

## *Keeping the Peace*

**A focus on Criminal and Domestic Violence Law in Queensland.**

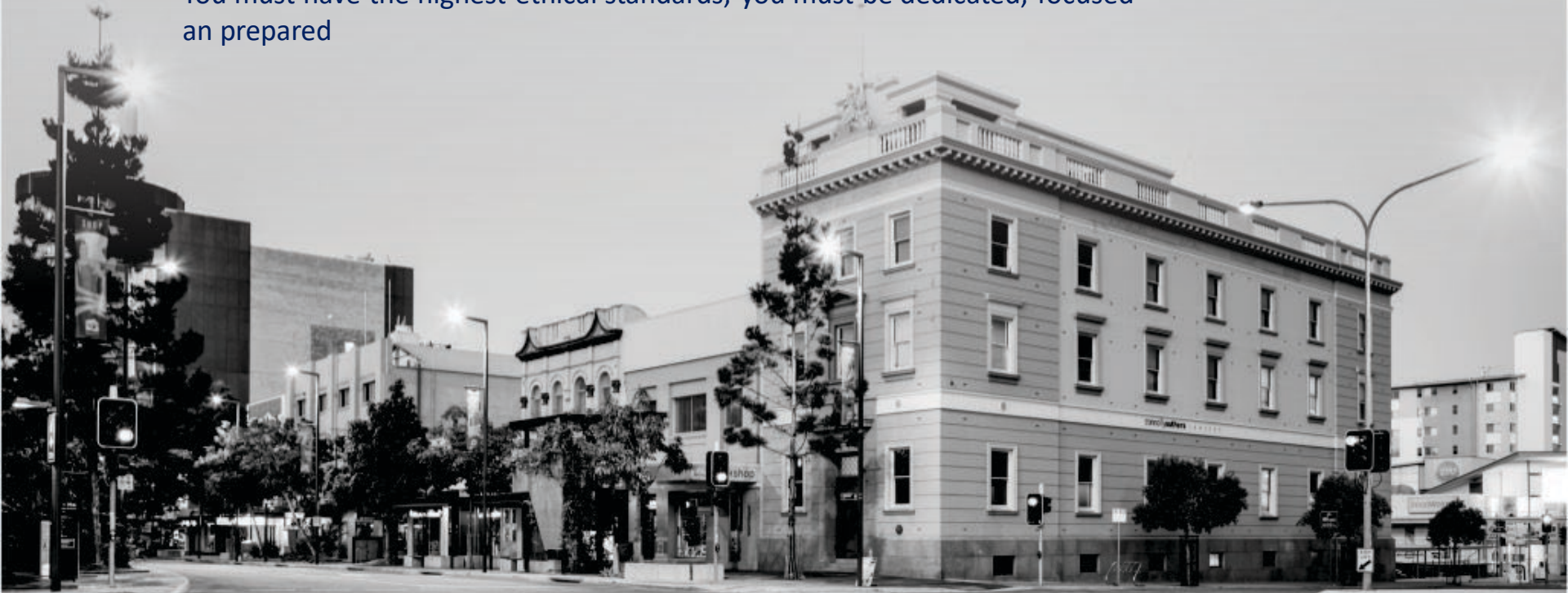
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James Cook University Law Seminar Series



## General Summary of Criminal Law

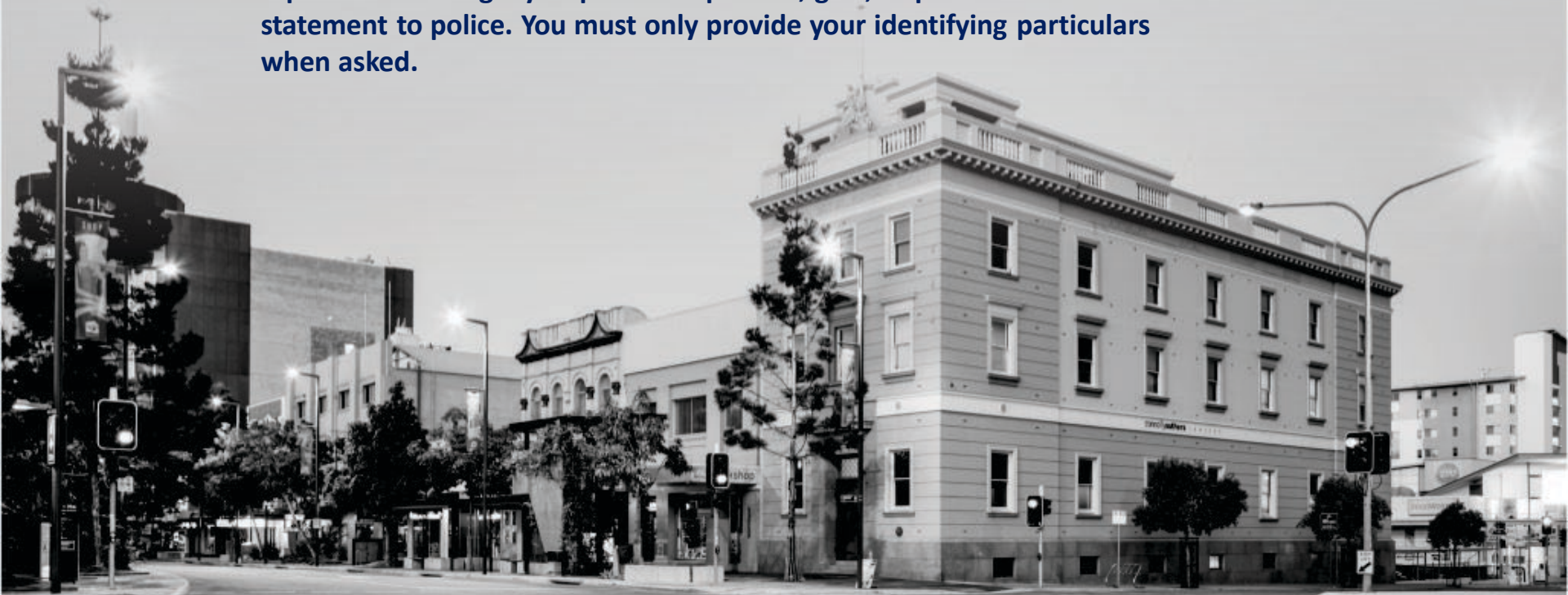
- It is a foundational practice of law, relevant to the function of our society
- It enforces the principles of the rule of law, natural justice, procedural fairness, and access to Justice
- It is a demanding area of law because of the competing interests in protecting and compensating a victim and punishing an offender for just reasons
- You must have the highest ethical standards, you must be dedicated, focused and prepared





## Why is the Practice of Criminal Law Important?

- It is a balance against the interests of an individual faced with a prosecution by the State with all its resources and might.
- Criminal Law allows the preservation of basic civil liberties and rights
  - Example the right to silence
  - **A person is not legally required to speak to, give, or provide a statement to police. You must only provide your identifying particulars when asked.**



## Common myths and misconceptions of practice

- How Can you act for a person who has been charged with the worst offence?
- Role is to not be the moral arbiter of the truth, it is to represent the client to my absolute best ability with the highest ethical standards.
- Our law is not biased, or prejudiced. Each act or omission is punished according to law.
- Guilt or Innocence must be determined to the absolute highest standards.





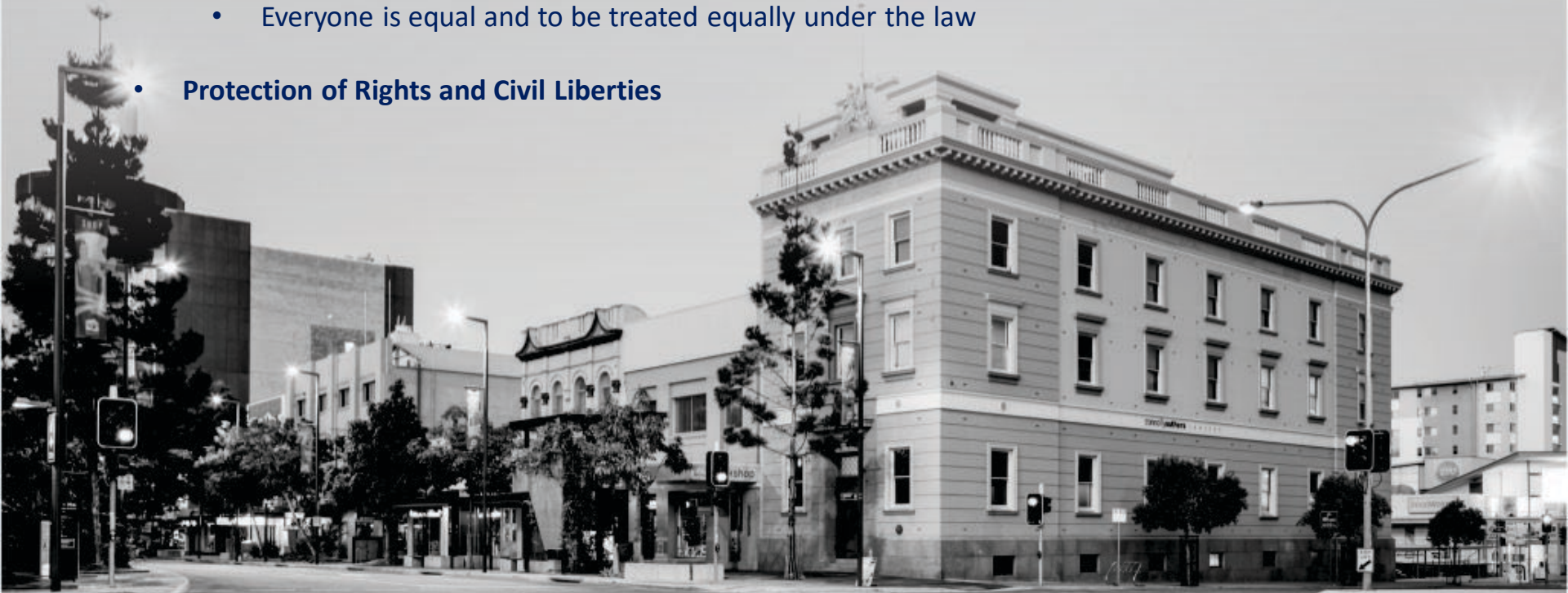
## Operation and Principles of Criminal Law

- Criminal Law mainly governed through the *Criminal Code Act 1899* for state related offending.
- Federal Criminal Offences are governed in a different regime under the *Criminal Code Act 1995*
- Other legislation that is relevant is:-
  - *Penalties and Sentences Act (QLD) 1922*
  - *The Bail Act (QLD) 1980*
  - *Justices Act (QLD)*



# Fundamental Principles of Criminal Justice System

- **Presumption of innocence**
  - You do not need to prove your innocence, the Crown must prove guilt.
- **Burdens and Standards of Proof**
  - Crown must prove ***guilt beyond reasonable doubt*** – The Prosecution bears the responsibility to prove guilt.
- **Rule of Law**
  - Everyone is equal and to be treated equally under the law
- **Protection of Rights and Civil Liberties**





## Presumption of Innocence

- The presumption of innocence is a cornerstone of criminal justice throughout the world.
- A person is presumed to be innocent until proven guilty at law.
  - Guilt is proven either by admission from the Defendant, or by a finding of guilty by a Judge or Jury.



## Why is presumption of innocence important?

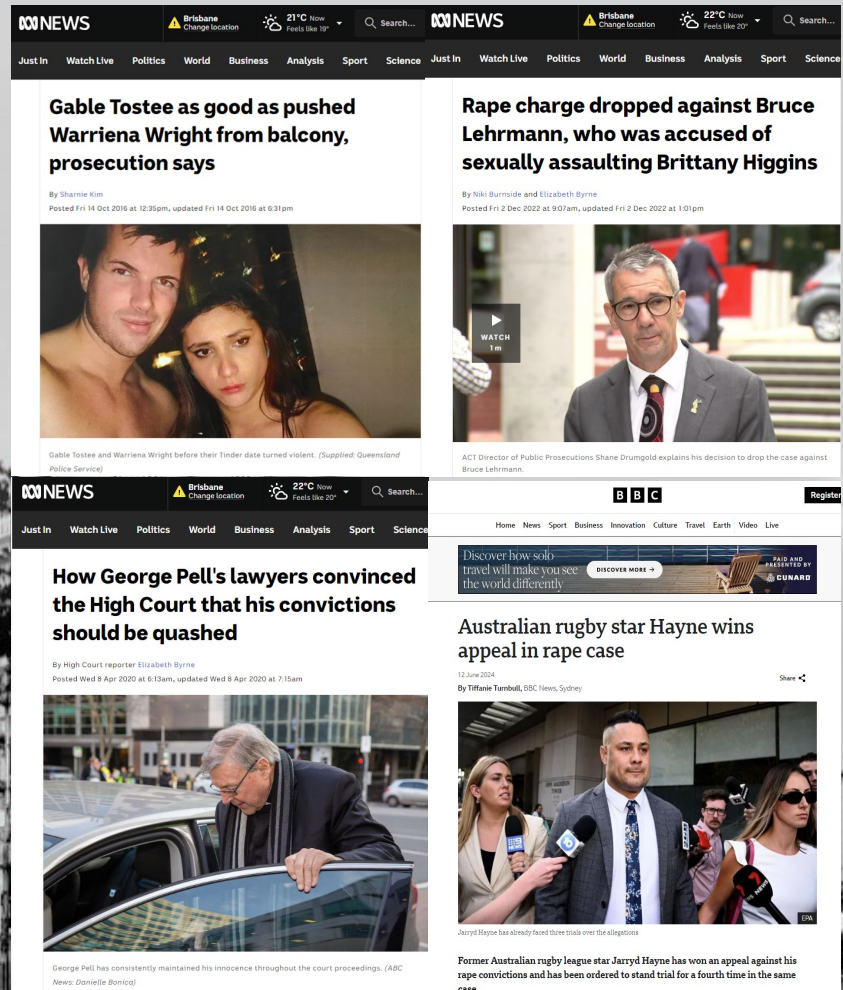
- It allows the accused person their right to contest the allegations made against them.
- It protects their interests against self-incrimination
- Irrespective of the evidence and severity of a charge, a defendant has the right to be presumed innocent unless proven guilty
- It preserves the integrity of the proceedings.





# Court of Public Opinion vs Presumption of innocence

- Principle of presumption of innocence is always fought in the Court of Public Opinion.
- Examples
  - Gable Tostee Murder Charge
  - George Pell Historic Offending
  - Bruce Lehrmann
  - Jarred Hayne



## Protection of Rights?

- Criminal Defence law provides a shield to safeguard rights and freedoms
- Right to a fair trial, Right to preserve against self-incrimination, Right to disclosure and due process
  - Important because they protect against miscarriages of justice and wrongful convictions





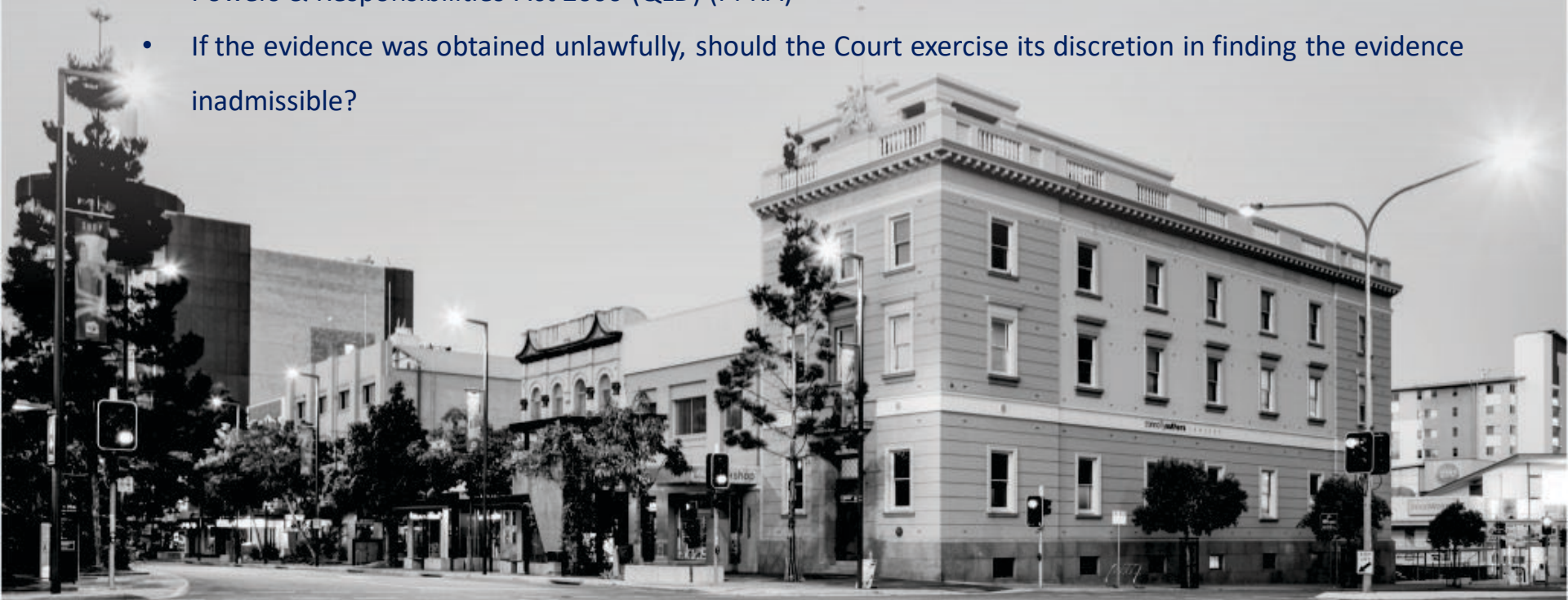
## Example of procedural fairness

### *R v Paull* [2021] QSCPR 22 – due process for Police Search

- Case dealt with a police search of a young man in Cairns who was walking in the CBD at 1:50am
- Police found a large quantity of drugs on his person in a pouch following stopping him for a search.

#### Legal issues:

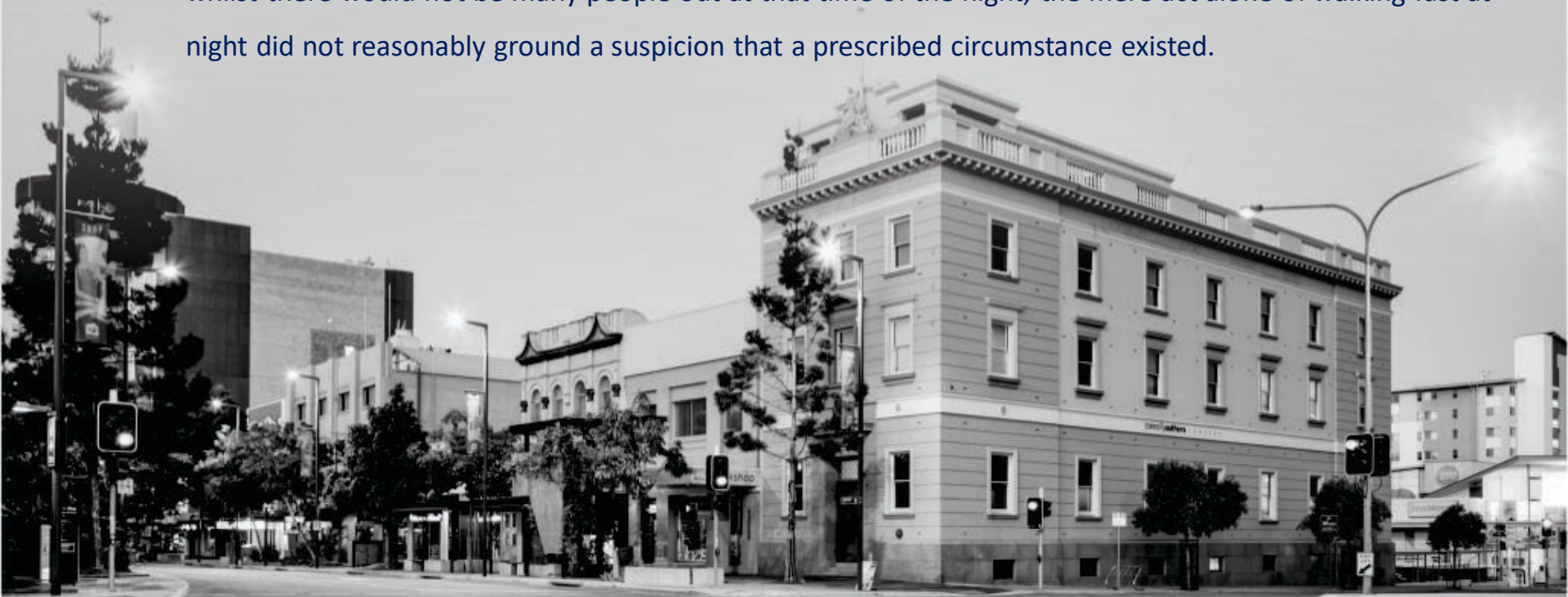
- Was the evidence obtained by Police done so lawfully?
- When searching Mr Paull, did the police exercise their powers appropriately in accordance with the Police Powers & Responsibilities Act 2000 (QLD) (PPRA)
- If the evidence was obtained unlawfully, should the Court exercise its discretion in finding the evidence inadmissible?



## Example of procedural fairness

### *R v Paull* [2021] QSCPR 22 – due process for Police Search

- Court held that the search by Police was unlawful.
- The issue was whether the reasonableness of the suspicion held by police reasonable in the circumstances.
  - Police based their reasonable suspicion on the behaviour of the applicant ‘being nervous and walking fast’
  - That he was walking around the CBD at 1:50am which was abnormal.
- Court **Rejected** these submissions by finding that
  - whilst there would not be many people out at that time of the night, the mere act alone of walking fast at night did not reasonably ground a suspicion that a prescribed circumstance existed.





## Principles of Fairness before the Law

- Criminal Lawyers are advocates for fairness and equality in the law –  
whether Prosecution for Victims, or Defence of defendants
- Commitment to fairness helps maintain integrity of the justice system and  
public trust
- It is a check and balance system to ensure fairness and equality.



## Example of procedural fairness – *Penalties and Sentences Act*

- Person A before the Court:-
  - 20 year old male
  - Charged with Enter premises by break at night, threatening violence, possession of a knife in a public place
  - Stands over the occupants at 1:50am, standing over the bed whilst holding a knife threatening to cause harm.
  - Occupants are scared, wake up and call the police and are shaken





## Example of procedural fairness – *Penalties and Sentences Act* continued

- Joe is charged with the offences and gets a lawyer.
- Joe says to his lawyer he 'blacked out' and has no memory
- Joe's lawyer obtains a Psychiatric report, the report states that Joe might have been under the influence of an untreated psychotic illness – such as schizophrenia
- What do you think should happen in this scenario?



## Example of procedural fairness – *Penalties and Sentences Act* continued

- Example of very complicated circumstances
- Charges are very serious and a Court must punish the actions to deter offending behaviour to the community and uphold community values
- Balanced against Joe's psychiatric illness, how should the Court do this?
- Was Joe affected by his psychiatric illness to know the difference between right and wrong?





## Example of procedural fairness – *Penalties and Sentences Act* continued

- Joe's case is one which is covered in case law
- R v Verdins & Ors [2007] VSCA 102, sets out the principles of mental impairment which are relevant to sentencing.
- Mental impairment could:-
  - Reduce moral culpability of an offender – affecting the weight attached to sentence
  - Influence type of sentence imposed and conditions
  - Reduce weight of deterrence to sentencing
  - Increase hardship caused by an offender in prison if suffering from impairment
  - Justify a less severe sentence where there is a risk of imprisonment having adverse effect on offenders mental health.



## Summary

- We can see that Criminal Justice System is far more complex than what our media says or reports on
- It is not a black and white system
- A lot more pressure on Courts than what we see on the exterior





## Domestic Violence Law in Queensland

- Growing and complicated area's of law now.
- Domestic and Family Violence is a growing problem in society – it is an epidemic.
- Relevance of Domestic Violence in Criminal Proceedings is more prevalent and prominent.



## Domestic Violence

- Governed under the Domestic and Family Violence Protection Act (DVFPA)
- How is it defined?
  - Pattern of behaviors used by one partner to maintain power and control over another in an intimate relationship.
  - Can be in many forms, not just physical violence – can be emotional, psychological, sexual, and economic abuse.





## Prevalence of Domestic Violence - Statistics

- According to Queensland Government's Department of Child Safety, Youth, and Women DV incidents reported to police have been consistently high
- 2020-2021 – Over 98,000 reported incidents of DV events.

**1 in 6 women**

**1 in 18 men**

in 2021-22 had experienced **physical and/or sexual violence** by a current or previous cohabiting partner since the age of 15

**1 in 4 women**

**1 in 7 men**

in 2021-22 had experienced **emotional abuse** by a current or previous cohabiting partner since the age of 15

FEEDBACK

**1 in 6 women**

**1 in 13 men**

in 2021-22 had experienced **economic abuse** by a current or previous cohabiting partner since the age of 15

**1 in 5 women**

**1 in 16 men**

2021-22 had experienced **sexual violence** since the age of 15

# Objectives of the Domestic Violence Family Protection Act

- Governed under section 4 of the DVFPA

## DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 2012 - SECT 4

### Principles for administering Act

#### 4 Principles for administering Act

- (1) This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience [domestic violence](#), including children, are paramount.
- (2) Subject to *subsection (1)*, this Act is also to be administered under the following principles—
  - (a) people who fear or experience [domestic violence](#), including children, should be treated with respect and disruption to their lives should be minimised;
  - (b) to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience [domestic violence](#) should be sought before a decision affecting them is made under this Act;
  - (c) perpetrators of [domestic violence](#) should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;
  - (d) if people have characteristics that may make them particularly vulnerable to [domestic violence](#), any response to the [domestic violence](#) should take account of those characteristics;

*Examples of people who may be particularly vulnerable to [domestic violence](#)—*

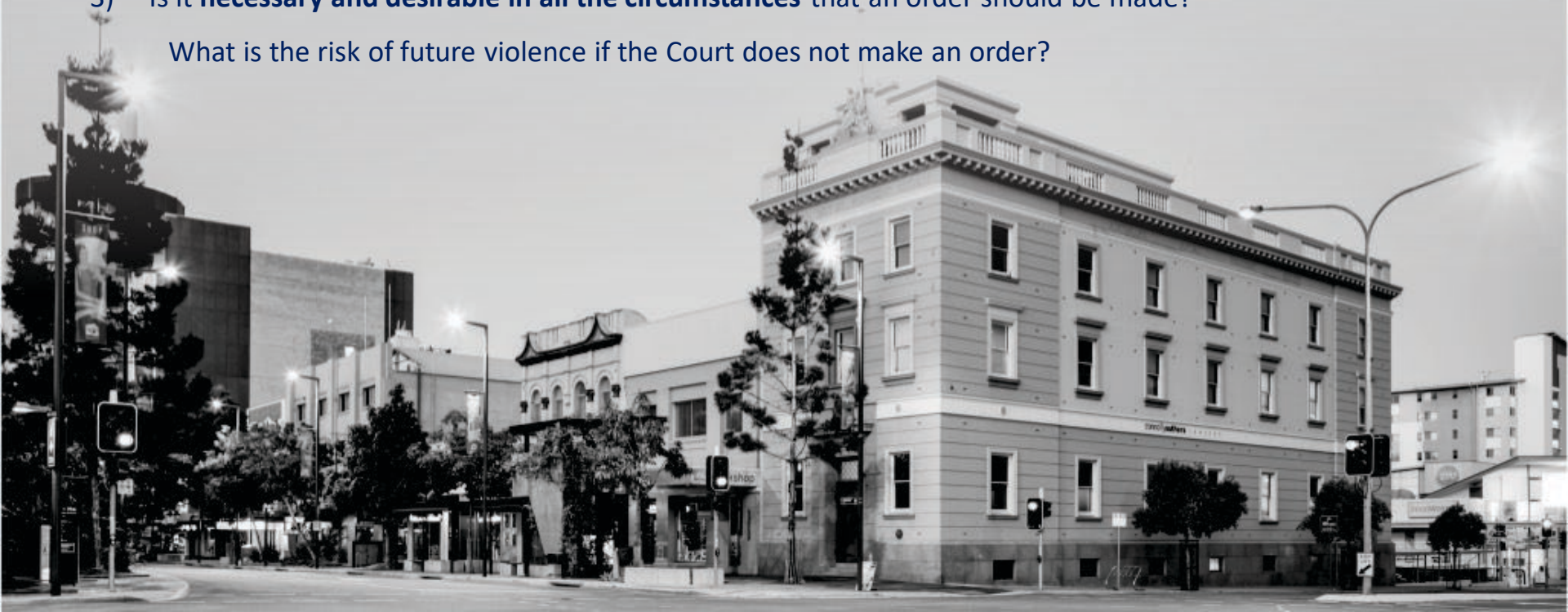
- women
  - children
  - Aboriginal peoples and Torres Strait Islander peoples
  - people from a culturally or linguistically diverse background
  - people with disability
  - people who are lesbian, gay, bisexual, transgender or intersex
  - elderly people
- (e) in circumstances in which there are conflicting allegations of [domestic violence](#) or indications that both persons in a relationship are committing acts of violence, including for their self-protection—
    - (i) the person who is most in need of protection in the relationship should be identified; and
    - (ii) only 1 [domestic violence](#) order protecting that person should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other;
  - (f) a civil response under this Act should operate in conjunction with, not instead of, the criminal law.



# What does the Court need to be satisfied to make a Domestic Violence Order?

Section 37 of the DFVPA states that a Court may make a protection order if satisfied that:-

- 1) There must be a **Relevant Relationship between the parties**
  - Intimate personal relationship, spousal relationship, parent, engagement relationship, family relationship or relative
- 2) In the context of the relationship, **there must be domestic violence in that relationship**
  - Physical violence, economic abuse, sexual abuse, emotional abuse, psychological abuse
- 3) Is it **necessary and desirable in all the circumstances** that an order should be made?
  - What is the risk of future violence if the Court does not make an order?



# Considerations of making a Domestic Violence Order

- Finely balanced exercise for a Court to make a protection order.
- Making of an order is important, because it substantially affects a person's:-
  - liberty,
  - Employment and;
  - and can have severe consequences if not dealt with properly such as they have an order which they end up breaching and then become charged with a criminal offence of breaching a DVO.





# Coercive Control

- It s a new 'sub-area' of DV law which has emerged.
- Coercive Control is behaviour by one person over another person in a relationship, where the behaviour is manipulating, coercive, controlling or restricting the liber
- Want further info? Read some of my articles on our website:-
  - **New criminal offence of Coercive Control**
    - <https://www.connollysuthers.com.au/coercive-control-new-criminal-offence/>
  - **New Amendments Coercive Control**
    - <https://www.connollysuthers.com.au/law-update-coercive-control-amendments/>



## Example behaviour – is it Coercive Control?

- Cultural considerations
- Ethnic backgrounds
- Conservative views
- Other relevant considerations

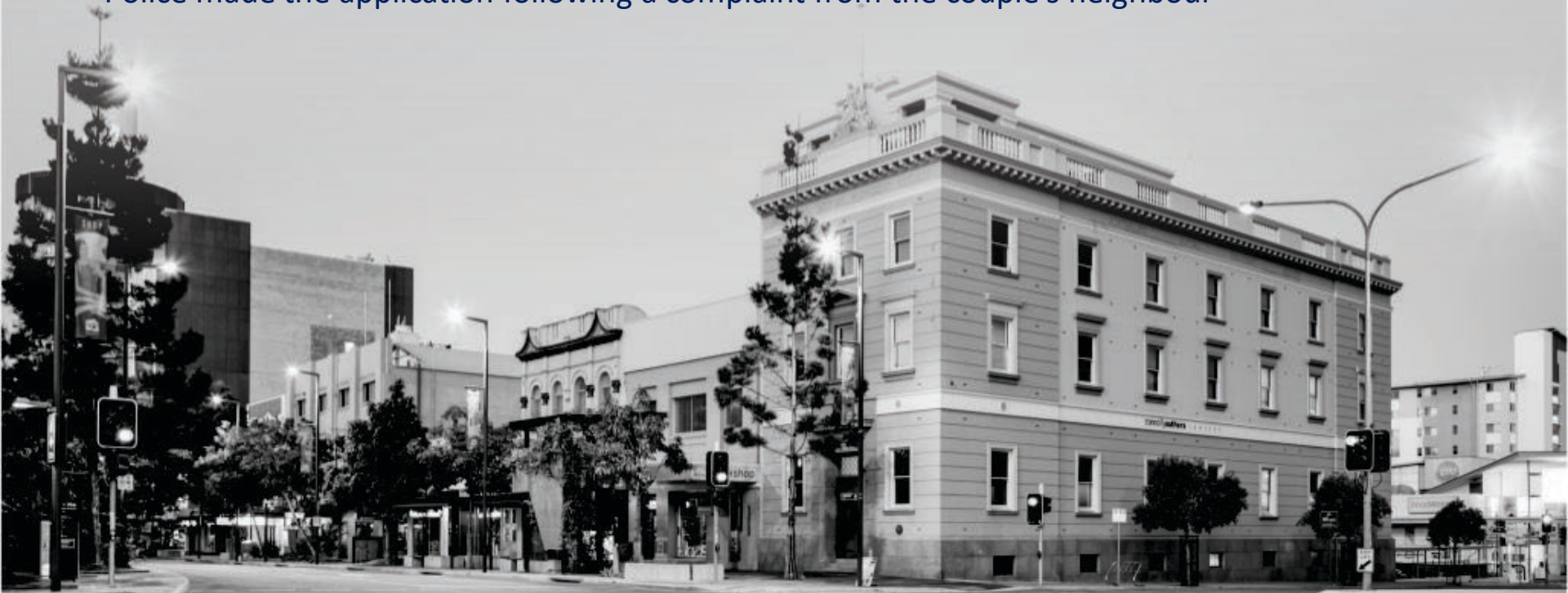




## Necessary and Desirability

### *ZTP v BBY [2023] QDC*

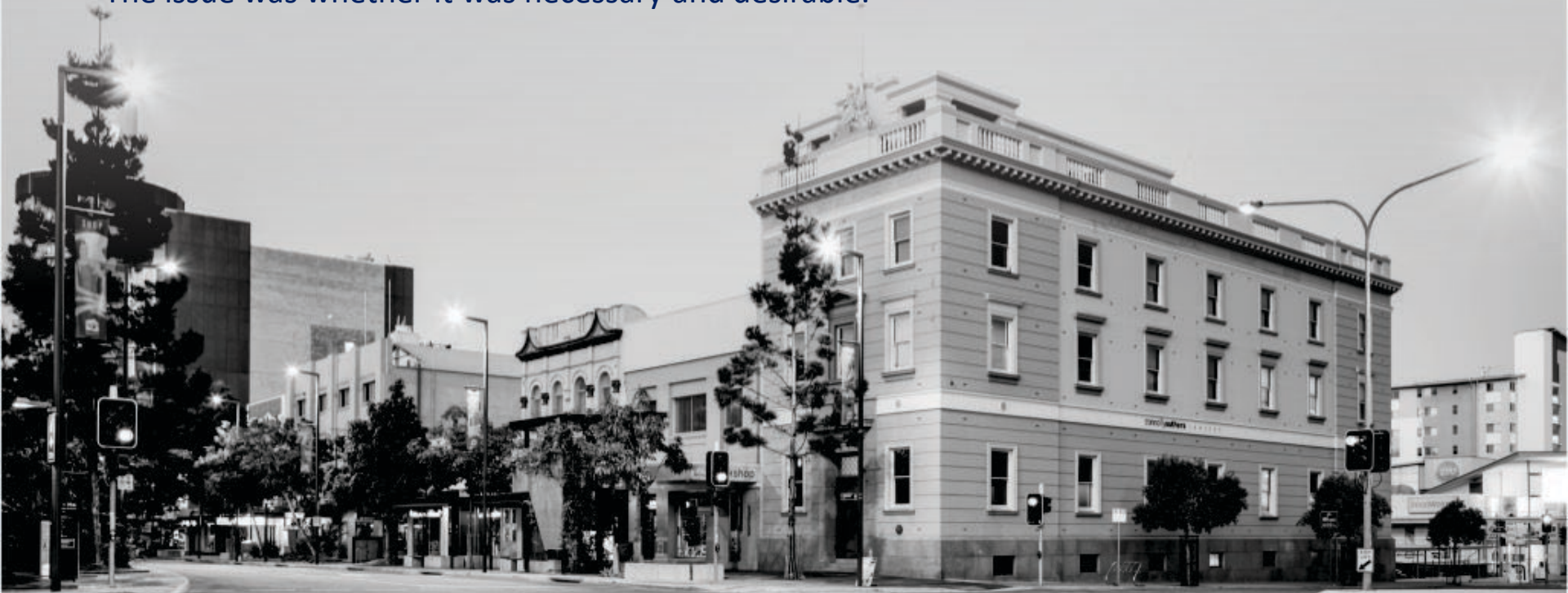
- Magistrate in Holland Park made a final protection order against the parties.
- It was a two year order made against ZTP naming his defacto partner MNP as the aggrieved
- There were no children in the relationship, and the relationship went on for 6 years
- Application was brought on behalf of police, the aggrieved MNP did not support it.
- Police made the application following a complaint from the couple's neighbour



## Necessary and Desirability

### *ZTP v BBY [2023] QDC continued*

- Police continued with the application, despite it not being supported by the aggrieved.
- At the hearing, it was not disputed that the parties were in a relationship, and it was open to the court to make a finding that Domestic Violence occurred
- The issue was whether it was necessary and desirable.

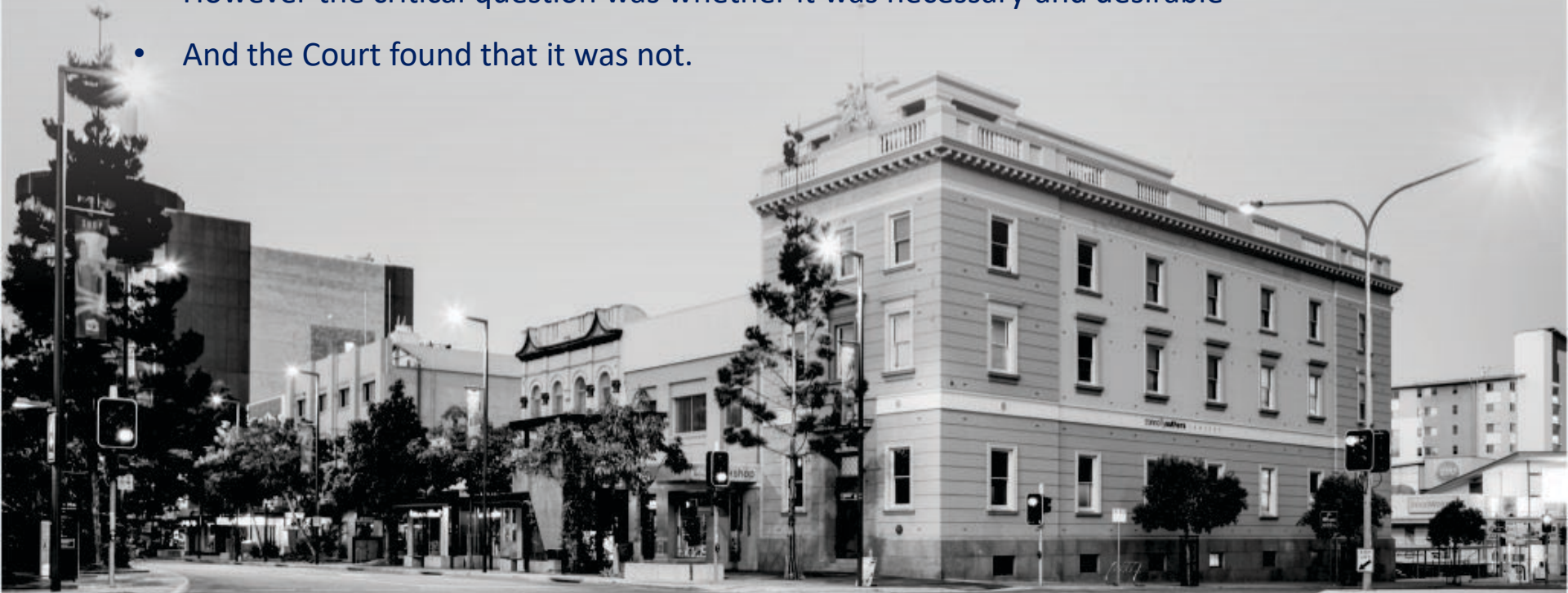




# Necessary and Desirability

## *ZTP v BBY [2023] QDC continued*

- Decision
  - The original decision to make a final order was contested on appeal
  - The appeal Court noted that there was Domestic Violence that occurred and that acts of emotional and psychological abuse had occurred
  - However the critical question was whether it was necessary and desirable
  - And the Court found that it was not.



## Conclusion and final remarks

- You can see the value of the Criminal Justice System and why we do what we do
- The work we do is important
- Society lives blissfully unaware of another world that exists





*“Every society gets the kind of criminal it deserves. What is equally more important is that every community gets the kind of law enforcement it insists on”*

*Robert Kennedy*

