Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities

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This research report was commenced in 2007, prior to machinery-of-government changes which were made following the 2009 State election. As such, the report refers to government agencies whose names have changed. The following is a list of agencies referred to who were affected by the machinery-of-government changes and the name by which they are currently known:

Prior to 2009 election	**Following machinery-of-government changes**
Department of Child Safety	Child Safety Services, Department of Communities
Office for Aboriginal and Torres Strait Islander Partnerships, Department of Communities	Aboriginal and Torres Strait Islander Services, Department of Communities

Research for this report was conducted using interviews with victims of domestic and family violence, non-government service providers and government officers. Some details have been omitted or amended where necessary to protect the identity and privacy of an individual.

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Acronyms

ATSILS	Aboriginal and Torres Strait Islander Legal Service
ATSISJC	Aboriginal and Torres Strait Islander Social Justice Commissioner
ATSIWTV	Aboriginal and Torres Strait Islander Women's Taskforce on Violence
AIATSIS	Australian Institute for Aboriginal and Torres Strait Islander Studies
CDFVR	Queensland Centre for Domestic and Family Violence Research
DJAG	Department of Justice and Attorney-General
DOGIT	Deed of Grant in Trust
DVLO	Domestic violence liaison officer
IFVPLS	Indigenous Family Violence Prevention Legal Services
IPLO	Indigenous police liaison officer
OATSIP	Office of Aboriginal and Torres Strait Islander Policy
QATSIP	Queensland Aboriginal and Torres Strait Islander Police
QPS	Queensland Police Service
QWIC	Queensland Wide Interlinked Courts
SCAN	Suspected Child Abuse and Neglect
SCROGSP	Steering Committee for the Review of Government Service Provision
VPU	Violence Prevention Unit

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FINDINGS AND RECOMMENDATIONS

Extent of Domestic and Family Violence (Chapter 2)

Nationally, there is widespread research and data which shows that Indigenous women are more likely to be victims of violence (including homicide, and including domestic and family violence) than non-Indigenous women. Under-reporting by all women of incidents of violence is common (69per cent nationally in 2005). There is no reliable data on the extent of under-reporting of violence by Indigenous women. Given the absence of services in many remote communities we could reasonably expect under-reporting to be higher among Indigenous women than non-Indigenous women.

In Queensland in 2006-07 Indigenous women comprised 17.6 per cent of all recorded female victims of offences against the person and comprised 68.8 per cent of all recorded Indigenous victims of offences against the person.

Those communities with the highest reported rates of violent offences against Indigenous women included Kowanyama, Pormpuraaw, Aurukun, Yarrabah and Mornington.

Initial Police Responses (Chapter 2)

In 2006-07 some 26.4 per cent of incidents initially defined as domestic and family violence and responded to by police involved either or both an Indigenous aggrieved and respondent.

An incident involving an Indigenous person initially defined as a DV incident is slightly more likely to be re-classified as not being DV by responding police, than if either party is non-Indigenous.

Indigenous people were the aggrieved in 21.8 per cent of incidents accepted by responding police as being domestic and family violence incidents.

Domestic and family violence incidents involving Indigenous aggrieved and respondents are more likely to involve breaches of existing orders and are less likely to result in ‘no action’ being taken, than is the case for non-Indigenous incidents.

Domestic and family violence incidents involving an Indigenous aggrieved are concentrated in relatively few police districts – some 59 per cent of accepted incidents in 2006-07 were in the three police districts of Cairns, Townsville and Mount Isa.

Domestic and Family Violence Protection Orders (Chapter 3)

In 2006-07 Indigenous aggrieved comprised:

- 16.9 per cent of all domestic and family violence orders (temporary protection orders, protection orders, registration of interstate orders, revocations and variations of orders)
- 14.7 per cent of temporary protection orders, and
- 19.2 per cent of protection orders.

Based on the population, Indigenous people are 5.7 times more likely than non-Indigenous people to be the aggrieved in a domestic and family violence order in Queensland.

The number of orders involving Indigenous aggrieved increased by 9.4 per cent between 2004-05 and 2006-07. Much of the increase during this period was accounted for by an increase in variation and revocation orders.

Indigenous domestic violence orders are more likely to involve family members than non-Indigenous orders, and are slightly less likely to involve spousal or intimate personal relationships. Very few (less than 0.5 per cent) of either Indigenous or non-Indigenous orders involve informal care relationships.

In 2006-07 police were the applicants in 73 per cent of protection orders involving an Indigenous aggrieved. This was 21 percentage points higher than non-Indigenous applications.

In many remote Indigenous communities police are the applicants in more than 95 per cent of the orders.

While Indigenous people have higher rates of domestic violence order use than non-Indigenous people, they are much less likely to be the person applying for the order. This raises questions about engagement with and confidence in the legal process, as well as the availability of services to assist with private applications.

On the basis of the research interviews there appear to be very few cross-applications involving Indigenous people.

Police indicated that one barrier to the use of domestic violence protection orders was the reluctance of some police to apply for orders because of the paperwork involved in the application.

The possibility of police issued domestic violence protection orders was raised by a number of police as a way of increasing the number of protection orders in remote and rural communities.

The level of violence involved in Indigenous domestic violence incidents is more serious than the level of violence found in non-Indigenous matters.

Indigenous offenders who breach a domestic violence order are more likely to be processed by police by way of arrest than non-Indigenous offenders. Conversely,

Indigenous offenders are less likely to be given a notice to appear in court or not proceeded against.

Recommendation 1 Police Powers
QPS and the Department of Communities investigate the extension of police powers to provide for police issued short-term emergency domestic violence orders. Any change to police powers in this regard must be accompanied by increased services and programs in the community for perpetrators.

Domestic and Family Violence Funded Services (Chapter 4)

Compared to non-Indigenous clients, Indigenous people who use domestic and family violence funded services are:

- slightly more likely to be female (86 per cent compared to 82 per cent)
- More likely to be seeking crisis intervention (34 per cent compared to 18 per cent)
- slightly more likely to be experiencing or to have previously experienced violence (72 per cent compared to 68 per cent)
- more likely to have had the violence reported to police (72 per cent compared to 62 per cent)
- more likely to have a current domestic violence order in place (30 per cent compared to 20 per cent)
- a little less likely to have a disability (10 per cent compared to 12 per cent)
- a little less likely to have children reported to be in the household (84 per cent compared to 87 per cent).

Indigenous people comprise 7 per cent of all clients of domestic and family violence funded agencies.

Recommendation 2 Domestic and Family Violence Funded Services
Existing domestic and family violence funded services need to ensure policies and practices are in place that maximise access for Indigenous clients.

Indigenous Domestic and Family Violence Protection Orders (Chapter 5)

Indigenous applications comprised 17.2 per cent of all applications for orders before the courts in 2006-07.

There is a significant problem with the lack of attendance of Indigenous aggrieved and respondents at the court when the order is made. This raises issues about the sense of ownership of the legal process by Indigenous people and has implications in terms of either the aggrieved or the respondent understanding the nature of the order. There is a disengagement with the legal process which is less likely to be found in non-Indigenous applications for domestic violence orders.

Applications for Indigenous domestic and family violence orders are more likely to be granted than non-Indigenous applications, and are less likely to be dismissed, struck out or withdrawn than non-Indigenous applications.

There appear to be very few hearings where the application is contested in Indigenous domestic violence matters.

Although Indigenous applications for orders are more likely to be granted by the court, they are less likely to contain additional conditions than non-Indigenous orders. Some 70 per cent of Indigenous domestic violence orders have only the standard conditions required by the legislation.

The major reasons for the difference between Indigenous and non-Indigenous conditions appear to be related to the desire for the aggrieved to have contact with the respondent and the specific nature of life in remote communities.

Sentencing Indigenous Offenders Who Breach (Chapter 5)

Indigenous offenders who are convicted of breaching a domestic violence order are twice as likely as non-Indigenous offenders to be jailed, and about half as likely to receive a fine. For every ten Indigenous breaches of a domestic violence order, between four and five will result in a sentence of imprisonment.

The Queensland sentencing provisions for breaches of domestic violence orders rank at the lower end of maximum penalties nationally. However, increasing the maximum penalty for domestic violence breaches in Queensland is unlikely to increase the use of domestic violence orders by Indigenous women. The evidence also strongly suggests that imprisonment is not changing the behaviour of Indigenous offenders. It is not a sanction that deters or rehabilitates Indigenous offenders.

Recommendation 3 Penalties
It is recommended that the Queensland penalties be aligned with the Model Domestic Violence Laws of a maximum penalty for a first offence of one year imprisonment or for a subsequent offence, two years imprisonment. The current time constraints relating to breaches should be repealed.

Barriers to Reporting Violence and Accessing Protection (Chapter 6)

The Indigenous women who were interviewed for this research varied in their age from their late teens to their sixties. They revealed a picture of ongoing violence: within the one relationship some violence would be reported and other violence would not. The interviews showed that most women reported at least some of the violence, and often on a regular basis.

The major reasons identified by Indigenous victims of violence for not reporting violence or seeking a domestic violence order include:

- fear of the perpetrator
- family and kinship issues
- the nature of Indigenous relationships
- the Department of Child Safety and fear of child removal
- the unavailability of community support and services
- lack of police presence and police responses, and
- empathy for the perpetrator.

Family and kin issues are complex in how they impact on domestic and family violence and decisions whether to report the violence or not. Family and kinship can play a positive role in supporting women and in the reporting of violence, and this is true of both the victim's and the perpetrator's families. Equally, the family and kin of both the victim and the perpetrator may play a negative role in pressuring a victim not to report domestic and family violence.

One of the greatest barriers to reporting was the fear of having children removed. There was widespread knowledge that reporting violence might lead to intervention by the Department of Child Safety. This fear of Child Safety intervention was frequently mentioned by both service providers and victims, and was prevalent in all the locations where interviews were conducted.

Police responses appear inconsistent. Interviewees from the same community reported different experiences with police. The basic question of whether police are available to receive a report of domestic and family violence also directly affects whether the violence will be reported.

Support Services (Chapter 7)

The local context of available services will strongly influence reporting. If basic support services are not in place, then the use of a domestic violence order is often not an option. Women will not report violence if there is no reasonable likelihood that they will be protected, have the perpetrator removed or have the opportunity to escape the violence. All of these outcomes depend on the availability of basic support services. The lack of emergency support services means that women cannot leave a violent relationship.

Recommendation 4 Provision of Services
It is recommended that an audit be conducted of significant Indigenous communities (including rural townships) to determine the availability of basic emergency and support services for women leaving a domestic and family violence relationship. Resources need to be allocated to those communities on a priority basis where there are no or limited services available.

Community Education (Chapter 7)

There is widespread recognition of the problems associated with aggrieved and respondents not understanding orders, as well as a lack of general community knowledge about domestic and family violence and potential legal responses.

There needs to be whole-of-government approaches to community education at the local level. Community education needs to be targeted to specific Indigenous communities and in a form accessible to the community. While the Department of Communities might play a lead agency role, other agencies including Police, Corrections and Child Safety need to be involved, as well as relevant Indigenous agencies in particular ATSILS, IFVPLS and Healing Services.

Recommendation 5 Community Education
It is recommended that Department of Communities play a lead role in developing whole-of-government strategies to community education for Indigenous communities on domestic and family violence, and that these strategies include key Indigenous non-government agencies.

Indigenous Police Liaison Officers (Chapter 7)

The IPLOs can have an important role both at the broader community education level, as well as the individual level in providing information about domestic violence orders to aggrieved and respondents. They can directly influence the likelihood of reporting domestic and family violence at the local level.

Recommendation 6 IPLOs
It is recommended that the involvement of IPLOs in follow-up work after a domestic and family violence incident be improved and extended.

Training (Chapter 7)

It is very important that IPLOs receive training in domestic and family violence issues, law and policy. IPLOs need to be confident in their ability to explain orders to aggrieved and respondents. Legal service field staff also need to be confident in their ability to provide information on basic domestic and family violence law and policy.

Recommendation 7 Training IPLOs, ATSILS and IFVPLS field staff, Community Justice Group coordinators and members.
It is recommended that training for IPLOs in relation to domestic and family violence be addressed as a matter of urgency.
It is recommended that minimum requirements for IPLOs, ATSILS and IFVPLS field staff be the completion of the *Course in Responding to Domestic and Family Violence,* or equivalent. It is also recommended that Community Justice Group co-ordinators and members receive training in an accredited course on domestic and family violence.

There is a widely recognised need for Department of Child Safety officers to be better trained around domestic and family violence and the corresponding legislative and policy issues. The research also showed the need for improvements in police training.

Recommendation 8 Training Child Safety Officers and Police
It is recommended that current training on domestic and family violence for general duties police and child safety officers should be reviewed to ensure that it adequately covers issues relating to the nature of domestic and family violence in Indigenous communities, and current law and policy.

Mandatory Reporting (Chapter 8)

The issue of mandatory reporting emerged in the research in two separate contexts: health workers and child safety.

There does not appear to be a Queensland Health policy to report suspected domestic and family violence to police. There was some support for mandatory reporting of domestic and family violence by health workers and police, but also recognition of potential problems of limiting access by women to health services.

Recommendation 9 Mandatory Reporting by Health Workers
It is recommended that mandatory reporting by health workers not be introduced without further investigation of its specific impacts on Indigenous women in other jurisdictions.

A major reason for not reporting violence or breaches of orders is the fear of intervention by Child Safety and the removal of children. However, there is also recognition of the complexity of the problem and mixed views among stakeholders about the mandatory reporting policy.

Recommendation 10 Mandatory Reporting by Police to Child Safety

It is recommended that QPS thoroughly review the impact their mandatory reporting policy to Child Safety is having on the reporting of domestic and family violence.

It is recommended that QPS audit the number of confidentiality agreements they have signed with Indigenous Recognised Entities with a view to developing strategies to increase the number of these agreements.

It is recommended that the Department of Child Safety establish a community education function focusing on their policies, practices and responsibilities, and that Indigenous communities be a priority for community education.

Simplifying Domestic Violence Orders (Chapter 8)

There is a recognised need to simplify both the application for a domestic violence order and the order itself. There was general agreement that the order should be in plain English and with examples, and that the application form needs to be rewritten in plain English.

Recommendation 11 Simplifying Applications and Orders
It is recommended that the Department of Communities undertake a review of the current protection order application and the protection order with a view to simplifying both documents in plain English and providing examples to clarify relevant sections as appropriate.

Specific Responsibility for Explaining the Order to the Respondent and the Aggrieved (Chapter 8)

Those best placed in the community to explain domestic violence orders to aggrieved and respondents, providing they are properly trained, are the IPLOs or the Community Justice Group.

Recommendation 12 Specific Responsibility for Explaining the Order
a) It is recommended that IPLOs and Community Justice Groups, properly trained, take on a proactive role in explaining protection orders to the respondent, and, if appropriate, the aggrieved.
b) Further, it is recommended that magistrates, upon making a protection order, consider as a requirement of that order that the respondent be directed to attend a community justice group for the purpose of explaining the order and the unacceptability of domestic and family violence. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.

Behavioural Change Programs and Counselling Services (Chapter 8)

There is a need for behavioural change programs and counselling services for perpetrators to be expanded. Services and programs need to comply with minimum practice standards of the department. The general preference for Indigenous-specific services for Indigenous parties should be recognised. There is a need to ensure the victim's services are already in place prior to behavioural change and counselling services for perpetrators.

There was widespread support for perpetrators to be required to attend behavioural change or counselling programs at the time when the domestic violence order is made.

Recommendation 13 Magistrates' Power to Direct Attendance at Programs
a) It is recommended that clarification be sought by the Department of Communities with DJAG on the power of magistrates to direct respondents to attend counselling or behavioural change programs at the time a protection order is made. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.
b) Magistrates require in-service training on the different types of programs and their availability.

Murri Court, Community Justice Groups and JP Courts (Chapter 9)

There is widespread support for expanding the role of the Community Justice Groups and potentially the JP Courts in responding to domestic and family violence, particularly at the time when an order is made, and potentially when there is a breach. Further there is support for continuing involvement of the Murri Court in domestic and family violence matters in those locations where it is operational.

Recommendation 14 Community Justice Groups and JP Courts
It is recommended that the Department of Communities establish a working party with DJAG to:
a) identify issues and develop protocols (and perhaps procedures) for use by community justice groups in working with domestic and family violence matters
b) investigate the potential for greater involvement of JP Courts in dealing with minor breaches of protection orders.

Provision of Data and Strategic Planning (Chapter 9)

COMSIS is currently poorly equipped to provide information relating to domestic and family violence and Indigenous people. However, there is a wide range of relevant data available from the QPS and DJAG.

Recommendation 15 Enhancement of COMSIS
It is recommended that Department of Communities work with the Office of Economic and Statistical Research, DJAG and QPS to develop a more comprehensive capability on COMSIS to report on Indigenous issues relating to domestic and family violence.

CHAPTER ONE:
INTRODUCTION AND BACKGROUND

1.1 Introduction and Research Questions

This report addresses the issue of whether the legal system is responding adequately to domestic and family violence against Indigenous people. More specifically it assesses the effectiveness of domestic violence protection orders for Indigenous clients and proposes recommendations for change. The research has been commissioned by the Violence Prevention Unit in the Department of Communities, and was developed in consultation with the Violence Prevention Unit (VPU). At the time the research was commissioned there was no routine data available on the number of domestic and family violence protection orders being made for Indigenous victims of violence. An assumption underpinning the research was that Indigenous women were not using domestic and family violence protection orders to an extent that might be expected given the level of reported violence.[1]

The aims of the research were as follows:

- determine what data is available in relation to the use of domestic violence orders by Indigenous clients
- determine whether domestic violence orders are an adequate and effective legal mechanism to respond to violence against Indigenous clients, particularly in rural and remote areas
- propose potential models for more effective interventions in responding to domestic and family violence in Indigenous communities, and determine whether they require legislative or non-legislative change.

There are a number of further secondary research questions which have guided the current work. These include:

Best practice

a) On the basis of the existing research literature, what is current best practice regarding legislative responses to Indigenous domestic and family violence in Australia?

b) On the basis of the existing research literature, what is current best practice regarding non-legislative responses to Indigenous domestic and family violence in Australia?

Current Data

a) What data is available in relation to the use of domestic violence orders by Indigenous clients, and what data is available in relation to breaches of domestic violence orders?

b) What does the data show in terms of pattern of use of domestic violence orders by Indigenous clients?

c) What are the data and information gaps and how can this information be remedied?

[1] The VPU noted that, 'When statistics were available to the department that identified Aboriginal and Torres Strait Islander usage of the DVO system as distinct from the mainstream usage of the DVO system, Aboriginal and Torres Strait Islander people appeared to be the lowest users despite their experience of domestic and family violence being higher' (VPU 2006).

Satisfaction with the Current System

a) What is the level of client and stakeholder satisfaction with the current system of domestic violence orders?

b) How do clients and stakeholders understand or define effectiveness in terms of a response to domestic and family violence?

c) What are the barriers identified by clients and stakeholders to the effective use of the current system?

Potentials for Change

a) What alternatives or changes do clients and stakeholders propose to the current system? Does it require legislative or non-legislative change? Or both?

b) What alternatives are suggested as effective by the literature in other states and territories?

1.2 Structure of this Report

The report is divided into nine chapters and an Executive Summary. Chapter One provides an overview of the research, policy issues which have been previously raised in relation to Indigenous use of domestic violence orders, some comparative legislative discussion, and an indication of successful approaches to domestic and family violence in Indigenous communities.

Chapter Two discusses definitional issues relating to domestic and family violence, and the incidence of domestic and family violence nationally and in Queensland. There is analysis of the police recording of domestic and family violence, their definition of and responses to particular incidents and the location of incidents of domestic violence involving Indigenous aggrieved across Queensland.

Chapter Three provides data on the number of domestic violence orders involving Indigenous aggrieved and respondents, including discussion on relationship type, applications for orders and the seriousness of the violence underpinning Indigenous domestic violence orders. It also provides data on the police processes for Indigenous offenders who breach orders.

Chapter Four is an analysis of the data provided by the Queensland Centre for Domestic and Family Violence Research on Indigenous use of 29 domestic and family violence funded services.

Chapter Five provides analysis of court responses to Indigenous protection orders including major court locations, court outcomes for applications and breaches, conditions and sentencing.

Chapter Six relies primarily on the interview data to discuss the barriers which Indigenous victims of domestic violence identified in relation to using the current system of domestic violence orders.

Chapter Seven also relies primarily on the interview data to discuss the importance of support services for victims of domestic violence, the need for greater community education around the nature of domestic violence and legislative and policy responses to the violence. Finally, the chapter identifies the need for significant improvements in training around domestic and family violence for a range of Indigenous and non-

Indigenous stakeholders, including Indigenous police liaison officers, state police, and legal service field officers.

Chapter Eight discusses a number of key policy areas including mandatory reporting, simplifying domestic violence orders, responsibility for explaining orders to aggrieved and respondents, removal of the perpetrator and behavioural change programs.

Chapter Nine raises issues in relation to the greater use of community justice groups, JP Courts and the Murri Court in relation to domestic and family violence. There is also a discussion on the need for improved data reporting and its role in better strategic planning and whole-of-government approaches.

1.3 Methodology

The evaluation has utilised a combination of legal research, qualitative interviews and quantitative analysis. This methodology involves mixed methods research (Creswell and Plano Clark 2007). This type of research offsets weaknesses in the use of quantitative or qualitative approaches alone, and provides a better understanding of research problems, particularly in area of law and policy research. It includes analysis of legislation, cases and relevant legal policy documentation.

1.3.1 Interviews

Part of the project has focused on the examination of people's ability to avail themselves of the current legal protections against domestic and family violence. It is a study of law and policy in a practical context. The primary approach has been the use of qualitative interviews of clients who have used, attempted to use, or are in need of domestic violence orders, and government and community stakeholders who provide domestic and family violence-related services. These interviews have taken place in a specific number of sites (see below). Interviews with key stakeholders (both government and community) and clients have been used to assess satisfaction with and the effectiveness of current legal responses to domestic and family violence in Queensland.

The research utilised semi-structured, in-depth interviews to provide interviewees the opportunity to raise issues they consider important to them and to allow open discussion to explore new themes and ideas as they emerge. This approach is particularly important in facilitating Indigenous knowledge and input into the research process. These types of interviews allow people to answer more on their own terms but still provide structure for comparability (May 2001).

The stakeholder interviews have been selected from a range of organisations that provide services to Indigenous victims of family and domestic violence. Client interviewees have been selected by Indigenous workers in local Indigenous Healing Services and Indigenous Family Violence Counselling Services, using a process of purposive sampling. The criteria for selection included service clients who have used domestic violence orders and those who have suffered domestic and family violence but not sought legal assistance. Access to client interviews was arranged through relevant Indigenous organisations (Healing Services and Indigenous Family Violence Counselling Services) in the six research site areas. The client interviews were conducted by staff from local Indigenous Healing Services and Indigenous Family

Violence Counselling Services under the supervision of the researcher. The original aim was for approximately 8 – 10 client interviews at each site area, which would have yielded 48-60 interviews. However, this did not prove feasible because of the reluctance of clients to discuss their situation, even though the interviewers were Indigenous and known to the clients through the local service. In the end there were 32 interviews with domestic and family violence victims. The majority of interviews were sound recorded. A list of interviews with both stakeholders and domestic and family violence victims can be found in Appendix C. [2]

1.3.2 Identification and Selection of Research Site Areas

The selection of sites for this research was completed in consultation with the Family Violence Unit, Department of Communities. A number of criteria were used to select the specific sites. There was a focus on rural and remote sites. A further criterion was coverage of both Aboriginal and Torres Strait Island sites. Finally, as local Indigenous Healing Services and Indigenous Family Violence Counselling Services were to conduct client interviews, it was necessary that sites were serviced by these organisations.

Given the timeframe and budget for the research, a selection of six research sites was made for client interviews, plus additional regional centres for stakeholder interviews where organisations provided services to the rural and remote communities. The following sites were selected because they satisfied the above criteria. They provided a spread of rural and remote (ARIA+ 1.35 – 15.00)[3] reflecting the emphasis on rural and remote discrete communities as prioritised by the research agenda. The sites included both Aboriginal and Torres Strait Islander communities, and former DOGIT[4] and non-DOGIT communities.

Thursday Island

Thursday Island was chosen for a number of reasons. There is the unique culture of the Torres Strait Indigenous peoples which needs to be considered separately from Indigenous people elsewhere in Queensland. There is the unique geographic position of the Torres Strait and the particular difficulties people on the outlying islands have in using services (for example, police are concentrated on Thursday Island). The police have domestic violence liaison officers (DVLOs) and Indigenous police liaison officers (IPLOs) on Thursday Island, and there are community police on the main islands. There is a Healing Centre on Thursday Island and community justice groups on a number of islands. The Office of Aboriginal and Torres Strait Islander Policy (OATSIP) have a regional office and there is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) office on Thursday Island.

Rockhampton

[2] Interviews with victims have been consecutively numbered according to location – due to the small size of some of the communities, the communities themselves have been deidentified and will be referred to as Victim/Community x/interview x (for example VC1.1, VC2.1). Interviews with stakeholders have been consecutively numbered according to role (for example magistrate 1, magistrate 2, etc).

[3] ARIA+ is widely accepted as Australia's most authoritative geographic measure of remoteness. Indexes of remoteness are derived from measures of road distance between populated localities and service centres. These road distance measures are then used to generate a remoteness score for any location in Australia, with values ranging from 0 (high accessibility) to 15 (high remoteness).

[4] Deed of Grant in Trust community.

Rockhampton is a relatively well-serviced population centre (ARIA+ score 1.35). There is an active Murri Court operating. The police have DVLOs and IPLOs. There is an Indigenous Healing Centre in Rockhampton and a community justice group. There is the Ghin.gil Family Violence Prevention Legal Service. ATSIP have a regional office and there is an ATSILS office. Rockhampton also provides services to Woorabinda.

Woorabinda
Woorabinda is a rural/remote discrete Aboriginal community (ARIA+ score 4.87). It has an Aboriginal community council and Aboriginal Justices of the Peace. It had at the time a pilot QATSIP program operating. It has a community justice group. The Indigenous Healing Centre in Rockhampton services Woorabinda.

Doomadgee
Doomadgee is a remote discrete Aboriginal community (ARIA+ score 11.9). It is an isolated community with the nearest services at Mount Isa. It has an Aboriginal Community Council and Elders groups. There is a community justice group. The Indigenous Family Violence Counselling Services based in Mount Isa services the area.

Pormpuraaw
Pormpuraaw is a remote discrete Aboriginal community (ARIA+ score 14.9). It is a very isolated community (scoring almost 15 on the ARIA+ scale which is the highest score for remoteness). The nearest services are in Cairns. It has an Aboriginal Community Council and Elders groups. There is an Indigenous Healing Centre based in Pormpuraaw.

Roma, Charleville and Cunnamulla
Roma is a rural centre with an Indigenous population and some specialist services (ARIA+ score 5.21). The police have DVLOs. There is a Family Violence Prevention Legal Services based in Roma. There is a healing service and other funded domestic and family violence services in Roma. These organisations also provide services to Cunnamulla and Charleville. Both Charleville (ARIA+ score 10.49) and Cunnamulla (ARIA+ score 10.82) have significant Indigenous populations. For the purposes of interviews with victims, Charleville and Cunnamulla were treated as a single site.

In addition to the selected sites for client interviews, there were also interviews with stakeholders in the regional centres of Cairns and Mount Isa. These stakeholders included OATSIP, Family Violence Prevention Legal Services, police DVLOs, IPLOs and regional DVLO coordinator, magistrates and Murri Court coordinator.

1.3.3 Ethics Clearance

This research proposal was developed in the context of AIATSIS (2000) *Guidelines for Ethical Research in Indigenous Studies* and the Queensland [former] Department of Aboriginal and Torres Strait Islander Policy and Development (1999) *Protocols for Consultation and Negotiation with Aboriginal People*. This research project was approved by the UNSW Human Research Ethics Committee.

1.4 Supply of Data

Data was sourced from a number of organisations. Some non-Indigenous specific data was publicly available on the Department of Communities website. Some data is also available from the Queensland Police Service website on police responses to breaches of domestic violence orders by whether the offender was Indigenous or non-Indigenous.

The Queensland Centre for Domestic and Family Violence Research (CDFVR) supplied data from 29 domestic and family violence funded services relating to Indigenous and non-Indigenous clients over a three-year period from 1/7/04 to 30/6/07.

The Statistical Analysis Unit of the Department of Justice and Attorney-General (DJAG) provided data from the Queensland Wide Interlinked Courts (QWIC) system on domestic violence applications, orders and breaches of orders in the Magistrates Courts in the financial years 2004-05 to 2006-07. The data identified Indigenous and non-Indigenous aggrieved and respondents.

The Queensland Police Service (QPS) provided data from the DV Index on domestic violence incidents responded to by police by the Indigenous status of the aggrieved and respondent for 2006-07. The QPS also provided data on victims of reported violent offences by gender and Indigenous status for the years 2004-05 to 2006-07.

Most data used in this report was supplied in response to a specific data request. There is virtually no domestic violence data in Queensland which is routinely reported upon or made available which identifies the Indigenous status of either the aggrieved or the respondent. The lack of an evidence base relating to domestic and family violence and Indigenous people makes the development of appropriate policy far more difficult. There is considerable information collected by DJAG and QPS relating to domestic and family violence and Indigenous people but this is not routinely analysed or reported upon. This is a serious omission.

1.5 Previously Identified Issues in Access to Domestic Violence Orders

The question of whether domestic and family violence protection orders are unsuitable or limited as a legal mechanism to protect Indigenous people against domestic and family violence has been raised in many reports over many years. From the early 1990s, a number of state and federal reports highlighted the problematic relationship between Indigenous women and the criminal justice system (Australian Law Reform Commission 1994; Malcolm 1994; Criminal Justice Commission 1996).

These concerns were often broader than the specific question of the use of domestic violence orders, however, the various reports and inquiries brought to the fore some of the general problems Indigenous women have with mainstream Australian legal systems. The problems have been summarised as:

- lack of cultural sensitivity and awareness of family violence issues
- failure to provide appropriate and accurate advice
- lack of access to Aboriginal and Torres Strait Islander legal services, and
- lack of appropriate services for remote communities (Partnerships Against Domestic Violence 2000: 1).

The Aboriginal and Torres Strait Islander Social Justice Commissioner [hereafter ATSISJC] (2006:7) notes that there are two main concerns for Indigenous women with criminal justice responses specifically to the incidence of family violence. Firstly, the system is not effective in addressing the behaviour of the perpetrator in the longer term. Secondly there is a range of barriers to the legal process, including lack of access, an inadequate police response and cultural inappropriateness.

Given that the current research reported upon here focuses on Queensland, it is appropriate to identify the key Queensland literature relating to violence against Indigenous women and the response of the legal system. The main report in this regard is the Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report [hereafter ATSIWTV]. Specifically, in relation to the domestic and family violence, the ATSIWTV noted that:

> In some cases they [domestic violence orders] may be ineffectual due to the way they have been constructed, implemented and enforced … Some Indigenous women may only want 'time out' from the perpetrator with alcohol and substance abuse counselling and anger management programs enforced, rather than removal, containment or incarceration of their spouse (ATSIWTV 2000: 209).

This tension between the requirements of a domestic and family violence order and subsequent criminal sanctions upon a breach, and Indigenous women's desire for 'time out' with remedial and rehabilitative intervention is a constant theme underpinning discussions on whether the current processes work for Indigenous women.

It is possible to identify and summarise the major issues arising from the literature as knowledge and decision making; cultural issues; community issues; police, legal system and associated services; geographic isolation; concerns about consequences and outcomes, and broader contextual issues of colonisation, dispossession and Indigenous law. We summarise the major points below.

1.5.1 Knowledge and decision-making

There may be an inability on the part of Indigenous women to make informed decisions because of the lack of appropriate advice and information to both the community and the individual about domestic and family violence. The limited education and lack of knowledge of legal rights, processes and procedures and lack of knowledge of essential services and programs restricts effective use of the legal system (ATSIWTV 2000: 209-210, 236). The Cape York Justice Study noted that

there is a general lack of information in Cape York about family violence and the behaviours that constitute family violence.

> A family violence worker on Cape York said that many Indigenous women were unaware that violence is a crime. She notes that in particular community members are unfamiliar with the legal process and how to seek legislative protection from violence, or are unwilling to use legal advice and support (Department of Communities 2001: 98).

The Cape York Justice Study also noted earlier Department of Families analysis of the *Domestic and Family Violence Protection Act 1989* which indicated a lack of knowledge of content and procedures for usage among Indigenous people (Department of Communities 2001: 98). The ability to make informed decisions is also influenced by the lack of formal education, literacy and language problems (see Steering Committee for the Review of Government Service Provision [hereafter SCROGSP] 2007 for relevant comparative data).

1.5.2 Cultural Issues

Under certain circumstances, applying for a domestic and family violence order may be a culturally inappropriate response for Indigenous people. Kinship rules of most Indigenous peoples place great pressure on the victim and offender to stay together (VPU 2006). Associated issues include culturally linked shame and fear and community attitudes towards violence (ATSIWTV 2000: 236).

In addition, there also may be a desire for redress through customary law and processes (ATSIWTV 2000: 209). These customary processes are not static. There is widespread acknowledgment that Indigenous people are developing new ways of dealing with domestic and family violence which rely more on Indigenous justice practices and principles, sometimes seen in the context of restorative justice (Partnerships Against Domestic Violence 2001a; Nancarrow 2006; Blagg 2008). As discussed further in this report, Indigenous justice practices are most clearly seen in the context of the development of healing centres, community justice groups and Murri Courts.

1.5.3 Community Issues

Applying for a domestic and family violence order may be a divisive factor in a community, particularly for those living in discrete communities and rural areas (VPU 2006). The closed nature of many Aboriginal and Torres Strait Islander communities means that the application and granting of an order will likely become common knowledge within the community.

Further, there may be no alternative living arrangement for either party to enable carrying out the conditions of the domestic violence order, particularly for those living in discrete communities and rural areas (VPU 2006). These types of restrictions may arise because of the small size of the community (for example, with one shop) or because of the lack of alternative accommodation.

The period before court arrives in the community may be so far away that the consequences for the victim between the time of application and time of hearing make it impractical or far worse for the victim (VPU 2006). Further, the length of time

between court sittings in remote communities (commonly a month) may inhibit the reporting of breaches of existing orders, particularly if there are previous breaches before the court that are still outstanding.

1.5.4 Queensland Police Service Policy and Practice

In March 2005, the Queensland Police Service amended their Operational Procedures Manual in an attempt to provide for the safety of children living with domestic and family violence through more streamlined referral pathways. As part of this policy, police officers are required to refer any children who normally reside with a victim or perpetrator to either the Department of Child Safety or a Suspected Child Abuse and Neglect (SCAN) team, depending on the level of risk of harm to the child. Anecdotal evidence suggests that, since the Queensland Police Service introduced this policy, victims of domestic and family violence have become more reluctant to report the violence they are experiencing (VPU 2006). It has been reported that women refusing to take out domestic violence order applications for fear that their children will be removed from them is far more prevalent among Aboriginal and Torres Strait Islander communities where the history of child removal has exacerbated this fear (VPU 2006).

There is a range of historical and contemporary factors which influence relationships between community and police. ATSIWTV identified poor police responses and community distrust of the justice system (ATSIWTV 2000: 235-6), and police reluctance to respond to calls for assistance in family violence situations, particularly if the violence is ongoing (ATSIWTV 2000: 209) as compounding factors in decisions not to involve the police in domestic and family violence or to seek domestic violence orders. ATSIWTV identified continuing hostility, mistrust, suspicion and fear between communities and police (ATSIWTV 2000: 227). The Taskforce noted that:

> Elders, local justice groups and others stated that the failure of police to assist victims of family violence, their conflict with Indigenous youth, and their negligence in following up reported cases of rape and sexual assault against women and children, were serious injustices (ATSIWTV 2000: 216).

Ineffective cultural training for police officers was also identified (ATSIWTV 2000: 230).

1.5.5 Legal System and Associated Issues

The formality of the legal system and associated services, and the lack of cultural awareness, sensitivity and compassion among justice system personnel was identified as an inhibiting factor in women seeking assistance for domestic and family violence (ATSIWTV 2000: 236).

The lack of Indigenous personnel in the justice system has been identified as a major issue. In addition there is a lack of specific services including

- Indigenous family support workers
- domestic violence counselling in communities

- lack of anonymity of refuges in communities
- no perpetrator services in communities (ATSIWTV 2000: 236).

There are few services to deal with critical situations (ATSIWTV 2000: xii). For example, there is a lack of secure crisis accommodation (ATSIWTV 2000: 165, 209). Indigenous Family Violence Prevention Legal Services and Queensland Government funded court support have limited availability in remote Aboriginal communities. If legal representation is available at all, it may only be given to the respondent.

The service provision may be so poor in many communities that in reality they exacerbate the problem because they cannot provide even basic assistance (ATSIWTV 2000: xi).

There may be distrust of the legal system because of previous personal experiences and poor support after making a complaint (ATSIWTV 2000: 235), and little confidence in confidentiality, support and empathy from services (ATSIWTV 2000: 236). Adding to this problem is the issue of compartmentalisation. Services need to be interlinked.

> A high percentage of Aboriginal and Torres Strait Islander individuals and families presenting with one issue, say domestic violence, may also report other problems for which they need help; for example, sexual assault, alcohol and drug problems, suicidal behaviour, unresolved loss and grief, or mental illness (ATSIWTV 2000: 119).

Therefore, better service delivery could be achieved through a single access point for women suffering from family violence, or multi-agency services centre (ATSIWTV 2000: 122).

1.5.6 Geographic Isolation

There is restricted access to police in rural and remote areas. Probably the worse case is the outer islands of the Torres Strait, where women do not have access to police or legal representation (ATSIWTV 2000: 230).

There are also a number of Cape communities which still have no access to police. This severely restricts applications being taken out at time of incident, but also follow-up for breaches (VPU 2006).

Adding to the problem is the current uncertainty over community police and the closure of the QATSIP trial program in Yarrabah, Woorabinda and Bamaga. Queensland Government policy has been to withdraw support for QATSIP and to signal a preference for IPLOs over Aboriginal and Torres Strait Islander community police. However, the current situation is one that relies heavily on Indigenous community police particularly in Cape York and the Torres Strait – with all the well-documented limitations of this form of policing (Cunneen 2005).

1.5.7 Interim Orders and Breaches of Orders

It has been widely recognised that some Indigenous women may only seek an interim order rather than a permanent protection order (ATSIWTV 2000: 209). This may be

wrongly interpreted as a failure to follow through with a legal response, rather than as an attempt to use the legal system in a way that suits the situation.

Similarly, a breach of a DVO by either spouse can represent in some cases an emphasis on the vital role of the family, it may represent economic necessity or it may represent a lack of viable alternatives (ATSIWTV 2000: 209-210).

As a consequence it was recommended there be greater flexibility in protection orders and that women should have choice in the way protection orders are enforced (ATSIWTV 2000: 210).

1.5.8 Concern about the Consequences and Outcomes of Legal Intervention

As noted above, the reporting of domestic and family violence may lead to intervention by child protection agencies. There may be pressure to consent to guardianship orders and there were concerns that cultural issues were not recognised (ATSIWTV 2000: 242).

Domestic and family violence may escalate as a response to the taking out of an order (VPU 2006). There may be retribution from the offender's family or extended family (ATSIWTV 2000: 209). There may be violence exerted by the family upon the aggrieved (that is not necessarily as a result of customary law) (VPU 2006).

There are fears by the aggrieved concerning the outcomes of a legal intervention on the perpetrator. These fears include that their spouse may be subject to discrimination if incarcerated (ATSIWTV 2000: 209), or that incarceration might lead to a death in custody (ATSIWTV 2000: 232). Further, there is a view that incarceration does not change men's behaviour and further depletes the community of men (ATSIWTV 2000: 232) which is why there is a critical need for men's behavioural change programs to operate in prisons (VPU 2006).

In general there is a lack of programs to help Aboriginal and Torres Strait Islander men deal with their aggression (ATSIWTV 2000: 211), and there is a desire for the man to be part of the healing process: if there is to be a break in the cycle of violence there must be collective work to reunite families (ATSIWTV 2000: xii, 232). Both parties should receive counselling sessions after an order is issued (ATSIWTV 2000: 210)

1.5.9 Outstations and Community Correctional Centres

Indigenous communities have sought support for more outstations and community correctional centres to divert minor offenders. Community facilities play an important

role in diverting Indigenous people from the criminal justice system and in assisting in transition back into the community after release from prison (ATSIWTV 2000: 253).

1.5.10 Alcohol and Drugs

There has been widespread recognition of the role of alcohol (in particular) and other drugs in domestic and family violence. The National Aboriginal and Torres Strait Islander Social Survey confirmed that Indigenous people who reported alcohol consumption at a high risk level were also more likely to report being a victim of

threatened or actual violence (AIHW 2005: 48). Other estimates include between 70 and 90 per cent of all assaults being committed while under the influence of alcohol or drugs (Partnerships Against Domestic Violence 2001: 6).

The ATSIWTV noted that their consultation processes showed that alcohol was 'the most pressing concern of Indigenous people. Of the 43 submissions received from individuals and various agencies, 91 per cent of the overall submissions and 100 per cent of those from Aboriginal and Torres Strait Islander people … cited alcohol and other drugs as major factors for attention if the issue of violence is to be successfully addressed' (ATSIWTV 2000: 64).

Following the ATSIWTV Report, the Cape York Justice Study also regarded action against alcohol abuse as one of the key factors in addressing violence in Indigenous communities. While there is widespread recognition of the connection between alcohol and violence, the responses may vary and emphasise supply control, demand reduction or a combination of both.

1.5.11 Colonisation, Dispossession and Indigenous Law

Colonisation and dispossession were widely identified in the ATSIWTV work as being central to contemporary alcohol and drug abuse, violence and dysfunction in Indigenous communities (ATSIWTV 2000: xii).

Further, the recognition of Indigenous law is seen as essential.

> Elders are calling for the use of cultural law/lore to address escalating crime and over incarceration of Indigenous people. Crime prevention strategies are deficient with little relevance to traditional law (ATSIWTV 2000: xvii).

The rejection of a 'criminalisation' approach as the only strategy for dealing with the problem of domestic and family violence has been widely acknowledged (Department of Communities 2001: 99; Blagg 2008). In fact the Cape York Justice Study called for three levels of response:

- community-controlled prevention and early intervention
- community-controlled and civil responses to violence, and
- criminal justice system responses (Department of Communities 2001: 100-102).

Perhaps the disillusionment with the existing criminal justice response is best summarised by Memmott et al (2006: 18).

> A concern regularly voiced by Indigenous community members regarding family violence is the way offenders are treated by the criminal justice system once a violent act has been brought to its attention. Complaints are frequently made about offenders being drawn into a system that separates them from the local consequences of their actions, and from any efforts to attain justice for those concerned within their kinship-focused communities. Concern is frequently voiced by victims that their trauma is not heard and considered during the sentencing process. Furthermore, and most particularly, Indigenous communities decry that traditional law is not a part of the process. It is argued

that this 'blindness' to the context in which violent acts are carried out is a key part of what drives recidivism, or continued family violence, and that it is coupled with offenders not being made to understand the consequences of their actions in terms they can relate to, by people whose authority they are bound by culture to respect.

Blagg (2000, 2008) suggests that Indigenous views of domestic and family violence differ from non-Indigenous views in following areas:

- there is a rejection of criminalisation as the main strategy to deal with family violence;
- there is greater stress on the impact of colonialism, trauma, family dysfunction and alcoholism as primary causes of violence
- male violence is seen as less an expression of patriarchal power than as a compensation for lack of status, esteem and value
- there is greater emphasis on the impact of family violence on the family as a whole
- there is greater emphasis on a range of potential perpetrators including husbands, sons, grandsons, and other male kin;
- there is a great emphasis on healing and re-integrating the offender.

1.6 Comparative Legislative Overview

Some comparative analysis was undertaken in relation to the legislative regimes for dealing with domestic and family violence in other Australian jurisdictions, as well as a discussion of existing references to Aboriginal and Torres Strait Islander people in Queensland legislation. Much greater detail of the comparative material is provided in Appendix A.

1.6.1 Indigenous Legislative References in Other Jurisdictions

There is no specific reference to Indigenous people in domestic violence legislation in South Australia, Victoria and Tasmania. (See Appendix A.1)

In other states and territories domestic violence legislation usually refers to Aboriginal and Torres Strait Islander people in the context of defining a domestic relationship to include persons who are regarded as extended family or according to kinship as defined by Indigenous traditions and customs.

- ACT *Domestic Violence and Protection Orders Act 2001* s10A
- New South Wales *Crimes Amendment (Apprehended Violence) Act* 2006 s562B
- *Western Australia Restraining Orders Act 1997* as amended by *Acts Amendment(Family and Domestic Violence) Act 2004* s4
- Northern Territory *Domestic Violence Act* s32
- Queensland *Domestic and Family Violence Protection Act 1989* s12A

The Commonwealth Model Domestic Violence Legislation 1999 s4 also has a similar provision.

The Queensland legislation is the only domestic and family violence legislation where there is also a provision that seeks to ensure that Indigenous respondents and aggrieved understand the orders. Section 50 provides that:

> *a court may arrange with a community government under the Local Government (Community Government Areas) Act 2004, Torres Strait Islander local government, community justice group or group of elders for someone to explain the order to an aggrieved or respondent.*

The section would appear to apply only if the aggrieved and/or respondent is before the court. Failure to comply with the section does not affect the validity of the domestic violence order.

1.6.2 Indigenous Legislative References in Queensland Criminal Law

There are several specific references to Aboriginal and Torres Strait Islander people in Queensland criminal law. These references relate to legislative principles in the case of juvenile justice.

> *Juvenile Justice Act 1992*
> Section 2 Objectives of Act
> The principal objectives of this Act are–
> (a) to establish the basis for the administration of juvenile justice; and
> (b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and
> (c) to provide for the jurisdiction and proceedings of courts dealing with children; and
> (d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
> (e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to–
> (i) rehabilitate children who commit offences; and
> (ii) reintegrate children who commit offences into the community.

There are also specific provisions relating to Aboriginal and Torres Strait Islander people at the time of sentencing. These provisions allow the court to hear from community justice groups and Elders groups.

> *Penalties and Sentences Act 1992*
> Section 9 Sentencing guidelines
> (2) In sentencing an offender, a court must have regard to–
> (o) if the offender is an Aboriginal or Torres Strait Islander person–any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example–
> (i) the offender's relationship to the offender's community; or
> (ii) any cultural considerations; or
> (iii) any considerations relating to programs and services established for offenders in which the community justice group participates;

Children's Court Act 1992
Section 20 Who may be present at a proceeding
(1) In a proceeding before the court in relation to a child, the court must exclude from the room in which the court is sitting a person who is not–
(g) if the child is an Aboriginal or Torres Strait Islander person–
(i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
(ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child;

It is these sections in the *Penalties and Sentences Act 1992* and the *Children's Court Act 1992* that allow for the Murri Court to operate.

1.6.3 Comparative Legislative Issues

Appendix A.2 shows the comparative analysis between various domestic and family violence legislation around the following questions:

- How much should the legislation spell out its aims?
- Should domestic violence be defined, especially in order to recognise its extension beyond physical/sexual abuse to property damage, threats, emotional /psychological and economic abuse (Tasmania is currently the only jurisdiction explicitly recognising economic abuse)?
- How should the special vulnerabilities of children be recognised?
- How should the issue of juveniles as perpetrators be dealt with?
- What should be included in the categories of applicable relationships?
- Who should be removed from the family home – the victim or the perpetrator, and what should be the considerations in deciding what the appropriate action should be?
- What should the extent of police powers be to effectively protect victims and their children?
- Should victims of domestic violence be liable for aiding/abetting the breach of orders?
- What are the appropriate penalties for breach?

There is a wide range of matters identified above which are essentially beyond the scope of this research. However, throughout the course of this report we have drawn on the comparative material as appropriate to specific issues such as police powers of detention, police powers in relation to initiating or making orders, and the penalties and principles applicable to sentencing for breaches of orders.

1.7 Identifying Successes in Indigenous Approaches to Domestic and Family Violence

While there are numerous Indigenous family violence projects nationally[5], most programs tended to be preventative rather than interventionist. That is, most programs

[5] Partnerships Against Domestic Violence funded 74 Indigenous violence projects between 2001 and 2004. Memmott et al 2001. identified 131 Indigenous violence programs nationally.

were not focused on the point when violence was just about to occur, was occurring or had just occurred (Memmott et al. 2006: 3). Interventionist programs would include, for example, responses such as counselling, night patrols, wardens, and women's refuges.

It has been widely recognised that there has been little systematic evaluation of the variety of programs which address Indigenous domestic and family violence (Memmott et al. 2006: 14; Department of Communities 2001: 33). However, based on the literature and existing evaluations, Memmott et al. (2006) identify five Indigenous family violence projects or programs: remote area night patrols that target family violence; the Apunipima project in Cape York which focused on a community-controlled counselling service; the 'Walking into Doors' community education and media campaign; the Yirra Yaakin Noongar Theatre's Kutta Kutta project which focused on a performance and follow-up workshops on family violence; and the circle sentencing courts in New South Wales.

Memmott et al. (2006) have identified some of the key barriers to effective program execution, which include the following:

- lack of suitable sectoral partnerships for program delivery
- lack of coordination at the local level
- lack of training and skills among program staff
- lack of funding or insufficient funding
- unethical community politics interfering with program execution
- programs not directly targeted at the worst forms of violence in a community, which may appear too awesome to tackle
- programs being predominantly reactive and not balanced with proactive components to reduce incidents of violence
- lack of coordination or fragmentation between state and Commonwealth goals and programs
- violence intervention staff themselves can be threatened and/or assaulted by violent perpetrators
- 'burn-out' among program staff caused by regularly dealing (both during and out of work hours) with the constant, stress-inducing occurrences of violence in the community (Memmott et al. 2006: 20).

In contrast the good practice elements necessary for Indigenous family violence projects include:

- cultural grounding of projects
- community grounding of projects
- the engagement of men into programs
- ensuring the involvement of Elders
- self-empowerment and self-esteem as capacity-building by-products
- examining inter-generational family history and colonial experience as a healing element
- cultural preference for group approaches
- capacity building through networking and partnerships

- information collection and dissemination
- training and skills acquisition
- flexibility and adaptability of projects (Memmott et al. 2006: 20).

What is the relevance of this discussion of Indigenous programs in terms of the use of domestic violence orders and the current domestic and family violence legislation? As will become apparent, Indigenous use of domestic violence orders requires a range of support networks and institutions which allow for more effective use of the legislation, or alternatively, circumvent the need for a legislative intervention in the first place. One of the main findings of the current research is that legislative intervention is unlikely to be successful unless there is a range of basic support services available for Indigenous women.

1.8 Restorative Justice: A Change in Focus?

The potential relationships between restorative justice and Indigenous justice has been discussed for sometime (Cunneen 1997, 2007), as has the potential relationship between restorative justice and domestic and family violence interventions (see for example Stubbs 2004, Nancarrow 2006). It is widely recognised that the application of restorative justice to areas of Indigenous justice or domestic and family violence is potentially problematic.

Despite the potential problems, there is strong support among Indigenous people for alternative approaches to the current criminal justice system interventions – either in terms of modifying and strengthening those approaches or in the consideration of new approaches outside of traditional criminal justice interventions. The Aboriginal and Torres Strait Islander Women's Taskforce on Violence referred to restorative justice on a number of occasions in their report:

- Restorative justice is a viable alternative that must be considered in circumstances where Indigenous people are disproportionately represented in correctional centres (ATSIWTV 2000: 255).

- Reform must be accompanied by willingness to view an alternative paradigm and to accept restorative justice methods where appropriate (ATSIWTV 2000: 257).

The alternative approaches recommended by the Taskforce included the use of sentencing circles as one restorative justice method (ATSIWTV 2000: 256). Underpinning this was a recognised need for a better coordinated network that includes community justice groups, women's groups and men's groups, health services and visiting magistrates. Community justice groups 'could participate with the family and the offender to determine a suitable counselling format for the offender. Such information could then be supplied to the visiting magistrate as a mandatory part of the sentencing process' (ATSIWTV 2000: 211).

> The sentencing court should still be able to seek a fully detailed brief on all matters pertinent to the case that could allow the Elders and the local justice groups to identify possible means by which the offender can address his/her behaviour. This could then form a mandatory part of that sentence (ATSIWTV 2000: 250)

It is clear that the Aboriginal and Torres Strait Islander Women's Taskforce on Violence saw restorative justice as a way of strengthening Indigenous culturally based and controlled approaches to dealing with domestic and family violence, and that Indigenous-specific approaches to domestic and family violence have led to different approaches and priorities to those identified by mainstream approaches to domestic and family violence (Nancarrow 2006).

Nancarrow's (2006) work extended that of the ATSIWTV (2000) through interviews with Indigenous and non-Indigenous women involved in two Taskforces which addressed issues of women and criminal justice. She specifically focused on questions relating to the appropriateness of restorative justice in cases of domestic and family violence. Her research found that Indigenous women 'saw the criminal justice system as a tool of oppression against Indigenous people and a facilitator of increased violence against them and their communities' – an opposite view to the interviews with non-Indigenous women (Nancarrow 2006: 94).

None of the Indigenous women preferred the criminal justice system as a response to domestic and family violence compared to restorative justice. Indigenous women saw several failures of the criminal justice system. It failed at the symbolic level and was irrelevant to Indigenous people because there was no ownership of the institution; it failed by escalating the violence against women and children (imprisoned men returned more violent, and there was potential violence from the perpetrator's family); and it failed by continuing to separate Indigenous families. Indigenous women's 'focus was largely on rehabilitation of the offender and restoration of the relationship between the offender and the victim, and between the offender and the broader community' (Nancarrow 2006: 98).

Indigenous and non-Indigenous women also had different views about what constituted restorative justice. For Indigenous women, restorative justice was a structured meeting between people directly affected by an offence, including extended family and the broader community. Importantly, 'central to their concept of restorative justice was the promise of an element of self-determination for Indigenous people' (Nancarrow 2006: 94).

Nancarrow found that Indigenous women's support for restorative justice was conditional upon it being part of a holistic response, based on self-determination and with a strong organic connection to community initiatives. The same point is made perhaps more forcibly by Blagg (2008) based on his work with the Western Australia Law Reform Commission's Inquiry into customary law. His turn of phrase is 'Restorative justice: an idea whose time has gone?' (Blagg 2008: 74). By this comment he is drawing attention to the fact that Indigenous demands for recognition of Indigenous law may have surpassed what restorative justice can offer.

> Aboriginal customary law cannot simply be collapsed into restorative justice. Restorative justice articulates popular feelings of alienation from impersonalized justice *institutions*: for colonised peoples the sense of estrangement is deeper and extends not just to social institutions but to underlying *social structures* (Blagg 2008: 74; emphasis in original).

Having said that, it is likely that hybrid models of justice which involve, to a great or lesser extent, elements of the criminal justice system are the most likely development.

Stubbs' (2004: 18) work on restorative justice and domestic and family violence concludes by doubting the ability of generic models of restorative justice to provide adequate and just response to domestic violence. Perhaps for a different set of reasons, generic models of restorative justice will also be unable to satisfy Indigenous demands for change – because Indigenous demands prioritise self-determination and strong connections to local contexts.

1.9 Conclusion

Generally speaking existing domestic and family violence legislation nationally does not specifically refer to Indigenous people except where Indigenous family and kinship relations are relevant to definitions of domestic violence relationships. Queensland domestic and family violence legislation attempts to ensure that Indigenous aggrieved and respondents understand the relevant order and its conditions. Queensland legislation also provides for recognition of Indigenous background in relation to the advice that can be provided to the court at the time of sentencing.

There is a considerable amount of research which summarises the problems which Indigenous women face using the criminal justice system. Perhaps the ATSISJC summarises it most succinctly by noting that the issues fall into two areas: barriers to the legal process and lack of effective change in the behaviour of offenders. There maybe a desire to improve the current operation of the criminal justice system, as well as a demand for alternative Indigenous responses.

On the surface, there may be a range of contradictory attitudes to traditional Western criminal justice responses, including both critique of the failure of existing systems, the desire to develop and enhance Indigenous approaches, and the desire to rely on an improved criminal justice responses in particular circumstances. In this context the three-tiered response advocated by the Cape York Justice Study has the most chance of satisfying Indigenous demands. Such a response requires attention to interventions which are both community and justice-system driven and cover non-legal, civil legal responses and responses by the criminal law.

One of the most important insights from Nancarrow's (2006) interviews with Indigenous women was that the existing system of legal interventions failed at both a symbolic level and a practical level: there was no ownership of the institutions of justice; and those institutions failed to live up to their stated goals of protection and rehabilitation.

CHAPTER TWO
THE INCIDENCE OF DOMESTIC AND FAMILY VIOLENCE AND POLICE RESPONSES

2.1 Introduction

In recent years there has been a particular concentration on the level of violent crime in Aboriginal and Torres Strait Islander communities in Australia. Perhaps the most comprehensive report in regard to this issue is *Violence in Aboriginal Communities* (Memmott et al. 2001). The literature notes the many types of violence which can impact on Aboriginal communities including physical, psychological and economic abuse. Physical abuse can take various forms from homicide, sexual assault, spouse assault to child abuse and can involve families, relatives and inter-group fighting. Suicide and self-injury also need to be considered when discussing violence (Memmott et al. 2001). However, this report specifically focuses on domestic and family violence, and access to the legal system.

2.1.1 Definitions of Domestic and Family Violence

Indigenous people do not believe that the term 'domestic violence' adequately describes the nature of violence within their families and communities. There is a preference for the term 'family violence'. Family violence, as defined in the Aboriginal and Torres Strait Islander Commission report *Tjunparni: Family Violence in Indigenous Australia*, is the behaviour and experience of 'beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse and child sexual abuse … When we talk of family violence we need to remember that we are not talking about serious physical injury alone but also verbal harassment, psychological and emotional abuse, and economic deprivation, which although as devastating are even more difficult to quantify than physical abuse' (quoted in Partnerships Against Domestic Violence 2001: 1).

A recent comprehensive report on violence in Indigenous communities summarised the nature of family violence as:

- family violence may involve all types of relatives. The victim and the perpetrator often have a kinship relation
- the perpetrator of violence may be an individual or a group
- the victim of violence may also be an individual or a group
- the term 'family' means 'extended family' which also covers a kinship network of discrete, intermarried, descent groups
- the 'community' may be remote, rural or urban based; its residents may live in one location or be more dispersed, but nevertheless interact and behave as a social network
- the acts of violence may constitute physical, psychological, emotional, social, economic and/or sexual abuse
- some of the acts of violence are ongoing over a long period of time, one of the most prevalent examples being spousal (or domestic) violence (Memmott et al. 2001: 34).

Most of the recent literature on violence in Aboriginal communities deals with family violence, and it is often taken to be synonymous with violence more generally.

Perhaps it is also worth considering whether useful distinctions can be made between family violence and, for example, inter-group violence, cyclic violence and 'dysfunctional community syndrome'. For a discussion of these categories, see Memmott et al. (2001: 34-54).

One of the problems with the above definitions of family violence is that they are far broader than legal definitions of domestic and family violence. Domestic and family violence protection orders are not designed as responses to, for example, rape, sexual assault or child abuse. Section 11 of the Queensland *Domestic and Family Violence Protection Ac 1989t* defines domestic violence as follows:

(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;
Example of paragraph (b)—
Wilfully injuring a de facto's pet.
(c) intimidation or harassment of the other person;
Examples of paragraph (c)—
1. Following an estranged spouse when the spouse is out in public, either by car or on foot.
2. Positioning oneself outside a relative's residence or place of work.
3. Repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night).
4. Regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent's fortnightly pension cheque.
(d) indecent behaviour to the other person without consent;
(e) a threat to commit an act mentioned in paragraphs (a) to (d).

2.1.2 Indigenous Women, Family Violence and Homicide

Based on Western Australian police reports, Aboriginal women are 10.7 times more likely to be victims of violent crime than non-Aboriginal women (Harding et al. 1995: 22). Further analysis of the police reports by age revealed extraordinarily high victimisation rates for Aboriginal women in the 20 to 24 year age group. One in ten women in this age group had a reported offence of violence committed against her in a twelve month period (Harding et al. 1995: 23). Other research shows that violence as a cause of hospitalisation for young people between the ages of 15 and 24 is at a rate 2.7 higher for Indigenous males than non-Indigenous males, and 15 times higher for Indigenous women than non-Indigenous women (AIHW 1999).

Homicide rates show that Indigenous people are 8.1 times more likely to be victims of homicide than non-Indigenous people (Mouzos 2000). However, they are higher again for Indigenous women. A nine-year study of homicide and Indigenous women between 1989 and 1998 showed that the rate of homicide for Indigenous women was 11.7 compared to a non-Indigenous rate of 1.1. Thus Indigenous women were more than 10 times more likely to be a victim of homicide than other women in Australia (Mouzos 1999).

Indigenous women were also more likely to be killed by an intimate partner than non-Indigenous women (75 per cent for Indigenous women compared to 54 per cent for non-Indigenous women). Conversely very few Indigenous women were killed by strangers (1.5 per cent of Indigenous women compared to 17.2 per cent of non-Indigenous women) (Mouzos 1999). Approximately 95 per cent of Indigenous women killed were killed by Indigenous men (Mouzos 1999).

Data from Western Australia showed that Aboriginal women are 45 times more likely than non-Aboriginal women to be a victim of domestic violence (Ferrante, Morgan, Indermaur and Harding 1996). South Australian research suggests that rates are likely to be between 7 and 16 times higher among Aboriginal people than non-Aboriginal people (Partnerships Against Violence 2001: 2).

Western Australian data also shows a much greater proportion of serious assaults are spousal assaults in Aboriginal communities: 39.5 per cent in Indigenous communities compared to 7.5 per cent in non-Aboriginal communities. The incidence of violence directed to family members was also higher: 17.2 per cent of serious assaults in Aboriginal communities compared to 4.4 per cent in non-Aboriginal communities.

Witnessing parental domestic violence has a significant effect on young people's attitudes and experiences. Around 45 per cent of Indigenous young people considered that family violence was a common problem (Australian Bureau of Statistics 1995).

Indigenous children and young people also experience higher rates of abuse and neglect than non-Indigenous children (AIHW 2000), although this finding is also the subject of controversy over identification and definitional issues (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997).

In summary, the national research data demonstrates that Indigenous women are:

- more than 10 times more likely to be a victim of homicide than other women in Australia
- 45 times more likely than non-Indigenous women to be a victim of domestic violence (based on Western Australia data)
- 10.7 times more likely to be victims of violent crime than non-Indigenous women (based on Western Australia data)
- more than twice as likely to be the victim of sexual assault than non-Indigenous women (based on New South Wales data)
- 7 times more likely to suffer grievous bodily harm in an assault than non-Indigenous women (based on New South Wales data)
- 30 times more likely to be hospitalised for assault than non-Indigenous women in Australia.

For sources and further information see: ATSISJC (2002, 2003, 2006), AIHW (2006), Cunneen (2001) and Memmot et al. (2001).

2.1.3 Unreported Crime and Family Violence

Much of the violence against Indigenous women is not reported and does not lead to police intervention. In Queensland, Atkinson (1990) estimated that 88 per cent of rape

and assault cases in Aboriginal communities are unreported. On Palm Island, Barber, Punt and Albers (1988: 96) noted that 'assault and rape are the two most under-reported crimes on the Island and that it can take something as extreme as pack rape before a woman will complain'. Similarly, the National Aboriginal and Torres Strait Islander Social Survey in Western Australia revealed that Indigenous women were less likely to report crimes of violence than non-Indigenous women (Harding et al 1995: 18). In some communities violence is said to affect up to 90 per cent of Indigenous families (Queensland Domestic Violence Taskforce 1988: 256). A recent national report again highlighted the problem of under-reporting of violence (Memmott 2001: 7).

The ABS Personal Safety Survey showed that in 2005 some 69 per cent of women who reported being physically assaulted by a man did not report the incidence of violence to the police (this was a decline from the 79 per cent recorded in 1996). The 1996 Women's Safety Survey showed that only 16 per cent of women who had been physically or sexually assaulted by a man since the age of 15 used services after the last incident. The most common types of services used after a physical assault were legal services (11 per cent), crisis services (6 per cent) and financial services (3 per cent), with similar results for those who were sexually assaulted (AIHW 2006: 29).

Although based on a small sample, the Australian component of the International Violence Against Women Survey found that Indigenous women (71 per cent) were more likely to have experienced some form of violence in their lifetime than non-Indigenous women (57 per cent), and were more likely to have experienced violence in the last 12 months than non-Indigenous women (25 per cent compared to 10 per cent) (AIHW 2005: 32).

There is widespread research and data which shows that Indigenous women are more likely to be victims of violence (including homicide) than non-Indigenous women.

Most reports and research discuss the high level of under-reporting of crimes of violence by Indigenous women.

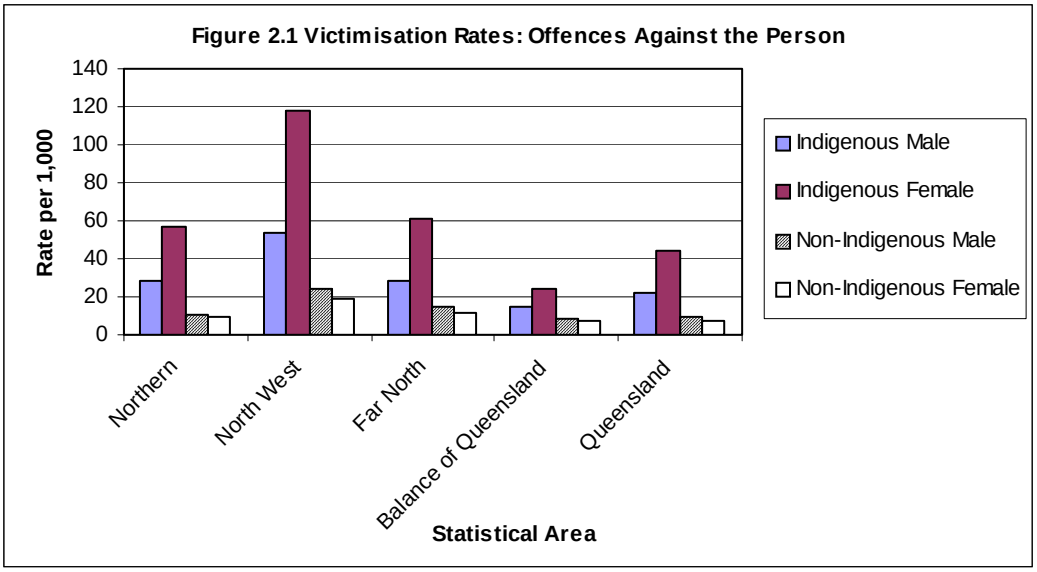
Under-reporting by women of incidents of violence is common (69 per cent nationally in 2005). However, large-scale victims surveys do not distinguish between Indigenous and non-Indigenous reporting rates.

2.2 Indigenous Women and Crimes of Violence in Queensland

Publicly available data on the incidence of crimes of violence in Indigenous communities is sparse. The Queensland Criminal Justice Commission has been developing statistics on rates of reported crime by police divisions. Some of this material specifically on the rate of crimes against the person can be found in Memmott (2001). This data shows that between 1994–95 and 1996–97 the divisions in the state with the highest reported crime rates are located in Aboriginal communities, or areas with substantial Indigenous populations. Communities such as Cairns, Mareeba, Townsville, Rockhampton and Gympie also have relatively high rates. In the outer urban areas of Brisbane, the divisions with the highest rates are Ipswich, Inala and Logan Central. Based on this data from the mid 1990s, Memmott

et al. (2001: 14) identified the four places with the worst incidence of violent crime in Queensland as Aurukun, Doomadgee, Kowanyama and Mornington Island.

The *Evaluation of the Aboriginal and Torres Strait Islander Justice Agreement* analysed QPS data on victims of offences against the person for 2004 (Cunneen 2005: 32-34). The data identified whether the victim was male or female and Indigenous or non-Indigenous. Figure 2.1 is taken from the *Evaluation* and shows the rate of victims by Indigenous status for the statistical regions of northern, north west and far north. The remaining statistical regions are collapsed into the 'balance of Queensland'.



Source: Cunneen (2005: 34)

Overall, the victimisation levels are approximately four times higher for offences against the person among Indigenous compared to non-Indigenous peoples. The rate of victimisation is particularly high in the north west region. The Indigenous rate of victimisation in the north west region is 2.6 times higher than the Indigenous rate for Queensland as a whole (86.6 compared to 33.5 per 1000). Generally, the northern and far north regions have higher rates than the rest of the state.

However, what stands out most dramatically in Figure 2.1 is the rate at which Indigenous women are victims of crimes against the person. For Queensland as a whole, Indigenous women are twice as likely as Indigenous men to be victims of offences against the person. They are 4.7 times more likely to be victims compared to non-Indigenous men, and nearly six times more likely to be victims than non-Indigenous women.

In the north west region, the rate of victimisation for Indigenous women is 118.4 per 1000 of the Indigenous female population, which is a victimisation rate greater than one in ten Indigenous women in the community.

Table 2.1 shows more recent data supplied by QPS for the current report. The table shows victims of offences against the person by gender and Indigenous status for 2006-07.

Table 2.1 Victims of Offences Against the Person 2006-07

	Indigenous		Non-Indigenous		Total	
	No	**per cent**	**No**	**per cent**	**No**	**per cent**
Male	999	31.2	13 141	56.1	14 140	53.0
Female	2207	68.8	10 305	43.9	12 512	47.0
Total	**3206**	**100**	**23446**	**100**	**26652**	**100**

Excludes 107 victims where gender was not recorded.
Chi-square = 701.38, df =1, p = 0.000 (significant)
Data Source: Queensland Police Service

The QPS data shows that:

- **Indigenous people** comprise 12.0 per cent of all recorded victims of offences against the person (3206 of 26 653).

- **Indigenous women** comprise 17.6 per cent of all recorded female victims of offences against the person (2207 of 12 512).

- **Indigenous women** comprise 68.8 per cent of all recorded Indigenous victims of offences against the person (2207 of 3206).

The QPS data on victimisation was provided by local government area (LGA) for Queensland. To provide further information on specific areas, those Queensland LGAs with the greatest number of Indigenous women recorded as victims of offences against the person were ranked from 1-10 over a three-year period.

Table 2.2 shows that there is very little difference over a three-year period in those LGAs with high numbers of reported offences against Indigenous women, particularly for Cairns, Yarrabah, Mount Isa, Townsville, Palm Island, Brisbane and Aurukun which appear in the top ten LGAs for each of the three years.

Table 2.2 Indigenous Female Victims of Reported Violent Offences by Top Ten LGA over Three Years

LGA	Indigenous Female Victims of Reported Violent Offences					
	2006-07		2005-06		2004-05	
	Rank	No	Rank	No	Rank	No
Cairns	1	187	2	174	1	167
Yarrabah	2	140	4	116	6	92
Mount Isa	3	121	3	120	3	118
Townsville	4	117	6	100	2	123
Palm Island	5	113	1	200	7	84
Carpentaria	6	90			10	61
Brisbane	7	89	7	93	4	113
Aurukun	8	72	5	102	5	100
Kowanyama	9	68	10	58		
Mornington	10	58				
Rockhampton			8	84	8	62
Pormpuraaw			9	63		
Cherbourg			10	58		
Woorabinda					9	62

Data Source: Queensland Police Service

It is important to remember the data refers to victims of reported offences, and so will be subject to the extent to which offences are reported to police, and to any variability in police practices. However, the consistency over a number of years would suggest that these are clearly areas with high levels of violence against Indigenous women.

Table 2.3 Indigenous Female Victims of Reported Violent Offences by Rate per 1000 2006-07

LGA	2006-07	LGA	2006-07
	Rate per 1000		Rate per 1000
Kowanyama	86.18	Mount Isa	37.05
Pormpuraaw	82.53	Townsville	25.68
Aurukun	79.64	Mareeba	23.82
Yarrabah	69.41	Thuringowa	19.29
Mornington	68.39	Rockhampton	18.29
Woorabinda	57.64	Cairns	16.9
Palm Island	56.52	Ipswich	12.39
Doomadgee	52.53	Brisbane	7.48
Cherbourg	41.89	Torres	6.58
Carpentaria	41.26		

Sources: Victim data from QPS, population data from *The Indigenous Population of Queensland, 2006 Edition,* http://www.localgovernment.qld.gov.au/?id=3594 Appendix A and Appendix B.

Table 2.3 takes those LGAs where in 2006-07 there were 40 or more Indigenous female reported victims of offences against the person, and shows the data as a rate per 1000 of the total Indigenous population for that area.[6]

[6] 40 reported victims was chosen as the cut-off point to allow identification of those LGAs that had the highest volume of reported offences as well as the highest rates.

In 2006-07 Indigenous women comprised 17.6 per cent of all recorded female victims of offences against the person and comprised 68.8 per cent of all recorded Indigenous victims of offences against the person.

Those communities with the highest reported rates of violent offences against Indigenous women included Kowanyama, Pormpuraaw, Aurukun, Yarrabah and Mornington.

2.3 Domestic and Family Violence Incidents

The discussion above related to crimes of violence generally, and included offences against the person which are not necessarily domestic and family violence. There is very limited research on the incidence of domestic and family violence involving Indigenous aggrieved or respondents. The Crime and Misconduct Commission (2005) report on policing domestic violence noted the high rates of confirmed domestic violence incidents per 100 000 population in Mount Isa (2593 per 100 000), Charleville (1089 per 100 000) and Cairns (988 per 100 000) police districts (CMC 2005: 31).

The CMC noted that approximately 23 per cent of domestic violence victims statewide were Indigenous, while 60 per cent of victims in the Far Northern Region and 55 per cent of victims in the Northern Region were Indigenous. The Commission also drew attention to the high proportions of domestic violence calls involving Indigenous people in Mount Isa and Cairns districts, and argued this 'may be a consequence of multiple factors such as high unemployment, drug or alcohol problems and other health issues. Mount Isa and Cairns districts also have the highest officer workload for domestic violence in the state' (CMC 2005: 36).

The data used for the following analysis was supplied by the QPS from their DV Index. It relates to incidents entered onto the Index where the date of the incident occurrence fell between 1 July 2006 and 30 June 2007. Indigenous status for the aggrieved and respondent was supplied.

Table 2.4 DV Index Recorded Incidents Attended by Police by Indigenous Status of Either Aggrieved or Respondent. 2006-07

	No	**per cent**
Indigenous	9473	26.4
Non-Indigenous	26 424	73.6
Total	35 897	100

Source: QPS DV Index. Missing cases=92. Some 1651 records with aggrieved or respondent person type 'other' have not been included in this analysis. This is 4.4 per cent of the total recorded incidents in 2006-07.

Table 2.4 shows that police attended 35 987 incidents where the Indigenous status of the aggrieved or respondent was recorded. Some 26.4 per cent of these incidents involved at least one party (either the aggrieved or the respondent) who was Indigenous. As noted, in some 1651 incidents the respondent or aggrieved were recorded as 'other' and these have been removed from the analysis.

Table 2.5 shows whether the aggrieved was male or female and Indigenous or non-Indigenous. Indigenous aggrieved were more likely to be female than non-Indigenous aggrieved (81.4 per cent compared to 77.6 per cent).

Table 2.5 DV Index Recorded Incidents Attended by Police by Indigenous Status and Gender of Aggrieved. 2006-07

Aggrieved	Indigenous		Non-Indigenous	
Gender	**No**	**per cent**	**No**	**per cent**
Female	6561	81.4	21 589	77.6
Male	1502	18.6	6247	22.4
Total	8063	100.0	27 836	100.0

Source: QPS DV Index. Missing cases=90. Some 1651 records with aggrieved or respondent person type 'other' have not been included in this analysis.
Chi-square = 53.73, df = 1, p = 0.0001 (significant)

Table 2.6 shows a slight (but significant) difference in the gender of Indigenous respondents. Indigenous respondents were more likely to be female than non-Indigenous respondents.

Table 2.6 DV Index Recorded Incidents Attended by Police by Indigenous Status and Gender of Respondent.
2006-07

Respondent	Indigenous		Non-Indigenous	
Gender	**No**	**per cent**	**No**	**per cent**
Female	1605	19.9	5285	19.0
Male	6458	80.1	22 547	81.0
Total	8063	100.0	27 832	100.0

Source: QPS DV Index. Missing cases=98. Some 1651 records with aggrieved or respondent person type 'other' have not been included in this analysis.
Chi-square = 128.07, df = 1, p = 0.0001 (significant)

In 2006-07 some 26.4 per cent of incidents initially defined as domestic and family violence and responded to by police involved either or both an Indigenous aggrieved and respondent. Indigenous women were slightly more likely to be either an aggrieved or a respondent in Indigenous incidents than was the case for non-Indigenous women in non-Indigenous incidents.

2.4 Defining Incidents of Domestic and Family Violence

Not all of the incidents recorded on the DV Index were subsequently defined by police as involving domestic and family violence. The recent Crime and Misconduct Commission (CMC 2005) report provides a useful overview of the definitional and reporting requirements in relation to police responses to domestic violence.

When a member of the public calls for police assistance, an operator at the Police Communication Centre (PCC) determines the nature and priority of the call and dispatches a patrol car to deal with the situation. An initial job code is recorded, based on information that the operator receives. This information is not always complete or correct and, consequently, the initial code given to a call for service may not reflect the true nature of the call.

All calls for service that are initially dispatched as domestic violence incidents must be recorded in the DV Index. During the six-month period from April to September 2003, police dealt with 20 251 jobs initially dispatched as domestic violence. Of these, about 83 per cent (16 751) were verified as domestic violence incidents (CMC 2005: 31).

It is important to note therefore that a significant number of callouts initially recorded as domestic violence on the DV Index are subsequently classified as not being domestic violence. Again as the CMC notes:

Officers attending domestic violence incidents undertake a number of actions that vary with the situation. Once dispatched to a domestic violence call, officers must record details of the incident on the DV Index database, even if preliminary investigation determines that the matter reported does not constitute domestic violence (OPM, section 9.11.1). In these circumstances, the officer records **'No DV'** as the action taken (CMC 2005: 38).

Table 2.7 below shows the number of incidents initially recorded as 'DV' which were subsequently classified as 'No DV' by police attending the incident, and whether the aggrieved was Indigenous or non-Indigenous. The incident is 3 percentage points more likely to classified as 'No DV' if the aggrieved is Indigenous.

Table 2.7 DV Index Recorded Incidents by Those Defined as 'No DV'. Indigenous and Non-Indigenous Aggrieved. 2006-07

Incident	Indigenous Aggrieved		Non-Indigenous Aggrieved	
	No	per cent	No	per cent
No DV	2063	25.6	6306	22.6
Other Outcome	6000	74.4	21 537	77.4
Total	8063	100.0	27 843	100.0

Source: QPS DV Index. Missing cases=83. Chi-square = 30.18, df = 1, p = 0.0000 (significant)

Table 2.8 shows the whether the incident is more or less likely to be classified as DV if the respondent is Indigenous. The incident is 2 percentage points more likely to be classified as 'No DV' if the respondent is Indigenous.

Table 2.8 DV Index Recorded Incidents by Those Defined as 'No DV'. Indigenous and Non-Indigenous Respondent. 2006-07

Incident	Indigenous Respondent		Non-Indigenous Respondent	
	No	**per cent**	**No**	**per cent**
No DV	2077	24.8	6293	22.8
Other Outcome	6284	75.2	21 248	77.2
Total	8361	100.0	27 541	100.0

Source: QPS DV Index. Missing cases=87. Chi-square = 14.23, df = 1, p = 0.0002 (significant)

An incident involving either an Indigenous aggrieved or respondent which was initially defined as a DV incident is more likely to be re-classified as not being DV by responding police, than if either party is non-Indigenous. Although statistically significant, the difference is not large.

Overall Indigenous people were the aggrieved in 21.8 per cent of incidents accepted by responding police as being domestic and family violence incidents.

2.5 Police Responses to Domestic and Family Violence Incidents

If police decide that the incident they have responded to is a domestic and family violence incident, there are a number of actions which can be initiated, including 'no action', detention, summons and breach. The CMC (2005) report provides a useful overview of the possible police responses to domestic and family violence as recorded on the DV Index.

> If preliminary investigation determines that the incident involves domestic violence, the officer may determine that no action is warranted. The number of 'no actions' recorded by officers is closely monitored by police management. Officers would assert that some of the jobs identified as domestic violence were minor verbal arguments, or had little likelihood of happening again. Therefore, taking no action as defined by domestic violence policy can be a valid and proper response. **[no action]**
>
> If the attending officer believes that domestic violence has been committed and a person or their property is at risk, they then have the option of detaining the respondent for up to four hours for the purposes of making an application for a protection order (OPM, section 9.6.6). [**detention**]
>
> Alternatively, if the respondent is not present at the time of police arrival at the scene, an application for a protection order by way of a summons can be made. **[summons]**
>
> If a protection order is already in place, this constitutes a breach, in which case a criminal charge should be laid [**breach**] (CMC 2005:38-39, emphasis added).

Table 2.9 show police outcomes and actions by whether the aggrieved was Indigenous or not. The major difference is that police responses to domestic and family violence involving Indigenous aggrieved are in situations where there is a protection order already in place (34 per cent compared to 29 per cent) and as a result the subsequent

action is a breach of the existing order. Where there is an Indigenous aggrieved and no order in place, the police action is less likely to result in detention and slightly more likely to involve the use of a summons. 'No action' is less likely to be an outcome in cases where there is an Indigenous aggrieved.

Table 2.9 Domestic violence incidents attended by police by Indigenous and non-Indigenous status of aggrieved, and by incident outcome/action. 2006-07

Outcome/Action	Indigenous Aggrieved		Non-Indigenous Aggrieved	
	No	per cent	No	per cent
No Action	1411	23.5	5560	25.8
Summons	1544	25.7	5220	24.2
Detention	1006	16.8	4492	20.9
Breach	2039	34.0	6265	29.1
Total	6000	100	21 537	100

Source: QPS DV Index. Missing cases=66. Chi-square = 90.67, df = 3, p = 0.0001 (significant)

Table 2.10 shows outcomes and actions when the respondent is Indigenous and demonstrates a similar pattern to that identified in Table 2.9. The main difference between Indigenous and non-Indigenous respondents relates to breaches of existing orders.

Table 2.10 Domestic violence incidents attended by police by Indigenous and non-Indigenous status of respondent, and by incident outcome/action 2006-07

Outcome/Action	Indigenous Respondent		Non-Indigenous Respondent	
	No	per cent	No	per cent
No Action	1436	22.9	5533	26.0
Summons	1616	25.7	5146	24.2
Detention	1077	17.1	4422	20.8
Breach	2155	34.3	6147	28.9
Total	6284	100	21 248	100

Source: QPS DV Index. Missing cases=71. Chi-square = 102.92, df = 3, p = 0.0001 (significant)

Domestic and family violence incidents involving Indigenous aggrieved and respondents are more likely to involve breaches of existing orders and are less likely to result in 'no action' being taken, than is the case for non-Indigenous incidents.

2.6 The Location of Police Responses to Indigenous Domestic and Family Violence Incidents

As noted above in Table 2.5, the DV Index contained records of 8063 incidents in 2006-07 where the aggrieved was an Indigenous person. Of the 8063 incidents initially defined as domestic violence, some 2063 were subsequently classified by police as 'no DV'. Therefore, the number of incidents where police responded to an Indigenous aggrieved and defined the situation as involving domestic violence was 6000 (see Table 2.7).

Table 2.11 shows the 6000 domestic violence incidents involving Indigenous aggrieved by police district. There are 29 police districts in Queensland.

Table 2.11
Domestic Violence Incidents* for Indigenous Aggrieved by Police District 2006-07

Police District	No	per cent	Cumulative per cent
CAIRNS	1567	26.12	26.12
MOUNT ISA	1010	16.83	42.95
TOWNSVILLE	938	15.63	58.58
ROCKHAMPTON	390	6.5	65.08
MAREEBA	328	5.47	70.55
GYMPIE	194	3.23	73.78
IPSWICH	185	3.08	76.87
LOGAN	142	2.37	79.23
TOOWOOMBA	140	2.33	81.57
INNISFAIL	124	2.07	83.63
BUNDABERG	92	1.53	85.17
MACKAY	91	1.52	86.68
CHARLEVILLE	90	1.5	88.18
ROMA	85	1.42	89.6
OXLEY	74	1.23	90.83
MARYBOROUGH	61	1.02	91.85
SOUTH BRISBANE	59	0.98	92.83
NORTH BRISBANE	58	0.97	93.8
GLADSTONE	57	0.95	94.75
WYNNUM	57	0.95	95.7
REDCLIFFE	43	0.72	96.42
WARWICK	39	0.65	97.07
SUNSHINE COAST	32	0.53	97.6
DALBY	28	0.47	98.07
PINE RIVERS	28	0.47	98.53
GOLD COAST	27	0.45	98.98
BRISBANE CENTRAL	25	0.42	99.4
LONGREACH	25	0.42	99.82
BRISBANE WEST	11	0.18	100
Total	6000	100.0	

* 2063 ‘no DV’ incident outcomes removed

Domestic and family violence incidents reported to and accepted by responding police and involving an Indigenous aggrieved are concentrated in relatively few police districts. Table 2.11 shows that three police districts (Cairns, Townsville and Mount Isa) contain 59 per cent of reported cases, and more than 80 per cent of reported cases are found in 9 districts.

Many police districts in Queensland cover large areas and multiple Aboriginal and Torres Strait Islander communities. The Cairns District reaches from Cairns in the south to the Torres Strait, including all of Cape York. Similarly, Mount Isa District

reaches from Birdsville to Burketown and Mornington Island. For the purposes of this research, a more useful breakdown can be found through analysing the data from the police divisions which comprise the larger district areas.

Three tables below show the police divisions within the Districts of Cairns, Townsville and Mount Isa. The number of domestic and family violence incidents involving an Indigenous aggrieved and the proportion of the total incidents involving Indigenous aggrieved for the District is shown in each table.

Table 2.12
Cairns District. Domestic Violence Incidents* for Indigenous Aggrieved by Division, 2006-07

Divisions in the Cairns District	No of Incidents	per cent
AURUKUN	96	6.1
BADU ISLAND	2	0.1
BAMAGA	59	3.8
CAIRNS	389	24.8
COEN	21	1.3
COOKTOWN	28	1.8
EDMONTON	71	4.5
GORDONVALE	23	1.5
HOPE VALE	53	3.4
HORN ISLAND	5	0.3
KOWANYAMA	152	9.7
LAURA	8	0.5
LOCKHART RIVER	32	2.0
MOSSMAN	55	3.5
PORMPURAAW	52	3.3
PORT DOUGLAS	3	0.2
SMITHFIELD	17	1.1
THURSDAY ISLAND	118	7.5
WEIPA	114	7.3
WUJAL WUJAL	23	1.5
YARRABAH	246	15.7
Total	1567	100

* ‘no DV’ incident outcomes removed.

In the Cairns District, more than 40 per cent of domestic and family violence incidents involving Indigenous aggrieved were in the city of Cairns and Yarrabah. Other major areas of incidents were, in order, Kowanyama, Thursday Island, Weipa and Aurukun.

Table 2.13
Mount Isa District. Domestic Violence Incidents* for Indigenous Aggrieved by Division, 2006-07
Omitted to protect the privacy and identity of individuals

In the Mount Isa District, some 45 per cent of domestic and family violence incidents involving Indigenous aggrieved were in the city of Mount Isa. Other major areas of incidents were, in order, Normanton, Mornington Island and Doomadgee.

Table 2.14
Townsville District. Domestic Violence Incidents* for Indigenous Aggrieved by Division, 2006-07
Table omitted because it contains information which may identify individuals

In 2006-07 some 217 police divisions in Queensland recorded an incident accepted by responding police as domestic violence and involving an Indigenous aggrieved. However, for many of these divisions the number of incidents was small. For example, 101 police divisions recorded five or less incidents involving an Indigenous aggrieved over the twelve-month period.

For the purposes of the research we have identified those police divisions where there were 40 or more incidents accepted as domestic violence and involving an Indigenous aggrieved during the twelve-month period. Some 37 police divisions fitted this criteria and they comprised 75 per cent of all the reported incidents involving an Indigenous aggrieved. The 37 police divisions are shown in Table 2.15.

Table 2.15
Police Division By Domestic Violence Incidents* for Indigenous Aggrieved 2006-07.

Police Division	No of Incidents
MOUNT ISA	454
CAIRNS	389
PALM ISLAND	271
YARRABAH	246
KIRWAN	209
TOWNSVILLE	182
MAREEBA	180
NORMANTON	172
KOWANYAMA	152
MORNINGTON ISLAND	144
DOOMADGEE	139
CHERBOURG	138
WOORABINDA	127
THURSDAY ISLAND	118
NORTH ROCKHAMPTON	118
WEIPA	114
TOOWOOMBA	97
AURUKUN	96
LOGAN CENTRAL	96
INNISFAIL	80
MUNDINGBURRA	78
BUNDABERG	75
GOODNA	74
EDMONTON	71
ROCKHAMPTON	63
BAMAGA	59
CUNNAMULLA	59
MOSSMAN	55
KURANDA	54
HOPE VALE	53
PORMPURAAW	52
STUART	52
IPSWICH	50
CLONCURRY	50
MACKAY	49
GLADSTONE	46
AYR	45

Divisions with more than 40 incidents in 2006-07. ‘No DV’ incident outcomes excluded.

As would be expected, many of the divisions shown in Table 2.15 above are the same as those identified previously in the tables covering the Cairns, Mount Isa and Townsville Districts. However, there are a number of police divisions outside of these three Districts that have a high number of incidents including Mareeba, Cherbourg, Woorabinda and North Rockhampton.

Map: The 15 QPS Divisions with Highest Number of Domestic Violence Incidents for Indigenous Aggrieved 2006-07.

The map of Queensland shows the location of those 15 QPS divisions with the highest number of domestic violence incidents in 2006-07 which had an Indigenous aggrieved.

2.7 Conclusion

Nationally, there is widespread research and data which shows that Indigenous women are more likely to be victims of violence (including homicide) than non-Indigenous women. Most reports and research discuss the high level of under-reporting of crimes of violence by Indigenous women. However, under-reporting by women of incidents of violence is common (69 per cent nationally in 2005). The large-scale victims surveys do not distinguish between Indigenous and non-Indigenous reporting rates. It is not clear whether the extent under-reporting of violence is greater by Indigenous women than non-Indigenous women. However,

given the absence of services in many Indigenous communities we could reasonably expect a higher level of under-reporting.

In Queensland in 2006-07 Indigenous women comprised 17.6 per cent of all recorded female victims of offences against the person; and comprised 68.8 per cent of all recorded Indigenous victims of offences against the person. Those communities with the highest reported rates of violent offences against Indigenous women included Kowanyama, Pormpuraaw, Aurukun, Yarrabah and Mornington.

In 2006-07 some 26.4 per cent of incidents initially defined as domestic and family violence and responded to by police involved either or both an Indigenous aggrieved and respondent. Indigenous women were slightly more likely to be either an aggrieved or a respondent in Indigenous incidents than was the case for non-Indigenous women in non-Indigenous incidents.

An incident involving either an Indigenous aggrieved or respondent which was initially defined as a DV incident is more likely to be re-classified as not being DV by responding police, than if either party is non-Indigenous. Although statistically significant, the difference is not large. Overall, Indigenous people were the aggrieved in 21.8 per cent of incidents accepted by responding police as being domestic and family violence incidents.

Domestic and family violence incidents involving Indigenous aggrieved and respondents are more likely to involve breaches of existing orders, and are less likely to result in ‘no action’ being taken, than is the case for non-Indigenous incidents.

Domestic and family violence incidents involving an Indigenous aggrieved are concentrated in relatively few police districts — some 59 per cent of accepted incidents in 2006-07 were in the three police districts of Cairns, Townsville and Mount Isa.

CHAPTER THREE
DOMESTIC AND FAMILY VIOLENCE PROTECTION ORDERS

This section of the report provides an analysis of domestic and family violence protection orders involving Indigenous aggrieved persons. We begin by noting recent changes in the legislation and the long-term increase in the number of protection orders issued in Queensland.

3.1 The Number of Domestic and Family Violence Orders

Amendments to the *Domestic and Family Violence Protection Act 1989* in 2003 extended the relationships covered by the Act beyond spousal relationships to include intimate personal, informal care and various family relationships. Prior to the amendments there had been a steady rise in the numbers of applications for orders, but these rose more quickly after the amendments.

Table 3.1 and Figure 3.1 show the longer-term increase in domestic and family violence protection orders in Queensland over the last 18 years.

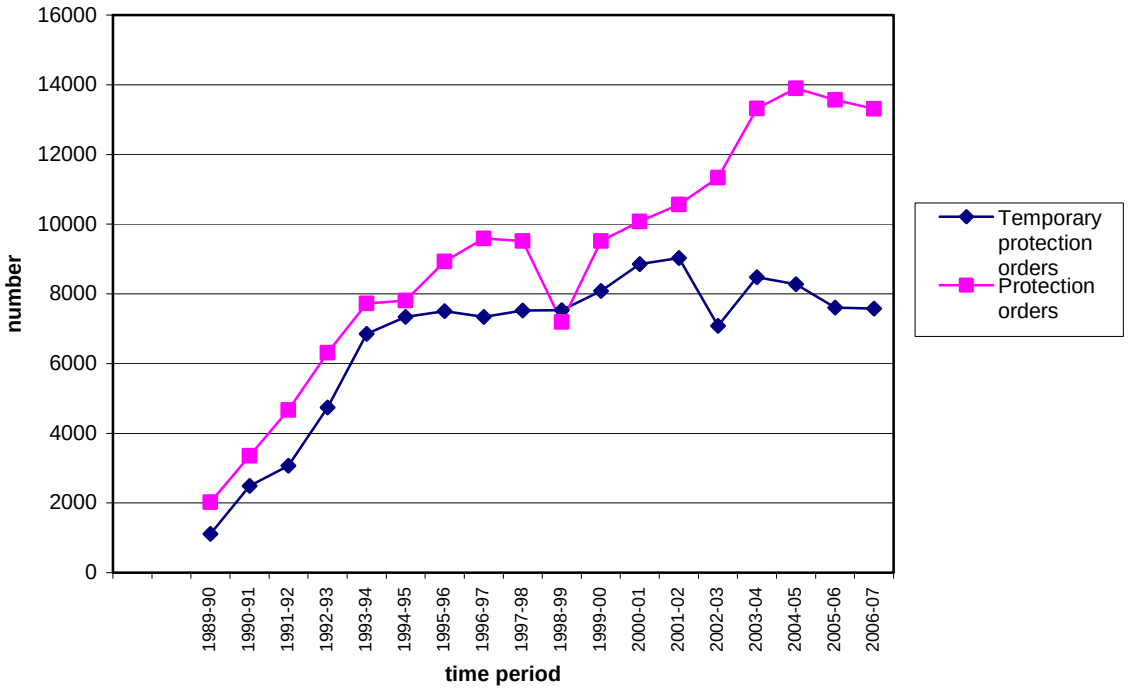
Table 3.1
Domestic and Family Violence Orders. Queensland.
1989-90 to 2006-07

Period	Temporary Protection Order	Protection Order
	No	No
1989-90 (a)	1107	2017
1990-91	2486	3356
1991-92	3066	4670
1992-93	4735	6306
1993-94	6852	7724
1994-95	7341	7804
1995-96	7505	8924
1996-97	7340	9585
1997-98	7518	9512
1998-99	7532	7196
1999-00 (b)	8084	9513
2000-01	8851	10 075
2001-02	9032	10 563
2002-03 (c)	7080	11 336
2003-04	8479	13 316
2004-05	8275	13 894
2005-06	7605	13 567
2006-07	7580	13 305

(a) From commencement date of the *Domestic Violence and Family Protection Act 1989*.
(b) From July 1999 data are not comparable with those from previous periods due to changes in reporting arrangements.
(c) From commencement date of amendments to the *Domestic and Family Violence Protection Act 1989* that occurred on 10 March 2003.
Source: Queensland Government, Department of Communities, May 2008.

The increase in protection orders peaked in 2004-05 after the introduction of the amendments and, as shown below in Figure 3.1, has declined slightly since then.

Figure 3.1 Domestic and family violence orders: Number and type of order, Queensland, 1989-90 to 2006-07



3.2 Domestic and Family Violence Orders for Indigenous People

Table 3.2 below shows the number of orders involving an Indigenous aggrieved for the three-year period 2004-05 to 2006-07. The number of orders involving Indigenous aggrieved has increased slightly over the three-year period, from 4183 to 4577. In 2006-07 orders involving Indigenous aggrieved comprised 16.9 per cent of all orders.

Table 3.2
Number of Domestic Violence Orders* by Indigenous Status of the Aggrieved, 2004-05 to 2006-07

Year	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
2004-05	4183	15.1	22 740	81.9	844	3.0	27 767	100
2005-06	4353	16.1	22 141	82.1	471	1.7	26 965	100
2006-07	4577	16.9	22 208	81.9	325	1.2	27 110	100

* Includes protection orders, temporary protection orders, register interstate orders and variations and revocations of orders. See Appendix B for breakdown. Because of the broader definition of 'orders', the numbers do not correspond with those shown in Table 3.1. They were also extracted from the system at a different time to those used in Table 3.1.
Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

It should be noted that much of the increase in the total number of Indigenous orders between 2004-05 and 2006-07 was the result of an increase in variation and revocation orders which doubled from 367 in 2004-05 to 712 in 2006-07 (see Appendix B for details).

Table 3.3 shows the order type by the Indigenous status of the aggrieved for 2006-07. Non-Indigenous aggrieved had a higher proportion of temporary protection orders than Indigenous aggrieved (29 per cent compared to 20 per cent). Variation or revocation of orders comprised a similar percentage for both groups (15 per cent-16 per cent).

Table 3.3
Number of Domestic Violence Orders by Indigenous Status of the Aggrieved, 2006-07

Order Type	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Protection Order	2937	64	12 384	56	149	46	15 470	57
Register Interstate Order	3	0	55	0	3	1	61	0
Temporary Protection Order	925	20	6,372	29	92	28	7389	27
Vary or revoke DV Order	712	16	3,397	15	81	25	4190	15
Total	4577	100	22 208	100	325	100	27 110	100

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

Based on the data in Table 3.3, and excluding the cases where Indigenous status was unknown, Indigenous aggrieved comprised 14.7 per cent of temporary protection orders and 19.2 per cent of protection orders made by the courts in 2006-07.

It is clear from the data that Indigenous people are using the current system of domestic and family violence protection orders. Based on the 2006 Census there were 127 581 Indigenous people and 3 552 040 non-Indigenous people in Queensland.[7] Therefore the rate for all orders involving Indigenous aggrieved is 3588 per 100 000 of the Indigenous population compared to the rate for non-Indigenous aggrieved at 625 per 100 000 of the non-Indigenous population. On this basis, Indigenous people are 5.7 times more likely than non-Indigenous people to be the aggrieved in a domestic and family violence order.

[7] It should be noted that Indigenous status was not stated for 224 911 people in the 2006 Census. Source: ABS Cat No 2068.0. 2006 Census of Population and Housing. Census Tables. Age by Indigenous Status by Sex, Queensland. Accessed 6/8/08.

The number of orders involving Indigenous aggrieved increased by 9.4 per cent between 2005 and 2007. However, much of the increase during this period was accounted for by an increase in variation and revocation orders.

In 2006-07 Indigenous aggrieved comprised:
- 16.9 per cent of all domestic and family violence orders (temporary protection orders, protection orders, registration of interstate orders, revocations and variations of orders)
- 14.7 per cent of temporary protection orders, and
- 19.2 per cent of protection orders
made by the magistrates courts in Queensland in 2006-07.

Based on the population, Indigenous people are 5.7 times more likely than non-Indigenous people to be the aggrieved in a domestic and family violence order in Queensland.

3.2.1 Protection Orders and Indigenous Respondents

Data is also available on the number of orders involving Indigenous respondents – see the Appendix B for 2004-05 to 2006-07 data. The figures are only slightly higher than those for Indigenous aggrieved for each of the three years under review (for example, 4706 orders with an Indigenous respondent for 2006-07 compared to 4577 orders for an Indigenous aggrieved in the same year).

3.3 Protection Orders and Relationship Type

Table 3.4 shows that the proportion of orders where the relationship between the aggrieved and respondent was a spousal relationship was slightly less for Indigenous people (72 per cent compared to 75 per cent). There was a five percentage point difference in family relationships, where Indigenous orders were somewhat more likely to involve family members.

Table 3.4
Number of Domestic Violence Orders by Relationship Type and Indigenous Status of the Aggrieved, 2006-07

Relationship Type	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Spousal	3305	72	16 617	75	248	76	20 170	74
Family	984	21	3482	16	57	18	4523	17
Intimate Personal Relationship	287	6	2060	9	20	6	2367	9
Informal Care Relationship	1	0	49	0	-	-	50	0
Total	4577	100	22 208	100	325	100	27 110	100

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

The results shown in Table 3.4 are consistent with the data from 2004-05 and 2005-06 — in both years a smaller proportion of Indigenous matters involved spousal relationships and a greater proportion involved family members. (See Appendix B for details). The reasons for this are less clear. On the one hand it may reflect broader issues of family violence or may reflect specific policing practices. One magistrate who was interviewed was of the view that the non-spousal family orders reflected police using domestic and family violence orders where they could not use a criminal charge.

> With sibling violence there is probably too much use of orders, taken out by police. Police are tending to make the orders between family members because neither party will give evidence for criminal charges to be laid. Police will take out the order ... The matter is then dealt with ex parte, and generally without any desire from the parties to have the order made (*Magistrate 2 Interview*).

Indigenous domestic violence orders are more likely to involve family members than non-Indigenous orders, and are slightly less likely to involve spousal or intimate personal relationships. Very few (less than 0.5 per cent) of either Indigenous or non-Indigenous orders involve informal care relationships.

3.4 Applications for Protection Orders

Applications for a protection order can be made by the aggrieved, by the police or by other authorised persons. [8] As shown in Table 3.5, police take out the majority of applications for protection orders. Despite the 2003 amendments which broadened the category of people who could make application for orders, the percentage of orders taken out by police has increased.

[8] An authorised person mentioned in s14(2) of the legislation is an adult authorised by an aggrieved to appear on behalf of the aggrieved; a person acting under another Act for the aggrieved in s14(4) is a guardian for the aggrieved or acting under a power of attorney.

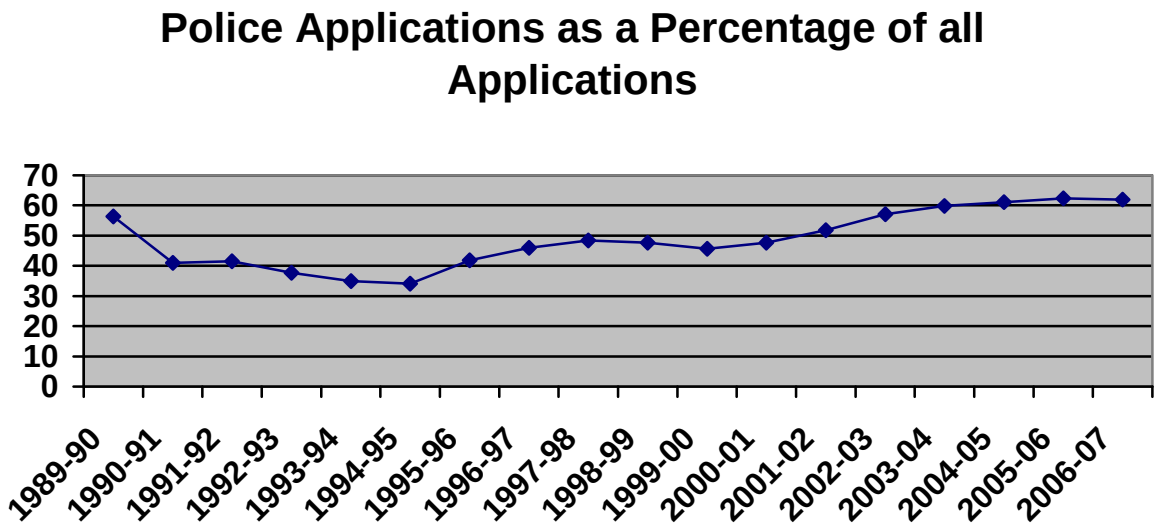
Table 3.5
Domestic and family violence applications: Number and type of application, Queensland, various time periods

Period	Application for protection orders						Applications for revocation or variation
	Aggrieved	Authorise persons	Police	Person acting under another act [(a)]	Not Stated	Total	
1989-90 [(b)]	1230	63	1664	-	-	2957	102
1990-91	2637	114	1916	-	-	4667	146
1991-92	4040	95	2937	-	-	7072	284
1992-93	5498	104	3392	-	-	8994	631
1993-94	7069	145	3868	-	-	11 082	1232
1994-95	7404	132	3906	-	-	11 442	1469
1995-96	7396	91	5387	-	-	12 874	1771
1996-97	7011	102	6070	-	-	13 183	1929
1997-98	7109	53	6729	-	-	13 891	2124
1998-99	7312	35	6694	-	-	14 041	2295
1999-00 [(c)]	7178	33	6038	-	-	13 249	2100
2000-01	7375	44	6772	-	-	14 191	2010
2001-02	6813	45	7360	-	-	14 218	1873
2002-03 [(d)]	6942	61	9348	12	4	16 367	2024
2003-04	8313	150	12 691	49	-	21 203	3965
2004-05	7904	174	12 799	63	-	20 940	4049
2005-06	7463	104	12 667	50	-	20 284	4049
2006-07	7611	135	12 760	60	-	20 566	4249

(a) From 10 March 2003 a new applicant type of Person acting under another act came into use.
(b) From commencement date of the *Domestic Violence (Family Protection) Act 1989*.
(c) From July 1999 data are not comparable with those from previous periods due to changes in reporting arrangements.
(d) From commencement date of amendments to the *Domestic and Family Violence Protection Act 1989* that occurred on 10 March 2003.
Source: Queensland Government, Department of Communities, May 2008.

As shown below in Figure 3.2, there has been an upward trend over the last decade in police applications for orders as a percentage of all applications. In 2006-07 some 62 per cent of applications for orders were made by police.

Figure 3.2



3.5 Who is the Applicant for the Indigenous Aggrieved?

While most Indigenous and non-Indigenous applications for an order are taken out by police, Table 3.6 shows there is a significant difference between the two groups with almost three of every four orders for Indigenous aggrieved being police applications, compared to a little over one in two non-Indigenous applications. Conversely, less than one in four applications for an Indigenous person are undertaken by the aggrieved. There may be a number of reasons for this difference including police policies, the lack of alternative assistance for the aggrieved particularly in rural and remote communities, and the lack of engagement with and knowledge of the legal process.

Table 3.6
Number and Type of Domestic Violence Application* by Applicant Type and Indigenous Status of Aggrieved, 2006-07

Applicant Type	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Aggrieved	877	22	8567	45	160	56	9604	41
Police	2944	73	9970	52	113	39	13 027	56
Authorised Person	159	4	152	1	7	2	318	1
Person acting under another Act	14	0	52	0	-	-	66	0
Respondent**	16	1	255	1	8	3	279	1
Total	4010	100	18 996	100	288	100	23 294	100

* Applications include general applications; applications to vary or revoke an existing order; phone or fax applications to the court; registration of interstate orders.
** Respondents can be the applicant in matters to vary or revoke an existing order.
Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data. Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

The three years of data from 2004-05 to 2006-7 shows little difference in the proportion of orders for an Indigenous aggrieved where the aggrieved is also the applicant for the order (24 per cent in 2004-05, 22 per cent in 2005-06 and 22 per cent in 2006-07), and police continue to be the applicant in around three-quarters of applications (see Appendix B for details).

3.5.1 Locational Differences and Police Applications

The 2006-07 figures for Queensland indicate that Indigenous aggrieved are the applicant in 22 per cent of matters and police are the applicants in 73 per cent of matters. However the relative proportions vary considerably between different geographic locations. Data was supplied by the Department of Justice and Attorney-General on applicant type and court location for Indigenous domestic violence applications for a three year period (2004-05 to 2006-07) (see Appendix B for the relevant Tables).

In some locations, particularly in remote communities, there were no applications made by the aggrieved. For example, in Mornington Island all 87 applications in 2006-07 were made by police (64) or an authorised person (23). Similarly, in Pormpuraaw 34 of the 35 applications were made by police and one by an authorised person.

In other remote communities very few applications were made by the aggrieved. In Kowanyama only 4 of the 110 applications were made by the aggrieved, in Yarrabah five out of 162 applications were made by the aggrieved, and in Doomadgee only one of the 89 applications were made by the aggrieved. In these cases over 95 per cent of the applications are made by police, or the police and an authorised person. Drawing attention to this is not meant as a criticism of police, rather it highlights the lack of engagement, knowledge and perhaps confidence by the aggrieved in the legal process, and the lack of any alternative services to the police to assist victims of domestic and family violence.

Police and magistrates noted the few private applications in remote areas.

> Most are taken out by police rather than private applications. They generally involve physical violence, rather than intimidation or harassment (*Interview DVLO 6*). There would be zero private applications here. Most people can't fill the form out (*Interview State Police 5*). In most cases police take the order out after being called to an incident, the same with breaches of order. Occasionally, a woman might phone up, but it's mostly police attending incidents (*Interview DVLO 3*).

> I don't think I've seen in the communities a private application for a domestic violence order (*Magistrate 4 Interview*). The vast majority of protection orders that are made are those that are brought by the police or alternatively Cape York Domestic and Family Violence Service. My gut feeling is that probably 99 per cent are police applications (*Magistrate 5 Interview*). It is usually police applications. Indigenous people won't come and seek out the police to take out an order. When a criminal act has been committed the police will take the initiative and apply for an order (*Magistrate 3 Interview*). If a woman on the outer islands wants to take out an application they have to rely on the community police to notify the state police. There's only a few

applications from the outer islands. They are all police applications rather than private applications (*Registrar 1 Interview*).

A major issue is also the availability of services to assist with private applications. In locations like Townsville, there is a much higher proportion of applications being made by Indigenous aggrieved. Some 30 per cent (89 of the 298) of applications were made by the aggrieved in Townsville. This higher proportion no doubt reflects greater access to advice and support in using the legal system – a point recognised by magistrates. 'In Townsville there are more private applications because there is a service here that is quite visible, proactive and has good access to the courts' (*Interview Magistrate 2*).

The interviews and the data indicate there is a positive relationship between the availability of services and private applications.

In 2006-07 police were the applicants in 73 per cent of protection orders involving an Indigenous aggrieved. This was 21 percentage points higher than non-Indigenous applications. In many remote Indigenous communities police are the applicants in more than 95 per cent of the orders. Thus, while Indigenous people have higher rates of domestic violence order use than non-Indigenous people, they are much less likely to be the person applying for the order. This raises questions about engagement with and confidence in the process, as well as the availability of services to assist with private applications.

3.6 Factors Affecting Police Applications for a Protection Order

The *Domestic and Family Violence Protection Act 1989* provides police with the power to apply for a domestic violence order. There are two situations where a police officer is required to apply for a domestic and family violence order. Sections 71 and 72 both apply where a police officer has taken a respondent into custody in order to protect the aggrieved from personal injury or to protect property belonging to the aggrieved from being damaged. Section 71 stipulates that, in such a circumstance, a police officer must apply for a domestic violence order and, in some cases, section 72 also requires a police officer to apply for a temporary order.

Although the legislation only requires a police officer to apply for a domestic violence order in particular situations noted above, the QPS Operational Procedures Manual (OPM) does impose obligations on police officers attending domestic and family violence to apply for protection orders. A Crime and Misconduct Commission (2005) survey of police on their decisions to apply for a protection order found that more than three-quarters (75.4 per cent) of officers indicated that the likelihood of the violence recurring influenced their decision to apply for a protection order. These results are consistent with QPS operating procedures (CMC 2005: 45).

It is clear from the interviews with victims, service providers, police and magistrates that Indigenous domestic violence incidents do involve significant levels of violence (see 3.9 below) and this corresponds with other data reviewed in Chapter 1. The level of violence and the fact that police applications for protection orders are generated from attendance at incidents also accounts for the large proportion of police applications compared to private applications in the Indigenous community.

3.6.1 Cross-Applications and Predominant Aggressor

It was clear from the interviews across the state that there were very few cross-applications involving Indigenous people. One magistrate noted, '… as a matter of fact I'm struggling to remember one [cross-application] … there is so little use of family law so there is no use of cross-applications in that context (*Magistrate 3 Interview*). Police noted that:

> The violence in the community is pretty clear-cut – there is usually a clear aggressor in the situation (*Interview State Police 5*).

> There are very very few cross-applications – I was surprised when I came here how few there are (*Interview DVLO 5*).

Among the women interviewed who had been victims of domestic and family violence, only one noted a cross application and the later removal of her children.

> Four years ago I seeked help on my own. I travelled a hundred kilometres to get help with the support services available. I had to pay out of my own pocket to do that. Walking into shelters and reporting it to the police and then I realised that I got myself into trouble. That my partner took out an order against me reporting that I was causing the behaviour at home. And I didn't understand the law at the time. I was advised that I could take out an order against him as well, which I did ... Through my experience I also lost my children. Five months later getting my children back and then the violence started again. I went back to the shelter and taken another protection order against my partner (*VC4.1*).

More generally, however, cross-applications were seen as a problem in the wider non-Indigenous community, and that there was a need to reduce cross-applications with police training necessary around 'predominate aggressor'.

> Cross-applications are difficult and a major issue. There is a need for training at the Academy on the predominant aggressor – it's a training issue for police (*Interview DVLO 4*).

This report has not canvassed issues around predominant aggressor training given that it did not emerge as a key issue in relation to responses to domestic and family violence among Indigenous people. However, it is noted that substantial literature and training packages exist for police in relation to identifying the predominant aggressor and improving evidence gathering techniques at domestic violence crime scenes. Previous Ministerial Advisory Councils on Domestic and Family Violence have raised the importance of clearly defining domestic and family violence and distinguishing between immediate acts of violence and ongoing abuse and violence. It has been recommended that the term 'predominant aggressor' be used in the legislation and that police are required to make a determination as to who is the predominant aggressor in a domestic and family violence situation. The use of the 'predominant aggressor' principle allows police to consider the context of the history of the relationship between the two parties, rather than making a determination solely on the immediate incident.

On the basis of the research interviews there appear to be very few cross-applications involving Indigenous people.

3.7 Police Applications and Paperwork

Interviews with police indicated that one barrier to the use of domestic violence protection orders was the reluctance of some police to apply for orders because of the paperwork involved in the application. The complaints came from both station sergeants as well as some DVLOs. Comments from two state police officers follow:

> The application is far too involved. I can charge someone with a serious criminal offence like unlawful wounding and put them before the court with a one page objection to bail and with a few pages on a QP9 (*Interview State Police 5*).
>
> Police hate the paperwork associated with domestic violence. QPRIME is a nightmare. The whole reporting system turns police off. A lot of police are extremely reluctant to take the application out. Police will talk their way out of doing the application. It's a civil order and should be much simpler (*Interview State Police 2*).
>
> You need to be thorough with the information, but at the moment it can take an hour or more to do an application, depending on how forthcoming the victim is with the information. 'Notice to Appear' form could be used as a model for a notice for domestic violence order (*Interview State Police 2*).
>
> The data entry, the screens that have to be completed are a nightmare (*Interview State Police 5*).

The issues raised here are consistent with the findings of the earlier CMC (2005) report which found that the three key factors that influenced some officers not to apply for a protection order included the amount of paperwork, the time taken to deal with a domestic violence incident, and proximity to the end of a shift (CMC 2005: 47).

In the CMC survey, approximately one-third (35 per cent) of survey participants agreed or strongly agreed that the amount of paperwork involved in processing a domestic violence application made it less likely that they would take action. In particular, officers in focus groups indicated that the apparent duplication of data entry and the lack of information technology capabilities caused frustration among officers. For example, officers have to log in and log out of numerous indexes (for example, DV Index, Custody Index, CRISP, Weapons Index) to input the same information repeatedly (CMC 2005: 47-48).

The systems and paperwork associated with attending a domestic violence incident were seen as more cumbersome and resource intensive than for other criminal offences. 'Why is it harder to commence action for a DV application than proceed against an offender for a serious indictable offence? A procedure similar to a Notice to Appear and QP9 could be utilised for police' (Police survey participant #153) (CMC 2005: 62).

It is probable that the time it takes to complete an application for an order is potentially more of an issue in remote communities where there are few staff available on shift at any one time. Certainly, the issue was raised more in the current research among police working in remote areas.

3.8 Police Issued Protection Orders

The possibility of police-issued domestic violence protection orders was raised by a number of police as a way of increasing the number of protection orders in remote and rural communities. At present police consistently need to apply for temporary protection orders from a magistrate because the courts sit infrequently in remote communities.

> Other states have police initiated orders. Police should be able to issue the order – at least a temporary order until the next sitting of court … Most of the orders we make here are temporary orders because the court sits infrequently (*Interview State Police 5*).
>
> Police issued protection orders like in other states are worth looking at (*Interview DVLO 3*).

It is noted that the Tasmanian *Family Violence Act 2004* gives police officers the power to make and issue a protection order to the respondent at the time of the incident (Police Family Violence Order). A police-issued protection order remains in effect for 12 months and both parties can apply for variations to the order. More recently it has been suggested that these orders might be restricted to interim orders only. Tasmania is the only jurisdiction where police have the power to make orders (Urbis 2008: 14). In Western Australia police can make interim orders in emergency situations which last 24 or 72 hours (the duration must be specified).

If the goal is simply to increase the number of protection orders in remote communities, then consideration could be given to the Tasmanian model. However, it does not overcome the problems of Indigenous engagement with and ownership of the process. While police initiated orders might increase the total number of domestic and family violence orders, it may well also increase Indigenous dissatisfaction with the process because of the further lack of empowerment and control by the aggrieved.

By contrast the advantage of the Western Australian process of interim orders of either 24 hours or 72 hours in emergency situations means that it may provide for the immediate removal of the perpetrator from the home for a period up to several days — which may act as essentially a 'cooling off' period. Under the Western Australian *Restraining Orders Act 1997* the 'restraints' or conditions which can be imposed by police are similar to those of the court. A 72 hour police order cannot be made unless there is consent of the aggrieved (or parent or guardian, if a child). A police order cannot be extended or renewed. An acknowledged advantage of the Western Australian legislation is that it allows for the removal of a person from a residence if they pose a risk to another person, without the requirement of evidence to lay a criminal charge. However, there must be somewhere for the perpetrator to be removed to, particularly in remote communities where there are limited alternatives.

Recommendation 1 Police Powers
QPS and the Department of Communities further investigate the extension of police powers to provide for police-issued emergency domestic violence orders. Any change to police powers in this regard must be accompanied by increased services and programs in the community for perpetrators.

3.9 Seriousness of the Violence and Breaches of Domestic Violence Orders

Interviews with victims confirmed that there were serious acts of violence underpinning contact with police and subsequent applications for domestic violence orders. For example,

> I go to the coppers for help or to his eldest brother. When it's getting worse, like when he is full on hitting me non-stop, that's when I run to the police. When he's just arguing and he do just little soft hits, I just leave it. I take the pain … When I was four months pregnant he booted me in the guts. He knocked my tooth out, black eye. I had bruises on my back. The copper took photos of my mouth and black eyes. (*VC2.3*)

> The last time I reported it was a month ago when I got stabbed in [remote community]. My cousins were there they saw it and reported it. I was unconscious. It went to court. The court remanded him until the next month. There is an order out, we can be together. The violence is starting again. (*VC3.1*)

> I'm 31 and I'm originally from [small community]. The violence has been going on for several years. I've been bashed pretty bad. I've been bashed with didgeridoos, beer bottles. Dragged around the house by hair, booted in the head. I've woken up and there was blood all over the walls with my hair in it. I've been bashed pretty bad. You can't get to a phone because you have been bashed. I've tried everything. I've tried to commit suicide. I've overdosed. I can't read or write. I've only been able to speak out about it in the last couple of years. (*VC6.9*)

> The police were involved a lot of times. Once they had fly me out of here to [a] women's shelter … [Another time] I was black and blue. I had to be taken by helicopter from [small community] to hospital. I was in hospital for a couple of weeks. (*VC3.3*)

There was widespread agreement among service providers that the level of violence involved in Indigenous domestic violence incidents was more serious than the level of violence found in non-Indigenous matters. For example, the following comments from magistrates in different parts of Queensland all illustrate this point.

> I would have to say from my experience … the dvs are associated with quite serious offending. It's not your typical argument at home … it's usually something quite serious ... (*Magistrate 2 Interview*). The violence is quite ferocious … heavy beatings, using sticks or anything else they can get their hands on, and repeated and prolonged beatings. (*Magistrate 3 Interview*)

> The Indigenous violence is usually much more severe, and it seems to be not getting acted upon until it has escalated quite severely. I think this is partly because of that reluctance to report initially and there is a lot of acceptance (not approval) that this is part of living with a man especially if he drinks. (*Magistrate 1 Interview*)
>
> Yes you get the orders associated with offences of violence such as unlawful wounding, assault occasioning grievous bodily harm. You very rarely see an application from the police where there is not some violence, usually severe violence … (*Magistrate 4 Interview*). The ones we see are at the higher end of physical violence. (*Magistrate 5 Interview*)

3.10 Breach Offenders Proceeded Against by Police

According to the Queensland Police Service (2007: 76-77) data there were 8098 offenders proceeded against for breach of domestic violence orders in 2006-07. Of these, some 2316 (28.6 per cent) were Indigenous. Police can proceed against offenders by way of arrest, caution, notice to appear, summons, warrant or 'other'. According to the Queensland Police Service (2007: 142) the 'other' category refers to matters where 'the offender is known and sufficient evidence has been obtained but there is a bar to prosecution or other official process'.[9]

Table 3.7
Breaches of Domestic Violence Orders by Type of Police Process. Indigenous and Non-Indigenous Offenders. 2006-07

Type of Process	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Arrest	1385	59.8	2899	50.1
Caution	0	0.0	5	0.1
Notice to Appear	799	34.5	2093	36.2
Summons	2	0.1	19	0.3
Warrant	6	0.3	36	0.6
Other	124	5.4	730	12.6
Total	2316	100	5782	100

Chi-square = 123.39, df =5, p = 0.000 (significant)
Source: Queensland Police Service, *Annual Statistical Review 2006-07*

Table 3.7 shows the type of police process initiated against offenders in cases of breaches of domestic violence orders. The data shows both Indigenous and non-Indigenous offenders. Offenders include both adults and juveniles – however, the number of juveniles proceeded against for a breach of a domestic violence order is very small (0.2 per cent of all offenders in 2006-07).

Differences in police responses to Indigenous offenders are statistically significant, with Indigenous offenders more likely to be processed by way of arrest than non-Indigenous offenders. Conversely, Indigenous offenders are less likely to be given a notice to appear in court or not proceeded against (the 'other' category).

[9] We have also included in the 'other' category one case of referral to a 'community conference' in 2004-05 and one case in 2005-06. Both cases involved Indigenous offenders.

Data from previous years confirms this difference in police response.[10] Tables 3.8 and 3.9 show that Indigenous offenders are between 11-12 per cent more likely to be processed by way of arrest than non-Indigenous offenders. Differences in police responses are statistically significant in each year.

Table 3.8
Breaches of Domestic Violence Orders by Type of Police Process. Indigenous and Non-Indigenous Offenders. 2004-05

Type of Process	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Arrest	1430	61.6	2904	49.5
Caution	0	0.0	2	0.0
Notice to Appear	758	32.6	2264	38.6
Summons	2	0.1	17	0.3
Warrant	11	0.5	49	0.8
Other	121	5.2	630	10.7
Total	2322	100	5866	100

Chi-square = 152.95, df =5, p = 0.000 (significant)
Source: Queensland Police Service, *Annual Statistical Review 2004-05*

Table 3.9
Breaches of Domestic Violence Orders by Type of Police Process Indigenous and Non-Indigenous Offenders. 2005-06

Type of Process	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Arrest	1434	60.6	2872	49.2
Caution	2	0.1	4	0.1
Notice to Appear	809	34.2	2208	37.8
Summons	2	0.1	21	0.4
Warrant	2	0.1	22	0.4
Other	118	4.9	709	12.1
Total	2367	100	5836	100

Chi-square = 142.85, df =5, p = 0.000 (significant)
Source: Queensland Police Service, *Annual Statistical Review 2005-06*

Given the information provided in the interviews by both victims and magistrates on the level of violence in Indigenous matters, it is perhaps not surprising that police intervene by way of arrest rather than the use of a notice to appear or summons.

Indigenous offenders who breach a domestic violence order are more likely to be processed by way of arrest than non-Indigenous offenders. Conversely, Indigenous offenders are less likely to be given a notice to appear in court or not proceeded against.

[10] The first year in which the Indigenous status of the offender is available is 2004-05.

3.11 Conclusion

The number of orders involving Indigenous aggrieved increased by 9.4 per cent between 2005 and 2007. However, much of the increase during this period was accounted for by an increase in variation and revocation orders.

In 2006-07 Indigenous aggrieved comprised:

- 16.9 per cent of all domestic and family violence orders (temporary protection orders, protection orders, registration of interstate orders, revocations and variations of orders)
- 14.7 per cent of temporary protection orders, and
- 19.2 per cent of protection orders.

Based on the population, Indigenous people are 5.7 times more likely than non-Indigenous people to be the aggrieved in a domestic and family violence order in Queensland.

Indigenous domestic violence orders are more likely to involve family members than non-Indigenous orders, and are slightly less likely to involve spousal or intimate personal relationships. Very few (less than 0.5 per cent) of either Indigenous or non-Indigenous orders involve informal care relationships.

In 2006-07 police were the applicants in 73 per cent of protection orders involving an Indigenous aggrieved. This was 21 percentage points higher than non-Indigenous applications. In many remote Indigenous communities police are the applicants in more than 95 per cent of the orders. Thus, while Indigenous people have higher rates of domestic violence order use than non-Indigenous people, they are much less likely to be the person applying for the order. This raises questions about engagement with and confidence in the process, as well as the availability of services to assist with private applications.

On the basis of the research interviews there appear to be very few cross-applications involving Indigenous people.

Interviews with police indicated that one barrier to the use of domestic violence protection orders was the reluctance of some police to apply for orders because of the paperwork involved in the application.

The possibility of police-issued domestic violence protection orders was raised by a number of police as a way of increasing the number of protection orders in remote and rural communities (see Recommendation 1).

There was widespread agreement among service providers that the level of violence involved in Indigenous domestic violence incidents was more serious than the level of violence found in non-Indigenous matters. This was supported by the description of incidents by Indigenous victims of domestic and family violence.

Indigenous offenders who breach a domestic violence order are more likely to be processed by police by way of arrest than non-Indigenous offenders. Conversely,

Indigenous offenders are less likely to be given a notice to appear in court or not proceeded against.

Recommendation 1 Police Powers
QPS and the Department of Communities investigate the extension of police powers to provide for police-issued short-term emergency domestic violence orders. Any change to police powers in this regard must be accompanied by increased services and programs in the community for perpetrators.

CHAPTER FOUR
DOMESTIC AND FAMILY VIOLENCE SERVICES DATA RELATING TO INDIGENOUS PEOPLE

4.1 Introduction

The Queensland Centre for Domestic and Family Violence Research (CDFVR) holds data supplied by 29 domestic and family violence funded services[11] over a three-year period from 1/7/04 to 30/6/07. The database contains information on 81 526 new client matters[12] over this period. The data distinguishes between Indigenous and non-Indigenous clients. As shown below in Table 4.1, some 7.1 per cent of clients over the period were Indigenous. In 1.3 per cent of cases Indigenous status was unknown.[13]

Table 4.1 Domestic and family violence clients 1/7/04 – 30/6/07

Indigenous Status	Number	per cent
Indigenous	5752	7.1
Non-Indigenous	74 689	91.6
Unknown	1085	1.3
Total	81 526	100

The percentage of Indigenous clients is lower than we would normally expect given the incidence of domestic and family violence among Indigenous people in Queensland:

- the CMC (2005: 36) found that 23 per cent of domestic violence victims statewide were Indigenous
- some 26.4 per cent of police callouts to domestic and family violence incidents involved an Indigenous aggrieved person in 2006-07 (see Chapter 2) and
- the number of domestic violence orders involving Indigenous aggrieved was 19.2 per cent in 2006-07 (see Chapter 3).

On this basis we might reasonably expect the proportion of Indigenous clients to be greater than 7.1 per cent, although this will obviously be influenced by the location of the funded services.

[11] There are a number of domestic and family violence services in Queensland not included in the database, and these include some Indigenous services. However, the database covers the majority of services including the statewide service DVConnect.

[12] Data is collected by domestic and family violence prevention and support services funded by the Department of Communities. The data does reflect individual people. The data is collected by the service for each new client or new client matter.

[13] Cases where Indigenous status is unknown have been excluded from the remaining analysis.

The Department of Communities funded domestic and family violence services which provide data to the CDFVR are as follows:

Atherton	Mossman	Rockhampton x 2
Townsville	Mount Isa	Cannonvale
Bundaberg	Gladstone	Maroochydore
Emerald	Biloela	Caboolture
Maryborough	Roma x 2	Toowoomba
Southport	Ipswich	Beenleigh
Mackay	Logan City x 2	
Brisbane x 6	Cairns	

Two of these services are Indigenous-specific and are located in Mossman and Brisbane. We can see from the map below that most services are on the east coast and most are concentrated in South-East Queensland.

Map: Domestic and family violence funded services across Queensland

The location of the majority of domestic and family violence funded services supplying data to the CDFVR does not correspond with the location of Indigenous need. This is perhaps not surprising given that the majority are not Indigenous-specific services. Queensland Police Service data indicates that the 10 police divisions

with the highest numbers of confirmed domestic and family violence incidents are Mount Isa, Cairns, Palm Island, Yarrabah, Kirwan, Townsville, Mareeba, Normanton, Kowanyama and Mornington Island (see Chapter 2).

4.2 Domestic and Family Violence Services and Indigenous Clients

The following discussion provides analysis on the types of services offered to Indigenous clients, and various characteristics of the need for service including relationship details, reporting to police and whether current protection orders were in place.

Table 4.2 Type of Service Provided

Type of Service	Indigenous		Non-Indigenous		Total	
	No	per cent	No	per cent	No	per cent
Counselling	960	16.6	20 160	27.2	21 120	26.4
Court Support	2252	39.3	33 420	45.1	35 672	44.6
Crisis Intervention	1949	34.0	13 266	17.9	15 215	19.0
Advocacy	86	1.5	1619	2.2	1705	2.1
Other	482	8.4	5707	7.7	6189	7.7
Total	5729	100.0	74 172	100.0	79 901	100.0

Excludes 543 where type of service was not recorded.
Chi-square = 1000.12, df =4, p = 0.000 (significant).

Table 4.2 shows there is a significant difference between the type of assistance sought by Indigenous clients from domestic and family violence services. Indigenous clients were less likely to seek counselling and court support and more likely to require crisis intervention than non-Indigenous clients. This is shown diagrammatically below in Figure 4.1.

Figure 4.1 Type of Service Provided

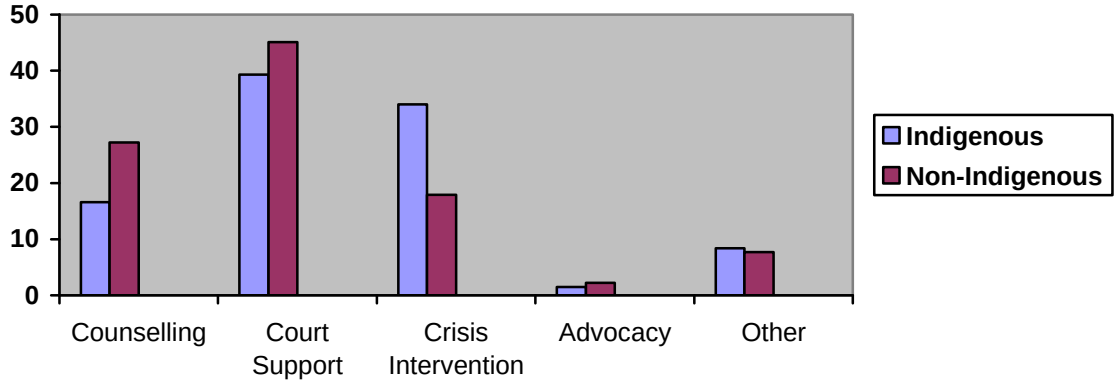


Table 4.3 Client Gender

Gender	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Female	4917	85.8	60 245	81.7
Male	809	14.1	13 734	18.2
Transgender	5	0.1	62	0.1
Total	5731	100	74 041	100

Excludes 679 cases where client gender was not recorded.
Chi-square = 70.12, df = 2, p = 0.000 (significant).

Table 4.3 shows that Indigenous clients of domestic and family violence services are slightly more likely to be women than non-Indigenous clients. Conversely, the 'other party' in Indigenous matters was more likely to be male, or involve multiple parties than was the case for non-Indigenous clients (Table 4.4).

Table 4.4 Gender of Other Party

Gender	**Indigenous**		**Non-Indigenous**	
	No	per cent	No	per cent
Female	4563	80.2	56 912	79.7
Male	1048	18.4	13 907	19.4
Transgender	1	0.0	32	0.0
Multiple	74	1.3	564	0.8
Total	5686	100	71 415	100

Excludes 3340 cases where gender of other party was not recorded
Chi-square = 20.73, df = 3, p = 0.0001 (significant)

The data supplied to the CDFVR also records the type of relationship involved in the violence for which the person is seeking assistance. Table 4.5 shows the type of relationship recorded by domestic and family violence services.

Table 4.5 Type of Relationship

Type of Relationship	**Indigenous**		**Non-Indigenous**	
	No	**per cent**	**No**	**per cent**
Spousal	4202	61.0	55 636	64.3
Spousal same sex	15	0.2	296	0.3
Intimate personal	597	8.7	6498	7.5
Intimate personal same sex	8	0.1	221	0.3
Informal care provider	4	0.1	74	0.1
Informal care receiver	4	0.1	107	0.1
Parent/child	291	4.2	5146	5.9
Grandparent/child	12	0.2	167	0.2
Sibling	309	4.5	1582	1.8
Parent/child respondent	44	0.6	866	1.0
Child/parent respondent	30	0.4	377	0.4
Grandparent/child respondent	7	0.1	29	0.0
Child/grandparent respondent	2	0.0	20	0.0
Other	1367	19.8	15 523	17.9
Total*	6892	100.0	86 542	100.0

*Total exceeds the 81 526 clients because there may be multiple relationships.

There is broad similarity between the type of relationships recorded for Indigenous and non-Indigenous clients. The greatest differences are a slightly smaller percentage of spousal relationships, a greater percentage in the 'other category' and a higher percentage of the 'sibling' category (more than twice the percentage of Indigenous clients (4.5 per cent) compared to non-Indigenous clients (1.8 per cent). This is broadly consistent with the data on protection orders noted in Chapter Three.

Table 4.6 Primary Reason for Contact

Primary Reason for Contact	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Experiencing violence in current relationship	3576	63.0	43260	60.6
Previously experienced violence	514	9.1	5498	7.7
Experiencing violence from past relationship	800	14.1	12 487	17.5
Using violence in current relationship	606	10.7	6965	9.8
Previously used violence	92	1.6	2072	2.9
Using violence in past relationship	88	1.6	1087	1.5
Total	5676	100.0	71 369	100.0

Excludes 3396 cases where primary reason for contact was not recorded.
Chi-square = 87.84, df = 5, p = 0.000 (significant).

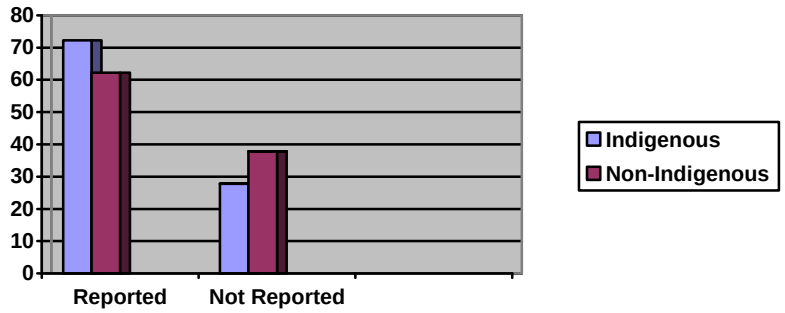
Table 4.6 shows the primary reason for contact with the domestic and family violence agency. The main difference with Indigenous clients is that they were more likely to be currently experiencing violence or had previously experienced violence than non-Indigenous clients.

Table 4.7 Violence Reported to Police

Reported to Police	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Yes	3556	72.2	38 293	62.2
No	1367	27.8	23 307	37.8
Total	4923	100.0	61 600	100.0

Excludes 14 222 cases where violence reported to police was either not recorded or unknown.
Chi-square = 198.05, df = 1, p = 0.000 (significant).

Figure 4.2 Violence Reported to Police



The data in Table 4.7 indicates that Indigenous clients are 10 percentage points more likely to have the violence reported to the police than non-Indigenous clients. The nature of the information does not tell us who reported the violence to police. We do not know whether it was the client herself who reported or whether the report to police came from a third party, with police responding to a domestic and family violence incident by way of a callout.

It is not necessarily contradictory that Indigenous victims of domestic and family violence are more reluctant to report violence or breaches of domestic and family violence orders to police, and the service data which indicates a higher proportion of reported violence among Indigenous clients.

Table 4.8 Current Domestic Violence Order Status

Current DVO Status	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
None	1447	22.0	21 640	26.6
Service assisting with application	379	5.8	5099	6.3
Current application	1422	21.6	20 820	25.6
Current order	1968	29.9	16 556	20.3
Temporary order	483	7.3	8507	10.4
Registered interstate order	7	0.1	175	0.2
Unregistered interstate order	4	0.1	83	0.1
Expired order	154	2.3	1153	1.4
Application to vary order	354	5.4	3789	4.7
Multiple orders	33	0.5	335	0.4
Unknown	326	5.0	3292	4.0
Total*	6577	100.0	81 449	100.0

*Total exceeds the 81 526 clients because there may be multiple orders.

Reflecting the greater likelihood of violence and the reporting of that violence to police, Table 4.8 shows that Indigenous clients of domestic and family violence services are more likely to have a current protection order in place than non-Indigenous clients.

Table 4.9 shows the position of the client in respect of a domestic violence order or application. As might be expected, in three-quarters of cases the client is the aggrieved on the order. Compared to non-Indigenous clients, Indigenous clients are less likely to be the respondent on an order (16.5 per cent) and slightly more likely to be an aggrieved and respondent on a cross-order (5.2 per cent).

Table 4.9 How The Client is Named on Current Order or Application

Who is Client on Current Order?	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Aggrieved	2819	75.7	32 989	74.0
Respondent	613	16.5	8193	18.4
Cross-order aggrieved and respondent	195	5.2	1965	4.4
Aggrieved and respondent	85	2.3	1355	3.0
Combination of two of more	12	0.3	116	0.3
Total	3724	100.0	44 618	100.0

Chi-square = 20.66, df = 4, p = 0.0004 (significant).

Table 4.10 shows that Indigenous clients of domestic and family violence services are slightly less likely to have a disability than non-Indigenous clients (10.1 per cent compared to 12.1 per cent). Of those Indigenous clients who do have a disability, half have a psychiatric disability and slightly more than a quarter have a physical disability. This is a similar profile to non-Indigenous clients.

Table 4.10 Client Disabilities

Client Disabilities	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
No disability	4022	89.9	51 010	87.9
Physical disability	123	2.8	1839	3.2
Specific learning/attention deficit disorder	6	0.1	182	0.3
Intellectual disability	43	1.0	569	1.0
Autism	0	0.0	22	0.0
Acquired brain injury	6	0.1	135	0.2
Psychiatric disability	225	5.0	3546	6.1
Neurological disability	23	0.5	381	0.7
Sensory and speech disability	24	0.5	359	0.6
Total	4472	100.0	58 043	100.0

Excludes 13 948 cases where disability was not recorded.

Table 4.11 shows the reports of children in the household of the client. It is not possible to determine from the way the data has been collected between households where there were no children or whether it was unknown whether there were any children. The data does show that slightly more non-Indigenous households were reported as having children (87.4 per cent non-Indigenous compared to 84 per cent Indigenous).

Table 4.11 Reports of Children in Household by Age Group

Children in Household	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
0-2 years	1546	20.4	14 055	17.2
3-5 years	1407	18.5	14 703	18.0
6-8 years	1176	15.5	13 117	16.0
9-11 years	907	12.0	10 540	12.9
12-14 years	677	9.0	8241	10.1
15-18 years	374	5.0	5820	7.1
Over 18 years	291	4.6	4974	6.1
Unknown	1215	16.0	10 343	12.6
Total	7593	100.0	81 793	100.0

*Total exceeds the 81 526 clients because there maybe multiple reports of children in different age groups in a single household.

There are children present in the vast majority of the households of Indigenous clients who seek assistance of domestic and family violence services. This is particularly relevant in relation to the police mandatory reporting of the presence of children where an incident of domestic and family violence has occurred.[14] In more than 20 per cent of Indigenous clients' households there were children two years or younger, and in two-thirds of households (66.4 per cent) there were children under the age of twelve years.

[14] Arising from changes to the QPS Operational Procedures Manual in 2005. See Chapter 1, section 1.5.

4.3 The DVConnect Service

DVConnect is the single statewide service that supplies data to the CDFVR database. A separate analysis has been completed on the service's reported data for the period July 2004 – June 2007. DVConnect provides a statewide domestic and family violence telephone service across Queensland. The telephone service provides crisis intervention, support, information, advocacy, telephone counselling, referrals and coordination of emergency refuge and shelter placements.

Table 4.12 DVConnect clients 1/7/04 – 30/6/07

Indigenous Status	Number	per cent
Indigenous	2022	8.3
Non-Indigenous	22 432	91.6
Unknown	39	0.2
Total	24 493	100

Table 4.12 show the percentage of Indigenous clients using DVConnect at 8.3 per cent. It is slightly higher than the percentage for all services (8.3 per cent compared to 7.1 per cent — see Table 4.1).

Table 4.13 Type of Service Provided by DVConnect

Type of Service	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Counselling	633	31.5	12 923	58.1
Court Support	15	0.7	959	4.3
Crisis Intervention	1213	60.3	5491	24.7
Advocacy	13	0.6	130	0.6
Other	136	6.8	2753	12.4
Total	2010	100	22 256	100

Excludes 188 cases where type of service was not recorded and 39 cases where Indigenous status was not recorded.

Table 4.13 shows that the majority of Indigenous clients using DVConnect are seeking crisis intervention (60.3 per cent) and this is much greater than the proportion of non-Indigenous clients who seek crisis intervention (24.7 per cent) from DVConnect. Non-Indigenous clients are more likely to be seeking counselling (58.1 per cent).

Table 4.14 Primary Reason for Contacting DVConnect

Primary Reason for Contact	Indigenous		Non-Indigenous	
	No	per cent	No	per cent
Experiencing violence in current relationship	1620	81.0	15 325	75.7
Previously experienced violence	168	8.4	1565	7.7
Experiencing violence from past relationship	191	9.5	2031	10.0
Using violence in current relationship	14	0.7	1036	5.1
Previously used violence	4	0.2	134	0.7
Using violence in past relationship	3	0.2	160	0.8
Total	2000	100	20 251	100

Excludes 2203 cases where primary reason for contact was not recorded, and 39 cases where Indigenous status was not recorded.

Table 4.14 shows that Indigenous clients of DVConnect are more likely to be experiencing violence in their current relationship than non-Indigenous clients (81 per cent compared to 75.7 per cent).

4.4 Conclusion

Compared to non-Indigenous clients, Indigenous people who use domestic and family violence funded services are:

- Slightly more likely to be female (86 per cent compared to 82 per cent)
- More likely to be seeking crisis intervention (34 per cent compared to 18 per cent)
- Slightly more likely to be experiencing or to have previously experienced violence (72 per cent compared to 68 per cent)
- More likely to have had the violence reported to police (72 per cent compared to 62 per cent)
- More likely to have a current domestic violence order in place (30 per cent compared to 20 per cent)
- A little less likely to have a disability (10 per cent compared to 12 per cent)
- A little less likely to have children reported to be in the household (84 per cent compared to 87 per cent).

Based on the usage data, we might expect a greater number of Indigenous clients to be utilising the services of domestic and family violence funded agencies than is currently the case. Part of the reason for the relative lack of use may be the absence of services in identified areas of need.

Recommendation 2 Domestic and Family Violence Funded Services
Existing domestic and family violence funded services need to ensure policies and practices are in place that maximise access for Indigenous clients.

CHAPTER FIVE
COURT RESPONSES

This section of the report provides analysis of court responses to Indigenous protection orders including major court locations, court outcomes for applications and breaches, conditions and sentencing.

5.1 Location of Major Courts for Indigenous Applications

Given that police responses to domestic and family violence are concentrated in particular areas and that police generally are the most likely applicant for an order where the aggrieved is an Indigenous person, then it is not surprising that some courts deal with a relatively large number of domestic violence orders involving Indigenous people.

Table 5.1 lists those courts in Queensland that had more than 100 orders[15] made involving an Indigenous aggrieved in 2006-07. All courts where orders were made involving an Indigenous aggrieved are listed in Appendix B for the three year period 2004-05, 2005-06 and 2006-07.

Table 5.1
Domestic Violence Orders for Indigenous Aggrieved by Courts with over 100 Orders. 2006-07.

Court	Protection Order	Temporary Protection Order	Vary or Revoke Order	Total Orders
Cairns	236	92	63	391
Townsville	217	80	58	355
Mount Isa	197	35	67	299
Yarrabah	138	22	30	190
Normanton	86	62	40	188
Rockhampton	118	28	28	174
Palm Island	129	11	13	153
Mareeba	101	11	37	149
Doomadgee	71	62	12	145
Beenleigh	70	42	4	116
Kowanyama	87	6	15	108
Ipswich	62	29	12	103
Mornington Island	57	21	23	101

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

Cairns, Townsville, Mount Isa and Yarrabah were the four courts with the highest number of orders made involving an Indigenous aggrieved. It is worth noting that some of the smaller courts like Normanton, Palm Island and Doomadgee were among the courts with the largest number of orders involving Indigenous aggrieved.

[15] The term 'order' includes protection order, temporary protection order, variation or revocation of an existing domestic violence order and registration of an interstate domestic violence order. The cut-off of 100 orders was chosen to enable identification of the courts with the highest volume of Indigenous domestic violence orders.

5.2 Court Outcomes for Applications

Under the legislation there are basically two types of domestic and family violence orders in Queensland: a temporary order and a final order. A final order can be made for a maximum period of two years unless the court is satisfied that there are special reasons for its continuing longer (s. 34A). Courts have the power to grant an order or dismiss an application for an order.

Applications can be to extend the term of a domestic violence order; it is also possible for a court to make a series of domestic violence orders [ss. 34(b) and 35(1)(b)]. Applications can be made to vary the conditions on orders and to revoke orders. Courts also deal with the registration of interstate orders.

Table 5.2 shows the outcome for domestic and family violence order applications before the courts in 2006-07 by whether the aggrieved was Indigenous or non-Indigenous. Indigenous applications comprised 17.2 per cent of all applications for orders.

Table 5.2
Number of Domestic Violence Applications by Outcome and Indigenous Status of the Aggrieved, 2006-07

Outcome	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Dismissed	158	4	1550	8	38	13	1746	7
Granted	2925	73	12 124	64	130	45	15 179	65
Interstate Order registered	6	0	95	1	3	1	104	0
Order varied/revoked	556	14	1963	10	55	19	2574	11
Struck out	248	6	1588	8	32	11	1868	8
Withdrawn	117	3	1676	9	30	10	1823	8
Total	4010	100	18 996	100	288	100	23 294	100

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

The main difference in outcomes between Indigenous and non-Indigenous aggrieved is that a greater percentage of Indigenous applications for orders are granted (73 per cent compared to 64 per cent). A smaller proportion of Indigenous applications are dismissed (4 per cent compared to 8 per cent), struck out (6 per cent compared to 8 per cent) or withdrawn (3 per cent compared to 9 per cent). One reason for this result is that Indigenous applications are more likely to be brought by police than non-Indigenous applications, and hence are less likely to be withdrawn and have a higher likelihood of success than private applications (given police experience in meeting the evidentiary requirements of the legislation).

Similar results can be seen in the data for 2004-05 and 2006-07 (where 77 per cent of Indigenous applications for orders were granted in both years) (see Appendix B for details).

Indigenous applications comprised 17.2 per cent of all applications for orders. Applications for Indigenous domestic and family violence orders are more likely to be granted than non-Indigenous applications, and are less likely to be dismissed, struck out or withdrawn than non-Indigenous applications.

5.2.1 Lack of Attendance at Court

Despite the fact that Indigenous orders are more likely to be granted than non-Indigenous orders, there is a significant problem with the lack of attendance of Indigenous aggrieved and respondents at the court when the order is made. As noted previously in 3.5, this again raises issues about the sense of ownership of the process by Indigenous people and has implications in terms of either the aggrieved or the respondent understanding the nature of the order (a point we return to later).

Police, court staff and magistrates noted the following.

> With police applications the majority of the respondents and aggrieved won't turn up to court (*Interview State Police 2*).
>
> The vast majority won't go to the court – probably only about 5 per cent turn up. The respondent will only go to court if they have another criminal matter … (*Interview State Police 5*)
>
> A lot of times you won't get either side turn up and you just make the orders (*Magistrate 3 Interview*).
>
> A very small proportion [of respondents] show up to court – the order is made in their absence … I would say 80 per cent don't show up — that's either party. We might have 15 files [relating to applications] and we won't have 30 people out there waiting. We'd be lucky to have four (*Registrar 1 Interview*).

The interviews with criminal justice system personnel showed a clear disengagement with the court process by either the respondent or the aggrieved.

5.2.2 Hearings

There was a general view among magistrates, police and legal staff that very few Indigenous applications for orders were contested in court. As one magistrate noted:

> The Indigenous applications are very rarely contested. The main ones recently that have been contested by Indigenous respondents have been where there is some argument over custody or contact with the children (*Magistrate 2 Interview*).

None of the 32 victims of domestic and family violence interviewed for this research mentioned any applications that had been contested by the respondent.

Based on the interviews, most Indigenous people (either aggrieved or respondent) do not attend court when a domestic violence order is made. There appear to be very few hearings where the application is contested.

5.3 Conditions placed on orders

Section 17 of the *Domestic and Family Violence Protection Act 1989* requires, if an order is made, that the respondent must be of good behaviour and must not commit acts of domestic violence or associated domestic violence. These are referred to as the 'standard conditions'.

Section 17(b) requires that the respondent must comply with any other conditions imposed by the court and stated in the order. These are referred to as 'additional conditions'.

Table 5.3 shows that in the majority of Indigenous orders (70 per cent) only the standard conditions apply. The situation for non-Indigenous orders is the reverse: two-thirds of non-Indigenous orders (67 per cent) contain additional conditions.

Table 5.3
Number of Domestic Violence Orders in Queensland Courts by Conditions Placed on Order by Indigenous Status of Aggrieved. 2006-07

Order conditions	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Standard conditions only	3226	70	10 256	46	107	33	13 589	50
Other additional conditions	1351	30	11,952	54	218	67	13 521	50
Total	4577	100	22 208	100	325	100	27 110	100

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

The data shown in Table 5.3 is consistent with the previous two years (2004-05 and 2005-06) where around 70 per cent of orders involving Indigenous aggrieved had standard conditions only (see Appendix B for details).

Although Indigenous applications for orders are more likely to be granted by the court, they are less likely to contain additional conditions than non-Indigenous orders. Some 70 per cent of Indigenous domestic violence orders have only the standard conditions required by the legislation.

Magistrates, lawyers and police were certainly aware of the difference in conditions between Indigenous and non-Indigenous orders.

> No contact clauses don't tend to work, so there is usually only the mandatory conditions (*Interview State Police 3*). The conditions are less restrictive because of smaller nature of the community (*Interview State Police 4*).
>
> For example, things like not going in a certain distance of a residence is almost impossible [in remote communities]. They tend to be less restrictive (*Magistrate 1 Interview*).

> Typically, the order made for an Indigenous respondent will have the two standard clauses. It is less likely to have the additional clauses of no contact, etc. compared to non-Indigenous orders (*Magistrate 3 Interview*).
>
> Generally, the applications only have the mandatory terms. Even when there has been significant violence the police are usually only seeking the standard mandatory conditions (*Magistrate 5 Interview*).
>
> This is also based on living conditions in the community that additional conditions are not enforceable. Women will also specifically say that they don't want a non-contact order. They do want contact (*Magistrate 6 Interview*).
>
> Nine out of ten orders here have the standard conditions (*Registrar 1 Interview*).

The major reasons for these differences between Indigenous and non-Indigenous conditions related to the desire for the aggrieved to have contact with the respondent and the specific nature of life in remote communities.

5.4 Court Outcomes for Breaches of Orders

Table 5.4 shows that the major difference in court outcomes for Indigenous and non-Indigenous offenders relates to the greater use of custodial orders for Indigenous offenders and the greater use of fines for non-Indigenous offenders.

In 2006-07 some 44.1 per cent of Indigenous breaches of an order result in a custodial sentence compared to 21.9 per cent of non-Indigenous breaches. Conversely, nearly half of the non-Indigenous breaches of orders result in a fine (48.4 per cent). These results are broadly consistent with the previous two years data (see Appendix B for details).

Table 5.4
Number of Breach of Domestic Violence Order Offences Proven Guilty By Outcome and Indigenous Status of Respondent. 2006-07

Outcome	Indigenous		Non-Indigenous		Unknown		Total	
	No	per cent	No	per cent	No	per cent	No	per cent
Custodial Order	792	44.1	952	21.9	7	20	1751	28.4
Community Service order	76	4.2	103	2.4	1	2.9	180	2.9
Probation	279	15.5	693	16.0	4	11.4	976	15.8
Fine	521	29.0	2102	48.4	20	57.1	2643	42.9
Good Behaviour/ Recognisance	51	2.8	273	6.3	1	2.9	325	5.3
Convicted Not Further Punished	65	3.6	143	3.3	1	2.9	209	3.4
No Penalty Imposed	10	0.5	72	1.7	1	2.9	83	1.3
Total	1794	100	4338	100	35	100	6167	100

Note: Due to missing or erroneous data approximately 2 per cent of applications/ orders have been excluded from the data.
Source: Queensland Wide Interlinked Courts (QWIC) system 4/7/08.

While there are clear differences in court outcomes for Indigenous and non-Indigenous offenders for breaches of domestic and family violence orders, this data does not take into account prior offending history either for prior breaches of orders, or for other criminal convictions.

Indigenous offenders who are convicted of breaching a domestic violence order are twice as likely as non-Indigenous offenders to be jailed, and about half as likely to receive a fine. For every ten Indigenous breaches of a domestic violence order, between four and five will result in a sentence of imprisonment.

5.5 Responding to Breaches of Protection Orders: Sentencing and Punishment

Although the data shown above demonstrates that Indigenous offenders who breach orders are far more likely to be jailed than non-Indigenous offenders, there is a perception that the sentences imposed on offenders who have breached orders on multiple occasions may be too lenient or are inconsistent.

> Inconsistency is the greatest problem in sentencing. (*Interview State Police 2*)
> The inconsistency is the problem. (*Interview State Police 6*)

As one legal stakeholder commented in relation to sentencing,

> The problem is that the first breach is probation, the second breach is probation, and the third breach might be a suspended sentence, and so on. You have to wonder what the message is that is being sent out … [If] people come

> to court they have done something pretty serious. They don't really understand the suspended sentence and they ask 'am I free to go?' and you say, 'yeah you're free to go'. (*Legal officer Interview*)

Similar perceptions of the 'failure of the courts to impose tough sanctions on respondents who breach protection orders was also an issue of concern raised by domestic violence service providers and police officers' were noted in the CMC report (2005: 66).

However, it is the case that Indigenous offenders are being jailed for breaches of domestic violence orders. As shown in Table 5.4 more than twice the proportion of Indigenous offenders are jailed compared to non-Indigenous offenders, and in fact more than four in every ten Indigenous breaches (44 per cent) resulted in imprisonment. A central part of the problem is the failure of the criminal justice system, and particularly imprisonment, to change the behaviour of offenders.

The interviews with magistrates and criminal justice personnel noted some of the difficulties associated with sentencing Indigenous offenders for breaches of protection orders.

5.5.1 Violence

It was noted with Indigenous offenders that the breaches often involve serious violence.

> The breaches are not technical breaches of the order, they tend to involve violence and hence breach the fundamental aspects of the order. (*Interview Magistrate 2*)

> The breaches are serious and the number of multiple breaches is serious. In contrast with the non-Indigenous breaches you won't get those technical breaches which might occur say with the changeover of kids and there is a bit of a spate. Having been charged with a breach doesn't seem to be a discouragement for further breaches. (*Interview Magistrate 4*)

> With mainstream orders there is less likely to be an accompanying offence and no physical violence, so you are sentencing purely on a contempt basis. (*Interview Magistrate 3*).

Police who were interviewed made a similar point.

> The breaches usually involve violence (*Interview State Police 4*). The rate of breaches is higher in the Indigenous community and the breaches are more likely to have a high level of violence. They [breaches] are less likely to be associated with no contact orders or in relation to family law matters. (*Interview DVLO 3*)

The presence of violence in the breach of the order will increase the penalty imposed by the court.

5.5.2 Lack of a Substantive Charge Relating to Violence

A significant problem was that breaches of domestic violence protection orders were often not accompanied by a substantive criminal charge relating to the assault.

> I've had a couple of instances from [small community] when the aggrieved hasn't proceeded with a complaint of a serious assault, so the police have charged with a breach of a domestic violence order and it's been sufficiently serious to warrant imprisonment (*Magistrate 5 Interview*).

> You get a number of those where there is no substantive charge of assault, but a breach of the domestic violence order and there has been a serious assault (*Magistrate 6 Interview*).

> I am convinced that there are serious criminal assaults, but there is no complaint made. So in fact what we are dealing with is serious bodily harm under the guise of a breach of a domestic violence order … It is much simpler if you have the breach and an associated assault bodily harm because you can impose the one sentence … Typically you would see a prison sentence for the assault bodily harm and no penalty for the breach of the order. The difficulty is when you are only sentencing for the breach and you take into account the violence (*Magistrate 2 Interview*).

> The breaches will come before the court without the accompanying bodily harm offence. It is a difficult sentencing option because there is the two components to it. You've got the fact that there was the contempt of the order and the degree of violence that is evident in the breach of the protection order. The more violent the offending the more serious it is regarded (*Magistrate 3 Interview*).

5.5.3 Severity and the Maximum Penalty

There were mixed views about whether the maximum penalty for breach of a domestic violence order was severe enough. One magistrate noted:

> I don't think the maximum penalty for the breaches is enough to be honest. You have to save the upper limit for the most serious breaches and therefore those lower down the hierarchy tend to be dealt with less seriously. Particularly where there is no substantive charge and you have to deal with breach only (*Magistrate 2 Interview*).

Police noted in this regard:

> Harsher penalties are needed for repeated breaches (*Interview DVLO 2*). The penalties need to be looked at more seriously in remote communities because the orders do not have a no contact condition on the order – because they can't be enforced (*Interview State Police 6*).

However, many police and magistrates also put the contrary view that the maximum penalty was severe enough. One police officer noted:

> It's not an issue – people know if they breach a couple of times they will go to jail. Part of the problem is that the women may not go ahead with ABH and so the court is sentencing for the breach and not the other offence (*Interview State Police 5*).

5.5.4 Imprisonment as Deterrent?

A significant problem noted by magistrates, police and Indigenous service providers is that imprisonment is not a deterrent. In this context increasing the maximum penalty may serve a function of public denunciation and relatively short-term incapacitation, but it is unlikely to function as a deterrent for repeat offending, and there is little evidence to suggest it serves a rehabilitative function.

> The bigger problem is that jail doesn't really scare them. (*Interview State Police 5*)

> Some of them have that attitude, 'so what?' 'I've been to jail before. I've been locked-up before.' We've seen instances where fellows have breached their conditions time and time again. They are taken to watch-house. They get released, go back to the relationship and breach it again. Some of them might get 2 weeks or a month or something. It's not going to worry them — in a few weeks they'll be back out. There are some out there that don't take the orders seriously. (*Interview IPLOs 6*)

5.5.5 Victims Views on Punishment and Imprisonment

There were various views expressed regarding imprisonment. Among some victims of domestic and family violence there was a reluctance to see the perpetrator imprisoned. When deciding not to report a breach of a domestic violence order, one interviewee stated:

> I was scared that he might go to jail, or that he might lose his Blue Card because he was working with children. I just didn't want [him to lose his job]. That was my main concern. (*VC4.2*)

The interviews with victims showed many instances where the victim and their partner remained in a relationship, with the violence continuing despite the domestic violence order, and despite imprisonment. Often the victim did not want their partner jailed.

> I have reported the violence to the police. I have reported to the police five times in one year. I walk to the police station, it's not far. They told me to keep away from him, but I have kept going back – ever since I found out I was pregnant. I told the police there was nothing going to stop me going back to him …. I didn't want them to charge him. He went to jail earlier this year … There were a couple of times I haven't reported it — we just sorted it out ourselves. I just didn't want to put him back in jail again. (*VC2.5*)

> He is on a suspended sentence or maybe ICO now. If he breaches he goes back to jail. We supported him in the courthouse, and the judge said lucky for him … I was really worried that he would go to jail. I have a child. But he was looking forward to going to jail, but they gave him a suspended sentence. (*VC3.5*)

Others were happy that imprisonment had been used as a sentencing option, either because of the hope that the offender would change (*VC3.4*), or because the offender is incapacitated (*VC5.5*).

> Sometimes he puts hand on me, sometime he don't. Now he is in [jail], because he breached his DVO. I went to hospital, then to the shelter, and then to the police to give a statement ... It is good for him to have some time in jail to think [about] what he done wrong. He said on the phone [from jail] 'I held lots of things from you. When I come back I will talk with you and we can start trusting each other'. (*VC3.4)*

> I have a domestic violence order in place. The police took it out. He is back in jail. He was in jail until last year then came out on parole and then broke his parole because of domestic violence, and now he is back in jail. The order works to keep him away. He is coming back this year and I am not too happy about it. I'm a bit scared. He is not allowed near me. The first time he went to jail I thought it might change him, but it didn't. I've started a new relationship. (*VC5.5*)

For many victims, however, experience showed that imprisonment was unlikely to change behaviour.

> He has been to jail for breaking that order. He still commits that violence when he came out of jail. He hasn't changed. He seems worse. (*VC5.4*)

5.6 Length of Time for Breaches to be Determined

Finally, there were issues raised about the length of time it may take for breaches to be dealt with by the court.

> The last time I reported he was on a DVO. I reported it, he had breached it. It has just been a constant DVO. The DVOs don't really make any difference. It didn't make any difference to the violence occurring. He was being remanded [in the community, not in custody] month after month, and he was still doing domestic violence. It got onto five months for one remand. He was given a one-year sentence [of imprisonment]. It was a big relief. (*VC3.2*)

The problem was particularly acute where the breach was associated with a serious criminal offence which needed to be dealt with in the district court.

> Part of the problem with the length of time for dealing with breaches can be where they are associated with criminal charges relating to the violence, in the sense that once the breach is associated with a substantive criminal offence it

> will be heard and dealt with at the same time – this could involve a committal hearing and referral to the district court depending on the seriousness of the offence. If it's a trial it will be held in Cairns [for matters arising from Cape communities]. (*Interview Magistrate 6*)

However, it was also clear from the interviews in the communities that because of the infrequent sitting of the court on a monthly basis that matters were being held over in the magistrate's court from month to month.

5.7 Is There a Need to Increase the Maximum Penalty?

The evidence suggests that the current penalties are not working particularly effectively given the levels at which domestic and family violence orders are breached. It is legitimate to ask whether the maximum penalty for breaches should be increased.

The Queensland *Domestic and Family Violence Protection Act 1989*, section 80 provides for a tiered approach to sentencing. If the respondent has previously been convicted of an offence on at least two different occasions and at least two of those offences were committed not earlier than three years before the present offence was committed, the penalty is two years imprisonment otherwise, 40 penalty units or one year imprisonment. Therefore, to attract the heavier penalty, the respondent must have committed three breaches within a three-year period before the penalty escalates.

The penalties vary across Australian jurisdictions both in terms of maximum penalty and in the effect on penalty of prior breaches of orders.

South Australia

A breach of an order has a maximum penalty of imprisonment for two years. There is no particular provision in the Act for multiple breaches or aggravating factors to be taken into account.

Western Australia

A breach of an order has a maximum penalty of $6000 or imprisonment for two years or both. There is no escalation in penalty for subsequent breaches. An aggravating factor is if a child with whom the offender is in a family and domestic relationship is exposed to an act of abuse.

Victoria

A breach of an order has a maximum penalty for a first offence of 240 penalty units or imprisonment of not more than two years and for a subsequent offence to imprisonment for a term not exceeding five years.

Northern Territory

A breach of an order has a maximum penalty of $2000 or imprisonment for six months for a first offence and for a second or subsequent offence, imprisonment for not less than seven days but not more than 6 months.

Australian Capital Territory

A breach of an order has a maximum penalty of 500 penalty units or five years imprisonment or both. There is no provision for escalation of penalty in respect of multiple or subsequent offences.

New South Wales

A breach of an order requires a sentence of imprisonment if the act constituting the offence was an act of violence, unless the person convicted was under 18 years of age at the time. Imprisonment is the sentencing option regardless of whether the contravention is a first or subsequent offence. The maximum sentence of imprisonment a magistrate can impose is five years.

If the breach does not involve an act of violence, where the Court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.

Tasmania

The Family Violence Act provides an escalating series of penalties. A breach of an order has a maximum penalty of:
(a) in the case of a first offence, a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months
(b) in the case of a second offence, a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 18 months
(c) in the case of a third offence, a fine not exceeding 40 penalty units or to imprisonment for a term not exceeding 2 years
(d) in the case of a fourth or subsequent offence, to imprisonment for a term not exceeding 5 years.
When sentencing a court:
(a) may consider to be an aggravating factor the fact that the offender knew, or was reckless as to whether, a child was present or on the premises at the time of the offence, or knew that the affected person was pregnant
(b) must take into account the results of any rehabilitation program assessment undertaken in respect of the offender and placed before the court or judge.

Commonwealth Model Domestic Violence Laws

A breach of an order has a maximum penalty for a first offence of $24 000 or one year imprisonment or for a subsequent offence, two years imprisonment.

Effectively, Victoria, New South Wales, the ACT and Tasmania have maximum penalties of five years. South Australia, Western Australia and Queensland have

maximums of two years, although in Western Australia and South Australia the two years maximum also applies for a first offence. The Northern Territory has a maximum of six months but imposes mandatory sentences of imprisonment for repeat offenders.

The Queensland provisions rank at the lower end of maximum penalties nationally. The time requirements relating to subsequent breaches would appear to unnecessarily benefit repeat offenders, and has been described as 'unnecessarily generous to the respondent' (Pyke 2007: 122).

Recommendation 3 Penalties
It is recommended that the Queensland penalties be aligned with the Model Domestic Violence Laws of a maximum penalty for a first offence of one year imprisonment or for a subsequent offence two years imprisonment. The current time constraints in the legislation should be repealed.

Increasing the maximum penalty for domestic violence breaches in Queensland is unlikely to increase the use of domestic violence orders by Indigenous women. The evidence also strongly suggests that imprisonment is not changing the behaviour of Indigenous offenders. It is not a sanction that deters or rehabilitates Indigenous offenders. Rehabilitation might occur if there were adequate programs for those in prison as well as those in the community. There has been a move away from the use of Indigenous programs, like 'Ending Family Violence' in correctional centres. Programs also tend not to be available for those prisoners serving shorter prison sentences.

5.8 Conclusion

Indigenous applications comprised 17.2 per cent of all applications for orders. Applications for Indigenous domestic and family violence orders are more likely to be granted than non-Indigenous applications, and are less likely to be dismissed, struck out or withdrawn than non-Indigenous applications.

There is a significant problem with the lack of attendance of Indigenous aggrieved and respondents at the court when the order is made. This raises issues about the sense of ownership of the process by Indigenous people and has implications in terms of either the aggrieved or the respondent understanding the nature of the order. There is a disengagement with the process which is less likely to be found in non-Indigenous applications for domestic violence orders.

There appear to be very few hearings where the application is contested in Indigenous domestic violence matters.

Although Indigenous applications for orders are more likely to be granted by the court, they are less likely to contain additional conditions than non-Indigenous orders. Some 70 per cent of Indigenous domestic violence orders have only the standard conditions required by the legislation.

The major reasons for the difference between Indigenous and non-Indigenous conditions appear to be related to the desire for the aggrieved to have contact with the respondent and the specific nature of life in remote communities.

Indigenous offenders who are convicted of breaching a domestic violence order are twice as likely as non-Indigenous offenders to be jailed, and about half as likely to receive a fine. For every ten Indigenous breaches of a domestic violence order, between four and five will result in a sentence of imprisonment.

The Queensland sentencing provisions for breaches of domestic violence orders rank at the lower end of maximum penalties nationally. However, increasing the maximum penalty for domestic violence breaches in Queensland is unlikely to increase the use of domestic violence orders by Indigenous women. The evidence also strongly suggests that imprisonment is not changing the behaviour of Indigenous offenders. It is not a sanction that deters or rehabilitates Indigenous offenders.

Recommendation 3 Penalties
It is recommended that the Queensland penalties be aligned with the Model Domestic Violence Laws of a maximum penalty for a first offence of one year imprisonment or for a subsequent offence two years imprisonment. The current time constraints in the legislation should be repealed.

CHAPTER SIX:
BARRIERS TO REPORTING DOMESTIC AND FAMILY VIOLENCE

6.1 Introduction

This section of the report covers a number of basic findings from the interviews with Indigenous victims of violence and various stakeholders. It details the basic barriers to reporting domestic and family violence, to seeking orders and to reporting breaches of orders when they occur. The 32 women victims of domestic and family violence who were interviewed for this research generally had experienced several years of violence by their partner or partners. Some had experienced decades of violence.

> I'm 19 … We have been together three years. Violence has happened right through [this period]. (*VC2.3*)

> I have experienced domestic violence over nine years since I have known this person. It used to happen often when he was drunk. He would come around and pick an argument. Then he would kick me or hit me, and then he will just take off. He was my boyfriend. (*VC4.2*)

> I'm 34 and I'm from [remote community]. I have had violence occasionally over many years. It occurs in the community. It is done by my de facto. (*VC3.1*)

> I have experienced domestic and family violence over many years, going back 7 years. It started occasionally over verbal arguments and over time went to physical abuse, social abuse, spiritual abuse, cultural abuse. It occurs in my family house with my partner. Over the years it has become more serious. It became a regular thing. I tried to keep my family together, but my partner wouldn't agree on seeking help ... I tried very hard to stop it. (*VC4.1*)

> I'm 41 and I've been in [remote community] for 15 years. The violence has been happening over the last 14 years. The violence always occurs at home. My kids witness it. (*VC3.2*)

> I've been putting up with it for 20 years with him. I frightened to tell the police. He say I will murder you. I frightened to go up to the shelter. He hit my oldest daughter. He punched her, hit her with a bar. (*VC5.2*)

Some victims had grown up in families where domestic violence was present. Their current relationships were often contextualised as part of the ongoing violence which had been part of their lives since childhood.

> I'm 19 and I'm from [small community] originally. It started when we were young. Dad was a really violent man. He used to bash mum every day. Mum got sick of it one day and just left. She left all of us with Dad … and he took it out on us. Me and my youngest brother have been in and out of foster homes. (*VC2.3*)

> When I was a child I used to see my dad and my mum, and I wanted to kill him but I was just too small. All my life there has been violence in the house,

> every time they drink they bring the problem into the house … I have been getting hidings, getting flogged since I was 18. (*VC4.6*)

Other women who were interviewed had not experienced domestic and family violence until they were adults and in a relationship.

> I'm 35 and I come from New South Wales originally. I didn't grow up with domestic violence or alcohol. He [the partner] has grown up around violence, and sometimes I feel like that is all he has known. He has seen his grandmother go through it, his mother go through it, and now us his family are going through it …. It occurs when he binge drinks … that's when he gets violent. He just gets argumentative. He starts getting aggressive and then it just escalates. When he gets violent, I ring the police. (*VC2.2*)

> I'm 20 years of age ... Violence was not known in our family so it is all new stuff to me. It has just happened in my relationship over the last three years. It's my first relationship. (*VC2.4*)

> I'm 20 and I live in [small community]. I didn't grow up with violence in the family. Violence has occurred now and then over the last three years I have been with my partner. (*VC2.5*)

The women interviewed in this research had been in ongoing violent relationships for many years – even those who were only 19 or 20 years of age.

6.2 Barriers to Reporting and Seeking Orders

The following discussion centres on issues identified in the interviews with victims and service providers as the major barriers to reporting domestic and family violence. It should be acknowledged that while these reasons have been separated out for analytical purposes, it is common that Indigenous women will face a combination of barriers to reporting. As one Indigenous police liaison officer stated:

> Domestic and family violence is a major issue and half doesn't get reported … The reasons are dependency on partner, the lack of income, no where to go – there is a shortage of housing alternatives. The mental state of the victim – shame, low self-esteem. The fear of the partner mixed with dependency … Many of the victims are older — over 25 years — and most have children. Fear of losing their children is a problem. (*Interview IPLOs 2*)

The fact that there are multiple barriers to reporting has policy implications to the extent that a number of issues will need to be addressed before change can occur. It is unlikely that there will only be one reason that prevents the reporting of violence.

Overwhelmingly, the interviews revealed a picture of ongoing violence. It was the case that within the one relationship some violence would be reported and other violence would not. The interviews showed that most women reported at least some of the violence, and often on a regular basis.

> Yeah there have been times when I haven't reported – it has been a matter of getting to a phone or getting out of the house. I've reported before it has

> happened, as it happened and after it has happened … I reported the most recent incident. It was the behaviour. I thought, you've got a four year old son and I am not going to put him through that. I just want him to stop doing it and we can't tolerate it ... I've explained to him that I have no choice. I told him that it frightens us, terrorises us, being abusive in front of our son. It's been serious every time I reported it …. I know police will come and get him. Take him away and then I expect him to walk home in a couple of hours. (*VC2.2*)

The interviews showed that many of the women had been reporting the violence over many years.

> The violence has been happening over the last 14 years … I have reported the violence all the time. At first when I started living with him I didn't report it for about two years, but then it got so bad that I decided to — it got more frequent like every week or month. He has been in and out of prison for domestic violence. He just came out again for domestic violence. (*VC3.2*)

6.2.1 Fear of the Perpetrator

One of the common reasons given for failing to report violence or seek an order was fear of the perpetrator.

> I've told my family about the violence and the police. I decided to report it because I hate getting hurt over and over. The last time it happened was two days ago. I didn't report it. I was scared something might happen to me. It is happening in a cycle, over and over again. (*VC3.1*)

> It was very hard to run away from him. If I ran away he would get more wilder. His mum tried to hide me and he hit her. He threatened to kill me. (*VC3.3*).

> I'm 48 and I have children. I had an order against [man] before, but he is still threatening me. I am worried but he says he is going to kill me if I get an order now. He belted me up and put me in intensive care and I lost my right eye. He hit me with an iron picket over the head. He went to jail for that. The other night he picked up a chair and hit me with a chair. I was just sitting down with some friends. (*VC5.2*)

> Fear stops women from taking out orders. Police can't protect them for 24 hours. Eventually the person who has done the violence is going to be there. The other family can get involved too … there could be other family members. The aggrieved isn't only afraid of the respondent. (*Interview IPLOs 6*)

> Based on my experience I've seen that there will be retribution. If you are in a remote community there may be no safe place. (*Interview IPLOs 5*)

> The main reasons for not reporting can be threats from the offender, particularly if they are on a suspended sentence from some previous incident. (*Interview DVLO 3*)

6.2.2 Family and Kinship Issues

Family and kinship issues are complex in how they impact on domestic and family violence and decisions about whether to report the violence or not. They can have both negative and positive influences on reactions to domestic violence.

Commonly family and kinship were identified as a major reason for not reporting in connection to fear of the perpetrator, their family or relations.

> It's to do with family and the recriminations that will come back. As well as the factions within the community. (*VC6.7*)

> [Where do the women come from to Lena Passi?] Mostly from outer islands coming, but the disadvantage is that they can't get in here. It's because they are trying to get away from their partner but partner wouldn't let them. and there is so much family around who won't let them leave. Families will stick up for partner's wrongdoing. (Torres Strait interview)

> One of the main reasons for not reporting is that everyone is related to everyone else. They are small islands and everyone is family. There can be fear of retribution... Often the victim doesn't report the violence. It is her family or friends who report. Although we get some spouses coming saying they have had enough, but the majority is close family or friends who do the reporting rather than the victim. It is a big issue not having police in the outer islands. (*Interview State Police 2*)

> I have seen whole families threaten the woman not to speak to police about a partner's violence. (*Interview State Police 5*)

> Part of the problem is family relationships. Virtually every street brawl you go to you could take out a domestic violence order. The fighting might be between family groups, but because of intermarriage they are related. (*Interview State Police 5*)

Although often not recognised, the victim's family can also play a negative role in reporting domestic and family violence by their lack of support for the victim.

> "I went through three years of mental and physical abuse. I had a child during that period. It was horrible. The family of the victim need to support the person. When I was going through it, I never had nobody. My family put me down about it. They made me feel low and it made me go back to the man and get more hidings. It took me three years to wake up and stand up to my family and say you should have been there in the first place. The family support is really important." (*VC6.8*)

Splitting up the family is also seen as an issue as is the potential loss of economic support for the children in the family.

> The close ties to family groups are very strong, and the repercussion later on down the track. They lose identity and family. "If I report, what is going to happen to my family?" Women may not be confident to come forward and report, also fear of loss of economic support. Who's going to support them and their kids if their partner goes to jail? There is the shame factor and the ostracism if they report. The family pressure comes from both sides, her family and her partner's. (*Interview IPLOs 5*)

> In Torres Strait there is a fear that the orders will split the family up. There needs to be more explanation, more counselling. The families put pressure on when there are kids involved. "You are going to put the Dad in jail". (*Interview IPLOs 1*)

There are also other specific family-related issues in the Torres Strait concerning island adoption, although differing views as to whether this causes domestic and family violence.

> Island adoption is still strong. Some family violence issues come back to adoption. Some estimate as much as 40 per cent of domestic violence arises when the woman doesn't want to give up her firstborn child, or later children. She is kicked out of the family, she may become homeless. Or the conflict can continue over years. In that situation an order is going to break up the family, especially if there is no family mediation to try to heal the rifts. (*Torres Strait Interview*)

> Island adoption can cause friction when the parents later change their mind about giving up a child, but it's not likely to lead to violence. (*Interview IPLOs 1*)

Family and kinship can play a positive role in supporting women and in the reporting of violence, and this is as equally important as the negative role played in pressuring a victim not to report domestic and family violence. It was often acknowledged that the woman's family may be directly responsible for reporting domestic and family violence to police.

> In [small community] one of the biggest barriers is the dynamics of the Indigenous family – the violence is visible and the women rely on other family members to do the reporting for them, because it takes some of the direct payback for them out of the situation. Particularly if the reporting leads to a breach and it has serious consequences, then it puts them out of the firing line in relation to that. (*Interview Magistrate 1*)

> I reported it from the first time. I put a domestic violence order on him, but he just keep coming. I keep on calling the police and they keep on grabbing him. My mum helped with getting a domestic violence order. My mum explained me the order. You can't break these things. If they tell you keep away from that person, then you have to keep well away from that person. (*VC3.3*)

In some circumstances the perpetrator's family may also assist the victim.

> His mum and his sister went and got the police to take him away. They took him to the police station and took me to hospital. They got me to give a statement. That was the last time he hit me. We busted up after that. That's when the violence stopped. (*VC3.3*)

Older children within the family may also be placed in a situation where they report the violence while trying to protect younger siblings.

> I'm 16 and I'm from [small community]. I have experienced a lot of domestic violence with my parents. We run out of the house because that is the only thing we can do. I have rung the police occasionally. I reported it because they were fighting and I had to take my little sisters out of the house. I didn't report the last time. I was scared. I was frightened what might happen to me. Both [parents] are doing the violence. It should stop. They've got five kids. (*VC6.4*)

Understanding the complexity of the role that family and kinship can play in the reporting of domestic and family violence has implications for the development of community education (see below). It is appropriate that community education packages enhance a positive role of Indigenous family and kinship groups in supporting victims of domestic violence to seek assistance from police and other agencies.

6.2.3 The Nature of Indigenous Relationships

An issue that frequently emerged in the interviews was the difference between Indigenous and non-Indigenous ideas about the permanency of marriage and de facto relationships.

As victims of domestic and family violence and service providers noted:

> In Indigenous communities you are life partners and that is it. That is a cultural thing. The man may have sliced and diced you, but he is still part of your life. 'You are the father of my kids'. (*VC2.1*)

> The police told me that I can never go back to him. And I said, I still love him that much and I still want to go back to him. I've got four kids for him and that's why I love him. (*VC3.4*)

> Sometimes it was serious but still I didn't report it. Maybe because I always loved him even though what he was doing to me. (*VC4.2*)

> I think part of the reluctance for Indigenous women not to report is that there is a great acceptance that this relationship is for life, even if it is not an intimate relationship for life particularly if they have children… With non-Indigenous couples you are much more likely to say, "No this isn't working. You can see the kids, that's a separate issue but I'll walk away and never see you again". That hardly ever happens with Indigenous couples… For these reasons Indigenous women are less likely to get away from a destructive relationship. Family support is important in the decision for women to report and follow through with an order. (*Interview Magistrate 1*)

> Ninety-nine per cent of the women who come into the shelter won't leave their husbands. They just want the violence to stop. All we can do is inform them and try to break the cycle of abuse. There is also no accommodation once they leave the refuge. **(***Interview OATSIP Officer 1post MOG)*

Associated with intimate relationships was the recognised problems of jealousy in causing domestic and family violence. As one service provider put it, "Jealousy is a big problem" (*Interview IPLO 1*).

Victims who were interviewed noted the following accounts of jealousy and the impact on domestic violence.

> He is angry about jealousy, and he is a violent man. I have to look down, not look up at other people. It is the jealousy. I can't sit down with my own family. (*VC3.4*)

> He never used to let me go, especially to see my family. If I do go, he would crack up. I have been with him a long time, since 2002. I have a son. He is three and a half. He was in jail, and when he was discharged they told him all sorts of stories – jealousy. He was in jail – he went away twice. Domestic violence but not from me. From his mother – his mother put a DVO on him... At home behind locked doors he was asking silly questions. "Were you with so and so?" Making me answer the question. He hit me. (*VC3.5*)

> I'm 23 and I'm from [remote community]. I broke up from my partner about five months ago because of hidings. I was with him for about three years. He was very jealous. If anyone walks up to me and talk to me he doesn't like it. It didn't matter if it was a man or a women. Every day, every night it was jealousy. He was in jail for one year because of a breach. (*VC3.3*)

6.2.4 Department of Child Safety and the Removal of Children

One of the greatest barriers to reporting violence and seeking a protection order that emerged in interviews was the fear of having children removed. There was widespread knowledge that reporting violence might lead to intervention by the Department of Child Safety. This fear of Child Safety intervention was frequently mentioned by both service providers and victims, and was prevalent in all the locations where interviews were conducted.

> I had to take out a DVO after considerable thought and it was a really hard choice for me to do. It was the last straw. Even if I lose my kids it had to be done. It had to stop. Mine wasn't that physical, it was more verbal abuse… It is a really hard thing to do. Child Safety is one of the issues. You know it can have that snowball effect where the next thing you know your kids are being removed. (*VC2.1*)

> There is a fear that Child Safety will become involved particularly if they have little kids. (*VC6.4*)

> The reason I haven't reported is my kids, my babies. I'm worried about them being taken. I had four children. Because police are brought to a house where

there is violence, the kids get taken straight away. The Stolen Generation I reckon is coming back. (*VC6.9*)

A lot of people are aware of what can happen to their kids. It may just be a report from someone. (*VC6.7*)

One of the main things is fear of child removal in the last few months. Women don't want to use the domestic violence orders because they are afraid of losing their children. "I'm going to lose my kids if I put this order against my husband". There needs to be security that the children can still be with family. Women don't understand that there will be an assessment process. With education of women it will help – your kids won't just be ripped out of your hands. (*Interview Women's Shelter Worker 1*)

The fear of Child Safety stepping in… it may have encouraged people to just keep taking it (domestic violence) in the quiet of their home … that's what I found with some cases. (*Interview Healing Service Worker 1*)

I think the extra dimension for Indigenous women which is onerous is Child Safety. All of these veiled threats that if you do this you will lose the kids… That sought of dynamic was driving people underground and they weren't reporting because they knew Child Safety would get involved. (*Magistrate 1 Interview*)

I think there is a fear because of the Stolen Generation they think that their kids are going to be taken off them again. (*Interview IPLOs 5*)

The issue of Child Safety has definitely come up. It has put more pressure on victims, if they know that children can be taken from them. (*Interview DVLO 4*)

Some of them do get worried about it, about the government taking their children away. (*Interview State Police 2*)

Many people, including police officers, questioned the usefulness of mandatory reporting by police if a child is present (or usually resident) at the scene of a domestic violence incident.

Women are less willing to report. The police reporting should not be mandatory. We should be able to apply criteria as to whether to report. For example, if the child is not present or the violence is a one off. (*Interview DVLO 6*)

I am not sure with the mandatory reporting whether we are doing the right thing – we might put the report in tonight but Child Safety won't be here for a month or two. Why can't we use the normal reporting procedures? We have in place a system if we suspect a child is being abused – why don't we rely on that?

We are reporting on incidents but who's investigating them? We are just generating reports. Police should make the decision. Police get paid to do a job – if you can't make a decision in relation to a four-year-old child, you

> shouldn't be in the job. Police have the power to deprive people of their liberty, they should be able to use their discretion to make a decision as to whether a child is at risk. (*Interview State Police 5*)

> A better relationship is needed between QPS and Child Safety. Often the Child Safety officers are quite young and don't understand their power. (*Interview DVLO 6*)

It was also clear from the interviews that Child Safety needs to engage in a community education program about their work, and particularly in relation to domestic and family violence.

> People are very wary of Child Safety. Education is required… Child Safety need to spend more time in the community, educating the community about their work and child protection issues. (*Interview State Police 3*)

> Women don't understand that there will be an assessment process. With education of women it will help – your kids won't just be ripped out of your hands. (*Interview Women's Shelter Worker 1*)

6.2.5 Community Support and Services

It was clearly acknowledged by women and stakeholders that basic support services were needed before women would report domestic and family violence. We return to this issue in more detail below (Chapter 7), but note that the lack of support services is a barrier to Indigenous women reporting violence or a breach of an existing order, and that expanding services leads to an increase in reporting.

> Things are changing with the development of services like the domestic violence service, the IFSU (Indigenous Family Support Unit). The Mt Isa Domestic and Family Violence Action Group has a wide membership and [has] resulted in reductions in breaches of domestic violence. (*Interview DVLO 2*)

> The thing that I have found recently in [small community] is that the more interventions there are by way of counselling, people to talk to, the women's shelter and support persons in organisations, then the more reporting and the more criminal charges being laid where the women, the spouses, are prepared to become a complainant. The more support there is then the stronger they feel to be able to stand on their own feet – that's the single biggest issue in places like [small community]. (*Interview Magistrate 1*)

These support services are needed after the order has been taken out.

> Women are often feeling really guilty when they get a DVO and they are blaming themselves, that is when they need support. It is like a grieving process. I know when I did mine I felt so sick. I was a nervous wreck. I couldn't work or nothing and that was only because I had taken the DVO. He sought counselling straight away. (*VC2.1*)

6.2.6 Police Presence

Connected to the issue of support services is the basic question of whether police are available to receive a report of domestic and family violence. This issue is of particular importance in the Torres Strait where there are many communities without a police presence, but it also affects other Indigenous communities and rural centres where the police station is not operating 24 hours a day.

> The DVO itself is useless. It gives women a false sense of security. You think you have this piece of paper to back you up. You ring it in and they haven't got anyone at the police station. It's like Coles – take a number. Sometimes it is easier to live with it. (*VC2.1*)

> We [in this community] have a problem contacting police. We get diverted to Cairns. Sometimes the community police respond, but it is the state police who should respond. And that is when the phone gets diverted to Cairns, especially at night. **(***VC3.2*)

> Domestic violence doesn't get reported. But there are only two police here and we are not always available – we also patrol other islands. So police are not always available. (*Interview State Police 1*)

> The women are out there by themselves. What does happen depending on injuries is that maybe the next day she'll get 'medi-vaced' out with her children, which has obviously come from a health perspective, and she might spend a couple days here at the women's shelter and then she just gets flown back in. The police aren't providing a service in terms of intervening in the interests of the safety of the woman. (*Interview ATSILS 1*)

> If someone takes out a DVO in the outer islands, it is not necessarily protective. If there is a call for help, the call may be diverted to Cairns if the TI station is closed. (*Interview Child Safety Officer 2*)

> The low rate of reporting is [affected by] the poor level of policing services – there is no policing services in the outer islands… If someone phones up from an outer island and the TI station is closed then the call will be diverted to Cairns. At that stage people just hang up... From the outer islands it is often the community police who report the violence to us, or the victim will go to the hospital and the staff there will notify us or the community police. (*Interview State Police 2*)

There are specific issues with the community police, particularly in the Torres Strait but also in other communities.

> Policing is probably the number one issue in the outer islands, and particularly the ineffectiveness of the community police. It not a personal attack on individuals but a general frustration in the community that there is no support for community police. For example there are no mobile phones for after hours services, there's no training in dealing with violent situations. They don't have uniforms, they don't have office space… the community police can't manage domestic violence situations… they don't have accoutrements, they're not trained, there is nowhere to detain people, to separate people… My sense is

> that they don't have training or knowledge of the domestic violence application process. They don't have a lot of confidence in giving that advice. (*Interview ATSILS 1*)

> Another issue that has come up is community police, they really don't have any power… A lot of the community police in the outer islands are related and that is a barrier to them intervening. The cultural thing is also important. If the community police is brother-in-law or son-in-law and the father figure is causing the problem, there is no way they are going to intervene. The cultural system is that the male figure is the head. (*VC4.7*)

> People don't want to report to the community police. There are family ties and people have low expectations of the community police. (*Interview State Police 2*)

6.2.7 Police Responses

There were various responses by victims to the adequacy of police response to reports of domestic and family violence. Certainly there were negative experiences in terms of police responses after the reporting of domestic violence.

> The police have been involved six times over the eight years we have been here. No I haven't been satisfied with the police response. Sometimes the police are good. It all depends on the police you get. Some come here and are really, really rude. Some think it is just another domestic violence and too much paperwork. Some make you feel really intimidated and like it is your fault. [When asked about explaining the order] The only time in the whole six years I have got a pamphlet...

> A lot of the female offices are not very sympathetic to your situation. I've had one female office tell me I am the aggressor. I've had one female officer tell me why don't you just pack up and move. I've got an amputated leg. It's not easy for me to just pack up and move. Why should I run out of my house with my son. That's what annoys me. They try to make me move out of my house. Why should I have to get up and move. (*VC2.2*)

Other victims expressed the view that an inappropriate police response can reduce the likelihood that violence will be reported in the future:

> The police explained the order, but they put different stuff on the order, making it worse and different words to what I was saying – that's a reason I haven't been reporting it lately. (*VC2.5*)

> When you do report it, the police say we can't do anything until they actually do something to you. That's what they told me – there's nothing they can do for me, even though there was violence. So I said: "what's the point of me coming to you then?" I just don't think the women are treated fairly or protected by the police. (*VC6.7*)

Others were concerned about the lack of information provided about the domestic violence order or the slow response by police.

> Sometimes the police force you to put on a DVO. Most ladies in the community don't know what a DVO is. I ask the police what that DVO for. The police told me that I can never go back to him. (*VC3.4*)

> I have a domestic violence order in place, the police put it in place. I do tell the police if he breaks the order… The police won't come down. I have been up to the station to tell them he is threatening me. They say he has to do something more. The police never explained what the order is about. (*VC5.4)*

> It was reported to the Health Centre. I reported to get help to stop the violence and I felt I needed to talk to someone. I reported it to the police and it took them nearly a week to respond (*VC6.4*)

> They might ring up before the thing has escalated into serious violence, they might put a complaint in against their partner, and nothing is done or little is done. They probably get this thing [idea] that nothing happens. (*Interview IPLOs 6*)

One magistrate noted:

> There is still more work that needs to be done with the police. Women may go to police to report a breach and be told to take out a variation on the order to deal with his behaviour. There is still an undercharging of breaches by police, and that doesn't send a great message to Indigenous women because they often won't come to get a variation on the order. (*Interview Magistrate 2*)

However, responses from victims were definitely not uniformly negative concerning the police. Indeed some police saw an increased preparedness for Indigenous women to report domestic violence to police.

> There is more willingness now to request domestic violence orders by Indigenous women at the time of the incident [of violence] … there is much more knowledge about domestic violence… although there may be some hesitation in proceeding. (*Interview State Police 4*)

Many victims when they reported violence or when police attended a domestic violence incident were satisfied with the police response.

> The police responded and wanted to put me in the women's shelter. But I didn't want to go there. I was scared because I was on my own. They just put him in the watch-house for an hour or two and then let him out. They explained the orders to me. Most of them were good to me. They helped me out a lot. (*VC2.3*)

> I have to go back to court. I have a temporary order out at the moment. He has three of my kids. The police are doing the orders. They are really good. They have been driving past keeping an eye out in case he turns up. (*VC6.9*)

> At the time I thought nothing would happen, but talking to the police and explaining what happened they told me what steps I could take which was a great help. (*VC4.1*)

> I'm happy with the process taken to report the incident with the police. The violence has stopped because my partner has decided to go away and stay away from home at this time, until we go to the court to deal with the order. (*VC4.1*)

> I reported him to the police and they charged him. I report most of the violence when it occurs, when it is serious. I think this domestic violence order is his third… I will go and make statements with the charges and the domestic violence orders. I'm familiar with most of the police over there. I haven't had any bad experiences with the police. Its all been good. (*VC2.4*)

> I had a good experience with the police. They were helpful. (*VC3.5*)

> The police are good. They are supporting me. They have told me he is not allowed near me when he comes out of jail. (*VC5.5*)

On the basis of the interviews with victims of domestic violence, it is fair to say that police responses are inconsistent. Interviewees from the same community reported different experiences with police. There is a need for better police training around domestic and family violence, and specifically in regard to Indigenous victims and perpetrators.

6.2.8 Sympathy or Empathy for the Perpetrator of Violence

At times in the interviews, there were expressions of sympathy or empathy for the perpetrator of violence and this provided a reason for not reporting the violence.

> [The violence] It happens when he is drunk or when he is stressing out for drugs. I talk to him many times to get off it especially since we had our bubba taken off us. I try my best to stop him. He just starts hitting me. I know when he starts drinking he's going to hit me. He's got a real anger inside of him. It's something must have happened to him. All he told me was he got bashed by his father, he got bashed when he was in jail. He doesn't know his real father. He tells me he seen a couple of his brothers hung themselves. (*VC2.3*)

> Each time he did that to me I never reported because I used to feel sorry for him, even though he was doing that to me. I was thinking about his work, that he might lose his job if I did report. I didn't want to see him lose his job. (*VC4.2*)

6.3 Conclusion

The Indigenous women who were interviewed varied in their age from their late teens to their sixties. Overwhelmingly the interviews revealed a picture of ongoing violence. It was the case that within the one relationship some violence would be reported and other violence would not. The interviews showed that most women reported at least some of the violence, and often on a regular basis.

The major reasons identified by Indigenous victims of violence for not reporting violence or seeking a domestic violence order included:

- fear of the perpetrator
- family and kinship issues
- the nature of Indigenous relationships
- the Department of Child Safety and fear of child removal
- the unavailability of community support and services
- lack of police presence and police responses, and
- empathy for the perpetrator.

Family and kinship issues are complex in how they impact on domestic and family violence and decisions whether to report the violence or not. Family and kin can play a positive role in supporting women and in the reporting of violence, and this is true of both the victim's and the perpetrator's families. Equally the family and kin of both the victim and the perpetrator may play a negative role in pressuring a victim not to report domestic and family violence.

One of the greatest barriers to reporting violence and seeking a protection order that emerged in interviews was the fear of having children removed. There was widespread knowledge that reporting violence might lead to intervention by the Department of Child Safety. This fear of Child Safety intervention was frequently mentioned by both service providers and victims, and was prevalent in all the locations where interviews were conducted.

It was clearly acknowledged by women and stakeholders that basic support services were needed before women would report domestic and family violence. The lack of support services is a barrier to Indigenous women reporting violence or a breach of an existing order, and that expanding services leads to an increase in reporting.

Police responses appear inconsistent. Interviewees from the same community reported different experiences with police. The basic question of whether police are available to receive a report of domestic and family violence also directly affects whether the violence will be reported.

At least some of these issues can be addressed through changes in procedures, improved training and community education. These are addressed in the final sections of the Report.

CHAPTER SEVEN:
SUPPORT SERVICES, COMMUNITY EDUCATION AND TRAINING

7.1 Enhancement of Support Services

> Accessing support services is the main thing – the services are far more important than legislative protection. (*Interview Domestic Violence Policy 1*)

A major finding of this research is that there is a demonstrated need for primary crisis support services as a prerequisite for the successful use of domestic violence orders. There is widespread recognition that legal interventions are at the end of a process and that there is a need for basic support services which enable victims to deal with domestic and family violence, and to access legal intervention.

> This neighbourhood centre has been really helpful. They got me into accommodation ASAP. They helped me get food. This is the longest I have left him. It's not just physical it's the mental abuse that I am copping… There's not enough shelters around. That's the main problem. There's a lot of people who can't move too far because of the children. There should be men's and women's shelters. (*VC6.9*)

> After five years of abuse I thought enough is enough. So I let go. I had security. I had a job. What made it easier for me was that I had income coming in. Plus I was able to cope. I knew the system. A lot of the ladies up here have not had that independence. Plus I had family support. Up here the woman gets the blame. We don't have resources in place here. There is a lack of awareness of what rights they have and the services available. (*VC4.7*)

The local context of available services will strongly influence reporting. If basic support services are not in place, then the use of a domestic violence order is often not an option. Women will not report violence if there is no reasonable likelihood that they will be protected, have the perpetrator removed or have the opportunity to escape the violence. All of these outcomes depend on the availability of basic support services.

The specific locations studied in this research like the Torres Strait, Doomadgee and Cunnamulla provide examples of the need to enhance the availability of services.

> Domestic violence is an issue that comes up as an issue on all the Islands, but is probably more frequent on TI, but there are also more services in TI compared to the outer islands… transport and communication is a problem. Even to get emergency relief they have to be here in TI. Some women are aware that as soon as the violence happens they can ring the police. But after a couple of days they think well, where I am going to get money to feed the kids? Who is going to pay the rent? So they just go back. And they forget about the order. It is the support mechanisms that need to be around that make the order effective. (*Remote community*)

> The domestic violence cycle here is hard to break due to isolation, lack of education by both perpetrator and victim, no support (such as men's groups to address an important part of this issue – hurry up mens' sheds) and lack of

> resources for transition (like a halfway house and permanent accommodation). (*Torres Strait interview*)

In some areas there may be a women's shelter, but because of lack of support and staff training it may be barely functioning.

> We have a very high incidence of domestic violence and a lack of resources. We have nothing other than the women's shelter – and that's not staffed, the women are just left there. And that's our only resource… The Department of Communities is funding the shelter but not training people up to operate it. Some of the people have no idea what to do because they haven't received any training. (*Interview State Police 5*)

Case Study: Inadequate Support for Services

In this remote Aboriginal town there is a women's shelter. During an interview, the police complain that when they attempt to take a woman from a domestic violence situation to the shelter at night, it is closed up, the doors are locked and there is no-one there. No-one can be found. The same evening we drive to the shelter at about 8pm and it is dark with the gates chained and locked. We phone the refuge number and can hear the phone ringing inside unanswered. We try an alternative number and there is no answer.

The next day I do an interview with a leading woman in the community called Jane. She tells me there is no food in the women's shelter, and there hasn't been for some time. The computer is not working properly, and can't be used to print off a standard purchase order. The person working in the shelter does not know either how to fix the computer or how to write up a purchase order without the computer. Consequently, there has been no food because it couldn't be purchased. There are adequate funds available to cover the cost of food and the shelter has not been spending its allocated budget. The shelter is funded by the Department of Communities. We visit the shelter later in the day and find that the computer is not functioning, there is no food, and indeed the shelter worker is unable to complete a purchase order.

Jane tells me there are limited choices in the community. 'Really there's only the women's shelter or to go back home. There needs to be more options. And there's nothing for men. A healing centre or something similar is needed'.

In some locations, existing Indigenous services have been closed. In the case of the Healing Service in the Torres Strait the closure arose because of its auspicing body and not because of any issues with the service itself.

> The closing of the Healing Service was disgraceful – it was a critical service for men and a model for providing services. There was going to be a village model around the healing in each community. We are not about breaking down families but about healing. How are we going to break this domestic violence when all these places are shutting down? Changing men's behaviour – that was what the Healing Service was going to do. (*Service Interview*)

In other areas the lack of emergency support services means that women cannot leave a violent relationship. There is a clear need for a shelter/refuge to cover the southwest

of Queensland where the nearest shelter for women in Cunnamulla is in Toowoomba (and if this is full, in Brisbane, Maryborough or Gympie).

> There's no shelter and the lack of transport is a problem. There is no daily public transport out of the town. (*Interview IPLOs 2*)

From Cunnamulla women have to be transported by police to Charleville and then use public transport (about nine hours) to Toowoomba. For a number of years there has been a proposal for a women's shelter in Roma. The establishment of a shelter there would greatly assist Indigenous women in the southwest corner of Queensland.

The Aboriginal and Torres Strait Islander Women's Task Force on Violence (2000) previously recommended that there was 'an urgent need to provide and upgrade facilities for people escaping violence. Women's, men's and children's shelters must be established in all Indigenous communities… (2000:290). The government response to the taskforce supported the recommendation (Queensland Government Response to the Aboriginal and Torres Strait Islander Women's Task Force on Violence 2000:90-91).

In all the communities visited during this research, the lack of housing had serious consequences for Indigenous women or men to leave or have time out of a relationship.

> There is nowhere to take the males. Housing is a major issue here. You might have 20–25 people to a house. No beds. Maybe some mattresses on the floor. People sleeping on verandas out the back. (*Interview DVLO 5*)

The issue of housing was also raised in the recent report of the Ministerial Advisory Council on Domestic and Family Violence where it was noted that 'the extent of overcrowding and limited availability of housing and accommodation is particularly high in most communities' (2008:24).

Among Indigenous people, perhaps the group that has the most difficulty in accessing protection orders and domestic and family violence services generally are the homeless and itinerant. In commenting on town camps in one city, the DVLO and IPLOs noted the following:

> It is hard for follow-up services for people who are homeless. They do certainly have orders taken out against them and offenders are breached. Some of them are quite serious recidivist offenders. (*Interview DVLO 3*)

> You can't just tackle the issue of domestic violence in the camps – they have a whole range of problems that need to be addressed. (*Interview IPLO 5*)

In Mount Isa there is a River Bed Action Group which is trying to address health issues, alcohol consumption and access to housing. Also included is access to domestic violence orders. In Cairns the Department of Communities employs two street-based outreach workers and part of their focus is providing information related to domestic and family violence services.

Recommendation 4 Provision of Services
It is recommended that an audit be conducted of significant Indigenous communities (including rural townships) to determine the availability of basic emergency and support services for women leaving a domestic and family violence relationship. Resources need to be allocated to those communities on a priority basis where there are no or limited services available.

7.2 Community Education

The need to develop and enhance community education around domestic and family violence was raised by many of the victims of violence and service providers who were interviewed.

> I couldn't talk to anybody… there is no-one there to listen, no-one to understand. That is why I kept quiet. We didn't know what is this 'reporting'? I used to go away, go for a walk. (*VC4.6*)

> [What can be done to make things better?] To have community awareness of domestic and family violence – for males, females and children. To see awareness being promoted through schools, community workshops. To have all people involved to learn about domestic and family violence. (*VC4.1*)

As the following quotes show, there is widespread recognition of the problems associated with the aggrieved and defendants not understanding orders, as well as a lack of general community knowledge about domestic and family violence and potential legal responses. One problem is that people do not necessarily recognise what they are experiencing is domestic and family violence. As one magistrate stated:

> I think it's right that there is still a need for community education. There is not a lot of appreciation in the community that domestic violence extends to threatening or intimidating behaviour. The view in the Indigenous community seems to be that bodily harm or grievous bodily harm [is domestic violence], anything less than that is pretty much what they would expect to happen (*Interview Magistrate 1*)

Victims made a similar point:

> Getting the perpetrator to realise what domestic violence is, for a start. Quite often people do not realise what domestic violence is, and that they are committing domestic violence. They think it is basically normal. (*VC2.1*)

> People need to get out and be open about the issues. People are too afraid to talk about and be shamed about what happened. (*VC6.4*)

There are several elements to enhanced community education, including:

- community education about the nature of domestic and family violence
- community education about the application and use of domestic violence orders. For example, the nature of conditions: how orders are enforced; that orders are civil orders, but any future breach will constitute a criminal offence.

As one magistrate noted: "There needs to be better community education about the order and what the breach of the order means". (*Interview Magistrate 4*) While an Indigenous police liaison officer made the point that:

> There is a lack of understanding about how the DV orders work both by the respondent and the aggrieved. They think that the men will be arrested and they will lose their job and so on. We need to educate them that it is just an order and if they don't breach the order, they won't get arrested or a conviction. (*Interview DVLO 1*)

Community education needs to be targeted to specific Indigenous communities.

> Community education can fall in with traditional storytelling approaches. We could take a video camera out and get communities to do their own stories. (*Interview Healing Service Worker 1*)

Community education needs to be targeted at identified barriers to reporting – for example, we noted in the previous chapter the positive and negative roles that family and kin can play in preventing domestic and family violence and supporting victims.

The Violence Prevention Unit in the Department of Communities ran forums at the time of the implementation of the 2003 amendments to the legislation. There have been information booklets. However, there appears to have been no recent extensive community education campaign in relation to domestic and family violence in general or specifically designed for Indigenous communities, except for Kickstart which is a targeted program aimed at teenagers through the Kickstart football clinics. The Kickstart DVD is the conversation starter. The Department of Education also needs to take on educational programs, such as the Which Way! You Choose package.

> Education is the way – we need messages like the recent Northern Territory ads using AFL footballers. We need to change the view that some women will accept domestic violence as part of a relationship. People still have the perception that it is acceptable. The ads specifically targeting Aboriginal people are very good. (*Interview DVLO 1*)

There is also a need to rethink delivery beyond the provision of information for engaging in community education. Community education needs to recognise problems due to poor literacy that some people cannot read or write. So pamphlets have limited impact.

> I don't think there is enough community education. People are not going to read pamphlets or can't read them… people have a look at the pictures and that's it. Video ads are better such as the football ads which are more targeted. There is not enough education around the legal system. (*Interview Women's Shelter Worker 1*)

> Who is going to read the brochures? There needs to be 'hands on' involvement such as in the schools, the women's groups. The Community Justice Group should also be involved in distributing information. (*VC6.7*)

Thus, posters and pamphlets may not reach desired audience, and this is particularly exacerbated with literacy issues. Videos may be useful in overcoming literacy issues. There is also a need for more targeted education aimed at the community (for example, through women's groups, school, and so on).

7.3 Who Provides Community Education?

From the Department of Communities' perspective, at present if there is no funded domestic violence service in a particular community such as a counselling service then there is no-one there to deliver community education. The Department of Communities' community education response largely relies on funded services and if they are not present in a community, or if they do not engage properly with community education then there may be little community education taking place.

However, it is also important to think of other services which can play a role in community education around domestic and family violence. These include Indigenous Family Violence Prevention Legal Services, ATSILS, police and corrective services.

Corrective Services might seem an odd inclusion in this respect. However, it is worth considering the broader educative effects of programs that are run for offenders, including those run by Corrections. As one magistrate noted:

> The Ending Offending and Ending Family Violence programs at the community level are really helpful and had a huge impact on the community (not just offenders) in (small community) in understanding what domestic violence is. When we were doing it, the reporting went up, it really got everyone thinking about and talking about it. That was the single biggest impact that I've seen. The loss of Indigenous programs from Corrections has impacted more broadly on the community not just in terms of the lack of availability to offenders. (*Interview Magistrate 1*)

Effective community education about domestic and family violence can be undertaken by a range of stakeholders, including police.

> Police can have success engaging in community education, particularly with partnerships with other groups like the school, health. There is a wealth of literature on domestic violence but very little aimed at Aboriginal people. The reality is that many Aboriginal people have poor literacy skills. (*Interview State Police 1*)

> The rate of reporting domestic violence increased on Palm Island after community education run by police. There are domestic violence education workshops run by police where those with orders and others could attend. (*Interview State Police 3*)

Properly trained Indigenous legal service field officers and Indigenous police liaison officers can play a special role in community education.

> We have a DVD PowerPoint on domestic violence that we ran in the schools – we think it worked alright. We took it through most of the high schools here. It has dropped off because of the time factor and that we are down on numbers. (*Interview IPLOs 6*)

Some victims also noted that Indigenous police liaison officers could play a more enhanced role in community education specifically for Indigenous women.

> It would be a good thing for police liaison officers to go around and inform women of what their rights are. I just don't think the police do enough to promote the rights of women. There is not enough education for the Murri women about what their rights are. It could be a role for the liaison officers. (*VC6.7*)

There needs to be whole-of-government approaches to community education at the local level. Community education needs to be targeted to specific Indigenous communities and in a form accessible to the community. While the Department of Communities might play a lead agency role, other agencies including Police, Corrections and Child Safety need to be involved, as well as relevant Indigenous agencies in particular ATSILS, IFVPLS and Healing Services.

Recommendation 5 Community Education
It is recommended that Department of Communities play a lead role in developing whole-of-government strategies to community education for Indigenous communities on domestic and family violence, and that these strategies include key Indigenous non-government agencies.

7.4 Training and Improved Responses

There needs to be improved training on domestic and family violence for a range of people in the criminal justice system including Indigenous police liaison officers, state police, community justice group members and magistrates.

7.4.1 State Police and Indigenous Police Liaison Officers

Some victims who were interviewed suggested that state police need further training in responding to domestic and family violence incidents (see also 6.2.7 above).

> I think the police that deal with domestic violence should be more informed of things – the way to handle things. Sometimes the police don't handle things right – how they approach and how they talk to you. Sometimes they make you feel like it's all your fault when you know its not… [Police need to be able] to put clearly what all these different laws and orders mean because half the time we don't understand them. [If the process was explained more clearly, would this make a big difference to you in your case?] Yes it would because you'd know clearly what the law is, because half the time you don't know what you are able to do and what you can't do. (*VC2.2*)

IPLOs need to have specific training in relation to domestic and family violence and in relation to domestic violence orders. There is no suggestion that their role in responding to incidents of domestic and family violence should change. However, there was a perceived need by IPLOs that they be better trained in the area and could be better utilised in providing community education on domestic and family violence and the legal processes which are available (see above). IPLOS can also provide

important follow-up to both the aggrieved and the respondent after an order has been issued.

> The DVLO has been particularly working with PLOs to do a lot of call-outs where there have been domestic violence reports. Everyone who makes a call gets a follow-up with a police officer going to the house to talk to them personally. This seems to have broken down a lot of barriers between Indigenous women and police… When the police are putting more work into domestic violence, there does seem to be improvements in reporting. (*Interview Magistrate 1*)

Many Indigenous police liaison officers are involved with some form of follow-up with the aggrieved and respondent after a domestic violence incident. However, it is not clear that the follow-up provides much more than giving out written pamphlets or phone numbers for various agencies. A typical information 'kit' provided as part of the follow-up might include written brochures covering counselling services, emergency accommodation and other local services.

> If the domestic violence happens one night, it will go through the system. We will come in the next morning and it will be on the computer. We will go out and see that the parties are OK and talk to them about domestic violence orders and whether they need referrals. (*Interview IPLOs 6*)

> The PLOs have been involved in follow-up, particularly when the DVLO is around. It would be useful to have training on domestic and family violence – we haven't received any special training on DV… At follow-up we provide a package of information to both parties, but we don't have a copy of the order. We don't sit down and explain the order. We would be happy to do some training so we could do more than just hand out the package. There could be joint training with other PLOs… like the training we have had on suicide prevention and VSM (volatile substance misuse). (*Interview IPLOs 4*)

> We will go explain to them what the order means and explain the conditions of the order. Some IPLOs definitely need training. The IPLOs have done some training for the community police on domestic violence. Most of the community police are CDEP workers, and this affects their work – they are not going to work overtime or do call-outs when they are not getting paid. (*Interview IPLOs 1*)

> We have a follow-up service to see if clients need information kits and so on, mainly to reassure people we are there to help as much as possible. The follow-up is with both the respondent and the perpetrator if possible. We have kits of information we can pass on to both groups. Lack of education makes it hard – they may not understand the pamphlets. They nay not understand the orders. (*Interview IPLO 3*)

> I have assisted with follow-ups as an IPLO and also previously as a QATSIP officer in Badu. There is not as much repercussion if the IPLOS are involved.

> I think it is worth pushing to have more Indigenous women as community police and IPLOs. The follow-up is mainly letting people know what services

> are available. Follow-up has the potential to break the cycle particularly if helping to address the confidence in the police. (*Interview IPLOs 5*)

There needs to be established guidelines for the involvement of IPLOs in follow-up work. A number of police and liaison officers raised the issue that there needs to be care that the domestic violence is not still occurring when follow-up is undertaken. The IPLOs also need to speak to both the aggrieved and the respondent and not just one party.

Furthermore there needs to be some quality control over what constitutes follow-up.

> [The orders need to be] explained better and more information. Maybe they could have someone come around and follow-up afterwards. Once I had the Aboriginal liaison officers come here and I never seen them again. They come once and give me a sticker and that was it. (*VC2.2*)

The IPLOs can have an important role, both at the broader community education level and the individual level in providing information about domestic violence orders to the aggrieved and respondents. They can directly influence the likelihood of reporting domestic and family violence at the local level.

Recommendation 6 IPLOs
It is recommended that the involvement of IPLOs in follow-up work after a domestic and family violence incident be improved and extended.

7.4.2 Specific training for IPLOs and ATSILS Field Officers

It is very important that IPLOs receive training in domestic and family violence issues, law and policy. It was clear from the interviews that they would like to receive that training so they can improve their responses. IPLOs need to be confident in their ability to explain orders to the aggrieved and respondents. Consideration should also be given to whether IPLOs might directly assist in the application process.

> All PLOs definitely need training on domestic and family violence, the legislation and also training on how to introduce that information into the community. (*Interview State Police 6*)

> In some cases the aggrieved will often contact us as first port of call for advice. And we can only give them the advice to maybe take a court order out, and some of them don't go ahead and do it. We don't do the applications, we only advise them to take out an application. We haven't got the authority or power. (*Interview IPLOs 6*)

> For sure we need more training around domestic and family violence. PLOs have to be up to speed in that regard… It is worth thinking about whether domestic violence could be reported to the PLO in terms of them taking out the process. (*Interview IPLOs 5*)

> IPLOs need training to develop and work better around issues of domestic and family violence, including community education … we could provide better

> follow-up after police have served an order. At the moment I don't really feel comfortable because I don't have the knowledge. (*Interview IPLOs 2*)
>
> Community police don't have much knowledge of the domestic violence legislation. (*Interview State Police 5*)
>
> IPLOs definitely need training around domestic and family violence. IPLOs can be excellent in dealing with cultural matters, but would need training. We would have more success if we had IPLOs involved. They can explain: "You have been issued with the order, this is what the order means". (*Interview State Police 1*)
>
> English is not their first language but the orders are in English. At the moment, people tend to agree, say yes, yes, but really just to get out of here… IPLOs need the training to do follow-up, but also there are not enough IPLOs in the Torres Strait. We have made applications for more IPLOS to do follow-up. (*Interview IPLOs 1*)

We also noted above the role of ATSILS field officers in remote communities as potentially an important source of community education on domestic and family violence, as well as a source of specific information on domestic violence applications and orders in the community. It is equally important that they receive appropriate training as well as IPLOs.

7.4.3 Department of Child Safety

There was widespread dissatisfaction with the level of training of Child Safety officers in regard to domestic and family violence. The quote below from a magistrate captures the main issues that were raised.

> The biggest problem is that there is an almost total lack of understanding of domestic violence laws and dynamics and issues in child safety… that is partly a training issue. Certainly there is not a lot of practical experience or understanding with the CSOs about domestic violence. It's all very black-and-white if he is being violent then you have to leave him to protect the kids…
>
> There is an issue about training particularly with Child Safety who are quite bereft of training in relation to domestic violence. We have had a lot of situations here where the aggrieved has turned up to court and said that Child Safety have told me I've got to get my domestic violence order changed in this way or they won't give me my children back and a lot of times the order already provides for what Child Safety want provided for, a lot of times its just wrong… Things like having him not be able to live with her, having him not see the kids which isn't possible. So they really don't know about the whole overlap between family law with domestic violence.
>
> People really get quite hysterical at court if you start to say, no that's not right or that can't happen. They keep saying, Child Safety told me I can't get my kids back unless this happens… The problem is created by their [Child Safety] lack of understanding and awareness of the orders, actually what they can be used for, what they can contain and how they can be enforced. (*Interview Magistrate 1*).

There is a recognised need for Department of Child Safety officers to be better trained around domestic and family violence and the corresponding legislative and policy issues.

7.4.4 Training Packages

The CDFVR has developed a TAFE standard *Course in Responding to Domestic and Family Violence*. Using this course for IPLOs and Indigenous field officers would provide consistency with other agency's staff training, further facilitate coordinated approaches and provide students with a recognised TAFE certificate.

Recommendation 7 Training IPLOs, ATSILS and IFVPLS field staff, Community Justice Group coordinators and members
It is recommended that training for IPLOs in relation to domestic and family violence be addressed as a matter of urgency.
It is recommended that minimum requirements for IPLOs, ATSILS and IFVPLS field staff be the completion of the *Course in Responding to Domestic and Family Violence,* or equivalent. It is also recommended that community justice group co-ordinators and members receive training in an accredited course on domestic and family violence.

There is a widely recognised need for Department of Child Safety officers to be better trained around domestic and family violence and the corresponding legislative and policy issues. The research also showed the need for improvements in police training.

Recommendation 8 Training Child Safety Officers and Police
It is recommended that current training on domestic and family violence for general duties police and child safety officers should be reviewed to ensure that it adequately covers issues relating to the nature of domestic and family violence in Indigenous communities, and current law and policy.

7.5 Conclusion

The local context of available services will strongly influence reporting. If basic support services are not in place, the use of a domestic violence order is often not an option. Women will not report violence if there is no reasonable likelihood that they will be protected, have the perpetrator removed or have the opportunity to escape the violence. All of these outcomes depend on the availability of basic support services. The lack of emergency support services means that women cannot leave a violent relationship. (See Recommendation 4)

There is widespread recognition of the problems associated with the aggrieved and defendants not understanding orders, as well as a lack of general community knowledge about domestic and family violence and potential legal responses.

There needs to be whole-of-government approaches to community education at the local level. Community education needs to be targeted to specific Indigenous communities and in a form accessible to the community. While the Department of Communities might play a lead agency role, other agencies including Police,

Corrections and Child Safety need to be involved, as well as relevant Indigenous agencies in particular ATSILS and IFVPLS. (See Recommendation 5)

The IPLOS can have an important role both at the broader community education level, as well as the individual level in providing information about domestic violence orders to aggrieved and respondents. They can directly influence the likelihood of reporting domestic and family violence at the local level. (See Recommendation 6)

It is very important that IPLOs receive training in domestic and family violence issues, law and policy. IPLOs need to be confident in their ability to explain orders to the aggrieved and respondents. (See Recommendation 7)

There is a widely recognised need for Department of Child Safety officers to be better trained around domestic and family violence and the corresponding legislative and policy issues. The research also showed the need for improvements in police training. (See Recommendation 8)

Recommendation 4 Provision of Services
It is recommended that an audit be conducted of significant Indigenous communities (including rural townships) to determine the availability of basic emergency and support services for women leaving a domestic and family violence relationship. Resources need to be allocated to those communities on a priority basis where there are no or limited services available.

Recommendation 5 Community Education
It is recommended that Department of Communities play a lead role in developing whole-of-government strategies to community education for Indigenous communities on domestic and family violence, and that these strategies include key Indigenous non-government agencies.

Recommendation 6 IPLOs
It is recommended that the involvement of IPLOs in follow-up work after a domestic and family violence incident be continued and extended.

Recommendation 7 Training IPLOs, ATSILS and IFVPLS field staff, Community Justice Group coordinators and members.
It is recommended that training for IPLOs in relation to domestic and family violence be addressed as a matter of urgency.
It is recommended that minimum requirements for IPLOs, ATSILS and IFVPLS field staff be the completion of the *Course in Responding to Domestic and Family Violence,* or equivalent. It is also recommended that community justice group co-ordinators and members receive training in an accredited course on domestic and family violence.

Recommendation 8 Training Child Safety Officers and Police
It is recommended that current training on domestic and family violence for general duties police and child safety officers should be reviewed to ensure that it adequately covers issues relating to the nature of domestic and family violence in Indigenous communities, and current law and policy.

CHAPTER EIGHT: IMPROVING PROCESSES AND OUTCOMES

8.1 Mandatory Reporting

The issue of mandatory reporting emerged in the research in two separate contexts. The first context related to a possible requirement of mandatory reporting to police by health workers where domestic and family violence is suspected. The second context related to the current mandatory reporting policy by police to Child Safety when there is a child present (or normally resident) at a domestic violence incident.

As a general principle, it should be noted that any system of mandatory reporting needs to be contextualised within a whole-of-government approach, which includes improved information sharing across agencies.

8.1.1 Mandatory reporting of domestic and family violence by health workers

There does not appear to be a Queensland Health policy to report suspected domestic and family violence to police. It is acknowledged that generally hospital staff will notify police, but there is inconsistency in this reporting. One police officer in a remote community related the story of seeing a stabbing victim in hospital after being notified of the incident. While in attendance at the hospital the officer noted from the victim's medical records that he had been stabbed five times previously over the previous few months. These injuries were recorded on the medical file but had not been reported to police. (*Interview State Police 5*)

Other police noted:

> They (the hospital staff) tend to ask the people whether they want them to contact the police and will follow their decisions. (*Interview DVLO 5*)
>
> Most hospital staff do ring the police anyway if there are injuries. Most of them ring us up. They will say, 'these are the injuries and we are a bit concerned'. It is discretionary and varies from one community to another as to whether they will contact the police. (*Interview State Police 2*)
>
> Health are not compelled to report to police. It appears to have no policy on reporting. It should include both health and ambulance – you are looking at the upper end of the scale when it requires the hospital and ambulance. (*Interview State Police 2*)
>
> There should be a requirement to report to police from health workers where there is suspected domestic violence. (*Interview State Police 4*)

There was some support for mandatory reporting of domestic and family violence by health workers, but also recognition of potential problems of limiting access for women to health services. Any mandatory reporting by health workers would require training for health professionals in identifying features of domestic violence in patients and providing appropriate support.

The Tasmanian *Family Violence Act 2004* requires 'prescribed persons' to inform the police if, in the course of their duties, they form the belief, suspect or know that family violence involving the use of a weapon, sexual violence or physical violence or

where a child is affected, has occurred or is likely to occur. 'Prescribed persons' include medical practitioners, nurses, dentists, dental therapists, dental hygienists, police, correctional officers, probation officers, principals, teachers, child care workers and psychologists. The provision has yet to be commenced, and a recent review of the legislation has recommended that the provision be excised from the Act (Urbis 2008:6).

The Northern Territory discussion paper on mandatory reporting by health professionals specifically noted the possible negative impact of mandatory reporting on Indigenous women.

> We have been advised that many Indigenous women already believe that health professionals disclose information to the Police and as a result avoid or are prevented by their partners or their partner's family from seeking medical attention for fear of their partners getting into trouble (Department of Justice 2007:10).

Recommendation 9 Mandatory Reporting by Health Workers
It is recommended that mandatory reporting by health workers not be introduced without further investigation of its specific impacts on Indigenous women in other jurisdictions.

8.1.2 Police Mandatory Reporting to Child Safety

We referred to the QPS policy on mandatory reporting to Department of Child Safety in relation to domestic and family violence previously in this report (see 1.5.4). The interviews with victims and service providers indicated that a major reason for not reporting violence or breaches of orders is the fear of intervention by Child Safety and the removal of children. There is also the specific issue of the Indigenous experience of government police of the forced removal of children. The interviews suggest that this is still part of current apprehensions about possible Child Safety interventions (See 6.2.4). Mandatory reporting by police to Child Safety increases the fear that is held that children might be removed by child protection agencies.

Humphrey's (2007) research suggests that mandatory reporting of children affected by domestic and family violence may not increase the child's safety, particularly if the increased level of notifications to child protection agencies does not lead to increased resources and a backlog of matters arises. The Department of Child Safety reported an increase in the number of children referred to it from the police from 246 in July 2004, to 1193 in July 2005 (485 per cent increase over 2 years).

While it is widely recognised that police mandatory reporting to Child Safety limits Indigenous women's reporting of violence, there is also recognition of the complexity of the problem and mixed views about the mandatory reporting policy.

Perhaps there is a need for greater flexibility by police in reporting, rather than a mandatory policy. Should it only be reported when children are present rather than usually resident, or present and at risk? Certainly some of the police interviewed indicated that a more sensible policy would provide for better use of police discretion on this issue.

A further question is the role of Indigenous Recognised Entities in this process. The policy intended that children classified as low risk would be referred to a support service, but only if a confidentiality agreement is entered into with the QPS. The introduction of this policy requires resourcing to other broader support services and shows the need for a coordinated whole-of-government approach. From the interviews, it does not appear that many Indigenous child care agencies have signed the confidentiality agreements.

> The biggest problem I have working for an RE is that I don't see all the information that Child Safety do. They have access to all the history. It puts us as child protection workers in a really awkward position. I can't make a full assessment of what is in the best interests of the child based on one incident. The police are limited in what information they can provide. At least the REs are usually local people and they know the community.
>
> Every RE is different. Most REs only have one or two people. But we do assessments and intakes with Child Safety and we have a member on SCAN. A lot of them only do family support and supervision. (*VC6.1*)
>
> The relationship between the Recognised Entity and Child Safety is pretty good. We tend to keep the Indigenous kids in the community. Otherwise the children come back more messed up after being sent away from the community and placed with foster carers. (*VC6.8*)

It was also widely recognised in the interviews with service providers that the Department of Child Safety needs to engage in community education about their assessment processes and the various possible responses by Child Safety (see 6.2.4). Child Safety officers also recognised the need for community education.

> There is a fear of Child Safety and it does affect decisions to report domestic violence. People need to be educated on what Child Safety do and the options they have. Our biggest concern is explaining what Child Safety actually do.. we look at the options. It could be a safety plan. We don't just take kids. There are a lot more alternatives. [There are] intensive parenting agreements where we work intensively with the family. (*Interview Child Safety Officer 1*)
>
> Child Safety needs to be engaged in targeted education to attack misconceptions. Local child safety officers should be involved in community education because of their local connections. (*Interview Child Safety Officer 2*)

Recommendation 10 Mandatory Reporting by Police to Child Safety

It is recommended that QPS thoroughly review the impact their policy on mandatory reporting by Child Safety is having on the reporting of domestic and family violence.

It is recommended that QPS audit the number of confidentiality agreements they have signed with Indigenous Recognised Entities with a view to developing strategies to increase the number of these agreements.

It is recommended that the Department of Child Safety establishes a community education function focusing on their policies, practices and responsibilities, and that Indigenous communities be a priority for community education.

8.2 Simplifying Domestic Violence Orders

There was considerable discussion among stakeholders about simplifying both the application for a domestic violence order as well as the order itself. There was general agreement that the order should be in plain English and with examples (as there are in the legislation – see 2.1.1). Below are comments from the magistrates relating to the application and the orders, and comments by police specifically on the orders.

> The format of the orders is not user friendly. They are just terrible – both the applications and the order.
> The application forms are appalling.
> The effect of the order needs to be explained.
> More explanatory and in plain English and less cluttered.
> They are totally non-user friendly. (*Interviews. Discussion between Magistrates 4, 5 and 6*)

> It would be a great idea to have some examples in the orders. I think non-Indigenous people struggle with it too. You often have people say does that mean so and so, or what happens if I go to the school play and she's at the school play, and then you have to explain what it means 'not to approach'. (*Interview Magistrate 1*)

> Recently I had to serve a Northern Territory order... The Northern Territory order comes with an attached page in simplified terms.[16] I was impressed with that because it allows them to read in simplified terms what happens if I want to go to court, what happens if I don't want to go to court and gives a series of points… I was really impressed with this. (*Interview DVLO 5*)

> The order could be a lot simpler – a lot of people have limited education and have trouble reading and writing. They don't understand the terms. (*Interview State Police 5*)

Generally the concern with the application was the difficulty in completing the form.

[16] *Fact Sheet. Domestic Violence Restraining Orders. Information for Defendants.* This four-page document covers basic issues in a question and answer style. The last page has a list of contacts.

> The application is pretty hard to fill out and then you fall back on the police to complete it, and not even the police always fill it out correctly. It takes a significant amount of time. (*Interview Magistrate 1*)
>
> Police do enough of them that they are not complicated. They are time consuming and that is a big problem. For civilians who want to do a private application they are complicated and could be difficult to fill out. (*Interview State Police 2*)

Certainly not all police were in favour of simplifying the application form in terms of reducing the information that needed to be recorded. 'The aggrieved need to be able to have their say. It has important implications for the respondent who might lose their job. The form needs to have the relevant information in it' (*Interview State Police 6*). There was general agreement however that the application forms need to be rewritten in plain English.

Recommendation 11 Simplifying Applications and Orders
It is recommended that the Department of Communities undertake a review of the current protection order application and the protection order with a view to simplifying both documents in plain English and providing examples to clarify relevant sections as appropriate.

8.3 Specific Responsibility for Explaining the Order to the Respondent and the Aggrieved

A major issue emerging from this research is the need for an order to be properly explained to the respondent. There is a widespread view that respondents and often the aggrieved do not understand the orders. This issue was raised by ATSILS, police, service providers and magistrates. Magistrates do not necessarily know whether a respondent understands an order if the respondent is not in court and is later served after the order has been made. The nature and conditions of the order need explanation, as well as the consequences of any breach. As noted previously, in some areas the IPLOs are involved in a follow-up service. However this does not ensure that either the respondent or the aggrieved understand the order – particularly if the IPLOs have had no training and only see their role as distributing information.

Section 50 of the legislation requires that the court ensure that the respondent understands, among other things, the purpose, terms and effect of the order. However, this is of limited assistance when the respondent is not present in the court. As we indicated previously in this report, it appears that in the majority of matters, particularly in rural and remote areas, the respondent is unlikely to be present in court at the time the order is made. In many cases the aggrieved will also be absent from court. It is also the case that in rural and remote areas there is more likely to be language problems and less likely to be Indigenous or other services who might assist with an explanation of an order.

Magistrates noted the following:

> The problem is that so many of them are ex parte and you don't have the opportunity to explain the order. These are the practical difficulties. (*Interview Magistrate 2*)

> Our big issue is getting the respondents here in the first place. In (regional city) they sometimes turn up. In (small community) we go through cycles. If there is a support service (which there isn't at the moment), they can make sure both parties come and then you can sit down and talk about it and make sure they do understand what it all means. Follow-up after court is really important. (*Interview Magistrate 1*)

> One way around the ex parte problem is that 'if you had a system whereby if the order is made in the absence of the respondent, a condition is that within seven days of the serving of the order then you shall attend upon the justice group. Send a copy of the order to the justice group. They liaise with the police that this person must attend the justice group. (*Interview Magistrate 2*)

> You could have a condition on the order to report to the justice group, say on no fewer than two occasions, and the justice group can explain the order and the unacceptability of domestic violence. (*Interview Magistrate 3*)

Magistrates were of the view there would be no limitation on the powers of magistrates to require attendance at a community justice group as a condition of an order under the domestic and family violence legislation.

ATSILS suggested that the process should be similar to the way the Department of Corrective Services officers explain the meaning and conditions of a probation order. This suggestion does not identify a particular organisation with the responsibility for explanation.

Many police who were interviewed also acknowledged there may be problems when police were called upon to explain the orders, particularly given other demands on their time.

> It is not being communicated adequately – what the ramifications of the order are. There are a lot of misconceptions with the orders and what they mean. Police don't give a great explanation – it may be no more what you get when you get a speeding ticket. (*Interview State Police 1*)

> They don't understand that it is a civil order. They may understand at a very basic level what might happen. It also depends on how you explain the order… sometimes we don't have the time to sit down and explain it fully, but we try to explain as best we can. (*Interview State Police 5*)

Even those police interviewed who stated that the orders were thoroughly explained, acknowledged there could be problems.

> Police explain the orders thoroughly. I will ask them to explain it back to me. There may be a tendency for the respondents not to understand the seriousness of breaching the order – there is a case for education on how serious breaching an order is. (*Interview State Police 2*)

One officer suggested an answer to the problem was greater use of domestic violence courts. 'Domestic Violence Courts on a regular basis are useful, you can have a designated prosecutor for dv matters and support services to follow through' (*Interview DVLO 4*). However this does not overcome the problem of lack of attendance at court.

Those best placed in the community to explain domestic violence orders to the aggrieved and respondents, providing they are properly trained, are the IPLOs or the Community Justice Group. Not all Indigenous communities will have a community justice group, and those Indigenous communities with Indigenous community police are unlikely to have IPLOs. However, most Indigenous communities will have either IPLOs or a community justice group (or both).

Recommendation 12 Specific Responsibility for Explaining the Order
a) It is recommended that IPLOs and Community Justice Groups, properly trained, take on a proactive role in explaining protection orders to the respondent, and if appropriate, the aggrieved.
b) Further, it is recommended that magistrates, upon making a protection order, consider as a requirement of that order that the respondent be directed to attend a community justice group for the purpose of explaining the order and the unacceptability of domestic and family violence. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.

8.4 Removal of the Perpetrator

Many people who were interviewed (victims and particularly service providers) expressed a view that it should be the perpetrator of violence that is removed from the violent situation rather than the victim and children. A similar issue was raised in the Cape York Justice Study (Department of Communities 2001:100-101). Currently police can remove a perpetrator of domestic and family violence for up to four hours under the Queensland domestic and family violence legislation. The Cape York Justice Study also noted another option which might include making residence at an outstation or other men's place a condition of a protection order (Department of Communities 2001:101).

The Queensland *Domestic and Family Violence Protection Act* (1989) provides for the use of 'ouster' orders to remove men from the home, and with linked provisions in the *Residential Tenancy Act* (1994), allows for the removal of a perpetrator's name from a tenancy agreement. Previous research has indicated that the provisions are very rarely used (see Ministerial Advisory Council on Domestic and Family Violence 2008: 39). There was no reference to ouster orders by victims or stakeholders in the

current research and no indication that the orders had been used with Indigenous domestic violence orders.

The argument put by police and some service providers is that the four-hour detention period available to police needs to be extended because it is not long enough to ensure the safety of family, and the perpetrator if seriously intoxicated may not have sobered up at the time of release. The Aboriginal and Torres Strait Islander Women's Task Force on Violence (2000:294) had recommended amending the domestic violence legislation to extend the provisions for detention to 12 hours. The Queensland Government Response (2000:118) rejected the recommendation. The Commonwealth Model Domestic Violence Laws provide police with a power to detain for a maximum of four hours.

If police-issued protection orders are introduced along similar lines to that of Western Australia (see discussion 3.8), then the reasons for advocating an extension of the four-hour detention rule no longer appear to apply.

8.5 Behavioural Change Programs, Counselling and Healing

The issue of treatment and counselling for perpetrators was raised in a number of contexts, as was the question of whether counselling might in some situations be helpful for both parties. There was widespread support for the requirement that treatment or counselling be undertaken at the time the order is made, rather than waiting for a breach of the order before treatment programs can be made mandatory.

The report of the Ministerial Advisory Council on Domestic and Family Violence (2008:20) argued that perpetrator programs should be court mandated to help reduce domestic and family violence and decrease recidivism. The Council argued this on the basis that research indicates that programs are effective in reducing violence (Babcock et al 2004; Gondolf 2001, 2004). The Council argued that perpetrator programs should be embedded in a whole-of-government approach, and must not be introduced at the expense of programs and services for women and children who have experienced violence. The Council was not explicitly considering mandated programs at the time when a domestic violence order is made, but rather when there was a breach of an existing order.

The Department has specific policies and protocols in place in relation to behavioural change programs for perpetrators (rather than counselling). However it should be noted that the distinction between counselling and behavioural change programs is often not made or understood in the community. The language of 'counselling' rather than 'program' tends to permeate the discussions because that is the way most stakeholders refer broadly to interventions, without distinguishing between or understanding the difference between the two.

Certainly some victims and service providers with a better understanding of the distinction between counselling and programs recommended structured programs which have an Indigenous focus.

> It would make a difference if there was a program. Quite often men become more aggressive, "why did you do that you bitch?" If there was some kind of mandatory program at the time of doing the DVO, it may be something that will get men to think about what they are doing. 'OK got the DVO. The next

> day you have to go to the program for so many weeks. If you don't, that's your first breach.' That would give the victim more sense of security. (*VC2.1*)

One of the recommendations (See recommendation 8) from the Cape York Justice Study in regard to compulsory counselling for both parties is that there be either a by-law or a protocol between police, the magistrate and the community justice group that provides for compulsory counselling ordered by the magistrate on the advice of the community (Department of Communities 2001:101, 104). Compulsory counselling was also recommended by the ATSIWTV.

8.5.1 Behavioural Change Programs and Counselling at the Time the Order is Made

It was suggested during the course of the research that some magistrates are making respondents agree to undertake counselling or treatment and reducing the time of order (to say 12 months). There is a provision in the legislation which allows for magistrates to order conditions as necessary – but there is a need to clarify this in terms of ordering a respondent to undertake counselling, or mandatory attendance at a program.

Some of the comments supporting counselling, from Indigenous domestic and family violence victims, service providers, magistrates and police included the following:

> That's one of the issues. You can go and get your order enforced, but there is nothing to make that perpetrator comply, nothing to counsel them about what they've done or how they have affected their family. Counselling for the perpetrator would be an excellent idea, and then make them responsible for their actions. (*VC6.7*)

> At the time the order is made there should be mandatory counselling or attendance at a program. (*Interview IPLO 4*)

> I think having attendance at counselling at the time the order is taken out would work as long as it is enforceable. Counselling would have to address the cultural issues. (*Interview State Police 2*)

As the above quote alludes, there was widespread recognition by both Indigenous and non-Indigenous people that programs or counselling need to have a strong Indigenous focus or be conducted by Indigenous people/organisations.

> Ideally it would be good to take it back to culture. To have a group situation, even if it is live in and give them back their sense of their identity because domestic violence is definitely not part of Aboriginal culture or Torres Strait Island culture. That would be one of the things that would make a major difference – being able to reconnect with culture and taking back their roles in a cultural way. If they don't want to be reconnected with the culture then throw the book at the bastards. You've got these opportunities, these ideal situations to be able to learn what is right and what is wrong. (*VC2.1*)

> There should be mandatory referral to the healing centre or other services for counselling after the application with a view of reducing breaches and ensuring compliance. (*Interview State Police 4)*

Perhaps more controversially, many were of the view that counselling should involve both parties. However, this is not surprising given the focus on maintaining relationships and the role of jealousy underpinning domestic and family violence.

> There has to be counselling somewhere along the line. Someone who is professionally trained… mandatory counselling once the order is in place. You have to have it for both parties. If you want to make the relationship work, you have to see someone. For some uncanny reason they still love each other and still want to have this relationship. (*Interview IPLOs 6*)

The dominant view was that counselling for both parties should have an Indigenous focus.

> I think counselling would be good for both parties. But it needs to be with appropriate people in the community. It needs to be with people who have authority and weight in the community, with people who are respected by the offender. (*Interview IPLOs 5*)

> If the two people love each other and they want to keep going… I would suggest that they both go to the counsellor to see if that would help if both parties agree to go to talk to counsellors or Elders and both tell their stories and be open, as long as both parties are agreeable. (*VC4.2*)

> One of the issues that comes up before the courts in remote communities is the issue of jealousy… Relationship counselling could be valuable in these cases [that is involving both parties]. We need to understand the cultural issues that give rise to the problems. (*Interview Magistrate 5*)

Magistrates and police noted the need for services.

> There is no point in making an order that can't be complied with, therefore you must make sure there are adequate facilities available for such an order to be made. It needs to be more of a voluntary situation for Aboriginal and Torres Strait Islander people or otherwise you are setting them up to fail by non-attendance… There doesn't appear to be anything stopping the condition being placed on an order.... It would have to be extremely well structured, and start from a different base for Indigenous people. It would have to be locally-based. (*Interview Magistrate 4*)

> Counselling would be great… that is voluntary because of the problems with availability and consistency. From the court's point of view if we order someone to do it, we need to know that is available…. the best you can do, you can adjoin the matter with a temporary order and strongly suggest that the respondent head off and do it. That is a bit of a problem. I think it would be good if we could do that [order counselling]. It would be good but it will require the support services. (*Interview Magistrate 1*)

> Early intervention has benefits, but in (small community) there is no obvious service to do it. (*Interview State Police 3*)

Magistrates also need to be aware of the location of services for behavioural change programs and counselling, so that if the conditions were placed on orders they could be met.

> There is a need for domestic violence specific magistrate's training, which is vastly lacking at the moment, so they know what is available and what is acceptable in terms of behavioural change interventions. Something I have observed over time is that magistrates feel they are doing the right thing when in a community they might refer a victim to a family support worker and a perpetrator to a men's group. I would say that both of those are fraught with danger because the family support worker has not been trained in domestic violence specific counselling and the men's group could be anything [even] without a proper facilitator. (*Interview Domestic Violence Policy 1*)

Therefore there is a need for domestic and family violence legal education for magistrates.

The New Zealand *Domestic Violence Act* provides an example of requiring a person to attend a program at the time when an order is made. Upon making a protection order, the court must direct the respondent to attend a specified program unless the court considers there is good reason for not making such a direction.[17] The direction is a condition of the relevant order. Therefore a failure to attend is a breach of the order.

An alternative approach to compliance would be to consider the failure to attend a program as directed an aggravating factor in any future sentencing for a breach of the order.

Recommendation 13 Magistrates Power to Direct Attendance at Programs
a) It is recommended that clarification be sought by the Department of Communities on the power of magistrates to order respondents to attend counselling or behavioural change programs at the time a protection order is made. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.
b) Magistrates require in-service training on the different types of programs and their availability.

8.5.2 Behavioural Change Programs and Counselling after a Breach

A requirement that an offender undergo treatment and/or counselling as part of a structured sentence after being convicted for a breach of an existing domestic violence order is less controversial than such a requirement at the time the order is made. Although there is an accepted need for intervention programs and counselling, the lack of services is a major problem.

> The paucity of services or programs that respondents can be referred to is also a problem. It can be very difficult to refer people to programs because of the lack of availability. One of the biggest problems in dealing with breaches by the courts is the lack of programs, and the lack of consistency of their availability. (*Interview Magistrate 1*)

[17] Reasons for not making a direction might include the lack of availability of a program, the respondent's character or personal history or any other relevant circumstances (s32).

> It [counselling] doesn't occur at the moment when there is a breach of an order because there is nowhere to send them to. (*Interview Magistrate 4*)

> I would prefer it to be mandatory rather voluntary. It definitely should be mandatory for those that are sentenced [for a breach]. (*Interview DVLO 3*)

For those that are involved in counselling and intervention programs there is a clear preference for Indigenous services.

> [Their children had been removed into care] Since then we start doing the violence counselling. We come to see the counsellor once a week and that helps us. We talk to each other; talking about violence. After that we go back home and we apologise to the kids. We been together maybe six years. We argue may be once a month. We had separate counselling, then together. We were doing it once a week. He goes to the men's group and that has made a difference. *(VC3.4)*

> We do the counselling together to talk about our problems, not about domestic violence but about our problems. My baby is under Child Safety because of domestic violence in our house, but it happened years ago. To get him back I do counselling, now I take him to day care. He is here [in remote community] in care, but I am probably going to get him back this month... I'd rather talk about my problems with [local Aboriginal woman], and I think that boy feels more comfortable talking with [local Aboriginal man]. They are Murris but not from here. They keep things confidential. (*VC3.5*)

> The good thing about Helem Yumba [Aboriginal Healing Service] is that they will involve the spouse and the family and look at the problems in a holistic way. (*Interview Magistrate 1*)

There is a need for behavioural change programs and counselling services for perpetrators to be expanded. Services and programs need to comply with minimum practice standards of the department. The general preference for Indigenous-specific services for Indigenous parties should be recognised. Magistrates need to have clearly defined powers in relation to referral, and the discretion to refer to mandatory counselling needs to reside with magistrates. The decision by magistrates needs to be founded on a well informed understanding of what services are available and what programs are acceptable for dealing with domestic and family violence.

There is a need to ensure victim's services are already in place prior to behavioural change and counselling services for perpetrators. 'You can't establish a perpetrator service without first establishing a victim's service. Victim's services need to be established first in communities'. (*Interview Domestic Violence Policy 1*)

8.6 Conclusion

The issue of mandatory reporting emerged in the research in two separate contexts: mandatory reporting to police by health workers; and the current mandatory reporting policy by police to Child Safety when there is a child present (or normally resident) at a domestic violence incident.

There does not appear to be a Queensland Health policy to report suspected domestic and family violence to police. There was some support for mandatory reporting of domestic and family violence by health workers, but also recognition of potential problems of limiting access for women to health services. (See Recommendation 9)

A major reason for not reporting violence or breaches of orders is the fear of intervention by Child Safety and the removal of children. Mandatory reporting by police to Child Safety increases the fear that children might be removed by child protection agencies. However, there is also recognition of the complexity of the problem and mixed views about the mandatory reporting policy. (See Recommendation 10)

Stakeholders noted the need to simplify both the application for a domestic violence order as well as the order itself. There was general agreement that the order should be in plain English and with examples, and that the application forms need to be rewritten in plain English. (See Recommendation 11)

Those best placed in the community to explain domestic violence orders to the aggrieved and respondents, providing they are properly trained, are the IPLOs or the Community Justice Group. (See Recommendation 12)

There is a need for behavioural change programs and counselling services for perpetrators to be expanded. Services and programs need to comply with minimum practice standards of the department. The general preference for Indigenous-specific services for Indigenous parties should be recognised. There is a need to ensure victim's services are already in place prior to behavioural change and counselling services for perpetrators.

There was widespread support for perpetrators to be required to attend behavioural change or counselling programs at the time when the domestic violence order is made. (See Recommendation 13)

Recommendation 9 Mandatory Reporting by Health Workers
It is recommended that mandatory reporting by health workers not be introduced without further investigation of its specific impacts on Indigenous women in other jurisdictions.

Recommendation 10 Mandatory Reporting by Police to Child Safety

It is recommended that QPS thoroughly review the impact their policy on mandatory reporting by Child Safety is having on the reporting of domestic and family violence.

It is recommended that QPS audit the number of confidentiality agreements they have signed with Indigenous Recognised Entities with a view to developing strategies to increase the number of these agreements.

It is recommended that the Department of Child Safety establishes a community education function focused on their policies, practices and responsibilities, and that Indigenous communities be a priority for community education.

Recommendation 11 Simplifying Applications and Orders
It is recommended that the Department of Communities undertake a review of the current protection order application and the protection order with a view to simplifying both documents in plain English and providing examples to clarify relevant sections as appropriate.

Recommendation 12 Specific Responsibility for Explaining the Order
a) It is recommended that IPLOs and Community Justice Groups, properly trained, take on a proactive role in explaining protection orders to the respondent, and if appropriate, the aggrieved.
b) Further, it is recommended that magistrates, upon making a protection order, consider as a requirement of that order that the respondent be directed to attend a community justice group for the purpose of explaining the order and the unacceptability of domestic and family violence. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.

Recommendation 13 Magistrates Power to Direct Attendance at Programs
a) It is recommended that clarification be sought by the Department of Communities on the power of magistrates to direct respondents to attend counselling or behavioural change programs at the time a protection order is made. Failure to comply with such a direction might be considered an aggravating factor when sentencing for a breach of an order.
b) Magistrates require in-service training on the different types of programs and their availability.

CHAPTER NINE: ALTERNATIVE APPROACHES AND INTEGRATED RESPONSES

One of the major findings of this research has been the current lack of engagement with the legal process by either the aggrieved or respondents. One important way to remedy this lack of engagement is to provide greater opportunities for direct Indigenous involvement in the operation of the justice system when it is dealing with domestic and family violence. Increased engagement can be achieved through enhancing the role of the Murri Court, community justice groups and JP courts.

9.1 Role of CJGs, JP Courts and Murri Courts

There is widespread support for expanding the role of the Community Justice Groups and potentially the JP Courts in responding to domestic and family violence, particularly at the time when an order is made, and potentially when there is a breach. Furthermore, there is support for continuing involvement of the Murri Court in domestic and family violence matters in those locations where it is operational.

At present there is a very limited role for community justice groups in relation to protection orders and breaches, unless there is a Murri Court in operation. At present there is basically no role for JP Courts in relation to applications for orders or breaches.

9.1.1 Murri Court

Murri Courts are in operation in various locations throughout Queensland. The main objective of the court is to reduce the number of Indigenous people in the criminal justice system. According to the Queensland Magistrates Courts *Annual Report 2003-04*:

> The Murri Court has been set up specifically to give the magistrate more culturally appropriate sentencing options by using the special guidelines within the *Penalties and Sentences Act 1992*… Community elders and respected persons explain cultural considerations and personal issues relating to the defendant and work with the magistrate to help determine the most appropriate sentencing options, penalties and interventions for each individual case… The Murri Court aims to impose sentences other than imprisonment wherever possible in an attempt to reduce recidivism. It also seeks to reduce the number of Indigenous offenders who fail to appear in court (Queensland Magistrates Courts 2004:25).

Murri Courts began operation in Rockhampton in 2003 and Mount Isa in 2004. The Youth Murri Court began in the Brisbane Childrens Court in 2004. The Murri Court is not governed by specific legislation. However, as noted previously, amendments to the Queensland *Penalties and Sentences Act 1992*, the *Juvenile Justice Act 1992* and the *Childrens Court Act 1992* enables elders and CJGs to formally assist judges and magistrates when sentencing Indigenous people.

The extent to which Murri Courts deal with domestic and family violence matters varies between locations. Murri Courts are likely to become involved in domestic and family violence matters at the time when there is a breach of an existing order. The

Mount Isa Murri Court deals with a high number of family violence matters where it is estimated that 75 per cent of offences before the Murri Court are *related* to family violence (Mount Isa Murri Court 2007:2). A matter *related* to family violence is not necessarily a breach of an order. However one might reasonably suspect that many matters do involve breaches of orders.

All the adult offenders in the Mount Isa Murri Court are facing custodial sentences. However very serous matters such as family violence that resulted in serious physical assaults are referred to the general magistrates Court or the District Court (Mount Isa Murri Court 2007:3). The Murri Court program uses adjournments with bail conditions (usually for 3–6 months) before sentencing occurs. Bail conditions include attendance at men's or women's group, drug and alcohol counselling and involvement with the community justice group (Mount Isa Murri Court 2007:3). Offenders are monitored by the community justice group and offenders report back to court every 2–3 months (Mount Isa Murri Court 2007:5).

Below is a quote from one magistrate where there is a community justice group operating with a Murri Court.

Magistrate's Comments: The Murri Court and Justice Groups

The Elders really come down on offenders. They will relate their own experiences of domestic violence. Typically the female Elders have been the victim of domestic violence and they understand the problem. It is really quite moving to listen to them and the passion with which they will address these guys. That's more powerful than us going through a template of sentencing comments. We can't express our sentencing comments with the same passion.

They will give offenders a dressing down. It relieves us of the necessity of doing it. There will also be a recommendation for sentencing and it is sometimes higher than what is being envisaged by the magistrate.

The Murri Court has a very significant role in dealing with domestic violence. One of the criteria is the likelihood of imprisonment. There will be a regular stream of domestic violence – related offences coming to the Murri Court.

The benefit it has is that the justice group puts an imprimatur on the sentencing – to show that it is not acceptable. It is a very powerful method by which that message of the unacceptability can be got across.

The Murri Court and the justice group also play a wider role in showing to the community that the courts will treat domestic violence breaches seriously, and that Indigenous people have a role in the courts.

We are trialling an unofficial domestic violence court… to try and make it inclusive with applications, breaches and connected to child protection matters. We have put those matters together on a couple of days per month and provided more specialised services, particularly from the police.

The Murri Court become involved when there are breaches and associated criminal charges. The offenders who are beyond the pale go to jail anyway through the Murri Court. It is particularly useful for other offenders in terms of the offender's background, and an opportunity for the spouse and family to provide some input and background. (*Interview Magistrate 1*)

9.1.2 Community Justice Groups

Community justice groups are an integral part of the Murri Court in locations where the Murri Court is operating. Typically, Elders who sit on the Murri Court are drawn from the community justice group, and typically the community justice group will play an integral role in supporting initiatives and supervising offenders. However, community justice groups exist far more widely in many more Indigenous communities than the Murri Court.

Victims and stakeholders were supportive of the work of the community justice groups in those areas where they were operating effectively.

> The Community Justice Group are a great resource… they will write letters saying for example there are complaints about violence or unacceptable behaviour. It would be great to have them involved at the time when the order is being made, but they would require resources and training. (*Interview Magistrate 1*)

> The justice group work well – they work pretty hard – they bring both in. They have settled things down here. Really the people in the community don't understand what's going on – they not sure what the law is – people have never been with this DVO before. They should go to the local court – the court run by the justices. They listen to the justice group. (*Interview Community Police 1*)

> We tried mediation through the justice group. It worked for a while. It would have made a difference if there wasn't such a long remand period and it could be dealt with straight away. (*VC3.2*)

> Justice Group and Murri Court. I reckon they have a role to play. Depends who is on the group. If you go before those Elders and it is your aunty on that group it can be pretty daunting… it has an effect. You find that most of the Elders will know the person or their family – it's definitely worth doing, it's a positive, it's got to have an effect. (*Interview IPLOs 6*)

Training and resources are a key issues for community justice groups. The groups are better resourced since their operation has been taken over by DJAG. However they require specific training in relation to domestic and family violence. (See Recommendation 8)

The strength of the community justice groups is their local authority and knowledge of the community.

> They [CJG] could definitely have a greater role – they can have a really important role in meeting with offenders – could be a referral to a CJG where there is one functioning – at least then it will be dealt with in a cultural context. They speak the language which is important... They are on the ground. I think that would be great. (*Interview ATSILS 1*)

However, conflicts of interest may occur and these need to be recognised by the group and dealt with accordingly.

> I think we need to be careful in involving CJGs in domestic violence issues to avoid bringing in clan and family issues. I don't think it is a good idea involving them other than explaining orders. They are not well-trained from my experience. (*Interview State Police 5*)

One potentially important role for community justice groups (where they exist and are trained) is explaining the order to both parties. Attendance by the aggrieved at the community justice group would need to be on a voluntary basis. However, there

appears to be nothing preventing a magistrate from requiring a respondent to attend the community justice group for the purpose of having an order explained. Section 50 of the legislation allows for a community justice group to explain an order to a respondent but this appears to be where the respondent is in court. However the requirement to attend the community justice group could be part of a condition of the order (See Recommendation 12). Failure to comply with the condition could be considered an aggravating factor when sentencing for any later breach, rather than attracting a specific penalty. (See also Recommendation 13)

There is also potential for the involvement of the community justice group at the time of a breach of an order. For example, when there is a breach the court might adjourn the matter while the respondent and possibly the aggrieved (if voluntary and appropriate) meet with the community justice group. The role of the community justice group would be to ensure the behaviour stops, ensure compliance generally and report back to the court.

There are many issues that need to be resolved in terms of the involvement of community justice groups in stopping domestic and family violence and ensuring compliance with orders. However, it needs to be recognised that community justice groups are already heavily involved in the locations where there is a Murri Court operating. What is envisaged here is expanding that role to places where there is no Murri Court or perhaps the court only sits on a monthly circuit.

9.1.3 JP Courts

There is also scope for the Indigenous JP courts to take on a greater role in dealing with domestic and family violence. At present the JP courts may deal with domestic violence – related matters in an indirect manner.

> The JP court basically do by-laws matters. They can't make the orders or deal with breaches. But breaches can involve the by-laws. They get charged under the by-laws because they don't need a complainant… The JP courts could have a role in making interim orders. At present they are made over the phone by the magistrates. They could have a role because they are more aware of the dynamics and what is possible and what is not. (*Interview Magistrate 1*)

> At the moment the community police enforce the by-laws that include disorderly behaviour and intoxication offences. These can cover minor domestic violence and are heard by the JP court. (*Interview State Police 4*)

At the moment the JP courts do not have power to deal with breaches of an order. It was suggested that they could more effectively deal with minor breaches that do not involve physical violence.

> In terms of minor breaches I'm very much in favour of that – the JP courts and the CJGs dealing with the matter… I think that if they can have their own court, it seems to have far more effect on them that if a white man comes in a black robe saying 'Johnny no more of this' It doesn't have the same effect. I think there is scope for the JPs courts and Community Justice Group in dealing with minor things. (*Interview Magistrate 4*)

There are more issues with the JP courts dealing with minor breaches of protection orders, than for example the involvement of community justice groups under the supervision of and in cooperation with the magistrate's court. There are legislative changes that would need to be considered in terms of the jurisdiction of the JP courts if they were to determine matters involving minor breaches, and questions about whether the penalties that can be imposed by the JP courts would be commensurate with breaches of an order. However, these issues are not insurmountable if the overall goal is to increase Indigenous participation in ensuring compliance with domestic violence protection orders.

Recommendation 14 Community Justice Groups and JP Courts
It is recommended that the Department of Communities establish a working party with DJAG to:
a) identify issues and develop protocols (and perhaps procedures) for use by community justice groups in working with domestic and family violence matters
b) investigate the potential for greater involvement of JP courts in dealing with minor breaches of protection orders.

9.2 Data, Strategic Planning and Whole-of-government Approaches

The level of data relating to Indigenous domestic and family violence is very poor. In particular data from QPS and DJAG relating to Indigenous aggrieved and respondents needs to be included in the Department of Communities database COMSIS (Department of Communities Statistical Information System). COMSIS was developed by the Office of Economic and Statistical Research (OESR), Queensland Treasury for the Department of Communities to use in its resource planning and allocation process.

COMSIS is currently poorly equipped to provide information relating to domestic and family violence and Indigenous people. However, there is a wide range of relevant data available from the QPS (both victim data and the DV Index) and DJAG (Queensland Wide Interlinked Courts or QWIC) by the Indigenous and non-Indigenous status of the aggrieved and respondent. At present this data is not routinely made available and remains unanalysed.

Some of this data is currently generated more for performance measurement than the development of evidence-based strategies. However, if government is serious in promoting evidence-based policy, and the monitoring of legislative impact and strategic development more generally, then COMSIS needs to be enhanced with QPS and DJAG data.

Recommendation 15 Enhancement of COMSIS
It is recommended that Department of Communities work with the Office of Economic and Statistical Research, DJAG and QPS to develop a more comprehensive capability on COMSIS to report on Indigenous issues relating to domestic and family violence.

The Queensland Government is committed to the development of a whole-of-government strategy on domestic and family violence, and further that an integrated response to domestic and family violence will include relevant government and non-government agencies.

On the basis of the findings of this research, the development of a whole-of-government strategy on Indigenous domestic and family violence needs to be premised on two factors.

Firstly, although domestic violence orders are frequently issued for Indigenous aggrieved and respondents, there is widespread disengagement by the affected Indigenous people from the mainstream legal process.

Secondly, whole-of-government approaches need to actively include the key Indigenous community-based justice organisations. These include Aboriginal legal services (ATSILS and IFVPLS) and community justice groups, as well as Department of Communities funded services such as Healing Services.

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