

7. Definitional issues

- Personal and domestic violence
- Domestic relationship

7.1 In this chapter, the Commission considers the adequacy of the definitions of “personal violence”, “domestic violence”, and “domestic relationship”.

PERSONAL AND DOMESTIC VIOLENCE

7.2 Part 15A provides that an ADVO or an APVO may be issued where a person has reasonable grounds to fear, and in fact fears, the commission of a personal violence offence.¹ Personal violence offence is defined in section 4 of the Crimes Act to include the commission of, or the attempt to commit, a range of offences such as murder, manslaughter, malicious wounding or damage, assault, sexual assault and contravening an AVO.²

7.3 There is no express definition of domestic violence in the Crimes Act. Rather, a domestic violence offence is defined as a personal violence offence committed against a person who is in a domestic relationship with the offender. There have been calls for AVO legislation to contain a specific definition of domestic violence, in the belief that it would not only influence the interpretation of lawyers, courts and police, but have a wider impact in terms of “shaping community understandings of domestic violence”.³ The Model Domestic Violence Laws Report recommended that an act of domestic violence be defined as:

- causing or threatening to cause a personal injury to the protected person, or the abduction or confinement of the protected person;
- causing or threatening to cause damage to the protected person’s property;

1. Crimes Act s 562AE and s 562AI.
2. Personal violence offences relate mainly to physical violence. Mental and psychological abuse which may give rise to an AVO is covered by the stalking and intimidation provisions in s 562AB of the Crimes Act: see discussion of stalking and intimidation in Chapter 13.
3. R Hunter and J Stubbs, “Model Laws or Missed Opportunity?” (1999) 24(1) *Alternative Law Journal* 3.

- causing or threatening to cause the death of, or injury to, an animal, even if the animal is not the protected person's property;
- behaving in an harassing or offensive way towards the protected person; or
- stalking the protected person.⁴

7.4 Legislation in some other jurisdictions contains definitions of personal and/or domestic violence. While the definitions differ, they all involve some form of actual or threatened personal injury or property damage, and intimidating, harassing and otherwise indecent or inappropriate behaviour.⁵ The Commission is interested in hearing views on whether the current definitions in the Crimes Act are adequate, or whether a definition of personal and/or domestic violence should be included in Part 15A to clarify the offences for which an AVO may be sought. Should the option of removing the AVO provisions from the Crimes Act, or of creating separate domestic violence legislation, be favoured, it may be appropriate to develop a definition of personal and domestic violence for inclusion in that legislation.⁶

Issue 8

Are the current definitions of domestic and personal violence offence adequate?

Should domestic and personal violence be better defined in Part 15A? How?

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4. Domestic Violence Legislation Working Group, *Model Domestic Violence Laws* (Report, April 1999) at 18.
 5. See for example, *Protection Orders Act 2001* (ACT) s 9 and s 10; *Domestic Violence (Family Protection) Act 1989* (Qld) s 11(1); *Domestic Violence Act 1994* (SA) s 4(2); *Crimes (Family Violence) Act 1987* (Vic) s 4; *Domestic Violence Act 1995* (NZ) s 3.
 6. See Chapter 6.

DOMESTIC RELATIONSHIP

7.5 Part 15A provides that people are in a domestic relationship if they:

- are, or have been, married;
- are, or have been, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* (NSW);
- have, or have had, an intimate personal relationship, whether or not of a sexual nature;
- are living in the same household or other residential facility;
- have, or have had, a relationship where one party is dependent on the other providing ongoing paid or unpaid care; or
- are, or have been, relatives.⁷

7.6 The definition of domestic relationship is significant because it determines whether a person may apply for an ADVO or an APVO.⁸ The definition was broadened in 1999 to include same-sex de facto partners, housemates (including tenants, boarders, and people living in institutions or group homes), carers and former relatives, such as ex-mothers-in-law. The CLRD Discussion Paper also raised the issue of whether the definition of domestic relationship should make specific reference to Aboriginal and other cultural traditions.⁹ The Northern Territory legislation provides that a domestic relationship exists where someone is a relative “according to Aboriginal tradition or contemporary social practice”.¹⁰

Issue 9

Is the current definition of domestic relationship adequate? If not, how should it be amended?

7. Crimes Act s 562A.

8. The definition would become increasingly important if the option of separate domestic violence legislation is adopted: see para 6.8-6.14.

9. NSW Criminal Law Review Division, *Apprehended Violence Orders: A Review of the Law* (Discussion Paper, 1999) at 22.

10. *Domestic Violence Act 1992* (NT) s 3(2)(viii).