

## **Domestic Violence Court Assistance Network (DVCAN)**

*DVCAN is a network for specialist domestic violence services providing court support services to Domestic & Family Violence Courts in Queensland. DVCAN meets monthly online and workers providing support to women in DFV court are able to explore trends, share information about court protocols and procedures in different areas and provide state-wide advocacy about the needs of women in DFV courts.*

*The six-week response period for this discussion paper did not allow time to convene a DVCAN meeting and then ensure each individual service was able to sign off on the resulting submission. However, the perspective of specialist DFV workers within courts, witnessing daily the way that legal responses work or fail to work for victim/survivors, seemed a unique and important viewpoint. We decided, therefore, to record some key points of our discussion in relation to the information and proposals in the discussion paper and provide this, in place of a submission.*

*This is simply a record of the conversation held at the DVCAN meeting of 23/6/21 and does not reflect the views of each member service and worker.*

### **Concerns about a stand-alone domestic violence offence**

- Police unwillingness to investigate (much less prosecute) breaches under current legislation, indicates to court workers that making DFV a criminal offence means police are less likely to take action. Individual DVCAN members agreed there can be a 'disconnect' between what police see as meeting the rules of evidence in criminal court and what Magistrates will see as meeting the rules of evidence. DVCAN members discussed experiences in which individual officers responding to victim/survivors reporting breaches dismissed these as "unprovable" although the court worker had seen similar incidents successfully prosecuted in court. For example:
  - o A woman who had a DVPO stating that the respondent was not to use social media to abuse her was told that this could not be investigated as a breach because she would have to prove that the post coming from his account was actually made by him, and that his account had not been hacked. The Respondent had not claimed his account had been hacked.
  - o A woman reporting a threatening text which said "Only a few days left for you. Tick tock" was told that the message could not be construed as a threat and the Officer was not prepared to talk to her while she was being 'so emotional'.
- If these examples could not be investigated as breaches to an existing civil order with appropriate conditions, it is difficult to see how police would pursue a criminal prosecution in the first instance. We believe that criminalising domestic violence *may* result in the unintended consequence of women receiving less protection and being more likely to be turned away from help. DVCAN members were particularly concerned that the rules of evidence required for criminal prosecution will mean that many more women will be turned away, and that this may further entrap women in coercive control.

### **Concerns about coercive control being specifically defined in legislation**

- DVCAN members saw a high potential for misidentification of the person most in need of protection where police attend an incident involving coercive control, leading to system abuse for victim/survivors. An example was provided in which a police officer told a woman who had told her partner not to put his dirty work clothes in with cleaner clothes but to

wash them separately, that she was using coercive control and that her partner had reacted to this in the subsequent violent incident to which police had been called. DVCAN members also note a growing trend for police to issue a Police Protection Notice and application against both persons, although this is specifically addressed as undesirable in current legislation. This would appear to indicate a problem identifying the person most in need of protection within current police systems and utilising current legislation. Introducing legislation requiring far more extensive assessment to make a determination of the person most in need of protection will exacerbate this problem unless accompanied by wide-reaching structural and systemic reform.

- DVCAN members thought there was some potential for coercive control to be identified as 'gendered' behaviour more aligned with cultural constructs of femininity – e.g. manipulation or 'being emotional'. We were concerned that actions such as withholding children because of safety concerns might well be interpreted as coercive control.
- DVCAN members discussed the need for extensive training of police to recognise coercion and control as domestic & family violence and to take a 'pattern-based' approach to identifying the person most in need of protection. Some members identified that the barriers to correct identification of the person most in need of protection were not necessarily well addressed with training. DVCAN members identified other barriers such as:
  - o Lack of time and resources available to officers attending a DFV incident to carry out risk assessment such as the Protective Assessment Framework or to investigate DFV in previous relationships etc.
  - o Cultural understanding of gendered patterns of violence. Some DVCAN members considered that police may feel they are 'balancing out' what they see as incorrect or unfair assumptions about gendered patterns of violence by listening to both sides of the story. As the person with the most power is likely to be able to give the most coherent account of what has happened, this may lead to misidentification of the person most at risk.

DVCAN members thought it was important that any changes to legislation be accompanied by changes to the way that police and others respond to incidents of domestic abuse and identify the person most in need of protection. These could include strategies such as :

- o Co-response models in which specialist DFV workers attend incidents with police and/or carried out risk assessments very soon after incidents.
  - o Structural changes to police systems that enable police officers to access information and expertise about 'perpetrator patterns' from previous incidents.
- Reference was made to NSW court systems in which there is greater opportunities for DFV specialist workers in court to speak directly to prosecutors about risk and potential misidentification of the person most at risk. This can include eliminating one application where police have made a PPN against both parties. In QLD, prosecutors do not have the power to withdraw an inappropriate police order but must take this back to the applicant officer. DVCAN members would suggest that changes to the discretionary powers of the police prosecutor may be important if legislation changes occur.

- DVCAN members also note that consulting with DFV Court Support workers to ensure that risk was appropriately addressed happened more regularly in the early days of the Qld Specialist DFV courts. We would suggest that a re-examination of the Domestic & Family Violence Court Protocols be carried out in line with any changes in legislation to support the communication of risk within the court process.

There are a range of other safety and justice issues within current legislation and legal responses, that would potentially be exacerbated in legislative changes:

- **Police procedures and capacity**
  - o DVCAN members are seeing a trend for police to apply for orders with the standard, good behaviour condition only, so that if the victim/survivor wishes to add conditions she must make a self application to vary. Placing the burden and risk of applying for protection back on the victim is often unsafe. DVCAN members are concerned that police may be more likely to request standard condition only where the DFV reported is coercive control rather than physical abuse.
  - o DVCAN members did see value in tracking respondents who have had multiple abusive relationships and being able to disclose this information to victims. This is particularly important in pattern mapping and risk assessment.
- **Court Procedures**
  - o DVCAN members expressed frustration at huge differences in Magistrate's interpretation of the legislation and of admissible evidence – some members noted that the legal advice of duty lawyers is tailored to which Magistrate will be appearing on the day. We are concerned that the subtlety and pattern-based nature of coercive control means that the effect of Magistrate's interpretation was likely to be exacerbated.
  - o Victim/Survivors (who may be either aggrieved or respondent in the court matter) do not currently receive court support in criminal proceedings and in hearings. Victim/survivors with self applications often give up at the point of hearing as no support is available whatsoever and Magistrate may not be helpful. Some Magistrates require a letter from a medical practitioner before they will allow the aggrieved to request that she not be cross-examined by the respondent. DVCAM members felt that criminalising 'domestic violence' requires court support to be available in criminal court and in civil hearings.