The significance of domestic violence within the Family Courts and the legal impact it has upon separation

Date : January 25, 2021

Domestic violence extends beyond just physical abuse; it can comprise sexual, emotional, financial and psychological abuse. Unfortunately, for some people who have been exposed to this type of behaviour over an extended period, they don't appreciate that such behaviour is not the norm.

Domestic Violence lawyers can assist in identifying this type of behaviour.

Within the family law context, the *Family Law Act describes this conduct as* 'family violence' and defines it as follows:-

"*… family violence means 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*" (s.4AB(1)).

The legislation also provides examples, which are not exhaustive, of behaviour that may constitute family violence.

Subsection (2). includes some brief examples such as

- withholding access to finances,
- preventing contact with family and friends,
- assault,
- sexual assault,
- derogatory behaviour, and
- destruction of property.

If you feel that you are in a relationship where it is one of domestic violence or family violence, please contact one of our expert domestic violence lawyers who can assist you in your family law matter.

Family Violence in Parenting Matters

Where the Court is considering what Orders should be made in a parenting matter including where there have been findings of family violence; the Court's paramount consideration is to protect the child from risk of harm: s.60CC(2A).

There are options available to ameliorate the risk, such as the use of supervised contact centres, supervision generally, and /or that parents be required to enter into undertakings.

It is important, however, that a parent applying to the Court; complies with the filing rules when

there are concerns of family violence, child abuse and any other alleged risks to the child. The filing rules require the completion and filing of the Notice of Risk document.

Please contact one of our domestic violence lawyers who can properly advise you in relation to the question of risk.

Family Violence in Property Matters

When determining a property dispute the Court is not tasked to enquire about the conduct of the partners to each other during the course of the relationship as, generally, it is not usually considered relevant to the question of contributions and consequential property adjustment.

Domestic Violence Lawyers can advise as to the limited circumstances where such conduct may be relevant for the Court's consideration.

The Family Court of Australia held in the case of *Kennon v Kennon* that domestic violence can be a relevant consideration provided the party asking the Court to consider a Kennon argument can satisfy the following elements:-

1. A course of violent conduct is established (generalised allegations are not sufficient);
2. The violent conduct had a discernible impact upon the victim;
3. The victim's contributions to the relationship had been significantly more arduous because of the domestic violence.

You can read more into this case at: http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1997/27.html

Organisations that can assist you with Family Violence

There are a number of non-government organisations available that specialise in helping victims of domestic violence. If you require any assistance (i.e. finding a safe haven), you can make contact with White Ribbon Australia who will be able to refer you to a number of services that can assist you in greater detail.

If you are the victim of domestic violence, or there are allegations being made against you as a perpetrator of domestic violence, and you wish to commence Court proceedings, please contact one of our expert domestic violence lawyers who can assist you further.

For more information, visit our page on Domestic Family Violence.

Please contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation,

professional advice should be sought. For advice, please contact one of our Family Lawyers.