Fighting Domestic Violence - Australia

3. Similarities and differences in terminology

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# Introduction

**Introduction**

Although Australian state and territory legislation relating to domestic violence includes a framework for the mutual recognition of domestic violence orders issued in one state or territory in other states and territories throughout Australia, the state and territory legislation is not harmonized, and key defined terms lack consistency across relevant domestic violence-related legislation. This is a result of long-standing debates in Australia and internationally regarding the most appropriate terminology to use when identifying violence and abuse between spouses, partners and family members. In Australia in particular, terminology has become increasingly fragmented across the policing, legal and service sectors, and it is complicated by the range and diversity of cultural, socioeconomic, sexual, geographical and familial structures that are intended to be captured by any one label.[3]

The section below provides a comparative summary of the most central concepts under domestic violence laws, including the types of conduct constituting domestic violence, the scope of relationships considered domestic and the use of terminology identifying the victim or perpetrator of domestic violence under applicable laws.

Comparative summary of key concepts

**a) Types of conduct constituting domestic violence**

While there are some differences in the terminology used in each piece of legislation, the types of conduct that constitute domestic violence and, therefore, that provide the grounds for making a protection order are generally similar across the various jurisdictions. In all jurisdictions, domestic violence includes assault or personal injury (including sexual assault or marital rape) and intentional damage to the victim’s property, as well as threats of such behavior. Domestic violence also expressly encompasses intimidation in all jurisdictions other than the Australian Capital Territory, although the Australian Capital Territory definition includes categories of conduct that are likely to capture most types of behavior that would constitute intimidation such as emotional or psychological abuse, threatening behavior and coercion or any other behavior that controls or dominates the family member and causes the family member to feel fear for the safety or well-being of the family member or another person. The laws of Victoria and the Australian Capital Territory specifically address the issue of the exposure of children to domestic violence in their definitions of domestic violence or its equivalent, so that**behavior by a person that causes a child to hear or witness, or otherwise be exposed to the effects of** domestic violence, is itself considered to constitute a form of domestic violence.

The legislation in Queensland, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory expressly includes economic abuse as a form of domestic violence. Each of these jurisdictions deals with this issue slightly differently but, in broad terms, “economic abuse” means behavior that is coercive, deceptive or that unreasonably controls another person in a way that either denies them economic or financial autonomy they would otherwise have or withholds or threatens to withhold the financial support necessary for meeting their reasonable living expenses in circumstances where they are financially dependent. Examples of such conduct include coercing a person to relinquish control over assets or income, disposing of a person’s property without their consent, preventing a person from accessing a joint bank account for the purpose of meeting normal household expenses or withholding financial support necessary for the maintenance of the person or the person’s children.

The legislation in all states and territories provides for making domestic violence protection orders on the basis of at least some types of conduct that would commonly be described as stalking. The legislation in New South Wales, Queensland, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory expressly provides that stalking constitutes domestic violence.

In most jurisdictions, legislation expressly includes the concepts of emotional harm, psychological harm, emotional abuse, psychological abuse or similar as forms of domestic violence. Broadly, these terms relate to behavior by a person toward another person such as tormenting, intimidating or harassing the other person, for example, by making repeated derogatory taunts and, in some cases, may encompass conduct that would commonly be described as stalking. In particular, the South Australian Act refers to acts that would typically be associated with stalking or harassment, including following the person, loitering outside the place of residence of the person or some other place frequented by the person and keeping the person under surveillance, which are examples of conduct that may cause emotional or psychological harm that constitutes domestic abuse in South Australia. Similarly, Victoria’s definition of “emotional or psychological abuse” refers to behavior by a person toward another person that torments, intimidates, harasses or is offensive to the other person, which may be broad enough to encompass various types of conduct typically associated with stalking or harassment.

The legislation in the majority of jurisdictions (New South Wales, Queensland, Victoria, Western Australia, the Australian Capital Territory and the Northern Territory) expressly provides that harming or killing and, in some cases, threatening to harm a person’s pet animal can constitute domestic violence. In other jurisdictions, although harming or killing a pet animal are not expressly referred to, such conduct may constitute damage to property or a form of emotional or psychological abuse (or similar) that would amount to domestic violence or its equivalent, providing grounds for a protection order.

**b) Relevant relationships in the scope of domestic violence laws**

In all jurisdictions, conduct is only considered domestic violence or its equivalent if the victim is or has been in a particular kind of relationship with the perpetrator. The range of relationships within the legislative scope of domestic and family violence varies across Australia, although noting the following:

In all jurisdictions, a relevant relationship includes that between current or former intimate partners including, at least, spouses and de facto partners (including same-sex partners).

In almost all jurisdictions, a relevant relationship extends to relationships between immediate and extended families (those living in the same household, children and stepchildren, the child of a person’s de facto partner and other persons who are generally regarded as relatives) and other communal or extended kinship relationships of mutual obligation and support.

The Tasmanian legislation is an exception to this. Broadly, a protection order can only be made under Tasmanian legislation in respect of conduct directed toward a current or former spouse or (same-sex or opposite sex) de facto partner.

However, there may be scope for a person suffering abuse in the context of a relationship that is not covered under domestic violence legislation in Tasmania to seek a restraining order under other (more general) Tasmanian legislation. In particular, in connection with relationships not covered by the Tasmanian Act, restraint orders may be available under the Justices Act 1959 (Tasmania). Under the act, restraint orders may be obtained by a person against someone who has caused or threatened personal injury or damage to property, or who has stalked the person, even if there is no particular relationship between those persons.

**c) Use of terms such as “victim” and “perpetrator” across jurisdictions**

The terms “victim” and “perpetrator” are the most commonly used among police and judicial officers in domestic and family violence-related proceedings (for parties both alleged and proven to be a victim or a perpetrator of domestic or family violence), notwithstanding that alternatives (such as “aggrieved,” “affected person” or “protected person” in the case of a victim; and “respondent” or “defendant” in the case of a perpetrator) may be expressly defined under applicable state, territory and commonwealth domestic violence-related legislation, as set out in Table 8 below.

# 3.1 Domestic violence

**Table 8: Key defined terms and concepts under Australian domestic violence legislation**

**Domestic violence**

**New South Wales**

*NSW Act*

New South Wales family violence legislation does not define domestic or family violence. However it defines a **domestic violence offense** under Section 11 of the NSW Act as follows:

An offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being:

a personal violence offence, or

an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or

an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

A **personal violence offense** is defined under Section 4 of the NSW Act and refers to 55 offenses under the Crimes Act 1900 (New South Wales), including murder, manslaughter, wounding or causing grievous bodily harm with intent, assault, sexual assault, kidnapping, child abduction and destroying or damaging property. The list includes stalking or intimidation with the intent to cause fear of physical or mental harm (Section 13 of the NSW Act) and contravening an apprehended violence order (Section 14 of the NSW Act). The act of attempting to commit an offense referred to in Section 4 of the NSW Act is also deemed to be a personal violence offense.

A person has a **domestic relationship** with another person under Section 5 of the NSW Act:

If the person:

is or has been married to the other person;

is or has been a de facto partner of that other person;

has or has had an intimate personal relationship with the other person;

is living or has lived in the same household as the other person;

is living or has lived as a long-term resident in the same residential facility as the other person at the same time (excluding correctional centres and detention centres);

has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person;

is or has been a relative of the other person; or

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.

**Queensland**

 *Queensland Act*

Under Section 8 of the Queensland Act, “domestic violence”means the following:

Behaviour by a person (the **first person**) towards another person (the **second person**) with whom the first person is in a relevant relationship that:

is physically or sexually abusive; or

is emotionally or psychologically abusive; or

is economically abusive; or

is threatening; or

is coercive; or

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.

From the Queensland Act, domestic violence expressly includes the following behavior:

causing personal injury to a person or threatening to do so;

coercing a person to engage in sexual activity or attempting to do so;

damaging a person’s property or threatening to do so;

depriving a person of the person’s liberty or threatening to do so;

threatening a person with the death or injury of the person, a child of the person, or someone else;

threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;

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;

unauthorised surveillance of a person; and

unlawfully stalking a person.

Under the Queensland Act, a person who counsels or procures someone else to engage in behavior that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.

Under Section 13 of the Queensland Act, a relevant relationship is as follows:

an intimate personal relationship

a family relationship

an informal care relationship

**Victoria**

 *Victorian Act*

Under Section 5 of the Victorian Act, **family violence** is as follows:

(a) behavior by a person towards a family member that:

is physically, sexually, emotionally, psychologically or economically abusive;

is threatening or coercive; or

in any way controls or dominates the family member and causes that family member to feel fear for their safety or wellbeing or that of another person; or

(b) behavior by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behavior referred to in paragraph (a).

Per Section 8 of the Victorian Act, a **family member** of a relevant person means the following:

a person who is, or has been, the relevant person’s spouse or domestic partner; or

a person who has, or has had, an intimate personal relationship with the relevant person; or

a person who is, or has been, a relative of the relevant person; or

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

a child of a person who has, or has had, an intimate personal relationship with the relevant person.

Section 8(2) clarifies that a relationship may be an intimate personal relationship whether or not it is sexual in nature. Section 8(3) states that a **family member** includes the following:

Any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship.

Section 8(3) provides several factors that may be taken into account when determining whether this is the case.

**Western Australia**

*WA Act*

Under Section 5A of the WA Act,**family violence** is defined as follows:

violence, or a threat of violence, by a person towards a family member of the person; or

any other behavior by the person that coerces or controls the family member or causes the member to be fearful.

Further, under the WA Act, a person who procures another person to commit family violence is deemed to have committed family violence.

Per Section 4(3) of the WA Act, a person is a **family member** of another person “if the persons are in a **family relationship**.” Section 4(1) defines a **family relationship** as follows:

A relationship between 2 persons:

who are, or were, married to each other; or

who are, or were, in a de facto relationship with each other; or

who are, or were, related to each other; or

one of whom is a child who:

ordinarily resides, or resided, with the other person; or

regularly resides or stays, or resided or stayed, with the other person; or

one of whom is, or was, a child of whom the other person is a guardian; or

who have, or had, an intimate personal relationship, or other personal relationship, with each other; or

one of whom is the former spouse or former de facto partner of the other person’s current spouse or current de facto partner.

**South Australia**

 *SA Act*

Under Section 8(8) of the SA Act, **domestic abuse** is defined as “an act of abuse that is committed by a defendant against a person with whom the defendant is or was formerly in a relationship.”

Section 8(1) of the SA Act provides that abuse “may take many forms including physical, sexual, emotional, psychological or economic abuse.” Specifically, per Section 8(2) of the SA Act:

An act is an act of abuse against a person if it results in or is intended to result in:

physical injury; or

emotional or psychological harm; or

an unreasonable and non-consensual denial of financial, social or personal autonomy; or

damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

Section 8(8) of the SA Act further provides that two persons are in a relationship in the following instances:

they are married to each other; or

they are domestic partners; or

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

1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or

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

1 is a child and the other is a person who acts in loco parentis in relation to the child; or

1 is a child who normally or regularly resides or stays with the other; or

they are brothers or sisters or brother and sister; or

they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or

they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or

is the carer (within the meaning of the Carers Recognition Act 2005) of the other.

**Tasmania**

 *Tasmanian Act*

Under Section 7 of the Tasmanian Act**, family violence** is defined as follows:

any of the following types of conduct committed by a person, directly or indirectly, against that person’s spouse or partner:

assault, including sexual assault;

threats, coercion, intimidation or verbal abuse;

abduction;

stalking and bullying within the meaning of s 192 of the [Tasmanian] [Criminal Code](https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1924-069);

attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv); or

any of the following:

economic abuse;

emotional abuse or intimidation;

contravening an external family violence order, an interim FVO, an FVO or a PFVO; or

any damage caused by a person, directly or indirectly, to any property:

jointly owned by that person and his or her spouse or partner; or

owned by that person’s spouse or partner; or

owned by an affected child.

Per Section 4 of the Tasmanian Act, a **spouse or partner** of a person means “another person with whom the person is, or has been, in a family relationship.” A **family relationship** means the following:

A marriage or a significant relationship within the meaning of the [Relationships Act 2003](https://www.legislation.tas.gov.au/view/html/inforce/current/act-2003-044), 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.

 The concepts of economic abuse and emotional abuse or intimidation referred to in the definition of family violence also relate to conduct directed against the spouse or partner.

**Australian Capital Territory**

 *ACT Act*

Under Section 8(1) of the ACT Act, **family violence** is the following:

any of the following behavior by a person in relation to a family member of the person:

physical violence or abuse;

sexual violence or abuse

emotional or psychological abuse;

economic abuse;

threatening behavior;

coercion or any other behavior that:

controls or dominates the family member; and

causes the family member to feel fear for the safety or wellbeing of the family member or another person; or

behavior that causes a child to hear, witness or otherwise be exposed to behavior mentioned in paragraph (a), or the effects of the behavior.

Section 8(2) of the ACT Act supplements this definition by clarifying that **family violence**:

by a person in relation to a family member of the person includes the following:

sexually coercive behaviour;

damaging property;

harming an animal;

stalking;

deprivation of liberty.

Per Section 9 of the ACT Act, a family member of a person is the following

a domestic partner or former domestic partner of the person; or

an intimate partner or former intimate partner of the person; or

a relative of the person; or

a child of a domestic partner or former domestic partner of the person; or

a parent of a child of the person.

 Specific sub-definitions of **intimate partner** and **relative** are set out in Sections 10 and 11 of the ACT Act. The term **domestic partner** is interpreted in accordance with Section 169 of the [Legislation Act 2001 (Australian Capital Territory)](https://www.legislation.act.gov.au/View/a/2001-14/current/PDF/2001-14.PDF) as “someone who lives with the person in a domestic partnership, and includes a reference to a spouse, civil union partner or civil partner of the person.” **Domestic partnership** is defined as “the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.”

**Northern Territory**

 *NT Act*

Under Section 5A of the NT Act,domestic violenceis defined as follows:

Any of the following acts committed by a person against someone with whom the person is in a domestic relationship:

conduct causing harm;

damaging property, including the injury or death of an animal;

intimidation;

stalking;

economic abuse;

attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).

A person is in a **domestic relationship** (Section 9) with another person if the person:

is or has been in a family relationship with the other person; or

has or had the custody or guardianship of, or right of access to, the other person; or

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

ordinarily or regularly lives, or has lived, with:

the other person; or

(ii) someone else who is in a family relationship with the other person; or

is or has been in a family relationship with a child of the other person; or

is or has been in an intimate personal relationship with the other person; or

is or has been in a carers relationship with the other person.

 Sub-definitions of **family relationship, intimate personal relationship and carer relationship** are set out in Sections 10, 11 and 12, respectively, of the NT Act.

**Commonwealth**

*Commonwealth Act*

**Family  violence** is defined under Section 4AB of the Commonwealth Act as “violent, threatening or other behavior by a person that coerces or controls a member of the person’s family, or causes the family member to be fearful.”

The Commonwealth Act provides the following (non-exhaustive) examples of behavior that may constitute family violence:

an assault; or

a sexual assault or other sexually abusive behaviour; or

stalking; or

repeated derogatory taunts; or

intentionally damaging or destroying property; or

intentionally causing death or injury to an animal; or

unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

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

preventing the family member from making or keeping connections with his or her family, friends or culture; or

unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty.

Per Section 1AB of the Commonwealth Act:

A person (the **first person**) is a **member of the family** of another person (the **second person**) if:

the first person is or has been married to, or in a de facto relationship with, the second person; or

the first person is or has been a relative of the second person (as defined in subsection (1AC)); or

an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:

a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;

an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or

an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:

an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;

an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or

the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or

the first person is or has been a member of the family of a child of the second person.

The concept of a **relative** is further defined in Section 1AC of the Commonwealth Act.

# 3.2 Stalking

See also the discussion on the criminal offense of stalking in Section 1 above.

**New South Wales**

*NSW Act*

Section 8 of the NSW Act defines stalkingas follows:

the following of a person about;

the watching or frequenting of the vicinity of, or an approach to, a person’s place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity; or

contacting or otherwise approaching a person using the internet or any other technologically assisted means.

To determine whether a person’s conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offense) in the person’s behavior.

**Queensland**

 *Queensland Act*

Section 8 of the Queensland Act refers to **unlawful stalking**, which is defined with reference to Section 359B of the Criminal Code Act 1899 (Queensland) as conduct intentionally directed at a person comprising the following:

1 or more acts of the following, or a similar, type:

following, loitering near, watching or approaching a person;

contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;

loitering near, watching, approaching or entering a place where a person lives, works or visits;

leaving offensive material where it will be found by, given to or brought to the attention of, a person;

giving offensive material to a person, directly or indirectly;

an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;

an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and

that:

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

causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

The definition of domestic violence also refers to **unauthorized surveillance**, defined under the Queensland Act as “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.”

The following examples are given of surveillance by using technology:

reading a person’s SMS messages

monitoring a person’s email account or internet browser history

monitoring a person’s account with a social networking internet site

using a GPS device to track a person’s movements

checking the recorded history in a person’s GPS device

The related definition of **emotional or psychological abuse** under the Queensland Act incorporates examples of behavior that is typically considered to constitute stalking, such as “following a person when the person is out in public, including by vehicle or on foot” (see below under the section “Harassment”).

**Victoria**

 *Victorian Act*

The Victorian Act does not expressly define stalking. However, the definition of **emotional or psychological abuse** under Section 7 of the Victorian Act refers to “behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person,” which may encompass certain activities that are typically associated with stalking.

The Victorian definition of **emotional or psychological abuse** includes a more limited set of examples than under the Queensland Act and, in particular, it does not include examples equivalent to the following:

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 a social networking site without the person’s consent

as are expressly listed in the Queensland Act

**Western Australia**

 *WA Act*

The WA Act defines **stalking** with reference to the definition in Chapter XXXIIIB of the Western Australian Criminal Code, which includes to “pursue another person with intent to intimidate that person or a third person” and to “pursue another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate.”

The concepts of **intimidate** and **pursue** are defined broadly under the Western Australian Criminal Code. In particular, pursue includes the following:

to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;

to repeatedly follow the person;

to repeatedly cause the person to receive unsolicited items;

to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;

whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

 Section 3 of the WA Act expressly defines **cyberstalking** as “in relation to a person, stalking, monitoring the movement or communications of, or repeatedly communicating with or harassing, the person using electronic means.”

**South Australia**

 *SA Act*

The SA Act does not expressly define stalking. However, under Section 8 of the SA Act, **emotional or psychological harm**is defined broadly as follows:

a mental illness

a nervous shock

distress, anxiety or fear that is more than trivial

 This definition is supplemented by specific examples that indicate that the definition is broad enough to encompass many acts that would typically be associated with stalking. Relevant examples include following the person (Section 8(4)(e)), loitering outside the place of residence of the person or some other place frequented by the person (Section 8(4)(f)) and keeping the person under surveillance (Section 8(4)(k)).

**Tasmania**

 *Tasmanian Act*

The definition of family violence under Section 7 of the Tasmanian Act refers to **stalking and bullying** “within the meaning of section 192 of the Criminal Code,” i.e., the description of stalking and bullying in Section 192(1) of the Criminal Code Act 1924 (Tasmania), as follows:

A person who, with intent to cause another person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful, pursues a course of conduct made up of one or more of the following actions:

following the other person or a third person;

keeping the other person or a third person under surveillance;

loitering outside the residence or workplace of the other person or a third person;

loitering outside a place that the other person or a third person frequents;

entering or interfering with the property of the other person or a third person;

making threats to the other person or a third person;

directing abusive or offensive acts towards the other person or a third person;

sending offensive material to the other person or a third person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the other person or a third person;

publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the other person or a third person;

using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the other person to be apprehensive or fearful;

contacting the other person or a third person by postal, telephonic, electronic or any other means of communication;

acting in another way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful.

Section 192(2) clarifies that “a person pursues a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion.”

Section 192(3) also states the following:

 Aperson who pursues a course of conduct of a kind referred to in subsection (1) and so causes another person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful is taken to have the requisite intent under that subsection if at the relevant time the person knew, or ought to have known, that pursuing the course of conduct would, or would be likely to, cause the other person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful.

**ACT**

 *ACT Act*

The ACT Act does not expressly define stalking. However, **emotional or psychological abuse** forms part of the definition of family violence in the Australian Capital Territory. It is defined broadlyunder Section 8 of the ACT Act in relation to a family member as follows:

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.

 This definition is supplemented by specific examples, although, unlike in other jurisdictions, these do not seem to address typical stalking scenarios. However, to the extent that behaviors associated with stalking may be interpreted as tormenting or harassing a family member, such behaviors may be captured under the definition of emotional or psychological abuse.

**Northern Territory**

 *NT Act*

Section 7 of the NT Act expressly defines **stalking** and states the following:

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:

intentionally following the person;

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.

# 3.3 Harassment

**New South Wales**

*NSW Act*

The NSW Act does not specifically define harassment. However, it refers to harassment in its definition of intimidation (Section 7) and defines the **intimidation** of a person as follows:

conduct (including cyberbullying) amounting to harassment or molestation of the person;

an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or

conduct that causes a reasonable apprehension of:

injury to the person or to another person with whom the person has a domestic relationship, or

violence to any person, or

damage to property, or

harm to an animal that belongs or belonged to, or is or was in the possession of, the person or another person with whom the person has a domestic relationship.

To determine whether a person’s conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offense) in the person’s behavior.

**Queensland**

 *Queensland Act*

The Queensland Act does not specifically define harassment. However, it refers to harassment in its definition of **emotional or psychological abuse** and defines it as “behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.”

The following examples of emotional or psychological abuse are provided under the Queensland Act:

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 a 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

**Victoria**

 *Victorian Act*

The Victorian Act does not expressly define harassment. However, the definition of **emotional or psychological abuse** under Section 7 of the Victorian Act expressly refers to harassment as a form of emotional or psychological abuse and as “behaviour by a person towards another person that torments, intimidates, **harasses** or is offensive to the other person.”

The following examples of emotional or psychological abuse are provided under the Victorian Act:

repeated derogatory taunts, including racial taunts

threatening to disclose a person’s sexual orientation to the person’s friends or family against the person’s wishes

threatening to withhold a person’s medication

preventing a person from making or keeping connections with the person’s family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person’s cultural identity

threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person

**Western Australia**

 *WA Act*

The WA Act does not expressly define harassment. However, the definition of **cyberstalking** (Section 3) expressly refers to “harassing a person using electronic means” as constituting cyberstalking, which is defined as “in relation to a person, stalking, monitoring the movement or communications of, or repeatedly communicating with or harassing, the person using electronic means.”

 The definition of stalking can also be seen to encompass acts that would typically be considered harassment, with the definition of pursue referred to in the definition of stalking including “to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise.”

**South Australia**

 *SA Act*

The SA Act does not expressly define harassment. However, **emotional or psychological harm** under Section 8 of the SA Act is defined as follows:

a mental illness

a nervous shock

distress, anxiety or fear that is more than trivial

This definition is supplemented by specific examples that indicate that the definition is broad enough to encompass acts that would typically be considered harassment.

Relevant examples include “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” (Section 8(4)(h)); “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” (Section 8(4)(i)); “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” (Section 8(4)(j)); “directing racial or other derogatory taunts at the person” (Section 8(4)(l)); and “taking an invasive image (within the meaning of Part 5A of the Summary Offences Act 1953) of the person and threatening to distribute the image without the person’s consent” (Section 8(4)(oc)).

**Tasmania**

 *Tasmanian Act*

While the Tasmanian Act defines the related term **harassing**, this term is not referred to as part of the definition of family violence. The term harassing (defined as set out below under the Tasmanian Act) is only used in the context of potential conditions of a police family violence order (also known as a PFVO in legislation). Specifically, a police family violence order may require the person to whom it is issued to “refrain from harassing” an affected person, affected child or other person named in the order.

This means that, in practice, an affected person would need to rely on another element of the definition of family violence, such as stalking and bullying (see above), which includes a number of elements that would typically be associated with harassment, to demonstrate that relevant harassment-type conduct constitutes family violence against which the affected person should be protected under the Tasmanian Act.

**Harassing** (Section 4) is defined as follows:

Doing any one or more of the following actions in respect of a particular person:

following the person;

keeping the person under surveillance;

loitering outside the residence or workplace of the person;

loitering outside a place that the person frequents;

entering or interfering with the property of the person;

sending offensive material to the person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the person;

publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the person;

using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the person to be apprehensive or fearful;

contacting the person by postal, telephonic, electronic or any other means of communication.

**Australian Capital Territory**

 *ACT Act*

The ACT Act does not specifically define harassment. However, it refers to harassment in its definition of **emotional or psychological abuse** and it defines it in relation to a family member as follows:

 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.

**Northern Territory**

 *NT Act*

The NT Act does not expressly define harassment. However, it refers to harassment in its definition of **intimidation** (Section 6), which is defined as follows:

harassment of the person; or

any conduct that causes a reasonable apprehension of:

violence to the person; or

damage to the property of the person, including the injury or death of an animal that is the person’s property; or

any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.

The NT Act also provides the following examples of harassment:

Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.

Giving or sending offensive material to the person.

# 3.4 Victim

**New South Wales**

*NSW Act*

Section 3 of the NSW Act uses the defined term **protected person**, which means the person for whose protection an apprehended violence order is sought or made.

**Queensland**

 *Queensland Act*

Section 21 of the Queensland Act uses the defined term**aggrieved**, which means the person for whose benefit a domestic violence order or a police protection notice is in force or may be made under the Queensland Act.

**Victoria**

 *Victorian Act*

Section 4 of the Victorian Act uses the defined term **affected family member**, which is defined as follows:

a person the subject of an application for a family violence intervention order to protect the person or the person’s property;

a person for whom a police officer intends to make an application referred to in section 13(1)(a) or 13A(1)(a) to ensure the safety of the person or to preserve any property of the person;

a person who is seeking leave, or for whom leave is being sought, from the court to make an application for a family violence intervention order as referred to in section 45(d)(ii) or (iii) or (e)(ii); or

an additional applicant under section 76.

Section 4 of the Victorian Act also uses the term **protected person** to refer to “a person who is protected by a family violence intervention order or a family violence safety notice or a recognised DVO.”

**Western Australia**

 *WA Act*

Section 3 of the WA Act uses the defined term **person seeking to be protected**, which means the following:

(a) the person who has applied for a restraining order; or

 (b) if an application for a restraining order has been made on behalf of another person, the person on behalf of whom the application is made.

**South Australia**

*SA Act*

Section 3 of the SA Act uses the defined term **protected person** to refer to “a person for whose protection an intervention order is issued.”

**Tasmania**

*Tasmanian Act*

Section 4 of the Tasmanian Act uses the defined term **affected person**, defined as “a person against whom family violence is directed.”

**Australian Capital Territory**

 *ACT Act*

The ACT Act (Dictionary) uses the defined term **affected person**, defined as “a person against whom family violence has been, or is likely to be, committed.” It expressly states that an affected person “includes any child who hears, witnesses or is otherwise exposed to family violence committed against another person.”

**Northern Territory**

 *NT Act*

Section 13 of the NT Act uses the defined term **protected person**, defined as a person for whose protection a domestic violence order is sought or is in force. It notes that a protected person must be in a domestic relationship with the defendant.

# 3.5 Abuser

**New South Wales**

*NSW Act*

Section 3 of the NSW Act uses the defined term**defendant**, which means the person against whom an apprehended violence order is made or is sought to be made.

**Queensland**

 *Queensland Act*

Section 21 of the Queensland Act uses the defined term **respondent**, which means a person against whom a domestic violence order or a police protection notice is in force or may be made under this act.

**Victoria**

 *Victorian Act*

Section 4 of the Victorian Act uses the defined term respondent, which is defined as follows:

a person against whom:

an application for a family violence intervention order has been made; or

a family violence intervention order has been made; or

a family violence safety notice has been issued;

an additional respondent under section 76;

in relation to a recognised DVO, a person against whom the recognised DVO has been made*.*

**Western Australia**

 *WA Act*

Section 4 of the WA Act uses the defined term **respondent**, which means the person against whom a restraining order is sought.

**South Australia**

 *SA Act*

Section 6 of the SA Act uses the defined term **defendant** to refer to a person against which there are grounds for issuing an intervention order, noting that an intervention order may be issued for the protection of any person against whom it is suspected the defendant will commit an act of abuse.

**Tasmania**

 *Tasmanian Act*

Section 13C of the Tasmanian Act uses the defined term **prescribed person** to refer in certain contexts to the person against whom an external family violence order, interim family violence order, family violence order, police family violence order or domestic violence order is made. In other contexts, the person is simply referred to as “the person against whom an FVO is sought” or “the person against whom the order is made.”

**Australian Capital Territory**

 *ACT Act*

The ACT Act (Dictionary) uses the defined term **respondent**, which is defined as follows:

a person in relation to whom an application for a family violence order has been made; or

a person against whom a family violence order has been made; or

for part 8 (Court-initiated actions) - the defendant in the family violence proceeding.

**Northern Territory**

*NT Act*

Section 14 of the NT Act uses the defined term **defendant**, defined as the person against whom a domestic violence order is sought or is in force. It states that the defendant must be at least 15 years old.

# 3.6 Civil protection order

**Commonwealth**

*Commonwealth Act*

The Commonwealth Act refers to a **family violence order**, which is defined as an order (including an interim order) made under a prescribed law of a state or territory to protect a person from family violence.

**New South Wales**

 *NSW Act*

Section 3 of the NSW Act uses the defined term **apprehended domestic violence order**,which means an order made under Part 4 of the NSW Act.

**Queensland**

 *Queensland Act*

Section 171 of the Queensland Act uses the defined term **domestic violence order**, which is defined as a local order, an interstate order or a New Zealand order.

**Victoria**

 *Victorian Act*

Sections 4 and 11 of the Victorian Act use the defined term **family violence intervention order**,which comprises final orders and interim orders made under the Victorian Act. **Recognized domestic violence orders,** which are interstate or foreign domestic violence orders, are recognized under the Victorian Act.

Section 26 of the Victorian Act includes the concept of a **family violence safety notice**, which is a notice that may be issued by a police officer in response to an application from an affected family member if no family violence intervention order is in place between the affected family member and respondent, and if the police officer:

[…] believes on reasonable grounds that issuing the notice is necessary: (i) to ensure the safety of the affected family member; or (ii) to preserve any property of the affected family member; or (iii) to protect a child who has been subjected to family violence committed by the respondent.

The Victorian Act refers to supplementary orders that may be made under other Victorian legislation, including **personal safety intervention** orders (made under Section 4 of the Personal Safety Intervention Orders Act 2010 (Victoria)) and **child protection orders** (made under Section 515(1) of the Children, Youth and Families Act 2005 (Victoria)).

**Western Australia**

 *WA Act*

The WA Act uses the defined term **family violence restraining order**, which means an order made under the WA Act imposing restraints of the kind referred to in Section 10G of the WA Act, which are restraints to prevent the respondent from doing the following:

committing family violence against the person seeking to be protected;

if the person seeking to be protected by the order is a child, exposing a child to family violence committed by the respondent; or

behaving in a manner that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them.

 More broadly, the WA Act refers to **restraining orders** as encompassing three types of restraining orders: **family violence restraining orders, violence restraining orders** **and misconduct restraining orders.**

**South Australia**

 *SA Act*

The SA Act uses the term **intervention order** to refer to interim and final intervention orders issued under the SA Act for the protection of any person against whom it is suspected the defendant will commit an act of abuse, or any child who may hear, witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against a person.

**Tasmania**

 *Tasmanian Act*

Section 4 of the Tasmanian Act uses the term **family violence order**, defined as “a family violence order made under section 16” of the Tasmanian Act, which may include such conditions as the court considers necessary or desirable to prevent family violence being committed against an affected person or to protect any other person named in the order.

The Tasmanian Act includes related concepts of a **police family violence order** for orders made by the police under Section 14 of the Tasmanian Act and a **domestic violence order** to refer to orders made in another jurisdiction.

**Australian Capital Territory**

 *ACT Act*

The ACT Act (Dictionary) uses the term **family violence order**, defined as a protection order or an after-hours order made under the act, as well as interstate family violence order, a New Zealand family violence order or prescribed order.

**Northern Territory**

 *NT Act*

Section 4 of the NT Act uses the term **domestic violence order**, which includes a court domestic violence order or police domestic violence order and, where relevant, an interstate domestic violence order or New Zealand domestic violence order.

# 3.7 Causes of action

**Commonwealth**

*Commonwealth Act*

The Commonwealth Act refers to **proceedings**, defined as “a proceeding in a court, whether between parties or not, and includes cross‑proceedings or an incidental proceeding in the course of or in connection with a proceeding.”

**New South Wales**

 *NSW Act*

Section 3 of the NSW Act uses the defined term **apprehended violence order proceedings**, which means “proceedings under the NSW Act in relation to an apprehended violence order or an application for an apprehended violence order.”

**Queensland**

 *Queensland Act*

Section 41A of the Queensland Act uses the term **original application** to describe the cause of action whereby an application for a protection order has been made and is before a court.

**Victoria**

 *Victorian Act*

Section 42 of the Victorian Act refers to “an **application** for a family violence intervention order,” which must be made at the proper venue of the magistrates’ court or children’s court. Part 4, Division 1 of the Victorian Act describes the application process and who may apply for such an order.

**Western Australia**

 *WA Act*

The WA Act refers to **proceedings under this act**, which includes “the hearing of an application” for a restraining order under the act or “proceedings for an offence against this Act.”

**Southern Australia**

 *SA Act*

Section 20 of the SA Act refers to “**an application to the Court for an intervention order**” as the primary cause of action to obtain an intervention order.

**Tasmania**

 *Tasmanian Act*

Section 15 of the Tasmanian Act refers to “**an application for an FVO**” to be made to a court.

**Australian Capital Territory**

 *ACT Act*

The ACT Act refers to an **application for a protection order** as the primary form of civil action to obtain a protection order and to **family violence proceedings** as criminal proceedings for a family violence offense.

**Northern Territory**

 *NT Act*

Section 14 of the NT Act uses the defined term proceedings to refer to the following causes of action:

the hearing of an application for:

a DVO; or

the variation or revocation of a DVO; or

a proceeding for the confirmation of a DVO; or

a proceeding for an offence against this Act.

# 3.8 Marital rape

Marital rape is not specifically defined under Australia’s domestic violence laws. However, acts constituting marital rape (such as a person engaging in sexual activity with the person’s spouse without the spouse’s consent) are criminalized in all Australian states and territories. Under most of Australia’s domestic violence laws, the concept of domestic violence or its equivalent (see above) is defined broadly to encompass acts of marital rape.

For example, the definition of “domestic violence” in the Queensland Act expressly includes “coercing a person to engage in sexual activity or attempting to do so.” The definition of “family violence” in the Victorian Act expressly includes “sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour.” The definition of “emotional or psychological harm” constituting “abuse” under the SA Act expressly includes “sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity.” The definitions of family violence in the ACT Act (Section 8(2)) and domestic violence in the NT Act (Section 6(1)(b)(i)) expressly include “sexually coercive behaviour.”

# 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Not specifically, However, see, for example, the discussion above in relation to economic abuse and emotional or psychological abuse.

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