COERCIVE CONTROL

The Education Network
10th Annual Melbourne Family Law Conference
March 2025

By Stephen Page[1]

Vale Pearl Watson[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]:

> *"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]
>
> *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."*

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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.

[2] The late Pearl Watson 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.

[3] https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2021/07/15122551/Submission-96.pdf

[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 .

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*
- *Understanding how coercive control can affect people with disability*
- *Understanding coercive control and economic and financial abuse*
- *Understanding how coercive control can affect LGBTQIA+ people*
- *Understanding how coercive control can affect people from migrant and refugee backgrounds*
- *Understanding how coercive control can affect older people*
- *Understanding technology-facilitated coercive control"*

There is no one black letter definition of coercive control, as seen in Wilson & Carter, below. The National Domestic and Family Violence Benchbook 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 🕮 that create fear and deny victim-survivors liberty and autonomy 🕮.

There is no single agreed definition of coercive control 🕮. However, research consistently identifies that the behaviours and tactics associated with coercive control can be subtle 🕮, difficult to identify and different in each relationship 🕮. 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 . *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. Professor Evan Stark has described coercive control as "a pattern of domination that includes tactics to isolate, degrade, exploit and control" victims.*

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. Common behaviours that may be used by perpetrators as part of coercive control include but are not limited to:

- *emotional manipulation including humiliation and threats,*
- *surveillance and monitoring, often carried out online,*
- *isolation from friends and family,*
- *rigid rules about where the person can eat, sleep or pray,*
- *placing limits on economic autonomy.*

As coercive control depends on context, evidence or information about the context may assist the decision-maker to identify coercive control and help ensure the victim-survivor is not misidentified as a perpetrator.

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:

- *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.*
- *The abuser's attack on the victim's autonomy can involve utilising systems VE, including the legal system (sometimes referred to as '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. These patterns of behaviour may occur throughout a relationship, or may be initiated or exacerbated at times of heightened risk, for example, pregnancy, attempted or actual separation, and during court proceedings.

Some judicial officers have considered coercive control. A selection of examples are contained in the 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. 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. Some people who experience coercive control do not experience physical violence.

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. 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.

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. 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.

Researchers have suggested that coercive control is a common thread running through risk identification and assessment for domestic violence.

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. 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 (see also 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, 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] in 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 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 the economic or financial autonomy the 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 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*

[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 .

- *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.*

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

*(1) "**Domestic violence**" means behaviour by a person (the "**first person**") towards another person (the "**second person**") with whom the 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 and causes the second person to fear for the 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 and the second person as a whole.

(3) Without limiting subsection (1) or (2), 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 the person;

(h) 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

*(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 that consists of domestic violence occurring on more than 1 occasion; and

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

(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the other person 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 that constitutes the course of conduct, when considered in isolation, to coerce or control the 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 in the context of their relationship as a whole.

(5) In relation to the domestic violence that constitutes the course of conduct—

(a) the prosecution is not required to allege the particulars of any act of domestic violence constituting an offence that would be necessary if the act were charged as a separate offence; and

(b) the jury is not required to be satisfied of the particulars of any act of domestic violence constituting an offence that it would have to be satisfied of if the act were charged 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.

(6) A person may be charged with—

(a) the coercive control offence; and

(b) 1 or more other offences of domestic violence alleged to have been committed by the person against the other person during the course of conduct for the coercive control offence.

(7) The offences mentioned in subsection (6)(a) and (b) may be charged in the 1 indictment.

(8) The person charged as mentioned in subsection (6) may be convicted of and punished for any or all of the offences charged.

(9) However, if the person is—

(a) charged as mentioned in subsection (6); and

(b) sentenced to imprisonment for the 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 be served cumulatively with the sentence or sentences for the other offence or offences.

Note—

See the Penalties and Sentences Act 1992 , 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 was reasonable in the context of the relationship between the person and the other person as a whole.

(11) It is not a defence to a charge for a coercive control offence that the person believed that any single act of domestic violence that formed part of the course of conduct for the coercive control offence, or each of the acts of 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 as a whole.

334D What is immaterial for coercive control

(1) For section 334C(1)(b) and (c), it is immaterial whether the domestic violence that constituted the course of conduct against the 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 to the other person; and

(b) if an act of domestic violence that formed part of the course of conduct was unauthorised or unreasonable surveillance or economic abuse of the other person, it is immaterial whether the 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

(1) This section applies on the hearing before a court of a charge against a person of 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 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 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 and any application mentioned in subsection (3).

(6) The court hearing the restraining order proceeding may make a 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 and any application under subsection (3) and any further evidence the court may admit.

(7) A 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; or

(b) if no day is stated, the day that is 5 years after the day the restraining order is made.

(8) The court may order that a 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 is made is not compromised by the shorter period.

(9) A 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 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 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 may be made against a person whether or not another order is made against the person in the proceeding for the charge.

(13) A 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 must be decided on the balance of probabilities.

(15) In this section—

*"**charge**" means the charge of coercive control mentioned in subsection (1).*

*"**domestic violence offence**" includes an offence against the Domestic and Family Violence Protection Act 2012 , part 7.*

Note—

*See also the definition of "**domestic violence offence**" in section 1.*

*"**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 Upon an indictment charging a person with the crime of 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.

The other States and Territories are at various points of implementing or not implementing the agreement to legislate against coercive control.

AUSTRALIAN CAPITAL TERRITORY

The *Crimes (Coercive Control) Amendment Bill 2024* (ACT) was introduced to the Legislative Assembly last year. It was said to be modelled on both the NSW and Queensland Acts. The bill lapsed with the end of term. It is unclear when it will be reintroduced.

The explanatory statement to the bill says:

> *"The Bill amends the Crimes Act 1900 to create a standalone criminal offence for coercive control.*
>
> *The Bill sets out a maximum penalty of 7 years imprisonment for an offender convicted of a coercive control offence. This is in line with the NSW coercive control offence. The maximum penalty is the same as that applied to a bodily harm offence aggravated in a family violence context. This is in line with advice from victim survivors that coercive control is often as harmful or more harmful than physical assault in a domestic violence situation.*
>
> *The Bill's commencement date is 12 months after passing, allowing a year for adjacent education campaigns and training to occur in line with stakeholder advice. This is consistent with the motion passed by the Legislative Assembly in May 2024, which committed the government to implementing an education campaign on coercive control and to providing training to police and other frontline services.*
>
> *The Bill is intended to align with the NSW coercive control offence wherever possible in order to ensure that legal responses to domestic violence are consistent across both jurisdictions, given the border community. Numerous provisions of the Bill reflect this intention, including the maximum penalty for offenders, strict liability for the causing of fear of violence or serious adverse effect on capability to engage in day-to-day activity, and the requirement for a defendant to adduce evidence that the course of conduct was reasonable.*
>
> *Also, in line with the NSW offence, coercive control constitutes a course of conduct committed against a current or former domestic or intimate partner, rather than any other family member as well as set out in the Qld offence.*
>
> *Some provisions of the Bill were mirrored from the Qld legislation, including that providing that a jury is not required to be satisfied about the same incidents of conduct alleged to form part of the course of conduct, and that it is not necessary to prove that the defendant intended each individual incident of family violence in the course of conduct to coerce or control.*
>
> *These provisions mirrored from the Qld coercive control criminal offence will improve the ability for a coercive control offence to be prosecuted in the ACT.*
>
> *The Bill makes consequential amendments to the Bail Act 1992 and the Working with Vulnerable People (Background Checking) Act 2011.*
>
> *The amendment to the Bail Act 1992 provides that coercive control offences are considered with a presumption against bail for offenders.*
>
> *The amendment to the Working with Vulnerable People (Background Checking) Act 2011 will provide that a person found to have committed a coercive control offence against a vulnerable person will be disqualified from receiving a working with vulnerable people*

registration, while a person found to have committed a coercive control offence against someone other than a vulnerable person may receive a conditional working with vulnerable people registration."

NORTHERN TERRITORY

The *Domestic and Family Violence Act 2007* (NT) was amended in 2023 by the *Justice Legislation Amendment (Domestic and Family Violence) Act 202*3 (NT). The amendments contain wide definitions of emotional or psychological abuse in s.5A and coercive control in s.5B, but were criticised at the time in not criminalising coercive control[6]. Sections 5A and 5B provide:

s.5A

"Emotional or psychological abuse

(1) ***Emotional or psychological abuse*** *is conduct that would torment, coerce, intimidate, harass or be offensive to a reasonable person and result in a reasonable person suffering emotional distress or mental harm.*

(2) Without limiting subsection (1), emotional or psychological abuse of a person may include any of the following conduct:

(a) making repeated derogatory taunts of the person;

(b) threatening to disclose sensitive information about the person to the person's friends, family or workplace;

(c) threatening to withhold the person's medication;

(d) preventing the person from maintaining social, familial or cultural connections;

(e) preventing the person from expressing the person's cultural identity;

(f) threatening to self-harm with the intention of tormenting the person;

(g) threatening to harm another person with the intention of tormenting the person;

(h) following the person in public or in the person's residence or remaining outside the person's residence or work with the intention of tormenting the person;

(i) repeatedly contacting the person by any means of communication without the person's consent;

(j) sending offensive material or communications to the person or leaving offensive material where it is likely to be found by the person;

(k) taking an intimate image of the person without consent;

(l) threatening to distribute or publish an intimate image of the person;

[6] https://www.abc.net.au/news/2023-10-25/domestic-family-violence-legislation-tightened-nt-government/103020690 .

(m) publishing offensive material or communications about the person without consent;

(n) driving a motor vehicle in a reckless or dangerous manner or acting in a reckless or dangerous manner while driving a motor vehicle when the person is a passenger in the vehicle;

(o) threatening to request that the person be assessed to determine whether the person is in need of treatment under the Mental Health and Related Services Act 1998 ;

(p) threatening to withdraw care on which the person is dependent;

(q) preventing the person from entering the person's place of residence.

(3) In deciding whether a person's conduct amounts to emotional or psychological abuse, consideration may be given to a pattern of conduct."

s.5B

*"**Coercive control***

*(1) **Coercive control** , of a person, is a pattern of conduct that causes the person to fear for their safety, or the safety of another person in a domestic relationship with the person engaging in the conduct, that results in any of the following:*

(a) controlling or subordinating the person;

(b) dominating, regulating or monitoring the person's daily activity;

(c) isolating the person from social, familial or cultural connections and support;

(d) depriving the person of freedom;

(e) frightening, humiliating, degrading or punishing the person.

(2) In deciding whether a person's conduct amounts to coercive control of the person, consideration must be given to what is reasonable in the circumstances of the relationship between the persons.

(3) Without limiting subsection (1), a pattern of conduct may be coercive control whether or not any of the conduct is physical behaviour."

SOUTH AUSTRALIA

The *Criminal Law Consolidation (Coercive Control) Amendment Bill 2024* was introduced to the Legislative Assembly last year, and received by the Legislative Council. As of 19 February 2025, it has not been enacted.

The bill criminalises coercive control. Central to this are proposed new sections 20B and 20C of the *Criminal Law Consolidation Act 1935* (SA):

"20B—Interpretation

(1) In this Division—

behaviour includes an omission or a threat to engage in behaviour;

controlling impact—see subsection (2);

in a relationship—2 people will be taken to be in a relationship if—

(a) they are married to each other; or

(b) they are engaged to be married to each other, including a betrothal under cultural or religious tradition; or

(c) they are domestic partners; or

(d) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other;

psychological harm means—

(a) mental illness; or

(b) nervous shock; or

(c) serious distress, anxiety or fear.

(2) For the purposes of this Division, a person's behaviour will be taken to have a controlling impact on another person if the behaviour restricts 1 or more of the following:

(a) the other person's freedom of movement;

(b) the other person's freedom of action;

(c) the other person's ability to engage in social, political, religious, cultural, educational or economic activities;

(d) the other person's ability to make choices with respect to their body (including, but not limited to, choices in relation to their reproductive options, medical treatment or sexual activity);

(e) the other person's ability to access—

(i) the justice system; or

(ii) basic necessities, including water, sleep, food or hygiene; or

(iii) support services, including welfare services or services provided by a registered health practitioner or a legal practitioner; or

(iv) property owned by the other person (whether solely or jointly with another person) or the other person's place of residence;

(f) any other aspect of the other person's life as may be prescribed by the regulations.

(3) For the purposes of subsection (2), a person may restrict another person by—

(a) physical restriction; or

(b) verbal or psychological restriction; or

(c) removing the means by which a person is able to do something; or

(d) deception; or

(e) any other behaviour that, directly or indirectly, significantly impairs the other person's ability to do something.

Examples—

The following are examples of behaviour that may have a controlling impact by restricting another person in a way contemplated in subsection (2):

- *a person may restrict another person's freedom of movement by—*
    - *locking the other person in a room or building; or*
    - *excessively monitoring or tracking the other person's activities, movements or communications;*
- *a person may restrict another person's freedom of action by—*
    - *physically harming the other person after the other person fails to undertake a household duty in accordance with the person's wishes; or*
    - *making threats against the person or a child of the person in order to influence the other person to take a certain action;*
- *a person may restrict another person's ability to engage in social, political, religious, cultural or economic activities by—*
    - *deleting or otherwise interfering with communications received from a third party by the other person; or*
    - *by threatening to harm a third party if the other person were to have contact with the third party;*
- *a person may restrict another person's ability to make choices with respect to their body by—*
    - *destroying the other person's method of contraception; or*
    - *threatening to sexually assault the other person if the other person were to behave or refuse to behave in a certain manner;*
- *a person may restrict another person's ability to access basic necessities by—*
    - *locking the refrigerator or pantry; or*
    - *engaging in derogatory name-calling of the other person each time the other person eats food;*

- *a person may restrict another person's ability to access support services by—*
    - *hiding the other person's keys to a motor vehicle or otherwise intervening in the other person's ability to utilise transport; or*
    - *threatening to harm the other person if the other person were to leave or attend a particular location;*
- *a person may restrict another person's ability to access property owned by the other person by—*
    - *changing or withholding information (for example, passwords or access codes) required by the other person to access the other person's financial assets; or*
    - *deceiving the other person as to their rights with respect to their own property.*

20C—Coercive control

(1) A person is guilty of the offence of coercive control if—

(a) the person engages in a course of conduct that consists of behaviour that has, or that a reasonable person would consider is likely to have, a controlling impact on another person; and

(b) the person intends by that course of conduct to have a controlling impact on the other person; and

(c) the person is, or was, in a relationship with the other person; and

(d) a reasonable person would consider the course of conduct to be likely to cause the other person—

(i) physical injury; or

(ii) psychological harm,

(whether temporary or permanent).

Maximum penalty: Imprisonment for 7 years.

(2) However, a person does not commit an offence against subsection (1) if the person engages in a behaviour, or behaviour of a kind, as may be prescribed by the regulations.

(3) It is a defence to a charge of an offence against this section for the defendant to prove that the course of conduct alleged to have been engaged in by the defendant was reasonable in all the circumstances.

(4) For the purposes of proceedings for an offence against this section—

(a) the course of conduct may be constituted of 1 or more kinds of behaviour; and

(b) whether the course of conduct consists of behaviour that has a controlling impact on another person must be determined by considering the totality of behaviours; and

(c) it is not necessary for the prosecution to prove that the defendant intended to have a controlling impact on the other person by engaging in each behaviour making up the course of conduct; and

(d) the prosecution is required to allege the particulars of the period of time over which the course of conduct occurred; and

(e) the information—

(i) must include the nature and description of the behaviours that amount to the course of conduct; but

(ii) need not allege the particulars of each behaviour with the degree of particularity that would be required if the behaviour was charged as an offence against any other provision of this Act or any other Act or law; and

(f) evidence of any behaviour of the defendant may be admissible in proceedings for an offence against this section despite the fact that the behaviour constituted 1 or more elements of a different offence for which the defendant has been convicted.

(5) If—

(a) a person engages in behaviour that makes up part of a course of conduct alleged in proceedings for an offence against this section; and

(b) the behaviour also constitutes the elements of a different offence, the person may—

(c) be charged with an offence against this section and the other offence (whether in the same information or separately); and

(d) be convicted of, and sentenced for, an offence against this section and the other offence (provided that a court sentencing a person for an offence in these circumstances must take into account any other sentence that has been imposed on the person in respect of the same behaviour).

Example—

In proceedings for a coercive control offence it may be proved that one of the behaviours that the defendant engaged in involved acts of animal cruelty. Nothing prevents the defendant from also being charged with a specific animal cruelty offence but the court sentencing the defendant for the animal cruelty offence would be required to take into account the sentence imposed for the coercive control offence.

(6) A person who has been convicted or acquitted of a previous offence against this section in relation to a person cannot be convicted of an offence against this section in relation to the same person if the period of the alleged course of conduct includes any part of the period during which the person was alleged to have committed the previous offence.

(7) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the behaviour determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the behaviour determined by the trier of fact found to be proved beyond a reasonable doubt).

(8) A court sentencing a person for an offence against this section must take into account the effect any behaviour constituting the offence had on a child who witnessed or was affected by such behaviour (as may be known to the court)."

TASMANIA

It is an offence under the *Family Violence Act 2004* (Tas) to engage in either economic abuse or emotional abuse or intimidation. Sections 8 and 9 provide:

"8. Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

(a) coercing his or her spouse or partner to relinquish control over assets or income;

(b) disposing of property owned –

(i) jointly by the person and his or her spouse or partner; or

(ii) by his or her spouse or partner; or

(iii) by an affected child –

without the consent of the spouse or partner or affected child;

(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

9. Emotional abuse or intimidation

(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

(2) In this section –

> ***a course of conduct** includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation."*

It is expected, however, that Tasmania will also legislate along similar lines to NSW and Queensland.

VICTORIA

There are no specific laws making coercive control a stand alone offence. The focus for the moment is on prevention, and criminalisation of strangulation[7]. At which point, I note that it was a generation ago that strangulation was identified as an indicia of risk for homicide, amid calls for it to be a separate offence- pioneered in Queensland.

WESTERN AUSTRALIA

While raising awareness, there have been no moves as yet to criminalise coercive control as an offence in Queensland.

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.

[7] https://www.premier.vic.gov.au/stronger-laws-address-family-violence-perpetrators .

In the words of Coroner Bentley[8]:

> *"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*

[8] 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 .

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 Womens 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[9]. Generally, that screening information is not admissible[10].

[9] Ss. 10Q to 10U.
[10] S.10V.

Section 4AB defines what is family violence:

*"(1) For the purposes of this Act, **family violence** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful.*

(2) Examples of behaviour that may constitute 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; or

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

(g) unreasonably denying the family 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, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or

(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

*(3) For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.*

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the 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)**[11]

On 27 October 1969, Prosenjit Poddar killed Tatiana Tarasoff. In the words of the Supreme Court of California[12]:

> *"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*

[11] 17 Cal.3d 425 (1976), https://scocal.stanford.edu/opinion/tarasoff-v-regents-university-california-30278 .
[12] At 430-432, 437-442.

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 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, 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, 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 may disclose a communication if the counsellor reasonably believes that the disclosure is necessary for the purpose of:

(a) protecting a 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 of a person; or

(e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or

(f) if a lawyer independently represents a child's interests under an order under section 68L--assisting the 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.*

First instance decision: ***Wilson & Carter*** [2022] FedCFamC1F 216

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.*
>
> *15. 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.*
>
> *16. 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.*
>
> *17. 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.*

18. *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) 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.*

19. *The presumption that X's parents should have equal shared parental responsibility does not apply because s 61DA(2) 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.*

20. *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'.*

21. *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.*

22. *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.*

23. *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.*

24. *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.

25. *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.*

26. *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.*

27. *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.*

28. *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.

29. *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.

30. 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.

31. *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[13]:

"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:

[13] At [6].

"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]).

12. 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, after examining the ordinary and natural meaning of the words separately[14], 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]

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.

*13. To similar effect, in Ramzi & Moussa [2022] FedCFamC2F 1473, 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".*

14. 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 at [10], referring to F v M [2021] EWFC 4).

15. 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 at [91]).

16. 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

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[14] 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*

124. Control is defined in the 7th Edition of the Macquarie Dictionary relevantly as:

1. *To exercise restraint or direction over; dominate; command*

125. 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."

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.

17. *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."* (emphasis added)

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.

74. '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.

75. *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.*

76. *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.*

77. *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] it is said that "coercive control" involves an "ongoing pattern", yet in L(ND) v L(MS) 2010 NSSC 68, 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.*

78. *In the English case of F v M [2021] EWFC 4 ("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".*

79. *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.*

80. *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]*

    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.

81. *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. (emphasis added)

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.

137. *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.* (emphasis added)

138. *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.*

139. *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.*

140. *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.*

141. *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.*

142. *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.*

143. *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".*

144. *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 <u>will</u> kill.*

145. *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 <u>does</u> 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 <u>needs</u> to go to [Suburb J] psychiatric immediately.*

146. *The paternal grandmother also wrote:*

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

147. *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.*

148. *She then wrote:*

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

149. *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."*

Coercive control was revisited in Pickford & Pickford [2024] FedCFamC1F 249 by a 5 member bench.

***Pickford & Pickford* [2024] FedCFamC1F 249**

This was a decision by McClelland DCJ, Aldridge, Austin, Carew and Williams JJ. Three judgments were delivered: by McClelland DCJ; Aldridge and Carew JJ and Austin and Williams JJ.

The case was a property and parenting matter before Altobelli J[15]. The father appealed in respect of the parenting orders that were made, and principally about findings of the occurrence of family violence. The trial had lasted 11 days, spread out over a year. The matter was remitted for further hearing. No costs order was made. No costs certificate was granted.

Although the Court was agreed that the appeal was to be dismissed, the Court split between Austin and Williams JJ who found that there were only two types of family violence under s.4AB, one that coerced or controlled, and the other where the recipient was in fear, and that of Aldridge and Carew JJ (with whom McClelland DCJ agreed), that the test was wider.

Austin and Williams JJ

Austin and Williams JJ said:

> *"[78] Nothing said within these reasons should be construed as the trivialisation of family violence, which is an undeniable blight on our society. The Act sensibly identifies the imperative of keeping children and their carers safe from subjection or exposure to family violence as being integral to the promotion of children's best interests.*
>
> *[79] However, in litigation under Pt VII of the Act, untested allegations of family violence are not proven facts. No court can prophetically know whether such allegations made by one party against another are true or false and, if false, whether the falsehood is deliberate or inadvertent. Disputed allegations of family violence must be subjected to the same forensic rigour as any other contested factual issue (Edinger & Duy [2023] FedCFamC1A 194; (2023) 68 Fam LR 55). The party alleging the fact bears the burden of proving it (Wallaby Grip Ltd v QBE Insurance (Australia) Ltd (2010) 240 CLR 444 at [36]) and the standard of the burden is the balance of probabilities (s 140 of the Evidence Act 1995 (Cth)). The same point was recently made by the Full Court, though perhaps in less robust terms (Leventis & Leventis [2024] FedCFamC1A 141; (2024) FLC 94-204 at [13]–[19]).*
>
> *[80] It is also important to acknowledge how the purpose of litigation under Pt VII of the Act is to determine orders which will most ably serve children's best interests (s 60CA and s 65AA). Keeping children and their carers safe into the future is the ideal, which objective should not be subverted by allowing the litigation to be used as the medium by which to make definitive factual findings resolving disputed allegations of historical family violence between conflicted, vengeful or anguished parents, nor to make punitive orders against the parties who may be found to have perpetrated family violence."*

As Austin and Williams JJ noted, the trial went off the rails, when the central issue at trial was as to historical domestic violence allegations, which had not been raised in either party's case outline:

> *"[83] Nobody sought to disturb the children's residence with the mother. Nobody doubted the children should spend an extensive amount of time with the father. Everybody agreed the children should spend time with the father for one-half of school holiday periods and on other special occasions. The dispute was therefore confined to the question of how much time the children should spend with the father during school terms. The mother said preferably three, but no more than four nights per fortnight .... The father said it should be equal time of seven nights per fortnight ... The ICL fell between them and said five nights per fortnight ...*
>
> *[84] Axiomatically, the decision required of the primary judge was whether the children's best interests were served by them spending time with the father during school terms for*

[15] Pickford & Pickford (No 2) FedCFamC1F 500.

as little as three or for as many as seven nights per fortnight, which decision was contextualised by the children having successfully spent time with the father for four nights per fortnight for several years beforehand with the parties' consent.

[At which point I note that the facts of this case as described are those types of cases complained of by Warnick J on his retirement as taking up a large amount of the Court's resources, when dealing with fairly marginal issues.]

[85] Unsurprisingly then, neither party raised the issue of family violence as a salient consideration within the Case Outline documents they filed just in advance of the trial. For her part, the mother forecast that the only issue of relevance under s 60CC(2)(b) of the Act was the father's "preoccupation" with the need for an injunction against her friend ("[Mr B]").

[86] For some reason, which was neither clear to the primary judge then (at [36]), nor now, the parties then conducted a trial over 11 days at enormous expense and made contested allegations of family violence the centrepiece of the dispute. Indeed, the mother began her final written submissions by saying family violence was "a major issue in these proceedings".

[87] Even if the parties did inadvisedly challenge one another about disputed allegations of historical family violence, either in cross-examination or by duelling submissions, given how the disputed allegations did not seem genuinely material to the outcome of the narrow parenting issue left to decide, one wonders why it was necessary for his Honour to appease the parties by engaging with their debate. It is apposite to observe how judges need not make findings to resolve contested facts unless the findings authentically influence the outcome. In fact, the High Court of Australia has expressly cautioned against unnecessary factual findings in the context of risk assessment (M v M (1988) 166 CLR 69 at 76–77) ... So has this Court (Eastley & Eastley [2022] FedCFamC1A 101; (2022) FLC 94-094 at [18] and [31])….

[88] In both M v M and Eastley, the risk assessment concerned the risk of sexual abuse to a child, but the present circumstances are analogous because his Honour was supposedly assessing the risk of the children's exposure (s 60CC(2)(b)) and the risk of the mother's subjection (s 60CG(1)) to family violence committed by the father. Yet, despite the statutory imperative to prioritise the assessment of such future risks over making factual findings about past events, no risk assessment was ever conducted by the primary judge….

[89] …No attention was given to the separate material question of the existence of any prospective risks of harm (Isles & Nelissen [2022] FedCFamC1A 97; (2022) FLC 94-092). As this Court has observed, any factual findings made about past events are liable to inform the task of risk assessment (Isles & Nelissen at [50]–[51]), which the Act now expressly recognises (s 60CC(2A)), but in this instance the primary judge did not use the findings of family violence to inform any prediction about the safety of either the children or the mother from family violence. There was no prediction.

[90] Implicitly, the mother's case was posited on the basis that neither she nor the children were at any risk of harm from family violence committed by the father provided the children only spend four nights per fortnight with him in school terms, so it is entirely unclear how she could have conversely contended the children were at risk of such harm if they instead spend five, six or seven nights per fortnight with him in school terms. It may be wondered: what danger could emerge on the fifth night to threaten the children's safety which danger would be absent on the previous four nights? The question is incapable of a

rational answer. The curious paradox was accentuated by the mother's satisfaction the children could safely spend one-half of all school holidays with the father, which would certainly entail them staying with him for no less than seven contiguous nights in each holiday stint."

Their Honours continued:

"[94] The evidence of parental conflict in this case was abundant, but it is important to observe how parental conflict and family violence are not one and the same thing. Parents can be in conflict without one perpetrating family violence upon the other. Mere disagreement between parties, even if voluble, is not necessarily family violence. The primary judge correctly cited (at [31]) the Full Court's observations of how one party's conduct does not inevitably constitute "family violence" simply because it could potentially meet the statutory definition (Carter & Wilson [2023] FedCFamC1A 9; (2023) FLC 94-129 at [8]–[17]), yet his Honour failed to adequately distinguish between potentiality and actuality when making findings in this instance.

[95] While factual findings about family violence were the exclusive province of the primary judge, it is worth noting the single expert did not consider the children had been exposed to any family violence… (H)is Honour then proceeded, needlessly it would seem, to make positive findings of family violence against the father, though some of the mother's allegations were rejected.

[96]The mother alleged she was assaulted by the father during a physical altercation …at or about the time of their separation. On her complaint, police charged the father and issued a provisional family violence order against him. The father defended both proceedings and, in April 2019, the assault charge and the application for the family violence order were both dismissed ... The criminal charge was dismissed because no prima facie case was made out. The application for the family violence order was dismissed because the mother had no "fear of immediate or continued violence". In these proceedings, the primary judge was not satisfied the father physically abused the mother (at [51]).

[97] With the one and only incident of alleged physical violence rejected in that way, the mother's case against the father of family violence was then contained to "coercive control, emotional abuse, litigation abuse, [and] financial control" (at [50]), which aspects of the evidence his Honour then went on to sequentially discuss.

[98] The primary judge rejected the mother's contention the father was "emotionally abusive by infantilising her", not least because she only made the assertion for the first time in final submissions. It had neither been alleged by her in evidence-in-chief nor put to the father in cross-examination (at [52]).

[99] The primary judge rejected the mother's contention the father had been "financially controlling during their relationship", as the parties mutually agreed he would be responsible for managing the family's financial affairs (at [53]–[54]).

[100] The mother next alleged the father had been "financially controlling post-separation and during [the] proceedings", which allegedly took several different forms.

[101] His Honour was not satisfied the father's decision to cease contributing funds to the mortgage offset account after separation was an example of financial control, given the account was in the mother's sole name, he had already contributed $1.4 million to the

account, there were already sufficient funds in the account to keep the mortgaged loan in credit, and he was paying child support to the mother (at [63]).

[102] However, in March 2023, the mother wanted to use the funds in the mortgage offset account to pay the children's school fees, as the parties had done before, but the father objected and maintained both parties should be equally responsible for the fees from their income to avoid the further depletion of their capital, which the mother alleged was financially controlling conduct. The primary judge agreed, saying:

1. *...the father's conduct was unreasonable in the circumstances and further adds to the financial control described above...The father's unilateral decision to cease the payment of school fees from the [mortgage] offset account was unnecessary and can be seen as an attempt to exert control over the mother and was certainly experienced by her as such.*

[103] That is not a finding which was open to the primary judge on the evidence….

[105] His Honour also fell into error by relying upon merely the mother's perception of the father's refusal as being an example of his exertion of control over her. Her feelings were irrelevant to the issue of "family violence" if his conduct could not be objectively considered to be coercive or controlling, and it could not…"

Coerce or control or be fearful: s.4AB

Austin and Williams JJ then discussed the definition of family violence:

"[108] The concept of "family violence" is defined as follows in the Act:

4AB Definition of family violence etc.

(1) For the purposes of this Act, ***family violence*** *means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the* ***family member)****, or causes the family member to be fearful.*

(Emphasis in original)

[109] The definition is exclusive, not inclusive. Notwithstanding the obvious breadth of the definition, it is disjunctive and admits of "violent, threatening or other behaviour" amounting to "family violence" in only one of two ways, being behaviour of that sort which:

(a) "coerces" or "controls" a family member – which is an objective concept focussing upon the characteristic nature of the perpetrator's behaviour towards the victim; or

(b) causes the family member to be "fearful" – which is a subjective concept instead focussing upon the victim's reaction to the perpetrator's behaviour.

[110] Here, the mother sought to invoke only the first limb – the father's coercion and control. So, having found the parties' unresolved disagreement over the children's prospective attendance at private schools and the manner of payment of the associated fees did not amount to violent, threatening or other behaviour by the father that "coerced or controlled" the mother, her subjective feelings became irrelevant to the objective issue of the occurrence of family violence in that form. She certainly did not allege being "fearful" on account of such disagreement with the father, which meant she eschewed the

second limb of family violence. While the mother's feelings of oppression may well have been a relevant consideration in the eventual discretionary exercise of formulating orders to determine the parenting cause, her feelings could not be relevant to the separate anterior factual question about the characterisation of the father's behaviour as being either coercive or controlling.

[110] The first form of family violence, which entails coercion or control, essentially captures one family member's domination of the other family member. That the victim may subjectively feel coerced or controlled is not enough. The coercion or control must be an objective actuality. The alleged perpetrator's inferred intention to exert influence over and to dominate the alleged victim will very often be decisive of the issue, but it is not an essential ingredient of a finding of family violence taking the form of coercion or control.

[112] If it be the case that, on the whole of the available evidence, the judge is unable to find the perpetrator's conduct does amount to family violence in the form of coercion or control, such unsatisfactory conduct will still likely be relevant in other ways. If the conduct induced the victim's fear, then it will be family violence under the second limb of the definition. Alternatively, the unsatisfactory conduct might not amount to family violence at all, but will still influence the overall exercise of discretion under Pt VII of the Act if, for example, it demonstrates lack of insight or stunted parenting capacity.

[113] Turning then to the second form of family violence, it captures behaviour that causes the victim to be "fearful" and thereby shifts attention to the subjective effect of the perpetrator's behaviour upon the victim and away from the objective characterisation of the perpetrator's conduct. The perpetrator's intention to cause the victim's fear may well be present, but it need not be. Provided the perpetrator's "violent, threatening or other behaviour" does cause the victim to be "fearful", the statutory definition of family violence is fulfilled. The victim's sensation of fear may be established at trial either by accepting the victim's evidence of experiencing it or by inferring it from the surrounding facts and circumstances.

[114] The father's submission in this appeal that, for the purpose of the second form of family violence, the victim's fear may only be established by applying a test of reasonableness should be rejected. The damage is done even if the victim does have a low threshold of tolerance. When the current definition of "family violence" (s 4AB of the Act) was enacted by the Family Law Amendment (Family Violence and Other Measures) Act 2011 (Cth), it abolished the former definition of family violence, which required the perpetrator's behaviour to cause the victim to "reasonably" fear or to be "reasonably" apprehensive about his or her personal wellbeing or safety, so the change was quite deliberate. Once it is accepted a victim is caused to genuinely feel fearful by reason of a perpetrator's behaviour, even though a reasonably stoic person may not have been, it can be more easily understood how the perpetrator's intention to cause such fear is irrelevant. For example, a perpetrator's angry outburst might not be intended to induce the victim's fear, but does so nonetheless, in which case the perpetrator's "violent, threatening or other behaviour" might be construed as family violence." (emphasis added)

Litigation abuse

The primary judge accepted the mother's case that the father had engaged in litigation abuse, and that this amounted to family violence. That was rejected by their Honours:

"[121] One litigant does not commit family violence against another litigant just by refusing to consent or submit to the orders for which the opponent applies. It is impossible

> *to conceive otherwise and, by doing so, the primary judge fell into legal error. Parties are entitled to exert their legal rights and to expect such rights will be adjudicated according to law, regardless of the timidity of the opposing litigant. Undoubtedly, litigation is sometimes apt to be used by one litigant to strategically harass another, which is why Pt XIB of the Act was recently enacted to enable the Court to make orders dismissing, and injunctions prohibiting, unmeritorious, harmful or vexatious proceedings. But this case was far removed from that situation and it was not open to the primary judge to find the contrary. The father did not bring the parenting cause under Pt VII of the Act. The mother did. Nor did he bring the interlocutory litigation funding applications. She did. He was entitled to respond to the litigation instigated by the mother other than by his immediate and complete capitulation.*
>
> *[122] The father was also perfectly entitled to maintain legal arguments about the waiver of legal professional privilege during interlocutory evidentiary rulings and to also press his application for parenting orders pursuant to s 64B(2)(b). The mother was no less insistent by maintaining her application for the child to spend a maximum of four nights per fortnight with the father during school terms than he was by pressing his application for seven nights per fortnight. The primary judge did not explain why his Honour took an adverse view of the father's insistence, yet not the mother's.*
>
> *[123] Similarly, the father was perfectly entitled to maintain his application for an injunction pursuant to s 68B of the Act against the mother in respect of Mr B. The primary judge positively found Mr B had once slapped the elder child ([171]–[172] and [175]). The father also alleged Mr B lay in bed with the elder child several times, which Mr B denied, but he did admit being in the elder child's bedroom two or three times.."* (emphasis added)

Aldridge and Carew JJ

Their Honours agreed with Austin and Williams JJ that the appeal must be allowed, and largely agreed with the reasons save as to the definition of family violence, which Aldridge and Carew JJ did not consider limited to two types of behaviour.

Their Honours said of the definition of family violence in s.4AB:

> *"[43] The section is both remedial and protective and as such should not be read down by artificial limitations (Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 35; (1998) 194 CLR 355).*
>
> *[44] The definition identifies certain behaviour that may fall within the definition, namely, violent, threatening or other behaviour that coerces or controls a member of the person's family or causes the family member to be fearful. Violent behaviour or threatening behaviour are stand-alone behaviours that fall within the definition of family violence. Such behaviours may coerce or control or cause fear, but it is not essential. It might be, for instance, that a female punches her male partner but the punch neither coerces nor controls nor causes the male to be fearful. The behaviour may nevertheless be an act of family violence."*

Is intention relevant to coerce or control?

Their Honours said that to argue that intention was relevant to determine if behaviour was to coerce or control:

"[45] …is ultimately about a straw man because intention is not an element of coercive or controlling behaviour and a focus on it is apt to divert a court from focusing on the real issue.

[46] In fulfilling the onus of proving an allegation of family violence that involves behaviour that coerces or controls, it is not necessary to prove the alleged perpetrator intended the behaviour to be so. That does not mean that intention is irrelevant, but it is not dispositive. A person who engages in such behaviour may be completely oblivious to the impact of their behaviour or they may believe that they are acting in such a way to protect the other family member. Notwithstanding that subjective belief, the behaviour may nevertheless coerce or control the other family member and fall within the definition of family violence.

[47] The focus of the fact finding process is on the behaviour and the impact of the behaviour. It is the behaviour that coerces or controls. It requires action and reaction. A single act is unlikely to be coercive or controlling but it may be. Behaviour that coerces or controls may be innocuous, subtle, capable of different interpretations, complex, undermining, etc. Such behaviour may create impossible expectations for the other family member. It may be transactional and involve punishments for perceived failures. The impact of the behaviour can be insidious. A confident and happy family member may lose their confidence, their self-esteem, question their sanity, shun their family and friends, become depressed, irritable, inefficient, and unhappy. There may be times when they strike out either verbally or physically.

[48] When determining an allegation that a person has engaged in behaviour that coerces or controls a family member, a trial judge will undertake a forensic examination of all relevant evidence to:

(a) identify the behaviour about which complaint is made;

(b) identify the full context of the behaviour including any explanation that may be given by the alleged perpetrator;

(c) identify the impact of the behaviour on the alleged victim (mere assertion by the alleged victim that they feel coerced or controlled is insufficient);

(d) make all relevant factual findings; and

(e) explain why the behaviour in question is or is not family violence that coerces or controls the family member and if the alleged behaviour does not entail a course or pattern of conduct, explain how the behaviour can nevertheless be characterised as behaviour that coerces or controls, if so found.

[49] Once such behaviour has been identified it is then a question of what weight is to be given to it and any impact on the orders under consideration.

[50] The definition of family violence is necessarily broad and any interpretation that may be perceived to, or actually, create unnecessary hurdles to an alleged victim proving an allegation of family violence should be avoided.

[51] Whilst the key feature of coercion or control is that a person is induced (many other words are also apt here) to do as the other wishes, the statutory focus is simply on behaviour that coerces or controls and not the intention of the perpetrator.

[52] So understood, the finding that there is coercive or controlling behaviour is an evaluative one, having regard to all of the circumstances and all of the evidence before the court. Whilst patterns of behaviour may be particularly illuminative, they are not essential. Importantly, for present purposes, the trial judge does not need to spend time and trouble searching for an inference that there is an intention to coerce or control. It is sufficient simply to apply the words of the statute without embellishment and assess whether there is behaviour that coerces or controls.

[53] It must be recognised that, particularly in parenting matters, parents will often disagree. Matters may be seen as proper or as coercive or controlling depending on the circumstances. For example, a proposal that a child be seen by a particular doctor, that changeovers take place in a particular manner or that a certain person not be alone with the children are all capable of being seen as both reasonable and proper parenting proposals or may also be examples of coercive or controlling behaviour." (emphasis added)

McClelland DCJ

After agreeing with Aldridge and Carew JJ about family violence having a wider scope, McClelland DCJ spoke of the relevance of family violence not only to risk, but best interests:

"[10] It is also important to appreciate that family violence is relevant not only to the assessment of future risk, but it is also very much a best interests consideration that may influence the making of an order for a child to spend a particular amount of time with a parent. This was made clear in the legislation that was applicable at the time of the hearing of this matter, with s 60CC(3)(j) of the Act requiring that, in considering those matters relevant to determining the child's best interests, the Court "must" consider "any family violence involving the child or a member of the child's family".

[11] Similar principles are reflected in decisions of superior courts in comparable jurisdictions. In terms of impact upon the child's carer, in Re H-N (Children) (Domestic Abuse: Finding of Fact Hearings) [2021] EWCA Civ 448 …, the England and Wales Court of Appeal stated, at [52]:

... The fact that there may in the future be no longer any risk of assault, because an injunction has been granted, or that the opportunity for inter-marital or inter-partnership rape may no longer arise, does not mean that a pattern of coercive or controlling behaviour of that nature, adopted by one partner towards another, where this is proved, will not manifest itself in some other, albeit more subtle, manner so as to ***cause further harm or otherwise suborn the independence of the victim in the future and impact upon the welfare of the children of the family***.(Emphasis added)

[12] In terms of the impact on children, in Re W (Children) [2012] EWCA Civ 528, the England and Wales Court of Appeal explained at [15] that:

... ***the court must only make an order for contact if it can be satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact****. Also in every case, the court has to consider the conduct of both parents towards each other and towards the child, and in particular* ***the effect of the domestic violence on the parent and child****, the motivation of the parent seeking contact,* ***the likely behaviour of that parent during contact*** *and the effect on the child, his capacity to appreciate the effect of past violence and the potential for future violence on the other parent and child, and* ***his attitude to his past violent conduct and capacity to change and behave appropriately***. (Emphasis added)

[13] The principles adumbrated in those cases are now reflected in the Act in its current form, post-May 2024 amendments, in s 60CC(2)(a) and, by reference to that paragraph, s 60CC(2A).” (emphasis added by me in yellow shading, otherwise by McClelland DCJ)

Intention not an element

McClelland DCJ also rejected the view that intention was an element of family violence:

“[15] Section 4AB(1) of the Act defines family violence as meaning “violent, threatening or ***other behaviour by a person that coerces or controls*** *a member of the person’s family (the family member), or causes the family member to be fearful” (emphasis added). Examples of behaviour that may constitute family violence are set out in s 4AB(2) of the Act. Examples of situations that may constitute a child being exposed to family violence are set out in s 4AB(4) of the Act. The focus of the definition is on the effect of the behaviour rather than the intention of the perpetrator of the behaviour.*

[16] To introduce the notion of intention into the definition of family violence, by reference to case law or otherwise, would be to introduce an unnecessary and unwarranted atextual constraint on the ability of a victim of family violence to establish that they and/or their children have been adversely impacted by coercive and controlling behaviour.

[17] Had the legislature intended the concept of intention to be an element of coercive or controlling behaviour, it would have been specifically stated, as is the case in respect to, for instance, s 4AB(2)(e), which refers to “intentionally damaging or destroying property”, or s 4AB(2)(f), which refers to “intentionally causing death or injury to an animal”. Similarly, s 4AB(2)(j) necessarily incorporates the notion of intention by referring to “unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty”.

[18] Modern principles of statutory interpretation require the meaning of words to be construed in the context of the legislation as a whole and its statutory purpose (Electoral Commissioner of the Australian Electoral Commission v Laming [2024] FCAFC 109; (2024) 304 FCR 561 at [59]–[61] (Perry J with whom Logan and Meagher JJ agreed on this issue)). To incorporate the notion of intent as a necessary element into the definition of family violence in s 4AB would be contrary to the purpose and intention of the Act, which is both protective (ss 43(1)(ca), 60CF and 60CG) and educative (s 4AB(2) and s 4AB(4)). To require victims of family violence to prove intention as an additional element of coercive or controlling conduct would be contrary to that statutory purpose. This is in the context where it is frequently the case that a victim of family violence will be unrepresented and potentially suffering the impact of having been subjected to family violence.

[19] It is necessarily the case that a party, and their children, who have been the subject of family violence, including coercive and controlling conduct, will be as much affected by that behaviour irrespective of whether the perpetrator intended that effect. This includes, for instance, where aggressive physical and non-physical behaviour that is not intended to subjugate or corrode the victim’s autonomy may be associated with other factors such as the perpetrator’s mental health and complex trauma. It also includes a situation where a perpetrator denies such an intention existed and instead asserts that they are behaving in a manner consistent with their cultural or religious norms.

[20] That is not to say that considering the objective, purpose, design, aim or intention (however described) will be irrelevant in considering whether a person has been the victim of family violence. In that respect, senior counsel for the appellant referred to the helpful

guidance provided in the decision of Hayden J in F v M [2021] EWFC 4 …where his Honour stated at [4]:

... The nature of the allegations included in support of the application can succinctly and accurately be summarised as involving complaints of 'coercive and controlling behaviour' on F's part. In the Family Court, that expression is given no legal definition. In my judgement, it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that 'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation ...

[21] The analysis of Hayden J has subsequently been adopted and applied by the England and Wales Court of Appeal in Re H-N at [30]. The Court of Appeal in that case, however, specifically cautioned family court judges against "being drawn into an analysis of factual evidence based on criminal law principles and concepts" (at [65]). This includes, in my view, introducing the notion of mens rea or intention, which is more apt in criminal or civil penalty legislation, but not in the context of the Act which is, as I have mentioned, both protective and educative."(emphasis added)

His Honour stated that determining whether behaviour constitutes coercive or controlling conduct requires deeper evaluation that simply a party's experience or perception:

"…[31] - – as relevant as that may be. In that context, I commend and respectfully adopt the following analysis provided by Gill J in Olivier & Olivier [2020] FamCA 639 where his Honour observed at [51]–[52]:

It should be accepted that the definition of family violence goes well beyond physical assaults to encompass behaviours that, absent context may appear innocuous, but in context may be examples of coercion or control. However, the mere assertion that the conduct has the quality of being coercive or controlling does not make it so. It is necessary that the evidence, particularly where the behaviour is ambiguous and may bear an innocuous explanation, be sufficient to allow a characterisation of coercion or control.

By way of example, a pattern of disagreements and criticism can form controlling or coercive behaviour. ***Whether they do or not must be derived from consideration of their form, intensity, context and the impact upon a person. The mere fact of disagreement or criticism does not automatically equate to family violence***. (Emphasis added)

[32] This point is also well made by the England and Wales Court of Appeal in Re H-N, where the Court stated at [32]:

It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. I would endorse the approach taken by Peter Jackson LJ in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (paragraph 61):

"Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is 'used to

> *harm, punish, or frighten the victim...' and 'controlling behaviour' as behaviour 'designed to make a person subordinate...' In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict."* (Emphasis in original)

In addition to the "useful guide" by Aldridge and Carew JJ, his Honour endorsed an approach by an English judge, by which each party provides concise statements setting out:

(a) a summary of the nature of the relationship;

(b) a list of the forms of domestic abuse that the evidence is said to establish;

(c) a list of key specific incidents said to be probative of a pattern of coercion and/or control;

(d) a list of any other specific incidents so serious that they justify determination irrespective of any alleged pattern of coercive and/or controlling behaviour;

(e) a reply indicating which specific allegations listed at (d) were admitted or disputed.

His Honour went on to say:

> *"[38] The task of the trial judge, once relevant evidence is before the Court, was explained by Hayden J in F v M at [108] as being one of resolving those issues of fact by evaluating the separate strands of evidence and then considering them in the context of the whole. His Honour noted that, in the context of considering allegations of coercive or controlling behaviour "[s]ome features of the evidence will weigh more heavily than others and evidence which may not be significant, in isolation, may gain greater relevance when placed in the context of the wider evidential canvas". Justice Hayden also suggested a useful framework in which to assess the characteristics of coercive or controlling behaviour, as follows:*
>
> *Coercive Behaviour:*
>
> *i. a pattern of acts;*
>
> *ii. such acts will be characterised by assault, threats, humiliation and intimidation but are not confined to this and may appear in other guises;*
>
> *iii. the objective of these acts is to harm, punish or frighten the victim.*
>
> *Controlling Behaviour:*
>
> *i. a pattern of acts;*
>
> *ii. designed to make a person* ***subordinate*** *and/or* ***dependent****;*
>
> *iii. achieved by isolating them from support, exploiting their resources and capacities for personal gain, depriving them of their means of independence, resistance and escape and regulating their everyday activities.*
>
> (Emphasis in original)
>
> *[39] The approach taken in those England and Wales authorities is one that may also commend itself to trial judges and case management judges."*

CRITICAL INCIDENT LIST

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

a) The applicant is a non-parent caring for the child or children;

b) 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;

c) 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

d) 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 recommended:

Recommendations	**Comment**
Recommendation 1 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.

Recommendations	**Comment**
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 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;	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

Recommendations	**Comment**
• 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.	
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.

Recommendations	**Comment**
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:	Set out in the exposure draft.

Recommendations	Comment
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.	
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	Without further Commonwealth resources provided to the States, this will not be realised. It is proposed in the draft exposure

Recommendations	**Comment**
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.	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.

Recommendations	Comment
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.

Recommendations	**Comment**
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*,	Not seemingly implemented.

Recommendations	**Comment**
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	
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.

Recommendations	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.

Recommendations	**Comment**
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, 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.

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. 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.*
>
> *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, or the Guide for practitioners in the Evatt List.

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.

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.*

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, the Guide for Practitioners and the Guide for parties in the 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 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 ACT 2024

The *Family Law Amendment Act 2024*, which commences 10 June 2025 (i.e. for all new matters, and all matters in which the hearing has not been completed) provides that family violence be taken into account in property settlements. This seems to codify the approach in *Kennon*. e.

Among the changes are the insertion of a new s.79(4)(ca) and 90SM(4)(c) to take into account family violence. The proposed s.79(4)(ca) says:

"(ca) the effect of any family violence, to which one party to the marriage has subjected the other party, on the ability of a party to the marriage to make the kind of contributions referred to in paragraphs (a), (b) and (c); and

Rather than s.75(2) being referred to in s.79, instead there would be a new s.79(5) [and s 90SM(5)] to take up the s.75(2) factors. In both is a new (a). The proposed s.79(5)(a) reads:

"(5) For the purposes of paragraph (3)(b)(ii), the court is to take into account the following considerations in making orders under subsection (1), 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;"

Until that is legislated, I refer you to the excellent paper by Adam Cooper delivered at this conference in 2022: *"Counting the Cost of Family Violence on Property Settlements"* which sets out how *Kennon* is applied.

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] 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

[16] By the Queensland Taskforce on Domestic Violence.

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.

In Queensland, at least, domestic homicides seem to be increasing. A petition by the Queensland Police Union states[17]:

> *"Nine years into Queensland's DFV reform agenda under the Domestic and Family Violence Prevention Strategy 2016-2026, the dial has not moved - the incidence and seriousness of DFV is rising alarmingly and perpetrator behaviours and attitudes are not changing quickly enough.*
>
> *Queensland Police and DFV service providers are overwhelmed by demand and this is only expected to worsen based on the trajectory of occurrences in Queensland.*
>
> *Queensland Police are attending 526 DV occurrences across the State every day.*
>
> *In 2023-24, the Queensland Police Service responded to more than 192,000 DFV occurrences up from 171,000 the previous year. So far in 2024-25, DFV occurrences are up by 8%, meaning the number of DFV occurrences will likely exceed 210,000 this financial year. What is even more concerning is breaches of a DFV Order are currently up by 12% and are on track to exceed 70,000 demonstrating that perpetrators are not deterred by existing sanctions. Those numbers drive home our urgent call for action."*

The shortage of Queensland Police officers and the unmet demand has been attributed in media reports to be the reason why it has taken police at times *up to 11 days* to turn up at a domestic violence incident address.

The Queensland Sentencing Advisory Council[18] has noted a significant increase in manslaughter sentences from 26 in 2021-2022 to 39 in 2022-2023, and then 34 in 2023-2024. Aboriginal and Torres Strait Islander people were disproportionately represented, consistent with a higher rate of manslaughter in the North and Far North, compared to the rest of the State.

About one quarter of manslaughter cases were domestic violence offences. In the three years in question, there were 5 domestic violence manslaughters in 2021-2022, 7 in 2022-2023 and 12 in 2023-2024, the highest number since 2016. The biggest group of perpetrators of domestic violence manslaughter were those aged 60 or over.

Table 1: State and Territory family violence legislation

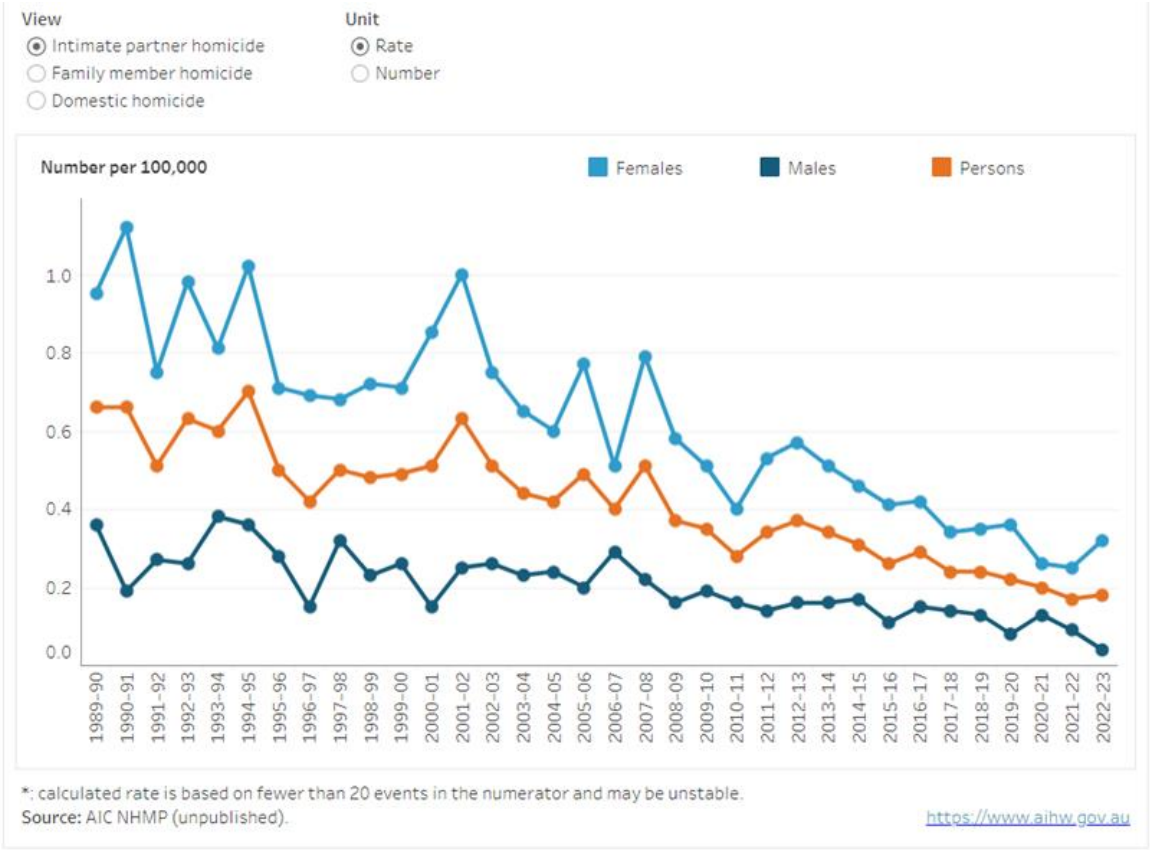
Jurisdiction	**Law**
Commonwealth	*Family Law Act 1975, ss. 68B, 114, 114AB*
Australian Capital Territory	*Domestic Violence and Protection orders Act 2008*

[17] https://www.parliament.qld.gov.au/Work-of-the-Assembly/Petitions/Petition-Details?id=4205 .

[18] https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0011/518177/Sentencing_Spotlight_on_Manslaughter_HighRes.pdf .

Jurisdiction	Law
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.

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[19].

Based on the latest available report on the demographic features of Australian domestic homicide victims using NHMP data (see Table 2), 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).

It is no surprise to read what the AIHW says[20], that female IPV homicide victims are more likely to be killed during a period of intended or actual separation. In about 3 in 5 (58%) of the cases where a male killed a female partner in the ADFVDRN focused dataset (about 225), one or both partners intended to separate or they had separated at the time of the homicide:

- In about 1 in 3 (34%) cases the couple was separated, with almost 3 in 5 of these cases involving a separation within the past 3 months (57% of separated couples).
    - In about 1 in 4 (24%) cases the couple were in an ongoing relationship where at least 1 person had expressed their intention to separate, with the majority (94%) of these cases involving the female victim's intention.

VIOLENCE PREVALENCE RATES

According to the Australian Bureau of Statistics[21], the current violence prevalence rates are shown in **Table 3**.

[19] 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 .
[20] https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/domestic-homicide .
[21] Australian Bureau of Statistics, *Personal safety survey 2021-2022* (2023).

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%)
a. Fractions provided are approximations. For precise estimates, refer to the 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%

a) Cohabiting partner violence statistics for men have a high relative standard error and are considered too unreliable to measure changes over time.

b) 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.

c) 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%

a) While the data is comparable across the time series, the list of emotional abuse behaviours asked about in the survey has expanded over time.

b) 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%

a) Data from 2005 is not included in this analysis as the data is not comparable to subsequent years.

b) 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%

a) While the data is comparable across the time series, the list of stalking behaviours asked about in the survey has expanded over time.

b) Stalking statistics for men have a high relative standard error and are considered too unreliable to measure changes over time.

c) 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[22]:

> *"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."*

[22] https://aifs.gov.au/sites/default/files/2023-07/2304_Coercive-control-literature-review_July2023.pdf at p. 11.

Victim-survivor experiences

Research in 2020[23] 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:

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

[23] Cited in https://aifs.gov.au/sites/default/files/2023-07/2304_Coercive-control-literature-review_July2023.pdf p.15.

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] 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.

Factor	Key facts
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.

Factor	Key facts
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

Factor	Key facts
	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.

Factor	Key facts
	• 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.

Factor	Key facts
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.

My first domestic violence case was in 1985, when the only available legal step to escape domestic violence was to obtain an injunction under the Act. Now, 40 years later, society is still dealing the scourge of domestic violence. Despite concerted and sometimes inconsistent action, domestic violence remains among us.

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18 February 2025
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