

## ***The Queen v Anzac* [2020] NTSC 58 (7 August 2020) – Northern Territory Supreme Court**

‘Breach’ – ‘Misuse of alcohol or drugs by the perpetrator’ – ‘Prosecution appeal against sentence’ – ‘Protection order’

Charges: Breach domestic violence order (DVO) x 1.

Proceedings: Prosecution appeal against sentence.

Facts: The male respondent contravened a DVO protecting his female partner by being intoxicated in her presence. As the respondent had previous convictions for breaching DVOs, he was required to be sentenced under s 121(2) of the *Domestic and Family Violence Act 2007* (NT) (“the Act”), unless the court was satisfied of the matters set out in s 121(3). The respondent was sentenced to a 6-month good behaviour bond on conditions.

Grounds of appeal:

1. The sentencing judge erred in applying ss 121(2) and (3) of the Act.
2. The sentencing judge failed to accord the complainant procedural fairness by not requesting submissions on proceeding without recording a conviction, where the sentencing judge had previously indicated he would impose a conviction.
3. The sentence was manifestly inadequate.

Held: Appeal allowed on ground 2 and the appellant re-sentenced to a 12-month good behaviour bond on conditions. Section 121(3) applied in this case. The offence did not result in harm being caused to the protected person, and, in the particular circumstances of the offence, it was not appropriate to record a conviction and impose a sentence of 7 days or more on the respondent under s 121(2) of the Act. The particular circumstances of the offence (which lowered the respondent’s moral culpability) included his deprived background, chronic misuse of alcohol (including early exposure, inability to control drinking in town, mutual misuse in the relationship, and lack of treatment). The respondent was also genuinely remorseful.