



**Submission to the review of the  
*Domestic and Family Violence Protection Act 1989***

Queensland Domestic Violence Service Network (QDVSN) is a Queensland network of Regional and State-wide Domestic Violence Services. Since the inception of the QDVSN in 1992, our membership has worked collaboratively and strategically to:

- advance understanding of, and work to eliminate gender, structural, political, economic, legal and cultural inequalities and inequities which result in gender based violence in all its forms;
- Provide peer support, information sharing and debriefing within our membership;
- Be a change agent by providing a reference point and a collective voice to Government, non-government and member services on State and National issues relating to domestic and family violence.

QDVSN membership includes the following services:

- Brisbane Domestic Violence Advocacy Service
- Caboolture Regional Domestic Violence Service
- Cairns Regional Domestic Violence Service Inc
- Centacare Domestic and Family Violence Services SCOPE
- Domestic and Family Violence Prevention Service (South West)
- Domestic Violence Prevention Centre Gold Coast
- Domestic Violence Resource Service (Mackay & Region) Inc.
- Domestic Violence Service of Central Queensland
- dvconnect: Domestic and Family Violence Telephone Service
- Immigrant Women's Support Service (IWSS)
- Ipswich Women's Centre Against Domestic Violence
- North Queensland Domestic Violence Resource Service
- Queensland Centre for Domestic and Family Violence Research (CDFVR)
- Safer Families Support Service
- Working Against Violence Support Service (WAVSS)

The Queensland Domestic Violence Services Network (QDVSN) welcomes the opportunity to provide input to the review of the *Domestic and Family Violence Protection Act 1989*. However, the QDVSN also strongly recommends that further consultation opportunities be forthcoming by ensuring that an exposure draft Bill be available for review by the domestic and family violence sector in due course. The QDVSN's considered submission is detailed below and has been informed by the work of our membership and other colleagues within, and intersecting with, the domestic and family violence sector.

Our submission identifies issues for consideration in the review of the *Domestic and Family Violence Protection Act 1989* (hereafter referred to as 'the Act') and makes key recommendations on the following areas:

1. Defining intimate partner violence (IPV) as distinct from family violence;
2. Using appropriate language that contextualizes violence;
3. Enshrining principles in the Act;
4. Predominant Aggressor;



5. Children and domestic and family violence;
6. Police issued protection orders;
7. Engagement with professional interpreters;
8. Breach of orders made;
9. Ouster conditions; and
10. Behaviour change programs.

## **Response / Recommendations Prevention**

- In the 2002 amendments to the Act, the scope of protection was broadened to include spousal relationships, intimate personal relationships, family relationships and informal care relationships. However, the QDVSN assert that the predominant area of work still pertains to domestic violence, that is, violence occurring in intimate personal relationships (IPR). These IPR include current and former marital, defacto and dating relationships whether of the same or opposite sex; and biological parents of a child.
- QDVSN notes that the current legislation only contains definitions of ‘forms’ or ‘acts’ of behaviour that may constitute domestic and family violence. In order to provide greater clarity to those seeking to use or implement the legislation, QDVSN recommends that a definition be included that contextualizes the acts or behaviours associated with domestic and family violence to better reflect the dynamics of domestic violence and family violence. QDVSN contends that the term ‘domestic violence’ may be better represented by the term ‘Intimate Partner Violence’ (IPV) and recommends that the following definition be included for IPV which is:
  - Intimate partner violence is a fundamental violation of human rights and involves an exploitation of power imbalances. It is predominantly perpetrated by men against women and their children and is where one person uses a pattern of abusive and/or coercive behaviour and/or pursuit in order to control and dominate the other both in a relationship and after separation. This behaviour often repeats, may escalate and can result in death. The most commonly acknowledged forms of IPV are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. The consequence of this behaviour instills fear for personal safety and/or well-being and traumatizes women and children.
- QDVSN recommends that the Department of Communities (DoC), in consultation with relevant specialist parties, for example, the disability sector, Aboriginal and Torres Strait Islander communities, Seniors services, LGBTI, test the IPV definition against the other relationship categories in the legislation, to see if this definition is applicable to their safety and protection needs.
- QDVSN recommends that more appropriate, contextual language be used within the Act to signify the unacceptability of IPV and family violence. Language is important because it shapes our understanding of the situation and context in which violence takes place.



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- QDVSN believes that the term ‘affected person’ or ‘protected person’ would give greater context and meaning to the experience of IPV or family violence for the victim, perpetrator, legal service system and the community.
- QDVSN recommends adopting the specific guiding principles held within the Act from section 9 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) as shown below:

*(2) This Act aims to achieve those objects by:*

*(a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking; and*  
*(b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice.*

*(3) In enacting this Act, Parliament recognises:*

*(a) that domestic violence, in all its forms, is unacceptable behaviour, and*  
*(b) that domestic violence is predominantly perpetrated by men against women and children, and*

*(c) that domestic violence occurs in all sectors of the community, and*

*(d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and*

*(e) that domestic violence occurs in traditional and non-traditional settings, and*

*(f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and*

*(g) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.*

*(4) A court that, or person who, exercises any power conferred by or under this Act in relation to domestic violence must be guided in the exercise of that power by the objects referred.*

- QDVSN recommends these additional guiding principles:
  - Administration of this Act within specialist domestic and family violence courts;
  - The importance of risk assessment and safety planning for all bodies dealing with domestic and family violence;
  - Clarifying that the role of the legislation is about ensuring the safety and protection of victims and the responsibility of the system to hold the perpetrators of violence accountable;
  - All regulations be informed by the guiding principles.
- QDVSN recommends that a court or person exercising any power conferred by or under the Act in relation to domestic and family violence must be guided in the exercise of that power by the guiding principles and regulations. This includes, but is not limited to the following: magistrates, judicial registrars, court registrars, police, justice of the peace, corrective services, legal representatives, domestic violence services, court support information and advocacy services (adapted from section 9(4) *Crimes (Domestic and Personal Violence) Act 2007* (NSW)).



## Civil and Criminal Approaches

- QDVSN identifies that there are current opportunities for IPV victims to pursue a civil or criminal response. However, these provisions are often not applied and an undue burden is placed on the most vulnerable person.
- QDVSN recommends that a pro-investigation approach be implemented to ensure that current criminal responses are applied appropriately eg. assault, stalking, arson, grievous bodily harm, deprivation of liberty.
- QDVSN recommends that the Act includes a requirement that the police or independent legal advocate inform victims of IPV of the criminal law responses available to them.
- QDVSN recommends that a separate offence of ‘attempted strangulation’ be included within the criminal code.
- QDVSN recommends that the terminology of ‘predominant aggressor’ be utilized throughout the legislation as evidenced below and not the term ‘primary aggressor’ as that is related to single incident assessment. A definition of predominant aggressor and a framework for identifying and responding to predominant aggressor should be adopted. The following is an extract from QDVSN’s response to the *Policing Domestic Violence in Queensland* (CMC, 2005) report.

*The term predominant aggressor is used in reference to decision making within a domestic violence response. It charges officers with the responsibility of determining who has the most potential for doing the most harm, and what actions were done in self-defense. It encourages officers to desist from ‘equalizing’ the violence or seeing domestic violence as mutual combat. Factors to consider include the history of domestic violence between the people involved, the threats and fear level of each person, and whether either person acted in self defense. These are appropriate considerations when determining who the predominant aggressor is, and therefore which of the two parties should be arrested or subject to a domestic violence order:*

*Main factors to be considered:*

1. *The intent of the law to protect domestic violence victims;*
2. *Any threats - real or implied - which instill fear of violence by one partner toward another;*
3. *Any history of violence between the partners;*
4. *If either partner acted in self defense.*

*Other factors to be considered:*

5. *Height/weight of the parties;*
6. *Criminal history;*
7. *Level of violence;*
8. *Corroborating witnesses;*



9. *Offensive/defensive injuries, for example, strangulation (injuries consistent with explanation);*
10. *Seriousness of injuries;*
11. *Corroborating evidence;*
12. *Presence of fear;*
13. *Existing court orders.*

(QDVSN, 2005, pg 3)

### **Protection of Victims**

- QDVSN fully endorses the Women's Legal Service's submission recommendations in relation to the protection of children.

### **Immediate Police Response to D&FV**

- QDVSN recommends the introduction of more consistent guidelines regarding the grounds for making temporary protection orders (TPOs). For example, section 39A(2) needs more clarification regarding what constitutes sufficient and appropriate evidence and these guidelines may reduce the current trend for different interpretations and decisions between magistrates and across districts on what constitutes immediate risk and whether a TPO is required.
- QDVSN expresses our concern regarding the introduction of police issued protection orders. Currently, there are many cross applications for Domestic Violence Protection Orders (DVPO) taken out by police across the state. The victim, who may have been the person who called the police in the first instance, finds themselves a respondent to domestic violence proceedings.

Prior to any consideration of police issued protection orders, a definition of predominant aggressor and a framework for identifying and responding to predominant aggressor should be adopted in the Act and by the Queensland Police Service (QPS) and legal service system. This, together with training on recognizing and responding to self defense injuries could ensure that victims are no longer treated as perpetrators.

When the intent of the law is to provide enhanced protection to victims of domestic and family violence, then actions which undermine their confidence in the system should be addressed. Not responding appropriately to a victim of domestic violence who has called police seeking protective intervention can have devastating consequences.

- QDVSN advocates the adoption of a policy on predominant aggressor and self defense as a precursor to the consideration of extended discretionary police powers in respect to police responses.

### **Understanding Legal Processes**

- QDVSN fully endorses the recommendations contained in the submission from The Migrant Women's Emergency Support Service trading as IWSS on pages 15 to 17.



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- In addition, QDVSN draws your attention to the extract below from our response to the *Policing Domestic Violence in Queensland* (CMC, 2005) report addressing interpreter issues.

*The census of 2001 stated that 17.1% of Queensland's total resident population was born overseas. Bearing in mind that 180,000 did not state their birthplace, this figure may be understated. The census also identified that 8.2% of this group did not consider they had proficient English capacity. In considering these figures it is essential across the law enforcement and legal service system to have in place processes / policies and procedures that ensure access and equity issues for people from non-English speaking backgrounds (NESB) in particular women in domestic violence.*

*In addition, all law enforcement and legal service system personnel need to be trained in the guidelines / policies and procedures. For example, it is not appropriate for an officer to state that "[My] supervisor is not available... and therefore [I] cannot make the decision to call an interpreter" when the woman is at the police station bleeding and cannot communicate her needs in addition to her emotional and psychological trauma.*

*The Queensland Government Multicultural Policy 2004 upholds the value of ensuring access to all Queenslanders and in view of anecdotal cases such as the one above, and others identified across the state of women from NESB in domestic violence, the law enforcement and legal service system must take this into consideration.*

*QDVSN believes that it is essential that the professional practice be appropriate for the clients identified in the community. This entails having guidelines / policies and procedures and skills to meet clients' unique needs and not rigidly applying interventions in the same manner to all clients. Interventions with a thorough understanding of domestic violence must be incorporated. Additionally, we encourage the law enforcement and legal service system to examine its cross cultural service practice and to ensure the training of all personnel in relation to cross cultural understanding and sensitivity when working with people from NESB, particularly women. (QDVSN, 2005, pg 5)*

- QDVSN also recommends that the legislation should direct the use of specialist interpreters for people with disabilities, for example people with intellectual and learning disabilities, the hearing impaired and tracheotomy patients (National Relay Service – speech to speech) and to the provision of indigenous interpreters for people identified to have a need. With this in mind, there may be a need to support and train people in communities who are identified as potential interpreters within the indigenous community and CALD communities.

### **Perpetrator Accountability**

- The current range of penalties for domestic and family violence is adequate but inconsistently applied. A schedule or table of penalties (such as is used in the Juvenile Justice system or informally for drink driving/disqualified driving offences) to assist Magistrates/Judges may improve consistency with regards to imposing penalties. Table 1 below is extracted from the Domestic Violence Prevention Centre Gold Coast's submission to the legislation review.



Table 1

Offence	Penalty for first breach	Penalty for second breach	Penalty for third breaches	Penalty for three or more breaches
Breach of DVPO – no aspect of physical assault or willful damage; and no evidence of using controlling behavior/threats to cause fear.	Fine	Probation Order for a minimum of 18 months and special condition to attend Men’s DV Program.	Intensive Corrections Order with special condition to repeat Men’s DV Program	Sentence of imprisonment.
Breach of DVPO – with physical assault/willful damage; or using controlling behavior/threats to cause fear.	Probation or ICO (depending on seriousness of assault - <u>imprisonment to be seriously considered</u> ). Special condition to attend Men’s DV Program to be placed on Order.	Imprisonment	Longer period of imprisonment	Longer period of imprisonment.

- QDVSNS supports the recommendation made by the Domestic Violence Prevention Centre Gold Coast’s submission that breaches of DVPO featuring physical violence/willful damage/controlling behavior/threats to cause fear, be called ‘Aggravated Breaches’ of DVPO so these can easily be identified on criminal histories and taken into account in sentencing.

**Ouster Condition**

- QDVSNS contends that the provision, and uptake of, ouster conditions could be enhanced by:
  - Thorough assessment processes regarding the appropriateness of an ouster condition to the presenting situation with a strong framework of safety for women and children experiencing domestic violence;
  - Increasing the opportunity for QPS officers attending domestic violence incidents to include an ouster condition where appropriate and with the consent of the aggrieved;
  - The provision of free safety upgrades to the home and immediate QPS response to any breaches of an order;
  - More efficient and effective court procedures to enable easier access to an ouster condition. Currently women and their children are more likely to need emergency accommodation to ensure their immediate safety as court procedures involving an ouster



- condition are lengthy with delays frequently observed, causing significant disruption and crisis in the lives of women and their children who have to leave their home in order to establish their safety; and
- Information and community education specifically developed in consultation with CaLD and NESB communities to ensure timely access to accurate information; to address community understandings and response to domestic violence; and reduce the heightened risk of domestic violence related homicide within CaLD and NESB communities.
- QDVSN fully endorses the recommendations contained on pages 22 to 23 of the submission from The Migrant Women's Emergency Support Service trading as IWSS.

### **Behaviour Change Programs**

- As mentioned previously, QDVSN recommends that more appropriate, contextual language is used to signify the unacceptability of IPV and family violence. The 'poor' use of language is a central part in the misrepresentation of violence. Intimate partner violence is often portrayed as being mutual. Mutualising terms blame victims and absolve perpetrators of their actions. Some common mutualising terms that are used frequently are describing an act of violence as a 'domestic dispute', 'an argument' or 'conflict'. These terms distance the perpetrator from their acts of violence to such an extent as to render them almost invisible and always imply active participation from the victim. The corollary being that the victim is somehow responsible.
- We contend that the naming of 'behaviour change programs' as opposed to 'perpetrator programs', along with euphemisms such as 'users of violence', sends mixed messages about the unacceptability of violence against women and their children. Such terms not only 'soften' this message, but allow the perpetrator's agency in undertaking such acts to be hidden. The term 'perpetrator of violence' or 'perpetrator' is appropriate in this context.
- QDVSN recommends that perpetrator programs be mandatory at the protection order stage as well as a sentencing option for criminal proceedings. However, where programs do not adhere to the Department of Communities' (DoC) *Professional Practice Standards - working with men who perpetrate domestic and family violence*, we recommend that perpetrators not be referred to these programs.
- QDVSN notes that the DoC's *Professional Practice Standards - working with men who perpetrate domestic and family violence* are not being adhered to, or adequately monitored by all funding sources, across Queensland.
- QDVSN further notes that the availability of perpetrator programs is limited across Queensland. Anecdotally, magistrates are demanding the provision of perpetrator programs in all jurisdictions. Consideration should be given to the coordinated funding and provision of such programs through the Department of Justice and Attorney General and Corrective Services budgets as well as federal funding.





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- In addition, QDVSN recommends that any future funding towards perpetrator programs should be undertaken in collaboration with specialist Regional or statewide DV Services to ensure adherence to best practice and the safety of women and their children.
- QDVSN, in recommending perpetrator programs that meet the Department of Communities' *Professional Practice Standards - working with men who perpetrate domestic and family violence*, notes that the Women's Advocate role is paramount to ensuring the safety of women and their children. In order to ensure that the Women's Advocate role can continue in accordance with best practice, the QDVSN advises that the legislation should be amended to make provision for domestic and family violence service provider personnel to be able to make contact with the protected person (the aggrieved or named person).

Currently Section 25 details when the Court may impose other conditions on the Domestic Violence Protection Order (DVPO). Section 25, clause (3)(d) details the condition that the respondent is prohibited from

“...contacting, attempting to contact or asking someone else to contact the aggrieved or a named person...”

Concerns regarding the above clause were first noted at an Integrated Response to Domestic and Family Violence Committee meeting held in Cairns. The Cairns Integrated Response includes a male perpetrator program, run by Relationships Australia, which, like many others around the state, include a Women's Advocate. It seems that a partner with a 'no contact' condition on a DVPO who is unhappy about being contacted by the Women's Advocate, could, legally, seek to breach the respondent to the DVPO under section 25 (3)(d).

This matter was raised at the QDVSN meeting in October 2009 and it was found that the role of Women's Advocates in perpetrator programs was wide-spread and that all carried out these initial 'safety checks' with the partners, as this is considered best practice. In addition, the role of the Women's Advocate is noted as being a critical one in section 3.1.2 Safety and Risk Assessment and 3.1.3 Advocacy Work (where funded) of the Department of Communities' *Professional Practice Standards – working with men who perpetrate domestic and family violence*.

Understandably, members of QDVSN were concerned that the purpose of the clause, which is to stop respondents harassing the protected person (the aggrieved or named person) to a DVPO, if strictly applied, would prohibit the important task of seeking to ensure partners of those attending perpetrator programs are assessed for risk and informed of safety measures.

The QDVSN notes that Section 25 includes clause (7) that moderates Section 25, clause (3)(d) as follows:

“A condition in an order that prohibits a respondent from asking someone else to contact or to locate an aggrieved or a named person does not prohibit the respondent asking-

(a) someone else who is a lawyer to contact the aggrieved or named person; or



(b) someone else, including a lawyer, to locate the aggrieved or named person for a purpose authorised by an Act.”

- In order to ensure that the Women’s Advocate role can continue in accordance with best practice, the QDVSN advises that clause 7 should be amended to make provision for domestic and family violence service provider personnel to be able to make contact with the protected person (aggrieved or named person) for the purpose of ensuring safety and support for the protected person.

### **System Planning and Coordination**

- QDVSN recommends that information may be shared in regard to a respondent in the context of risk management and evidence-based sentencing. However, any system of information sharing must be set up so as to ensure that an ongoing focus on victim safety and autonomy, offender accountability and system responsibility is embedded in the policies and procedures of the organisation or agency at all levels.
- QDVSN recommends that the Act should include a provision that a protected person (aggrieved or named person) must be advised within a specified (short) timeframe should a perpetrator be released on bail or from custody, and what the conditions of their release is.
- Furthermore, QDVSN supports the Ipswich Women’s Centre Against Domestic Violence’s recommendation that all personnel with access to such information is regularly and specifically trained regarding the intricacies of domestic and family violence. For example power and control; victim versus perpetrator presentation; predominant aggressor; risk assessment.
- QDVSN also advises strongly that consideration must be given to the unintended consequences of such information sharing. For example, anecdotally, victims may be less likely to come forward if they think information sharing may lead to removal of their children (adapted from the Ipswich Women’s Centre Against Domestic Violence’s submission to the legislation review).
- QDVSN endorses the following recommendations made in the submission from the Domestic Violence Prevention Centre Gold Coast:
  - *The new legislation to enshrine the sharing of privileged communication between advocates and emergency response agencies such as QPS, Health and Social Services Courts (Department of Justice) and Queensland Corrective Services and any other appropriate entities. In particular, section 82 of the Privacy Act could be modified or adapted to address this.*
  - *Procedures of information sharing to be consistent across all QLD Govt agencies to ensure consistency and access to all relevant information to keep victims safe and hold perpetrators accountable. It is essential, in doing this, that the victim guides all decision-making related to her safety.*



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- *That Data sharing be available across all relevant agencies and departments to map the extent of the issue of domestic violence, determine trends, issues and service system gaps.*
- The QDVSN recommends that immediate, sufficient funding be allocated to specialist regional and statewide DV services to fully implement integrated/coordinated community responses to domestic and family violence in all regions across Queensland. We further recommend that the Department of Justice and Attorney General funds specialist domestic and family violence courts in all jurisdictions across Queensland.

### References

Crime and Misconduct Commission (2005) *Policing Domestic Violence in Queensland*, CMC.

Department of Communities (undated) *Professional Practice Standards - working with men who perpetrate domestic and family violence*, Department of Communities, Queensland Government.

NSW (2007) *Crimes (Domestic and Personal Violence) Act 2007*

QDVSN (2005) *Queensland Domestic Violence Service Network's response to Policing Domestic Violence in Queensland*, <http://www.dvcairns.org/public/qdvsn/qdvsncmcreponse.pdf>

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