FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 1) APPELLATE JURISDICTION

Cannon & Moore [2026] FedCFamC1A 206

Appeal from:	*Cannon & Moore* [2026] FedCFamC1F 412
Appeal number:	NAA 337 of 2026
File number:	MLC 3357 of 2024
Judgment of:	**ALSTERGREN CJ, CHRISTIE, SCHONELL, STRUM & CURRAN JJ**
Date of judgment:	13 November 2026
Catchwords:	**FAMILY LAW** – APPEAL – Parenting orders – Family violence – Inadequate reasons – Failure to make explicit findings concerning material disputed allegations of family violence – Statutory interpretation of s 4AB of the *Family Law Act 1975* (Cth) – Consideration of *Pickford & Pickford* (2024) FLC 94-230 ("*Pickford*") – Whether violent, threatening or other behaviour must coerce or control a family member or cause the family member to be fearful – Statements of law in *Pickford* providing for an expansive definition of family violence held to be plainly wrong – Appeal allowed.
Legislation:	*Family Law Act 1975* (Cth) ss 4AB, 43, 60CG *Federal Proceedings (Costs) Act 1981* (Cth) ss 6, 8, 9 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (Cth) Replacement Explanatory Memorandum, Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (Cth) Australian and New South Wales Law Reform Commissions, *Family Violence – A National Legal Response* (Report No 114, October 2010)
Cases cited:	*ASB17 v Minister for Home Affairs* (2019) 268 FCR 271; [2019] FCAFC 38 *Bennett and Bennett* (1991) FLC 92-191; [1990] FamCA 148 *Boensch v Pascoe* (2019) 268 CLR 593; [2019] HCA 49

	Pickford & Pickford (2024) FLC 94-230; [2024] FedCFamC1A 249 *Re: Devin* [2025] FedCFamC1F 211 *Resource Pacific Pty Ltd v Wilkinson* [2013] NSWCA 33 *Sun Alliance Insurance Ltd v Massoud* [1989] VR 8 *SZEEU v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 150 FCR 214; [2006] FCAFC 2
Number of paragraphs:	74
Date of hearing:	28 October 2026
Place:	Melbourne (via video link)
The Appellant:	Self-represented litigant
Counsel for the Respondent:	Mr Hoult
Solicitor for the Respondent:	Johnston Family Law
Counsel for the Independent Children's Lawyer:	Ms Bowen
The Independent Children's Lawyer:	Clark Family Lawyers

ORDERS

NAA 337 of 2026
MLC 3357 of 2024

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
DIVISION 1 APPELLATE JURISDICTION

BETWEEN:	**MR CANNON** **Appellant**
AND:	**MS MOORE** **Respondent**
	INDEPENDENT CHILDREN'S LAWYER

ORDER MADE BY:	**ALSTERGREN CJ, CHRISTIE, SCHONELL, STRUM & CURRAN JJ**
DATE OF ORDER:	**13 NOVEMBER 2026**

THE COURT ORDERS THAT:

1. The appeal is allowed.
2. The orders of the primary judge made on 19 June 2026 remain in force.
3. The proceedings are remitted to a judge of the Federal Circuit and Family Court of Australia (Division 1) for rehearing.
4. The appellant is granted a costs certificate pursuant to s 9 of the *Federal Proceedings (Costs) Act 1981* (Cth), being a certificate that, in the opinion of the Court, it would be appropriate for the Attorney-General to authorise a payment under that Act to him in respect of the costs incurred by him in relation to the appeal.
5. The respondent is granted a costs certificate pursuant to s 6 of the *Federal Proceedings (Costs) Act 1981* (Cth), being a certificate that, in the opinion of the Court, it would be appropriate for the Attorney-General to authorise a payment under that Act to her in respect of the costs incurred by her in relation to the appeal.
6. The appellant is granted a costs certificate pursuant to s 8 of the *Federal Proceedings (Costs) Act 1981* (Cth), being a certificate that, in the opinion of the Court, it would be appropriate for the Attorney-General to authorise a payment under that Act to him in respect of the costs incurred by him in relation to a rehearing.

7. The respondent is granted a costs certificate pursuant to s 8 of the *Federal Proceedings (Costs) Act 1981* (Cth), being a certificate that, in the opinion of the Court, it would be appropriate for the Attorney-General to authorise a payment under that Act to her in respect of the costs incurred by her in relation to a rehearing.

8. The Independent Children's Lawyer's application for costs is refused.

Note: The form of the order is subject to the entry in the Court's records.

Note: This copy of the Court's Reasons for judgment may be subject to review to remedy minor typographical or grammatical errors (r 10.14(b) *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 10.13 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth).

Part XIVB of the *Family Law Act 1975* (Cth) makes it an offence, except in very limited circumstances, to publish an account of proceedings that identify persons, associated persons, or witnesses involved in family law proceedings.

IT IS NOTED that publication of this judgment by this Court under the pseudonym *Cannon & Moore* has been approved pursuant to subsection 114Q(2) of the *Family Law Act 1975* (Cth).

REASONS FOR JUDGMENT

ALSTERGREN CJ, CHRISTIE, SCHONELL, STRUM & CURRAN JJ:

1 These reasons explain why we have determined to allow the father's appeal against final parenting orders governing the care arrangements for two children, Y, aged nine and X, aged six.

2 The parties separated following a disclosure by Y to the Department of Families, Fairness and Housing Victoria ("DFFH"), being the relevant child welfare department. The primary judge recorded the disclosure (at [111]):

> [Y] did not disclose any concerns in relation to [the respondent] but stated that she was fearful when [the appellant] yelled in the home. [Y] spoke about the reported incident on 2 December 2023, stating that [the appellant] yelled at [X] because he wanted another bottle and "shook him very hard". [Y] stated that following the incident, she was scared and "cuddle[d] up with mum in bed". [Y] stated that [the appellant] did not yell often but made her feel sad when he yelled at [the respondent].

3 In fact, the involvement of DFFH had begun on 28 July 2023 when the "[respondent] told a member of staff at [Y]'s school that she was feeling afraid to go home" (at [105]).

4 An interim intervention order issued in December 2023 (at [116]). In January 2024, a final order was made by consent and without admission for a period of 12 months (at [147]).

5 The appellant later breached that intervention order. The Magistrates' Court of Victoria dealt with the breach by way of a diversion (at [148]).

TRIAL

6 The children were living with the respondent and spending professionally supervised time with the appellant at the time of trial.

7 The primary judge identified the issues for determination (at [3]):

> (a) The risk posed to the children by the [appellant];
>
> (b) The allocation of long-term major decision-making for the children;
>
> (c) Whom the children should live with; and
>
> (d) The children's time and communication with the [appellant], including whether such time is supervised (professionally or by a third party).

8 The appellant sought joint decision-making responsibility and graduated time culminating in orders which saw the children living in a week-about arrangement. The respondent sought

sole decision-making responsibility and orders that the children live with her and spend supervised time with the appellant. The children's interests were represented by an Independent Children's Lawyer ("ICL") who submitted that the arrangement proposed by the respondent was the one which would operate in the best interests of the children.

9 The primary judge had the benefit of single expert evidence from a psychologist, Dr C, who prepared Family Reports during the currency of the proceedings. In relation to the first report, the primary judge recorded (at [27]) that the expert had:

> …[A]ssessed the [appellant]'s parenting risk as high indicating there were factors indicating a likelihood the children would be exposed to or subjected to parental anger and aggression…

10 The expert recommended both therapy with a clinical psychologist and education as methods to address risk. The primary judge found that while the appellant continued to engage with a registered psychologist, he did not engage a clinical psychologist as was recommended. The parents were again assessed by the expert and an updated report was prepared. The primary judge recorded that the "parenting risk" posed by the appellant remained high (at [31]) and that "his insight and accountability remained limited" (at [32]).

11 The appellant's psychologist gave evidence in the appellant's case, but the psychologist had explicitly not worked with the appellant about any issues relating to allegations of family violence (at [42]).

12 At the time of trial, the appellant had participated in 78 periods of supervised contact and the primary judge accepted that the reports of those sessions consistently described "the children's interactions with [the appellant] as positive, warm and child-centred" (at [209]).

APPEAL

13 The appellant challenged all of the orders of the primary judge made 19 June 2026 and sought that they be set aside, in whole or part, and this Court re-exercise the discretion or, alternatively, remit the matter for rehearing. The appellant accepted that if the appeal were allowed because this Court determined that the primary judge had failed to make findings necessary to support the orders, then the only available path was remitter.

14 The appellant advanced seven grounds of appeal. We have determined to remit the matter because we accept that there is merit in Ground 1 and Ground 5 when considered together. In acknowledgment of the principles of judicial economy identified by the High Court of

Australia in *Boensch v Pascoe* (2019) 268 CLR 593 at [8], we do not propose to consider the remaining grounds.

GROUND 1: INADEQUATE REASONS

The primary judge erred in law in failing to give reasons adequate to expose the path of reasoning to the critical conclusions upon which the orders rest

15 Reasons will be inadequate where the reasoning upon which the decision is based is not apparent or justice is not seen to be done: *Sun Alliance Insurance Ltd v Massoud* [1989] VR 8 at 18, adopted in *Bennett and Bennett* (1991) FLC 92-191 at 78,266 ("*Bennett*"). We are satisfied the former consideration arises here.

16 This is a case where we are persuaded that the observation that this Court "is not obliged to uphold a judgment merely because the result may be said to fall within the wide ambit of the Judge's discretion" has direct application (*Bennett* at 78,267).

17 The appellant particularised Ground 1 by reference to four critical findings made by the primary judge:

(a) The appellant's past and continuing conduct had exposed the respondent to "coercive and controlling behaviour" which in turn exposed the respondent and children to harm (at [202]) and impaired the respondent's parenting capacity (at [204]);

(b) Indefinite supervised time was necessary;

(c) Positive supervision reports must be weighed against the "history of family violence" and the appellant's "lack of insight" (at [210]); and

(d) Parental conflict and the live with order supported sole decision-making responsibility (at [216]).

18 We will address the complaint of adequacy using the structure adopted by the appellant.

Nature and magnitude of apprehended harm

19 The primary judge said:

> 202. Although I have power to make orders in the terms sought by the [appellant], having regard to the Full Court's decision in [*Shinohara & Shinohara* (2025) FLC 94-266], I am not satisfied that such orders are in the children's best interests. Orders of that kind would be contrary to the weight of the evidence. It is unnecessary to determine whether every allegation of family violence is made out. I am, however, satisfied that the [respondent] has established that, over a considerable period, the [appellant] has engaged in conduct which has

> continued, and is likely to continue, to place the [respondent] and the children at risk. That conduct is capable of destabilising the [respondent] and subjecting her to ongoing coercive and controlling behaviour of a serious and unacceptable kind which exposes her and the children to risk of harm.
>
> …
>
> 204. I accept that the [appellant] is entitled to challenge the processes and conclusions of the Family Report writer, and that doing so is not, of itself, evidence of a lack of insight. However, his conduct throughout the litigation, including in the period leading up to the final hearing, causes me to conclude that he is likely to continue to undermine the [respondent] in a manner apt significantly to impair her capacity to parent the children.

20 We agree with the primary judge that it will not always be necessary to determine every dispute identified by the parties. However, a failure to determine a material dispute of fact necessary for the disposition of the proceedings may amount to an error of law: *Resource Pacific Pty Ltd v Wilkinson* [2013] NSWCA 33 at [9].

21 Here, the parties were at issue about aspects of the appellant's conduct which the respondent submitted met the definition of "family violence" and posed a future risk to the safety of the children. The examples of this conduct or behaviour included:

(a) Angry and abusive comments or silence (at [55]–[56]);

(b) Financially controlling conduct (at [57]–[59]);

(c) In 2013, grabbing the respondent, dragging her out of bed, throwing her into a mirror, carrying her to their front door and throwing her outside in her pyjamas at night – occasioning bruising (at [62]–[63]);

(d) In 2018, saying "I'll gouge out your eyes and bury you alive and you'll have no idea where you are or how to get out" (at [64]);

(e) In 2018, in anger grabbing the respondent's head, unsuccessfully attempting to wipe his dirty bottom on it and then grabbing her arm and using it to wipe his bottom leaving a trail of faeces (at [65]);

(f) In 2021, swinging a fist at the respondent's face (at [66]);

(g) In 2021, yelling and demanding that the respondent clean a stain on the couch made by the children (at [67]);

(h) Limiting the respondent's family from attendance at the parties' home (at [68]);

(i) In 2022, saying "get away from me you disgusting diseased animal" when the respondent leaned in to kiss him (at [69]);

(j) In 2022, calling the respondent a “lazy filthy slob pig” when dishes were left in the sink (at [70]);

(k) In 2022, yelling at Y “look what you’ve done to your brother you fucking idiot” and calling the respondent a “pathetic half-mum” and a “fucking useless loser” (at [71]);

(l) In 2022, saying to the children “imagine if Mummy was killed in these woods and we could never find her body again” (at [73]);

(m) In 2022, yelling for over two hours about a tyre puncture at [74]);

(n) In 2022, picking up and shaking X while verbally berating him and the respondent (at [75]);

(o) In 2022, saying of the maternal grandparents in Y’s presence “those pathetic geriatrics are NOT coming to my daughter’s kinder concert! How dare you […]? You watch what happens if they come. You watch what I’ll do” (at [76]–[77]);

(p) In 2022, saying to the respondent “you don’t want to work, you don’t want to do anything at home, you don’t want to be a mother, how are you going to take care of yourself without me?” (at [77]);

(q) In 2023, causing X to shake uncontrollably and cry (at [78]);

(r) Accusing the respondent of isolating him from the children by taking them on “planned exotic excursions” without him (at [79]–[81]);

(s) In July 2023, calling the respondent “fucking useless” and Y “a fucking idiot” (at [82]);

(t) Using the Life360 app to monitor the respondent’s movements (at [83]–[84]);

(u) In 2023, making angry denigrating comments to Y which caused her to soil her pants (at [85]);

(v) In 2023, angrily chastising X for playing with the respondent (at [86]);

(w) In December 2023, grabbing X by the shoulders and shaking him violently (at [88]–[90]);

(x) In 2024, without notice, the appellant stopped paying private health insurance premiums (at [93]); and

(y) In 2024, without notice, the appellant stopped meeting internet, electricity and swimming lesson charges (at [94]).

22 The primary judge noted some partial concessions by the appellant although it is not possible to determine which events are said to be the subject of the concession (at [99]). The judge records the appellant's contention that "insulting and degrading language" was "mutual" (at [99]).

23 The primary judge recorded "[t]he [appellant] admits to calling the [respondent] 'birdbrain', 'pathetic', 'half mum', 'fucking idiot' and 'freeloader'" and while the appellant said this could "arguably" be family violence, instead reasoned that it was actually mutual conflict (at [101]).

24 The primary judge's reasons comprehensively detail the respondent's allegations but do not adequately address which allegations are established and which allegations have not been established.

25 In the reasons for judgment, the primary judge says "[i]t is clear that allegations made by both parents, referred to above, constitute family violence" (at [149]).

26 The comment is unhelpful. A party reading the reasons for judgment is entitled to know which allegations have been accepted and which allegations have been rejected.

27 In particular, the respondent made no concessions regarding any allegations said to constitute family violence perpetrated by her towards the appellant. In context, the comment (at [149]) is apt to be interpreted as an acceptance by the primary judge that the appellant's contention that the respondent had sworn at him met the definition of family violence. This finding (if, indeed, that is what it was) was not the subject of any reasons.

28 The primary judge's findings concerning the matters set out above are set out (at [153]) of the reasons, which reads:

> In relation to allegations that the [appellant] physically abused the [respondent] or subjected her to humiliating treatment by wiping excrement on her arm, I am not satisfied that that [sic] those events occurred as alleged. I do accept that the parties had arguments and that the [appellant] was extremely rude and arrogant towards the [respondent], but I do not accept that he physically assaulted her. Nor do I accept that the [appellant] threatened to kill the [respondent] or intended to physically hurt either the [respondent] or the children. I do not accept that in December 2023, the [appellant] shook the child [X] with the intention of hurting him although, I do accept that he handled the child roughly and was angry. The incident occurred when there were two adults and two children attempting to sleep in the same bed. I accept that the [appellant] was frustrated by the boy, that everyone was tired, and that the [appellant] held the child, but I do not accept that this was an assault of the child or intended as an assault.

29 The paragraph deals with specific issues globally. While it is clear that the primary judge has rejected the account given by the respondent of one specific incident, the reasons do not explain the basis of that finding. In making a global finding that there was no "physical assault" the primary judge has failed to identify which "violent, threatening or other behaviour" he was addressing. We will return to the primary judge's references to intent and "assault" when we consider Ground 5.

Indefinite Supervised time

30 The appellant submits that the reasons do not address the basis upon which the primary judge declined to order a less restrictive regime to ameliorate identified risk. We disagree.

31 The primary judge recorded (at [37]):

> [Dr C] concluded that the most likely risk scenario pertained to the [appellant] potentially physically assaulting or causing serious emotional harm to individuals when they do not behave in line with his wishes, particularly in the family context.

32 The primary judge went on to conclude (at [40]):

> The trenchant tone in correspondence with practitioners and professional people who did not support him lend weight to the opinion of [Dr C].

33 The primary judge found the appellant lacked insight about his conduct (at [139]), has been controlling and "verbally abusive", "angry and aggressive" and "[w]hen challenged in or when he feels slighted, he goes on the verbal offensive beyond what is ordinarily acceptable" (at [156]). Having made those findings, the primary judge accepted (at [157]) the assessment of the expert Dr C:

> [The appellant's] parenting risk is High. The risk pertains to the likelihood of the children being exposed to and directly subjected to his anger and aggression. The psychological evaluation found him to present with certain personality vulnerabilities. Collateral material points towards a likelihood of family violence perpetration in the form of verbal and emotional abuse (towards the [respondent] and children) and physical abuse towards [X]. Additionally, [the appellant] is denying of problems in this realm, which raises further concern.

34 The primary judge did not accept the respondent's characterisation of the events concerning X being shaken but he nonetheless identified that the conduct was a risk to safety as an example of the "angry disciplining of a young child" (at [163]).

35 The primary judge made a finding that the appellant sought to deny or minimise his actions (at [203]) and that the appellant's conduct may "destabilise" the respondent and create a risk

of harm (at [202]). In those circumstances, the primary judge found supervision was necessary to ensure the children's time was "safe" (at [213]).

Weight given to positive supervision reports

36 The primary judge said (at [210]):

> That positive relationship [between the appellant and the children] in a supervised setting must be viewed against the history of family violence perpetuated by the [appellant] and his lack of insight into the effects of that behaviour which significantly impacts on his capacity.

37 We have earlier indicated that we are concerned that the primary judge failed to adequately demonstrate which events said by the respondent to constitute "family violence" had been accepted and which rejected. To that extent, we accept that the global reference to "family violence" in this paragraph may not provide adequate reasons for the imposition of supervision. That conclusion does not preclude a differently constituted Court from finding that the evidence establishes a significant number of the factual matters asserted by the respondent.

Parental conflict and the live with order supported sole decision-making responsibility

38 The primary judge made an order that the respondent have sole decision-making responsibility for the children. The primary judge gave the following reasons for that order (at [216]):

> Given the level of conflict between the parties and the fact that the children will be living with the [respondent] and in her care, it is in the best interests of the children that she have sole parental responsibility for them. Orders will be made requiring her to consult with the [appellant] before major long- term [sic] decisions are made by her in respect of the children.

39 The conclusion is unassailable and must be read in the context of the judgment as a whole. The reasons are adequate.

40 The appellant says no reasons were given for the reduction of his electronic communication. We accept that no individual paragraph of the reasons specifically addressed this issue. However, in a context where the Court is making final orders, there is no assumption that the level of communication which was provided in interim orders (at a time when it would have been in contemplation that supervision could have been lifted) remained appropriate at the conclusion of the proceedings.

GROUND 5: ERROR IN THE FINDING OF PROSPECTIVE RISK OF COERCIVE AND CONTROLLING BEHAVIOUR

41 The appellant expressed Ground 5 in the following terms:

> The primary judge erred in finding at [202] and [204] that the [appellant] presented an ongoing risk of coercive and controlling behaviour of a serious and unacceptable kind, and was likely to continue to undermine the [respondent's] parenting capacity, without subjecting the allegations to the forensic rigour, and the objective evaluative assessment, required by *Pickford & Pickford* [2024] FedCFamC1A 249.

42 It is necessary to situate the discussion within the statutory framework which deals with the significance of findings of family violence to the making of parenting orders.

43 Family violence is defined in s 4AB(1) of the *Family Law Act 1975* (Cth) ("the Act"), as follows:

> (1) For the purposes of this Act, ***family violence*** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the ***family member***), or causes the family member to be fearful.
>
> (Emphasis in original)

44 In s 4AB(2), the Act provides examples of behaviour which **may** meet the definition in s 4AB(1). In a similar vein, s 4AB(2A) provides some examples which **may** be considered "economic or financial abuse".

45 It is important to identify behaviour which constitutes family violence because s 43(1)(ca), which is expressed in mandatory terms, provides:

> (1) A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to:
>
> …
>
> (ca) the need to ensure protection from family violence;

46 Similarly, s 60CG, which is also expressed in mandatory terms, entreats a Court considering the making of a parenting order to consider the question of family violence, in the following terms:

> (1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interests being the paramount consideration, ensure that the order:
>
> (a) is consistent with any family violence order; and
>
> (b) does not expose a person to an unacceptable risk of family violence.
>
> (2) For the purposes of paragraph (1)(b), the court may include in the order any safeguards that it considers necessary for the safety of those affected by the

order.

47 The section clearly has application whether the parties identify it or not.

48 Section 4AB(3) of the Act sets out a definition, for the purpose of the Act, about what it means for a child to be **exposed** to family violence. It is an expansive definition which includes seeing, hearing or otherwise experiencing the effects of the "family violence". A non-exhaustive list of situations which may constitute exposure is contained in s 4AB(4).

49 This Court, in *Pickford & Pickford* (2024) FLC 94-230 ("*Pickford*"), considered the metes and bounds of the definition in s 4AB(1). We consider that it is necessary to revisit that determination in the context of this appeal.

50 The current iteration of s 4AB was introduced through the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (Cth). The Bill's Replacement Explanatory Memorandum says:

> 17. New subsection 4AB(1) defines 'family violence' as violent, threatening or any other type of behaviour that coerces or controls a family member or which causes the family member to be fearful. Behaviour that fits within the general characterisation set out in the definition will be captured. The definition is intended to cover a wide range of behaviour including assault, sexual assault or other sexually abusive behaviour, stalking, emotional and psychological abuse, and economic abuse. The definition encompasses patterns of family violence and single violent events.
>
> 18. New subsection 4AB(2) provides a non-exhaustive list of examples that fit within the definition of 'family violence'. The examples recognise the wider range of behaviour experienced by victims of family violence. The inclusion of examples will not include any behaviour that is within the general characterisation set out in subsection 4AB(1). For example, threats of suicide and self-harm are not mentioned in the definition or examples of 'family violence', but will be captured by the definition where the threat coerces, controls or causes a family member to be fearful
>
> 19. New subsection 4AB(3) defines the term 'exposed'. This new term provides that a child is 'exposed' to family violence if the child sees or hears or otherwise experiences the effects of family violence. Proposed subsection 4AB(4) provides a non-exhaustive list of example situations where a child may be exposed to family violence. The examples clarify that there does not have to be intent for a child to hear, witness or otherwise be exposed to family violence.

51 In *Pickford*, their Honours Austin and Williams JJ said:

> 109. The definition is exclusive, not inclusive. Notwithstanding the obvious breadth of the definition, it is disjunctive and admits of "violent, threatening or other behaviour" amounting to "family violence" in only one of two ways, being behaviour of that sort which:

(a) "coerces" or "controls" a family member – which is an objective concept focussing upon the characteristic nature of the perpetrator's behaviour towards the victim; or

(b) causes the family member to be "fearful" – which is a subjective concept instead focussing upon the victim's reaction to the perpetrator's behaviour.

52 We agree.

53 In effect, the definition has two parts. First, there must be violent, threatening, or other behaviour. Second, that behaviour must do one of two things: coerce or control a family member or cause the family member to be fearful.

54 The use of the expression "that" in s 4AB(1) operates as a qualifier. Only where the "violent, threatening or other behaviour" has one of the identified effects does it meet the definition.

55 By way of example, the primary judge set out (at [66]) details of an incident in July 2021 where the respondent says the appellant "took a very fast swing with his fist at her face". The primary judge recorded the respondent's evidence that the:

> …[E]vent remains burned in my brain as one of the most shocking and terrifying moments of my life. The fear of somebody, double your size, throwing a fist directly at your face is not something you ever forget and I certainly never will…

56 The evidence details the act (swinging a fist) and the effect (fear). If that evidence were accepted, it would plainly satisfy the two components of the s 4AB definition. Yet the primary judge made no explicit finding unless the opening sentence of [153] was intended to resolve the parties' competing evidence. If so, the reasons do not disclose the basis upon which the respondent's account was rejected. Fact finding requires something more than a mere statement that the primary judge is not satisfied it occurred. As the Full Court of the Federal Court of Australia succinctly expressed in *ASB17 v Minister for Home Affairs* (2019) 268 FCR 271 at [43]:

> …Where an adverse finding is made on the basis of differences in accounts, it will usually be necessary to properly discharge the fact-finding task for a decision-maker to explain why she or he has found those differences of such a nature as to justify rejection of the narrative or account given by a person.

57 It follows that we consider that the statements of the law by the majority in *Pickford* at [3], [41] and [43], to the effect that "family violence" may include conduct or behaviour which neither coerces nor controls nor engenders fear, are plainly wrong. In reaching that conclusion, we have been guided by the principles which apply when an intermediate appellate court is considering whether an earlier decision is plainly wrong, manifestly wrong

or clearly erroneous: *SZEEU v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 150 FCR 214 at [8], [145]–[146] and [187]–[192].

58 We reject the submission that the section may be read disjunctively. Such an interpretation is inconsistent with a plain reading of the subsection. To read s 4AB(1) in this manner is not to read it down, but to read it as intended.

59 In contending for a broader definition of the expression "family violence," the plurality in *Pickford* (at [44]) provided, as an example, a female punching her partner in circumstances where that behaviour neither coerced nor controlled the partner, nor engendered fear. We say that this behaviour falls short of meeting the statutory definition, and deliberately so.

60 The statutory construction adopted by the legislature in enacting s 4AB was a deliberate decision informed by the recommendations of the 'Family Violence – A National Legal Response' report produced by Australian and New South Wales Law Reform Commissions in October 2010 ("ALRC Report 114").

61 Section 4AB is, in large part, an implementation of the core definition recommended in the ALRC Report 114 (Recommendation 6–4). The Commissions were "persuaded by arguments that the definition of family violence needs to describe the context in which acts take place– rather than merely listing specific incidents of violence or abuse" (ALRC Report 114, paragraphs 5.166 and 6.105). Underlying that view was the proposition that, whatever form family violence takes, "a central feature is that it involves a person exercising control and power over the victim by inducing fear" (ALRC Report 114, paragraph 5.9).

62 Section 4AB defines "family violence" for the purposes of civil litigation concerning family law disputes. It directs attention to the nature and effect of the conduct within the family relationship. In doing so, it departs from the approach which has been taken in the criminal law. The criminal law asks whether the proscribed act occurred and, if so, whether it was justified. In the family law context, the language of "assault" is potentially unhelpful, because it imports concepts relevant to criminal responsibility (including intention), which do not form part of the statutory definition in s 4AB(1).

63 It follows that we accept that violent behaviour, threatening behaviour or other behaviour alone will not satisfy the statutory definition.

64 This is consistent with s 4AB(2), which provides a non-exhaustive list of potential examples of behaviour which may satisfy the definition of family violence. Importantly, the list is

explicitly a list of behaviours which "may constitute" family violence. For example, an assault (s 4AB(2)(a)) is *capable* of meeting the statutory definition but may not do so in every case.

65 The ALRC Report 114 identified as advantages of the proposed definition its capacity to perform two valuable functions. First, to bring within the definition of family violence, seemingly innocuous or minor events which, when viewed through a lens which examines their effect (coercion, control or fear), assume a far greater significance. Second, to exclude events which might otherwise have been captured such as violent resistance by a victim (ALRC Report 114, paragraphs 5.168–5.169). The statutory definition appreciates the context.

66 In seeking to clarify the position regarding the scope of the statutory definition of "family violence", we confirm that, in all other respects, the judgments of the majority in *Pickford* remain accurate and useful statements of the law. In particular, regard should be had to helpful guidance concerning fact finding in cases involving allegations of family violence in the judgment of Aldridge and Carew JJ (with which McClelland DCJ agreed at [36]–[39]):

> 48. … a forensic examination of all **relevant** evidence to:
>
> (a) identify the behaviour about which complaint is made;
>
> (b) identify the full context of the behaviour including any explanation that may be given by the alleged perpetrator;
>
> (c) identify the impact of the behaviour on the alleged victim (mere assertion by the alleged victim that they feel coerced or controlled is insufficient);
>
> (d) make all relevant factual findings; and
>
> (e) explain why the behaviour in question is or is not family violence that coerces or controls the family member and if the alleged behaviour does not entail a course or pattern of conduct, explain how the behaviour can nevertheless be characterised as behaviour that coerces or controls, if so found.
>
> (Emphasis added)

67 In addition to the matters addressed above, we would specifically include the requirement (in cases where it arises) to evaluate whether behaviour about which a finding has been made caused the target of that conduct to experience fear. No matter how useful the above guidance is, each case turns on its own facts, and the process by which the Court determines which orders are in the best interests of a child is governed by the application of the statutory considerations to the relevant findings.

68 Finally, we consider that *Pickford* remains authority for the propositions that:

(a) Behaviour or conduct may be coercive or controlling or engender fear absent intent on the part of the person undertaking the behaviour or conduct; and

(b) A person may feel coerced or controlled by behaviour but unless the judge objectively finds that the behaviour was coercive or controlling, the perception of the person is not determinative.

69 In seeking to examine the breadth of the definition of "family violence" in the Act, we acknowledge the potential relevance of conduct which does not meet the definition. Whether events meet the definition is but one issue in a wider determination of what orders will be in the best interests of the subject children. As Strum J expressed in *Re: Devin* [2025] FedCFamC1F 211 at [301]:

> Even if conduct is found to be unsatisfactory but not to constitute family violence, as defined, it will still likely be relevant in other ways and will still likely influence the overall exercise of discretion under Pt VII of the Act. Indeed, conduct may be found to constitute violence, in the ordinary usage of that term, but merely not "family violence" as defined in, and for the purposes of, the FLA. In many cases, the distinction may be one without a difference, more apparent than real. It is unlikely that an act of violence, such as that postulated by Aldridge and Carew JJ at [44], even if it did not constitute "family violence", would be any less relevant or irrelevant. It must be recalled that many of the provisions in Part VII of the FLA are not an end in themselves, but a means to an end, namely, the determination of what is in a child's best interests.

70 When we consider the failure by the primary judge to make explicit findings about a lengthy history of asserted violence which is then implicitly part of the rationale for the imposition of supervised time, we are satisfied that the appellant has demonstrated error.

71 However, an absence of explicit findings about serious contentions of family violence does not warrant discharge of the orders made by the primary judge. We propose to remit the matter but leave the orders in place.

COSTS

72 The appeal has been allowed. In the event that the appeal was allowed on a question of law (which it was), the appellant sought a certificate under the *Federal Proceedings (Costs) Act 1981* (Cth). The appellant appeared on his own behalf but incurred filing fees and fees to procure the transcript of the proceedings below. He sought a certificate referable to the appeal and to the rehearing. We propose to grant both.

73 The respondent similarly sought the grant of a certificate in the event the appeal was allowed. We similarly propose to grant a certificate in respect of the appeal and any rehearing.

74 The ICL also sought a certificate. We decline the application. Counsel who appeared on behalf of the ICL neither filed a Summary of Argument nor made submissions and their attendance was as a courtesy to the Court. In circumstances where the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) make provision for the filing of a Submitting Notice, no Schedule of Costs was filed and we were provided with no assistance nor any indication as to costs incurred (if any). We decline the application.

I certify that the preceding seventy-four (74) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Chief Justice Alstergren, Justices Christie, Schonell, Strum & Curran.

Associate:

Dated: 13 November 2026