



## FAMILY LAW

### Domestic violence – the silent epidemic

For generations, domestic violence (or family violence) was seen as a “private matter,” to be dealt with by the family unit. Fortunately, times are changing. Today we are witnessing an outpouring of community concern and governmental action about the impact of domestic violence on victims and our society as a whole. But what is domestic violence, who does it affect and what should you do if you, or someone you know is being abused?

#### Defining family violence

The *Family Violence Protection Act 2008 (Vic) (the Act)* broadly defines family violence as behaviour by a person towards a family member which is:

- physically or sexually abusive; or
- emotionally or psychologically abusive; or
- economically abusive; or
- threatening; or
- coercive; or
- in any other way controlling or

dominating the family member to feel fear for the safety or wellbeing of that family member or another person.

The definition also includes behaviour that causes a child to hear or witness, or otherwise be exposed to the effects of, the behaviour referred to above. Both the terms economic abuse and emotional or psychological abuse are further defined within the Act, with examples of each behaviour being listed. These include:

#### Economic abuse

Economic abuse is defined under the Act as:

- coercing a person to relinquish control over assets and income;
- removing or keeping a family member's property without permission, or threatening to do so;
- without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;

- preventing a person from seeking or keeping employment.

#### Emotional or psychological abuse

Emotional or psychological abuse is defined under the Act as:

- repeated derogatory taunts, including racial taunts;
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;
- threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person.

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**Domestic violence & women & children**

There is no doubt that women and children are grossly overrepresented in family violence statistics. In most cases, they are subjected to family violence by a male perpetrator.

Australia's National Research Organisation for Women's Safety (ANROWS) provides sobering statistics in regard to family violence. In 2016-2017, 72,000 women and 34,000 children sought homelessness assistance as a result of family violence. Moreover, intimate partner violence is the biggest health factor for women between the ages of 25 and 44; surpassing smoking, alcohol and obesity. Alarmingly, 8 women each day are hospitalised following assaults by their spouse or partner. Frighteningly, between 2012 and 2014, 1 woman a week was killed at the hands of their current or former partner in Australia.

**Domestic violence & men**

It surprises some people to realise that family violence also affects men. ANROWS statistics demonstrate that in 2016-2017, around 9,000 men also sought homelessness assistance due to family violence. Furthermore, the One in Three campaign claims that 1 in 3 victims of family violence are men.

**The story of James – a victim of family violence**

Family violence affects all individuals, regardless of gender. Let's look at a case study.

*James would return home from work in the evening to find his wife's car parked in the garage. James would keep driving towards a local park, where he would walk around the park for a couple of hours, preparing mentally for the abuse that would follow once he returned home. James attempted suicide a number of times over his 35-year relationship with his wife.*

**What should you do?**

It is important that anyone who is experiencing domestic violence, or knows someone who is being abused, seeks professional support promptly. If you are in immediate physical danger, it is imperative that you contact the police on 000.

**Where can you get help?**

**For women**

**Women's Information Referral Exchange (WIRE)**

WIRE provides free information, support and referral information for women across Victoria. They provide a telephone support service, Women's Information Centre, online Livechat support and an email support service.

Telephone: 1300 134 130  
Website: [www.wire.org.au](http://www.wire.org.au)

**For men**

**Mensline**

Telephone and online support, information and referral for men.

Telephone: 1300 789 978 (24/7)  
Website: [www.mensline.org.au](http://www.mensline.org.au)

**To assess your legal options**

**Katrina Bristow**

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*\*The contribution of George Yiannis in the preparation of this article is acknowledged.*



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**Flammable cladding on high-rise apartment buildings**

*Challenges for Owners Corporations*

Over the past few years, flammable exterior cladding has been identified as a cause of numerous fires in high rise buildings around the world. One fire occurred in Melbourne in 2014, in the Lacrosse tower in Docklands. In London in 2017, the tragic Grenfell fire made international headlines when it took 72 lives.

**What is flammable cladding?**

Two types of cladding are implicated in the problem - aluminium composite panels (ACP) and expanded polystyrene (EPS). These products have been used in high rise construction since the 1990s.

ACP products are flat panels, generally 3-6mm thick consisting of two thin aluminium sheets bonded to a non-aluminium core, such as polyethylene. Panels are produced in various formats but can be up to 6m in length and 2m wide. ACP is an attractive design feature, as it is lightweight and comes in a variety of colours and finishes.

EPS is a lightweight plastic material used in packaging, as well as in building projects. It is easy to install and has thermal insulation properties. It is typically rendered with cement when used as cladding.

**How many buildings are affected?**

The precise number of buildings affected is not certain. The Victorian Building Authority (VBA) conducted an audit in 2015 of 188 high-rise and public buildings in Melbourne's CBD. This audit found that a staggering 51% were non-compliant. In 2017, the Victorian Cladding Taskforce identified 1,369 buildings in Victoria which may have flammable cladding. The list of suspect buildings has not been made public.



The 2017 Grenfell fire tragedy

In January 2018, the VBA wrote to all Victorian local councils, identifying the buildings within their local government area likely to have combustible cladding.

ABC News reports that the number of potentially non-compliant buildings in the following municipalities are:

Moreland	150
Monash	86
Greater Dandenong	52
Stonnington	49
Glen Eira	39
Boroondara	38
Yarra	27
Melbourne	22

\*Other councils did not respond to the ABC.

Councils are currently working with affected building owners in relation to compliance. This presents a resourcing problem for Councils, and in at least one case, the Planning Minister has stepped in and directed the VBA to issue building notices

requiring immediate fire safety upgrades.

### What should an OC, OC committee or OC manager do?

The dangers of flammable cladding are now well known. A proportion of all high-rise apartment buildings built in the last 30 years have flammable cladding. For buildings under 30 years old, it is now beyond question that the Owners Corporation (OC), itself or through its committee or manager, must take steps to determine definitively whether their building is affected.

Exterior cladding is typically common property in a residential high rise. The cladding may also form part of private lots, especially around balconies.

The OC is responsible for the repair and maintenance of the common property. Importantly, this will extend to ensuring that the common property is not a fire risk.

To get a definitive answer as to whether your building has flammable

cladding, the OC should engage a registered building practitioner to investigate. McKean Park can refer you to the appropriate person.

### What if my apartment building does have flammable cladding?

If the building has flammable cladding, the OC needs to develop a plan to address the immediate fire risk. Depending on the situation, there may be solutions short of cladding removal that satisfy the Building Code, including upgraded sprinkler systems.

Confirmation that the building is non-compliant will have financial consequences, including loss of value of apartments and the cost of rectification, which may be significant. The OC will need legal advice on avenues for recovery.

In Victoria, there is a limitation period of 10 years from the occupancy permit for building claims. In the case of buildings approaching 10 years of age, urgent legal advice may be required.

Councils and the VBA have issued a number of building notices requiring fire safety upgrades in recent weeks. These notices can have serious consequences, and legal advice should be sought immediately.

Legal liability of the builder, developer, building surveyor or others is a complex issue. The OC should seek legal advice from lawyers with experience in construction law about this issue. McKean Park has worked in both Owners Corporation and construction law for many years and offers specialised advice in this area.



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## Superannuation planning for the future

As people get closer to retirement age, the issue of having an appropriate amount of superannuation becomes increasingly important.

However, most people are unaware that the \$1,600,000 cap on total superannuation contributions is a fallacy. With proper planning, this cap can be increased by up to \$300,000 in additional superannuation contributions.

### The Downsizer Contribution Cap

From 1 July 2018, there is a new contribution cap called the "Downsizer Contribution Cap". Although this cap was designed for people downsizing their home, it can be used in much wider circumstances if planned properly.

#### How does it work?

The cap can only be used once. The maximum amount that can be contributed under the Downsizer Contribution Cap is \$300,000 - or the actual sale proceeds from a residential property, (whichever is less).

There are a number of restrictions:

- 1 The contribution must be all or part of the capital proceeds received from the sale of a dwelling in Australia.
- 2 The contributor must be 65 years or more.
- 3 The contributor, or a spouse, must have owned the property before the sale.
- 4 At least some of the capital gain must have been disregarded under the principal place of residence capital gains tax rules.
- 5 The contribution must be made within 90 days after the sale takes place.



- 6 The contributor or spouse must have owned an interest in the property for at least 10 years prior to the sale.

#### Do I have to buy a special type of property?

It is not necessary that a new "downsized" home be bought or any new property be bought at all. The property does not have to be owned by the contributor. It could be owned by the spouse or the member for whom the contribution is made. This could potentially allow up to \$600,000 to be contributed for a couple under this cap.

#### Do I have to live in the property?

The property does not have to be the contributor's principal place of residence immediately before the sale. It is sufficient that the property at some stage was used as the principal place of residence. This means the sale of an investment property that at one stage was a main residence could qualify to allow some of the proceeds to be contributed to superannuation under the Downsizer Contribution Cap.

#### What should I do?

With appropriate planning, the Downsizer Contribution Cap can be used to provide an additional opportunity for people over 65 to make contributions to superannuation, in vastly wider circumstances than may have been originally contemplated.

Anyone planning their future superannuation contributions can arrange their affairs to take advantage of the Downsizer Contribution Cap.

If you require any further information concerning the notional superannuation contribution cap or the new superannuation regime generally, please contact our office.



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**Expert advice. Practical solutions. Personal service.**

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 LAWYERS



## Capacity in an ageing population

**Australia has an ageing population. This means in the next two decades, we will see an increase in the number of persons with a disability.**

Legally, this can cause problems. Persons with a disability cannot make their own decisions in certain transactions. However, one cannot simply assume that because a person has a disability, they do not have the capacity to enter into a transaction.

Many people with an intellectual disability retain decision making capacity for particular transactions. The ability to decide on a transaction varies according to the type of transaction and what is involved. Take for example purchases. A person may be able to go to a cafe to purchase a coffee, but may not have the capacity to understand the purchase of a multi-million derivative portfolio. The same goes with a number of legal transactions.

### Will making

In relation to a person's Will, the Courts have provided a long standing legal test. To have Will making capacity, a person must:

- 1 Understand the document is a Will;
- 2 Know the general extent of their assets;

- 3 Understand who has a claim on their estate and be able to evaluate those claims;
- 4 Be suffering no mental delusion which would result in an unwanted gift under the Will.

For many people with a disability, they may still have Will making capacity. For example, a person who is suffering from the early stages of Alzheimer's disease may meet all of the requirements for testamentary capacity. A person with a more advanced case of Alzheimer's disease may have capacity at particular times of the day but not at others. It is not unusual for somebody to have capacity in the morning but not in the afternoon.

There are a number of cases where it is clear a person lacks capacity. A loved one of a person who lacks capacity can make an application to the Supreme Court for a Court Sealed Will. However, the matter can be costly and significant costs implications would apply. Legal advice needs to be sought to ascertain whether this is an option for you.

### Powers of Attorney

A person can also make a power of attorney if they have decision making capacity. Decision making capacity means the ability to understand,

retain, use or weigh and communicate information required to make a decision. A person is presumed under the law to have decision making capacity, unless there is information to the contrary.

### Guardianship & Administration

In circumstances where a person does not have decision making capacity, an application can be made to the Victorian Civil and Administrative Tribunal for the appointment of a guardian and/or administrator. This can only be done if a person does not have decision making capacity. Medical evidence of the lack of decision making capacity needs to be provided at the time of the hearing.

We understand the sensitivity surrounding these issues. In combination with medical professionals, we can empathetically assist you to navigate these matters.



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**Expert advice. Practical solutions. Personal service.**



## New Special Counsel appointed

It is with pleasure that we announce the appointment of James Daly in the position of Special Counsel. James joined McKean Park in February this year.

An Accredited Specialist in Wills & Estates, James was listed as a Recommended Wills & Estates Litigation Lawyer for Victoria in Doyles' 2016 Guide to the Australian Legal Profession.

James assists clients with estate planning, administration and litigation. He enjoys working with clients to determine the best possible legal outcome.

James was admitted to practice in 2009. Prior to joining McKean Park James oversaw the successful operation of Daly Legal in Moonee Ponds. He is a popular presenter at the Leo Cussen Institute, Legalwise Seminars and other education providers. We are delighted to have James' expertise in-house and warmly welcome him to the firm.



## George Yiannis admitted to practice

20 February, 2018 was a big day for George Yiannis when he was formally admitted to legal practice. It was also a proud day for our firm with Special Counsel, David Brett, moving his admission.

George holds a Bachelor of Laws with Honours and a Bachelor of International Studies with Distinction, (majoring in International Relations and Middle Eastern Politics) from Deakin University.

Whilst studying, George worked part-time with the firm as a Law Clerk. We are delighted that George has now accepted a full-time position with the firm as a Lawyer.

Predominantly working for our Commercial Litigation, Insolvency and Construction Law areas, George will also rotate through our other practice groups. Congratulations George!

## Anniversaries

We congratulate and thank the following people on their service anniversaries:

**David Brett, Special Counsel**  
Accredited Specialist -  
Commercial Litigation  
Nationally Accredited Mediator  
10 year anniversary

**Katrina Bristow, Senior Lawyer**  
Accredited Specialist -  
Family Law  
5 year anniversary

## Our expertise

- Aged Care & Retirement Living
- Building & Construction
- Commercial & Taxation
- Commercial Litigation
- Family Law
- Insolvency
- Leasing
- Property & Owners Corporations
- Rotary
- Wills, Estates, Succession Planning & Estate Litigation

### Disclaimer

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