



FEDERAL CIRCUIT AND  
FAMILY COURT OF AUSTRALIA  
DIVISION 1 | DIVISION 2

# Family Violence Best Practice Principles

5th Edition



## Foreword - Fifth Edition

This is the fifth edition of the *Family Violence Best Practice Principles*. The first edition was published in March 2009.

Protecting families and children from the effects of family violence and ensuring that all court users are treated with dignity and respect are priorities for the Federal Circuit and Family Court of Australia (Division 1) and Federal Circuit and Family Court of Australia (Division 2) (the Courts). The Courts are committed to improving the way in which family violence is dealt with. To this end, the Courts have made significant investments in early identification of families in need of special protection, and the careful management of those matters, through the implementation of Lighthouse and the establishment of specialist case management pathways, including the Magellan List and the Evatt List.

These *Family Violence Best Practice Principles* are designed to provide practical guidance to court users, legal practitioners, litigants and service providers regarding the way in which matters involving issues of family violence are managed in the Courts. They also set out the Courts' expectations as to the knowledge and understanding decision makers and practitioners appearing before the Courts should have regarding the complexities of family violence. The *Family Violence Best Practice Principles* are to be read in conjunction with the *Family Law Act 1975* (Cth), the Rules of the Courts and relevant Practice Directions. In particular, in parenting matters, the best interests of the child are the paramount consideration.

I am grateful to the Family Violence Committee for its ongoing work in reviewing and updating the *Family Violence Best Practice Principles* and to all those who have contributed to its development.



**The Honourable William Alstergren AO**

**Chief Justice**

**Federal Circuit and Family Court of Australia (Division 1)**

**and**

**Chief Judge**

**Federal Circuit and Family Court of Australia (Division 2)**

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## Introduction

Allegations of family violence feature in the majority of the cases coming before the Federal Circuit and Family Court of Australia (Division 1) and Federal Circuit and Family Court of Australia (Division 2) (the Courts). The Courts play a central role in identifying, responding appropriately to, and determining these allegations of family violence; it is the Courts' core business.

All court users and children should feel safe, feel heard and be protected.

The Courts expect that all court users are treated with dignity and respect.

These *Family Violence Best Practice Principles* have been developed to provide practical guidance to legal practitioners, court users, service providers and the general public about the principles that guide the Courts' response to family violence, and to ensure the physical and emotional safety of participants.

The overarching principles are as follows:

- 1. Family violence is not acceptable**
- 2. Safety is a right and a priority for all court users**
- 3. Parenting matters involving family violence will be identified early and appropriately managed**
- 4. All professionals working in or appearing before the Courts are expected to undertake ongoing training and professional development to ensure that they have a sound and contemporary knowledge of family violence**
- 5. Litigants must have access to specialist and support services, and clear information to assist their full participation in all court processes**
- 6. The Courts must have access to information relevant to safety and risks**
- 7. All litigants have an equal right to access justice, and those experiencing family violence are not to be disadvantaged in the court system**

The Courts condemn all forms of family violence. The prioritisation of the safety of children, vulnerable parties and litigants, as well as the early and ongoing identification and appropriate handling of issues of risk, including allegations of family violence, are essential elements of all case management. The safety of families and children is one of the [core principles](#) of the [Central Practice Direction – Family Law Case Management](#) and underpins the approach taken to family law cases and case management by the Courts.

### What is family violence?

[Section 4AB](#) of the *Family Law Act 1975* (Cth) (the Family Law Act) defines family violence as “*violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family... or causes the family member to be fearful*”.

Examples of behaviours that may constitute family violence include (but are not limited to):

- a. physical assault
- psychological or emotional abuse
- sexual assault
- harassing or intimidating a person or subjecting them to derogatory taunts
- intentionally damaging or destroying property
- intentionally causing death or injury to an animal
- financial abuse by unreasonably denying a person financial autonomy or withholding financial support, and
- isolating a person from friends or family or depriving them of their liberty

A person may commit family violence if they engage in coercive controlling behaviour. [Coercive control](#) is understood as a course of conduct by one person aimed at dominating or exerting power over the other. It can include a pattern of controlling and manipulative behaviours such as (but not limited to):

- emotional manipulation including [humiliation](#) and threats
- [surveillance and monitoring](#), often carried out online
- [isolation](#) from friends and family
- rigid rules about where the person can eat, sleep or [pray](#), and
- placing limits on [economic autonomy](#)

Both men and women can experience family violence. However, women are significantly more likely than men to experience violence from a current or former partner and the [impacts of this violence are more likely to be severe for women](#), including hospitalisation or death. Understanding [the gendered nature of family violence](#) is crucial to developing effective responses within the legal system.

## Systems abuse

[Research](#) shows that a party to proceedings may use a range of litigation tactics to gain an advantage over or to harass, intimidate, discredit or otherwise control the other party. Sometimes referred to as systems abuse, this behaviour may involve using the family law process, and/or making multiple applications and complaints in multiple systems such as child support, child protection and police.

In these circumstances, the Courts will take steps to ensure the requirements for procedural fairness and access to justice are met while protecting a person from experiencing further abuse through the other party's misuse of these systems.

Options available to address systems abuse may include:

- ensuring the matter remains listed before the same judicial officer who can be alert to and identify conduct that does not meaningfully advance the matter to closure
- seeking a dismissal of all or part of proceedings because they are [frivolous, vexatious or an abuse of process](#), or
- seeking a [vexatious proceedings order](#)

## The impact of family violence on children

Under sub-section [4AB\(3\)](#) of the Family Law Act, a child may be regarded as having been exposed to family violence if the child has seen or heard family violence, or otherwise experienced the effects of family violence.

Growing up in an environment where family violence is perpetrated can have a profound [impact on a child's life](#). In addition to risks of physical harm, family violence can affect a child's long term behavioural, emotional, social and developmental wellbeing.

Children can experience the impacts of family violence both directly and indirectly. Children may be directly affected by seeing or hearing, or otherwise being witness to the violence. Family violence behaviours may also be targeted directly at children as a means of inflicting harm on the victim parent.

Family violence can impact children indirectly through the effect it has on their parents. Parents experiencing violence can behave in ways that may appear inconsistent with good parenting practices. Importantly however, some of these behaviours when seen in their proper context may serve the purpose of protecting a child from serious harm and need to be understood as being a direct consequence of the family violence. For example, a parent who is experiencing violence may change the way they parent as a result of the violence, including behaving in a way that is designed to appease the perpetrator, or being less available to meet a child's needs as a result of the demands of the perpetrator. They may also experience depression, anxiety, substance abuse or other mental health problems that may impede their parenting capacity.

Parents who perpetrate family violence commonly have parenting styles that show a lack of warmth, use coercive and manipulative tactics, use harsh and/or inconsistent discipline, involve regular expressions of anger towards the children, lack involvement in routine parenting tasks, attribute blame to others rather than taking responsibility for their own behaviour and undermine the other parent.

Family violence can also have an impact on a child's life through indirect outcomes of the violence such as financial insecurity, housing instability, loss of contact with extended family and educational disruptions.

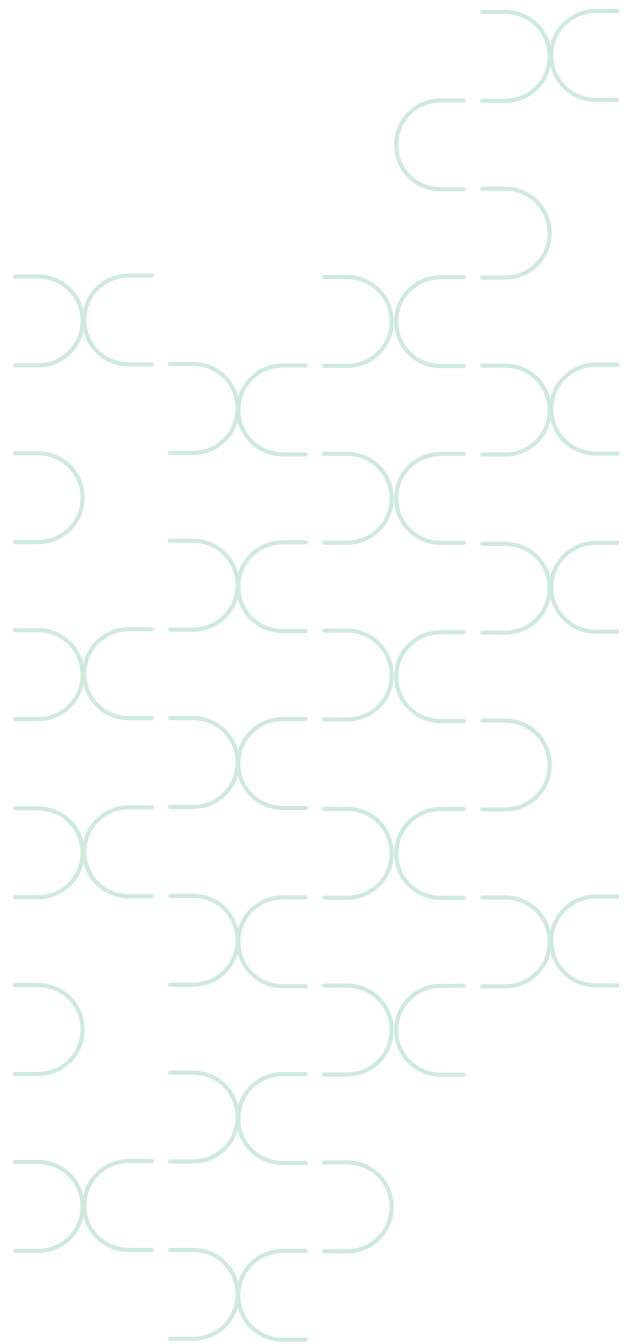
**The decision to perpetrate family violence is a decision by the perpetrator about what type of parent they are going to be.**

## What is trauma?

Trauma is the emotional and/or physiological response to an event, or series of events, in which a person experiences a real or perceived threat to their safety. A person experiencing trauma is usually in a high state of arousal which effects how they feel, think and behave. People who have trauma histories are often highly sensitive to power differentials, perceived attacks and environments where they are not in control. Their experiences of trauma can also be re-triggered by having to recount past traumatic events.

The Courts understand that many people involved in family law matters have complex trauma histories and that participation in court proceedings can be re-traumatising. Professionals working in the Courts are expected to work in a [trauma-informed](#) way in order to ensure that people experiencing trauma get the information and assistance with family law processes they need, while minimising the potential for additional harm.

Service providers are encouraged to familiarise themselves with some of the many [excellent resources](#) that support a trauma-informed approach.



The Courts place a high priority on the safety of all who attend.

## What is available for parties?

### Before coming to Court:

#### Pre action procedures – family violence exemptions

There is a [pre-action requirement](#) for parties to participate in family dispute resolution (FDR) services before applying to the Court for a parenting order. A party may seek an exemption to this requirement where there are reasonable grounds to believe that:

- there has been child abuse and/or family violence by a party
- there is a risk of family violence by a party, and/or
- there is a risk of child abuse if there were to be a delay in applying to the Court

Further information on the [pre-action requirements](#) is available on the [Courts' website](#).

#### Quick Exit Button

The Courts' website has a Quick Exit Button which allows a user to immediately exit the website and be automatically redirected to an open blank Google search page. This feature ensures safe browsing of information by users.

### At the time of issuing proceedings:

The Courts have implemented [Lighthouse](#) to ensure family safety risks are identified early in the proceedings, with eligible parties being invited to complete an online and confidential [risk screen](#). The results of that screen assist in the determination of the most appropriate case management pathway, and provides the opportunity for parties to receive information about safety planning and referrals to appropriate services.

### At Court:

The Courts ensure safety for all court events through a number of measures, including airport-style screening upon entrance to court buildings, developing safety plans with litigants, providing access to safe rooms and conducting hearings remotely and/or with the parties appearing in a separate courtroom.

#### Safety plans

All Court registry staff are trained in how to develop a 'Safety at Court Plan' for any litigant concerned about their safety when attending the Court.

There are two ways in which a safety plan may be developed. The first is where registry staff identify a risk and/or safety concerns at Part L of the [Notice of child abuse, family violence or risk](#). In these circumstances, registry staff will contact the party and/or their legal representative to offer a safety plan. The second is where a party and/or their representative directly requests a safety plan.

If a litigant is fearful about attending a court event at the same time or in the same room as the other party, they are encouraged to advise the Court as soon as possible (at least five days prior to the court event, if practicable). Litigants can contact the Court on **1300 352 000** to ascertain what specific safety measures are offered at the relevant registry and to put a Safety at Court Plan in place.

Because an individual's safety needs may change, all safety plans need to be renewed before each court event. A litigant or their legal representative should contact the Court at least five days before each event if a safety plan needs to remain in place.



Where a legal professional identifies that a client could be at risk when attending Court, it is their responsibility to seek arrangements be put in place to maximise the safety of their client.

#### Court-based dispute resolution conferences

The Courts may require parties to attend a court-based dispute resolution conference for financial matters or parenting matters.

Before a court-based dispute resolution conference is ordered, the decision maker will consider whether it is appropriate for the parties to attend a conference, whether attendance should be in-person, whether it will be safe for them to do so and what measures need to be in place to ensure safety.

In parenting matters, safety and appropriateness is assessed again at Part 1 of the two-part conference, which is conducted by web conference. During Part 1, the Registrar will discuss any safety concerns individually with the party to determine whether it is appropriate for the parties to attend Part 2 in-person and what measures need to be in place to ensure the parties' safety. Parties will not be in the same room (whether by web conference or in-person) unless the person concerned for their safety consents.

All Registrars conducting court-based dispute resolution conferences have undertaken specialised family violence training.

#### Court hearings

In addition to having a safety plan in place for the duration of a Court hearing, a party may also [request to attend the Court electronically](#) where they have concerns for their safety.

Litigants may be accompanied by a support person at Court.

Support and safety planning for people at Court who have been affected by domestic and family violence is also available through the Family Advocacy and Support Services (FASS). Further information on FASS is available on the [Family Violence Law Help website](#).

#### Court Children's Service (CCS) Reports

If parties have concerns for their, or their children's, safety in relation to attending an interview for a CCS report (such as a Child Impact Report or a Family Report), they should advise CCS of these concerns using the email address in the order for the report. CCS will then take the necessary steps to ensure suitable arrangements are put in place to address these concerns. This can include arranging appointments on different days and/or organising a 'Safety at Court Plan' for their attendance. If the report is to be completed by a Regulation 7 Family Consultant, this can also include organising for the interviews to be conducted at the Court registry rather than in the Regulation 7 Family Consultant's rooms.

#### Private Expert Reports

Where the parties agree to obtain a private expert report, it is the responsibility of the parties, or their legal representatives, to alert the private report writer of any safety concerns related to attendance at the report interviews so that the report writer can put suitable arrangements in place to ensure the parties/children's safety.

## What safety measures are in place to keep Court and support services safe?

Heads of Security are present in each registry of the Courts, and hold regular security briefings.

In addition to airport-style security and CCTV, there are duress buttons installed throughout each registry building. Pressing a duress button will trigger immediate attendance to the relevant room by a member of the Courts' security team.

Staff and members of the judiciary are able to access registry buildings through secure entry and exit points as well as the registry buildings having entirely secure passageways and floors.

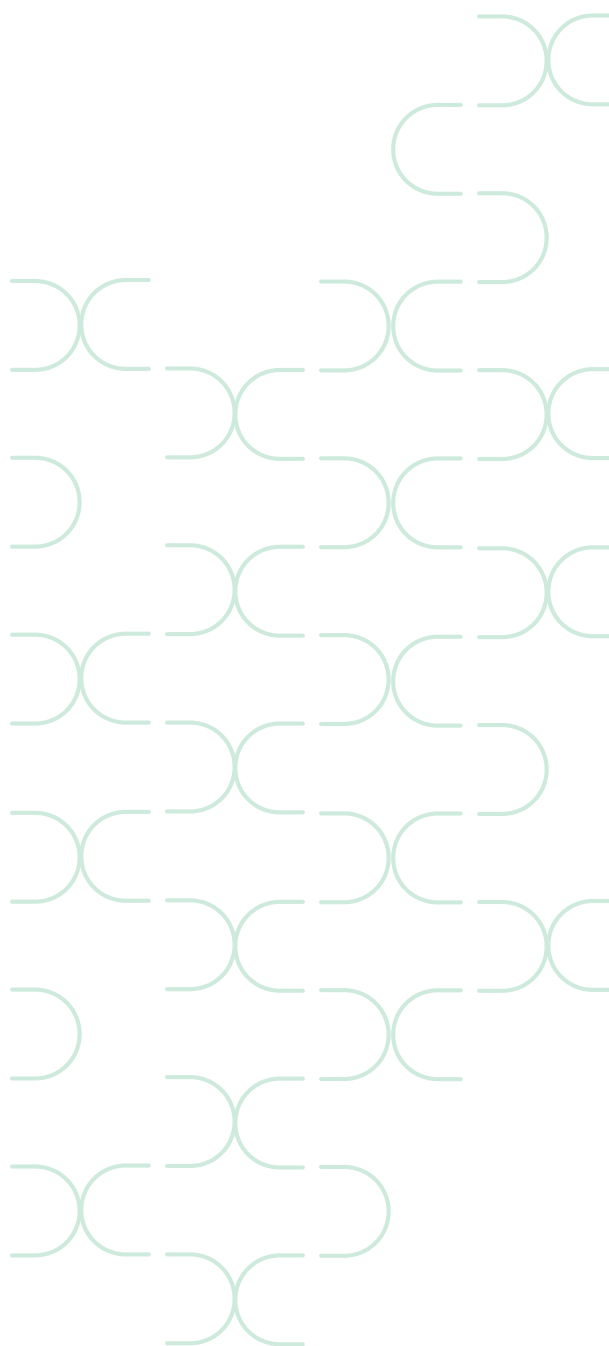
Where security incidents arise, they are to be reported via the Courts' security incident reporting tool and are acted upon by the security team.

### Outside Court:

Family violence orders can be obtained from state and territory courts (such as Local Courts and Magistrates Courts) to protect people from a family member who is using family violence. Family violence orders are known in different states and territories as Intervention Orders, Family Violence Orders, Apprehended Violence Orders or Restraining Orders.

Information on how to get a family violence order in your state or territory is available on the [Family Violence Law Help](#) website.

There are [state and territory family violence support services](#) who can provide information about and assistance in developing a safety plan outside Court events.



## Parenting matters involving family violence will be identified early and appropriately managed

The Courts have obligations under the [Family Law Act](#) which require it to take prompt action in relation to allegations of child abuse or family violence in parenting matters.

The prioritisation of the safety of children, vulnerable parties and litigants, as well as the early and ongoing identification and appropriate handling of family violence are essential elements of all case management in the Courts.

This is achieved in a number of ways:

### Applying to the Court for an order

The Courts ensure families and their children receive appropriate targeted early intervention and assistance in parenting matters by collecting information at the time of filing on:

- allegations of [child abuse or a risk of child abuse](#), and
- allegations of [family violence or a risk of family violence](#).

A [Notice of child abuse, family violence or risk](#) must be filed with any new Initiating Application, Response or Application for consent orders in any proceedings in which parenting orders are sought. Any allegations of child abuse recorded in this form are reported to child welfare authorities. If a new risk arises over the course of the litigation, parties are obliged to file a new *Notice of child abuse, family violence or risk*.

A person seeking a parenting order is also required to tell the Courts about any family violence orders affecting a child or a member of the child's family. This is done by filing a copy of the [family violence order](#). If the family violence order is changed, a copy of the new or varied order must be filed promptly with the Court.

### Early identification of risk and triage

The Courts have implemented [Lighthouse](#) to ensure that family safety risks are identified at

the earliest point in proceedings and that the most appropriate case management pathway can be identified for that matter.

Parties filing an Initiating Application or Response which includes parenting orders will each be invited to complete the online Family DOORS Triage risk screen within two business days of filing. The risk screen is confidential under [Part II A Family Law Act](#) and all eligible parties will be sent an invitation to complete the screen. This is in addition to the *Notice of child abuse, family violence or risk*.

Family DOORS Triage is based on the 'Detection Of Overall Risk Screen' (known as [DOORS](#)) and has been developed specifically for use by the Courts to assist with the confidential identification and management of risks present in family law matters. Risk screening at the point of filing allows the Courts to consider a range of safety risks that frequently arise in family law proceedings including family violence, mental health issues, child abuse or neglect, and drug or alcohol misuse and provide support and guidance to parties at the earliest opportunity.

The results of the risk screen allow the Courts to place the matter into the most appropriate case management pathway. It provides the parties with the opportunity to receive safety planning and appropriate service referrals.

## Specialist Court lists

The early identification of risk and triage processes allow the Courts to consider the suitability of the matter for inclusion in a specialist list. These specialist lists include the Evatt List, the Critical Incident List and the Magellan List.

### Evatt List

The [Evatt List](#) operates in the Federal Circuit and Family Court of Australia (Division 2). It involves early information gathering and active case management for serious high risk matters.

A matter can only be allocated to the Evatt List if:

- a party has completed the Family DOORS Triage risk screening questionnaire, and
- the matter has been reviewed and determined to be appropriate for allocation to the Evatt List.

When determining whether a matter is appropriate for the Evatt List, the Court will consider whether the matter contains high risk features, including allegations of:

- a. serious abuse or risk of serious abuse of a child of the proceedings, whether it be physical, psychological or neglect
- b. serious family violence or risk of serious family violence by a party to the proceedings, whether this is physical, emotional/psychological or financial
- c. exposure or risk of exposure to serious family violence by a party or a child
- d. serious drug, alcohol or substance misuse which has caused harm or poses a serious risk of harm to a child or party
- e. a party's mental health issues have caused harm or pose a serious risk of harm to themselves or others, including a child
- f. a party who poses a potential risk of self-harm

- g. recent threats or attempts to abduct a child, or
- h. recent threats to harm a child or another person relevant to the proceedings, such as a new partner

More information about the [Evatt List](#) and its operation can be found on the [Courts' website](#).

### Critical Incident List

Some applications are made to the Courts when there is no parent available to care for a child as a result of death (including homicide), critical injury or incarceration relating to or resulting from a family violence incident. The [Critical Incident List](#) has been established to facilitate faster access to the Courts in these tragic circumstances.

### Magellan List

The [Magellan List](#) operates in the Federal Circuit and Family Court of Australia (Division 1). It deals with matters where there are recent allegations of serious or escalating physical and/or child sexual abuse.

When determining whether a matter is appropriate for the Magellan List, the Court will consider whether the matter involves recent (generally within 12 months but subject to discretion) notifications or allegations of:

- a. sexual abuse of a child, and/or
- b. serious physical abuse of a child, and/or
- c. fresh allegations of historical sexual or physical abuse of a child which have never previously been disclosed

- d. activity by a party to the proceedings or a relevant adult (such as step parent or relative) which:
  - i. poses a risk of direct or indirect sexual abuse to the child, including activity directed towards children who are the subject of the proceedings or any other child/ren, and/or
  - ii. involves an allegation, charge or conviction for offences related to the production, possession and distribution of Child Exploitation Material, whether or not the images relate to a subject child of the proceedings
- e. serious or escalating physical abuse of a subject child of the proceedings

More information about the [Magellan List](#) and its operation can be found on the Courts' website.

### Case Management

The Courts have adopted a [Central Practice Direction](#) which guides the approach to case management of family law matters involving family violence. The single point of entry ensures that all cases involving family violence will be appropriately triaged and actively case managed, regardless of whether they are allocated to a specialist list.

### How you can help

If you are assisting a person with a family law issue, it is important that you appreciate that people may respond to family violence in different ways. There may be barriers to disclosing, or fully disclosing family violence and, in particular, sexual violence. There are screening tools available to assist professionals to ask a person about their experience of family violence in a systematic way. Lawyers who appear before the Courts should understand the risk factors in order to be in a position to assess the risk of family violence to their client, and be familiar with information and tools such as [risk assessment tools and screening](#) questions and [lethality indicators](#).

You should familiarise yourself with the support services located at the Courts that provide [free legal advice and non-legal support services](#) available in matters involving family violence. These *Family Violence Best Practice Principles* provide further practical guidance on safety at Court: see Family Violence Best Practice Principles [2](#) and [5](#).

## All professionals working in or appearing before the Courts are expected to undertake ongoing training and professional development to ensure that they have a sound and contemporary knowledge of family violence

All Judicial Officers, Registrars, Court Child Experts, and other Court staff are provided with ongoing training to assist in understanding and recognising family violence in all its forms. This includes training regarding the nature of family violence, and understanding the complex pattern of violent and abusive behaviours and coercive control.

The National Domestic and Family Violence Bench Book provides decision makers with a central resource to promote best practice and improve consistency in judicial decision making in matters involving family violence. The [National Domestic and Family Violence Bench Book](#) is a publicly available resource.

### Expectations

Lawyers representing parties in family law proceedings are also expected to engage in ongoing training regarding family violence. They are expected to understand the multifaceted layers to family violence, to work carefully and respectfully with their clients, and to ensure that the Courts are provided with documents that articulate the violence, coercive control, and other cross-cultural or religious matters that may alter the nature and dynamics of the abuse.

Lawyers appearing at court events should:

- be familiar with and utilise continuing professional development requirements and state or territory guidelines
- comply with all applicable codes of conduct relating to family violence promulgated by their state or territory law society or bar association
- expect other legal professionals to complete ongoing training about family violence
- expect the Court to be educated about family violence
- ensure all relevant information is available to the Court through affidavits, subpoenas and information sharing processes

- ensure that affidavits are properly drafted and well particularised, and
- ensure that experts engaged by the parties have appropriate qualifications

### Other useful resources:

- [Attorney-General's Department Guiding Principles for protecting vulnerable witnesses in family violence and family law proceedings](#)
- [Family Violence Plan 2023–2026](#)
- [ANROWS Report on best practice principles for interventions with domestic and family violence perpetrators from refugee backgrounds](#)
- [NSW Law Society Guide for Family Law Practitioners: Working with Clients Affected by Domestic and Family Violence](#)
- [Queensland Law Society Domestic and Family Violence Best Practice Guidelines](#)
- [Australian Solicitors' Conduct Rules—Law Council of Australia](#)

## Litigants must have access to specialist and support services, and clear information to assist their full participation in all court processes.

### Legal assistance and support

The Family Advocacy and Support Service (FASS) operates as a service offering both non-legal support and free legal advice at Court for people affected by family violence.

FASS provides a dedicated [men's support worker](#) in most Court registries.

FASS is located at all registries of the Court.

More information on FASS can be found on the [Family Violence Law Help website](#).

### Court Network

The Court Network is a free support service operating in Victoria and Queensland for all individuals, families and friends going to Court. Network volunteers may be able to be with parties on their day in Court, sit with them during their appearance, and provide referrals to other community services such as health, housing and legal questions. A complete list of services that the Court Network is able to provide can be found on the [Court Network website](#).

### Interpreters

It is important that persons for whom English is not their primary language are given the necessary supports and assistance to fully promote their participation in the court process. When requested, the Courts will arrange interpreters or translators for litigants who require such assistance, so that all litigants can access a fair hearing.

Any requests for an interpreter or translator must be made at least 14 days prior to the hearing.

The Courts will not provide interpreters or translators for witnesses. They must be arranged by the litigant or their legal representative. Any such privately appointed interpreter or translator should be appropriately qualified (preferably [NAATI](#) certified).

Consideration should also be given to whether the gender of the interpreter or translator will impact the litigant.

Legal practitioners should use their best endeavours to ensure interpreters and translators are properly briefed on the nature of the case prior to the commencement of the proceedings.

For further information see the [Standards and Guidelines for Interpreters developed by the Judicial Council on Diversity and Inclusion](#).

### Other useful resources:

- [Litigants who have fears for their safety when attending Court](#)
- [Court interpreter policy and guidelines](#)
- [Family violence: Get help and support](#)

Information that is relevant to the safety of litigants and children must be provided to the Courts and Court Child Experts in a timely manner to ensure that informed and appropriate decisions are made.

Information sharing at all stages of the Courts' involvement, and particularly at the early stages, is integral to ensuring litigant and child safety within the Courts.

In most registries, officers from state and territory child welfare authorities and police (co-located officials) facilitate information sharing. This provides a clearer picture of the nature, frequency and severity of violence and/or other risks to the parties and children.

The provision of information is implemented in the Courts at a practical level by way of the following:

### Information gathering under the Family Law Act

The [Notice of child abuse, family violence or risk](#) is a mandatory form that must be filed with any Initiating Application, Response or Application for consent orders seeking parenting orders. This Notice ensures parties and their children receive appropriate and targeted early intervention and assistance.

The Courts have a mandatory obligation to report information identified in the *Notice of child abuse, family violence or risk* to the child welfare authorities which relates to:

- i. allegations or risk of child abuse, and
- ii. allegations or risk of family violence amounting to the abuse of a child

Once this information is reported to child welfare authorities, the relevant authority may prepare and provide a response in relation to any known involvement with the family and their children.

The Family Law Act also enables the Courts to make orders directed to child welfare authorities and police services for relevant information held by those agencies to be provided to the Courts.

### Co-located officials

Co-located officials perform a range of functions to enhance information sharing and collaboration between the Courts, state and territory child protection, and state and territory family violence systems.

The co-location initiative forms part of the developing national strategic framework for information sharing between the family law, family violence and child protection systems. This aims to promote the safety and wellbeing of those affected by family violence and child abuse, and supports informed and appropriate decision making in circumstances where there is, or may be, a risk of family violence or child abuse.

More information about the co-location initiative is available on the [National Plan to Reduce Violence against Women and their Children website](#).



## CCS–Family Reports and Child Impact Reports

Family Reports and Child Impact Reports assist the Courts to ensure that informed and appropriate decisions are made in relation to litigants and children by providing independent evidence. These reports are prepared by practitioners that hold an appointment as a family consultant, and are funded by the Courts. There are two types of family consultant:

1. a Court Child Expert employed by the Courts; and
2. a Regulation 7 Family Consultant who undertakes the report on a fee for service basis

Family Consultants are psychologists or social workers with specialist knowledge in child and family issues after separation and divorce.

All Family Consultants also have specialised knowledge of and training in family violence. Specialist knowledge of family violence is assessed rigorously during recruitment and CCS provides further training after the practitioner is appointed.

Family Consultants undertaking Family Reports and/or Child Impact Reports on behalf of the Courts are provided with copies of all documents filed by the parties in the proceedings and responses provided by child welfare authorities and the police which have been released to the parties.

### Private Family Reports

Parties are able to engage private professionals to undertake family reports at their own expense. There is an expectation that all privately engaged family report writers have specialist training and knowledge of family violence. Practitioners and litigants should ensure, when selecting a private report writer, that the report writer has the necessary training and knowledge.

Any privately appointed expert preparing a family report should have access to information about risks. An order of the Court is required to allow the private expert to be provided with copies of the material filed by the parties at Court, copies of responses from child welfare authorities, and to have access to documents produced under subpoena.

## All litigants have an equal right to access justice, and those experiencing family violence are not to be disadvantaged in the court system

Family violence can occur before, during and after separation and it may affect the ability of people to make choices about their family law matter and to take part in court events. The Courts recognise that the court system itself can exacerbate the trauma experienced by litigants as a result of family violence.

To ensure those experiencing family violence are not disadvantaged in the court system, the Courts consider a range of factors so that parties are afforded fair and equal access to justice, and to protect those at risk from harm. This includes implementing [practical measures](#) regarding the physical aspects of safety as well as managing the way in which proceedings are conducted.

[Section 69ZN](#) of the Family Law Act contains important provisions relating to the conduct of child-related proceedings including the Courts' obligation to actively direct, control and manage the conduct of the proceedings, and to safeguard children and parties against family violence.

### Family violence and cross-examination

All parties to proceedings must have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties. The Courts are required to ensure that where allegations of family violence are made, there are appropriate protections in place for the party alleging violence. The Courts recognise that where a party is an alleged victim of family violence, even being in the same room as the alleged perpetrator may impact on their capacity to participate in proceedings. Steps may be taken to allow a party to participate in the hearing by video or audio link (either from another room in the Court building or from an external location), to allow them to have a support person near them whilst giving evidence, or to set up a physical screen between the parties.

When the matter is listed for final hearing, any safety measures that a litigant or practitioner seeks to utilise should be raised with the Court.

Judicial officers have an obligation to ensure cross-examination is not conducted in a manner that is [harassing, intimidating, belittling, insulting or otherwise inappropriate](#).

### Section 102NA of the Family Law Act

Personal cross-examination is where a party asks questions directly of the other party, rather than through a lawyer. The Australian government recognises that allowing an alleged victim of family violence to be personally cross-examined by the alleged perpetrator, or requiring them to personally cross-examine their alleged perpetrator may be traumatic and/or difficult and may affect their access to justice. To address this, the Family Law Act was amended in 2019 to introduce section 102NA.

[Section 102NA](#) of the Family Law Act prohibits an alleged perpetrator personally cross-examining the other party, and an alleged victim personally cross-examining their alleged perpetrator where:

- there is a final family violence order in place between the parties at the time of the cross-examination
- either party has been convicted of an offence involving violence or a threat of violence against the other party
- one party is currently facing charges of an offence involving violence or a threat of violence against the other party at the time of the cross-examination
- there are orders made under the Family Law Act for the personal protection of one party against the other, or
- the Court determines that there should be no personal cross-examination conducted

Litigants who are prohibited from cross-examining the other party in these circumstances can either engage a legal practitioner to act for them, or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme to obtain legal representation. The Scheme is administered by the various state and territory legal aid commissions but is not the same as a grant of legal aid. There is no means or merit test. If one of the conditions in section 102NA above is met, a party prohibited from cross-examining the other party is automatically eligible for representation under the section 102NA Scheme. More information on the Scheme can be found through all state and territory legal aid commissions.

If section 102NA applies, an unrepresented litigant will not be permitted to personally cross-examine the other party.

**Other useful resources:**

- [Lighthouse information sheet for parties – risk screening](#)
- [Translated versions of Lighthouse information sheet for parties – risk screening](#)

