

# Causing someone else to commit suicide: Incitement or manslaughter?

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## Abstract

For more than half a century, Australian states and territories have criminalised the distinct offence of inciting another person to commit suicide. The maximum penalties for these offences vary and require the accused to have *intended* that the victim would commit suicide. In contrast, the offence of involuntary manslaughter does not require such an intention. Instead, a charge of manslaughter requires that the accused acted in a conscious and voluntary way that caused the victim's death, and that their conduct was either criminally negligent or unlawful and dangerous. Drawing on cases from the United States and United Kingdom, this article suggests that in appropriate circumstances in Australia, especially in the context of family violence, offenders should be held criminally liable for manslaughter if they cause another person to commit suicide.

## Keywords

Criminal law, manslaughter, suicide, criminal liability, causation, free will

Across Australia in 2016, 2866 people took their own life.<sup>1</sup> Recent research by the NSW Domestic Violence Death Review Team suggests that family violence could be a significant contributor to this number, with 49 per cent of female suicides having a recorded or apparent prior history of family violence.<sup>2</sup> This article considers the extent to which individuals, especially family violence offenders, might be criminally liable for the offence of manslaughter if they cause someone else to commit suicide.

A fundamental assumption of common law-based legal systems is that individuals have free will and are

responsible for their own actions.<sup>3</sup> It is on this assumption, for example, that individuals are held liable for their behaviour when it constitutes a criminal offence. There are, though, certain circumstances in which criminal responsibility for one person's actions can be shifted or shared between multiple people, such that the legal system will accept that one person's free will has been so overborne that responsibility is transposed onto (or shared with) another person. For example, if a person incites another person to commit an assault, and the other person acts accordingly, then both may be held responsible for that crime.<sup>4</sup> Similarly, if a person has

<sup>1</sup>Australian Bureau of Statistics, '3303.0 – Causes of Death, Australia, 2016' (2017) <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3303.0~2016~Main%20Features~Intentional%20self-harm:%20key%20characteristics~7>.

<sup>2</sup>NSW Domestic Violence Death Review Team, *Report 2015–2017* (2017) 129.

<sup>3</sup>See, eg, Stephen J Morse, 'Neuroscience, Free Will and Responsibility' in Walter Glannon (ed), *Free Will and the Brain* (Cambridge University Press, 2015).

<sup>4</sup>*Crimes Act 1958* (Vic) s 321G (and see s 2A for the definition of 'incite').

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been threatened with physical harm unless they perform a criminal act, and they reasonably believe that the threat will be carried out if they do not comply, then they may be able to avoid criminal liability by claiming the defence of duress,<sup>5</sup> with the person who issued the threat being liable for the substantive offence.

Particularly complex and contentious issues of criminal responsibility and liability arise when a person encourages another to commit suicide; issues of free will, causation and shared responsibility loom large. Following the decriminalisation of suicide in the mid-20th century, a common criminal justice response was to create the distinct, stand-alone offence of inciting another person to commit suicide, such that the encouragement remained criminalised despite the act itself being decriminalised. In a novel development, there has now also been at least two reported cases (one in the United States and one in the United Kingdom) where a person has been held criminally liable for manslaughter for having caused another person to commit suicide in circumstances where the offender contributed to the death without necessarily physically assisting the victim to die.<sup>6</sup> This development creates an additional exception to the criminal law's default presumption of free will and protection from liability for the acts of another.

In this article, we consider whether, in addition to the legislative prohibition against inciting another person to commit suicide, there may also be circumstances in the Australian context (especially in cases of family violence) in which causing another person to commit suicide can directly constitute the more serious crime of manslaughter. In doing so, we outline the offences of inciting another person to commit suicide in the various Australian jurisdictions, provide an overview of involuntary manslaughter, compare and contrast those two offences, and then utilise cases from the US and the UK to illustrate the potential applicability of manslaughter laws in cases of suicide. Although there has not yet been a test case in Australia to determine the extent to which a person can be convicted of a homicide offence when they cause another person to commit suicide, it is likely that such a case will emerge in the near future.<sup>7</sup>

## Incitement to commit suicide

In each Australian jurisdiction, it is a crime to encourage another person to commit suicide.<sup>8</sup> In most of these jurisdictions, an offence will only have been committed if the incitement or counselling resulted in the other person actually attempting to commit suicide.<sup>9</sup> In Tasmania, though, there is no apparent requirement that the encouragement eventuated into an attempt; it is simply unlawful to instigate another to kill themselves.<sup>10</sup>

These incitement (to commit suicide) offences differ significantly from other incitement (to commit crime) offences. In most cases involving incitement, both parties can be held responsible for the incited behaviour because it constitutes a crime; for instance, the person who incites another to commit the crime of armed robbery is liable for the robbery as much as the person who physically commits the offence.<sup>11</sup> Conversely, a person who incited conduct that did not constitute a crime would not be guilty of a criminal offence. Consequently, when the act of attempting or committing suicide was decriminalised in Australia 50 years ago,<sup>12</sup> this meant that a person who incited another to commit suicide could not be criminally liable for an offence. State and Territory parliaments responded to this lacuna by creating specific statutory offences that criminalised this form of incitement. As a result, when a person attempts suicide after being incited to do so, the inciter can be held responsible. It is not clear, however, whether anyone has ever been convicted of, or charged with, any of these suicide incitement offences in Australia. A search of AustLII and various sentencing databases did not reveal any reported cases.

## Involuntary manslaughter

The novel suggestion in this article is that there are a number of homicide offences that may be applicable if someone behaves in such a way that it results in another person's suicide. Such behaviour could, for example, include cases in which the deceased and the offender were voluntarily acting in concert, such as a game of Russian Roulette where the deceased fatally shot *themselves*,<sup>13</sup> or where the death was consequent to a mutual suicide pact.<sup>14</sup> However, we limit our focus to those cases

<sup>5</sup>*Crimes Act 1958* (Vic) s 322O.

<sup>6</sup>Compare this, eg, with *Persampieri v Commonwealth*, 343 Mass 19 (1961), in which the victim's husband contributed by obtaining the gun with which she shot herself, and helping her load it.

<sup>7</sup>Note that the issues raised in this article are quite distinct from those raised in *R v Russell* [1933] VLR 59. Russell was charged with murder in relation to the deaths of his wife and two children (the latter were drowned by his wife). The prosecution argued Russell either murdered them all or stood by and did nothing while his wife drowned the children and then herself. Liability for manslaughter was established on the basis of accessorial liability, involving a failure to act in the context of a special relationship.

<sup>8</sup>In addition to the offence of inciting suicide, Victoria's stalking provision also contains unique language that renders it a distinct offence to engage in any behaviour that would reasonably be expected to cause another person to self-harm, even if that person does not actually engage in self-harm (with a maximum penalty of 10 years' imprisonment): *Crimes Act 1958* (Vic) s 21A, as inserted by the *Crimes Amendment (Bullying) Act 2011* (Vic) s 3.

<sup>9</sup>*Crimes Act 1958* (Vic) s 6B(2)(a); *Crimes Act 1900* (NSW) s 31C(2); *Criminal Code Act* (NT) sch 1 cls 162(1)(b), (3); *Crimes Act 1900* (ACT) s 17(2); *Criminal Law Consolidation Act 1935* (SA) s 13A(5); *Criminal Code Act Compilation Act 1913* (WA) s 288(2); *Criminal Code Act 1899* (Qld) s 311(b).

<sup>10</sup>*Criminal Code Act 1924* (Tas) sch 1 cl 163.

<sup>11</sup>*Crimes Act 1958* (Vic) s 321G.

<sup>12</sup>See, eg, *Crimes Act 1958* (Vic) s 6A; *Criminal Law Consolidation Act 1935* (SA) s 13A(1); *Crimes Act 1900* (ACT) s 16; *Crimes Act 1900* (NSW) s 31A; *Criminal Code 1924* (Tas) s 163.

<sup>13</sup>*Commonwealth v Atencio*, 345 Mass 627 (1963). Cf. cases such as *R v Faure* [1999] 2 VR 537, which discuss criminal liability for manslaughter for a death that occurred during a game of Russian Roulette when the defendant (rather than the victim) was the one who pulled the trigger.

<sup>14</sup>See, eg, *Crimes Act 1958* (Vic) s 6B(1); *R v Iannazzone* [1983] 1 VR 649.

where one person's suicide follows another person exerting significant psychological pressure on them.

The two most likely homicide offences that could capture the offence of causing another person's suicide are the two common law forms of involuntary manslaughter: (1) negligent manslaughter and (2) unlawful and dangerous act manslaughter.<sup>15</sup> There is considerable overlap between the two offences: both involve the offender engaging in a conscious and voluntary course of conduct that causes the death of another. Where they differ is in the originating conduct that caused the victim's death.

To establish *negligent* manslaughter, the prosecution must prove that the accused owed the victim a duty of care, that they breached that duty of care in a way that fell significantly below the standard of a reasonable person ('gross negligence'), and that the breach involved such a high risk of death or serious injury that the conduct merits criminal punishment.<sup>16</sup> In contrast, to establish *unlawful and dangerous act* manslaughter, the prosecution must prove that the accused's act that caused the death was, axiomatically, unlawful (in the sense that the behaviour causing the other person's death was a criminal offence, such as assault)<sup>17</sup> and dangerous (in the sense that a reasonable person in the position of the accused would have realised that they were exposing the deceased to an appreciable risk of serious injury).<sup>18</sup> Put simply, the difference between these two forms of involuntary manslaughter is that when the wrongness of the originating behaviour becomes more serious (going from a negligent to a criminal act) the level of risk required to prove the offence decreases (from a *high* risk to an *appreciable* one).

An important feature of these manslaughter offences is that they involve the victim being placed at risk of some form of injury. It might be thought that the term *injury* connotes purely physical harms; however, the term (and its synonym: harm) has increasingly encapsulated psychological harms. There have been a number of cases in the UK in which the term *actual bodily harm* has been interpreted as including recognisable psychiatric illnesses<sup>19</sup> and in Victoria the statutory definition of *injury* in s 15 of the *Crimes Act 1958* (Vic) expressly includes psychological harm (which in turn is defined as harm to a person's mental health).<sup>20</sup> In the context of causing someone else to commit suicide, then, a person could be held liable for manslaughter if they caused psychological

harm that resulted in someone else's suicide, and their behaviour was unlawful and dangerous or constituted criminal negligence.

## Distinguishing incitement from manslaughter

It is, of course, important to ask: if there is already a distinct offence of inciting another person to commit suicide, why is it necessary to consider whether the accused might also, or alternatively, be guilty of manslaughter? There are two key differences between the offences of manslaughter and incitement to commit suicide.

The first difference between the two offences is in the maximum penalties available across Australia. Though a crude measure, maximum penalties are one way of measuring (the legislature's view of) the seriousness of an offence.<sup>21</sup> The penalties for inciting suicide vary widely between jurisdictions. The maximum penalty is five years' imprisonment in New South Wales and Victoria, 10 years' in the Australian Capital Territory, life imprisonment in Queensland, Western Australia and the Northern Territory, and in South Australia the penalty is determined by whether the attempted suicide was successful (14 years) or unsuccessful (eight years). In contrast, the maximum penalty for manslaughter ranges from 20 years in the ACT and Victoria,<sup>22</sup> to life imprisonment in Western Australia, the Northern Territory, South Australia and Queensland.<sup>23</sup> The broad range of maximum penalties for inciting suicide (between five years' imprisonment and life imprisonment) could perhaps suggest a national indecisiveness about the seriousness of that behaviour, whereas there appears to be more of a general consensus about the seriousness of manslaughter.

The second and more important distinction between the offences of manslaughter and incitement to commit suicide is the requisite *mens rea* of the offender. Incitement, by definition, requires that the accused person *intended* that the other person would engage in a certain behaviour.<sup>24</sup> By contrast there is no requirement, in establishing manslaughter, that the accused intended (or was even reckless) about whether their behaviour would result in the other person's death. It is sufficient if a reasonable person would have foreseen

<sup>15</sup>*Wilson v The Queen* (1992) 174 CLR 313.

<sup>16</sup>*Nydam v R* [1977] VR 430, 445; cited with approval in *Wilson* (1992) 174 CLR 313 and *R v Lavender* (2005) 222 CLR 67.

<sup>17</sup>*R v Holzer* [1968] VR 481, 482.

<sup>18</sup>*Wilson* (1992) 174 CLR 313.

<sup>19</sup>*R v Miller* [1954] 2 All ER 529; *R v Chan-Fook* [1994] 2 All ER 552; *R v Ireland*; *R v Burstow* [1997] 4 All ER 225; *R v Morris* [1997] EWCA Crim 2654; *R v Dhalliwal* [2006] EWCA Crim 1139.

<sup>20</sup>Similarly, in South Australia the statutory definition of 'harm' in s 21 of the *Criminal Law Consolidation Act 1935* (SA) applies to offences in Division 7A of that Act and expressly includes 'mental harm', which is in turn defined as 'psychological harm [but] not . . . emotional reactions such as distress, grief, fear or anger unless they result in psychological harm'.

<sup>21</sup>Richard Fox and Arie Freiberg, 'Ranking Offence Seriousness in Reviewing Statutory Maximum Penalties' (1990) 23(3) *Australian and New Zealand Journal of Criminology* 165, 180.

<sup>22</sup>*Crimes Act 1900* (ACT) s 15; *Crimes Act 1958* (Vic) s 5.

<sup>23</sup>*Criminal Code Act Compilation Act 1913* (WA) s 280; *Criminal Code* (NT) s 161; *Criminal Law Consolidation Act 1935* (SA) s 13; *Criminal Code 1899* (Qld) s 310. In Tasmania the maximum penalty is 21 years' imprisonment, and in New South Wales the maximum penalty is 25 years' imprisonment; *Criminal Code Act 1924* (Tas) sch 1 s 389; *Crimes Act 1900* (NSW) s 24.

<sup>24</sup>See, eg, *Crimes Act 1958* (Vic) s 321G(2).

an appreciable or high risk of serious injury resulting from their behaviour. This distinction therefore effectively makes the offence of manslaughter less onerous for the prosecution to prove (despite the higher maximum penalty for this offence in most jurisdictions).

The incitement and manslaughter offences both require a causal relationship between the offending behaviour and the victim's actual or attempted suicide. In almost every jurisdiction (other than Tasmania), it is a prerequisite of criminal liability for inciting suicide that the attempted suicide was 'in consequence thereof' the incitement or counselling.<sup>25</sup> So too must a causal link be established in manslaughter cases.



### Manslaughter prosecutions for encouraging or causing another's suicide

The first contemporary attempt to convict a person of manslaughter, for causing the suicide of another, was in the UK in 2006.<sup>26</sup> In February 2005, a woman took her life by hanging herself in an outhouse at the back of her matrimonial home. The prosecution charged her husband with manslaughter for having caused a psychiatric injury that resulted in her death. The evidence supporting that psychiatric injury arose from what is known as a psychological autopsy: an investigative process in which experts review materials produced by the deceased (diary entries, statements made previously, etc), views of family and friends, police records and medical reports, to infer the state of mind of the deceased prior to death. In this case the expert review strongly suggested that the abusive behaviour of the deceased's husband over the years was the

cause of her suicide. Ultimately, however, the manslaughter charge was dismissed because there was conflicting evidence concerning whether the deceased had suffered a *recognisable psychiatric illness* as a result of her husband's abuse.<sup>27</sup> The court did not, however, rule out the possibility of a future case arising in which an offender could be held liable for manslaughter in similar circumstances. The court first noted that unlawful violence resulting in suicide could substantiate a charge of manslaughter:

subject to evidence and argument on the critical issue of causation, unlawful violence on an individual with a fragile and vulnerable personality, which is proved to be a material cause of death (even if the result of suicide) would at least arguably, be capable of amounting to manslaughter.<sup>28</sup>

More specifically, the court posited that a spouse or partner could be held liable for manslaughter if they caused a *recognisable psychiatric illness* that resulted in suicide (without the need to establish any physical violence).<sup>29</sup>

Of note, the unlawful act in this context, in both the UK and Australia, would not require assault in the traditional sense (that is, some form of physical violence), but instead could theoretically be premised on the infliction of psychological harm through non-physical means. It is, for example, a crime in Victoria to cause psychological harm to another person, regardless of whether the catalyst for that harm was physical or not.<sup>30</sup> Behaviours such as emotional abuse, social isolation, and stalking could therefore just as easily constitute the relevant 'unlawful act' to found a charge of involuntary manslaughter.

The UK courts revisited the issue in March 2018 when Nicholas Allen pleaded guilty to unlawful act manslaughter after stalking his ex-partner Justene Reece to the point where she had committed suicide in the previous year, leaving behind a note that read, 'I've run out of fight'.<sup>31</sup> During and after their relationship, Allen had twice put his hands around Justene's neck, taken her keys and money, stopped her from leaving their house, thrown her to the floor, threatened her son, sent her abusive voicemails, texts, and Facebook messages (nearly 4000 of them), fitted a tracer to her scooter, monitored her social media, and set up fictitious Facebook accounts pretending to be her and claiming to have been raped. Allen was also obsessed with finding out who had sexually assaulted her after she had confided an incident to him. After Justene's death, Allen pleaded guilty to manslaughter, as well as the relatively new offence of controlling or coercive

<sup>25</sup>Cf *Criminal Law Consolidation Act 1935* (SA) ss 13A(5), (6)(a).

<sup>26</sup>*R v D* [2006] EWCA Crim 1139.

<sup>27</sup>*R v Chan-Fook* [1994] All ER 552; *R v Ireland*; *R v Burstow* [1997] 4 All ER 225.

<sup>28</sup>*R v D* [2006] EWCA Crim 1139 [8].

<sup>29</sup>*R v D* [2006] EWCA Crim 1139 [32].

<sup>30</sup>*Crimes Act 1958* (Vic) ss 15–18.

<sup>31</sup>'Man Jailed for Manslaughter Over Ex-Girlfriend's Suicide', BBC News (online), 28 July 2017 <http://www.bbc.com/news/uk-40758095>.



behaviour,<sup>32</sup> and multiple counts of stalking. He was sentenced to 10 years' imprisonment. In a media release the Crown Prosecution Service (UK) described the case as 'highly unusual' because Allen had been held criminally responsible for his ex-partner's suicide after his campaign of threats and abuse.<sup>33</sup>

Interestingly, in a subsequent similar matter, the Crown Prosecution Service (UK) did not charge Steven Gane with manslaughter, despite the similarities between the cases. In August 2017, London mother-of-three Kellie Sutton took her own life.<sup>34</sup> Prior to her suicide she had sent a text message to her partner Gane, telling him that she was going to hang herself; he had replied, 'Do everyone a favour and do it'. Throughout their five-month relationship Gane had choked Kellie if she went out without telling him where she was going, accused her of cheating, searched her bedroom for other men, and repeatedly physically assaulted her. After Kellie's death, a jury convicted Gane of multiple counts of assault as well as controlling or coercive behaviour. The judge sentencing Gane accepted that his actions had driven his partner to take her own life. Gane, however, was not charged with any homicide offences. He was not charged with involuntary manslaughter for having engaged in what seems to have been unlawful and dangerous acts (the course of conduct that constituted the controlling or coercive behaviour and the assaults) which resulted in Kellie's death. Indeed, in a curious charging gap, Gane does not appear to have even been charged with encouraging another person to commit suicide.<sup>35</sup>

Meanwhile in Massachusetts (USA) the first successful prosecution of an offender for manslaughter for having caused another's suicide was finalised in 2017. In 2014, Conrad Roy filled his car with noxious fumes and suffocated to death.<sup>36</sup> Three months later his partner Michelle Carter sent a text message to a friend: 'Sam his death is my fault, like honestly I could have stopped him. I was on the phone with him and he got out of the car because it was working and he got scared.' Carter admitted that she had told Conrad to 'get back in', which he did. A grand jury indicted Carter for involuntary manslaughter, but she appealed on the basis that there was

no physical act, and that manslaughter could not be constituted by words alone. The appellate court disagreed, stating that the coercive quality of her behaviour, in the context of an intimate relationship, coupled with the deceased's delicate mental state and the constant pressure Carter put on him during their long-distance relationship, meant that she had 'overborne the victim's willpower'.<sup>37</sup> When Conrad exited the vehicle and called her to say he was scared, and she instructed him to get back in, the court found that she broke whatever 'chain of self-causation' might have otherwise prevented her from being held liable for Conrad's death.<sup>38</sup> Carter was convicted and sentenced to 15 months' imprisonment<sup>39</sup> (notably less than the sentencing range of 40–120 months in the Massachusetts Sentencing Commission's advisory sentencing guidelines).<sup>40</sup>

In February 2018, Carter appealed her conviction, arguing that convicting her for 'words alone' was a violation of her right to free speech.<sup>41</sup> The outcome of those proceedings is not yet known. However, a case note in the *Harvard Law Review* suggests that courts should consider applying what is known as a conduct-based liability test (based on Carter's entire course of conduct during her relationship with Conrad, not just her final words telling him to get back into the car), in order to stem fears of overcriminalisation.<sup>42</sup> This approach would require evidence of a consistent course of coercive behaviour that overbore Conrad's free will. Indeed, it is this recognition of the *cumulative* effect of domestic abuse that has led England and Wales, Scotland, and now Ireland, to introduce new 'course of conduct' offences that criminalise controlling or coercive behaviour between persons in an intimate relationship.<sup>43</sup>

## Conclusion

As previously noted, thousands of people take their own life each year in Australia, many of whom do so in the context of family violence. This article has raised the possibility that, if a person in Australia causes another to commit suicide (especially in the context of family violence), they may be liable not just for the traditional offence of encouraging or inciting suicide, but also or

<sup>32</sup>*Serious Crime Act 2015* (UK) s 76.

<sup>33</sup>Crown Prosecution Service (UK), 'Man Jailed for Manslaughter After Stalking His Former Partner' (Media Release, 28 July 2017) <https://www.cps.gov.uk/west-midlands/news/man-jailed-manslaughter-after-stalking-his-former-partner>.

<sup>34</sup>Steven Gane jailed after "Driving his Partner to Suicide", *BBC News* (online), 26 March 2018 <http://www.bbc.com/news/uk-england-beds-bucks-herts-43541535>.

<sup>35</sup>*Suicide Act 1961* (UK) s 2.

<sup>36</sup>Katharine Q Seelye and Jess Bidgood, 'Guilty Verdict for Young Woman Who Urged Friend to Kill Himself', *New York Times* (online), 16 June 2017 <https://www.nytimes.com/2017/06/16/us/suicide-texting-trial-michelle-carter-conrad-roy.html>.

<sup>37</sup>*Commonwealth v Carter*, 52 NE 3d 1054 (Mass, 2016).

<sup>38</sup>See further Marilyn McMahon and Paul McGorrery, 'Could Long-Distance Bullies in Australia Face Up to 20 years in Jail for Encouraging Suicide?', *The Conversation* (online), 23 June 2017 <https://theconversation.com/could-long-distance-bullies-in-australia-face-up-to-20-years-in-jail-for-encouraging-suicide-79908>.

<sup>39</sup>Michelle Carter: US Woman Who Sent Texts Encouraging Boyfriend to Kill Himself Gets 15 Months in Jail', *ABC News* (online), 4 August 2017 <http://www.abc.net.au/news/2017-08-04/woman-who-sent-texts-urging-suicide-gets-15-months-in-jail/8773448>.

<sup>40</sup>Massachusetts Sentencing Commission, *Advisory Sentencing Guidelines* (2017) 25 <https://www.mass.gov/doc/advisory-sentencing-guidelines>.

<sup>41</sup>Joyce Chen, 'After Convicted for Texts in Boyfriend's Suicide Case, Michelle Carter Files Appeal', *Rolling Stone* (online), 5 March 2018 <https://www.rollingstone.com/culture/news/michelle-carter-appeals-conviction-texts-boyfriend-suicide-w517483>.

<sup>42</sup>*Commonwealth v Carter*: Trial Court Convicts Defendant of Involuntary Manslaughter Based on Encouragement of Suicide' (2018) 131(3) *Harvard Law Review* 918.

<sup>43</sup>*Serious Crime Act 2015* (UK) s 76; *Domestic Abuse (Scotland) Act 2018* (Scot) s 1; *Domestic Violence Act 2018* (IR) s 39.

alternatively, for involuntary manslaughter.<sup>44</sup> This would not only expose offenders to a potentially higher sentence than they might otherwise have received for the offence of inciting suicide, but would also mean that the prosecution would not have to prove that the offender *intended* that the victim would take their own life. Instead, the prosecution would need to establish either (1) that the offender was reckless about causing psychological harm to the victim, and exposed them to an appreciable risk of serious psychological injury, or (2) that the offender was criminally negligent in their actions in a way that exposed the victim to a high risk of serious psychological harm. The unlawful acts upon which such a charge could be premised are myriad and extend well beyond physical assaults (eg, causing psychological harm, stalking, etc). In addition, if Australia follows the lead of England and Wales, Scotland, and Ireland in introducing a family violence-specific offence, it could also be constituted by the express offence of engaging in controlling or coercive behaviour.<sup>45</sup> But even without such an offence in most Australian jurisdictions,<sup>46</sup> the aforementioned cases of

*R v D, Allen and Carter* suggest that psychologically damaging behaviour could already appropriately found a prosecution for manslaughter when that behaviour causes another to commit suicide. The decision to proceed with a charge of manslaughter in such cases now rests with police and prosecutors.

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<sup>44</sup>For a similar analysis in the UK context, see Vanessa E Munro and Ruth Aitken, 'Adding Insult to Injury? The Criminal Law's Response to Domestic Abuse-Related Suicide in England and Wales' (2018) 9 *Criminal Law Review* 732; Vanessa Munro and Sangeeta Shah, 'R v Dhaliwal: Reconstructing Manslaughter in Cases of Domestic Violence Suicide' in Rosemary Hunter, Clare McGlynn and Erika Rackley (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing, 2010); Jeremy Horder and Laura McGowan, 'Manslaughter by Causing Another's Suicide' (2006) *Criminal Law Review* 1035.

<sup>45</sup>See, eg, Marilyn McMahon and Paul McGorrery, 'Criminalising Controlling and Coercive Behaviour: The Next Step in the Prosecution of Family Violence?' (2016) 41(2) *Alternative Law Journal* 98.

<sup>46</sup>Cf *Family Violence Act 2004* (Tas) ss 8–9; Marilyn McMahon and Paul McGorrery, 'Criminalising Emotional Abuse and Intimidation in the Context of Family Violence: The Tasmanian Experience' (2016) 35(2) *University of Tasmania Law Review* 1.