

FAMILY LAW SUMMARY



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<i>Vick and Hartcher</i> (1991) 15 Fam LR 149	84
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<i>Wallace v Stanford</i> (1995) 19 Fam LR 431	115
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<i>Wotherspoon and Cooper</i> (1981) FLC 91-029	58
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TOPIC 1: The Framework of Family Law

1.1 INTRODUCTION TO FAMILY LAW

- The family is an institution, which is understood as the foundation of all civilised societies.
- Article 23 of the *UN International Covenant on Civil and Political Rights* provides a concise definition of a family as the “natural and fundamental group unit of society.”
- There are primarily two types of families:
 1. ‘Traditional’ families – which involve a husband, wife and/or children.
 2. ‘Alternative’ family arrangements – which involve any relationship between two or more individuals sharing residence (including de facto and other types of domestic relationships).
- The legislation which is relevant for all types of families includes:
 1. The *Family Law Act 1975* (Cth) - established the Family Court of Australia and regulates divorce, parentage and parenting disputes, spousal support of married partners, child support for children making claims against parents (if over 18 years old) and/or step-parents, property disputes between married partners, and injunctions relating to family violence.
 2. The *Marriage Act 1961* (Cth) – regulates annulments.
 3. The Family Law Legislation Amendment (Family Violence and Other Matters) Act 2011 (the Family Violence Act). The intention of the amendments is to provide better protection for children and families at risk of family violence and abuse. The Family Violence Act is part of the plan to improve the family law system’s response to family violence and abuse by sending a clear message that family violence and child abuse are unacceptable. The key changes made by the family violence amendments:
 - Remove deterrents to disclose family violence to the courts;
 - Update the definitions of family violence and child abuse to clearly set out what type of behaviour is unacceptable – such as physical

and emotional abuse and the exposure of [children to family violence](#); and

- Ensure appropriate action is taken to prioritise the safety of [children](#) in family law disputes.

This puts the safety of [children](#) front and centre in family law matters, without compromising a child's right to a meaningful relationship with both parents where this is safe. The [Family Violence Act](#) does not have any influence for separating families where there is no [family violence](#) or [child abuse](#) concerns. For [cases](#) where there is no risk of [family violence](#) or abuse and it is in the child's best [interests](#), the courts will continue to apply the presumption of [equal shared parental responsibility](#) and consider [equal time](#) or, as the [case](#) requires, substantial and significant time.

4. *The Property (Relationships) Act 1984 (NSW)* – this was an example of a state Act that reregulates maintenance payments and property settlements for de facto partners. Note that this State legislation only applies to de facto relationships which ended before the 01/03/2009. Relationship which are still in force on 01/03/2009 or begin after this date will be covered by new federal provisions. This is because the majority of States have referred their power on this matter to the Cth under the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*. See 2.2.
5. *The Child Support (Registration and Collection) Act 1988 (Cth)* and the *Child Support (Assessment) Act 1989 (Cth)* – established the Child Support Agency within the Australian Taxation Office and regulates child support.



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