

Domestic Violence Reform in Queensland: A Course of Conduct Domestic Violence Offence

I INTRODUCTION

The *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* report ('*NNNE*')¹ delivered in February 2015 references eliminating domestic and family violence ('DFV') in Queensland. The unfortunate challenge is that DFV consumes 20% of the Magistrate Court load in Queensland.² *NNNE* made 140 recommendations: 121 directed at Government, and 19 directed at community organisations. There is a 10 year plan of reforms.³ Some *NNNE* recommendations combine with other recommendations to contribute to an overarching reform. This essay adopts a similar approach so that the emphasis of discussion is on the reforms following *NNNE*, and not the individual recommendations. More specifically this essay predominantly focuses on a definition of domestic violence, specialist DFV courts in Queensland, and a new offence of domestic and family violence. In 2019 progress is being made, but a gap between policy and practice, in some instances, remains. This essay seeks to analyse reforms already made, reforms underway, and possible reforms in the future. One opportunity for reform is the system surrounding Domestic Violence Orders ('DVOs'), which as a civil order has essentially

¹ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland*. (Taskforce Report, 28 February 2015) <<https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/special-taskforce/dfv-report-vol-one.pdf>> ('*NNNE Report*').

² Department of Justice and Attorney, 'Domestic and Family Violence: DJAG is making a difference' Queensland *Government publications* (PDF Issue 3 Second quarter 2017) 1 <<https://publications.qld.gov.au/dataset/dfv-djag-is-making-a-difference>>.

³ Department of Child Safety, Youth and Women, 'DFVP Strategy' (Web Page, 7 February 2019) <<https://www.csyw.qld.gov.au/campaign/end-domestic-family-violence/dfvp-strategy>>.

decriminalised domestic violence: the matter only criminal when a breach of the DVO occurs. However, the larger opportunity is the creation of a specific domestic violence offence. This new offence could be a course of conduct offence triggered when three or more existing offences like torture,⁴ strangulation,⁵ stalking,⁶ or revenge porn⁷ are found to have been perpetrated against the intimate partner⁸ of the offender. The start point for future DFV reform is the same for any offence, ambiguous word, or concept in law. That start point is the need for a widely accepted, cross jurisdictional, uniform definition of what the words 'domestic violence' actually mean.

II DISCUSSION AND CRITICAL ANALYSIS

A Definition of Domestic Violence

The NNNE found that the *Domestic and Family Violence Protection Act 2012*⁹ ('*Qld DFV Act*') s 8 definition of 'domestic violence' had "widespread agreement that the definition under the Act is thorough and comprehensive".¹⁰ However, Australian jurisdictions do not share the Queensland definition, or share any complete and uniform definition of what constitutes domestic violence throughout Australia.¹¹ This is easily checked. The *Family Law Act 1975* (Cth) does not define domestic violence, but does define family violence in s 4AB(1): "*family violence* means violent,

⁴ *Criminal Code Act 1899* (Qld) s 320A.

⁵ *Criminal Code Act 1899* (Qld) s 315A introduced following NNNE Report recommendation 120.

⁶ *Criminal Code Act 1899* (Qld) s 359B.

⁷ *Criminal Code Act 1899* (Qld) ss 223, 229A, 229AA as inserted by *Criminal Code (Non-Consensual Sharing of Intimate Images) Amendment Act 2019*, which also amended ss 207A, 227A, 227B, 227C.

⁸ *Domestic and Family Violence Protection Act 2012* (Qld) Division 3 definitions.

⁹ In effect 17 September 2012.

¹⁰ NNNE Report (n 1) 94.

¹¹ NNNE Report (n 1) 69.

threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful". The *Crimes (Domestic and Personal Violence) Act 2007* (NSW) ('NSW Act') does not define domestic violence, but does define a domestic violence offence in s 11 as essentially a personal violence offence in a domestic setting.¹² There are common threads of coercion and control in the various definitions, but also threads left hanging.

Inconsistent DFV definitions is a problem. It seems inconceivable that a uniform system of enforcing DVOs (see below page 4) has been rolled out without a uniform definition of domestic violence. For example, the interplay of inconsistent DFV definitions within the National Domestic Violence Order Scheme ('NDVOS'). If an individual is subject to a DVO in NSW on the basis of a "personal violence offence", and the DVO now applies in every state and territory, is the individual *correctly subject* to a DVO in Queensland? Queensland does not reference NSW's "personal violence offence", which is not mentioned anywhere within Queensland's definition of domestic violence. The *NSW Act* s 11 offence *may* possibly be subsumed under the relatively broader *Qld DFV Act* s 8 definition, but the situation appears an unnecessary arguable gap within the national NDVOS framework. A national definition of DFV would likely aid the rollout of future uniform domestic violence reforms just as the 2005 Defamation Acts and 2003 Civil Liability Acts assisted a uniform approach across jurisdictions. A uniform definition of domestic violence is discussed below on pages 11-17.

¹² *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 11.

B National Domestic Violence Order Scheme

Commencing 25 November 2017 DVOs issued in one state can be enforced across Australia.¹³ This reform gives life to *NNNE* recommendation 90.¹⁴ Notwithstanding the discussion above, this is a common sense solution to an obvious gap in the relationship between States. The extreme mobility and web of life options available to families, commuting workers or holiday makers provide any number of reasons why people might relocate for a day, a week, a month or a year. The mobility of DFV perpetrators, and victims, and associated jurisdictional challenges appear largely addressed by this national enforcement program. Queensland's online portal has made the DVO process accessible with easy access to application forms, and forms to vary existing orders.¹⁵ This common-sense reform has bridged a gap between policy and practice, just as the creation of the first specialist DFV court dedicated to dealing with domestic violence has bridged a gap between concept and reality in Queensland.

C Specialist Domestic and Family Violence Court (DFV Court)

1 Overview of DFV Court Rollout

¹³ *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016*; *Domestic and Family Violence Protection Act 2012* ss 223-226; Department of Justice and Attorney-General, 'Domestic and family violence reform' (Web Page, 23 January 2019) <<https://www.justice.qld.gov.au/corporate/initiatives/dfv-reform>>.

¹⁴ *NNNE Report* (n 1) 35.

¹⁵ Queensland Courts, 'National Domestic Violence Order Scheme' (Web Page, 24 November 2017) <<https://www.courts.qld.gov.au/going-to-court/domestic-violence/national-domestic-violence-order-scheme>>.

As of April 2019, Southport, and Beenleigh¹⁶ (Queensland South East) are the only operational specialist DFV Courts in Queensland. This reform gives life to *NNNE* recommendations 96-97. The creation of specialist DFV courts is a major, tangible outcome from *NNNE* recommendations. In the first two years since the Southport specialist DFV court ('Southport') opened in September 2015 the court reportedly dealt with over 12000 matters.¹⁷ Townsville (which will circuit to Palm Island and Mount Isa)¹⁸ has appointed a Domestic Violence Magistrate,¹⁹ but does not yet appear to be a fully functional integrated civil and criminal DFV court.²⁰ Beenleigh appears operational but like Townsville not yet a fully functional integrated civil and criminal DFV court.²¹ When this author called the media contact for the Attorney-General Yvette D'Ath on 16 April 2019, and advised the purpose of this essay, the contact was unable to provide any further update. Regardless, media releases online from the Attorney-General announce approved construction contracts for the Beenleigh courthouse upgrade (scheduled for completion December 2019),²² and Townsville (scheduled for completion November 2019).²³ Beenleigh and Townsville are scheduled to be fully integrated specialist DFV courts in 2019-20.²⁴

¹⁶ Queensland Courts, 'Magistrates Courts of Queensland Annual Report 2017-2018' (PDF 25 October 2018) 20 <https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/589545/mc-ar-2017-2018.pdf> ('*Magistrates Annual Report*').

¹⁷ Attorney-General and Minister for Justice and Minister for Training and Skills, 'Renovated court officially opened' (Media Release 19 October 2017) <<http://statements.qld.gov.au/Statement/2017/10/19/renovated-court-officially-opened>>.

¹⁸ Queensland Courts, 'Specialist Domestic and Family Violence Court' (Web Page, 29 May 2018) <<https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>>.

¹⁹ *Magistrates Annual Report* (n 16) 7.

²⁰ See above n 17 page 5.

²¹ *Ibid.*

²² Attorney-General and Minister for Justice and Minister for Training and Skills, 'Construction tender awarded for Beenleigh courthouse upgrade' (Media Release 4 December 2018) <<http://statements.qld.gov.au/Statement/2018/12/4/construction-tender-awarded-for-beenleigh-courthouse-upgrade>>.

²³ Attorney-General and Minister for Justice and Minister for Training and Skills, 'Construction tender awarded for Townsville courthouse upgrade' (Media Release 30 October 2018) <<http://statements.qld.gov.au/Statement/2018/10/30/construction-tender-awarded-for-townsville-courthouse-upgrade>>.

²⁴ *Magistrates Annual Report* (n 16) 25.

2 Southport DFV Court Evaluation

The Southport trial received an interim evaluation in May 2016,²⁵ and a final evaluation in February 2017.²⁶ In October 2017 the renovated and now permanent DFV court opened. The interim evaluation reported that Southport was “tracking well”.²⁷ The interim report found the benefits of having dedicated magistrates included quicker same day service, and consistency of sentencing for perpetrators. Southport was well regarded for overall court staff interaction, and levels of safety and privacy.²⁸ However, there were express recommendations to develop protocols and practice notes to assist collaboration of the agencies involved, and the need for more proactive distribution of information about reporting the progress of court matters to both the applicant and respondent.²⁹

The final report into Southport echoed the ideas of collaboration and partnership within the workplace culture of the court, and the vital continuing need for information about the court process to be made proactively available to both victims and perpetrators. It appears a gap between policy and evolving practice remained after two years of operation. Lessons learned at Southport will hopefully benefit Townsville and Beenleigh DFV courts as they come online.

²⁵ Department of Justice and Attorney-General, ‘Interim evaluation of the trial specialist domestic and family violence court in Southport’ (Report May 2016) <https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/511737/report-on-the-interim-evaluation-of-the-domestic-and-family-violence-court-in-southport.pdf> (‘*Southport Interim Report*’).

²⁶ Griffith Criminology Institute, Griffith University, ‘*Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport*’ (PDF February 2017) <https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/515428/dfv-rpt-evaluation-dfv-court-southport-summary-and-final.pdf> (‘*Southport Final Report*’).

²⁷ *Southport Interim Report* (n 25) 2.

²⁸ *Ibid* 3.

²⁹ *Southport Final Report* (n 26) iii.

3 DFV Courts: Specialist Magistrates, Court Staff, Bench Book, Support Services

Several associated reforms attached to the development of DFV Courts follow on from *NNNE* recommendations. Specialist Magistrates (recommendation 97), development of a DFV Bench book (recommendation 101), compulsory training for court staff (recommendations 106, 124), better use of interpreters (recommendations 44, 113 -116), and specialist duty lawyers (recommendation 126) to name but a few.

This integrated specialist training and specialist approach in Southport has had the benefits outlined above. The possibly less obvious reform, but resounding need identified in *NNNE*, was the need for fully briefed interpreters³⁰ to engage with clients at all stages of the police and court process. *NNNE* identified particular difficulties for women and victims from a non-English speaking background ('NESB'), who needed interpreter services. Allowing victims and perpetrators to have a clear understanding of the police and court processes, and an ability to better engage in the process is representative articles 7 and 10 of the Universal Declaration of Human Rights.³¹ It is worth noting Southport is located within an area where 35% of residents have parents born overseas, and unemployment is higher than the state average.³² Closing systemic issues like interpreter deficiencies for NESB victims remains an opportunity, as identified in the 2017/ 2018 report of the Domestic and Family Violence Death Review Board.

³⁰ *NNNE Report* recommendations 44, 113-116; Queensland Courts, 'Getting an Interpreter' (Web Page, 21 December 2018) <<https://www.courts.qld.gov.au/services/getting-an-interpreter>>; Magistrates Court, *Practice Direction No. 6 of 2017: Engaging Interpreters for domestic and family violence civil proceedings in Magistrates Court*, 2 June 2017 <https://www.courts.qld.gov.au/_data/assets/pdf_file/0018/523512/mc-pd-6of2017.pdf>.

³¹ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/80 (10 December 1948).

³² *Southport Final Report* (n 26) 1.

D Domestic and Family Violence Death Review Board

Establishing the DFV Death Review Board ('Review Board') gave life to *NNNE* recommendation 6. The *Coroners Act 2003* was amended in 2015 to provide for the establishment of the Review Board in Part 4A.³³ The primary function of the Review Board is not to review individual deaths, but to identify patterns, trends and risk factors within the system. The 2017-18 report reviewed 20 cases involving 30 deaths.³⁴ The lethal risk of DFV extends to children, other family members, and the perpetrator themselves.³⁵ The Review Board makes recommendations for the improvement of systems, policies, legislation and the like with a goal towards early intervention, and prevention of DFV deaths in Queensland.³⁶

The Review Board sees the need for national reforms to disrupt the cycle of violence, and the common feature of a "thread of repetitive victimisation".³⁷ (Future reform including a new domestic violence offence is discussed below on pages 11-17.) There remains systemic issues with risk assessment, such as identifying incidents of non-lethal strangulation as a high risk indicator.³⁸ There are enforcement, safety and protection issues such as a lack of evidence demonstrating what will reduce recidivism.³⁹ Deficiencies in service delivery to culturally and linguistically diverse victims, which include language barriers and understanding of

³³ *Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Act 2015*.

³⁴ Domestic and Family Violence Death Review and Advisory Board, '2017-18 Annual Report' <https://www.courts.qld.gov.au/__data/assets/pdf_file/0003/586182/domestic-and-family-violence-death-review-and-advisory-board-annual-report-2017-18.pdf> ('*Death Review Report*').

³⁵ *Ibid* 5.

³⁶ *Death Review Report* (n34) 8.

³⁷ *Ibid*.

³⁸ *NNNE Report* (n 1) recommendation 5.

³⁹ *Death Review Report* (n 34) 10.

the legal process, were also identified.⁴⁰ Improving service delivery to perpetrators was identified as a key opportunity for improvement, because presently perpetrators are likely to receive less than the minimum standard of service offered to a victim.⁴¹ This author can understand that situation, but can also see the grounds for appeal if procedurally the perpetrator receives less than the minimum assistance in navigating the system. It is the way society treats its worst, and weakest, that is the mark of a fair society.

E Domestic Violence Disclosure Scheme: NSW, NZ, UK

Before discussing a future reform like enacting a new specific domestic violence offence, a brief look at *NNNE* recommendations 129-130. These recommendations did not result in the introduction of a Domestic Violence Disclosure Scheme ('DVDS') in Queensland. A DVDS would have essentially operated as the non-consensual sharing of information about a perpetrator to relevant agencies, and ultimately to victims, partners or individuals. The Attorney-General asked the Queensland Law Reform Commission ('QLRC') to "review and investigate whether or not to introduce a DVDS in Queensland and, if so, to consider a number of specific matters relevant to any proposed scheme."⁴² The QLRC report referenced pilot schemes currently

⁴⁰ *Death Review Report* (n 34) 9.

⁴¹ *Ibid.*

⁴² Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme* (Report No 75, June 2017) i [5] <https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/541189/qlrc-report-no-75.pdf> ('QLRC DVDS report').

available in NZ,⁴³ NSW,⁴⁴ Scotland,⁴⁵ and 'Clare's Law' in England and Wales.⁴⁶ The QLRC consulted widely, but did not recommend the introduction of a DVDS in Queensland. The QLRC looked at the effectiveness of current schemes, whether a DVDS would complement DFV law reform, and linking persons at risk with appropriate services.⁴⁷ The QLRC took the view that resources allocated to a scheme would be better directed towards other services, and that disclosure about a perpetrator's DFV history would not necessarily increase the safety of all concerned. Indeed, a DVDS may give rise to a false sense of security.⁴⁸ QLRC reluctance to endorse a DVDS is understandable, and yet a DVDS could be a powerful tool if correctly managed. Queensland already manages and directs online reporting for the Child Protection Offender Registry,⁴⁹ and issues serious drug offence certificates.⁵⁰ The question then is why Queensland could not, or should not, maintain a DVDS with convicted domestic violent offenders reporting their movements, when there are already similar schemes up and running.

⁴³ New Zealand Police, 'Family Violence Information Disclosure Scheme (FVIDS) (Web Page) <<https://www.police.govt.nz/advice/family-violence/family-violence-information-disclosure-scheme-fvids>>.

⁴⁴ NSW Government, Family and Community Services, *Domestic Violence Disclosure Scheme (DVDS)* (Web Page, 20 April 2018) <<https://www.facs.nsw.gov.au/domestic-violence/police-law-help/disclosure-scheme>>.

⁴⁵ Police Scotland, 'Disclosure Scheme for Domestic Abuse Scotland' (Web Page, 2019) <<https://www.scotland.police.uk/keep-safe/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland>>.

⁴⁶ Home Office, 'Domestic Violence Disclosure Scheme (DVDS) Guidance' (PDF, December 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575361/DVDS_guidance_FINAL_v3.pdf>.

⁴⁷ QLRC DVDS report (n 42) ii [12].

⁴⁸ Ibid [15]-[25].

⁴⁹ Queensland Police Service, 'Guide to using the online Registered Person Report' (Web Page) <<https://www.police.qld.gov.au/online/cpor/Documents/Guide-to-using-the-Registered-Persons-Report.pdf>>.

⁵⁰ *Penalties and Sentences Act 1992* (Qld) s 161G <http://www5.austlii.edu.au/au/legis/qld/consol_act/pasa1992224/s161g.html>.

F Future Reform of DFV Law

1. New Offence of Domestic Violence as a Course of Conduct Offence

There is currently no specific offence of domestic violence in Queensland, although a specific offence of domestic violence has been well researched and analysed by Professor Heather Douglas.⁵¹ In a comprehensive article Professor Douglas examined global trends including the creation of a domestic violence offence in England, as well as existing offences related to domestic violence⁵² like strangulation in Queensland.⁵³ Domestic violence can readily be regarded as a course of conduct offence, as distinct from a single incident offence. The “repeated or continuous nature of the behaviour”⁵⁴ sets domestic violence apart from single incident offences⁵⁵ such as assault.⁵⁶ Enacting a specific offence of domestic violence would mean the “the real nature of the offence ... is not camouflaged.”⁵⁷ This is an excellent point. By calling out domestic violence with a specific offence, domestic violence would face challenges to being camouflaged behind civil orders like DVOs. Nor could domestic violence hide within the trees of seemingly unrelated single incident offences. Professor Douglas eloquently sets out the basis for a course of conduct domestic violence offence, just as there are existing course of conduct offences in Queensland,⁵⁸ Australia,⁵⁹ and England.⁶⁰ Notwithstanding the increasing

⁵¹ Heather Douglas ‘Do We Need a Specific Domestic Violence Offence?’ (2015) 39 *Melbourne University Law Review* 434.

⁵² *Ibid* 451-452.

⁵³ See above n 5.

⁵⁴ Douglas (n 51) 444.

⁵⁵ Douglas (n 51) 439,450.

⁵⁶ *Criminal Code Act 1899* (Qld) s 245.

⁵⁷ Douglas (n 51) 450.

⁵⁸ *Criminal Code Act 1899* (Qld) s 229B.

⁵⁹ *Drugs Misuse Act 1986* (Qld) s 5 Trafficking in Dangerous Drugs: *Crimes Act 1958* (Vic) s 21A.

⁶⁰ *Serious Crime Act 2015* (UK) c 9, s 76

<<http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>>.

use of language like 'control and coercion' in DFV definitions within legislation in Australia (see above page 2) the approach of trying to pin down the course of conduct behaviour has been identified as difficult by Professor Douglas.⁶¹ Difficult to prove the subjective intent,⁶² difficult to prove on evidence,⁶³ and difficult to enforce.⁶⁴ The idea of a new offence of cruelty⁶⁵ is a good idea, however to flesh out the remainder of this essay this author would like to promote an alternative route to pinning down domestic violent offenders. Instead of trying to define domestic violence from the top down, apply an approach from the bottom up.

2. Create A Threshold of Existing Offences to Trigger Declaration of Domestic Violence

An alternative route is to work with the existing offences, as a way to achieve a new offence of domestic violence. The proposal here is to simply create a threshold test of existing offences that activates a new offence of domestic violence. A range of existing offences would need to be declared as domestic violence threshold offences. The NSW Act already provides a similar process allowing NSW courts to record a domestic violence offence on a person's criminal record if the court is satisfied the offence is a domestic violence offence. The idea for Queensland to declare a raft of offences as potential domestic violence offences would assist the courts declaring an offence to be a domestic violence offence. Once an alleged perpetrator has breached the threshold of three offences like stalking,⁶⁶ revenge

⁶¹ Douglas (n 51) 436.

⁶² Douglas (n 51) 444, 454.

⁶³ Douglas (n 51) 437.

⁶⁴ Douglas (n 51) 457.

⁶⁵ Douglas (n 51) 448.

⁶⁶ See above n 6.

porn,⁶⁷ non-lethal strangulation,⁶⁸ or torture⁶⁹ against an intimate partner or relevant family member⁷⁰, a presumption of domestic violence is activated. The onus then shifts to the alleged perpetrator to prove that a declaration of domestic violence should not be made.⁷¹ The elements of any defence would need to be clearly stated, but must be discharged to rebut the presumption that domestic violence has occurred. If the legal or persuasive burden is not discharged by the alleged perpetrator, a declaration of domestic violence is triggered.

3. *The Declaration of Domestic Violence Triggers Registration on a DVDS*

A declaration of domestic violence triggers certification and registration of the domestic violence offence, in much the same way a serious drug trafficker receives a serious drug offence certificate under the *Penalties and Sentences Act 1992* (Qld).⁷² Think also of the consequences, and eligibility, for registration on the Child Protection Offender Registry⁷³. Given these existing certification and registry provisions in Queensland, it seems difficult to advance an argument that goes against creating a DVDS in Queensland to certify and register declared domestic violent offenders. A certified domestic violence perpetrator could enter a DVDS just as a reportable offender can enter the Child Protection Registry. Certification of domestic violent offenders and registration on a DVDS might provide added benefits

⁶⁷ See above n 7 and accompanying text.

⁶⁸ See above n 5.

⁶⁹ See above n 4.

⁷⁰ See above n 8.

⁷¹ See for example reverse onus *Criminal Code Act 1899* (Qld) s 304(9) <http://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s304.html>.

⁷² See above n 51.

⁷³ *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* s 5 defines a reportable offender; Queensland Police 'Child Protection Offender Registry' (Web Page, 22 August 2018) <<https://www.police.qld.gov.au/online/cpor/>>.

like activating mandatory attendance at perpetrator interventions and therapeutic programs.⁷⁴ There may well be associated stigma for any perpetrator participating in a DVDS, but that is nothing new as there is a stigma associated across the board when the criminal justice system penalises any transgressor.

4. Domestic Violence Definition Simplified and Aided by Breach of Threshold Approach

The potential for a uniform definition of what constitutes domestic violence is tantalisingly close, simply by defining a domestic violence offence as a breach of a new threshold test for existing offences. The bottom up approach could build on existing offences to create the new offence, and automatically aid the potential uniform definition of domestic violence. The trouble with proving subjective intention, discharging an evidentiary burden, or defining control and coercion is largely put to one side. It is the perpetrator's collation of existing offences against an intimate partner or relevant relationship,⁷⁵ which brings the new offence of domestic violence to life.

5. Existing Offences Already Connected to Domestic Violence: Part 1

⁷⁴ *NNNE Report* (n 1) recommendation 122: The Queensland Government identifies and implements strategies to increase perpetrators' participation in interventions, including a pilot on mandatory attendance, with the evaluation of the pilot to inform future decisions about broader use of mandatory perpetrator interventions. <<https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/special-taskforce/dfv-report-vol-one.pdf>>.

⁷⁵ See above n 8.

Case law shows stalking is linked to domestic violence.⁷⁶ Torture may be appropriately linked to domestic violence.⁷⁷ Strangulation⁷⁸ and the contravention of a domestic violence order⁷⁹ are linked by statute. However, for any new domestic violence offence to work practically it would need to be an offence largely administered by the Magistrates Court⁸⁰ where DVOs are issued. A system like the electronic DV interface which electronically transfers information between the Queensland Police, and Queensland Courts⁸¹ could help. The Magistrates Court needs a lighter workload, not more.⁸²

6. *Existing Offences Already Connected to Domestic Violence: Part 2*

Domestic violence is, anecdotally, a precursor to other offences. Indirectly researching this essay the author visited the Supreme Court in Cairns to observe the sentencing of three MDMA drug traffickers by Justice Applegarth. The last sentence for the day was a woman in her mid-twenties, brought sobbing into the court, who had dealt over two grams of MDMA more than five times. The young woman's mother and sister were in the public gallery. When the court was closed temporarily during sentencing submissions, this author briefly spoke with the mother and sister outside the court.⁸³ According to the mother part of the young woman's antecedence

⁷⁶ *R v Keong* [2007] QCA 163 [10]-[13]; *R v Rowe* [2011] QCA 372.

⁷⁷ Douglas (n 52) 453.

⁷⁸ *Criminal Code Act 1899* (Qld) s 315A; See also *NNNE Report* (n 1) recommendation 120.

⁷⁹ *Domestic and Family Violence Protection Act 2012* (Qld) s 177.

⁸⁰ *NNNE Report* (n 1) page 270; Douglas (n 51) 453.

⁸¹ Department of Justice and Attorney-General, 'Annual Report 2016-2017' (PDF, 18 September 2017) 20

<<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1847.pdf>>.

⁸² NZ Herald 'Sobering accounts of domestic violence by Judge Phil Connell and victim Mereana Love' (Web Page, 23 July 2018)

<https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12092323>.

⁸³ The author advised his presence as a JCU law student, before a naturally flowing, and freely consenting, conversation followed.

included domestic violence, and the abusive partner still controlled the young woman while she was imprisoned awaiting sentence. It was the mother's firm view that her daughter fell into drug use only after enduring significant episodes of domestic violence. The DFV included a cigarette being "put out" on the young woman's face, filmed, and shown to the mother. The young woman was sentenced to three years, and paroled after seven months. However, as a New Zealand citizen, and according to federal policy, she would likely be sent to immigration detention for deportation or removal.⁸⁴ This author notes that all three traffickers sentenced that day had some form of domestic violence as part of their antecedence.

7. Final critical thoughts before conclusion

It is hard to see the solution to the staggering levels of domestic violence.⁸⁵ This essay has focused on a few key recent reforms to the criminal justice system in Queensland. The more important enquiry is how to prevent the DFV behaviour in the first place. *NNNE* did make many recommendations for cultural change. *NNNE* also recommended access to therapeutic intervention programs for offenders serving less than 12 months,⁸⁶ and mandatory attendance at perpetrator interventions,⁸⁷ but those programs only occur after the domestic violence. Note also the Review Board found a lack of evidence for what reduces recidivism.⁸⁸ The Crown might need to be proactive, think outside the box, and consider moving hard against DFV to effect a behavioural change in society so that perpetrators stop being violent towards their

⁸⁴ *Migration Act 1958* ss 206, 501.

⁸⁵ *NNNE Report* n 1.

⁸⁶ *NNNE Report* (n 1) recommendation 81.

⁸⁷ *NNNE Report* (n 1) recommendation 122, and page 015.

⁸⁸ See above n 39.

intimate family members. Enacting a specific domestic violence offence as outlined in this essay might cut through the camouflage⁸⁹ of single incident offences. As discussed, NSW courts already record offences as domestic violence offences, if the court is satisfied the offence is a domestic violence offence.⁹⁰ Queensland has an opportunity to use existing offences to declare certified domestic violence offenders, and create a new proactive tool against domestic violence.

III CONCLUSION

Progress has been made with the creation of the first specialist DFV courts. These specialist courts are improving outcomes, and helping both perpetrators and victims better understand and engage with the police and court systems. The Review Board is building and analysing data with a goal towards early intervention, and prevention of DFV deaths in Queensland. The pursuit of a uniform definition of DFV in Australia could be aided by Queensland taking a bottom up approach to tackling domestic violence by using a threshold test of existing domestic violence related offences. The declaration, certification and registration of domestic violence offenders on a DVDS could provide a powerful tool to proactively discourage perpetrators of domestic violence from being violent towards their intimate family members.

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⁸⁹ Douglas (n 51) 450.

⁹⁰ *Crimes (Domestic and Personal Violence) Act 2007* s 12.