Coercive control - Cases

***Behn & Ziomek* [2019] FamCA 298 (10 May 2019) – Family Court of Australia**

McClelland DCJ recognized that the father was using repeated litigation in a way that amounted to coercive and controlling conduct:

[245] Additionally, I find that the manner in which the father has conducted himself throughout this litigation amounts to coercive and controlling conduct as against the mother. As set out above and annexed to these Reasons for Judgment, the father has brought an excessive number of interim applications, including two Contravention Applications. In that regard, during cross-examination, Ms O gave the following evidence:

> Question: … Would you suggest that, should the Court reinstate a regime whereby the father spends time with the child, that the father will continue to do such things as use the Court system to control the mother?
>
> Answer: That's another very common feature of perpetrators of coercive controlling family violence. Yes. Continued litigation. And that in turn has a negative impact not just on the other parties but on the children obviously because coming before – having to be interviewed by someone like me over and over again or the ICL, or whomever it is, is an incredibly stressful experience for children.

[246] It was not disputed that in the period between 19 April 2016 and 10 May 2016, at the request of the father, the Police attended the mother's home on seven occasions to conduct welfare checks on the child. I am also satisfied that the father acted in a coercive and controlling manner by requesting that the Police conduct such a number of unnecessary welfare checks on the child.

[247] I am further satisfied that the father has sought to exercise control over the mother by dictating to her the appropriate medical treatment for the child and when the child should commence school. I set out the evidence relevant to that issue below.

***Garrod & Davenort* [2018] FamCA 825 (12 October 2018) – Family Court of Australia**

Bennett J was critical of the Regulation 7 Family Consultant's handling of the matter:

[219] The Regulation 7 Family Consultant agreed with Ms Lewis, counsel for the mother, that the flagrant breach of orders so the father can get what he wants is consistent with him engaging in coercive controlling violence. It is particularly concerning that the father's poor behaviours were not based on a lack of control but on a prerogative of his needs and desires. That indicates to me that very significant changes in attitude and behaviour are required to be undertaken by the father.

Bennett J noted that family violence is not to be assessed on a sliding scale focused solely on physical violence:

[220] …The Regulation 7 Family Consultant did not recognise the father's conduct to Ms O or the mother as being on the higher end of family violence. His manipulative behaviours were insidious and should have been identified as such. The Regulation 7 Family Consultant has assessed family violence on a scale which was an error. Family violence is not to be assessed on a sliding scale. Every child is entitled to be kept safe from harm. Precautions must be proportionate to the harm identified. It does not follow that a cessation of time is reserved only for perpetrators of physically life threatening violence. My strong impression is that the Regulation 7 Family Consultant had regard to some physical violence perpetrated by the father towards the mother but largely gleaned over the coercive controlling violence of the father.

And later, noting the Family Violence Best Practice Principles definition of coercive controlling violence:

[223] …Coercive controlling violence is an ongoing pattern of use of threat, force, emotional abuse and other coercive means to unilaterally dominate a person and induce fear, submission and compliance in them. Its focus is on control, and does not always involve physical harm. [referring to the Family Violence Best Practice Principles, Edition 4, December 2016, Family Court of Australia, 8.] It is inconceivable that the Regulation 7 Family Consultant could have had regard to the definition of violence in which the father was engaged.

Maluka & Maluka **[2009] FamCA 647 (24 July 2009) – Family Court of Australia**

In this case Benjamin J made several comments about coercive control:

[396] In many ways the facts as between the parties that I have determined in this case fit most, if not all, of the indicators of coercive controlling violence. The father has used coercion, control, violence, intimidation and threats throughout the relationship, including after separation. He seeks to intimidate and control the mother with the attendant violence, abuse, isolation and aggression. From time to time he focuses this on the children. He dominates and controls the children, particularly X, but his behaviour with regard to Y and her reaction to his verbal abuse of her in June 2008 is indicative of his continuing coercive controlling violence.

[397] The father exercised economic power to control and manipulate the mother and effectively the children. He endeavoured to isolate the mother and in effect continues to do so. In that process he denies or minimises his involvement and culpability.

[399] The effect of that long term violence, control and manipulation imposed by the father on the mother has from time to time undermined the mother's parental authority and undermined her parenting role…

Heilig & Cabiness **[2011] FMCAfam 97 (2 March 2011) – Federal Magistrates' Court of Australia**

Altobelli FM recognised the coercive and controlling behaviour of the father:

[10] He has a long history of law breaking, and there is very little evidence of conscience in his functioning. His controlling abusive behaviour towards young partners I find flabbergasting. The description of his severely burning Ms Cabiness' arm when he considered the coffee she had made for him was 'crap' is appalling. The description of his behaviour is almost of treating them as slaves, while enjoying humiliating them.

In paragraph [30], Altobelli FM favourably refers to research quoted in the decision of the Court of Criminal Appeal on the Crown manifest inadequacy appeal in relation to the father's sentencing for violent offending against the mother and other former domestic partners, cited as R v Hamid [2006] NSWCCA 302 (20 September 2006) at [77]:

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, pages 6-7.

R v Smith **[2021] ACTSC 114 (3 June 2021) – Australian Capital Territory Supreme Court**

Mossop J observed:

[25] The sexual intercourse without consent is constituted by the digital penetration of the complainant's vagina. This is a case in which the sexual intercourse can properly be described as an act of sexual violence. There is nothing which suggests that the act was performed for the purposes of sexual gratification. Rather, it was an assault designed to degrade the victim and formed part of a pattern of demeaning and controlling behaviour on the part of the offender. That demeaning and controlling behaviour

is an important part of the context in which the offence occurred.

***R v NX (No 2)* [2019] ACTSC 131 (24 May 2019) – Australian Capital Territory Supreme Court**

In considering the objective seriousness of the offence, Mossop J observed:

[31] The offending in the present case includes very serious offending occurring in a context having features of domestic violence. Those include that the offending was directed to maintaining control over the victim by destroying her property and means of transport and blaming her for the offender's unlawful conduct. The victim was more vulnerable by reason of her need to care for and protect her young child. Her young child was present during some of the offences.

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

Burns J accepted the opinions and statements he quoted from clinical psychologist, Dr Michael Barry's report.

[4] … 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.

[5] I accept the opinions and statements which I have just quoted from Dr Barry's report.

***Roberts v Smorhun* [2013] ACTSC 218 (1 November 2013) – Australian Capital Territory Supreme Court**

Refshauge J referred to dicta of the Alberta Court of Appeal in R v Brown (1992) 73 CCC (3d) that:

[81] When a man assaults his wife or other female partner, his violence toward her can be accurately characterized 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.

Refshauge J noted that this statement had been cited with approval by the Court of Criminal Appeal of the Supreme Court of Tasmania in Parker v R [1994] TASSC 94 (21 July 1994) and in the NSW Court of Criminal Appeal in R v Hamid [2006] NSWCCA 302 (20 September 2006). [82]

***Purcell v O'Reilly* [2018] ACTSC 60 (9 March 2018) – Australian Capital Territory Supreme Court**

Penfold J observed:

[48] … the incident giving rise to Mr Purcell's conviction, and its source in Mr Purcell's determination to examine the victim's mobile phone, seem to reflect both an attempt to exercise power or control over his former wife and a belief that this was justified. For this reason, the incident as a whole may legitimately be treated as more serious than it would have been if the TV had been destroyed in anger or frustration generated by some event unrelated to conflict between Mr Purcell and his former wife.

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

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'.

***Love v Kumar* [2018] ACTMC 23 (31 October 2018) – Australian Capital Territory Magistrates' Court**

In finding the accused assaulted his wife Special Magistrate Hunter OAM observed:

[207] Taken together the evidence if accepted of giving information to officials at Immigration, the refusal to recant that information, the bruise to the head which is consistent with the allegation on 18th and the general information such as not allowing Ms Devi to have a phone, not allow her to contact her brother and the like which could lead to a conclusion that the defendant was controlling her life, (which is not unknown in domestic violence situations). It also leads to a conclusion that Ms Devi is speaking the truth and should be believed.

And:

[209] I am also satisfied that she had been controlled at least to some extent. That is supported by uncontroverted evidence that she had to secret a SIM card so that she could contact her family and brother by phone. This is consistent with the evidence from her brother that she had no access to contact him except by public phone until he gave her the SIM card. I am also satisfied she had limited access to friends and family. That evidence was corroborated by her brother and by the fact she used the SIM card he gave her to make the various phone calls she made to family and friends. I also note the Defendant had alluded to that control in some of his answers in the ROI such as those referred to by Prosecution counsel in her submissions.

[Note: This decision was unsuccessfully appealed *Kumar v Love* [2019] ACTSC 238 (30 August 2019) ?– Australian Capital Territory Supreme Court]

***Yaman v R* [2020] NSWCCA 239 (25 September 2020) – New South Wales Court of Criminal Appeal**

[135] The right of all women to determine their own path in life must be protected and upheld by the courts. Where a woman's right is ignored or disregarded by an offender, that right must be vindicated, including by punitive and strongly deterrent sentences where necessary.

[136] The applicant had failed to accept that his former partner had chosen a life that did not include him and, by the commission of a violent crime against her, he sought to force her to resume a relationship with him. His act had to be denounced; stern punishment had to be imposed, and the applicant and others

deterred from future conduct of that nature.

***Le v R* [2020] NSWCCA 238 (23 September 2020) – New South Wales Court of Criminal Appeal**

Adamson J observed:

[215]: Thus, it was, for example, for the jury to determine whether the applicant's conduct in proposing dinner with the complainant's family on the evening of Sunday 15 October 2017 was inconsistent with that of a man who had just assaulted the complainant and caused her serious injury which, to his knowledge, had resulted in at least a substantial bruise on her hip and in her having difficulty walking. One might postulate, as Mr Dhanji did in argument, that it would be odd for a man who had assaulted his partner to want to expose her to the gaze of her family soon after the event when the effects of the injury would still have been obvious. On the other hand, a jury might regard it as consistent with their plainly abusive relationship that the applicant would oscillate between drug-fuelled violence and affectionate, inclusive gestures to perpetuate the complainant's emotional dependency on him and her compliance with the dictates of their relationship. The jury might have regarded the applicant's conduct in expressing concern about the complainant's welfare, including her consumption of alcohol, as a smoke screen to assuage her family's concerns.

[223]: None of the matters referred to above is, as Mr Dhanji would have it, a matter of "making excuses" for the complainant's inconsistencies. The jury could have formed the view that the complainant was prepared to endure an injury inflicted by the applicant if it was one from which she could recover because she had come to love and depend on him, both financially and emotionally, and believed that he loved her. The jury might have considered that once the complainant appreciated, as she did at the end of October 2017, that he had fractured her hip and that she would have to undergo a serious operation, she realised that he had not been acting in her interests and had permanently harmed her. It was open to the jury to infer that, from that time on, she stopped making excuses for him, as she had done up until that point, both when confiding in her aunt and in telling the police on the first occasion in October 2017 before she knew of the diagnosis. The jury might have considered that this was what led the complainant to participate in a recorded interview in November 2017, having been so reluctant to go on the record or identify the applicant when she was taken to the police station on 24 October 2017 following her call to Triple-0. The jury could have formed the view that the complainant was prepared to endure an injury inflicted by the applicant if it was one from which she could recover because she had come to love and depend on him, both financially and emotionally, and believed that he loved her. The jury might have considered that once the complainant appreciated, as she did at the end of October 2017, that he had fractured her hip and that she would have to undergo a serious operation, she realised that he had not been acting in her interests and had permanently harmed her.

[225] The complainant's conduct towards the applicant involved the inevitable conflict inherent in an

abusive relationship: notwithstanding that he hurt her, she loved him and did not want to lose him. It may be that when she called police on 24 October 2017, she did so to assist her in her dual aims of keeping the relationship with the applicant on foot and yet stopping him from assaulting her. Her descriptions to her aunt and to the police of how she sustained the injury to her hip were broadly consistent. I do not consider it to be of any particular significance whether she reported a single kick or more. It is understandable that the jury might have considered that the diagnosis caused her to rethink the relationship and stop making excuses for the applicant.

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

Johnson J commented:

[77] 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’.

And:

[403] I am satisfied that the father represents a real danger to the mother and the children of continuing his coercive controlling violence and that the mother ought to have the ability to bring up these children free of that behaviour and its consequential fear and the children ought to be able to escape the direct and indirect consequences of that behaviour and the actuality of that behaviour by the father.

R v Argyle (a pseudonym) **[2021] NSWDC 267 (18 June 2021) – New South Wales District Court**

Whitford SC DCJ observed:

[50] On [the victim] Ms Argyle’s meeting with and experience of [the accused] Steadman, and his influence over her, [the clinical psychologist] Ms Pratley observed:

…(her) anxiety and posttraumatic symptomatology meant that she believed she had no choice but to participate in the abuse by Steadman, or face physical or sexual harm herself, which she believed put her unborn child at risk. Ms Argyle's trauma history and low self-esteem contribute to her lack of agency…and… impaired problem-solving capacity… (which would be intensified with low cognitive capacity).

…(her) account indicates that she was subject to a pattern of ongoing intimidation by Steadman, which constituted coercive control…

[69] [A factor that diminishes Ms Argyle's culpability is] her experience of the coercive controlling behaviour of Steadman and the attendant duress and fear that he would harm her unborn child and/or herself. Duress in relation to her fear for her unborn child was clearly raised with police in her interview and there is a foundation, in a combination of the agreed facts and the expert reports, for a reasonable conclusion that she was operating under a form of duress. In the whole of the circumstances, Ms Argyle was under the coercive control of Steadman and was unable to think through the consequences either of her actions or of her failure to respond differently to, and to report, what had happened to her sister.

***R v Aumash* [2020] NSWDC 168 (1 May 2020) – New South Wales District Court**

Haesler SC DCJ observed:

[33]-[34] In earlier messages Aumash had sought to control, threaten, and demean Ms White. His intention this day was clear. It was part of a pattern of behaviour. He also sought to cajole her into dropping the charges and excusing his criminal actions toward her. I can infer from those facts that the messages were similar in content to those sent on other days. That conclusion can be drawn beyond reasonable doubt.

The extent of his harassment and the motivation for his actions this day make this a particularly serious example of offences of this type. It requires a custodial sentence: s17 *Crimes Act 1914 (Cth)*.

***R v Bohun* [2019] NSWDC 807 (25 October 2019) – New South Wales District Court**

[33] That Ms Smit and the offender had been in a domestic relationship does not in any way mitigate the offending behaviour. It appears that Ms Smit was personally targeted. Given the breach matters, it does here show that there is pattern of physical and mental violence towards Ms Smit, requiring denunciation.

[34] Here, there could be no clearer example of the exercise of coercive power and control. It may be that at the time, Bohun thought what he did was justified. There could be no justification for such violence. Such behaviour poses a continued threat to victims. They never truly feel safe. Denunciation and appropriate punishment is required. In such matters, the way we do it is by locking someone up: R v Dunn (2004) 144 A Crim R 180.

[35] Gaol, however, puts this offender in cells with other men who are capable of or have demonstrated misogynist violence against their partners. Gaol breaks prosocial bonds. Gaol encourages links with other criminals. Gaols are intrinsically violent environments, and unfortunately can have a crime producing effect rather than discouraging violent crime. Nevertheless, the vulnerable position of Ms Smit must be considered and her dignity vindicated.

***Emitja v The Queen* [2016] NTCCA 4 (21 October 2016) – Northern Territory Court of Criminal Appeal**

Grant CJ and Kelly J noted the sentencing judge's remarks in relation to the course of conduct in which the appellant engaged with approval:

[28]: It is clear that the appellant had in the years prior to the present offending subjected the victim to a course of repeated violence in the domestic context which left the victim in a state of perpetual fear for her person. This is reflected in the Victim Impact Statement dated 5 March 2014, in which the victim stated:

> I get really stressed out by [the appellant]. I get scared when I see him cause I know each time he's going to hurt me. He goes and tells his family I'm to blame for him going to prison and then they come and threaten me. That DVO doesn't work. It doesn't stop him from coming near me and hurting me. The only time I feel safe is when [the appellant] is in prison.

[29]: It was this course of conduct to which the sentencing judge was referring when he observed:

> The offending is once again a very serious incident of domestic violence committed by the offender. The offender's moral culpability for this offending is very high. The offender engages in domestic violence in order to control the victim and to express his displeasure when she does not behave in a manner that he expects her to behave. The offence was committed while [the offender was] subject to [a] DVO once again. The victim was seriously injured.

Grant CJ and Kelly J held the offender's pattern of coercive controlling behaviour rendered spontaneity less relevant to the assessment of the objective seriousness of the offence:

[52] We do not accept the submission made on behalf of the appellant that the objective seriousness of the offence was lower because it was not premeditated. First, the absence of a factor which would elevate the seriousness of the offending is not a matter of mitigation. Secondly, as the respondent submitted, the offending was the epitome of a particularly pernicious form of domestic violence in which a violent and controlling male seeks to exercise dominion over a female victim; a type of offending in which each episode is spontaneous but part of a pattern which renders spontaneity less relevant to the assessment of the objective seriousness of the offence than it might be in relation to other types of offence. The appellant's history of relevant offending has already been detailed. It shows that the offending the subject of this appeal was simply the latest incident in a deliberate and violent pattern of behaviour engaged in by the appellant

for the purposes of intimidating and controlling the victim. The circumstances of the offence under consideration involved direct defiance of the domestic violence order then in place, as have the circumstances of many of the other incidents which form part of the appellant's pattern of behaviour. The instant offence was in no way "an uncharacteristic aberration".

The Queen v Haji-Noor **[2007] NTCCA 7 (18 May 2007) – Northern Territory Court of Criminal Appeal**

Angel J highlighted the sentencing judge's comments that only the offender is to blame for his behaviour:

[31] …It is not uncommon for men in your position to harbour a belief that their former partner had been unreasonable. Nor is it uncommon for violent men in your position to harbour a belief that the former partner has brought the violence on themselves by being unreasonable. You and others like you must learn that only you are to blame for the situation in which you now find yourself. The female victim is not the true cause of your violent behaviour over the years or in February 2006. You and others who are tempted to behave like you must understand that they are not entitled to use physical violence and, if they do, they will go to gaol.

As to the male victim, it is not uncommon for men in your position to become angry and violent towards the new friend or partner. Those people are also vulnerable to attacks by men like you. It is not a case of saying they are men and can look after themselves. As your violence and the consequences well demonstrate, such men are vulnerable to violent attacks by men in your position and they too are entitled to the full protection of the law. Men in your position must understand that if they attack new friends or partners they will go to gaol. For this reason also, general deterrence is particularly significant.

Southwood J noted:

[185] The crime committed by the respondent was nonetheless a serious crime. It was part of a pattern of fundamentally oppressive and coercive behaviour in which the respondent deliberately engaged to dominate and control Ms Hawksworth.

The Queen v Kerridge **[2021] NTSC (sentencing) (1 November 2021) – Northern Territory Supreme Court**

Mildren AJ recognised the offender's controlling behaviour in sentencing:

(p7) I have not dealt in detail with all of the assaults and bad behaviour you had exhibited towards the complainant over the whole period of the relationship. Suffice it to say that during the relationship, you were extremely controlling and demanding.

She not only had fulltime employment, but she had to run the finances of your business which ran at a loss, obtain extra money by repairing bicycles and second-hand white goods and furniture, feed you and the children and attend to the children's schooling, ensure that your alcohol was ready for you when you came home after work and to generally act as your personal servant.

You demanded that she send photos of her breasts to you on numerous occasions, as is evidenced by the text messages. You blame her for the fact that there was not enough money to meet all of the expenses, while at the same time, you indulge yourself in your hobby of repairing cars and other vehicles which you ordered both from Queensland and in Alice Springs.

When money was tight, you became angry and violent towards her, regardless of whether this was her fault or not. The level of violence, punishment and degradation that you dealt her was extreme. The words "domestic violence" are inadequate to properly describe the torment that you caused her to suffer. Your behaviour was callous, controlling and sadistic

The Queen v Lynch **[2021] NTSC SCC22033629 (4 October 2021) (Sentence) – Northern Territory Supreme Court**

Grant CJ recognised the offender's coercive and controlling behaviours in sentencing:

[2] You entered into a relationship with the victim in 2018. She had a young daughter at that time. She then fell pregnant with your child, after which time you started to become more possessive and controlling of her. You would not let her visit friends and relatives, and you were verbally abusive to her, particularly in relation to her mothering skills. However, you had never hit her during the course of the relationship prior to the events in question in this case….She left the house where she was staying with you and returned with police so that she could pick up her infant son. That was because she was too scared to do so by herself. She then returned to Tennant Creek, but you continued to contact her and her family, demanding that she return to Alice Springs.

[3] You told your ex-wife that your purpose in going to Tennant Creek was that you were concerned about the welfare of your infant son. I think the objective reality is that you knew that the victim had resumed seeing her former partner, and that you were both jealous of that relationship and resentful that the former partner was having any part to play in your son's life.

[7] However, I do accept that alcohol was not a contributing factor in this offending. I am not sure whether that works in your favour or not. It seems to suggest that you are unable to resist your possessive and controlling urges even when you are sober…..The reason for that [the offender not showing any remorse], Mr Lynch, I suspect, is that you considered and you still consider that you were in the right, because you felt that the victim – your former partner – was not looking after your son in a manner which you considered to be suitable; and because you consider that you are entitled to impose your will in that respect on your

domestic partners. That is reflected, as I say, in your long history of domestic violence offending.

Inquest into the Death of HD **(Name Suppressed) [2021] NTLC 029 – Northern Territory Coroners Court**

The following extract provides an example of the way in which the deceased's vulnerabilities were used by the partner to justify his controlling behaviour:

[70]: HD's partner was from time to time said to be manipulative and controlling. When questioned about his controlling ways he generally indicated that HD was an alcoholic and he needed to know where she was to either stop her drinking or so as to assist her when she was intoxicated. It appeared to explain his tracking her phone. Her alcoholism was provided as the reason he removed her from the house or used force to keep her there. The same might be said when he escorted her to the police station and asked that her bail be breached for drinking. Perhaps it might be seen in his insistence that he pick her up from work or when he intercepted her at the bus stop.

[71] It is difficult however to see her alcoholism as the reason for him reading her texts and having access to her social media accounts. There are instances where he attempted to warn off a person he thought she was having an affair with using her own Messenger account. It also doesn't explain the constant messaging and telephone calls when she was with her father in Queensland. It appears they were more to do with his belief that she may be talking to another male.

MNT v MEE **[2020] QDC 126 (20 May 2020) – Queensland District Court**

Byrne QC DCJ accepted that the first instance decision was based on "more than merely a finding of a singular act of domestic violence, being economic abuse constituted by the one act of the unilateral forgiveness of the debt." [73], holding that domestic violence was proved by evidence of the appellant's controlling behaviours:

[75] Although I am not satisfied that the incident involving the unilateral forgiveness of the debt owed by the appellant's son amounts to economic abuse as defined, I do consider that it comprises an aspect of overall controlling behaviour or emotional or psychological abuse, in the relevant senses. It is, in my view, not sensible in light of the timing and sequence of events to reach any other conclusion. The forgiveness of the debt the month before the appellant spoke to solicitors about family law proceedings suggests on the face of it that it was deliberate attempt to remove the asset (i.e. the debt owing) from the property pool which would inevitably be the subject of focus in the family law proceedings. That neither the appellant nor his son could satisfactorily explain how and why that occurred supports that view.

[77] I am satisfied, as was the Magistrate, that the evidence concerning the manner in which the respondent's property was dealt with amounts to controlling behaviour in the overall context of the relationship, and that contributed to the respondent's fear for her own wellbeing and safety. In addition to the express findings of the Magistrate, I also include the removal of the go-cart and placing it in the weather, the respondent being told what chairs she could sit on and the moving of her clothing and other property from the residence to variously the garage and into the weather in this class of evidence…

[79] I am satisfied, as was the Magistrate, that the incident involving the appellant getting into the bed already occupied by the respondent, at a time after they had commenced living apart on the one property, forms part of that controlling behaviour as described.

[81] I too am satisfied, as was the Magistrate, that the condition of the house and the lack of approvals for work done was another aspect of the appellant's controlling behaviour towards the respondent.

[83] …I am satisfied that the admitted failure by the appellant to attend in any meaningful way to the rectification in the roughly two months between the council notice and the hearing (i.e. more than the 20 business days allowed by the Council notice) is both domestic violence in that it is controlling behaviour which limited the lawful use of the premises and potentially affected the asset base for the intended family law proceedings, and evidences the nature of the previous relationship involving controlling behaviour by the appellant towards the respondent.

***CPS v CNJ* [2014] QDC 47 (21 March 2014) – Queensland District Court**

Dearden DCJ observed:

[18] I am not persuaded (contrary to the submissions made on behalf of the appellant) that the learned magistrate erred in concluding that "continuous contact and comments" made by the appellant were capable of constituting domestic violence.

[19] The definition of "domestic violence" includes behaviour that is "emotionally or psychologically abusive" [Domestic and Family Violence Protection Act ["DFVPA"] s 8(1)(b)] and/or "is threatening" [DFVPA s 8(1)(d)] and/or "coercive" [DFVPA s 8(1)(e)] or "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 of that of someone else". [DFVPA s 8(1)(f)] It was open to the learned magistrate to conclude, on the basis of the respondent's sworn affidavit … and cross examination, … that the appellant's conduct, verbal and by text, fell within one or more of the categories in DFVPA s 8(1).

[20] I am therefore not persuaded that the learned magistrate fell into error in concluding that the appellant's conduct subsequent to the end of the relationship was harassment which amounted to "domestic violence".

***MAA v SAG* [2013] QDC 31 (28 February 2013) – Queensland District Court**

McGinness DCJ was satisfied at [44]:

[44] …The appellant's numerous complaints about the aggrieved to government bodies alleging child abuse and mistreatment were unjustified and an abuse of process as were his complaints to organizations about the aggrieved's doctor and lawyer. The appellant did not dispute that he lodged most of these complaints. I consider that one of the purposes of lodging these complainants was to harass and intimidate the aggrieved. I accept the aggrieved's evidence that she felt intimidated and harassed when she became aware of the complaints;

The aggrieved and her daughters were also subjected to repeated investigations due to the appellant's complaints. For example, she and her children were interviewed by police on a number of occasions. None of the complaints were substantiated. This is further evidence of harassment suffered by the aggrieved and her three daughters at the hands of the appellant.

***SHW v ABC* [2021] QDC 151 (13 August 2021) – Queensland District Court**

In finding the learned Magistrate erred in refusing to grant a restraining order against the respondent because it was not necessary or desirable to protect the appellant from future domestic violence Richards DCJ found:

[37] Even accepting the Magistrate's findings that the respondent was not likely to be violent towards the appellant in the future, his passive aggressive acts such as going to Paluma the day before she was due to arrive, refusing to hand over furniture, and handing over the wrong keys to his solicitors so when the appellant did attend Paluma, she would be unable to enter the cabin, all amount to controlling and emotionally abusive behaviour that has the potential to be repeated during the course of the property settlement. Contact is inevitable during that period.

[38] In my view the magistrate erred in finding that it was not necessary or desirable to protect the appellant from future domestic violence.

***NK v Director-General, Department of Justice and Attorney-General* [2021] QCAT 270 (30 July 2021) – Queensland Civil and Administrative Tribunal**

In confirming the decision of the Director-General, Department of Justice and Attorney-General on 28 February 2020 to issue NK a negative working with children notice Member Hughes observed in relation to the applicant's former partner's attempts to seek termination of a protection order made against the applicant:

[18] More alarming is evidence of controlling behaviour since the Order. In seeking to terminate the Order, NK's ex-partner said:

> I feel I contributed to the incidence (sic) occurring due to my treatment of [NK] including acting verbally abusive towards him, I believe I provoked him to become angry with me.
>
> I was pressured by my friends to take on (sic) order out against [NK]. My friends were always unhappy that I didn't have time to socialise with them when I was spending time with [NK].
>
> I have a really good relationship with [NK's] family; they are very supportive of me. I don't wish to ruin the relationship I have with them by having this order.

[19] I do not accept these statements as proof of their content. Rather, they are evidence of coercive control: victim self-blame and shame, social isolation and in-law pressure. Domestic violence manifests in many forms: physical, psychological, emotional and financial. They are all abhorrent and unacceptable.

Applicant SIL v Scheme Manager, Victim Assist Queensland, Department of Justice and Attorney-General **[2021] QCAT 237 (13 July 2021) – Queensland Civil and Administrative Tribunal**

Member Cranwell accepted that the applicant's husband had used complaints to the Queensland Police Service as a means to control the applicant:

[41] …In relation to the incidents on 27 March 2018 and 5 April 2018, Person A made complaints to the Queensland Police Service. The applicant submitted that Person A used complaints to the Queensland Police Service as a means of controlling her. I would be inclined to accept this submission, given that the there is no record of the Queensland Police Service ever having conducted an investigation in relation to either incident. The Queensland Police Service simply recorded Person A's version of events without speaking to the applicant.

Warne v The Queen **[2020] SASCFC 124 (21 December 2020) – South Australian Supreme Court (Full Court)**

Hughes J (Peek and Stanley JJ agreeing) noted a controlling course of conduct:

[51] The course of conduct in February 2017 was sustained and violent. The appellant caused injuries to the victim and also sought to control her with frightening and dangerous behaviour tending to place her in fear for her life and to submit. That was reinforced by the explicit threat made by the appellant to the victim whilst he directed a firearm at her at close range. There has been no expression of remorse or contrition by the appellant, or any indication of insight on his part with respect to his conduct.

[52] The February course of conduct perpetuated and escalated the earlier incidents of control exerted by violence by the appellant over the victim. This Court has recognised the need to place offending such as this within the context of the relationship and the manner by which such incidents effect control through fear. In R v Saunders [[2017] SASCFC 86 at [41]], Hinton J, with whom Peek J agreed, said:

> In R v Hamid [[2006] NSWCCA 302 (20 September 2006) at [21]], Johnson J, with whom Hunt AJA and Latham J agreed, said after referring to a number of authorities dealing with sentencing in cases of domestic violence: 'These judicial statements are complemented by criminological research concerning domestic violence. 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, pages 6-7.

***R v Saunders* [2017] SASCFC 86 (27 July 2017) – South Australia Supreme Court (Full Court)**

In commenting on sentencing for domestic violence matters Hinton J observed:

[41] In R v Hamid [2006] NSWCCA 302, at [77]–[78], Johnson J, with whom Hunt AJA and Latham J agreed, said after referring to a number of authorities dealing with sentencing in cases of domestic violence:

> These judicial statements are complemented by criminological research concerning domestic violence. 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, pages 6-7.

And:

[43] Intervention orders comprise one component of the Government's response to domestic violence in this State. In concluding his speech on the motion that the Intervention Orders (Prevention of Abuse) Bill be a read a second time the Attorney-General said:

> In enacting these reforms, Parliament will be sending a clear message that it will not tolerate the use of violence to control or intimidate another person, particularly in a domestic setting; that it recognises and abhors the lasting psychological and emotional damage to children from exposure to such violence; that it expects perpetrators to accept full responsibility for their violent behaviour; and that the paramount consideration is always the protection and future safety of the victims of abuse and the children who are exposed to it.

[44]: It must be borne in mind that the abuse which intervention orders are intended to protect against, can take many forms. Physical violence is but one. Emotional and psychological harm is often debilitating and equally often profoundly so.

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

Parker J (Lovell and Nicholson JJ concurring) described the coercive control which the appellant subjected the victim to:

[17] 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.

[18] 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.

[19] 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.

[20] 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.

[21] 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.

***R v Rogers* [2020] SADC 72 (16 June 2020) – South Australian District Court**

Tracey J noted that abusive and violent relationships give rise to behaviours that are difficult to comprehend and that should not alone be the basis for disbelieving a complainant:

[273] SE's behaviour in contacting police, making statements on some occasions and not others, withdrawing complaints, denying incidents occurred, allowing the accused back into her life and seeking variation to intervention orders, are behaviours that too commonly feature in cases involving serious domestic violence. Abusive and violent relationships give rise to behaviours that to anyone who has not had that experience, may seem simply too odd or counterintuitive to be believed.

***R v Hanks* [2019] SADC 139 (16 September 2019) – South Australian District Court**

In her reasons for judgement Chapman J made a number of observations:

As to the complainant's fear of the accused:

[127] In cross-examination, it was suggested to the complainant the accused did not threaten her with violence in any way if she did not park in that spot. She responded, 'When you're in a domestic violence relationship it gets to the point where they don't need to threaten you. I'm terrified. He controlled absolutely everything that I did, the whole aspect of my life he controlled. I'm not going to argue against him. If he says to me 'Park there', I park there because it's either park there and risk a fine and that later or don't park there and get hit, and to me I take the easy option.'

As to the impact of the complainant's lies on her credibility:

[159] It is a serious matter for the complainant to have told those lies. I have considered the extent to which her admitted lies impact upon her credibility. Whilst I do not condone or excuse that conduct, there is a credible explanation. She was in a violent and controlling relationship with the accused. She was in fear of him. She knew that if he was angry, she was in danger of being harmed. She adopted behaviours which she believed would minimise his anger. They included not informing on him to the police and doing what she was told to do. I accept her explanation. I do not consider her admitted lies detract from her credibility.

As to the complainant's failure to mention specific incidents to police:

[176] The accused controlled her through his violence. She tried to manage her safety by doing as he said and by minimising police involvement. I do not consider the failure of the complainant to mention various matters to the police in her subsequent statements about every aspect of the course of events that day (the accused fighting with Mr Cooper; the accused punching her in the car) detracts from her credibility or reliability.

As to the complainant's decision to seek the withdrawal of charges against the accused:

[203] The fact the complainant changed her mind about pressing charges against the accused and said she was the one to hit the accused does not cause me to doubt her evidence about what happened. This assault is alleged to have occurred against the background of a violent relationship in which the accused controlled and manipulated the complainant. She was scared of him and what he might do to her if she proceeded with charges against him.

Director of Public Prosecution v Johnson **[2020] TASCCA 4 (8 April 2020) – Tasmanian Court of Criminal Appeal**

Wood J considered the appellant's behaviour as an attempt to control and manipulate the complainant to avoid prosecution and that the offender was aware of the danger he posed to the complainant:

[4] His moral culpability with respect to the crimes of assault and indeed, all the offences, was high. Before he committed these crimes, he knew he had reacted with violence towards the complainant in the past and he knew that he was prone to jealousy and possessiveness. In short, he knew he represented a danger to the complainant. … Subsequent to the assaults, his conduct of stalking was domineering, relentless and subsisted over days. The court orders protecting the complainant had no impact on his conduct. He then interfered with the prosecution in a way that was calculated to succeed by sending messages and letters while he was in prison. He was determined to control and manipulate the complainant to avoid prosecution.

Geason J considered Brett J's sentencing comments as to the appellant's attempts to control the victim and his own father with approval:

[29] …During that time, you constantly attempted to contact the complainant by telephoning her, and sending her text messages on numerous occasions. I have been provided with a sample of the text messages. They demonstrate an apparently obsessive persistence in seeking to bend the complainant to your will. There is a mixture of repeated threats and emotional manipulation, all of which are clearly designed to persuade the complainant to continue a relationship with you. It would seem that on occasion the complainant did engage in conversation with you about the future.

However, during this period, she also felt upset, scared and frightened and on at least one occasion, told you to leave her alone.

However, you were also persistent in your efforts to persuade [your father] to do what you wanted, and again relied on a combination of overbearing conduct and emotional manipulation. He attempted to contact the complainant, at your urging, on numerous occasions during the relevant period, although was only successful in actually making contact with her a couple of times.

Geason J considered the suffocation of the victim as a form of controlling behaviour:

[33] The fact that the respondent's conduct included suffocation has significance to the assessment of the objective seriousness of the offending. Suffocation should be treated with the same level of seriousness as is afforded strangulation or throttling. Such conduct is inherently dangerous, and capable of causing serious consequences within a very short period. It renders victims incapable of acting to protect themselves. As Estcourt J observed in DPP v Foster [2019] TASCCA 15 at [26]- [27], it is a form of dominance and control which has the potential to cause grave psychological harm, serious injury and even death.

Geason J identified the stalking as part of pattern of behaviour aimed at controlling the complainant:

[36] The stalking conduct is to be considered in the context of the earlier assaults and as part of a pattern of behaviour. It evidences the respondent's possessiveness. It was intended to engender fear in the complainant, and to make her comply with his wishes. As the learned sentencing judge noted, some of the messages demonstrated "an obsessive persistence in seeking to bend the complainant to your will.

***Director of Public Prosecutions v Foster* [2019] TASCCA 15 (12 September 2019) – Tasmanian Court of Criminal Appeal**

Estcourt J (Brett J and Marshall AJ concurring) observed the controlling nature of strangulation:

[26] Each of the identified incidents involved vicious and cowardly attacks by the respondent on a woman. Lest it be thought that grabbing the complainant by the throat and applying pressure is somehow less insidious than punching or kicking, it has been noted in an article by Heather Douglas and Robin Fitzgerald entitled "Strangulation, Domestic Violence and the Legal Response", published in the (2014) 36 (2) Sydney Law Review 231, that strangulation is a form of power and control that can have devastating psychological long-term effects on its victims in addition to a potentially fatal outcome.

***Gregson v Tasmania* [2018] TASCCA 14 (31 August 2018) – Tasmanian Court of Criminal Appeal**

In agreeing with Martin AJ, Geason J observed:

[4] Violence in relationships takes many forms. In whatever guise, whether physical or psychological, it involves the exertion of power and control over another. The victims of such violence are diminished by it, often succumbing to mental and bodily injuries that ruin their lives.

[5] It is a particularly insidious crime because it is difficult to detect. And an all too common consequence of this abuse is that its victims may be so broken or fearful that they do not report it.

[6] It follows that, in sentencing for offences of this type, general deterrence is a significant factor.

[7] The complainant is entitled to the full protection of the law, and the vindication of this Court.

Director of Public Prosecutions v Karklins **[2018] TASCCA 6 (20 April 2018) – Tasmanian Court of Criminal Appeal**

Geason J commented on the seriousness of systems abuse achieved by emotional manipulation:

[56] The respondent's attempts to frustrate his prosecution should also be seen as particularly serious matters. They were a cynical exercise in emotional blackmail. That these offences occurred while the respondent was subject to an interim family violence order is an aggravating factor. Domestic violence typically occurs behind closed doors, making detection inherently difficult. Relationship dynamics frequently militate against a prosecution. Conduct directed at interfering with the prosecutorial process undermines the system intended to afford protection to victims of violence, making an inherently difficult process more so. When it is effective the opportunity for court intervention is foregone. Such intervention might be lifesaving. This offending should be viewed as striking at the heart of legislative attempts to provide protection to the vulnerable. It should be accepted in cases of family violence that attempts to interfere with the due administration of justice by the means of emotional manipulation of a vulnerable victim is a serious matter the consequences of which will always be severe.

And noted that the lack of express threats to achieve that end was not a mitigating factor:

[86] Finally, I note that in sentencing, the learned sentencing judge said of the respondent's attempts to dissuade the complainant from pursuing a prosecution that, "as to the steps he later took to pressure the complainant to change her story, none of his approaches contained express threats of violence or intimidation". I do not consider that that in any way mitigates the conduct. Such conduct would be aggravating, but the absence of an aggravating feature, does not serve to mitigate the seriousness of the conduct which was admitted. Nor does the observation recognise that intimidation through manipulation can occur by means other than actual threats and violence, a proposition particularly pertinent in the context of relationships.

And required denunciation:

[94] The assaults perpetrated on the complainant were serious. They resulted in her becoming unconscious on two occasions. She feared for her life, and her baby. She was threatened with death. The subsequent interference with the prosecution of this offending was perpetrated on multiple occasions, and sought to manipulate the complainant by playing upon her vulnerability. The respondent's methods were devious and require the strongest denunciation.

State of Tasmania v Matthew John Davey **(Sentence) [2021] TASSC unreported (10 December 2021) – Tasmanian Supreme Court**

In sentencing Brett J acknowledged the extent of the accused's coercive and controlling behaviours towards the victim:

… I am satisfied that in your case, the evidence established the tendencies asserted by the prosecution, and that it was these tendencies which defined your approach to the relationship. In particular, I am satisfied that you engaged in a continuous and marked pattern of coercive control over the complainant. I accept the complainant's evidence that you constantly monitored her whereabouts, including by conducting or making her believe that you were conducting electronic surveillance of her communications and movements. You restricted her movements, both by demand but also from time to time by disabling or damaging her motor vehicle. You restricted and controlled her relationships with others, and demanded and expected complete loyalty from her.

You regularly utilised verbal threats and threatening conduct towards her in order to maintain this control. These included threats of burning, or the use of fire against her or her property. On a number of occasions, you made it clear to her that if she ever left you, you would find and kill her. You described to her the very specific ways that you would do this. In my view, the complainant's evidence about the extent of your controlling behaviour was vividly demonstrated by the telephone intercept and listening device recordings, and the surveillance footage, as well as the evidence of independent witnesses who saw particular events. I also accept the evidence of the complainant's mother about this issue. I found her generally to be a credible and reliable witness.

State of Tasmania v Levi Joseph David Hall **(Sentence)** **[2021] TASSC unreported (27 September 2021)** **– Tasmanian Supreme Court**

Comments on passing sentence Pearce J:

I do not accept the submission however that this is not a serious example of the crime. It is possible to think of factors which might have made the crime even worse, for example permanent or disabling physical injuries or sexual crimes. However, over many months you exposed the complainant to a terrifying and degrading ordeal, apparently without any insight into the seriousness of your offending. You targeted her with the type of violent, abusive and controlling conduct which the community rightly condemns. You betrayed her trust and affection, took advantage of her vulnerability, blamed her for your own acts, all with the intention of making her fearful and compliant.

State of Tasmania v ARJ **(Sentence)** **[2021] TASSC unreported (11 March 2021)** **– Tasmanian Supreme Court**

Pearce J acknowledged that inconsistencies in the victim's accounts of the events did not detract from her credibility:

(pp2-3) Mindful of the need for care in any case in which the prosecution depends substantially on the evidence of a single witness, the complainant's account was persuasive and compelling. There were some inconsistencies in the accounts she gave over time to the attending police, to the nurse examiner at the hospital, in the statutory declaration she gave to another police officer and her evidence to the jury, but those inconsistencies do not undermine my confidence in her general truthfulness. She was faced with describing highly traumatic events on multiple occasions mostly when she was in stressful and distressing circumstances, and when the specific instances of violence she was asked to identify and detail were, I am satisfied, not the only instances of similar violence she was subjected to during the indictment period. Some confusion or mistake is not inconsistent with the truth of her account.

Baker v Barratt **[2019] TASSC 28 (4 July 2019) – Tasmanian Supreme Court**

Geason J cited the Magistrate's reasons for decision (which focused on the defendant's controlling behaviour including Visa threats) with approval:

[12]… The defendant appeared in his video interview to be a controlling person. He admitted that he insulted – sorry, he admitted that he insisted that he owned the two phones, which apparently the couple had between them, he insisted it was his phone, both phones were his phone, and he refused the use of the phone to his partner at will because he owned them, that's what he said. That he would threaten to contact the Immigration officer or the Immigration lawyer if he argued with his partner and gave evidence today that he did on the occasion of the 1st February. He made consistent references – numerous references, I didn't count them but well in excess of twelve references to the fact that she'd lacked respect for him and he didn't receive the respect from the complainant that he deserved. He freely admitted that he called her a cunt but denied that it was abusive and was surprised that the police thought that there was anything untoward in that language. He said that he owed – that she owed everything to him and that she was an ungrateful person. He did however support significant parts of the complainant's evidence and lots of the complainant's isn't really in dispute….

….The defendant's controlling manner, well I've referred to his own evidence, he denies he controls her, it's quite apparent to me that he does control her and he thinks that she – that she owes him something and that – in his evidence in chief – it was only when I brought up the question of love that he even mentioned it. A fiancé visa's not – this sounds more like a partnership, you keep – you do the right thing by me, you give me some financial support, you drive me around and I'll support you on a fiancé visa. Now he is controlling, he admits – he doesn't admit he's controlling but what he's admitted to is controlling behaviour and it's consistent again with her version…

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

Magistrate Pearce admitted relationship evidence:

[60] I have also determined to admit the relationship evidence. I consider that it is relevant to removing the implausibility that might otherwise be attributed to MG's account of the assaults charged if the assaults were thought to be isolated incidents, and any implausibility associated with the way each party is said to have behaved on those particular occasions. It may be relevant in supporting an inference that the defendant wished to exercise control and domination over the complainant and so acted violently towards her. It also tends to support the prosecution contention that MG feared MRB and, for a period of time, tried to hide what was happening, did not complain to others, lied about what really happened and that she tolerated violence to preserve the relationship.

Magistrate Pearce commented on the difficulty of prosecuting family violence matters:

[68] …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.

***Dunford v The Queen* [2021] VSCA 304 (9 November 2021) – Victorian Court of Appeal**

In relation to the charges of attempt to pervert the course of justice Beach JA observed:

[25] In relation to the objective seriousness of the applicant's offending and his moral culpability, the judge said:

> …Only five days after you were remanded into custody on these charges, and an intervention order had issued, you were on the phone to your father and your brother asking them to ask the complainant to drop the false imprisonment charge, with a view to minimising the amount of time you would spend in custody for these matters. Though neither proceeded to contact the complainant, I understand another family member did speak to her.

***Baker (a pseudonym) v The Queen* [2021] VSCA 158 (9 June 2021) – Victorian Court of Appeal**

McLeish and Osborn JJA observed:

36 Moreover, this offending involved aggravating features which distinguish it from offending of less seriousness. It took place in the context of a history of violence, manipulation and coercion against Ms Anderson and involved an attempt to pervert the course of justice in respect of his own serious offending. That serves to make the attempt itself more serious. Further, the offending had the especially unpleasant features of seeking to exploit Ms Anderson's emotional and psychological vulnerability by threatening her ability to access the ashes of her stillborn child and also threatening her dignity and right to privacy with the exposure of intimate images.

37 An attempt by a perpetrator of family violence to prevent a victim from seeking the full protection of the law and their physical and emotional safety is a very serious matter which calls for general deterrence and denunciation….

40 … Charge 8 involved repeated attempts by the applicant to conceal his wrongdoing over the previous 18 months, by means of emotional and physical threats directed at Ms Anderson. It was distinct offending that called for significant additional punishment.

***Mercer (a pseudonym) v The Queen* [2021] VSCA 132 (14 May 2021) – Victorian Court of Appeal**

The court made the following observations relevant to coercive control at [64]-[65]:

> "In our view, the answer to the applicant's contention regarding the 'attempt to pervert' sentence is to be found in the judge's sentencing reasons. As noted earlier, her Honour said:
>
> > You attempted to persuade a victim to withdraw her allegation to police. This is reprehensible – it was motivated by your self-interest and need for control. While it was unaccompanied by threats or violence, it was protracted and repeated and it preyed upon [the complainant's] vulnerabilities. And of course it was also committed in breach of your intervention order, which was also unsuccessful in preventing you from continuing to control [her].
>
> In our view, the applicant's persistent and cynical assertion of control over the complainant, and his exploitation of her known vulnerabilities, made this case just as serious as if there had been explicit threats or actual violence. The transcripts of the calls make plain his exertion of coercive psychological pressure on her, encouraging her to think that they can 'work things out' between them and asking questions like 'Do you want me to get out or not?' The fact that the conduct about which he was asking her to lie involved his own criminal violence against her was a further aggravating feature. In our view, the applicant's moral culpability for this offence was high.

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

Neave JA and Kyrou AJA observed:

[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 [43] [o]ther serious financial effects.

***DPP v O'Neill* [2015] VSCA 325 (2 December 2015) – Victorian Court of Appeal**

In describing the respondent's relationship with the deceased Warren CJ, Redlich JA and Kaye JA observed:

[7] The deceased was the dominant partner in the relationship, with the respondent by and large acquiescing to the deceased's directions. Over the term of the relationship there was regular verbal conflict which intensified with time. The respondent told his psychologist how he was abused and humiliated in front of others by the deceased. Sometimes the conflicts involved verbal abuse and sometimes pushing and shoving. He also told the psychologist that the deceased was sexually demanding of him and if he declined the deceased's approaches he would call him a 'frigid bitch'. The respondent said he felt as if the deceased treated him as his own property. Despite all this, the deceased was regarded by the respondent as being loving and affectionate towards him.

Their Honours noted the sentencing judge's comments recognising the dominance and control the deceased exercised over the respondent:

[27] The personalities of both the deceased and the respondent were considered by the judge. Her Honour said this:

Mr Rattle was strong, confident and successful. He also had a dominant, controlling personality; everything had to be done his way, both personally and professionally. No doubt that was part of the key to his professional success. And, because of your own psychological make-up, you felt inadequate; it suited you to be with someone who took control and made all the decisions. But many of your mutual friends have described how Mr Rattle used to demean and belittle you in public. He frequently complained to them that you were not satisfying him sexually. In front of others, he would call you lazy, a parasite; he would threaten

to send you back to where you came from. He was critical of your lack of business acumen. There were financial and business pressures on the relationship. In the work context, he treated you like the office boy, not his partner.

The Queen v Donker **[2018] VSC 210 (11 May 2018) – Victorian Supreme Court**

Having outlined a history of controlling and violent behaviour by the deceased towards the accused at [5]-[9] and the physical violence to which the accused was subjected immediately prior to the instant offending Croucher J noted:

[72] While the law in this State does not excuse anyone – whether of uncommonly sturdy or brittle disposition – from criminal liability for otherwise unlawful actions based on provocation alone, the same law does not demand that victims of abuse of the kind and extent to which Ms Donker was subjected be super-resilient before provocation can operate in mitigation of sentence. Rather, the law attempts to strike a balance that recognizes human frailty in the face of extremely difficult circumstances, and allows that moral culpability may be reduced in such cases. This is such a case. As I say, I think it is very likely that any ordinary person, facing the circumstances which confronted Ms Donker and fixed with her history of exposure to family violence by Mr Powell, would lose self-control and act in a violent manner towards him.

DPP v Paulino **(Sentence) [2017] VSC 794 (21 December 2017) – Victorian Supreme Court**

In sentencing the accused for murdering his wife Bell J observed:

[27] … The nature and gravity of this offending is significantly aggravated by the considerations to which I have referred, but particularly the contextual considerations, which are quite specific to the crime of murder that you committed as a man upon your estranged wife as a woman. By these I mean the threats that you made towards Teresa, the character assassination with abuse of various kinds, including promiscuity, and spurious allegations of involvement in pornography, the nuisance-calling, following and unwelcome contact, and the breach of the intervention order. These were not random measures but represented a pattern of coercive control. Teresa had a right to personal dignity and autonomy, to physical and psychological integrity and to live an independent and fulfilling life free of fear from your violence. While always being a loving mother to Daniel and Luke, she struggled heroically to realise that life, and won a lot of ground against great odds. She was trying to be a positive role model for her sons. Motivated by jealousy, hatred and rage, you first tried to defeat her and then you punished her, which led to the murder. While the murder would mean that Teresa no longer had a life to live, it was the culmination of a pattern of behaviour aimed at preventing her from living the life she chose. Such was the particular nature of the offending, which is all the more grave for it.

Lydon v Lydon **[2008] WASCA 8 (8 February 2008) – Western Australia Court of Appeal**

Le Miere AJA, with whom Pullin JA agreed, considered what is meant by the term ‘emotional abuse’ in determining whether the appellant had committed an act of family and domestic violence under s 6(1) of the Restraining Orders Act 1997 (WA).

Le Miere AJA held that:

[49] Emotional abuse is not defined in the Act. Emotional abuse involves improper or inappropriate behaviour, verbal or non-verbal, that adversely impacts upon another person's emotional wellbeing. Emotional abuse improperly excites strong unwelcome feelings in another. Emotional abuse may involve coercion by intimidation, inducing fear, stalking, or harassment, that is words, conduct or action, usually repeated or persistent that, being directed at a specific person, annoys, alarms or causes substantial emotional distress to that person.

[50] There are two aspects to emotional abuse. The first is the adverse impact upon another person's emotional wellbeing. The second is the behaviour that causes the negative impact upon the emotional wellbeing of another.

Riddoch v Chiera **[2020] WASC 114 (7 April 2020) – Western Australia Supreme Court**

In holding that the Magistrate’s interruptions of counsel’s plea in mitigation did not found leave to appeal McGrath J observed:

[26] His Honour raised with counsel immediately his concerns regarding the description of the relationship as being 'toxic'. His Honour directly challenged counsel as to whether a submission was effectively being made that the victim was to blame. Counsel then positively engaged with the judicial officer, clarifying the submission. I do not accept the contention that the magistrate denied Mr Riddoch the procedural right to agitate an issue in mitigation. Mr Riddoch's counsel reframed this part of her submission, which concerned the improvements Mr Riddoch had made to his life since the offending.

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

Mitchell J (as his Honour then was) considered the impact of the aggravating factor of an assault committed in circumstances of a domestic relationship and observed:

[16] 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.

Ahmed and Gupta **[2020] FCWA 140 (31 August 2020) – Family Court of Western Australia**

Duncanson J observed:

[139] Although I have not been able to make findings as to specific incidents of family violence I am satisfied that the father's controlling behaviour of the mother amounts to family violence perpetrated by him against her. I am unsure as to the extent to which the father's cultural beliefs may have contributed to this. The mother deposed that she believed the father's expectation of bringing her to Australia was so that she could be a domestic help and be a subservient [sic] to him and his brother in the house. In contrast the father said he had been living in Australia for 16 years, Australian culture comes first and the religion is his second option …

Shelley and Dickens **[2020] FCWA 52 (3 April 2020) – Family Court of Western Australia**

Tyson J observed:

[241] The father has also behaved in a controlling and coercive manner, which falls within the definition of family violence. For example, he prevented the mother talking to her family by removing the telephone from her on the yacht; he demanded the mother answer his calls when in hospital after G's birth and suggested the maternal grandmother required his permission to provide assistance with meals after G was born.

Dempsey & Brahms **[2017] FCWA 59 (12 May 2017) – Family Court of Western Australia**

Thakray CJ observed:

[15] Contrary to what some of his associates and family believe, I find that the father is an aggressive, controlling and manipulative man. He has a propensity to bend the truth, and appears skilled at turning accusations against him back onto the accuser. He demonstrated no insight into the way that he made the lives of the mother and her adult sons (and to a slightly lesser extent his own children) a complete misery. He is quite oblivious to the harm his violent, abusive and controlling behaviour has caused.

[111] The father has engaged in coercive, controlling and abusive behaviour toward the mother and children over many years. Apart from his physical and verbal abuse of the mother, I accept that the father has damaged every vehicle she has ever owned (sometimes when children have been in the vehicle and sometimes when they have been observing).

[112] In my view, all five of the mother's children have suffered psychological harm as a result of their exposure to the father's violence and abuse and the ongoing conflict between the mother and father. This is likely to be one of the main reasons for Child A's poor behaviour and also for Child B's nightmares and long-term self-harming, including her habit, developed very early in life, of twisting her hair until she was almost completely bald on one side of her head. It would seem the child least damaged by the father's behaviour has been Child C who has had significantly less involvement with him than the other children.

[113] I accept that the mother remained in the relationship for as long as she did because of the father's manipulative behaviour and because she considered this was the best way to keep her and the children safe. The father's manipulation has included his efforts to drive a wedge between the mother and her friends and between the mother and the children.

[114] I accept that the father has not been charged with any offences arising out of his conduct towards the mother but that is far from conclusive. As I have mentioned, the father is skilled at deflecting accusations.