Domestic Violence Victimisation as Mitigation

Summary



This summary highlights the observations from the Council's research into the operation of the domestic violence (DV) general factors and DV mitigating factor. It is intended to assist understanding of how courts have considered DV victimisation in sentencing since the provisions commenced in August 2023.

What did we research?

Recent amendments to the *Penalties and Sentences Act 1992* (Qld) (PSA) and the *Youth Justice Act 1992* (Qld) (YJA) direct courts to consider whether an offender is a victim of DV, how the effects of DV contributed to their offending, and the individual's history of abuse or victimisation (**DV general factors**). The courts must consider as mitigating: the effect of the DV on the offender, and the extent that the offence committed was wholly or partially attributable to the effects of DV (**DV mitigating factor**). The PSA and YJA provisions are worded slightly differently.

We reviewed some court decisions to report on how the DV general factors and mitigating factor were being used when sentencing **adults**.

What did we find?

Courts consider DV victimisation in a broad range of circumstances

Courts have considered DV victimisation broadly and not just where offending occurs directly within an abusive relationship. Courts have considered:

- coercion or manipulation by an abusive partner
- offending committed out of fear, self-preservation or retaliation
- childhood and other historical exposure to DV, and
- cumulative experiences of trauma and abuse linked to offending behaviour.

The research suggests that DV victimisation has become a routine sentencing consideration in Queensland courts.

Experiencing DV and a history of abuse and victimisation is generally relevant to sentencing but does not necessarily warrant a reduction in sentence. It is the adverse effects of DV, and the extent to which it was attributable to the offending, that is mitigating (see *R v SEP* [2025] QCA 117).

Appellate authority confirms that practitioners and courts are expected to engage with the issue when it is raised, and failure to do so may amount to appealable error (See *Alexander v Commissioner of Police* (2024) 4 QDCR 84; *Carter v Commissioner of Police* [2024] QDC 141).

A broad range of evidence can be used

The sentencing remarks reviewed referred to a wide range of materials used to establish DV victimisation and its impacts, including:

- psychologist and psychiatrist reports
- agreed statements of fact
- DVOs and DV history reports, police information from attending a prior incident
- text messages between the sentenced person and their abuser and photographs of injuries
- affidavits or letter from the offender, or family or friend who witnessed the DV, and
- prior sentencing remarks.

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Stakeholders also noted other forms of supporting material have come from:

- the Brief of Evidence or other information from police,
- treating GP or counsellors, Court Link Services or Victims Assist, and
- Community Justice Group reports.

Expert reports can help, but they are not decisive

The research found that expert reports frequently assisted courts to understand:

- a person's history of victimisation
- the effects of DV victimisation, and
- a possible connection between victimisation and offending.

However, courts continued to assess expert opinions alongside all other information and the circumstances of the offending.

Expert evidence is not a requirement, but there must be some material relied on to support the mitigating effects of DV.

The effect of DV can be relevant to multiple sentencing considerations, and is part of instinctive synthesis

Courts considered DV victimisation in the context of:

- reduced culpability due to its impact on decision-making and judgement
- reduced deterrence and denunciation
- rehabilitation prospects
- the increased need for community protection, and
- personal circumstances and background context.

The mitigating effects of DV, and the extent to which the offence is attributable to it, is considered and balanced with all other relevant factors to arrive at an appropriate sentence and is a matter of judicial discretion (see *R v BEM* [2024] QCA 175).

Some cases involve complex factual issues

The research identified some complexity where:

- a co-offender was also alleged to be a perpetrator of DV
- both parties engaged in conduct meeting the definition of DV
- there were competing claims of DV victimisation, and
- the offence itself is a DV offence, which is an aggravating factor.

In some matters, courts were required to assess disputed facts and weigh competing sentencing considerations.

Summary

The research suggests that Queensland courts appear to be applying the DV general factors and DV mitigating factor broadly and are willing to consider the effects of DV in a wide range of factual circumstances. Consistent with contemporary research, the sentencing remarks reviewed recognised that offending may occur in the context of coercion, control, abuse, trauma, emotional duress, as well as be indirectly linked to the ongoing effects of historical abuse and victimisation.

The research indicates that while experiencing DV is a general sentencing consideration, this alone does not warrant a reduction in sentence. Rather, the mitigating weight is from the adverse impacts and the effects of DV such as whether the DV reduced a person's capacity for decision-making, resulted in homelessness and financial stress, contributed to a mental disorder, PTSD or substance misuse, and the extent to which those effects were wholly or partially attributable to the offending.

The research also highlighted the practical challenges in identifying, articulating and evidencing those effects, particularly in the Magistrates Courts where Legal Aid funding, time, resources and access to expert evidence are often limited, and it is not always practical or achievable for all matters. Supporting information can be obtained from GPs, counselling records, letters from support services such as Court Link, material with the prosecution about prior DVOs or from the Brief of Evidence, to support submissions about coercion, fear and vulnerability in the absence of an expert report.

As this remains an emerging area of sentencing, there is scope for judicial guidance to explain when, and how, the effects of DV reduce culpability or are relevant to sentencing purposes. Established common law principles relating to mental illness and childhood deprivation and disadvantage provide a useful foundation and framework for the ongoing development of this area of sentencing.