

Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence

Submission by Legal Aid Queensland

27 June 2022

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence (the Commission of Inquiry).

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Family Law Services division operates the Violence Prevention and Women’s Advocacy service, which is one of the leading providers of domestic and family violence legal services in Queensland. Our services include, but are not limited to:

- The Women’s Domestic and Family Violence Assistance Service at Brisbane Magistrates Court
- The Application Assistance Program at Brisbane Magistrates Court
- Domestic and Family Violence duty lawyers at Magistrates Courts throughout Queensland
- Grants of aid for on-going legal representation in domestic and family violence proceedings (subject to eligibility).

LAQ’s Criminal Law Services division is the largest criminal law legal practice in Queensland, providing legal advice and representation for the full range of criminal offences. These services include representation of defendants charged with domestic violence related offences, including victim defendants.

We note that the terms of reference of the Commission of Inquiry refer to matters identified in the Women’s Safety and Justice Task Force: *Hear her voice Report One – Addressing coercive control and domestic and family violence in Queensland*. We also note the issues that the Commission of Inquiry will examine:

1. whether there is, and if so, the extent and nature of, any cultural issues within the Queensland Police Service that negatively affects police investigations of domestic and family violence;
2. if there are any cultural issues, whether these cultural issues have contributed to the overrepresentation of First Nations people in the criminal justice system;
3. the capability, capacity and structure of the Queensland Police Service to respond to domestic and family violence; and
4. the adequacy of the current conduct and complaints handling processes against police officers.

LAQ's Family Law Services and Criminal Law Services Divisions have provided input into three submissions to the Women's Justice Task Force which address issues of concern to the Commission of Inquiry. Those submissions are:

1. Discussion Paper 1 - Options for legislating against coercive control and the creation of a standalone domestic violence offence;
2. Discussion Paper 2 – Women and girls' experience of the criminal justice system;
3. Discussion Paper 3 – Women and girls' experience of the criminal justice system as victims-survivors of sexual violence and also as accused persons and offenders.

With the exception of the issue of the adequacy of the current conduct and complaints handling processes, we have addressed many of the issues of concern to the Commission of Inquiry in the above submissions, particularly our submission in response to Discussion Paper 1. We have extracted the relevant material from our submission in response to Discussion Paper 1 below, and provided additional material for the information of the Commission of Inquiry. Where material is extracted from our submission in response to Discussion Paper 1, the submission page number is indicated. Additional material to that extracted from our submission in response to Discussion Paper 1 is indicated.

Submission

9. What could be done to improve the capacity and capability of the service system to respond to coercive control (this includes services to victims and perpetrators)? (page 12)

LAQ is concerned about the understanding of, and systemic responses to DFV particularly where it is non-physical DFV (including coercive control). LAQ's connection with stakeholders across the DFV court programs and the broader support sector has indicated that our concerns are not isolated to particular locations but are common across the whole state.

More rigorous, regular, and consultative mandatory training, that provides practical skills to respond, for QPS, legal practitioners and judicial officers is essential to improving current system responses. This should include guidance for QPS on evidentiary requirements and information gathering.

LAQ is particularly concerned about the increasing number of domestic violence protection order applications being taken out against victims. In initial assessments, these women may have pushed, shoved, or yelled at the other party, but brief further questioning indicates that these behaviours were in response to DFV being perpetrated by the other party. This is particularly concerning for victims who feel intimidated by QPS when asked questions about whether they did a particular action, may answer "yes" without expanding on the context. QPS must be asking further questions to ensure they have the most accurate assessment of dynamics and risk profiles as possible.

Additional service response gaps are observable when working with Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ+ clients.

For example:

- The Domestic Violence Prevention Centre (DVPC), supported by the Department of Justice and Attorney General (DJAG), ran a pilot program at Southport for an Indigenous court support worker to be present for a number of months. This significantly increased the numbers of clients identifying as Indigenous and made “the invisible visible.” There is currently no funding for this to continue.
- At the Southport courthouse, if both the victim and the perpetrator are male there is no support room for either client. Similarly, for a lesbian couple, only the aggrieved can access the support room and not the respondent female (respondent females in heterosexual couples can access the safe room).

Enhanced knowledge and practical skills in providing a culturally safe intervention are also essential.

Additional material regarding First Nations peoples

In the First Nations community of Woorabinda, which is a “dry” community, police will often charge a female aggrieved/respondent to a cross-application with possession/consumption of alcohol which has the effect of deterring women from reporting domestic and family violence. Often consuming alcohol with the respondent is the safer option for these women.

Also, police often make cross applications in respect of parties in such communities rather than fully investigating and determining which party is the one in greater need of protection.

There is also a greater propensity for police attending/investigating domestic and family violence in First Nations communities that include children to report to the Department of Child Safety. This also contributes to the reluctance of women to report domestic violence incidents to the police.

Parties to domestic violence protection orders must be encouraged to attend their mention dates. Too frequently, aggrieved and respondents under QPS applications are told they do not need to attend and parties then miss valuable opportunities to link with legal and non-legal supports and gain an understanding of the behaviours that have led to QPS intervention, and what their options are to change.

Coercive control is unlikely to be a standalone incident, and frontline responders and justice responses must become better equipped to provide safe and helpful interventions. This includes revising the online Application for a Domestic Violence Protection Order forms which prompt applicants to complete the forms around a series of tangible events, and have no capacity to include descriptions of a pattern of behaviour, which is so essential for capturing escalation of risk, and coercive control. Forms should also be updated to be gender neutral.

Ensuring services that help change the behaviours of men who use DFV is also essential. The only way to end DFV is for those who perpetrate it to stop. There are currently insufficient behaviour change groups offered to meet demand, with wait times becoming a deterrent, and few options available for LGBTIQ+ men or men reliant on an interpreter.

More resourcing for these programs is an immediate need.

Until June 2020, DVConnect Mensline provided outreach services at a number of DFV Magistrates courts across south east Queensland, providing support around experiences and use of DFV. This on-site work was particularly important in supporting men who use violence to connect with behaviour change programs and adopt an accountability framework by way of any orders made, and obligations under it. This program ceased to operate and has not been prioritised to be re-instated. This has been a grave loss to providing collaborative (and accountable) supports at DFV courts, particularly as the only real way to end DFV is to support those using DFV to change their behaviours and the attitudes that underpin them. These services should not only be re-instated but expanded to other DFV courts across Queensland as part of efforts to enhance safety.

Steps should be taken to increase the accessibility of the legal process. Considerable issues (with impacts on victim safety) arise when the QPS does not engage, and courts do not schedule, official interpreters, with further compounding issues for Auslan interpreters where interpreters may only be available during business hours. It is unacceptable for QPS to rely on one party to translate for the other party where there are concerns about DFV. It is also unacceptable for QPS to rely on children to interpret. Both of these create a risk that information may not be accurately conveyed to either party and potentially exposes a child to DFV.

Clients who require an interpreter are disproportionately affected through multiple adjournments to schedule interpreters, impacting safety (especially if a temporary order is not made, or not made when the conditions are needed), risking criminalising a respondent who may not understand conditions they are bound by under a police protection notice, or compromising engagement with the system through an inability to take further employment leave or engage with a potentially stressful process again. Clients can also feel isolated from the process where their duty lawyer may use an interpreter to provide advice and take instructions, but there is no interpreter in the courtroom so the person cannot follow what is said. If an application has been poorly particularised, a client reliant on an interpreter may not be provided with the opportunity at that mention to provide oral submissions as is often offered to English-speaking clients. Where the respondent requires an interpreter, there is a risk that attending QPS officers may not have fully explained the conditions they are bound by to them.

Additional material regarding interpreters

In the experience of LAQ domestic and family violence lawyers, police often do not use interpreters when investigating an incident involving parties who are culturally and linguistically diverse, often using family members as interpreters. This may result in the interpreter influencing the aggrieved. There have been incidents in which the police have used the person using violence to translate for the person experiencing violence. In one matter QPS used google translate to communicate with a person experiencing violence.

The Police Protection Notice should indicate if the person experiencing violence is CALD and requires/would benefit from an interpreter so that an interpreter can be arranged for the first mention.

Often domestic violence workers and domestic violence lawyers will not receive full information about an event until the client is seen at court. Often the person experiencing violence is actually the respondent to the application and only when they are in a confidential room, they inform the worker and lawyer that they were not able to communicate the true situation to the police because they did not have an interpreter. On one occasion, the subsequent use of an interpreter by the domestic violence worker/domestic violence lawyer resulted in the person experiencing violence making a rape allegation against the respondent which was subsequently referred to the police.

Often if the person experiencing violence is able to provide police with their name and answer

questions with “yes” or “no”, no further inquiry as to their ability to adequately speak or understand English is made. An offer of an interpreter should be made when it is apparent that English is not the first language of the person experiencing violence. This would also assist the police in properly assessing safety risks.

Also, Auslan interpreters are rarely, if ever, used. On one occasion a domestic violence duty lawyer had to use typing to communicate with a hearing-impaired person which was unnecessarily time consuming.

Parties with mental health issues

QPS officers require more training in dealing with domestic and family violence in situations where one or both of the parties suffer from mental illness. Often in these situations the person using violence is supported by and dependent on the person experiencing violence.

There have been cases where police have attended domestic violence incidents and one of the parties has been experiencing an episode of mental illness and have taken that party to hospital and then, without further reference to the aggrieved, applied for a domestic violence order which was inappropriate in the circumstances.

13. What are the gaps in the service system that could be addressed to achieve better outcomes for victims and perpetrators of coercive control? (page 20)

See response to Question 9.

Gaps to address include:

- enhancing QPS and judicial responses to DFV, particularly around non-physical violence, or where QPS may have options to criminalise the victim on other unrelated matters (infringement notices, etc.)
- prioritising a QPS and judicial response that is trauma informed and culturally safe
- prioritising accessibility and providing interpreters as needed
- modifying forms to make them more inclusive, for example to enable nonbinary clients to identify and to feel comfortable seeking support and intervention.

14. What service system changes would be required to support the options to legislate against coercive control? (page 20)

Whether legislative changes are made, or the current framework maintained, significant co-facilitated expert training is essential to work to meaningfully enhance safety, and not further systemically victimise survivors. All training packages must include how knowledge can be practically applied to assess and respond, as well as up-to-date risk indicators, strategies for assessing DFV dynamics, indicators of compounding vulnerabilities, and working with cultural awareness and safety.

Also see response to Question 50 (QPS training requirements).

25. What could be done to improve the capability of police, lawyers, and judicial officers to better understand coercive control behaviours so that these factors are given appropriate weight in the assessment of unacceptable risk under section 16 of the Bail Act? (page 27)

For the purposes of bail application, it is a matter for police and prosecutions to present evidence they consider establishes an unacceptable risk under the Bail Act s. 16. This is often done in the

form of an “objection to bail” affidavit and/or verbal submissions based on information summarised in the initial police document outlining the allegations. The content is reliant on information obtained from the police attending on a case or investigating an alleged offence. How information is elicited and summarised by police for the prosecuting authority is therefore crucial to how the case is presented by the prosecution in the courts for a bail application. Given the court can take into account evidence of any kind if it is credible or trustworthy under the Bail Act s. 15 (e), it is a matter for police and prosecutions to consider whether the evidence put before the court by them sufficiently addresses the risk they submit is unacceptable. How information is obtained and presented in court is a matter for training for police and prosecutions. Training about the existing law, including the broader capacity to consider any evidence in the Bail Act s. 15 (e), the definition of domestic violence as including coercive behaviour in the D&FVPA, and the existing offence provisions (such as unlawful stalking, threats, etc.) may be of some benefit.

26. Should further training be offered to police, lawyers and judicial officers involved in bail applications about coercive control and if so, should it be mandatory where possible? (page 27)

See response to Question 25.

Such training should be mandatory to improve understanding of bail and offence provisions. QPS, lawyers and judicial officers should be provided with mandatory annual coercive control training, as well as ongoing supports to recognise and respond to coercive control. Police in England and Wales were provided with coercive control training in 2015. Following an evaluation in 2020, it was found that targeted, in-person training, along with peer support networks and professional development assisted police officers in understanding, recognising and responding to coercive control. Attendance at the coercive control training was associated with an increase in interventions to protect against coercive control. Specialist training could be rolled out in partnership with DFV services and experts by QPS, the QLS (as a component of required CPD points), and by DJAG for the judiciary and registry staff.

31. How could police and prosecutors in Queensland utilise the current offences in the Criminal Code more effectively to prosecute coercive control? (page 31)

There is no legislative barrier to using existing offences (for example, stalking) to prosecute coercively controlling behaviours. There may be other internal barriers to police and prosecutors in prosecuting this conduct, such as:

- a systemic failure to receive, review or investigate domestic violence complaints encompassing a long history of conduct rather than a single incident
- a reluctance to complain about or pursue conduct that constitutes coercive control stemming from a difficulty to identify or articulate such behaviours by the victim, particularly where language or communication barriers are involved
- a lack of awareness of the availability of charges such as unlawful stalking, due to the labels and opinions that stem from it.

To better utilise existing offences requires a multi-pronged approach encompassing not only prosecuting bodies, but community education. Increased recognition of coercively controlling behaviours, the ability to more effectively communicate with victims to obtain a comprehensive history, and further education to police and prosecutors on the extent to which existing offences can be utilised could be very beneficial.

46. What could be done to ensure that police officers more effectively and consistently comply with the guidance for investigation of domestic violence in the Operational Procedures Manual (OPM)? (page 43)

Chapter 9 of the OPM should be regularly reviewed and updated to ensure that it aligns with new DFV research and best practice. Annual QPS training on DFV (see response to Question 50) should also incorporate a refresher and overview of the OPM.

47. How could Chapter 9 of the OPM be improved to ensure it is effective in guiding police to identify and respond appropriately to coercive control? (page 43)

An express provision under 9.4.2 allowing for QPS to, where practicable and where there is no clear immediate threat to safety, interview an alleged respondent where the alleged aggrieved is listed as the respondent in an existing Protection Order (temporary or final) before applying for a protection order in the current incident.

Many women accessing DFV legal advice through LAQ have previously reported their experiences of coercive control and DFV to QPS and have been reportedly advised to make their own private application. This is even in circumstances when there have been abusive or harassing text messages, emails, voice or video recordings that clearly establish that DFV has occurred. To address this, an express direction could be included in 9.4.1 for QPS to apply for a domestic violence protection order in circumstances where someone reports DFV at a police station or establishment and the officer is satisfied that DFV has occurred, an order is necessary or desirable and that there is sufficient evidence to a civil standard.

50. What improvements could be made to police training to ensure better protections for women and girls who are victims of coercive control? (page 44)

Coercive control is a nuanced area of DFV. The risks associated from incorrect assessments or inadequate service or system responses and interventions can be grave. Given the broad range of issues the QPS must be equipped to respond to, it is understandable that they may suffer fatigue of training. However, we recommend the need for annual, mandatory DFV and coercive control training for all frontline QPS civilian and uniformed Police Prosecution Corps.

A training package that is co-developed and co-delivered by a QPS representative and DFV specialist (service, practitioner or academic) would best capture the QPS priorities, as well as ensuring that the training is consistent with current research and best practice. A partnership-training, led by QPS would also aim to make the training accessible and applicable and contribute to a culture of taking DFV seriously and making it a priority.

Any training package developed must include:

- the principles and preliminary sections of the DFVPA
- responding to DFV as a pattern of behaviours rather than incident-specific
- assessing DFV dynamics to determine the person most in need of protection
- identifying high risk indicators of DFV homicide

- barriers to disclosing DFV to QPS and services
- indicators of trauma, including how events may be recalled and recounted
- survivor adaptability, including why survivor engagement may change (threats, fear)
- compounding vulnerabilities and
- using interpreters.

QPS should also be provided with more support (peer and professional) to help protect against biases, compassion fatigue, and burnout, or frustration. More funding and more normalisation of debriefing and support is necessary to combat these issues and emotionally strengthen this workforce to continue to respond appropriately to DFV.

QPS may benefit from having access to in-house social work support (or other professional assistance) to assist in decision making when investigating claims of coercive control, and what actions should be taken by QPS to ensure safety.

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