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# RESPONSE TO DOMESTIC AND FAMILY VIOLENCE
# - NEW DIRECTIONS -

**Address to Domestic Violence Court Assistance Network Conference at Cairns on 11 November 2005**

**Judge Marshall Irwin**[1]
**CHIEF MAGISTRATE**

## THE PAST AND PRESENT

It is difficult to measure the true extent of domestic and family violence as research indicates that most incidents are not reported to police or any other official channel.

However an indication of its extent is gained from the 1996 Women's Safety Survey which found that 23 percent of women who have been married or are in a de facto relationship experienced physical violence from a male partner at sometime.

Further the Australian Institute of Criminology has found that it plays a significant role in the lead up to lethal violence, accounting for 40 percent of homicides across Australia - 60 percent of those occur between intimate partners and three quarters of intimate partner homicides involve men killing women.

Australian Institute of Family Studies research in 2000 indicated that 66 percent of separating couples point to violence as a cause of marital break down, with one in three describing the violence as serious.  This figure is confirmed by a limited study undertaken by the Family Court of Australia which revealed that violence was a factor in 68 of 91 judicially-determined cases.

An indication of the extent of domestic and family violence in Queensland is the 42.4 percent increase in applications to the Magistrates Court over the past 3 years. This period involved the amendment of the *Domestic and Family Violence Protection Act* 1989 in March 2003 to extend the type of relationships for which protection orders can be made. In the first full year of operation of the amendments there was a 24 percent increase in applications. There was a negligible decline of 1 percent in the last financial year. This suggests that the volume of work in this area increased enormously as a result of the amendments and has now stabilised at that level.

In the court year ending 30 June 2005 our court heard 24,912 applications for protection orders. There were 13,389 temporary protection orders and 16,414 protection orders granted. There were variations of 3,569 of those orders and 286 orders were revoked.

More that 500 applications were dealt with in each of 18 court centres dealing with over 1000 applications each. In summary the centres which heard in excess of 1000 were:

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| Southport | 2359 |
| Beenleigh | 1801 |
| Brisbane | 1752 |
| Townsville | 1121 |
| Maroochydore | 1068 |
| Ipswich | 1060 |
| Cairns | 1044 |

There can be no doubt that domestic and family violence of this level affects the victims, their children, their family and friends, employers and co-workers. It also has repercussions for the quality of life in a local community. It affects people of all ages, cultures, background and life experiences. There can be far reaching financial, social, health and psychological consequences. The impact of violence can also have indirect costs, including the cost of the community bringing perpetrators to justice or the cost of medical treatment for injured victims.

And while some of our courts are busier that others in dealing with matters under the domestic and family violence legislation you would appreciate that it is a jurisdiction that magistrates find emotionally demanding regardless of the number of applications brought and heard before each court.

Appreciating that domestic and family violence proceedings are emotional and in some cases, potentially volatile there has been a court initiative to provide a calmer and more secure environment for parties in domestic violence proceedings. This has involved the incorporation of domestic violence waiting lounges when planning the construction and refurbishment of courthouses. These lounges will generally have en suite facilities and direct access to court rooms without the need to enter public areas. The intention is to avoid unnecessary trauma and distress from open confrontation between the parties.

These facilities have been incorporated in each of our recently opened courthouses in Brisbane central, Thursday Island and Caloundra. The new Brisbane courthouse for example has:

- two Domestic and Family Violence Courts;
- separate access for the aggrieved and respondent to each court;
- a waiting lounge with en suite facilities for aggrieved people within a secure area with direct access to court rooms;
- a separate play room for children separated by a glass wall which reduces children's exposure to pre-court discussion; and
- a separate waiting area for respondents.

At present, aggrieved persons in this court complex receive the benefit of counselling from professionally trained Court Assistance workers from the Women's Domestic Violence Court Assistance Service of Women's Legal Aid.

The new facilities have allowed the extension of domestic violence support and advice services to men as well as women. There is now a designated waiting room for men and male counsellors from DV Connect operate a daily counselling service for male respondents prior to their court appearance. This service addresses communication, violence and behavioural issues at a critical time and is able to explain court procedures and the choices available. Counselling is available both before and after court appearances, with options being provided for treatment and support programs.

Magistrates who have presided in the Domestic and Family Violence jurisdiction at Brisbane since the operation of these two services have noticed that aggrieved people are well informed and well supported and respondents who have received the benefit of prior assistance seem less confused, more aware of the issues to be addressed and better informed of the court process and options open to them. It has also been noticed that such respondents are more inclined to consent to initial orders without admission which results in reduced court time and emotional output for all concerned. Upon making orders our Brisbane Magistrates are encouraging respondents to return to the counsellor to debrief and on several occasions counsellors have been able to refer respondents to anger management courses or parenting courses to assist them in addressing underlying issues which may lead to their behaviour.

The Gold Coast Domestic Violence Service has been operating a court assistance program at Southport, our busiest domestic and family violence court, since 1993. Its Court Office is staffed on a full time basis. It has greatly enhanced the access to legal protection for victims of domestic violence by assisting with:

- Provision of information about legal and court processes;
- Applications for protection orders and variation to existing orders;
- Information on criminal matters arising before the court;
- Safety planning;

- Pre-court visits and orientation;
- Support in the courtroom;
- Referral and advocacy; and
- Liaison and advocacy.

While court assistance workers facilitate the discharge of the domestic and family violence jurisdiction in many courts throughout Queensland, it is obviously not possible to replicate the scale of the facilities and support available in larger court complexes such as Brisbane and Southport.

However there are many valuable programs which are developed with the resources which are available in other areas. For example at Sandgate, more consent orders are being affected through the police advocate approaching respondents prior to hearings to explain the procedures and outlining the options available to them. I am pleased to be able to announce that the facilities for those involved in domestic and family violence proceedings will be upgraded with the construction of a new Sandgate Courthouse which is due for completion in mid 2007.

In addition combined domestic violence/child witness facilities have been approved for construction during this financial year in:

- Biloela
- Charleville
- Charters Towers
- Goondiwindi
- Kingaroy
- Proserpine
- Stanthorpe
- Weipa; and
- Yeppoon

This will add to the facilities that already exist at Beaudesert, Bundaberg, Coolangatta, Gatton, Holland Park, Maroochydore, Noosa, Toowoomba and Townsville.

**THE FUTURE**

Of course, as all of you here would know, the hearing of an application for a protection order is often just the initial step in a long on-going saga played out before the courts. Whilst intervention orders may place restriction on a respondent's behaviour, they are often breached. In our 2004-2005 court year, the Magistrates Court of Queensland dealt with 7889 breaches of domestic violence orders.

Apart from these criminal charges the Court deals constantly with charges of common assault, serious assault, stalking, deprivation of liberty, child abuse, wilful damage - all part of the domestic violence overlay that exists between the parties. Regularly, upon the domestic violence alarm being raised, the Court may have to deal with applications for Child Assessment Orders and Child Protection Orders or child residence and contact orders in our family jurisdiction.

This leads me to giving you some insight into my vision for the Queensland Magistrates Court's Domestic and Family Violence jurisdiction in the future.

The simple making of a protection order does not address the key issues as to why respondents have chosen or are likely to continue to choose to use violence and breach orders through being violent, not only in the sense of physical abuse but also in the sense of emotional abuse and controlling behaviour.

In these circumstances it is essential to tackle the causes of domestic and family violence rather than to simply deal with the outcomes. Therefore we must look at

ways of intervening to prevent such violence from occurring in the first instance, and to thereby break the cycle of violence.

What is required is a more long term integrated response to the issue which:

- promotes the safety of persons affected by family violence;
- increases the accountability of people who use violence towards family members;
- encourages behavioural change; and
- increases the protection of children exposed to family violence.

This requires that the making of protection orders is not considered in isolation from rehabilitative outcomes.

To achieve this I foresee that the court will move towards the establishment of a specialist domestic and family violence jurisdiction which will adopt what is often described as a "problem solving" or "therapeutic jurisprudential" approach.

A specialised domestic and family violence jurisdiction could become a "one stop shop" to deal with all matters arising from of domestic and family violence. Such a court could hear:

- applications for protection orders;
- breaches of such orders;
- bail applications and criminal offences involving domestic and family violence;
- associated criminal compensation applications; and
- civil damages claims for personal injury arising from domestic and family violence.

And it would be able to access intervention programs where the causes of the violent behaviour can be identified and addressed rather than just dealing with the outcome.

This is not a novel concept. A pilot project proposal of such a nature was advanced last year by the Gold Coast Domestic Violence Service. And the concept has been introduced in various forms into some other Australian jurisdictions, including South Australia and, most recently through specific legislation in Victoria.

In Victoria a Family Violence Division of the Magistrates' Court has been established to operate at two locations for a two year pilot period from 2005-2007. A coordinating magistrate has been appointed with other magistrates assigned to the Division by the Chief Magistrate. It has jurisdiction in the range of matters that I have referred to, and also in relation to family law issues arising in the jurisdiction of the Magistrates Court.

These courts are administered by specially trained registrars and counter staff. There are also dedicated court assistance workers – one for the aggrieved applicant and another for the respondent.

The court assistance workers referred to as "Applicant Liaison Officers" and "Defendant Liaison Officers" explain the court processes and procedures to the client, carry out risk assessments, develop safety plans for those in fear and ensure there are timely referrals made to outside agencies with respect to housing, finances, employment and ongoing counselling and support.

The courts also have power to order respondents/defendants subject to what is called an intervention order in Victoria, to attend counselling to address their violent behaviour. Upon such an order being made a respondent/defendant is assessed for eligibility based on the capacity and ability to participate in a counselling program. Upon receipt of a favourable report the court orders the respondent's participation in a counselling program which may extend up to 20-25 weeks.

I note that the Gold Coast Domestic Violence Integrated Response 2004 also proposed the use of mandated offender education programs as viable sentencing options for addressing domestic and family violence. On the issue of sentencing it was said:

> "The majority of current sentences imposed for a breach of a domestic violence order are primarily that of a fine. The preferred sentencing practice would be a combination of court-directed risk management reviews and intensive probation and participation in a 24 sessions domestic violence education program paid for by the defendant and a jail sentence (if applicable). The court can order the defendant to pay restitution for the victim."

In Victoria, court direction is seen as a crucial step in holding accountable those people who have used violence, as well as providing opportunities for them to change their behaviour.

An evaluation of a court directed approach which was introduced in New Zealand in 1995 showed that men attending programs significantly reduced their use of physical violence as well as emotional abuse and controlling behaviour. Women reported that they were safer after the program ended. The report concluded that, from the perspective of cost effectiveness and change outcomes, these programs were being effective in changing behaviour and were value for money.

A key feature of the new Victorian Family Violence Act is to provide increased protection for children from family violence and minimise their involvement with court proceedings. Apart from the usual grounds for protection orders the Victorian Act makes the hearing or witnessing of violence together with the likelihood to again hear or witness violence by certain persons as a specific ground for an order to be made for a child. The Act allows for orders for children

to be made on the magistrate’s own initiative and introduces a procedure where the court must inquire into the welfare of children when making a order.

In assessing whether the introduction of a specialist domestic and family violence jurisdiction in the Queensland Magistrates Court is a realistic prospect in future it is relevant that a problem solving approach utilising the principles of therapeutic jurisprudence has been adopted by the court in relation to other issues, for example the Drug Court pilot program and the Murri Court.

The Queensland Drug Court pilot program has been operating since 13 June 2000 in South East Queensland at Beenleigh, Southport and Ipswich Courts, and since November 2002 in North Queensland at Townsville and Cairns. This program was established by legislation and has been government funded throughout its existence. The legislation aims to reduce:

- the level of drug dependence in the community;
- the level of criminal activity;
- health risks to the community associated with drug dependence; and
- pressures on resources in the court and prison systems.

An Australian Institute of Criminology review of the south East Queensland pilot found that the program had shown that the cycle of drug addiction and crime can be broken by using Intensive Drug Rehabilitation Orders. The government has now announced that the pilot status will be removed and the court will become a permanent part of the Queensland judicial landscape.

The Murri Court is an innovation by our court to determine sentences for adult Aborigines and Torres Strait Islanders where a period of imprisonment is a reasonable likelihood. It operates in Brisbane, Rockhampton and Mount Isa, with the Brisbane and Mount Isa courts also addressing juvenile offenders. The Court seeks to address the disproportionate representation of indigenous offenders in

prison, high rates of recidivism, and frequent failure of indigenous offenders to actually appear in court when required.

In this context, the Murri Court has developed a holistic approach to matters which come before it, recognising that community, cultural, social or other factors can play a significant role in sentencing. In some cases these factors can help determine a sentence more beneficial to the community, particularly a sentence which requires participation in programs which address underlying causes or issues related to offending.

The Murri Court is presently the subject of a government review to determine whether it is achieving its aims and whether it is a cost effective response to the causes of indigenous offending. This may result in a legislative recognition of the court, and specific funding and resources to support the court in its operation. At present it is operated within the court's general budget and resources.

Consideration is also currently being given by our court to establishing a special circumstances list to more effectively address those cases in which the defendant suffers from an impaired capacity. This will be operated in conjunction with a homeless persons court diversion program. While there is some funding for the diversion program the special circumstances list, like the Murri Court will have to operate within the court's current budget and resources.

Similarly the establishment of a special domestic and family violence jurisdiction would initially have to operate within the court's general budget allocation. It is currently a glimmer of an idea which has yet to be the subject of a specific proposal to government. Therefore like the Special Circumstances list and the Murri Court before it, any such new jurisdiction will not be created overnight. It will have to evolve gradually, with possibly one court designated for a pilot project. Then if it is shown to be effective it is to be hoped that legislative recognition and specific funding will follow.

## CONCLUSION

Following the 2003 amendment of the *Domestic and Family Violence Protection Act* 1989 there has been a significant increase in applications for protection orders to the Magistrates Court, with a stabilisation of the volume of work indicated in the last financial year.

Recognising that domestic and family violence proceedings are emotional and potentially volatile domestic violence waiting lounges with direct court access are being incorporated in all new and refurbished court buildings. It is hoped that together with the very real assistance given by domestic violence support workers in many courts throughout Queensland, these developments will reduce the emotion and distress that is always likely to be involved in domestic and family violence proceedings.

However the fact that in the 2004-2005 court year, our court dealt with almost 8000 breaches of protection orders illustrates that the simple making of such an order addresses the effects but not the causes of the violence.

Therefore it is essential to tackle the causes of domestic and family violence rather than simply deal with its outcomes so as to break the cycle of violence.

To achieve this I foresee that the court will move towards the establishment of a specialist domestic and family violence jurisdiction as a "one stop shop" to deal with all matters arising from domestic or family violence. There are models for such an approach in other Australian jurisdictions, including South Australia, and most recently through specific legislation in Victoria.

However because there has yet to be a proposal submitted to government for the establishment of this specialist jurisdiction there is no current funding to support

any move in this direction. Therefore it would have to be achieved incrementally as a pilot project – but at least it is an aim to work towards for the future.

***Footnote:***

[1] I would like to thank Ms Jeannie Donovan, Acting Judicial Support Officer, Magistrates Court of Queensland for her assistance in preparing this paper.

***Reference:***


Office of Attorney-General of Victoria (2004) *Media release: Domestic violence Courts for Heidelberg, Ballarat.*

http://www.justice.vic.gov.au/CA2569020010922A/page/Courts+and+Tribunals-Magistrates%27+Court+of+Victoria-Family+Violence+Court+Division?OpenDocument&1=0-Courts+and+Tribunals~&2=0-Magistrates%27+Court+of+Victoria~&3=0-Family+Violence+Court+Division~

The Magistrates' Court of Victoria (2003) *Family Violence and Stalking Protocols*

Goldsbrough, A (2005) *Magistrates' Court (Family Violence) Act 2004 – Summary*

Carrington, K and Phillips J, (2003) *Domestic Violence in Australia – an Overview of the Issues,* *www.aph.gov.au/library/intguide/SP/Dom_Violence.htm*

Gold Coast Domestic Violence Criminal Justice Reform – Pilot Project Proposal.