Understanding domestic and family violence - Cases

The cases identified here provide examples of the way judicial officers have dealt with some of the issues raised in the context statement.

Click on the citation to be directed to a summary of the case in the Case Database.

R v Gittany (No 5) **[2014] NSWSC 49 (11 February 2014) – New South Wales Supreme Court**

McCallum J at [40]: 'In my view, that history informs the degree of moral culpability of the offence. The arrogance and sense of entitlement with which Mr Gittany sought to control Lisa Harnum throughout their relationship deny the characterisation of his state of mind in killing her as one of complete and unexpected spontaneity. By an attritional process, he allowed possessiveness and insecurity to overwhelm the most basic respect for her right to live her life as she chose. Although I accept that the intention to kill was formed suddenly and in a state of rage, it was facilitated by a sense of ownership and a lack of any true respect for the autonomy of the woman he claimed to love'.

R v Hamid **[2006] NSWCCA 302 (20 September 2006) – New South Wales Court of Criminal Appeal**

Johnson J: 'An adequate account of domestic violence should recognise that it typically involves the exercise of power and control over the victim, is commonly recurrent, may escalate over time, may affect a number of people beyond the primary target (including children, other family members and supporters of the victim) and that it contributes to the subordination of women; domestic violence typically involves the violation of trust by someone with whom the victim shares, or has shared, an intimate relationship; the offender may no longer need to resort to violence in order to instil fear and control: J Stubbs, "Restorative Justice, Domestic Violence and Family Violence", Australian Domestic and Family Violence Clearing House, Issues Paper 9, 2004, pp 6–7' ([77]).

DPP v Barnes & Barnes **[2015] VSCA 293 (12 November 2015) – Victorian Court of Appeal**

This was a Crown appeal against sentence. Redlich JA at [68]-[69*]:* 'In sentencing, the judge said this about Trevor's offending: 'I make it plain that I consider that you are the main offender in this criminal enterprise and the whole appalling saga was dictated by your immaturity and inability to control your anger in the context of your possessive and controlling behaviour of Ms Bethune, whom you had subjected to domestic violence on earlier occasions. In sentencing you, the court must denounce your conduct, give emphasis to general deterrence, and impose just punishment. A strong message needs to be sent to males in the community who are inclined to be violent towards their female partners. You do not own them. You have no

right ... menacingly [to] control them. If you lay a hand on them in anger, the law will not spare you punishment. Men who are bullies towards women usually have some psychological inadequacy. They need to look long and hard at themselves to try to understand why they are inclined to behave with anger and brutality, and seek professional help to overcome such inclinations.

***Pasinis v The Queen* [2014] VSCA 97 (22 May 2014) – Victorian Court of Appeal**

Kyrou AJA at [53]-[54]: 'The effects of family violence are now well documented. They are not confined to physical injury. Victims often feel responsible for the violence and ashamed that they were not able to prevent the perpetrator from offending. As occurred in this case, it is common for victims to deny or conceal that their partners have assaulted them until the violence becomes unbearable. This phenomenon was reflected in the behaviour of D, which is described at [5] and [8] to [10] above. Victims who have been dominated, controlled and beaten by their partners over a significant period experience serious and longlasting psychological trauma. As in the present case, the physical effects of the violence and its erosion of the victim's confidence can also affect their ability to participate in paid work and have other serious financial effects'.

***R v Ritter* [2016] SASCFC 88 (16 August 2016) – Supreme Court of South Australia**

Parker J at [17]-[21]: 'At the time of the offending the appellant and the victim had been in a relationship for approximately two years. His behaviour towards her was violent and controlling. About one month into the relationship the appellant began verbally abusing the victim. This progressed to physical abuse occurring about twice each week. By the last year of the relationship the frequency of assaults had escalated to the point where the appellant was assaulting the victim on a daily basis. The assaults included punching, slapping, kicking, throwing items and spitting. When the victim was threatened or attacked by the appellant she would try to leave their flat, often running into nearby streets and parks and attempting to hide. The appellant would frequently chase her or track her down in order to continue his abuse. The appellant monitored the victim's movements and rarely let her leave the house without him. He also controlled her finances, regularly forcing her to withdraw money from her account for his benefit, including so that he could buy drugs and alcohol. The appellant regularly threatened that if the victim reported any abuse to the police or left the relationship he would harm her and her children. She was too frightened to leave or to report the abuse to police, friends and family'.

***Her Majesty's Attorney-General v O* [2004] TASSC 53 (9 June 2004) – Supreme Court of Tasmania**

Quoting the Canadian decision of *R v Brown* (1992) 73 CCC (3d) 242, 249 (as cited in *Parker v R* [1994] TASSC 94): *'When a man assaults his wife or other female partner, his violence toward her can be accurately characterised as a breach of the position of trust which he occupies. It is an aggravating factor. Men who assault their wives are abusing the power and control which they so often have over the women with whom they live. The vulnerability of many such women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape.'*

***Lusted v MRB* [2013] TASMC 9 (19 February 2013) – Magistrates' Court of Tasmania**

Magistrate RW Pearce at [68]: 'Family violence is to be abhorred. It is a significant social problem, of concern to the community and the justice system. The parliament saw fit to enact legislation, the *Family Violence Act 2004*, expressly to "provide for an integrated criminal justice response to family violence which promotes the safety of people affected by family violence". The nature of family violence is that it is difficult to detect and prosecute. It is frequently the case that offences are committed in private and with little or no independent corroborative evidence. Moreover, family violence offences are often characterised by reluctance on the part of the victim to assist in the prosecution of offences. That is so for a range of factors including fear and a wish to preserve relationships, even dysfunctional ones, for the sake of loyalty, affection, companionship, economic and domestic support and in the perceived interest of children. Sometimes those motivations are misguided but persist nevertheless. As a consequence of such factors victims sometimes act in a way that seems to an outside observer to be incongruous and difficult to understand, including by failing to complain about, or hiding or lying about violence directed at them. Even if victims are willing to give evidence then the success of prosecutions depends principally on credibility of the uncorroborated account of the victim, a factor often taken advantage of by perpetrators and further adding to the reluctance of victims to complain'.

***Bropho v Hall* [2015] WASC 50 (9 February 2015) – Supreme Court of Western Australia**

Mitchell J at [16]: 'The fact that the aggravated assault occurred in a domestic setting is a significant aggravating factor of the offence. An offence of this nature generally involves an abuse of the trust which one partner places in another, often where the victim is in a vulnerable position by reason of greater physical strength of the offender. The vulnerability of the victim is generally increased by the difficulty which she (it is usually a she) may have in extricating herself from the situation. As McLure P has noted, the readiness of many victims to return to, or remain in, a relationship with the perpetrator is a hallmark of domestic violence. Recognising that common feature, it remains important for a court sentencing an offender for that kind of offence to take account of the need to protect persons in that vulnerable position, so far as the courts can do so by the imposition of a sentence, bearing a proper relationship to the overall criminality of the offence, which has a deterrent effect and, in an appropriate case, removes the offender to a place where there is no opportunity to violently attack their partner' (which was approved by this court in Gillespie v The State of Western Australia [2016] WASCA 216 [48]).

***The State of Western Australia v Cheeseman* [2011] WASCA 15 (19 January 2011) – Supreme Court of Western Australia (Court of Appeal)**

McLure P at [3]: 'The hallmark of domestic or relationship related violence is the readiness of many victims to return to, or remain in, a relationship with the perpetrator of the violence. The otherwise appropriate penalty should not be reduced because there is a return to the status quo that existed prior to the

breakdown of the relationship which precipitated the violence. It is also circular to rely on the return to the relationship status quo as the route to rehabilitation. Moreover, the emphasis on the domestic context marginalises the actual and threatened violence inflicted by the respondent on C'.

***Dawes v Coyne* [2000] WASCA 134 (19 May 2000) – Supreme Court of Western Australia (Court of Appeal)**

Miller J at [6]: 'The learned Magistrate decided the matter after hearing submissions. He began by stating that it was a tragedy that "domestic matters of this sort get into the criminal court" and made the observation that "both parties had been causing trouble for the police who do not want to be involved in these sort of things". The learned Magistrate's observations that the matters in question were merely "domestic" and should not get into the criminal court were entirely inappropriate. Allegations of unlawful assault and breaches of [the] restraining order were matters properly the subject of a complaint and the proper place for the resolution of those complaints was in the Court of Petty Sessions. Further, the observation that both parties had been causing trouble for the police is difficult to understand from the evidence but whether it be true or not, it was wrong for the learned Magistrate to make the statement that police did not wish to be involved in matters of breach of restraining order and assault in the circumstances of this case'.

***WJ v AT* [2016] QDC 211 (19 August 2016) – District Court of Queensland**

Smith DCJA quoting the explanatory notes to the 2011 bill for the *Domestic and Fami*ly Violence Protection Act 2012 (Qld) at [166]: 'Lastly, the Bill aims to ensure that the person who is most in need of protection is identified. This is particularly important where cross-applications are made, which is where each party to a relationship alleges domestic violence against the other and which often result in cross-orders.

During consultation, stakeholders reported a disproportionate number of cross-applications and cross-orders and expressed the concern that in many instances domestic violence orders are made against both people involved.

This is inconsistent with the notion that domestic violence is characterised by one person being subjected to an ongoing pattern of abuse by another person who is motivated by the desire to dominate and control them. Both people in a relationship cannot be a victim and perpetrator of this type of violence at the same time.

A cross-application may be used by a respondent to continue victimising the aggrieved person, to exact revenge or to gain a tactical advantage in other court proceedings.

Also, violence used in self-defence and to protect children can be misconstrued as domestic violence if a broader view of the circumstances is not taken' (His Honour's emphasis).

***R v Brown* [2015] ACTSC 65 (5 March 2015) – Supreme Court of the Australian Capital Territory**

Burns J at [4]-[5]: Burns J accepted the opinions and statements he quoted from clinical psychologist, Dr Michael Barry's report. Dr Barry said: 'At the time of the offence, Miss Brown had been in an emotionally and physically abusive relationship for over two years. She described a gradual deterioration in her mental health, reporting low self-worth and feeling overwhelmed, feeling that she did not "fit in anywhere" and she described a "sense of loss in the world". She reported that despite Mr Ruspandini's treatment of her, she felt that he was the only one who she could rely on.

Domestic violence and emotional abuse are behaviours used by one person in a relationship to control the other. Research into the cycle of domestic violence suggests that it is common for victims of domestic violence to blame themselves for the abuse and to experience major disruption in their self and world view. Domestic abuse can have a serious impact on the way a person thinks and interacts with the world around them. The chronic exposure to violence, or the threat of violence, and the stress and fear resulting from this exposure, can cause not only immediate physical injury, but also mental shifts that occur as the mind attempts to process trauma or protect the body.

Domestic violence affects a person's thoughts, feeling and behaviours, and can significantly impact on mental stability. While the effects of physical abuse are obvious, the effects of emotional abuse are easier to hide and harder to repair. It is common for victims of emotional abuse to blame themselves and minimise their abuse, particularly when they are repeatedly told that it is their fault that their partner becomes angry or aggressive'.