**WHEN Coercive Control MEETS FAMILY LAW- THE RESPONSIBILITIES OF LEGAL PRACTITIONERS**

**The Education Network**

**September 2024**

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**Vale Pearl Watson**[[2]](#footnote-2)

*“You have caused all of this, it’s your fault.”*

Rowan Baxter to Hannah Clarke

*“Call the police, he’s going to kill me. He’s poured petrol on me.”*

Hannah Clarke’s last words - about Rowan Baxter

**What is coercive control?**

The clearest definition I have seen was by ANROWS (2021)[[3]](#footnote-3):

*“Coercive control is a course of conduct aimed at dominating and controlling another (usually an intimate partner, but can be other family members) and is almost exclusively perpetrated by men against women (Stark, 2007). Coercive control can involve both physical and non-physical tactics, with the non-physical tactics set out very clearly in Pence and Paymar’s Power and Control Wheel (Pence & Paymar, 1986).[[4]](#footnote-4)*

*Coercive control cannot, however, be reduced to a list of forms of abuse. Rather, as described by Stark (2007), it is an attack on autonomy, liberty and equality. That is, it is aimed at dominating and controlling the life of another person to the extent that they are effectively denied personhood, and the right to think and act independently of the perpetrator.”*

In other words, it is the context in which actions occur that is important, so that those actions are characterised as coercive control, or innocent and appropriate behaviour, or somewhere on the spectrum between the two.

In the words of the Attorney-General’s Department:

***“Understanding coercive control***

*Coercive control is when someone uses patterns of abusive behaviour against another person. Over time, this creates fear and takes away the person’s freedom and independence. This dynamic almost always underpins family and domestic violence.*

*Coercive control can involve physical and non-physical abuse. Non-physical abuse is sometimes thought of as less serious, but this is not the case. All abuse can cause lasting damage that builds up and gets worse over time.*

*The negative impacts of coercive control can be physical, emotional, psychological, spiritual, cultural, social and financial, or a combination of these.*

*Many people who experience coercive control feel trapped and afraid. Their self-esteem and confidence may have been slowly worn down by the repeated abuse, making it difficult to leave a relationship or get help.*

*Coercive control can happen in intimate partner relationships, even after they’ve ended. It can also happen in family relationships.*

*Coercive control can be used against anyone, but is mostly used by men against women.*

***Recognising the signs***

*The signs of coercive control can be hard to spot. People who use coercive control to get what they want can be good at hiding it from others, and their abuse can be subtle and targeted.*

***Some of the signs of coercive control include:***

* *Controlling who a person sees, what they wear and where they go.*
* *Monitoring or tracking everything a person does.*
* *Controlling everyday needs, such as finances, medication, food or exercise.*
* *Regularly criticising a person, or manipulating or blaming them so they doubt themselves and their experiences.*
* *Forcing someone to have sex or do sexual things.*
* *Stopping a person from following their religion or cultural practices.*
* *Threatening a person, their children, family or friends.*
* *Manipulating co-parenting arrangements or child support payments after relationship separation.*

These are just some examples of behaviours that can be used as part of a person’s pattern of abuse.

*People experiencing coercive control may feel like they’re walking on eggshells, or that it’s difficult to disagree or say no.*

*They may not know they are being abused. This may be because:*

* *They may not realise that non-physical abuse is also family and domestic violence.*
* *They may think the abusive behaviour is a normal part of a relationship, especially if friends and family don’t say or do anything to stop it.*
* *The person who uses coercive control may trick a person into doubting their own experiences, or blame them for the abuse.*

*The abuse does not always stop, and can even become worse, after a relationship ends.*

The Attorney-General’s Department has fact sheets on:

* [*Understanding coercive control*](https://www.ag.gov.au/node/6523)
* [*Understanding how coercive control can affect people with disability*](https://www.ag.gov.au/node/6572)
* [*Understanding coercive control and economic and financial abuse*](https://www.ag.gov.au/node/6573)
* [*Understanding how coercive control can affect LGBTQIA+ people*](https://www.ag.gov.au/node/6574)
* [*Understanding how coercive control can affect people from migrant and refugee backgrounds*](https://www.ag.gov.au/node/6575)
* [*Understanding how coercive control can affect older people*](https://www.ag.gov.au/node/6576)
* [*Understanding technology-facilitated coercive control*](https://www.ag.gov.au/node/6577)*”*

There is no one black letter definition of coercive control, as seen in Wilson & Carter, below. The [National Domestic and Family Violence Benchbook](https://dfvbenchbook.aija.org.au/terminology/coercive-control/) says of coercive control:

***“Understanding coercive control***

Coercive control is almost always an underpinning dynamic of family and domestic violence: Perpetrators exert power and dominance of victim-survivors using patterns of abusive behaviour over time[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=510#t-510) that create fear and deny victim-survivors liberty and autonomy[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1300#t-1300).

*There is no single agreed definition of coercive control[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=400#t-400). However, research consistently identifies that the behaviours and tactics associated with coercive control can be subtle[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=720#t-720), difficult to identify and different in each relationship[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1400#t-1400). Coercive control manifests and is experienced in various ways in different class and cultural contexts. The impacts of coercive control are pervasive, and can be physical, emotional, psychological, spiritual, cultural, social and financial. Impacts are also intersecting and cumulative, rather than incident-specific. Victim-survivors commonly describe coercive control as feeling like ‘walking on eggshells’ and report they need to ask permission to do small everyday things and fear the repercussions of not fulfilling their abuser’s expectations or demands.*

*Use of retaliatory violence or self-defence against a perpetrator are not coercive control.*

*Coercive control is mainly perpetrated by men against women[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1300#t-1300) . Perpetrators can exert power and dominance over victim-survivors in current and former intimate partner relationships. Coercive control can also be perpetrated in broader family relationships, such as against children or young people by parents or relatives, against parents or elders by adult children or grandchildren, or between siblings. Coercive control is particularly prevalent in relationships where there is an imbalance of power[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1400#t-1400). Professor Evan Stark has described coercive control as “a pattern of domination that includes tactics to isolate, degrade, exploit and control” victims[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1300#t-1300).*

*The behaviours associated with coercive control can take many different forms including any of the forms of domestic and family violence* [*considered in this benchbook*](https://dfvbenchbook.aija.org.au/terminology/understanding-domestic-and-family-violence/)*. Common behaviours that may be used by perpetrators as part of coercive control include but are not limited to:*

* *emotional manipulation including* [*humiliation*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/emotional-and-psychological-abuse/) *and threats,*
* [*surveillance and monitoring*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/following-harassing-and-monitoring/)*, often carried out online,*
* [*isolation*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/social-abuse/) *from friends and family,*
* *rigid rules about where the person can eat, sleep or* [*pray*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/cultural-and-spiritual-abuse/)*,*
* *placing limits on* [*economic autonomy*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/economic-abuse/)*.*

*As coercive control depends on context,* [*evidence*](https://dfvbenchbook.aija.org.au/evidence/relationship-context-tendency-and-coincidence-evidence/) *or information about the* [*context*](https://dfvbenchbook.aija.org.au/dynamics-of-domestic-and-family-violence/vulnerable-groups/) *may assist the decision-maker to identify coercive control and help ensure the victim-survivor is not* [*misidentified as a perpetrator*](https://dfvbenchbook.aija.org.au/vulnerable-groups/victims-as-alleged-perpetrators/)*.*

In situations involving coercive control the abuser draws on their specific knowledge of the victim to entrap the victim, and the tactics used to assert control may change over time[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1300#t-1300):

* *The abuser may target the victim’s children to extend their control over the victim, sometimes using children as a tool of surveillance or intimidation[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=900#t-900).*
* *The abuser’s attack on the victim’s autonomy can involve utilising systems[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/ve/?ref=995#t-995), including the legal system (sometimes referred to as* [*‘systems abuse’*](https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/)*).*

*Research has identified that domestic and family violence is rarely a single incident, rather it is a pattern of behaviour that may or may not include physical force and extends beyond the home and beyond the duration of a relationship[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1000#t-1000). These patterns of behaviour may occur throughout a relationship, or may be initiated or exacerbated at times of heightened* [*risk*](https://dfvbenchbook.aija.org.au/dynamics-of-domestic-and-family-violence/factors-affecting-risk/)*, for example, pregnancy, attempted or actual separation[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=450#t-450), and during court proceedings[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=720#t-720).*

*Some judicial officers have considered coercive control. A selection of examples are contained in the* [*Cases*](https://dfvbenchbook.aija.org.au/terminology/coercive-control/cases) *tab attached to this subsection.*

*In some relationships physical violence is part of the pattern of coercive control but incidents of physical violence may be routine, minor and frequently repeated[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1300#t-1300). Other victims-survivors report that physical violence is rare or a once off or occurred early in the relationship, but establishes the abuser’s capacity and potential for physical violence[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=600#t-600). Some people who experience coercive control do not experience physical violence[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=400#t-400).*

*Coercive control can be damaging even when there is no physical violence. Many victim-survivors identify that non-physical abuse deeply impacts on their sense of self and freedom, and often continues to affect them years after separation[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=300#t-300). Many victim-survivors of domestic and family violence report that the most difficult forms of abuse they experienced were non-physical forms of abuse, especially emotional abuse[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=600#t-600).*

*The community and broader service and response system, including law enforcement and the courts, can typically focus on physical violence and single or episodic acts of violence in isolation, rather than considering patterns of physical and non-physical behaviour over time and their cumulative impacts[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1400#t-1400). This can make it easy for perpetrators to hide their actions from systems and can lead to a perpetrator’s subtle and highly contextualised abuse, and the compounding impact of coercive control, being overlooked and/or minimised. Incident-based responses can also heighten the risks of* [*misidentifying the victim-survivor as the perpetrator*](https://dfvbenchbook.aija.org.au/vulnerable-groups/victims-as-alleged-perpetrators/)*[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=770#t-770).*

*Researchers have suggested that coercive control is a common thread running through risk identification and assessment for domestic violence[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=1100#t-1100).*

*In NSW, a detailed analysis of intimate partner homicides between 2008-2016 demonstrated that 99% (111/112) of the homicides were preceded by coercive control.[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=785#t-785) The Queensland Domestic and Family Violence Review and Advisory Board in its 2018-19 Annual Report reported evidence of controlling behaviours by 39.4 per cent and obsessive and/or jealous behaviours by 37.8 per cent of family and domestic violence homicide offenders between 2006 and 2018[](https://dfvbenchbook.aija.org.au/terminology/coercive-control/kl/?ref=550#t-550) (see also* [*Death review*](https://dfvbenchbook.aija.org.au/factors-affecting-risk/death-review/)*.)”*

The Benchbook lists many cases that discuss coercive control.

**7 National Principles**

The Standing Committee of Attorneys-General have set out 7 national principles on coercive control:

1. A shared understanding of the common features of coercive control.
2. Understanding the traumatic and pervasive impacts of coercive control.
3. Taking an intersectional approach to understanding features and impacts.
4. Improving societal understanding of coercive control.
5. Embedding lived experience.
6. Coordinating and designing approaches across prevention, early intervention, response, and recovery and healing.
7. Embedding the National Principles in legal responses to coercive control.

**State Legislation**

Two States have legislated to criminalise coercive control, NSW and Queensland.

**New South Wales**

***Crimes Legislation Amendment (Coercive Control) Act 2022***

This Act amended the *Crimes Act 1900* (NSW), by inserting Division 6A: abusive behaviour towards intimate partners. The offence commenced on 1 July 2024.

S.54D provides:

“(1) An adult commits an offence if—

(a) the adult engages in a course of conduct against another person that consists of abusive behaviour, and

(b) the adult and other person are or were intimate partners, and

(c) the adult intends the course of conduct to coerce or control the other person, and

(d) a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused—

(i) fear that violence will be used against the other person or another person, or

(ii) a serious adverse impact on the capacity of the other person to engage in some or all of the person’s ordinary day-to-day activities.

Maximum penalty—Imprisonment for 7 years.

(2) For subsection (1)(a)—

(a) the course of conduct may be constituted by any combination of abusive behaviours, and

(b) whether the course of conduct consists of abusive behaviour must be assessed by considering the totality of the behaviours.”

Who is an *intimate partner* is defined in s.54C:

*“intimate partner, of a person (the first person), means a person who—*

*(a) is or has been married to the first person, or*

*(b) is or has been a de facto partner of the first person, or*

*Note—*

*“De facto partner” is defined in the* [*Interpretation Act 1987*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1987-015)*, section 21C.*

(c) has or has had an intimate personal relationship with the first person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature.”

A defence is contained in s.54E:

*“(1) In proceedings for an offence under section 54D(1), it is a defence if the course of conduct was reasonable in all the circumstances.*

*(2) For subsection (1), that the course of conduct was reasonable in all the circumstances is taken to be proven if—*

*(a) evidence adduced is capable of raising an issue as to whether the course of conduct is reasonable in all the circumstances, and*

*(b) the prosecution does not prove beyond reasonable doubt that the course of conduct is not reasonable in all the circumstances.”*

What is abusive behaviour falls within a very wide net in s.54F:

“(1) In this Division, abusive behaviour means behaviour that consists of or involves—

*(a) violence or threats against, or intimidation of, a person, or*

*(b) coercion or control of the person against whom the behaviour is directed.*

(2) Without limiting subsection (1), engaging in, or threatening to engage in, the following behaviour may constitute abusive behaviour—

*(a) behaviour that causes harm to a child if a person fails to comply with demands made of the person,*

*(b) behaviour that causes harm to the person against whom the behaviour is directed, or another adult, if the person fails to comply with demands made of the person,*

*(c) behaviour that is economically or financially abusive,*

*Examples for paragraph (c)—*

* *withholding financial support necessary for meeting the reasonable living expenses of a person, or another person living with or dependent on the person, in circumstances in which the person is dependent on the financial support to meet the person’s living expenses*

*• preventing, or unreasonably restricting or regulating, a person seeking or keeping employment or having access to or control of the person’s income or financial assets, including financial assets held jointly with another person*

*(d) behaviour that shames, degrades or humiliates,*

*(e) behaviour that directly or indirectly harasses a person, or monitors or tracks a person’s activities, communications or movements, whether by physically following the person, using technology or in another way,*

*(f) behaviour that causes damage to or destruction of property,*

*(g) behaviour that prevents the person from doing any of the following or otherwise isolates the person—*

*(i) making or keeping connections with the person’s family, friends or culture,*

*(ii) participating in cultural or spiritual ceremonies or practice,*

*(iii) expressing the person’s cultural identity,*

*(h) behaviour that causes injury or death to an animal, or otherwise makes use of an animal to threaten a person,*

*(i) behaviour that deprives a person of liberty, restricts a person’s liberty or otherwise unreasonably controls or regulates a person’s day-to-day activities.*

*Examples for paragraph (i)—*

* *making unreasonable demands about how a person exercises the person’s personal, social or sexual autonomy and making threats of negative consequences for failing to comply with the demands*
* *denying a person access to basic necessities including food, clothing or sleep*
* *withholding necessary medical or other care, support, aids, equipment or essential support services from a person or compelling the person to take medication or undertake medical procedures.”*

*Harm* is not defined.

Non-payment of expenses of the other party post-separation, if economically or financially abusive, would fall within the definition.

To engage in litigation that would be seen to be abusive in nature, and not merely forcefully put, is arguable may also be an offence (though whether that State legislation might apply to Federal proceedings is unclear). It may then be a very fine line as to what is abusive and what is not. It would be wise to be circumspect in your communications with the other side, so that you do not engage in aggressive communications (which you should not do anyway) and then provide evidence that your client has committed an offence, or worse, that you are also a party to the offence.

Section 54G defines course of conduct:

*“(1) In this Division, a course of conduct means engaging in behaviour—*

*(a) either repeatedly or continuously, or*

*(b) both repeatedly and continuously.*

*(2) For subsection (1), behaviour does not have to be engaged in—*

*(a) as an unbroken series of incidents, or*

*(b) in immediate succession.*

*(3) For subsection (1), a course of conduct includes behaviour engaged in—*

*(a) in this State, and*

*(b) in this State and another jurisdiction.”*

The Implementation and Evaluation Taskforce for the coercive control reforms has rolled out training, including through a Coercive Control Working Group through Legal Aid NSW[[5]](#footnote-5):

“The training program consists of three parts, each with a different focus:

1. A foundational module.

2. A criminal defence lawyer module.

3. A domestic and family violence specialist worker module.

Training will be made available to Legal Aid staff, Community Legal Centres, the Aboriginal Legal Service (NSW/ACT) and private practitioners.”

The current training schedule can be found [here](https://dcj.nsw.gov.au/documents/children-and-families/family-domestic-and-sexual-violence/police-legal-help-and-the-law/crimes-legislation-amendment-coercive-control-act-2022-statutor-.report.pdf). The training by Legal Aid is described as:

“Module 1

In February 2024, Legal Aid released two versions of a tip sheet on the amendments to the Crimes (Domestic and Personal Violence) Act 2007 – one for lawyers and one for domestic and family violence specialist workers.

From June 2024, Legal Aid will launch an eLearning course on coercive control. The course offers a snapshot of coercive control and the new legislation, with a focus on how it will be encountered in practice. In developing this course, Legal Aid has consulted with multiple subject matter experts and sector representatives.

Module 2

This module is being presented as a five-part podcast series on the Legal Aid NSW Criminal Law Division channel. Episodes will be released incrementally from May and will feature special guests. The episodes are tailored to criminal defence lawyers, but we expect that lawyers from different practice areas will also find the content valuable.

There will also be two face-to-face sessions on coercive control as part of the 2024 Legal Aid NSW Criminal Law Conference in June. These sessions will be recorded.

Module 3

It is anticipated that this module will take the form of a webinar. It will highlight the key points domestic and family violence workers need to know about the new legislation, and explore how this will affect their work with clients.

All resources will be available to learners on an ongoing basis beyond June 2024.”

**Queensland**

***Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Hannah’s law)**

Hannah’s law is so named in memory of Hannah Clarke, discussed below.

Among the other amendments to the Criminal Code are the criminalisation of coercive control. This is by a new part 5, chapter 29A, sections 334A to 334F. It is expected that they will take effect in 2025.

The sections provide:

*“334A* [*Definitions*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s25.html#definition) *for chapter In this chapter—*

***"coercive control"*** *means the offence mentioned in section 334C.*

***"domestic violence"*** *see section 334B.*

***"economic abuse"*** *means behaviour by a person (the*

***"first person"*** *) that is coercive, deceptive or unreasonably controls another person (the* ***"second person"*** *)—*

*(a) in a way that denies the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *the economic or financial autonomy the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *would have had but for that behaviour; or*

*(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *or a child.*

*Examples—*

* *coercing a person to relinquish control over assets and income*
* *unreasonably removing or keeping a person’s property, or threatening to do so*
* *unreasonably disposing of property owned by a person, or owned jointly with a person, without lawful excuse*
* *preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses without lawful excuse*
* *preventing a person from seeking or keeping employment*
* *coercing a person to claim social security payments*
* *coercing a person to sign a power of attorney that would enable the person’s finances to be managed by another person*
* *coercing a person to sign a contract for the purchase of goods or services*
* *coercing a person to sign a contract for the provision of finance, a loan or credit*
* *coercing a person to sign a contract of guarantee*
* *coercing a person to sign any legal document for the establishment or operation of a business*

***"emotional or psychological abuse"*** *means behaviour by a person towards another person that torments, intimidates, harasses or degrades the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)*.*

*Examples—*

* *following a person when the person is out in public, including by vehicle or on foot*
* *remaining outside a person’s residence or place of work*
* *repeatedly contacting a person by telephone, SMS message, email or social networking site*
* *repeated derogatory taunts, including racial taunts*
* *threatening to disclose a person’s sexual orientation to another person*
* *threatening to withhold a person’s medication*
* *preventing a person from making or keeping connections with the person’s family, friends, kin or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person’s cultural identity*
* *threatening to withdraw support for a visa for a person or a member of the person’s family*
* *threatening to have a person or a member of the person’s family deported*
* *coercing or threatening a person to gain further or larger dowry gifts*
* *interfering with a person’s ability to access or communicate with the person’s friends or family or with support services by restricting access to any means of communication or otherwise*

***"harm"****, to a person, means any detrimental effect on the person’s physical, emotional, financial, psychological or mental wellbeing, whether temporary or permanent.*

***"unauthorised or unreasonable surveillance"****, of a person, means the monitoring or tracking of the person’s movements, activities or interpersonal associations, including, for example, by using technology, that is unauthorised or otherwise unreasonable.*

*Examples of surveillance by using technology—*

* *reading a person’s SMS messages*
* *monitoring a person’s email account or internet browser history*
* *monitoring a person’s account with a social networking internet site*
* *using a GPS device to track a person’s movements*
* *checking the recorded history in a person’s GPS device*
* *monitoring a person’s activities using cameras or smart home devices*

*334B What is* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence)

*(1)* ***"Domestic violence"*** *means behaviour by a person (the* ***"first person"*** *) towards another person (the* ***"second person"*** *) with whom the* [*first person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#first_person) *is in a domestic relationship that—*

*(a) is physically or sexually abusive; or*

*(b) is emotionally or psychologically abusive; or*

*(c) is economically abusive; or*

*(d) is threatening; or*

*(e) is coercive; or*

*(f) in any other way controls or dominates the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *and causes the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *to fear for the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person)*’s safety or wellbeing or that of someone else.*

*(2) Behaviour mentioned in subsection (1)—*

*(a) may occur over a period of time; and*

*(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and*

*(c) is to be considered in the context of the relationship between the* [*first person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#first_person) *and the* [*second person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#second_person) *as a whole.*

*(3) Without limiting subsection (1) or (2),* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *includes the following behaviour—*

*(a) causing personal injury to a person or threatening to do so;*

*(b) coercing a person to engage in sexual activity or attempting to do so;*

*(c) damaging a person’s property or threatening to do so;*

*(d) depriving a person of the person’s liberty or threatening to do so;*

*(e) threatening a person with the death or injury of the person, a child of the person, or someone else;*

*(f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;*

*(g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or* [*coerce*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coerce) *the person;*

*(h)* [*unauthorised or unreasonable surveillance*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#unauthorised_or_unreasonable_surveillance) *of a person;*

*(i) unlawfully stalking, intimidating, harassing or abusing a person;*

*(j) making a person dependent on, or subordinate to, another person;*

*(k) isolating a person from friends, relatives or other sources of support;*

*(l) controlling, regulating or monitoring a person’s day-to-day activities;*

*(m) depriving a person of, or restricting a person’s, freedom of action;*

*(n) frightening, humiliating, degrading or punishing a person.*

*(4) In this section—*

***"coerce"****, a person, means compel or force a person to do, or refrain from doing, something.*

***"unlawful stalking, intimidation, harassment or abuse"*** *see sections 359B and 359D.*

*334C* [*Coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control)

*(1) A person who is an adult commits an offence (a* ***"coercive control offence"****) if—*

*(a) the person is in a domestic relationship with another person (the* ***"other person"****); and*

*(b) the person engages in a course of conduct against the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *that consists of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *occurring on more than 1 occasion; and*

*(c) the person intends the course of conduct to* [*coerce*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coerce) *or control the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)*; and*

*(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)[*harm*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#harm)*.*

*Penalty—*

*Maximum penalty—14 years imprisonment.*

*(2) An offence against subsection (1) is a crime.*

*(3) For subsection (1)(c), the prosecution is not required to prove that the person intended each act of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that constitutes the course of conduct, when considered in isolation, to* [*coerce*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coerce) *or control the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)*.*

*(4) For subsection (1)(d), without limiting the circumstances for the purpose of the subsection, those circumstances include the behaviour of the person and the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *in the context of their relationship as a whole.*

*(5) In relation to the* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that constitutes the course of conduct—*

*(a) the prosecution is not required to allege the particulars of any act of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *constituting an offence that would be necessary if the act were* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *as a separate offence; and*

*(b) the jury is not required to be satisfied of the particulars of any act of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *constituting an offence that it would have to be satisfied of if the act were* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *as a separate offence; and*

*(c) all the members of the jury are not required to be satisfied about the same acts of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence)*.*

*(6) A person may be* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *with—*

*(a) the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence)*; and*

*(b) 1 or more other offences of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *alleged to have been committed by the person against the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *during the course of conduct for the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence)*.*

*(7) The offences mentioned in subsection (6)(a) and (b) may be* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *in the 1 indictment.*

*(8) The person* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *as mentioned in subsection (6) may be convicted of and punished for any or all of the offences* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge)*.*

*(9) However, if the person is—*

*(a)* [*charged*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *as mentioned in subsection (6); and*

*(b)* [*sentenced*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s69.html#sentenced) *to imprisonment for the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence) *and for the other offence or offences;*

*the court imposing imprisonment may not order that the sentence for the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence) *be served cumulatively with the sentence or sentences for the other offence or offences.*

*Note—*

*See the* [*Penalties and Sentences Act 1992*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/pasa1992224/) *, section 155 (Imprisonment to be served concurrently unless otherwise ordered).*

*(10) It is a defence for the person to prove that the course of conduct for the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence) *was reasonable in the context of the relationship between the person and the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *as a whole.*

*(11) It is not a defence to a* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *for a* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence) *that the person believed that any single act of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that formed part of the course of conduct for the* [*coercive control offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#coercive_control_offence)*, or each of the acts of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that constituted the course of conduct when considered in isolation, was reasonable in the context of the relationship between the person and the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *as a whole.*

*334D What is immaterial for* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control)

*(1) For section 334C(1)(b) and (c), it is immaterial whether the* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that constituted the course of conduct against the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *was carried out in relation to another person or the property of another person.*

*(2) For section 334C(1)(d)—*

*(a) it is immaterial whether the course of conduct actually caused* [*harm*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#harm) *to the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)*; and*

*(b) if an act of* [*domestic violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence) *that formed part of the course of conduct was* [*unauthorised or unreasonable surveillance*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#unauthorised_or_unreasonable_surveillance) *or* [*economic abuse*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#economic_abuse) *of the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person)*, it is immaterial whether the* [*other person*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#other_person) *was aware of the act.*

*(3) Despite particular matters being immaterial for section 334C(1) as mentioned in subsection (1) or (2), nothing in this section prevents evidence being adduced about the matters.*

*(4) In this section—*

***"other person"*** *see section 334C(1)(a).*

*334E Court may restrain* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control)

*(1) This section applies on the hearing before a court of a* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *against a person of* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control)*.*

*(2) Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *should be made against the person.*

*(3) The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge’s or magistrate’s own initiative.*

*(4) Also, if the* [*restraining order proceeding*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order_proceeding) *is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.*

*(5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *and any application mentioned in subsection (3).*

*(6) The court hearing the* [*restraining order proceeding*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order_proceeding) *may make a* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *and any application under subsection (3) and any further evidence the court may admit.*

*(7) A* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *takes effect on the day it is made and continues in force until—*

*(a) the day stated by the court in the* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order)*; or*

*(b) if no day is stated, the day that is 5 years after the day the* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *is made.*

*(8) The court may order that a* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *is made is not compromised by the shorter period.*

*(9) A* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *may be varied or revoked at any time by the court, and, if the order provides, by another court.*

*(10) A person who knowingly contravenes a* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *commits an offence.*

*Penalty—*

*Maximum penalty—120 penalty units or 3 years imprisonment.*

*(11) However, if the person has been convicted of a* [*domestic violence offence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#domestic_violence_offence) *in the 5 years before the contravention, the person is guilty of a misdemeanour and is liable to a fine of 240 penalty units or imprisonment for 5 years.*

*(12) A* [*restraining order*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order) *may be made against a person whether or not another order is made against the person in the proceeding for the* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge)*.*

*(13) A* [*restraining order proceeding*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order_proceeding) *is not a criminal proceeding.*

*(14) A question of fact for a decision under subsection (2) and in a* [*restraining order proceeding*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#restraining_order_proceeding) *must be decided on the balance of probabilities.*

*(15) In this section—*

***"charge"*** *means the* [*charge*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s20.html#charge) *of* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control) *mentioned in subsection (1).*

***"domestic violence offence"*** *includes an offence against the* [*Domestic and Family Violence Protection Act 2012*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/dafvpa2012379/) *, part 7.*

*Note—*

*See also the* [*definition*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s25.html#definition) *of* ***"domestic violence offence"*** *in* [*section 1.*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s1.html)

***"restraining order"****, against a person, means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.*

***"restraining order proceeding"*** *means a proceeding started under subsection (2).*

*334F Alternative offence to crime of* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control) *Upon an indictment charging a person with the crime of* [*coercive control*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/num_act/clcaacaolaa2024754/s19.html#coercive_control)*, the person may alternatively be convicted of the crime of unlawful stalking, intimidation, harassment or abuse if that offence is established by the evidence.”* (emphasis added)

The Queensland legislation largely mirrors that of NSW.

Practitioners have to be circumspect about how matters are run, so as to ensure that evidence is not accreted that shows that the client (and possibly the practitioner) have committed the offence. Appropriate warnings should be given to clients early on, as to the implications for them.

An example of coercive control:

**Hannah Clarke and her children, Aaliyah, Laianah and Trey Baxter**

On the morning of 19 February 2020 Rowan Baxter killed his wife, Hannah Clarke and their three children, Aaliyah, Laianah and Trey, by dousing them with petrol and setting them alight in their car. He also killed himself. Hannah’s prophetic last words, screamed at a man in her street were:

“Call the police, he’s going to kill me. He’s poured petrol on me.”

Hannah was 33, Aaliyah 6, Laianah 4 and Trey 3 when they were killed. Hannah was the school captain in her senior year at high school. When she was 16 years old she represented the state for trampoline. Soon after she started coaching trampoline classes at the local Police Citizens Youth Club. When she finished school she started teaching Kindy Gym at the PCYC and she also worked as a teacher in vacation care.

Rowan Baxter experienced a prejudicial childhood with his father being imprisoned for sexually abusing his sisters. He did not drink alcohol or take drugs. He was fit and healthy.

At the time of their deaths Hannah and her children were living with her parents at Camp Hill in Brisbane as Hannah had recently separated from Baxter. There was a Domestic Violence Protection Order and Hannah felt protected and reassured by that order. Many people who knew Hannah and Baxter believed the image that he projected was of a perfect, happy family.

Hannah and Baxter first met when she was 20 and he was 31. This was the second relationship in which he had been dominating and engaged in stalking. They married when Hannah was pregnant with Aaliyah. Her parents paid for the wedding.

Hannah and Baxter opened a gym together. It did not do well. The gym continued to struggle as Baxter was not a good businessman – he could not project future incomings and outgoings and he found it difficult to manage money. He was blunt with potential new members and current members often left the gym. Hannah’s parents kept supporting them and the gym.

In the words of Coroner Bentley[[6]](#footnote-6):

“37. At the beginning of their relationship Hannah went on a cruise with a friend. She told her mother that Baxter wasn’t happy about her going away and contacted her constantly whilst she was on the cruise.

*38. Shortly after they started living together Baxter told Hannah that she couldn’t wear shorts, short skirts or the colour pink. She could wear a bikini on the beach but not off the beach. They shared a joint Facebook page as Baxter did not allow Hannah to have her own.*

*39. During their relationship Baxter sought to drive a wedge between Hannah and her family.*

*40. He openly criticised her mother in front of her and her brother. He made it difficult for Hannah to spend time with her parents. Baxter stopped Hannah and her children attending weekly family barbeques at the Clarkes’ house.*

*41. Baxter borrowed Hannah’s brother’s car and drove it for months – he put over 30,000 km on it and $200 in toll bills and never left any fuel in the car. When Hannah’s brother said he needed the car and Baxter could no longer drive it Baxter stopped talking to him and made it difficult for Hannah to do so.*

*42. Baxter refused to allow Hannah to spend the day with her mother on Mothers’ Day – she could only spend half a day there and then had to spend the rest of the day with him celebrating his deceased mother. He stopped the family from attending the annual Good Friday family celebrations at the Clarkes’ house.*

*43. After Aaliyah was born in 2013 Baxter would not allow Mrs Clarke to look after her or have the baby stay at her house.*

*44. In 2015 when Hannah was pregnant with Laianah she told her mother that Baxter had slammed the back gate on her leg causing a bruise.*

*45. After Trey was born in December 2016, Baxter worked at the gym three days per week and rested on the other days. Hannah took numerous classes at the gym, looked after the children and was trying to do a marketing course online. She told her mother that Baxter criticised her, shouted at her that the house was a pigsty and questioned what she did all day. He often went for days without talking to her especially if she refused to have sex with him. He told her to get a second job as they needed money. She then worked at The Athlete’s Foot on Monday and Friday and worked in the gym on the other days.*

*46. Baxter was often rude to Mrs Clarke and Hannah would ask her to apologise to him as he would refuse to speak to Hannah until she did.*

*47. On 18 May 2019 Hannah phoned her mother and told her that Baxter had wanted sex and she didn’t which resulted into a huge fight. Baxter smashed her watch and left the house. Hannah found the hose missing and was afraid he was going to kill himself. Hannah’s parents drove around Capalaba and Carindale looking for him. He came home that morning and told Hannah that he had driven to Citipointe Church carpark and tried to kill himself.*

*48. When they had the Capalaba gym Hannah made a joke during a class that Baxter was running. He immediately stopped the class. It was usual for everyone to have breakfast together after the Saturday class. Because he was angry with Hannah, Baxter refused to let the children go to breakfast. He often punished the children by refusing to allow them to do things which were planned when he was angry with Hannah. If they did not put their toys away quickly enough, he threw them in the bin.*

*49. In September 2019 Hannah turned 30 years old and wanted to have a dinner with family and friends. Baxter planned a surprise party for her at the gym. Her friend told Baxter that Hannah didn’t want a party. He didn’t speak to Hannah for days and told her she couldn’t have a celebration.*

*50. Hannah wanted a necklace with the children’s names on it for her birthday. Baxter collected money from members of the gym and asked the Clarkes for money towards it which they gave him. Hannah’s family ended up organising a celebration for her birthday.*

*51. Baxter’s controlling behaviour began to escalate in November 2019.*

*52. In early November 2019 Hannah qualified to compete in a big CrossFit competition in a team. Baxter failed to qualify for the solo competition. Mr D, a member of the gym, also qualified for a team. Hannah asked a friend to be the third team member and Baxter said he would be the fourth member of the team but he pulled out, apparently due to injury. When he did so he expected Hannah to pull out as well.*

*53. On 6 November 2019 Hannah was driving back from a gym session and had a conversation in the car with a friend about Baxter taking over the session and being too ‘full on’.*

*54. Baxter overheard this conversation (he told Hannah that Aaliyah was playing with Hannah’s phone and called him and he overheard it) and became enraged. He refused to speak to Hannah.*

*55. Baxter told an associate that the kids had somehow recorded Hannah’s phone conversation and then sent it to his phone but the associate found that unbelievable and believed Baxter had been recording her.*

*56. The first day of the competition was on 8 November 2019. Baxter made Hannah take a gym class that morning. She came home from the gym at 7am to find Baxter and the children gone from the house. She phoned her mother crying. She said Baxter was punishing her for taking part in the competition. He had his phone turned off. She was so fearful of what he might do that she was vomiting. She asked her brother to go to the beach to see if he could find them. Baxter finally sent her a text message stating that he couldn’t believe she was competing in the competition without him. He still didn’t tell her where he was or whether he was bringing the children home.*

*57. He came home later that day and said that he had taken the children to the beach.*

*58. In relation to this Baxter told an associate that he and Hannah argued and he took the children and left the house. When he left the house he left an old phone recording in the house. He recorded and listened to Hannah’s phone calls to her mother and she was hysterical as he had taken the children and she didn’t know where they had gone and they called him derogatory names. When his associate commented that it was not right to record people Baxter swore he left the phone recording by mistake.*

*59. It is likely that he had a listening device in their house and one in her car as he revealed to her knowledge of conversations she had in those places when he was not present.*

*60. Hannah had told Aaliyah that she would take her to watch the finals of the competition but Rowan was not allowing her to go – Hannah believed because he was angry at her. They had a huge fight when she insisted on taking Aaliyah. As she left the house Rowan grabbed her by the arm and told her they would be talking about it later. Her friend saw red marks on her arm. Hannah said there would be no more discussions and once that weekend was over she was leaving. Hannah told her friend that she couldn’t take it anymore and that was ‘the final straw’.*

*61. The next week Hannah was sad and told her friend that she was ‘keeping her head down at home’.*

*62. Hannah told her mother that Baxter checked her phone in the middle of the night when she was asleep. When she woke up one night and asked him what he was doing he threw the phone across the room, breaking the screen. She started to think he was tracking her phone and listening to her phone calls as he had questioned why she had phoned certain people.*

*63. Baxter became suspicious that Hannah was having a relationship with Mr D. After she was speaking to him on the phone one evening Baxter ‘went ballistic’ and accused her of having an affair with him.*

*64. Hannah started to prepare to leave Baxter and told her mother she wanted to return home with the children. Mrs Clarke started preparing for their arrival.*

*65. On 5 December 2019 Nicole, Hannah’s best friend, phoned Mrs Clarke and told her that Hannah had moved out, they had taken Aaliyah out of school, Hannah had only taken a few things from the home and she was scared. Nicole said that they hid Hannah’s car and left her phone in her car in case Baxter had a tracking device in it.*

*66. Hannah and the children arrived at the Clarkes’ residence the next day. Baxter called her numerous times that day and told her she was hurting the children.*

*67 On 6 December 2019 Hannah went to the Carina police station. She met Senior Constable Kirsten Kent who told her that she could obtain a DVO but Hannah told her mother she was scared that doing so would aggravate Baxter.*

*68. Hannah obtained a new phone and changed her phone number. Baxter continued to phone her on her old phone. He insisted on picking her up and taking her out. They went out and when they returned Baxter came inside and was crying and asking for help. He stayed for dinner and then Hannah said she was going home with him. Hannah told her mother she would be at the 5am gym class the next day.*

*69. The following morning Mrs Clarke attended the 5am class. Baxter took the class. After the class Hannah phoned her mother and said the children were with her and she was taking them to her brother’s house. Later that day, her brother phoned her mother and said that Baxter had been calling her telling her she needed to come home and she was hurting the children.*

*70. On 8 December Senior Constable Kent spoke to Hannah after running into her at Carindale shopping centre. She gave Hannah some advice about DV and later Senior Constable Kent contacted the Vulnerable Persons Unit (VPU) of the QPS to discuss Hannah’s case.*

*71. A couple of days later Hannah and the children moved into her parent’s house.*

*72. A few days later Hannah took the children to visit Baxter. He asked her to come inside to show him how to cook something. At about 8.30pm Mrs Clarke became worried about Hannah and sent her a text message. She replied asking her mother to come over straight away. Mr and Mrs Clarke went to Baxter’s house and found that Baxter was putting the children to bed in his bedroom. Hannah wanted to take the children home but he refused. Baxter told the Clarkes that Hannah was crazy and making things up. When they still insisted on taking the children he cried and said that they should have helped him sooner. They left the children there and went home but were scared of the possibility that Baxter could harm the children.*

*73. Baxter brought the children home the next morning and said that he’d had a mental health assessment and Hannah should come home with the children and couldn’t understand why she would not do so.*

*74. Soon after Hannah moved into her parents’ house she was at home with the children one morning. Baxter opened the door and let himself into the house and stood outside the bedroom listening to Hannah talk to the children. She realised he was there and he had her phone in his hand. He asked her whose phone it was and she said it was her mother’s. He said it was not her mother’s phone and she told him that she had bought a new phone because he was tracking her other phone.*

*75. On 21 December 2019 Baxter had the children for a couple of days and he was supposed to take them home at 4pm. He had agreed to do so as he knew that the Clarkes had hired a van to take Hannah and the children to visit Mr Clarke’s mother in Kingaroy the next day. At 4.30pm he sent Hannah a text saying he was running late. She called him at 5.30pm and he said he was stuck in traffic. About an hour later he phoned Hannah and said he might keep the children for a few days. Hannah begged him to bring them back. Mr Clarke drove to Baxter’s house and saw him driving down the street. He followed him and saw Baxter park in a car park. Hannah told her father to come home as she was scared that Baxter would see him.*

*76. Baxter phoned a friend, Mr M, and told him that he was supposed to have the children back at 4.30pm so they could go away with Hannah and her parents to the Sunshine Coast, but he was going to keep them.*

*77. Baxter called Hannah at 8.30pm and told her she could collect the children from a service station at Cleveland if she came on her own. She left and collected the children. When she came back, she said that Aaliyah was very upset as she knew she was supposed to have been home at 4pm.*

*78. On 22 December Baxter contacted Centrelink and applied for full parenting payments stating that he was the full-time carer of the children. They phoned Hannah who told them she was caring for the children.*

*79. On 24 December 2019 Baxter told Hannah that he was upset as he wanted to see the children for Christmas. Hannah and her father decided to allow him to visit the house for a few hours on Christmas Day. He arrived at 4.45am and stayed until 5pm. He gave the children gift cards – the Clarkes later discovered they had no funds on them when they took the children to buy toys with them.*

*80. On 26 December 2019 Baxter asked Hannah to take the children to Bulimba skatepark so the children could play with their new skateboards (purchased by the Clarkes). She agreed but as she went to leave he said he wanted to take the children home with him. She refused and he took Laianah and threw her in the front seat of his car, unrestrained, and drove off.*

*81. Baxter said to Hannah, “You have caused all of this, it’s your fault.”*

*82. Baxter kept Laianah for three days. He took her to the house of his friend in New South Wales. The friend sent Hannah a text message stating this was her fault and she shouldn’t keep the children.*

*83. Constable Luke Erba was on duty with Constable Shane Cobban on 26 December 2019. At about 10.30am they were driving west on Oxford Street when they were flagged down by a member of the public. The female told them that she saw a man and a woman arguing and the male jumped into a vehicle and took off with one of the children.*

*84. They continued down the street and were flagged down by Hannah who was standing opposite the Bellissimo Café. She said there had been an incident with Baxter. Constable Erba activated his body worn camera (BWC).*

*85. Hannah was crying and told the police that he took Laianah away in Hannah’s car and said that he won’t bring her back. She said Laianah was bawling her eyes out and the other two children were beside themselves. She said he called her and said she either let him take the other two children or he wouldn’t bring Laianah back.*

*86. Hannah said she had been in contact with Senior Constable Kent and the only reason she hadn’t obtained a DVO was she was worried that it would antagonise the situation but now this had happened.*

*87. Constable Erba advised Hannah that as there were no Family Court orders they couldn’t go and take Laianah back but they could ask Baxter to return Laianah. Hannah became tearful and upset.*

*88. Hannah told them there was a lot of controlling behaviour and it had gotten worse since she left him. That was why, once she got them back on Sunday, she decided to keep the children with her.*

*89. Hannah told them that he spent the whole day yesterday with the children and then she agreed to meet with him today. He said he wanted them for the night and she refused at which time he put Laianah in the front seat and drove off with her.*

*90. Constable Erba said they would call Baxter and try to get Laianah back.*

*91. Constables Erba and Cobban had a conversation during which Constable Cobban said that it was controlling behaviour and they could consider whether a DV application was warranted. They decided to contact Baxter and persuade him to return Laianah.*

*92. Constable Erba tried to phone Baxter but his phone was blocked to private numbers. He then told Hannah he would attempt to find Baxter and provide her with an update. He also offered her a referral to DV services.*

*93. Constables Erba and Cobban attended Baxter’s address but he was not home. They then entered a job on the Police LCAD system to have crews attend the address to locate Baxter and Laianah to check on her and ascertain his version of events. Constable Erba monitored this for the rest of his shift.*

*94. That night Baxter Facetimed Hannah showing her that Laianah was okay. Baxter accused Hannah of having an affair with Mr D and told her she needed to fix that before he brought Laianah home.*

*95. On 27 December Senior Constable Kent arranged for Hannah to visit the station the next day with the intention of pursuing a DVO application.*

*96. Also, on 27 December Baxter received letter from Hannah’s lawyers (K Lawyers) on behalf of Hannah requesting return of Laianah immediately. He phoned a friend who was a solicitor, Mr E, and gave a false version of taking Laianah from the park. He appeared upset and scared by the letter. Mr E advised him to return Laianah and resolve the matter with Hannah. He drafted letter to K Lawyers proposing a return to the previous custody arrangements. K Lawyers advised that was no longer acceptable and Baxter must return Laianah immediately.*

*97. Hannah emailed the property manager requesting her name be taken off the lease. The property manager later asked Baxter if would consent to this and he said he would not.*

*98. On 28 December Baxter contacted police and advised that Hannah had taken his dog and he was scared of her coming to his house and making a scene in front of his daughter.*

*99. On 28 December Senior Constable Kent advised Hannah she was going to apply for a DVO regardless of Hannah’s intention and Hannah supported the decision and provided an affidavit. Senior Constable Senior Constable Kent was satisfied that Baxter had placed Laianah in a dangerous situation and took out PPN with conditions that Baxter not be within 100 metres of the children or Hannah’s residence until the matter was heard in court. She attempted to contact Baxter but was unable to do so.*

*100. On 28 December Baxter sent an email to K Lawyers in which he demanded 50/50 time with children and set out a proposal for the next month which involved Hannah picking the children up and dropping them off at every changeover.*

*101. A friend gave Baxter $2000 to pay for counselling as he believed Baxter was going to harm himself.*

*102. That night Baxter sent a text saying Laianah was tired and going to bed early. Hannah called police and told them Baxter was at home. Police attended at his house but he was not there. Hannah went over and opened the house as there were lights and a tv on inside. She saw that Baxter had put up photos of her that weren’t there before.*

*103. At about 7am on 29 December Constable Justin Kersey and Sergeant Nigel Johns attended Baxter’s residence to serve him with a Police Protection Notice (PPN) and a DVO application. When they arrived Baxter was putting Laianah into the car to go out. They went back inside the house and he was served with the PPN and application.*

*104. Constable Kersey activated his BWC. He told Baxter that he was there to serve him with the PPN and the application and Baxter commenced to complain immediately and repeatedly said it wasn’t fair. He was read the conditions and said that he understood them. He agreed with the conditions until it came to Laianah and then he started to disagree with it and said Hannah couldn’t do that. Sergeant Johns explained that it was the police that had obtained the order, not Hannah.*

*105. He became upset that he couldn’t go within 100 metres of his children and said again that it wasn’t fair. He tried to make a phone call and then started apparently crying.*

*106. During the time the police were in the house he would not let Laianah go. He carried her and then sat her on his lap with his arms around her.*

*107. Baxter said that he rang the police the night before because he had been away at a friend’s house for three days and he thought Hannah was going to come around and take Laianah. He gave a false version about taking Laianah in the car and said that she wanted to go with him. He said he had done nothing wrong and only wanted to look after his children. He said his friends gave him advice.*

*108. He said when he got home the dog was gone and Hannah had taken his alcohol. He was worried she was going to come over and make a scene.*

*109. He said he hadn’t done anything to warrant any of this. Hannah’s solicitor asked him to bring Laianah back. When he refused, they said they were going to court. She’d been ‘pushed to the wall’ so she’d brought this application. The police repeated that it was a police application, not Hannah’s application.*

*110. Baxter told the police that he was a great father and there are many people who would testify to that.*

*111. Sergeant Johns and Constable Kersey took Laianah back to Hannah. They told her that Baxter had been served and the next court date was 4 January 2020.*

*112. Sometime in December Hannah was speaking to a friend at CrossFit Carina and said, ‘I am scared that Rowan will hurt the kids to hurt me’.*

*113. On 1 January 2020 Detective Sergeant Derek Harris of the Morningside Child Protection Investigation Unit reviewed a Child Harm Referral created as a result of Baxter taking Laianah on 26 December 2019*

*114. Child Harm Referrals are generated by uniformed officers who attend domestic abuse incidents. They are generated regardless of any action taken by police at the time they attend. They are also created by officers who attend an address and have concerns as to child safety e.g. living conditions.*

*115. The purpose of the review of such referrals is to determine whether any further investigative response is required to address any identifiable offences committed against children. The referral is reviewed, and the information forwarded via email to the Department of Child Safety (DOCS) Brisbane Regional Intake Service. DOCS should then undertake a similar review process to determine its response.*

*116 Detective Sergeant Harris determined that no further investigation was required and that the circumstances related to a custody dispute between parents. There were no court orders in force and nothing to indicate that Baxter was not allowed to have custody of his daughter. The QPS incident log indicated that Baxter had contacted Hannah and advised that he and Laianah were in Pottsville. There was no child protection history. No offences had been committed. At the time he undertook the review Laianah had been returned to Hannah and DV issues were being dealt with by way of a DVO application. Detective Sergeant Harris forwarded a copy of the referral to DOCS.*

*117. On 4 January 2020 Hannah, the children and her parents were at Carindale shopping centre when Mr Clarke received a phone call from a friend of Baxter’s who asked him why Hannah was not allowing Baxter to see the children.*

*118. On 8 January Baxter went to court and advised the court that the DVO application was contested. Two barristers and Mr E accompanied him to court. He had not retained these lawyers – they were friends of friends that he had persuaded to help him. The parenting plan was negotiated, and the matter was adjourned to 5 February 2020. The court made a Temporary Protection Order in which Baxter was ordered not to:*

*• Commits act of DV;*

* *Expose the children to DV;*
* *Go within 100m of Hannah’s residence;*

*• Contact Hannah unless to contact the children or arrange contact with the children.*

*119. On 14 January Baxter sent an email to K Lawyers advising it was 24 hours since he saw his children. His tone was patronising, aggressive and bullying.*

*120. On 14 January police officers visited Baxter to talk about DV and offer support service referrals.*

*121. On 17 January K Lawyers sent an email to Baxter advising Hannah had organised mediation next Thursday to resolve parenting arrangements and she would continue to facilitate Facetime until there was a formal agreement in place.*

*122. On 17 January Hannah applied to vary the TPO.*

*123. On 19 January a solicitor Mr C commenced acting for Baxter. He acted pro bono as Baxter was friends with his brother and Baxter said he was struggling financially.*

*124. On 20 January Hannah applied to vary the TPO to obtain stricter conditions.*

*125. On 21 January Mr C emailed K Lawyers stating that Baxter had not seen his children for a month and wanted them dropped off at his residence at 8am on 24 January and he would return them on 26 January at 4pm.*

*126. On 21 January Baxter texted Mr M asking him to tell his lawyer that Hannah said she was only taking out the DVO to get Laianah back.*

*127. On 22 January an internal email was sent at C Lawyers indicating that Baxter instructed that he did not see the children on Christmas Day.*

*128. On 22 January Mr C emailed the police prosecutor advising that:*

*• The DVO was strongly contested;*

* *Baxter would call two witnesses who would say that Hannah only brought the application for custody matters;*
* *Another witness would say that Hannah told him she was only doing it to get the kids back;*

*• If this is proven they would seek costs.*

*129. On 22 January Mr C represented Baxter in court in relation to the application to vary the TPO. The court made the variation as sought by Hannah.*

130. On 23 January the mediator sent an interim parenting plan to Mr C pending court determination with the following terms:

*• The children live with their mother;*

* *They spend every second weekend with Baxter;*
* *They spend every other week Thursday to Friday with Baxter;*
* *Holidays are shared;*
* *They Facetime Baxter Tuesday and Thursday at 6pm;*

*• Changeovers take place at the Clarke’s house.*

*131. Baxter signed the agreement and then almost immediately requested his solicitor to make changes to it.*

*132. On 24 January K Lawyers returned the signed agreement to Mr C.*

*133. On 24 January Hannah agreed for their children to stay with Baxter for Friday, Saturday and Sunday of that weekend and the next Thursday. During that stay Baxter questioned the children about Hannah’s ‘friendship’ with Senior Constable Kent which upset them.*

*134. On 28 January Hannah was advised by Centrelink that Baxter was to pay child support payments of $360 per month.*

*135. On 28 January Baxter posted on Facebook thanking his supporters and stating that having had his children taken from him was crippling and he would not stop fighting to have them 50% of the time.*

*136. On 29 January Baxter drafted a letter to Hannah signed from himself and the three children which seemed to be written in contemplation of his death or Hannah’s.*

*137. On the morning of 30 January Aaliyah was crying as she didn’t want to go to her father’s place that night. Hannah told a school mother that Baxter had picked up Trey and then turned his phone off. The mother told her that she saw the girls that afternoon at school and they were not their usually happy selves. Hannah texted her that Baxter was horrible to Aaliyah because she stood up to him.*

*138. Baxter had the children overnight. Hannah received a Facetime call from Aaliyah that night. She was crying and said that Baxter was driving them on a highway and she didn’t know where they were going.*

*139. When Aaliyah arrived at school on 31 January she asked a mother if she could use her phone to call Hannah.*

*140. On 31 January Baxter returned Trey after 9am contrary to the agreement. Hannah saw explicit photos of her in Baxter’s car and grabbed them and walked away. Baxter got out of the car and followed her and grabbed her wrist. Mrs Clarke heard Hannah scream and phoned the police.*

*141. Hannah was advised by her solicitor not to continue contact and to allow phone contact only between Baxter and children until the Family Court proceedings.*

*142. Hannah reported the breach to Senior Constable Kent. Senior Constable Kent disclosed to her Sergeant that she had become friendly with Hannah. He took over as the lead officer.*

*143. On 31 January Baxter emailed Mr C advising of the photo incident but denying that he assaulted Hannah.*

*144. Baxter attended the Coorparoo police station and spoke with police regarding an application for a DVO against Hannah.*

*145. On 1 February 2020 Hannah attended a GP who diagnosed a sprained wrist which required a splint.*

*146. On 2 February 2020 Senior Constable Kent and Sergeant Rolf attended Baxter’s house and spoke to him about the assault and breach of TPO on 31 January.*

*147. Baxter said he had been told by his lawyer not to speak to the police and he didn’t wish to participate in an interview without a solicitor. He said he had already been to Coorparoo police station as he went there as soon as the incident occurred and told them what happened. He called a solicitor (a friend) who advised him to speak to Mr C.*

*148. Sergeant Rolf said if Baxter was refusing an interview he would take action that day. Baxter then said that he wanted legal advice and said he would phone Sergeant Rolf on 4 February 2020 to advise whether he would participate in an interview with police.*

*149. Sergeant Rolf told Baxter that the order was still in place and he could not breach it. Baxter said, ‘I’m very smart about what I do’.*

*150. Senior Constable Kent prompted Sergeant Rolf to discuss the photos with Baxter.*

*151. Baxter said: I’d rather not get into that, because that that’s, that’s stuff that’s for Court, and that was under the seat with files that she’s taken. So that’s all, they’re all part of the bigger…*

*152. He said they were in a folder which spun around. Sergeant Rolf said if Baxter had photos like that to ‘put them in an envelope or something’.*

*153. On 3 February Baxter emailed Mr C advising police had been around to see him re the alleged breach of DVO and it had been suggested to him that he should get a DVO against Hannah for stealing his property out of his car and losing her temper in front of Trey. He said, ‘I feel like a punching bag for her at the moment’.*

*154. On the same day Baxter lost a job as a personal trainer at a gym in Brisbane and believed that it was because of Hannah joining the gym the day before and members advising they would withdraw their membership if he was employed.*

*155. On 4 February Baxter emailed Mr C asking for changeover to occur at McDonalds as he was not comfortable going to Hannah’s parents’ place.*

*156. On 6 February K Lawyers emailed Mr C advising that due to incident on 31 January Hannah would not be complying with the parenting plan and not facilitating contact until further agreement or order of the court. They advised they instructions to file an initiating application in the Federal Circuit Court. They said Hannah would continue to facilitate Facetime Tuesday and Thursdays.*

*157. On 8 February Baxter emailed Mr C. He said he was perplexed, nothing happened, she was a fraud and why wasn’t Mr C defending him. Mr C was unhappy about receiving the email and advised Mr E as such.*

*158. Mr E later emailed Mr C advising he had told Baxter he needed to be more patient given that Mr C was helping him out in return for training sessions with Baxter and noted that Baxter had not provided any sessions.*

*159. Baxter emailed Mr C and apologised for bombarding him with emails and texts. He said he was sick of Hannah pulling stunts like this and he planned to file a DVO application against her for emotional abuse of withholding the kids.*

*160. Mr C replied that they could file for a cross order but they needed sufficient grounds and they would discuss it further.*

*161. Around this time Baxter’s friends became concerned that he may kill himself.*

*162. At about 11.15am on 9 February Sergeant Johns and Constable Kersey saw Baxter at Carindale Shopping Centre. They were aware that he was wanted for questioning in relation to Breach of the DVO on 31 January 2020. They approached him and Constable Kersey activated his BWC.*

*163. Baxter went to the Carindale Police Beat with the officers. He declined to participate in a record of interview on advice from his solicitor, Mr C, after speaking to him on the phone. Baxter asked Mr C why it was going this far.*

*164. Constable Kersey told Mr C he would have to charge Baxter and he would have to go through the watch house as it was a DV matter.*

*165. Constable Kersey then asked Sergeant Johns whether they could serve Baxter with a Notice to Appear (NTA).*

*166. Constable Kersey read the allegations of 31 January 2020 i.e. Hannah found photos in the car and he grabbed her on the arm. He said they were just deciding whether Baxter could be given a NTA or whether they would have to take him through the watch house.*

*167. Constable Kersey left to make a phone call and then returned and told Baxter he was taking him to the watch house. He then issued him with a NTA in the Brisbane Magistrates Court on 2 March 2020 and told him he was free to leave.*

*168. Later that day Constable Kersey phoned Hannah and advised her that Baxter had been charged with the breach on 31 January 2020.*

*169. Mr C sent a letter to K Lawyers requesting reinstatement of the parenting plan and advising Baxter was availing himself of the appropriate courses and counselling.*

Findings of the inquest into the deaths of Hannah Clarke, Aaliyah Baxter, Page 27 of 165 Laianah Baxter, Trey Baxter and Rowan Baxter.

*170. Baxter contacted Mensline and said he was interested in a program.*

*171. On 10 February Hannah told a work colleague that she was convinced that if she and Baxter were ever alone together and he had the opportunity she had no doubt that he would try to kill her. She then spoke about needing a will.*

*172 On 11 February 2020 Constable Kersey created an additional NTA for the offence of common assault that occurred on 31 January 2020 and amended the court to Holland Park.*

*173. On 13 February K Lawyers sent Baxter a letter advising that he continued to contact Hannah directly and asking that he cease but said she remained willing to continue Facetime as previously but was not willing to reinstate the parenting plan.*

*174. On 14 February Senior Constable Matthew Rogers and Constable Mahesh Joshi attended Baxter’s address and served him with the NTA for common assault.”*

A few days before Hannah and the children were murdered, and Baxter killed himself, he went and bought supplies, including a petrol tin, to enable the deaths to occur.

A senior police officer agreed that, taking into account that DV accounts for 40% of all police call outs and in some stations up to 60%, police officers have been provided with very little training in relation to it.

In the words of the Coroner:

“I find it unlikely that any further actions taken by police officers, service providers, friends or family members could have stopped Baxter from ultimately executing his murderous plans.

*520. Rowan Baxter was not mentally ill. He was a master of manipulation. After Hannah left him and he realised that she had obtained support and did not intend to give in to him and his demands, he began to rally support from friends he had not seen for years and professionals he considered could advance his cause. He received funds and support from a number of friends and family members who believed his lies that Hannah was treating him badly and that he was being victimised by her.*

521. Baxter made numerous appointments for counselling and with doctors. All of these actions were designed to assist him to contest the DVO and get what he wanted from the Family Court process. He did not have any real wish to obtain counselling or address his problems. He manipulated doctors and psychologists.

*522. When Baxter concluded that he had totally lost control over Hannah he killed her and her three children. He planned the deaths in the days prior.*

*523. Baxter understood the extent of the atrocities he had committed. He did not want to live with the public denunciation and punishment he would receive so, when he was sure his plan had been carried out, he killed himself in a final act of cowardice.”*

**What could have been done to prevent the deaths?**

Coroner Bentley said:

*“536. It is clear that there is a significant lack of counselling, programmes and support for perpetrators. However, in this case, I am satisfied that, even had it been available, Baxter was not interested in engaging unless it furthered his cause i.e. unless his engagement would result in Hannah agreeing to his wishes.*

537. Hannah was spoken to by DV services and the services provided to her were adequate and appropriate, however, there was a failure by all agencies to recognise her extreme risk of lethality – probably due to the fact that Baxter had not been physically violent, had no relevant criminal history and it was considered that she had the support of family. There was a failure to recognise the risk of intimate partner homicide which results from separation in a coercive controlling relationship.

*Risk to the Children*

*538. I find that there was no real assessment of risk of harm to the children by QPS or Child Safety Officers – the only assessment was that Hannah was able to care for them.”*

Most shocking for me is that about twenty years before Hannah and her children and Baxter died at his hands, the same had happened with another family in that suburb. The father had killed himself, his ex and their children, in what had been dubbed a murder-suicide. Nothing had seemingly been learnt in the meantime.

**What can we do as practitioners?**

* 1. Always put safety first.
  2. Do not assume you are the expert with domestic violence. Too often, in my view, family lawyers have under-estimated risks in difficult matters.
  3. When there is any hint of domestic violence, ensure that your clients undertake a thorough safety screening, before any safety plan is implemented.
  4. Ensure that your client has a clear, implemented safety plan.
  5. Consider whether you should have a safety plan for you and your staff and family arising out of this matter.
  6. Take steps within your office and how you and your client go to court that ensures that your client, and you and your staff are not put at risk but are protected as far as possible. This might involve, for example, how someone has physical access to your office.
  7. Obtain a full picture from your client as to the full range of domestic violence behaviour to ensure that you understand what is going on. This takes time, and can be frustrating to obtain, as often victims of domestic violence are hysterical, because they are survivors of trauma. But it is necessary to do.
  8. Too often, family lawyers have seemingly focused on physical domestic violence, and not focused on the other range of behaviours which may constitute domestic violence and may be coercive control. Be respectful - but ask.
  9. Too often, clients will downplay strangulation, or not want to talk about sexual behaviour without consent. That sexual conduct might be at the heart of the controlling behaviour.
  10. Be aware of potential risks to your clients, their children, yourselves and your staff and family from the former partners of your clients (or from your clients).
  11. Never assume that obtaining a domestic violence order is a cure all. It is not. It should always be considered to be only part (if appropriate) of a holistic response.
  12. Listen to your client. If your client is saying that they are at risk of death, take it seriously.
  13. Have your client engage with a domestic violence service and/or a private counsellor experienced in domestic violence cases. Having a multi-disciplinary team approach minimises risk. This might involve a specific DV service, such as a local DV service, or specialist service, such as Migrant Women’s Support Service, or a statewide service, such as DV Connect.
  14. Ensure there is engagement with police to ensure that they follow up on their duties. Too often they are slack.
  15. While domestic violence and coercive control is typically gendered, by a man to a woman in a spousal relationship, it can be in other relationships: by the woman to the man, or in a same sex relationship, for example.
  16. Be aware of stalking behaviours, including the use of keyloggers on PC’s, tracking devices on phones, miniature bugs and cameras, or attached to cars.
  17. In appropriate cases, your client and the children should move to a women’s and children’s refuge.
  18. If your client is going to court, then set out the evidence of domestic violence clearly. If you want the court to draw the conclusion that there was coercive control, set out the evidentiary basis for that, including the context in which actions were taken.

***Family Law Act 1975***

As part of the triage process of the Court, family risk screening, undertaking administratively, is now standard[[7]](#footnote-7). Generally, that screening information is not admissible[[8]](#footnote-8).

Section 4AB defines what is family violence:

*“(1) For the purposes of* [*this Act*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#this_act)*,* [***family violence***](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence)*means violent, threatening or other behaviour by a person that coerces or controls a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the person's family (the* ***family*** [***member***](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member)*), or causes the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *to be fearful.*

*(2) Examples of behaviour that may constitute* [*family violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence) *include (but are not limited to):*

*(a) an assault; or*

*(b) a sexual assault or other sexually abusive behaviour; or*

*(c) stalking; or*

*(d) repeated derogatory taunts; or*

*(e) intentionally damaging or destroying* [*property*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#property)*; or*

*(f) intentionally causing death or injury to an animal; or*

*(g) unreasonably denying the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *the financial autonomy that he or she would otherwise have had; or*

*(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member)*, or his or her* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*, at a time when the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *is entirely or predominantly dependent on the person for financial support; or*

*(i) preventing the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *from making or keeping connections with his or her family, friends or culture; or*

*(j) unlawfully depriving the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member)*, or any* [*member of the family*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#member_of_the_family)[*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member)*'s family, of his or her liberty.*

*(3) For the purposes of* [*this Act*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#this_act)*, a* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child) *is* [***exposed***](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#exposed)*to* [*family violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence) *if the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child) *sees or hears* [*family violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence) *or otherwise experiences the effects of* [*family violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence)*.*

*(4) Examples of situations that may constitute a* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child) *being* [*exposed*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#exposed) *to* [*family violence*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_violence) *include (but are not limited to) the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*:*

*(a) overhearing threats of death or personal injury by a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family towards another* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family; or*

*(b) seeing or hearing an assault of a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family by another* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family; or*

*(c) comforting or providing assistance to a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family who has been assaulted by another* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family; or*

*(d) cleaning up a site after a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family has intentionally damaged* [*property*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#property) *of another* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family; or*

*(e) being present when police or ambulance* [*officers*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s122b.html#officer) *attend an incident involving the assault of a* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family by another* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *of the* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s family.”* (emphasis added)

It is just after 5pm Friday. Your client has just called you to say that they are very angry about the “outrageous” demands from the other side. Your client says they are going to “kill” the other side. You are unsure whether your client is serious about the threat. It might be taken that your client was joking, or that your client was making a threat.

What do you do?

You have the other party’s mobile phone number on your system.

In Queensland, the solicitor is bound by the *Australian Solicitors Conduct Rules 2012*. Rule 9 provides:

*“9. Confidentiality*

9.1 A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client’s engagement to any person who is not:

*9.1.1 a solicitor who is a partner, principal, director, or employee of the solicitor’s law practice; or*

*9.1.2 a barrister or an employee of, or person otherwise engaged by, the solicitor’s law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client,*

*EXCEPT as permitted in Rule 9.2.*

9.2 A solicitor may disclose confidential client information if:

*9.2.1 the client expressly or impliedly authorises disclosure;*

*9.2.2 the solicitor is permitted or is compelled by law to disclose;*

*9.2.3 the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor’s legal or ethical obligations;*

*9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;*

*9.2.5 the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or*

*9.2.6 the information is disclosed to the insurer of the solicitor, law practice or associated entity.”* (emphasis added)

Rule 9.2.4 is sometimes known as a *Tarasoff* clause, though the clause’s scope is wider. I will explain the name below.

Rule 33 provides:

*“33 Communication with another solicitor’s client*

33.1 A solicitor must not deal directly with the client or clients of another practitioner unless:

*33.1.1 the other practitioner has previously consented;*

*33.1.2 the solicitor believes on reasonable grounds that:*

*(i) the circumstances are so urgent as to require the solicitor to do so; and*

*(ii) the dealing would not be unfair to the opponent’s client;*

*33.1.3 the substance of the dealing is solely to enquire whether the other party or parties to a matter are represented and, if so, by whom; or*

*33.1.4 there is notice of the solicitor’s intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact.”*

In essence, you have to make a call about whether or not your client is serious. If you decide that your client is serious, you then have to make a decision as to whether to notify the other party direct, or the police or both. You may consider telling your client that you may tell the other party direct. If you do so, will that decrease the chances of your client carrying out the threat, or will it put the other party at greater risk?

***Tarasoff v Regents of University of California*, (1976)**[[9]](#footnote-9)

On 27 October 1969, Prosenjit Poddar killed Tatiana Tarasoff. In the words of the Supreme Court of California[[10]](#footnote-10):

*“Plaintiffs, Tatiana's parents, allege that two months earlier Poddar confided his intention to kill Tatiana to Dr. Lawrence Moore, a psychologist employed by the Cowell Memorial Hospital at the University of California at Berkeley. They allege that on Moore's request, the campus police briefly detained Poddar, but released him when he appeared rational. They further claim that Dr. Harvey Powelson, Moore's superior, then directed that no further action be taken to detain Poddar. No one warned plaintiffs of Tatiana's peril.*

*Plaintiffs' complaints predicate liability on two grounds: defendants' failure to warn plaintiffs of the impending danger and their failure to bring about Poddar's confinement pursuant to the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 ff.) Defendants, in turn, assert that they owed no duty of reasonable care to Tatiana and that they are immune from suit under the California Tort Claims Act of 1963 (Gov. Code, § 810 ff.).*

*We shall explain that defendant therapists cannot escape liability merely because Tatiana herself was not their patient. [1] When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.*

*In the case at bar, plaintiffs admit that defendant therapists notified the police, but argue on appeal that the therapists failed to exercise reasonable care to protect Tatiana in that they did not confine Poddar and did not warn Tatiana or others likely to apprise her of the danger. Defendant therapists, however, are public employees. Consequently, to the extent that plaintiffs seek to predicate liability upon the therapists' failure to bring about Poddar's confinement, the therapists can claim immunity under Government Code section 856. No specific statutory provision, however, shields them from liability based upon failure to warn Tatiana or others likely to apprise her of the danger, and Government Code section 820.2 does not protect such failure as an exercise of discretion.*

*Plaintiffs therefore can amend their complaints to allege that, regardless of the therapists' unsuccessful attempt to confine Poddar, since they knew that Poddar was at large and dangerous, their failure to warn Tatiana or others likely to apprise her of the danger constituted a breach of the therapists' duty to exercise reasonable care to protect Tatiana….*

*Defendants contend, however, that imposition of a duty to exercise reasonable care to protect third persons is unworkable because therapists cannot accurately predict whether or not a patient will resort to violence. In support of this argument amicus representing the American Psychiatric Association and other professional societies cites numerous articles which indicate that therapists, in the present state of the art, are unable reliably to predict violent acts; their forecasts, amicus claims, tend consistently to overpredict violence, and indeed are more often wrong* ***[17 Cal.3d 438]*** *than right.* *[fn. 10](https://scocal.stanford.edu/opinion/tarasoff-v-regents-university-california-30278" \l "B0120) Since predictions of violence are often erroneous, amicus concludes, the courts should not render rulings that predicate the liability of therapists upon the validity of such predictions.*

*The role of the psychiatrist, who is indeed a practitioner of medicine, and that of the psychologist who performs an allied function, are like that of the physician who must conform to the standards of the profession and who must often make diagnoses and predictions based upon such evaluations. Thus the judgment of the therapist in diagnosing emotional disorders and in predicting whether a patient presents a serious danger of violence is comparable to the judgment which doctors and professionals must regularly render under accepted rules of responsibility.*

*We recognize the difficulty that a therapist encounters in attempting to forecast whether a patient presents a serious danger of violence. Obviously, we do not require that the therapist, in making that determination, render a perfect performance; the therapist need only exercise "that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of [that professional specialty] under similar circumstances." (Bardessono v. Michels (1970)* [*3 Cal.3d 780*](https://scocal.stanford.edu/opinion/bardessono-v-michels-27592)*, 788 [91 Cal.Rptr. 760, 478 P.2d 480, 45 A.L.R.3d 717]; Quintal v. Laurel Grove Hospital (1964)* [*62 Cal.2d 154*](https://scocal.stanford.edu/opinion/quintal-v-laurel-grove-hospital-30004)*, 159-160 [41 Cal.Rptr. 577, 397 P.2d 161]; see 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 514 and cases cited.) Within the broad range of reasonable practice and treatment in which professional opinion and judgment may differ, the therapist is free to exercise his or her own best judgment without liability; proof, aided by hindsight, that he or she judged wrongly is insufficient to establish negligence…*

*In the instant case, however, the pleadings do not raise any question as to failure of defendant therapists to predict that Poddar presented a serious danger of violence. On the contrary, the present complaints allege that defendant therapists did in fact predict that Poddar would kill, but were negligent in failing to warn…*

In our view…once a therapist does in fact determine, or under applicable professional standards reasonably should have determined, that a patient poses a serious danger of violence to others, he bears a duty to exercise reasonable care to protect the foreseeable victim of that danger. While the discharge of this duty of due care will necessarily vary with the facts of each case, in each instance the adequacy of the therapist's conduct must be measured against the traditional negligence standard of the rendition of reasonable care under the circumstances…

*The issue in the present context, however, is not whether the patient should be incarcerated, but whether the therapist should take any steps at all to protect the threatened victim; some of the alternatives open to the therapist, such as warning the victim, will not result in the drastic consequences of depriving the patient of his liberty. Weighing the uncertain and conjectural character of the alleged damage done the patient by such a warning against the peril to the victim's life, we conclude that professional inaccuracy in predicting violence cannot negate the therapist's duty to protect the threatened victim.*

*The risk that unnecessary warnings may be given is a reasonable price to pay for the lives of possible victims that may be saved. We would hesitate to hold that the therapist who is aware that his patient expects to attempt to assassinate the President of the United States would not be obligated to warn the authorities because the therapist cannot predict with accuracy that his patient will commit the crime….*

*We recognize the public interest in supporting effective treatment of mental illness and in protecting the rights of patients to privacy (see In re Lifschutz, supra, 2 Cal.3d at p. 432), and the consequent public importance of safeguarding the confidential character of psychotherapeutic communication. Against this interest, however, we must weigh the public interest in safety from violent assault. The Legislature has undertaken the difficult task of balancing the countervailing concerns.*

*We realize that the open and confidential character of psychotherapeutic dialogue encourages patients to express threats of violence, few of which are ever executed. Certainly a therapist should not be encouraged routinely to reveal such threats; such disclosures could seriously disrupt the patient's relationship with his therapist and with the persons threatened. To the contrary, the therapist's obligations to his patient require that he not disclose a confidence unless such disclosure is necessary to avert danger to others, and even then that he do so discreetly, and in a fashion that would preserve the privacy of his patient to the fullest extent compatible with the prevention of the threatened danger.*

*We conclude that the public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins.*

*Our current crowded and computerized society compels the interdependence of its members. In this risk-infested society we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal. If the exercise of reasonable care to protect the threatened victim requires the therapist to warn the endangered party or those who can reasonably be expected to notify him, we see no sufficient societal interest that would protect and justify concealment. The containment of such risks lies in the public interest.”*

Family lawyers are not counsellors, but most family lawyers should know their clients, and if they become aware of an imminent threat to kill the other party, may need to take action to prevent it.

**Family Counselling**

There is an exception under the *Family Law Act* to the confidentiality of family counselling. S. 10D(4) provides:

*“(4) A* [*family counsellor*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#family_counsellor) *may disclose a* [*communication*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s10d.html#communication) *if the counsellor reasonably believes that the disclosure is necessary for the purpose of:*

*(a) protecting a* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child) *from the risk of harm (whether physical or psychological); or*

*(b) preventing or lessening a serious and imminent threat to the life or health of a person; or*

*(c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or*

*(d) preventing or lessening a serious and imminent threat to the* [*property*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#property) *of a person; or*

*(e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to* [*property*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#property) *of a person or a threat of damage to* [*property*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#property)*; or*

*(f) if a* [*lawyer*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#lawyer) *independently represents a* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*'s* [*interests*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#interests) *under an order under section* [*68L*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s68l.html)*--assisting the* [*lawyer*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4.html#lawyer) *to do so properly.”*

**Mediation or arbitration agreement**

The same may occur in a mediation or arbitration. The mediation or arbitration agreement will typically have a similar clause.

Family dispute resolution has a similar exception to s.10D(4) in s. 10H(4) for family dispute resolution. There is no provision under the Act for reporting by a mediator or arbitrator. These would need to be in the mediation or arbitration agreement.

|  |
| --- |
| **The mediation threat to kill**  Over 20 years ago, I chaired a Legal Aid conference. The terms of the conference, which we would not call a family dispute resolution conference, included the ability to notify authorities when there was a threat to safety.  I saw the parties in separate rooms. The father had said during his intake that the mother had had close association with members of an outlaw motorcycle gang, including association with some of their criminal activities. In that part of the world, that was not an unusual allegation.  During the session with the mother and her solicitor, the mother stated about the father, with a menacing tone to me, “If he doesn’t like what I’m offering, I’ll get my mates in the Hells Angels to beat him up. No one does me over! I’m going to get him done over!”  I paused the conference at that point. I got advice. In my view, the mother’s threat was real. I decided to end the conference. I told the father and his solicitor of the threat. I said that if any harm happened to him, I would provide a statement to police.  I then spoke to the mother and her solicitor. Her solicitor said that his client wanted to apologise for her “over enthusiastic” and “exaggerated” language, which was “clearly a bit of hot air.” I did not agree. I said that in my view I considered the threat a real one. I did not consider that she was just blowing off steam, but that I was concerned for the safety of the father.  I said that I had ended the meeting, but that if anything happened to the father, I would provide a statement to the police. I would be taking detailed file notes immediately after we were finished.  I am glad to say that I was never asked to give evidence. I never heard of the couple again. |

ASCR rule 4.1.2 provides:

“A solicitor must also be honest and courteous in all dealings in the course of legal practice.”

Rule 5 provides:

“A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:

*5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or*

*5.1.2 bring the profession into disrepute.”*

The late Charles Cooper was a solicitor for over 30 years, and an accredited family law specialist. In a letter to an opponent, he wrote:

*“We note that according to the documentation that you provided us on the 10th November undercover of the letter of the 7th November, as of 4 November your client had $43,830.01 in her bank account. Presumably she has spent all of that in the period between the 4th November and your letter of the 13th November! Given the manner in which the funds under her control have been depleted, that seems an excessive rate of expenditure even for your client who has already spent over $180,000.00 in joint funds in the last 12 months.”*

Two weeks later, he further wrote:

“*I have advised my client to instruct me not to respond to anymore of your correspondence. It just seems to me that every time you have got no work to do you return to [the wife’s] file because there is plenty of money there to pay your legal fees….*

*The children’s issues are never going to be resolved at the mediation. The likelihood is that your client and her family have done so much damage to [child] that my client will never have a meaningful relationship with his daughter. Your client will live to regret that in the future, when [child] grows up and becomes as dysfunctional as your client is.”*

Cooper accepted that his letters were discourteous, offensive or provocative to a sufficiently serious degree as to constitute unsatisfactory professional conduct under s.418 of the *Legal Profession Act 2007* (Qld). Cooper was found to have engaged in unsatisfactory professional conduct and ordered to pay costs of $2,500.

In *Legal Services Commission v Orchard* [2012] QCAT 583, Mr Orchard was a family lawyer of 32 years standing. He sent a lurid statutory declaration by his client to the mother of a teenage girl. The statutory declaration was for the purposes of those proceedings. The basis of the proceedings against his client was alleged sexual misconduct by his client with the teenage daughter of a woman with whom he had a personal relationship of some years’ duration.

In the words of QCAT:

*“The letter [by Orchard] was in neutral terms, recording that the firm acted for the teacher and ‘...pursuant to express instructions from our client ...’ enclosing the statutory declaration which, it was said, had also been sent to the QCT.*

*The annexed documents contained denials of the allegations against the teacher, and lengthy (and very personal) details of his sexual relationship with the mother. The submissions contained a request that a copy of the document be made available to the mother and that she withdraw her complaint to the QCT and end the matter. They went on to say that if the complaint was not withdrawn and the teacher was required to appear in this Tribunal, then he intended to provide a copy of the document to the Director-General of the Department of Education and Training and other important ‘key people’ including local school principals.*

*The mother applied to QCAT to intervene in the QCT proceedings against the teacher and, on 17 February 2011, the Honourable James Thomas OA QC, sitting as a Judicial Member of the Tribunal, gave the mother leave to intervene and issued an injunction restraining the teacher from publishing in the statutory declaration or its annexure in any form to any person other than his legal representatives, and this Tribunal.*

*In doing so the Honourable Member said that the document went far beyond the proper limits of a robust defence and descended to ‘... fulminations against both the mother and the daughter and recounts at length details of his sexual relationship with the mother’; and, that it contained risqué descriptions of their sexual encounters, and of the daughters allegedly provocative conduct ... much of it seems directed against the mother and to be an attempt to embarrass her and to induce her to withdraw her complaint.*

*The learned Member went on to say that*

... it is a scandalous document which goes considerably beyond the limits of a proper defence. It contains highly embarrassing and gratuitously graphic descriptions of what the teacher alleges to have been the details of his past relationship with her. It contains a clear threat to defame her by publication of such material to outsiders, which is of particular concern.

*The learned Judicial Member went on to say that there appeared, in his view, to be a prima facie case of retaliation against or intimidating a witness under s 119B(1) of the Criminal Code Act 1899. He said:*

*‘The evidence seems capable of showing that the teacher made a threat to cause detriment to a witness, or a member of the family of a witness, for the purpose of retaliation or intimidation, because of something unlawfully done by the witness’.”*

Mr Orchard was reprimanded, ordered to pay compensation and costs.

In *Legal Services Commission v PRF* [2023] QCAT 291, the solicitor acted for his daughter in domestic violence and parenting/property proceedings. After the domestic violence proceedings were withdrawn by the estranged son-in-law, the solicitor saw fit to send an email to 20 others to detail what had happened in court, including that he had been acting for his daughter. The identities of the son-in-law and the grandchildren were revealed. The solicitor also attached to the email (sent from his work address and identifying himself as a solicitor) an affidavit and his submissions in the domestic violence proceedings.

The solicitor was reprimanded for unsatisfactory professional conduct, ordered to pay a pecuniary penalty of $1,500 and costs, and ordered to undertake domestic and family violence education course nominated by the LSC. He was lucky not to have been charged with breaching the secrecy provisions of the *Domestic and Family Violence Protection Act* 2012 (Qld) or s.121 of the *Family Law Act*.

In *Legal Services Commission v. SYG* [2023[ QCAT 401, the lawyer was reprimanded and ordered to pay a pecuniary penalty of $2,000 and costs. The complaint against him included that he had:

*“made statements that grossly exceeded the legitimate assertion of the rights or entitlement of his client and which mislead or intimidates the other person; and used tactics that went beyond legitimate advocacy and which were primarily designed to embarrass or frustrate another person.”*

Some of this sanctioned behaviour may, in NSW matters at least, also be considered to be criminal conduct by the lawyer, if it can be shown that it is coercive control by the client, and that the lawyer was acting on behalf of the client.

Coercive control was considered by the Full Court in *Carter & Wilson [2023] FedCFamC1A 9.*

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The parents had reached agreement about all issues, save parental responsibility. The mother sought, with the support of the family consultant and the ICL, that she have sole parental responsibility. The father sought that parental responsibility be equally shared.

Jarrett J set out the definitions of abuse and that of family violence in the Act. His Honour stated:

“14 Each of the parties addressed the question of parental responsibility in their final submissions. The respondent and the Independent Children’s Lawyer submitted that the presumption of equal shared parental responsibility did not apply. The applicant argued that it did.

1. *The respondent and the Independent Children’s Lawyer argue that the presumption of equal shared parental responsibility does not apply because the Court should be satisfied that the applicant has engaged in abuse of another of his children, Y. The evidence supports this submission. The applicant accepted that he had placed his hand over Y’s mouth on a number of occasions so as to prevent her screaming when he did not want her to scream. That action probably constituted an assault within the description of abuse. I so find.*
2. *Further, the presumption that it will be in X’s best interests if his parents have equal shared parental responsibility for him does not apply because there are reasonable grounds to believe that each of X’s parents has engaged in family violence. Let me explain why.*
3. *I am comfortably satisfied and I find, that the applicant has engaged in family violence towards the respondent. The evidence demonstrates that there was at least one physical assault of the respondent by the applicant. That assault was not repeated and I am not satisfied that such behaviour by the applicant represents an ongoing risk for X, but it does mean that the presumption of equal shared parental responsibility is displaced.*
4. *Further, I am also satisfied and I find, that the respondent has engaged in family violence towards X. It will be seen from* [*s 4AB(1)*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4ab.html) *that family violence is constituted by behaviour by a person that controls a member of that person’s family. Here, the respondent’s behaviour in preventing X from spending time with the applicant controlled X and controlled his relationship with the applicant. It also controlled the applicant in his relationship with X. That control prevented X from keeping connections with his family, namely his father. X is a member of the respondent’s family. The applicant is X’s family. Withholding X from maintaining a relationship with the applicant, as the respondent did initially, I find, was family violence.*
5. *The presumption that X’s parents should have equal shared parental responsibility does not apply because* [*s 61DA(2)*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s61da.html) *is engaged. The making of any orders for parental responsibility must necessarily be a direct result of a consideration of X’s best interests rather than the application of any presumptions.*
6. *As the Independent Children’s Lawyer submits, the evidence suggests that the biggest risk factor here for X is exposure to the psychological harm that results from his parents’ conflict and what is described as their ‘inability to communicate’.*
7. *Both the applicant and the respondent seemed to accept that X will do best if he has input from each of his parents. One might have thought that if the respondent’s view was that X would not benefit from input from his father or a meaningful relationship with him, the orders for time would be either non-existent or less extensive than they are. The orders that she seeks regarding parental responsibility underscore what she must consider to be the importance to X of the input of each of his parents to important decisions about him. She seeks that I impose on her an obligation to inform the father of the decisions she has to make for X, call for his input and consider that input if given.*
8. *The Independent Children’s Lawyer highlighted a concern with the respondent’s unilateral decision-making for X. The evidence shows that she has effectively excluded the applicant from any decision-making for X for a large part of X’s life. Her unilateral decision-making has led to conflict between the parties and resentment on the part of the applicant which is, frankly, understandable.*
9. *More recently, however, the parties have demonstrated an emerging capacity to reach agreement about significant matters for X. Schooling is a good example. They have agreed upon the primary school at which X will attend. It is true to say that that agreement was not reached without some difficult communication between the parents but the significance of the fact that they reached an agreement in the end cannot be underestimated.*
10. *The Independent Children’s Lawyer pointed out that as X gets older, if there are further decisions that need to be made (and there will be), both parents may prioritise what is convenient to them as opposed to what it is that is in X’s best interests. She points to the evidence-in-chief and the cross-examination about distances and travel times and what was ‘fair’ to the parents. The Independent Children’s Lawyer submits that the parties will look to make decisions based on what is fair, or appears to be fair to them, as opposed to putting themselves in the perspective of their child and making a joint decision based upon what is best for him. The Independent Children’s Lawyer submits that for that reason, I should make an order for sole parental responsibility so that, in effect, there will be certainty for decision-making in respect of X and that he will not have to be exposed to ongoing conflict where, as X gets older, there is a real concern that one or both of these parents may seek to engage the child to their way of thinking.*
11. *Respectfully, however, I cannot accept these submissions. First, whilst the evidence certainly does suggest that the parties have attempted to take into account their own convenience when attempting to make decisions for X, that is not an inappropriate consideration by them. For just about any decision that will need to be made for X, one particular decision will be more convenient or have more convenient effects than another for each of his parents. It is entirely legitimate for parents to raise these issues with each other for consideration as part of the decision-making process. That is because the convenience of the parents may well impact upon X’s day-to-day existence. There are questions of reasonableness involved, of course. The applicant’s argument that X should change his swimming, should change his music lessons and should change those activities in which he is already enrolled so that the travel and involvement of the applicant is ‘fairer’ to him are not reasonable. That is because these parties live approximately half an hour’s drive away from each other. As the Independent Children’s Lawyer submits, this is not a case where the parties are hours away or hundreds of kilometres apart from each other. Half an hour travel time should enable these parties to facilitate their child’s extracurricular activities, whether they occur in a place that is closer to the mother’s residence or in the event that they occur in a place that is closer to the father’s residence. Overall, however, I consider that whilst the parties will raise issues of their own convenience when it comes to making decisions for X, those issues will not prevent them from making a decision for him and nor will they allow such considerations to burden X.*
12. *Second, putting the capacity to make decisions for X solely into the hands of one or other of these parents may well lead to them giving greater emphasis to their own convenience than what is truly in X’s best interests. There will be no checks or balances.*
13. *Third, nor do I accept that vesting decision-making for X solely in one parent, in this case the respondent, will mean that X will not have to be exposed to ongoing conflict. Indeed, the respondent seeks orders that will oblige her to seek and consider the applicant’s input into any decisions that need to be made for X. Such an arrangement is just as apt to lead to conflict between the parties as is an order for shared parental responsibility. One can envisage arguments mounted by the applicant to the effect that the respondent has failed to give any, or any proper consideration to his views in relation to a decision that the respondent may have to make for X. That is especially so if, on its face, the decision seems to favour the convenience of the respondent more than anything else.*
14. *The Independent Children’s Lawyer argues that the order that she proposes will require:*

*(a) the respondent to provide advice to the applicant in writing in respect of decisions that she has to make;*

*(b) the applicant to respond in writing; and*

*(c) the respondent to provide her decision to the applicant in writing.*

1. *She argues that such an order, whilst not perfect, balances X’s exposure to the parties’ conflict with X’s interest in having his father involved in long-term decision-making for him. However, the fallacy with that argument is that it will not work to shield X from his parents’ conflict. I do not accept that will be an effect of the order proposed by the Independent Children’s Lawyer. In my view, it has a real potential to exacerbate the conflict between the parties, especially where the applicant considers that his views have not been properly taken into account by the respondent or that the respondent pays nothing more than lip service to the obligations upon her to consult the applicant. There is a very real potential for such an order to lead to further litigation between these parties in the nature of a contravention application or perhaps an application by the applicant to vary the parental responsibility orders in the face of repeated demonstrable non-compliance by the respondent.*
2. *In submissions, counsel for the respondent reiterated the arguments made by counsel for the Independent Children’s Lawyer and relied upon them. She argued that the parties recent agreement about X’s schooling was a unique agreement and stands on its own. She argued that it was not representative of some newfound ability on the part of these parents to reach agreements about matters concerning X’s welfare. She pointed, quite correctly in my view, to the parties’ long history of disputation about things such as recording the applicant’s name on X’s birth certificate, the disagreement about school and X’s involvement with a speech therapist. That evidence tended to suggest that these parties moved along parallel paths rather than coming together on a single path for X’s best interests.*
3. *However, in my view, the decision the parties reached about X’s schooling is a harbinger for better things for X. Not only have the parties been able to reach agreement about the primary school X will attend, they have now reached agreement about X’s living arrangements and the time that he will spend with each of his parents. There is also evidence that in the recent past the parties have been able to agree on changes to the current interim arrangements where changes have been necessary – Christmas time in 2020 and twice in 2021. That is a significant matter which augurs well for X’s future. They have been able to reach agreement about a range of other matters recorded in the orders that have now been made. Whilst those matters do not indicate that X’s parents will not fall into dispute again about what is in his best interests, it does provide reason for optimism that they will be able to reach agreements about those matters, perhaps not without some little difficulty, but they will be agreements nonetheless.”* (emphasis added)

His Honour ordered that there be equal shared parental responsibility. The mother appealed.

***Carter & Wilson* [2023] FedCFamC1A 9**

The Court, comprising of McClelland DCJ, Bennett and Campton JJ, dismissed the appeal, on the basis that although an error by the primary judge had been established, it did not affect the result.

McClelland DCJ and Campton J said, after noting the finding as to the father’s family violence[[11]](#footnote-11):

“Controversially, however, the primary judge also found that the mother’s conduct in limiting the amount of time the child spent with the father and her insistence upon such time being supervised amounted to controlling conduct for the purpose of the definition of family violence as set out in s 4AB of the Act.”

Their Honours continued:

*“10. The assessment of whether conduct that falls within one of the provided examples constitutes family violence as defined in s 4AB(1) of the Act necessarily requires that conduct to be considered in the context in which it occurred.*

*11. The primary judge found that the mother had engaged in family violence because she ‘initially’ prevented the child from spending time with the father and, in doing so, ‘controlled [the child] and controlled his relationship with the [father]’. That control, the primary judge found, prevented the child from keeping connections with his family, namely his father (at [18]).*

1. *There have been a number of authorities, both in Australia and in comparable jurisdictions, in which the words “coercive” and ‘control’ have been considered both separately and in combination. For example, in Illgen & Yike* [*[2018] FamCA 17*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2018/17.html)*, after examining the ordinary and natural meaning of the words separately[[12]](#footnote-12), Gill J noted that while, in s 4AB, behaviour that ‘coerces or controls’ is expressed disjunctively, the two concepts are closely related, stating at [125]:**[[1]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC1A/2023/9.html" \l "fn1)*

*Together they form an expanded concept of the exercise of power, to restrain another or to cause another to act, by force, domination or command.*

1. *To similar effect, in Ramzi & Moussa* [*[2022] FedCFamC2F 1473*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC2F/2022/1473.html)*, after referring to the decision of Gill J, Judge Beckhouse stated at [45] that, in the context of conduct that was not inherently violent or threatening,* ***“[g]enerally****, coercive control is understood as a course of conduct aimed at dominating and controlling another person, including a family member” (emphasis added).*
2. *There is much to commend in her Honour’s succinct analysis and, in that respect, we observe that a similar approach has been taken in applying the ordinary and natural meaning of the words in comparable jurisdictions (see for example the Canadian cases of Newfoundland and Labrador (Manager of Child, Youth & Family Services) v. A.C. 2012 NLTD(F) 7; R. v. Parsons, [2020] N.J. No. 232 and the English case of F, M v A & B (Acting through their Children's Guardian, Ruth Alexander)* [*[2022] EWFC 124*](http://www.bailii.org/ew/cases/EWFC/HCJ/2022/124.html) *at* [*[10]*](http://www.bailii.org/ew/cases/EWFC/HCJ/2022/124.html#para10)*, referring to F v M* [*[2021] EWFC 4).*](http://www.bailii.org/ew/cases/EWFC/HCJ/2021/4.html)
3. *In the absence of either the primary judge or ourselves having the benefit of argument concerning the potential relevance and applicability of those authorities to this appeal, we do not intend to give a comprehensive definition of what constitutes behaviour by a person that is other than violent or threatening, but that ‘coerces or controls’. What is clear is that the determination of what constitutes behaviour ‘that coerces or controls’ must be considered in the context in which the conduct occurred (Helbig & Rowe and Ors* [*[2016] FamCAFC 117*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCAFC/2016/117.html) *at* [*[91]*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCAFC/2016/117.html#para91)*).*
4. *In the context of the facts and circumstances of this case, we respectfully agree with Bennett J that the conduct of the mother in limiting the amount of time that the child spent with the father could not reasonably be determined to be coercive or controlling conduct for the purposes of s 4AB(1). In that respect, there was no finding that the mother’s concerns for the welfare of the child were other than genuine in the context where she had herself been the subject of one violent assault by the father and had witnessed the father’s admittedly unacceptable conduct towards Y. There was no finding that the mother acted capriciously or maliciously. Indeed, as noted by Bennett J, the mother was acting in accordance with orders of the Court after 30 January 2019.*
5. *The mere fact that the mother’s conduct in limiting the child’s time with the father could fall within the example provided in s 4AB(2)(i) does not, in and of itself with nothing more, condemn the conduct as being family violence as defined in s 4AB(1). Context is all important. There was no finding that the mother was acting other than protectively towards the child. Such conduct, in the context of the Act, which has a strong focus on the promotion of the welfare of children and protecting them from being exposed to violence, cannot, in our respectful opinion, in the circumstances of this appeal, reasonably ground a finding of family violence as defined in s 4AB of the Act.”*

Bennett J also emphasised the need for context:

“71. Section 4AB of the Act is drafted in very wide terms in order to catch behaviour which is thought to be undesirable. In so doing, the section also catches behaviour which is both acceptable and necessary (for example, exerting control over child in the exercise of the parenting powers). Therefore, in practical terms and save for blatant acts of family violence, an evaluation of evidence to ascertain the context in which alleged behaviour took place may be a precondition to the Court characterising behaviour as family violence within the meaning of s 4AB. Contextualising the behaviour calls for findings of fact.

*72. I am not aware of any authoritative decision on the definitional aspects of behaviour which controls a family member within the meaning of s 4AB, although there are a number of authorities from this jurisdiction which discuss ‘control’ in various contexts.”*

Her Honour then spoke approvingly of *Ramzi & Moussa*, and said:

*“73. I agree with Judge Beckhouse’s analysis of the need to contextualise the behaviour which is said to constitute family violence. Insofar as the balance of Judge Beckhouse’s comments in relation to coercive and controlling conduct generally requiring a pattern of conduct can be read as confined to the narrower concept of coercive control, as opposed to the wider concept of behaviour that coerces or controls to which s 4AB is directed, I have no difficulty.*

1. *‘Coercive control’ is a technical phrase in social science literature. It is a concatenation of coercive behaviour and controlling behaviour and is a subcategory of one or both types of behaviour. Whilst the term “coercive control” has been attributed a legal definition in legislation in some jurisdictions, s 4AB of the Act does not do so. Accordingly, it would be an error to describe the behaviour defined in s 4AB as merely “coercive controlling behaviour” or “coercive and controlling behaviour” because to do so could exclude behaviour which is controlling but not coercive or coercive but not controlling, as well as behaviour which cannot be said to constitute a course of conduct. This would limit the ambit of s 4AB in a manner not intended.*
2. *If the legislature intended to provide a definition of “coercive control”, it would have done so. The very wide definition in s 4AB(1) coupled with the non-exhaustive list in s 4AB(2) conveys an intention of width. Therefore, when s 4AB is interpreted and its application to a particular set of facts considered, there needs to be a consideration of whether the application of the definition meets the purpose of the statute.*
3. *While the comments of Judge Beckhouse and Gill J were relevant to the cases respectively decided by them, their comments do not, in my view, provide a foundation for a general definition of s 4AB.*
4. *The Canadian case of Newfoundland and Labrador (Manager of Child, Youth & Family Services) v. A.C. 2012 NLTD(F) 7 is of little assistance here save for highlighting, in the learned judge’s brief review of judgments and social science literature, that there are varying definitions in different contexts with different terms. For example at [46], it is noted that in one social science article, Little Eyes, Little Ears,**[[2]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC1A/2023/9.html" \l "fn2) it is said that “coercive control” involves an “ongoing pattern”, yet in L(ND) v L(MS)* [*2010 NSSC 68*](http://www.canlii.org/en/ns/nssc/doc/2010/2010nssc68/2010nssc68.html)*, Macdonald J noted that “domestic violence” may include “isolated and rare incidents” (at [49]). Notably, neither of these exact phrases are used in s 4AB of the Act and there is no requirement that behaviour that coerces or controls a family member must involve a series of acts or a pattern of behaviour.*
5. *In the English case of F v M* [*[2021] EWFC 4*](http://www.bailii.org/ew/cases/EWFC/HCJ/2021/4.html) *(“F v M”), Hayden J noted that “coercive and controlling behaviour” in the Family Procedure Rules 2010 (UK) means “an act or pattern of acts” (at [103]), yet the definition of “controlling or coercive behaviour” in s 76 of the Serious Crime Act 2015 (UK) requires that a person “repeatedly or continuously engages in behaviour” which “emphasises the repeated and/or continuous nature of this abuse” (at [105]–[106]). In all these approaches we see (as Hayden J noted in F v M at [109]) that “the significance of individual acts may only be understood properly within the context of wider behaviour”.*
6. *The relevant legislation or rules of court discussed in F v M are markedly different from s 4AB. Whilst judgments from other jurisdictions can sometimes provide helpful contrasts, it is the terms of s 4AB as they appear in the context of the Act that must be considered by this Court, not the interpretations adopted in other jurisdictions with respect to provisions that are differently worded or have different purposes. Indeed, definitions that depart from the words of the s 4AB risk leading judges into error by imposing limits on the breadth of the section which was enacted, giving broad examples suitable for its operation in the Act rather than limited elements that would be more suitable in a penal provision.*
7. *Before leaving this general discussion about the interpretation of s 4AB, I observe that a finding of family violence for the purpose of s 4AB does not require the Court to be satisfied that the perpetrator intended to perpetrate family violence as defined in s 4AB. A reading of the Canadian and United Kingdom decisions referred to above does suggests that the relevant behaviour must be “designed” or intended to control. Intention on the part of the perpetrator is not a necessary component of family violence under s 4AB of the Act and for good reason. As argued by Riethmuller J and Senior Judicial Registrar O’Neil writing ex curially:**[[3]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC1A/2023/9.html" \l "fn3)*

*The use of 'intent' to provide limits to the definition is unlikely to be helpful: most perpetrators of family violence claim (with all the sincerity that they can muster) that, subjectively, they did not intend to perpetrate 'family violence', even in the most palpable if (sic.) cases.*

1. *At fn 30, the authors observe that, when considered critically and from a distance, it is apparent that the behaviours are most commonly deliberate methods of tactical control and manipulation. The well-developed capacity of perpetrators to manipulate also equips them with the skill and motivation to provide denials of subjective intent that are at least superficially persuasive, making subjective intent a difficult element to prove against a perpetrator.”* (emphasis added)

In *Ilgen & Yike*, Gill J accepted that social isolation might constitute family violence, if it were coercive or controlling:

*“126. It should be noted that the definition contained at s 4AB properly does not encompass all occasions where one family member causes another to act other than in accordance with his or her inclinations. The nature of interactions within a family often involves the various members of the family preferring the interests of other members of the family ahead of their own.*

*127. However, where this is the result of the exercise of power by force or domination or command, that is, it is the product of coercion or control, it then constitutes family violence and falls within the definition at s 4AB.*

*128. While it is clear on a reading of s 4AB(2), and on the above understanding of family violence, that preventing a family member from making or keeping connections with his or her family can constitute family violence, the questions in this case are whether the mother has done so, and whether, if she has, whether the conduct was coercive or controlling of either the child or the father.”* (emphasis added)

His Honour continued:

*“129. The evidence of interaction between the parties regarding the child prior to the orders of Justice Carew lacks clarity sufficient to allow inferences to be drawn as to how or why time did not occur between the child and the father. There were periods of time where he did not pursue the issue, particularly where he was met with the ADVO and unable to secure representation through Legal Aid. There were periods where there were orders in his favour, yet the time did not occur and it is not clear why. There are periods where the child was reported as refusing. Without properly focussed evidence on how and why these periods occurred, it is dangerous to draw inferences for this period.*

*130 The evidence post the orders of Justice Carew does have adequate particularity and focus to allow some conclusions to be drawn. While it would be inappropriate to hold the mother responsible for the initial missing of time following the reintroduction by Ms D, after that time the significant and consistent departure by the mother from the scheme of the orders, reducing and minimising the time the child spent with his father, together with inadequate explanation for occasions when the time simply did not occur at all, coupled with the mother’s long standing position that there was nothing positive about spending time with the father, means that a conclusion may be drawn that the mother has been obstructive of the relationship between the child and the father. That is, she has prevented the child making or keeping connection with his family.*

*131 However, the evidence does not go far enough to establish that this was either to control or to coerce the child or the father, as opposed, for example, to it merely being the reflection of a trenchant opposition to the child spending time with the father based upon her inability to identify such as positive for the child.*

*132. In this case, the obstructive conduct should not be construed to be an instance of family violence. However, it remains prominent and of strong significance in the consideration of the balance of the s 60CC factors.”* (emphasis added)

Vasta J in Wylder & Wylder [2022] FedCFamC2F 1366 set out his concerns about coercive control, and some examples of conduct that could be coercive control:

*“136. The father has continually claimed that he was the victim of violence from the mother, especially when they were in the Country B. Conversely the mother has continually claimed that she was the victim of violence from the father, both in the Country B and especially when they returned to live in Australia. There is very little in the way of contemporaneous recordings to corroborate these claims.*

1. *However, it is not the spectre of physical violence that concerns this Court; rather, it is the spectre of coercive control. Whilst it had been documented that the parents had separated on occasions, the mother said that the father spoke to her in such a way that she felt compelled to return to the relationship. The father denies any such conduct.*
2. *What has been of concern is the documented history of the litigation. It is incongruous that the mother would: make the complaints that she made during the previous filing in this Court …; have a Court make an order that mandated supervised visits between the father and the child; and, then choose to ignore that and, instead, come to a compromise solution with the father that gave him unsupervised equal time with the child.*
3. *There seems to be no other rational explanation for this other than the father implementing coercive control over the mother to the extent that she felt that she had no other choice but to comply with the father’s demands. The judicious use of covertly recorded conversations with one parent by the other parent and then referring to selective excerpts is a feature that is often found in cases of coercive control.*
4. *In this case, the father did give to the Court such selective recordings. The father pointed to one particular recording where the mother made an “admission” that the father was the favoured parent by the child. In another recording, the mother “admitted” that the father treated her like a queen. In another recording, the mother is said to convey that she arranged custody arrangements for her financial benefit. In a further recording, the mother has “conceded” that she was “not going back to court again”. And in a final recording, the mother “admitted” that the father would never hurt his daughter.*
5. *These recordings were used by the father to intimidate the mother into not pursuing any parenting matter because these recordings would be used against her, as if they were repudiations of her stance. Of course, they have little evidentiary value as they are excerpts from a larger conversation upon which the Court has no information, and therefore, no context.*
6. *The behaviour in making constant notifications to the Department of Child Safety can also be seen as a manifestation of the coercive control. Further, posting the videos to social media can also be seen as a manifestation of coercive control. One such video records a “Tik Tok” dance that the mother had uploaded to social media. The father recorded himself watching the video where the father made derogatory comments suggesting that the manner of solo dancing in the video was not befitting that of a woman who had a boyfriend, let alone a woman who was a mother.*
7. *It is also instructive that the paternal grandmother (that is, the mother of the father) applied for a domestic violence order against the father on 10 September 2019. In that application, the paternal grandmother wrote that the father “has had anger issues since he was 16 years old”. She also wrote that “he has threatened me many times - swear words - degradation, year after year after year”.*
8. *The paternal grandmother also wrote:*

*His mental health deteriorated over the years. In 2014, he returned to Australia from the [Country B] where he was homicidal and suicidal for 18 months. He was in [Suburb J] psychiatric hospital for nearly a month. On 22 August 2019, he told me twice - seriously and threatening - he would kill me if I reported them to DOCS again, today I am! He visited for four hours and was extremely angry the whole time. He will kill.*

1. *Also in that same application, the paternal grandmother wrote that the father:*

*Kicked my three year old granddaughter on 17 September 2019. She, [X], has seen her dad, my son, verbally abuse and offer to fight too many people in her life. He does get overly angry instantly! He boasts to me year after year of the dangerous things he has done in instigating physical fights. People back down from him as I think he is crazy. He needs to go to [Suburb J] psychiatric immediately.*

1. *The paternal grandmother also wrote:*

*He can be a loving dad to [X] though his anger flicks to extreme too quickly. She is at risk of being frightened or hurt by other people’s reactions to his anger. He will kill!*

1. *Instructively, the paternal grandmother wrote:*

*Late last year, [the father] befriended and developed a very close relationship with his dad [paternal grandfather]. Me and my 2 children left his dad when [the father] was [young]. [I had a] domestic violence order. Since then, [the father] has hated me and his sister immensely, he believes his dad was innocent. Their dad never paid maintenance or even sent one card - ever.*

1. *She then wrote:*

*[the father] has abused and degraded me for way too many years. He manipulates, lies, isolates people for his gain. He is an abuser. He has not hit me, though he may kill me as his dad wanted to do!*

1. *In my view, there is ample evidence to satisfy the Court that the father has engaged in family violence by his coercive actions towards the mother.”*

**Critical Incident List**

Be aware of this list. The criteria for inclusion is contained in the Critical Incident List Practice Direction:

1. The applicant is a non-parent caring for the child or children;
2. There is no parent available to care for the child or children as a result of death (including homicide), critical injury or incarceration relating to or resulting from a family violence incident;
3. The applicant is seeking urgent orders for parental responsibility, such as about major-long term issues, to enable appropriate arrangements to be made for the child or children (for example, authorities to engage with schools and health care providers, and this may or may not include an order for the child or children to live with the applicant); and
4. There are no existing final family law or state/territory child welfare orders in place which relate to the child or children’s care arrangements with a non-parent or allocating parental responsibility of the child/children to a non-parent.

The judge in charge of the list is Justice Brasch. Her Honour was senior counsel assisting in the Hannah Clarke inquest.

**Lighthouse Project**

The House *family law inquiry into a better family law system to support and protect those affected by family violence*, 2017, the [Henderson Committee](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report/section?id=committees%2freportrep%2f024109%2f25158) recommended:

| **Recommendations** | **Comment** |
| --- | --- |
| [**Recommendation 1**](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report/section?id=committees%2freportrep%2f024109%2f25163#s25163rec1)  4.226  The Committee recommends that the Australian Government considers extending the Family Advocacy and Support Services program, subject to a positive evaluation, to a greater number of locations including in rural and regional Australia. |  |
| **Recommendation 2**  4.232  The Committee recommends that the Australian Government progresses, through the Council of Australian Governments, the development of a national family violence risk assessment tool. The tool must be nationally consistent, multi‑method, multi‑informant and culturally sensitive and be adopted to operate across sectors, between jurisdictions and among all professionals working within the family law system. | This has been undertaken. The National risk assessment principles for domestic and family violence have been written by ANROWS, set out below. |
| **Recommendation 3**  4.240  The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to require a risk assessment for family violence be undertaken upon a matter being filed at a registry of the Family Court of Australia or the Federal Circuit Court of Australia, using the national family violence risk assessment tool. The risk assessment should utilise the national family violence risk assessment tool and be undertaken by an appropriately trained family violence specialist provider. | Now part of the Act. |
| **Recommendation 4**  4.246  The Committee recommends, subject to a positive evaluation of the recently announced legally‑assisted family dispute resolution pilot, the Australian Government seeks ways to encourage more legally‑assisted family dispute resolution, which may include extending the pilot program. | I am not aware of its status. |
| [**Recommendation 5**](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report/section?id=committees%2freportrep%2f024109%2f25163#s25163rec5)  4.254  The Committee recommends that the Attorney‑General considers how the Family Court of Australia and the Federal Circuit Court of Australia can improve case management of family law matters involving family violence issues, including:   * the adoption of a single point of entry to the federal family law courts so that applications, depending on the type of application and its complexity, are appropriately triaged, and actively case managed to their resolution in an expedited time-frame; * the greater use of mediation or alternative dispute resolution by the federal family courts during proceedings to encourage earlier resolution of matters; * the implementation of more uniform rules and procedures in the two federal family courts to reduce unnecessary complexity and confusion for families; * the establishment of formal and expedited referral pathways between state and territory magistrates courts and the federal family courts; and * the development of a stronger regime of penalties including cost orders to respond to abuse of process, perjury and non‑compliance with court orders. | All of these have now taken place:   * single entry point with triage * greater use of mediation * uniform rules * expedited pathways from state courts * greater likelihood of costs orders being made |
| **Recommendation 6**  4.258  The Committee recommends that the Attorney‑General progresses through the Council of Australian Governments an expanded information sharing platform as part of the National Domestic Violence Order Scheme to include orders issued under the *Family Law Act 1975* (Cth) and orders issued under state and territory child protection legislation. | This remains a work in progress. |
| **Recommendation 7**  4.261  The Committee recommends the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts. | This can be done under s.69ZR. How often it is applied is unclear. |
| **Recommendation 8**  4.262  The Committee recommends that abuse of process in the context of family law proceedings be identified in the list of example behaviours as set out in section 4AB(2) of the *Family Law Act 1975* (Cth). |  |
| **Recommendation 9**  4.264  The Committee recommends that the Attorney-General develops stronger restrictions in relation to access by other parties to medical records in family law proceedings. | It is harder to have subpoenas issue- but it seems little has been done here. |
| **Recommendation 10**  4.270  The Committee recommends that the Attorney-General works with state and territory counterparts through the Council of Australian Governments to reach agreements (such as in relation to resources, education and court infrastructure) to encourage state and territory magistrates to exercise family law jurisdiction, particularly in specialist family violence courts and courts which deal with a high number of family violence matters. | Little apparently done. |
| **Recommendation 11**  4.272  The Committee recommends that the Attorney‑General works with state and territory counterparts through the Council of Australian Governments to establish a trial in one or more specialist state or territory family violence courts (including reaching agreement in relation to resources, education and court infrastructure) enabling family law issues in family violence cases to be determined by the one court, including expedited pathways for breach and enforcement proceedings. One of the trial courts should ideally be located in an area of high Indigenous population. | Little apparently done. |
| **Recommendation 12**  4.275  The Committee recommends the Attorney‑General introduces the Family Law Amendment (Family Violence and Cross-examination of the Parties) Bill 2017 into the Parliament for its urgent consideration such that perpetrators of family violence will be prohibited from cross examining the other party including in relation to the qualifications and funding of those appointed to undertake such cross examination. | This resulted in the enactment of s.102NA. |
| **Recommendation 13**  5.67  The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to enable:  the impact of family violence to be taken into account in the Court’s consideration of both parties’ contributions; and  the impact of family violence to be specifically taken into account in the Court’s consideration of a party’s future needs. | Set out in the exposure draft. |
| **Recommendation 14**  5.71  The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act* *1975* (Cth) to include a requirement for an early resolution process for small claim property matters. This process should involve a case management process upon application to the Court for a property settlement, rather than a pre-filing requirement, which will provide greater certainty and more expeditious resolution. | And thus we have the under $500,000 list. |
| **Recommendation 15**  5.74  The Committee recommends that the Attorney General:  develops an administrative mechanism to enable swift identification of superannuation assets by parties to family law proceedings, leveraging information held by the Australian Taxation Office; and  amends the *Family Law Act 1975* (Cth) and relevant regulations to reduce the procedural and substantive complexity associated with superannuation splitting orders, including by simplifying forms required to be submitted to superannuation funds. | Let’s wait and see on this. |
| **Recommendation 16**  5.80  The Committee recommends that the Attorney-General’s Department considers options for legislative amendment to the *Family Law Act 1975* (Cth) to enable the federal family courts to make greater use of court orders for the split or transfer of unsecured joint debt and shared liabilities following the separation of families, particularly those affected by family violence. | Part 8AA is rarely used, and it seems little is to change here. |
| **Recommendation 17**  5.83  The Committee recommends that the jurisdictional limit on state and territory magistrates’ courts hearing family law property disputes be increased and that the Attorney-General introduces to the Parliament the Family Law Amendment (Family Violence and Other Measures Bill 2017) to give effect to the increase. | Without further Commonwealth resources provided to the States, this will not be realised. It is proposed in the draft exposure bill that State and Territory prescribed courts have jurisdiction under Part VII. |
| **Recommendation 18**  5.86  The Committee recommends that the *Family Law Act 1975* (Cth) be amended to extend sections 69ZN and 69ZX, which requires the Court to conduct proceedings in a way which safeguards the parties against family violence in parenting matters, to apply in property division matters. | Has not occurred.  This was also recommended by the ALRC recommendation 20, and is in the draft exposure bill. |
| **Recommendation 19**  6.130  The Committee recommends that the Australian Law Reform Commission, as part of its current review of the family law system, develops proposed amendments to Part VII of the *Family Law Act 1975* (Cth), and specifically, that it consider removing the presumption of equal shared parental responsibility. | Now changed, as of May 2024. |
| **Recommendation 20**  6.136  The Committee recommends that the Attorney‑General extends the Family Advocacy and Support Services pilot, subject to positive evaluation, to include a child safety service attached to the Family Court of Australia and the Federal Circuit Court of Australia, modelled on the United Kingdom’s Children and Family Court Advisory and Support Service. The expanded service, which may require additional infrastructure, should:   * provide ongoing supervision of the safety of children following orders made by a court; * bring applications to the Court where the risk of a child’s safety is of concern and where an exercise of judicial power is required to ensure the child’s ongoing safety; and * refer matters to state and territory child protection agencies, where required. | There has been no effort to copy CAFCASS. Resources have not allowed that to occur. |
| **Recommendation 21**  6.148  The Committee recommends the Attorney‑General, through the Council of Australian Governments where necessary, works to improve the information available to courts exercising family law jurisdiction at the earliest possible point in proceedings by:  implementing the Family Law Council’s recommendations in its 2015 *Families with complex needs and the intersection of the family law and child protection systems – Interim Report* for information sharing protocols between the federal family courts and state and territory child protection departments;   * establishing a child safety service attached to the Court that operates as a liaison between the federal family courts and child protection departments to ensure all relevant information is available to the Court at the earliest possible stage; and * consider the adoption of multi-disciplinary panels by state and territory governments for child abuse investigations which would assist the family law courts to determine whether family violence has occurred; and * works with the Family Court of Australia to extend the Magellan program to all parenting matters where there are allegations of family violence. | And thus we have the Lighthouse Project. |
| **Recommendation 22**  6.156  The Committee recommends the Attorney‑General pursues legislation and policy reform to abolish private family consultants, with family consultants to be only engaged and administered by the Court itself. Further, the Committee recommends the development of an agreed fee schedule to regulate the costs of family reports and other expert witnesses. | Not done. |
| **Recommendation 23**  6.159  The Committee concludes that the Court must be better informed of children’s views, concerns and matters affecting their welfare, and recommends that the Australian Law Reform Commission in its ongoing review of the family law system, examines and propose alternative mechanisms that would ensure children’s perspectives are heard in court. | No substantive change. |
| **Recommendation 24**  7.96 The Committee recommends that, as a matter of urgency, the Australian Government implements the Family Law Council recommendations from both the 2012 *Improving the family law system for Aboriginal and Torres Strait Islander clients* report*,* and the 2016 *Families with complex needs and the intersection of the family law and child protection systems – Final Report*, as they relate to Aboriginal and Torres Strait Islander families, including those recommendations addressing:   * community education; * cultural competency; * service collaboration; * culturally diverse workforce; * early assistance and outreach; * legal and non-legal services; * interpreters; * cultural reports; * family group conferences; * participation of elders or respected persons in court hearings; and * consulting with Aboriginal and Torres Strait Islander representatives in the development of any reforms. | In part at least this appears to have been implemented. |
| **Recommendation 25**  7.101  The Committee recommends that, as a matter of urgency, the Australian Government implements recommendations from both the 2012 *Improving the family law system for clients from culturally and linguistically diverse backgrounds* report, and the 2016 *Families with complex needs and the intersection of the family law* *and child protection systems – Final Report*, as they relate to culturally and linguistically diverse families, including those recommendations addressing:   * community education; * cultural competency; * service integration; * culturally diverse workforce; * consultation with culturally and linguistically diverse communities in service evaluation; * interpreters; * cultural connection for children; and | Not seemingly implemented. |
| **Recommendation 26**  7.103  The Committee recommends the Attorney‑General extends the Family Advocacy and Support Service pilot to include collaboration and referral pathways to specialist support services for families with additional challenges, using the Children and Family Court Advisory and Support Service model. | Not done. |
| **Recommendation 27**  The Committee recommends that the Australian Government develops a national and comprehensive professional development program for judicial officers from the family courts and from states and territory courts that preside over matters involving family violence. The Committee recommends that this program includes content on:   * the nature and dynamics of family violence; * working with vulnerable clients; * cultural competency; * trauma informed practice; * family law; and   ‘The Safe and Together Model’ for understanding the patterns of abuse and impact of family violence on children | I am unable to comment. |
| **Recommendation 28**  8.83  The Committee recommends that the Australian Government develops a national, ongoing, comprehensive, and mandatory family violence training program for family law professionals, including court staff, family consultants, Independent Children’s Lawyers, and family dispute resolution practitioners. The Committee recommends that this program includes content on:   * the nature and dynamics of family violence; * working with vulnerable clients; * cultural competency; * trauma informed practice; * the intersection of family law, child protection and family violence; and   ‘The Safe and Together Model’ for understanding the patterns of abuse and impact of family violence on children | Not done. |
| **Recommendation 29**  8.84  The Committee recommends the Australian Government undertakes an evaluation of the Addressing Violence: Education, resources and training (AVERT) family violence training program, with consideration of its content, format, uptake, reach and effectiveness. | Unable to comment |
| **Recommendation 30**  8.87  The Committee recommends that the Australian Government develops a national accreditation system with minimum standards and ongoing professional development for family consultants modelled on the existing accreditation system for family dispute resolution practitioners. This system should include a complaints mechanism for parties when family consultants do not meet the required professional standards. | Not done. |
| **Recommendation 31**  8.92  The Committee recommends that the Australian Government considers the current backlog in the federal family courts and allocates additional resources to address this situation as a matter of priority. | This has been undertaken, commencing in 2021. |
| **Recommendation 32**  9.40  The Committee recommends the Attorney‑General works to introduce ‘wrap-around’ services co-located in the federal family courts, modelled on the provision of these legal and non‑legal support services in the specialist family violence courts of the states and territories. | Not done. |
| **Recommendation 33**  9.44  The Committee recommends the Attorney‑General works to establish a systematic court referral mechanism to evidence‑based, evaluated, best practice behaviour change programs, through an expanded Family Advocacy and Support Services program, which includes systematic reporting from behaviour change program providers to advise the Court on ongoing risks to families’ safety. Further, the Committee recommends that the Attorney‑General work with state and territory counterparts to ensure adequate funding of evidence‑based, evaluated, best practice behaviour change programs to support the mechanism. | I am unable to comment. |

**The Lighthouse Project** was initially piloted in the Adelaide, Brisbane and Parramatta family law registries, and has now been expanded to include the following family law registries: Adelaide, Brisbane, Cairns, Canberra, Dandenong, Darwin, Hobart, Launceston, Melbourne, Newcastle, Parramatta, Rockhampton, Sydney, Townsville and Wollongong.

Lighthouse focuses on identification of risk factors and safety through:

1. **Risk Screening:** Parties filing an eligible Initiating Application or Response, will be asked to complete the Family DOORS Triage risk screen via a confidential and secure online platform. This has been developed specifically for the Courts and can be completed safely and conveniently from any device; computer, mobile phone or tablet. Assistance to facilitate the screening process can also be provided by the Lighthouse Team.
2. **Triage:** A dedicated, specialised team will assess and direct cases into the most appropriate case management pathway based on the level of risk. The team is made up of highly skilled Judicial Registrars, Triage Counsellors (acting in the role of Family Counsellor), and support staff with detailed knowledge in family violence and family safety risks. The team will triage matters and identify parties who may require additional support and safety measures. This may include online referrals or interviews with those most at risk.
3. **Case Management:** Those matters with the highest levels of risk will be referred to be placed on the [Evatt List](https://www.fcfcoa.gov.au/node/1236), the specialist court list developed and designed to assist those families that have been identified as being at high risk of family violence and other safety concerns. The Evatt List focuses on early information gathering and intervention from the very commencement of proceedings. The team, including Judges, Senior Judicial Registrars and Judicial Registrars, has specialised training and is experienced in working with families where high risk safety issues have been identified. Lower risk cases will be considered for a range of case management pathways, including dispute resolution, in accordance with the level of risk and the [Central Practice Direction: Family Law Case Management.](https://www.fcfcoa.gov.au/fl/pd/fam-cpd)

Family Doors triage applies in applications or responses in parenting only or parenting and property matters in Adelaide, Brisbane, Cairns, Canberra, Dandenong, Darwin, Hobart, Launceston, Melbourne, Newcastle, Parramatta, Rockhampton, Sydney, Townsville and Wollongong family law registries after the date of commencement of the Lighthouse model.

In the words of the Court:

“A link to the questionnaire together with a unique access code will be emailed to the parties. The platform for completing the questionnaire is secure and can be accessed safely and conveniently using a computer, mobile phone or tablet….

***Contacting parties for risk screening***

*Parties and their lawyers are requested to ensure that the party’s personal email address is provided to the Court in the following ways:*

* *Both represented and unrepresented parties can provide their email address when prompted in the course of uploading their Initiating Application or Response on the Commonwealth Courts Portal;*
* *Where parties are represented and have not previously provided their email address, lawyers will be contacted by the Lighthouse Team to request their client’s personal details for the purpose of risk screening via an online form.*

Please note, the email address will only be used for the purposes of risk screening to ensure litigants are emailed a direct link to the questionnaire together with a unique access code after their Court documents are accepted for filing. The Court will otherwise continue to contact the lawyer on record.

***The Evatt List***

*Where at least one party has completed the Family DOORS Triage questionnaire, returned a high risk assessment, and a clinical review by a Triage Counsellor has been completed, the matter will be referred to an Evatt Judicial Registrar who will consider whether to place the matter on the Evatt List in accordance with* [*Family Law Practice Direction – Evatt List*](https://www.fcfcoa.gov.au/node/1237)*. The Evatt List is a specialised list developed to ensure that families who are the most vulnerable are provided with appropriate resources and support to ensure their safety and wellbeing.*

*Matters which are not eligible for the Evatt List include:*

* *cases involving only financial and/or property orders*
* *child support only cases*
* *child maintenance only cases, or*
* *contravention applications.*

*When communicating with the registry about an Evatt List case, lawyers should make any requests in writing by:*

* *eFiling the request as ‘correspondence’ on the Commonwealth Courts Portal, and*
* *emailing the Court, copying in all other parties to the proceeding, confirming that the request has been eFiled.*

*When emailing the Court in an Evatt List case, it is expected that a party will:*

* *address the email to the Evatt Judicial Registrar’s case manager email and not to the Judicial Registrar directly*
* *clearly state the Court's file number, names of relevant parties and any Court dates in the subject heading*
* *provide a clear description of any attached documents in the body of the email, and*
* *copy the message to all other parties (if applicable).”*

**Evatt list**

The Court says about the Evatt list:

***Evatt list***

*The Evatt List is a specialist list developed by the Courts where a highly qualified team of Senior Judicial Registrars, Judicial Registrars, Court Child Experts and court staff, in consultation with Judges, are allocated to manage eligible cases that are considered to be high risk, through more intensive case management and resources. The Evatt List is managed in accordance with* [*Family Law Practice Direction: Evatt List*](https://www.fcfcoa.gov.au/fl/pd/fam-evatt)*.*

*The Evatt List has been created to ensure that families who are the most vulnerable are provided with resources, support and timely court events. It is a case management pathway that responds to the particular needs of the family as efficiently and effectively as possible to minimise the risk of further trauma and harm.*

In broad terms, the Evatt List case management pathway is as follows:

1. *Evatt Determination Event and Evatt First Return Event: within 5-10 business days after referral, an Evatt Judicial Registrar will review the case to determine if it is appropriate for the Evatt List and make preliminary orders in chambers. The case will be listed for its first court event, usually 6-8 weeks after the date of placing the matter on the Evatt List. The Evatt Judicial Registrar will consider any procedural requirements and identify as appropriate, the case management approach for the orders and in consideration of the needs of the case.*
2. *Interim Hearing: within 10-12 weeks, the Judge or Senior Judicial Registrar will address any urgent issues, interlocutory applications, and decide what further information and evidence needs to be gathered to progress the case to finalisation, either through settlement or a trial. This will usually include making interim orders.*
3. *Specialist Case Management: from 6-8 months, the Evatt Judicial Registrar will check on the progression of any interim orders, outcomes of any dispute resolution or conciliation conferences and identify next case management steps and opportunities for settlement prior to trial where this is safe and appropriate to do so.*
4. *Compliance and Readiness Hearing: within 10 months, the matter will be listed for a Compliance and Readiness Hearing (CRH) before a Judge. At the CRH, the Judge will make directions about the trial and provide trial dates.*
5. *Final Hearing: Within 12 months, the matter will go to trial before a Judge.*

*For more information, see the*[*Guide for parties in the Evatt List*](https://www.fcfcoa.gov.au/fl/pubs/guide-parties-evatt-list)*, or the*[*Guide for practitioners in the Evatt List*](https://www.fcfcoa.gov.au/fl/pubs/lhp-guide-practitioners)*.*

***Frequently asked questions***

***What is the Evatt List?***

*The Evatt List is a specialist court list with a highly qualified team of Judges, Senior Judicial Registrars, Judicial Registrars, Court Child Experts and court staff assigned to support high risk cases, which have serious and significant risk factors.*

*It was named after the Honourable Elizabeth Evatt AC, the first Chief Justice of the Family Court.*

*The Evatt List ensures that families are provided with appropriate support to safeguard against family violence and other associated risks. It also ensures cases are managed through the Court process as efficiently and effectively as possible, with a focus on identifying risks and early information gathering.  For more information, see the* [*Guide for parties in the Evatt List*](https://www.fcfcoa.gov.au/fl/pubs/guide-parties-evatt-list)*.*

***How is a case placed onto the Evatt List?***

*A case may be placed onto the Evatt List if:*

1. *it is an eligible proceeding filed in a family law registry*
2. *one of the parties (applicant or respondent) has completed the Family DOORS Triage questionnaire*
3. *the case has been reviewed by a Triage Counsellor, and*
4. *the Evatt Judicial Registrar has reviewed the case and determined it is appropriate for allocation to the Evatt List in accordance with* [*Family Law Practice Direction – Evatt List*](https://www.fcfcoa.gov.au/fl/pd/fam-evatt)*.*

If a case is allocated to the Evatt List, a formal Court Order will be made notifying parties generally, before the first Court date. If you do not receive a formal Court Order, your court date originally allocated and case pathway will remain the same unless otherwise advised by the Court.

***Can matters be referred for placement on the Evatt List?***

*Parties are unable to self-refer or be referred to Lighthouse for placement on the Evatt List by external support agencies or by any other means.*

***Can a party bring a support person or friend to a conference or other court appointment?***

*If a party is not legally represented, they may have a friend or support person attend a Court hearing, conference or other appointment with them. In most cases, the support person's involvement in the conference/appointment will be limited. In special circumstances, the Judge, Registrar or Court Child Expert conducting the conference/appointment may allow the support person to provide information to the Court.*

*If a party has a friend or support person with them for a court hearing, they may sit at the back of the courtroom. Please note, children and young people under 18 are not permitted in the courtroom.*

***How does the Evatt List operate?***

*A key principle of the Evatt List, is the early and front-ended proactive case management of the matter by the Evatt Judicial Registrar prior to its first listing date and interim hearing. This approach is designed to assist the Judge or Senior Judicial Registrar to make the most appropriate decision as soon as practical, based on the evidence gathered by the Evatt Judicial Registrar and parties. To support this approach, the Evatt Judicial Registrar will conduct regular chambers events to ensure compliance with orders/directions, pursue information, and liaise with Court Children’s Service as and when required.*

*All judicial officers supporting the Evatt List has specialised training and experience working with families where high risk, serious safety issues have been identified.*

*For more information, see* [*Family Law Practice Direction – Evatt List*](https://www.fcfcoa.gov.au/fl/pd/fam-evatt)*, the* [*Guide for Practitioners*](https://www.fcfcoa.gov.au/fl/pubs/lhp-guide-practitioners) *and the* [*Guide for parties in the Evatt List*](https://www.fcfcoa.gov.au/fl/pubs/guide-parties-evatt-list)*.*

***Are parties required to attend court events throughout the Evatt List?***

*Unless otherwise advised, you should make arrangements to attend all court events if your case has been placed onto the Evatt List.*

*The Evatt List has been developed with a focus on safety and supporting the individual needs of a case. You or your legal representative will be notified about attendance requirements. If you are concerned about your safety when attending court, you should contact the Court about alternative arrangements, including, for example, attendance by telephone or video.*

***Do applications need to be filed with a particular cover letter to be considered for the Evatt List?***

*There is no need for you to do anything when you file your Initiating Application or Response to be considered for the Evatt List. Cases are placed on the Evatt List in accordance with* [*Family Law Practice Direction – Evatt List*](https://www.fcfcoa.gov.au/fl/pd/fam-evatt) *and at least one party must have completed the Family DOORS Triage risk screen.*

*In order to receive an email with a link to the Family DOORS Triage questionnaire, please ensure that your personal contact details have been provided to the Courts.*

*Parties and lawyers are requested to ensure that the party’s personal email address is provided to the Court in the following ways:*

* *Both represented and unrepresented parties can provide their email address prompted in the course of uploading their Initiating Application or Response on the Commonwealth Courts Portal.*
* *Where parties are represented and have not provided their email address, lawyers will be contacted by the Lighthouse Team to obtain their client’s personal details for the purpose of the risk screening process via an online form.*

We strongly encourage you to complete the Family DOORS Triage questionnaire as soon as possible after the link is sent to you. This email will be sent shortly after you file your court documents.”

***FAMILY LAW AMENDMENT BILL 2024***

The Bill deserves a paper on its own! In short, there are a raft of proposed changes, including:

* adding a s.79(3), which codifies *Stanford,*
* bringing what are s.75(2) factors directly under a new s.79(5) (and likewise for s.90SM, of course), so that they are all in the one place,
* updating the shopping list in s.79(5) and s.75(2), to include the effect of family violence, effect of wastage, liabilities and care and housing needs of children. It is unclear how notional addbacks are to be treated.
* codifying *Kennon* for both property settlement and spousal maintenance,
* codifying *Kowaliw* and similar cases as to wastage, empowering the court to make orders for companion animals – pets- in the context of family violence-,
* codifying the duty of disclosure,
* bringing the costs provisions out of the Rules and into the Act,
* enabling a party not to have to appear on a divorce when there are children,
* LAT procedures to apply to property matters as well as parenting- so that evidence of DV can be more easily put before the court,
* regulation of children’s contact services, and
* protecting “protected confidences”- such as attending the doctor, pharmacist, hospital, sexual assault service, psychologist, psychiatrist, or family violence service.

Until the Bill is legislated, I refer you to the excellent paper by Adam Cooper delivered at the TEN Family Law Conference in 2022: *“Counting the Cost of Family Violence on Property Settlements”*, which sets out how *Kennon* is applied.

The Bill is over 100 pages.

The provisions that are relevant coercive control are these (with emphasis added by me) and with similar provisions in ss90SFand 90SM as those for ss 72, 75 and 79:

* Amend s.4(1)- by adding:

***companion animal*** means an animal kept by the parties to a marriage or either of them, or the parties to a de facto relationship or either of them, primarily for the purpose of companionship, but does not include:

1. an assistance animal within the meaning of the *Disability Discrimination Act 1992*; or
2. an animal kept as part of a business; or
3. an animal kept for agricultural purposes; or
4. an animal kept for use in laboratory tests or experiments.

* Repeal s.4AB(2) (g) [*unreasonably denying the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *the financial autonomy that he or she would otherwise have had*] and (h) [*unreasonably withholding financial support needed to meet the reasonable living expenses of the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member)*, or his or her* [*child*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s100b.html#child)*, at a time when the family* [*member*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90yd.html#member) *is entirely or predominantly dependent on the person for financial support*] and substitute with:

1. economic or financial abuse.

* Inserting a new s.4AB(2A), to give examples for s.4AB(2)(g):

(2A) For the purposes of paragraph (2)(g), examples of behaviour that might constitute economic or financial abuse of a family member include (but are not limited to) the following:

1. unreasonably denying the family member the financial autonomy that the family member would otherwise have had, such as by:
   1. forcibly controlling the family member’s money or assets, including superannuation; or
   2. sabotaging the family member’s employment or income or potential employment or income; or
   3. forcing the family member to take on a financial or legal liability, or status; or
   4. forcibly or without the family member’s knowledge, accumulating debt in the family member’s name;
2. unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or the family member’s child (including at a time when the family member is entirely or predominantly dependent on the person for financial support);
3. coercing a family member (including by use of threats, physical abuse or emotional or psychological abuse):
   1. to give or seek money, assets or other items as dowry; or
   2. to do or agree to things in connection with a practice of dowry;
   3. hiding or falsely denying things done or agreed to by the family member, including hiding or falsely denying the receipt of money, assets or other items, in connection with a practice of dowry.

* Adding to s.75(2) a new (aa): the effect of any family violence to which one party has subjected or exposed the other party, including on any of the matters mentioned elsewhere in this subsection.
* Updating the current version of s.75(2)(c) so that it will be:

(c)  the extent to which either party has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child.

* Alter s.79(1) so that any powers about property settlement are subject to the pet provision (companion animal) in the new s.79(6).
* Repeal s.79(1A) to (1C)
* Update the language in s.79(2) from *shall* to *must*.
* Insert a new s.79(3):

(3)  In considering what order (if any) should be made under this section in property settlement proceedings, the court:

(a)  is to identify:

(i) the existing legal and equitable rights and interests in any property of the parties to the marriage or either of them; and

(ii) the existing liabilities of the parties to the marriage or either of them; and

(b)  is to take into account (except for the purpose of making an order with respect to the ownership of property that is a companion animal):

(i) the considerations set out in subsection (4) (considerations relating to contributions); and

(ii)  the considerations set out in subsection (5) (considerations relating to current and future circumstances).

* In s.79(4): Omit “In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:”, substitute “For the purposes of subparagraph (3)(b)(i), the court is to take into account the following considerations, so far as they are relevant:”.
* Insert a new s.79(4)(ca):

(ca) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a) [financial], (b) [non-financial] and (c) [family];

* Repeal s.79(4)(e), which refers to s.75(2), and instead insert a new s.79(5).
* Amend s.79(4)(g) so that child support to be taken into account is what has been paid, not what “is to provide, or might be liable to provide in the future”- but see s.79(5)(s).
* Insert new s.79(4)(5)-(7) and a new s.79AA:

(5)  For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:

(a)  the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;

(b)  the age and state of health of each of the parties to the marriage;

(c)  the income, property and financial resources of each of the parties to the marriage and the physical and mental capacity of each of them for appropriate gainful employment;

(d)  the effect of any material wastage, caused intentionally or recklessly by a party to the marriage, of property or financial resources of either of the parties to the marriage or both of them;

(e)  any liabilities incurred by either of the parties to the marriage or both of them, including the nature of the liabilities and the circumstances relating to them;

(f)  the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

(g)  commitments of each of the parties to the marriage that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain;

(h)  the responsibilities of either party to the marriage to support any other person;

* 1. the eligibility of either party to the marriage for a pension, allowance or benefit under:
  2. any law of the Commonwealth, of a State or Territory or of another country; or
  3. any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;

(j)  if either party to the marriage is eligible for a pension, allowance or benefit as mentioned in paragraph (i)—the rate at which it is being paid to the party;

(k)  if the parties to the marriage have separated or divorced, a standard of living that in all the circumstances is reasonable;

(l)  the extent to which an alteration of the interests of the parties to the marriage in any property would enable a party to undertake education or establish a business or otherwise obtain an adequate income;

(m)  the effect of any proposed order on the ability of a creditor of a party to the marriage to recover the creditor’s debt, so far as that effect is relevant;

(n)  the extent to which each party to the marriage has contributed to the income, earning capacity, property and financial resources of the other party;

(o)  the duration of the marriage and the extent to which it has affected the earning capacity of each party to the marriage;

(p)  the need to protect a party to the marriage who wishes to continue that party’s role as a parent;

(q)  if either party to the marriage is cohabiting with another person—the financial circumstances relating to the cohabitation;

(r)  the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:

(i)  a party to the marriage; or

(ii)  a person who is a party to a de facto relationship with a party to the marriage; or

(iii)  the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or

(iv)  vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii);

(s)  any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage is to provide, or might be liable to provide in the future, for a child of the marriage;

(t)  the terms of any financial agreement that is binding on the parties to the marriage;

(u)  the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage;

(v)  any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Considerations relating to companion animals.

(6)  In property settlement proceedings, so far as they are with respect to property that is a companion animal, the court may order:

(a)  that only one party to the marriage, or only one person who has been joined as a party to the proceedings, is to have ownership of the companion animal; or

(b)  that the companion animal be sold.

The court may not make any other kind of order under this section with respect to the ownership of the companion animal.

Note: For ***companion animal*** , see subsection 4(1).

(7)  In considering what order (if any) should be made under this section with respect to the ownership of property that is a companion animal, the court is to take into account the following considerations, so far as they are relevant:

(a)  the circumstances in which the companion animal was acquired;

(b)  who has ownership or possession of the companion animal;

(c)  the extent to which each party cared for, and paid for the maintenance of, the companion animal;

(d)  any family violence to which one party has subjected or exposed the other party;

(e)  any history of actual or threatened cruelty or abuse by a party towards the companion animal;

(f)  any attachment by a party, or a child of the marriage, to the companion animal;

(g)  the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party;

(h)  any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

79AA   Other matters in relation to alteration of property interests.

(1)  The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

Enforcement of order after death of party

(1A)  An order made under section 79 in property settlement proceedings may, after the death of a party to the marriage, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

Adjournment of property settlement proceedings

(2)  The court may (subject to subsection (2A)) adjourn property settlement proceedings on the terms and conditions the court considers appropriate, for the period the court considers necessary to enable the parties to the marriage to consider the likely effects (if any) of an order under section 79 on the marriage or the children of the marriage.

(2A)  Subsection (2) does not apply if the parties to the marriage are:

(a)  parties to concurrent, pending or completed divorce or validity of marriage proceedings; or

(b)  parties to a marriage who have divorced under the law of an overseas country, if that divorce is recognised as valid in Australia under section 104; or

(c)  parties to a marriage that has been annulled under the law of an overseas country, if that annulment is recognised as valid in Australia under section 104; or

(d)  parties to a marriage who have been granted a legal separation under the law of an overseas country, if that legal separation is recognised as valid in Australia under section 104.

(3)  Nothing in subsection (2) limits any other power of the court to adjourn property settlement proceedings.

(4)  A party to property settlement proceedings that have been adjourned under subsection (2) may apply to the court for the hearing of the proceedings to be continued if:

(a)  the period of the adjournment has not expired; and

(b)  any of the following subparagraphs apply:

(i)  one or both of the parties to the marriage institutes divorce or validity of marriage proceedings;

(ii)  the parties to the marriage have divorced under the law of an overseas country and the divorce is recognised as valid in Australia under section 104;

(iii)  the marriage is annulled under the law of an overseas country and the annulment is recognised as valid in Australia under section 104;

(iv)  the parties to the marriage are granted a legal separation under the law of an overseas country and the legal separation is recognised as valid in Australia under section 104.

* Enabling property proceedings to be LAT proceedings, and changing the provisions of the Act so that there is a Division 4 of Part XI enabling LAT proceedings for both parenting and property proceedings.
* Codifying the duty of disclosure as to financial or property matters in new ss71B and 90RI, including obligations on practitioners.
* Codification of costs, so that s.117 is to be replaced with Part XIVA- Costs, comprising ss.114UA to 114UE.
* The protection of protected confidences under proposed ss. 102BA to 102BG. In essence, objection can be taken to the production of documents relating to medical or health records (such as hospital, GP, sexual assault service, pharmacist) if it involves a protected confidence. The Court then has a discretion to order that the document not be adduced, produced, inspected or copied. Proposed s.102BE provides:

*(1) The court may give a direction under section 102BC or 102BD in relation to evidence, or a document or part of a document, if the court is satisfied that:*

*(a) it is likely that harm would or might be caused (directly or indirectly) to the protected confider, or to a child to whom the proceedings relate, if the evidence were adduced or the document or part produced, inspected or copied; and*

*(b) the nature and extent of the harm outweighs the desirability of adducing the evidence or producing, inspecting or copying the document or part.*

*(2) For the purposes of subsection (1), harm may include, but is not limited to, the following:*

*(a) physical harm;*

*(b) psychological harm;*

*(c) mental distress;*

*(d) a detrimental effect on the other party’s capacity to care for a child;*

*(e) financial harm.*

*(3) If the direction is being made in proceedings under Part VII, the court must regard the best interests of the child as the paramount consideration.*

*(4) The court must have regard to the following matters in deciding whether to make the direction:*

*(a) in relation to the evidence, or the document or part:*

*(i) its probative value in the proceedings; and*

*(ii) its importance in the proceedings; and*

*(iii) the availability of other evidence or documents, concerning the matters to which the evidence, or the document or part, relates;*

*(b) the likely effect of adducing the evidence, or producing, inspecting or copying the document or part, including the likelihood of harm, and the nature and extent of harm, that would or might be caused:*

*(i) to the protected confider; or*

*(ii) to a child to which the proceedings relate;*

*(c) the means available to the court to limit the harm or extent of the harm likely to be caused if the evidence is adduced or the document or part produced, inspected or copied;*

*(d) whether the substance of the evidence, or of the document or part, has already been disclosed by the protected confider or any other person;*

*(e) the public interest in preserving the confidentiality of protected confidences;*

*(f) whether the protected confider opposes the disclosure of the protected confidence or any part of it;*

*(g) whether a lawyer is representing the protected confider in relation to the proceedings;*

*(h) if the protected confider is a child aged under 18—whether any of the following oppose the disclosure of the protected confidence or any part of it:*

*(i) a person who has parental responsibility (within the meaning of Part VII) for the child;*

*(ii) an independent children’s lawyer who represents the interests of the child in the proceedings.*

*(5) Subsection (4) does not limit the matters to which the court may have regard in making the direction.*

*(6) The court must give reasons for making, or deciding not to make, a direction under this* *Division.*

**Explanatory memorandum**

The explanatory memorandum commences:

“1. This Bill will primarily amend the Family Law Act 1975 (Family Law Act), with consequential amendments to the Evidence Act 1995 (Evidence Act), Federal Circuit and Family Court of Australia Act 2021 (FCFCOA Act), Federal Proceedings (Costs) Act 1981 (Federal Proceedings (Costs Act), Child Support (Registration and Collection) Act 1988 (Child Support (Registration and Collection) Act) and Child Support (Assessment) Act 1989 (Child Support (Assessment) Act). These amendments will make the family law system safer and simpler for separating couples to navigate, and ensure the property and financial aspects of relationship breakdown are resolved safely and fairly. The Bill also includes amendments to enhance the operation of Children’s Contact Services (CCS), clarify various aspects of family law and support the operation of the Federal Circuit and Family Court of Australia (FCFCOA) and the Family Court of Western Australia (FCWA).

* 1. These amendments will address recommendations from the 2017 House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry: A better family law system to support and protect those affected by family violence (Henderson Inquiry), the Australian Law Reform Commission’s 2019 Final Report No. 135: Family Law for the Future – An Inquiry into the Family Law System (ALRC Inquiry), and elements of the 2023 Government response to the Joint Select Committee on Australia’s Family Law System (JSC Inquiry) which tabled its final report in November 2021. These inquiries highlighted challenges facing the family law system, including extensive court delays, complex and confusing legislation and inadequate protection for people at risk of family violence. This Bill focuses on addressing aspects relating to family law property and financial matters in Australia.
  2. Schedule 1 of this Bill contains amendments relating to the property framework in the Family Law Act. The division of property of parties to a marriage and a de facto relationship is dealt with in Part VIII and Part VIIIAB of the Family Law Act respectively, which provide the family law courts with broad discretion to make orders that account for the diverse circumstances of each Australian family. The effective operation of Parts VIII and VIIIAB of the Family Law Act is critical to ensuring the economic consequences of relationship breakdown are resolved safely and on just and equitable terms. However, common law principles developed by the courts guide much of the exercise of discretion under Parts VIII and VIIIAB of the Family Law Act, including the process for determining a property settlement. This means that aspects of the law are unclear to users on the face of the legislation, and familiarity with relevant case law would be necessary to understand the decision-making principles a court will apply. This barrier to accessibility is particularly problematic given the high proportion of people involved in family law matters who may be self-represented litigants and/or people experiencing multiple risk factors (such as family violence, child abuse and mental health issues).
  3. This Bill will therefore amend Parts VIII and VIIIAB of the Family Law Act to codify aspects of the common law, and will provide greater clarity on the face of the law to support users, including vulnerable users, of the Family Law Act. This includes amendments setting out the approach a court is to take when resolving property matters. These provisions may serve as a useful guide for resolving property disputes outside of the family law courts.
  4. The Government considers that all forms of family violence are unacceptable and is committed to addressing the economic consequences of family violence for separated families in Australia.
  5. Family violence is a prominent issue in the community with vulnerable groups including women and First Nations women significantly affected. The Australian Bureau of Statistics’ 2021-22 Personal Safety Survey demonstrated that one in three women has experienced violence since the age of 15 years. Women are most likely to experience physical and sexual violence in the home, at the hands of a current male partner or ex‑partner. Rates of violence are higher for Aboriginal and Torres Strait Islander women and women with a disability.
  6. Family violence often does not end when a relationship ends, and there is a heightened risk that perpetrators will increase or escalate abusive behaviours against victim‑survivors during and after relationship separation. In the 2022-23 financial year: 83% of initiating applications for parenting or parenting and property related orders filed in the FCFCOA contained allegations of family violence in the mandatory notice of risk form by one or both parties to a proceeding. Research referenced by the ALRC Inquiry identified that those affected by family violence may struggle to achieve a fair division of property under the Family Law Act, and may suffer long-term financial disadvantage.[[13]](#footnote-13) Family violence may also act as a barrier to women seeking access to justice, providing a disincentive to many women to pursue financial settlements after relationship breakdown, causing further financial disadvantage for women.
  7. Experience of, and exposure to, family violence also poses significant risks to children. The 2023 Australian Child Maltreatment Study found that, of young people aged 16‑24 years, 44% had been exposed to domestic violence. This can have profound and detrimental impacts on a child’s behavioural, emotional, social, developmental and educational wellbeing. In addition to a child being exposed directly to trauma and risks to their physical and psychological safety, family violence can have a significant impact on a child’s life through indirect outcomes of the violence. These impacts can include financial insecurity and housing instability, with family violence the most common factor contributing to homelessness among women and their children.*[[14]](#footnote-14)*
  8. This Bill will amend Parts VIII and VIIIAB of the Family Law Act to clearly signal that the family law courts will consider the economic effects of family violence in property and spousal maintenance proceedings under the Family Law Act. These amendments send a strong message to the community that property settlement outcomes should recognise the effect of family violence on individuals, and on the wealth and welfare of the family, where this is relevant. The amendments make clear to the family law courts, and parties negotiating outside of court, that the economic consequences of family violence can be considered when resolving the property and financial aspects of relationship breakdown.
  9. Schedule 1 of this Bill also contains amendments which will enhance the courts’ ability to actively control and manage the conduct of property and other non-child-related proceedings, including to address family violence and ensure appropriate evidence is before the court….

13. Schedule 3 of this Bill contains amendments which will safeguard against the harmful disclosure and adducing of evidence arising from communications made in the course of professional confidential relationships (known as protected confidences). This measure recognises that perpetrators of family violence may seek to use the family law system as a vehicle to abuse a former partner, including by seeking the disclosure of an individual’s private and sensitive records. This can have significant detrimental consequences for a respondent’s wellbeing and for their willingness to seek support and treatment in future. The measure protects against misuse of sensitive information in family law proceedings where the information would have limited probative value and supports families to safely seek support from and engage with health services. The measure makes clear that, where an application is made in the course of parenting proceedings, the best interests of any child involved will be the paramount consideration.”

The explanatory memorandum continues:

1. Amend the property decision-making framework in the Family Law Act to:

* *codify the approach to decision-making in relation to a property division*
* *co-locate all the factors that may be considered by the family law courts in determining a property division*
* *codify concepts of liabilities and wastage, and clarify existing factors related to the housing needs of children to make clear their relevance to a just and equitable property division*
* *prescribe companion animals (pets) as a specific type of property to which a set of considerations may apply when the family law courts determine what order, if any, should be made in respect of the ownership of the companion animal as part of property division.*

1. Better recognise family violence in family law proceedings in the Family Law Act by:

* *accounting for family violence in the property decision-making framework, ensuring the economic impact of the family violence conduct on a party’s ability to make contributions to the relationship and on a party’s current and future considerations is considered, where relevant*
* *accounting for family violence in spousal maintenance proceedings, ensuring that when considering what order is proper for the provision of spousal maintenance, the family law courts can take into account the effect of family violence, where relevant*
* *amending the family violence definition to further identify forms of economic and financial abuse-related conduct, including dowry abuse*
* *providing that family violence is a relevant consideration when determining the ownership of a companion animal as part of property division*
* *extending the Less Adversarial Trial (LAT) procedures to property and financial matters where there are no children’s matters, providing the family law courts with additional powers to manage evidence, particularly where there may be family violence.*

Human rights framework

The explanatory memorandum refers to various international conventions, such as CEDAW and ICCPR, which is now commonplace in human rights jurisdictions (ACT, Qld, Vic) but not common elsewhere.

The explanatory memorandum says of the human rights framework:

Family violence amendments

1. Although family violence is perpetrated by and against both men and women, and the Family Law Act is accordingly gender-neutral, the majority of victim-survivors of family violence are women. Data published by the Australian Bureau of Statistics in its 2021-22 Personal Safety Survey details that 1 in 3 women has experienced violence since the age of 15. Currently, victim-survivors of family violence may struggle to achieve a fair division of property, and may suffer long-term economic disadvantage following relationship breakdown.
2. The measures in Part 1 of Schedule 1 of this Bill that seek to better recognise the economic consequences of family violence in property and spousal maintenance proceedings will assist to address the economic impacts of gender-based violence on women, following the breakdown of a marriage or de facto relationship.
3. These measures will seek to ensure the full development and advancement of women impacted by family violence (Article 3 of CEDAW), and will recognise the economic disadvantage faced by those who have been impacted by family violence, in property or spousal maintenance proceedings (Articles 2, 15, and 16 of CEDAW, and Article 26 of the ICCPR).
4. These rights are promoted by the amendments in Part 1 of Schedule 1 of this Bill, that will include additional examples of economic and financial abuse (including dowry abuse) in the definition of family violence at subsection 4AB(2) of the Family Law Act. This will make clear to users of the legislation that conduct of this nature may constitute family violence. In particular, this implements Article 2 of CEDAW to modify existing laws which constitute discrimination against women, by making clear that economic and financial abuse (including dowry abuse), may be recognised within the meaning of section 4AB of the Family Law Act, ensuring recognition of the impacts of various forms of family violence, providing women with greater equality before the law in property or spousal maintenance proceedings.
5. The measures in Part 1 of Schedule 1 of this Bill that will amend the Family Law Act to define companion animals (pets) as a specific category of property within the property decision‑making framework and prescribe considerations that apply where the ownership of a companion animal is to be determined as part of a property settlement, implement Article 16 of the CEDAW. The National Principles to Address Coercive Control in Family and Domestic Violence 2023 explicitly recognise animal abuse as a form of family violence. Accordingly, considerations such as whether there has been any family violence to which one party has subjected or exposed the other party, and whether there has been any history of actual or threatened cruelty or abuse towards the companion animal, must be considered by the family law courts when making orders about a companion animal. The amendments prescribing that family violence and cruelty or abuse towards a companion animal are relevant when determining the ownership of that companion animal promote the right for persons to be protected from gender-based discrimination in the form of family violence. Ultimately these amendments will support family violence victim‑survivors (including where a family pet was used as a tool of coercion or control) to retain the pet where this may not occur under the current framework.

Extension of Less Adversarial Trial (LAT) processes to property and other non-child‑related proceedings

1. Part 2 of Schedule 1 of this Bill will amend the Family Law Act to establish LAT processes for conducting property or other non-child-related proceedings. The amendments adapt the existing LAT processes for child-related proceedings under Division 12A, Part VII of the Family Law Act so they may apply in property or other non‑child-related proceedings with the consent of the parties or at the courts’ discretion. The amendments also relocate the existing LAT processes to a new Division within Part XI —Procedure and Evidence, reflecting their application beyond Part VII—Children matters.
2. This will support the elimination of discrimination against women by assisting their full participation in family law proceedings. This is because, this measure will support women to have evidence of the occurrence and effect of family violence, that may not currently be admitted by the family law courts, considered in property proceedings. The LAT processes will also extend to spousal maintenance applications, supporting women to have evidence of the effect of family violence considered in an application for spousal maintenance. This supports the full development and advancement of women on the same basis as men (Article 3 of CEDAW).

Protected Confidences

1. Part 5 of Schedule 3 of this Bill will amend the Family Law Act to expressly safeguard against the disclosure and adducing of evidence related to ‘protected confidences’ in family law proceedings. These amendments recognise that perpetrators of family violence may seek to use the family law system as a vehicle to abuse a former partner, including by seeking the disclosure of an individual’s private and sensitive records. This can have significant detrimental consequences for a respondent’s wellbeing and for their willingness to seek future support and treatment.
2. This measure will support victim-survivors of family violence (who are predominantly women) by providing a mechanism to prevent sensitive records being viewed by, and/or weaponised by, a former partner in the course of family law proceedings. This will assist women’s full participation in family law proceedings on the same basis as men (Article 3)…

Part 5 of Schedule 3 of this Bill provides a new power to prevent the disclosure of documents or part of a document from being adduced in family law proceedings where harm would or might result to a person confiding, or to a child to whom the proceedings relate, if the evidence were adduced or the document or part produced, inspected or copied. This applies where the nature and extent of the harm outweighs the desirability of adducing the evidence or producing, inspecting or copying the document or part.

Part 5 of Schedule 3 of this Bill promotes the best interests of children being the paramount consideration in family law matters, in accordance with Article 3(1) of the CRC. The amendments make clear that the family law courts must regard the best interests of the child as the paramount consideration if making a direction that a document not be disclosed or adduced in proceedings under Part VII child related proceedings. This focus on the best interests of the child in this Part directly promotes Article 3(1) of the CRC.

Family violence amendments

The measures in Part 1 of Schedule 1 of this Bill that enable the effect of family violence, to which one party has subjected or exposed the other party, to be considered by the family law courts as part of determining a property settlement or ordering spousal maintenance will promote the right of children to be protected from family violence in Article 19(1) of the CRC. Family violence to which one party has exposed another can include violence by one party that has affected the other party, but that they were not the direct target of, such as family violence against a child. This right is promoted because these measures recognise that family violence against a child is family violence which has an impact on the wealth and welfare of the family and may be relevant in determining the just and equitable distribution of property following relationship breakdown…

Family violence in property and spousal maintenance proceedings

1. The measures in Part 1 of Schedule 1 of this Bill that recognise the economic consequences of family violence in property and spousal maintenance proceedings will support victim-survivors of family violence to achieve a fair division of property after separation, acknowledging the long-term economic and financial disadvantage victim‑survivors of family violence frequently face following relationship breakdown. These measures promote the rights of parties, and their dependent children, to an adequate standard of living following separation. …

54. The measures in Part 2 of Schedule 1 of this Bill that will establish LAT processes for conducting property or other non-child-related proceedings promote the right to a fair hearing for victim-survivors of family violence. They do so by ensuring that relevant evidence of family violence that may be inadmissible under the technical rules of evidence provided in the Evidence Act, can be considered by the family law courts in property and spousal maintenance proceedings, in certain circumstances (at the courts’ discretion or with the consent of the parties). This promotes the rights of victim‑survivors of family violence to a fair hearing by ensuring all relevant evidence can be considered by the family law courts when determining just and equitable property settlements, or when considering what order would be proper in relation to spousal maintenance.

1. The LAT measure will not limit the right to a fair hearing for those who are alleged to have engaged in conduct that is family violence. This is because, the extension of the LAT processes to property and non-child-related proceedings will not disadvantage one party over the other – as is the current approach that applies in child-related proceedings, both parties will have a reasonable opportunity to present their case. Further, a judicial officer will have discretion about how and what type of evidence of family violence is brought before the court to support the determination of a just and equitable outcome in the property proceedings, and to determine what order is proper in spousal maintenance proceedings. This may include not accepting or giving little weight to allegations of family violence conduct, if appropriate, having regard to the nature and quality of the evidence before the family law courts.

Protected Confidences

1. Parties to family law proceedings can experience harm if sensitive personal information, such as medical and counselling records, or records from specialist family violence or sexual assault services, are made available to the other party or adduced as evidence. Part 5 of Schedule 3 of this Bill creates a new power for courts to make directions preventing the disclosure and adducing of ‘protected confidences’ evidence in circumstances where it is likely that harm would or might be caused to the protected confider, or to a child to whom the proceedings relate.
2. The measure may be considered as limiting the right to a fair trial and a fair hearing as, where a direction is made regarding the evidence after due consideration by a court, it will prevent access to information relevant to proceedings which may be relied upon as evidence. However, this is a reasonable and justifiable limitation due to the need to protect against harm to persons in family law proceedings, including, importantly, children subject to those proceedings.
3. Further, in determining whether to make a direction, the court must have regard to a number of factors, including the probative value of the evidence, the importance of the evidence to the proceedings, and whether there are options available to it to limit the harm that might be caused by making the evidence available in proceedings. A court will also be required to give reasons for its decision. The compulsory nature of these considerations ensures that due weight will be given to the value of the evidence in the proceedings, therefore balancing this limitation with the right to a fair trial and fair hearing.
4. Preventing access to protected confidences evidence may, in some cases, promote the right to a fair trial and a fair hearing by preventing the unnecessary, unmerited or unjustified requests to access sensitive information and attempts to misuse these documents in proceedings. This includes by encouraging parties to resolve their matter through the family law system, without fear that their sensitive personal communications will be exposed to a former partner. This measure therefore promotes the right to a fair trial and a fair hearing, by encouraging parties to access the justice system where this is necessary.

The intention is that the effect of family violence will be considered more commonly in property cases than now:

1. As noted above, family violence is a form of gendered violence that overwhelmingly impacts women, and is therefore discriminatory towards women in violation of Article 26 of the ICCPR. Currently, parties seeking recognition of family violence in property proceedings are required to make their case based upon principles established in case law.*[[15]](#footnote-15)* To do so, parties must have awareness of what these case law principles are and whether their circumstances would meet the threshold that the case law establishes. This means that family violence is considered in fewer cases than it is likely to be relevant, and that family violence victim-survivors (who are disproportionately women) struggle to achieve a fair property settlement and suffer long term economic disadvantage.
2. The measures in Part 1 of Schedule 1 of this Bill that enable the effect of family violence to be considered where relevant by the family law courts as part of determining a property settlement or ordering spousal maintenance, implement the right to an effective remedy for women who are victim-survivors of this discriminatory form of gendered violence. This is because these amendments will ensure property settlement or spousal maintenance orders of the family law courts, or property settlements or spousal maintenance payments negotiated outside of court, take into account the economic and financial consequences of family violence on the wealth and welfare of the family, where this is relevant…

94. The measures in Part 1 of Schedule 1 of this Bill that establish the relevance of the effects of family violence in property and spousal maintenance proceedings implement Article 16(1) of the CRPD and Article 20(2) of the ICCPR. It is acknowledged that women are most likely to experience physical and sexual violence in the home, at the hands of a current or former male partner. Rates of violence are higher for some women, including First Nations women and women with disabilities. These measures that apply to all victim-survivors, including persons with disabilities who suffer higher rates of family violence, will assist to protect persons from exploitation, violence and abuse, including gender-based exploitation, violence and abuse, by assisting to ensure the impact of family violence is taken into account, where relevant. ..

1. The measures in Part 1 of Schedule 1 of the Bill that establish a new framework in the Family Law Act for determining ownership of companion animals (pets) following relationship breakdown implement Article 16(1) of the CRPD. Assistance animals that are kept by a party to a marriage or a de facto relationship to provide support to a person with a disability will not be considered a companion animal. This will ensure the assistance animal cannot be the subject of a dispute under the new framework for making orders about companion animals in the Family Law Act.

Economic or financial abuse

The explanatory memorandum says:

* 1. Adding ‘economic or financial abuse’ signals to family law users and professionals this is a form of family violence. The terminology ‘economic or financial abuse’ captures a broad range of conduct and reflects that there are differing views and understandings about the scope of behaviour captured by ‘economic abuse’ and ‘financial abuse.’

1. These changes are explained at Item 3. The effect of the amendments is to show that behaviour involving ‘economic or financial abuse’ may be family violence, and therefore may be considered in a property settlement or spousal maintenance matter.
2. These amendments and the amendments in Item 3 provide guidance only. Whether certain behaviour meets the definition of family violence under subsection 4AB(1) is determined by the family law courts on a case-by-case basis. The amendments do not alter the substantive definition of family violence under subsection 4AB(1).

Unreasonably withholding financial support

* 1. New paragraph 4AB(2A)(b) explains that the unreasonable withholding of financial support that is needed to meet the reasonable living expenses of the family member, or the family member’s child might constitute economic or financial abuse. This could include the persistent non-payment of child support. The example has been relocated from old paragraph 4AB(2)(h) with minor updates to broaden the scope of its applicability beyond circumstances of a financially dependent relationship.
  2. The old example described unreasonably withholding financial support for living expenses where the family member or their child was entirely or predominantly dependent on the person for financial support. These circumstances continue to be relevant to this example, however it is not necessary that there be financial dependency. This expansion reflects that economic or financial dependency is not always a relevant factor in the context of the dynamics of family violence, and that behaviour to withhold financial support may occur regardless.

Dowry abuse

* 1. New paragraphs 4AB(2A)(c) and (d) describe dowry abuse type behaviour as behaviour that might constitute ‘economic or financial abuse.’ Both examples are broadly framed to reflect that dowry practices differ across cultures and can occur before, during or after a marriage. New subparagraphs 4AB(2A)(c)(i) and (ii) describe behaviour where a family member is coerced to give or seek money, assets or other items as dowry, or coerced to do or agree to things in connection with a practice of dowry. This example reflects the broad range of things or actions that may form a dowry, or that could be connected to a particular cultural practice of dowry. The framing reflects that dowry abuse may extend to coercing the victim to seek things, for example from extended family, as dowry or additional dowry.
  2. New paragraph 4AB(2A)(d) provides that dowry abuse includes the circumstance where a person hides or falsely denies that money, assets, other items or things given, done or agreed to were in connection with a practice of dowry. In the context of the amendments at Items 6, 19, 24, 26, 38 and 43 in this Bill, which expressly provide for the family law courts to consider the effect of family violence as a relevant factor in determining a property division or spousal maintenance matter, this example highlights the relevance of hidden or denied dowry in the context of identifying property.
  3. New paragraphs 4AB(2A)(c) and (d) and the other amendments in this Bill establish the effect of family violence as a factor relevant to determining property settlement and spousal maintenance matters and address disadvantages experienced by victims of dowry abuse in these matters. The Senate Legal and Constitutional Affairs References Committee report: Practice of dowry and the incidence of dowry abuse in Australia (Recommendation 3) recommended the Government consider dowry abuse in respect to property settlements. These amendments signal to victims of dowry abuse, family law professionals and the community, that this behaviour may constitute family violence and be relevant to the assessment of each party’s contributions and/or current and future circumstances as part of determining a property settlement, and/or relevant to determining the proper provision of spousal maintenance.

1. It is intended that, consistent with existing jurisprudence, the new family violence factor will be considered together with other factors in the existing non-hierarchical list of matters in subsection 75(2) of the Family Law Act. It is also intended that if family violence had an effect on any of the existing factors in subsection 75(2), for example, family violence impacted the state of health of a party under paragraph 75(2)(a), the family law courts can take that into account as well.
2. The purpose of new paragraph 75(2)(aa) is not for the family law courts to punish or order compensation for family violence in spousal maintenance proceedings. Rather, the paragraph permits the family law courts to take into account the economic effect of family violence when considering what (if any) order is proper for the provision of maintenance of a party to the marriage.
3. For the avoidance of doubt, the same family violence conduct might be relevant to an application of spousal maintenance, and might also be relevant in property proceedings, to either or both of an assessment of contributions under new paragraph 79(4)(ca) (at Item 19) and current and future circumstances under new paragraph 79(5)(a) (at Item 24). For example, there may be cases where the effect of the same family violence conduct or course of family violence conduct is argued to have impacted both a party’s contributions under new paragraph 79(4)(ca) and the party’s current and future circumstances under new paragraph 79(5)(a). That party may also contend the same family violence conduct or course of family violence conduct is relevant to the family law courts’ consideration of what (if any) order is proper for the provision of spousal maintenance of a party to the marriage under new paragraph 75(2)(aa). It is intended the family law courts would have broad discretion to take into account the economic effect of family violence wherever this is relevant in the particular circumstances of the case, to ensure just and equitable outcomes in property settlement proceedings, and as the family law courts consider what order may be proper for the provision of maintenance.

There appears no provision about **notional addbacks**. It is unclear whether these will be taken into account following the changes. The explanatory memorandum says:

1. **‘Liabilities’** is given its ordinary meaning and what is a liability held by both parties, or one of them, is to be determined according to the particular circumstances of the case. For example, property of parties, or one party, could include real property (a house), superannuation, businesses, vehicles, furniture and personal effects; liabilities of parties, or one party, could include loans, credit cards, debts owed to the Australian Taxation Office and informal loans made by family and friends.

New s.79(4)(ca)

The explanatory memorandum says:

1. This Item inserts new paragraph 79(4)(ca) which is a new family violence factor that the family law courts may consider as part of the assessment of contributions. This factor requires the family law courts to consider, where relevant in the circumstances of the case, the economic impact of family violence on the respective contributions of the parties to the marriage made under existing paragraphs 79(4)(a) (direct and indirect financial contributions), 79(4)(b) (non‑financial contributions), and 79(4)(c) (contributions to the welfare of the family). New paragraph 79(4)(ca) will provide guidance for Family Law Act users, including those negotiating their own property settlements outside of court, that the law can, and does, take into account where relevant, the economic impact of family violence on the respective contributions of the parties to the marriage made under existing paragraphs 79(4)(a) (direct and indirect financial contributions), 79(4)(b) (non-financial contributions), and 79(4)(c) (contributions to the welfare of the family).
2. This Item implements Recommendation 13 of the Henderson Inquiry, to enable the economic impact of family violence be taken into account in the courts’ assessment of both parties’ contributions, and Recommendation 23 of the JSC Inquiry, to better reflect the impact of family violence on property settlements.
3. ‘Family violence’ for the purposes of new paragraph 79(4)(ca) means family violence as defined in section 4AB of the Family Law Act.
4. New paragraph 79(4)(ca) provides family violence will be relevant to an assessment of contributions, where both:

* *the family violence conduct, is conduct that one party to the marriage subjected or exposed the other party to the marriage to, limiting the relevant family violence conduct to that undertaken by one party to the marriage, and not family violence conduct undertaken by third parties. Subjected or exposed is intended to capture both family violence conduct done directly by one party to the other party, and also family violence conduct done by one party that has affected the other party, but that they were not the direct target of. For example, this would capture violence by one party against a member of the family as defined in subsection 4(1AB) (for example, a child of the parties) that the other party witnessed.*
* *that family violence impacted the ability of a party to make the kinds of contributions referred to in existing paragraphs 79(4)(a), (b) and (c). A party must demonstrate a connection between the family violence conduct and its effect on a party’s ability to make a contribution under paragraphs 79(4)(a), (b) or (c).*

1. The new factor provides the family law courts with broad discretion to consider the effect of any family violence on a party’s ability to make direct and indirect financial and non‑financial contributions, and contributions to the welfare of the family. Family violence might affect a party’s ability to make contributions, if for example, a party was unable to work, or unable to work as often because of the impact of the family violence they were exposed or subjected to by the other party. Another example may be where a party was unable, or was limited in their ability, to care for children of the marriage because they were subjected or exposed to family violence by the other party.
2. The new factor provides an express basis for the family law courts to consider the economic impact of family violence as part of the assessment of contributions. This recognises the prevalence of family violence in Australian society and the economic impact of family violence on the wealth and welfare of the family. The purpose of new paragraph 79(4)(ca) is not for the family law courts to punish or order compensation for family violence. Consistent with existing jurisprudence relating to the assessment of contributions, new paragraph 79(4)(ca) permits the family law courts to consider the effect of family violence as part of a holistic assessment of the respective contributions of the parties.
3. For the avoidance of doubt, the same family violence conduct might be relevant to an assessment of contributions under new paragraph 79(4)(ca), and might also be relevant to an assessment of a party’s current and future circumstances under new paragraph 79(5)(a). It might also be relevant to an application for spousal maintenance under new paragraph 75(2)(aa). It is intended the family law courts would have broad discretion to take into account the economic effect of family violence where relevant, to ensure just and equitable outcomes in property settlement proceedings.

Feeling overwhelmed? That’s not all. The explanatory memorandum says of new s.79(5)(a):

1. New paragraph 79(5)(a) permits the family law courts to take into account the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, when conducting a holistic assessment of the current and future circumstances of the parties. It is intended that the family law courts have broad discretion to consider, where relevant, the economic impact of family violence on the current and future circumstances of the parties. For example, the family law courts could consider the cost for ongoing counselling due to family violence conduct that one of the parties to the marriage subjected the other.
2. New paragraph 79(5)(a) will also provide guidance for Family Law Act users, including those negotiating their own property settlements outside of court, that the law can, and does, take into account the economic impact of family violence on the current demonstrate a connection between the conduct and its effect on a party’s current and future circumstances.
3. New paragraph 79(5)(a) provides an express basis for the family law courts to consider the economic impact of family violence as part of the assessment of current and future circumstances. This recognises the prevalence of family violence in Australian society and the economic impact of family violence on the wealth and welfare of the family. The purpose of new paragraph 79(5)(a) is not for the family law courts to punish or order compensation for family violence.
4. Under new paragraph 79(5)(a), the effect of family violence can also be considered in so far as it is relevant to any other matters listed in subsection 79(5). For example, family violence might have had an effect on the state of health of a party to the marriage under paragraph 79(5)(b), and might have also had an effect on the physical and mental capacity of a party for gainful employment under paragraph 79(5)(c).
5. For the avoidance of doubt, the same family violence conduct might be relevant to an assessment of contributions under new paragraph 79(4)(ca), and might also be relevant to an assessment of a party’s current and future circumstances under paragraph 79(5)(a). It might also be relevant to an application for spousal maintenance under new paragraph 75(2)(aa). It is intended that the family law courts have broad discretion to consider the economic effect of family violence in property settlement proceedings wherever this is relevant in the particular circumstances of the case, to ensure just and equitable outcomes in property settlement proceedings.
6. and future circumstances of the parties, where this is relevant to the circumstances of the case.
7. New paragraph 79(5)(a) provides family violence will only be relevant to an assessment of current and future circumstances if a party was subjected or exposed to family violence by the other party, and that family violence had an effect on the current and future circumstances of the party who was subjected or exposed to that family violence. For family violence to be relevant, a party must

Companion animals

The explanatory memorandum says:

1.A ‘companion animal’ is an animal kept by the parties to a marriage or either of them, or the parties to a de facto relationship or either of them, primarily for the purpose of companionship. ‘Companionship’ is not defined in the Family Law Act and is to be given its ordinary meaning. Any species of animal has the potential be a companion animal for the purposes of this definition. An animal can only be a ‘companion animal’ if it is owned by the parties to a marriage or de facto relationship or either of them. Pets owned by third parties who are not parties to the relationship will not be within this new definition.

2.Some classes of animals are excluded from this definition. This includes animals that are assistance animals within the meaning of the Disability Discrimination Act, animals kept as part of a business, animals kept for agricultural purposes, or animals kept for use in laboratory tests or experiments. ‘Assistance animal’ is defined in subsection 9(2) of the Disability Discrimination Act. ‘Business’, ‘agricultural purposes’, and ‘laboratory tests or experiments’ are not defined in the Family Law Act and are to be given their ordinary meaning. An ‘animal kept as part of a business’ might include a horse kept as part of an animal breeding business. An animal ‘kept for agricultural purposes’ might include a cow kept on a dairy farm. An animal ‘kept for use in laboratory tests or experiments’ might include mice kept for the purposes of medical research by a laboratory. Whether an animal is an assistance animal or an animal kept for one of the other purposes in paragraphs (b) to (d) of the new definition, will be a question of fact for the family law courts to determine. If the family law courts determine that an animal is an assistance animal, or an animal kept for business or agricultural purposes, or for use in laboratory tests or experiments, the new framework for making orders about companion animals in new subsections 79(6) and (7), and subsections 90SM(6) and (7) of the Family Law Act would not apply.

3. An animal might be kept for companionship purposes, and for other purposes. For example, a sheepdog might be used as part of a family business to herd sheep on the family farm, and might also be a source of companionship for a family member. It is for the family law courts to determine if the animal is a type of animal within the meaning of paragraphs (a) to (d) of the new definition, and if so, it cannot be a companion animal for the purposes of the Family Law Act. Animals that have a high economic value and are not used for companionship would be dealt with by the family law courts in the same way as any other type of property in the property pool.

4.Consistent with the current approach, the family law courts may conclude that it would not be just and equitable to make a property settlement order under sections 79 or 90SM of the Family Law Act at all. For example, if orders are sought under Parts VIII or VIIIAB of the Family Law Act in relation to an assistance animal kept by one of the parties to the marriage or de facto relationship, the family law courts can conclude it would not be just and equitable to make an order about that assistance animal. The animal would be retained by the party to the marriage or de facto relationship who keeps it as an assistance animal.

5.For the avoidance of doubt, companion animals are to be treated as property in proceedings under the Family Law Act. If an animal is a companion animal, the family law courts will be required to consider the new list of prescribed considerations for determining ownership of a companion animal in new subsections 79(7) and 90SM(7) (at Items 24 and 43) of the Family Law Act. The family law courts can only make an order that only one party to proceedings under Part VIII or VIIIAB of the Family Law Act owns the companion animal, or an order that the companion animal be sold. Consistent with the current approach, the family law courts cannot make orders about a companion animal under Part VII of the Family Law Act.

The explanatory memorandum says this of proposed s.79(6) and (7):

**Considerations relating to companion animals – subsections 79(6) and 79(7)**

1. This Item includes a heading, ‘Considerations relating to companion animals’ before new subsection 79(6), to assist the readability of the provision.
2. New subsection 79(6) sets out the orders that the family law courts can make in proceedings under section 79 of the Family Law Act in relation to companion animals. The family law courts can only make the types of orders (including orders by consent) outlined in new subsection 79(6). The family law courts cannot make any other type of order under section 79 with respect to ownership of a companion animal.
3. New paragraph 79(6)(a) provides that the family law courts can only order that one party to the proceedings owns the companion animal. For the avoidance of doubt, the family law courts cannot make an order for more than one person to have ownership of a companion animal, nor for parties to share possession of a companion animal. This is consistent with the duty of the court in section 81 of the Family Law Act to, so far as practicable, make orders that will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.
4. New paragraph 79(6)(b) provides that the family law courts can order that a companion animal be sold. If, after considering the matters in new subsection 79(7), the court determines it would not be just and equitable to order that any party to the proceeding owns the companion animal, the court may order that a companion animal be sold.
5. For the avoidance of doubt, the family law courts are not obligated to make an order about a companion animal under section 79 of the Family Law Act. As noted in relation to new subsection 79(3), it is open to the family law courts to conclude that it would not be just and equitable to make an order about a companion animal in property proceedings, at all.
6. For the avoidance of doubt, the family law courts will retain jurisdiction under section 79 to make orders about animals that are the property of parties to the proceedings, but that do not satisfy the definition of companion animals. When considering what order, if any, to make about these types of animals, the court will take into account existing considerations relating to contributions in subsection 79(4), and considerations relating to current and future circumstances in new subsection 79(5), to ensure just and equitable outcomes.
7. New subsection 79(7) sets out the matters the court is to take into account when considering what order, if any, should be made with respect to property that is a companion animal. The matters in this list are the only matters that the court can have regard. The court is not to have regard to existing considerations relating to contributions in subsection 79(4), or considerations relating to current and future circumstances in new subsection 79(5) inserted by this Item.
8. The list of matters in new subsection 79(7) is non‑hierarchical. It is intended that the family law courts holistically assess these matters to determine what order, if any, should be made in relation to the companion animal. For the avoidance of doubt, the family law courts are not obligated to assess every matter listed in subsection 79(7) when determining ownership of a companion animal; the family law courts need only have regard to those matters that are relevant in the particular circumstances of the case.
9. New paragraph 79(7)(a) permits the family law courts to consider the circumstances in which the companion animal was acquired. This may include but is not limited to, if the animal was purchased, who purchased the companion animal and the purchase price, or if the animal was a gift, to whom the companion animal was gifted.
10. New paragraph 79(7)(b) permits the family law courts to consider who has ownership or possession of the companion animal. ‘Ownership’ and ‘possession’ are not defined in the Family Law Act and are to be given their ordinary meaning. Relevant to the questions of ownership and possession this may include, but is not limited to, whether the companion animal is registered under a state or territory law, the circumstances of the registration and in whose name the animal is registered, and with whom the companion animal has resided following separation.
11. New paragraph 79(7)(c) permits the family law courts to consider the extent to which each party cared for, and paid for the maintenance of, the companion animal. This is intended to permit consideration of financial and non-financial contributions that contributed to the conservation and improvement of the companion animal. This may include, but is not limited to, who paid expenses related to the companion animal such as food and veterinary bills, who cared for the animal including through enrichment activities such as walking the companion animal, training the companion animal, and general maintenance and grooming of the companion animal.
12. New paragraph 79(7)(d) permits the family law courts to consider any family violence to which one party has subjected or exposed the other party. Family violence means family violence as defined in section 4AB of the Family Law Act. The definition of family violence includes actions such as intentionally causing injury to an animal. This factor will clearly signal to the family law courts and parties negotiating outside of court, that family violence is relevant to and must be considered when determining ownership of the family pet following relationship breakdown. This is consistent with the 2023 National Principles to Address Coercive Control in Family and Domestic Violence, which acknowledge that animal abuse may be part of coercive and controlling conduct, particularly when a victim‑survivor has a strong emotional connection to a pet or when the pet has a service or support role for the person. This paragraph is intended to support victim-survivors of family violence by prescribing that family violence is a relevant consideration when the family law courts are making an order about the ownership of a companion animal in property proceedings.
13. New paragraph 79(7)(e) permits the family law courts to consider any history of actual or threatened cruelty or abuse by a party towards the companion animal. ‘Cruelty’ and ‘abuse’ towards an animal are not defined in the Family Law Act and are to be given their ordinary meaning. Relevant types of conduct might include, but is not limited to, threats of or actual sexual or physical abuse towards the companion animal, threats towards causing the death of a companion animal, and neglect of the companion animal including not providing or preventing others from providing essential care such as food, water, shelter, grooming and veterinary care.
14. New paragraph 79(7)(f) permits the family law courts to consider the attachment by a party to the marriage, or a child of the marriage to the companion animal. This acknowledges that attachment between members of the family and the family pet are emotionally significant. It is not intended that the family law courts can consider the significance of the attachment to the pet. In circumstances of family violence, it will permit the family law courts to consider the attachment of a victim‑survivor to the family pet. This acknowledges that for victim-survivors of family violence, companion animals can be an important source of comfort, friendship and support.
15. New paragraph 79(7)(g) permits the family law courts to consider the demonstrated ability of each party to care for and maintain the companion animal in the future, without support or involvement from the other party. This includes, but is not limited to, the history of financial contribution to or care of a companion animal, and whether either party can financially support and care for the companion animal in the future. Requiring the family law courts to consider whether a party can care and maintain the companion animal without the involvement of the other party is consistent with the duty of the court in section 81 of the Family Law Act to finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.
16. New paragraph 79(7)(h) permits the family law courts to consider any other fact or circumstance the justice of the case requires to be taken into account. This will ensure the family law courts have broad discretion to consider all matters that might be relevant to determining ownership of a pet in property proceedings under section 79 of the Family Law Act, to ensure just and equitable outcomes in the particular circumstances of the case.

If and when the Bill commences, it is intended to apply to all matters in the system, except those where the final hearing has already commenced.

**AND THE MESSAGE?**

* 1. *Kennon* cases are hard to bring. They can consume a large amount of resources, re-traumatise clients who have been through the conduct already, and have to relive it, and for relatively little gain. The effort can be disproportionate to the hoped for outcome.
  2. If enacted, Parliament is saying that while *Kennon* is codified, it is expecting that family violence impacts now and into the future will be a specific factor to take into account. Presumably, Parliament wants a higher weighting given to those who have been economically impacted by the conduct.
  3. *Kennon* does not require an economic impact, but an impact on contributions, which may be both economic and non-economic. Parliament is however saying economic impact only.
  4. The provision about companion animals gives a useful shopping list of matters to be taken into account, including family violence.
  5. It is likely that significant resources will be spent seeking to look at and defending protected confidences, in both property and parenting matters. The Bill is clear that the person confiding can consent to disclosure. The measure is put forward to protect women.
  6. The significance of attendances on hospitals, GP’s and psychiatrists, for example, may not be obvious at the beginning of a matter, but may become obvious at the end- by which stage there might be a ruling to prevent access to the material or its use. Hopefully, carte blanche access through sexual assault and domestic violence counselling records will no longer be the norm.

**Potential misuse of protected confidences**

However, a determined litigant, seeking to hide fraud or bad behaviour, can put up significant barriers to wear down the other side, and hide the truth.

I will give two examples of cases I have had, to illustrate the point.

In *Wickham & Toledano* (No 2) [2022] FedCFamC1 32, the dispute was between my clients, the sister and sister-in-law of the mother (who died from childbirth), called Ms D by the court, and the mother’s former partner, another woman. It was ultimately a dispute about whether the respondent was a parent under s.60H(1) or someone concerned with the care, welfare and development of the children under s.65C(c). At the centre of the dispute was whether or not the mother and the respondent had been in a de facto relationship on the day of the implantation of the embryos into the mother- and the nature and extent of domestic violence by the respondent to the mother. My clients were successful.

In the words of Carew J:

*“25. In my view, it is rarely necessary to make general findings of credit about a witness. In my experience, most people do their best to tell the truth and inconsistencies in their evidence more often arise out of a different perception or memory of something rather than an intention to lie.*

1. *This case is different. The respondent was such an unimpressive witness who took any opportunity to obfuscate, evade answering questions, and contradict her own evidence that I place very little weight on her evidence where it is not corroborated by an independent source.*
2. *By way of example:*

*(a) The respondent contended that Ms D did not believe the respondent’s admitted lies about having brain cancer. I completely reject that contention. I have no doubt, after listening to the recording of the conversation between the respondent and Ms D on 2 December 2020, that Ms D believed the web of lies spun by the respondent and agreed to attend couples counselling with the respondent because of the respondent’s manipulative behaviour in causing Ms D to feel sorry for her;*

*(b) The respondent denied that her lies were intended to be manipulative. I am in no doubt that manipulation was most certainly was her intention. She wanted Ms D to remain in a relationship with her at the times she told the lies and used the most manipulative means possible to pressure Ms D to return to her;*

*(c) The respondent contended that her lies were spun out of a concern for Ms D and the unborn children. I completely reject that contention. Her concern was purely self-interest. How the respondent could maintain that untruth after the recorded conversations were played during the hearing beggars belief;*

*(d) The respondent sought to contradict her own affidavit when she realised her reference to cohabitation and living together in different contexts did not help her case;*

*(e) The respondent contended that the lies about her serious health condition were not discussed during any of their conversations after December 2020 and in particular during their weekends together in early 2021. I reject that contention. It is completely unbelievable that Ms D would not have enquired about the respondent’s health. Indeed she wrote to a friend on 28 February 2021 stating that the respondent had just finished 12 weeks chemotherapy and radiation. The only likely source for that lie was the respondent.*

28. My findings are made notwithstanding that there is only one surviving party to the relationship between Ms D and the respondent. The applicants have done their best to piece together the relevant evidence from information obtained from documents created by Ms D, credit card statements, toll records relating to travel, emails, text messages and social media entries. Obviously, information sourced from Ms D cannot be tested under cross-examination. That would generally make it difficult to place much weight on such evidence where it is contentious. However, given my findings in relation to the respondent’s credibility I feel less constrained than I might otherwise have been in accepting evidence emanating from Ms D’s untested evidence.”

At the commencement of the matter, the material about the cancer and communications between the parties was sparse. There was a Word document by the deceased with a brief chronology of the relationship with the respondent. The mother’s mobile had been lost, presumably taken by the respondent.

Among the notes was an assertion that on a particular day, shortly after separation, the respondent told the mother that the respondent had surgery at the X public hospital for cancer on her nose. There was a recording, a few days later, in which the respondent called the mother, pleading to have counselling, and another go, while, she said, she was driving with her nose bleeding profusely as an after effect of the surgery. At the beginning of the call, the mother was quite sceptical, but by the end, when the respondent said she was outside the Y public hospital, the mother pleaded with the respondent to go into the emergency department immediately- and get off the call.

The call was a lie. The respondent sat in her lounge room when she alleged she was driving. She used a comb to imitate the sound of the car’s indicator. Her expressed frustration about the state of traffic was all a lie. In the words of Carew J:

“On 2 December 2020 the respondent told Ms D that she had brain cancer and pleaded with her to resume the relationship. The recorded conversation between Ms D and the respondent was an extraordinarily deceitful exercise by the respondent. She pretended to be driving her car while bleeding and adjusted her voice to indicate her failing condition. She was relentless in her manipulation of Ms D and kept up the pressure until Ms D agreed to attend couples counselling with her. They attended counselling on 4 December 2020.”

The first subpoena that had been issued about the “cancer” to X public hospital for the respondent’s medical records. The respondent was excoriating in her criticism of delving into her private affairs- and took objection. The hospital said it had no records, but try X private hospital, down the road.

A second subpoena then issued- to X private hospital. It, too, had no records. Again, the respondent objected to any material being produced, on the grounds of privacy, relevance, and accusing my clients of a fishing expedition.

Then the recording and some text messages turned up. The mother had saved these to her work computer. The mother’s employer turned over this material to my clients. A subpoena then issued for the Y public hospital, being the one named in the recording. It revealed no evidence of cancer. However, the respondent had sinus issues caused by a nose operation some years before, and had gone back, time and again, about that. She had also been admitted to Z and AA public hospitals for mental health issues to do with bipolar personality disorder, and violent relationships where she had been the victim or perpetrator (or both). Again, the respondent objected, or sought to delay the release of documents- using the procedure for her being able to inspect before the documents were available to inspect.

Those documents ultimately revealed who her GP was, whose file was produced under subpoena- and revealed that the respondent saw her GP often once a week- but never for cancer, and sometimes for mental health issues.

It took particular persistence of my clients to keep going, following intransigent opposition from the respondent to her medical records being revealed.

The records ultimately revealed the respondent’s deceit. The rest, they say, is history. If that case were repeated under this regime, and access was declined or limited, it is unclear whether the lie would have been exposed. The respondent had minimised the domestic violence in the relationship with the mother, and said in any event that the domestic violence had been mutual. Both were lies.

In 2019, I was the independent children’s lawyer in an unreported matter before Judge Demack. The case concerned a baby, aged 18 months. The mother agreed with the brother of a friend of hers, and the brother’s male partner, to be a traditional surrogate for them. They did not have lawyers or counsellors.

Twice on a Sunday the “father” attended at her home and supplied her with sperm for an at home insemination. She said that she had self-inseminated. At some later stage, the mother had undergone the Nuchal test at hospital. This test is undertaken at 12 weeks gestation, to determine if the pregnancy is viable.

The mother called the man afterwards, in shock, and told him that contrary to what she had believed, he was not the father of the child. The father, she said, was a man she had sex with from a one night stand some weeks before. What should be done? Horrified, the two men agreed that they would nevertheless take the child anyway. They were committed to that child.

Two weeks before the child was born, the mother demanded of the “father” that his sister have nothing to do with the child. When he refused, pointing out that he and his partner would be the parents, and the sister would not, but she would play the role of aunt, the mother called the whole deal off, found a couple, husband and wife, on the internet- and handed the child to them upon birth.

The mother and the couple agreed that the parties on the birth certificate as the parents be the mother and the husband. This was to enable the wife to subsequently bring a step-parent adoption application, so that husband and wife were reflected as the parents. It seems that the idea of the husband being on the birth register was the mother’s idea.

The wife later moved states, and stayed with the mother, the mother’s other children, and the wife and her three children, including this child. This was to facilitate the anticipated step-parent adoption application. The father remained behind, due to work requirements. The wife, isolated and without social support, had a breakdown resulting in hospitalisation. She asked the mother to care for the children. The mother agreed to do so.

Upon the wife’s discharge from hospital, the mother returned the other two children, but did not return the child.

Ultimately, there was a dispute between that couple and the mother about where the child was to live.

During the course of the court case, the mother tried to farm out the child to her GP, while maintaining to the court that she was seeking orders that the child remain living with her. The mother hid these efforts during the proceedings- which only became exposed at trial.

I had subpoenaed the mother’s hospital records. Buried in the records was the date of the Nuchal test. Both the mother and the “father” were vague in their affidavits about the date of the home inseminations. When I spoke to him before he gave evidence, the “father” told me the date.

At that point, on rechecking the records, I realised that the mother was a manipulative liar. The mother had had four other children before this child. She knew about pregnancy. A Nuchal test, as I said, is done at 12 weeks gestation. Nevertheless, the mother underwent the Nuchal test *two* weeks after the self-inseminations. She was clearly pregnant (and would have known this) on the day of the self-inseminations. The mother went ahead with the charade of the self-inseminations (if she did that) to trap the father and his partner into taking her unwanted child.

But for me finding out the date of the self-inseminations, and having the hospital records, this extraordinary lie would never have been uncovered. It is no surprise that the child ultimately ended up in the care of the couple.

The “father” was crushed by the deceit of the mother.

What does the data tell up about intimate partner homicide and filicide?

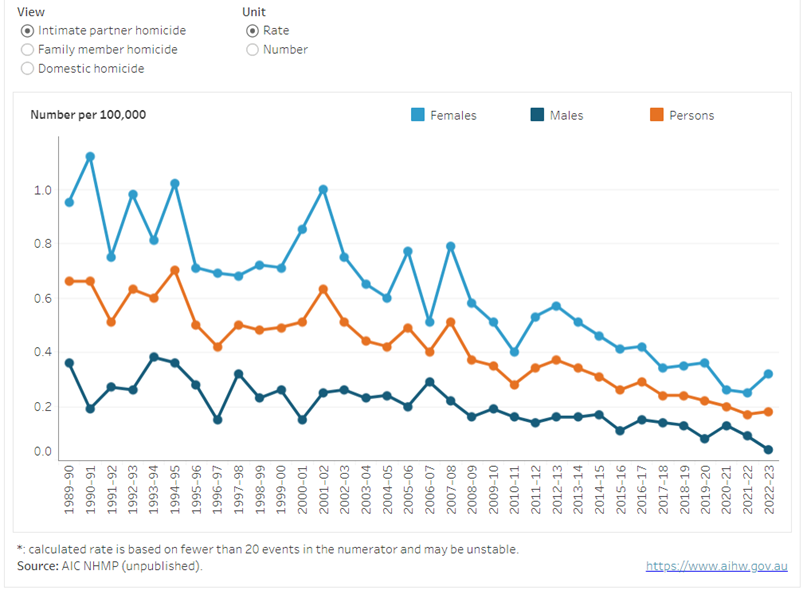
If one looked at the media reports, one would think that there was a never ending story of doom. The reality is that intimate partner homicides have continued to decline since the enactment of laws about 35 years ago bringing a civil response to domestic violence. In 1988, the report *Beyond These Walls[[16]](#footnote-16)* called for a civil response to domestic violence in legislation, in part because of the failure by police to enforce the criminal law. The result in Queensland was the enactment of the Domestic Violence (Family Protection) Act 1989 (Qld), which took effect in 1990. The current version is the *Domestic and Family Violence Protection Act 2012* (Qld).

There is similar legislation in every State and Territory, as seen in Table 1. There has been a huge response by the State to domestic violence. As we have seen in numerous reports, and seen in practice, however, the response has been a bit of a mixed bag. Too often, victims are not listened to by police, or half hearted action is taken.

**Table 1: State and Territory family violence legislation**

| **Jurisdiction** | **Law** |
| --- | --- |
| Commonwealth | *Family Law Act 1975, ss. 68B, 114, 114AB* |
| Australian Capital Territory | *Domestic Violence and Protection orders Act 2008* |
| New South Wales | *Crimes (Domestic and Personal Violence) Act 2007* |
| Northern Territory | *Domestic and Family Violence Act 2007* |
| Queensland | *Domestic and Family Violence Protection Act 2012* |
| South Australia | *Domestic Violence Act 1994* |
| Tasmania | *Family Violence Act 2004* |
| Victoria | *Family Violence Protection Act 2008* |
| Western Australia | *Restraining Orders Act 1997*  *Family Court Act 1997* |

As seen in **Table 2**, the intimate partner homicide victimisation rate is now just over one quarter what it was back in 1989-1990.



According to the Australian Institute of Health and Welfare, between 1989–90 and 2022–23:

* The female victimisation rate has consistently been more than twice as high as the male victimisation rate (with the exception of 2006–07 when the rate was just under twice as high).
* The victimisation rate decreased for both females (by two-thirds, from 0.95 to 0.32 per 100,000) and males (by 90%, from 0.36 to 0.04 per 100,000).

A 25% reduction per year in female victims of intimate partner homicide is an identified target in the [Outcomes Framework 2023-2032](https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/outcomes-framework).

It has been put to me that the irony of having protection orders, and having the men removed by police is that more perpetrators of violence have survived. Women are less desperate than they are used to be, and are therefore less likely to kill their spouse, as they felt bereft of any other support, as happened for example to Robyn Kina[[17]](#footnote-17).

AIHW: People of all ages and backgrounds can be victims of domestic homicide. However, some people are at a greater risk than others.

Based on the latest available report on the demographic features of Australian domestic homicide victims using NHMP data (see Box 1), between 1 July 2002 and 30 June 2012, the most common age groups when homicide occurred varied by homicide type:

* for intimate partner homicides, about 2 in 5 (39%) victims were aged 35–49
* for filicide (a parent killing a child), around 1 in 2 (51%) victims were aged 1–9

**Demographic features of IPV homicide offenders and victims**

Among intimate partner homicides preceded by a reported or anecdotal history of violence between offender and victim (IPV homicides) in the ADFVDRN IPV homicide dataset (about 310), differences are apparent for:

* Aboriginal and/or Torres Strait Islander people, who were disproportionately represented in IPV homicide offenders (27%) and victims (27%) compared with their representation in the general population (3.2%) (ABS 2022a; ADFVDRN and ANROWS 2022).
* People with disability, who were under-represented in IPV homicide offenders (9.6%) and victims (7.1%) compared with their representation in the general population (18%) (ABS 2019; ADFVDRN and ANROWS 2022).

People known to be born overseas had a similar representation among IPV homicide offenders (28%) and victims (26%) compared to their representation in the general population (29%) (ABS 2022b; ADFVDRN and ANROWS 2022).

**Violence prevalence rates**

According to the Australian Bureau of Statistics[[18]](#footnote-18), the current violence prevalence rates are shown in **Table 3**.

**Table 3: Australian violence prevalence rates**

| **Women** | **Men** |
| --- | --- |
| **Prevalence since the age of 15** | |
| 2 in 5 women experienced violence (39%) | 2 in 5 men experienced violence (43%) |
| 1 in 5 women experienced sexual violence (22%) | 1 in 16 men experienced sexual violence (6.1%) |
| 1 in 3 women experienced physical violence (31%) | 2 in 5 men experienced physical violence (42%) |
| 1 in 5 women experienced stalking (20%) | 1 in 15 men experienced stalking (6.8%) |
| **Prevalence of intimate partner and family member violence since the age of 15** | |
| 1 in 4 women experienced violence by an intimate partner or family member (27%) | 1 in 8 men experienced violence by an intimate partner or family member (12%) |
| 1 in 12 women experienced violence by a family member (8.1%) | 1 in 17 men experienced violence by a family member (5.9%) |
| 1 in 4 women experienced violence by an intimate partner (23%) | 1 in 14 men experienced violence by an intimate partner (7.3%) |
| 1 in 11 women experienced violence by a boyfriend, girlfriend, or date (9.3%) | 1 in 44 men experienced violence by a boyfriend, girlfriend, or date (\*2.3%) |
| 1 in 6 women experienced cohabiting partner violence (17%) | 1 in 18 men experienced cohabiting partner violence (5.5%) |
| 1 in 4 women experienced cohabiting partner emotional abuse (23%) | 1 in 7 men experienced cohabiting partner emotional abuse (14%) |
| 1 in 6 women experienced cohabiting partner economic abuse (16%) | 1 in 13 men experienced cohabiting partner economic abuse (7.8%) |
| **Experiences before the age of 15** | |
| 1 in 6 women experienced childhood abuse (18%) | 1 in 9 men experienced childhood abuse (11%) |
| 1 in 6 women witnessed parental violence during childhood (16%) | 1 in 9 men witnessed parental violence during childhood (11%) |
| 1. Fractions provided are approximations. For precise estimates, refer to the [data downloads](https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2021-22-0#data-downloads).   \* Estimate has a relative standard error of 25% to 50% and should be used with caution. | |

The sexual violence prevalence rate for 12 months for women aged 18 and older has remained stable in 2021-2022, with 1.9% of women affected. However, there has been an increase since 2012, when the rate was 1.2%.

The physical violence prevalence rate for men and women was also stable in 2021-2022, with 6.1% of men affected, and 2.9% of women, but there has been a significant drop for both men and women over time. In 2005, 10.4% of men were affected, and 4.7% of women.

**Cohabiting partner violence**

For women, the 12-month prevalence rate of cohabiting partner violence decreased from 1.7% in 2016 to 0.9% in 2021-22. This was driven by a decrease in the rate of physical violence by a cohabiting partner, from 1.3% in 2016 to 0.7% in 2021-22.

**Women aged 18 years and over, Cohabiting partner violence, 12-month prevalence rate(a), By type of violence, 2005 to 2021-22**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Women aged 18 years and over, Cohabiting partner violence, 12-month prevalence rate(a), By type of violence, 2005 to 2021-22 | | | | |
|  | **2005** | **2012** | **2016** | **2021-22** |
| Total violence (b) | (c)1.5% | (c)1.5% | (c)1.7% | 0.9% |
| Physical violence | (c)1.2% | (c)1.4% | (c)1.3% | 0.7% |
| Sexual violence | 0.4% | 0.3% | 0.5% | 0.4% |

1. Cohabiting partner violence statistics for men have a high relative standard error and are considered too unreliable to measure changes over time.
2. Where a person has experienced both sexual and physical violence by a partner, they are counted separately for each type of violence they experienced but are counted only once in the aggregated total.
3. The difference between the prevalence rate for that year and the 2021-22 prevalence rate is statistically significant.

**Cohabiting partner emotional abuse**

For women, the 12-month prevalence rate of cohabiting partner emotional abuse decreased from 4.8% in 2016 to 3.9% in 2021-22. For men, the 12-month prevalence rate of cohabiting partner emotional abuse decreased from 4.2% in 2016 to 2.5% in 2021-22.

**Cohabiting partner emotional abuse(a), 12-month prevalence rate, 2012 to 2021-22**

|  |  |  |  |
| --- | --- | --- | --- |
| Cohabiting partner emotional abuse(a), 12-month prevalence rate, 2012 to 2021-22 | | | |
|  | **2012** | **2016** | **2021-22** |
| **Women** | (b)4.7% | (b)4.8% | 3.9% |
| **Men** | 2.8% | (b)4.2% | 2.5% |

1. While the data is comparable across the time series, the list of emotional abuse behaviours asked about in the survey has expanded over time.
2. The difference between the prevalence rate for that year and the 2021-22 prevalence rate is statistically significant.

**Sexual harassment**

For women, the 12-month prevalence rate of sexual harassment decreased from 17% in 2016 to 13% in 2021-22. For men, the 12-month prevalence rate of sexual harassment decreased from 9.3% in 2016 to 4.5% in 2021-22.

**Sexual harassment(a), 12-month prevalence rate, 2012 to 2021-22**

|  |  |  |  |
| --- | --- | --- | --- |
| Sexual harassment(a), 12-month prevalence rate, 2012 to 2021-22 | | | |
|  | **2012** | **2016** | **2021-22** |
| **Women** | (b)14.8% | (b)17.3% | 12.6% |
| **Men** | (b)6.6% | (b)9.3% | 4.5% |

1. Data from 2005 is not included in this analysis as the data is not comparable to subsequent years.
2. The difference between the prevalence rate for that year and the 2021-22 prevalence rate is statistically significant.

**Stalking**

For women, the 12-month prevalence rate of stalking remained stable between 2016 and 2021-22.

Women aged 18 years and over, Stalking(a), 12-month prevalence rate(b), 2005 to 2021-22

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Women aged 18 years and over, Stalking(a), 12-month prevalence rate(b), 2005 to 2021-22 | | | | |
|  | **2005** | **2012** | **2016** | **2021-22** |
| **Women** | (c)2.5% | (c)4.1% | 3.1% | 3.4% |

1. While the data is comparable across the time series, the list of stalking behaviours asked about in the survey has expanded over time.
2. Stalking statistics for men have a high relative standard error and are considered too unreliable to measure changes over time.
3. The difference between the prevalence rate for that year and the 2021-22 prevalence rate is statistically significant.

Of women aged 18 years and over:

* 23% (2.3 million) experienced violence by an intimate partner
* 17% (1.7 million) experienced violence by a cohabiting partner
* 9.3% (920,300) experienced violence by a boyfriend, girlfriend, or date
* 8.1% (806,000) experienced violence by a family member

Of men aged 18 years and over:

* 7.3% (692,600) experienced violence by an intimate partner
* 5.5% (526,600) experienced violence by a cohabiting partner
* 2.3%\* (224,000\*) experienced violence by a boyfriend, girlfriend, or date
* 5.9% (560,600) experienced violence by a family member

Women were more likely than men to experience violence by an intimate partner, cohabiting partner, and boyfriend/girlfriend or date.

**Sexual violence**

An estimated 2.8 million people aged 18 years and over (14%) experienced sexual violence (assault and/or threat) since the age of 15.

Of women, 22% (2.2 million) experienced sexual violence, including:

* 20% (2.0 million) who experienced sexual assault
* 5.5% (544,700) who experienced sexual threat

Of men, 6.1% (582,400) experienced sexual violence, including:

* 5.1% (483,800) who experienced sexual assault
* 1.4%\* (137,900\*) who experienced sexual threat

Women were more likely than men to experience sexual violence (both assault and threat).

**Cohabiting partner violence, emotional abuse, and economic abuse**

In the PSS, a partner/cohabiting partner refers to a person the respondent lives with, or has lived with at some point, in a married or de facto relationship.

An estimated 4.2 million people aged 18 years and over (21%) have experienced violence, emotional abuse, or economic abuse by a cohabiting partner since the age of 15.

Of women, 27% (2.7 million) have experienced violence or emotional/economic abuse by a cohabiting partner, including:

* 17% (1.7 million) who have experienced partner violence (physical and/or sexual)
* 23% (2.3 million) who have experienced partner emotional abuse
* 16% (1.6 million) who have experienced partner economic abuse

Of men, 15% (1.5 million) have experienced violence or emotional/economic abuse by a cohabiting partner, including:

* 5.5% (526,600) who have experienced partner violence (physical and/or sexual)
* 14% (1.3 million) who have experienced partner emotional abuse
* 7.8% (745,000) who have experienced partner economic abuse

Women were more likely than men to experience violence, emotional abuse, and economic abuse by a cohabiting partner.

**Stalking**

An estimated 2.7 million people aged 18 years and over (14%) have experienced stalking since the age of 15, including:

* 20% of women (2.0 million)
* 6.8% of men (653,400)

Women were more likely than men to experience stalking.

**Witnessing parental violence during childhood**

An estimated 2.6 million people aged 18 years and over (13%) witnessed violence towards a parent by a partner before the age of 15.

Of women, 16% (1.6 million) witnessed parental violence during childhood, including:

* 14% (1.4 million) who witnessed violence towards their mother
* 5.0% (498,300) who witnessed violence towards their father

Of men, 11% (1.0 million) witnessed parental violence during childhood, including:

* 8.9% (853,800) who witnessed violence towards their mother
* 3.7% (350,000) who witnessed violence towards their father

Women were more likely than men to witness parental violence towards their mother and/or father.

**Prevalence of coercive control**

Despite the prevalence of domestic and family violence[[19]](#footnote-19):

“There is limited evidence on the experiences and perpetration of coercive control in Australia (rather than DFV more broadly). Consequently, there is no reliable prevalence data on coercive control. Although many behaviours associated with coercive control are measured or discussed in the studies referred to in this literature review, most studies do not refer to coercive control specifically.”

**Victim-survivor experiences**

Research in 2020[[20]](#footnote-20) stated that:

* *Two‑thirds of victim‑survivors report experiencing more than one form of emotionally abusive, harassing, or controlling behaviour (Boxall et al., 2020, p. 8).*
* *One in two participants experienced financial abuse.*
* *Two in three participants indicate that they had been verbally abused or experienced constant insults in order to make them feel intimidated by the perpetrator (Boxall et al.,2020, p. 7).*
* *Threatening behaviours are also directed towards others in the victim‑survivors life, such as their children, friends, family, and pets (Boxall et al., 2020)*

**Identifying domestic and family violence**

ANROWS has written the excellent [National Risk Assessment Principles for domestic and family violence](https://www.anrows.org.au/publication/national-risk-assessment-principles-for-domestic-and-family-violence/read-quick-reference-guide/):

**National Risk Assessment Principles for domestic and family violence**

**Principle 1**

**Survivors’ safety is the core priority of all risk assessment frameworks and tools.**

The safety and wellbeing of adult and child survivors of domestic and family violence (DFV) is the first priority of any response. Risk must be identified, comprehensively assessed and appropriately responded to by holding the perpetrator responsible and accountable for their behaviour and actions.

**Principle 2**

**A perpetrator’s current and past actions and behaviours bear significant weight in determining risk.**

While the safety of adult and child survivors of DFV is prioritised, workers must also reorient risk assessment and safety management processes onto the behaviour of perpetrators, rather than focusing solely on the protective strategies of survivors.

**Principle 3**

**A survivor’s knowledge of their own risk is central to any risk assessment.**

A survivor’s assessment of their own risk should be considered one of the primary elements of any risk assessment, as it provides intimate knowledge of their lived experience of violence and patterns of coercive control.

Service providers need to approach risk assessment and safety management with adult and child survivors through a collaborative process which respects and builds on the survivor’s own assessment of their safety, as well as drawing on other sources of information. These sources may include: the use of a well-tested actuarial risk assessment tool; professional judgement and practice wisdom drawn from workers’ specialist knowledge of domestic and family violence; and information gathered from other organisations.

**Principle 4**

**Heightened risk and diverse needs of particular cohorts are taken into account in risk assessment and safety management.**

Some members of diverse communities are more vulnerable to DFV, experience violence more frequently and with more severity than others and face a range of specific barriers to safety. An understanding of the effect of the intersections of gender, ethnicity, sexuality, disability, culture, mental health issues, citizenship, age, economic status, geographical isolation and other identity-based and situational factors are critical when undertaking risk assessment and managing safety.

**Principle 5**

**Risk assessment tools and safety management strategies for Aboriginal and Torres Strait Islander peoples are community-led, culturally safe and acknowledge the significant impact of intergenerational trauma on communities and families.**

It is important to work with extended families and communities in responding to Aboriginal and Torres Strait Islander family violence. Workers need to respond to the whole family rather than to individuals. Healing for adult and child survivors, as well as for the perpetrators of violence, is key to all responses, including risk assessment and management.

Community-driven, trauma-informed approaches to family violence, which prioritise cultural healing and are based on the understanding that culture is a key protective factor supporting Aboriginal and Torres Strait Islander families to live free from violence, are critical.

**Principle 6**

**To ensure survivors’ safety, an integrated, systemic response to risk assessment and management, whereby all relevant agencies work together, is critical.**

Working collaboratively across agencies is fundamental to improving the safety and wellbeing of adult and child survivors. This can be best achieved through an integrated, systemic response that ensures all relevant agencies work together on risk assessment and risk management processes in partnership with the survivor. Effective leadership and governance arrangements which support collaboration and partnerships are essential for collaborative service delivery.

**Principle 7**

**Risk assessment and safety management work as part of a continuum of service delivery.**

Risk assessment should always form part of a safety management approach which moves with the adult or child survivor on their journey away from violence. The development of a continuum of service responses which addresses survivor safety, perpetrators taking responsibility for their violence and aspects of prevention and healing is critical. As risk factors change over time, ongoing risk assessment and management along the service continuum also changes.

**Principle 8**

**Intimate partner sexual violence must be specifically considered in all risk assessment processes.**

Intimate partner sexual violence (IPSV) is a uniquely dangerous form of DFV which must be specifically considered in all risk assessment and safety management processes and practices. Survivors’ who are sexually abused by their partners are at a much higher risk of being killed, particularly if they are also being physically assaulted, and IPSV is a significant indicator of escalating frequency and severity of domestic and family violence.

More so than other factors, IPSV is under-reported and often not disclosed. Training on IPSV for all workers conducting DFV risk assessment is essential. Training should include:

* details on the myths and dynamics of sexual violence within relationships;
* guidance on “how to ask” sensitively and building trust;
* the specific effects and health consequences of IPSV;
* how best to manage victim survivors’ safety;
* cultural considerations; and
* legal options and evidence requirements.

**Principle 9**

**All risk assessment tools and frameworks are built from evidence-based risk factors.**

The factors critical to developing a shared understanding of risk and safety include:

* Evidence-based risk factors: variables which assist in assessing the likelihood that violence will be repeated or escalate and responding appropriately to that violence.
* Conditions of vulnerability: identity-based and situational factors which may indicate heightened vulnerability to violence, and which may intersect with other factors to compound the risks and effects of violence.
* Protective factors: characteristics which mitigate or eliminate risk, or which reduce conditions of vulnerability.
* Determining a risk threshold: identification of “risk” or “high-risk” through a thorough assessment, so that the allocation of support and treatment interventions address the specific needs of individual survivors and perpetrators.

Specific evidence-based risk factors and their impact on determining risk thresholds are outlined in the following table: *High-risk factors for domestic and family violence*.

**High-risk factors for domestic and family violence**

**National Risk Assessment Principles Quick reference guide for practitioners**

There are many factors which contribute to the risk of DFV. However, findings from empirical studies, academic and practice-based literature, and reports produced by international and Australian domestic violence death review committees and Coroner’s Courts indicate that some risk factors are associated with a higher likelihood of violence reoccurring, serious injury, or death, in the context of intimate partner violence by men against women.[[1]](https://www.anrows.org.au/publication/national-risk-assessment-principles-for-domestic-and-family-violence/read-quick-reference-guide/#footnote-1) The relationship between these factors and risk of reassault or lethality are not always straightforward, and no one factor can be considered singularly “causal”. Importantly, there are diverse forms of DFV that do not necessarily involve risk of physical violence or lethality, but which can have a devastating impact on victims’ lives. While there is significant evidence that the below risk factors indicate high risk of serious harm or death when mediated by other risk factors or an individual’s situation, all of these factors are salient in any case of DFV and should be responded to appropriately and proportionately, whether or not there is a clear intent of homicide.

**Lethality/High-risk factors**

| **Factor** | **Key facts** |
| --- | --- |
| **History of family and domestic violence** | * The most consistently identified risk factor for intimate partner lethality and risk of reassault is the previous history of violence by the perpetrator against the victim. * In their 11-city study in the United States (US), Campbell et al. (2003) found that 72 percent of intimate partner femicides were preceded by physical violence by the male perpetrator. When there was an escalation in frequency or severity of physical violence over time, abused women were five times more likely to be killed. * Smith, Moracco, & Butts (1998) found that for 75 percent of homicides perpetrated by women, the relationship was characterised by a history of abuse by her male partner and the homicide was preceded by male-initiated violence. * Homicide is rarely a random act and often occurs after repeated patterns of physical and sexual abuse and psychologically coercive and controlling behaviours. |
| **Separation – actual or pending** | * Women are most at risk of being killed or seriously harmed during and/or immediately after separation. * The NSW Domestic Violence Death Review Team recorded that two-thirds (65%) of female victims killed by a former intimate partner between 2000-2014, had ended their relationship within three months of the homicide. * Separation is particularly dangerous when the perpetrator has been highly controlling during the relationship and continues or escalates his violence following separation in an attempt to reassert control or punish the victim. * Children are also at heightened risk of harm during and post-separation. |
| **Intimate partner sexual violence** | * Intimate partner sexual violence (IPSV) is a uniquely dangerous form of exerting power and control due to its invasive attack on victims’ bodies and the severity of mental health, physical injury and gynaecological consequences. * Campbell et al. (2003) found that physically abused women who also experienced forced sexual activity or rape, were seven times more likely than other abused women to be killed and IPSV was the strongest indicator of escalating frequency and severity of violence, more so than stalking, strangulation and abuse during pregnancy. * The 2016 ABS *Personal Safety Survey* (PSS) found that since the age of 15, 5.1 percent (480,200) of Australian women have experienced sexual violence by a partner. Heenan (2004) found that Australian domestic violence workers believe that 90-100 percent of their female clients have experienced IPSV. * More than other factors, IPSV is under-reported by victims. Shame and stigma caused by commonly held assumptions that discussing sex or sexual assault within relationships is “taboo”, are significant barriers to seeking help for IPSV. |
| **Non-lethal strangulation (or choking)** | * Strangulation is one of the most lethal forms of intimate partner violence. When a victim is strangled, whether by choking or other means of obstructing blood vessels and/or airflow to the neck, they may lose consciousness within seconds and die within minutes. * Glass et al. (2008) found that women whose partner had tried to strangle or choke them were over seven times more likely than other abused women to be killed, whether by repeat strangulation or another violent act. * The seriousness of strangulation as an indicator of future lethality is often misidentified, or not responded to proportionately, as a consequence of the often minimal visibility of physical injury. However, many victims suffer internal injuries which may result in subsequent serious or fatal harm. * Most perpetrators do not strangle to kill but to show that they can kill. Non-lethal strangulation is a powerful method of exerting control over victims. Through credible threat of death, perpetrators coerce compliance. |
| **Stalking** | * Stalking behaviours (repeated, persistent and unwanted) including technology-facilitated surveillance, GPS tracking, interferences with property, persistent phoning/texting and contact against court order conditions, increases risk of male-perpetrated homicide. * The 2016 ABS PSS found that since the age of 15, one in six Australian women (17% or 1.6 million) have experienced at least one episode of stalking. * McFarlane et al. (1999) found that stalking was a factor in 85 percent of attempted femicides and for 76 percent of femicide victims. * The vast majority of perpetrators of stalking, and the most dangerous, are intimate partners of the victim, and not a stranger. |
| **Threats to kill** | * Perpetrators who threaten to kill their partner or former partner, themselves or others including their children, are particularly dangerous. Threats of this nature are psychologically abusive. * Campbell et al. (2003) found that women whose partners threatened them with murder were 15 times more likely than other women experiencing abuse to be killed. * Humphreys (2007) found that actual attempts to kill are difficult to separate from serious physical and sexual abuse, and that as above, attempted strangulation is of particular concern given the prevalence of femicide through strangulation |
| **Perpetrator’s access to, or use of weapons** | * Use of a weapon (any tool used by the perpetrator that could injure, kill or destroy property) indicates high risk, particularly if used in the most recent violent incident, as past behaviour strongly predicts future behaviour. * Campbell et al. (2003) found that women who are threatened or assaulted with a gun or other weapon, are 20 times more likely than other abused women to be killed. The severity of abuse-related harm is significantly heightened when weapons are involved. |
| **Escalation (frequency and/or severity)** | * The escalation in frequency and severity of violence over time is linked to lethality and often occurs when there are shifts in other dynamic risk factors, such as the attempts by the victim to leave the relationship. * Campbell et al. (2003) found that when there is an escalation in either frequency or severity of physical violence over time, abused women are more than five times more likely to be killed. * Dwyer and Miller (2014) found that police investigations and family, criminal or civil court proceedings can trigger an escalation in the aggressive and violent behaviour of the perpetrator and heighten risk to the partner and children. Transition points such as this should be treated with great caution. |
| **Coercive control** | * Reports from death review committees and Coroner’s Courts highlight the prevalence of patterns of coercive and controlling behaviours prior to male-perpetrated intimate partner homicide, including verbal and financial abuse, psychologically controlling acts and social isolation. * Elliott (2017) found through a synthesis of key empirical research, that coercive control is a gendered pattern of abuse, and is the primary strategy used to coerce and exercise control over female survivors by a current or former male partner. Understanding violence as coercive control, highlights that it is ongoing, cumulative, chronic and routine. * Coercive and controlling patterns of behaviours are particularly dangerous and can heighten the risk of lethality, in contexts where other high-risk factors are present, such as attempts by the victim to leave the relationship. |
| **Pregnancy and new birth** | * Violence perpetrated against pregnant women by a partner is a significant indicator of future harm to the woman and child, and is the primary cause of death to mothers during pregnancy, both in Australia and internationally. * The 2016 ABS PSS found that nearly half (48% or 325,900) of women who have experienced violence by a previous partner and who were pregnant during that relationship, experienced violence from their partner while pregnant. * Humphreys (2007) highlights this violence as “double-intentioned”, where perpetrators may aim physical violence at their partner’s abdomen, genitals or breasts, so that abuse is both of the mother and child. * Women with a disability, women aged 18-24 years and Indigenous women are at particularly significant risk of experiencing severe violence from their partner during pregnancy. * Violence often begins when women are pregnant, and when previously occurring, it often escalates in frequency and severity |

Other Risk factors

| **Factor** | **Key facts** |
| --- | --- |
| **Victim’s self-perception of risk** | A victim’s perception of their own risk of experiencing future violence is not sufficient by itself to accurately determine severity or incidence of violence. However, there is significant consensus across the literature that it is important to consider the victim’s own assessment as at a minimum, they can provide information relevant to their safety management. |
| **Suicide threats and attempts** | * Hart’s (1988) study found that the combination of attempts, threats or fantasies of suicide, availability of weapons, obsessiveness, perpetrator isolation and drug and alcohol consumption indicates severe or lethal future violence. * Threats of suicide, like most threats in the context of DFV, are a strategy used by perpetrators to exert control. The NSW Domestic Violence Death Review Team recorded that 24 percent of men who killed an intimate partner in NSW between 2000-2014 suicided following the murder |
| **Court orders and parenting proceedings** | * In their review of the *Victorian Common Risk Assessment Framework* (CRAF), McCulloch et al. (2016) found that from their experience, victims/survivors considered Family Law proceedings and intervention orders a critical and often overlooked indicator of DFV risk. * DFV is common and often escalates among separating parents. Perpetrators may use their joint parenting role or judicial options as a way of exercising control over their former partner. |
| **Misuse of drugs or excessive alcohol consumption** | * Alcohol and/or drug misuse and abuse are often exacerbating or moderating factors in predicting the dangerousness of a perpetrator, and may increase the severity of future violence. * Recent cessation of drug or alcohol use, particularly where addiction was present, can also exacerbate violent behaviour when the perpetrator is not actively involved in a recovery and rehabilitation process. |
| **Isolation and barriers to help-seeking** | * Isolation, including limiting interactions with family, friends, social supports and community support programs is a control strategy used by some perpetrators and increases the risk of severe harm. * A victim is at increased risk of future violence if she has had no prior engagement with services and is presenting with DFV. A systematic review by Capaldi et al. (2012) found that social support and tangible help are protective against both perpetration and victimisation and that a lack of support is a significant risk factor for victims. |
| **Abuse of pets and other animals** | * Cruelty and harm directed to pets and other animals can indicate risk of future or more severe violence and are often used as a control tactic by perpetrators. * Having to leave pets behind is a recognised barrier to victim-survivors leaving their violent partners. |

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5 September 2024

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1. Stephen Page is a principal of Page Provan solicitors, Brisbane. He was admitted in 1987 and has been an accredited family law specialist since 1996. He is a Fellow of the International Academy of Family Lawyers, and of the Academy of Adoption and Assisted Reproduction Attorneys. Stephen has co-founded a domestic violence service, chaired a women’s and children’s shelter committee, served on a court based domestic violence served for 13 years, served on the board of a domestic violence charity, and was the Queensland Law Society representative in discussions that led to the enactment of the *Domestic and Family Violence Protection Act 2012* (Qld). About 25 years ago, he was listed as an associate of his client, the aggrieved, on a protection order, after the husband, the respondent, had threatened to kill Stephen. The husband had bribed an official to provide Stephen’s home address. Stephen was cross-examined for four hours by the husband in person prior to the making of that order, in what was Queensland’s longest running domestic violence trial, of seven days. [↑](#footnote-ref-1)
2. The late [Pearl Watson](https://en.wikipedia.org/wiki/Family_Court_of_Australia_attacks) was the wife of Justice Ray Watson of the Family Court at Parramatta. She was killed in 1984 by a bomb when she opened her letter box at home. In 1980 Stephen Blanchard was murdered. Justice David Opas was murdered in 1980, having been shot outside his home. In 1984 Justice Richard Gee was injured by a bomb at his home. One month later, the Court at Parramatta was bombed. In 1985 Graham Wykes, a Jehovah’s Witness minister was killed and another 13 injured when their service was bombed. In 1985 an unexploded bomb was found under the bonnet of a car at the former address of a family law solicitor connected with the case. In 2015, a disgruntled family law litigant, Leonard John Warwick, was arrested. He was convicted of these murders, except that of his brother-in-law Stephen Blanchard, and sentenced to life imprisonment. [↑](#footnote-ref-2)
3. <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2021/07/15122551/Submission-96.pdf> . [↑](#footnote-ref-3)
4. If you have not seen the power and control wheel, look it up, such as here: <https://www.researchgate.net/figure/Power-and-Control-Wheel_fig1_233016790> . [↑](#footnote-ref-4)
5. <https://dcj.nsw.gov.au/documents/children-and-families/family-domestic-and-sexual-violence/police-legal-help-and-the-law/December_2023_Taskforce_statutory_report.pdf> . [↑](#footnote-ref-5)
6. <https://www.courts.qld.gov.au/__data/assets/pdf_file/0010/723664/cif-hannah-clarke-aaliyah-baxter-laianah-baxter-trey-baxter-and-rowan-baxter.pdf> . [↑](#footnote-ref-6)
7. Ss. 10Q to 10U. [↑](#footnote-ref-7)
8. S.10V. [↑](#footnote-ref-8)
9. 17 Cal.3d 425 (1976),<https://scocal.stanford.edu/opinion/tarasoff-v-regents-university-california-30278> . [↑](#footnote-ref-9)
10. At 430-432, 437-442. [↑](#footnote-ref-10)
11. At [6]. [↑](#footnote-ref-11)
12. At [123]-[124]:

    *“123. Coerce is defined in the 7th Edition of the Macquarie Dictionary relevantly as:*

    * + 1. *To restrain or constrain by force, law or authority; force or compel, as to do something.*
        2. *To compel by forcible action*
    1. *Control is defined in the 7th Edition of the Macquarie Dictionary relevantly as:* 
       1. *To exercise restraint or direction over; dominate; command* 
          1. *The phrase ‘coerces or controls’ is expressed disjunctively. However it may be seen that the two concepts are closely related. Together they form an expanded concept of the exercise of power, to restrain another or to cause another to act, by force, domination or command.”*

    [↑](#footnote-ref-12)
13. See ALRC Inquiry, p. 214. [↑](#footnote-ref-13)
14. The National Council to Reduce Violence against Women and their Children, Background Paper to Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009-2021 (March 2009) 44 < <https://www.dss.gov.au/women-programs-services-reducing-violence-national-plan-to-reduce-violence-against-women-and-their-children/background-paper-to-time-for-action-the-national-councils-plan-for-australia-to-reduce-violence-against-women-and-their-children-2009-2021> >. [↑](#footnote-ref-14)
15. *Kennon v Kennon* (1997) FLC 92-757 [↑](#footnote-ref-15)
16. By the Queensland Taskforce on Domestic Violence. [↑](#footnote-ref-16)
17. For example: <http://classic.austlii.edu.au/au/journals/AboriginalLawB/1994/15.html> ; <https://www.amazon.com.au/Robyn-Kina-Strong-Aboriginal-Redeemed/dp/1503048640> . [↑](#footnote-ref-17)
18. Australian Bureau of Statistics, *Personal safety survey 2021-2022* (2023). [↑](#footnote-ref-18)
19. <https://aifs.gov.au/sites/default/files/2023-07/2304_Coercive-control-literature-review_July2023.pdf> at p. 11. [↑](#footnote-ref-19)
20. Cited in <https://aifs.gov.au/sites/default/files/2023-07/2304_Coercive-control-literature-review_July2023.pdf> p.15. [↑](#footnote-ref-20)