Following, harassing and monitoring - 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.

R v Kulczycki **[2018] ACTSC 9 (30 January 2018) – Australian Capital Territory Supreme Court**

(Where the defendant sent the complainant emails and text messages threatening to release a video of the defendant and complainant engaged in sexual activity unless the complainant paid him $20,000) Justice Elkaim remarked on the seriousness of the blackmail in the context of a domestic relationship at [16]: 'blackmail of the type involved in this case must be regarded as serious. This is not so much because of the amount of money demanded but because it involved a threat to breach the privacy of a relationship and to cause severe embarrassment to the complainant'.

R v Gittany (No 5) **[2014] NSWSC 49 (11 February 2014) – New South Wales Supreme Court**

McCallum J at [40]: 'In my view, that history informs the degree of moral culpability of the offence. The arrogance and sense of entitlement with which Mr Gittany sought to control Lisa Harnum throughout their relationship deny the characterisation of his state of mind in killing her as one of complete and unexpected spontaneity. By an attritional process, he allowed possessiveness and insecurity to overwhelm the most basic respect for her right to live her life as she chose. Although I accept that the intention to kill was formed suddenly and in a state of rage, it was facilitated by a sense of ownership and a lack of any true respect for the autonomy of the woman he claimed to love'.

R v Foodey **[2003] QCA 310 (25 July 2003) – Queensland Court of Appeal**

Jerrard JA at [11]: 'The applicant's behaviour towards Jennifer Foodey in the two and a half months between their separation and his incarceration was persistently cruel and aggressive. At different times he insulted, degraded, and terrified her. His conduct throughout was in breach of court orders intended to give her protection. Considered in isolation, the sentence imposed by the learned judge does not appear manifestly excessive, and indeed far from it. The same result occurs if regard is had to other sentences for unlawful stalking imposed or approved by this court.

R v Millar **[2002] QCA 382 (25 September 2002) – Queensland Court of Appeal**

De Jersey CJ: 'I would say for my part that that is not a feature which should necessarily lead to a lower

penalty being imposed, where the stalking follows the break-up of an emotional relationship'.

***MB v Queensland Police Service* [2020] QDC 325 (18 December 2020) – Queensland District Court**

Aggravating features included that these were instances of domestic violence and "the emotional harm done to the victims and the damage, loss and injury caused." …

> "Charge 12 occurred on 27 August 2020 which was a contravention of domestic violence order. The appellant updated his profile status making threatening comments about the complainant, SH. The post named SH and contained threats and disclosed her sexual preferences to several friends. This had a significant emotional impact on the complainant SH. The appellant was interviewed on 29 August 2020 and said he didn't remember posting the comment but went on to say it was true.
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> "A victim impact statement was tendered as Exhibit 4. The offending caused distress and inconvenience to the complainant SH. She had to move regularly as a result of the conduct of the appellant and suffered defamation to her character. She alleged that total out of pocket expenses was $16,748.84."

***Howe v S* [2013] TASMC 33 (29 July 2013) – Tasmanian Magistrates' Court**

Magistrate M Brett, in the context of the relevant Tasmanian legislation noted: '*Whilst I accept that the term "harass" as used in the general community could well include an element of persistence or repetition, I see no reason why a person cannot be harassed within the context of a Family Violence Order, by one act alone.* This view is in fact consistent with the definition in s.4 of the *Family Violence Act* of the word *"harassing"*… The reference in the definition to *"any one or more of the following actions"* suggests that a single act might be sufficient. Furthermore, it is appropriate, in my view, to interpret the term having regard to the context in which it is used in the order. The reference to *"threaten, harass, abuse or assault"* suggests that the order is to be understood as providing protection to a person from contact with the respondent which is unwelcome, and might be in various forms or have variable effect' ([12]-[16]).

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

[49] '… SMS messages, that were the subject of charge 1, comprised an escalating series of threats sent to Ms M late at night and in the early hours of the morning. Plainly they were calculated to instil fear into her, and to undermine her right to feel safe and secure within her own home.'