Brown v Bluett **[2013] WASC 189 (14 May 2013) – Supreme Court of Western Australia**

'Aboriginal and Torres Strait Islander people' – 'Aggravated assault' – 'Breach of restraining order' – 'Physical violence and harm' – 'Repeated breaches of a restraining order' – 'Temporary protection order'

Charge/s: Aggravated assault causing bodily harm, breach of violence restraining order (x 3).

Appeal type: Appeal against sentence.

Facts: A violence restraining order was obtained by the female victim against the male, Aboriginal appellant. This included conditions prohibiting the appellant from communicating or attempting communication with the victim, from remaining on premises where the victim lived or worked and from remaining within 10 metres of the victim. The first breach of the restraining order occurred at a Native Title meeting where the appellant spoke to the victim. He also assaulted her by hitting her on the back of the head with a jaffle iron. The second breach occurred when the appellant went to the victim's home and persuaded her to take him to Meekatharra. Finally, the appellant breached the order by ringing the victim on 52 occasions and also by persuading the victim to drive him to Bondini Reserve. In sentencing, the magistrate noted that the appellant had pleaded guilty immediately and was entitled to a reduction of a maximum of 25% as provided for by s 9AA of the *Sentencing Act.* Her Honour took the maximum penalties as a starting point and reduced these by 25% in imposing sentences. This resulted in a head sentence of 27 months' imprisonment.

Issue/s: The magistrate erred in the application of the *Sentencing Act* in particular by construing it as requiring a (potentially) significant increase in the sentence that would otherwise have been imposed and a starting point being the maximum penalty open to the court.

Decision and Reasoning: The appeal was allowed. The respondent conceded that the magistrate's interpretation of s 9AA was erroneous and that the appeal ought to be allowed. That concession was properly made. The magistrate's application of the *Sentencing Act* was erroneous and the error resulted in a sentence beyond the range of sentences customarily imposed for offences of this type. The appellant was resentenced.

In resentencing the appellant, Allanson J noted that a sentence of immediate imprisonment was the only penalty appropriate in light of repeated violations of a restraining order and one act of significant violence. His Honour provided:

‘The law is limited in the manner in which it can respond to domestic violence. One important part of that response is by the issue of violence restraining orders. It is essential that those orders are not ignored. When they are repeatedly breached, the need for general and individual deterrence will ordinarily outweigh subjective and other mitigating considerations’ (See [16]).

The offence of assault was a serious example of its kind as it involved a blow to the victim’s head and was committed with an object capable of causing serious injury (See [17]-[18]). The breaches of the restraining order did not in themselves involve acts of violence but it was particularly serious that in each of the last two offences the appellant was breaching the order soon after appearing in court in relation to the first breach (See [19]). The appellant had made some attempt to turn his life around but the mitigating weight of this factor was limited by the nature of the offending and the need to emphasise the importance of complying with the restraining order (See [21]-[22]). Taking these factors into account and with the full benefit of the 25% reduction, Allanson J imposed a head sentence of 12 months’ imprisonment.