



THE LAW SOCIETY
OF NEW SOUTH WALES

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Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601

By email: nathan.macdonald@lawcouncil.asn.au

Dear Mr Tidball,

Proposed model definition of family violence

Thank you for the opportunity to provide input into a proposed model definition of family violence.

The Law Society's position is informed by the understanding that a definition of family violence primarily has two different applications. The first relates to identifying family violence for the purpose of protecting victim/survivors, and the second relates to the criteria relevant to punishing perpetrators.

In our view, there is value in ensuring a consistent definition of family violence in family law legislation, where the definition is used for identifying and responding to family violence risk (**FVR**) for parties and their children, and for determining parenting issues. In that context, it is appropriate for the definition to be relatively broad. However, this would not necessarily be true in the criminal law context, where the definition is applied for the purpose of punishing perpetrators. Given this, we have concerns about the utility and feasibility of developing a national definition for use across criminal and family law in all Australian jurisdictions.

Our responses to the consultation questions, as applicable, are set out below.

1. Should the term 'family violence' be adopted consistently across jurisdictions to the exclusion of other terms?

As outlined above and as discussed below under Question 2, we do not support the development of a national definition of family violence, outside the context of family law legislation. Accordingly, we would not support the adoption of a single term to denote family violence and/or domestic violence.

2. Are there other potential benefits or risks of developing a consistent nation (sic) definition of family violence which require further consideration?

As noted above, laws relating to domestic violence and/or family violence have different purposes in different legal contexts. In the context of family law, 'family violence' is defined for

the purpose of laws and court procedures that aim to identify and respond to FVR as experienced by the parties and/or their families, and to inform the determination of parenting proceedings. In this context, given the objective is to protect against FVR, it is appropriate to define 'family violence' broadly, in a way that encompasses a wide range and degree of risk. In the criminal law context, 'domestic violence' is defined for the purpose of criminal offences and procedures that aim to punish offenders as well as to protect victim/survivors. In that context, we suggest stricter criteria should apply to the definition, to ensure it only captures behaviour considered to be of a criminal nature. In our view, different definitions should continue to apply in the family law and criminal law contexts.

We appreciate there is a degree of overlap between the two contexts in that, in parenting proceedings, criminal and police records are routinely used to provide evidence of FVR. We note also that the establishment of a national domestic violence register may see an increase in cross-jurisdictional sharing of domestic violence information for this purpose. Nonetheless, in our view it is appropriate that in parenting proceedings the court is able to consider a wide range of factors, beyond the information contained in criminal records.

We question the utility of developing a model definition in the criminal law context, given that the states and the territories have different models of responding to domestic violence in their legislation. The task of developing uniform definitions across state and territory jurisdictions is unlikely to be easy, either conceptually or politically, and we question the extent to which the exercise will ultimately benefit victim/survivors. We also query the practicality of maintaining a consistent definition across different jurisdictions, given the likely political imperatives to amend those definitions as cases arise in specific jurisdictions that fall outside existing definitions.

3. Do you share the ALRC's concern that in expanding the list of examples it is to be assumed that something not on the list is deliberately excluded (i.e. the list becomes exhaustive despite being intended to be non-exhaustive)? If so, how can this risk be mitigated?

We agree that including specific examples of behaviour could run the risk of implying that other behaviours are excluded. However, this is a legislative drafting issue and, in our view, it would be possible to indicate in the legislation that the list of examples is not exhaustive.

4. Beyond those revisions indicated in red in Appendix A, are there any other examples of conduct which should be included in the definition of family violence? In particular, are forms of abuse involving the internet and technology adequately covered in the list of examples?

5. Are there any examples included in the definitions of 'economic abuse' or 'emotional or psychological abuse' which should be included at the higher level under the definition of family violence?


Our view is that while it may be helpful to set out various types of abusive behaviour, the definition should not describe the means by which abuse is perpetrated. Technology-related abuse is a recent phenomenon and there is a risk that describing technology-based methods may become outdated.

We note that the proposed model definition does not clearly indicate the severity or degree of abusive behaviour required to constitute family violence. For example, in relation to threatening behaviour or coercive behaviour, there is no differentiation between behaviour that is considered merely disrespectful or dysfunctional, and behaviour that potentially warrants intervention by a court, or indeed a criminal penalty. A national definition should apply

nationally consistent standards of behaviour, although we acknowledge that these standards would be difficult to define.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JW', followed by a horizontal line extending to the right.

Juliana Warner
President