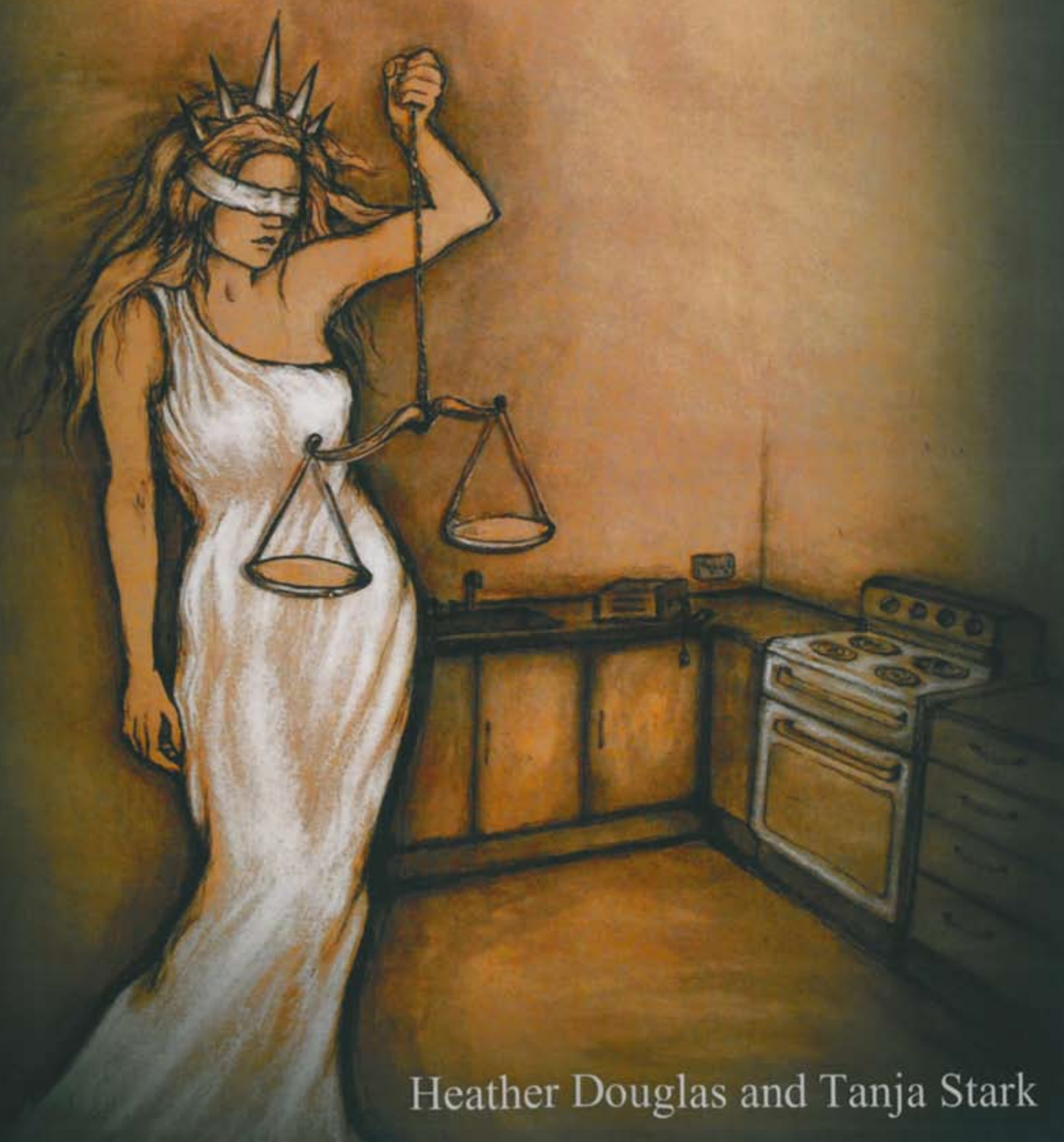


Stories from Survivors

Domestic Violence and
Criminal Justice Interventions



Heather Douglas and Tanja Stark

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2010

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RECOMMENDATIONS

1. Community education must continue to focus on domestic violence as a societal issue and raise awareness of how those involved can access help.
2. Training with professionals and campaigns in the wider community should also emphasise the severe emotional impact of domestic violence.
3. Women in domestic violence situations should be referred to community based support services as early as possible.
4. Women need access to clear information about what to expect from the Queensland legal system, including their rights and the choices available to them.
5. All workplaces should have policies around domestic violence.
6. The interplay between domestic violence and mental health issues needs further attention.

(see part 3 of the report)

7. Police should prioritise domestic violence cases in call-outs and aim to reduce call out delays.
8. Police should treat a domestic violence call-out as a possible crime scene and collect evidence appropriately.
9. Police should inform victims regularly of service progress and provide information about court hearings, particularly in relation to domestic violence protection documents and orders.
10. Police should distribute a special wallet-sized information card which provides referrals to support services to victims and perpetrators at the call-out scene.

(see part 4 of this report)

11. Court staff, including security guards, should be properly trained about the dynamics of domestic violence.
12. Court staff should endeavour to refer those involved in domestic violence proceedings to support organisations at the earliest possible stage.
13. Ensure courts have a secure, separate waiting room in the court and consider the possibility of alternative access to court.
14. Magistrates (and judicial registrars) should consider the use of vulnerable witness protections in the Magistrates Court in some domestic violence matters.
15. Partial grants of legal aid should be available in domestic violence matters to ensure that parties are not able to directly question or cross examine each other.
16. Fines should be a last resort in offences involving domestic violence (including charges of breach).
17. There should be a presumption that a conviction will be recorded in domestic violence matters unless there are exceptional circumstances.
18. Prosecutors should advise victims of their right to request information about penalties.

(see part 5 of this report)

1. INTRODUCTORY MATTERS

1.1 Aim

‘... if you have a person that doesn’t fit that process, which between you and me – and everybody knows, a criminal does not do crimes according to the law. If they do crimes according to the law, they can be charged according to the law. But they don’t, so everything slips through the law.’ (IV 10, 49)

In the past ten years, greater emphasis has been placed on the role of the criminal justice system in responding to domestic violence. New criminal justice models have been developed to deal with the criminal prosecution of domestic violence offences in a number of jurisdictions, including Victoria, Tasmania and the ACT. In Queensland, little attention has been paid to the role of the criminal justice system in responding to domestic violence. Research about women’s experiences of the criminal prosecution of domestic violence is also an under-researched topic, especially in Queensland. This research tries to respond to this gap. Interviews with twenty women who have experienced domestic violence and who have assisted (or attempted to assist) in the prosecution of domestic violence offences were undertaken. Interview participants were asked to reflect on their experiences and to offer insights into how the criminal justice process may be improved in the context of prosecuting domestic violence offences. As much as possible this report relies on the direct quotations of the interviewees to set out their concerns. It is hoped that this research will assist in the development of criminal justice interventions in the domestic violence context that can better engage and support victims of domestic violence and in the identification of practices that should be avoided. It is stressed, though, that the criminal justice response is just one aspect of a wider system of intervention, and as the quotation above suggests, going to ‘the law’ will not always be helpful (see also Smart, 1991).

1.2 Background

Australian Government campaigns against domestic violence clearly state that domestic violence is a crime (Carrington, 2006; Australian Government, 2004). Research has regularly emphasised that domestic violence should be understood as a criminal assault as well as a

private or civil matter (Hudson, 2006; NSWLRC, 2003; Safe at Home, 2003; VLRC, 2006; Holder and Caruna, 2006; Robertson et al, 2007). The effect of recognising domestic violence as criminal may be both substantive and symbolic (Kelly, 2005; Lewis et al, 2001). Recognition may improve safety for victims and it also helps to educate the community about the unacceptable nature of domestic violence. The criminal justice system has struggled to recognise harms perpetrated against women in the private sphere as crimes (Stubbs, 2002). Where domestic violence is prosecuted as a criminal act, it is usually treated like other crimes; that is as a 'one off' incident that is abstracted from its wider context (Lewis et al, 2002; Douglas, 2008). The criminal law tends to operate in a top down, linear fashion rather than reflecting webs of connection, and the approach is individualised rather than relational, with rules that are generalised rather than tailored to particular experiences (Lacey et al, 2002; Schneider, 2000; Howe, 1990). While domestic assault is legally identical to other forms of assault, it may be considered sociologically different (Hoyle and Sanders, 2000, 14).

There are often complex and continuing emotional, financial and legal ties between the victim and the perpetrator, regardless of whether they are separated (Cowan and Hodgson, 2007, 45; Lemon, 2002). As our interviews demonstrate, engagement with the criminal justice system in domestic violence matters is often bewildering, scary and frustrating for women although sometimes interviewees in this study found that engaging with the criminal justice process did ultimately contribute to their safety (Coker, 2001; Romkens, 2006; ATSI, 1999). There is a high attrition rate in relation to criminal domestic violence cases from the criminal justice system and many women do not even make the requisite complaint which will initiate criminal proceedings (Hester, 2006; CMC, 2005; Hoyle, 1998). The women that we spoke to during this research are just the tip of the iceberg.

In earlier research Douglas has examined breach charge files and found that charges for summary breach of domestic violence orders were often laid in circumstances where a more serious charge could have been preferred, prosecutions were frequently unnecessarily extended and sentences were regularly very low (Douglas, 2007; Douglas, 2008). This raised questions about how women survivors – the complainants in these cases – perceived the processes and practices surrounding the criminal justice system. This research tries to address these questions.

1.3 Why focus on women?

Time for Action reported that about one in three Australian women experience physical violence in their lifetime, and that the ‘overwhelming majority of the violence and abuse is perpetrated by men against women’ (2009, 25; Harwin, 2006, 559). Domestic violence is a contested term (Graycar and Morgan, 2002, 313), but despite this, most statutory definitions require that it occur between intimate partners or within family relationships and encompass a wide range of behaviours including assault, property damage, indecency, harassment and intimidation.¹ Statutory definitions do not clearly reflect the gendered power and control that most commentators agree lie at the heart of most domestic violence (Dobash and Dobash, 2004, 330). The Australian Personal Safety Survey (ABS, 2005) revealed that ‘women are between three to seven times more likely to be victims of domestic violence than men’, and ‘women are the victims in about 90 percent of all identified incidences of domestic violence’ (Evans, 2007, 4). Lloyd observes that ‘overwhelmingly ... domestic and family violence is perpetrated by men against women’, and put simply, ‘[t]he biggest risk factor for becoming a victim of ... domestic and family violence is being a woman’ (2009, 29, 26). An assumption of the gendered nature of family violence underlay the recent draft consultation paper on domestic violence produced by the Australian Law Reform Commission (ALRC, 2010, 68).

Research suggests that men’s violence tends to be much more serious than women’s violence (Hester, 2009, 19; Buzawa and Hirschel, 2008, 408) and it is overwhelmingly women who are the victims of intimate partner homicide (Websdale, 2003, 27; Connelly and Cavanagh, 2007, 281). Osthoff (2002, 1523) claims that women generally do not employ controlling tactics, threats or violence in order to create fear in their male partners or exert control over them. Other studies (eg. Dobash & Dobash, 2004, 330) confirm this and suggest that men do not usually feel fear and helplessness when attacked by a female, nor do they commonly change their behaviour as a result of the violence, as happens in the reverse scenario (Fitzpatrick, 2009). Some research suggests that men may call the police first as a kind of ‘pre-emptive strike’ (Hester, 2009, 4). Other recent studies claim that women are as aggressive as men and that greater social attention to domestic violence issues has encouraged male victims of abuse

¹ See, eg *Domestic and Family Violence Protection Act 1989* (Qld), s 11. See also *Crimes (Family Violence) Act 1987* (Vic), s 4; *Family Violence Act 2004* (Tas), s 7.

to make a complaint (eg. Henning and Renauer, 2005; RADAR, 2006). However, current research tends to suggest that women's violence, where it occurs, is more likely to be defensive or retaliatory rather than initiating (Hester, 2009, 4). In their research Buzawa and Hirshel found that male violence was more serious than women's violence. Men were more likely to have a criminal history, to have a prior record of violence, to reoffend and to be under the influence of alcohol or drugs when they were violent (2008, 408). Because research continues to support the position that women are much more likely to be the victims of domestic violence, this research focussed on the experiences of women as complainants in the criminal justice system in relation to domestic violence matters.

1.4 Method: One on One Interviews

Many researchers have emphasised that much can be learned from listening to the voices of survivors of domestic violence (Hague et al, 2003; DeKeseredy and Schwartz, 2009). It is with this in mind that we conducted individual interviews, during 2009, with twenty women who have been involved in the criminal prosecution of a domestic violence matter (eg. a breach of domestic violence protection order prosecution or other criminal matter such as assault or criminal damage). All of the interviewees had engaged (or attempted to engage) with the criminal justice process at some point between 2005 and 2009. Some women had been involved in prosecutions on a number of occasions during the period. Interviews took place in metropolitan Brisbane and regional and rural areas around Brisbane, including the Gold Coast area. One interview occurred in North Queensland.

1.4.1 What women were asked about

Women were asked about their experiences and views in relation to:

- police call outs, including both positive and negative aspects;
- the process of providing a formal complaint (in relation to a criminal offence) and why they decided to assist prosecution (or not to assist);
- the type and level of support they received as a prosecution witness and whether this was satisfactory;
- their satisfaction with the court hearing process, including both positive and negative aspects of the process;

- their role in the process; and
- their overall satisfaction with the process and outcome.

One to one and a half hours were devoted to each interview. Domestic Violence Service workers at key organisations were supplied with information sheets about the project and were asked to refer women interested in participating in the study to the researchers. The interviewees had access to a Domestic Violence Service worker for the purpose of debriefing if required (Hlavka et al, 2007). Interviews were conducted on the premises of community service providers or in public places such as coffee shops that were nominated by the interviewees. Most of the women interviewed were separated from their intimate partner, and given that research has shown that one of the most dangerous times for an abused woman is in the months after separation, safety during the interview was a key consideration (Humphreys, 2007, 365; Mahoney, 1991, 65; Harne and Radford, 2008). Funds were available to pay survivors \$25 to participate in the interview. This was considered to be important to off-set, in a token way, the costs incurred in attending the interview such as transport and child care. All interviews were recorded in audio format, and transcripts were obtained.

The qualitative data was analysed thematically, using Miles and Huberman's (1994) methods of qualitative analysis. Summary sheets were prepared for each individual interview conducted and vignettes were extracted. Identified themes centred on the key questions outlined above.

1. 5 Issues and concerns

1.5.1 A subjective account and limited numbers

The women interviewed for this study had already been through the criminal justice process and had been supported in each case by women's support services. It is recognised that their stories are mediated by these two experiences (Scales, 2006). There are many other survivors of domestic violence who navigate the criminal justice process alone and unsupported, and it is recognised that their experiences may be different to those experiences discussed in this report. This approach to research presents a subjective account that offers up another construction of reality (Ullman, 2005; Scales, 2006). This report draws heavily on the words of the interviewees, as it is their stories and experiences that we hope to distil in this report. Approaching the interviews in this way also ensures that the stories of survivors of domestic

violence are intrinsic to the discussion about how to proceed to better protect and support women who have experienced violence and how to best improve criminal justice processes. While only twenty women were interviewed their stories were consistent on a number of matters however given that each experience is individual we believe each story is important in informing change.

1.5.2 Payment of interviewees

Phillips argues that monetary incentives are sometimes useful in the context of qualitative research and that a lower level of money is appropriate so that participants are not exploited or unduly induced by the payment (2009, 10). While gatekeeper organisations (the domestic violence services) were advised of our intention to pay participants, in many cases survivors were unaware that they would be paid. Survivors may not have been informed or, if they were, they had forgotten the information or misunderstood it. Many were surprised when the payment was offered and some did not want to take it. These responses suggest that payment did not appear to be a significant factor in ensuring survivors' participation in the interviews and in most cases it is unlikely to have been a compromising factor.

2. THE CONTEXT OF VIOLENCE

The women in this study have all experienced intimate relationships that were marred by the presence of abuse and, as part of their journey to be free from violence, became involved with the legal system in Queensland. For many, this was not their first choice or their only strategy in attempting to end the violence against them. Women often utilized a range of personal strategies and community supports. However all women eventually reached a point where domestic violence protection orders (DVOs)² were made against their partners, and, when conditions were breached, came into contact with the criminal justice system, often for the very first time in their lives.

A broad range of behaviours comes within the definition of domestic violence under the *Domestic and Family Violence Protection Act 1989* (Qld):

Section 11: What is Domestic Violence?

(1) Domestic violence is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons—

- (a) wilful injury;
- (b) wilful damage to the other person's property;
- (c) intimidation or harassment of the other person;
- (d) indecent behaviour to the other person without consent;
- (e) a threat to commit an act mentioned in paragraphs (a) to (d).

While protection orders and engagement with the criminal justice system may offer some protection to women (Holt et al, 2002, 593), research has shown that the application and effectiveness of the legal system in responding to domestic violence is often fraught with difficulty (Douglas, 2008). This is borne out in the accounts of the women interviewed for this study. The women in this study were in relationships with perpetrators that lasted from one year to many decades. All are now separated or divorced from this partner. All, except one of the women, have children with the perpetrator. A number of children continue to have regular

² See part 2, *Domestic and Family Violence Protection Act 1989* (Qld)

access and contact with their fathers, underlying the enmeshed nature of these relationships (Lewis et al, 2002). In the following sections of the report we set out the interviewees' lived experiences of these relationships.

2.1 Women's Experience of Abuse

Recognising incidents of domestic violence and defining patterns of behaviour as domestic violence is a pivotal aspect in women's capacity to respond to their circumstances. This can be a complex process and it is sometimes difficult for others to understand the issues involved. Abuse by an intimate is incongruent with the idea of home as a 'safe place'. It can have physical, economic and psychological ramifications for all individuals in the family sphere in the short and long term, often across generations (The Cost of Violence, 2009).

In a recent study in New Zealand Fanslow and Robinson (2010) found that women's reasons for seeking help and for leaving violent relationships were similar and included: 'could not endure more', being badly injured, fear or threat of death, and concern for children. They found that women's reasons for staying in, or returning to, violent relationships included: perception of the violence as 'normal/not serious', emotional investment in the relationship, or staying for the sake of the children. The interviewees in this study expressed similar reasons for staying or leaving in this study.

Many women recalled an increasing awareness of problematic dynamics, which were only fully understood retrospectively. Several interviewees reported being oblivious to or minimising early signs or patterns of violence as isolated events. For example:

'The marriage was – it's funny, because looking back on it in hindsight, I can see the clear indications that something wasn't right, and looking on from what I know now, but back then obviously you just don't see it. He was controlling from the start.' (IV 5, 5)

'Before the kids were born, occasionally he'd have these just outbursts, like a big temper tantrum, you know. He'd just have this big spit and then all of a sudden everything would be okay.' (IV 5, 6)

'I was aware, but I didn't think of it as domestic violence; I just thought he doesn't get on with my family, the entire family, or any of my friends.' (IV 17, 9)

Several women who had grown up with violence felt they were desensitised to certain behaviours, while others compared their relationships to other, more violent, relationships thereby downplaying the seriousness of their own circumstance. In the early stages of their relationships, some women who experienced (sometimes extreme) emotional violence were reticent to describe the relationship as domestically violent as they did not identify with the 'battered woman' stereotype:

Facilitator: Did you define it to yourself as domestic violence or an abusive relationship?

Interviewee: No. I had an alcoholic father, had it. I know what it's like. I've seen my mother beaten up for years, so I defined it as physical violence. I didn't get any bruises so therefore it's not. (IV 8, 7)

2.2 The cycle of violence: Acknowledging abuse

Even where serious problems were evident, many women said they continued in the relationship for a complex interplay of reasons which included loneliness, social isolation, attempts to maintain a stable family unit and a hope or belief that things would change:

'I had a sense that I wasn't going to deprive my son of his father, instead of looking at the quality of the man that was his father.... I felt that it wasn't a bond that I should break between father and son. That's the cognitive distortion that got me to stay in that relationship.' (IV 6, 24-25)

'...it was a big push, he'd winded me. He'd showed shitloads of remorse and so in my head of course as you do a silly woman in a DV situation thinks 'Oh well that's just once it will get better from there' - but it never got better from there.' (IV 19, 12)

'Yes. I always knew, even back in 2002 I knew that it was dysfunctional, because of the relationship that he had with my oldest boy. I, even back then, was trying to look for any excuse I could or any support I could find to not go ahead with the marriage, but at that

time I felt that I was very unsupported by my family and I didn't want to be alone with two kids and chose that I could fix it, you know, it was just going to take time and they would get on better if they just spent more time together...' (IV 12, 12)

'I mean there had been problems right from the beginning of the relationship, only I never really – like breaking furniture and that sort of thing, controlling. He separated me from my family, and I sort of made excuses, I suppose, for him that it was because his family was like that and he would change and all of that sort of thing.' (IV 17, 7)

Many of the relationships were characterised by a cycle of abuse followed by expressions of remorse followed again by abuse and so on:

'Then he was just really persistent. I kind of liked him, but I wasn't like that interested. Then I think we started going out. The first time we went out together, he grabbed me by my arm really, really hard, because I was talking to my male friends from school. I had bruises all over my arms ... Then I broke up with him straight away. He would like come over with flowers, like crying and stuff. I was like I don't care, I don't want a boyfriend that does that to me, get out. Then he just kept coming back. Because I lived by myself, it was just like – I don't know. It was good to have the company.' (IV 3, 5)

'I even went overseas and he had followed me and he said look I know I've got problems but you're the only one who can fix it and the fact that he went all the way to Spain and followed me, I mean that's quite an expense and everything else and I thought well there's obviously – maybe he's sincere and doesn't know how to get help.' (IV 8, 7)

Although it may have occurred at differing times, all 20 women came to understand that what they were experiencing was beyond normal conflict and fell under the definition of domestic violence. A number of women alluded to the 'cycle of violence' theory as a useful tool that helped them gain insight into their situations (Walker, 1979) (IV 3, 5; IV 19, 12). The model, which identifies patterns in violent relationships that are cyclical and repetitive, informs much contemporary domestic violence theory and counselling practice in Queensland. It can be

found on the website of the Queensland Police Service and inside many court houses and women's support services.³ The following interviewee's comments provide a good example:

Facilitator: So you just mentioned then the support agencies and the literature and stuff, what ... worked for you?

Interviewee: It was this little diagram about the five stages of domestic violence and it had the build-up phase and the explosion and the remorse and buyback and the standover phase again and it was just this little diagram...Yeah cycle of violence and it had a little write up for each of the things and I really identified with the behavioural patterns of S. That's when I thought wow this man's never going to change for me, I'm sticking around waiting for something that's never going to come because it's going to repeat. (IV 19, 31)

2.3 Domestic Violence takes many forms

While it is possible to categorise different forms of violence as physical, emotional, financial and so on, the women in this study described a complex interplay and overlap of abusive behaviours. Often an individual event that could seem minor in isolation, like a glare or words such as 'you'll be sorry', could be understood as a nonverbal threat of revenge if viewed in context of the relationship. Understanding the whole picture is particularly significant for women in coming to recognise and understand the dynamics of their own abuse. However a failure by other systems and professionals to understand the whole picture creates problems when women try to engage with the legal system; a system that often seeks to identify discreet categories of abuse, and specific incidents, outside of their wider context. A number of themes emerged in the interviews that give voice to both the diversity and commonality of women's lived experiences of abuse.

³ See the *Duluth Power and Control Model*: <http://www.theduluthmodel.org/wheelgallery.php> (viewed 20 September 2010); Queensland Police Service: <http://www.police.qld.gov.au/programs/crimePrevention/dv/Cycle.htm> (viewed 20 September, 2010).

2.3.1 Physical Violence

Physical abuse is, for better or worse, often the most commonly recognised form of domestic violence, with its connotations of the ‘bruised and battered wife’ often overshadowing other insidious and perhaps less understood forms of violence in the public consciousness. Physical abuse is usually acute and shocking to victims. It can sometimes be the catalyst for women to re-evaluate their relationship.

Interviewees experienced physical violence across the spectrum from incidents of hitting, to being thrown from cars, having teeth knocked out, being threatened with weapons and serious murder attempts.

‘He actually threw me to the ground and it was only the fact that he had his hand behind my head that I didn’t smash my skull in. That scared the crap out of me and I was like suddenly this trigger came in, this is physical violence, this is domestic abuse.’ (IV 8, 9)

‘He’s a very controlling, possessive person. We were together a long time before we came to Australia. And it didn’t seem to be a problem until here in this country, the physical violence started. And the police became involved when I called them, he was strangling me.’ (IV 18, 4)

‘Obviously I didn’t want to go home because I knew what was going to happen when I got home. If I stayed out until like four or five in the morning, then eventually I would have to go home. As soon as I walked in the door, he grabbed me and started punching me.’ (IV 3, 9)

‘Broken ribs, punctured lungs, broken nose, couldn’t stand up, you know. Busted, broken teeth, as you can see – broken teeth still... He used weapons; put knives to my throat, burnt me. Suffocated me a real lot, I have trouble breathing now. I’d just, well, go blue and nearly pass out he’d let me have a little breath. Broken broomsticks on me, body slam me to the ground, booted my head in. It’s hard.’ (IV 20, 8)

A number of women claimed they had experienced attempted strangulation. This has also been noted in other studies (see Radford and Hester, 2006, 21). This form of abuse is of particular concern. American studies have found that many domestic violence homicides occurred as a result of strangulation (Hawley et al, 2001) and that strangulation is an important risk factor for predicting homicide (Glass et al, 2008).

2.3.2 The Trauma of Emotional Abuse and Control

All forms of abuse have emotional effects, however survivors specifically emphasised the deeply traumatising effect that emotional abuse had upon them. Women spoke of relationships characterised by extreme control and psychological abuse that undermined their confidence and sense of self:

‘....it all started so subtly and built up over time, and it started off, what did you do today at lunch time? ... Then it was, where are you going and who are you seeing? It got to the point where he was checking the kilometres on my car, how many kilometres I had done, how much petrol I was using ... Five years after that. So we’re 10 years into the marriage now...Then the put-downs of, no one else would ever have you, and you’re so stupid, and I can’t deal with your health issues. You’re lucky I stick around because no one else would ...my ex-husband – was so controlling. He’d come in and he’d wipe his finger on the furniture and, this place is filthy and what have you been doing all day? Here I was, heavily pregnant with my daughter and he’s making me lift windows and clean them both sides and – while he’s down next door getting drunk, and ...I was absolutely petrified to stand up to him by that stage. If – when I was to voice my opinion I’d just get a quick slap, or he’d get right in my face and scream at me. He gets this look on his face and he goes white. It’s like – he looks like he actually could kill. So I was petrified. I just – it was always head down and just do it.’ (IV 1, 6- 8)

‘I wasn’t allowed to go anywhere because I was being slutty and people were looking at me, and I was embarrassing him or something. Then he would say oh like you’re fat and you’re ugly.’ (IV 3, 6)

'I don't know how he had this power over me. It just baffles me now that I'm out the other end of it.' (IV 7, 10)

Many felt the impact of emotional abuse was not fully understood by professionals and others:

'There's a lot of women who are physically abused [but] are also mentally and psychologically abused and there's not enough emphasis on that.' (IV 8, 25)

'Physical wasn't near as much as the emotional and mental. The mental was torturous. We're talking about someone who has been trained in guerrilla warfare; he's ex-army and treated his children like little SAS troopers.' (IV 8, 9)

When domestic violence is understood to encapsulate emotional abuse this can have implications for policing. This is discussed further in 4.2.4 of this report.

2.3.3 Sexual violence, and rape

Sexual violence can have devastating consequences for victims, and yet can be very hard to legally prove or speak about publically. Women who have been violated within their relationship may feel further stress by invasive examinations and questioning, and with little likelihood of conviction are often reluctant to report sexual violence (Kennedy, 2005).

'[The prosecutor] said we're probably not going to get a much better result because it's going to be really hard to prove the rape because you were in a relationship.' (IV 3, 25)

'What you're doing is domestic violence, and he said, 'Oh no, you can't rape your wife.' (IV 17, 9)

'He said: "You will never be with another person as long as I live. If I go down, you will be coming down with me. I'm not leaving here unless you call the cops; and if you call the cops I'll rape you anyway.'" (IV 7, 23)

'My head was pounding. He was ripping out my hair. I had big chunks of hair missing.....I was screaming the whole time. The neighbours didn't call anyone. When I tried to scream, he would smother me. Then I blacked out. When I woke up, he was on top of me and he started having sex with me. I was like stop it, everything is hurting, I can't move, stop it, you're hurting me. I was crying. He was like 'shut-up, shut-up, I'm just using you, shut-up you slut'. I was like please stop, please stop. He was like 'I'm doing this because I love you.' Then he obviously didn't stop. I just blacked out. I can't really remember it clearly now. Then when I woke up again, he was yelling at me to get up because he had to go to work.' (IV 3, 9- 10)

Significantly, research has demonstrated a strong correlation between emotional abuse and sexual abuse. Starratt et al (2008) report that:

'...sexually coercive behaviours can be statistically predicted by the frequency and content of the insults that men direct at their intimate partner. Insults derogating a partner's value as a person and accusing a partner of sexual infidelity were most useful in predicting sexual coercion.'

Awareness of this overlap may be important in counselling and criminal justice contexts when women report emotional abuse.

2.3.4 Death Threats

Many women in this study have lived with the fear that the perpetrator was, or continues to be, willing to kill them during the relationship or after they have left the relationship. Indeed some believed they were in the most danger after leaving. Mahoney has documented the severe violence that often follows separation (1990). Some women in this study received severe beatings that threatened their life; others restructured their lives to avoid this outcome. One woman was hunted down by the perpetrator and repeatedly run over in a busy suburban street. He is currently in prison, serving a sentence for attempted murder. Other women commented:

'I was going to die that day. He told me I was going to die that day. He made me say goodbye to my daughter.' (IV 7, 18)

'One night when I thought he was going to murder me. Like, he just went real psycho...'
(IV 20, 10)

Interviewee: [The abuse was] more so emotional and mental. The physical assaults only happened if I argued back which I didn't do a hell of a lot because it was too frightening. This man is 6'6 and 19 stone; I'm 5'2 and 55 kilos.

Facilitator: What, in the back of your mind, did you think he was capable of?

Interviewee: Killing. (IV 9, 10)

Several women spoke of being overtly 'warned' by others that their partner was very dangerous. In several cases, police made chilling judgements of the perpetrator:

'The police asked me if I wanted to take out a Domestic Violence Order, and I said no. They said well I'm sorry to tell you this but we are going to take it out of your hands because we do see pre-homicide indicators here and we have every reason to believe that if we don't take action now your life is in danger.' (IV 6, 5)

'The thing that I must mention about W to you is that he was never a hitter – like I never got bashed or anything like that, although I did have my throat squeezed and was full punched in the face once. But in the general way people think of domestic violence, I'm not one of those...No, W is more what the police call emotional, and the police have also said that that's the kind of guy that does the one-off event. So they do take it quite seriously.' (IV 10, 5)

2.3.5 Stalking, Threats and Intimidation, Destruction of property

Stalking is recognised as a precursor to more dangerous behaviour in the domestic violence context. For example in Johnson's study of domestic homicides, she found that many killings were preceded by stalking (Johnson, 2005, 54-70, 94-96). Many of the women in this study reported stalking behaviour:

'Because the reason we reconciled is he stalked me and stalked me until he got back in. At the end of the day they push their way back in. I had a knife to my throat, family threatened. He has been down there to my Mum's house. So at the end of the day you do what you have to do to protect your family. At the end of the day I am better off to take a hit or to live like that than it is to put everybody else at risk. That has been really, really hard.' (IV 11, 14)

Facilitator: W thinks that if I don't have bruises then it's not violence. But I said, just what you do is violence...But everything in the house is smashed and you know ...

Facilitator: That's violence.

Interviewee:... things like, I'll be in bed asleep, and at 2 o'clock in the morning, he'll have broken into the house, broken into my bedroom – and I have double doors in there – opened the doors, and I'm – standing with him standing above me. And I wake up and I go, 'Oh my God, what are you doing here?' And he goes, and he's got his arms crossed and a big stern look and his big bikie outfit, you know, 'Well, what do you expect? You won't answer my phone calls, you won't answer my texts, what do you expect?' (IV 10, 6)

'At one point I was standing holding one of the kids in the bathroom and we were having an argument, and he punched past my head and punched the door beside me; he punched a hole in the door. He did a really weird thing. I came out of the bathroom; I was crying; I wanted to just get the kids out of the way. He took the door off its hinges and threw it out into the backyard and burnt it.' (IV 5, 9)

In other parts of this report incidents of property damage are documented by the interviewees. The financial burden of replacing and repairing damaged property is often borne by victims. In Australia costs associated with replacing property damaged as a result of domestic violence has been estimated to be in the vicinity of 2.6 billion dollars in 2002-2003 (Costs of Violence, 2009, 49). Property damage is also a threatening exhibition of force.

2.3.6 Manipulation and Concealment

Many women expressed deep frustration at their partner's ability to manipulate them and 'work the system'. They spoke of deliberate tactics to conceal or disguise (physical) evidence of abuse, to 'charm' outsiders and to misrepresent the reality of their experience.

'He was saying to me I can hit you where no one's going to see it and no one's going to believe it rah, rah, rah, rah.' (IV 14, 13)

'Usually what he does – and he's done it to my kids – is he grabs by the collar of your shirt, twists it around so it chokes you and drags you around with it. Because you've got no – you're off balance all the time. So he controls you by your clothing. So you end up with scrapes down here. ...No-one else really can tell. Then he makes sure he hits the back of your head ... where your hair is and stuff, yeah.' (IV 2, 18)

When this manipulation extended to outside agencies and systems they expressed profound disillusionment:

'He's a very manipulative person. He can even manipulate all this system here.' (IV 4, 5)

'Before I met my husband, I was never a strategic person. He has taught me strategy. It was about survival.' (IV 6, 13)

Women believed that police and magistrates were often conned and manipulated by the perpetrator's behaviour. This is discussed further later in this report (see 4.2.3; 5.4 of this report).

2.3.7 Technology and Abuse

Technology has proved a double edged sword in this context. The women in this study spoke of increasing abuse via a range of information and communication technologies (ICTs). Many had received abuse and harassment via mobile phone text and email. One woman told of her ex

partner posting explicit pictures of her on the internet without her permission and pressuring her into unwanted sexual encounters:

‘I told him we were over because he kept putting my information on the internet and nude photos of me without my information, without my knowledge, was addicted to swingers web sites, was continuously trying to pressure me into having sexual encounters with couples and singles. I was stalked in September because he put my information on the internet.’ (IV 12, 2)

A number of contemporary studies bear out these experiences that women are increasingly abused, stalked and controlled via mobile phones, the internet, emails and even monitored by covert surveillance devices (Southworth et al, 2007). Online social networking platforms such as Facebook increasingly present new and complex challenges around privacy, abuse and the management of personal details, particularly when there are domestic violence orders:

‘He posted photographs of me on the internet. They weren’t illicit or anything else. He just had no right to post photographs of me on the internet. When I told the police ... [they] are like... It’s not an offence for him to post photographs of me on the internet.’ (IV 14, 8)

‘He also took very personal intimate details that I told him and shared with him, that you only share with your partner, about some things that I had been through in the past, and he took those details and just said everything and said it all in the worst possible way to make me seem like the worst possible person.... He then took 14 of my contacts from my email contacts list from a previous, like circular email, these included my father, my oldest son, other family members, work colleagues, the perpetrator’s work colleagues. He made this email a circular email and sent it to them all.’ (IV 15, 8- 9)

However, women also reported that the same new technologies such as mobile phones, email and the internet, have beneficial uses, particularly around their potential to reduce isolation and increase access to support and information.

Facilitator: How did you start to piece together the resources that you needed to move forward?

Interviewee: I did it on-line, on the computer....

Facilitator: And can I ask, just out of curiosity, were there any particular sites that were really helpful?

Interviewee: Queensland law site, there's a couple of solicitors, private solicitors who have got their own web sites ...a lot of the DV sites. I have joined a couple of forums through Yahoo domestic violence forums, so with other people impacted by domestic violence. (IV 12, 44)

Women also noted that emails, texts and mobile telephone calls all leave records that offer new ways for police to collect evidence. This is discussed further in 4.4 of this report.

2.3.8 Domestic Violence and Children

Women experiencing Domestic Violence in the context of pregnancy and parenthood can face profoundly difficult issues. Women can be particularly vulnerable during these stages and violence can have very serious consequences for planning and decision making and the wellbeing of both mother and child. This was borne out by the experience of a number of women in this study. Some spoke of violence that emerged or increased around pregnancy and parenting.

Interviewee: I was about to leave him when I found out I was pregnant when he first started showing signs.

Facilitator: You said showing signs. Do you mean signs of domestic violence?

Interviewee: Yes, like throwing furniture across the room, picking up a bed and chucking it; little, tiny signs like that. (IV 6, 24)

'Basically he was always controlling with money and he only slapped me once ... and said he would never do it again. It was only until I was pregnant with our first child that he became physically abusive again. But he was always verbally abusive.' (IV 11, 8)

Some spoke of being prohibited from using the contraceptive pill, another of forced termination:

'Then in February he...he told me I wasn't allowed to take the pill anymore because I was getting fat. He took it away from me ... So I fell pregnant. I said I wanted to keep it because I didn't want to have an abortion. I said if you keep hitting me I can't have it. He said he wouldn't. Then he bashed me up again and said don't worry, I'm not punching you in the stomach. He just punched me in the face and in the chest.' (IV 3, 14)

Interviewee: No, no. When I was pregnant with our third child, just pregnant, he told me get rid of it, terminate the pregnancy or else he would have me removed from the house and I would never see my children again. I was in such a state...I believed him and went ahead with the termination of a child that...

Facilitator: Under duress basically.

Interviewee: It was more than duress, the fear of losing my children, believing him. He brought that up in front of [their 11 and 13 year old children], well he brought up the fact of you know, 'you ask your mother why she won't have sex' because he knew very well it was my immediate sore point about the whole relationship at that point. (IV 9, 40)

Research has demonstrated that a common reason for women seeking terminations is that they are in a violent relationship (Taft et al, 2007, 135). Research conducted by Rhodes et al (2010) suggests that the presence of children both facilitates and inhibits women from disentangling themselves and their children from abusive relationships. That study found that mothers wanted to both spare their children from the harm but also to keep families together and to protect their children from potential instability caused by the involvement of the legal system. Some of the women in this study mothered through domestic violence, believing that hanging onto the family unit was most important:

'I used to say he's not hitting my kids - he's not hurting my kids. Now I've got a seven year old girl who turns around to me and says mummy when daddy did this to you - I remember when daddy did that to you.' (IV 14, 17)

'Kids are so good. Like even now, she has helped me get through it. She has always stood up for me. Unfortunately, she has really suffered the consequences of his behaviour over the years. I see that now. I actually feel – and I deal with it in counselling – that I'm actually an abusive parent for subjecting her to what she has had to go through... I mean obviously I didn't do it on purpose. It was the position that I was in. But now when I look back at it, it horrifies me, and there's no way I'm doing it again.' (IV 7, 9)

'I'm going mad. Because he is text messaging me again now – I can't believe he still has control of me and still is making me feel bad about it. I feel really bad. Like he sent me a message this morning going 'I'm crying at work because I just found out that mediation can't happen; I just want to see my daughter.' And there's me going ... of course he's not going to hurt her. Why are you doing this?' (IV 7, 32)

Understanding these conflicting pressures is important for those providing support and advice for women in this context (Douglas and Walsh, 2010).

2.4 Violence toward children as the catalyst for engaging the Legal System

Consistent with research mentioned previously (Rhodes et al, 2010; Meyer, 2010), interviewees repeatedly stated that a major impetus for engaging with the legal sector was the welfare of their children. Many women who had experienced serious prolonged violence were galvanised into action when they perceived violence was having a serious impact upon their children or when violence started to be directed at their children:

'It was one evening when he tried to choke me and he had me between the roof and the wall of a room and my youngest son came in and said don't kill my mummy. That was it. I went to the police.' (IV 9, 10)

'Then, when he started on my children... I said, that's it. I said, I can take what you dish out to me, but how dare you start on the children...He didn't smack my daughter, but he was very, very rough with her. She dropped a piece of food from her plate onto the floor, and he's got up out of his chair and he's grabbed her by the arm. He's dragging her towards the glass sliding door, and he's saying to her, if you're going to eat like a dog

then you will eat like a dog. Outside. He's thrown her outside. I'm like, what the hell are you doing? He goes; you sit down and shut the fuck up and all this.' (IV 1, 25)

'He was just full on kicking [his daughter] across the room Christmas 2007, in her back and throw her up against the wall and bed and making [his son] eat grass and – it was just horrible.' (IV 11, 12)

'I think I knew the abusive nature of the relationship but what actually clinched it for me was when he sent a message which he very carefully sat down and thought about and told me that he'd sat down and thought about. It was an email message and in the email message he directed a death threat towards my son... He said I would make him eat his own dick before I slit his throat.' (IV 15, 8)

'The crunch came when he spoke to my son a particular way. He was telling him off in his bedroom. He was totally right but it was what he was saying – you're useless, you're this, you're that. Just what he said to me and my blood went cold and I thought my kids are nothing, like me. They're nothing to him just like I am.....I put my foot down and I've never lifted it since. I said you need to get help; I need help for accepting this behaviour...' (IV 8, 8)

While there is now a significant body of research available that demonstrates that harm is caused to children simply by witnessing domestic violence (Choudry and Herring, 2006), these interviewees' comments suggest that mothers frequently try to parent protectively. In the next section of this report we discuss help-seeking issues further in the context of pathways toward safety.

3. HELP SEEKING: PATHWAYS TOWARD SAFETY

As shown in the previous extracts from women's stories, throughout their ordeal, women in this study described various attempts to seek help, manage, escape from, work on or salvage the relationship before (and sometimes concurrently with) formal engagement with the legal system. This included strategies such as counselling, seeking medical help for themselves or their partner, setting boundaries, and separating from the perpetrator. The women often employed psychological coping strategies such as denial, contextualisation, 'trying harder' and exaggerated avoidance of conflict.

The ability to gain access to support services, to draw on personal resources, to identify and utilise knowledge and information and the capacity of outside networks to adequately screen and refer women to appropriate supports were often key to women finding a pathway to safety. Women's interpersonal networks sometimes supported them in getting to safety. The capacity to engage this support is affected by a complex interplay of factors. These include, but are not limited to, socio-economic and structural factors such as gender, race, and class, family of origin, personal experience, age and health, marital status, parental status, literacy, and location (Moe, 2010; Meyer, 2010).

3.1 Networks of support

Women may have contact with a range of formal and informal networks which can potentially provide help in ending the violence. Women in this study reported mixed experiences of support, which ranged from highly empowering and 'life-saving' responses to indifference, incompetence and further abuse.

3.1.2 Interpersonal and informal community networks

Meyer's research has shown that informal support networks are most commonly used by women seeking help (Meyer, 2010). Family and friends, neighbours, churches, school communities and workplaces can be a crucial part of getting to safety, although women experiencing domestic violence may be isolated by partners and may not have a strong network of supports. Many women in this study struggled with isolation and alienation. They

also experienced frustration and compassion fatigue from those agencies and individuals who supported them:

'I did have family, but you need to understand that over a long period of time, had no friends. I wasn't allowed to have any friends, until I became friends with my next door neighbour who ended up being my best friend for six years.' (IV 1, 9)⁴

'My family were not allowed to visit. I wasn't allowed to have any friends. They had to be his friends and it was isolated.' (IV 11, 8)

'I lost a lot of my friends because I think they were sick of picking up the pieces. They couldn't get through to me because I was so blindsided by the fact that I wasn't recognising what it was for what it was.' (IV 19, 14)

'My daughter was born in 2001. The isolation started then.' (IV 5, 5)

'You keep going back. But you go back because there is nowhere else to go. At the end of the day, unless you have got a great support system...' (IV 11, 18)

A number faced disbelief and betrayal from some of the people in their interpersonal networks:

'[His sister] just grabbed me, like what the fuck is going on, and slammed the door in my friend's face. Then she started yelling at me. I tried to explain. I was like W hit me; he has been doing it for a long time. She was like what the fuck are you talking about, do you think I wouldn't fucking know if my brother was like that, you're lying, what did you do, where is he.' (IV 3, 12)

⁴ After the woman obtained a domestic violence order, her former partner started a relationship with her best friend and he moved next door into the 'best friend's' house.

'I even had his friends and other people going what are you doing getting the cops involved, you stupid idiot. They weren't saying to him why the fuck are you doing that.'
(IV 7, 15)

'My mother was always very protective of him. She would say oh you must have done something to deserve it.'
(IV 6, 19)

'The reason why I didn't do anything about it for ages is because when I was younger – I left home when I was 15 because my stepfather was abusive. Basically when I told my mum what was happening she told me not to worry about it; he was probably just slapping me around a bit. So I didn't think that it was a big deal.'
(IV 3, 2)

Others spoke of positive support from friends:

'I've got a lot of friends that are very worried. I only had people on my doorstep two nights ago, because I hadn't contacted them for two days...They thought something had happened to me, and he had tears in his eyes. He's just a mate and his wife, and he seriously thought something was going to go wrong. So anyway, so everybody else seems to be more affected than me, so it's probably more serious than I make it out to be. Problem is I've lived with it for so long...'
(IV 10, 6)

A recent Australian study has noted that domestic violence can lead to job loss and reduction of promotion opportunities (The Cost of Violence, 2009, 22). A number of women in this study recalled how the violence had a negative effect upon their work and employment. This highlights the economic impact of domestic violence on women and underscores the vital importance of workplace domestic violence policies:

'I have been going to work with black eyes and he has come into work and threatened me at work and knocked computers off and my work has got involved. Rather than get police involved they have said right, pulled me out of the branch. You are no longer the manager, go have two weeks, sort your personal life out and come back.'
(IV 11, 11)

'I went to work and they wouldn't let me work because I was covered in bruises. My ear was all bloodshot, just completely bloodshot in both ears. I had like bite marks and bruises all underneath my jaw, and fingerprints all around my arms. They wouldn't let me work like that.' (IV 3, 13)

In New South Wales a number of workplace reforms have been introduced that seek to support victims of domestic violence. Under these agreements the employer is obliged to offer victims a range of support that includes special access to sick leave and compassionate leave so they can attend court, counselling, or medical appointments. Victims are also entitled to be moved to a different office or have their phone number or email address changed 'to help them escape an abusive partner' (Bibby, 2010).

One woman explained that intervention from her son's school was a significant turning point:

'For my children it was – the catalyst was my son and school raising his problems, bringing them to my attention. I knew that I – and felt guilty – that I have allowed my children to grow up in an abusive environment which is swearing, throwing things, temper tantrums by a middle aged man and when things weren't going his way and the pressure was on, I was scared.' (IV 13, 7)

Neighbours can also play a vital role in helping women get to safety. In a culture that sometimes is reticent to 'get involved' neighbours' willingness to notice violent incidents, offer sanctuary and call police can literally save a woman's life, especially when a woman herself is unable to call:

'The next door neighbour came out and got me and my son into their house to get safe. Then he was smashing into their house. They were calling the police. The police got there very, very quickly, as he was still trying to get in. They didn't get back-up for some time.' (IV 6, 3)

'Towards the end, the neighbours called the police for domestic violence because I was like screaming for help. The neighbours came over and interrupted what was happening.

Then the police came eventually, like three hours later. He basically tried to kill me.’ (IV 3, 1)

3.1.3 Health, Welfare, Housing and Medical Agencies

Formal community services and agencies provide crucial opportunities for domestic violence screening, referral and support. Accommodation instability, health problems, injury and acting out in children can be markers of violence and professionals should ask about and be prepared to respond to this issue. Hegarty et al suggest that health providers often do not ask questions about domestic violence (2006, 82). There continues to be debate about screening for domestic violence in health care settings (Spangaro et al, 2009). However, Hegarty et al note that, while direct disclosure of abuse is rare, health professionals can still raise the issue and offer support (2006, 86, 89).

The link between domestic violence and mental health concerns such as depression and anxiety is well known (Hegarty et al, 2006, 85). Some interviewees were still suffering from depression and anxiety years after separating from their violent partners (IV 1; IV 3). Some of the interviewees also noted that their doctors flagged mental health issues surrounding perpetrators’ behaviours. The interviewees in this study discussed several instances where professionals raised concerns about safety:

‘I called his doctor the next day. His doctor actually said - I believed it was just something like stress or something – he said “this is something more than that”...he gave me the [domestic violence] phone number. He said you can speak with these people and see what is going on.’ (IV 4, 23)⁵

‘..in the end, my GP said to me, if you are not going to do something about his violent behaviour, then as your general practitioner I have to...He wanted to call the authorities and let them know himself...I said, please don’t do that, I said, because it would just make things worse for me.’ (IV 1, 21)

⁵ This woman’s husband is now serving a sentence of imprisonment for attempted murder.

Interviewee: ...They just had to look at the bite marks. I had to get a tetanus shot. I thought I had broken ribs, but I didn't; just really bad bruising. The doctor was really upset about it.

Facilitator: What did the doctor say to you?

Interviewee: The first one was Indian. He couldn't speak English that well. He was really upset. He said this never should have happened to anyone, let alone a woman, especially someone so young. He said he should be in jail. (IV 6 , 7)

Facilitator: Did they give you any advice at the hospital?

Interviewee: They told me to come back the next day. There was a lady [doctor] there. She told me that I had to break up with him. (IV 3, 17)

One woman experiencing post natal depression described being referred to a counsellor via her local Community Health Centre, who later facilitated her involvement with a community based domestic violence support service. By using coordinated community referral processes, this counsellor played a crucial role in facilitating one woman's pathway to safety:

'I ended up in counselling; it was through a community health nurse....I was going once a week and talking to a counsellor and I was constantly in floods of tears and that's when it all started to come out. That went on for a good year probably ... went through all kinds of therapy ...Eventually she said you're not suffering from depression anymore, you're suffering from this relationship. It didn't immediately sink in, but probably after a few months I started to think this is just wrong the way he treats me, the way he treats the kids. That's when I started to get my strength back a bit, I think, because someone actually said to me this situation is not right.' (IV 5, 7)

Others were not as positive, with some feeling failed by the health sector:

Facilitator: So you've just had a pretty difficult experience; not just with the whole process of the law, but you've actually had a very difficult medical experience in not getting the right support early on through the medical system?

Interviewee: Yes.

Facilitator: People weren't flagging with you that some of this stuff could have been dangerous to you?

Interviewee: Yes. I called the psychiatrist after I came home from the hospital. I told him your patient did this and this. (IV 4, 47)

'[Doctors] were sort of like, you know. But they can't really do anything. All they can do is write down stuff.' (IV 2, 14)

One woman was concerned that the violence she experienced from both her partner and her partner's brother was linked to the brother's mental health. This woman made a conscious decision to pursue legal avenues over medical and mental health channels due to a perceived lack of funding in mental health:

'I actually rang up mental health because I thought it might actually be a better way of going around it where he might actually get the help he needs rather than be rather than it be a criminal matter, have it as a health matter... I felt that if I did it by mental health... it would actually inflame the thing more. Then I felt that with the police response, with the Domestic Violence Order, it would be more of a message of that's not acceptable...I looked at how overwhelmed the mental health system was... The police probably had a lot more resources to deal with crisis at that point in time. It just sort of worked it out that way...' (IV 6, 20)

A number of women also had contact with the Department of Child Safety, with very mixed responses. Some initiated contact seeking help, others were assessed after referrals were made via school, or maliciously by partners.

'I've actually visited the child protection agency to try to get them to do something about my husband, with no success.' (IV 1, 3)

'...But then if DoCS are going to say to you if you go back to him and expose your children to violence we're going to take your kids away then they need to give you assistance to get somewhere to go. I'm really lucky; I went from the bottom of the Department of

Housing list to the top of the Department of Housing list which is 12 years long in less than six months.’ (IV 14, 17)

One woman received assistance from the child protection service: who called the police for her (IV 11, 3). Interestingly, one woman expressed support for the department’s stance to remove her children if she returned to the perpetrator feeling it confirmed the seriousness of the situation and gave her the boundaries that she needed to remain away from him:

‘Apparently they make reports to DoCS [Department of Child Safety] but DoCS show up three months later. That’s great. That’s doing the kids a lot of good. That’s fantastic and this is how these kids get dead. It’s because DoCS don’t act.’ (IV 14, 17)

3.1.4 The Legal System

Although not all people affected by Domestic violence will have formal contact with the legal sector, it is a highly significant experience for a large proportion of women, although the time between the onset of the violence and legal contact varies greatly. All women in this report had contact with the legal system in Queensland. This contact involved a complex mix of police call outs, civil and criminal legal procedures, legal representation and multiple court attendance at both magistrate and family law courts. Detailed examination of their experiences is covered in parts 4 and 5 of this report.

3.2 The Domestic Violence Support Services and the Women’s Sector

Women were profoundly supportive of the women’s support sector and spoke highly of their experiences. This is not surprising as many of the interviewees were referred by women’s support agencies, thus there is clearly the risk of selectivity by the gatekeeper organisations that referred the women to this study. It is important to read the following comments with these factors in mind. Women referred to their experiences with women’s services as non-judgemental, ‘helpful’ (IV 2, 49; IV 4, 44) and safe:

‘I really appreciated having somewhere safe to go, having somewhere to walk straight into the court, go straight through and know that nobody could see me.’ (IV 15, 11)

The inference from some of the comments was that as part of the overall experience of engaging with law, this was an empowering experience. For example:

‘[Women’s support service staff] don’t judge. They just let you talk, too. They don’t sort of – they don’t supply like – like they don’t go oh we usually do this. They give you everything. They don’t tell you what you have to do. ... Yeah. They give you lots of information. ..Yeah. They don’t judge you, which is really nice, because you always feel judged when you’re a domestic violence person, I think.’ (IV 5, 3)

This woman’s comment underlines the fact that while the women’s service provided her with non-judgmental information, material support and advice, they did not direct or pressure her. She was able to make informed and supported choices about how to proceed. For many women the treatment they experienced from domestic violence women’s service workers was a completely new experience. For the first time in many years they felt safe and secure in that environment (IV 15, 11). For example one woman explained: ‘They are really good, really supportive. They are beyond question.’ (IV 13, 12). Another commented: ‘... that the program that they run at the court was just fantastic.’ (IV 15, 10). While still others commented:

‘... they walked me through it, they helped me, exactly what I had to do. They are absolutely amazing women. When you are frazzled and can’t think and don’t even know what to do, they just walk you through it, a very slow psychological pace. They are very, very – I can’t sing their praises enough. They have everybody’s interests at heart, they’re not man haters, but they make you feel safe, make you feel like your mum’s there when she’s not. And everybody would like their mum if you’re going through a hard time, no matter how old you are. And they make you feel like somebody’s there looking after you.’ (IV 10, 22)

‘I was just like – this is the first time anyone has ever helped me. I was just traumatised by being helped. .. I was more traumatised, more upset by being helped, than I was when I wasn’t, because I’m tougher when I’m – you know.’ (IV 2, 46)

One of the key themes that arose in this study was women's relief at being believed and treated with dignity by others. As discussed in part 4 and 5 of this report, many women who sought legal resolutions in relation to domestic violence experienced a system that found them incredible and irrelevant. Many of the women emphasised that they felt that workers at women's services believed them and treated them with dignity:

'I went to the courthouse and they were just like go upstairs. ...Yeah and I'm like well what's upstairs. I went upstairs and there was a doorbell and I rang on that and they took me in. The funny thing was I was quite inconsolable only because when they said they believe me. It's really weird.' (IV 8, 15)

'There are two women in that DV clinic that are just the loveliest women I've ever met. I've had to go back to court since - not for my matters but to support other people - they remember me, they remember my daughter, they're just beautiful women.' (IV 19, 31)

'...I spoke to women that really knew their stuff. That really helped me. But what if I didn't have those resources? I just would have – and the thing is, even my partner before my husband, he just sits there and shakes his head wondering how I ever got wrapped up in someone that's so pathological. Because he says you don't take shit, how did you get involved? If it could happen to me, it could happen to anyone. It took seven years to extract myself from something like that. It does worry me because I am an inherently assertive person.' (IV 6, 27-28)

Other women found telephone services especially helpful:

Facilitator: How was the phone call to [domestic violence telephone service]? How were the counsellors on the other side?

Interviewee: She was great; they were really good and I actually said look the police haven't arrived, I've called them twice and she actually did a conference call through to the cops and within about half an hour they arrived, after she'd spoken to them because that was really disgusting. (IV 5, 16)

'The only time I used to try and reach out to someone was when I just finished getting a hiding or something and I've taken off and I call [domestic violence telephone service].'
(IV 20, 9)

Interviewee: Prior to taking out this DVO I was on the phone to [domestic violence telephone service]... I have a list of people I rang just to help me get through what I was going through.

Facilitator: So you often used phone lines?...

Interviewee: Yes because just when you are so down just having a voice at the other end - and soon your friends lose - it is hard to explain to people how you're feeling, what you're going through and my hurt is mainly for my children. (IV 13, 23)

'I'd already rung 000. .. They kept saying to me do you want police? Do you want this? Do you want that? I said I want the police. I was pretty upset. Because he was like laughing at me and pushing me and back ...anyway, they got sort of impatient with me. I said just give somebody who can help me then. That was like do you want the police or do you want? I said just - well I just want somebody who will come and help me. I don't want you. I want somebody who will come and help me. Just anybody. Give me anybody. Give me a number. They gave me the [domestic violence telephone service] number. He gave me that. So thanks very much.' (IV 2, 19)

For some women contact with a women's service was the end of a long line of attempts to get help:

'No. I tried to access a lot of services but found, for one reason or another, because so many people - the area is so underfunded that their criteria is so stringent. I found that I just fell through the cracks. Then sometimes I had wins and I appreciated that. I had amazing support from [a women's legal service]. They were phenomenal.' (IV 6, 23)

While most women found that the legal system did not ultimately give them much help, ironically as part of their engagement with the legal system women often were put in contact

with women's support services. This often proved to be the connection they needed to make in order to leave violence behind.

Part 3: Recommendations:

- 1. Community education must continue to focus on domestic violence as a societal issue and raise awareness of how those involved can access help.**
- 2. Training with professionals and campaigns in the wider community should also emphasise the severe emotional impact of domestic violence.**
- 3. Women in domestic violence situations should be referred to community based support services as early as possible.**
- 4. Women need access to clear information about what to expect from the Queensland legal system, including their rights and the choices available to them.**
- 5. All workplaces should have policies around domestic violence.**
- 6. The interplay between domestic violence and mental health issues needs further attention.**

PART 4. POLICING

Women interviewed for this study expressed a range of views in relation to the way they were treated by police. One of the most consistent comments from the interviewees was that police often took too long to attend – if they attended at all. It was common for women to report that they waited three hours for police to attend. However women suggested that police attendance was much quicker when they reported something different to domestic violence, for example a stranger’s attendance at their home or an incident involving their children. Some of the women’s comments about police are extracted below in relation to call out, demeanour and attitude, provision of information, evidence gathering and prosecution. Women were also asked to comment on whether they thought the introduction of no-drop policies or mandatory arrest in domestic violence would be appropriate.

4.1 Call out

One of the most common claims made by the women in this study was that the police took too long to attend when they were called. A number of women reported that delays of up to three hours between call and police attendance were common in the suburbs of Brisbane. For example women commented:

‘Then the police came eventually, like three hours later. He basically tried to kill me.’ (IV 3, 1)

‘I had rung the police two hours beforehand. It took them two hours to come.’ (IV 11, 9)

‘The history of the police taking six and seven hours to show up doesn’t bode well for me.’ (IV 14, 30)

Women also pointed to the fact that delay may mean the difference between life and death:

‘My first call I logged was at 11:15. It wasn’t until 5:30 that they arrived after S had already choked me.’ (IV 19, 7)

‘I told him. I spelled my surname. He said I can’t find you. I told him listen, he’s outside and he’s waiting for me. I said his dream is to run over somebody with the car; he will do this to me. [The police officer] says if he does this, we will come to you. I said I won’t be able to call you.’ (IV 4, 51)

Other interviewees explained that they had to ring more than once to get a response, for example:

‘Yeah they just didn’t arrive. I rang them again and they said for some reason the call hadn’t been dispatched and they were sending someone as soon as possible... Eventually – what did I do? I’d rung the cops again. Three times in total the cops had to be called.’ (IV 4, 14-15)

One interviewee had given up on calling the police; she suggested that she was more likely to get the needed assistance by calling on a family member:

‘I rang my brother who – the police sometimes take 40 minutes to come out, so I could be dead on the kitchen floor.’ (IV 18, 24)

Some interviewees suggested that risk times for violence corresponded with risk times for other matters that may call on police services. The correlation between drinking and violence that many women identified often meant that violence was more likely to occur at night and on nights close to the weekend or on the weekend. For example one interviewee commented:

‘It’s frightening because it’s in the middle of the night when I know the cops can’t get here for hours. But it always happens on a Friday or a Saturday when he’s been drinking, so the cops are very busy. Very busy, and you know they can’t get there for a couple of

hours. So you do feel very vulnerable when you know the response time is so long.’ (IV 10, 7)

However not all interviewees reported police delays. Some women in this study commented on the speed of police response. For example one interviewee observed that the police response was ‘very swift’ (IV 5, 30). Another woman’s neighbours were the ones to call the police. This woman explained:

‘The next door neighbour came out and got me and my son into their house to get safe. Then he was smashing into their house. They were calling the police. The police got there very, very quickly, as he was still trying to get in.’ (IV 6, 4)

It may be that when those who are outsiders to the violence call for police assistance the police attend more quickly. Two interviewees were unable to identify the perpetrator with certainty to police. They suggested that in such situations police were more likely to respond and to respond more rapidly than would have been the case if it had been a domestic violence call. For example interviewees commented that: ‘the police were called and basically the [school] principal had said somebody was trying to abduct a child, so the police were there within minutes’ (IV 5, 20). Similarly another woman commented:

‘I always keep my mobile by my bed so I ducked under my covers and called the police and they said they were sending someone straight away because I said there’s someone there, I don’t know who it is and they sent someone straight away.’ (IV 6, 28)

It may be that the police response to non domestic violence matters tends to be more efficient than it is to domestic violence matters, suggesting that domestic violence matters are not taken as seriously as other matters.

4.2 Demeanour and Attitudes of police officers

The demeanour and attitudes of police officers varied widely. Common themes in the comments of interviewees were that women did not feel that they were respected by police officers, that some police officers did not understand the context of domestic violence and that

there was a culture of mateship between police officers and male perpetrators. While there may be a community perception that having a female police officer attend a domestic violence call-out would be preferred by women victims (Sherman, 1973; Grant, 2000, 54) interviewees in this study did not suggest such a preference and did not identify particular gender differences in police approaches.

4.2.1 Consistency

A number of women commented on the lack of consistency in the way that police responded to them. For example:

‘I just said to myself, “Look, for the most part, the rest of the coppers are great. He’s obviously been affected in some adverse way.” And you’re going to get that. If you’ve got 20 guys in a cop course, you’re not going to get 20 perfect coppers, you’re going to get five of them that had shit happen to them, whatever. I understand that, so I wasn’t going to, you know, burn any bridges or anything.’ (IV 10, 16)

‘The coppers. Some have been fantastic. Others have been very dismissive.’ (IV 18, 27)

‘I mean it really just depended on the policeman at the time... I had police here really were just like, “Well, there’s nothing we can do. We’ll take your report but there’s nothing we can do.” But then that last time they were very, very helpful and told me that I needed to get a “must not attend the property” [on the Domestic Violence Order].’ (IV 12, 24)

While police officers are all different and come from different experiences, it may be possible to ensure that police response is made more consistent through improvements in training.

4.2.2 Respect

Many women in this study complained that they were not treated with dignity or respect by police officers. For example:

'It was just such an inconvenience for them [for the police to attend].' (IV 12, 15)

'[Police] just look at us like we're – you know – cuckoo ladies, you know. They do. They look at you like you're some sort of blubbering idiot. They can't stand it. So then, if you speak to them nicely, then you're being a smart arse.' (IV 2, 35)

'Having to justify myself constantly, being told oh in the scheme of things your situation's not that serious...The police have said it on several occasions.' (IV 5, 35)

'We went to the police to try to get my car back. [My friends] were like my friend has been bashed up by her boyfriend. They said he has stolen her car; he has got her car and won't give it back. They asked if the police could get the car. They were like oh this is an in-and-out area; you'll have to go to Dutton Park. Basically they were really mean. They just didn't give a shit.' (IV 3, 11)

'I think [police are] all overworked and underpaid, just like the rest of us. They're complacent. That's what I think. I think that they think that all women who get hurt, underneath, I think they think that we all deserve it, honestly.' (IV 2, 43)

One interviewee suggested that police who ordinarily had less to do with domestic violence were actually better at responding than those police who were more involved in the field. She said:

Interviewee: I took it in to Adelaide St Police Station. It wasn't the local police station.

Facilitator: Do you think that made a difference?

Interviewee: Yeah I do, definitely...Yeah, treated more seriously, definitely....I think [the suburban) police [are] a bit desensitised to it. They see it probably a lot more often down here than they would in the city....They actually sent out a forensics guy to take photographs of the message on the phone and the dates and everything and actually did something for a change. That went to court and he was prosecuted and charged. (IV 5, 39)

This comment suggests there is a kind of compassion fatigue operating for some police. This may be alleviated by shifting police officers around different stations more regularly so they do not become 'desensitised' as this woman suggested.

4.2.3 Old boys' networks

Related to the concern with lack of respect was a concern that many police officers appear to take sides with the perpetrator. Interviewees commented on the apparently friendly relationship between police and perpetrators. According to interviewees, on many occasions, police officers seemed to have a great empathy towards perpetrators. Women suggested that this led to police behaving inappropriately. For example interviewees commented:

'There's a copper at the door. [The police officer says] we're just taking G; we've gone down to the station and we've charged him. We're just dropping him off at a mate's place for the night. We're wondering if you could go get him a beer for the trip...' (IV 7, 13)

'...[police] turn up and he's like uh and runs outside and goes, oh yeah, officer, don't worry about it. There's nothing going on and all this sort of stuff. They go oh what a nice guy. You know how guys are like that? They're all like oh what a great guy. He seems really nice.' (IV 2, 20)

'Because one incident when the police turned up ... they said look he has had a hard night's work, you know, he has been on all night, he is tired, he is cranky, just let him in to have a good night's sleep and it will all It was a female police officer too, which made it even more hurtful. He had kicked me and choked me and that but the marks were not – to them – they said they are not distinguishing marks. They are only just a little bit red at the moment...' (IV 11, 14)

'He ... slapped my face, broke my finger, hurt my back, pushed me to the ground and kicked me. He violently assaulted me. And so I rang the police...[they came]...they weren't willing to go and wake him up. ...They just said, oh well, everything's quiet now

and he's asleep and not prepared to go and wake him up – 'cause he was full of alcohol as well... I was just gobsmacked.' (IV 1, 10)

One interviewee was concerned that the police seemed to blame her for the violence:

'They [the police] talked to me inside, him outside and then they came back in and spoke to both of us. They looked at me and they said if you frivolously phone the police again someone will be arrested...I was just like what's the point, he's just going to talk to everyone and convince them, so what's the point...It took me almost three years to phone the police again and that was when I [had him] arrested for that breach. They just made me not want to phone the police at all.' (IV 8, 12)

Research in the United States has also noted the social connections that exist between police and male perpetrators (Websdale and Johnson, 1997, 312). In one recent study survivors called for the 'breaking up of the good ol' boy network that protected offenders' (DeKeseredy and Schwartz, 2009, 107).⁶

4.2.4 Lack of understanding of domestic violence

Those who work in the domestic violence field are very familiar with the reality that, despite serious abuse, women often do not leave their abuser – or they take a long time to decide to leave. The literature reports many reasons for this including fear of retribution and inability to look after children or financially cope if they leave (Hunter, 2007, 165; Murray, 2008; Douglas and Godden, 2003). Further, as noted earlier, separation is one of the most dangerous times for a woman who has lived with domestic violence (Mahoney, 1991). Many women probably understand this intuitively, or know it from experience, and so stay believing they are safer if they do. Women in this study reported that their failure to leave the relationship, even when supported in doing so by police officers, often frustrated those police officers who were trying to help. Women also suggested that often police officers did not seem to be able to understand women's unwillingness to leave. For example:

⁶ Another study has claimed that men who target women for hostility are likely to bond more closely with other men (Anderson and Anderson, 2008).

'The female police officer actually said don't let him come home. I was like how; it's his home; I don't understand this.' (IV 4, 21)

'And I had stayed with him after he's been abusing me for five years – well they're not comprehending the fact that I was just convinced that I couldn't leave him. So therefore it's oh well self-inflicted no sympathy. You've chosen this life it's no sympathy.' (IV 14, 33)

'I had a lot of police at X say to me that I'm a stupid fool [for revoking the Domestic Violence Order] ...That he's going to kill you one day, you know. But I just look at him and thought, no, you don't know. I know what he's saying but they're not in it, they're not there. They're not the ones that are in fear.' (IV 20, 18)

'I do understand [the police have] got their hands tied, that they deal with DV shit every day; day in, day out. But I think what they don't see and they don't understand is that it's the psychological part. Like they don't see the wording that he uses and the things that he says to me; like the point that he text messages me all the time saying why are you doing this to me.' (IV 7, 30)

Largely as a result of feminist activism, domestic violence has been defined in legislation to extend to non-physical abuse (Karganas, 2006, 140-141). Despite this, some women in this study claimed that police often continued to define and understand domestic violence narrowly, as physical assault. For example interviewees observed:

'I know [the police officer] also said to me he hasn't actually sort of done anything, has he? It's all just threats [The police are] in the front line and they see the absolute horror of it, that violence is as such, physical violence. But what they don't see and what they evidently don't understand is the horror of prolonged psychological, emotional and verbal abuse.' (IV 15, 20-21)

'...the young constable at the front desk there... he pulled faces and then said well do you want us to go around and talk to him? ... He said we're not going to do anything about

this from here because he's not like he's actually really done anything. You know, he said in cases where people have been severely beaten up then we make the reports.' (IV 14, 10)

'And I said [to the police officer], what, so would you think that any of what I've just gone through is scary? And I said, do I have to be hit and punched? What, haven't you been listening to me for the last four pages ... the gates were off their hinges...Everything was broken in the front yard. And he's got a gun on his person. And I'm stuck in the front yard, I was trapped for 20 minutes in the front yard, screaming and yelling ... also the triple 0 call, because I was pressing it, and I left it on the seat, and I was screaming. If you listen to the triple 0 call you will hear a screaming woman trying to get out, thinking she's going to be killed. And four pages of telling him all about that is not domestic violence?' (IV 10, 14)

Other research has noted that many police hang on to rigid definitions of assault as something different or outside of the domestic violence context and this impacts on police willingness to investigate domestic violence incidents as possible criminal offences (Finn and Bettis, 2006, 283).

Some interviewees also focussed on physical injuries, underlining the fact that this narrow conception of what constitutes domestic violence is held quite broadly in the community:

'It helped that I had a black eye...and strangulation marks and everything.' (IV 11, 7)

'The police should take more of a role and it should be a criminal offence to hit.' (IV 14, 18)

One woman suggested that some police had a stereotyped image of victims. She commented:

'... I said to him ... what's the matter, am I not talking in a way you want me to talk to you, or something? Because I'm not distressed and crying, I'm angry...the police like to see you with tears and black eyes. It suits their purpose much better if you are weak and

pathetic. Because then they can see that you need help. But if you're strong... you can help yourself, obviously...' (IV 10, 12)

If police officers do hold images of victims as necessarily weak and fearful they may be more reluctant to assist in cases where victims appear to be strong and angry. Indeed research in Victoria has shown that the fear expressed by the victim was the predominant situational characteristic for police in assessing a high level of risk (Trujillo and Ross, 2008, 465). Trujillo and Ross also found that the victim's level of fear was a key consideration in deciding what action to take (2008, 467).

4.3 Information

For many victims of domestic violence, one of their first formal contacts with potential helpers may be with the police. Research suggests victims are more likely to make formal help-seeking approaches when the violence is more severe (Meyer, 2010, 5). A police call out, or indeed contact with the police, offers an important opportunity for information to be delivered to the victim on what her options are and appropriate referrals. Research has consistently found that victims need to be informed and that information helps women to regain a sense of control in their lives. In turn women are found to be most able to recover from trauma and move on when they are able to regain control (Shapland, 1984; Strang, 2002, 8-13). The interviewees in this study reported that they were generally not given clear information by police. Some were also frustrated that it was actually difficult to talk directly to police officers:

'I had to phone up the police and my solicitor said you get on there and you phone up the police and they should be able to tell you this and you push them and I was dealing with X police who apparently are quite notorious for just not doing anything. Have you ever tried to phone the station? You never get anybody.' (IV 8, 4)

Facilitator: Tell me what you think would make the process better, as someone who has gone through this really difficult experience?

Interviewee: If when reporting breaches you could actually speak to someone in the domestic violence unit and not just any stray constable straight out of, you know, from whatever department... (IV 12, 39)

A number of other interviewees also made comments about the lack of information they received from police about the role of criminal justice responses in domestic violence matters and the lack of referrals to appropriate support services provided. These issues are discussed further below.

4.3.1 Criminal Charges

Earlier research has suggested that the civil response to domestic violence has effectively trumped the use of criminal justice interventions (Douglas and Godden, 2003). Many interviewees in this study believed they were not advised by police about the possibility of criminal charges, for example:

Interviewee: He had actually entered my home ... slapped my face, broke my finger, hurt my back, pushed me to the ground and kicked me. He violently assaulted me. And so I rang the police... [they came]...

Facilitator: Did they tell you what your options were?

Interviewee: Then they said to me, my best option would be to ... take out a Domestic Violence Order of protection.

Facilitator: Did they tell you that that was assault and he could have been charged for assault?

Interviewee: No. (IV 1, 10)

Facilitator: So you could've charged for destruction of property, or something like that?

Interviewee: Nobody told me that, it's the first I've ever heard of that. (IV 10, 19)

Facilitator: Did they let you know that you could prosecute that as a breach? There was obviously lots of evidence of his calls on the answering machine. Was that treated as a breach? Did that go to court?

Interviewee: They never told me...

Facilitator: But they didn't make it clear that that had been a breach or that that had been evidence of stalking.

Interviewee: No. Even I didn't think it was a breach. (IV 4, 36)

Of course, in some situations, women are advised by police that a criminal justice response is a possibility in the particular circumstances but women are sometimes reluctant to agree to assist in the prosecution, often because of fear. Other research has noted that 'it is this fear which paradoxically ...paralyses a woman in what, to an outsider, may appear to be the safest course- that is agreeing to let the police press charges' (ISTD, 1994, 9). For example:

'I told him everything. He said we're going to take out a Domestic Violence Order to protect you. He asked if I wanted to press charges. I said no...I was just too scared.' (IV 3, 16)

'... [the police] saw the marks on my neck... And that's when I said look, stop it, just forget it, just bring him out. And then they said it's not my choice. I said, can you just go out and see how he is – because it was about an hour and a half later. And so they came back... he was in the [paddy wagon]... And then I felt terribly guilty and I was going to definitely die for this. So [the police] said there was nothing I could do, that this is not acceptable behaviour.' (IV 18, 9)

'I never applied for a breach to be put on him because if I did I would cop more wouldn't I? The ramifications of making his life difficult - it was just like no. Every time the police were called by the time they'd arrive - because you know how quick they are to arrive - I'd become oh no nothing's going on. We've just had an argument. Everything's fine. We'll be okay. It was the safest way for me to behave. My kids were involved.' (IV 14, 16)

In the above context, complainants might be better able to make an informed decision about whether to assist in criminal justice prosecutions if they are properly supported and informed about the process. Simply asking whether a victim wants to press charges does not provide the necessary support and information to make an informed decision.

Some interviewees were frustrated by the fact that if they wanted any information about the progress of a matter in which they were involved they actually had to make contact with police; they were often not provided with this information:

Facilitator: So you knew he was charged?

Interviewee: I did because I rang and found out. (IV 8, 5)

‘So it has been nine days and he still hasn’t actually been charged with that breach. I only know that because I rang up this morning. Nobody ever tells me if he has ever been charged or served.’ (IV 7, 28)

A failure to provide information can contribute to a sense of re-victimisation. For example many of the women in this study explained that they found preparing for and attending court very stressful. If women have reliable up to date information about their matter they may be able to avoid some of the stresses associated with preparing for and attending court as they will know in advance what to expect, for example that nothing can happen at the court return date or that the respondent will not be at court on the day. Many women organised for support people to attend court with them so third parties were often unnecessarily inconvenienced. One interviewee explained that she kept turning up at court only to find that her matter was adjourned due to lack of service. She observed:

‘If I had had some information along the way even, say – I just went to court, so I have to go out of my way to go down to court for a completely useless bloody adjournment, yet again, with girlfriends, yet again, and everybody works, right – when I should have been told that it’s not been served yet. I should’ve been told ...’ (IV 10, 52)

Such unnecessary attendances could presumably be avoided with a single telephone call to advise of lack of service. This could be an administrative service provided by the police service or courts.

4.3.2 Support / safety services

As noted earlier, contact with police provides a good opportunity for victims to be referred to appropriate support services. While all of those interviewed in this study were asked whether police had referred them to support services, none of the interviewees could recall that this had happened:

Facilitator: Sometimes in domestic violence we talk about safety plans. Did they talk about a safety plan?

Interviewee: No.

Facilitator: At any point, had they put you in contact with the domestic violence number, the emergency number, the refuge number or the counsellors' number?

Interviewee: No, nothing. (IV 4, 37)

Facilitator: Did they give you information? Did they give you brochures? Did they give you ...

Interviewee: No, nothing. (IV 10, 14)

'I rang a few days later to talk to the sergeant to see ... if it was safe for me to go home or what I should be doing. I was in limbo land. I didn't know what to do. I didn't know if he had been served. I didn't know what the procedure was. I didn't know if he got locked up for it. Did they just slap him on the wrists and send him on his way? How much risk am I in?' (IV 7, 21)

'Police not giving information about a domestic violence situation where something quite dangerous has occurred and they have information that you really need to know that could assist you in protecting your family is wrong. It is clearly wrong. If that was a stranger who had done that they would be in jail. Because it's a family member should have no bearing on a different type of treatment.' (IV 9, 26)

Clearly, information that could assist in supporting the victim's ongoing safety should be provided to victims by police. In some areas the 'faxback program' operates.⁷ Those police stations that are involved in the faxback program can fax a domestic violence support service about the victim. The support service can then contact the victim directly. However to do this police require the victim's consent. This is sometimes difficult to obtain as victims might not want to appear to be engaging with such services in front of the perpetrator. As an alternative to or addition to faxback, it may be appropriate to develop a small card with relevant contacts that can be given to both the victim and the perpetrator.

4.4 Evidence gathering

A number of women in this study noted that in many cases the police failed to collect evidence or investigate when they were called to a domestic violence incident. For example:

Facilitator: What did the police do when they arrived?

Interviewee: Nothing. They had a look around to see if there was anybody there, took a brief statement of what happened and just took some notes and said basically that what I should do first thing in the morning is go and apply for a DVO.

Facilitator: Did they look at the evidence of the trees that had been crashed into by a car?

Interviewee: No. (IV 5, 17)

Facilitator: When the police, the very, very first time they attended with that strangulation, did they recommend that you go to a doctor to get the wounds checked?

Interviewee: No. (IV 18, 33)

'The policeman said to me – unless they catch him in the act or you are actually hurt, we can't prove it.' (IV 11, 28)

It is perhaps in response to this approach that many women took on the role of the state and acted as investigators in their own matters. Some women located and collated relevant

⁷ See for example North Queensland Domestic Violence Resource Centre, <http://www.nqdvrs.org.au/Fax-Back.htm> (viewed 10 September 2010)

evidence and presented it to police demanding action. Many interviewees were of the view that because their matter related to domestic violence, and did not involve visible injuries, they would have to work to ensure that the police and the state were 'interested' in their harms (Howe, 1990, 161; Mackinnon, 1985, 61). Many women in this study compiled emails to demonstrate stalking (eg. IV 7, 28), kept detailed diaries (eg. IV 18, 32) and made audio-recordings of the perpetrators. For example one woman explained:

'I was like, yes, finally someone is listening to me, but it's only because, and I don't know that this was ever really meant to happen, because I had had this thing transcribed, I had a recording device ... and the only way that I could get the evidence, was to actually record him.' (IV 12, 36)

'I had my injuries photographed and again it still wasn't followed through by the police.' (IV 14, 15)

Another interviewee in this study claimed that although she kept calling, and the police continued to attend, the police continually refused to charge the perpetrator with breach of the protection order. Eventually the perpetrator telephoned the woman while she was with her lawyer and the lawyer was able to record the perpetrator's comments:

'I was actually with [Legal aid lawyer] and he's rung me. I've put it onto speaker phone. He was abusing me. I just said, don't ring me anymore. I said, you're not allowed to have any contact with me unless it's to do with the children. ..Then he's rang again...He told me he was going to kill me.' (IV 1, 15)

The interview extract above emphasises the importance of corroborative evidence, such as a third party's testimony or a recording, to support a prosecution in this sphere. In this case the victim's lawyer could also give evidence and the recorded conversation may have also been admissible. While of course police don't want to waste time collecting evidence for a prosecution that may not proceed because of a hostile or unwilling victim, there are probably going to be more successful prosecutions more often if police do routinely treat domestic violence scenes as possible crime scenes. Hoyle and Sanders have referred to this police

approach as the 'victim choice position' (2000, 16). They observe that police and prosecutors, at least in the United Kingdom, share an aspiration to respond to the wishes of the victim and using this approach, if victims refuse to assist or withdraw, a criminal case will not be commenced or it will be ended (Hoyle and Sanders, 2000, 17). However, victims may be much more willing to participate if they know there is strong evidence already collected against the perpetrator. Indeed research in the United Kingdom has shown that the thoroughness of the police investigation and evidence gathering had a significant impact on the likelihood of arrest and the retraction of witness statements (Cowan and Hodgson, 2007, 57). Victims may also decide to change their mind about prosecution once they have had time and other resources made available to support them in making a properly informed decision. They may shift from being a reluctant to a willing complainant. Frequently women in this study claimed that they were asked immediately after the violence, at the police callout, about whether they would like to make a formal complaint (ie have the perpetrator charged). However, at this stage many women may feel under great pressure from others, such as perpetrators, not to proceed (Edwards, 1989).

A further possibility is that if the police do collect evidence at the callout, they may be able to proceed with a prosecution without the victim needing to give evidence. Interestingly, one interviewee believed that the police cannot start to gather evidence of a crime unless the victim agrees to press charges:

Facilitator: Did the police take photographs of your injuries?

Interviewee: They can't unless you press charges. [A doctor took photographs], about six days later. All the bruising was still there, but not as bad as it was at the time.

Facilitator: Did they go through the house and treat it like a crime scene? Did they take photographs of...?

Interviewee: No. I told W that if he did it again, if he breached the protection order, I would press charges for that incident. (IV 3, 19)

It is possible that some police assume this position as well. While the CMC (2005) has claimed that a pro-evidence gathering approach should be taken, none of the women in this study thought this was the approach taken by the police they had contact with.

A definite problem with a pro-evidence gathering approach is that it is very time-consuming for police. However one interviewee commented on the inefficient and outmoded methods police used to collect information in her case. These methods added significantly to the time taken:

‘I’ve spoken into those little notebooks I don’t know how many times. When you are stressed and everything like that, you can’t say it in a story form, or... slow enough or detailed enough, and your mind’s racing, whereas you can do it on tape and you can make [fathom] out of it later, or something, you know.’ (IV 10, 11)

‘I’ve got an iPhone, you plug it into the computer and it just sucks it all onto the computer instantly ...So then it’s all there. But no, it has to be typed in, and it has to be typed in the way that W writes. So when he writes U and it’s just letter U, it’s the U. So it’s very time-consuming, it’s ridiculous.’ (IV 10, 36)

‘... there’s so much paperwork, because it’s so archaic. And who can blame the coppers for having to do it so archaically.’ (IV 10, 48)

Written statements remain a feature of the prosecution process and as time consuming as this process is, it does not appear to be likely to change soon. Other problems in relation to evidence collection were articulated by the interviewees. For example, an interviewee who had a protection order in place was asked by police to contact the offender in order to assist the police to find him:

‘Anyway, they said – because they wanted to charge him – the police officer said to me could you give him a call and tell him that we’re looking for him. I went no; I don’t want to call him. My counsellor couldn’t believe that he asked me to call him to say the police were looking for him.’ (IV 7, 19)

Clearly asking the victim in this context to assist in this way may be very traumatic for the victim. However, the remarks of many of the women in this study do suggest that they have learned the rules about what counts as evidence and many women have taken action to ensure

that the required forms of evidence are available when they seek prosecution or police protection. While this demonstrates that women are able to operate as agents of change it also suggests that women continue to be treated as second class victims in the legal system.

4.5 Prosecution

Some interviewees suggested that police were more willing to charge an offence where a third party was the victim. This is related, at least partly, to the apparent reluctance of police to collect evidence in domestic violence matters because of a perception that matters are unlikely to proceed.⁸ For example interviewees in this study alleged that although it was the interviewees personally who had been directly assaulted, police encouraged third parties, who had only peripheral involvements in the domestic violence, to pursue a criminal charge. In one example the interviewee stated that the police attended a domestic violence incident and a neighbour became involved and was assaulted by the perpetrator. The perpetrator was charged with assaulting the neighbour but not the assault against his intimate (IV 20, 5). In another matter the perpetrator assaulted the interviewee and her new boyfriend. The police recommended that the assault on the new boyfriend should be charged as a criminal offence but made no such recommendation in relation to the interviewee (IV 6, 4). In another case the perpetrator was ejected from a hotel because of his assault on the interviewee. As the perpetrator was being ejected he ripped the bouncer's shirt:

'... the bouncer had charges against him for assault. But there was an assault on me. But [the police officer] laid charges against the bouncer because he tried to get at me while they were putting me in a taxi and he ripped [the bouncer's] shirt... So [the bouncer] pressed charges of assault. X was fined eight hundred and something dollars.' (IV 11, 10)

Women also reported frustration that charges other than those related to violence seemed to be preferred by police. For example:

⁸ This view was supported in the CMC study of factors related to police deciding to obtain a protection order or proceed with criminal charges (CMC, 2005, 45,49)

‘Basically there were three possible charges – one was abandonment of the children, one was breach of the protection order for being at my place and the other one was drunk driving, but the only one that stuck was drunk driving which was the lesser of all of them.’ (IV 5, 31)

‘They said to me to come down there and make a statement or whatever... they charged him with drink driving, unlicensed driving, speeding and all of that, nothing to do with me or domestic violence at all. And I said, why can’t you do anything more than that? And he said, because basically there’s no evidence. And I said, well, has anybody been to the house? And they said, well, this is his exact words – we went to the house, and quite frankly, we can’t really tell what’s mess and what’s broken. And I said, what about the gun? And he said, well, basically, we’ve asked him about the gun, and he says there is no gun.’ (IV 10, 15)

It is not surprising that it is driving offences which ‘stick’ as these are clearly the easiest to pursue in terms of evidence gathering and thus are most likely to result in a conviction. Also, such charges do generally not require the cooperation of the victim.

It has been noted elsewhere that police prosecutors often negotiate with the defendant to accept a plea to one breach charge in exchange for the withdrawal of a number of breach charges (Douglas, 2008, 451). Although charge negotiation is an accepted practice (Douglas et al, 2010, 181-182) it may result in the perpetrator having a very misleading criminal record. Criminal records are important at the sentencing stage and also for magistrates to gauge the level of danger to victims (Douglas, 2007; Douglas et al, 2010, chapter 4). One breach charge looks very different to ten on a criminal record, even though they may simply relate to standing outside the victim’s house on a number of occasions. Such behaviours may suggest stalking which, as noted earlier in this report, is recognised as a precursor to more dangerous behaviour in the domestic violence context. For example in Johnson’s study of domestic homicides, she found that many killings were preceded by stalking (Johnson, 2005, 54-70, 94-96).

Other studies have found that cases involving domestic violence are especially vulnerable to charge reduction (Cretney and Davis, 1997, 148). While negotiating charges may be positive in

order to spare the victim the ordeal of a trial and where the prosecution evidence is deficient in some way (and these matters are often considerations in domestic violence prosecutions) some interviewees were frustrated with this approach:

‘All of my breaches, every single – all of those breaches, all of those probably 20 breaches ... [were rolled up into 2 charges]’ (IV 10, 40)

‘I was then told after the fact - after this all went through and he got his \$200 fine - if I had rung them on each individual little offence - the phone call, the text message, the letters, the showing up at my step-mother’s house, the ringing my step-mother, the showing up at my mother’s house again - if I had rung them on every single little one of these offences which would have really pissed the police off, they culminate into a bigger offence at the end.’ (IV 14, 25)

It is likely that many breach charges are perceived to be trivial and that one offence that covers all of the breaches complained of is considered to reflect the gravity of the respondent’s behaviour.⁹ On the other hand, a single charge may not reflect the gravity of the harm experienced by the victim, may lead to an inappropriate penalty being applied and may also lead to an insufficient indication on the perpetrator’s criminal record of the risk to the safety of the victim. These are important considerations in the domestic violence context. One interviewee emphasised that ‘rolling’ the charges together reduced the seriousness of the matter for sentencing purposes:

‘But to get the point across to the magistrate, and this is what I’ve been told time and time again, by the prosecutors, by the women who helped me down there, they said, if the magistrates get sick of seeing them in front of them, they will do something. But they don’t come up in front of them enough, because the police are rolling it all into one, too much.’ (IV 10, 48)

⁹ ODPP, Director’s Guidelines, Guideline 14 & 15.

Another interviewee suggested that the police need to know the history of the victim to make an effective response:

‘When you report a breach, it's just with whoever's available, some young constable who knows nothing about your history, nothing about your situation, runs a little check on you on the computer and it shows that you have been and reported it four times, but doesn't look into those reports, doesn't look into the history or the pattern or anything else. So to actually be dealing with a domestic violence unit, rather than just with whoever. That was probably my biggest frustration.’ (IV 12, 43)

This latter comment underscores the need for detailed records of behaviour to be kept by police beyond just the perpetrator's prior convictions and for police to have appropriate training to ensure greater understanding of patterns of violence and to be able to identify indications of escalation of violence.

4.6 Mandatory arrest and no drop policies

‘Mandatory arrest’ refers to the policy of requiring police to arrest the perpetrator at the scene of domestic violence. A ‘no-drop’ policy can be understood as a policy of continuing with a prosecution (assuming there is sufficient evidence) even where the victim wishes to withdraw. Research generally shows that there is a higher rate of successful criminal prosecution when police are mandated to arrest, charge and prosecute domestic violence matters and where mandatory reporting by service providers is required (Taylor, 2004, 4). However, increasingly, commentators have questioned whether the costs of such mandatory policies are too high for women (Coker, 2001, 801; Hester, 2009, 9). For example, Mills argues that mandatory approaches operate to disempower women victims by excluding them from the process and removing their decision-making power (Mills, 2000, 554; Hunter, 2006, 40). Others have suggested that mandatory policies may operate to disenfranchise particular groups in society (Sherman et al, 1992, 139). In Queensland neither of these policies currently apply. There was absolutely no agreement between the women in this study as to whether mandatory arrest policies and no-drop policies should be introduced in Queensland. The interviewees fell fairly evenly into two polarised positions for and against:

'I totally agree with [mandatory arrest]...Because when you're being controlled by a man and he has full control of your heart, your soul, your possessions, your children, everything and he says to you, you get an order against me you're never going to see your kids again ...' (IV 14, 16)

'No, I don't think [mandatory arrest] is a good idea because I think when you're still in the relationship, until you've made the choice to leave that relationship, I think it's taking the control away from you, which is already what your abusive partner is doing, he's taking controlling power away from you, and I think that's just somebody else taking, and it's a very personal thing. You have to be ready yourself to leave the relationship, and to actually decide that you're going to stay in the relationship and the police are pressing charges, it's going to impact on the woman.' (IV 17, 25)

There have been moves towards 'pro-arrest' – a more flexible approach than mandatory arrest – in some Australian States (Douglas, 2008, 445-446). Hoyle and Sanders (2000) argue for a 'victim empowerment model'. According to Hoyle and Sanders this model puts the victim at the centre and attempts to ensure that she is informed about and understands her options, her interests and is supported when she makes a choice (2000, 19). Using this model would lead to different approaches and outcomes depending on the needs, circumstances and wishes of individual victims. Many women would no doubt choose not to engage with the criminal justice system even under the victim empowerment model. While some might suggest that a victim empowerment approach operates in Queensland, the comments of the interviewees extracted in this report suggest that many women are not properly informed about available options and are often not well-supported to make a choice.

4.7 What made a police response positive?

Most women in this study experienced a range of policing styles. Given the comments discussed above it is perhaps not difficult to predict the kinds of things women found positive about their engagements with police. One woman commented that she was impressed with the way that police set consequences for the perpetrator's behaviour so that it was clear what would happen if he re-abused, and she credited a good police response with saving her life:

'The way that the police dealt with it is you are engaging in criminal behaviour: it is not acceptable and you will pay the penalty if you want to continue to commit crimes. They were just so effective in how they handled it... I think the police response to that situation could not be faulted. It set consequences ... He was sent very strong messages with those consequences that it was unacceptable. Anything that he tried to do with me, he would get it back tenfold... I could be dead otherwise if it wasn't for that amazing police response.' (IV 6, 13)

Other women were impressed with the police response when it was caring, supportive and took into account the women's specific circumstances, for example:

'...when he [a particular police officer] came down when my house was vandalised, he's like, sit down. I'll get you a drink of water. Where are the cups? All of that. Take a few breaths. Do you need to call your counsellor or anything like that...He was absolutely fantastic. Him and his partner – his partner was a woman. She was only a young girl. The pair of them were absolutely fantastic ...' (IV 1, 15)

'These two guys that came this time were absolutely wonderful. They were really supportive. The senior officer was the DV liaison officer and he was really great and basically he said what's the address [where the children had been taken]? Are you able to drive? Can you drive and we'll follow?' (IV 5, 30)

'Always the police have always been really, really good. Most of the coppers just want him; they want him now.' (IV 10, 25)

One woman claimed that being believed was particularly important (IV 9, 11). Another was impressed when police were prepared to spend time talking through the issues:

'The police are absolutely fabulous. I can understand they don't know what they're walking into. They sat down and they spoke with me for probably an hour and said there is nothing we can do unless you get a protection order. Their hands were tied. Because

I'm not being bashed or hit or broken boned, you feel you're wasting their time. There is nothing the police can really do.' (IV 13, 9)

In circumstances where the police response is positive women are more likely to seek assistance from police again. One woman commented:

'I had a good experience [with the police] the first time, so I felt confident to call again.'
(IV 4, 24)

A concern identified in recent literature is that women in situations of domestic violence are often reluctant to seek help (Meyer, 2010). A failure to seek help may exacerbate danger for women and may place children at increased risk. Ensuring that police provide an environment which encourages women to report domestic violence may save lives.

4.8 Summary

Many women never call the police for help (Stanko, 1995) and those women who do call the police are likely to have already tried informal help-seeking avenues (Meyer, 2010). Those women who seek help from the police probably come from longer term relationships where the violence has become more severe (Meyer, 2010). Thus, it is likely that many women contact police as a last resort when they are in real danger. Accordingly, it is important that the police response is timely. When police take more than twenty minutes to attend call-outs, women and children may be placed in serious danger.

In their research comparing rural and urban policing in Kentucky in the United States, Websdale and Johnson conclude that greater detachment from the community and less discretion in response to domestic violence matters tends to improve victim perceptions of police responses (1997, 315). They suggest that more intimate links between the police and policed 'may not be the answer' (Websdale and Johnson, 1997, 315). The risk of closer relationships may be that greater rapport will be developed between male perpetrators and (usually) male police officers. This is something women interviewed in this study observed and were uncomfortable about. Websdale and Johnson's research also makes a connection between higher levels of training in relation to domestic violence and better work conditions for police with more

positive perceptions of policing held by victims (1997, 315). In light of this observation, it may be appropriate to reassess training approaches and work conditions for police in Queensland. Improved training may help to improve the interactions between police and victims.

Part 4: Recommendations:

- 1. Police should prioritise domestic violence cases in call-outs and aim to reduce call out delays.**
- 2. Police should treat a domestic violence call-out as a possible crime scene and collect evidence appropriately.**
- 3. Police should inform victims regularly of service progress and provide information about court hearings, particularly in relation to domestic violence protection documents and orders.**
- 4. Police should distribute a special wallet-sized information card which provides referrals to support services to victims and perpetrators at the call-out scene.**

PART 5. THE COURT PROCESS

For many women attending court in order to obtain a domestic violence protection order or as a victim in a domestic violence related offence, it will be the first time they have been inside a court room. Some of the women in this study expressed their fear of going to court and their experiences underscore the need for a support person to attend with them:

‘I was confused. I was terrified to go into – ‘cause I had to go into the court. I’d never been in a court room in my life. My sister-in-law came in with me and the domestic violence unit in X. It was all so new to me and humiliating. I was open, baring everything out there about what I’d hidden and lied about for years. And he was there with his solicitor. I didn’t have a solicitor ‘cause I didn’t have any money. I felt like I was going to throw up. I was absolutely intimidated, completely intimidated.’ (IV 18, 12-13)

‘I felt I needed somebody who can come to court, because even to go for an adjournment scared me, because the one time – I started saying, when I lost my train of thought, but he came and tried and he said he was going to come with the locksmith and break the door down to get in, so I went the next day to ask again for no contact conditions, and I went on my own then because I just had to go the very next day, I didn’t have the solicitor. I could hardly even get a sentence out. I was just stammering, I was really, really nervous...’ (IV 17, 29)

Separation can be one of the most dangerous times for women who have experienced intimate abuse (Mahoney, 1991) and for the women we interviewed separation often occurred alongside court appearances in relation to protection orders and prosecutions involving domestic violence offences. Speaking out in court may be the first time women speak publicly about their abuse. They are likely to feel that they are in danger but they are also likely to be at greater risk of harm in reality. For example one woman explained:

‘Then we had to go to the Magistrates Court for the Domestic Violence Order application...No one spoke to me beforehand really. I was really scared. He was like if

you tell them what happened ... I'm going to bash you up; tell them I didn't do anything wrong.' (IV 3, 18)

Because of the high level of fear and anger many women may be experiencing when they attend court in relation to domestic violence matters, it is particularly important that court staff are properly trained about the relevant issues. One interviewee expressed her distress in relation to the way she was treated by security officers at the court she attended:

'Yes, and the people I have trouble with down there is the guy that is on the metal detector at the front door... They pry into why you are there. They look at you like, Oh, another one. If you want to go somewhere different than they want you to go, they want to know why. I wanted to find out – W had a lot of – a court case hearing there, with his motorbike and that sort of thing – I wanted to find out whether that had been heard. This was down the track a bit ... the other day when I went there, they say, "What is your business here?" And he's, "Well, are you going to court today?" And I said, "Yes". And he's "well, you can just sit down over there." And I said, "No thanks I'll just go straight up to the girls up there." Now, he knows that if you don't feel protected that you go up to that room up the top. And he's telling me, as a frightened female, to go and sit with all the men that are in that little circle of people down the bottom there, right. And he knows, and he's seen me, but they do it. They both have attitudes there.' (IV 10, 20)

Another interviewee suggested that it would have been helpful if court staff could have advised the interviewee when her violent partner had left the court:

'I think that if W was in and out of court with criminal charges, and had they known that I've got a domestic violence order on him, they should be compassionate enough to go, Okay, look, Miss, he actually has gone and you're all right.' (IV 10, 21)

While it may be possible to ensure that appropriate training is provided to court staff so that they are respectful of those attending court and are able to inform individuals of relevant processes, it would be difficult, especially in a busy court, for staff to keep track of the whereabouts of those in attendance.

5.1 Information

Many interviewees were very nervous about attending court and had very little idea about what to expect. Some had been advised to go to the courthouse to apply for a domestic violence protection order and were very surprised about the high level of detailed information required. For example one interviewee explained:

‘I went to the magistrate’s court and thought that it might be a fairly straightforward process. I got there and I just realised. I looked at the application forms and I just thought my god, there is so much. I don’t even know where to start.’ (IV 15, 10)

Once they went into the courtroom for their mention or hearing, the confusion and uncertainty continued:

‘I didn’t understand half of what was going on... I was totally unprepared.’ (IV 13, 10)

‘I was unaware that, even though DV Resources are there with you and you have a police prosecutor talking to the magistrate for you, I was unaware whether or not I could actually stand up and speak for myself. I didn’t know what the whole process was.’ (IV 12, 25)

Magistrates’ courts have a very high case load so they are busy places. Few court staff have the time to explain to victims what is going on. Domestic violence services often operate within the courthouse or very close by. Despite this some women were unaware of the existence of available services for sometime:

‘Women should know there’s a domestic violence unit available to them [in the courthouse]... because I only found that out last month...after five years... I had no idea I was eligible for legal aid until – again, the domestic violence unit at X said, you work full time, don’t you? And I said no, I work part time. And they said, you know you could probably get legal aid. I wish I’d known that five years ago.’ (IV 18, 29-30)

Ideally women should be directed as early as possible to seek support from the domestic violence support services. Prosecutors and court staff, including magistrates should be trained to refer women to specialist domestic violence services as soon as possible where they are available.

5.2 Waiting for court hearings

Many interviewees found that it was extremely stressful waiting in the court foyer for their matter to be called. Some women experienced further intimidation and abuse from their former partners while waiting for their case to be called on while others were worried that further trouble might arise:

‘I had to sit in the waiting room ... for two hours with G harassing me.’ (IV 7, 26)

‘I think it is more vulnerable because you are actually in the same room and until you get some strength in yourself, until you are comfortable with confronting that person –it is a major step, you are actually standing up for yourself. But having that person in that same room initially – and if you’re not a strong person you worry.’ (IV 13, 11)

‘I went there nice and early and I didn’t think he’d turn up and then I heard his voice so I ducked over the other side of the room. I’m not a confrontationalist.’ (IV 13, 13)

Some courts provide safe rooms for women to wait in, or women can wait in the domestic violence support service when it is located in the court building. Women who had access to waiting rooms separate from the general foyer felt much safer and less intimidated as they waited for their matter to come on:

‘There were private rooms within the court. I did feel safe within the court. There was an arrangement that two police officers were present in the room so I did feel safe, unlike further down the track with family law which is a different story.... It was a great resource, it was in terms of you sit here and you sit with me until this fellow has left the court house. With strict instructions you sit here, I will go out, I will look through the

windows, I will make sure that they have gone in a car and then you can come out.’ (IV 9, 16)

‘They’ve seen him running round the courthouse looking for me when I’ve been in the [domestic violence service] rooms and things like that.’ (IV 8, 26)

‘I think the whole idea which was fantastic for having rooms, locked rooms where you could sit before court appearances was great. That was a level of protection.’ (IV 9, 26)

Interviewee: The safe room was great. It was a bit - quite frankly they should have funding for a bigger room.

Facilitator: Can you imagine doing it without it [the safe room]?

Interviewee: I couldn’t do it. (IV 14, 22-23)

One woman pointed out that to get to the safe room in one of the courts she had to walk through the general foyer, past the abuser. She described this as the ‘march past’:

‘I found this court was really good. In fact, I found both courts really good. I like the fact that there’s a protection area for us and the fact that they have little rooms downstairs. Although, you know, you sort of have to do the march, the march past, which is pretty scary.’ (IV 2, 51)

Alternative access to the court might be worth considering for victims and offenders. Some women noted that they attended court early so that they could be in the safe room of the women’s support service before the alleged perpetrator arrived at court. The support service staff would then ensure that the alleged perpetrator was installed in the court room before bringing the victim into the court. This minimised contact between the parties and made women feel more prepared for court. One woman had a very positive experience of the court process and explained why:

‘This time, on the Tuesday when we came in, they kept me up here, and then they put me down in a safe room. Then they actually pushed me to the front of the list so that we

were heard first. They walked me into the court first. Then they got me all settled and everything. Then they called for him to come in.’ (IV 7, 26)

5.3 During court hearings

Once women go into the courtroom, they are placed in very close proximity to their abuser. The safety of victims in the courtroom has been the focus of a great deal of research (see Graycar and Morgan, 2002). This research has tended to focus on criminal offences of sexual assault heard in the higher courts but many of the same issues confront victims of domestic violence in the magistrate’s courts. In Queensland the *Evidence Act 1977* (Qld) contains various provisions which are designed to protect special witnesses in criminal cases. Special witnesses are defined to include ‘a person who, in the courts opinion, would be likely to suffer severe emotional trauma or would be likely to be intimidated or disadvantaged as a witness’.¹⁰ In response to an application from a party or ‘by its own motion’ a court can exclude parties from the court, ensure parties are obscured (eg by screens), order special witnesses to give evidence in another room, order special witness support or order that a special witness give evidence via video.¹¹

However despite the fact that many of the women whose matters were heard in the magistrate’s courts felt intimidated by being in the same courtroom as their abuser, none of the women in this study whose matters were heard in the magistrate’s court were given access to the protections available in the *Evidence Act*. Presumably this was in part because there was no application, however clearly the magistrates decided not to seek these supports ‘by their own motion’. Interviewees whose matters were heard in the magistrate’s courts explained how being in the same room as their abuser was an experience of re-victimisation:

‘...we’re vulnerable, we wanted our families to work, don’t stick that guy there, he can see us. I do think they need partitions in the courtroom so that the male cannot see the female and everything ‘cause it’s their eyes, it’s their body language. After 20 years he doesn’t have to speak to me. I know what he’s saying.’ (IV 8, 29)

¹⁰ Section 21A(1)(b) *Evidence Act 1977* (Qld).

¹¹ Section 21A(2) *Evidence Act 1977* (Qld).

Facilitator: Can I just ask, were you given the opportunity to give, to use screens, to be separated from this man?

Interviewee: No.

Facilitator: Anything to help your physical safety?

Interviewee: No, and physically, it's really bad ... you're in the same presence of a very scary person...a screen would be a very, very good idea. (IV 10, 30).

Interviewee: I just don't like even the fact that I can see him, you know, and he's always trying to make eye contact. So I just don't look at him; I just look at the magistrate.

Facilitator: Were you ever given opportunities or explored the potential of presenting your evidence with closed-circuit TV?

Interviewee: No.

Facilitator: Behind screens?

Interviewee: No. (IV 17, 16)

Interviewee:...When we went to court the first time, they wanted evidence from me about what happened... His solicitor tried to blame me.

Facilitator: Were you actually cross-examined? Were you actually put up on a stand and addressed by the solicitor?

Interviewee: Yes, I was.

Facilitator: So there were no screens? There was no closed circuit television?

Interviewee: No. (IV 4, 41)

One interviewee explained how she had to endure direct cross examination by her abuser who had been charged with assault:

'S got to represent himself on the dislocation of the jaw thing, which was awful because I'm sitting in the courtroom with my solicitor, this judge and S interrogating me like a solicitor saying "So tell me Miss" and fully putting it on and I just - my skin was crawling. They sit me in another room while we're waiting so that I'm nowhere near him and then he gets an opportunity to actually interrogate me because he's got no legal

representation. He was asking me lines of questioning which had zero to do with what we were there for yet the judge is making me answer the question honestly.’ (IV 19, 19)

It may be appropriate for partial grants of aid¹² to be provided by legal aid so that the cross examination of victims can be undertaken by a lawyer, not to give an advantage to the accused but to protect the victim from experiencing further abuse via direct cross- examination.¹³

One of the interviewees in this study gave evidence in a case in a higher court, the District Court, involving rape, grievous bodily harm and assault among other charges. She was provided with a screen while she gave her evidence. However she also found there were limitations to the protection and security she experienced as the offender’s support network, which included several people, were also in the court:

Facilitator: You had a screen between you so he couldn’t look at you?

Interviewee: Yes, but I could hear him. He was still – his parents were allowed in even though it was a closed court. They were the ones intimidating me as well (IV 3, 23).

It may be appropriate to close the court, or limit support persons for the parties allowed in court, while the victim is giving evidence, especially in sexual assault and rape cases.

5.4 Magistrates

In his groundbreaking research on the experience of battered women in the courtroom, Ptacek (1999) expanded on the work of Mileski (1971) to identify five categories of judicial authority that he observed in cases involving battered women. He referred to these categories as ‘good natured’, ‘bureaucratic’, ‘condescending’, ‘firm and formal’ and ‘harsh’. One interviewee described the magistrate as ‘very neutral, they are very, very neutral’ (IV 10, 30). Ptacek would perhaps describe this as ‘bureaucratic’. Sometimes Ptacek observed these approaches were

¹² See *Gassy v R* (2008) HCA 18.

¹³ There is some provision for this already in sections 21M-21S *Evidence Act 1977* Qld AQ which provide that if the person is a ‘protected witness’ then they may not be cross examined by the perpetrator in person – perhaps the protection of these provisions should be extended to domestic violence related criminal matters heard in the lower courts.

used towards women complainants and sometimes towards male respondents (1999, 97-111). A similar range of approaches was identified by the women interviewed in this study.

A number of the women interviewed in this research were concerned that the magistrates' behaviour in their individual case was the result of the magistrate having insufficient time to prepare and read the relevant case materials prior to the hearing. This perception of lack of preparation reduced some interviewees' sense of confidence in the legal system. For example:

'But, it goes deeper than that when you have judges that are making decisions who clearly haven't had the time to read all the documentation or make informed decisions and you're at their mercy, that is frightening.' (IV 9, 26)

'I don't trust the magistrate's decision. I don't believe they read the background before they come in... I've been in front of a couple of magistrates twice and I remember them. I know they see hundreds of people, but I think before I see a client I'd go through their record even if it's for five minutes – scan through. I don't believe – they may do, but I don't believe they do because if they did, when he was in front of them, they would surely penalise more than \$200. I think there should be some guidelines into – if there's a breach once you have this penalty, if there's a breach twice it's this. Because there's no consistency.' (IV 18, 21)

'We went to court for a hearing because the order he had been served was only a temporary one. The magistrate gave me hell. What do you want these conditions on it for? ... Do you know what she said? She goes why do the children need to be on it anyway? This was after she had really [raised] me about the conditions. She goes why should the children? And I said I'm not sure if you've read my application. My application was pages long. She goes oh kind of. She goes as far as I'm concerned, this isn't domestic violence anyway. The magistrate hardly spoke to me at all; just spoke to G, same drill again.' (IV 7, 26)

'A different judge, a male fellow who admitted in court I have 30 cases today, I am too busy, I haven't had time to read everything when there were medical reports in there...'
(IV 9, 20)

According to these interviewees the effect of the magistrates' apparent lack of preparation was 'frightening', lead to inconsistent results and in one case, the interviewee suggested the magistrate failed to understand the circumstances of the case. It is well-known that case loads in the magistrate's courts are very heavy. In most cases it is likely that the magistrate has not had time to read materials in advance of the hearing. The failure to read materials in advance of the hearing can also have the effect of re-victimising the victim. She has to go through her story yet another time. This is unnecessary and can add to the embarrassment and shame some women feel about taking their cases to court as they have to explain things to the magistrate in the presence of other court staff that are already canvassed in the written materials. It is preferable that a matter be stood down so that the magistrate has the opportunity to read the relevant file rather than require the victim to go through her story verbally in court. In the end such an approach may indeed lead to timesaving through avoiding misunderstanding.

Other interviewees in this study suggested that the manner of the magistrate implied that the magistrate was too busy to focus on the particular case:

'There needs to be more time spent by the Magistrate Court hearing these matters.' (IV 14, 31)

'The magistrate initially just seemed very distant. Basically he just said yep, righto, you get your date and you've got your order extended. He actually said next. Next. Like just bring it on...he asked the police prosecutor to give him a date or something that was available and he made a joke saying we'll do it tomorrow shall we? To tell the truth, I think the magistrate was in such a hurry to get through the workload.' (IV 15, 13)

'She was very short, actually, the magistrate, or the judicial registrar.' (IV 17, 14)

Some interviewees believed that there was greater empathy towards the male perpetrator than the victim:

‘The magistrate knew him – she was the mother of one of his friends. She was really mean to me, really nasty. She said to him do you agree. He didn’t really understand it because he’s not like the smartest kid. He was like yeah. She was like you do know if you didn’t agree to this I wouldn’t be approving the Domestic Violence Order, even though I was sitting there covered in bruises. It was just the fact that she was really nice to him, and then looked at me – just in the tone of voice and the expression, and the fact that obviously she didn’t think it was that bad to not be approving it if he hadn’t agreed to it.’ (IV 3, 18)

‘[The Magistrate] just seemed to be on his side from the very moment that we walked in, that’s the feeling that I got... The questions that she asked me and the questions that she asked him just seemed to be leaning in his favour. I would recommend that magistrates and judges have in-depth training on domestic violence issues, behaviour patterns, the whole ingrained psyche of Australian males and the way they behave towards women...I just feel it wasn’t taken seriously.’ (IV 5, 35-37)

5.4.1 What made the magistrate’s response positive?

Similar to the comments made in relation to women’s perceptions of good policing, given the comments discussed above, it is not difficult to predict the kinds of things women found positive about their engagements with magistrates. According to the women in this study, good magistrates were those who listened and seemed to have time to properly deal with the case, who ‘believed’ the victim and took, what they thought was, appropriate action. Interviewees commented that:

‘[the magistrate] said to me, what I am reading in this domestic violence order, she said, is absolutely horrific... I don’t know how you’ve stood it for so long. I said, because I was scared to leave. I was in fear of my life if I was to leave. I said – it took me six years to get the guts up to ask him to get out of the family home...I believed when he told me that he would kill me. So she said to me, I’m granting this order, and I am going to put an [ouster]

order on him. It is the first time in my years of sitting on the bench that I have placed an ouster order on someone without the respondent being here. So she called a senior sergeant in and said, how soon can we get this order served, because this woman's absolutely terrified of this terrible man, and I want him out – because he was still storing his car in my garage even though he was living next door, because it had to be undercover and perfect.' (IV 1, 23)

'[The magistrate was] wonderful. He believed me. I wasn't lying but I was expecting – he told me that no one would believe me and so to have people believe me...' (IV 8, 17)

'The Magistrate at X was an older fellow, was amazing actually, he was fantastic. He obviously really understood the situation and I think too when he saw the father walk in and he saw me walk in there's a huge height and weight variance I think he was really, really fearful... There was also a particular woman [Magistrate] who was absolutely fantastic, she read everything. She read everything. She took the time.' (IV 9, 15, 19)

'The magistrates who I thought did a good job, who really didn't give my ex the time of day at all and could see straight through him, my ex would go the very next day and put in a complaint about that magistrate, so we couldn't get him again. So he kept ruling out all the ones who sided with me, and then the ones he liked we got to keep.' (IV 17, 19)

The nature of the adversarial system is such that often one party is not believed and as a consequence they do not get the relief or order they seek. Certainly interviewees were very happy when the magistrate appeared to take the side of the victim. They were also often quite surprised:

'[We] got this judge who W started saying, oh, but I've got nowhere to live... This judge said – he said to him, well you can't stay with me. I just – I was like – I didn't want to say anything. But I was just like so shocked that he said that. I almost laughed, but I couldn't ...' (IV 2, 46)

5.4.2 Further learning?

As has been recommended elsewhere (Time for Action, 2009, 59), some of the interviewees suggested that it was important that magistrates are better educated and informed about the context and experiences associated with domestic violence. Specifically, interviewees suggested that the interviewees themselves might be the best people to offer the education needed by magistrates:

‘The legal system needs to talk to the women on the coalface.’ (IV 13, 15)

‘It is so intimidating. The registrar was very nice. I get a feeling that they don’t understand... the feelings that you are feeling. Because I don’t have any pictures they feel it is just two people who can’t communicate.’ (IV 13, 11)

‘The magistrates just letting these people just go. That’s the sense that I’m getting from everybody...I don’t know, I suppose they’re not out in the halls to see the women crying, they’re not out in the halls to see the filthy dirty looks on the men’s faces, staring their women down. They’re not out there. They walk in, they sit there, the guy looks glowing, he’s all dressed up, he talks with a silver tongue, and they think, look, half of these, the women probably have set them up.’ (IV 10, 33)

‘I think some of the magistrates, particularly the one that I had for my permanent order, even for the actual hearing, I don’t think did have a very good understanding and he made comments that I thought were completely inappropriate. You know, he said things like, you know, well they’ve been together for a long time. He might still love her and things like that. I just thought it was totally inappropriate.’ (IV 17, 19)

While ongoing judicial education is now entrenched in the profession, there may be scope for developing education programs that call on women who have experienced the system to relay these experiences directly to magistrates.

5.5 Sentence

Regardless of whether the person is charged with a criminal offence under the *Criminal Code* or a breach offence pursuant to the *Domestic and Family Violence Protection Act 1989* (Qld), sentencing is limited by the relevant maximum penalty and although it is discretionary to some extent it follows, and is constrained by, sentencing principles set out in sentencing legislation and the case-law.¹⁴ In some jurisdictions, penalties for breaching a protection order are staggered depending on whether the breach is the first, second or a subsequent breach of the protection order. For example, in Queensland, the maximum penalty for the first or second offence of a breach of a domestic violence order is a one-year maximum period of imprisonment. For a third or subsequent breach offence, the penalty increases to a maximum period of two years imprisonment.¹⁵ Some women began their interaction with the criminal justice process hoping that the perpetrator would be appropriately punished and that they would achieve safety for themselves and their children. For example:

‘I thought I’d tell my story and I’d be believed and he’d get the punishment he deserved and me and the kids would be safe.’ (IV 5, 24)

Ultimately most interviewees became discouraged with the criminal justice process and were especially frustrated about the sentencing response in their particular cases:

‘I think that everybody needs to be able to be made accountable for their actions. If you shoplift, then you have to go to court and you have to face your punishment. If you drink drive and you get caught, you have to face your punishment. Yet these people can do whatever they like...’(IV 1, 29)

¹⁴ For example, in Queensland, the *Penalties and Sentences Act 1992* (Qld) will be the primary legislation used to guide sentencing. See also *Domestic Violence and Protection Orders Act 2001* (ACT), s 34(1), the note associated with this provision make specific reference to the *Crimes (Sentencing) Act 2005* (ACT).

¹⁵ *Domestic and Family Violence Protection Act 1989* (Qld), s 81(1)(a) and (b). In order to obtain the maximum of two years imprisonment, at least two of the prior breaches must have occurred in the past three years. See also *Family Violence Act 2004* (Tas), s 35; *Domestic Violence Act 1992* (NT), s 10 also provides a staggered regime.

5.5.1 Sentences that minimise harm

One of the most common sentencing outcomes interviewees reported in response to a breach charge was the imposition of a fine. This is consistent with previous research carried out in relation to sentencing charges of breach of a protection order in Queensland where around 61% of breach offences resulted in fines (Douglas, 2007, 208).¹⁶ Fines are, in a general sense, the most common form of penalty throughout Australia (White and Perrone, 2010, 430). Many women suggested that fines trivialised or minimised the harm they had experienced and did not require perpetrators to be accountable:

Facilitator: And what was the fine? How much would you say it was?

Interviewee: \$700 or \$800. It was nothing to him. (IV 7, 7)

'... he went to court and he got a \$200 fine and a slap on the wrist for stalking me ...He thought it was hilarious because you know what, now he's...He's got another SPER debt. He owes the Queensland Government money? So what, he's got a SPER¹⁷ debt... Then he goes and tells all of his mates - stupid bitch, I only got a \$200 fine ...if it says 12 months' imprisonment that's what they should get because they've got the piece of paper, they've had it read to them, they've signed it to say that they understand it and then they go and stalk you and get a \$200 fine. That's not fair. That is the one thing that stripped my confidence in the legal system - was that well what's the fricking point?' (IV 14, 31)

'I don't think [a fine's] enough...I think he – it should be mandatory, for the first breach, three months ...in gaol. These orders are taken out for a reason. They're not given out willy nilly like lollies. There has to be serious consequences to the person who breaches an order that has been put into place by the court. A fine is nothing. What's that? Nothing.' (IV 1, 19)

'They [the police prosecutors] are recommending to the magistrate that he gets imprisoned. This is probably two, three years ago, they recommended – this man can –

¹⁶ However compare with NSW where only 17% of breach offences resulted in fines (Ringland and Fitzgerald, 2010, 2) and Victoria where 29% of breach offences resulted in fines (SAC (Vic), 2008, 16).

¹⁷ SPER: State Penalties Enforcement Registry.

he sleeps in the garden on the sun bed, he breaks into the house, he follows me – twice he followed me to the UK. In May this year he stalked me at my sister’s house in England. He was at the airport when I went back. He knows my every move. The police were – we’ve had enough too, years ago, and said, we’ve recommended he have eight weeks inside, four to eight weeks in prison to teach him a lesson. That’s when he got a \$200 fine.’ (IV 18, 15)

A breach of a protection order is a ‘summary offence’¹⁸ so it is perhaps not surprising that when this offence is the one that is prosecuted it is associated with a lower order penalty. However, there may be problems associated with this form of penalty in the context of domestic violence. When deciding to impose a fine, justices in Queensland are required to consider the defendant’s ability to pay.¹⁹ However, there are often ongoing connections between victims and defendants in the domestic violence context and there is a risk that it will actually be the victim of the breach who will pay the fine from the family income (NSWLRC, 2003, [10.44]). Alternatively there is a risk that the fine will be paid from money that should be paid as child support. The imposition of fines could provide an opportunity for further intimidation, harassment or actual violence towards the victim if a perpetrator tries to obtain money from the victim in order to pay the fine. Research has recognised that fines are inappropriate in domestic violence matters because of these kinds of risks (Hoyle, 1998, 193). In the domestic violence context, one study has found that fines were the most likely penalty to be associated with recidivism (Ventura and Davis, 2005, 271). Magistrates should avoid ordering fines in this context.

Many of the interviewees quoted above were probably not aware of whether a conviction was recorded or not. It is likely that in many cases a conviction was not recorded (Douglas, 2007, 207). In one matter where the perpetrator was ultimately found guilty of a number of serious matters no conviction was recorded. The interviewee was quite distressed about this:²⁰

¹⁸ This means that it must be dealt with in the Magistrates Courts and is considered to be on the same level of seriousness as matters such as nuisance.

¹⁹ *Penalties and Sentences Act 1992* (Qld), s 48.

²⁰ Note that this matter was dealt with in the Queensland District Court. The researchers have accessed the sentence hearing transcript and the interviewee’s understanding of the sentence is correct. The case is not referenced to preserve the anonymity of the interviewee.

Interviewee: It was assault occasioning grievous bodily harm. He pled guilty to deprivation of liberty, stalking, the few assaults, the more serious one, breach of bail, breach of DVO. They gave him 200 hours community service and no conviction recorded ...

Facilitator: So you got the plea bargain, and the rapes weren't in it.

Interviewee: No.

Facilitator: How did you feel about that?

Interviewee: Upset. When she said there would be seven convictions – it was important to me that he had to plead guilty and there would be convictions. And then it wasn't really a conviction.

Facilitator: Why not?

Interviewee: He got no conviction recorded. (IV 3, 25-26)

This interviewee felt that the fact of no conviction being recorded minimised the harm perpetrated upon her but also minimised her own importance as a human being:

'Why didn't he get into trouble for it? I went through hell. The committal hearing ruined me. It was four days of just getting humiliated, abused. It was terrible. To get a result like that is just – I can't believe it. He nearly killed me, and he didn't even get a conviction recorded. ..It makes me feel like other people get in trouble for hurting someone important. It just makes me feel like I'm not important because he didn't even get in trouble for like trying to kill me.' (IV 3, 29)

The question of whether to record a conviction is based on a number of considerations including the nature of the offence, the character of the accused, and the impact that recording a conviction will have on the offender's social and economic well-being and chances of finding employment.²¹ The courts have recognised that not recording a conviction effectively gives the accused the right to conceal what has happened in a court.²² Courts have suggested that there is a public right to know about matters of a sexual nature involving children, so a conviction should be recorded in those cases.²³ However, great flexibility has been applied to domestic

²¹ *Penalties and Sentences Act 1992* (Qld), s 12.

²² *R v Briese; Ex parte Attorney-General* (1997) 92 A Crim R 75; [1998] 1 Qd R 487.

²³ *R v Gallagher; Ex parte Attorney-General* (1997) 98 A Crim R 513; [1999] 1 Qd R 200.

violence breach matters in Queensland on this point, in spite of the general recognition that such matters should be taken seriously.²⁴ Given the purported seriousness of domestic violence in our community it may be appropriate for courts to operate with an assumption that a conviction should be recorded unless circumstances are exceptional.

One interviewee in this study used the sentencing process to negotiate safety:

‘But I did know that the magistrate said next time you’re going away for a year... So when he breached the third time, I said to him you know that you’ve just given yourself a year’s sentence. I said we can do this one of two ways: I won’t report the breach, but that’s the very last time; you leave me the hell alone. And suddenly, because I just saved him a year jail, I became the good guy... it was a hard call to make because it was alleviating him of consequences. But I just got a gut sense that I went with at that time, that him going away for a year would aggravate – as soon as he got out, he would be...[it would escalate].’ (IV 6, 9)

The interviewee quoted above appeared to be very aware of the risk analysis she was undertaking. Women who have been abused are often very strategic in responding to their circumstances and using available resources to protect themselves and their children (Lewis, 2004, 219-220). However, sometimes women’s judgments are ‘fatally wrong’ (Ursel, 2007). In this context a good partnership between criminal justice representatives (ie police) and the woman at risk are extremely important. A woman’s agency and her views about her situation should be respected but her safety must be the pivotal concern and an outsider might, in some circumstances, be better equipped to assess and respond to danger (Douglas, 2008, 452-454).

5.5.2 Lack of information

Many of those in this study had no idea what penalty had been ordered in relation to the domestic abuse:

‘I wasn’t advised whether he’d been fined. There was no information given to me whatsoever. I don’t know if I’m supposed to be privy to it or what.’ (IV 19, 7)

²⁴ *R v Marsden* [2003] QCA 473.

'I don't know what the result was. They didn't make me privy to any of that.' (IV 6, 8)

'I didn't go though. You know what? I have no idea what the outcome was. Personally, he should have probably gone to jail for that one. But I have no idea what the outcome was. He told me that he got a suspended sentence. But I don't believe he did because he has breached it again and again and again since then...' (IV 7, 8)

'I think there might have been a fine or something. To tell you the truth, I really wasn't overly – I was just focused on the kids. It was sort of like – I wasn't sort of gunning for him. I didn't care what happened in a way. It was just the process.' (IV 6, 8)

'...this man and what he does relates directly to myself and my children and I believe that where that breach was concerned I should have been notified of the penalty that he received because then he might have got a bigger penalty ...' (IV 14, 24)

In the Queensland the *Office of the Director of Public Prosecutions Guidelines* (the Guidelines) state that victims of crime are often the best source of information in relation to sentencing (2010, 49). The Guidelines state that victims should be advised of the sentencing date and asked to be present. If they do decide to attend victims should inform the prosecution if there is anything said by the defence that is false. The Guidelines apply to all offences but they do not specifically require that prosecution authorities notify victims of the sentence outcome. If a victim chooses not to attend the sentencing hearing but wants to find out about the penalty under the current law she will have to make contact with the prosecution authority. If the victim asks for information about penalty it should be made available so far as it is practicable.²⁵ Some of the interviewees were ambivalent about finding out about the penalty; nevertheless they should have been advised of their right to access that information.

²⁵ *Victims of Crime Assistance Act 2009* Qld, ss 12, 16.

5.5.3 What should happen?

A number of the interviewees in this study wanted the perpetrators to get help so that the violence would stop. Some of the interviewees focussed on the need for sanctions which are specifically targeted to confront the abusive behaviour. For example:

‘I just think a community service type environment which allows S to see the victims of women of those types of crimes without those women feeling uncomfortable would be a better way to go...there has to be something for them. It’s like graffiti artists who get caught graffitiing, they get made to clean up the graffiti...because then they learn how what they’re doing is just oh mate look what people have to do after me to pick up my pieces. I really think there needs to be some avenue like that. A monetary fine is nothing.’ (IV 19, 23)

‘[The prosecutors] didn’t know what courses were available.’ (IV 9, 29)

‘I never wanted him to go to jail. I wanted him to get help.’ (IV 7, 16)

Generally the interviewees did not suggest that jail sentences were appropriate for perpetrators. However two interviewees discussed this option. One suggested that in her specific case a jail sentence was the only way to ensure her protection:

‘It shouldn’t be three strikes and you’re out on a breach because that’s why S breached it twice. He breached it once and got charged; he breached it twice ... But there’s still those two chances for S, so it has to be if you’ve got a domestic violence order in place they cannot breach it again or else they go to prison because that’s the only thing protecting me now. S’s still got two more chances up his sleeve as far as he knows because he got away with the second breach and so I live in fear.’ (IV 19, 24)

Another interviewee suggested that a jail sentence would ensure that responses to assault – regardless of the context of the assault, were consistent:

'Legally at that stage, well what would any other person get for assault? They'd get six months in jail; I think that would have been fair.' (IV 5, 25)

Consistency was also raised as a concern by another interviewee:

'I think it depends on the magistrate of the day and how they're feeling. Now, that isn't fair justice.' (IV 18, 22)

The sentencing should be seen as an opportunity to redress offending behaviour. It should not be squandered by the use of fines (see Douglas, 2007).

Part 5 Recommendations

- 1. Court staff, including security guards, should be properly trained about the dynamics of domestic violence.**
- 2. Court staff should endeavour to refer those involved in domestic violence proceedings to support organisations at the earliest possible stage.**
- 3. Ensure courts have a secure, separate waiting room in the court and consider the possibility of alternative access to court.**
- 4. Magistrates (and judicial registrars) should consider the use of vulnerable witness protections in the Magistrates Court in some domestic violence matters.**
- 5. Partial grants of legal aid should be available in domestic violence matters to ensure that parties are not able to directly question or cross examine each other.**
- 6. Fines should be a last resort in offences involving domestic violence (including charges of breach).**
- 7. There should be a presumption that a conviction will be recorded in domestic violence matters unless there are exceptional circumstances.**
- 8. Prosecutors should advise victims of their right to request information about penalties.**

Demographics- Interviewees

Age:

25 and less: 1

26-34: 3

35-39: 4

40-44: 4

45-49: 8

Place of Birth:

United Kingdom: 4; Europe (other than United Kingdom): 1; Australia: 15

There were no Aboriginal or Torres Strait Islander women interviewed in this study.

Address:

Brisbane suburbs: 15; Mackay: 1; Gold Coast area: 4.

Length of relationship:

Less than 4 years: 3

5-9 years: 5

10-14 years: 3

15-19 years: 3

20-24 years: 4

25 years or more: 2

Children (perpetrator father):

0 children: 1 woman; 1: 5; 2: 13; 5: 1

Relationship status:

Married- trying to separate: 1

Married but separated / divorced: 12

De facto but separated: 7

Domestic Violence Protection Order (DVPO):

All interviewees had at some stage obtained a DVPO against the perpetrator.

Types of violence alleged:

Physical (non sexual)	Sexual violence	Emotional violence / threats	Violence against children	Attempted strangulation	Property damage
12	6	12	4	5	5

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