



To: The Honorable Margaret McMurdo AC  
Chair- Women's Safety and Justice Taskforce,

Via email: taskforce@womenstaskforce.qld.gov.au

4 July 2021

Dear Chair,

Thank you for your invitation to make a submission to the Women's Safety and Justice Taskforce Discussion Paper titled: 'Options for legislating against coercive control and the creation of a standalone domestic violence offence.'

I have addressed only some of the individual questions. I have several overarching concerns which I set out below I then comment on some of the questions raised in the Discussion Paper.

***Particular risks to women of expanded reach of criminal law system.***

There is increasing evidence that one of the unintended consequences of expanding the reach of criminal law is that more women, especially women from non-anglo backgrounds, are being caught up in the criminal law system.

Many commentators have been concerned about the potential misapplication of domestic violence laws generally, and a coercive control offence specifically, to people who are the primary victim/survivors of domestic and family violence (DFV) rather than the primary perpetrators of it.<sup>1</sup> Researchers have identified this problem in the context of breaches of protection orders, which may currently be the most similar offence to a potential coercive control offence.<sup>2</sup> In Queensland specifically, Nancarrow and colleague's work has highlighted this issue.<sup>3</sup> A study by the NSW Women's Legal service in 2014 reported an increase in women being identified as perpetrators of domestic and family violence in protection order cases.<sup>4</sup> My own work with Dr Robin Fitzgerald suggests that Aboriginal and Torres Strait Islander women are particularly at risk of criminalisation via the protection order system.<sup>5</sup>

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<sup>1</sup> Hayley Boxall, Christopher Dowling and Anthony Morgan, *Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence*. Trends and Issues No. 584, January 2020, Australian Institute of Criminology; Leigh Goodmark, *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence*. (2018, Oakland, California: University of California Press); Tolmie *ibid*.

<sup>2</sup> Ellen Reeves, Family violence, protection orders and systems abuse: views of legal practitioners. (2019) 32 *Current Issues in Criminal Justice* 91-110; Alicia Jillard and Julia Mansour, Women victims of violence defending intervention orders. (2014) 39(4) *Alternative Law Journal* 235-240

<sup>3</sup> Heather Nancarrow, et al., (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law (Research report, 23/2020). Sydney: ANROWS.

<sup>4</sup> Julia Mansour, Women defendants to AVOs: What is their experience of the justice system? 18 March 2014 <https://www.wlsnsw.org.au/law-reform/women-defendants-to-avos/>

<sup>5</sup> Heather Douglas and Robin Fitzgerald 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41-57. doi: 10.5204/ijcsd.v7i3.499 .

Corrections Victoria reports that over the past 10 years the number of women in prison has increased by 29 per cent, with the most significant growth being women held on remand, up by 15 per cent since 2020.<sup>6</sup> In Victoria research has identified that women are being jailed for different kinds of offending. In 2018, women were more likely to be remanded for breaches of justice procedure (these include breaches of protection orders) or minor drug offending than for violence or property offences.<sup>7</sup> Notably, Women's Legal Service Victoria has found that at least 10 per cent of protection order respondents were misidentified by police, and were in fact the victims not the perpetrators of DFV. At the same time, Corrections Victoria estimates 65 percent of women in prison report having experienced domestic violence.<sup>8</sup>

### ***Risk to young people of expanded reach of the criminal law system***

Expanding the criminal law response to domestic violence is likely to have significant impacts on young people (under 18 years), especially Aboriginal and Torres Strait Islander Young people. In my most recent study (not yet released) with Professor Tamara Walsh, we undertook a quantitative analysis of unpublished administrative data collected by the Queensland Department of Youth Justice. We were provided with information on every young person who was charged with a family violence flagged offence between 2013/14 and 2018/19.

We found that:

- Over 60% (n=161) of the 270 young people charged with family violence offences were Aboriginal and/or Torres Strait Islander;
- 18% (n=49) of the 270 young people charged with family violence offences were female;
- 9% (n=24) of the 270 young people charged with family violence offences were Indigenous females;
- Aboriginal and/or Torres Strait Islander young people were significantly more likely to be charged with more serious offences and receive a harsher penalty.

### ***Overall concern about expanded reach of the criminal law system***

Decreasing access to bail, increasing sentences (especially of imprisonment), expanding police powers and introducing new offences, are all ways of expanding the criminal law response.<sup>9</sup> Any expansion of the criminal law is likely to disproportionately effect marginalized groups (eg.

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<sup>6</sup> Corrections Victoria, *Profile of women in prison*, (2020) [https://www.corrections.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2020/12/16/e3731852e/Infographic\\_Profile\\_of\\_women\\_in\\_prison.pdf](https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2020/12/16/e3731852e/Infographic_Profile_of_women_in_prison.pdf)

<sup>7</sup> Isabelle Skaburskis, Opinion: The Cruel Politics of Bail. (2021) Law Institute Journal (June) <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/June-2021/Opinion--The-cruel-politics-of-bail>

<sup>8</sup> Corrections Victoria, *Women in the Victorian Prison System*. (2019) [https://www.corrections.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2020/04/d7/949fcbde8/women\\_in\\_prison2019.pdf](https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2020/04/d7/949fcbde8/women_in_prison2019.pdf)

<sup>9</sup> Luke McNamara et al (2019) 'Understanding processes of criminalisation: Insights from an Australian study of criminal law-making', *Criminology and Criminal Justice*, pp. 1 - 21, <http://dx.doi.org/10.1177/1748895819868519>

Aboriginal and Torres Strait Islander people<sup>10</sup>, culturally and linguistically diverse people<sup>11</sup> and people who use illicit drugs, people who are homeless or highly visible and others.)

Decreased access to bail, increased prison sentences and widening the net of available offences has significant implications for people's employment for the long term and thus their ability to contribute to the family's support and it has implications for the offender (and in some cases the victim's) immigration status if visas are insecure. The effects of bail refusal (which also increases the likelihood of imprisonment)<sup>12</sup> and penalisation (including fines,<sup>13</sup> community supervision<sup>14</sup> and incarceration) on employment are also greater for those who are already marginalised.<sup>15</sup>

While on remand or on bail there is generally no access to behaviour change programs and if incarcerated, especially for a short period, the offender is similarly unlikely to get access to rehabilitative programs. The effect of incarceration can thus be dangerous and toxic and increase recidivism and make the community less safe.<sup>16</sup>

### ***Lack of resources to respond usefully to perpetrators to improve safety***

My colleague Dr Robin Fitzgerald and I have recently interviewed many lawyers and support workers, including men's behaviour change workers across Queensland. We have been advised there is dearth of evidence-based programs available to perpetrators of DFV. Most prisoners are not currently getting access to programs they need that will support them to change and ensure their reintegration is safe. Programs such as men's behaviour change programs, alcohol and drug programs, proper responses to mental health etc are simply not available to most prisoners who seek them. Other programs like literacy, including financial literacy and training for work that may assist in reintegration are not sufficiently resourced.

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<sup>10</sup> Heather Douglas and Robin Fitzgerald 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41-57. doi: 10.5204/ijcjsd.v7i3.499 Note also non-fatal strangulation statistics in Queensland where 21% of people charged with non-fatal strangulation are Aboriginal and Torres Strait Islander people, see Queensland Sentencing Advisory Council, *Sentencing Spotlight Choking, Suffocation Or Strangulation In A Domestic Setting*. Available at: [https://www.sentencingcouncil.qld.gov.au/\\_data/assets/pdf\\_file/0004/614749/sentencing-spotlight-on-choking-suffocating-or-strangulation-in-a-domestic-setting.pdf](https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0004/614749/sentencing-spotlight-on-choking-suffocating-or-strangulation-in-a-domestic-setting.pdf) (viewed 25 January 2021).

<sup>11</sup> Emma Brancatisano and Lin Elvin, 'Push to criminalise coercive control in relationships sparks concern for migrant and refugee women.' SBS News, January 2021, <https://www.sbs.com.au/news/push-to-criminalise-coercive-control-in-relationships-sparks-concern-for-migrant-and-refugee-women?cid=news:socialshare:twitter>

<sup>12</sup> Sara Rahman, (2020) 'The marginal effect of bail decisions on imprisonment, failure to appear, and crime.' BOCSAR, p15.

<sup>13</sup> Julia Quliter and Russel Hogg, 'The hidden punitiveness of fines' (2018) 7 (3) *International Journal For Crime, Justice and Social Democracy* 10-40.

<sup>14</sup> Robin Fitzgerald et al, 'Sentencing, Domestic Violence, and the Overrepresentation of Indigenous Australians: Does Court Location Matter?' (2019) *Journal of Interpersonal Violence*, online first: doi: 0.1177/0886260519885916

<sup>15</sup> Christy Visher, Sara Debus-Sherrill and Jennifer Yahner, 'Employment After Prison: A Longitudinal Study of Former Prisoners' (2011) 28 *Justice Quarterly* 696-718, <https://www.tandfonline.com/doi/full/10.1080/07418825.2010.535553>

<sup>16</sup> Queensland Productivity Commission, (2019) *Summary Report: Inquiry into Imprisonment and Recidivism*, QPC, esp. p11; Paul Gendreau and Claire Goggin, (1993) 'The Effects of Prison Sentences on Recidivism' Public Works and Government Services Canada

There are similar issues faced by young people in accessing appropriate programs where they have perpetrated violence against parents or partners.<sup>17</sup>

Even those who have not yet been found guilty but seek to privately access programs while on bail struggle to connect with suitable programs at the current time.

Any suggestion that programs should be mandated or provided / offered to alleged perpetrators on bail or while on remand would require an extraordinary step change in resourcing. There would also be a question about whether people who have not yet been found guilty of an offence should be mandated to attend a program to address behaviour that they may not admit or ultimately not be found to have committed. The mandated program could be connected to the finding of future risk where DFV is found in an assessment for the granting of a protection order or where a plea of guilty has been advised.

I would support greater resourcing of programming as the suggested programs do work for some,<sup>18</sup> but this would not be a new call.

### **Types of coercive controlling behaviours or risk factors used by perpetrators in domestic relationships that might help identify coercive control.**

There is already significant work on risk. Behaviours like non-fatal strangulation and stalking are both aspects of coercive control in many cases. Obsessiveness and jealousy has also been identified as high risk and is also an aspect of coercive control in many cases.<sup>19</sup>

It is difficult however to determine what other types of coercive and controlling behaviour contributes to risk. Almost all behaviour might be coercive and controlling. It will depend on the particular context. The behaviours that are experienced by a victim/survivor as coercive and controlling are also likely to change over time. In some contexts, giving flowers might be experienced as controlling and the situation may be dangerous,<sup>20</sup> although giving flowers is of course not always coercively controlling. Numerous text messages with words such as 'I love you' may be experienced in a particular case as part of a pattern of coercive control, although such messages are not always coercive and controlling. The need for coercive control to remain open ended and understood within each individualised experience of coercive control makes risk difficult to assess in some situations.

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<sup>17</sup> David Burck, 'Adolescent to parent violence and the promise of attachment based interventions.' In Kate Fitz-Gibbon et al, *Young people Using Family Violence: International Perspectives on Research, Responses and Reforms*. Springer, 2021.

<sup>18</sup> Donna Chung, et al., *Improved accountability: The role of perpetrator intervention systems* (2020). Sydney: ANROWS.

<sup>19</sup> Campbell, Jacquelyn, et al, 'Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study' (2003) 93(7) *American Journal of Public Health* 1089; Campbell, Jacquelyn, et al, 'Assessing Risk Factors for Intimate Partner Homicide' (2003) 250 *National Institute of Justice Journal* 14.

<sup>20</sup> Ruth Busch, 'Don't throw bouquets at me..(judges) will say we're in love: an analysis of New Zealand judges' attitudes towards domestic violence.' In Julie Stubbs, ed. *Women, Male Violence and the Law*. AIC (1994)

**Aspects of women's attempts to survive and resist abuse should be taken into account when examining coercive control.**

The National Domestic and Family Violence Bench Book [\[4.4.15\]](#) outlines a number of factors that should be considered in relation to what women attempting to survive and resist abuse may do. I have extracted them here. They may:

- offend because their abusive partner has demanded that they do so;
- offend in response to a dangerous situation (for example sudden and unexpected homelessness) that has arisen as a result of their partner's violence;
- use physical violence to resist their partner's violence and/or defend themselves and/or their children;
- assist or encourage their violent partner to offend because it may be unsafe for them to do otherwise;
- claim Work and Income support that they are not entitled to in order to pay for rent and food when their abusive partner refuses to financially support them and their children and/or undermines their own capacity to provide that support;
- commit neonaticide, kill or harm their children whilst in a state of extreme trauma or dissociation as a result of their experience as a victim of domestic and family violence;
- know that their partner is also abusing their children but be unable to stop them from doing so;
- be impeded in their ability to parent because they are suffering from trauma or other mental health issues as a result of their partner's violence;
- offend in order to spend time in prison as a break from the violence;
- behave in a manner perceived as obstructive by family courts and/or breach family court orders in an attempt to keep their children safe from a violent former partner;
- breach sentence conditions for offending (for example, shoplifting) because of their circumstances and experience as a victim of domestic and family violence, sometimes with the consequence that these are escalated to higher-tariff sentences;
- be spuriously reported for child abuse or domestic abuse because of systems abuse.<sup>21</sup>

In understanding a primary victim's presentation, behaviour and constraints, it may be appropriate for the decision-maker to consider:

- the abuser's pattern of coercive and controlling behaviour, the true nature of which may appear benign to others;
- the safety options available to the primary victim; and
- the broader structural inequalities that limit available options for the primary victim.

This combination of factors is sometimes referred to as 'social entrapment'.<sup>22</sup>

The impact of trauma on victims of abuse may also influence presentation and behaviour of a primary victim. Some primary victims may not be able to safety separate from an abusive partner given the level of risk and/or resources available to them.

**Improving community understanding of coercive control.**

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<sup>21</sup> Heather Douglas et al (2021) *Social entrapment evidence: understanding its role in self-defence cases involving intimate partner violence*. *UNSW Law Journal* Vol 44 (1).

<sup>22</sup> Stella Tarrant, et al., *Transforming legal understandings of intimate partner violence: Final report* (ANROWS, 2019).

I think media and popular culture have an important role to play in educating the community about coercive control. Jess Hill's non-fiction book, *Look what you made me do*, has been very important in expanding public understanding of the concept. Ourwatch work is also important in improving understanding. In Australia, public education campaigns that extend to schools and the wider community have been shown to be helpful. There may also be a role for government to roll out a public education campaign on coercive control, perhaps similar to past Queensland programs. For example, an evaluation of the 'one punch can kill' education campaign found the campaign *itself* was extremely effective in improving people's understanding of this issue.<sup>23</sup>

### **The advantages and/or risks of using the civil protection order system under the DFVP Act instead of using a direct criminal law responses.**

One of the advantages of the civil protection order system is that the burden of proof for obtaining a civil protection order is quite low (the civil burden), while the criminal law applies a higher burden of proof, that is 'beyond a reasonable doubt'. Currently it is possible to get a protection order with - relative - ease because the burden of proof is - relatively - low. The standard condition of protection orders is 'not commit domestic violence', which in Queensland includes coercive control under the definition. It is possible, therefore, for a person to breach the protection order by continuing to be coercive and controlling and to be charged with the contravention. Protection orders frequently include no contact or distance conditions. In circumstances where the offender is charged with contravention of a distance or contact condition the court would have to be satisfied that the breach (ie the continuing coercive control; the contact) occurred beyond a reasonable doubt, and that there was a protection order in place. However, a contravention of some conditions (such as contact and distance) may be much easier to prove than coercive control - a text message - for example may prove breach of a contact condition.

However, it may be that the protection order system is overutilized, and places too many people, who may not be particularly risky, under surveillance. The sheer number of these orders may dilute public views about their seriousness and may create challenges regarding the ability of police to follow up on reported breaches.

### **Evidence of coercive control being used in criminal proceedings.**

I have seen protection order, sentencing and other cases referencing coercive and controlling behaviour. This suggests that evidence of this type of behaviour is being presented in courts - at least sometimes. I expect that different magistrates and judges would have different responses to, and varying understanding of, the concepts and lawyers would also have diverse understandings of it.

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<sup>23</sup> Debra Haszard and Celia Farnan, *One punch can kill assault reduction campaign: Online survey and qualitative exploration*. 2011, available at: <https://cabinet.qld.gov.au/documents/2011/nov/one%20punch%20can%20kill/Attachments/Attachment%201%20-%20One%20Punch%20Can%20Kill%20campaign%20research.PDF> (viewed 25 January 2021.) The Archers radio program in the UK was also identified as being extremely important in highlighting this form of abuse: see Evan Stark, "The 'Coercive Control Framework': Making Law Work for Women," in Marilyn McMahon and Paul McGorrey, *Criminalising coercive control*. Springer, 2020, 38.

The Mackenzie /Colvin report released in 2009<sup>24</sup> recommended that this issue be considered and it is great to see that it is happening. I think it would be useful to include a legislative provision regarding context and relationship evidence in a way that is consistent with the common law. This has occurred in Victoria<sup>25</sup> and more recently in Western Australia.<sup>26</sup>

The Western Australian provisions (ss38-39G *Evidence Act 1906 WA*), introduced in 2020, were introduced after significant research<sup>27</sup> and discussion and manage to capture the various dimensions of social entrapment experienced by many who live through domestic and family violence: coercive control, issues associated with the family violence safety response and structural intersectionality.<sup>28</sup> If such a provision is introduced it should endeavor to capture these overlapping issues as they all impact significantly on the victim/survivors experience of (and response to) domestic and family violence. Section 38 of the *Evidence Act 1906 WA* states:

**38 What may constitute evidence of family violence**

1. For the purposes of sections 39 to 39G, evidence of family violence, in relation to a person, includes (but is not limited to) evidence of any of the following —
  - a) the history of the relationship between the person and a family member, including violence by the family member towards the person, or by the person towards the family member, or by the family member of the person in relation to any other family member;
  - b) the cumulative effect of family violence, including the psychological effect, on the person or a family member affected by that violence;
  - c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
  - d) responses by family, community or agencies to family violence, including further violence that may be used by a family member to prevent, or in retaliation to, any help-seeking behaviour or use of safety options by the person;
  - e) ways in which social, cultural, economic or personal factors have affected any help-seeking behaviour undertaken by the person, or the safety options realistically available to the person, in response to family violence;
  - f) ways in which violence by the family member towards the person, or the lack of safety options, were exacerbated by inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;
  - g) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from a person who commits family violence;

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<sup>24</sup> Geraldine Mackenzie and Eric Colvin, (2009) *Homicide in abusive relationships: a report on defences*

<sup>25</sup> Section 322 J Crimes Act 1958 Vic; *The Queen v Donker* [2018] VSC 210 at [99]; see also Heather Douglas, "Social Framework Evidence: Its Interpretation and Application in Victoria and Beyond" [2015] ELECD 140; in Freiberg, Arie; Fitz-Gibbon, Kathe (eds), "Homicide Law Reform in Victoria" (The Federation Press, 2015), 94

<sup>26</sup> Sections 37-39G *Evidence Act 1906 WA*

<sup>27</sup> Stella Tarrant, Julia Tolmie and George Giudice, *Transforming legal understandings of intimate partner violence: Final report* (ANROWS, 2019).

<sup>28</sup> See Heather Douglas, Stella Tarrant and Julia Tolmie, 'Social Entrapment Evidence: Understanding Its Role In Self-Defence Cases Involving Intimate Partner Violence' forthcoming 2021 *University of New South Wales law Journal*. See also Heather Douglas, Hannah McGlade, Stella Tarrant and Julia Tolmie, 'Facts seen and unseen: Improving justice responses by using a social entrapment lens for cases involving abused women (as offenders and victims)' (2020) *Current Issues in Criminal Justice* online first: 10.1080/10345329.2020.1829779

- h) the psychological effect of family violence on people who are or have been in a relationship affected by family violence;
- i) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

The WA evidence provisions also include sections that are directed at expert evidence, self defence, and jury directions. While it is early days, these provisions offer a promising model, which should be considered in any review of the current Queensland law.

### **Sentencing courts and the consideration of coercive control.**

Several Court of Appeal cases involving sentencing of domestic violence related offences have clearly heard about and considered coercive and controlling behaviour. Some judges refer to the offender's use of control and demonstrate a good understanding how domestic violence is often carried out and experienced by the victim/survivor. Some judges have shown an awareness of the effect of non-physical violence in abusive relationships. I expect the level of awareness is inconsistent.

The *Penalties and Sentences Act* s9(10A) already identifies that the domestic violence context of offending is an aggravating factor (via *Queensland Criminal Code* s1). I think the current approach is enough. Presumably the prosecution would be required to present evidence of coercive control to the court if coercive control was introduced as a specific aggravation, I am not confident much would be gained from this. Perhaps better education for judges about the effect of s9(10A) PSA would be useful.

I note some example cases where controlling behaviour was highlighted. In *R v NT* [\[2018\] QCA 106](#) the appellant appealed his sentence (nine years with parole eligibility approximately three years and one month from the date of sentence) for a range of serious offences including torture, assault with bodily harm, rape and other offences. In dismissing the appeal, Atkinson J (with whom Gotterson and Morrison JJA agreed) commented:

The applicant and the complainant commenced living together in April 2016. Although there was no more physical violence after the night where he became enraged [and committed the offences] and the time they commenced living together, the applicant took control of the complainant's phone and other electronic devices, wiping her photos, deactivating her Facebook and cutting her off from contact with her family and friends. This type of controlling behaviour is typical of abusive domestic relationships.... [7]

And further:

During this period of cohabitation, the applicant's abusive and controlling behaviour continued and worsened, interspersed with periods of loving affection.... Her fear engendered by his threatening and controlling behaviour caused her to comply with his demands. Even though it was still daylight, he made her take off the hoodie and walk from the car to the house naked. When she asked to go to the toilet, he insisted that she urinate naked in the backyard like a dog whilst he continued to insult her in degrading language. [8]-[10]

Further in *CCR v Queensland Police Service* [\[2010\] QDC 486](#) the defendant was charged with assault occasioning bodily harm and contravening a protection order. He was ordered to serve 3 months imprisonment followed by 12 months' probation. CCR was 60 years of age with a history of offences of violence prior to 1992. He then had no offences for 16 years following his giving up alcohol. In



2008 there was one contravention of a protection order. C pleaded guilty and had some medical problems (including diabetes). Judge Robertson noted that although this type of offending was prevalent there were a dearth of comparable sentences. While the appeal was allowed on the basis of non-compliance with s13 of the Penalties and Sentences Act 1992 his Honour, Judge Robertson, imposed the same sentences saying at [40]:

As I have indicated, exercising the sentence discretion afresh in this case, leads me to the conclusion that the sentence imposed by her Honour was an appropriate one in all the circumstances. Domestic violence is common in our community and it's deplored by right-minded people. In this case, the appellant presented as an upstanding member of the community whilst acting as a controlling bully in the privacy of his own home. Both personal and general deterrence applied in this man's case. He persistently offended over a significant period and seemed to have no regard to his wife's rights and no regard in some cases to the fact that he was on bail.

In protection order matters some judges also appear to have a good understanding of coercive control. *ADH v ALH & Commissioner of Police* [2017] QDC 103 the appellant appealed against a protection order being made against him. In the background of the protection order matter the parties were unable to agree on parenting arrangements for their child. The appellant made numerous phone calls and text messages seeking contact with the child, he also contacted relatives of the respondent to enlist their help in this regard. In dismissing the appeal Morzone QC DCJ referred to the comments of the magistrate:

'Her honour remarked , and I agree:

"No matter the motive or how justified the person considers their conduct, for one person to continually harass another person by repeated unwanted contact to make them do something, in this case, accede to the respondent's demand for custody on his terms, meets the definition of domestic violence as it's coercive behaviour and emotionally abusive... and indeed it's controlling." [72]

In *MNT v MEE* [2020] QDC 126 aspects of controlling behaviour which His Honour Judge Byrne QC DCJ found amounted to domestic violence (having found the appellant's evidence not credible) within the meaning of s8 of the DFV Act included the treatment of the respondent's belongings, the appellant getting into bed with the respondent at a time after they had commenced living apart, the condition of the house and lack of approvals for work done (in circumstances where the appellant was a builder), lack of rectification of works which potentially diminished the value of joint assets, and an altercation of a recording. In His Honour's view, all of these instances of controlling behaviour collectively amounted to emotional or psychological abuse.

### **Benefits in legislating against coercive control.**

In many ways the introduction of an offence of coercive control brings with it the same benefits and risks associated with use of the criminal legal system in response to domestic violence generally.

There are some advantages to the introduction of a criminal offence. Because the introduction of such an offence is backed by the criminal justice system (including police and courts) it is a fast track way to:

***(i) Better recognition of the experience of victims***

Many who experience domestic and family violence find that coercive control is the worst aspect of the domestic and family violence. In the many interviews I have undertaken with women who have experienced domestic and family violence the non-physical forms of abuse including the put downs, belittling, the slow isolation and the degrading demands are the worst aspects of the abuse. When I asked 60 women from diverse backgrounds what the worst aspect of their abuse was, 44 of them (73%) said it was the non-physical forms of abuse they experienced with most (n40) highlighting emotional abuse.<sup>29</sup> Many of the women I spoke to were frustrated about the lack of recognition of the effects of this form of abuse both in the community, and in the justice process particularly by police and by magistrates and judicial officers in protection order matters and in the family courts.

***(ii) Public denunciation of this type of behaviour.***

Including coercive control as an offence will support public denunciation of this behavior.

Notably, the introduction of coercive control offences in other countries has not led to high levels of prosecution. For example, there were 59 prosecutions of the coercive control offence equivalent in Ireland in 2020.<sup>30</sup> It may be argued that the risk of over use is ill-conceived and that simply having the offence on the books is the main aim and by itself (without significant numbers of prosecutions) will help to positively influence other aspects of the domestic violence response. It is risky however to use the criminal law simply 'send a message'. If introduced, it should be assumed coercive control would be utilised regularly by police.

***(iii) Contribution to broader public education about this type of behavior.***

Introducing an offence of coercive control fast tracks public understanding of the behavior it may also encourage better understanding in the family courts and domestic violence protection order courts about this form of violence.

I think it is true that the introduction of the non-fatal strangulation offence in Queensland helped spark improved knowledge about non-fatal strangulation and there would now be few magistrates, police, criminal lawyers and domestic violence workers who would not understand the high risks associated with it. (Furthermore, women who have experienced the deep fear and terror associated with non-fatal strangulation now have that experience recognised more widely.)

One might expect there would be similar effects from the criminalisation of coercive control. I note on this point however that it is not clear that criminalization of coercive control has triggered the greater understanding of the concept in the United Kingdom. In England, for example, there have been high profile cases that have raised it and also popular culture programs have highlighted coercive control in their story lines (eg [The Archers](#)). These other approaches may have been more influential.

***(iv) Possibly positively effect resourcing of support programs***

It is not clear that criminalisation would lead to improved resourcing of other programs. For example, it is not clear that support programs for women who had experienced non-fatal strangulation or rehabilitation programs for those who perpetrated it changed in response specifically to the introduction of the offence in Queensland.

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<sup>29</sup> Heather Douglas, *Women, Intimate Partner Violence and Law*. OUP 2021, chapter 3.

<sup>30</sup> Conor Lally, 'Number of people charged with domestic violence surges amid pandemic' 26 January 2021 *The Irish Times* – reporting on police data. See also Sandra Walklate and Kate Fitz-Gibbon, 'The criminalisation of coercive control: The power of law?' (2019) 8 (4) *International Journal of Crime Justice and Social Democracy* 94.

### **Will legislating against coercive control improve the safety of women and children?**

I am not sure, I don't think there is any evidence that criminal prosecution makes women safer in the longer term. Any period of incapacitation through bail refusal or sentence provides safety for the period of the incapacitation.

Legislating coercive control may be unlikely to improve safety for Aboriginal and Torres Strait Islander people. Notably Harry Blagg and colleagues argues that 'coercive control' is only one form of family violence that invites a singular cause of violence:

While mainstream models of intervention favour approaches, such as the Duluth model, that explicitly champion increased use of mainstream penalties to leverage men into behaviour change programs, the critical literature suggests that this approach does not work for Aboriginal and Torres Strait Islander families. This is because it advances mono-causal explanations for family violence—patriarchal male power, coercive control, gender inequality—and avoids engaging in difficult debates about colonial violence, collective disempowerment, trauma, alcohol abuse, mental health, and disability; and because Aboriginal and Torres Strait Islander men and women are simply not deterred by the threat of mainstream sanctions.<sup>31</sup>

If the introduction of a new offence is associated with a big injection of funding into safe housing, and other social supports to assist women to safely escape violence and with increased resourcing of programs that deal with some of the factors that exacerbate DFV (eg ice addiction, mental health issues and proprietorial attitudes) and into education campaigns aimed at young people, I think legislating an offence will help to reduce the impacts of coercive control.

### **Will legislating against coercive control encourage greater reporting of domestic and family violence including non-physical abuse?**

I am not sure. It is possible that reporting could reduce as survivors may be fearful that their partners may be charged.

It is likely that the introduction of the offence will ensure that more reporters of DFV will use, or be supported to use, the language of coercive control in their reporting. It is also likely that police will ask more questions about it if they are investigating it as a standalone offence.

### **The risks in implementing legislation to criminalise coercive control.**

There are several risks associated with implementing a new offence of coercive control. These include:

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<sup>31</sup> Harry Blagg et al *Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence* (ANROWS Report, 2020) at 62. Available at: <https://20ian81kyngg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Blagg-RR-LawCulture.1.pdf> (visited 25 January 2021)

***(i) Net-widening, especially for marginalised people.***

Given the current lack of recognition of many forms of coercive control there is likely to be wider group of people caught up in the criminal justice process ('net-widening') as a result of the introduction of this offence.

Like all criminalization, as noted at the outset, the criminalization of coercive control is likely to disproportionately effect marginalized groups (Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people and people who use illicit drugs, people who are homeless or highly visible.)

In the USA Ritchie has criticised the United States focus on criminalising domestic violence and questioned whether anyone benefits from it and in particular 'who loses the most when we rely too much on the criminal legal system'.<sup>32</sup> Ritchie points to a number of problems that have been identified including dual arrest, 'police fatigue' leading to less effective responses for those women who do seek a criminal response, and that the criminal justice system's requirement for victims to be involved can be both 'undesirable and dangerous'. Ritchie argues that:

A circuitous pattern of disempowerment results whereby 1) women are hurt by [...intimate partner violence] 2) they aren't helped when they attempt to get relief from the criminal legal system, 3) so they are hurt more, 4) then they avoid turning to the system that has not helped them, and 5) since they don't engage with what has become the expected trajectory to safety they are understood to be non-victims.<sup>33</sup>

***(ii) Inapplicability to certain groups and contexts- coercive control is but one form of domestic and family violence.***

There is some evidence that coercive control is not a concept that is a good fit with certain groups of people in the community, including Aboriginal and Torres Strait Islander people.<sup>34</sup> Notably Harry Blagg and colleagues argue that 'coercive control' is only one form of family violence. They explain:

While mainstream models of intervention favour approaches, such as the Duluth model, that explicitly champion increased use of mainstream penalties to leverage men into behaviour change programs, the critical literature suggests that this approach does not work for Aboriginal and Torres Strait Islander families. This is because it advances mono-causal explanations for family violence—patriarchal male power, coercive control, gender inequality—and avoids engaging in difficult debates about colonial violence, collective disempowerment, trauma, alcohol abuse, mental health, and disability; and because Aboriginal and Torres Strait Islander men and women are simply not deterred by the threat of mainstream sanctions.<sup>35</sup>

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<sup>32</sup> Beth E Ritchie, 'Who Benefits and Who Loses in the Criminalization of IPV: Considering the Logic of Punishment and Impact of Legal Intervention as a Tertiary Prevention Strategy' (Paper presented at National Science Foundation/National Institute of Justice Workshop: A Workshop on Developing Effective Primary, Secondary and Tertiary Interventions, Arlington, Virginia, 14–16 May 2014) 11.

<sup>33</sup> Ritchie above, 12-13.

<sup>34</sup> Heather Nancarrow, *Unintended consequences of domestic violence law: Gendered aspirations and racialised identities*. Palgrave, 2019.

<sup>35</sup> Harry Blagg et al *Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence* (ANROWS Report, 2020) at 62. Available at: <https://20ian81kyngg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Blagg-RR-LawCulture.1.pdf> (visited 25 January 2021)

***(iii) Minimisation of offending / use to negotiate offences.***

If coercive control can be heard in the magistrate's court and attracts a lower level penalty, the offence is likely to be used to negotiate a plea of guilty away from one of the traditional offences (eg. stalking, non-fatal strangulation, bodily harm type assaults etc) in order to attract that lower level penalty. Arguably, this may have the effect of minimising offending and encouraging a less serious response to domestic and family violence offending that is currently penalised.<sup>36</sup>

***(vi) Misapplication to victims of coercive control.***

Many commentators have been concerned about the potential misapplication of a coercive control offence to people who have experienced domestic and family violence rather than perpetrated it.<sup>37</sup> See page 1.

***(v) Women pressured into the criminal justice process as complainants or refuse to report as they do not want their partner criminalised.***

Some women may determine that they do not want their partner charged and may be reluctant to report to police. Others may be pushed into the criminal justice system by well-meaning police and others, and if there are circumstances where their evidence is not needed to prove the offence, they may have no control over the process. There is a real risk then, depending on how the offence is framed and how prosecution policies around the role of victim's views are taken into account, that women will experience further coercion and control through the prosecution process.

Research suggests that women are generally reluctant to engage with the criminal law for a range of reasons beyond fear of their perpetrator, including fear of the process, financial and time costs associated with giving statements and coming to court, the risk of loss of income, children, accommodation, status and shame.<sup>38</sup> These risks and losses are disproportionately experienced by marginalized women. In this context, Aya Gruber has pointed out that victims' and perpetrators' interests are not always zero-sum:

A battered woman's desire to be free from violence conflicts with her abuser's desire to batter. But as members of socioeconomically marginalized group the couple may have convergent interests in economic security. As racial minorities they may have convergent interests in freedom from police over-reach. As immigrants they may have convergent interests in stemming the tide of anti-immigrant fervor. Many victims and perpetrators have convergent interests in maintaining their marriage and family. Yet domestic violence law, in the name of women's interests makes it easier for the state to arrest, deny low income housing, deport immigrants and impose [separation].<sup>39</sup>

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<sup>36</sup> Julia Tolmie, 'Coercive control: To criminalize or not to criminalize?' (2018) 18 (1) *Criminology & Criminal Justice* 50-66 at 51.

<sup>37</sup> Hayley Boxall, Christopher Dowling and Anthony Morgan, *Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence*, Trends and Issues No. 584, January 2020, Australian Institute of Criminology; Leigh Goodmark, *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence*. (2018, Oakland, California: University of California Press); Tolmie *ibid*.

<sup>38</sup> Lucy Williams and Sandra Walklate, 'Policy Responses to Domestic Violence, the Criminalisation Thesis and 'Learning from History'' (2020) 59 (3) *The Howard Journal of Crime and Justice* 305-316.

<sup>39</sup> Aya Gruber, *The feminist war on crime: The unexpected role of women's liberation in mass incarceration*. University of California Press, 194

***(vii) Redirection of more resources into the criminal law process – potentially away from the services sector.***

In circumstances where there are finite resources, the introduction of a new offence necessarily directs resources towards managing the offence: to policing, lawyers, court staff and processes and corrections. All of these professionals need to be trained and retrained, and implementing the offence obviously requires time and other costs (interviews; evidence collection; support to keep victims engaged in the process; file/record keeping; attending court for bail applications, adjournments, directions, hearing, sentences; perhaps accessing expert reports). Thus the introduction of the offence will direct resources away from other safety responses. The criminal law response also requires that survivors' resources are directed towards planning, preparing for and attending more court.<sup>40</sup> There are emotional and material costs invested in this.<sup>41</sup> In a context of limited resources directing resources away from women's safety services, including public housing and counselling may not be considered the best use of resources. It is also questionable from the justice perspective whether, if law is the right way to direct resources, family law responses might not be better supported instead.

***(vii) Generally, ineffectiveness of criminal responses to deter / rehabilitate/ or protect from offending.***

Imprisonment may provide some respite from further violence for a period of time, imprisonment also makes re-offending more likely. The high cost of justice responses and imprisonment in Australia is well-known – imprisonment costs approximately \$107,300 per year or \$293 per day.<sup>42</sup> Justice responses may be more expensive than, for example, a full time social work case worker position (median wage \$65,000 per year in Australia) or a year of rent (approximately \$36,000 per year). The indirect costs of prison include that prison worsens the physical and mental health of the inmate, their ability to return to work declines with length of prison term as does the likelihood of homelessness – the Queensland productivity Commission indicates indirect costs equal approximately \$40,000 per year per prisoner on top of the direct costs, recidivism is also more likely through prison.<sup>43</sup> Studies on the use of criminalisation /prosecution to stop domestic violence offending / improve safety have mixed results, with some studies showing increased victimisation after prosecution.<sup>44</sup>

**How could risks be mitigated successfully ?**

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<sup>40</sup> Heather Douglas, 'Legal Systems Abuse and Coercive Control' (2018) 18 (1) *Criminology & Criminal Justice* 84-99.

<sup>41</sup> Judith Herman, 'The mental health of crime victims: Impact of legal intervention'. (2003) 16 *Journal of Traumatic Stress* 159–166. doi:10.1023/A:1022847223135; see also Heather Douglas, 'Domestic and family violence, mental health and well-being and Legal Engagement' (2018) 25 (3) *Psychiatry, Psychology and Law* 341.

<sup>42</sup> Queensland productivity Commission, Inquiry into imprisonment and recidivism, (QPC, 2019), 67, <https://qpc.blob.core.windows.net/wordpress/2019/02/Imprisonment-and-recidivism-Draft-Report.pdf>; Productivity Commission, 2020. Corrective Services, *Report on government services*, Part C Section 8. Table 8A.18. <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/corrective-services>; see also Anthony Morgan, *How much does prison really cost? Comparing the costs of imprisonment with community corrections*. AIC, 2018.

<sup>43</sup> Queensland productivity Commission, Inquiry into imprisonment and recidivism, (QPC, 2019), 68.

<sup>44</sup> Lorraine Mazerole et al, *Criminal Justice Responses to Domestic and Family Violence* (2018, UQ), 48-49; 137 available at: [https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/586185/systematic-review-of-criminal-justice-responses-to-domestic-and-family-violence.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/586185/systematic-review-of-criminal-justice-responses-to-domestic-and-family-violence.pdf) viewed 26 January 2021.

Training of all who intersect with survivors of DFV about the concept of coercive control is important to mitigate the risks of misidentification.

It is also important to establish alternative pathways away from the criminal justice system and to work with relevant communities to establish and sustain programs that work well in that community's context. The Queensland Productivity Commission has already identified a number of options.<sup>45</sup>

### **How to determine success when measuring the impact of legislation against coercive control.**

The evaluation should be linked to the purposes for which the offence is introduced.

If the purposes of introducing a new offence are to increase community knowledge about it, ideally there would be an analysis of community understanding of the concept of coercive control before the introduction of the offence and some time after its introduction to see if public / police/ judicial etc awareness has increased with the introduction of the offence.

If the purpose is to keep women safer, it would be useful to survey survivors of DFV– for example in shelter or when reporting DVF to police before the introduction of the offence and then some time after to see if they believe their safety has increased and why. Other ways this might be analyzed would be to look at hospital records pre and post introduction of the offence and / or homicide records pre and post to see if there are less injuries or deaths in the context of DFV.

If the purpose is to increase resources for services, police etc, then an analysis of the resources provided to these agencies pre and post introduction of the offence would be useful in evaluating the offence, although it may be difficult to properly evaluate this outcome..

The number of reports, prosecutions, convictions would *not* be a useful way to analyse the impact or effectiveness of the offence unless the purpose of the offence was to increase successful prosecution of more offenders of family violence more often.

### **Options for the criminalization of coercive control in Queensland.**

On balance, I no longer support the introduction of new offences that expand the criminal net in the context of DFV for the reasons expressed at the outset of this submission. However, if the taskforce determines to introduce a new offence to criminalize coercive control, I would prefer an offence like the offence of cruelty is introduced, as discussed below.

***Creating an explicit mitigating factor in the Penalties and Sentences Act 1992 (Qld) that will require a sentencing court to have regard to whether an offender's criminal behaviour could in some way be attributed to the offender being a victim of coercive control***

Of course there is nothing stopping judges from taking this factor into account on sentencing as it is and judges often do, and in some cases appear to be more attuned to this than lawyers, see eg: *R v Blockey* [2021] QCA 77 (21 April 2021) at [11]; *R v Wallace* [2015] QCA 62 (21 April 2015) – Queensland Court of Appeal; *R v MacKenzie* [2000] QCA 324 (11 August 2000) – Queensland Court

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<sup>45</sup> Queensland Productivity Commission, (2019) Summary Report: Inquiry into Imprisonment and Recidivism, QPC, pp27-38.

of Appeal. Overall, I would support the suggestion. This would need to be drafted carefully. Many offenders who perpetrate DFV have experienced DFV in the past, often from a parent. Should this type of history be understood as a mitigating feature?

### ***Creating a new offence of 'cruelty' in the Criminal Code***

In 2015 I argued in 'Do we need a specific domestic violence offence?' (2015) 39 *Melbourne University Law Review* 434 for the introduction of a crime of cruelty into Queensland criminal law to address coercive control, and I restate those arguments here.

There are several advantages to introducing a crime of 'cruelty'.

The language and the proposed structure of the offence are not unfamiliar to the Queensland Criminal Code context.

Cruelty is a commonly understood term and it is often used in contexts where there is an abuse of power (in that sense it is similar to coercive control). It is also a more familiar term in Indigenous communities and easy to interpret for people from culturally and linguistically diverse backgrounds.

'Cruelty' would reflect a less serious form of torture (320A QCC).

Torture can be charged where the accused engages in a course of conduct involving a series of controlling and coercive actions intended to cause, and causing, severe pain and suffering to the victim. The torture offence states that pain and suffering may be permanent or temporary and may be physical, mental, psychological or emotional. The form of injury is notably broad and does not require physical injury. 'Acts' in the provision may encompass acts that are not criminalised elsewhere, such as those mentioned in the case of *R v HAC* (eg exclusion from using household amenities, pressure to eat chillies).<sup>46</sup> Clearly the offence is applicable and useful in domestic violence contexts and has been applied in a number of domestic violence cases.<sup>47</sup>

While Torture can be used to criminalise coercive control (and has done so) it has some limitations. Pain and suffering must be 'severe' and the pain and suffering must be 'intentionally' inflicted. Therefore the offence of torture may exclude less severe forms of domestic violence, and the subjective mens rea of intent may be difficult to prove. The language of 'torture' in the provision may also discourage police and prosecutors from applying the provision as it may be understood to be directed at more public or political forms of torture.<sup>48</sup> Torture can not be heard summarily.

The advantages of a crime of cruelty as suggested at p50 (and appendix 8) of the Taskforce discussion paper are that it could criminalise a series of actions as 'cruelty' that may not reach the threshold of torture and are otherwise not currently criminalised (for example regularly placing the victim's food next to the dog's bowl, locking the bathroom so that the victim must use an outdoor hose to wash, dropping the victim at faraway locations so that she or he must walk a long way home;

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<sup>46</sup> *R v HAC* [2006] QCA 291

<sup>47</sup> Eg: *R v Ottley* [2009] QCA 211 (24 July 2009); *R v Peirson* [2006] QCA 251 (14 July 2006); *R v West* [2007] QCA 347 (19 October 2007); *R v HAC* [2006] QCA 291 (11 August 2006).

<sup>48</sup> Heather Douglas, 'Do we need a specific domestic violence offence?' (2015) 39 *Melbourne University Law Review* 434, 467.



closing the victim's bedroom door so that her or his room is without access to air-conditioning or regularly moving a wheelchair out of reach).<sup>49</sup>

Unlike the 'torture' offence, the pain and suffering required to underpin a charge of 'cruelty' need not be 'severe'. Any pain and suffering would be sufficient, and presumably the types of acts and the level of pain and suffering would be relevant to sentencing outcomes. While there would, under the suggested 'cruelty' offence be a requirement for the victim to suffer some kind of pain and suffering, this would be relatively easy to prove in most cases. The requirement would also ensure that the victim's experience is relevant to proving the offence. It would be difficult to proceed with the offence in the absence of the victim's consent and without her engagement with the prosecution.

Missing from the proposed offence of 'cruelty' is any reference to omissions, insults or demeaning comments. In order to successfully prosecute 'cruelty', an act or acts must be proven. While evidence of omissions, insults or demeaning comments may assist in disproving a claim of automatism or accident, it is suggested that these matters are best dealt with by the protection order system rather than the criminal law.<sup>50</sup>

The crime of 'cruelty' would generally be heard summarily unless the defendant elected a jury trial. This decision would ultimately be subject to the magistrate's decision as to whether she or he should abstain from jurisdiction given the seriousness of the charge or the accused's criminal history. This is one of the features that distinguish the crime of 'torture' from the proposed crime of cruelty; it means that the offence could be applied to lower level offending and if heard in the Magistrates Court in Queensland the maximum penalty would be three years' imprisonment.

Other features distinguishing 'cruelty' from 'torture' include that there is no requirement for the offender to 'intend' to cause severe pain and suffering. In the Queensland context this would mean that "cruelty would be read as a crime of general intent (similar to assault), so that, while the prosecution will need to satisfy the court that the accused intended to carry out the acts alleged, it will not need to prove that the accused intended pain and suffering to result from the acts. However, like the crime of assault occasioning bodily harm, the prosecution will need to prove a connection between the acts carried out and the pain and suffering experienced by the victim.

'Cruelty' carried out in the context of DFV could be an aggravated form of the offence with a potentially higher maximum penalty. The two-tiered nature of the offence would indicate that cruelty in circumstances of DFV should be taken particularly seriously. The 'aggravated' form of the proposed offence would link the definition of DFV to the *Domestic and Family Violence Protection Act 2012* (Qld) similar to non-fatal strangulation (315A QCC).

Behaviours that are controlling and coercive behaviours, where they cause pain and suffering, would be captured under the provision of 'cruelty' as would other forms of DFV. The mens rea is an objective one – making the offence(s) easier to prove.

Notably the introduction of the crime of 'cruelty' may encourage the higher use/recognition of the 'torture' offence in circumstances of DFV. It is my understanding that the Queensland Office of the

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<sup>49</sup> See Heather Douglas, *Women, Intimate Partner Violence and The Law*, OUP, Chapter 3.

<sup>50</sup> Heather Douglas, 'Do we need a specific domestic violence offence?' (2015) 39 *Melbourne University Law Review* 434, 469.

Director of Public Prosecutions have successfully prosecuted some ‘torture’ matters in the absence of physical harm.

Both the terms ‘cruelty’ and ‘torture’ resonate with international human rights charters.

It may be useful to introduce an example of serious DFV / coercive control in the ‘torture’ provision as was suggested by the *Queensland Taskforce on Women and the Criminal Code* in 2000.<sup>51</sup> An example could also be included with the proposed ‘cruelty’ offence. The examples could draw attention to the DFV Act – and the terminology of coercive control used there.

I think it would be important that the ‘cruelty’ offence could be determined in the magistrates courts.<sup>52</sup> There are a number of problems associated with requiring matters to be dealt with at the higher courts, not least delay. It is also important that if the offender is sentenced to serve a period of imprisonment that it is served as a sentence – rather than mostly being completed on remand so that there is a better chance of access to programs. Determining DFV matters in the higher courts risks the alleged offender serving most of their sentence on remand if not granted bail and having no access to programs.

Some commentators have suggested that the Tasmanian offences of emotional abuse and financial abuse (ss8 and 9 *Family Violence Act 2004* (Tas)) may be difficult to enforce and difficult to prove given that they require the prosecution to prove that the person has *intent* to inflict economic abuse or that the person *knows or ought to know* that their course of conduct will have certain effects.<sup>53</sup> Notably the proposed ‘cruelty’ offence, as noted would have an objective test of mens rea.

### **Amending and renaming the existing offence of unlawful stalking in the Criminal Code**

I do not favour this option. I think stalking is understood by the community. Despite the claim in the Taskforce paper that media often highlights high profile stalking cases, there is a high proportion of stalking cases that involve people who were previously in intimate partner relationships with their stalker. In Queensland for example the most common offence associated offence when stalking is charged is contravention of a domestic violence order.<sup>54</sup> I think this offence is working satisfactorily in the DFV context.

### **Creating a new standalone ‘coercive control’ offence**

I do not favor using the language of coercive control as the title or key behavior underpinning any new offence. The language is complex and is arguably not well-suited to the Queensland context. Essentially it is a pattern of behaviours used to enforce domination and limit freedom. The behaviours include, potentially, both physical and non-physical behaviours.<sup>55</sup> One of the difficulties is that coercive control is necessarily inherently vague precisely because of its deeply contextually

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<sup>51</sup> Queensland Taskforce, (2000) ‘Report of the Taskforce on Women and the Criminal Code’ (Report, February) 115-116.

<sup>52</sup> See also this was recommended by Queensland Taskforce, (2000) ‘Report of the Taskforce on Women and the Criminal Code’ (Report, February) 116.

<sup>53</sup> Karen Wilcox, ‘Island Innovation, Mainland Inspiration: Comments on the Tasmanian Family Violence Act’ (2006) 32 *Alternative Law Journal* 213, 214

<sup>54</sup> Queensland Sentencing Advisory Council, (2020) *Sentencing Spotlight on Stalking*. QSAC.

<sup>55</sup> Evan Stark, *Coercive control: How men entrap women in personal life*. OUP 2007; Paul McGorrrery and Marilyn McMahon, ‘Criminalising the ‘Worst’ Part: Operationalising the Offence of Coercive Control in England and Wales’ [2019] 11 *Criminal Law Review* 957 - 965, 963

and culturally prescribed and individualized nature. Underlining its complexity, Stark and Hester comment that ‘the mistaken association of coercive control with “psychological abuse” ... risks leaving “real” partner violence outside the [coercive control] crime’s spectrum, not merely isolated assaults.’<sup>56</sup>

Several researchers have argued that coercive control is a concept that was developed in a clinical context and may be difficult to clearly translate into criminal law.<sup>57</sup> For example, Walklate and colleagues point out three inter-connected problems with criminalising the coercive control:

... what is meant by coercion in the context of the offence of coercive control, what implications such understandings have for notions of choice or voluntariness and finally the capacity of the dichotomous thinking of legal proceedings, to incorporate and respond to the *processes* inherent in the emotional relationships captured by coercive control.<sup>58</sup>

There is some evidence that coercive control is not a concept that is a good fit with certain groups of people in the community, including Aboriginal and Torres Strait Islander people.<sup>59</sup>

The language of ‘controlling or coercive’ behaviour may have a particular significance in the Australian context. In Australia Kelly and Johnson’s work on developing a typology of violence has been very influential.<sup>60</sup> In their typology, controlling or coercive violence is merely one of a variety of forms of violence that may occur between intimates; their typology also includes violent resistance, situational couple violence and separation instigated violence. Rathus has argued that if the language of ‘controlling or coercive’ behaviours was to be interpreted in line with the typologies of violence literature, one of the effects may be to exclude some very valid experiences of domestic violence from criminalisation.<sup>61</sup>

Notably, despite the language of coercive control being included in domestic violence law in Queensland for many years, courts have rarely ventured to describe domestic and family violence directly in terms of coercive control, preferring instead to focus on controlling behaviours or coercive behaviours (see page 7).

The *Domestic Abuse (Scotland) Act* sets out an offence using the terminology ‘domestic abuse’. This language is less technical and complicated than ‘coercive control’ and easier to understand. It captures the on-going nature of domestic violence (‘course of behaviour’ section 1) and identifies Domestic Abuse as ‘behaviour’ directed at the victim that is ‘violent, threatening or intimidating’ (section 2(2)). The offence sets out the ‘relevant effects’ of the domestic abuse (section 3) that include ‘creating dependence or subordination’; ‘isolating the victim’; ‘controlling, regulating or

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<sup>56</sup> Evan Stark and Marianne Hester, ‘Coercive control: Update and Review’ (2019) 25 (1) *Violence Against Women* 81-104, 86.

<sup>57</sup> Sandra Walklate et al, ‘Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories’ (2018) 18 (1) *Criminology & Criminal Justice* 115-131, 117.

<sup>58</sup> Sandra Walklate et al, ‘Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories’ (2018) 18 (1) *Criminology & Criminal Justice* 115-131, 118.

<sup>59</sup> Heather Nancarrow, *Unintended consequences of domestic violence law: Gendered aspirations and racialised identities*. Palgrave, 2019.

<sup>60</sup> Joan B Kelly and Michael P Johnson, ‘Differentiation among Types of Intimate Partner Violence: Research Update and Implications for Interventions’ (2008) 46 *Family Court Review* 476.

<sup>61</sup> Zoe Rathus, ‘Shifting Language and Meanings between Social Science and the Law: Defining Family Violence’ (2013) 36 *University of New South Wales Law Journal* 359, 388; Jane Wangmann, ‘Different Types of Intimate Partner Violence — An Exploration of the Literature’ (Issues Paper No 22, Australian Domestic & Family Violence Clearinghouse, October 2011).

monitoring' or 'frightening, humiliating, degrading or punishing' the victim. This criminal offence is limited to 'domestic abuse' and includes a number of conditions including that an ordinary person would consider the course of behaviour would be 'likely' to cause physical or psychological harm' to the victim *and* the accused either intended to cause the harm or was reckless about it (section 1). The offence does not require the victim to suffer harm (section 4) meaning the victim doesn't have to prove harm, the offence is focused on the actions of the accused but it also means it covers a very wide range of behaviours that the victim may not even have seen as problematic. The offence includes a stratified form – with higher and lower penalties available depending on whether it is dealt with summarily. The Queensland legislation refers to DFV as violence rather than abuse and it may be appropriate to reform the language of the *DFV Protection Act* if the Scottish model is selected.

Thank you for your consideration.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'HA Douglas', with a stylized, cursive script.

**Heather Douglas | Professor**  
Melbourne Law School,  
The University of Melbourne,  
Victoria 3010 Australia,  
email: [douglash@unimelb.edu.au](mailto:douglash@unimelb.edu.au)

## Chapter 12

# Domestic violence protection orders and their role in ensuring personal security

Heather Douglas\*

## Introduction

International agencies have promoted a number of actions to be taken by governments to prevent and eliminate violence against women around the world. One of these actions is to reinforce civil responses to violence against women (United Nations [UN] 1995: [124(b)]). In many countries, including Australia, Canada, New Zealand, the UK and the US, the legal response to domestic and family violence (DFV) has been increasingly focused on civil domestic and family violence protection orders (DVOs) (Goldfarb 2008). DVOs are now one of the most common legal remedies sought by, or on behalf of, women experiencing DFV in these countries (Fleury-Steiner, Fleury-Steiner and Miller 2011). Specifically in Australia, DVOs are the most common legal remedy (Taylor *et al.* 2015). In the state of Queensland, courts made over 48,000 DVOs in 2015–2016 (Magistrates Court of Queensland 2016: 51). Generally, an application for a DVO is made to a court by or on behalf of a person who seeks protection (typically a woman) against their current or previous intimate partner (typically a man) who has been abusive (Taylor *et al.* 2015). The primary aim of the DVO is to keep the person who seeks the order safe and secure by limiting contact between the abuser and victim/survivor, and demanding ‘good’ behaviour of the abuser (Goldfarb 2008). DVOs also aim to promote the accountability of abusers for their actions. These aims are supported primarily through (the threat of) criminal prosecution and sentencing for any breach of the DVO (Douglas 2008) and by placing police on notice of potential risk. Thus, DVOs can both supplement criminal justice interventions and provide a remedy in circumstances where the criminal law does not apply (Stark 2007: 66). An Australian judge has outlined the role of DVOs:

to provide the protection of the law to vulnerable individuals, usually ... women and children, who legitimately fear for their safety. Offenders who disregard such orders and occasion injury to persons whose personal security is intended to be guaranteed through this means must anticipate that an extremely stern view will be adopted by the courts.

(*R v. Pham* [2005] VSCA 57 [21] per Vincent J)

However, despite their promise and widespread use, their effectiveness, and how this effectiveness is understood, remains contested (Goodmark 2012: 157). In this chapter, I begin with a review of key studies on the effectiveness of DVOs. I then draw upon a qualitative interview study undertaken in Queensland, Australia, to consider women's perspectives of the 'helpfulness' of their DVO. The majority of interview participants were optimistic about the helpfulness of their DVO and identified many reasons for this assessment, including but not limited to improved safety and security.

### Previous studies of the 'effectiveness' of DVOs

Many of the studies that have been undertaken on the effectiveness of DVOs are US-based studies. Unlike Australia, where most DVOs are applied for by police acting on behalf of an abused woman (Wilcox 2010: 36), in the US the DVO application process does not usually involve the police at any stage. This seems to have created particular difficulties for women in the US, who are more likely to drop out of the DVO application process without receiving an order than their Australian counterparts (Cattaneo, Grossman and Chapman 2016; Durfee 2009; Malecha *et al.* 2003). A further difference between Australia and the US is that, pursuant to Australia's constitutional arrangements, national legislation governs family law decisions about property settlement and child contact, while state-based statutes and courts regulate DVOs. This contrasts with the US where federal law covers both child custody arrangements and DVOs. In Australia, an order made under the national family law system overrides state orders to the extent of any inconsistency, and this has created some issues in relation to police enforcement of DVOs (Laing 2010).

Overall, the results of US-based studies about the effectiveness of DVOs vary significantly. In part, this is because the effectiveness or helpfulness of DVOs is measured in different ways. Most commonly, effectiveness is measured in light of whether the abuse continues or reduces after the order is made and most studies have noted high rates of breach of orders, with between one-quarter and two-thirds being breached (Fleury-Steiner, Fleury-Steiner and Miller 2011; Logan and Walker 2009). However, despite the fact that DVOs are often breached, they may be considered successful because they reduce, rather than eliminate, the abuse and the need for police contact. In their study of administrative records involving 933 women victims, US-based researchers Kothari *et al.* (2012: 2859; see also Holt *et al.* 2003; Burgess-Proctor 2003) found that DVOs were associated with reduced police incidents and emergency department visits, both during the order and after its expiry. They also found that the DVO was linked to changes in the victim's behaviour, as she was more likely to call the police for incidents that did not involve assault (Kothari *et al.* 2012: 2860). Similarly, in their US-based study of DVOs, Chaudhuri and Daly (1992) found that a DVO was associated with an improved police response to incidents.

Another measure of effectiveness of a DVO is whether the abuser stays away from the survivor once the order is made. Durfee and Messing's US-based study found that women were more likely to apply for a DVO when there was no voluntary contact between the parties (2012: 706; Logan and Walker 2009), thereby increasing the likelihood of no contact. The aim of no contact may be a more realistic objective in situations where the parties are no longer living together.

Johnson, Luna and Stein (2003) have questioned whether DVOs work better depending on the characteristics of the perpetrator. Sherman's classic study of arrest (1992: 171–187) identified 'limited but strong evidence' for the claim that for men who have a stake in conformity (who are employed, educated and married), arrest produces a greater deterrent effect. However, when Johnson, Luna and Stein (2003) tested Sherman's hypothesis in a study involving 47 cases of breach of DVO, they found that the employment status of the perpetrator did not differentiate between the breach of DVO group and the non-breach group.

In determining whether DVOs work, researchers have increasingly considered the perspectives of survivors of abuse. Women who have experienced DFV and engage with the justice system have diverse goals (Cattaneo, Grossman and Chapman 2016; Herman 2005; Westmarland and Kelly 2013), and specifically the needs of those seeking a DVO vary (Chaudhuri and Daly 1992; Ptacek 1999). For example, many women seek a DVO primarily to protect their children (Lapierre 2010; Moe 2009). In their study, involving interviews ( $n = 10$ ) and surveys ( $n = 162$ ) with women who had obtained DVOs, Cattaneo, Grossman and Chapman (2016) asked whether the DVO had helped women to achieve their goals. The researchers generated a list of 32 overlapping goals. The four goals most commonly endorsed by the study participants were 'to stop the respondent from hitting or physically hurting me'; 'to make the respondent stay away'; 'to stop the respondent from threatening me' and 'to stop the respondent from contacting me' (Cattaneo, Grossman and Chapman 2016: 2901). The researchers found that, while priority goals related to safety, other nearly universally endorsed goals were more psychological in nature, including moving on with one's life (Cattaneo, Grossman and Chapman 2016: 2898–2899). For some women, a DVO provides them with a sense of control over their lives and they are generally optimistic about the order's effectiveness (Logan *et al.* 2006; Russell 2012; Chaudhuri and Daly 1992). Some women have identified that the DVO helps them to build a paper trail that can be used later for other purposes, and some consider that having a DVO empowers them to make claims on other agencies or offices (Johnson, Luna and Stein 2003: 321). While most studies provide evidence of an overall positive experience, different contextual factors may shift the perspective. For example, Logan and Walker (2009) identified that, while the majority of women experienced the DVO to be at least somewhat effective, women who had previously been stalked and women who had experienced violence of a more serious nature perceived the order to be less

effective. Given the distinctions between the Australian and US legal systems, it cannot be assumed that the role and helpfulness of DVOs for women in the Australian context will be the same as that for women in the US.

## The Queensland Study

In this section, I draw on interviews conducted as part of a qualitative interview study that I refer to as the Queensland Study.<sup>1</sup> Throughout 2014–2017, interviews were conducted with 65 women (on three occasions over two and a half years) who had experienced DFV and engaged with the legal system. The objective of the study was to explore women's experiences of engaging with multiple legal processes in the context of DVF over time. The women's experiences of DVOs were only one aspect of the study. Understanding how women use and experience DVOs is critical to ensuring that DVOs work for the women they are designed to protect (Bell *et al.* 2011). In this chapter, I have focused on these women's perspectives of whether and how DVOs – often referred to by the participants as 'pieces of paper' – are a helpful or unhelpful response to DFV.

## Methodology

For recruitment for the Leaving Domestic Violence Study, the women were approached by their DFV support workers or lawyers from a range of organisations in Brisbane, Australia, who initially discussed the study with them and then arranged interviews if the woman was interested in participating. The women were all over 18 years old, in the six months leading up to the first interview had experienced DFV from their current or previous male intimate partner, and had engaged with the legal system in some way to respond to the violence. Two women heard about the study and contacted me directly, requesting to be involved in the study. At interview 2, participants were asked to complete a survey. One of the survey questions asked them to rank the helpfulness of their DVO from 1 (very unhelpful) to 5 (very helpful). During the interview, I asked the women to provide reasons for their answer. I also asked about their ex-partner's employment, whether he had prior convictions for any offences and whether, from the woman's perspective, he had breached the DVO, regardless of whether he had been charged for doing so. Pseudonyms are used when referring to the participants' comments to protect their anonymity, and whether they are from a culturally and linguistically diverse (CALD) background or Aboriginal and Torres Strait Islander (ATSI) background is also identified.

## The participants

The women interviewed for this study were diverse in age, marital status, relationship duration, educational attainment and employment status. At the first



interview, their mean age was 39 years (SD=9), ranging from 23 to 68 years. The majority of participants were Australian-born or had migrated with their families when they were children ( $n=40$ , 61.5 per cent). Six of the women (9 per cent) were ATSI women. Of those 25 (37.5 per cent) women who were born overseas (CALD), nine had been living in Australia for five years or more, 13 for between two and five years, and three for less than two years. Just over half of the participants were never married to the abuser ( $n=35$ , 54 per cent) and 26 (40 per cent) had lived with him. Most of the women had mutual children with their abuser ( $n=48$ , 74 per cent). The women had spent between one and 29 years in their abusive relationships, with a mean relationship duration of 9.6 years. At the first interview, three women were still living with their abuser, and two other women returned to live with their abusive ex-partner but one of them had separated again by interview three. For those who were separated at interview 1, most ( $n=44$ , 69 per cent) had been separated for less than four years, with 18 (28 per cent) separated for more than one year but less than two years, and 14 women (22 per cent) separated for less than one year.

Overall, the participants were highly educated. The highest level of education attained for 28 (44 per cent) women was a university degree (bachelor degree or higher), 16 (25 per cent) had a diploma or advanced diploma, ten (15 per cent) had completed year 12 and 11 (17 per cent) had finished school at year 11 or earlier. Approximately half of the women ( $n=30$ , 46 per cent) were employed either part-time or full-time at the first interview. Nearly half of the women ( $n=32$ , 49 per cent) relied entirely on social security payments and, at interview 1, three women had no employment or access to social security because of their visa status.

All of the participants had experienced multiple forms of abuse, most had experienced physical abuse ( $n=57$ , 87 per cent) and emotional abuse ( $n=51$ , 78 per cent) during the relationship, and for many of the women the abuse had continued post separation. Post-separation abuse included stalking, threats concerning children and legal systems abuse (Douglas 2018; Miller and Smolter 2011); and the 'terror' experienced post separation continued to limit women's freedom (Stark 2007: 377). In reflecting on her experience of abuse post separation, Ingrid (CALD) explained: 'it's a psychological kind of terror. That is something that he's doing to this day though. Like he's kept doing it after separation, so it never – it's nothing that stops'. Similarly, Anna said, 'when it's quiet you think who's watching, you hear from people – there is stuff going on, that he's looking for you. Constant terror'. Both women had a DVO, but the abuse continued post separation.

### **Who had a DVO?**

Most of the women ( $n=55$ ) had a DVO at the first interview that was still in place for the second interview between six and ten months later. A majority of the women from CALD backgrounds had a DVO ( $n=20$  of  $n=24$ ). While

research suggests that people from CALD backgrounds may be reluctant to engage with legal systems (Cavallaro 2010), nearly all of the women in the Queensland Study were recruited from specialist support services and lawyers. The fact that this sample of women had already received advice and support may explain their high level of engagement with the DVO system (Ammar *et al.* 2012: 346).

Nevertheless, despite their connection with support services, not all of the women in the study had a DVO. Seven of the participants – four of them from CALD backgrounds – had no DVO at any time during the course of the study. They had a range of reasons for this. At the first interview, Luciana (CALD) and Bisera (CALD) were living at a shelter and both were reluctant to apply for a DVO. They explained that they felt safe and did not want to risk issues with immigration or their partners finding them. Euni (CALD) explained that she was still living with her partner and trying to work things out. Mira (CALD) thought a DVO would exacerbate problems with her partner. She and her children relied on her partner financially and she believed a DVO might jeopardise his employment. Milly also worried about compromising her ex-partner's employment and so did not seek an order. Jane paid lawyers privately to represent her for family law matters and did not want to go to court more than was necessary because of the expense. Shelley's children made serious allegations against her (that were later proven to be false). Her lawyer recommended against a DVO because it might complicate the family law proceedings.

In two cases, women had applied for DVOs but accepted 'undertakings' from their partners. An undertaking is an informal promise to the court to be of good behaviour and, unlike a breach of a DVO, a breach of an undertaking is not a criminal offence (AIJA 2017: [7.11]). Jacinta initially applied for a DVO but ultimately accepted an undertaking. She said,

I basically turned up and said I don't want to go through with it simply because I don't have money to be represented and it was too stressful to try and do everything, find all the text messages [evidence of abuse], present them all and all that sort of stuff.

Some of the participants felt pressured by their lawyers to accept an undertaking rather than go to a trial for a DVO. Celina (CALD), a recent migrant on a spouse visa who had separated from her sponsoring partner, said that her lawyer had pressured her to accept an undertaking after her first DVO had expired. In contrast, Sally, who has an intellectual disability, attended court with her support worker for a DVO hearing. She said that when she arrived at court her lawyer 'pressured her' to accept an undertaking. However, Sally's support worker did not think this would provide enough protection and Sally believed the support worker's advocacy had ensured that she obtained a DVO.

### **Helpfulness of the DVO**

At interview 2, it was possible to ask 54 of the women involved in the study for their perspective on the helpfulness of their DVO. I used the terminology of 'helpfulness' to avoid pre-empting the women's goals for the DVO (Westmarland and Kelly 2013). The women were presented with a scale of 1–5, with 1 being 'very unhelpful' and 5 being 'very helpful'. As noted in Table 12.1 below, nine women (17 per cent) rated the DVO as very unhelpful or unhelpful; 33 women (61 per cent) rated the DVO as helpful or very helpful; and 12 women (22 per cent) rated the helpfulness of the DVO in the middle of the scale, suggesting mixed feelings or ambivalence about its usefulness. Similar to other studies (Logan *et al.* 2006; Russell 2012; Chaudhuri and Daly 1992), women were generally optimistic about the helpfulness of DVOs. Similar to Johnson, Luna and Stein's (2003) US findings, when the women's perceptions of helpfulness of the DVO was correlated to the violent partner's characteristics of employment, previous convictions or breach of the DVO, it was difficult to discern any strong patterns between these characteristics and the women's perceptions of whether the DVO was helpful (see Table 12.1).

Like studies undertaken in the US (Fleury-Steiner, Fleury-Steiner and Miller 2011; Logan and Walker 2009), most of the women ( $n=35$ , 65 per cent) reported at interview 2 that the DVO had been breached, although in most cases reported breaches of DVOs did not result in criminal prosecution or conviction. Research suggests that criminal prosecution for DVO breaches only occurs in a minority of cases (Westmarland and Kelly 2013). Around half of the women in the Queensland Study ( $n=24$ , 44 per cent) reported that their partner was unemployed and half ( $n=27$ , 50 per cent) reported that their partner had a prior conviction (for any offence). While the largest group of perpetrators ( $n=16$ , 30 per cent) were unemployed, had prior convictions and had breached the order, women's views about the helpfulness of the DVO where perpetrators fitted this category varied. This suggests that perpetrator characteristics are not a very helpful predictor of how women evaluate the effectiveness of DVOs. The assessment checklist of helpfulness had limited utility because it was vague and answers may have depended on women's expectations of DVOs (Johnson, Luna and Stein 2003: 321), so the participants were asked to explain their answers. Their comments are explored in the following sections.

### **Ambivalent view of DVOs**

Notably, the ex-partners of the five ATSI women were unemployed, had prior convictions and had breached the protection order, yet four of the five were ambivalent about the helpfulness of the DVO (one said it was unhelpful). The four who were ambivalent thought that DVOs could work sometimes or to some degree. For example, Melissa (ATSI) felt that DVOs could work depending on the perpetrator but that, in her case, the DVO was not a deterrent:

Table 12.1 Perceived usefulness of DVO (correlated to employment, prior convictions and breaches of the DVO)

Perceived helpfulness of DVO at time 2	Perpetrator employed + prior convictions + breach	Perpetrator employed + prior convictions – no breach	Perpetrator employed – no prior convictions – no breach	Perpetrator unemployed – no prior convictions – no breach	Perpetrator unemployed – no prior convictions + breach	Perpetrator unemployed + prior convictions – no breach	Perpetrator unemployed + prior convictions + breach	Total
1–2 unhelpful/very unhelpful	n2		n2 (1 – CALD)	n1 (n1 – CALD)	n4		n9 (17%)	
3 ambivalent	n1	n2 (1 – CALD)	n1	n1	n6* (n4 – ATSI)	n1 (n1 – CALD)	n12 (22%)	
4–5 helpful/very helpful	n4 (n1 – CALD)	n1 (n1 – CALD)	n5 (n2 – CALD)	n7 (n5 – CALD)	n2 (n1 – CALD)	n2 (n1 – ATSI)	n33 (61%)	
Total	n7 (13%)	n1 (2%)	n8 (15%)	n7 (13%)	n4 (7%)	n3 (5%)	n54 (100%)	

Note

\* Four women did not complete the survey but made comments in their interview consistent with this assessment of helpfulness.

if you're mad, you're under the influence of drugs, you're doing whatever, a piece of paper's not going to stop you. [My ex-partner] wrote that to me in gaol, 'It's just a piece of paper, I'll get out one day'. But if [he's] going to do something, he's going to do it. If I could close doors [he is] the type of person, he'll kick the door in ... [he] kicked the shit out of me one day and he was handcuffed and put in the back of the police car ... he kicked the window out.... But I think [DVOs] work to some degree but if someone's going to do things they're not going to think, 'Oh, this is a deterrent'.

In a similar vein, Cassy (ATSI) believed that the protection orders work sometimes but

if they get pissed off and they go off – nothing's going to stop them. Sometimes when you feel like they're going to just lose it, you just say to them, either stop or I'll ring the cops. Sometimes you can say that to them, but sometimes ... they'll just flip it.

All four of the ATSI women who expressed ambivalence about the DVO had also experienced severe levels of physical violence from their abusers, including broken bones and rape.

Seven other women indicated that they had mixed feelings about the usefulness of the DVO. There did not seem to be any connection between the characteristics of the perpetrator and the participants' ranking. The women expressed a variety of reasons for their ambivalence. Carol's ex-partner had been stalking her for many years. She had a DVO and thought that it was useful in the short term but that ultimately it would not protect her:

if they do find him, they can lock him up. But I know it's only – it's just something that gives me time.... Because without it he'd be inside the house and he'd be living there ... I think it does stop that – [but] it won't stop him killing me, it won't.

Previous research has identified reduced levels of satisfaction with DVOs where stalking is reported (Logan and Walker 2009).

Lisa was also ambivalent about the DVO's helpfulness, although her reasons were connected to her experience of the process of obtaining the order as much as to its effectiveness once it was in place (see also Bell *et al.* 2011). Lisa's partner had also applied for a DVO against her. In his statement in support of his application, he alleged that Lisa had previously worked as a sex worker and used drugs for many years in the past. The magistrate asked Lisa to respond to the allegations and she believed that this was inappropriate. Lisa's ex-partner eventually withdrew his application and she obtained a DVO. She reported ongoing child contact issues with her partner that she believed made the DVO difficult to manage. Ingrid (CALD) was similarly ambivalent about the DVO:

He has breached it several times – with calls and various behaviours and I have reported this to the police but because it's not violence, the police don't bother to do anything. The fact that there are also family court orders that allow him access to the child is a concern to the police also.

As noted earlier, while state-based statutes and courts regulate DVOs, an order made under the national family law system about children overrides state orders to the extent of any consistency. At interview 2, 37 women in the study had concurrent family law orders and DVOs in place. Inconsistency between these orders and the reluctance of state police to identify breaches of DVOs where family law orders were in place affected the helpfulness of orders for some women in the study.

### ***DVOs are unhelpful or very unhelpful***

Generally, the explanations provided for why orders were seen as unhelpful or very unhelpful included the failure of police to enforce them, that the justice response was insufficient, and that abusers did not care what happened to them so the DVO was not a deterrent.

Susan believed that the police failed to respond to her reports of breaches of the DVO and failed to take non-physical DFV seriously. She reported that, among alleged breaches, her ex-partner had followed her in the supermarket and made 'veiled threats' towards her that she had recorded. Susan observed:

men are not being held accountable and I cannot put it down to anything else other than the failure of police at the coal face. Just being completely inept and lazy and not being trained on what constitutes domestic violence. Maybe they are jaded and they see my situation as relative to other women who do come in stabbed ... they are not following their operational procedures manual.

Similarly, Kim identified her frustration with the apparently selective practices of police in responding to breaches, especially where breaches did not involve physical violence. She had reported many breaches of the DVO to the police, including incidents where her ex-partner contacted her and where he tried to take their child from primary school. Kim said that the police described these breaches as 'soft breaches':

Breaches are breaches. There is nothing in the policy and procedure of police that mentions soft breaches. It's like being a little bit pregnant – either it's a breach or it isn't. Incarceration is what needs to happen for breaches. If you want to send a strong message to the Australian public about punishment and consequences ... this must include jail.

Notably, Monica's circumstances emphasised the danger of some non-physical behaviours. On the day that her ex-partner killed someone close to her, Monica had made numerous reports to the police about unrelenting text messaging from her ex-partner – texts that breached the DVO – but the police had not acted on her reports. The definition of DFV in Queensland law and Australian family law encapsulates coercive control and the wide range of behaviours that underlie it (AIJA 2017: [3.1]); yet participants expressed concern that too often the police focused on physical violence. This approach minimised the seriousness of other non-physical forms of obsessive behaviour that could indicate a high risk of danger (Campbell *et al.* 2003).

Some women reported that the police did respond but that their ultimate response, or the response of the court in sentencing, minimised the abuser's behaviour. Shuang (CALD) said,

From my experience ... he always damages the property but all the time the police came and let him get away and didn't really do something serious to make him realise he's very bad and he will get punishment for it.

Similarly, Hannah reported multiple breaches and that, although the breaches were prosecuted, the result was 'a slap on the wrist'.

For some participants, it did not matter how well the police and courts responded, the perpetrator was still not deterred. For example, Sandra observed, 'I never felt like [the DVO] would actually protect us.... If someone wants to do something to you, they don't care, they'll do it'. Alex had a similar view. At interview 2, she had attended court on 23 separate occasions for DFV-related matters over a six-month period. Alex said that her ex-partner had instigated almost all of the court applications and that this was a way of exerting control over her. Among other court actions, he had applied to revoke the DVO twice and attempted to reopen the application for the DVO that the court had ordered after a contested hearing. Ultimately, Alex's ex-partner had received two short jail sentences because of breach convictions. She commented:

Whilst having a DVO gives the police more power, I felt powerless to stop his behaviour and clearly having a DVO has not stopped his behaviour. The only way he has been stopped is by going to jail. However, he has continued to contact people involved in our family court matter not listed [as protected] on the DVO.

### ***DVOs are helpful or very helpful***

Of the 20 women who were from a CALD background and who had obtained a DVO, 14 said that the DVO was either helpful or very helpful. While there was no clear connection between the characteristics of the perpetrator and these women's conclusions that the DVO was helpful, CALD women commonly



made comparisons between the assistance they received in Australia in relation to DFV and the support they would expect to receive in their home countries. In many cases, CALD women reported that there was limited recognition of DFV and support in their home country (Ammar *et al.* 2012: 340). It is therefore likely that Queensland responses to DVF often seemed very positive in comparison to responses in their home country. Some studies have identified that CALD women struggle to engage with support systems in response to DFV because of the many obstacles they face, including language and isolation (Allimant and Ostapiej-Piatkowski 2011). However, most of the CALD women involved in the Queensland Study were recruited from a specialist support agency and had strong advocacy, which would have influenced their experience of DVOs.

Overall, the explanations about how DVOs helped CALD women overlapped considerably. These explanations included that the DVO made the perpetrator stay away, the perpetrator changed his behaviour and stopped being abusive, the DVO improved the police response and the DVO shifted power to the woman and helped set boundaries between her and her ex-partner. One woman, Anna, also talked about the importance of establishing a paper trail to ensure the abuser is held responsible (Johnson, Luna and Stein 2003). However, despite identifying the DVO as helpful, Anna's comment is rather ambivalent:

they're just another piece of paper ... it's not his problem, he doesn't care.... He's abused the system and that's my problem.... Like what can I do? Because I don't feel safe, and I was just denied that the whole time ... I'm getting [a DVO] because I know ... with having that, although he'll still get away with it.... They'll just think the more breaches you put in, the more paper trail there is, there is [more evidence] to prosecute him.

Nine of the women, including five women from CALD backgrounds, said that the DVO was helpful because it had ended their contact with the abuser. Notably, five of these nine women, four of them CALD women, did not have children with the abuser, making it easier to cease contact with him. For example, Celina (CALD), who did not have children with the abuser, attributed the cessation of contact between her and her ex-partner to her 'piece of paper'. Sally also did not have children with the abuser and had struggled to separate from him. She thought the DVO helped with that process: 'Because of having that order in place, feeling safe and thinking that I don't have to worry about it, I don't have to have any more contact with him because I'm thinking I'm safe. If I see him anywhere I just keep walking past and just ignore him'.

Some of the women believed that the DVO helped stop the abuse because their ex-partners were concerned about the impacts of a breach charge on their lives, including criminal prosecution, deportation or impacts on their employment. These views reflect the hypothesis made by Sherman in his arrest study (1992) that some people have greater stakes in conformity and therefore arrest



(or, in the context of this chapter, a charge of breach DVO) is more likely to deter the behaviour that may lead to arrest. Tabora (CALD) identified the limits of her order, explaining that she felt safe in Australia because of the DVO but would not feel safe if she had to go back to her home country. She pointed out that her partner had to 'behave' in order to stay in Australia as he was on a work visa. Dara (CALD) said, 'Before I had the protection order he abused me and he was carefree. He was God and he had all the power. Now, the court order made him subject to Australian law'. Dara further explained, 'Now he is in Australia he is worried about being caught. Before the DVO, he followed me, everywhere I saw him. I was scared. But the court order makes him vanish'. Colleen thought that the DVO was helpful because 'appearing in court for him was a shock ... he's a proud man and what he wants to do is earn loads more money and he doesn't want a blot on his character'.

In other cases, women pointed out that, once their partners were prosecuted for a breach of the order, their behaviour changed. Jamila (CALD) reported that her ex-partner had 'hassled' her after the DVO was put in place, but then the police charged him with breach and he had to pay a \$500 fine. She thought 'that was very, very good' because the abuse had stopped after the order had been enforced.

In line with previous research (Chaudhuri and Daly 1992), some of the women believed that police responses improved when they obtained the DVO. Both Vera and Francis assumed that the police had 'flagged' their houses because of the DVO and that police would attend very quickly if called. Faith said, 'I think that the DVO has really saved my life' – after the DVO was made, police had reliably arrived soon after she called them. Skye was also extremely positive about the effectiveness of the DVO and the police response:

I think the DVO helps. I am happy to have it. I tell all my friends to get one if they are in this situation. You need to protect yourself and your child. It's a piece of paper that can save your life. If you do it in the right way, it can stop that person from coming in and hurting you in the end. At the end of the day, if there is a DVO in place, the police are more likely to come. When I have reported the drive-bys, the police have been here within 5 to 10 minutes.

Others talked in terms of their DVO setting boundaries and being empowering. For Frieda, the order 'got him out of the house'. For Martha, the DVO was 'very helpful, because we have the Family Court stuff going on and we have to stay in contact. The DVO really boxed him in to the point he had no choice but to behave'. Kirsten explained that the DVO was very helpful because 'I could not have achieved the inroads that I have made.... It gave me the confidence to set boundaries ... gave me confidence that I have never had in my life. I could not have done it without it'.

## Reflections and conclusions

Fundamentally, the purpose of a DVO is to ensure the security of a person who has experienced DFV. This chapter has considered women's experiences of DVOs. The study was undertaken in Queensland, Australia, and included 65 women in total, out of which 54 women provided their views about the helpfulness of their DVO. The following conclusions and reflections are necessarily made in the context of the limitations of the sample and focus of the study.<sup>2</sup>

The explanations women provided for why orders were unhelpful or very unhelpful to them included the failure of police to enforce them, that the justice response was insufficient, and that abusers did not care what happened to them so the DVO was not a deterrent. Some women identified that police failed to take complaints about non-physical violence seriously, minimising the seriousness of many controlling behaviours that could indicate a high risk of danger (Campbell *et al.* 2003). Their comments underline the need for improved awareness among justice professionals of DFV as coercive and controlling behaviour rather than as being incident-specific (Stark 2009: 1510). An appropriate response to a breach of a DVO is important if DVOs are to deter future abuse, and to ensure that harms against women and their right to freedom from abuse are acknowledged. Several of the women in the study identified reluctance on the part of police to enforce DVOs (under state legislation) where there were also family law orders about child contact (under national legislation) in place, especially where the orders were inconsistent. This is a particular concern in the local Australian context (ALRC/NSWLRC 2010: 132). It is not uncommon for women who use the legal system as part of their response to DFV to be engaged with several different legal remedies, underlining the need for legal responses to DFV to be consistent and to apply similar understandings of DFV within the context in which they operate.

All five of the ATSI women in the Queensland Study had experienced severe violence from their partners, including broken bones, and their ex-partners had all breached the DVO. Despite this, four of the five ATSI women were ambivalent about the helpfulness of the DVO, explaining that they thought that DVOs could only work 'sometimes' or to 'some degree'. CALD women in the study were more positive about the helpfulness of their DVO, with most finding them helpful or very helpful. While there was no clear connection between the characteristics of the perpetrator and the women's conclusions that the DVO was helpful, CALD women commonly drew comparisons between the assistance they received in Australia in relation to DFV and the support they would expect to receive in their home countries. Perhaps for both groups their evaluations were linked to their underlying expectations of the legal system.

Similar to other studies, the majority of women ( $n=33$ , 61 per cent) were positive about the helpfulness of their DVO (Logan *et al.* 2006; Russell 2012; Chaudhuri and Daly 1992). Their explanations for this assessment included that

the DVO made the perpetrator stay away, made the perpetrator change his behaviour and stop being abusive, improved the police response, shifted power to the woman and helped set boundaries between her and her ex-partner, and contributed to a paper trail that ensured the abuser would be held responsible.

While several of the women referred to DVOs as ‘pieces of paper’ in a derisory way, claiming that they do not stop abuse, for some women their ‘piece of paper’ represented a power shift and helped to change the psychological dynamic they had experienced within the abusive relationship. Alex believed that the DVO gave the police more power. For Dara, the shift was greater, both psychologically and practically, as, while the abuser initially had ‘all the power’, the DVO ‘made him subject to Australian law’. For Kirsten, the DVO gave her confidence that she ‘had never had in [her] life’. Similar to other research (Fleury-Steiner, Fleury-Steiner and Miller 2011; Cattaneo, Grossman and Chapman 2016), the women in this study placed a high priority on acquiring safety and security through the DVO; but the symbolic role of the DVO was also important for many women, and in many cases facilitated their reclamation of what Stark (2009: 1521) would call their ‘psychic space’ and freedom. The women in this study had diverse views about the helpfulness of their DVO and their views were informed by both their experience and their expectations. While similar DVO systems operate in many countries globally, local conditions influence their effectiveness. This underscores the dangers of assuming that a response that works or fails in one country will necessarily work or fail in another.

## Notes

- \* Thanks to the women who shared their stories for this research and to Dr Jennifer Bell for her research assistance. This work was supported by the Australian Research Council’s Future Fellowship scheme (project number FT140100796).
- 1 For more information about this study see the study website <https://law.uq.edu.au/research/our-research/using-law-and-leaving-domestic-violence-research>.
- 2 For example, this study did not touch upon the increasing concerns about the criminalisation of women through the DVO system (Nancarrow 2016; Fleury-Steiner, Fleury-Steiner and Miller 2011).

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## Policing Domestic and Family Violence

**Heather Douglas**

The University of Queensland, Australia

### Abstract

How police respond to domestic and family violence (DFV) has important ramifications for the safety of women and their children. Despite recognition of the key role police play in responding to DFV and the importance of the perspectives of survivors in informing appropriate responses, there has been no recent exploration of survivors' experiences of the police response to DFV in Queensland. This article draws on interviews with women in Brisbane, Australia, who have experienced DFV and engaged in some way with the legal system. It explores women's reasons for calling, or not calling, the police and their experiences with police between 2014 and 2017. The article highlights the role of police culture in appropriately responding to DFV. It suggests that cultural change is needed and may be facilitated by ongoing training, addressing gender balance within the police service and introducing women-only police stations.

### Keywords

Domestic violence; family violence; police; violence against women.

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## Introduction

Recent Australian reports have recognised the importance of police as key frontline responders to domestic and family violence (DFV) (Special Taskforce on Domestic and Family Violence in Queensland 2015, 14; Victorian Government 2016). Domestic Violence Death Review reports have identified that positive and appropriate police responses may save the lives of those who have experienced DFV (Queensland Government 2017, 23; Special Taskforce on Domestic and Family Violence in Queensland 2015, 12). DFV is now ‘ordinary’ and ‘pervasive’ in police work (Barlow and Walklate 2018; Segrave, Wilson and Fitz-Gibbon 2018). In 2013–2014, Queensland Police responded to around 180 DFV incidents daily (Special Taskforce on Domestic and Family Violence in Queensland 2015, 1). In 2016–2017, they initiated nearly 30,000 domestic violence protection order applications, around 75 per cent of the total applications initiated during the period (Queensland Police Service 2017a, 25). Over 25,000 breaches of protection orders were reported to police during 2016–2017, with 85 per cent of breach offences involving male offenders (Queensland Police Service 2017a, 20). Figures from other states also show how pervasive DFV is in police work. For example, in 2006–2007, Victorian police attended over 30,000 incidents and laid DFV-related charges in around 25 per cent of these incidents (Rollings and Taylor 2008).

While reports identify the importance of the police response, those same reports have identified that police responses to DFV have fallen short of the expectations of many victims (see Special Taskforce on Domestic and Family Violence in Queensland 2015, 13–14; Victorian Government 2016, vol. 4, 1). While the Queensland *Not Now, Not Ever Report* (2016, 14) recognised that some inadequate police responses may result from a lack of appropriate processes, procedures and powers, police culture was also identified as a serious issue. The *Not Now Not Ever Report* made several recommendations about how to improve police culture. These included recommendations that district domestic violence coordinators be properly allocated and resourced; a deputy commissioner position be created to increase police awareness of DFV and create positive change in the QPS; and improved training for police about DFV (Special Taskforce on Domestic and Family Violence in Queensland 2015, recs. 135, 137, 138). While these recommendations have been implemented (Queensland Government 2016, ii), it is recognised that cultural change is one of the most difficult things to effect (Segrave, Wilson and Fitz-Gibbon 2018).

Despite recognition of the importance of police in DFV responses and the perspectives of survivors of DFV in informing appropriate responses, there has been no recent exploration of DFV survivors’ experiences of police response to DFV in Queensland. Drawing on interviews with 65 women in Brisbane, Australia, who experienced DFV and engaged in some way with the legal system, this article explores women’s reasons for calling, or not calling, the police and the interviewees’ positive and negative experiences of their engagements with police between 2014 and 2017. The paper begins with a discussion of research before exploring the study results. It concludes with some considerations for possible changes to policing in the context of DFV.

## Literature review

Many victims of DFV never report DFV to the police; Voce and Boxall (2018) report that around one in every five victims do so. However, when a report is made, it is often the victim of DFV who calls police (Barrett, St Pierre and Vaillancourt 2011; Hamby 2014, 145). In Australian studies, Birdsey and Snowball (2013) found that just over half the victims who sought help from a DFV service had called police. Similarly, Meyer (2011, 276) discovered that nearly half of the women she interviewed had themselves contacted police. To better understand the factors that increase the likelihood that victims will report DFV, Voce and Boxall (2018) systematically reviewed 21 quantitative studies. They concluded that females and white victims were less likely to report to police (Voce and Boxall 2018, 7). They also found that a number of factors increased the chance

of the victim reporting. These factors included past experience of abuse outside the current relationship, previous reports of violence to the police, a higher frequency and severity of injury (including victim injury), offenders' use of a weapon and offender intoxication (Voce and Boxall 2018, 11). Barrett and St Pierre (2011, 58) found that the 'biggest predictor' that a woman experiencing DFV will call the police is that she believes her life is in danger (see also Ackerman and Love 2014; Barrett, St Pierre and Vaillancourt 2011, 48; Birdsey and Snowball 2013, 6).

Birdsey and Snowball (2013, 7) found that victims were more likely to call the police if they had a civil DFV protection order in place. Several studies have identified that victims of DFV call police for a variety of reasons, including wanting to have the abuser removed from the home, wanting police to arrest the abuser or send a message to him, and wanting to seek help for the abuser (Barrett et al. 2017; Barrett, St Pierre and Vaillancourt 2011; Leisenring 2012; Stewart et al. 2013). Research also indicates that victims express a variety of reasons for not reporting incidents of DFV to police, including fear of further violence, embarrassment or shame, feeling that the incident is not important enough and feeling that they will face discrimination from police (Barrett et al. 2017; Birdsey and Snowball 2013, 6; Meyer 2011, 277).

Many myths and misunderstandings surround domestic violence. These include notions that a woman should leave a violent relationship, physical violence is more serious than other controlling behaviours, domestic violence is a relationship issue for which both parties are responsible and that victims of violence have certain characteristics—for example being generally weak, passive and powerless (AIJA 2017, para 4.1). To better understand police responses to DFV, some studies have explored whether police accept or hold some of these myths and misunderstandings. In their survey of United States (US) police officers, Gover and colleagues (2011, 627) found that 71 per cent of police agreed that 'many DV victims could easily leave their relationships but don't'. Research has shown that women who leave a violent relationship often take a long time to do so and may call on police many times before finally ending the relationship (Meyer 2011, 276; Strang, Neyroud and Sherman 2014, 227).

Studies have also identified that police may focus attention on physical violence in DFV cases. For example, Gover and colleagues (2011, 627) found that 52.8 per cent of police agreed that 'police should arrest DV cases only when there is clear evidence of injury' (see Hirschel and Buzawa 2013, 1097). Similarly, a recent English study found that in determining whether DFV was 'serious', police most often mentioned physical assaults and injuries rather than harassment or breach of a protection order (Myhill 2017, 9). In an Australian online survey of 493 lawyers and community advocates, 52 per cent of respondents reported that they had submitted one or more written complaints about police in the past two years (Goodman-Delahunty and Corbo Crehan 2016, 1011). Respondents identified that in a 'substantial' number of cases, police justified their refusal to act in response to DFV on the basis that the alleged victim had no visible physical injuries (Goodman-Delahunty and Corbo Crehan 2016, 1016).

Research also suggests that some police continue to understand DFV as a relationship issue. Myhill (2017, 10) reported that 'some' officers held the view that it was not appropriate to 'take sides' in DFV cases; officers said they tried to find solutions palatable to, or in the best interests of, all parties. Myhill's (2017) interviews with 32 frontline police found that police officers suggested that 'negotiation' was still a fairly common approach when responding to domestic-related calls for service, at least for incidents regarded as less serious or as a 'dispute' between equally aggrieved parties.

Most studies report that women are often dissatisfied with the police response to DFV (Birdsey and Snowball 2013; Leisenring 2012; Meyer 2011; Stewart, Mangan and Hannam 2013, 278–281). Client advocates in New South Wales, Australia, reported in focus groups that problematic police behaviour included unprofessional or illegal action, lack of respect for the victim, coercion of victims and discrimination or inaction where action could reasonably be expected (Goodman-



Delahunty and Corbo Crehan 2015). Many researchers have argued that negative police responses are linked to a masculine police culture (e.g., Hoyle and Sanders 2000; Meyer 2011; Westmarland 2001).

Importantly, research has shown that reporting to police, and how those reports are received by police, often has important future implications for victims. For example, Xie and Lynch (2017) determined that reporting DFV to police may reduce recidivism. Other research has found that a victim's experience of engagement with police is an important factor in determining whether they will call the police again, with negative experiences reducing the likelihood that the victim will call in future (Barrett et al. 2017; Goodman-Delahunty and Corbo Crehan 2015; Leisenring 2012). As previously noted, despite the importance of police in the response to DFV and the perspectives of survivors in informing appropriate responses (Kelly and Westmarland 2015, 117), there has been no recent exploration of DFV survivors' experiences of the police response to DFV in Queensland.

## **The Brisbane study**

### *Methodology*

This section draws on a qualitative study that involved interviews with 65 women in Brisbane, Australia, who had experienced DFV from a male intimate partner and engaged with the legal system in response to it. Twenty-four women were from a culturally and linguistically diverse background (CALD) and six were Aboriginal or Torres Strait Islander women (ATSI). Interpreters were used in interviews with nine of the women. The study received ethics approval from the University of Queensland. The aim of the study was to interview the women on three occasions between 2014 and 2017. Ultimately, 55 women were interviewed a third time. The women were initially approached by their DFV support workers or lawyers from a range of organisations in Brisbane, who discussed the proposed study with them. At the time of recruitment, the women were all aged over 18 years. Support workers or lawyers arranged interviews if the woman was interested in participating. A narrative interviewing style was used to encourage participants to tell their stories and describe their experiences in detail at their own pace and as accurately as possible (Flick 2007; Powell, Fisher and Wright 2005). The interviews were recorded and transcribed and thematically analysed, both manually and through NVivo qualitative software (Braun and Clarke 2006). Pseudonyms are used throughout this article and some details have been omitted to protect the anonymity of the interviewees. All participants had experienced multiple forms of abuse (n57, 87 per cent) and most had experienced both physical and emotional abuse (n51, 78 per cent). The women interviewed described their experiences with multiple aspects of the legal process (see Douglas 2018a; 2018b). However, it is the comments made by the women about their engagements with police (or their decision not to engage) that form the basis of the following discussion.

### *Why did women not call the police or why did they delay calling?*

By the third interview, six women reported that they had never had contact with the police as a result of the experience of DFV and many women reported that they delayed calling them. They provided a variety of explanations for why they had not called, or delayed calling. Reasons included fear of increased anger from the abuser, shame and embarrassment, physical obstruction from calling the police, concern that non-physical violence would not be taken seriously, fear that the woman would be expected to leave the relationship if she called police and that the woman did not feel she was in physical danger. Some reasons for not calling or delaying calling reflect the myths and misunderstandings about DFV outlined earlier.

Three of the women who had never had any contact with police were from a CALD background; they expressed various reasons for not calling the police. Luciana (CALD, interview 2) explained that she was worried her partner would become angrier: 'He doesn't like the police and for him

it's like ... I think, because it's like an offence'. Bisera (CALD, interview 2) explained that she had called the ambulance to attend to her abusive partner. On attending, the ambulance officers observed the way she was treated by her abuser. They talked to her and recommended she seek assistance from a support agency and call the police. Bisera sought assistance from a support agency and said she did not need police after that.

The three other women who had never had any contact with police explained it was in part because they had not experienced direct physical violence. Yvonne reported that her abusive partner exercised a high level of control over her and her children. She reported that she had very limited access to finances and had experienced physical threats and reproductive coercion (Douglas and Kerr 2018). Yvonne's (interview 3) partner refused to allow her to work or access television or a mobile telephone, making her extremely isolated:

When you're in a situation like that, you're sort of so involved in the situation and just surviving. There are things that are threatening ... I guess there was a lot of psychological stuff, and they were more threats than actual actions. But there was that point where I felt like I was treading a very thin line, so I think that's why. I didn't think the threat was real enough or tangible enough for someone else to take seriously, like the police.

Milly reported that her abusive partner would 'blow up ... he'd throw things and break things', he 'would stand over' her and 'threaten to punch [her] head in' and she felt 'scared'. Milly (interview 1) had never involved the police: 'I didn't want other people to know. I didn't want it to be real. I didn't want the police rocking up on my doorstep'. At interview 2, Milly said 'so much of it was in that grey area ... So much of the verbal abuse that was directed towards me was the grey. How do you prove it? Do you organise the police?'. Jane (interview 2) experienced financial abuse and significant monitoring of her behaviours, but had never called the police because she did not believe she was in physical danger.

One woman, Pari (interview 1, CALD), identified the physical obstruction she experienced on one occasion when she tried to call police:

That was a very bad time. He threw my son and he got his head banged on the wall ... He was crying, I was crying, I got bleeding lips and scars. I got cuts. Then ... I tried to call police, he snatched phone from me and he locked me in a room [with] my son.

Many other women said that they delayed calling the police, sometimes for years. Bianca had not called the police earlier in the relationship because she did not feel safe to leave and believed police would demand she leave. Bianca (interview 2) explained: 'I felt I would absolutely have to leave and I would have to not be found by him. I'd have to somehow disappear in order to be safe'. Others stated they were scared of what their partner might do if they called the police (e.g., Lyn, interview 1). Several women deferred calling the police because they believed police contact would jeopardise their partner's employment and success. For example Dara (CALD, interview 2) said, 'I loved him, I wanted his success'. In contrast, Hilary (interview 1) was worried about what the police would think of her. She explained, 'I didn't want to cause trouble ... I thought I don't want them to think badly of me'.

Some women delayed calling police because they were fearful their partner would not let them access their children if the police became involved. Faith (interview 1) explained, 'He told me he would take the kids ... He would take me to family court and he would win because I was so messed up, I was the one who was crazy'. Similarly, Julia (interview 1) observed that:

If ... I ever go to the police, he's going to lie and tell them that it was me that did this and me that did that, so that when it goes to court, it's that same thing, when it goes to court, it looks bad on me and I can lose custody of [our son].

Fiona was also worried about losing her children if she called the police. She finally left her abuser after more than 20 years of abuse when the children had grown. In explaining why she did not involve police earlier, Fiona (interview 1) described the shame she felt. 'You don't want everyone to know that you have put up with someone since you were 14 years old who hit you.' Feelings of shame or embarrassment were also cited by several other women as a reason for delaying engagement with the police. While Sara's TAFE worker eventually called the police on her behalf, Sara (interview 1, CALD) explained that she had been reluctant to call because 'when I see a policeman, like I feel like shy or embarrassed'. Martha (interview 1) was similarly reluctant to involve the police: 'I was so embarrassed ... Oh God, that I'm in domestic violence, here I am pregnant'. Other women discussed how they had kept their experience of DFV secret for many years and calling police would have exposed this. Gillian (interview 1) explained, 'you just cover these things up'; Terri (interview 1) said, 'you sort of keep to yourself because sometimes you get people saying, well why are you there or why don't you just walk out'. Maddy (interview 2) explained that she had subtly reached out to police for help on earlier occasions, but her quiet pleas were not noticed:

I think early in the piece over the years where I reached out to the police and made subtle attempts for them to notice that something was wrong—went there in a side-skirt so that they could see multiple bruises that were on my leg or on the side of my arm and things like that, to give testimony about a crash I had seen up the road; just different things like that.

### *Who called the police?*

At the first interview, most women (n59 of 65) had experienced contact with the police in relation to DFV. This is a very high proportion compared to other studies (Voce and Boxall 2018) and may be explained in part by the fact that the interviewees were recruited from support agencies where staff often encouraged and supported them to engage with police. At the second interview, 18 women reported they had contact with the police in response to DFV between the first and second interview and 15 women reported they had contact with police between the second and third interview. Generally, women reported that they themselves had called the police. At the first interview, 49 women reported that they had called the police (four ATSI women and 14 CALD women). However, some women reported at interview 1 that others had alerted the police. Three women reported that their abusive partner had called the police, one reported her new partner had called the police, one reported her child had called them and two women reported that a neighbour or friend had called the police. Seven women reported that a service (domestic violence support worker, ambulance worker, TAFE worker, child safety officer or hospital worker) had contacted police. On one occasion, police contact was the result of a drug investigation. On some occasions, women reported that more than one person had called the police.

### *Why did women call the police?*

Women expressed a range of overlapping reasons for calling the police, including seeking information about their options; wanting the police to stop the violence, provide protection or protect the children; applying for a civil protection order or reporting an abuser's breach of a civil protection order; recovering the child from the abuser; or reporting her abusive partner's suicide threat. Consistent with other studies (Ackerman and Love 2014; Barrett and St Pierre 2011, 58; Barrett, St Pierre and Vaillancourt 2011, 48; Birdsey and Snowball 2013, 6), more than half of the women in the Brisbane study who had contacted the police believed they were at risk of very serious injury when they called the police.

### *Positive experiences with police*

When discussing positive police responses, many of the women said they thought that the police had been respectful towards them, listened to them, worked with them and followed up on their safety. Positive comments on police interactions often reflected that the woman believed she had developed a relationship with an individual police officer or station. For example, Sandra had interactions with police over each of the three interviews. Her experience with police was inconsistent, but at interview 2, she reported a positive relationship with police:

This year, the police have been working very closely with me in a sense. They've been ringing me ... and then the police officer—six weeks would go by—Sandra, are you alright? We haven't heard from you. We haven't seen you ... So they were very—quite concerned.

While Frieda was only interviewed in the study once, she had already had several interactions with police over the weeks prior to the interview. She identified inconsistent police responses, but had praise for one officer:

The fact that he believed me that night in the face of this female police officer who was like, oh it is caused by nagging and the magistrate who was like, it's a push and shove ... so I just kept coming back to him. He was just very nice.

Skye (interview 1) was interviewed three times in the course of the study. She reflected on the difficulties police face in balancing the wishes of the victim against police views on the response that will best promote safety:

I believe it's hard for the police. They were very respectful on my behalf but they said to me they feel it's in the best interests of them that they [apply for] a protection order. I said to them no, no, no, please don't, please don't, I'll sort this out, everything ... They respected my wishes which I appreciated because at that point I was scared for what he would do to me in a way. But because when you supposedly love someone you don't want them going to jail or having a criminal record or anything.

At interview 3, Skye had separated from her partner, had a protection order and stable child contact arrangements. She was still experiencing stalking and was receiving support from police, but reported that she felt safe:

Sometimes the police give me a call and just say we're just checking in on you because of the past records that I've had with him they're like well we have to make sure that he's not doing anything stupid ... The one who was actually in charge of our main [protection order] thing is always like 'I'll always have to check up on you ... I felt really bad with what I saw'. He knew that I was having a really hard time with [the abuser] but I couldn't leave. He still does yearly if not half-year check-ups on me to make sure that nothing is going on.

Skye (interview 3) concluded that the police response had been an important part of her support network:

I think community services is a big part of people surviving and dealing with it. It's also the fact that I'm very grateful that I did have a lot of people supporting me and if it wasn't for them, if it wasn't for the community services, if it wasn't for the police, I wouldn't be where I am today.

Alex was involved with police at each of the three interviews and continued to experience extreme levels of stalking and legal systems abuse (see Douglas 2018a) throughout the period of the interviews. At interview 2, Alex said, 'I'm very grateful. The police have been very—they've done what they can do. But they've always been very respectful of me and my situation. They are very aware of how tricky he is'. Her experience continued to be positive at interview 3.

Bianca (interview 2) reported that she had developed a personal relationship with an individual officer that she found helpful:

[Named police officer] gave me her direct line and I spoke to her on a number of occasions around different things, when I was worried ... there was one occasion when my power went out and the meter box had been tripped ... I was completely paranoid. I don't actually think it was [the abuser], but at the time I was really freaking out about it and I rang [named police officer] and she arranged for people to drive by the house and check on things, just those little things like that.

The key themes identified in the women's positive experiences with police included a sense of feeling respected and believed by police and that individual police seemed to have a personal commitment to their ongoing safety.

### *Negative experiences with police*

Women reported number of concerns when asked about their experiences with police. Key issues they raised were police failure to investigate or take other appropriate action (especially where the parties had children together), failure to take the DFV seriously, blaming the women and aligning with or being manipulated by abusers. The women's comments about these overlapping issues are considered in the following three sections.

#### *Failure to investigate or take other appropriate action*

Some women expected that police would investigate the incident of DFV thoroughly if they were called. However, they reported that this did not always occur. Faith (interview 2) reported that the police eventually attended after a two-hour delay, then provided little support. Faith said that her ex-partner had come to her house. He was 'screaming abuse', threatening to kill her and banging on the front and back door to enter. He went under the house and started to bang a broom on the floor of Faith's bedroom:

I had locked myself and the children in my bedroom and pushed the drawers against my door. The children and I were very scared. The police took two hours to turn up. When they did, we noticed that he had snapped a key into the lock of my front door. [He] had fallen asleep downstairs, the police left him there.

When they attended, the police spoke to Faith about taking out a protection order, but did not offer to assist her or investigate possible criminal charges, despite the damaged lock and threats to kill.

Kirsten (interview 1) reported that her ex-partner violently attacked her male friend in her home, injuring him severely, including breaking one of his bones. Her male friend ran to a shop where he called the police. The police attended Kirsten's house, but she was disappointed with them:

They did nothing. In fact they were hopeless. The ones who came to the house made me feel like it was a storm in a teacup ... They didn't check on my daughter. They didn't check on me ... There was no [protection order] on their behalf ... No



evidence collected, despite blood being on the curtains and around the house. No statements. No checking on the child or the rest of the house.

While Kirsten blamed police, Francis (interview 1) blamed herself for the police failure to respond appropriately. Francis (interview 1) reflected on the first time police attended her house:

The neighbours called the police and two police came—one for him and one for me. The police said to me ‘What happened to my lip?’ and I said, ‘I bit it’ and she said, ‘Are you sure?’, and I said ‘yeah, I bit it’.

She explained that she denied that her partner had harmed her because she was scared of him. Francis further explained that although one of the police was talking to her partner outside, she thought her partner could still hear what she was saying. Francis believed the only way the police response could have been different would have been if she had ‘owned up.’ Francis discussed another time neighbours had called the police. Again she denied being harmed. Francis (interview 1) told the police her partner had thrown a saucepan and the police said, ‘You can’t fight in front of the children’. Despite her denials of DFV, she was disappointed the police did not inspect the house because, she said, ‘If they had, they would have seen a hole in the wall and blood on the wall’. Francis was disappointed the police did not follow up or talk to her about protection orders on either occasion.

Some women like Julia (interview 1) were disappointed that police did not follow through on what they committed to doing: ‘They lied to me, told me my son would be named on the protection order and he wasn’t and told me my ex was being charged and they didn’t’. Similarly, when Euni (interview 2) attended the police station on two occasions, she left her number for police to call her: ‘It seemed that it looked like they didn’t care much about that. I already left a message and contact number but they never called me back’.

In Australia, national family law orders govern property settlement and child contact post-separation, while civil protection orders and criminal offences are governed by state-based statutes and courts (AIJA 2018, para 1). In cases in which the woman had children with the abuser but did not have a family law order, some women identified that police seemed particularly reluctant to become involved. For example, Felicity (interview 1) called the police when her ex-partner was very late to return the baby from a contact visit. She recounted, ‘The police said there’s nothing we can do. There’s no parenting orders. I said he’s a five-month-old baby that’s being breastfed. The policeman said, well can he buy him formula?’. Similarly, Doya (CALD, interview 1) had eventually escaped from a very violent relationship. A final incident of strangulation and beating—in which she thought she might be killed—caused her to flee the house, leaving her two young children behind with the abuser. Doya went to hospital for her injuries and asked the police to return her children to her, especially her breastfed infant. She observed, ‘Yeah, the police think maybe, you know, they not believe me ... police said, you can’t have your kids, you will not take your kids from father’. Only after obtaining a family law order some time later were Doya’s children returned to her care.

However, issues also arose when women had family law orders in place that allowed the abuser contact with the children. At interview 3, police had told Sandra that her breach of protection order complaints were being investigated but that they ‘can’t go behind the family court order’. Police emphasised to Sandra that there were ‘two sides to every story’. Similarly, Faith had a no-contact protection order and a family court order with specific child contact conditions for the abuser. She reported numerous breaches of the no-contact condition (interview 3):

I did get the impression that the police were like, oh look he’s just trying to—he’s not doing anything wrong, he’s just trying to contact you. It’s not a big violent

outburst or anything like that. But it was—it was almost seen as—oh it's just, he's just emailing you. That's not classed as a breach.

#### *Police did not take domestic violence seriously*

Similar to Faith's experiences in relation to 'contact breaches' not being understood as DFV, Ingrid (CALD, interview 1) went with her lawyer to report stalking by her partner (via a GPS device in her daughter's doll). Ingrid hoped the police would assist her to obtain a protection order, but 'they said I can't make an application for [a protection order] because it's not physical violence'. Suggesting a gendered police response, Susan (interview 2) said, 'I hate to use the term, but I feel I'm just getting cock-blocked everywhere'. Susan had reported numerous 'contact breaches':

I have [a protection] order, he keeps breaching, why isn't anything being done about it? ... I'm continuously being threatened—yeah, and I said that to this [police officer] this morning. I said, you guys have ignored every single complaint I made for the last six months and they're just getting worse. His behaviour is escalating. What's it going to take for me to be noticed? I said, 'Do I have to show up here black and blue?'.

Several interviewees recounted that their DFV complaints were not taken as seriously as allegations that their abuser had been driving under the influence of alcohol, watching child pornography or growing cannabis. Some said that while assaults on the woman might not be investigated, it was a different story when the abuser assaulted a police officer. Terri (interview 1) reported her abuser's DFV to the police several times, but 'the crunch came when he assaulted police ... and child safety came around then'. Hannah (interview 1) reported an incident of physical violence to the police but was told she could not obtain a protection order. She also told police about her abuser's erratic and drunken driving with the children in the car: 'They were more interested in the fact that he was drink-driving, to be honest, than in him hitting me'. Her partner was charged for drink-driving.

Julia (interview 1) called the police for information about how she might respond to her abuser's threats. The operator said:

It sounds like [her abuser] was frustrated ... He hasn't directly said he is going to put my mouth over the gutter and kick me over the back of the head, there was nothing they could do, because he could just say that I did something to provoke him.

On another occasion, Julia went to the police station with copies of numerous text messages and evidence of her abuser making more than 40 calls a day:

I felt like an idiot when I left there. I felt like they were just looking at me as someone who was trying to, I don't know, get attention. [The police officer] basically just told me there was nothing they could do to help ... I left there and I rang police again because I didn't know what to do. I was extremely upset and I felt like an idiot. They suggested I try going to a different police station.

Julia went to a different police station and this time decided to report the fact that her abuser was also growing cannabis. Julia said the police response to the DFV improved significantly when she disclosed this information and her partner was charged with drug offences.

#### *Victim-blaming and aligning with men*

On some occasions, women identified that police officers appeared to align with or be manipulated by the abuser, or implied that the woman was responsible for the violence. Some

women believed this attitude resulted in a lower level of service. As noted in the previous section, Susan (interview 2) claimed she had faced a gendered police response and reduced level of service, having been ‘cock-blocked’. For others, there were more far-reaching implications, including several situations in which the woman was charged with a criminal offence.

Anna (interview 2) reported that police said she should be avoiding her abuser even though there was a protection order requiring him to stay away from her. At interview 3, Anna said that a police officer called her an ‘idiot’ for staying with her abuser. She reported, ‘It doesn’t matter how many times I ring, I feel like I’m annoying the police because obviously I’m calling and it’s always speaking to a different officer’. At interview 2, Fiona reported that a police officer had told her she should be the one to move out of the area where Fiona and her ex-partner had lived for many years. Frieda’s partner was ultimately convicted of assault. However, at interview 1, Frieda observed that when police first attended the house in response to the assault complaint:

The [police] woman came and talked to me. She said, oh I’ve talked to [him]. ‘He feels very nagged in the relationship and you really need to think about are you putting too much pressure on him and my advice is if these things happen once they’ll happen again. So you really need to think about it’. So she was just like basically placing all the blame on me and completely downplaying or dismissing or agreeing with him that he didn’t do it.

Julia (interview 3) reported that her protection order included a condition that the police accompany her to remove her belongings from the family home. Despite this, Julia ended up paying for a removalist. Anna reported:

Because the police told me that I would have maybe an hour if I was lucky, to grab whatever I could. They had to sort out a time that was convenient for [abuser] to be home from work and things like that. I just felt that they weren’t really considering the fact that I am a single mum with a two-year-old ... I just feel like [abuser] was able to manipulate the police really well in this whole situation.

Anna believed police were focused on the needs and convenience of the abuser rather than hers, despite the fact that she had been the one to move out of the family home because of DFV and had care of a young child.

When reflecting on her experiences with police over a three-year period, Shuang (CALD, interview 3) blamed her limited English for the lack of attention she received from police. She said, ‘Maybe my English was really not very good. They didn’t understand what’s going on. They just listen to [Australian-born partner], you know? From me, yeah, they didn’t give a lot of help’. Notably, Shuang reported that no interpreter was present at any of the call-outs.

In some cases, women were charged with offences after police determined the woman was the abuser, although in all instances the charges were subsequently withdrawn by police. Vera (CALD, interview 1) said that her Australian-born partner assaulted her but her abuser called the police. By the time police arrived, Vera was distressed. Vera and her abuser gave conflicting accounts of who had assaulted whom. Vera reported that when police arrived at the house:

He’s pretending—he’s using crutch for the police that day. He never used crutch. He cry and cry to the police and he’s using a crutch so the police will not charge him. He pretends that he is a cripple man.

Ultimately, Vera was arrested and charged with assault and kept in police cells overnight. The charge was later withdrawn. She reflected (interview 2), ‘this is really the police ... that’s a really bad experience in my life ... this is my bad experience. I cannot ever, ever forget’.



Similarly, Janet (interview 1) called the police on one occasion. She and her abuser were 'a bit drunk' when the police arrived, and Janet had stabbed her abuser with a kitchen knife. The police applied for protection orders for both Janet and her partner and initially charged Janet with serious assault, but later withdrew this charge. Janet (interview 1) said: 'I told [the police officer] the reason there was a knife there is because he tried to strangle me, and I couldn't breathe and I had to get a knife out to try and protect myself'.

In some cases, women reported that police seemed to have particular expectations of how a victim would behave, creating problems when women did not fulfil those expectations. For example, Lisa (interview 1) reported that her partner was hanging around in the garden, despite a protection order with a condition that he stay away:

[I] rang the police and because I didn't scream, I didn't cry, I didn't make a noise, I was not going to give that person standing on the other side of my window any satisfaction knowing that he had scared me. I had three children in the house, plus the granddaughter. So I rang the police and they didn't come.

The police came to the house the next day to check on matters because it had not sounded urgent, despite the clear breach of the protection order and the stalking-type behaviour.<sup>1</sup> Several women pointed to the complexity of the response to fear and that there is not one way of expressing fear. Colleen (interview 2) said:

Fear can sometimes come out mostly as aggression. Grief comes out as anger. So people think it's your problem, which it is, but there's a lack of compassion or an old idea that she may deserve it. That she's mad and she's aggressive.

### *Women's strategies*

Women reported that they developed a range of creative strategies for dealing with perceived shortcomings of the police. As outlined earlier, one such strategy was reporting their partner's other illegal acts (such as drink-driving) to ensure police treated their calls seriously. Other strategies included collecting their own evidence, making formal police complaints, re-partnering (in intimate relationships) with police and security officers, living close to police stations and on some occasions simply opting out of calling the police for help.

Frieda resorted to collecting her own evidence. When Frieda (interview 1) called the police, they applied for a protection order on her behalf but initially refused to instigate criminal charges. Frieda took photographs of her injuries and obtained a medical report and then went to the police station and demanded to make a criminal complaint. Her abuser was ultimately charged and convicted of assault. Some women also used their mobile telephones to record breaches of protection orders and other forms of abuse. Susan (interview 2) said 'I try to record, but then I have to be careful about it' (see Douglas and Burdon 2018).

Several women made formal complaints about police conduct, although none of the women reported that doing so was helpful. For example, Susan (interview 2) said 'I've made so many complaints to police since then and all of them are seen to be unfounded'. Fiona (interview 2) reported that she had good experiences with police 'depending on who you talk to', but she did make a formal complaint about one incident and was disappointed that 'they said they couldn't do anything'.

Leonie, Susan and Fiona had become intimately involved in a relationship with a police officer or a security guard. Fiona (interview 2) said the security guard she re-partnered with is 'very protective'. Susan (interview 2) had re-partnered with a police officer she met on a dating website and said, 'obviously I feel very secure with him'. Vera moved close to a police station. She said, 'where I live they always had a police car' parked in the street and that made her feel safe.

The most concerning response from women who had had problematic experiences in their engagement with police was that they had stopped calling them. For example, by interview 2, Kim stated, 'I have no faith in the police ... I have no faith that there's proper justice, because there doesn't seem to be'. Jacinta (interview 3), when asked why she no longer called the police, said 'I don't believe in the system ... I don't believe it's a system that really works'.

## Discussion and conclusion

The Brisbane study reflects the outcomes of other studies in finding that it was usually the woman herself who called the police (Barrett, St Pierre and Vaillancourt 2011; Hamby 2014, 145) and women called for a variety of reasons (Barrett et al. 2017; Barrett, St Pierre and Vaillancourt 2011; Leisenring 2012; Stewart, Mangan and Hannam 2013). Many of the Brisbane participants reported that police had been respectful towards them, listened to them, worked with them and followed up on their safety. These positive views on police interactions often reflected that the woman believed she had developed a relationship with an individual police officer or station. However, significant concerns were raised by the interviewees. These included police failures to investigate or take other appropriate action (especially where the parties had children together), failures to take the DFV seriously (especially its non-physical forms) and police blaming women or aligning with, or being manipulated by, abusers. Regardless of whether women reported negative or positive experiences with police, in general, participants' experiences were inconsistent over time.

The women's comments highlight that some police responses reflect myths and misunderstandings associated with DFV and sometimes women have also internalised these myths. In particular, women's reports illustrate that some police expect that women should be able to leave violent relationships, discount complaints of coercive and controlling behaviour when there is no physical violence and may expect victims to have certain characteristics. On this point, Segrave, Wilson and Fitz-Gibbon's (2018) interviews with Victorian police appear to reflect concerns raised by women in the Brisbane study. Their study (2018, 7) reported:

[o]n the whole deserving victims of [DFV] existed for officers only on a purely hypothetical plane, drowned out for the most part by a steady procession of imposters, liars and timewasters, presenting what were regarded as highly suspect claims to victim status.

While women engaged a number of strategies in response to negative or inconsistent police responses, of most concern is that some women ultimately opted out of calling the police. This concern is reflected in other research that has shown that experiences with police have implications for the woman's decision about whether to call again (Barrett et al. 2017; Goodman-Delahunty and Corbo Crehan 2015; Leisenring 2012; Li et al. 2015). Research suggests that calling the police may help reduce future violence (Xie and Lynch 2017, 359). Given that police are the frontline protectors of public safety, it is a grave situation when a woman experiencing DFV believes she can no longer rely on them.

In his interviews with English police, Myhill (2017, 14) found that many police retained a 'physical violence mindset' when policing DFV, and tended to view serious incidents as physical assaults. The limited understanding of DFV exhibited by some police may be explained to some extent by the fact that the crime control model tends to be focused on single incidents. Stark (2012, 206) suggests this focus may contribute to flawed approaches to policing DFV (see Segrave, Wilson and Fitz-Gibbon 2018, 12). Recruitment materials may also play a role in entrenching the expectations of new police. In Queensland, where this study took place, the police recruitment website includes pictures of police racing down a highway on motorbikes, leaping over fences and chasing someone or running towards something, under the caption: 'We don't do boring' (Queensland Police Recruiting 2018). Understanding of the dynamics of DFV may, to some extent, be improved

by encouraging realistic expectations at recruitment, and by training and specialisation. In some studies, police have expressed willingness to be trained (Horwitz et al. 2011, 623) and there is evidence that appropriate training can make a positive difference (Ruff 2012, 295). Ruff (2012) reported on the positive effects of a Canadian ‘train the trainer’ program designed in collaboration between police, researchers and representatives from a range of government departments to help police officers respond to DFV. Police were trained to identify forms of DFV, consider the impact of DFV on children and respond to clients with diverse needs (Ruff 2012, 287). After training Ruff (2012, 292) discovered that police spent more time at the DFV scene, were more likely to collect evidence of DFV and were more likely to make referrals to support agencies. Some studies have identified promising results from DFV specialty units in improving victim experiences of police, increasing the formal sanctioning of abusers and reducing DFV (Exum et al. 2014, 1003, 1024; Klein 2009; Segrave, Wilson and Fitz-Gibbon 2018). There is also US evidence to suggest that more police on the ground results in less DFV (Xie, Lauritsen and Heimer 2012, 984). In Queensland, since the *Not Now, Not Ever Report* (2015) was released, strategies including improved training, police specialisation and the recruitment of more police have commenced (Queensland Police Service, 2017b, a, 177). Directing women who have experienced DFV to attend specialised police units may help ensure that women experiencing DFV have a more consistently positive and appropriate experience. While all these responses are important and research suggests they will make a difference, most have been trialled now for several years and yet rates of DFV and of DFV-related homicide remain high (Walklate, McCulloch and Fitz-Gibbon 2017). In addition, concerns about police understanding of DFV continue to be raised (Segrave, Wilson and Fitz-Gibbon 2018; Smee 2018). Perhaps we need a more radical approach.

US research suggests that there may be some differences in the way female versus male police officers do their job. Morin et al. (2017, 9, 26) surveyed police and found that more male (35 per cent) than female (22 per cent) police reported physically struggling with or fighting a suspect who resisted arrest, and that male (30 per cent) officers were about three times more likely than female (11 per cent) officers to report firing their weapon while on duty. Research conducted in England by Andrews and Miller (2013) examined whether the presence of female police chiefs made a difference to the policing of DFV. They found that the rate of DFV arrests varied based on the authority and discretion accorded to female police officers and that higher rates of DFV arrests occurred where female chief constables were present in a police force (Andrews and Miller 2013, 1010). Importantly, they determined that ‘the quality of life for women, as victims of domestic violence, can be greatly improved if there is greater representation of women within the police service’ (Andrews and Miller 2013, 1011). The authors found that female police officers who had greater authority and opportunity to exercise discretion actively represented women’s interests (Andrews and Miller 2013, 1010). It may be that addressing gender balance within the police service may assist in encouraging cultural change and improved responses to DFV. Queensland Police Service is overwhelmingly a male-dominated institution. The most recent statistical review undertaken by the Queensland Police Service (2017a) shows that while almost half the new recruits are women, there is an obvious gender imbalance at higher levels of the service. Approximately 30 per cent of constables are women, 21 per cent of non-commissioned officers are women and there is only one female member (six per cent) of the 18-member Queensland Police Executive (Queensland Police Service 2017a).<sup>2</sup> More generally, of the 44 members of various QPS committees, six (13 per cent) are women, with three of those women being external members who are not QPS employees (Queensland Police Service 2017b). With the move towards a more gender-balanced police service at the recruitment end, we may observe some changes in the way policing is conducted in Queensland. However, ensuring women have greater authority within the police service may be a more reliable way to improve the policing of DFV.

Several studies (Barberet and Carrington 2018; Perova and Reynolds 2015) have highlighted the work of the hundreds of women’s police stations (WPSs) throughout Latin America. WPSs have

been developed since the 1980s to ‘enhance women’s confidence in the criminal justice system, encourage reporting, prevent re-victimization and send a message to the community that gendered violence was no longer tolerated and men who abuse women will be made accountable’ (Barberet and Carrington 2018, 837). WPSs operate using a variety of models, but their common features include that the stations are usually located separately from regular police stations, operators receive specialised training, and operators are able to coordinate women’s access to a range of services, including services providing support through the justice system, counselling, jobs skills training and childcare (UN Women 2011, 2). UN Women (2011, 4) reports that WPSs have improved women’s access to justice, resulting in more charges being laid against violent abusers, and the majority of WPS users surveyed reported feeling that they were listened to and, as a result, better supported and understood. Most users also perceived that WPSs contributed to a reduction in violence against women (UN Women 2011, 4). Perova and Reynolds (2015) examined national mortality data in Brazil to determine the effect of WPSs on the homicide of women. They concluded that WPSs had strong effects on homicide rates among women aged 15–24 years, living in larger metropolitan areas, resulting in a 70 per cent reduction in the average homicide rate for women in that group (Perova and Reynolds 2015, 17).

The *Not Now, Not Ever Report* (2015, 50) recognised that ‘cultural and attitudinal factors ... [affect] the behaviour of the professionals within our police, justice, welfare and service provider systems when called on to respond to, and manage, domestic violence’. Police are just one of the responses to DFV, but they are an important one. This research suggests that there is still some way to go to effect the cultural change needed among police. In the Queensland context, DFV training and specialised units have been introduced and there are increasing numbers of police on the ground. However, reports of DFV and associated deaths remain persistently high (Queensland Government 2017, 35). Perhaps it is time to reconsider the police recruitment message and the representation of women in higher ranks of the police service. It might also be time to investigate the potential of women’s only police stations.

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*Correspondence:* Heather Douglas, Professor of Law, TC Beirne School of Law, The University of Queensland, Sir Fred Schonell Drive, St Lucia, 4072, Queensland, Australia. Email: h.douglas@law.uq.edu.au.

<sup>1</sup> Notably stalking is identified as risk factor for future abuse (AIJA 2018, para 4.2).

<sup>2</sup> A definition of commissioned and executive rank: ‘The appointment of an officer to a commissioned and executive rank in the service is an important milestone in the officer’s career and comes after the officer has demonstrated advanced levels in the core attributes and personal qualities required of commissioned officers. A commissioned rank in the QPS is Inspector and above, and an executive rank is Assistant Commissioner and above’ (Queensland Police News 2018).

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