



Queensland Domestic Violence Services Network (QDVSN)

c/- PO Box 964, Ipswich Q 4305

Tel: (07) 3816 3000 Fax: 3816 3100

email: secretaryqdvsn@dvac.org.au

Brisbane Domestic Violence Advocacy Service (BDVAS)

PO Box 3278, South Brisbane BC 4101
P: (07) 3217 2544 F: (07) 3217 2679
admin@dvrc.org.au

Cairns Regional Domestic Violence Service

PO Box 12103, Cairns DC, 4870
P: (07) 4033 6100 F: (07) 4033 5863
office@dvcairns.org

Centacare Domestic and Family Violence Services, SCOPE (Suncoast Cooloola)

PO Box 5350, Maroochydore BC 4558
P: (07) 5430 9300 F: (07) 5479 5907
scopereqdv@centacarebrisbane.net.au

Centacare Safer Families Support Service (Roma, St George, Cunnamulla, Charleville)

PO Box 1733, Toowoomba 4350
P: 1300 477 433 F: 07 4632 8340

Centre Against Domestic Abuse (Caboolture)

Po Box 1746, Caboolture 4510
P: (07) 5498 9533 F: (07) 5498 9530
info@crdvs.org.au

Domestic and Family Violence Prevention Service (Toowoomba and South West) PO Box 281

Toowoomba Q 4350
P: (07) 4639 3605
toowoombaadmin@raq.org.au

Domestic Violence Action Centre

PO Box 964 Ipswich 4305
P: (07) 3816 3000 F: (07) 3816 3100
ea@iwcadv.org.au

Domestic and Family Violence Prevention (Rockhampton and Central West) PO Box 9959

Rockhampton Q 4700
P: 1300 364 277
rockhamptonadmin@raq.org.au

Domestic Violence Resource Service (Mackay & Region) Inc.

PO Box 519, Mackay 4740
P: (07) 4957 3888
admin@domesticviolenceservice.com.au

Domestic Violence Prevention Centre Gold Coast

PO Box 409, Southport 4215
P: (07) 5591 4222 F: (07) 5571 1508
admin@domesticviolence.com.au

Domestic Violence Service of Central Queensland

PO Box 176, Emerald 4720
P: (07) 4982 4288 F: 4987 5448
dvsocq@bigpond.com

Immigrant Women's Support Service (IWSS)

PO Box 5490, West End 4101
P: (07) 3846 3490 F: (07) 3844 8467
mail@iwss.org.au

North Queensland Domestic Violence Resource Service

PO Box 6061, Townsville 4810
P: (07) 4721 2888 F: (07) 4721 1794
nqdvrs@nqdvrs.org.au

Queensland Centre for Domestic and Family Violence Research

PO Box 5606, Mackay MC 4741
P: (07) 4940 7834 F: (07) 4940 7839
enquiries@noviolence.com.au

Safer Families Support Service

PO Box 1733, Toowoomba 4350
P: (07) 4688 3100
dvs@romanc.org

Working Against Violence Support Service Inc. (WAVSS)

PO Box 726, Woodridge 4114
P: (07) 3808 5566 F: (07) 3808 5109
wavss@wavss.org

Parliamentary inquiry into a better family law system to support and protect those affected by family violence 2017

Submission prepared by the Queensland Domestic Violence Services Network (QDVSN)





About QDVSN

QDVSN is a domestic and family violence (DFV) network of the regional/ Specialist Domestic Violence Services¹. Both QDVSN and Specialist DFV Services provide state-wide leadership, collaborating locally, regionally and state-wide. Specialist DFV Services operate within coordinated community (or integrated) responses to DFV.

Funded in Queensland since 1992, Specialist DFV Services have a demonstrated history of responding to DFV and operate from the perspective of safety, providing specialised risk assessment and other varied assistance to people, predominantly women and their children, who have experienced violence and abuse. The demand for this intensive DFV support is evidenced in the *Helping Out Families (HOF)* evaluation from 2011, which reported that families requiring support in relation to DFV represented 68.7% of referrals made to the HOF alliance. More recently, HOF partners verbally report that DFV is identified in closer to 80% of families.

QDVSN is a member of Queensland's violence against women peak organisation, Eliminating Violence Against Women (EVAWQ).

Response to the Terms of Reference

It is the position of the QDVSN that Family Law and domestic violence are intertwined and cannot be considered in isolation. This intersection of Family Law and domestic and family violence presents ongoing serious concerns and obstacles for victims of DFV. This is highlighted on a daily basis where the two issues are dealt with in separate jurisdictions, separate court locations and by different Magistrates, and leads to considerable confusion and disparity in responses.

The various parts of the justice system have the potential to make an enormous difference in the lives of victims and their children. The dynamics of domestic and family violence are complex and multi-faceted. Even after a separation from an abusive partner abuse continues, especially when there are children in the family. This abuse often ranges across various forms of abuse, such as physical and sexual violence, emotional abuse, economic abuse, stalking, intimidation, using legal systems and other processes to intimidate the victim, threats and harassment. Victims might have left a violent relationship, but are still vulnerable to violence, fear and intimidation an ex-partner can inflict on themselves and their children. This is especially true when elements of the overall system response are not working in a coordinated and planned way to ensure safety for victims and their children and accountability for those using family violence.

¹ Twelve regional specialist DFV services, the Immigrant Women's Support Service (IWSS) and the Centre for Domestic and Family Violence Research (CDFVR).



- 1) **How the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:**
 - a) **facilitating the early identification of and response to family violence; and**
 - b) **considering the legal and non-legal support services required to support the early identification of and response to family violence;**

One of the critical service responses arenas of the family law system is Family Relationship Centres (FRC), and in our experience there are a number of issues in the identification of and response to domestic and family violence here. Firstly, there is significant variation in the screening tools used by FRC's, or sometimes even in the perception that screening for domestic and family violence is required. There is also a risky perception often operating that resolving Family Law issues rapidly (through mediation or the making of consent orders for instance) is a desirable or effective strategy for resolving DV. Unfortunately, this strategy fails to take into account the exceptional risk that separation poses to victims of DV (at least 50% of all DV homicides occur post-separation), nor the ways in which perpetration strategies evolve once separation has occurred.

Further, there is fragmentation and limitations in the response to family violence that occurs within this sector once identified. Consideration needs to be given to appropriate and adequate funding of local specialised services, to support the work of the Family Relationships Centres. This would ensure that when family violence is identified, and potentially when the channels of mediation are not considered suitable because of that risk, that there is an integrated systems response to the communication of this decision, the mitigation of risk posed by the perpetrator and appropriate safety and support provided to the victim and children.

The system requires an enhanced and consistent strategy for addressing family violence that occurs throughout the process. There needs to be consideration for the timely management of breaches of orders, suspending of orders where risk is elevated, swift dismissal of cases, where family violence is occurring, so that the process in itself does not create more opportunities for abuse, and delays in the access of appropriate services requires to provide support and or reduce risk.

- 2) **The making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures;**

The contradictory nature of the different court jurisdictions creates confusion and potentially limits the protection offered by each court. The nature of domestic and family violence, particularly of coercive and controlling behaviour, makes a mockery of the level playing field required for "consent" orders to be freely negotiated. The experience of many of the clients of our services is that "Consent Orders" have been agreed to under duress or in the face of direct threats, are often unfair or unworkable, and frequently place children at greater risk of harm. These consent orders also position women to be further abused on contact handovers or in making contact arrangements for children.

Consent orders should not be made where allegations of domestic or family violence have been made. At best, a modified version of mediation (DV Mediation Model developed by WLSQ) could be considered as



a mechanism for creating workable orders for families, while still privileging the safety of victims and children and the accountability of those using violence.

3) The effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self represented, and where there are allegations or findings of family violence;

Access to appropriate and free legal advice should be provided system wide. There are several disadvantages faced by self-represented litigants, especially where the other party has private legal representation. Self-represented litigants are often confused and bewildered by the court system and processes as a whole, and even with guidance, can be overwhelmed with the work that falls on them (tracking dates, developing affidavits, submitting appropriate forms in a timely fashion, communicating with the other party, and so on). When we add the stress and trauma of having experienced domestic or family violence, and the requirement to engage regularly with the person that committed that violence in a legal setting, the strain and continuation of the trauma can be enormous.

There is also an embedded inequity, especially where the victim has experienced economic abuse and has limited access to the marital resources. This is partly played out in the monetised nature of legal practitioners and the specialised nature of that works, and regularly results in perceptions that the impartiality of the system disadvantages women, as a result of their limited access to the significant and necessary finances to seek private legal representation.

Another terrible consequence is the frequency with which we hear from women who have been routinely questioned by their domestic violence perpetrator during the hearing of family law matters. Please bear in mind that many of these women have been sexually violated as a function of the abuse, and that they are being cross-examined by their rapist in court – in no other jurisdiction in Australia is this allowable (and for good reason). This outcome further traumatises victims, and props up the belief of the perpetrator that he is entitled to his abuse and is supported by the system in committing such abuse.

QDVSN would like to see a less adversarial system employed in the cases of domestic or family violence, particularly where there are also self-represented litigants. Hearings that take into account the needs of victims and children, and that do not allow for cross-examination or other forms of intimidation by perpetrators would be an important first step. Also important would be providing baseline legal advice and support for all participants in the process, and representation for **both or neither** party.

4) How the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders;

The women working with services included in the QDVSN frequently report a number of issues to us. For instance:

- Victims mostly leave violent relationships to provide safety for themselves and their children. However, in doing so they often leave behind a home or a business that they have financial ownership in and their access to any joint assets is no longer possible. Victims of domestic and family violence often need the family law system to re-gain their share of assets and need legal assistance to do that successfully. However if they are named on a mortgage or as a business partner, they are in a difficult



situation: The lack of access to funds prevents them from engaging a private solicitor but their name on any assets means that they are no longer eligible to claim for legal aid.

- Even when women can apply for legal aid, the waiting lists are long (often several months). During this time victims cannot start to re-build their lives. Additional funding to Community Legal Services and Legal Aid would assist to reduce waiting times and assist financial recovery for victims of abuse.
- Property settlement orders need to consider the ongoing financial abuse, which is often hidden. The perpetrator can draw out property settlement for years, or will hide or dispose of assets in this time. During this time a victim cannot sell, occupy or even rent out a property that is jointly own. Lack of access to financial assets often for extended periods of time needs to be considered by the family law system when making property division orders, including prioritising the finalisation of property settlements in order to do this.
- The women we engage with have experienced loss of tenancy caused by a perpetrator's damage done to property. This often carries risk for a victim of becoming black listed in the rental market and frequently is the beginning of a family becoming homeless.
- Difficulties getting child support from the perpetrator after separation (ongoing financial abuse). Often by leaving a violent situation women also leave behind employment. This means the family needs to survive on reduced income and becomes dependent on government benefits and child support from the previous partner. It only takes a phone call from the father of the children to the Child Support Agency to declare no, or significantly less, income, resulting in reduced resources for the mother and children. The CSA appears to have limited power to investigate these claims or enforce adequate payment of support.
- Parenting Orders are often used by perpetrators to continue abuse on victims and often their children. While victims are encouraged by Child Safety to withhold contact in case of suspected child abuse, they often feel too fearful of breaching an existing parenting order, often the solicitors of respondents write letter to victims that are threatening and intimidating and compel victims to comply with an order that might expose their children to risk of harm
- The direct and indirect costs of court attendance are often enormous and include:
 - Time off paid work - including the risk of losing this employment due to the amount of leave required;
 - Loss of annual and sick leave as these paid days may be used to attend to legal preparations or court appearances;
 - Costs for some paid legal assistance;
 - Costs for Court transcripts;
 - Costs for private medical and psychological/emotional reports for both the woman and child/children;
 - Costs for extended childcare – before & after school care / day-care / outside hours childcare;
 - Petrol and or accommodation costs for attending Family Law Court in Brisbane for those women in more rural areas.

The women we engage with regularly advise of the difficulties they experience in education, employment and sustaining the multitude of time commitments required to pursue family law court proceedings. In considering how to better financially support people, the family law system needs to consider the financial impacts of accessing said system, the often extended timeframes for progression of matters, the duplication and incongruence across court jurisdictions. It would also benefit victims of domestic or family violence if the family court system were to work with state systems and services to streamline the manner in which a woman is able to report the violence and seek protection from it. In line with this, a specialised



QDVSN

approach, with careful and considered understanding of the impacts of secondary victimisation and trauma in addressing matters of family violence, is particularly important for continual review and reform to minimise the unintended consequences of the system.

5) How the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence; and

The development of the National Domestic and Family Violence Bench Book is an excellent initiative, and should be implemented in the context of ongoing training for judicial officers, and in concert with continuous improvement and communication with services providing a specialised response to Domestic and Family Violence.

In our practice, we identify significant challenges in relation to Family Reports, and in the importance placed on these. Our experience in delivering trauma informed services, highlights the importance of engagement, trust and relationship in supporting women who have been the subject to family violence, and the necessity of having a nuanced understanding of the dynamics of domestic and family violence and the impact that this can have on women and children. There is a deep concern that currently, Family Report Writers are ill-equipped to form adequate assessments of families there has been domestic or family violence or child sexual abuse. Firstly, because there is simply not enough time allowed for an adequate assessment to be developed, and secondly, because many Family Report Writers are quite open about the limited knowledge base in relation to trauma and violence that they are drawing from.

Our recommendation would be for a combined panel approach, which included the specialist women's service, a child development expert (who can identify and articulate the impacts of family violence on a child, to inform a 'best interest decision), a perpetrator engagement and behaviour specialist and a lawyer. Not only would this remove any collusion with professionals, it would lead to an informed decision regarding the best interests and safety of all parties. Regularly, in our experience the children at the centre of disputes miss a crucial opportunity for support through the long process, due to the requirement to maintain independence of the view of family violence. The system needs to represent and support that family violence is a community concern, and support and treatment need to be provided at the earliest opportunity, to achieve early intervention. This panel approach may also contribute to clear and purposeful messages of accountability and responsibility, from the court and judicial officers to the perpetrator.

We would strongly recommend that in consideration of the recognised level of local specialist service funding to support integrated responses, consideration also occur to the need to provide services and intervention to perpetrators. Further contextual understanding of the impact of the family law system on instances of post separation violence, femicide and patricide provide crucial indications of how an integrated response, with timely and appropriate information sharing can enhance victim safety and hold perpetrators to account for their violence.

Consideration should be given to appropriate standards of practice which require a level of demonstrated competency for all areas of family law pathways/ network, including contact centres, interpreters and court security staff. These standards should look to ensure a thorough understanding of power and control, coercion, and techniques utilised by perpetrators.



In Qld, we have had the benefit of participation in the Southport Domestic and Family Violence Specialist Court trial, overwhelming feedback from aggrieved in this space is that the provision of specialised services for advocacy and support, located within the court and within an integrated response to Domestic and Family Violence, as critical to their safety. Women report that the consistency and certainty offered by the specialised group of practitioners who work collectively to ensure timely, appropriate and considered protection in matters. We would surmise that the work undertaken in this State jurisdiction, provides an established model for consideration of how a system could strengthen its response, and perhaps consolidate the court jurisdictions. Not only would this reduce the impact of the court process, the timeliness of protection and financial impact of these processes – it would serve as an opportunity for efficiencies to be gained across the system, which could in fact be reinvested into the strong support system required to support a specialised model. Anecdotally, the rate of returned matters before each court, as a result of the congruency of outcomes, authority and clarity of conditions/ agreements, could potentially be greatly reduced, or at least this hypothesis tested with a combined jurisdiction.

6) The potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.

In our experience of working with women, children and men, the initiatives underway (including the proposed amendments to the Family law Act) as a result of the Australian Government to implement recommendations of the Family Law Council's interim and final reports on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems, are considered strong solutions to the use of Family Law system as a tool of abuse, by perpetrator. The women who engage with our services reflect on the fragmented nature of the different court systems, the drawn-out timeframes, financial impacts and increase in violence post separation as key factors which impact on their risk and safety and their engagement with the system.

Whilst we have witnessed the proactive use of provisions in local Qld courts to suspend family law court orders in some limited jurisdictions, the primary response remains for the making of an exception in Domestic Violence Protection Orders of contact being allowed for 'family law court, mediation and child protection matters'. In a practical sense, the court is determining an aggrieved is in need of significant protection, including no contact and in many cases ouster orders, however allows for permitted contact with an aggrieved for child handover etc. Our experience confirms that this is a significantly risky time, which can in fact elevate the use of abuse in front of children – the ultimate contradictory aim of the system.

Cross border issues currently exist within other state/territory jurisdictions, and whilst work is underway, there needs to be appropriate funding of all services to adequately respond to matters which don't neatly fit within jurisdictional boundaries or responsibilities. We are seeing an increasing number of movements across state/ territory boundaries, for women and their children having to safely flee, however the system does not allow for the confidentiality of this move to remain, without significant financial burden of returned visits to the same state as the perpetrator.