

DFV Newsletter

NOVEMBER 2024



From the Chief Magistrate's Desk

News

- The [Domestic and Family Violence \(DFV\) Live List](#) is being expanded to another 13 locations by the end of June 2025, including six specialist DFV court locations in Brisbane, Cairns, Townsville, Mount Isa, Palm Island and Southport. This expansion follows a successful implementation of the system in the Beenleigh Magistrates Court.
- Many resources available for those attending court are currently only available in English. The [QR Code Poster Pilot](#) aims to address the needs of diverse communities and improve their access to the Queensland justice system. The pilot offers a website with general information about attending Magistrates Courts, available in 20 different languages, as well as plain English. The website can be accessed through a QR code displayed on posters in ten Magistrates Courts across Queensland. The pilot will run from September to December 2024. Data will be analysed from the pilot to make recommendations on whether to transition to regular operations.
- The Queensland Sentencing Advisory Council has developed a [Sentencing DataHub](#) to provide statistical information about sentences made in Queensland's criminal courts. Data is available for specific, individual offences, with a separate breakdown provided for people sentenced as adults and children. The aim of the DataHub is to make statistical information about sentencing more accessible for lawyers, researchers, students, the media and interested members of the community.
- The [Queensland Law Reform Commission](#) will conduct a review of the offence of choking, suffocation, and strangulation in a domestic setting (s315A *Criminal Code*). The report is due in September 2025.

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- The State Government launched [two campaigns](#) in August 2024 to raise awareness of domestic and family violence, coercive control, and sexual consent ahead of new laws commencing:
 - [“Only 100% is Consent”](#) aims to raise awareness of what the affirmative model of consent looks like in practice, emphasising a free, voluntary, and mutual agreement when participating in sexual activity, particularly for young Queenslanders.
 - [“Patterns of Coercive Control”](#) has been created to educate the community on the signs and seriousness of coercive control, the severe impacts it can have and available support options, while also providing information on upcoming changes to the law.
- From 16 August 2024, the ICLRQ will be publishing the [Queensland District Court Reports \(QDCR\)](#). These reports will seek to promptly report recent cases of precedential value from the District Court. Over the next two years, the series will also be retrospectively reporting key cases from the period 2000- 2023. This project provides recognition of the importance of the judgements of the District Court in clarifying and developing the law of Queensland.

Legislation Updates

Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024

The offence of choking, suffocation, or strangulation in a domestic setting ([§315A Criminal Code](#)) has been amended to provide clarification that to choke, suffocate or strangle another person includes the application of pressure to that person’s neck that completely or partially restricts the other person’s respiration, blood circulation, or both.

This amendment commenced by assent on **19 September 2024**.

Domestic and Family Violence Protection Amendment Rule 2024

The Amendment Rule amends [Rule 19B of the Domestic and Family Violence Protection Rules 2014](#) to provide some flexibility to police in the requirement to give the respondent their criminal and domestic violence history before the first hearing (see subsections (3) and (4) of the rule).

This amendment commenced on **19 September 2024**.

Oaths Amendment Regulation 2024

The Amendment Regulation amends the [Oaths Regulation 2022](#), to allow senior police officers, who are not directly involved in the matter to which the contents of the affidavit or declaration relates, to witness any affidavit or statutory declaration made by another police officer in the course of duty.

Criminal Code (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

The following amendments, relevant to domestic and family violence matters, commenced on **23 September 2024**:

- Insertion of a new [s47B DFVPA](#) which requires the court to consider whether to make a temporary protection order if adjourning the hearing of the application at the first mention for the proceeding.
- Expansion of preliminary complaint evidence in sexual offences and domestic violence offences in new [s94A Evidence Act 1977](#).
- Insertion of a new [s103ZD Evidence Act 1977](#) regarding jury directions about a lack of complaint or a delay in making a complaint in criminal proceedings for a domestic violence offence.

The following amendments will commence on **26 May 2025**:

- A new offence of coercive control ([s334C Criminal Code](#)) punishable by up to 14 years imprisonment.
- Introduction of a court-based diversion scheme for certain adult domestic violence offenders ([Part 4A, DFVPA](#)).
- Media applications for transcripts of domestic and family violence proceedings ([ss157D, 157E, 159, 160, 161A, 240 and 241, DFVPA](#)).
- A new facilitation offence of engaging in domestic violence or associated domestic violence to aid a respondent ([s179A DFVPA](#)).
- Amendments to [ss56](#) and [106 DFVPA](#) regarding additional conditions on protection orders and police protection notices.
- Amendments to [s9 Penalties and Sentences Act 1992](#) to treat certain factors as aggravating circumstances when sentencing domestic violence offences.

Practice Directions

[Practice Direction 3 of 2021](#)
(Amended).
[Protected Counselling](#)
[Communications](#)

This amended Practice Direction complements the [Supreme Court Practice Direction 16 of 2024](#) and the [District Court Amended Practice Direction 5 of 2021](#).

Please note the addition of the first footnote regarding what a person cannot do in respect of PCC (protected counselling communications) for committal or *Bail Act 1980* proceedings.

Online Training

[Domestic and Family Violence](#)
[Training Modules](#)

The Queensland Government has developed two foundational online training modules that are available statewide for government agencies, non-government organisations and community groups.

These online training modules explore coercive control and the new coercive control legislation.

[Module One](#) will take around 50 minutes to complete.

[Module Two](#) will take around 30 minutes to complete.

Articles & Reports

[Defending Primary Victims Who Face Criminal Charges for the Use of Defensive Force against Their Abusive Partners: Attempting to Change 'Laws' Practices'](#)

Julia Tolmie, Rachel Smith, and Denise Wilson
April 2024

[Targeting fixated individuals to prevent intimate partner homicide: Proposing the Domestic Violence Threat Assessment Centre](#)

Timothy Cubitt, Anthony Morgan, Christopher Dowling, Samantha Bricknell and Rick Brown
July 2024

[The Domestic, Family and Sexual Violence Commission Yearly Report to Parliament](#)

Domestic, Family and Sexual Violence Commission
August 2024

[The New Coercive Control Offence in NSW: \(How\) Will it Work?](#)

Helen Gibbon & Emma Buxton-Namisnyk
August 2024

[Prevalence of Recorded Family and Domestic Violence Offending: A Birth Cohort Study](#)

Australian Institute of Criminology
September 2024

[Domestic and Family Violence Death Review and Advisory Board Annual Report \(2023-24\)](#)

Domestic and Family Violence Death Review and Advisory Board
September 2024

- Between 1 July 2023 and 30 June 2024, there were 19 DFV-related homicides in Queensland.
- Two of the 19 homicide victims and one of the 16 homicide offenders identified as Aboriginal or Torres Strait Islander. Five victims and five offenders were from culturally and linguistically diverse backgrounds.
- The Board noted that women and their children remain disproportionately affected by DFV-related homicides. Victims are predominately women, often in an intimate partner relationship with the person using violence.
- Conversely, most DFV-related homicide offenders were men, who were often the current or former partner of the victim.
- The Board reviewed 50 deaths arising from 35 DFV-related cases where there was evidence of intimate partner sexual violence (IPSV). The reviews identified significant gaps in addressing IPSV within the context of DFV, including the failure to capture more nuanced behaviours such as image based sexual abuse and sexual coercion.
- The Board also noted that community awareness of DFV and IPSV remained low despite ongoing research, with prevalent misconceptions about sexual violence hindering recognition and reporting. The Board recommended that education campaigns be culturally relevant and co-designed with local communities.

Queensland Police Service Annual Report (2023-24)

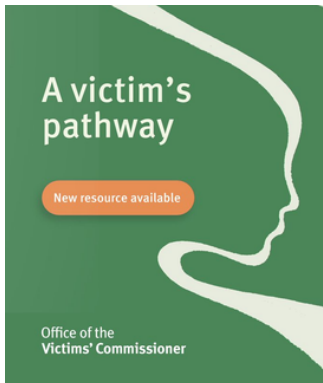
Queensland Police Service
September 2024

The Queensland Police Service Annual Report outlines the work being performed by the Domestic, Family Violence and Vulnerable Persons Command. These initiatives included:

- Supporting the DFV Video Recorded Evidence (VRE) trial in the Ipswich and Gold Coast Districts to enable video statements from adult victims to be used as evidence-in-chief. Consultation is ongoing to expand the trial for a further one-year period.
- Continuing to partner with the Department of Justice and Attorney-General (DJAG) and DFV support services to trial integrated DFV responses. This includes embedding a police officer within two DFV support services, developing a DFV co-response model to be trialed in Cairns, and embedding DFV practitioners in police stations across Queensland.
- Increasing the number of Domestic Family Violence Coordinator (DFVC) positions within the Brisbane Police Communication Centre (PCC) to provide almost 24-hour, 7 day per week support to frontline police responding to DFV incidents across the state. The DFV Advisory Unit receives approximately 3,000 calls a year from frontline officers requesting DFV-related advice.
- Supporting the expansion of High-Risk Teams (HRTs) across Queensland. The Townsville and Redlands HRTs are now operational which brings the total number of HRTs to 11 across the state.
- Developing a guide to support decision making of members to ensure the person most in need of protection is identified when responding to DFV where dual allegations of violence are identified.
- Reviewing and updating DFV related documents, policies and procedures to prominently and clearly acknowledge that DFV can affect any person regardless of race, gender, age, beliefs, religion or socioeconomic or cultural background.

Prosecutions Services has developed a DFV online learning product designed to upskill prosecutors in DFV law in general and highlight recent legislative changes. The training also encompasses trauma informed practices and awareness of vicarious trauma, making referrals to support services and applying relevant legislative provisions to ensure the safety and support of victim-survivors.

Webinars & Podcasts

	<p>A Victim's Pathway Office of the Victims' Commissioner</p>
	<p>Designed for victim-survivors of sexual violence and the people supporting them, A Victim's Pathway features podcast host Kay McGrath OAM and experts working across the criminal justice system, as they share victims' options and rights when reporting sexual violence and seeking support.</p>

Case Law Updates

[QPS v CAE \[2024\] QMC 17](#)

Magistrate Sinclair
26 August 2024

The defendant was charged with contravening a protection order. It was alleged that she breached the condition of the protection order requiring her not contact or attempt to contact the aggrieved. Magistrate Sinclair considered the meaning of “contact” and whether simply being in physical proximity of each other in a vehicle with no evidence of the defendant speaking to the aggrieved met the definition.

His Honour concluded that the “no contact” condition did not prevent the parties from being in proximity to each other and that the prosecution had failed to provide that the defendant had initiated any form of communication with the aggrieved. The defendant was found not guilty of the offence.

[HEG v Queensland Police Service & UHB \[2024\] QDC 134](#)

Kent KC DCJ
29 August 2024

The appellant appealed against the making of a protection order against him in favour of the second respondent. The appellant argued that the Magistrate erred in finding that domestic violence had occurred and that the second respondent was not a credible witness in that regard. Kent KC DCJ concluded that it was open to the Magistrate, in the context of the entire evidence which included recordings, to accept the second respondent’s evidence on any contentious facts.

Kent KC DCJ recommended that the delivery of ex tempore reasons by Magistrates could be better organised using headings such as nature of application, legislative framework, summary of evidence, summary of submissions, factual findings, and conclusion. Such an approach would make it easier for the parties and any appellant court to understand, as well as imposing the discipline of fleshing out the reasoning process in the mind of the judicial officer.

[Mau v Queensland Police Service \[2024\] QDC 135](#)

Morzone KC DCJ
30 August 2024

The appellant pleaded guilty to four offences of contravening a domestic violence order (aggravated offence) and two offences of giving false or misleading information to a correctional officer as a prisoner. The appellant was sentenced to 15 months and six months imprisonment respectively for each group of offences. Whilst incarcerated, the appellant used another prisoner’s phone account to contact the aggrieved in breach of a protection order.

He appealed against his sentence on the basis that it was manifestly excessive, and the Magistrate failed to give sufficient weight to his plea of guilty. Morzone KC DCJ found that the appellant’s lengthy criminal history overwhelmed the proper exercise of the sentencing discretion, and that insufficient weight was given to the appellant’s plea of guilty and time in custody. The appeal against sentence was allowed and the sentence was varied to 234 days imprisonment on each charge (reflective of the appellant’s time in pre-sentence custody).

[HIK v HCA \[2024\] QDC 155](#)

Kefford DCJ

17 September 2024

In this case, the appellant appealed against the making of a protection order against him in favour of the respondent. The appellant argued that the Magistrate erred in finding that he had committed domestic violence, in finding that the protection order was necessary or desirable and in naming the children of the appellant and respondent on the order. Kefford DCJ held that the Magistrate failed to explain or resolve the inconsistencies between their findings and the incontrovertible facts on the evidence.

Kefford DCJ also found that the Magistrate also failed to give adequate reasons for finding that the protection order was necessary or desirable and for naming the appellant and respondent's children on the order. No evidence was identified by the Magistrate that the children heard, saw or experienced the effects of the domestic violence found to have occurred by the Magistrate. The appeal was allowed, the order set aside and the respondent's application for a protection order was dismissed.

[EW v RW \[2024\] QDC 151](#)

Smith DCJA

18 September 2024

The appellant appealed against the making of a protection order against him in favour of the respondent. The final order was made in the absence of the appellant who had not received notice of a change in date for a directions hearing. Smith DCJA noted that it was likely that the respondent was aware that the appellant had not received the notice as the appellant had since been evicted from their joint residence where the notice was sent. The respondent did not advise the Magistrate of this at the time when the order was made.

Further, Smith DCJA noted that the matter was only listed for mention to determine the filing of affidavits and it was unclear how the matter turned into a hearing concerning the final order.

Finally, His Honour concluded that the Magistrate did not give any consideration to any of the matters listed in [s37 DFVPA](#) in reaching the decision. The appeal was allowed, the order set aside, and the matter remitted to the Magistrates Court for rehearing.

[CD v Queensland Police Prosecutions \[2024\] QDC 150](#)

Smith DCJA

18 September 2024

The appellant applied for a stay of an order made in the Magistrates Court, pursuant to [s151\(3\) DFVPA](#), that the aggrieved could not be cross examined by him in person. Smith DCJA ultimately concluded that there was no right to appeal under [s164 DFVPA](#) and further, that the appeal would be such as to fragment the domestic violence proceedings.

His Honour was satisfied that the District Court had no jurisdiction to hear the appeal. The application for a stay was dismissed and the appeal was struck out.

[HIK v HCA \(No 2\) \[2024\] QDC 163](#)

Kefford DCJ

24 September 2024

The appellant was successful in his appeal against the making of a protection order against him ([HIK v HCA \[2024\] QDC 155](#)). In this case, Kefford DCJ considered the issue of whether the respondent ought to pay the appellant's costs of the appeal. The appellant argued, amongst other things, that the self-represented respondent failed to comply with procedural directions, unnecessarily delayed the proceedings, abandoned two prior appeals without adequate notice and sought to rely on inadmissible evidence. Kefford DCJ noted that the appellant enjoyed success on all issues in the appeal, which the respondent attempted to resist. Her Honour was satisfied that the appellant should have his costs of the appeal.

[AKD v Commissioner of Police \[2024\] QDC 158](#)

Heaton KC DCJ

4 October 2024

The appellant pleaded guilty to contravening a domestic violence order and common assault. He was sentenced to two years' probation with a conviction recorded for both offences. He appealed this sentence on the basis that the recording of convictions was excessive. The appellant worked as a FIFO mining engineer on a working visa from Papua New Guinea. At sentence, the duty lawyer emphasised the impact the recording of a conviction may have on the appellant's employment.

Heaton KC DCJ noted that the Magistrate considered the nature and seriousness of the offence but made no reference to the other factors in [s12\(2\) Penalties and Sentences Act 1992](#). New evidence was adduced at sentence; however, Heaton KC DCJ was unpersuaded that the appellant's employment or visa would be in jeopardy with the convictions being recorded. Notwithstanding this, His Honour concluded that the sentencing Magistrate failed to have regard to the impact that recording of a conviction would have on the appellant's economic or social wellbeing. The appeal was allowed, and the sentence was varied to the extent that no convictions were recorded for either offence.

[R v OAD \[2024\] QCA 189](#)

Mullins P, Bond JA & Freeburn J

11 October 2024

The appellant pleaded guilty to nine counts of rape (domestic violence offence) against his stepdaughter. He was sentenced to eight years imprisonment with parole after serving four and a half years. The appellant had spent three years in custody on remand for other separate offences for which he was ultimately acquitted.

In appealing against his sentence, the self-represented appellant complained that, amongst other things, the sentencing judge failed to give "full weight" to this time spent in custody. The Court of Appeal considered Victorian authorities as to the undeclared "dead time" in custody and compared the sentencing regimes in Queensland and Victoria for dealing with pre-sentence custody. The Court ultimately determined that there is no principle that the offender must be given a discount on the sentence equivalent to the period of "dead time". It is a factor to be weighed in the overall sentencing discretion. The appeal against sentence was dismissed.

Quick Links

* NB - Links to pages on the Magistrates Intranet are not publicly accessible.

- [Earlier editions of DFV Newsletter](#)
- [Domestic and Family Violence Protection Act 2012 Benchbook](#)– September 2024
- [National Domestic and Family Violence Benchbook](#) – June 2023
- [Domestic and Family Violence Protection Act 2012](#)
- [Domestic and Family Violence Protection Rules 2014](#)
- [JVL Domestic Violence Material](#) *
- [DFV Resources, Magistrates Intranet](#) *
- [QJIS sentencing data](#) search page (search DFVP Act) *
- [Queensland Judgments](#) – Online search page *
- [Women's Safety and Justice Taskforce](#)