

AUSTRALIA / JUDGMENT

APC v Mr B (No 2) [2024] NSWSC 1608

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Supreme Court

New South Wales

Medium Neutral Citation: APC v Mr B (No 2) [2024] NSWSC 1608

Hearing dates: 8-10 October 2024

Date of orders: 13 December 2024

Decision date: 13 December 2024

Jurisdiction: Common Law

Before: Schmidt AJ

Decision: Judgment for the plaintiff.

Catchwords: TORTS -- claimed historical child sexual abuse -- where defendant denies abuse and alleges plaintiff and witnesses have conspired to give false evidence about claimed abuse -- credibility -- abuse established -- assessment of damages -- unchallenged expert evidence -- damages including aggravated and exemplary damages awarded

Legislation Cited: Civil Liability Act 2002 (NSW)

Court Suppression and Non-publication Orders Act 2010 (NSW), s 8

Evidence Act 1995 (NSW), ss 91, 128, 140

Family Law Act 1975 (Cth), ss 79, 114Q, Pt XIVB

Limitation Act 1969 (NSW), s 6A(2)

Cases Cited: APC v B [2023] NSWSC 988

Briginshaw v Briginshaw (1938) 60 CLR 336; [1938] HCA 34

Clancy v Plaintiffs A, B, C and D; Bird v Plaintiffs A, B, C and D [2022] NSWCA 119

Dessent v Commonwealth (1977) 13 ALR 437; (1977) 51 ALJR 482

Diamond v Simpson (No 1) [2003] NSWCA 67

Effem Foods Pty Ltd v Lake Cumbeline Pty Ltd [1999] HCA 15; (1999) 161 ALR 599

Gamser v Nominal Defendant (1977) 136 CLR 145; [1977] HCA 7

Graham v Baker (1961) 106 CLR 340; [1961] HCA 48

Gray v Motor Accident Commission (1998) 196 CLR 1; [1998] HCA 70

Griffiths v Kerkemeyer (1977) 139 CLR 161; [1977] HCA 45

JL v R [2023] NSWCCA 99

Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8

Kars v Kars (1996) 187 CLR 354; [1996] HCA 3

Lamb v Cotogno (1987) 164 CLR 1; [1987] HCA 47

Lee Transport Co Ltd v Watson (1940) 64 CLR 1; [1940] HCA 27
MacDougal v Mitchell [2015] NSWCA 389
Malec v J. C. Hutton Pty Ltd (1990) 169 CLR 638; [1990] HCA 20
Miller v Galderisi [2009] NSWCA 353
M v M (1988) 166 CLR 69; [1988] HCA 68
New South Wales v Ibbett (2006) 229 CLR 638; [2006] HCA 57
New South Wales v Moss (2000) 54 NSWLR 536; [2000] NSWCA 133
Reed v R [2006] NSWCCA 314
RHG Mortgage Ltd v Ianni [2015] NSWCA 56
Sharman v Evans (1977) 138 CLR 563; [1977] HCA 8
Smith v Alone [2017] NSWCA 287
State of New South Wales v Riley (2003) 57 NSWLR 496; [2003] NSWCA 208
Todorovic v Waller (1981) 150 CLR 402; [1981] HCA 72
Sullivan v Gordon (1999) 47 NSWLR 319; [1999] NSWCA 338
Van Gervan v Fenton (1992) 175 CLR 327; [1992] HCA 54
Watson v Foxman (1995) 49 NSWLR 315
Wynn v NSW Insurance Ministerial Corporation (1995) 184 CLR 485; [1995] HCA 53
Texts Cited: Nil
Category: Principal judgment
Parties: APC (Plaintiff)
Mr B (Defendant)
Representation: Counsel:
M Robinson SC / J McEnaney (Plaintiff)

Solicitors: Shine Lawyers (Plaintiff)
Self-represented (Defendant)
File Number(s): 2022/302110
Publication restriction: Nil

JUDGMENT

1. APC pursues damages against Mr B for child sexual abuse which she claims occurred while he was in a de facto relationship with her mother, who he later married and from whom he is now divorced. APC claims that Mr B first groomed her and then repeatedly sexually abused her while she was aged between 9 and 16 years. Further, that his abuse continued even after she had disclosed it to her mother.
2. APC relies on the evidence of her mother and other lay witnesses, as well as reports of a psychiatrist, Associate Professor Robertson, an accountant, Michael Lee and an occupational therapist, Ms Williams, to establish her case.

3. Mr B denies the claimed abuse. His case is that APC's claims are all fabricated and pursued by her and witnesses whom she called, in a scheme devised by her mother, which began during their earlier family law proceedings, in order to wrongly deprive him of even more of his assets.
4. There is no issue that APC has been diagnosed to be suffering complex post-traumatic stress disorder, with a comorbid depressive disorder; has never worked; and is unlikely ever to be able to work. But Mr B claims that all of her problems are the result of life choices she has herself made, for which he has no responsibility.
5. The parties' contest arises to be considered in circumstances where Mr B and his first wife, with whom he has children, divorced after he invited APC, her mother and brother to live at a property which he owned. This was some time after the death of APC's father, a long term friend of Mr B, in the 1984 Milperra bikie massacre.
6. Mr B and his first wife became closer again after he and APC's mother divorced a few years ago. In these proceedings Mr B finally did not lead evidence from his first wife, but she assisted him when he appeared unrepresented at the final hearing.
7. Earlier, he had been legally represented in both the family law and these proceedings.
8. It was in August 2023, after the family law judgment on which Mr B relied to advance his case was delivered, that Wright J made freezing orders against him in these proceedings. They were later continued by Lonergan J and finally by Campbell J: *APC v B* [2023] NSWSC 988.
9. Those orders remain in force.
10. Campbell J was satisfied that Mr B "does have in mind, if he can, rendering himself judgment proof": at [8]. Further, that his then non-appearance "may be part of a deliberate strategy to evade the Court's jurisdiction": at [10].
11. Mr B did not pursue such a strategy. He explained at the final hearing that it had been his experience of the family law proceedings which had resulted in his decision to dispense with his representation in these proceedings and to proceed only with the assistance which his first wife provided him.
12. The defence he advanced rested on his own evidence and that which APC and witnesses she called gave in cross examination, as well as the judgment and orders made in favour of APC's mother in their family law proceedings.
13. In the family law proceedings, the parties had each called evidence from witnesses and APC's mother had also served a statement which APC had made. APC was finally not called to give evidence in those proceedings, but her brother was. He had also made a statement for these proceedings, but he was finally not called by APC after he fell seriously ill.

14. Still Mr B not only tendered the family law judgment, which explained the evidence APC's brother had given in those proceedings, he also gave evidence responding to the brother's statement prepared for these proceedings, even though it was not tendered by APC. But he called no evidence from others to support his case.
15. The questions which Mr B asked of Associate Professor Robertson in cross examination concerned whether his opinions rested on information which had been provided by APC's lawyers and whether APC had told him about matters dealt with in his reports. He also cross-examined APC and her mother, as well as shortly cross examining other lay witnesses. But he did not challenge the opinions of the experts about the damages APC pursued.
16. The result of his approach was that Mr B had obvious difficulty pursuing his defence. But it must be accepted that this was the result of decisions which he had made, for the reasons which he explained.
17. That cannot preclude the case APC advanced being accepted.

Conclusions

1. Even accepting Mr B's explanations about his decision not to be represented and taking into account the resulting challenges that decision presented for the conduct of his case, I have concluded that APC has met the onus which falls upon her to prove her case. Further, that his case, that APC is pursuing a false claim with the assistance of other witnesses, cannot be accepted, his evidence not being able to be preferred over that of APC or of other witnesses.
2. I note that APC's claimed wrongdoing had not been pleaded in Mr B's defence. It having been confined to the denial of some paragraphs of her statement of claim and the non-admission of others.
3. Mr B called no evidence to support his allegation that APC and others were involved in her pursuit of false claims that he had abused her. The family law judgment on which he relied certainly provided no basis for that serious allegation.
4. On all the evidence I will explain I have concluded that Mr B's denials of the abuse cannot be accepted, inconsistent as they were not only with APC's evidence, but also with earlier admissions which I am satisfied he has made about his abuse.
5. The result is that APC must be awarded damages, including for the ongoing consequences of that abuse, which she has also established. The parties must thus now provide proposed final orders, which will permit the damages APC must be awarded to be finally determined.

The issues

1. APC relied on evidence of her repeated complaint about Mr B's abuse, first to her mother, as well as on Mr B's admissions, which she claims a solicitor not interested in the outcome of these proceedings overheard, to establish her case and resist his defence.

2. While a tendency notice had been served, it was finally not pressed, when APC's brother could not be called to give evidence.
3. There was no issue between the parties that the circumstances which arise for consideration include that:
 1. Mr B was long a friend of APC's father, who before his death during the Milperra bikie massacre was a member of the Bandidos motorcycle gang;
 2. APC has known Mr B since before her father died;
 3. After her father's death, APC lived at various times with Mr B, her mother and brother, at a number of country properties which Mr B owned, until she ran away when she was a teenager and went to live with other family members;
 4. It was only after this that Mr B and APC's mother married;
 5. As well as her ongoing mental health problems, APC's life has been marred by alcohol and drug abuse;
 6. APC has been involved in a number of abusive relationships, has given birth to seven children to a number of different fathers and has never pursued paid employment;
 7. APC has now lived in the same housing commission property for over 20 years;
 8. Mr B lives on one of his properties, which is located in the vicinity of APC's home, with the result that he, APC and her partner have encountered each other in town, including after the family law proceedings;
 9. Mr B made a complaint to police before these proceedings, about threats which he claims APC's partner made against him about defending these proceedings;
 10. APC's claims concern historical child sexual abuse to which s 6A(2) of the Limitation Act 1969 (NSW) applies, with the result that there is no bar to her bringing these proceedings; and
 11. Given the time of the alleged events, the requirements of the Civil Liability Act 2002 (NSW) do not arise to be considered.
1. In issue was:
 1. Whether the alleged abuse occurred;
 2. The credibility and reliability of the evidence given by APC, Mr B and other lay witnesses;
 3. Whether APC has proven that Mr B made the admissions on which she relies, during the family law proceedings;
 4. Whether the wrongdoing Mr B alleged APC and witnesses she had called were pursuing, had been established; and

5. Whether the damages APC pursues should be awarded, the parties agreeing that they need to be addressed further, once this judgment has been delivered.
1. What is in issue thus turns not only on the evidence of APC and Mr B, but also on the assessment of the other evidence on which APC relies to corroborate aspects of her evidence, it not being suggested that anyone ever witnessed the alleged sexual abuse while she was a child.

The parties' cases

1. The case APC finally pressed was that the evidence had established that Mr B had sexually abused her as she claimed and that its consequences for her, for which Mr B is responsible, continue to be devastating. With the result that a substantial award of damages, including aggravated and exemplary damages, must be awarded in order to compensate her for the injuries and losses she has suffered and will continue to suffer, as a result.
2. This was disputed by Mr B, who contends that it cannot be accepted that he abused APC as she claims and that instead, it would be accepted that with her fabricated evidence and the support of witnesses who have also given false evidence, she is pursuing the wrongdoing which her mother first began to pursue in their family law proceedings. She always having controlled and manipulated APC and as he now appreciates, also him.
3. Further, that it is APC who is responsible for all that she has suffered and that the evidence is not capable of establishing that he has made any admissions about the claimed abuse. The latter turning on whether it can be concluded that it was Mr B who the solicitor overheard speaking to APC, when she was due to give evidence in the family law proceedings.

Onus

1. In resolving what is in issue it is necessary to have regard to the onus which falls on APC to prove her case on the balance of probabilities.
2. Given the seriousness of what APC alleges, in determining whether she has met that onus, the evidence she relies on must be assessed in accordance with s 140 of the Evidence Act 1995 (NSW). It requires regard to be had to the gravity of the matters alleged: *Clancy v Plaintiffs A, B, C and D*; *Bird v Plaintiffs A, B, C and D* [2022] NSWCA 119 at [26]-[30].
3. That requires attention to be paid to what was decided in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34. Dixon J there observing that "[i]n such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences". Those observations were applied in *M v M* (1988) 166 CLR 69 at 76-77; [1988] HCA 68, in the context of an allegation of sexual abuse.
4. Their application in a case such as this, where the abuse is claimed to have occurred many years ago while APC was still a child, raises obvious difficulty.

5. In *JL v R* [2023] NSWCCA 99, Adamson JA referred to the Court's ability to account for general experience, including "that it is not uncommon for victims to remember specific details about the assaults but not tangential details": at [96] quoting *Reed v R* [2006] NSWCCA 314 at [64].
6. In *Watson v Foxman* (1995) 49 NSWLR 315 at 319, McClelland CJ in Eq observed that human memory is "fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time." It was not put to APC, Mr B or other witnesses, however, that the problem with their evidence was the result of the passage of time.
7. The competing evidence must be assessed in that light.
8. In a case such as this the Court must thus, if possible, "place primary emphasis on the objective factual surrounding material and the inherent ... probabilities, together with the documentation tendered in evidence": *Effem Foods Pty Ltd v Lake Cumbeline Pty Ltd* [1999] HCA 15; (1999) 161 ALR 599 at [15].
9. In this case the documentary evidence was limited, but included medical, tax and Centrelink records which supported APC's case. The evidence given by the challenged witnesses also tended to support APC's case, rather than that of Mr B. Further, even some of his evidence corroborated aspects of that given by APC.
10. Still, no onus falls on Mr B to disprove APC's claims.
11. I do consider that because of the nature of the defence which Mr B pursued and the seriousness of the wrongdoing he alleges that APC and others she has called to give evidence have engaged in, the assessment of the evidence he relies on must also be approached in accordance with the requirements of s 140 of the Evidence Act.

The witnesses' credibility and reliability

1. In this case much turns on the credibility and reliability of those who gave evidence, which thus requires close attention given all that is involved.
2. Their affidavits and statements were received without objection, even though they contained hearsay and in Mr B's case, what can only be understood to be submissions. That has to be taken into account in assessing the evidence and what it establishes.
3. APC's case was that Mr B's evidence could not be preferred over hers, nor that of other witnesses. Mr B's case that the evidence of APC, her mother and some other witnesses was untruthful and could not be accepted.
4. But Mr B did not challenge the credibility or reliability of the evidence the solicitor gave. His case being rather that her evidence was incapable of establishing that it was he who she had heard speaking to APC, when the family law proceedings were due to be heard. It could thus not be concluded that he had made any relevant admissions about the claimed abuse.

5. Mr B also did not challenge the evidence APC's daughter gave about her mother, which corroborated aspects of APC's evidence. Still, she did not agree with matters which Mr B put to her. For example, that she knew that he had a close relationship with her sisters, or that she had seen him giving her brother money. But she did agree that it was only in the last few years that her mother had told her that Mr B had abused her.
6. APC finally did not call evidence from her brother, because he had been hospitalised for treatment and was not then available to be cross examined, as Mr B insisted on. Still Mr B gave evidence about APC's brother, the evidence he had given in the family law proceedings, as well as what he had said in the statement APC had served in these proceedings, which was not tendered by either party.
7. That evidence did not assist Mr B's case. That is because Mr B's evidence established that APC's brother has made statements which supported evidence which APC gave about how Mr B had abused them both when they were children, while they lived with him.
8. It should also be noted that Mr B was only shortly cross examined. But that reflected that he had given but relatively limited evidence relevant to APC's claims, apart from his denial of the alleged abuse, about which the parties had clearly joined issue, given their competing evidence.

Can APC's evidence be accepted?

1. I am satisfied that APC's evidence must be accepted. It included:
 1. How her family had to move around as a result of her father's death; how she, her mother and brother came to live with Mr B at a country property, with the result she said, that he had stolen her childhood, innocence and self-worth;
 2. That Mr B's children had lived with them and attended the same school as she and her brother attended for a time; his abusive treatment of her and her brother, including the heavy work he required them to perform, even when they were young children; and how he had mistreated his own children;
 3. How he had repeatedly flogged both her and her brother in a brutal way, using a thick straight piece of rubber, which left them bruised and unable to attend school;
 4. How he had mistreated her dog and her brother, including by locking her brother in a bedroom for some three months and making him use a bucket, rather than allowing him to use the bathroom; and how both Mr B and her mother beat her brother at times, leaving them both screaming;
 5. How Mr B had groomed her while he took her riding on the property and when she was bathing;
 6. How she came to be baptised after attending bible classes with Mr B;

7. How they all moved to other properties and how two of Mr B's children came to live with them for a bit; how he had then punched all of them, despite which his children began calling her "dad's favourite";
8. How Mr B groomed and then sexually assaulted her; why she initially never told anyone about those ongoing assaults, because of what he had said to her;
9. How the assaults increased to once or twice a week and then to three or four times a week, during the day when Mr B sent her mother away on errands, or when she was kept out of school;
10. How he came to molest her "in every possible way that he could", which she described, other than by raping her with his penis, which it is unnecessary to describe in detail;
11. How she came to feel that she no longer wanted to be alive and after about six months, told her mum about the abuse;
12. Her mother later telling her that she had spoken to Mr B, who was sorry; that he had been mixed up in boys' homes and had lost his son; that it would never happen again; that it had been a moment of weakness; and that he had asked God to forgive him and that she had to forgive him too;
13. That while Mr B's abuse then ceased, he began to treat her terribly, abusing her emotionally for a while, until the sexual abuse resumed;
14. That she then threatened to tell her mother again, but he said "Where ya's gunna stay, she's got nothin, no money, no one and you wanna wreck that?"
15. That she was then taken out of school, while the other children were allowed to continue and then, when she was alone with Mr B, his sexual abuse resumed;
16. Eventually, that she told her mother about his further abuse, with the result that they left and went to stay with a friend, living on the property in a pig pen. She was also there sexually abused by the husband, when she had a sleepover in their house with their daughter;
17. That afterwards they returned to live with Mr B and his sexual abuse again soon resumed, with the result that she again told her mother, who threatened to go to the police, but was dissuaded by Mr B, who promised to provide money for them to purchase their own property. Her mother then also convincing her not to go to the police, so that they would not lose this money;
18. That they then moved to another property, which she believed had been sold to her mother for \$25,000, but in fact had been purchased in Mr B's name; and APC, her mother and brother lived there in a shed;

19. That Mr B showed up a few months later and stayed, with APC and her brother moving out to live in the shearing shed and not then being allowed to attend school;
 20. That Mr B's sexual abuse then resumed again, with the result that when she was again allowed to return to school, she left home and stayed with friends for a time; that during this period, she was assaulted by her mother, after Mr B objected to her talking to a boy;
 21. That she later attempted suicide and was admitted to hospital; she there spoke by phone to Mr B, who told her to keep her mouth shut. Her mother then telling her that she would be locked up if she spoke to a grief counsellor;
 22. After release from hospital going to Sydney to live with her uncle, who was still living a biker lifestyle and then running away from there, in order to live with her aunt;
 23. Disclosing Mr B's sexual abuse to her aunt, after her mother bashed her when she refused to leave her aunt;
 24. Later moving in with a boyfriend to whom she fell pregnant for the first time when she was aged 19. Leaving him when she was six months pregnant and then living with her brother. Later unsuccessfully trying to buy the property on which they had earlier lived from Mr B;
 25. Having her second and third children after moving in with a new boyfriend when she was aged 22;
 26. Leaving him when she was aged around 26 or 27 and moving in again with her aunt, before living with her brother and a friend;
 27. Then moving to the town where she eventually obtained housing commission accommodation, where she still lives; and
 28. Suffering from ongoing drug abuse and mental health issues which continued to cause problems for her and her family throughout her life, the further detail of which does not need to be explained at this point.
1. In his cross examination Mr B put to APC matters such as that he had never assaulted her; that they had always had a good relationship; and that her mother had given her \$30,000, before she made the statement for the family law proceedings that he had assaulted her, all of which she did not accept. APC also denied that her daughters "absolutely adored" him, as he put to her. Her evidence accorded with that given by her mother, daughter and cousin, all of whom had observed their interactions over the years.
 2. I am satisfied that APC's evidence must be accepted, compelling as it was in its detail about her life, including about how he continued repeatedly to abuse her over time, despite her complaints to her mother and supported as it was by other evidence, including by his admissions.

3. The case Mr B advanced about the life that APC had chosen to live and how she herself was responsible for what now she suffers, cannot deflect from that conclusion, given how her evidence is supported, including by the unchallenged opinions of Associate Professor Robertson.
4. It must be accepted that APC's evidence was not shaken by Mr B's cross examination. It was also supported by the evidence of the solicitor who had nothing to gain from these proceedings, who overheard Mr B's admissions. Aspects of APC's evidence were even corroborated by Mr B's own evidence.
5. In the result, I am satisfied that APC's evidence must be preferred, despite all that Mr B said in his evidence and submissions about his beliefs about APC's mother controlling APC and swaying her to falsely accuse him of abusing her and the greed which he claims is driving APC's false allegations of abuse, for the benefit of her family and current partner.

Can Mr B's evidence be preferred?

1. By way of contrast, I am unable to accept Mr B's evidence as either credible or reliable. Much of it did not respond to the statements which had been served upon him. His statements rather giving an account of matters which he considered to be relevant and opinions which he holds, which have not been established to have a foundation.
2. In his first statement Mr B explained:
 1. his opinions of APC and her need for drug and alcohol testing;
 2. his views about men with whom APC has had relationships, given his understanding of their criminal records, which he explained;
 3. his belief that APC and her mother are seeking to render him homeless;
 4. how he had bought his first property for \$69,000 and had worked as a farmer for 40 years, not believing that his hard work would be ripped away and given to APC's mother, who had earlier given untrue evidence both in probate proceedings in this Court, as well as in their family law proceedings;
 5. that APC's mother had also made false claims of sexual abuse against her own father and had admitted to defrauding Centrelink; and
 6. that the final orders made in the family law proceedings had resulted in him having to hand over just about everything he had worked for.
1. Mr B's evidence about the results of the family law proceedings and the loss of most of his assets, did not accord with the orders made in those proceedings. Mr B tendered the judgment which established that a 60:40 split of assets had been ordered, in his favour.
2. In his second statement Mr B:

1. Denied having sexually, emotionally or physically abused APC, or causing her to do any hard labour on his property;
2. Posed the question "what mother and grandmother would allow a sex abuser as they both claim I am, allow a child anywhere near me?";
3. Explained why he believed that APC was pursuing her fabrications, in order to provide her and her children with a better lifestyle, she having been coached by her mother and partner;
4. Described his understanding of APC's life after her father's death and how her mother had lied in her statements about how they came to live at his property, which he was then preparing for his first wife and their children to live in;
5. Denied APC's evidence about his children living there with them;
6. Explained how he and his first wife had split, as the result of problems APC's mother had caused them and how he came to be totally controlled by her needs, as well as the belief he had come to, that he had been used for APC's mother's own benefit from 1984;
7. Gave an account of places APC, her mother and children had lived, including at one point in a farmhouse on a property which he owned, from which he had to eject APC's brother, because of how he and his friends had damaged that property;
8. Explained his beliefs about how APC's life started to spiral out of control after 2001, despite which they had maintained a relationship, evidenced by affectionate cards she had given him, some of which he tendered;
9. Explained his views of APC's reputation because of her tattoos, drug and alcohol use, as well as his understanding that her current partner is a drug dealer;
10. Described his understanding of the criminal records of APC's former partners;
11. Described altercations with APC's mother during the family law proceedings, including when he attended a property where APC and her mother were riding horses;
12. Described his feelings about the result of the family law proceedings; his beliefs about how APC's father would have felt; and police reports he has made about incidents when he had felt threatened by APC, her friends, APC's mother and her current partner;
13. Explained his views about the impact of APC's drug use and lifestyle on her children; his relationship with them over the years, which included one of her daughters living with him for a time; why she was a beneficiary in his will, she having pursued a different path to that of her mother and grandmother, who had never worked to support themselves, but had relied on social services;

14. Explained his belief that his disclosure to APC's mother that she was not one of his beneficiaries, had started her on her path to destroy him and had also driven the pursuit of these proceedings, after the family law proceedings were concluded, that preventing him from selling his properties and moving away;
 15. Also explained his view that Associate Professor Robertson had based his report on a fabricated statement, which had been written by APC's mother, not APC and that this report had been obtained as part of their pursuit of financial gain;
 16. Complained about how experts could form opinions about such untrue stories, without even speaking to or seeing the person the subject of them;
 17. Explained his belief that the seeds of APC's false account had been planted in the family law proceedings, when APC's mother described his verbal, emotional and physical abuse towards her and her two children, referring extensively to the report of Dr Ao, which had been received in those proceedings, but was not tendered in these proceedings;
 18. Explained his view that APC's mother had perjured herself in other Supreme Court proceedings;
 19. Quoted from evidence APC's brother gave in the family law proceedings, which was supportive of APC's evidence, including as it did a description of him having been assaulted and seriously injured by Mr B when he was aged 10 years and again when he was aged 13;
 20. Analysed the differences between that evidence and the statement APC's brother had made in these proceedings, which was also supportive of APC's evidence;
 21. Contended that APC's brother's statements were fabricated, even though in the family court, he had been found to have been a reliable witness;
 22. Said that APC's brother is now living with his mother and that while he had claimed his occupation to be a farmhand, as long as Mr B had known him, he had been supported financially by a disability pension. Also explaining his view that "he is now enjoying the fruits of my many years of hard work by living on the property I once owned"; and
 23. Also said that he would not respond to witness statements made by other witnesses, even though he believed that they had colluded with APC, her mother and brother to fabricate evidence for their own financial gain, because they had been promised a reward for their lies. But he did not disclose the basis of that belief.
1. Why APC's brother has had disability support since childhood, if he has, was not explained by the evidence. But Mr B's evidence, it follows, establishes that statements APC's brother has made corroborate aspects of the evidence which both APC and her mother gave in these proceedings, about their life with him.
 2. What Mr B explained in his third statement included:

1. That he had nothing to do with APC, who was being supported by her mother in these proceedings, with the result that they did not get on and he had nothing to do with them;
 2. A description of an incident on 7 July 2024, when he was sitting outside a café and APC was in a car parked nearby; that when she and her partner left their car, they yelled and threatened him; when he later saw them again, her partner had also threatened him about going to court;
 3. That he had felt intimidated, worried and concerned for his welfare; and
 4. What he had reported about this incident to police.
1. Mr B's case was that he had accumulated the assets dealt with in the family law proceedings, despite having been brought up in orphanages, entirely as the result of his own work. He having worked hard, in order to acquire his first property and that improvements he had made to it and those he had later acquired, had enabled him to increase his assets considerably over time.
 2. But he led no evidence to establish this, despite in the family law proceedings having called evidence from his accountant and the evidence of APC's mother, that he was involved in drug supply. Mr B did not put such matters to APC's mother. Nor did he challenge relevant aspects of the evidence she and APC gave, either in his own statements or when he cross examined them.
 3. It may be accepted that much of Mr B's evidence was of limited relevance and did not help establish his case about APC's claimed wrongdoing.
 4. While Mr B tendered affectionate cards he had received in the past from both APC and her daughter, their evidence in cross examination about how they came to be sent, cannot result in his evidence about the nature of their relationship and in APC's case, that he did not abuse her, being preferred over theirs. APC's explanation that she wrote him cards, as her mother had required, being plausible and I am satisfied, having to be accepted. Even on Mr B's case, her mother having manipulated APC in the past.
 5. Having considered and weighed all of the competing evidence, I am satisfied that Mr B's evidence was not credible and cannot be preferred over that of other witnesses which I will explain. That conclusion flows from:
 - * the limited evidence which he gave about relevant matters, even in his denial of the claimed abuse;
 - * the inconsistency of his evidence with the family law judgment which he tendered and by which he is bound, not having appealed it;
 - * there being limited contemporaneous material which sheds light on the competing evidence, but what there is supporting APC's evidence;

* Mr B not having called supportive evidence from others who his evidence established he could have called to give relevant evidence, particularly from his own children and the Jones v Dunkel inferences which I am satisfied must be drawn as a result; and

* Mr B's admissions.

Can the evidence of APC's mother be accepted?

1. In her evidence APC's mother gave an account which corroborated many aspects of APC's evidence and contradicted that given by Mr B in relevant respects. Unlike the position now between Mr B and his first wife, they no longer have any ongoing relationship and feel very bitter towards each other, given the claimed wrongdoing by each of them during their marriage, which was disclosed as the result of Mr B's cross examination.
2. The evidence which APC's mother gave was also supported by other evidence, including Mr B's admissions. I am satisfied that her evidence was plausible, not shaken in cross examination and must be accepted. It is not necessary to explain all of it, at this point.
3. But her unchallenged evidence included that Mr B and her first husband had been friends since childhood, that Mr B had provided her and her children various support, both after her first husband's death and in later years, in APC's case even after she left home. She also said that Mr B was involved in drug supply, an allegation which he did not deal with in his statements, but which became relevant to the assessment of her evidence.
4. It was only in closing submissions that Mr B denied having any involvement in drug supply, not having put that to APC's mother. He then also submitted that he had never been a bikie or had a bike license, having instead been a "surfie" in the past. Earlier he had said he was now a farmer.
5. APC's mother had not suggested that Mr B was ever a bikie. In any event, not having been involved with bikies, having been a surfie in the past and now being a farmer was incapable of establishing that Mr B was not involved in drug supply, as was her evidence.
6. But Mr B having a source of illegal income would explain the considerable assets which were dealt with in the family law proceedings, which he claimed were all the result of his own hard work, despite having been raised in an orphanage and seemingly never having had a trade or profession. It would also support the evidence APC's mother gave about how they had lived and why she never reported his abuse of APC to police, even though she lost the friendship of her best friend who had long supported her, APC's aunt, as a result. That serious falling out was supported by the aunt's evidence, as well as that of APC and her cousin.
7. Mr B questioned APC's mother about APC's disclosure of the abuse. Her evidence was surprising, but I am satisfied, credible:

"Q. Did you go to the police at this time to inform them what had been done if she told you that she was sexually assaulted?

A. Not at that time, no, I didn't.

Q. Why not?

A. Because it was not of our culture at that time to go to the police. We were brought up in a – on the other side of the law at that time, and – you – you were – you were – I was suffering a lot through post-traumatic stress at that time, and I should have gone to the police, but through a lot of coercive control at that time and manipulation, I was a victim on my own right at that time, so I didn't, and I'll always regret that I didn't.

Q. Who were you a victim of?

A. Milperra at the time and victim of your narcissism and your coercive control at that time.

Q. Did you use this statement of abuse of me to A. to enhance your chances of success in the Family Law Court?

A. Absolutely not, just told the truth."

1. There was other evidence which supported that APC's mother and Mr B were living "on the other side of the law". Including her evidence that he supplied her with cannabis, which he did not challenge.
2. APC's mother also explained the abuse APC, her brother and she had all experienced at Mr B's hands and its consequences. In APC's case that included her disrupted schooling and the work she was put to, on Mr B's properties. She also explained her regret for how she had dealt with APC after she complained to her about his sexual abuse, about which APC's mother said she had not previously known and then pursued with Mr B.
3. Mr B not only cross examined APC's mother about their claimed discussion of the abuse, but also about why she had still later married him. As well as about her social security fraud and other matters which he relied on, to establish her involvement in the ongoing wrongdoing which he claimed was driving APC's false claims.
4. In both the family law and these proceedings, Mr B's case included that APC's mother had engaged in social security fraud for many years. She did not deny this when cross examined. How Mr B knew about this fraud was not explored, but on her evidence, he had benefitted from it. There being no evidence to the contrary, there is no reason to reject her evidence, given how they lived together over many years while he worked, on his evidence, to improve his properties.
5. Also consistent with them "living on the other side of the law" were matters which Mr B pursued with APC in cross examination. For example, he asked APC about her knowledge of him having been a fighter and having come to her rescue, bashing up two people who, he put to her, were inside her home damaging it, in order to protect her. Were they not "living

on the other side of the law", the police would no doubt have been called, given his description of how the house was then being trashed, while APC was cowering outside. Albeit that was a description she did not accept.

6. Mr B also asked APC's mother why she had married him, a man who had abused her and sexually assaulted her daughter. Her evidence was that:

"Well at that point we were practising Christians and you came and said that you'd converted and that you repented of everything that you'd done. You pursued me, you told me you had a vision from God in the rain and all of that and you changed your ways, you got re-baptised and we were taught to forgive and I was just following the dictates of the Bible at the time, I didn't understand the way I understand now about forgiveness and I – we honestly – I honestly believed you and, yeah, and I married you because I believed you."

1. Mr B pursued this with:

"Q. If that is the case, why are you here today making these allegations against me, if what you're saying is true?

A. I'm here today because my daughter is at court today and asked me to come and give witness and tell the truth about what had happened in her life prior to this day. That's why I'm here."

1. There was no issue that Mr B, APC and her mother had all converted and that he and APC were baptised in their Church at the same time. In the family law proceedings, evidence had been called from a number of Church members about their knowledge of and interaction with Mr B and APC's mother.
2. Mr B gave no evidence about his own beliefs, although he referred to them in his questioning of APC's mother.
3. Their involvement in their Church supported the evidence APC's mother gave about why she had forgiven Mr B for his abuse of APC, before marrying him and never having reported him to police. That also accorded with what he spoke to APC about when he was concerned that she was to be called in the family law proceedings and made his admissions.
4. Mr B also relied on his understanding of what had occurred in probate proceedings which had been commenced in this Court. He put to APC's mother:

"Q. You appeared here in the Supreme Court, probate against your sister.

A. That's not true.

Q. That's not true.

A. I never went to Supreme Court. It was dealt out of the Court."

1. Mr B did not suggest that he was a party to those proceedings. He tendered no documents to support his understanding that APC's mother had given evidence at a hearing. In the circumstances, there is no basis for the evidence she gave about those proceedings to be rejected. His understanding cannot sensibly be preferred over her evidence about what occurred.
2. Nor does the evidence establish that APC's mother had paid each of her children \$30,000, as was also Mr B's case and which she also denied. That accorded with the family law judgment which dealt with some \$29,057.76 she had received from her mother's estate and used to give money to her children and grandchildren and to make charitable donations. That was also taken into account in the orders made about the split of the parties' assets.
3. In the result, I am satisfied that the evidence APC's mother gave must be accepted, supported as it was by other evidence and not having been contradicted in relevant respects by evidence which Mr B gave. Nor was it shaken in cross examination. I am thus satisfied that her evidence must also be preferred over his, in the case of conflict.

Can the evidence of other challenged witnesses be accepted?

1. The evidence which the other challenged witnesses gave not only supported various aspects of APC's evidence and that which her mother gave, but also that of other witnesses. I am satisfied that their evidence must also be accepted as credible.
2. The evidence APC's aunt gave included that she had met Mr B before APC's father died; that she had known that he was a drug user; that she was aware of the relationship which later developed between APC's mother and Mr B, but that he kept them away from their friends and family; and that she took APC in after she left her uncle's house, where she had lived after she left home.
3. APC's aunt described APC then having been very quiet and withdrawn, but that one day, APC told her that Mr B had sexually abused her for a number of years. But APC did not go into the detail. Her relationship with APC's mother later came to an end when she learned that she had known about his sexual abuse and had done nothing about it.
4. When she confronted APC's mother, who had been like a sister to her, and asked her how she could stand by Mr B after something like that had happened, APC's mother said that he "is a good person, and he has repented and everything is alright now". The aunt then took APC under her wing and APC went with her family when they moved to the country.
5. In cross examination APC's aunt agreed that she had previously been married to the brother of APC's father, who had also been a member of the Bandidos and had died of his injuries, a few years after he was also shot at Milperra. That is not a reason for rejecting her evidence.
6. Mr B asked APC's aunt about their limited conversations many years ago, as well as about her relationship with APC. She was also asked about APC's mother:

"Q. Why do youse not talk a lot any more?

A. Because when I found out about what had happened to [APC], I decided - because [APC's mother] knew about it and nothing was, no police or anything was involved - I told her that I felt I couldn't be friends with her any more and that I wasn't pleased about that you were repented on what you had done. And that was it, so."

1. Mr B's case was nevertheless, that it would be accepted that APC's aunt was involved in APC's claimed wrongdoing. But I am satisfied that this cannot be accepted.
2. Rather, I find that her evidence was credible, corroborated as it was by evidence which APC, her mother and her cousin gave and Mr B having established no basis on which the claimed wrongdoing which he claims APC's aunt was also involved in, can be accepted, as I will further explain.
3. Similar conclusions must be arrived at in relation to the evidence given by APC's cousin.
4. On her evidence, APC's cousin has had a close relationship with APC over many years. As an adult, for some time she lived and worked close to APC in the country and saw her multiple times a week, before she moved further away. She providing APC with the ongoing care and assistance explained in a schedule to her affidavit, which Mr B did not challenge.
5. As long as APC's cousin could remember, APC's mother had been in a relationship with Mr B. APC came to live with them when she was aged 8 or 9, after which time they shared a bedroom.
6. It was much later, after APC's cousin gave birth to her own son, after APC had been admitted to hospital because her then-partner had assaulted her, that APC told her and her mother about what Mr B had done to her. That occurred after they had collected APC from hospital and brought her to their house.
7. APC had then told them that Mr B had molested her in the shed where they lived; that he would come into her bedroom at night and touch her; he had raped her when she was older in a motel room; he would click his fingers when he wanted her to do things for him; that she had told her mother that he was sexually abusing her and that her mother did not believe her; when he found out he kicked APC, her mother and her brother out of the house; she believed that he paid her mother off to keep quiet about what APC had said; they later moved to a property obtained with the money he gave APC's mother, but a short time later he also moved to that property where he continued sexually abusing APC, on and off for a long time afterwards.
8. APC's cousin also described what occurred when APC's mother later came to their house. Her father told her that she was not welcome, given what had happened to APC, which she had not stopped. What she heard APC's mother then say included that she did not understand why APC would mention it, because "[Redacted] had repented".

9. APC's cousin also described later occasions when Mr B turned up at APC's house, while she was there and APC then appearing to be "so terrified" of him, responding to him as if she was still a kid. That accorded with the evidence APC and her mother gave.
10. APC's cousin also described an occasion in 2021, while Mr B and APC's mother were finalising their divorce, when APC called her and asked her to go to meet her at her home, after Mr B had approached her and her young daughter at the library. APC had then told her how scared she was and how she 'just froze', before grabbing her daughter and leaving and then sitting in her car for three hours. APC's cousin then saw Mr B drive past APC's home twice, while she remained there.
11. APC had also told her cousin about her conversation with Mr B outside her home, which the solicitor overheard, the following day. APC's mother also gave evidence about what she came to know about this conversation and that it had led to APC not giving evidence in the family law proceedings. Her cousin also described having heard APC shout at Mr B during phone calls, "you know what you have done to me".
12. In cross examination APC's cousin Mr B asked her whether she would do anything for APC. Her evidence was:

"A. What do you mean by that?

Q. By your relationship, how youse are bonded together, that she would support you.

A. Yes.

Q. And you would support her?

A. Yes."

1. APC's cousin was also asked about when it was that APC had disclosed his abuse to her and her mother, given her mother's evidence that APC had disclosed it to her when APC was aged 15 or 16. Her evidence was that APC had lived with them at multiple times; that the abuse was disclosed to her after they picked her up from hospital after she had been bashed; and that she may have told her mum about the abuse on an earlier occasion.
2. She agreed that APC was then in a very bad condition, having been bashed up, but denied that the only thing that she had to talk about was that Mr B sexually assaulted her. She explained that this had come up in conversation after APC had arrived at their home.
3. APC's aunt was then recalled so that Mr B could ask her further questions. She then confirmed that it was when APC was aged 15 or 16 that she had disclosed his abuse to her. Mr B did not ask her about the later occasion about which APC's cousin had given evidence, when APC spoke to both her and her mother about his abuse.

4. I am satisfied that there is no proper reason for rejecting the evidence of APC's cousin, which was also credible. Supported as it was by other evidence, not having been undermined in cross examination and being incapable of establishing her claimed involvement in APC's alleged wrongdoing.
5. It must be accepted that it is entirely possible that APC spoke to her aunt more than once about Mr B's abuse, including at her home after APC had been bashed and hospitalised, while in the presence of both her aunt and her cousin. Her cousin by then no longer being a child.
6. It should also be noted that the description of APC freezing when in Mr B's company accorded with Associate Professor Robertson's explanation of that being a well described response in children who have been sexually abused and that APC remained, even in adulthood, vulnerable to revictimization by her perpetrator. He also explained the 'victim-perpetrator dyad' in which:

"The perpetrators, their victims, and the reluctant witnesses form together a complex and highly emotive relationship, bound in secrets and silence. These are not strangers, but people often who know each other well and play central roles in each other lives. Disentangling their relationship from the harm which is done through the relationship is as painful as the harm itself, and very hard to reach."

1. The description APC's cousin gave of what she observed about APC and her apparent inability to prevent Mr B continuing to access her over the years, despite how she felt about him, accorded with this description.
2. In the result I am satisfied that the evidence of APC's cousin must also be accepted as credible.

Should Jones v Dunkel inferences be drawn?

1. On APC's evidence Mr B's children had, at times lived with her, her brother, Mr B and her mother, including at times when he was sexually assaulting her. It must be accepted that they could have given relevant evidence about what is here in issue.
2. Mr B was asked about his children's whereabouts and their availability to give evidence. He remains in contact with them and on his evidence, they were available. But he gave no explanation for why he did not call them. Nor did he call evidence from his accountant, as he did in the family law proceedings, who could have given evidence to support his case about his acquisition of the assets he claimed were the subject of APC's attempted wrongdoing.
3. In those circumstances, it must be accepted that Jones v Dunkel inferences must be drawn against Mr B: Jones v Dunkel (1959) 101 CLR 298 at 309; [1959] HCA 8.

4. Such inferences may arise to be drawn against a party as the result of the party's unexplained failure to call a witness, where it would be natural for the party to call that witness, or where the party might reasonably be expected to call that witness. In that event, an inference may be drawn that the witness' evidence would not have helped the party's case.
5. This gives rise to three other considerations: RHG Mortgage Ltd v Ianni [2015] NSWCA 56 at [75]-[96]. First, that the missing witness would be expected to be called by one party, rather than the other; secondly, that this evidence would elucidate a particular matter; and thirdly, that the absence is unexplained. If those conditions are satisfied, then as discussed in RHG Mortgage, the inference may then be used in two ways: at [79].
6. First, in deciding whether to accept any particular evidence given, either for or against that party, which relates to a matter about which the person not called as a witness could have spoken. Secondly, in deciding whether or not to draw inferences of fact, which are open in relation to matters about which that person could have spoken.
7. I am satisfied that in this case, it must be accepted that Mr B's failure to call supportive evidence from available witnesses who it must be expected he would call to support his defence, leads to the conclusion that their evidence would not have assisted his case.
8. Such inferences cannot be drawn against APC.
9. She served and sought to tender the statement her brother had made, submitting that it should be received despite him not being available to give evidence, having been admitted to hospital following his heart attack. That was opposed by Mr B, who required him for cross examination. The tender was deferred and the statement finally not pressed, when it emerged that APC's brother had to undergo heart surgery.
10. Still, in his own evidence, Mr B explained evidence which APC's brother had given in the family law proceedings and responded to that served in these proceedings. That also corroborated aspects of APC's evidence. He also tendered the family law judgment, which referred to evidence APC's brother, who was found to have been a reliable witness, gave in those proceedings.
11. This all supports the conclusion that in the event of conflict, Mr B's evidence cannot be preferred over that of APC or of the other challenged witnesses.

Was APC's claimed wrongdoing established?

1. It is convenient next to deal with APC's claimed wrongdoing, which I am satisfied was not established.

2. That is because Mr B's opinions about the serious wrongdoing which he claimed APC and witnesses she called were pursuing against him in these proceedings, at her mother's instigation, she having paid APC and her brother some \$30,000 each before they made statements for the family law proceedings, cannot be accepted, unsupported as they were by the evidence.
3. Despite his denial of the abuse, the submissions which he advanced about the family law proceedings and the wrongdoing which he claimed APC's mother had instigated and influenced APC to pursue, I am satisfied that the evidence does not establish the pursuit of such wrongdoing.
4. APC and all the witnesses who Mr B cross examined about such wrongdoing each denied it. He led no evidence which supports the conclusion that it has been pursued by APC or those who she called to give evidence. Nor is that supported by the judgment on which Mr B relied to advance his claims.

Mr B's difficulty in conducting the proceedings also does not help establish the claimed wrongdoing

1. Unrepresented as he was, Mr B understandably found it challenging to formulate questions he put to the witnesses and to advance his case in submissions, including in relation to the wrongdoing he sought to establish.
2. He repeatedly had to be reminded to pose questions, rather than making statements. He was repeatedly asked to reformulate questions which witnesses could not understand; to refrain from a commentary on answers which they gave, with which he did not agree; and to confine his questions and submissions to matters relevant to what had to be decided, given what was in issue between the parties.
3. At times he was emotionally affected, particularly when referring to kittens and cows which he has owned.
4. Even taking into account the challenges which confronted Mr B in advancing his case, I am satisfied that there is no evidentiary basis for the conclusion that APC was falsely pursuing her claims with the support of witnesses whom she called, in order to wrongly deprive him of his remaining lawfully acquired assets, as was his case.
5. Mr B's beliefs alone are incapable of establishing an evidentiary foundation for his claims. The evidence does not establish the claimed wrongdoing.

The competing evidence

1. In cross examination APC denied that she was pursuing her claims about Mr B's abuse at her mother's instigation, or that her mother had paid her to give evidence about the claimed abuse.

2. But Mr B also suggested to APC that they had had a good relationship; that in the past she came to him whenever she found things overwhelming; and that he also had a good relationship with her children, all of which she also denied.
3. At one point during that cross-examination APC objected to how Mr B was questioning her about the claimed abuse, perceiving him to be laughing and smirking, which he denied. He then observed that it was not funny that he had to be in court defending himself and that he was not laughing at APC, but himself, that he had to "go through this".
4. Unquestionably the cross examination was a difficult experience for both APC and Mr B, who were each at times noticeably affected. His questioning included:

"Q. How long do you say that, in time-wise, do you have to put up with these floggings? A couple of years? One year?

A. No, it wouldn't be more than two years, but I did try and kill myself because of them.

Q. You have, with Professor Roberts, if I recall, I don't want to get off this subject, you never admitted that to him at all.

A. I don't understand the question.

Q. I'll come back to that later."

1. But Mr B did not return to that topic, which Associate Professor Roberts' report did refer to.
2. I am satisfied that APC's evidence about Mr B's sexual abuse and her denial of the fabrication of her evidence about that abuse, in pursuit of her and her mother's claimed wrongdoing, must both be accepted. Supported as that was by the evidence of other witnesses and Mr B's admissions, to which I will come.
3. APC's mother was also cross examined about her involvement in the claimed wrongdoing, which she also denied. APC's mother also denied that Mr B had never verbally abused or struck her. Her evidence included:

"A. Yeah, there's an incident that you dragged me by my hair and threw me around the room and there's a witness of the children finding my hair, and it was - it was all coercive control. It was all mental, physical, financial abuse, every sort of abuse that you could portray a narcissist on a person. Yes, you did, [Redacted], all of that abuse, child abuse, too.

Q. You have made this up, I put to you.

...

Q. You have made up that last answer?

A. Well I've been under psychiatric and psychologist care now for about seven years, and we've been going through treatments, and this is hard for me today because this is a form of continuation of abuse through having to be here to face you. And I'm sure if you were in my life and my world, you would know that I have not made this up. My water tank is empty [Redacted], I don't know how the water came out of that. Cameras everywhere. I live abuse all the time, because you sneak around, and you continue on abusing this family.

Q. Now, I put it to you, you are making this up again?

A. Well, I put it to you that I swore today on the Bible, and I'm telling the truth. And you know this is the truth, too.

Q. If you know your Bible, like I know my Bible, I can take you now to scripture where it tells you not to swear on that book, but I'm going back to—"

1. It was at this point that Mr B was asked to refrain from a running commentary on responses to his questions and to confine himself to posing questions. But, it should be noted, his observation was relevant to the evidence APC's mother gave about their religious beliefs and her reasons for having forgiven Mr B.
2. Mr B then turned to psychiatric care and the disability pension. APC's mother agreed that she had been on the disability pension all her life up until now. She was then asked a question about social security fraud which resulted in her being given a certificate under s 128 of the Evidence Act, in respect of evidence about that matter.
3. APC's mother denied having been involved in social security fraud for 25 years, but said that:

"Q. You did commit fraud with Centrelink for the last, it would, I'm not - I'm just going to ask a question, sorry. You have committed fraud with Centrelink for the last nearly 25 years?

HER HONOUR: Ask the witness if she agrees.

DEFENDANT

Q. Do you agree?

A. Not exactly, but there has been fraud as far as rent assistance goes. Not for the whole 25 years, no. You have been privy to it because you coerced me to tell me that I could keep my disability pension because even politicians' wives were able to have a disability pension. You wouldn't give me an income or support me in any way, yet I supported us both with food with that money begging you to come off the benefits because I didn't feel that it was the right thing to do, and I was experiencing financial abuse at that time. And you were privy to all of it. But the rent assistance part of it where that was the fraud, yes, I did do that, and you were not privy to that. And I did that because I was desperate because I couldn't afford to live. Yes.

Q. I put it to you that I was not involved in any of it whatsoever?

A. Well, that's a lie."

1. Mr B then turned to their breakup and the wrongdoing he claims was being pursued in these proceedings asking APC's mother:

"Q. Do you agree that when I found out that you were having an affair, that you knew that as far as I was concerned, that was it between you and me. Do you agree with that?

A. No, there's never been an affair. Never.

Q. Do you agree that after that time, when you knew that I was gone, that I wasn't coming back?

A. No, but when you left after you had the affair, and came back three months later, I didn't know where you went.

Q. (not transcribable).

A. It flowed from the pizza shop.

Q. No, no, that's not true. Do you agree that when I left, because of the reason that you knew that I wasn't coming back, you planned a full-on attack on me with fictitious stories to take me to the Family Law Court?

A. That's not true, that's not true.

Q. You know that it is true.

A. Absolutely not."

1. I am not satisfied that the evidence establishes any basis on which this denial can be rejected. Mr B's cross examination soon came to an end after this evidence was given, at a time when both he and APC's mother were plainly affected by his questioning.
2. Her denial of the pursuit of the claimed wrongdoing accords with the evidence which APC gave; the denials of other witnesses who Mr B alleged were involved in the pursuit of APC's false claims that he had abused her; and by the family law judgment.
3. By way of contrast, Mr B's beliefs and evidence had no such support. Nor did his beliefs accord with the orders made in the family law proceedings, which he considers to have been the genesis of the wrongdoing he alleges APC's mother has instigated.

The family law judgment

1. Mr B finally tendered the family law judgment without objection. Objection having successfully been taken to a document he had created which he claimed contained extracts he had selected from that judgment, about which he had sought to cross examine APC's mother.

2. Section 91 of the Evidence Act applies to that judgment, making it "not admissible to prove the existence of a fact that was in issue in that proceeding". But APC's claimed wrongdoing was not in issue in the family law proceedings, in which she gave no evidence and pursued no relief in respect of the claimed abuse.
3. It follows that the judgment is thus admissible in these proceedings, given what is here in issue in relation to the abuse APC pursues and the wrongdoing Mr B relies on to establish his defence. But still, the judgment does not support the case which Mr B advanced about that claimed wrongdoing.
4. Mr B disagreed with what was decided in the family law proceedings, even though consideration was there given to the social security fraud which APC's mother had also then admitted, as well as the payments she had made to her children, after the probate proceedings.
5. But Mr B never appealed the 60:40 split ordered in the family law proceedings, despite being entitled to do so, in circumstances where he claimed that he had good grounds for appealing the Court's orders. That was despite the Court's conclusion that in breach of consent orders which bound him, Mr B had purchased another property without consent or variation of the Court's orders. That being part of the basis on which the orders which were finally made, rested.
6. What grounds of appeal Mr B considered were available to him, was not disclosed. The course he has taken, however, has the result that the judgment binds him and the case that he advanced in these proceedings, that it was wrongly decided, cannot be entertained.
7. On Mr B's case, this judgment still supported his claim that APC had been influenced by her mother to pursue these proceedings against him and to fabricate her evidence, in order that not only she, but her current partner and other members of her family could wrongly, further profit from him. He described this as having involved "elder financial abuse."
8. I am also satisfied that this cannot be accepted.
9. That is because the orders made in the family law proceedings were made under s 79 of the Family Law Act 1975 (Cth). It empowering orders to be made which the Court considers appropriate, with respect to the property of parties to a marriage. That depends on the evidence which parties lead and the cases which they advance.
10. In issue in the family law proceedings were matters such as the length of the relationship between Mr B and APC's mother, the times that they had lived together, their assets and their division. Obviously, APC could have given relevant evidence about some of those matters. But while she had made a statement, she was not called and the statement was not tendered.

11. It follows that the making of the family law orders on which Mr B relies to establish APC's claimed wrongdoing in these proceedings cannot establish, as he alleges, APC's mother having already wrongly deprived him of part of his assets. Or that her success in the family law proceedings provided the trigger for the pursuit of APC's false allegations in these proceedings.
12. The orders which were made establish how the Federal Circuit and Family Court of Australia exercised its discretion in resolving what lay in issue between Mr B and APC's mother in those proceedings about the division of their property. That was decided on the evidence which they each led and the cases which they then advanced.
13. The assets dealt with in those proceedings included not only properties which Mr B owned, but \$29,057.76, part of what APC's mother had received from her mother's estate, which she had given to her children, grandchildren and a charity.
14. That this was taken into account when APC's mother exercised her rights under the applicable legislative scheme, with the result the property division ordered, thus provides no support for the claim that Mr B is now the victim of her ongoing, wrongful pursuit of a plan to rob him of even more of his assets, by APC's pursuit of false allegations of child sexual abuse.
15. Or that APC and others whom she called to give evidence in these proceedings are involved in that scheme.

The claimed wrongdoing is not established

1. In the result, it must be accepted that APC's claimed wrongdoing was not established.
2. There is simply no evidence that Mr B has been robbed of anything. Nor evidence of the existence of any plot to rob him of even more of his assets.
3. That Mr B did not appeal the family law decision supports this conclusion. He explained that decision to have been driven by his dissatisfaction with his then legal representation, on which he had spent over \$1 million and not being prepared to incur further costs on an appeal.
4. That explanation was difficult to credit. But even if true, it does not help establish the serious wrongdoing he alleged APC was pursuing in these proceedings, at the instigation of her mother and with the assistance of other witnesses he claims were involved.
5. I am thus satisfied that Mr B's case about that claimed wrongdoing cannot be accepted as having any foundation. The evidence having been assessed, as it must be, in accordance with s 140 of the Evidence Act, as I have explained.
6. The claimed wrongdoing Mr B relies on to defend APC's claims thus provides no basis for the refusal of the relief which she pursues.

Did Mr B abuse APC?

1. That APC's life has been marred by her drug taking and mental health problems was not in issue. It was whether APC experiencing those problems had resulted from Mr B's abuse, which was disputed.
2. None of the witnesses claimed that they had observed Mr B abusing APC in the ways she described and Mr B denied having ever physically or sexually abused APC.
3. His case being, as I have explained, that they had always had a good relationship and he had supported her and her children in various ways. Further, that APC's problems were all the result of choices which she had made throughout her life, for which he was not responsible. And that she and her mother had been driven by greed to pursue these proceedings, giving false evidence about abuse which had never occurred.
4. It is always possible that a witness has fabricated evidence about abuse. But in this case, I am unable to come to the conclusion that APC fabricated her evidence about her life with her mother and Mr B, or his ongoing sexual assaults, while she was a child.
5. I have rather concluded that Mr B's denials of the abuse APC described she had suffered in childhood cannot be accepted and that her evidence must be preferred. Supported as it was by other evidence, including evidence of her repeated complaint, as well as by his own admissions.
6. The sexual abuse complained of occurred many years ago, while APC was a child. It is thus relevant that she first made complaint about Mr B's abuse to her mother, later also disclosing his ongoing abuse to her mother and other family members.
7. The evidence about the circumstances in which APC came to make her repeated complaints about Mr B to her mother accorded with the detailed description she gave about the life she had led before and after her father's death. Her evidence about the sexual abuse Mr B had repeatedly inflicted was supported by Mr B's admissions during the family law proceedings, as well as by the evidence he gave about statements her brother had made, which disclosed that like APC, he too, has complained about the abuse which she described they had both suffered at Mr B's hands.
8. APC's evidence was supported by that of her mother. In cross examination APC's mother explained why she did not react to her daughter's disclosures of that abuse, as might be expected, by reporting Mr B to the police. Her written evidence having included that she was then under his control, self-medicating with the alcohol and marihuana he supplied, distrusting police and convinced that what he was doing, was for their protection.

9. APC's mother had also said in her statement that Mr B had done many things for APC when she was an adult, including assisting her to get a house, lending her money, buying her groceries and paying for surgery. She even believed that Mr B had built a relationship with APC over time, to the point that he had also slept with her when she was older. But that cannot determine what has to be decided about his claimed abuse of APC while she was still a child.
10. In the case of APC's daughter, APC understandably only disclosed Mr B's abuse to her during the last few years. She also described the ongoing relationship she observed he had with her mother and how he always asked about APC, even after he and her grandmother had split.
11. APC's complaint to her aunt was made not long after she left the home where she lived with Mr B, her mother and brother, when she was still a teenager, after self-harm which had resulted in her hospitalisation. Her more detailed later complaint to her cousin was made some time afterwards, in the presence of her aunt, while she was in a vulnerable state after release from hospital, after she had been bashed.
12. APC's mother, aunt and cousin all corroborated the making of APC's consistent complaints and the result, the breakdown of the long, supportive relationship between APC's mother and her aunt.
13. There was no issue that after APC ran away from home as a teenager, her mother continued her relationship with Mr B, eventually marrying him. Or that later, APC and eventually her own children, had continuing contact with him. But contrary to Mr B's case, that history cannot establish that he did not earlier abuse APC as she claims, despite the affectionate cards he relied on, which she explained.
14. Mr B denied the abuse. But his evidence about the statement which APC's brother had given in the family law proceedings, as well as that which he had prepared for these proceedings, established that he had made statements which corroborated APC's accounts of his ongoing physical abuse of her and her brother. Albeit Mr B denied this too.
15. Mr B's case also included that the admissions APC claims he made while the family law proceedings were on foot would not be accepted. But he then undoubtedly expected that evidence would be called from APC about his abuse, which would be adverse to his defence of her mother's claims.
16. As I have explained, I have found APC's evidence credible and have concluded that it must be preferred over that of Mr B. This has also led me to accept that he abused her as she claims. That conclusion being supported not only by the *Jones v Dunkel* inferences I have concluded must be drawn, but also by Mr B's admissions.

Did the solicitor's evidence establish relevant admissions?

1. Unlike his case in respect of other lay witnesses, Mr B did not allege that the solicitor was involved in the wrongdoing he claimed APC was pursuing in these proceedings.

2. I am satisfied that the solicitor's evidence that she overheard Mr B make relevant admissions about his abuse of APC must be accepted. That is despite his denial in cross examination that he had gone that day to APC's home to speak to her, at a time when APC was due to be called to give evidence in the family law proceedings.
3. The solicitor was then employed by the firm which represented APC's mother in those proceedings. She recognised that it was Mr B who was speaking to APC, when she listened by telephone to their conversation at the front door of APC's home, after APC called her.
4. In cross examination the solicitor explained that she was no longer employed by the firm which had conduct of the family law proceedings, but that she was involved at the time when she overheard the conversation.
5. Mr B put to the solicitor that the conversation she had described between him and APC did not occur and that there was no conversation between APC and him about "anything at all". The solicitor maintained that her affidavit accurately reflected what she had heard. But she agreed that she could not say "absolutely for sure" that it was Mr B on the other end of the conversation she heard. That concession was properly made, given that she did not see the person to whom APC was speaking.
6. In re-examination the solicitor agreed that she had come to know both APC and Mr B in the context of the family law proceedings and knew that both APC and her mother called him [Redacted].
7. I am satisfied that her involvement in the family law proceedings enabled this solicitor to identify that it was Mr B whom she heard speaking to APC, despite her proper concession in cross examination that she could not be absolutely sure that it was him.
8. Her evidence about what she heard was corroborated by the evidence which APC gave and what she did, telling both her mother and cousin about the conversation. As well as by what the solicitor then did, within 24 hours commencing to make a statement about what had she had heard for the family law proceedings, although it was not used.
9. The solicitor's evidence included an explanation of her involvement in the family law proceedings; how she had assisted in finalising witness affidavits, including that of APC; that APC had called her and told her she had been hiding from Mr B, who had followed her home and was banging on her door and that she was scared; that APC did not want the police called; and so she had remained on the phone with APC for over an hour, while APC spoke to a man who did not identify himself, but who she understood and believed to be Mr B.
10. This evidence accorded with that of APC's cousin, who also gave evidence about how scared APC was of Mr B.

11. The solicitor said that she could hear APC clearly throughout this conversation, but she could not always hear Mr B clearly. She did not believe he was aware that she was on the phone and could hear him. She heard that he was not willing to end the conversation, despite APC repeatedly telling him she had to go.
12. The solicitor also explained that what she had heard included Mr B referring to God and the Lord, reciting Bible verses or scripture teachings and saying words to the effect of "You haven't forgiven me; "God has forgiven me, why haven't you" and "The Lord says to forgive".
13. She also heard:

"20. [APC] repeatedly redirected [Mr B's] appeal to her faith and forgiveness, with words to the effect of, 'This isn't about God's forgiveness. This is about telling the truth. You're lying. You've sworn a statement that is lies. God only wants the truth,' and 'I know He has forgiven you. But you can't lie. Forgiveness isn't saying I didn't do it. It doesn't mean you can lie'.
21. [APC] repeatedly said to [Mr B] words to the effect of 'You need to own what you've done. I may have forgiven you and God may have forgiven you, but you still need to take responsibility'. I heard [Mr B] respond 'Why should I tell them? Why am I gonna say anything to them? The Lord has forgiven me. Just like He has forgiven you for everything'."
1. The solicitor also heard Mr B asking how APC knew he had lied and APC telling him that she had not read affidavits which had been filed. She had also heard Mr B raising financial gain, APC's drug taking and Centrelink fraud, amongst other matters it is unnecessary to explain.
2. In her second affidavit APC said that what Mr B had told her during this conversation included an offer to buy her a house if she did not go to the Family Court to support her mother; that he quoted Bible verses about forgiveness; talked about death and claimed that he was dying; asked "God has forgiven me, why haven't you?"; said that she was persecuting him to get even and that if she went to court it would kill him. On the evidence of her mother and cousin, she later told them about this conversation.
3. Mr B gave no affidavit or oral evidence about this alleged conversation. His case was finally that the evidence was incapable of establishing that it was him who the solicitor heard.
4. I am unable to accept this.
5. I cannot conclude that the evidence APC gave about this conversation was false, nor that the solicitor was mistaken in her identification of Mr B as the person whom she heard APC speaking to, about matters which were to be raised in the family law proceedings.
6. It was the solicitor's involvement in the family law proceedings which had resulted in her coming to know both APC and Mr B. That helped her identify that it was Mr B whom she heard speaking.
7. The circumstances in which she came to overhear the conversation she gave evidence about, no doubt led her to expect that it was Mr B who APC was speaking to.

8. But still she not only recognised that it was he who was speaking, she could follow what they were speaking about. That including matters APC was to be called to give evidence about in the family law proceedings and his concern that she had read other affidavits filed in those proceedings. APC also repeatedly called him by the name he was known, throughout their discussion.
9. That the solicitor properly conceded that she could not be absolutely sure that it was Mr B whom she heard, reflected that she neither saw Mr B nor observed this conversation. But that does not preclude the acceptance of her evidence that she had identified that it was Mr B who was speaking to APC. Given all that they discussed, it was unlikely to have been anyone else.
10. The very topics which were being pursued with APC supports the conclusion that it was Mr B to whom she was speaking. That he was pleading for her forgiveness is consistent with he having abused her, as she also claims in these proceedings.
11. I am thus satisfied that the solicitor's evidence, supported as it was by that which APC gave, must be accepted.
12. Their evidence establishes that Mr B then made relevant admissions when seeking APC's forgiveness. That is because in the Dictionary to the Evidence Act, "admission" is defined to mean "a previous representation that is—
 1. made by a person who is or becomes a party to a proceeding (including a defendant in a criminal proceeding), and
 2. adverse to the person's interest in the outcome of the proceeding.
1. What Mr B said while the family law proceedings were on foot, including his pleas for APC's forgiveness, were adverse to his interests in the outcome of these proceedings and thus did amount to relevant admissions.
2. They thus provide another very good reason for accepting APC's evidence about the claimed abuse and rejecting Mr B's denials.

The claimed abuse was established

1. In his submissions, what Mr B contended also included that APC and her brother had never come under his control; that it was their mother who had controlled them; that they had attended school; they had not been required to perform labour; unlike him, they were not prepared to work; and that it was they, not he, who were responsible for the life path they had each later pursued, of which he disapproved and described in considerable detail, beyond what he had dealt with in his statements.
2. Much of this was not dealt with in Mr B's evidence or his cross examination of APC and her mother.

3. The acceptance of APC's evidence and the rejection of Mr B's does not depend on his admissions. But I have concluded that they put beyond argument the acceptance of her case that he sexually abused her while she was a child, as she described. His grooming and increasingly sexually abusive behaviour having grown to continual inappropriate touching at age 9, including digital penetration by age 12, as well as oral sex and forced masturbation. Her evidence, that no child should have to experience what he repeatedly did to her for years, while warning her not to tell her mother, must be accepted.
4. As must her other evidence of how Mr B's abuse was able to continue for years, despite her disclosures of his abuse to her mother. Supported as it was by her mother's evidence, as well as by the evidence of how his abuse finally came to an end, following her hospitalisation after an episode of self harm, after which she went to live with other family members.
5. On her mother's evidence Mr B had convinced her that her children should be home schooled, but they were not. Instead, they were kept at home and forced to perform heavy manual labour on properties which he owned, for his benefit, while being subjected to his ongoing mental and physical abuse. Even when she became aware of his sexual abuse, still she took no steps to report his abuse to the police, for the reasons she explained in her cross examination. Instead, she forgave him and expected APC to do so, as well.
6. I am satisfied that it must be accepted that APC was raised in the way she described, isolated from others. There was no issue that she was living on country properties which Mr B owned, together with her mother and brother. Her evidence that Mr B repeatedly abused her and her brother in the ways that she described, while at times not even being allowed to attend school, accords with statements her brother has made about Mr B abusing him and with her mother's evidence, which included that he was also abusing her, as well as with the course her life has taken.
7. Mr B does not suggest that APC's mother was complicit in his abuse. Rather, he entirely denied that it ever occurred. I am not able to accept his denials.
8. On APC's evidence, her mother forgave Mr B when she first disclosed his abuse and it was her disclosure of Mr B's ongoing sexual abuse, which later led to the first breakup in their relationship. There was no issue that there had been a breakup; that Mr B and APC's mother later reunited; that they resumed living together; or that APC had later self-harmed and was admitted to hospital, before she went to live with her uncle.
9. I am satisfied that APC's evidence about how Mr B's abuse resumed must also be accepted. That having led her to leave home and later to disclose the abuse to her aunt and eventually her cousin as well. Contrary to Mr B's case, the evidence does not establish that they have anything to gain from giving false evidence or APC succeeding in her claims.

10. Despite all of this, APC's mother married Mr B, on her evidence having forgiven him. That was what Mr B was also pressing APC to do, in the conversation which the solicitor overheard years later. Mr B's reactions to the evidence which APC's mother gave, which included an attempt to debate with her what the Bible said, also accorded with his pursuit of the forgiveness he plainly felt entitled to.
11. On APC's account, her mother told her after she had disclosed the abuse that before their marriage, Mr B had claimed that he was a different person and that they had "left their past at the altar and should move forward and never talk of it again". Her mother also told her she needed to forgive him, because he had confessed and repented to God and her and that was what God also wanted APC to do and that she needed to show it.
12. That accords with Mr B later pressing APC for her forgiveness when he feared that her evidence would hurt his defence of the claims her mother was advancing in the family law proceedings.
13. There is no issue that they were all members of the Church into which they had been baptised together. It is pertinent that the family law judgment reveals that evidence was called from other Church members, including a director of a ministry who had met Mr B and APC's mother in 1995 and pastors of the Church. They gave evidence about the couple's involvement in Church activities, views Mr B had expressed, what they had observed of the relationship and their respective conduct.
14. That such evidence was led in those proceedings supports the evidence of APC's mother, that her reaction to APC's disclosure of the ongoing abuse and her later decision to marry Mr B anyway, were influenced by her religious beliefs, despite the loss of the friendship of APC's aunt, which this reaction cost her.
15. In cross examination, at a time when it was expected that APC's brother would give evidence in these proceedings, Mr B raised with APC that one of her daughters had disclosed to her that her brother had sexually assaulted her when she was a child and that another had disclosed that she had been sexually assaulted by a cousin when she was aged 11.
16. How this was relevant to the issues which have to be decided about his abuse of APC while she was a child, is not apparent. It does accord with Mr B's portrayal of APC and her family members in a light intended to support his claims about the falsity of their evidence and their claimed wrongdoing.
17. Still I am satisfied that the evidence APC gave about Mr B's abuse must be accepted and his denials rejected, contrary as they are to his own admissions. The result is that it must be concluded that APC has met the onus falling on her to prove that she was sexually abused by Mr B, as she claims.

18. This means that consideration must now be given to whether APC has also established that the considerable damages she pursues were the result of Mr B's abuse and the injuries it caused her.

Mr B's responsibility for the injuries APC has suffered

1. When the evidence I have discussed is considered in light of the expert evidence, I am also satisfied that it must be concluded that APC has established that Mr B contributed to the injuries and damages which she pursues.

Associate Professor Robertson's opinions

1. The Associate Professor provided three reports, having been provided with instructions and a medical brief. Various literature supporting and explaining his opinions were attached to his reports, but it is unnecessary to explain them, unchallenged as they were by Mr B.
2. In his first report the Associate Professor explained the history which APC had given, which accorded with her evidence in these proceedings. It was described as having included traumatisation related to her father's criminal activity; her bereavement following his death; her indifferent mother, whose failures prolonged Mr B's sexual abuse; experiences which were later compounded by significant re-traumatisation by physical and sexual violence by partners with whom she became involved, in relationships characterised by intimate partner violence, coercive control and associated behaviours.
3. In cross examination the Associate Professor agreed that he had assessed APC by Telehealth from her home. He was asked if she had denied being suicidal. His evidence was that if this was recorded in his report, it reflected what she had told him. He was not taken to the report, which did refer to such matters.
4. Associate Professor Robertson was also asked about matters referred to in the report, which APC had not dealt with in her statements. He did not agree that his report was based on information provided by APC's solicitors. He explained that it was based on the history she had given him and that he had also received a briefing letter, but that she was the primary source of the information dealt with in his report.
5. I am satisfied that this evidence must be accepted.
6. The reports referred to the accounts of sexual abuse and rape APC had experienced, as well as her drug abuse, which commenced in her 20's, together with binge drinking. When interviewed, she had been abstinent for six years.
7. APC also gave an account of her psychological problems, which had resulted in her being violent towards others, when triggered or aggravated and apprehended violence orders having been made against her. She had reported regular and more frequent nightmares and flashbacks since initiating these proceedings, as well as extensive dissociative amnesia of her childhood, panic attacks, emotional numbing and difficulty relating to her children. She

had also explained her treatment history, with medication and psychological therapy. Her medical history also included treatment for thyroid cancer, with resulting ongoing treatment.

8. In his first report Associate Professor Robertson diagnosed APC to be suffering complex post-traumatic stress disorder (PTSD), comorbid with a persistent depressive disorder and likely past periods of major depression, with a likely drug dependency. He concluded that there was a strong causal relationship between her childhood sexual abuse and later drug abuse and psychiatric disorder, with all forms of sexual abuse having potential psychological toxicity and capacity to cause significant long-term sequelae.
9. APC thus remained vulnerable to significant re-traumatisation, given her survivorship of childhood sexual abuse. Her repetitive and chronic experiences were consistent with Type II trauma, often associated with aberrant development of the central nervous system and the development of a personality disorder.
10. APC's diagnosis was chronic PTSD with dissociative features and her clinical problems were found to be in the moderately severe category, their substantial and main cause having been the sexual abuse she has suffered, the most serious of her childhood traumas. Her subsequent re-traumatisation and sexual re-victimisation were recognised sequelae of childhood sexual abuse and not competing causal factors.
11. Her dissociative symptoms were classic manifestations of such abuse, which when prolonged, leads to alteration of structure and function of the central nervous system, with the result that disassociation becomes hard wired.
12. APC's treatment had been inappropriate and had likely resulted in an underlying drug dependency. Her medications needed to be reviewed and there were potential gains to be made from the pursuit of psychological treatment, which was explained. But childhood sexual abuse was associated with poor outcomes and those who experienced improvements in early mid-life, had subsequent deterioration in mid-life and old age.
13. The Associate Professor considered that APC's prognosis was likely to be poor.
14. APC's education had been truncated because of the severity of her dissociative symptoms and mood disturbance. Her chronic state of psychopathy made her incapable of making good her educational shortfall.
15. While she had the capacity to care for her children, with support, she had no foreseeable future work or study capacity, given the severity of her symptoms. Her drug dependency also likely having impaired her cognitive function. She remained socially isolated, with limited capacity to engage in social or recreational activities. She also required the scaffolding of her older children to care for her children.
16. APC was thus assessed to have suffered 45% whole person impairment.

17. In his second report Associate Professor explained his review of the statements made by APC's brother, mother and cousin, which provided additional context to the history APC had earlier given. That also accords with the evidence received in these proceedings.
18. Associate Professor Robertson had also examined APC again. She had updated her treatment, given the problems she was experiencing with the reduction of medication, pursued because of concerns about dependency. She had also read him a lengthy statement she had made about her concerns about the effects of her mental health on her children.
19. The care which she requires was also dealt with. Her cousin had provided a schedule of the types of care she had provided APC over the years.
20. Associate Professor Robertson considered that this litigation had had an exacerbating effect on APC and that she remained a deeply disturbed person with a significant psychopathological burden, who required various treatments which she was not receiving, as well as significant ongoing support. His diagnoses were not altered.
21. The cardinal feature of her chronic PTSD was "chaotic and disturbed interpersonal relationships with vulnerabilities to re-victimisation and self-defeating behaviour compounding the psychosocial morbidity related to the other symptoms of PTSD and comorbidities."
22. The Associate Professor then quantified the contribution of the various traumas she had suffered:

"I remain of the view that the subject sexual abuse was the substantial and main contributing factor to [redacted] chronic psychopathological disturbances and psychosocial morbidity. I had stated that her father's death contributed 20% of causal contribution. Noting there is no reliable means of quantification, 65% of causation should be made to the sexual abuse and 15% to other factors as outlined in my original report."

1. He also explained that APC no longer had the gratuitous support she had received in the past and that she had significant ongoing professional care requirements. That was supported by the evidence.
2. In his third report the Associate Professor advised that a paper he had been asked to consider, authorised by Associate Professor Phillips, covered much of the same literature he had dealt with in his first report and supported his opinion, that the sexual abuse was the main contributing factor in APC's adult mental health problems.
3. Having accepted APC's evidence about the abuse she suffered, it follows that Associate Professor Robertson's unchallenged opinions about its consequences must also be accepted, persuasive as they were. APC's evidence about the extreme abuse which she endured for a long time at Mr B's hands, which did not cease even when she brought it to the attention of her mother, according with the histories she had given, on which Associate Professor Robertson's opinions rested.

The occupational therapists' opinions

1. APC also relied on the reports of a senior occupational therapist, Ms Williams, who was not required for cross examination. Ms Williams had also interviewed APC and been instructed with her evidentiary statements, as well as those of her mother and brother, her medical records, Associate Professor Roberts' first report and APC's school and Centrelink records.
2. The history APC gave Ms Williams also accorded with the evidence received in these proceedings. She recounted APC having described herself as having been "naïve because of the cult-like upbringing" and that she "didn't know anything about anything when I got out".
3. Ms Williams noted APC's diagnoses and poor prognosis. She also explained the known short and long term effects of child sexual abuse, noting that APC was unable to remember the details of some of the times and places of incidents which had occurred.
4. Ms Williams explained the serious issues then impacting APC's activities of daily living. They included flashbacks and nightmares, stress, anxiety, depression, disorientation, difficulty completing activities, issues with sleep, memory, concentration and emotional regulation, reduced self-esteem and self-efficacy, inability to work, ongoing need for assistance and a significant reduction in her quality of life.
5. Ms Williams also explained APC's current social and family situations and how easily she became overwhelmed, with resulting dependency on others. This accorded with the evidence of APC's cousin about the help she had given APC over time as well as that of APC, her mother and daughter.
6. APC's current functional state, which had resulted in her being assessed to be unfit for job seeking by Centrelink, was also explained. Ms Williams agreed that APC was not capable of any form of employment in future, due to her complex and chronic mental health issues, which had resulted from her childhood trauma and abuse.
7. Ms Williams assessed APC's physical capacity, as well as her ability to undertake domestic activities and her care and other requirements, both presently and in the future.
8. In her supplementary report Ms Williams referred to costings for APC's future care requirements in her first report. They had had regard to costings provided by Ms Burns, an experienced registered nurse and life care planner, who frequently assessed the costs of nursing care in the community. Ms Williams there explained that Ms Burns had provided further explanation of her costings, which had regard to an award and best practice nursing guidelines.
9. The amount of care which Ms Williams considered APC had received and requires is considerable. It is possible, of course, that another expert could have come to a different view. But Mr B led no such evidence and did not otherwise challenge Ms Williams' opinions.

10. Ms Williams has explained her conclusions about APC's circumstances and their impact, including her ability to develop life skills as an adolescent and young adult, her decision making, and life decisions, her parenting, mental and physical health and her ability to run a home, on her relationships, her ability to complete activities of daily living, including domestic activities and to live independently, her cognitive performance and issues with sleeping, as well as her social and leisure activities.
11. Ms Williams also explained the physical assistance that APC required as a result, as well as the barriers which her mental health problems presented her, they being the result of having spent critical periods of her adolescence isolated, locked in bedrooms, or performing hard physical labour, rather than going to school and developing life skills.

The financial evidence

1. This evidence was also unchallenged.
2. It established that the forensic accountant, Mr Lee, had considered information he had been briefed with about APC's circumstances, which included her not having undertaken any paid employment as the result of the matters she pursues in these proceedings and having had limited opportunity to perform unpaid work, while she was an adolescent. The assumptions on which his conclusions were based were all explained in his report and Mr B did not challenge any of them.
3. Mr Lee explained that he had considered APC's tax and Centrelink history, she having had no employment nor likely need to lodge tax returns. He also explained his conclusions about the likely career path APC might have otherwise had, in which he considered that it was likely she would have achieved average weekly earnings, having regard to relevant age factors which he also explained.
4. He had also assumed that APC has no future residual earning capacity, an assumption which accords with the opinions of Associate Professor Robertson and Ms Williams.
5. Mr Lee also took into account twelve-month periods when he considered that it was likely that APC would not have worked, after the birth of her seven children, as well as her likely superannuation entitlements during periods when she would have worked.
6. Mr Lee's calculations resulted in conclusions about APC's past and future economic losses, including for superannuation. They were also not disputed and are supported by the evidence received about APC's circumstances, of which Mr B claimed extensive knowledge. It was their cause and his responsibility for them, which he put in issue.
7. For reasons which I have explained, it must be accepted that Mr B's contribution to their cause was established by the evidence I have explained about all that APC has suffered, as the result of the abuse Mr B pursued while she was still a child.

8. Not only did that disrupt her schooling and opportunity to pursue employment, as was APC's evidence, but left her suffering the considerable mental health problems which she described and Associate Professor Robertson explained. These mental health problems also contributed to her financial problems. Further, I am satisfied on all of the evidence the abuse also contributed to her later abuse of drugs, which has also contributed to her financial problems.

Damages

1. Given all that I have explained about why the evidence of APC and the other witnesses she called must be accepted and Mr B's evidence, when it conflicted with theirs, rejected, I am satisfied that APC is entitled to damages for the injuries his sexual abuse while she was a child has contributed to and will continue to cause her.
2. They have to be assessed in a context where APC continues to struggle with the ongoing mental health problems Mr B helped cause and their ongoing consequences. Problems which are unlikely to improve in the future, given how long they have persisted.
3. APC's schooling was interrupted by Mr B's abuse and she was never able to complete high school. But she is literate and was assessed by Ms Williams to be an effective communicator and able to express herself clearly. That accorded with her evidence in cross examination and Mr B's own assessment of her capacities, he having known her since childhood.
4. Ms Williams concluded that APC has been socially isolated for much of her life, which has further adversely impacted her mental health. APC has reported self-medicating with drugs and alcohol over the course of her life. That is supported even by the case Mr B advanced. But she is not currently doing so.
5. APC experienced hard labour when living with her mother and Mr B, when she was forced to work on his properties, even though she was then a child. APC can perform tasks such as fencing, fixing brakes, changing tyres and fixing things.
6. She once had an opportunity to undertake the work of a strapper and stable hand as a 15 year old. Horses have long been a part of her life and she would have liked to work with them, but given her longstanding mental health problems, has never been able to pursue paid work and has long struggled to care for herself and her children.
7. She has also been assessed by Centrelink as unfit for job seeking, because of her mental health status. An assessment with which Associate Professor Robertson agreed, given the complex and chronic mental health issues which resulted from her childhood trauma and Mr B's abuse.

8. APC has also been involved in a number of abusive relationships and since 2003, has lived in Housing Commission accommodation in a rural area, at times alone with her children. Ms Williams referred to a current challenging relationship with a partner who is not supportive of APC, from a psychological perspective, but on whom she is still reliant.
9. In the past, from age 8 APC's older children have been required to help care for her younger children, because she was often incapable of doing so. As well as having to undertake domestic tasks, because APC was self-medicating. APC now lives only with some of her younger children, one of whom ran away to live with an older sibling.
10. APC's daughter described feeling as if her older sister had raised her, as well as what triggered her mother's moods and problems, which caused her to switch off and go to bed, sometimes for days. She also described how she had also had to care for her younger siblings, before she left home. And what had caused her to leave home, at a time when her mother was triggered by these proceedings, talking about what Mr B had done to her and struggling for days after an episode, which this triggered.
11. APC considers herself to have failed as a parent and described her continuing struggles, even with tasks such as enrolling a child in high school. She continues to struggle with parenting, her experiences having left her with a need to keep her children safe and so not allowing them to attend day care, preschool, social outings or sleepovers alone. APC has always required the help of her family, having had no other assistance. She continues to receive help from them, albeit less than in the past.
12. Ms Williams concluded that APC had the physical capacity for personal care, but for periods required assistance even with this, because of her mental health problems. She now still not only requires physical assistance, but prompting to undertake domestic tasks. An inability to consistently even initiate such tasks, being a major symptom of her chronic PTSD and other mental health issues.
13. Due to the severity of her ongoing problems, APC has been assessed as continuing to require ongoing assistance over the course of her life, which must be reflected in the damages she is awarded.

The claims

1. There was no issue that APC was entitled to pursue her claims in accordance with common law principles. She relied on an amended statement of particulars which was based on the experts' opinions, which specified claimed future out of pocket expenses, as well as past gratuitous and future domestic care.
2. I am satisfied that she is entitled to an order for significant damages.
3. What APC pressed in written submissions was:

"20. If the evidence of the plaintiff, the lay witnesses, and Associate Professor Robertson are accepted, then the plaintiff will be entitled to damages in the order of the following:

General Damages: \$450,000

Past Expenses (including Medicare buffer) *\$10,000

Future Expenses: *\$123,874

Past and Future Economic Loss (including Superannuation): *\$2,382,404

Past and Future Domestic Care *\$2,000,000

Aggravated and Exemplary Damages: \$350,000

Sub-total: \$5,316,278

21. Associate Professor Robertson found that 65% of the plaintiff's condition was attributable to the defendant's child sexual abuse, and accordingly a discount applied to the above amounts (marked in grey [1] in the table) gives a final claimed amount of \$3,735,581 plus interest plus costs."
1. APC thus accepted that the identified heads of damages she pursued had to be reduced by 35%, given Associate Professor Robertson's views about causation, earlier explained.
 2. The figures for past and future domestic care derive from the assessment of Ms Williams, who relied on Ms Burns, a registered nurse and life care planner, who costed the expense claims in accordance with the Social Community Home Care Industry and Disability Services Industry Award 2010. Those costings were also not challenged.
 3. The case finally advanced for APC was that she was entitled to the damages she claimed given the ongoing consequences of the opportunistic abuse which Mr B had pursued while he had a parent-like relationship with her, occupying a position of authority and trust which he had exploited. First to groom her and then repeatedly, to sexually abuse her, while she was still a child.
 4. Further, that the evidence established the causative relationship between the abuse and the psychiatric harm which had resulted, Associate Professor Robertson's unchallenged opinions having to be accepted. His evidence, as well as the unchallenged opinions of Ms Williams and the forensic accountant Mr Lee, providing a sound basis for the orders pressed.
 5. It was also contended that given that Mr B, the wrongdoer, was the defendant, while an award of exemplary damages was rare, it was appropriate in this case, given that the evidence established his conscious wrongdoing in contumelious disregard of APC's rights. She having been a little girl who had been deprived of her father's care and was entitled to Mr B's love, protection and care, given the role he stepped into, in her life.

6. Instead he had abused her, causing lasting, serious damage which entitled her to the rare exercise of the discretion not only to award her aggravated damages, but also exemplary damages.

The final orders will have to be addressed further

1. Mr B denied being liable for the claimed damages, but did not address the specific heads of damage pursued, or what fair compensation for the damage he has caused APC would be.
2. HIs case rested entirely on his denials of the abuse and his claim that APC and the witnesses who had supported her were simply intent on wrongly depriving him of the remainder of his assets. He did not challenge the calculation of the various heads of damage, nor their basis in the evidence, if his denials were not accepted.
3. The parties accepted however, that if it was concluded that APC was to be awarded damages, that they would need to further address their calculation, which must be approached in the context of the applicable principles, so that final orders can be made.

The applicable principles

1. The principles addressed by APC and not challenged by Mr B were, in short:
 1. Ordinary compensatory damages are supposed to be an amount adequate to compensate a plaintiff for all consequences of the defendant's wrongful conduct that are not too remote. "Damages for some aggravating feature of the defendant's wrongful conduct are still supposed to do no more than compensate for consequences of that conduct": *State of New South Wales v Riley* (2003) 57 NSWLR 496; [2003] NSWCA 208 at [127].
 2. Aggravated damages, "in contrast to exemplary damages, are compensatory in nature, being awarded for injury to the plaintiff's feelings caused by insult, humiliation and the like.": *Lamb v Cotogno* (1987) 164 CLR 1 at 8; [1987] HCA 47. The injury compensated by an award of aggravated damages may be "intangible": *New South Wales v Ibbett* (2006) 229 CLR 638; [2006] HCA 57 at [31].
 3. Their calculation requires care to be taken to avoid double counting: *Riley* at [130]. Thus "the court must assess damages for hurt damages neutrally and aim towards the centre of the wide range of damages that might conceivably be justified."
 4. But "in cases of hurt to feelings caused by wrong-doing that goes beyond ordinary human fallibility", where serious misconduct by the defendant has given rise to a situation where it is difficult to quantify appropriate damages the court 'should be astute to avoid the risk of under-compensating the plaintiff, so the court is justified in aiming towards the upper limit of the wide range of damages which might conceivably be justified.": *Riley* at [131].

5. By way of contrast, exemplary damages are awarded in cases of 'conscious wrongdoing in contumelious disregard of another's rights': *Gray v Motor Accident Commission* (1998) 196 CLR 1; [1998] HCA 70 at [14]-[15].
6. Thus in considering whether to award such damages, the first or principal focus of the Court's inquiry is upon the wrongdoer, not upon the party who was wronged, who is entitled to the compensatory damages the law allows. Exemplary damages are thus paid to that person "in addition to compensatory damages and, in that sense, will be a windfall in their hands, they being "awarded to punish the wrongdoer and deter others from like conduct", even though not exacted by the State nor paid to it: *Gray* at [15].
1. It must also be borne in mind that it is settled that "the purpose of damages for personal injuries is not to give a perfect compensation in money for physical suffering. Bodily injury and pain and suffering are not the subject of commercial dealing and cannot be calculated like some other forms of damage in terms of money": *Lee Transport Co Ltd v Watson* (1940) 64 CLR 1 at 13-14; [1940] HCA 27.
2. But damages are compensatory in nature, awarded once a plaintiff has proven a claimed injury or loss: *Todorovic v Waller* (1981) 150 CLR 402 at 412; [1981] HCA 72. The Court must thus do its best to put a value on that loss, even if the evidence is less than satisfactory: *Dessent v Commonwealth* (1977) 13 ALR 437; (1977) 51 ALJR 482.
3. In making an assessment of damages the main heads of damage must be assessed separately, guarding against the danger of compensation for the same damage twice, under separate heads: *Gamser v Nominal Defendant* (1977) 136 CLR 145; [1977] HCA 7. Such an assessment requires a process of methodical consideration, not ungoverned intuition: at 145.
4. What is ultimately required is an award of a total amount of damages, the component items having been separately considered: *Diamond v Simpson (No 1)* [2003] NSWCA 67 at [20]. That involves the exercise of a wide discretion: *Sharman v Evans* (1977) 138 CLR 563 at 585; [1977] HCA 8.
5. Its exercise still requires consideration of the aggregate sum arrived at in respect of each head, in arriving at the total sum awarded: *Diamond* at [22]. What must ultimately be arrived at is fair compensation for the damage suffered, which may still result in a judgment for a large amount: *Diamond* at [25].

Mr B's approach

1. Given all these principles, undertaking this exercise in APC's case is complicated. Its finalisation must await the parties' further submissions.

2. Mr B's case was that APC was a clever person who had been manipulated by her mother to fabricate her evidence and that all the matters on which she relied to establish her claimed damages were not the result of anything he had done, but rather the result of choices APC had herself made in her life.
3. In his cross examination Mr B thus did not challenge APC, her mother, daughter or cousin about her ongoing problems and the assistance she claimed she had received and required as a result.
4. Even in his cross examination of APC, he suggested to her that he, too, had assisted her over the years and that he had not only had a close relationship with her but also with her children, for whom he too, had helped care. The evidence of APC's mother corroborated that he had provided APC with some support.
5. Mr B did make extensive submissions about APC's life and life choices. There was no evidence about various of the matters he addressed. Nor did Mr B pursue his views about APC's life choices with Associate Professor Robertson, who had concluded that 65% of APC's ongoing problems, which he dealt with in his reports, had been the result of the abuse.
6. In the result I am satisfied, given all the evidence I have discussed, that it cannot be concluded that Associate Professor Robinson was wrong in his conclusions about the 65% contribution which Mr B's abuse made to APC's mental health problems and their consequences, unchallenged as his opinions were.
7. They must thus be taken into account in the calculation of some of APC's damages, as was her case.

General and aggravated damages

1. APC claimed \$450,000 general damages and \$350,000 aggravated damages.
2. These claims must be considered in light of the applicable principles. General damages being awarded for a plaintiff's non-economic loss, suffered as a result of matters such as the pain, disability, loss of enjoyment and amenities of normal life, disfigurement or loss of expectation of life which a defendant has caused.
3. Given all the evidence, I consider that the assessment of what APC has suffered as the result of the abuse Mr B long pursued while she was a child, must result in a considerable award of general damages. That reflecting not only his ongoing, serious sexual assaults over a number of years, undeterred even by APC's complaints to her mother and the pain and suffering which he undoubtedly caused her, which resulted in her attempted self-harm, but also their considerable ongoing consequences, which he pleas for forgiveness did not improve.

4. They include APC's mental health problems, to which I am satisfied Mr B's abuse contributed significantly and for which there is not even now, any hope of improvement. Also, the considerable disruption of APC's schooling; how she came to leave her home to escape the abuse; her resulting limited opportunity to pursue any paid work, even now or in the future; and her drug and alcohol abuse, to which I am satisfied the severe sexual abuse also contributed significantly.
5. Her life path has no doubt resulted in APC making many detrimental choices. But it must be accepted that they are choices which she may not have made, had she not experienced the sexual abuse she endured as a child and instead, had been able to live the normal life which Mr B deprived her of.
6. That APC has suffered pain, disability and the loss of enjoyment and amenities of normal life as a result of Mr B's abuse must thus be accepted and compensated by a considerable award of general damages.
7. I am satisfied that the evidence I have discussed must also result in APC being awarded aggravated damages. I have also concluded that to ensure that there is no double counting, she must be awarded one amount for both general and aggravated damages, given their respective purposes. Further, that exemplary damages must be considered separately, given its different purpose, as I have explained.
8. That conclusion flows because the evidence established that Mr B's abuse did cause considerable injury to APC's feelings, given the insult and humiliation which he continued to cause her for years, while she was a child, in obvious pursuit of his own sexual gratification, without thought for the harm he was causing her. Not even after she had disclosed his abuse to her mother.
9. The amount of those damages must be fixed in the context of the overall damages which APC must be awarded, which the parties must now address.

Past expenses

1. Past expenses are pursued on the basis of a buffer of \$10,000. There is no question that the Court has power to approach this head of damage on such a basis.
2. Given all that I have discussed, I am satisfied that it is just to approach past expenses on this basis. The amount must be arrived at in light of what the tax, Centrelink and medical records and other evidence all disclose and establish.

Future expenses

1. Future expenses are based on Associate Professor Robertson's unchallenged report, in which he explained his conclusions about the cost of the future expenses APC is likely to incur.

2. Given all that is in evidence and his opinions being unchallenged, that there is any proper basis for their rejection is not apparent.

Past and future economic loss

1. I am satisfied that APC has suffered past economic loss, because of the adverse effect which Mr B's abuse has clearly had on her earning capacity.

2. Further, that it must be accepted that:

* but for Mr B's abuse, APC's schooling would not have been disrupted as it was;

* but for that abuse she would have pursued paid employment which she would have had the capacity to perform;

* it is likely that in such employment she would have achieved average weekly earnings;

* there being no suggestion that such employment would not have been available to her.

1. Damages for economic loss must be assessed having regard to the impact of the abuse on APC's earning capacity, about which it is impossible to make a completely accurate assessment, given that she was injured by Mr B's abuse while she was still a child.
2. An injured plaintiff like APC recovers such damages not merely because her earning capacity has been diminished, but because the diminution of that earning capacity "is or may be productive of financial loss": *Graham v Baker* (1961) 106 CLR 340 at 347; [1961] HCA 48.
3. An assessment of such damages involves "an evaluation of possibilities, not establishing a fact as a matter of history", the Court making an estimate about the chances that a particular thing would or could have happened, which must then be reflected in the amount of damages: *Malec v J. C. Hutton Pty Ltd* (1990) 169 CLR 638 at 639; [1990] HCA 20.
4. Such an approach being adopted when young children are injured, where it is impossible to prove that the child would have had an earning capacity as an adult, or how he or she would have exploited it: *New South Wales v Moss* (2000) 54 NSWLR 536; [2000] NSWCA 133 at [71].
5. This requires that a fair award be arrived at for APC, "not the finding of historical facts on a balance of probabilities, but the assessment of the value of a chance", taking into account "possible outcomes even though the likelihood of any particular outcome being achieved may be no more than a real possibility": at [87].
6. Typically, this is done by having regard to an average wage, as Mr Lee did. Mr B did not challenge this approach, or suggest that any other approach should be adopted.
7. Mr Lee's unchallenged approach to the calculation of APC's economic loss should thus be accepted. That being supported even by the case Mr B advanced about APC's capacity.

8. Mr Lee's assumptions and the account which he took of times when APC would not have likely worked, were all explained and also unchallenged. It follows that they must be taken into account in calculating this head of damage.

Past care

1. There was no suggestion that APC has received paid care in the past.
2. Still, a plaintiff such as her is entitled to recover an amount equivalent to the commercial cost of nursing and domestic services which have been provided in the past and that would be provided in the future by family or friends, as the result of Mr B's assaults: Griffiths v Kerkemeyer (1977) 139 CLR 161 at 173-4; 192-3; Van Gervan v Fenton (1992) 175 CLR 327 at 338-340; [1992] HCA 54; Kars v Kars (1996) 187 CLR 354; [1996] HCA 37. This extends to the care she would otherwise have provided to other members of her family: Sullivan v Gordon (1999) 47 NSWLR 319; [1999] NSWCA 338.
3. In APC's case it must be accepted that given the length and severity of the mental health problems which she continues to suffer and their consequences, to which Mr B's abuse has contributed, that her care needs, both past and future, were much greater than parents typically require, even of large families and so are compensable.
4. There is, nevertheless, some difficulty with the assessment of those damages, in arriving at the required fair compensation.
5. Ms Williams concluded that APC had required certain care assistance since early adolescence. She set out in a table unpaid and gratuitous care variously provided to APC, taking into account normal development and noting that relevant dates had been estimated, given her patchy recall of time and events and that regard had thus been had to what medical evidence established. That was based on information APC provided, albeit with the difficulties explained.
6. The table proceeds on the basis that APC has made life choices that were not good for her, including self-medicating with alcohol and prescribed and illicit drugs. It deals with differing periods when APC was provided with care by identified people, including APC's mother, cousin, children and partners.
7. The conclusion that the care she received is compensable depends on it being accepted that if APC had not been injured as she was, she would not have required such care.
8. The calculation of these damages must have regard to all of the evidence, including the evidence which APC's mother and cousin gave about the care they had actually provided her over time. Her mother explained periods when APC had detoxed and been able to remain drug free for a couple of years before relapsing. That is not referred to in the table.

9. There are considerable periods there dealt with, from 1995 to 2019, when Ms Williams has concluded that on 50 days per year, that is on 5 occasions for 10 days at a time, APC was provided with 24 hour childcare. There is evidence of the children going to stay with APC's mother. On Mr B's case, with him as well.
10. In her table APC's mother indicated that she had provided the claimed 24 hour care from 2003 – 2013. But that from 2016 to 2022, it was only five times a year that she provided 24 hours care. That does not accord with Ms William's table.
11. Further, in the period 1995 to 2002, reference is made in the table to a partner who took three of her children away for three months and yet in that period, the care claimed remained 21 hours per week.
12. Nor does the care APC's cousin explained in her schedule she had provided to APC from 2014 – 2022, appear to be entirely reflected in Ms William's table.
13. Certainly more care than APC has actually received in the past as the result of Mr B's abuse cannot be compensated for by an award of damages. The calculation of this head of damage thus needs now to be considered by the parties, in light of all of the relevant evidence which has been received.

Future Care

1. The onus lies on APC to establish her future care needs. An award of damages for future care by commercial providers depends on evidence that at some time, they would be availed of, including for services which will require the claimed home modifications, namely when APC claims she will require 24 hour in home care. In home care is claimed in the table, as from the conclusion of these proceedings. But it is not suggested that APC has had such care in the past.
2. The evidence of APC's cousin is that she can no longer provide the care she previously provided APC, because she has relocated. Some of APC's children have left home and no longer provide the care they previously provided and APC's mother's ability to provide her with care will also, it must be accepted, wane over time: *Miller v Galderisi* [2009] NSWCA 353 at [21].
3. Dr Robertson considered that APC's care requirements would increase as she ages, but that does not accord with aspects of Ms William's table. On her approach, certain of APC's needs will decrease. That accords with her children growing and no longer remaining in her care.
4. Ms William's table also provides for gratuitous care to age 60 of a total of 14 hours per week future care for "general assistance and emotional support, promoting and supervision", 4 hours for travel and community access, 3 for "indoor domestic", a total of 21 hours per week, as well as 4 weeks per year of 24 hour care. That increasing from age 60 to 28 hours per week for "general assistance and emotional support, promoting and supervision", 6 hours per week for travel and 8 weeks per year of 24 hour care, but indoor domestic care remaining at

3 hours per week. That totalling 37 hours per week.

5. Costings for these requirements at commercial rates were provided, totalling \$88,469.44 for the first stage and \$167,611.20 for the second.
6. Ms Williams also concluded that:

"[Redacted] would require a separate bedroom and ensuite for cares staff when they perform the 24-hour live-in shift. The room needs to be furnished with a bed and linen and staff provided with basic facilities including light meal preparation as they cannot leave the home for meal breaks.

Costs for future nursing care are and staff requirements have been provided by Ms Jane Burns, Nurse Life Care Planner who regularly assesses and costs nursing care provided in the community. Ms Burns has read this report and is familiar with the current awards that apply to the provision of community care. Her CV is attached as Annexure B."

1. Also necessary to take into account, however, is that ordinarily, an allowance of 15% is made for vicissitudes when future economic loss damages are calculated: *Smith v Alone* [2017] NSWCA 287 at [33] and [58]. That discount being to "take account of matters which might otherwise adversely affect earning capacity" and "death apart, 'sickness, accident, unemployment and industrial disputes are the four major contingencies which expose employees to the risk of the loss of income.'": *Wynn v NSW Insurance Ministerial Corporation* (1995) 184 CLR 485 at 497; [1995] HCA 53.
2. It follows that the calculation of this head of damage, which must also reflect what all of the evidence establishes, must now be undertaken in order that a fair amount of compensation for APC can be arrived at.

Exemplary damages

1. Rarely though exemplary damages are awarded, I have concluded that they must be awarded in this case.
2. That is because the evidence establishes that Mr B persisted in his sexual abuse of APC while she was a child, despite her complaints to her mother and the obvious injury involved in what he was doing to her. That amounting to conscious wrongdoing pursued in contumelious disregard of APC's rights, even though she was then a child under Mr B's care.
3. In APC's case it is relevant that Mr B has in the past sought her forgiveness. In *MacDougal v Mitchell* [2015] NSWCA 389, remorse expressed for assaults which involved criminal conduct, which like in this case had not resulted in any charges, was taken into account in assessing the exemplary damages there awarded: at [33]-[34]. If Mr B had any remorse, that could be taken into account in his favour, had it been established by his evidence.
4. But while in his earlier admissions Mr B sought APC's forgiveness, at a time when he was trying to persuade her not to give evidence in the family law proceedings, in these proceedings he denied even this.

5. His case in these proceedings was not only that he has done nothing for which he needs to be forgiven, but also that APC's claims about his ongoing abuse are all false, driven by her mother's manipulation and her greed. That cannot be accepted, as I have explained.
6. The result is that it must be accepted that the evidence establishes that Mr B has no remorse for his repeated, ongoing sexual assaults pursued while APC was a child, which also involved criminal conduct. That helps drive the conclusion that an award of exemplary damages must be made in this case.
7. The amount of those exemplary damages must reflect that they are awarded not only to punish Mr B's persistent and reprehensible wrongdoing, but also to deter others from so injuring and damaging a child. One who long afterwards in adulthood not only continues to suffer the various serious consequences of the serious ongoing sexual abuse to which Mr B subjected APC in childhood, but which she will continue to suffer in the future.
8. This must all be taken into account in arriving at the amount of this head of damage.

Costs

1. The usual costs order under the Civil Procedure Act is that costs follow the event.
2. In this case that is an order that Mr B bear APC's costs. If there is any disagreement about the appropriate costs order, the parties will have to be heard.

Pseudonym Orders

1. When Campbell J gave his earlier judgment, the pseudonym APC was used. I have used that pseudonym in this judgment, as well as the pseudonym Mr B, for the defendant. In order to explain the evidence received, I have referred to certain other witnesses only by their relationship to the parties.
2. This reflects that in the family law judgment pseudonyms were also used, s 121 of the Family Law Act then prohibiting public dissemination of information that identifies the parties to the proceedings. Section 121 has since been repealed, but Part XIVB of the Family Law Act now regulates the communication of accounts of proceedings which refer to names of parties. Section 114Q making it an indictable offence to communicate an account of proceedings under that Act, if it identifies a party, witness or person related to or associated with a party to the proceedings.
3. In these proceedings APC finally pursued further pseudonym orders, which Mr B did not oppose, but which still disclosed his name. In all of the circumstances I have concluded that the Family Law Act compels the approach I have concluded must be adopted, in order that the parties, witnesses and others related to or associated with the parties to the family law proceedings, are not identified.

4. Further, that the approach I have adopted also accords with s 8 of the Court Suppression and Non-publication Orders Act 2010 (NSW), given the serious child sexual abuse dealt with in the evidence. It was all given in open court and obviously caused APC distress and embarrassment when she was cross examined. Such abuse could have been the subject of criminal charges and so, it must be accepted, also gives rise to the considerations which s 8(1)(d) of that Act addresses.
5. In the result I am satisfied that an order under s 8 of the Court Suppression and Non-publication Orders Act must be made. Accordingly I order that:
 1. The name of these proceedings be changed to APC v Mr B.
 2. The plaintiff be referred to by the pseudonym APC and the defendant by the pseudonym Mr B.
 3. Witnesses and others related to or associated with APC and Mr B, who are referred to in this judgment by reference to their relationship to APC and Mr B, including APC's mother's solicitor and Mr B's accountant, be referred to by that relationship.
 4. The full names and any particulars which might enable any of APC, her mother, children, brother, aunt, cousin, the solicitor who represented APC's mother in the family law proceedings, or Mr B, his children, first wife or the accountant he called in the family law proceedings to be identified, is not to be published or disclosed to any person other than the parties to the proceedings, their legal representatives or the Court, except as may be necessary for the proper conduct of these proceedings.
 5. These orders are to apply throughout the Commonwealth of Australia for a period of 40 years.
 6. The grounds on which these orders are made are that:
 1. A question arose about whether further pseudonym orders needed to be made which, given the evidence received about earlier family law proceedings, raised for consideration:
 1. provisions of the Family Law Act, which make it an indictable offence to communicate an account of proceedings under that Act, if it identifies a party, witness or person related to or associated with a party to proceedings under that Act; as well as
 2. evidence received about claimed, serious, ongoing historical child sexual abuse.
 1. The distress and embarrassment which APC experienced when giving evidence about that claimed child sexual abuse was apparent.
 2. That did not attract the provisions of s 8(1)(d) of the Court Suppression and Non-publication Orders Act, which is restricted to criminal proceedings in which distressing or embarrassing evidence about offending of a sexual nature is given.

3. But the claimed child sexual abuse could have been the subject of criminal charges, that also giving rise to the considerations which s 8(1)(d) addresses.
4. In all those circumstances, I was thus satisfied that the public interest accorded with the making of the orders I have explained.

Other directions

1. For these reasons I now enter judgment for APC and also direct that:
 1. On or before 22 January 2025 APC should file and serve proposed final orders, including as to the freezing orders which still remain in force and costs, together with a short outline of submissions;
 2. The parties should confer about the proposed orders;
 3. If the orders are agreed, the parties have liberty to approach with consent orders;
 4. If there is any disagreement, Mr B should file and serve the orders which he proposes, together with a short outline of submissions, on or before 12 February 2025.
 5. In that event the matter will be listed for directions at 9.30 am on 14 February 2025.

Endnote

1. It has not been possible to replicate the grey colour to mark the discounted amounts in NSW Caselaw, therefore an asterisk has been added to mark these amounts.

Amendments

31 January 2025 - Mr Vincent has been replaced with Mr Lee. Mr Lee is the a Chartered Accountant and Vincent is the accounting firm. The changes appear in the following paragraphs: [2], [268], [269], [271], [272], [294], [333], [334], and [335].

26 February 2025 - Defendant's name has been redacted at paragraphs 101, 140 and 190.

28 February 2025 - Redacted the Plaintiff's name in paragraphs 252 and 354.

Typographical error in paragraph 313, the figure "\$450,00" has been amended to read "\$450,000".

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Decision last updated: 28 February 2025

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