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Information Document on state/territory Definitions of Family/Domestic Violence

Summary

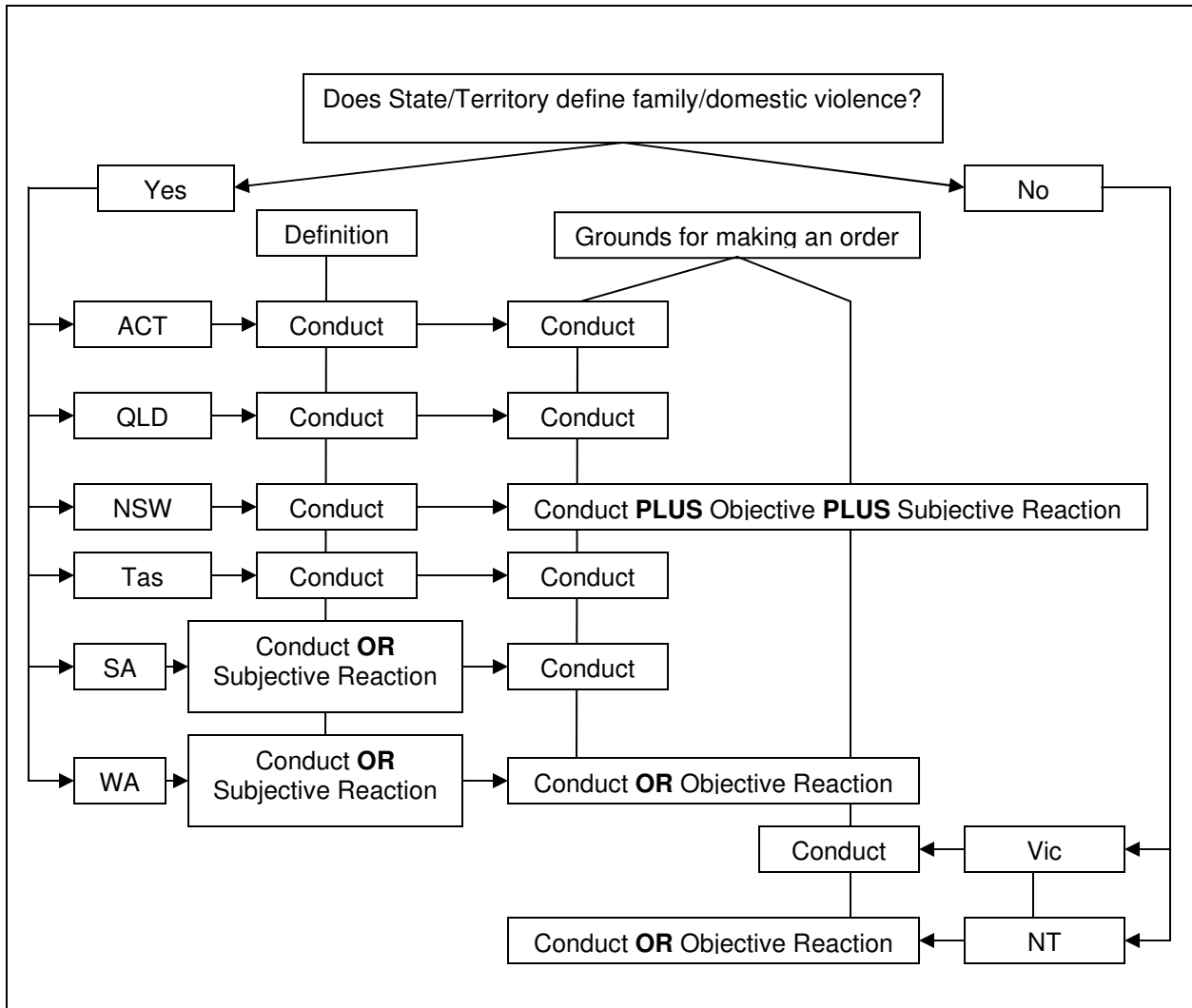
Six (of eight) States or Territories include a definition of family or domestic violence.

All states and territories include provisions for the equivalent of an Intervention Order.

In both definitions of family/domestic violence (where they exist) and in Grounds for Orders the overwhelming preference is for conduct definitions. That is, for defining family violence in terms of what the perpetrator has done and is likely to do, rather than by how the victim has reacted to it.

Three States (SA, WA and the NT) include an objective reaction definition as an alternative. For example, in WA a restraining order may be issued where either: a) the respondent has committed and is likely again to commit an act of abuse against the applicant (Conduct); or b) the person seeking to be protected, or the applicant on behalf of that person, reasonably fears that the respondent will commit an act of abuse against them (Objective Reaction) (*Restraining Orders Act (WA) 1997 s11A*)).

Only one State, NSW, requires an objective reaction in addition to conduct elements. Although the definition of “domestic violence offence” is conduct based, in order to be able to grant an Apprehended Domestic Violence Order, the court must also be satisfied that the applicant “has reasonable grounds to fear, and in fact fears” the conduct of the respondent (*Crimes Act (NSW) 1900 s562AE(1)*).



State/Territory Summaries

Commonwealth

Current Definition in *Family Law Act 1975* s60D(1)

“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 to fear for, or to be apprehensive about, his or her personal well-being or safety;

Note: Subjective reaction based.

Proposed new definition:

Schedule 1 - Shared Parental Responsibility Act Part 1 - Amendments
Family Law Act 1975
3 Subsection 4(1)

Insert:

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.

Note: Objective definition based on victim's reaction.

ACT

Domestic Violence defined in *Domestic Violence and Protection Orders Act 2001* s9:

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- (1) a person's [conduct](#) is **domestic violence** if it
- (a) causes physical or [personal injury](#) to a relevant person; or
 - (b) causes damage to the property of a relevant person; or
 - (c) is directed at a relevant person and is a [domestic violence offence](#); or
 - (d) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), (b) or (c); or
 - (e) is harassing or offensive to a relevant person; or
 - (f) is directed at a pet of a relevant person and is an [animal violence offence](#); or
 - (g) is a threat, made to a relevant person, to do anything to a pet of the person or another relevant person that, if done, would be an [animal violence offence](#).
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Relevant Person is defined in the Act's *Dictionary* as a) a domestic partner of the original person (not necessarily an adult) or (b) a relative of the original person; or (c) a child of a domestic partner of the original person; or (d) a parent of a child of the original person.

Animal Violence Offence is defined in s9(3) by reference to offences under provisions of the *Animal Welfare Act 1992*.

Domestic Violence Offence is defined in s9(2) including breaching Protection Orders, Burglary, possessing unregistered firearms etc.

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- (2) In this Act:
"domestic violence offence" means an offence against—
- (a) section 34 (which is about contravening protection orders); or
 - (b) a provision of the Crimes Act 1900 mentioned in schedule 1 (which deals with domestic violence offences); or
 - (c) any of the following provisions of the Criminal Code:
 - (i) section 311 (Burglary);
 - (ii) section 403, section 404, section 405, section 406, section 407 or section 408 (which deal with property offences); or

- (d) any of the following provisions of the Road Transport (Safety and Traffic Management) Act 1999 :
 - (i) section 6 (1) (which is about negligent driving);
 - (ii) section 7 (1) (which is about furious, reckless or dangerous driving);
 - (iii) section 8 (1) or (2) (which is about menacing driving); or
- (e) any of the following provisions of the Firearms Act 1996 :
 - (i) section 53 (Unregistered firearms);
 - (ii) section 80 or section 81 (which are about discharge of firearms or possession endangering life).

Note A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

Note: Conduct definition. Factors are Relevant person + Relevant Conduct. Victim's reaction largely irrelevant. Victim's reaction only relevant if the injury caused is 'personal injury' (in that 'personal injury' includes nervous shock s9(3)).

Grounds for making an Order are conduct based. Court must be satisfied on the balance of probabilities (s19) that the respondent has "engaged in domestic violence" (s40(1)(a)), with the paramount consideration being "the need to ensure that the aggrieved person, and any child at risk of exposure to domestic violence, is protected from domestic violence" (s6(1)(a))

Queensland

Domestic Violence defined in *Domestic and Family Violence Protection Act 1989 s11*:

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- (1) **Domestic violence** is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons--
 - (a) wilful injury;
 - (b) wilful damage to the other person's property;
 - (c) intimidation or harassment of the other person;
 - (d) indecent behaviour to the other person without consent;
 - (e) a threat to commit an act mentioned in paragraphs (a) to (d).
 - (2) The person committing the domestic violence need not personally commit the act or threaten to commit it.
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Notes: Conduct definition. Elements are: Domestic Relationship + Relevant Conduct.

Grounds for making a **Domestic Violence Order** are set out in s20.

20 Power of court to make order to protect person with a domestic relationship against domestic violence

- (1) A court may make an order against a person for the benefit of someone else (the other person) if the court is satisfied that--
 - (a) the person has committed an act of domestic violence against the other person and a domestic relationship exists between the 2 persons; and
 - (b) the person--
 - (i) is likely to commit an act of domestic violence again; or
 - (ii) if the act of domestic violence was a threat--is likely to carry out the threat.

- (2) A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of domestic violence is taken to have committed the act.
 - (3) If an application for a protection order names more than 1 respondent, the court may make a domestic violence order or domestic violence orders naming 1, some or all of the respondents, as the court reasonably considers appropriate.
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Notes: Still only conduct based. Reaction of victim is irrelevant.

New South Wales

Domestic Violence Offence defined in *Crimes Act 1900* (s4). Same as a personal violence offence (everything from murder to possession of explosives with intent to threaten another person.) + relevant person

"Domestic violence offence" means a [personal violence offence](#) committed against:

- (a) a [person](#) who is or has been married to the [person](#) who commits the offence, or
 - (b) a [person](#) who has or has had a de facto relationship, within the meaning of the [Property \(Relationships\) Act 1984](#), with the [person](#) who commits the offence, or
 - (c) a [person](#) who has or has had an intimate [personal](#) relationship with the [person](#) who commits the offence, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
 - (d) a [person](#) who is living or has lived in the same household or other residential facility as the [person](#) who commits the offence, or
 - (e) a [person](#) who has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the [person](#) who commits the offence, or
 - (f) a [person](#) who is or has been a relative (within the meaning of section 4 (6)) of the [person](#) who commits the offence.
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Notes: Conduct definition. Elements are Conduct + Relevant Person

BUT an **ADVO** (NSW equivalent of IO) can only be made if the applicant has "reasonable grounds to fear and in fact fears" the commission of a domestic violence offence s562AE (although the legislation includes some exceptions for children, and people with intellectual disabilities).

562AE [Court](#) may make ADVO

- (1) A [court](#) may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a [person](#) who has a domestic relationship with another [person](#) has reasonable grounds to fear and in fact fears:
 - (a) the commission by the [other person](#) of a [personal violence offence](#) against the [person](#), or
 - (b) the engagement of the [other person](#) in conduct amounting to harassment or molestation of the [person](#), being conduct that, in the opinion of the [court](#), is sufficient to warrant the making of the order, or
 - (c) the engagement of the [other person](#) in conduct in which the [other person](#):

- (i) intimidates the [person](#) or a [person](#) with whom the [person](#) has a domestic relationship, or
 - (ii) stalks the [person](#),being conduct that, in the opinion of the [court](#), is sufficient to warrant the making of the order.
- (2) Despite subsection (1), it is not necessary for the [court](#) to be satisfied that the [person](#) for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
 - (a) the [person](#) is under the age of 16 years, or
 - (b) the [person](#) is, in the opinion of the [court](#), suffering from an appreciably below average general intelligence function.
- (3) For the purposes of this section, conduct may amount to harassment or molestation of a [person](#) even though:
 - (a) it does not involve actual or threatened violence to the [person](#), or
 - (b) it consists only of actual or threatened damage to [property](#) belonging to, in the possession of, or used by the [person](#).
- (4) An order made under this section may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the [court](#).

Therefore: Domestic violence is a conduct definition, but obtaining an AVO requires both Objective and Subjective reaction elements.

Victoria

No definition of family/domestic violence.

Grounds for an IO are set out in *Crimes (Family Violence) Act 1987(4)*

4. Intervention orders

- (1) The Court may make an intervention order in respect of a person if satisfied on the balance of probabilities that-
 - (a) the person has assaulted a family member or caused damage to property of a family member and is likely to again assault the family member or cause damage to property of the family member; or
 - (b) the person has threatened to assault a family member or cause damage to property of a family member and is likely to assault the family member or cause damage to property of the family member; or
 - (c) the person has harassed or molested a family member or has behaved in an offensive manner towards a family member and is likely to do so again.
- (2) The order may impose any restrictions or prohibitions on the person that appear necessary or desirable in the circumstances to the court.
- (3) An intervention order may be made in respect of more than one aggrieved family member if the court is satisfied in accordance with sub-section (1) in respect of each aggrieved family member.

Note: Part 3 sets out procedures relating to intervention orders.

The Act includes special provisions to apply where children are involved, either as the aggrieved family member, or as a family member of either party.

4A. Additional protection of children

- (1) In addition to the grounds in section 4(1) on which the Court may make an intervention order, the Court may make an intervention order under that section in respect of a child as an aggrieved family member if the Court is satisfied on the balance of probabilities that-
 - (a) the child has heard or witnessed, and is likely again to hear or witness, violence by a person as described in section 4(1); and
 - (b) the child is a family member of that person or of the aggrieved family member whose person or property was the subject of the violence-
whether or not a complaint for an intervention order has also been made by or on behalf of the aggrieved family member whose person or property was the subject of the violence.
- (2) Before making an intervention order under section 4 (whether on the grounds in section 4(1) or in sub-section (1) of this section), the Court must consider whether there are-
 - (a) any children; or
 - (b) in the case of an intervention order referred to in sub-section (1) of this section, any other children-
who are family members of the defendant or of the aggrieved family member who have been subjected to, or have heard or witnessed, violence by the defendant as described in section 4(1).
- (3) If the Court is satisfied on the balance of probabilities that a child who is a family member of the defendant or of the aggrieved family member has been subjected to, or has heard or witnessed, violence by the defendant as described in section 4(1) and is likely again to be subjected to or to hear or witness such violence, the Court may (on its own initiative)-
 - (a) if the child's need for protection is substantially the same as that of the aggrieved family member, include the child as an aggrieved family member in making the order; or
 - (b) in any other case, make a separate intervention order under section 4 in respect of the child as an aggrieved family member.
- (4) If the Court makes an intervention order in respect of a child as an aggrieved family member (including an intervention order referred to in sub-section (1) or (3) of this section), the Court must determine whether there are any orders in force under the Family Law Act 1975 of the Commonwealth in respect of the residence of the child or the defendant's contact with the child.

Note: If there is such an order in force, section 68T of that Act may allow the court to vary, discharge or suspend that order.

(5) This section has effect despite anything to the contrary in section 4(1).

Notes: Conduct definition. Elements are Assault + Family Member

Although s4A focuses on a child's *experience* of the prohibited Conduct, it does not impart a reaction definition. The section specifies only that the child has 'heard or witnessed' violence by the defendant, their reaction to it is irrelevant.

Tasmania

Family Violence is defined in *Family Violence Act 2004 s7*

"family violence" means –

- (a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:
 - (i) assault, including sexual assault;
 - (ii) threats, coercion, intimidation or verbal abuse;
 - (iii) abduction;
 - (iv) stalking within the meaning of section 192 of the Criminal Code;
 - (v) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv); or
 - (b) any of the following:
 - (i) economic abuse;
 - (ii) emotional abuse or intimidation;
 - (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO
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Notes: Conduct Offence. Elements are Relevant Person (spouse or partner) + Conduct.

To be granted an Order the court must be satisfied, on the balance of probabilities, that – (a) a person has committed family violence; and (b) that person may again commit family violence (*s16(1)*).

Victim's reaction is not relevant.

South Australia

Domestic Violence is defined in *Domestic Violence Act 1994 s4(2)*

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- (2) For the purposes of this Act, a defendant commits domestic violence—
- (a) if the defendant causes personal injury to a member of the defendant's family; or
 - (b) if the defendant causes damage to property of a member of the defendant's family; or
 - (c) if on two or more separate occasions—
 - i. the defendant follows a family member; or
 - ii. the defendant loiters outside the place of residence of a family member or some other place frequented by a family member; or
 - iii. the defendant enters or interferes with property occupied by, or in the possession of, a family member; or
 - iv. the defendant—
 - (A) gives or sends offensive material to a family member or leaves offensive material where it will be found by, given to, or brought to the attention of a family member; or
 - (B) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a family member; or
 - iva. the defendant communicates with a family member, or to others about a family member, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or

- v. the defendant keeps a family member under surveillance; or
 - vi. the defendant engages in other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear.
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Note: Definition is substantially conduct based, but includes in *s4(2)(c)(vi)* a Subjective Reaction *option* that relies on the victim's 'apprehension or fear'

To make an Order the court (not the victim) must have 'a reasonable apprehension that the defendant may, unless restrained, commit domestic violence' (*s4(1)(a)*)

Western Australia

Family and domestic violence is defined in the *Restraining Orders Act 1997 s6(1)*.

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6. Meaning of "act of family and domestic violence" and "act of personal violence"
- (1) In this Act —
- "act of family and domestic violence" means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship —
- (a) assaulting or causing personal injury to the person;
 - (b) kidnapping or depriving the person of his or her liberty;
 - (c) damaging the person's property, including the injury or death of an animal that is the person's property;
 - (d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
 - (e) causing the person or a third person to be pursued —
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
 - (f) threatening to commit any act described in paragraphs (a) to (c) against the person.
-

It further specifies that 'any person who procures another person to commit an act of abuse, or part of such an act, is to be taken to have also committed the act himself or herself.' (*s6(3)*).

The prohibited conduct (assault, intimidation, kidnapping and pursuit) are given in *s6(4)* to have the same meanings as in the relevant sections of the *WA Criminal Code*.

Family and domestic relationship is defined in section 4 of the Act.

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4. Meaning of "family and domestic relationship"
- (1) In this Act —
- "**family and domestic relationship**" means a relationship between 2 persons —
- (a) who are, or were, married to each other;
 - (b) who are, or were, in a de facto relationship with each other;
 - (c) who are, or were, related to each other;
 - (d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;

- (e) one of whom is, or was, a child of whom the other person is a guardian;
or
- (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

(2) In subsection (1) —

“**other personal relationship**” means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

“**related**”, in relation to a person, means a person who —

- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
- (b) is related to the person’s —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

Intimidate is to be given the same meaning as the *Criminal Code* s338D (s6(4)). This definition is subjective in nature:

“intimidate” , in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
 - (b) to cause apprehension or fear in the person;
 - (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act;
 - (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing;
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Notes: Definition is substantially Conduct based but includes an *alternative* Subjective Reaction definition (s6(d)(e)) based on the respondent’s ‘intimidation’ of the person to be protected.

To be granted an order the court must be satisfied either, that the respondent has committed an act of abuse against a person seeking to be protected and is likely to do so again (s11A(a)) (Conduct) *OR* the person seeking to be protected or the person applying on their behalf reasonably fears that the respondent will commit an act of abuse against them (s11A(b)) -(Subjective Reaction).

Northern Territory

No definition of family/domestic violence given.

Grounds for a Restraining Order are set out in the *Domestic Violence Act* s4(1)

4. Restraining order

- (1) Where, on an application made in accordance with subsection (2), the Court or the Clerk is satisfied, on the balance of probabilities -
 - (a) that the defendant -
 - (i) has assaulted or caused personal injury to a person in a domestic relationship with the defendant or damaged property in the possession of that person; and
 - (ii) is, unless restrained, likely again to assault or cause personal injury to the person or damage the person's property;

- (b) that the defendant -
 - (i) has threatened to assault or cause personal injury to a person in a domestic relationship with the defendant or threatened to damage property in the possession of the person; and
 - (ii) is, unless restrained, likely again to make such a threat or to carry out such a threat;
 - (c) that -
 - (i) the defendant has behaved in a provocative or offensive manner towards a person in a domestic relationship with the defendant;
 - (ii) the behaviour is such as is likely to lead to a breach of the peace including, but not limited to, behaviour that may cause another person to reasonably fear violence or harassment against himself or herself or another; and
 - (iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,
- the Court or, subject to subsection (3) and any rule or practice direction under section 20AB, the Clerk, may make an order in accordance with subsection (1A).

Notes: Grounds for an order are Conduct based under s4(1)(a) and (b). Elements are Prohibited Conduct + Domestic Relationship + Likelihood of future prohibited conduct.

s4(1)(c) includes an alternative objective reaction offence. Elements are Prohibited Conduct + Beach of the Peace including but not limited to reasonable fear + Likelihood of future prohibited conduct.

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