



## FAMILY COURT OF WESTERN AUSTRALIA

### FAMILY VIOLENCE POLICY

This policy document contains information about family violence, your personal safety when attending Court and the Court's policy and strategy in dealing with family violence.

Family violence is a serious social issue which can impact on members of a family, namely children, parents and other extended family members.

The Court's Family Violence Policy provides a guideline for the management of cases involving family violence and the protection of children, parents, family members, Court staff and people who attend the Family Court of Western Australia.

This policy document contains the following information:

- ❖ Definition of Family Violence
- ❖ The effects of Family Violence on children
- ❖ Family Violence Strategy
- ❖ Safety Measures
- ❖ What should you do if you have concerns for your safety
- ❖ Contacts

## WHAT IS FAMILY VIOLENCE?

The term 'family violence' has been defined in different ways. To appreciate the context in which courts exercising family law jurisdiction approach this issue, it is important to know the definition used in the *Family Law Act 1975* (Cth).

The FLA definition is contained in section 4AB. This definition came into effect on 7 June 2012 and is significantly broader than the definition that formerly appeared in the Act.

Section 4AB states:

1. For the purposes of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful.
2. Examples of behaviour that may constitute family violence include (but are not limited to):
  - a. an assault, or
  - b. a sexual assault or other sexually abusive behaviour, or
  - c. stalking, or
  - d. repeated derogatory taunts, or
  - e. intentionally damaging or destroying property, or
  - f. intentionally causing death or injury to an animal, or
  - g. unreasonably denying the family member the financial autonomy that he or she would otherwise have had, or
  - h. unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support, or
  - i. preventing the family member from making or keeping connections with his or her family, friends or culture, or
  - j. unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
3. For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
4. Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
  - a. overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family, or
  - b. seeing or hearing an assault of a member of the child's family by another member of the child's family, or
  - c. comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family, or
  - d. cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family, or

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

While the definition includes examples of particular behaviour, it is not an exhaustive list. Even though conduct may not be specifically mentioned in the FLA definition, the courts (through section 60CC(3)(m)) may still take such conduct into account.

Unlike the earlier definition, there is no requirement that any fear experienced by the victim of the violence is reasonable. Thus the new definition has objective and subjective elements.

The courts understand that family violence is not homogeneous in its qualities and can arise in a variety of contexts. It is recognised that family violence is widespread and can occur in all socioeconomic and ethnic groups.

The definition of family violence in the FLA is expressed in gender neutral terms. It encompasses abusive acts committed by men and women in heterosexual and same-sex relationships. The courts recognise that women and men can experience family violence. Nevertheless data suggests that women are more often victims of personal violence than men. For example, the Australian Bureau of Statistics' *Personal Safety Survey* (2005) found that of women who had reported being physically assaulted in the 12 months prior to interview, 73,800 or 31 per cent reported being assaulted by a current and/or previous partner. This compares to 21,200 or 4.4 per cent of men who reported being assaulted by a current and/or previous partner in the 12 months prior to interview. The *Personal Safety Survey* also found that 16.6 per cent of women had experienced violence by a partner (including physical threat, physical assault, sexual threat and sexual assault by a current and/or previous partner) since the age of 15 as compared to 5.7 per cent of men.

Importantly, the FLA does not require independent verification of allegations of family violence (such as police or medical reports) for a court to be satisfied that it has occurred. As the Full Court of the Family Court said in *Amador & Amador* (2009) 43 Fam LR 268:

*Where domestic violence occurs in a family it frequently occurs in circumstances where there are no witnesses other than the parties to the marriage, and possibly their children. We cannot accept that a court could never make a positive finding that such violence occurred without there being corroborative evidence from a third party or a document or an admission.*

*The victims of domestic violence do not have to complain to the authorities or subject themselves to medical examinations, which may provide corroborative evidence of some fact, to have their evidence of assault accepted.*

## **THE EFFECTS OF FAMILY VIOLENCE ON CHILDREN**

Research indicates that family violence, abuse, neglect or exposure to family violence may adversely impact on a child's emotional, social, and physical development and well being.

Children are affected by family violence whether the violence is directed to them personally or directed to another family member in their presence or where it impacts on their significant carers.

The legislative framework in which the Court determines applications dealing with arrangements for the care of children directs the Court to have regard to and to protect parents and children from harm that arises from family violence or exposure to family violence.

## **FAMILY VIOLENCE STRATEGY OF THE FAMILY COURT OF WESTERN AUSTRALIA**

The following statement sets out the strategic objectives of the Court in dealing with cases involving family violence.

1. Recognition of the impact of Family Violence

Family Violence may occur during a relationship and continue after separation and may impact significantly on a person's capacity to effectively participate in Court events.

2. Safety on Court premises

All persons who attend the Court or work on its premises should be safe.

3. Risk Assessment

A screening and risk assessment will be undertaken by the Family Consultant in cases involving children and allegations of risk.

4. Importance of developmental programs for Court Staff and Judicial Officers

Professional development programs and access to current research on family violence issues is an important factor in supporting Court staff in dealing with cases involving family violence.

5. Links to associated services outside the Court

The Court will make referrals to a wide range of external organisations, agencies and community groups who support and assist parents and children who are affected by family violence.

6. Information Provision

Accurate and up to date information on the Court's response to family violence should be widely available to users of Court services and their families.

## SAFETY MEASURES

The Court has a number of processes in place to ensure client safety when attending Court.

There are many occasions during which a person may attend Court, for example:

- To attend a Court hearing or event
- To file court documents
- To attend an appointment with a Family Consultant
- To inspect documents.
- To support a family member or friend
- To obtain information or legal advice.

In each of the above situations different considerations may apply to ensure the person's safety and to promote a person's ability to effectively participate in Court events.

Separate interviews and waiting areas can be requested and arranged. Attendance by telephone or video conference may also be possible.

In children's cases, each party will be seen separately at the beginning of their Case Assessment Conference to enable the Family Consultant to conduct a risk screening.

Provision can sometimes be made for separate entry and exit points from the Court building.

You must tell the Court about Violence Restraining Orders (including Interim Violence Restraining Orders) as they may affect the orders the Court makes.

## WHAT SHOULD YOU DO IF YOU HAVE CONCERNS FOR YOUR SAFETY

You have a right to feel safe at Court. The Court places a priority on safety and can assist you when you attend Court.

If you have concerns for your safety it is important you inform the Court in writing, preferably at least 2 weeks before the Court event. The template "Request for Personal Safety Measures" letter provides guidance on what information to include. The Court recognises that parties may be hesitant to raise safety concerns; hence the requirement to serve a copy on the other parties is waived. Requests will be approved where resources allow. Please note: the information in these letters will not be taken into consideration during proceedings, except where also raised in documentation served on the other parties.

For more information please call your Client Administration Officer or the Court's Call Centre on:

08 9224 8222 or 1800 199 228

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You may wish to also consider the following:

- If there is an existing Violence Restraining Order you should advise the Court at least two days before your Court event and bring a copy of the order to Court with you.
- You can discuss your concerns with your Case Coordinator or a Customer Service Officer as soon as you are advised of your Court event.
- If you have concerns about your safety, advise Court staff so they can put in place special arrangements, such as separate waiting areas.
- Immediately report any threatening or aggressive behaviour to Court staff.

If you have concerns about your safety outside the Court or you have any questions about family violence you may wish to contact one of the following:

- The Police
- Your lawyer
- One of the agencies listed on this flyer

Some aspects of family violence may constitute a criminal offence and you may need to consider reporting such incidents to the Police or the Department for Child Protection and Family Support.

## *Further Assistance*

### **Western Australia**

<b>Agency</b>	<b>Contact Details</b>
Women's Domestic Violence Helpline	9223 1188 1800 007 339
Men's Domestic Violence Helpline	9223 1199 1800 000 599
Sexual Assault Resource Centre	9340 1828 1800 199 888
Mens' Helpline	1300 789 978
Crisis Care	9223 1111 1800 199 008 TTY 9325 1232
Lifeline	13 11 14 (24hr crisis line)
WA Police Service (Not for emergencies)	13 14 44 SMS Assist 0403 277 478
Dad's @ Lifeline	9261 4451 (9am-5pm weekdays)
Women's Information Service	1800 199 174
Women's Council for Domestic and Family Violence	9420 7264
Multicultural Services Centre of WA Inc	9328 2699