

## Impact on consent and disclosure

A victim's experiences of and vulnerabilities to domestic and family violence may affect their capacity to voluntarily consent [Stubbs 2007] to or willingness to disclose [Mouzos & Makkai 2004] the violent behaviours, or other matters resulting from their relationship with the perpetrator, for example matters arising in relation to a protection order [Wangmann 2012], a breach [Douglas 2008] of a protection order, a parenting order [Kaspiew et al 2009], other legal remedies or proceedings [Hunter 1999], financial dealings [Cameron 2014] and **immigration processes**.

The table below highlights some of the contexts or reasons that may affect a victim's consent and disclosure having regard to vulnerabilities commonly experienced by victims of domestic and family violence and more **particular vulnerabilities** relating to the violent behaviour or the victim's circumstances. In some cases, these contexts or reasons may intersect; in other words, a victim may not disclose certain behaviours or matters for the same reasons they have been coerced into consenting to them.

It may be appropriate for judicial officers in domestic and family violence related proceedings to inquire as to the contexts or reasons affecting the victim's consent or disclosure in a particular case where the evidence before the court does not sufficiently address or explain these issues.

Vulnerabilities – common	Possible contexts or reasons for:	
	Consent	Non-disclosure
<i>History/pattern of domestic and family violence</i>	<ul style="list-style-type: none"> <li>➤ Capacity to voluntarily consent compromised over time due to physical, mental or emotional impacts of coercive and controlling behaviours [Stubbs 2007]</li> </ul>	<ul style="list-style-type: none"> <li>➤ Coercive and controlling behaviours not recognised as domestic and family violence - seen as normal part of relationship</li> <li>➤ Violence not seen as sufficiently serious to warrant disclosure [Meyer 2010]</li> </ul>
<i>Relationship with perpetrator</i>	<ul style="list-style-type: none"> <li>➤ Perceived need to preserve ongoing relationship with perpetrator</li> <li>➤ Fear of further/escalation of violence</li> <li>➤ Economic dependence on perpetrator, fear of poverty and homelessness</li> </ul>	<ul style="list-style-type: none"> <li>➤ Perceived need to preserve ongoing relationship with perpetrator</li> <li>➤ Perceived need to protect perpetrator</li> <li>➤ Fear of perpetrator retaliation, further/escalation of violence</li> <li>➤ Economic and social dependence on perpetrator, fear of poverty and homelessness [ALRC/NSWLRC 2010]</li> </ul>
<i>Self perception</i>	<ul style="list-style-type: none"> <li>➤ Sense of self-worth and entitlement to volunteer/withdraw consent diminished over time by coercive and controlling behaviours</li> </ul>	<ul style="list-style-type: none"> <li>➤ Fear of others' judgment – feelings of shame, humiliation, embarrassment about being in violent relationship or being disbelieved [Evans &amp; Feder 2016]</li> </ul>

<p><i>Presence of children</i></p>	<ul style="list-style-type: none"> <li>&gt; Concern for children's safety and wellbeing</li> <li>&gt; Perceived need to keep the family together</li> <li>&gt; Perceived need to preserve relationship between children and perpetrator</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Concern for children's safety and wellbeing</li> <li>&gt; Perceived need to keep the family together</li> <li>&gt; Perceived need to preserve relationship between children and perpetrator [Evans &amp; Feder 2016]</li> </ul>
<p><i>Understanding/prior experience of legal and judicial processes</i></p>	<ul style="list-style-type: none"> <li>&gt; Lack of awareness of domestic and family violence related laws</li> <li>&gt; Lack of awareness of legal rights and available advice and support services</li> <li>&gt; Consent to orders compelled by expense and stress of ongoing proceedings and continuing opportunities for systems abuse by perpetrator</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Lack of awareness of domestic and family violence related laws</li> <li>&gt; Lack of awareness of legal rights and available advice and support services</li> <li>&gt; Feeling that concerns won't be believed or taken seriously</li> <li>&gt; Feeling of lack of control over process and outcomes</li> <li>&gt; Fear of criminal justice consequences for perpetrator</li> <li>&gt; Fear of child protection agency intervention, having children removed</li> <li>&gt; Fear of 'hostile parent' claim in parenting proceedings [Kirkwood 2007] – being accused of alienating children from perpetrator [Kaye et al 2003]</li> </ul>
<p><b>Vulnerabilities – particular</b></p>	<p><b>Possible contexts or reasons for:</b></p>	
	<p><b>Consent</b></p>	<p><b>Non-disclosure</b></p>
<p><i>Sexual violence</i></p>	<ul style="list-style-type: none"> <li>&gt; Violence is forced or unwanted – involuntary consent</li> <li>&gt; Past consensual relations [Carline &amp; Easteal 2014] between victim and perpetrator and victim difficulties in proving no consent [Logan et al 2015]</li> <li>&gt; Facilitated by alcohol or drugs [Cox 2016]</li> <li>&gt; Perceived need to comply with perpetrator's sexual demands to keep the peace, minimise the violence already experienced, and avoid further/escalation of violence [Heenan 2004]</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Lack of awareness of criminality of violence</li> <li>&gt; Fear of losing relationship</li> <li>&gt; Feelings of shame, self-blame and failure</li> <li>&gt; Fear of perpetrator retaliation, further/escalation of violence</li> <li>&gt; Fear of rejection by family and friends</li> <li>&gt; Fear of health and reproductive consequences</li> <li>&gt; Fear of adverse police or judicial responses [Heenan 2004] [Lievore 2003]</li> </ul>
<p><i>Economic abuse</i></p>	<ul style="list-style-type: none"> <li>&gt; Consent to financial dealings is demanded, forced or fraudulently obtained [ALRC/NSWLRC 2010]</li> <li>&gt; Emotional manipulation inferring secrecy or lack of trust if refusal to comply with demands [Hand et al 2009]</li> <li>&gt; Fear of further/escalation of violence</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Fear of being legally/criminally implicated in fraud or other wrongdoing</li> <li>&gt; Fear of economic loss/insecurity</li> <li>&gt; Fear of perpetrator retaliation, further/escalation of violence</li> </ul>

<p><i>People from vulnerable groups</i></p>	<ul style="list-style-type: none"> <li>&gt; Exploitation of diminished capacity to voluntarily consent due to exacerbating circumstances or physical, mental or emotional disability, impairment or illness</li> <li>&gt; Cultural/community expectations and practices</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Heightened physical, geographical or social isolation</li> <li>&gt; Practical difficulties in accessing advice and support services</li> <li>&gt; Advice and support services not properly equipped to address victim's specific circumstances/needs</li> <li>&gt; Past negative experiences of legal and judicial processes eg <i>people with disability</i> [Jennings 2003]</li> <li>&gt; Victim has offending/criminal record</li> <li>&gt; Fear of other legal consequences eg visa cancellation, deportation</li> <li>&gt; Cultural/community expectations and practices eg <i>Aboriginal and Torres Strait Islander</i> [Willis 2011], <i>culturally and linguistically diverse, remote and rural</i> [Wendt et al 2015], <i>LGBTIQ</i> [Calton et al 2015]</li> </ul>
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