

Exposing children to domestic and family violence - Cases

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

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

***Laa v The Queen* [2020] VSCA 136 (28 May 2020) – Victorian Court of Appeal**

[52] ‘The courts have made it clear that acts of violence in a domestic setting, and in particular by men towards women, are utterly abhorrent and unacceptable. In this case, the infliction by the applicant of the assaults on Ms M, in the presence of their frightened young children, was a serious aggravating factor to the offending. It was a serious breach of his duty as a parent towards his own children. In assaulting their mother before their eyes, he set an appalling example to each of them, and in particular to his son.’

***Boden & Boden* [2018] FCCA 82 (25 January 2018) – Federal Circuit Court of Australia**

Judge Willis remarked at [247]:

I have the impression that the mother has significant insight into her own behaviour and that of all of the children. She is acutely aware and has the skills to deal with Z and Y cutting themselves, of them suffering depression and anxiety and having self-esteem issues. Some of these issues will, no doubt, be directly related to their exposure to family violence. Day in day out, experts in this Court talk about the effect of family violence in children and their inability to sustain relationships, become depressed and blame themselves for breakdowns. All of these things have happened for Y and Z.

***R v Bell* [2005] ACTSC 123 (1 December 2005) – Australian Capital Territory Supreme Court**

Higgins CJ at [30]: Domestic violence, ‘is a pernicious and evil phenomenon not only because of the immediate trauma to the victim. Its evil influence spreads to children as well. It is no coincidence that, in my experience, young offenders, more often than not, present with a family history of domestic violence. It used to be regarded as a family matter, to be kept private. Victims would be made to feel humiliated, and ashamed to complain; in truth it is entirely the criminal conduct of the perpetrator which is at fault. It is entirely in the public interest that such conduct be exposed and deterred’.

***Pasa v Bell* [2014] ACTSC 303 (30 October 2014) – Australian Capital Territory Supreme Court**

Murrell CJ at [16]: ‘When considering the sentencing purposes set out in s 7 of the Sentencing Act,

including general and personal deterrence, a sentencing court is entitled to consider the fact that an offence involved domestic violence, and that the violence has occurred at the victim's home. An offence involving domestic violence is one that involves abuse of a partner, former partner or other family member (using the term "family" in the broadest sense). Frequently, such offences occur in the home, where the inhibitions of an offender may be lowered, the impact on the victim may be heightened (as she or he is made to feel that a formerly safe place has been violated) and the occurrence of the offence is more readily concealed. Further, where a domestic violence offence occurs in the victim's home, it is often associated with secondary abuse to other family members'.

***R v Eckermann* [2013] NSWCCA 188 (15 August 2013) – New South Wales Court of Criminal Appeal**

Price J at [54]: 'When women (and men) enter into a new domestic relationship, they are entitled to do so without the threat of violence from a former partner. This is particularly so when there are children of the prior relationship as acts of violence towards a parent particularly when committed in the children's presence have the potential to impact severely upon their well-being and future development'.

***Allen v Kerr* [2009] TASSC 10 (25 February 2009) – Supreme Court of Tasmania**

Porter J at [13]: '*Violence witnessed by children in the domestic environment not only is distressing (usually the victim is a parent or someone in the place of a parent), but it also serves to desensitise impressionable minds to violence, and to encourage the notion that resort to violence is acceptable*'.

***Mayne v Tasmania* [2017] TASSC 38 (29 June 2017) – Supreme Court of Tasmania**

Wood J said at [43]:

... it is important that deterrent sentences be imposed not merely for crimes that cause grave physical or psychological harm to victims. There is a need to counter the perception that somehow violence of this kind in the home is less serious than the same kind of violence inflicted on a stranger in a public place. Also, acts of violence committed in a family or domestic context causing fear and distress to victims can have debilitating effects upon their well-being or the well-being of a family member witnessing such violence. It is not only violence resulting in visible injury that must be seen as unacceptable, and these victims, as vulnerable members of our society who have experienced fear and trauma, are entitled to the court's protection.

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

Mitchell J at [18]-[19]: '*A person exposed to domestic violence in his early life goes on as an adult to perpetrate the violence to which he was exposed as a child, damaging members of his community in the same way he was damaged as a child. For that reason, the fact that the appellant's offence was committed in the presence of children was a significant aggravating factor. The courts are not in a position to solve all of the social problems which contribute to this cycle of violence. However, sentences imposed by courts should contribute, so far as they can within the constraints of the sentencing process, to attempts to break*

the cycle by giving proper weight to the need for community protection in the sentences which they impose’.