

# **FAMILY LAW SUMMARY**



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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. Relationships 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.
6. *The Crimes (Domestic and Personal Violence) Act 2007 (NSW)* – governs the law relating to apprehended domestic violence in NSW. The NSW Government approved important changes to the Crimes (Domestic & Personal Violence) Act 2007, to provide victims of domestic and family violence with immediate protection. These changes are now in force. They aim to provide victims of domestic and family violence with immediate protection. The changes will give NSW Police greater powers under the law in two main areas:
  1. If police suspect or believe that domestic violence has happened or is likely to happen the police will apply for a provisional apprehended domestic violence orders (ADVOs).



Police can take this action even if the victim is not willing to make a complaint. Police can temporarily detain and direct an offender to accompany police until a provisional ADVO is served.

2. Senior police officers will have the power to determine applications for provisional ADVOs. This process will provide faster and immediate access to provisional ADVOs (instead of waiting for authorised justices from the Court). The move will save time and resources for police and courts ensuring immediate victim safety and increased deterrence to domestic violence offenders. Senior police officers can decline approve or vary the conditions of a provisional ADVO and follow the same 'Legal Test' as authorised justices when determining an ADVO application.

7. The *Domestic and Family Violence Protection Act 2012* (Qld) - governs the law relating to domestic and family violence in QLD. The Act aims to provide safety and protection for people in relevant relationships who are victims of domestic and family violence. The Act defines relevant relationships as spousal relationships, intimate personal relationships, family relationships and informal care relationships. The Act replaces the *Domestic and Family Violence Protection Act 1989*. It provides a broader and more contemporary definition of what constitutes domestic and family violence. It also ensures greater protection for those who experience domestic and family violence through the introduction of police protection notices. Other amendments include:
- increased penalties of up to three years imprisonment for breaches of domestic violence orders
  - the addition of a preamble and principles to guide the administration of the legislation, and

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