintained as far as possible*”.<sup>45</sup>

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<sup>42</sup> Transcript, PN2742.

<sup>43</sup> Transcript, PN2742.

<sup>44</sup> ACTU Closing Submissions dated 28 November 2016, at [191]

<sup>45</sup> *Royal Commission into Family Violence: Report and Recommendations*, Chapter 37, 90.



<b>Enterprise Agreement/Policy</b>	<b>Confidentiality provisions</b>
<i>PwC Family and Domestic Violence and Sexual Assault Support Policy</i>	<i>Information concerning matters of family and domestic violence and sexual assault will be kept confidential by PwC Australia to the extent possible and will only be disclosed if necessary for PwC Australia to provide you with support, where required by law or when necessary in order to maintain the safety of you and/or your coworkers.</i>
<i>Spotless Group Holdings Limited Domestic Violence Policy</i>	<i>All information provided by a victim of domestic violence, and support provided to that person, will be confidential and will only be divulged if required by law or to maintain the safety of the victim.</i>
<i>Australian Defence Apparel Pty Ltd Enterprise Agreement 2015 (AG2015/812) – Clause 28.5</i>	<i>All personal information concerning family violence will be kept confidential and no information will be kept on an employee’s personnel file without their express written permission</i>
<i>Geofabrics Australasia Pty Ltd (South Queensland Manufacturing) Enterprise Agreement 2015 (AG2016/225) – Clause</i>	<i>All personal information concerning family violence will be kept confidential and no information will be kept on an employee’s personnel file without their express written permission</i>
<i>Blundstone Australia Pty Ltd (Melbourne Site) – TCFUA Enterprise Agreement 2015 (AG2015/3583) – Clause</i>	<i>All personal information concerning family violence will be kept confidential and no information will be kept on an employee’s personnel file without their express written permission</i>
<i>Blundstone Australia Pty Ltd (Hobart Site) – TCFUA Enterprise Agreement 2015 (AG2015/3710) – Clause</i>	<i>All personal information concerning family violence will be kept confidential and no information will be kept on an employee’s personnel file without their express written permission</i>
<a href="#"><u>Surf Coast Shire Council Enterprise Agreement No.7 2010-2013</u></a> (AG2010/19899) – Clause	<i>All personal information concerning family violence will be kept confidential in line with relevant legislation. No information will be kept on an employee's personnel file without their express written permission.</i>
<a href="#"><u>UNSW Australia (Professional Staff) Enterprise Agreement 2015</u></a> - Clause	No confidentiality provision
<i>Telstra Family and Domestic Violence Support Policy</i>	<i>Information concerning matters of family and domestic violence will be kept confidential by Telstra and would only be divulged in exceptional circumstances, where required by law or where it is imperative to maintain the safety of you and/or co-workers. You will not suffer adverse consequences on the basis of your disclosure, experience or perceived experience of domestic and family violence.</i>
<a href="#"><u>ABC Enterprise Agreement 2016-2019</u></a>	No confidentiality provision
<a href="#"><u>Mission Australia Service Delivery Enterprise Agreement 2016-2019</u></a>	No confidentiality provision
<a href="#"><u>Xavier College Enterprise Agreement 2016</u></a> – Clause 23.5	<i>The College will take all reasonable measures to ensure that any personal information provided by the employee concerning their experience of family and domestic violence is kept confidential.</i>

Enterprise Agreement/Policy	Confidentiality provisions
<p>Victorian Government  <a href="#">Victorian Public Service Enterprise Agreement 2016</a> – Clause 46.4(b)</p>	<p><i>All personal information concerning family violence will be kept confidential in line with the Employer’s policies and relevant legislation. No information will be kept on an Employee’s personnel file without their express written permission.</i></p>
<p>Queensland Government  <a href="#">Industrial Relations Act 2016 (Qld)</a>, s. 54(4)</p>	<p><i>An employer who receives evidence under this section must not disclose the evidence to someone else unless the disclosure is required or permitted under an Act.</i></p>
<p>Western Australian Government  <a href="#">Government of Western Australia, Premier’s Circular: Family and Domestic Violence – Paid Leave and Workplace Support, 18 August 2017</a> – Clauses 1.15 and 1.20-1.24</p>	<p><i>1.15 Such evidence will be dealt with in accordance with the confidentiality provisions in this clause. Only the employee will retain a copy of the evidence and information will not be kept on an employee's personnel file.</i></p> <p>...</p> <p><i>1.20 The employer will take all reasonable steps to ensure any information disclosed by employees regarding family violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the employee.</i></p> <p><i>1.21 Employers will take reasonable steps to ensure any information or documentation provided by an employee regarding family and domestic violence is kept confidential.</i></p> <p><i>1.22 Only the employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on the employee’s personnel file unless otherwise agreed. The employer will record that any evidence produced was sighted.</i></p> <p><i>1.23 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the employee.</i></p> <p><i>1.24 This clause does not override any legal obligations to disclose information.</i></p>

Enterprise Agreement/Policy	Confidentiality provisions
<p>South Australian Government</p> <p><a href="#">Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave, 1 July 2016</a> – Page 46, Section F(f)</p> <p><a href="#">Government of South Australia, Guideline of the Commissioner for Public Sector Employment - Domestic and Family Violence, 10 August 2016</a> – Page 5, Paragraph 5</p>	<p><i>In order to maintain confidentiality, public sector agencies may record special leave approved in such circumstances as “urgent pressing necessity”.</i></p> <p><i>Managers are to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.</i></p> <p>...</p> <p><i>An employee who discloses they are suffering from domestic/family violence to a manager/supervisor or a human resources consultant must be assured their information will be kept strictly confidential and apart from the personal safety plan, and intervention order, if relevant, information will not be recorded on their personal file, but rather on a confidential working file created for the purpose of storing any information related to the notification.</i></p> <p><i>There may be times, however, when there is a requirement to disclose the information as part of official business or if there is an inherent safety risk to either the affected employee or other employees (for example, if there is a risk the perpetrator might come into the workplace). In these instances, disclosure of the information will be consistent with the Information Privacy Principles and constrained to relevant information only. There may be adverse consequences in the case of any individual who fails to properly maintain confidentiality of information.</i></p>
<p>Tasmanian Government</p> <p><a href="#">Employment Direction No. 28, Family Violence – Workplace Arrangements and Requirements, 4 February 2013</a> – Paragraph 6</p>	<p><i>Agencies are to ensure that the confidentiality of an employee’s personal information (including payroll, work and residential contact details) is assured against loss, disclosure to third parties, unauthorised access, modification or any other form of misuse. Employee records concerning family violence are to be kept confidential and may only be divulged in exceptional circumstances (after consultation with the employee) where it is imperative to maintain the safety of the employee, co-workers and/or clients. Decisions concerning employee records for the purpose of this Direction are to be made by the Agency Human Resource Manager.</i></p>
<p>ACT Government</p> <p><a href="#">ACT Public Sector Health Professional Enterprise Agreement 2013-2017</a> – Clauses F22.9 and F22.14</p>	<p><i>For confidentiality and privacy reasons leave for domestic violence purposes will be attributed as coming under “where leave cannot be granted under any other provision” which is included and identified within “Other Leave Types” in Annex D of this Agreement.</i></p> <p>...</p> <p><i>Managers are to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.</i></p>

***Conclusion on confidentiality and privacy***

89. As explained above, under current Commonwealth privacy and workplace laws, there is a real possibility that award-covered businesses would not be subject to clear or consistent confidentiality obligations in relation to information provided to an employer regarding an employee's experience of family and domestic violence.
90. The protection of employee information regarding family and domestic violence is crucial to ensure utilisation of the entitlement and to protect the safety of the employee and their family.
91. In these circumstances, it is not fair or reasonable to rely on existing confidentiality obligations which may be varied in nature or non-existent, or an assumption that employers 'generally' or 'typically' handle employees' personal information appropriately.
92. The inclusion of a simple and easy to understand confidentiality obligation in modern awards would provide certainty and clarity for employers and protection for vulnerable employees. There is no evidence to suggest that such clauses are unworkable.

***Question 9: Parties are asked to consider whether the Commission can and should include in any model term dealing with family violence a requirement that an employer must keep information about their employee's experience of family violence confidential***

93. The Commission should include a confidentiality clause in the model award term in the following terms previously proposed by the ACTU, or similar:
- (a) Sensitive personal information means information that identifies the employee and discloses their experience of being subjected to family and domestic violence.
  - (b) Sensitive personal information provided by the employee to the employer for the purposes of seeking leave under this clause will be kept confidential to the extent possible, except where disclosure is required by law or to prevent a serious threat to the life, health and safety of any individual.

Dated: 2 October 2017

Kate Burke  
Counsel for the Australian Council of Trade Unions

# Legislative Definitions of Family and Domestic Violence

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
CTH	<p><i>Family Law Act 1975</i>  <b>s. 4AB</b></p> <p>(1) For the purposes of this Act, <i>family violence</i> means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the <i>family member</i>), or causes the family member to be fearful.</p> <p>(2) Examples of behaviour that may constitute family violence include (but are not limited to):</p> <ul style="list-style-type: none"> <li>(a) an assault; or</li> <li>(b) a sexual assault or other sexually abusive behaviour; or</li> <li>(c) stalking; or</li> <li>(d) repeated derogatory taunts; or</li> <li>(e) intentionally damaging or destroying property; or</li> <li>(f) intentionally causing death or injury to an animal; or</li> <li>(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or</li> <li>(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</li> <li>(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or</li> <li>(j) unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty.</li> </ul> <p>(3) For the purposes of this Act, a child is <i>exposed</i> to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.</p> <p>(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) seeing or hearing an assault of a member of the child’s family by another member of the child’s family; or</li> <li>(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</li> <li>(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</li> <li>(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.</li> </ul>	<p>“Family member” is not defined.</p>	<p><a href="#"><i>Family Law Act 1975</i></a>  s. 4AB</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
NSW	Family violence is defined by reference to a number of ‘personal violence’ offences in the <i>Crimes Act 1900</i> (NSW), where those offences are committed by persons in defined domestic relationships. These offences include murder, manslaughter, wounding or causing grievous bodily harm with intent, assault, sexual assault, kidnapping, child abduction and destroying or damaging property.	<p><b><i>Crimes (Domestic and Personal Violence) Act 2007</i></b></p> <p><b>s. 5</b></p> <p>(1) For the purposes of this Act, a person has a <b><i>domestic relationship</i></b> with another person if the person:</p> <p>(a) is or has been married to the other person, or</p> <p>(b) is or has been a de facto partner of that other person, or</p> <p>(c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or</p> <p>(d) is living or has lived in the same household as the other person, or</p> <p>(e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a detention centre within the meaning of the Children (Detention Centres) Act 1987), or</p> <p>(f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or</p> <p>(g) is or has been a relative of the other person, or</p> <p>(h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person’s culture.</p> <p><u>Note.</u></p> <p>“De facto partner” is defined in section 21C of the <i>Interpretation Act 1987</i>.</p> <p>(2) Two persons also have a domestic relationship with each other for the purposes of this Act if they have both had a domestic relationship of a kind set out in subsection (1) (a), (b) or (c) with the same person.</p> <p><u>Note.</u></p> <p>A woman’s ex-partner and current partner would therefore have a domestic relationship with each other for the purposes of this Act even if they had never met.</p> <p>...</p> <p><b>s. 6</b></p> <p>For the purposes of this Act, a person is a <b><i>relative</i></b> of another person (the other person):</p> <p>(a) if the person is:</p> <p>(i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or</p> <p>(ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or</p> <p>(iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or</p> <p>(iv) an uncle, aunt, uncle-in-law or aunt-in-law, or</p> <p>(v) a nephew or niece, or</p> <p>(vi) a cousin,</p> <p>of the other person, or</p> <p>(b) where the person has a de facto partner (the person’s partner)—if the other person is:</p> <p>(i) a father, mother, grandfather, grandmother, step-father or step-mother, or</p> <p>(ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or</p> <p>(iii) a brother, sister, half-brother, half-sister, step-brother or step-sister, or</p> <p>(iv) an uncle or aunt, or</p> <p>(v) a nephew or niece, or</p>	<p><a href="#"><i>Crimes (Domestic and Personal Violence) Act 2007</i></a></p> <p>ss. 4, 5, 6</p> <p><a href="#"><i>Crimes Act 1900</i></a></p> <p>s.4</p>



Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
		(vi) a cousin, of the person's partner.	
QLD	<p><b>Domestic and Family Violence Protection Act 2012</b> s.8</p> <p>(1) <i>Domestic violence</i> means behaviour by a person (the <i>first person</i>) towards another person (the <i>second person</i>) with whom the first person is in a <a href="#">relevant relationship</a> that—</p> <p>(a) is physically or sexually abusive; or  (b) is emotionally or psychologically abusive; or  (c) is economically abusive; or  (d) is threatening; or  (e) is coercive; or  (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.</p> <p>(2) Without limiting subsection (1), domestic violence includes the following behaviour—</p> <p>(a) causing personal injury to a person or threatening to do so;  (b) coercing a person to engage in sexual activity or attempting to do so;  (c) damaging a person's property or threatening to do so;  (d) depriving a person of the person's liberty or threatening to do so;  (e) threatening a person with the death or injury of the person, a child of the person, or someone else;  (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;  (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;  (h) unauthorised surveillance of a person;  (i) unlawfully stalking a person.</p> <p>(3) A person who counsels or procures someone else to engage in behaviour that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.</p> <p>(4) To remove any doubt, it is declared that, for behaviour mentioned in subsection (2) that may constitute a criminal offence, a court may make an order under this Act on the basis that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.</p> <p>(5) In this section—</p> <p><i>coerce</i>, a person, means compel or force a person to do, or refrain from doing, something.</p> <p><i>unauthorised surveillance</i>, of a person, means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.</p> <p><i>unlawful stalking</i> see the Criminal Code, section 359B.</p>	<p><b>Domestic and Family Violence Protection Act 2012</b> s.13</p> <p>A <i>relevant relationship</i> is—</p> <p>(a) an intimate personal relationship; or  (b) a family relationship; or  (c) an informal care relationship.</p> <p><b>s.14</b></p> <p>An <i>intimate personal relationship</i> is—</p> <p>(a) a spousal relationship; or  (b) an engagement relationship; or  (c) a couple relationship.</p> <p><b>s.15</b></p> <p>(1) A <i>spousal relationship</i> exists between spouses.</p> <p><i>Note—</i></p> <p>A reference to a spouse includes a de facto partner. For definitions of <i>spouse</i> and <i>de facto partner</i>, see the <i>Acts Interpretation Act 1954</i>, schedule 1 and section 32DA.</p> <p>(2) A <i>spouse</i>, of a person, includes—</p> <p>(a) a former spouse of the person; and  (b) a parent, or former parent, of a child of the person.</p> <p><i>Example of a former parent of a child—</i></p> <p>a birth parent who stops being a parent of a child under the <i>Surrogacy Act 2010</i>, section 39(2)(b)</p> <p>For subsection (b), it is irrelevant whether there is or was any relationship between the parents of the child.</p> <p><b>s.16</b></p> <p>(1) A <i>parent</i>, of a child, means—</p> <p>(a) the child's mother or father; and  (b) anyone else, other than the chief executive (child protection), having or exercising parental responsibility for the child.</p> <p>(2) However, a parent of a child does not include—</p> <p>(a) a person standing in the place of a parent of the child on a temporary basis; or  (b) an approved foster carer for the child; or  (c) an approved kinship carer for the child.</p> <p>(3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.</p> <p>(4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.</p> <p>(5) In this section—</p> <p><i>approved foster carer</i> see the <i>Child Protection Act 1999</i>, schedule 3.</p>	<p><a href="#">Domestic and Family Violence Protection Act 2012</a> ss. 8 and 11-20</p> <p><a href="#">Criminal Code Act 1899</a> s 359B.</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p><b>s.9</b>  <i>Associated domestic violence</i> means behaviour mentioned in <a href="#">section 8</a> (1) by a respondent towards—            (a) a child of an aggrieved; or            (b) a child who usually lives with an aggrieved; or            (c) a relative of an aggrieved; or            (d) an associate of an aggrieved.</p> <p><b>s.10</b>            A child is <i>exposed to domestic violence</i> if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence.            Examples of being exposed to domestic violence—            •overhearing threats of physical abuse            •overhearing repeated derogatory taunts, including racial taunts            •experiencing financial stress arising from economic abuse            •seeing or hearing an assault            •comforting or providing assistance to a person who has been physically abused            •observing bruising or other injuries of a person who has been physically abused            •cleaning up a site after property has been damaged            •being present at a domestic violence incident that is attended by police officers</p> <p><b>s.11</b>  <i>Emotional or psychological abuse</i> means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.  <i>Examples—</i>            • 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 social networking site without the person’s consent            • repeated derogatory taunts, including racial taunts            • threatening to disclose a person’s sexual orientation to the person’s friends or family without the person’s consent            • 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</p> <p><b>s.12</b>  <i>Economic abuse</i> means behaviour by a person (the <i>first person</i>) that is coercive, deceptive or unreasonably controls another person (the <i>second person</i>), 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</p>	<p><i>approved kinship carer</i> see the <i>Child Protection Act 1999</i>, schedule 3.</p> <p><b>s.17</b>            An <i>engagement relationship</i> exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.</p> <p><b>s.18</b>            (1) A <i>couple relationship</i> exists between 2 persons if the persons have or had a relationship as a couple.            (2) In deciding whether a couple relationship exists, a court may have regard to the following—            (a) the circumstances of the relationship between the persons, including, for example—            (i) the degree of trust between the persons; and            (ii) the level of each person’s dependence on, and commitment to, the other person;            (b) the length of time for which the relationship has existed or did exist;            (c) the frequency of contact between the persons;            (d) the degree of intimacy between the persons.            (3) Without limiting subsection (2), the court may consider the following factors in deciding whether a couple relationship exists—            (a) whether the trust, dependence or commitment is or was of the same level;            (b) whether 1 of the persons is or was financially dependent on the other;            (c) whether the persons jointly own or owned any property;            (d) whether the persons have or had joint bank accounts;            (e) whether the relationship involves or involved a relationship of a sexual nature;            (f) whether the relationship is or was exclusive.            (4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).            (5) A couple relationship may exist between 2 persons whether the persons are of the same or a different gender.            (6) A couple relationship does not exist merely because 2 persons date or dated each other on a number of occasions.</p> <p><b>s.19</b>            (1) A <i>family relationship</i> exists between 2 persons if 1 of them is or was the relative of the other.            (2) A <i>relative</i> of a person is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage.  <i>Examples of an individual’s relatives—</i>            an individual’s spouse, child (including a child 18 years or more), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law  <i>Examples of an individual’s former relatives—</i>            • the person who would be the individual’s mother-in-law if the individual was still in a spousal relationship with the person’s son or daughter            • the person who would be the step-parent of the individual if the spousal relationship between the person and the person’s former spouse, the individual’s parent, had not ended            • the individual’s step-siblings when the parent they do not have in common has died            (3) For deciding if someone is connected by marriage, any 2 persons who are or were spouses of each other are considered to be or to have been married to each other.</p>	



Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p>meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.</p> <p><i>Examples—</i></p> <ul style="list-style-type: none"> <li>• coercing a person to relinquish control over assets and income</li> <li>• removing or keeping a person’s property without the person’s consent, or threatening to do so</li> <li>• disposing of property owned by a person, or owned jointly with a person, against the person’s wishes and without lawful excuse</li> <li>• without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses</li> <li>• preventing a person from seeking or keeping employment</li> <li>• coercing a person to claim social security payments</li> <li>• coercing a person to sign a power of attorney that would enable the person’s finances to be managed by another person</li> <li>• coercing a person to sign a contract for the purchase of goods or services</li> <li>• coercing a person to sign a contract for the provision of finance, a loan or credit</li> <li>• coercing a person to sign a contract of guarantee</li> <li>• coercing a person to sign any legal document for the establishment or operation of a business</li> </ul> <p>...</p> <p><b><i>Criminal Code Act 1899</i></b>  <b>s.359B</b>  <b><i>Unlawful stalking</i></b> is conduct—</p> <p>(a) intentionally directed at a person (the <i>stalked person</i>); and</p> <p>(b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and</p> <p>(c) consisting of 1 or more acts of the following, or a similar, type—</p> <p>(i) following, loitering near, watching or approaching a person;</p> <p>(ii) contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;</p> <p>(iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;</p> <p>(iv) leaving offensive material where it will be found by, given to or brought to the attention of, a person;</p> <p>(v) giving offensive material to a person, directly or indirectly;</p> <p>(vi) an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;</p> <p>(vii) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and</p> <p>(d) that—</p> <p>(i) would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the stalked person or another person; or</p>	<p>(4) A <i>relative</i> of a person (the <i>first person</i>) is also either of the following persons if it is or was reasonable to regard the person as a relative especially considering that for some people the concept of a relative may be wider than is ordinarily understood—</p> <p>(a) a person whom the first person regards or regarded as a relative;</p> <p>(b) a person who regards or regarded himself or herself as a relative of the first person.</p> <p><i>Examples of people who may have a wider concept of a relative—</i></p> <ul style="list-style-type: none"> <li>• Aboriginal people</li> <li>• Torres Strait Islanders</li> <li>• members of certain communities with non-English speaking backgrounds</li> <li>• people with particular religious beliefs</li> </ul> <p>(5) In deciding if a person is a relative of someone else—</p> <p>(a) a subsection of this section must not be used to limit another subsection of this section; and</p> <p>(b) each subsection is to have effect even though, as a result, a person may be considered to be a relative who would not ordinarily be understood to be a relative.</p> <p><b>s.20</b></p> <p>(1) An <i>informal care relationship</i> exists between 2 persons if 1 of them is or was dependent on the other person (the <i>carer</i>) for help in an activity of daily living.</p> <p>(2) An informal care relationship does not exist between a child and a parent of a child.</p> <p>(3) An informal care relationship does not exist between 2 persons if 1 person helps the other person in an activity of daily living under a commercial arrangement.</p>	

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	(ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.		
SA	<p><b><i>Intervention Orders (Prevention of Abuse) Act 2009</i></b>  <b>s. 8(1)-(7)</b>  <b><i>Meaning of abuse—domestic and non-domestic</i></b>  (1) <b><i>Abuse</i></b> may take many forms including physical, sexual, emotional, psychological or economic abuse.  (2) An act is an <b><i>act of abuse</i></b> against a person if it results in or is intended to result in—  (a) physical injury; or  (b) emotional or psychological harm; or  (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or  (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.  (3) <b><i>Emotional or psychological harm</i></b> includes—  (a) mental illness; and  (b) nervous shock; and  (c) distress, anxiety, or fear, that is more than trivial.  (4) Emotional or psychological harm—examples  Without limiting subsection (2)(b), an act of abuse against a person resulting in emotional or psychological harm may be comprised of any of the following:  (a) sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity;  (b) unlawfully depriving the person of his or her liberty;  (c) driving a vehicle in a reckless or dangerous manner while the person is a passenger in the vehicle;  (d) causing the death of, or injury to, an animal;  (e) following the person;  (f) loitering outside the place of residence of the person or some other place frequented by the person;  (g) entering or interfering with property in the possession of the person;  (h) 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;  (i) 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;  (j) communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person;  (k) keeping the person under surveillance;  (l) directing racial or other derogatory taunts at the person;  (m) threatening to withhold the person's medication or prevent the person accessing necessary medical equipment or treatment;</p>	<p><b><i>Intervention Orders (Prevention of Abuse) Act 2009</i></b>  <b>s. 8(8)</b>  (8) If the act of abuse is committed by a defendant against a person with whom the defendant is or was formerly in a relationship, it is referred to in this Act as an act of <b><i>domestic abuse</i></b>; and for that purpose, 2 persons are in a relationship if –  (a) they are married to each other; or  (b) they are domestic partners; or  (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or  (d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or  (e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or  (f) 1 is a child and the other is a person who acts in <i>loco parentis</i> in relation to the child; or  (g) 1 is a child who normally or regularly resides or stays with the other; or  (h) they are brothers or sisters or brother and sister; or  (i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or  (j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or  (k) 1 is the carer (within the meaning of the <i>Carers Recognition Act 2005</i>) of the other.   <b>s.3</b>  <b><i>domestic partner</i></b> means a person who is a domestic partner within the meaning of the <i>Family Relationships Act 1975</i>, whether declared as such under that Act or not  ...  <b><i>Family Relationships Act 1975</i></b>  <b>s. 11</b>  <b><i>close personal relationship</i></b> means the relationship between 2 adult persons (whether or not related by family and irrespective of their sex or gender identity) who live together as a couple on a genuine domestic basis, but does not include—(a) the relationship between a legally married couple; or  (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.  <b>Note—</b>  Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.  <b><i>registered relationship</i></b> means a relationship that is registered under the <i>Relationships Register Act 2016</i>, and includes a corresponding law registered relationship under that Act.  A person is, on a certain date, the <b><i>domestic partner</i></b> of another if—  (a) the person is, on that date, in a registered relationship with the other; or  (b) the person is, on that date, living with the other in a close personal relationship and—  (i) the person—  (A) has so lived with the other continuously for the period of 3 years immediately preceding that date; or  (B) has during the period of 4 years immediately preceding that date so lived with the other for periods aggregating not less than 3 years; or</p>	<p><a href="#"><u><i>Intervention Orders (Prevention of Abuse) Act 2009</i></u></a>  ss. 3, 8(1)-(8)   <a href="#"><u><i>Family Relationships Act 1975</i></u></a>  ss. 11 and 11A</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p>(n) threatening to institutionalise the person;</p> <p>(o) threatening to withdraw care on which the person is dependent;</p> <p>(p) otherwise threatening to cause the person physical injury, emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or domestic autonomy or to cause damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.</p> <p>(5) Unreasonable and non-consensual denial of financial, social or personal autonomy—examples</p> <p>Without limiting subsection (2)(c), an act of abuse against a person resulting in an unreasonable and non-consensual denial of financial, social or personal autonomy may be comprised of any of the following:</p> <p>(a) denying the person the financial autonomy that the person would have had but for the act of abuse;</p> <p>(b) withholding the financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses;</p> <p>(c) without lawful excuse, preventing the person from having access to joint financial assets for the purposes of meeting normal household expenses;</p> <p>(d) preventing the person from seeking or keeping employment;</p> <p>(e) causing the person through coercion or deception to—</p> <p>(i) relinquish control over assets or income; or</p> <p>(ii) claim social security payments; or</p> <p>(iii) sign a power of attorney enabling the person's finances to be managed by another person; or</p> <p>(iv) sign a contract for the purchase of goods or services; or</p> <p>(v) sign a contract for the provision of finance; or</p> <p>(vi) sign a contract of guarantee; or</p> <p>(vii) sign any legal document for the establishment or operation of a business;</p> <p>(f) without permission, removing or keeping property that is in the ownership or possession of the person or used or otherwise enjoyed by the person;</p> <p>(g) disposing of property owned by the person, or owned jointly with the person, against the person's wishes and without lawful excuse;</p> <p>(h) preventing the person from making or keeping connections with the person's family, friends or cultural group, from participating in cultural or spiritual ceremonies or practices, or from expressing the person's cultural identity;</p> <p>(i) exercising an unreasonable level of control and domination over the daily life of the person.</p> <p>(6) If a defendant commits an act of abuse against a person, or threatens to do so, in order to cause emotional or psychological harm to another person or to deny another person financial, social or personal autonomy, the defendant commits an act of abuse against that other person.</p> <p>(7) A defendant may commit an act of abuse by causing or allowing another person to commit the act or to take part in the commission of the act.</p>	<p>(ii) a child, of whom the 2 persons are the parents, has been born (whether or not the child is still living at that date).</p> <p><b>s.11A</b></p> <p>A person is, on a certain date, the <i>domestic partner</i> of another if—</p> <p>(a) the person is, on that date, in a registered relationship with the other; or</p> <p>(b) the person is, on that date, living with the other in a close personal relationship and—</p> <p>(i) the person—</p> <p>(A) has so lived with the other continuously for the period of 3 years immediately preceding that date; or</p> <p>(B) has during the period of 4 years immediately preceding that date so lived with the other for periods aggregating not less than 3 years; or</p> <p>(ii) a child, of whom the 2 persons are the parents, has been born (whether or not the child is still living at that date).</p>	
WA	<i>Restraining Order Act 1997</i>	<i>Restraining Order Act 1997</i>	<i>Restraining Order Act 1997</i>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p><b>s. 5A</b>  <b>Term used: family violence</b>            (1) A reference in this Act to <b>family violence</b> is a reference to —            (a) violence, or a threat of violence, by a person towards a family member of the person; or            (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.            (2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —            (a) an assault against the family member;            (b) a sexual assault or other sexually abusive behaviour against the family member;            (c) stalking or cyber-stalking the family member;            (d) repeated derogatory remarks against the family member;            (e) damaging or destroying property of the family member;            (f) causing death or injury to an animal that is the property of the family member;            (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;            (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;            (i) preventing the family member from making or keeping connections with the member’s family, friends or culture;            (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;            (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;            (l) causing any family member who is a child to be exposed to behaviour referred to in this section.            (3) For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.</p>	<p><b>s. 4</b>  <b>Terms used: family relationship and family member</b>            (1) In this Act —  <b>family relationship</b> means a relationship between 2 persons —            (a) who are, or were, married to each other; or            (b) who are, or were, in a de facto relationship with each other; or            (c) who are, or were, related to each other; or            (d) one of whom is a child who —            (i) ordinarily resides, or resided, with the other person; or            (ii) regularly resides or stays, or resided or stayed, with the other person; or            (e) one of whom is, or was, a child of whom the other person is a guardian; or            (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.            (2) In subsection (1) —  <b>other personal relationship</b> means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;  <b>related</b>, in relation to a person, means a person who —            (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or            (b) is related to the person’s —            (i) spouse or former spouse; or            (ii) de facto partner or former de facto partner.            (3) In this Act a person is a <b>family member</b> of another person if the persons are in a family relationship.</p>	<p>ss. 4 and 5A</p>
<p><b>ACT</b></p>	<p><b>Family Violence Act 2016</b>  <b>s.8</b>            (1) In this Act:  <b>family violence</b> means—            (a) any of the following behaviour by a person in relation to a family member of the person:            (i) physical violence or abuse;            (ii) sexual violence or abuse;            (iii) emotional or psychological abuse;            (iv) economic abuse;            (v) threatening behaviour;            (vi) coercion or any other behaviour that—            (A) controls or dominates the family member; and</p>	<p><b>Family Violence Act 2016</b>  <b>s.9</b>            In this Act:  <b>family member</b>, of a person, means—            (a) a domestic partner or former domestic partner of the person; or            (b) an intimate partner or former intimate partner of the person; or            (c) a relative of the person; or            (d) a child of a domestic partner or former domestic partner of the person; or            (e) a parent of a child of the person.  <b>s.10</b>            (1) <b>intimate partner</b>, of a person—</p>	<p><a href="#"><u>Family Violence Act 2016</u></a>            ss. 8, 9, 10, 11</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p>(B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or</p> <p>(b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.</p> <p><b>Examples—par (b)</b></p> <p>1 overhearing threats being made in another room of the house</p> <p>2 seeing an assault or seeing injuries on a family member who has been assaulted</p> <p>3 seeing people comfort a family member who has been abused</p> <p>(2) Without limiting subsection (1), <i>family violence</i> by a person in relation to a family member of the person includes the following:</p> <p>(a) sexually coercive behaviour;</p> <p>(b) damaging property;</p> <p>(c) harming an animal;</p> <p>(d) stalking;</p> <p>(e) deprivation of liberty.</p> <p>(3) In this section:</p> <p><i>economic abuse</i>, of a family member, means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member—</p> <p>(a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or</p> <p>(b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.</p> <p><b>Examples</b></p> <p>1 stopping the family member from having access to money to meet normal living expenses</p> <p>2 requiring the family member to transfer or hand over control of assets or income</p> <p>3 stopping the family member from trying to get employment</p> <p>4 forcing the family member to sign a legal document such as a power of attorney, loan, guarantee</p> <p>5 forcing the family member to claim social security payments</p> <p><i>emotional or psychological abuse</i>, of a family member, means behaviour by a person that torments, intimidates, harasses or is offensive to the family member including by the person's exploitation of power imbalances between the person and the family member.</p> <p><b>Examples</b></p> <p>1 stopping the family member from visiting or having contact with family or friends</p> <p>2 stopping the family member from engaging in cultural or spiritual practices</p> <p>3 repeated derogatory or racist comments</p>	<p>(a) means someone with whom the person has an intimate relationship, whether they are members of the same household or not; but</p> <p>(b) does not include—</p> <p>(i) a domestic partner; or</p> <p>(ii) another person with whom the person has a relationship only because a service is provided between them—</p> <p>(A) for fee or reward; or</p> <p>(B) on behalf of another person (including a government or corporation); or</p> <p>(C) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.</p> <p>(2) For subsection (1), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:</p> <p>(a) the extent to which each is personally dependent on the other;</p> <p>(b) the extent to which each is financially dependent on the other (including any arrangements for financial support);</p> <p>(c) the length of the relationship;</p> <p>(d) the frequency of contact between each other;</p> <p>(e) if there is, or has been, a sexual relationship;</p> <p>(f) the extent to which each is involved in, or knows about, the other's personal life;</p> <p>(g) the degree of mutual commitment to a shared life;</p> <p>(h) if the 2 people share care or support for children or other dependents.</p> <p><b>s.11</b></p> <p>(1) <i>relative</i>, of a person—</p> <p>(a) means the person's—</p> <p>(i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or</p> <p>(ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or</p> <p>(iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or</p> <p>(iv) uncle, aunt, uncle-in-law or aunt-in-law; or</p> <p>(v) nephew, niece or cousin; and</p> <p>(b) if the person has or had a domestic partner (other than a spouse or civil union partner)—includes someone who would have been a relative mentioned in paragraph (a) if the person had been married to or in a civil union with the domestic partner;</p> <p>and</p> <p>(c) includes—</p> <p>(i) someone who has been a relative mentioned in paragraph (a) or (b) of the person; and (ii) if the person is an Aboriginal or Torres Strait Islander person, the following people:</p> <p>(A) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community;</p> <p>(B) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and</p> <p>(iii) someone regarded and treated by the person as a relative;</p> <p>and</p> <p>(iv) someone with whom the person has a family-like relationship; and</p> <p>(v) anyone else who could reasonably be considered to be, or have been, a relative of the person.</p> <p>(2) For subsection (1) (c) (iv), factors that indicate whether there is a family-like relationship between 2 people</p>	



Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p>4 threatening to disclose personal information about the family member</p> <p>5 threatening to withhold medication, personal health care items or other things necessary to the family member's health or quality of life</p> <p>6 threatening to self-harm as a way of intimidating the family member</p>	<p>include, but are not limited to, the following:</p> <p>(a) the extent to which each is personally dependent on the other;</p> <p>(b) the extent to which each is financially dependent on the other (including any arrangements for financial support);</p> <p>(c) the length of the relationship;</p> <p>(d) the frequency of contact between each other;</p> <p>(e) the extent to which each is involved in, or knows about, the other's personal life;</p> <p>(f) if the people live together or relate together in a home environment;</p> <p>(g) if the relationship is regarded as being family-like by the community in which each live.</p> <p><b>Example</b></p> <p>a relationship between a person with disability and the person's carer that has developed into a relationship that is like that between family members</p> <p><i>Note</i> An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see <a href="#">Legislation Act</a>, s 126 and s 132).</p> <p>(3) In this section:</p> <p><b>Aboriginal or Torres Strait Islander person</b> means a person who—</p> <p>(a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and</p> <p>(b) identifies as an Aboriginal person or a Torres Strait Islander person; and</p> <p>(c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.</p>	
TAS	<p><b>Family Violence Act 2004</b></p> <p><b>s.7</b></p> <p>In this Act –</p> <p><b>family violence</b> means –</p> <p>(a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:</p> <p>(i) assault, including sexual assault;</p> <p>(ii) threats, coercion, intimidation or verbal abuse;</p> <p>(iii) abduction;</p> <p>(iv) stalking within the meaning of <a href="#">section 192 of the Criminal Code</a> ;</p> <p>(v) attempting or threatening to commit conduct referred to in <a href="#">subparagraph (i)</a> , <a href="#">(ii)</a> , <a href="#">(iii)</a> or <a href="#">(iv)</a> ; or</p> <p>(b) any of the following:</p> <p>(i) economic abuse;</p> <p>(ii) emotional abuse or intimidation;</p> <p>(iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO; or</p> <p>(c) any damage caused by a person, directly or indirectly, to any property –</p> <p>(i) jointly owned by that person and his or her spouse or partner; or</p> <p>(ii) owned by that person's spouse or partner; or</p> <p>(iii) owned by an affected child.</p> <p><b>s.8</b></p>	<p><b>Family Violence Act 2004</b></p> <p><b>s.4</b></p> <p><b>spouse or partner</b> of a person means another person with whom the person is, or has been, in a family relationship.</p> <p><b>family relationship</b> means a marriage or a significant relationship within the meaning of the <a href="#">Relationships Act 2003</a> , and includes a relationship in which one or both of the parties is between the ages of 16 and 18 and would, but for that fact, be a significant relationship within the meaning of that Act;</p> <p>...</p> <p><b>Relationships Act 2003</b></p> <p><b>s. 4</b></p> <p>(1) For the purposes of this Act, a <b>significant relationship</b> is a relationship between two adult persons –</p> <p>(a) who have a relationship as a couple; and</p> <p>(b) who are not married to one another or related by family.</p> <p>(2) If a significant relationship is registered under <a href="#">Part 2</a> , proof of registration is proof of the relationship.</p> <p>(3) If a significant relationship is not registered under <a href="#">Part 2</a> , in determining whether two persons are in a significant relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:</p> <p>(a) the duration of the relationship;</p> <p>(b) the nature and extent of common residence;</p> <p>(c) whether or not a sexual relationship exists;</p> <p>(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between</p>	<p><a href="#">Family Violence Act 2004</a></p> <p>ss. 4, 7, 8, 9</p> <p><a href="#">Relationships Act 2003</a></p> <p>s. 4</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p><b>Economic abuse</b></p> <p>A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:</p> <p>(a) coercing his or her spouse or partner to relinquish control over assets or income;</p> <p>(b) disposing of property owned –</p> <p>(i) jointly by the person and his or her spouse or partner; or</p> <p>(ii) by his or her spouse or partner; or</p> <p>(iii) by an affected child –</p> <p>without the consent of the spouse or partner or affected child;</p> <p>(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;</p> <p>(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;</p> <p>(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.</p> <p><b>s.9</b></p> <p><b>Emotional abuse or intimidation</b></p> <p>(1) A person must not pursue a course of conduct that he or she knows, or ought to know, 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.</p> <p>(2) In this section –</p> <p><b>a course of conduct</b> includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.</p>	<p>the parties;</p> <p>(e) the ownership, use and acquisition of property;</p> <p>(f) the degree of mutual commitment to a shared life;</p> <p>(g) the care and support of children;</p> <p>(h) the performance of household duties;</p> <p>(i) the reputation and public aspects of the relationship.</p> <p>(4) No finding in respect of any of the matters mentioned in <a href="#">subsection (3)(a)</a> to <a href="#">(i)</a>, or in respect of any combination of them, is to be regarded as necessary for the existence of a significant relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.</p>	
NT	<p><b><i>Domestic and Family Violence Act</i></b></p> <p><b>s.5</b></p> <p><b>Domestic violence</b> is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:</p> <p>(a) conduct causing harm;</p> <p>Example of harm for paragraph (a)</p> <p>Sexual or other assault.</p> <p>(b) damaging property, including the injury or death of an animal;</p> <p>(c) intimidation;</p> <p>(d) stalking;</p> <p>(e) economic abuse;</p> <p>(f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).</p> <p>Note</p> <p>Under Part 2.2, a DVO may be sought, and made, against a person if the person counsels or procures someone to commit the domestic violence, see section 17.</p>	<p><b><i>Domestic and Family Violence Act</i></b></p> <p><b>s.9</b></p> <p>A person is in a <b>domestic relationship</b> with another person if the person:</p> <p>(a) is or has been in a family relationship with the other person; or</p> <p>(b) has or had the custody or guardianship of, or right of access to, the other person; or</p> <p>(c) is or has been subject to the custody or guardianship of the other person or the other person has or has had a right of access to the person; or</p> <p>(d) ordinarily or regularly lives, or has lived, with:</p> <p>(i) the other person; or</p> <p>(ii) someone else who is in a family relationship with the other person; or</p> <p>(e) is or has been in a family relationship with a child of the other person; or</p> <p>(f) is or has been in an intimate personal relationship with the other person; or</p> <p>(g) is or has been in a carers relationship with the other person.</p> <p><b>s.10</b></p> <p><b>Family relationship</b></p>	<p><a href="#"><i>Domestic and Family Violence Act</i></a></p> <p>ss. 5 – 12</p>

Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p><b>s.6</b> <b>Intimidation</b></p> <p>(1) Intimidation of a person is: (a) harassment of the person; or Examples of harassment for paragraph (a) 1 Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication. 2 Giving or sending offensive material to the person. (b) any conduct that causes a reasonable apprehension of: (i) violence to the person; or (ii) damage to the property of the person, including the injury or death of an animal that is the person's property; or Example of conduct for paragraph (b)(i) Sexually coercive behaviour. (c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm. (2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct (especially domestic violence) in the person's behaviour.</p> <p><b>s.7</b> <b>Stalking</b></p> <p>Stalking, a person, includes engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person: (a) intentionally following the person; (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity.</p> <p><b>s.8</b> <b>Economic abuse</b></p> <p>Economic abuse, of a person, includes any of the following conduct (or any combination of them): (a) coercing the person to relinquish control over assets or income; Example of coercion for paragraph (a) Using stand-over tactics to obtain the person's credit card. (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent; (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property; (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.</p>	<p>(1) A person is in a family relationship with another person if the person: (a) is the spouse or de facto partner of the other person; or (b) is otherwise a relative of the other person. Examples of relatives for paragraph (b) Stepchild, parent, step-parent, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law. (2) A relative of a person includes someone who, according to Aboriginal tradition or contemporary social practice, is a relative of the person. Note Section 19A of the Interpretation Act contains definitions of certain domestic relationships, including "spouse", "de facto partner" and "stepchild".</p> <p><b>s.11</b> <b>Intimate personal relationship</b></p> <p>(1) An intimate personal relationship exists between 2 persons if the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition. (2) In addition, an intimate personal relationship exists between 2 persons, whether or not the relationship involves a sexual relationship, if the persons date each other. (3) In deciding whether an intimate personal relationship exists under subsection (2), the following may be taken into account: (a) the circumstances of the relationship, including, for example, the level of trust and commitment; (b) the length of time the relationship has existed; (c) the frequency of contact between the persons; (d) the level of intimacy between the persons. (4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.</p> <p><b>s.12</b> <b>Carers relationship</b></p> <p>A carers relationship exists between 2 persons if 1 of them is dependent on the ongoing paid or unpaid care of the other.</p>	
VIC	<i>Family Violence Act 2008</i>	<i>Family Violence Act 2008</i>	<i>Family Violence Act 2008 (Vic)</i> ss. 5(1),



Jurisdiction	Conduct definition	Relationship definition	Relevant legislation
	<p><b>s.5(1)</b> For the purposes of this Act, <i>family violence</i> 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).</p> <p><b>s.6</b> For the purposes of this Act, <i>economic abuse</i> is behaviour by a person (the <i>first person</i>) that is coercive, deceptive or unreasonably controls another person (the <i>second person</i>), 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.</p> <p><b>s.7</b> For the purposes of this Act, <i>emotional or psychological abuse</i> means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.</p>	<p><b>s.8</b> (1) For the purposes of this Act, a <i>family member</i>, in relation to a person (a <i>relevant person</i>), 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.</p> <p><b>s.9</b> (1) For the purposes of this Act, <i>domestic partner</i> of a person means— (a) a person who is in a registered relationship within the meaning of the <b>Relationships Act 2008</b> with the person; 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. (2) For the purposes of subsection (1)(b), the following is irrelevant— (a) the genders of the persons; (b) whether or not the persons are living under the same roof. (3) Also, for the purposes of subsection (1)(b), a person is not the domestic partner of another person— (a) if the person provides domestic support and personal care to the person— (i) for fee or reward; or (ii) on behalf of another person or an organisation, including a government or non-government agency, a body corporate or a charitable or benevolent organisation; or (b) merely because they are co-tenants. (4) In deciding whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the <b>Relationships Act 2008</b> as may be relevant in a particular case.</p> <p><b>s.10</b> (1) For the purposes of this Act, a <i>relative</i> 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; (ii) the person's son, daughter, grandson or granddaughter; (iii) the person's brother or sister; (iv) the person's uncle or aunt; (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.</p>	6, 7, 8, 9 and 10