

Keeping the Peace

A focus on Criminal and Domestic Violence Law in Queensland.

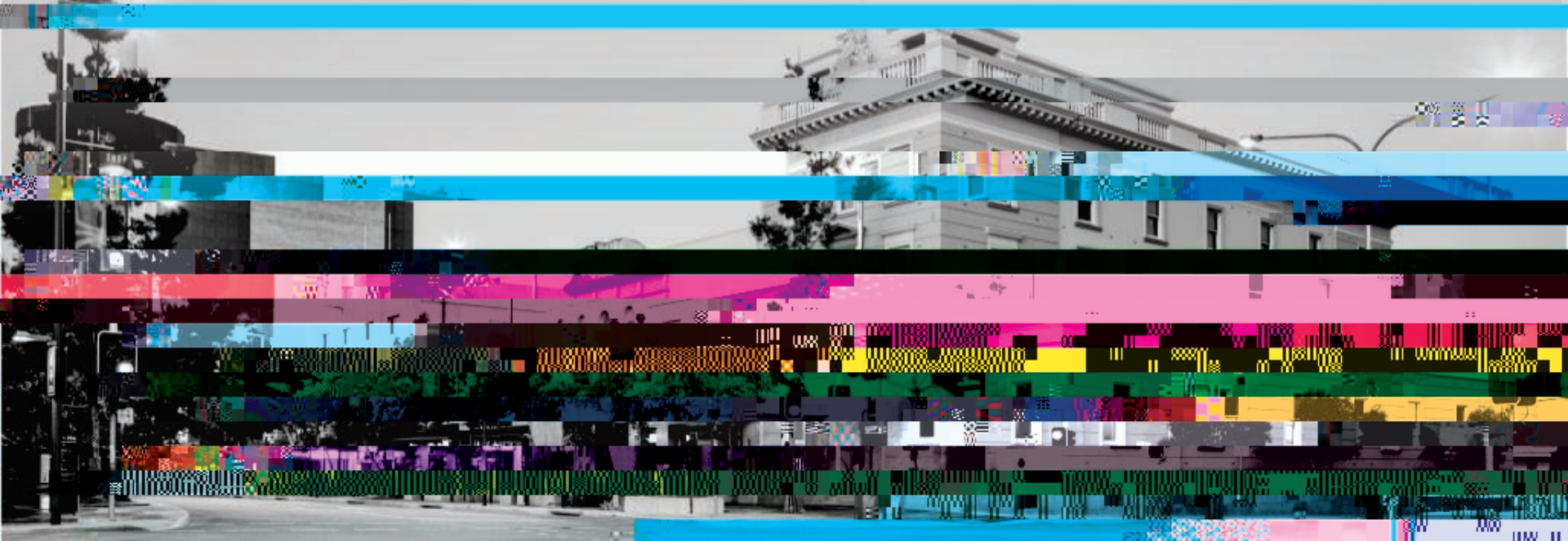
By Mathai Joshi, Associate at Connolly Suthers Lawyers

James Cook University Law Seminar Series



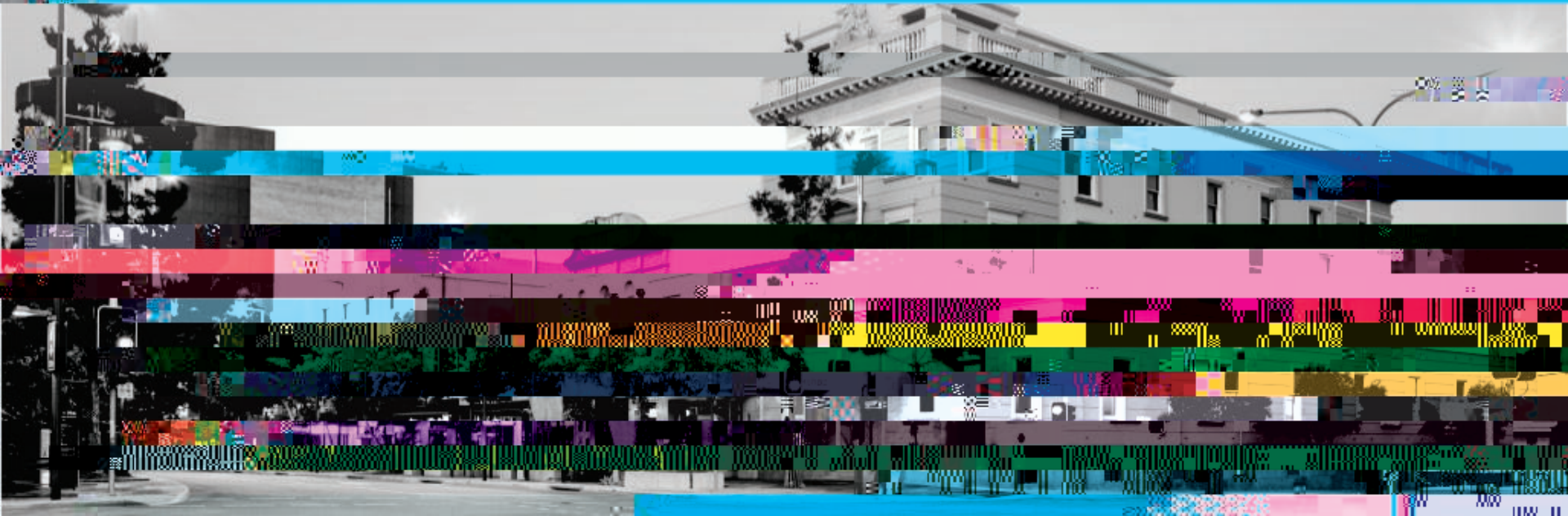
General Summary of Criminal Law

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



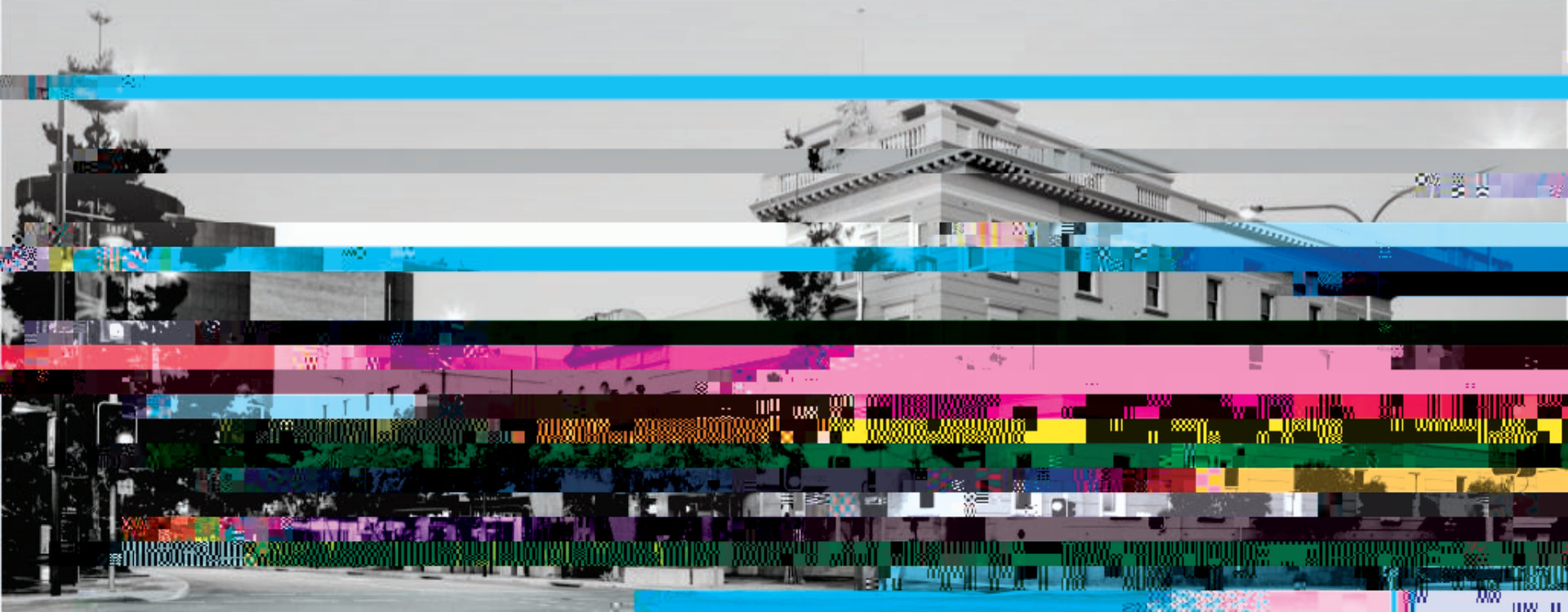
Why is the Practice of Criminal Law Important?

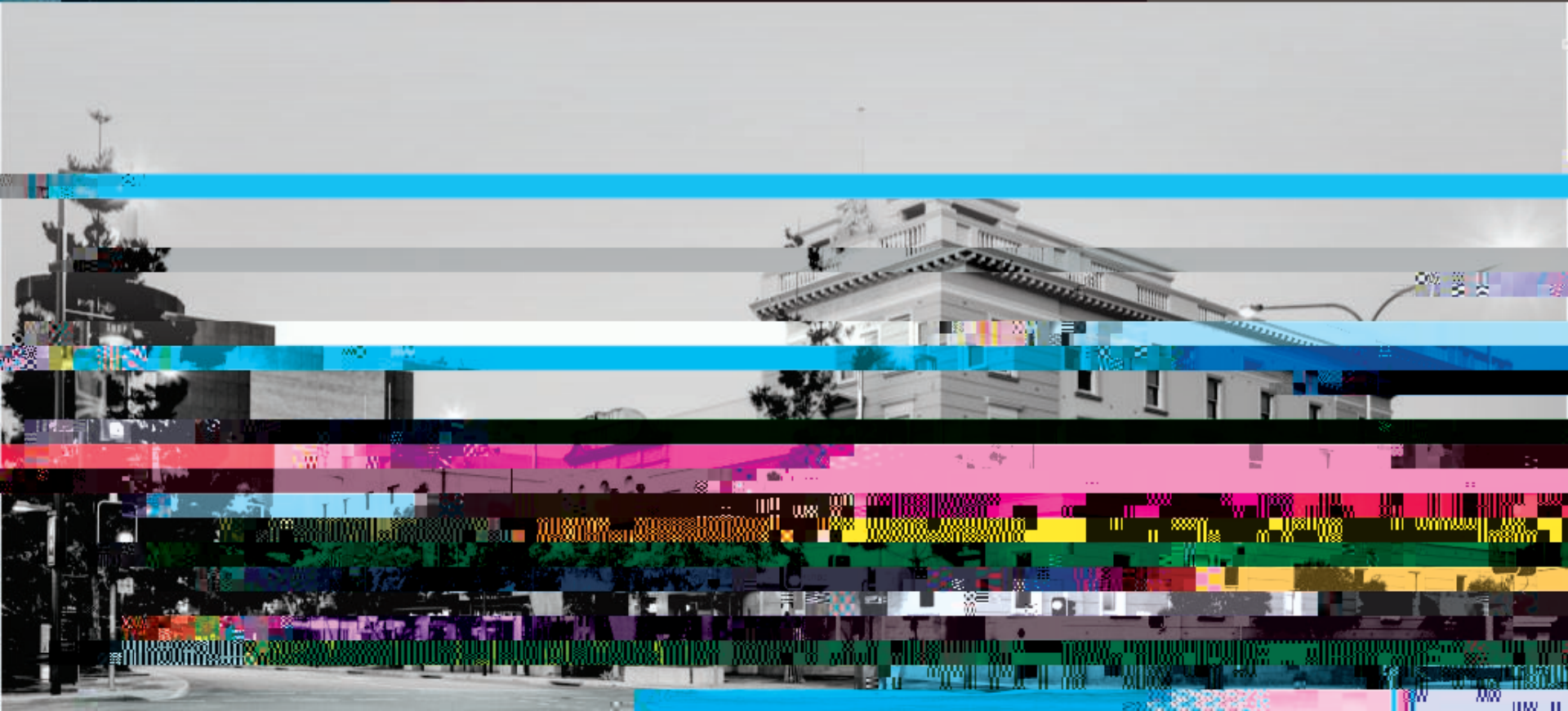
- It is a balance against the interests of an individual faced with a prosecution by the State with all its resources and might.
- Criminal Law allows the preservation of basic civil liberties and rights
 - Example the right to silence
 - A person is not legally required to speak to, give, or provide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



Common myths and misconceptions of practice

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





Presumption of Innocence

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



Why is presumption of innocence important?

- It allows the accused person their right to contest the allegations made against them.
- It protects their interests against self-incrimination
- Irrespective of the evidence and severity of a charge, a defendant has the right



Protection of Rights?

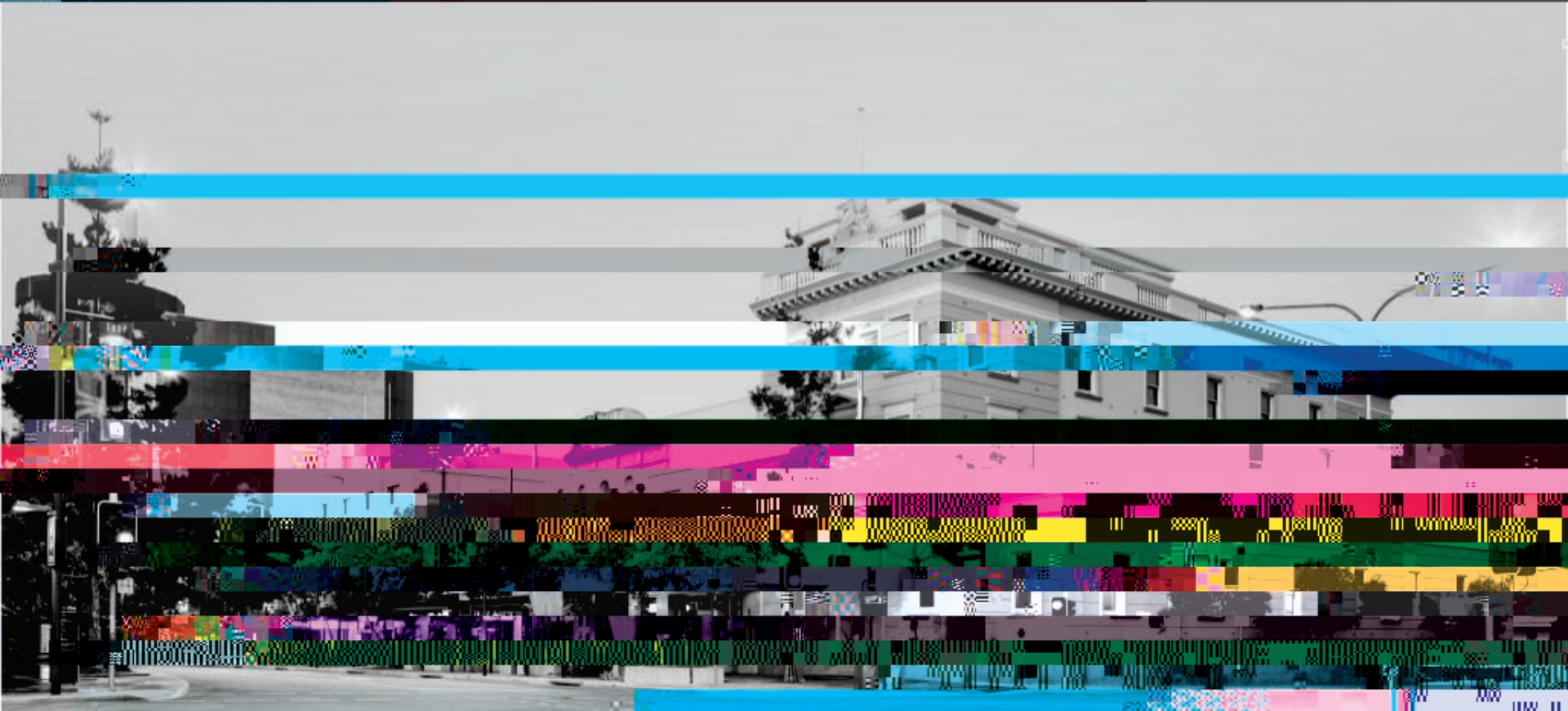
- Criminal Defence law provides a shield to safeguard rights and freedoms
- Right to a fair trial, Right to preserve against self-incrimination, Right to disclosure and due process
 - Important because they protect against miscarriages of justice and wrongful convictions



Example of procedural fairness

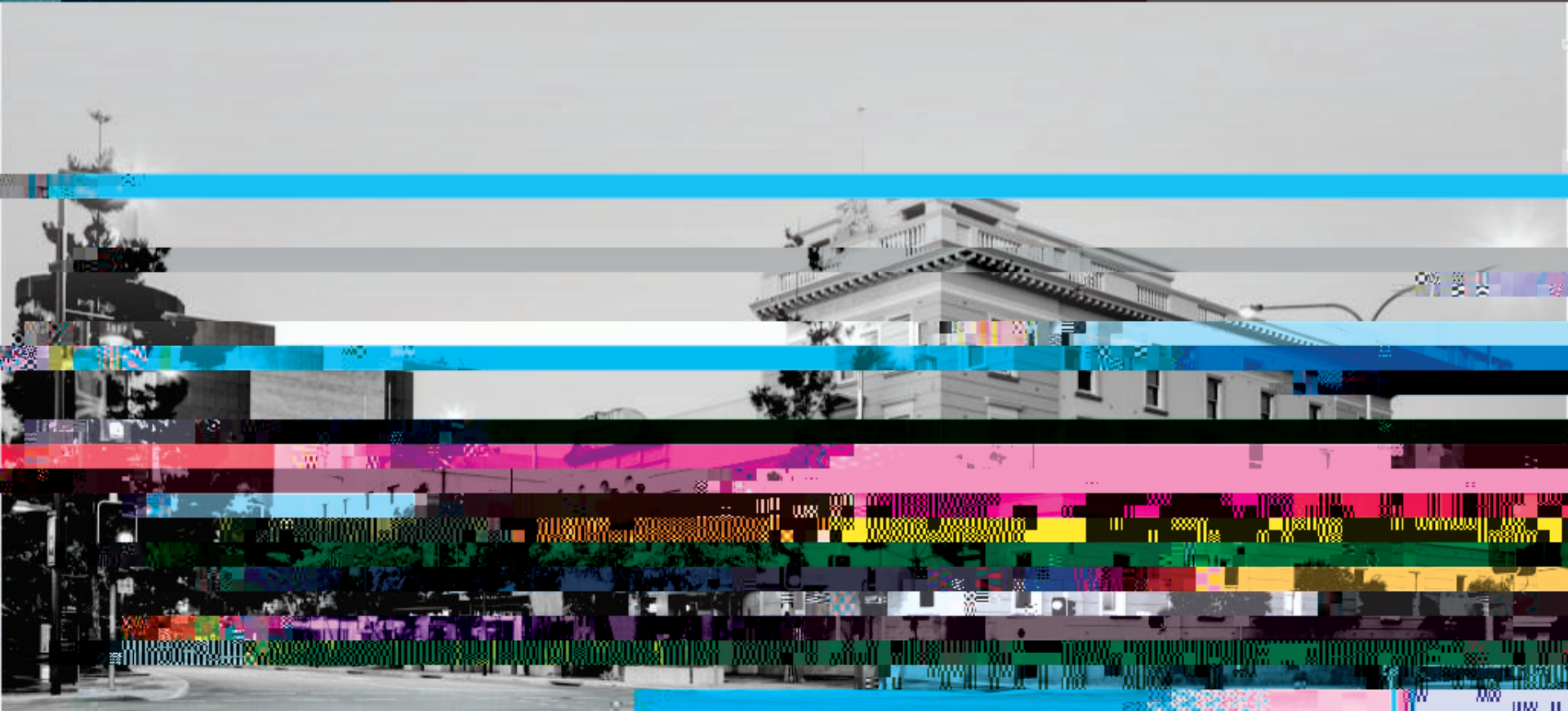
R v Paull [2021] QSCPR 22 – due process for Police Search

- Case dealt with a police search of a young man in Cairns who was walking in the CBD at 1:50am
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Example of procedural fairness

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



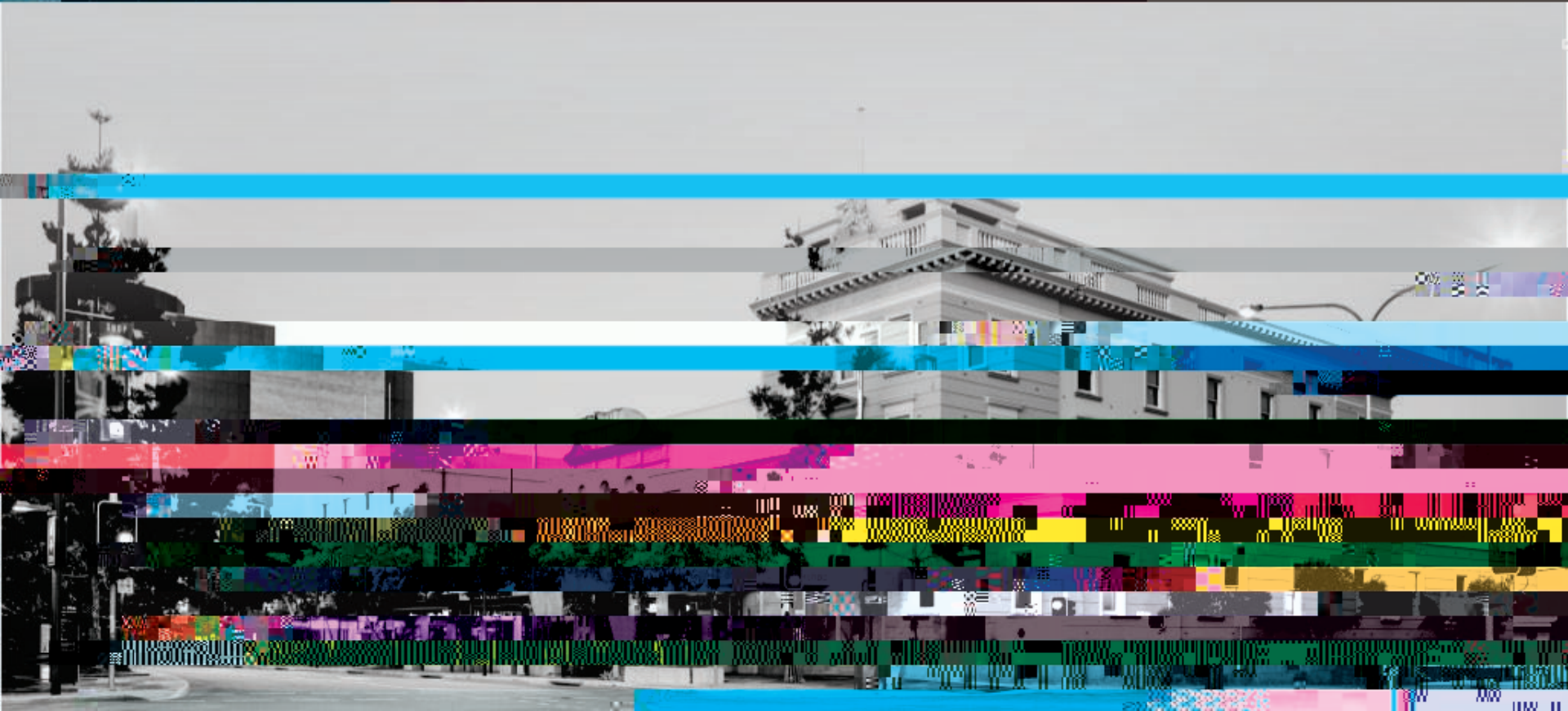
Principles of Fairness before the Law

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



Example of procedural fairness – *Penalties and Sentences Act*

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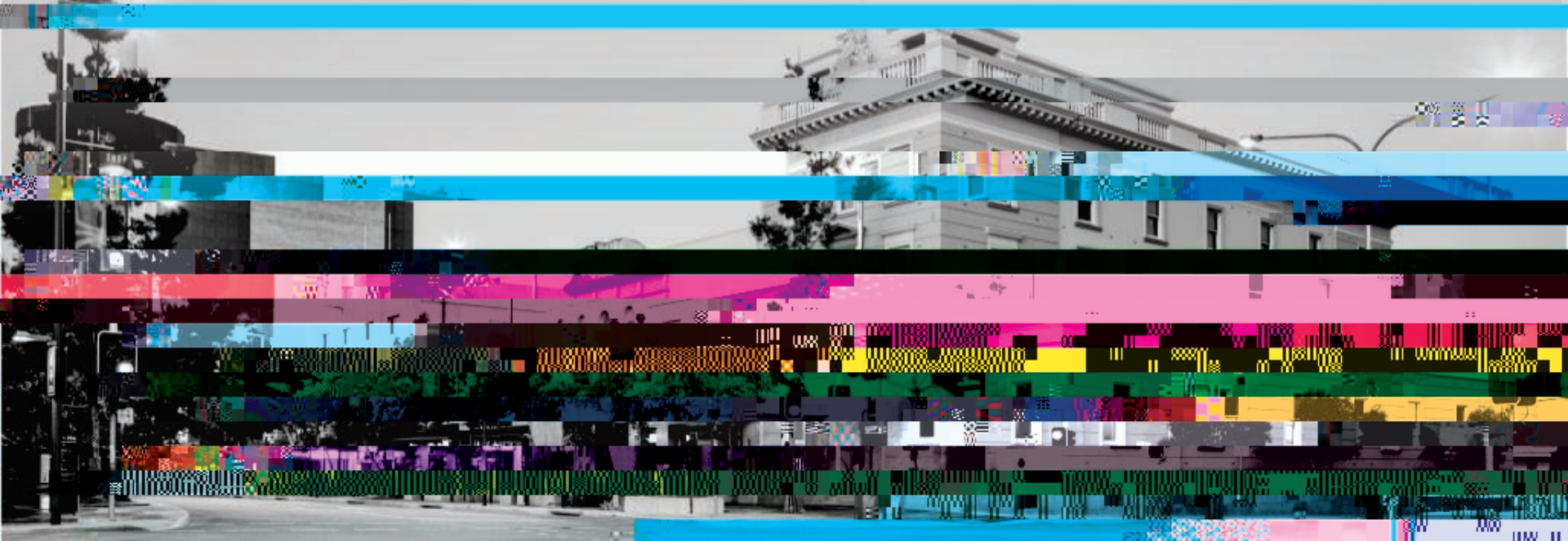
Example of procedural fairness – *Penalties and Sentences Act* continued

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



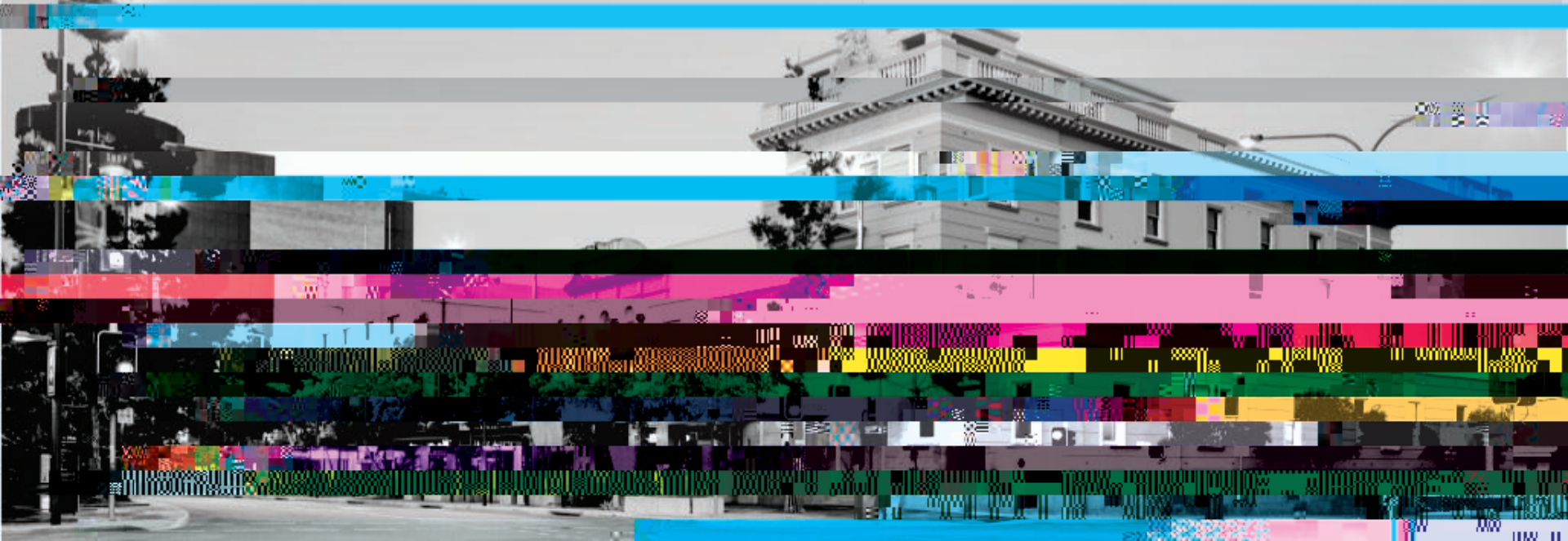
Example of procedural fairness – *Penalties and Sentences Act* continued

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



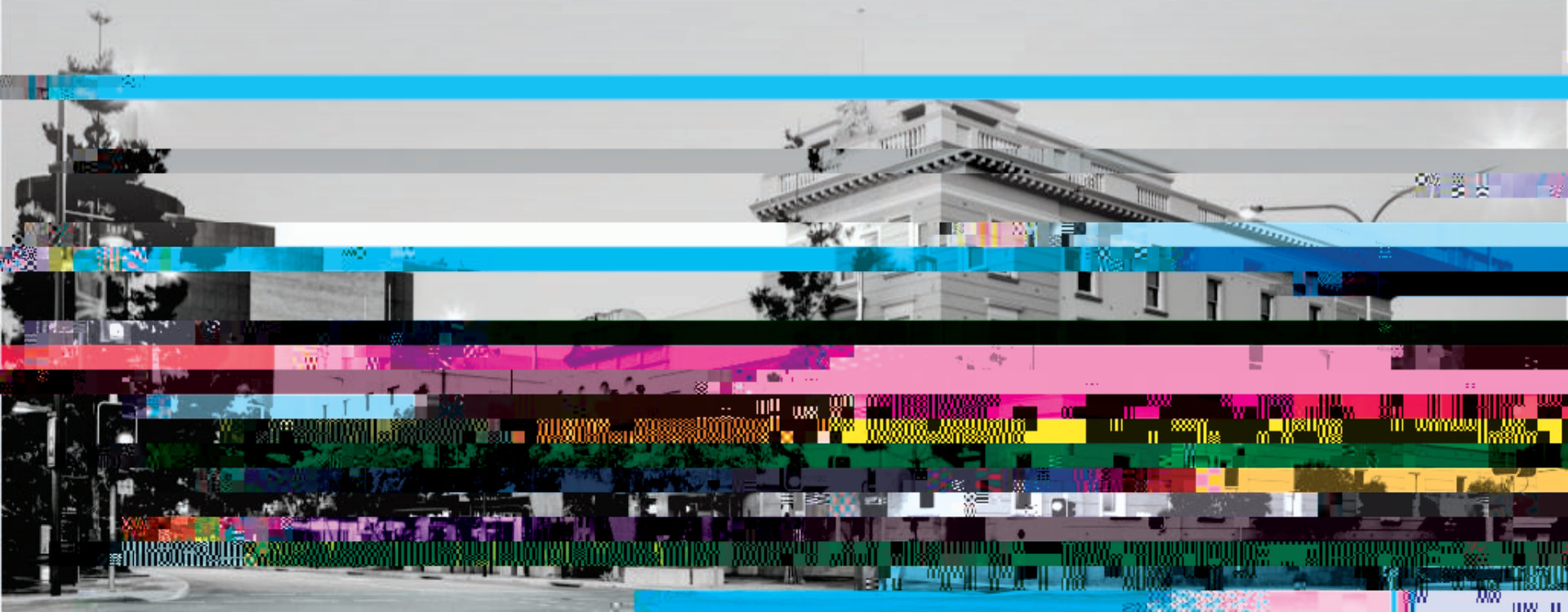
Example of procedural fairness – *Penalties and Sentences Act* continued

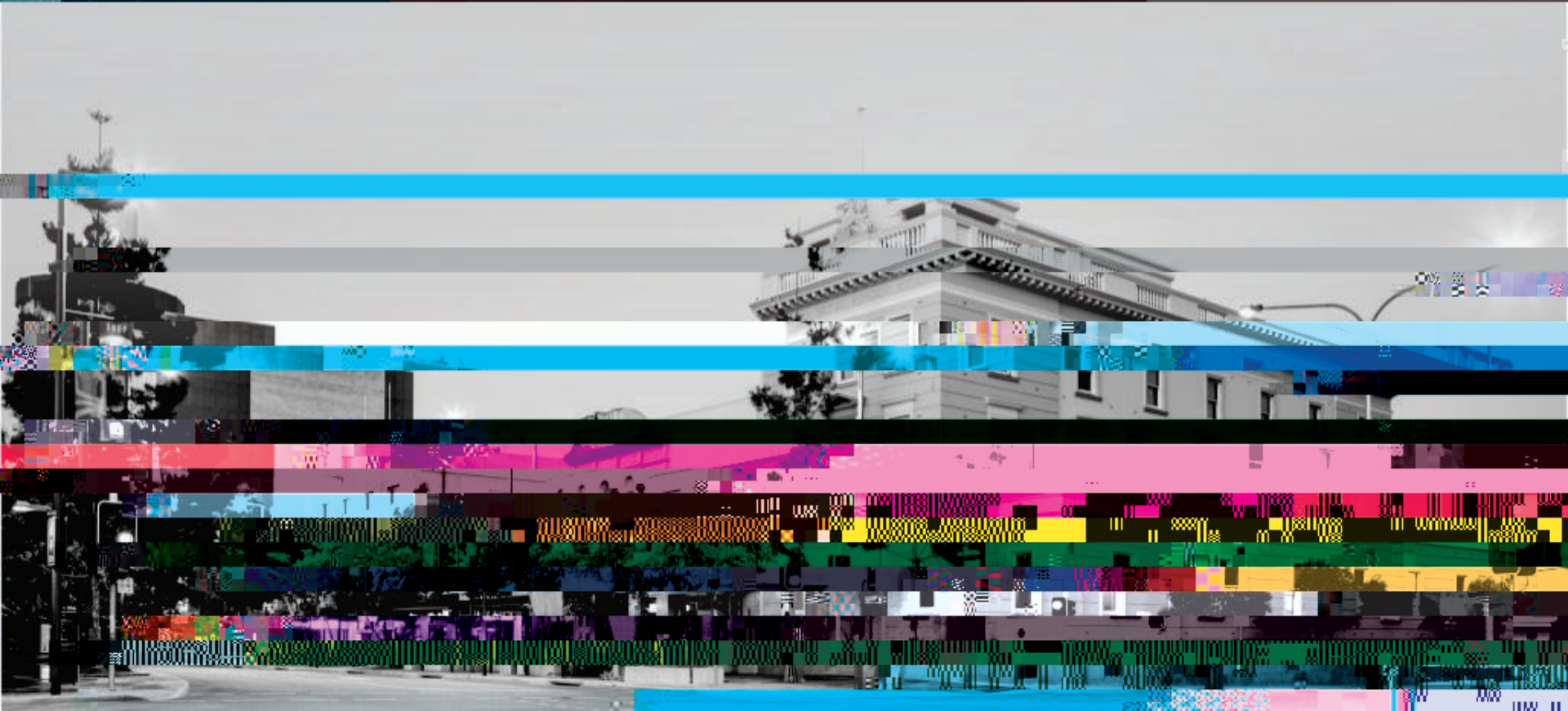
- Joe's case is one which is covered in case law
- R v Verdins & Ors [2007] VSCA 102, sets out the principles of mental impairment which are relevant to sentencing.
- Mental impairment could:-
 - Reduce moral culpability of an offender – affecting the weight attached to sentence
 - Influence type of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



Summary

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





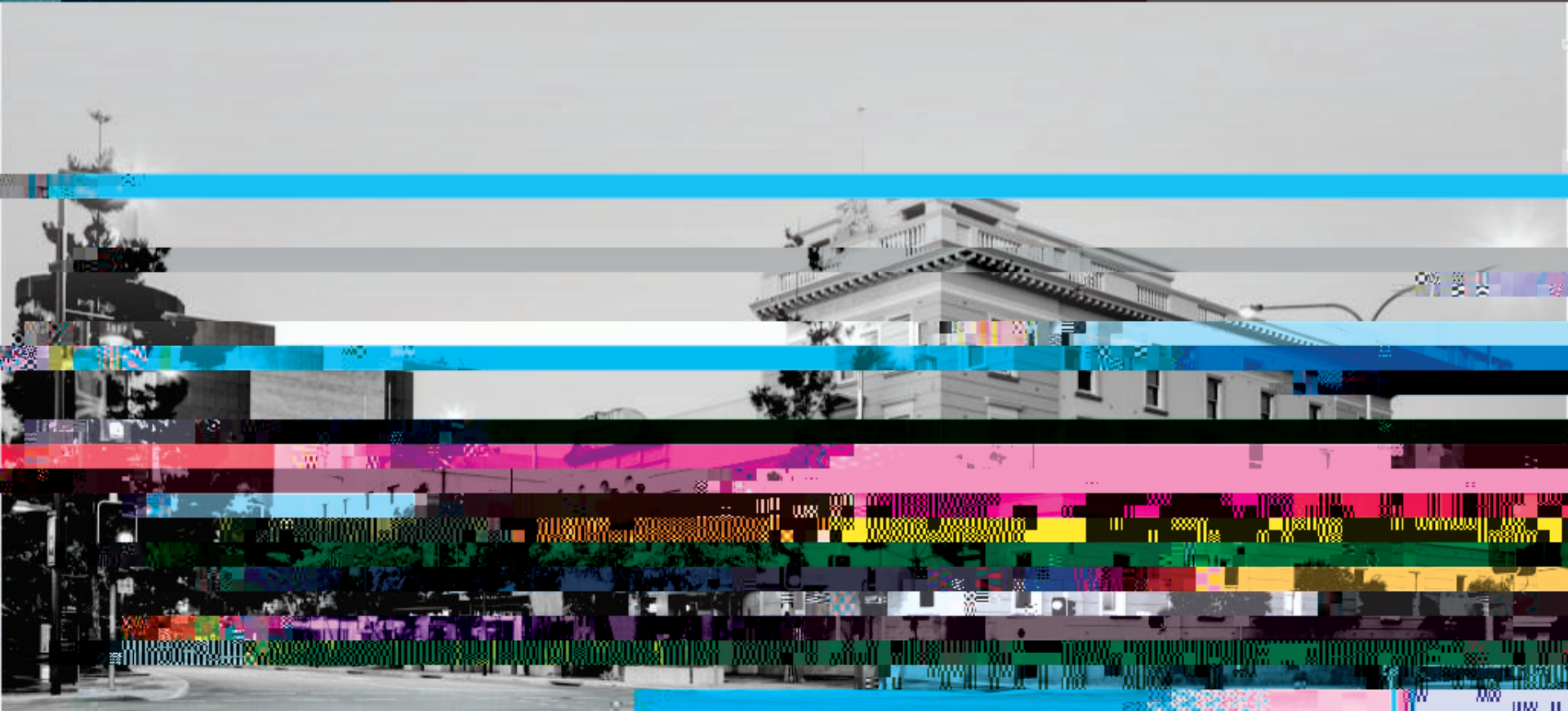
Domestic Violence

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



Prevalence of Domestic Violence - Statistics

- According to Queensland Government's Department of Child Safety, Youth, and Women DV incidents



Objectives of the Domestic Violence Family Protection Act

- Governed under section 4 of the DVFPA

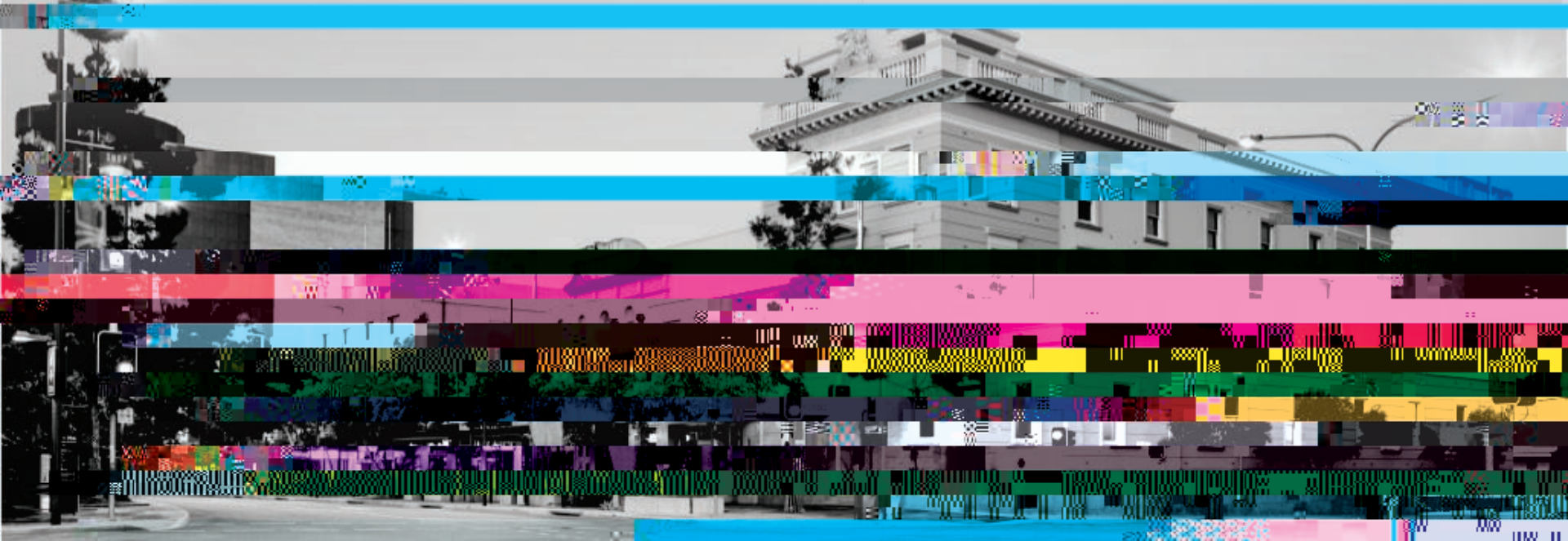
Principles from anti-bullying Act

4 Principles from anti-bullying Act

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

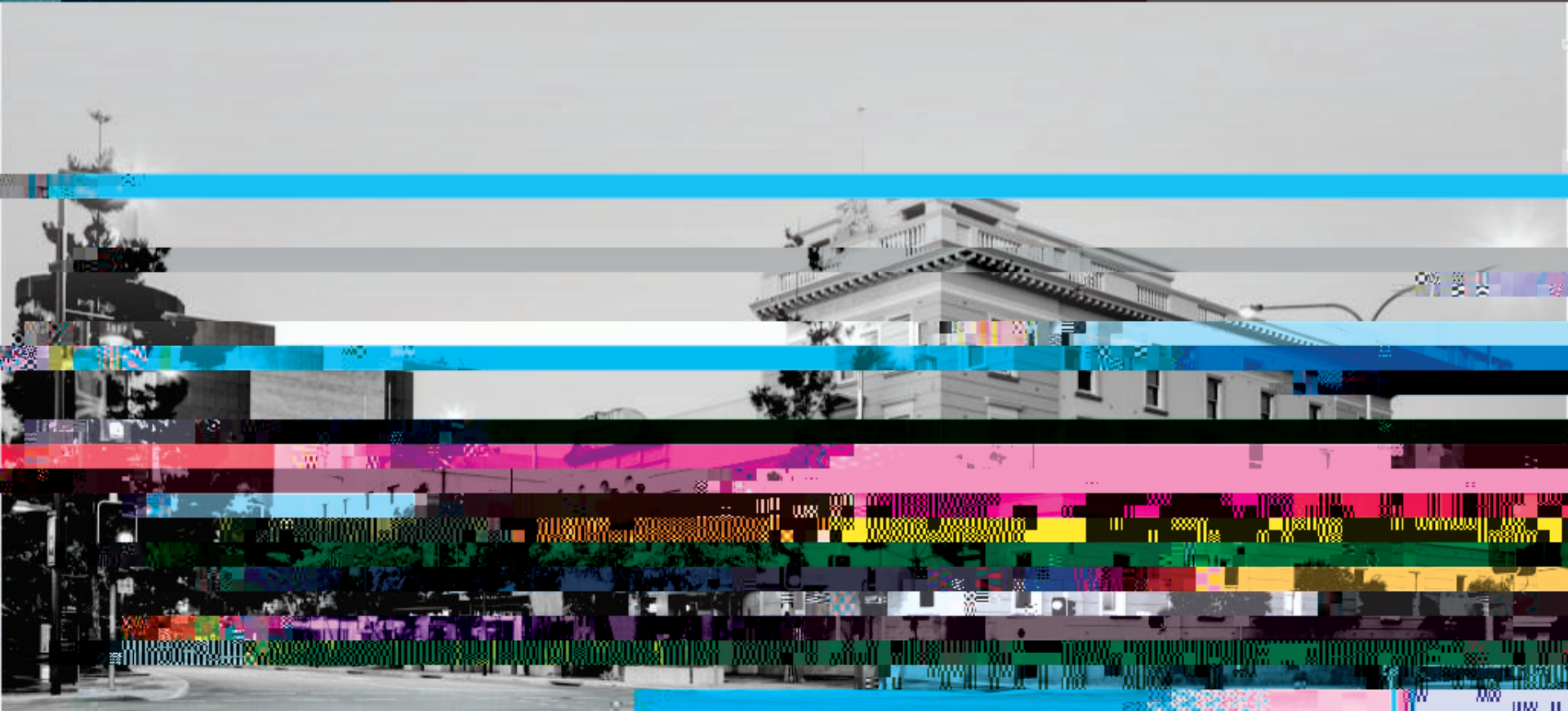
Section 37 of the DFVPA states that a Court may make a protection order if satisfied that:-

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



Considerations of making a Domestic Violence Order

- Finely balanced exercise for a Court to make a protection order.
- Making of an order is important, because it substantially affects a person's:-
 - liberty,
 - Employment and;



Coercive Control

- It is a new 'sub-area' of DV law which has emerged.
- Coercive Control is behaviour by one person over another person in a relationship, where the behaviour is manipulating, coercive, controlling or restricting the liber
- Want further info? Read some of my articles on our website:-

- **New criminal offence of Coercive Control**

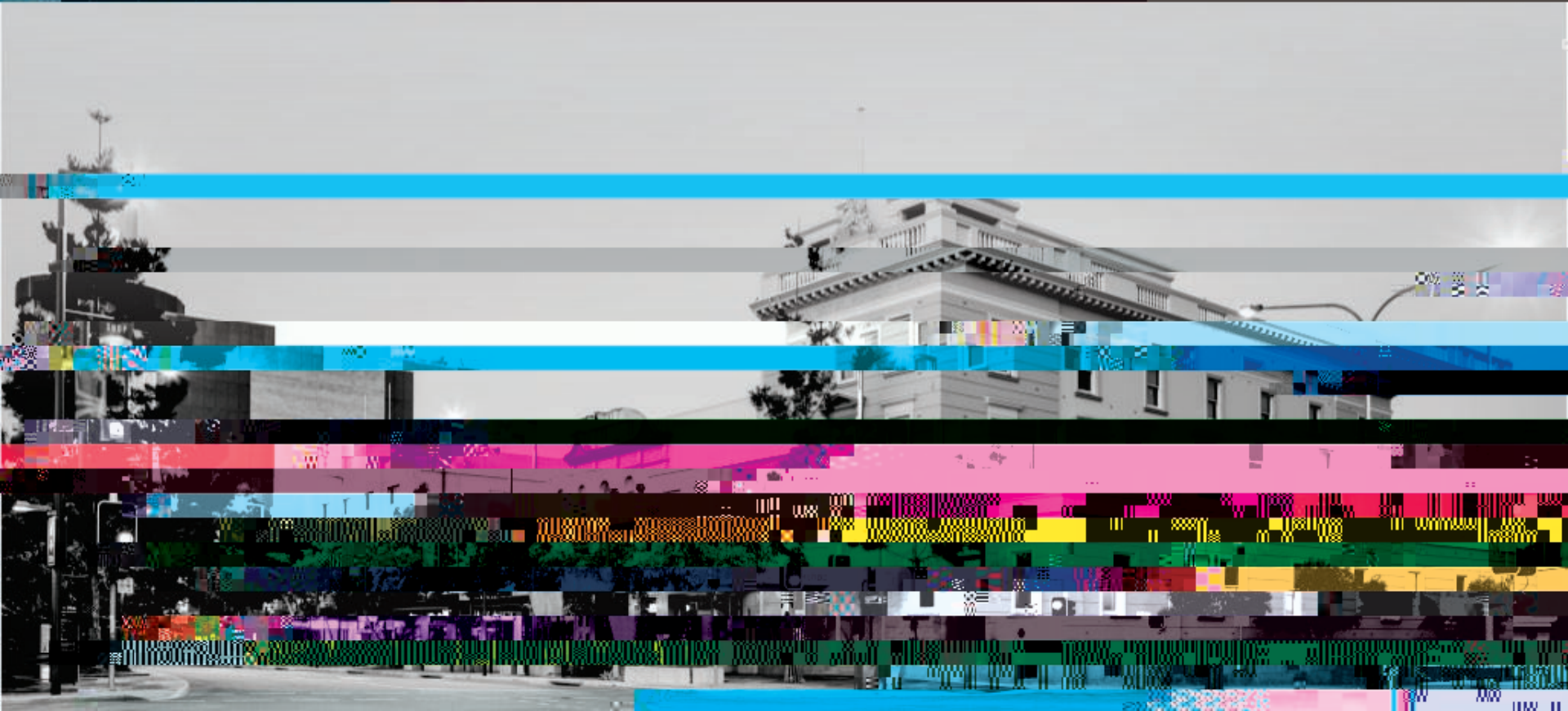
- <https://www.connollysuthers.com.au/coercive-control-new-criminal-offence/>

- **New Amendments Coercive Control**

- <https://www.connollysuthers.com.au/law-update-coercive-control-amendments/>

Example behaviour – is it Coercive Control?

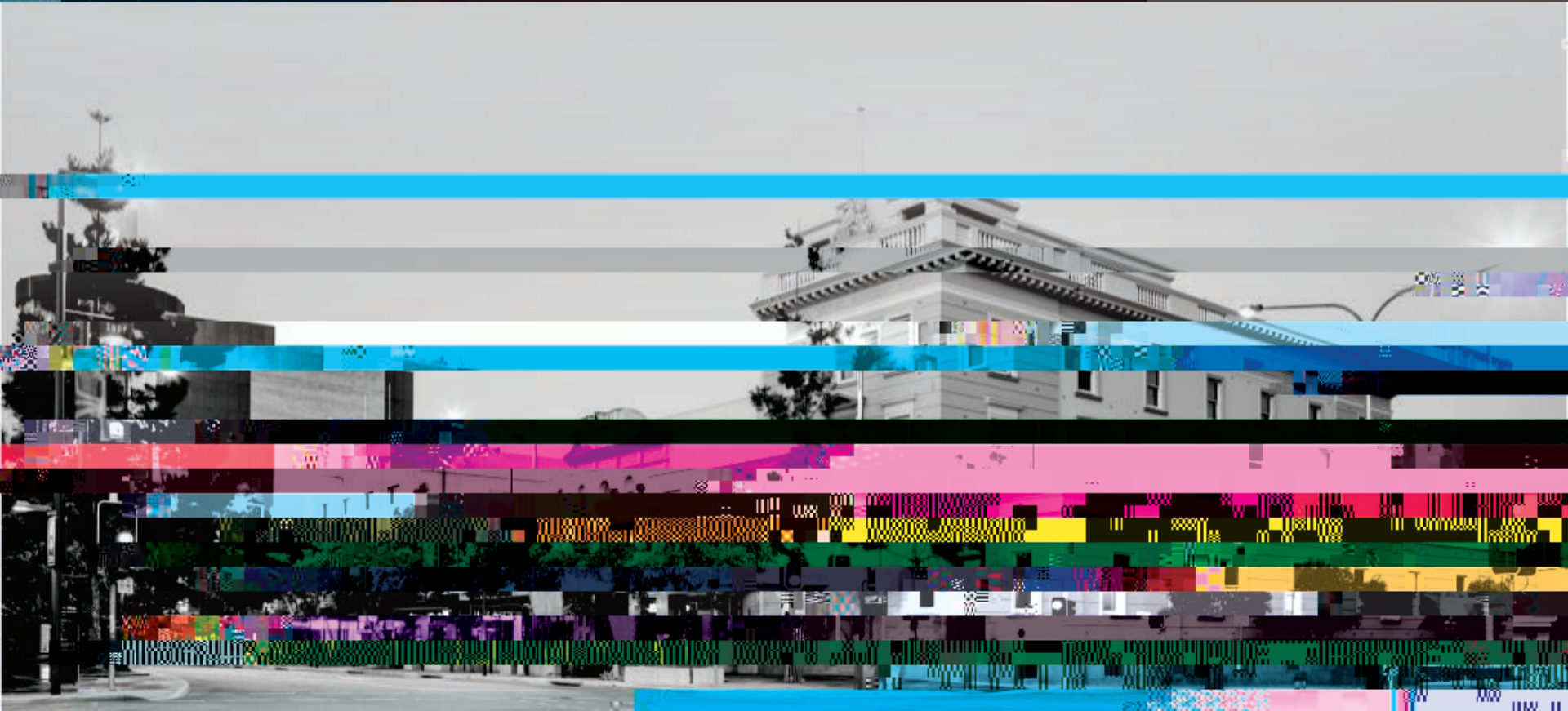
- Cultural considerations
- Ethnic backgrounds
- Conservative views
- Other relevant considerations



Necessary and Desirability

ZTP v BBY [2023] QDC

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Necessary and Desirability

ZTP v BBY [2023] QDC continued

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



