

## MANDATORY REPORTING

### What is mandatory reporting?

***The legal requirement to report suspected cases of child abuse and neglect is known as mandatory reporting. All jurisdictions possess mandatory reporting requirements of some description. What is mandatory reporting and who is mandated?***

This is a legal obligation and as such carries with a penalty if you fail to act. It is important to note that mandatory reporting legislation over-rides any professional code of conduct or ethical guidelines that may apply to your particular profession. Mandatory reporting was introduced in 1993 with an amendment to the Children and Young Persons Act that mandates certain professionals to report suspected cases of child physical and sexual abuse to child protection to Victoria. These include:

- Medical practitioners, including psychiatrists
- Nurses
- Registered psychologists
- Social workers, youth and welfare workers
- Preschool, primary and post-primary teachers and principals
- Operators, owners and professional employees of children's service centres (including kindergartens)
- Youth and child care officers for the Department of Human Services
- Police officers, probation officers and parole officers.

If you don't fit into any of these professional groupings, then you are not legally obliged to report but the moral obligation is still an issue.

The belief behind this legislation is CHILDREN HAVE THE RIGHT TO BE SAFE.

This right can only be ensured if adults take responsibility for childrens safety.

Mandatory reporting gives a clear message to the community that child abuse is a crime and that it will not be tolerated or accommodated by the professional community.

### **Who is mandated to notify?**

Registered medical practitioners, registered nurses, a person registered as a teacher under the *Education, Training and Reform Act 2006* or teachers granted permission to teach under that Act, principals of government or non-government schools, and members of the police force

### **What is to be notified?**

Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d), formed in the course of practising his or her office, position or employment

### **Maltreatment types for which it is mandatory to report**

Physical abuse

Sexual abuse

**Relevant sections of the Act/Regulations**

Sections 182(1) a-e, 184 and 162 c-d of the *Children, Youth and Families Act 2005*

(Vic.)

the identity of notifiers - whether mandated or not - is explicitly protected

Child Protection and Family Services - Department of Human Services

[www.cyf.vic.gov.au/child-protection-family-services](http://www.cyf.vic.gov.au/child-protection-family-services)

***So when do you report?***

By law, you must report when you have a suspicion of child abuse that is based on

REASONABLE GROUNDS. You have reasonable grounds to notify when:

- A child tells you they have been abused.
- Someone else, such as a sibling, relative, friend or acquaintance, tells you that a child has been or is being abused.
- A child tells you that they know someone who is being abused (the child could be referring to themselves).
- Your own observations of the child's physical and/or emotional condition or behaviour lead you to suspect that the child has suffered abuse.
- Other circumstances lead you to suspect that a child has been abused.

**NOTE:**

*You do not have to prove that abuse occurred to report.*

- *The law does not require proof.*
- *The law requires that you report suspected abuse.*

### ***How do I notify?***

To make a notification of child sexual abuse a phone call is all that is required. You contact the Department of Human Services Child Protection Unit in your region or after hours, the Child Protection Crisis Line. The Department of Human Services is the statutory body responsible for the protection of children and they have the power to ensure that all cases are investigated.

When you notify you will be asked:

Child:

Name, gender, ethnicity

Family:

Composition, parents' marital status, other adults in the home, extended family, patterns of interaction?, history of violence or Abuse, are other agencies involved?, likely reaction to investigation.

Alleged abuse:

Description, details of present and/or previous abuse.

Description of indicators: physical/ emotional/ behavioural.

Notifier:

Identification, what are the grounds (How did you form your belief). Relationship to child. Does the family know of notification?

NOTE: Even if you don't know all of this information, you must still notify with the information that you have.

### ***What happens next?***

Once a notification has been made, the protective worker will consult to determine if further action is required. This decision is based largely on how well the case fits the definition of harm or risk of harm in the act.

When further action is required a protective worker has 28 days to conduct an initial investigation. This will determine whether the notification can be substantiated.

In all cases, when a notification concerns allegations of physical or sexual abuse, protective workers are obliged to discuss the notification with the police prior to interviewing children or family members.

If notification is substantiated, Child Protection Victoria can instigate a range of protection options through making application to the children's court for protective orders. The type and length of order varies with each case. The protective interests of the child are managed by the Department until such time as the case can be closed.

## **FAMILY VIOLENCE AND INTERVENTION ORDERS**

**FOUR PRINCIPLES** (including that non-violence is a fundamental social value that should be promoted, family violence is a fundamental violation of human rights, it is not acceptable in any community or culture and that the justice system should treat the views of victims of family violence with respect) AND

• **FIVE FEATURES** of family violence recognised by Parliament (including, acknowledging the gendered nature of family violence, the impact on children, that it affects the entire community and occurs in all areas of society, that family violence extends beyond physical and sexual violence to emotional, psychological and economic abuse, and that family violence may involve overt or subtle exploitation of power imbalances)

### **Definition of Family Violence (s5)**

#### **(1) Family violence is**

(a) Behaviour towards a family member (FM) that is

- Physically or sexually abusive OR
- Emotionally or psychologically abusive OR
- Economically abusive OR
- Threatening OR
- Coercive OR
- Controls or dominates the FM and causes the FM to feel fear (*subjective test*)

for the safety or well-being of that FM or another person.

OR

(b) Causing a child to hear or witness or otherwise be exposed to the effects of behaviour in (a) above

- FIVE EXAMPLES are provided including: Over-hearing threats of physical abuse, seeing or hearing assaults, comforting a family member who has been physically abused, cleaning up a site after property damage, being present

when police attend family violence incident

**(2) Family violence includes (without limiting subsection (1) above)**

- Assault or personal injury (or threat)
- Sexual assaults or coercive behaviour (or threat)
- Damaging property (or threat)
- Deprivation of liberty (or threat)
- Injuring or killing an animal to control, dominate or coerce a family member  
(or threat)

**(3) Behaviour can be family violence even if it is not a criminal offence.**

**Economic abuse (s6)**

Behaviour which is coercive, deceptive or unreasonably controls another person without their consent:

- a. In a way that denies the person economic or financial autonomy they would have had but for the behaviour OR
- b. By withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the person or their child if they are entirely or predominantly dependent on the first person to meet those living expenses

Eleven non-exhaustive examples are provided under s6 to clarify the meaning (eg preventing a person from seeking or keeping employment).

**Emotional or psychological abuse (s7)**

Behaviour that “torments, intimidates, harasses or is offensive to the other person”

Five non-exhaustive examples are provided, including:

- Repeated derogatory taunts (including racial taunts)
- Disclose a person’s sexual orientation
- Threatening to withhold medication
- Preventing connections with family or culture
- Threatening suicide or self-harm or injury to others to torment or intimidate.

## Grounds for an interim order (s53)

Court may make an interim order if the court is satisfied on the balance of probabilities that an interim order is necessary pending a final decision:

- To ensure the **safety** of the AFM OR
- To **preserve property** of the AFM OR
- To **protect a child** who has been subjected to family violence by the respondent OR
- **Parties consent** or do not oppose OR
- **FV Safety Notice has been issued and no circumstances that would justify**

**discontinuing the protection**

Court cannot take into account whether holding powers have been used – s53(2)

Court can make an interim order whether or not the respondent has been served and whether or not the respondent is present at court – s54

Can be made for more than one family member if court is satisfied of the above grounds

for each person OR they consent OR a Family Violence Safety Notice has been issued– s56

## SOME ADDITIONAL MATTERS WITH IVOs

Types of Orders that may be made pursuant to an IVO:-

- Typically for a year
- Restricting the defendant from assaulting harassing molesting the AFM
- Restricting the defendant from approaching within 200 metres of where the AFM lives or works
- Telephoning , approaching or contacting in any way, which includes texting and email or getting any other person to do so
- Exceptions may be in relation to child contact orders when may be able to contact them to arrange or vary same but must be pursuant to an order

NOTE : FOR FINAL ORDERS

Court must be satisfied that the conduct complained of (a) has happened

AND (b) is likely to happen again.

This is a test on the BALANCE OF PROBABILITES which means more likely than not.

## **FAMILY LAW ACT AND FAMILY VIOLENCE**

### **What is Family Violence?**

The Family Law Act defines family violence as

*"family violence" means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.*

The Family Violence Committee considered that a more comprehensive description of the elements of violence was needed to meet the objectives of the Family Violence strategy. To meet this need the following description has been adopted by the Court:

*Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part*

*of the physical household but are part of the family and/or are fulfilling the function of family.*

Common forms of violence in families include:

- spouse/partner abuse (violence among adult partners and ex partners);
- child abuse/neglect (abuse/neglect of children by an adult);
- parental abuse (violence perpetrated by a child against their parent); and
- sibling abuse (violence among siblings).

A note to the definition (Section 4 of the Act) states: ‘A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.’

Common forms of violence in families include:

- spouse/partner abuse (violence among adult partners and ex-partners)
- child abuse/neglect (abuse/neglect of children by an adult)
- parental abuse (violence perpetrated by a child against their parent), and
- sibling abuse (violence between siblings).

Family violence can affect not only a person’s safety, but also:

- their readiness to take action in a family law matter
- their willingness to come to the Courts
- their ability to participate in court events, and/or
- their ability to achieve settlement of their dispute through negotiation.

## **Parenting cases – the best interests of the child**

When a court is making a parenting order, the Family Law Act requires it to regard the best interests of the child as the most important consideration. Parents must also use this principle when making parenting plans.

### **The Family Law Act**

The Act makes clear that:

- both parents are responsible for the care and welfare of their children until the children reach 18
- arrangements which involve shared responsibilities and cooperation between the parents are in the best interests of the child.

See Section [61DA](#) of the Act for the detail.

### **Two tiers of consideration**

In deciding what is in the best interest of a child, the Act requires a court to take into account two tiers of considerations - primary considerations and additional considerations:

#### **Primary considerations:**

- the benefit to children of meaningful relationships with both parents
- the need to protect children from physical or psychological harm (from being subjected or exposed to abuse, neglect or family violence).

**Additional considerations:**

- the child's views and factors that might affect those views, such as the child's maturity and level of understanding
- the child's relationship with each parent and other people, including grandparents and other relatives
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent
- the likely effect on the child of changed circumstances, including separation from a parent or person with whom the child has been living, including a grandparent or other relatives
- the practical difficulty and expense of a child spending time with and communicating with a parent
- each parent's ability (and that of any other person) to provide for the child's needs
- the maturity, sex, lifestyle and background of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant
- the right of an Aboriginal and Torres Strait Islander child to enjoy his or her culture and the impact a proposed parenting order may have on that right
- the attitude of each parent to the child and to the responsibilities of parenthood
- any family violence involving the child or a member of the child's family
- any family violence order that applies to the child or a member of the child's family, if:
  - the order is a final order, or
  - the making of the order was contested by a person

- whether it would be preferable to make the order that would be least likely to lead to further court applications and hearings in relation to the child, and
- any other fact or circumstance that the court thinks is relevant.

A court must consider the extent to which each parent has or has not previously met their parental responsibilities, in particular:

- taken the opportunity to:
  - participate in decision-making about major long-term issues about the child
  - spend time with the child
- communicate with the child, and has:
  - met their obligations to maintain the child, and
  - facilitated (or not) the other parent's involvement in these aspects of the child's life.

If the child's parents have separated, a court must consider events and circumstances since the separation.

See also Section [64B](#) on the law about parenting orders made by a court, and Section [65DAA](#) which is about how a court is to consider a child spending equal time or substantial and significant time with each parent in certain circumstances

## **FAMILY LAW ACT 1975 - SECT 65DAA**

### **Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances**

Equal time

(1) If a [parenting order](#) provides (or is to provide) that a [child's parents](#) are to have equal shared [parental responsibility](#) for the [child](#), the [court](#) must:

(a) consider whether the [child](#) spending equal time with each of the [parents](#) would be in the best [interests](#) of the [child](#); and

(b) consider whether the [child](#) spending equal time with each of the [parents](#) is reasonably practicable; and

(c) if it is, consider making an order to provide (or including a provision in the order) for the [child](#) to spend equal time with each of the [parents](#).

Note 1: The effect of [section 60CA](#) is that in deciding whether to go on to make a [parenting order](#) for the [child](#) to spend equal time with each of the [parents](#), the [court](#) will regard the best [interests](#) of the [child](#) as the paramount consideration.

Substantial and significant time

(2) If:

(a) a [parenting order](#) provides (or is to provide) that a [child's parents](#) are to have equal shared [parental responsibility](#) for the [child](#); and

(b) the [court](#) does not make an order (or include a provision in the order) for the [child](#) to spend equal time with each of the [parents](#); and

the [court](#) must:

(c) consider whether the [child](#) spending substantial and significant time with each of the [parents](#) would be in the best [interests](#) of the [child](#); and

(d) consider whether the [child](#) spending substantial and significant time with each of the [parents](#) is reasonably practicable; and

(e) if it is, consider making an order to provide (or including a provision in the order) for the [child](#) to spend substantial and significant time with each of the [parents](#).

Note 1: The effect of [section 60CA](#) is that in deciding whether to go on to make a [parenting order](#) for the [child](#) to spend substantial time with each of the [parents](#), the [court](#) will regard the best [interests](#) of the [child](#) as the paramount consideration.

Note 2: See subsection (5) for the factors the [court](#) takes into account in determining what is reasonably practicable.

(3) For the purposes of subsection (2), a [child](#) will be taken to spend *substantial and significant time* with a [parent](#) only if:

(a) the time the [child](#) spends with the [parent](#) includes both:

(i) days that fall on weekends and holidays; and

(ii) days that do not fall on weekends or holidays; and

(b) the time the [child](#) spends with the [parent](#) allows the [parent](#) to be involved in:

(i) the [child](#)'s daily routine; and

(ii) occasions and events that are of particular significance to the [child](#); and

(c) the time the [child](#) spends with the [parent](#) allows the [child](#) to be involved in occasions and events that are of special significance to the [parent](#).

(4) Subsection (3) does not limit the other matters to which a [court](#) can have regard in determining whether the time a [child](#) spends with a [parent](#) would be substantial and significant.

Reasonable practicality

(5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a [child](#) to spend equal time, or substantial and significant time, with each of the [child's parents](#), the [court](#) must have regard to:

(a) how far apart the [parents](#) live from each other; and

(b) the [parents'](#) current and future capacity to implement an arrangement for the [child](#) spending equal time, or substantial and significant time, with each of the [parents](#); and

(c) the [parents'](#) current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

(d) the impact that an arrangement of that kind would have on the [child](#); and

(e) such other matters as the [court](#) considers relevant.

Note 1: Behaviour of a [parent](#) that is relevant for paragraph (c) may also be taken into account in determining what [parenting order](#) the [court](#) should make in the best

[interests](#) of the [child](#). Subsection 60CC(3) provides for considerations that are taken into account in determining what is in the best [interests](#) of the [child](#). These include:

- (a) the willingness and ability of each of the [child's parents](#) to facilitate, and encourage, a close and continuing relationship between the [child](#) and the other [parent](#) (paragraph 60CC(3)(c));
- (b) the attitude to the [child](#), and to the responsibilities of [parenthood](#), demonstrated by each of the [child's parents](#) (paragraph 60CC(3)(i)).

Note 2: Paragraph (c) reference to future capacity--the [court](#) has power under [section 13C](#) to make orders for parties to attend [family counselling](#) or [family dispute resolution](#) or participate in courses, programs or services.

## Financial cases

The general principles for a court to settle financial disputes under the Family Law Act are based on:

- working out what you've got and what you owe; that is, your assets (including superannuation) and debts and what they are worth
- looking at the direct and indirect financial contributions to the marriage/de facto relationship, such as wage and salary earnings
- looking at indirect financial contributions such as gifts and inheritance from families
- looking at the non-financial contributions to the marriage/de facto relationship such as caring for children and homemaking

- factors such as standard of living during the marriage/de facto relationship and the length of the marriage/de facto relationship
- future requirements, including things like age, health
- future resources, including financial resources, care of children and ability to earn, child support which is being or is likely to be paid, the financial situation of someone with whom you are now cohabiting, any legal obligation to support other people in the household.

### **Emphasis on resolving disputes**

Where it is appropriate, parties are encouraged to reach agreements without a court hearing.

### **Options to resolve disputes**

Many people successfully work out arrangements for children without going to court.

A number of options are available and, in the case of disagreements over children, changes to the *Family Law Act 1975* require parties attend family dispute resolution before they apply for parenting orders.

### **Dispute resolution in parenting disputes**

You must make a genuine effort to resolve the matter by family dispute resolution.

Changes have been made to the family law system to encourage parents to develop cooperative parenting solutions without going to court. Family dispute resolution is a practical way for separating families to try to resolve any disagreements and make arrangements for the future.

If your application is an application for a parenting order, then you must provide a certificate with your application to the Court. This requirement applies even if you have preexisting orders in relation to the child that is the subject of the current application.

A court will not be able to hear an application for a parenting order unless a certificate from an accredited family dispute resolution practitioner is filed with the application.

In certain circumstances the court may grant you an exemption from the requirement to file a certificate.

For more information about compulsory family dispute resolution (or to find a family dispute resolution service provider in your local area) call the Family Relationships Advice Line on 1800 050 321 or go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au).

For more information about filing an application with the Court, call the National Enquiry Centre on 1300 352 000 or visit [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au).

### **Dispute resolution (pre-action procedures) in financial cases**

The Family Court requires people intending to apply for financial orders to follow pre-action procedures, including attending dispute resolution, before filing an application. (There are some exceptions to these requirements, such as those involving family violence, fraud or urgency.)

In the Federal Magistrates Court, parties intending to apply for financial orders are encouraged to resolve disputed issues before filing an application. In most cases,

parties will be ordered to attend family dispute resolution when an application is filed with the Court.

### **Reaching agreement through dispute resolution – what next**

If you and the other person reach agreement through a family dispute resolution process, you can make a parenting plan or obtain consent orders approved by a court.

### **What is a parenting plan?**

A parenting plan is a written agreement that sets out parenting arrangements for children. Because it is worked out and agreed jointly, you and your former partner do not need to go to court.

Unless a court orders otherwise, you and your former partner can agree to change a parenting order by entering into a parenting plan.

A parenting plan is not a legally enforceable agreement. It is different from a parenting order, which is made by a court. For a copy of the Attorney-General's fact sheet 'Parenting plans' visit Family Relationships Online located under website links.

You should seek legal advice when considering the alternative approaches.

### **What are consent orders?**

A consent order is a written agreement that is approved by a court. A consent order can cover parenting arrangements for children as well as financial arrangements such as property and maintenance.

Consent orders have the same legal force as if they had been made by a judicial officer after a court hearing.