

Family & Relationship Law

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GLBTI* RELATIONSHIPS AND THE LAW: The Family Violence Protection Act and its impact on the GLBTI community

In an attempt to further reduce the differences in legislation between heterosexual couples and same-sex couples, the Victorian Government introduced the *Family Violence Protection Act 2008* (“the Act”) in December 2008. The Act replaces any previous legislation in relation to Family Violence and Intervention Order matters.

In a notable move by the Government, the Act expands the definition of “family member” to include same-sex couples, and also affords non-biological parents the legal right to apply and obtain intervention orders to protect their children.

The Act also goes as far as to provide protection to same-sex couples in circumstances where someone is threatening to disclose their sexual orientation.

Amended definition of “family member”

Of relevance to the GLBTI community is the definition of a “family member”. The Act refers to a family member as a

“person who is, or has been, the relevant person’s spouse or domestic partner”; or “a person who has, or has had, an intimate personal relationship with the relevant person”. This means that parties in same-sex relationships are now defined under the Act as family members, which has never before been the case.

The Act also promotes the rights of the non-biological parent in same-sex relationships by extending the definition of a family member to include “a child who normally or regularly resides with the relevant person, or has previously resided with the relevant person on a normal or regular basis”.

* Gays, Lesbians, Bisexual, Transgender, Intersex

Historically, the Magistrate's Court has been reluctant to name a child on an Intervention Order in circumstances where the applicant is not the child's biological parent. By expanding the definition of family member to ensure that non-biological parents are afforded the same rights as biological parents, the Government is acknowledging the changing needs of society.

Domestic partner

Under the Act a "domestic partner" is now defined as a person who is in a registered relationship as defined under the *Relationships Act 2008* or an adult to whom the person is not married, but with whom they live as a couple and where either person provides personal or financial support of a "domestic" nature to the other. The gender of the parties and whether or not they reside under the one roof are not relevant considerations.

Family violence

Arguably, the most significant change to the current legislation is the definition of family violence. Family violence under the Act includes physical or sexual abuse, emotional or psychological abuse, financial abuse, threatening behaviour, coercion, or any other behaviour which controls or dominates a family member and causes that family member to feel fear for their safety or wellbeing or that of other members of their family.

What does this mean for you?

Although the GLBTI community is afforded the same rights and protection if they are being subjected to family violence, for the first time the definition of emotional or psychological abuse has been expanded to include specific reference to threatening to disclose a person's sexual orientation to a person's friends or family against that person's wishes.

The implementation of this legislation shows a move by the Government to reduce the differences in law between GLBTI and heterosexual relationships, while also being sensitive to issues that are specific to the GLBTI community.

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