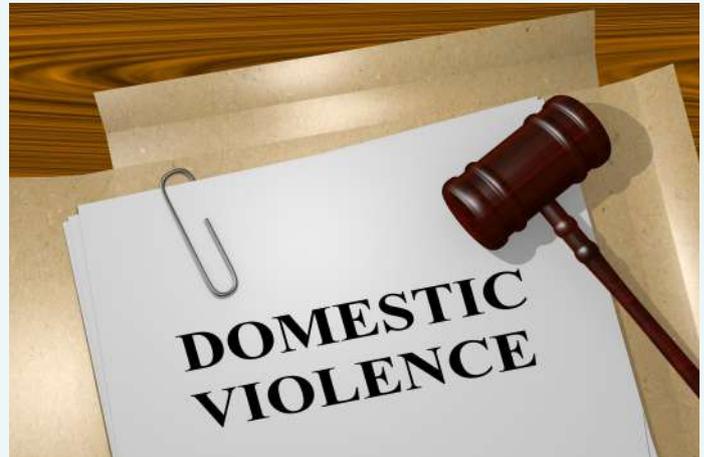


This article seeks to outline the meaning of domestic violence and the forms upon which it can occur. It also highlights pertinent legal concerns that a client may have, such as information regarding ADVO's, divorce and child custody.



A. WHAT IS DOMESTIC VIOLENCE?

Domestic violence is a criminal offence and can be defined as an intimate relationship that is characterised by violence, abuse, aggression and intimidation. It can be regarded as a pattern of abusive behaviour, which is conducted by the perpetrator in an effort to control every aspect of the victim's life and to maintain power over them. Contrary to popular belief, domestic violence victims are not solely female, as it can affect anyone regardless of their gender, sexuality, age, ethnicity, religion and socioeconomic status.

B. FORMS OF DOMESTIC VIOLENCE

Domestic violence can occur in a number of ways, where the purpose of the behaviour is to intimidate, manipulate, humiliate, isolate, frighten, terrorise, coerce, threaten, harass or injure the person. The main types of domestic violence that occur can be categorised as follows:

- **Physical abuse:** Physical abuse can be regarded as any behaviour that intentionally causes immediate bodily harm to another individual. This can include, but is not limited to, hitting, slapping, shoving, punching, kicking, using a weapon, denying medical care and forcing alcohol/drug use.
- **Sexual abuse:** Sexual abuse refers to the coercion or attempted coercion of any sexual behaviour without consent, such as rape and forced sexual contact.
- **Emotional abuse:** Emotional abuse relates to the use of verbal assault to undermine an individual's self-worth and confidence, as well as to invoke fear and humiliation. This can include, but is not limited to name calling, making threatening comments and constantly criticising the person.
- **Psychological (mental) abuse:** Psychological abuse is regarded as a form of abuse in which an individual is subjected to or exposed to behaviour that can result in mental disorders such as anxiety, depression and post-traumatic stress disorder (PTSD). This type of behaviour can include, but is not limited to, causing fear by intimidation, threatening physical abuse to children, destroying property and causing isolation.
- **Economic abuse:** Economic abuse can be defined as any behaviour that forcefully makes or attempts to make an individual financially dependent on another. This could include, maintaining full control over finances, withholding the individual's access to financial resources and forbidding any opportunity to gain employment.
- **Social abuse:** Social abuse relates to a form of abuse in which an individual is unable to make decisions about his or her social life. This includes the perpetrator controlling every aspect of the individual's social life through directing the places that the victim is able to go to and the people with whom he or she can interact with.



C. APPREHENDED DOMESTIC VIOLENCE ORDERS (ADVO's)

Victims of domestic violence can take out an ADVO under the *Crimes (Domestic and Personal Violence) Act 2007* to restrict the contact that they and any children have with a domestic violence perpetrator. ADVO's offer protection to the victim as the perpetrator (defendant) cannot breach the conditions and restrictions that are placed. This is because it is a criminal offence to breach an ADVO and the police will therefore have grounds to arrest and charge the perpetrator.

D. DIVORCING FROM AN ABUSIVE SPOUSE

In Australia, there are certain conditions that need to be proved to the court before a divorce can be granted. This includes proving that:

- The marriage is valid;
- The marriage has irretrievably broken-down (no chance of the two parties getting back together); and
- That both parties have been separated for at least twelve months before the application for divorce was filed.

In cases of domestic violence, leeway's towards the twelve month separation period may be made. This is because domestic violence is considered to be an aggravating factor before the law and keeping the victim/s safe is a priority. Similarly, the legal process for domestic violence cases generally disregards alternative dispute resolutions such as mediation, and the court proceedings may also be sped up to be finalised more quickly.

E. CHILD CUSTODY IN AN ABUSIVE RELATIONSHIP

In matters where there is evidence of domestic violence, the presumption of shared parental responsibility is disregarded. This is because the court must consider the best interests of the child, and being in the presence of the perpetrator is not consistent with their best interests. It is therefore very likely that the partner subjected to domestic violence would be given sole custody of the child or children.

F. CONCLUSION

In conclusion, this article seeks to explain the meaning of domestic violence and the types of domestic violence that may occur. It also addresses the legal matters that may be of concern to victims of domestic violence. At Comasters Law Firm, we can help with applying for an ADVO and filing for a divorce, in a manner that is empathetic and in line with the client's needs.

Comasters Law Firm can advise and assist clients with family law matters and will act in applications to the Family Court.

© Comasters October 2017 **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

CONTACT US

Jeffrey T Lee Principal Lawyer
Pauline A Beausoleil Senior Associate Lawyer
Alice Huang Senior Paralegal
Gina Bae Senior Paralegal
Alizeh Ahmad Paralegal

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia

T +612 9288 0300
F +612 9288 0399
E comasters@comasters.com.au
www.comasters.com.au