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Domestic violence victimisation as mitigation: Exploring two new legislated sentencing factors

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Overview

BACKGROUND	In August 2023, Queensland became the first Australian jurisdiction to expressly recognise an offender's domestic violence (DV) victimisation when sentencing adults and children. The reforms require courts to consider whether a person being sentenced is a victim of DV, how the effects of DV contributed to their offending, and their history of abuse or victimisation (DV general factors). Courts must also treat as mitigating: the effect of DV on the offender, and extent to which the commission of the offence is attributable to the effects of DV (DV mitigating factor).
AIM	This *Research Brief* explores how sentencing courts have interpreted and applied the DV general factors and DV mitigating factor to adults.
METHOD	We analysed appellate decisions from the Queensland Court of Appeal and District Court; analysed a sample of first-instance sentencing remarks from the Supreme and District Courts; and consulted key stakeholders.
OBSERVATIONS	The research suggests that the DV general factors and mitigating factor have established DV victimisation as a routine sentencing consideration for adults in Queensland. Courts are applying the provisions in circumstances envisaged by the Women's Safety and Justice Taskforce, such as where offending occurred due to coercion in an abusive relationship, and to a broader range of cases involving childhood exposure to DV, historical victimisation and cumulative experiences of trauma and disadvantage. We observed that courts accept a broad range of evidence to establish DV victimisation, and while expert reports can strengthen the evidentiary basis, they are not always decisive or required. Stakeholders reported that obtaining independent evidence can be difficult in the Magistrates Courts where Legal Aid funding, time, resources and access to expert evidence is limited, often requiring the sourcing of other information. The data we reviewed indicates that DV victimisation was often recognised as part of an offender's background and personal circumstances, rather than being expressly linked to culpability, offence seriousness or sentencing purposes. While this reflects that the effects of DV may not always be relevant beyond personal background and context, stakeholders reported that in the Magistrates Courts there can be limited opportunities for practitioners to identify, explore and properly evidence a person's experiences of DV and how it was attributable to the offending. We also observed that the broad definition of DV, the victim-offender overlap and complex DV relationship dynamics can make it challenging for practitioners to identify, evidence and articulate the effects of DV, and challenging for courts to assess and balance those effects against other sentencing considerations.
FUTURE DIRECTIONS	As an emerging area of sentencing, there is scope for further education to improve understanding of the effects of DV and its relevance to sentencing. Judicial guidance may assist 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 framework for the continued development of guidance in this area. This may also improve transparency and help the community to understand how DV victimisation is taken into account in sentencing.

Introduction

A person's experience of domestic violence (DV) and their involvement in criminal offending can be intricately linked. A victim of DV may offend because they were coerced, reacted violently in response to a perpetrator's abuse, took responsibility for a crime under emotional duress, or otherwise became involved because of a controlling or violent relationship.[1] Childhood exposure to, or experiencing, DV, may affect development, behaviour and coping mechanisms, which can increase the likelihood of psychological trauma, substance misuse and contact with the criminal justice system.[2]

In August 2023, Queensland became the first Australian jurisdiction to expressly legislate the effect of DV as both general factors and a mitigating factor in sentencing. 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).[3] The courts must consider as mitigating: the effect of the DV on the offender,[4] and the extent that the offence committed was wholly or partially attributable to the effects of DV (DV mitigating factor).[5]

Courts in sentencing are often presented with information that a sentenced person has experienced prior victimisation including DV, as well as other forms of childhood trauma, disadvantage and other adverse experiences (what is often described in court as 'a prejudicial upbringing'). Courts are called upon routinely to determine how reported past victimisation and its effects should be taken into account, balanced against the seriousness of the offence and other aggravating features. As the effect of DV—and the extent to which the offence was wholly or partially attributable to it—is now expressly mitigating, this raises questions about the evidence needed and how the effects of DV should be considered mitigating.

The Queensland Government implemented these reforms in response to recommendations by the Women's Safety and Justice Taskforce (WSJT). This *Research Brief* explores how the two new legislated sentencing factors are being interpreted and applied, the type of evidence used to establish a prior history of DV victimisation and its connection to the person's offending, common characteristics of cases that have successfully relied on the effects of DV in mitigation and the practical complexities and challenges for courts when sentencing.

This paper builds on work from the 2026 Queensland Sentencing Advisory Council report, *The Tangled Web: Examining domestic and family violence sentencing reforms*. Stakeholder feedback collected during that review highlighted significant practical and legal questions arising from the DV general factors and mitigating factor.[6] This *Research Brief* explores these issues, contributes to the broader conversation about the intersection of the effect of DV victimisation and offending, and areas for future education and development. We thank our stakeholders for sharing their views that contributed to this work.

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1 See, eg, Julia Tolmie et al, 'Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence' [2018] *New Zealand Law Review* 181, 182–3; Women's Safety and Justice Taskforce, *Hear Her Voice Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Government Report, 2021) vol 2, 303; Women's Safety and Justice Taskforce, *Hear Her Voice Report Two: Women and Girls' Experiences Across the Criminal Justice System* (Final Report, 2022) vol 2, 418–27 ('*Hear Her Voice Report 2*'); Australia's National Research Organisation for Women's Safety, *Women's Imprisonment and Domestic, Family and Sexual Violence* (Research Synthesis, 2020) 5–6.

2 See, eg, The Bugmy Bar Book, *Childhood, Infant and Perinatal Exposure to, and Experience of, Domestic and Family Violence* (May 2024) 10–11; Ben Mathews et al, *Child Maltreatment and Criminal Justice System Involvement in Australia: Findings from a National Survey* (Trends & Issues in Crime and Criminal Justice No 681, December 2023) 14–5 ('*Child Maltreatment and Criminal Justice System Involvement in Australia*'); 'Australian Child Maltreatment Study', *Main Findings* (Web Page, 2026) <https://www.acms.au/findings>; Stephanie Holt, Helen Buckley and Sadhbh Whelan, 'The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature' (2008) 32(8) *Child Abuse & Neglect* 797, 797; Catia Malvaso et al, *Adverse Childhood Experiences and Trauma among Young People in the Youth Justice System* (Trends & Issues in Crime and Criminal Justice No 651, June 2022) 12–13.

3 *Penalties and Sentences Act 1992* (Qld) s 9(2)(gb) ('PSA'); *Youth Justice Act 1992* ((Qld)) s 150(3)(gb) ('YJA') this includes 'exposure'.

4 PSA (n 3) s 9(10B)(a) unless it is not reasonable to do so because of exceptional circumstances; this exception is not in the YJA (n 3) s 150(6)(a).

5 PSA (n 3) s 9(10B); YJA (n 3) s 150(6) including 'exposure' to DV.

6 Queensland Sentencing Advisory Council, *The Tangled Web: Examining Domestic and Family Violence Sentencing Reforms* (Final Report, 2026) 117–8.

Background

The rationale for a DV mitigating factor

In 2021, the WSJT made recommendations to improve the response to women's experiences of domestic, family and sexual violence in Queensland. They included how to best legislate coercive control as a form of DV,[7] system-wide reform to recognise and improve understanding of the patterned and cumulative nature of DV on a victim,[8] the importance of assessing DV in the broader context of the relationship,[9] and guidance on how to identify the person most in need of protection.[10]

The WSJT explored how the effects of DV can be linked to women's offending. They found perpetrators of coercive control can use oppressive behaviours to restrict their victims' freedom and autonomy.[11] The WSJT recognised victims of DV may then offend because they react violently to prolonged abuse, may be manipulated into committing crimes such as theft, drug dealing, neglecting or abusing children or overstate their involvement or culpability.[12] Controlling partners may also prevent a victim from attending court or involve them in offending where they are not covered by defences to excuse their behaviour.[13]

The WSJT therefore recommended the PSA be amended to require the effect of DV, including coercive control, to be an expressed mitigating factor at sentence.[14] The aim of the recommendation was to:

- acknowledge and address the circumstances where a victim of DV reacts violently, takes other extreme measures or is manipulated to offend because of their DV victimisation, including because of the patterned, non-physical abuse experienced as part of coercive control[15]
- ensure courts consider the effect of experiencing DV and coercive control on a person's mental state, as it can reduce a person's moral culpability and the punishment that is just in all the circumstances,[16] and
- encourage courts to routinely regard whether offending behaviour is attributable to the effects of DV.[17]

The WSJT also noted a concern that practitioners are not always using evidence of the victim's experiences of coercive control in mitigation of sentence due to either a lack of knowledge or confidence in how the evidence would be received.[18] As part of the WSJT's further review, it recommended another amendment to the PSA to require courts to consider the offender's history of abuse or victimisation more broadly.[19]

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7 Women's Safety and Justice Taskforce (n 1) vol 1, lxvii, rec 52; implemented through *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) div 5.

8 Women's Safety and Justice Taskforce (n 1) vol 1, lv, rec 23; lx, 33; lxvii, 53; lxxi recs 67–9, implemented through amending the definition of DV to include the concept of a 'pattern of behaviour': *Domestic and Family Violence Protection Act 2012* (Qld) s 8 ('DFVPA').

9 Women's Safety and Justice Taskforce (n 1) vol 1, lxvii, rec 53, implemented through *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) s 31.

10 Women's Safety and Justice Taskforce (n 1) vol 1, lxvii, rec 56, implemented through *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (n 9) pt 4.

11 Women's Safety and Justice Taskforce (n 1) vol 3, 708, citing Evan Stark, 'Rethinking Coercive Control' (2009) 15(12) *Violence Against Women* 1509.

12 Women's Safety and Justice Taskforce (n 1) vol 2, 303.

13 Ibid.

14 Ibid vol 1, lxx–lxxi, rec 66; vol 2, 302–3; 3, 707–8.

15 Ibid vol 2, 303; vol 3, 708.

16 Ibid vol 2, 303; vol 3, 707.

17 Ibid vol 3, 709.

18 Ibid vol 2, 271, 223–5; vol 3, 596; also discussed in *Hear Her Voice Report 2* (n 1) vol 2, 409, 561.

19 *Hear Her Voice Report 2* (n 1) vol 2, 563, rec 126.

The legislated amendments

In response to the WSJT recommendations, the PSA and YJA were amended to introduce the DV general factors and mitigating factor.[20] These commenced in August 2023,[21] with an additional general factor (gb)(iii) commencing in March 2024.[22] The current PSA provisions are below, with the legislated amendments shown in italics.

> (2) In sentencing an offender, a court must have regard to—
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> ...
>
> (g) the presence of any aggravating or mitigating factor concerning the offender; and
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> ...
>
> *(gb) without limiting paragraph (g), the following—*
>
> *(i) whether the offender is a victim of domestic violence*
> *(ii) whether the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender;*
>
> *(iii) the offender's history of being abused or victimised;*
>
> ...
>
> *(10B) In determining the appropriate sentence for an offender who is a victim of domestic violence, the court must treat as a mitigating factor—*
>
> *(a) the effect of the domestic violence on the offender, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case; and*
>
> *(b) if the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender—the extent to which the commission of the offence is attributable to the effect of the violence.*

Similar DV general and mitigating factors were added to the YJA, but there is no exceptional circumstances exemption to the DV mitigating factor.[23] These provisions also specify that courts must also consider 'exposure to' DV, which relates to seeing, hearing or otherwise experiencing the effects of DV.[24]

Anticipated challenges

A range of challenges with these reforms were anticipated, including:

- When recommending the DV mitigating factor, the WSJT recognised that some DV perpetrators may attempt to falsely characterise themselves as victims of DV or seek to rely on isolated acts of retaliatory violence to reduce their culpability.[25] The WSJT emphasised the need for decision-makers be trained on the nature of DV to identify such claims.[26]
- Stakeholders told the Legal Affairs and Safety Committee considering the Bill that they were concerned about the evidence needed to satisfy the court that the effect of DV on the offender was wholly or partially attributable to the offending. Legal Aid Queensland (LAQ) anticipated an increased demand and costs for expert evidence, and court delays and lengthier sentencing proceedings.[27] Queensland Police Union of Employees also anticipated delays to enable police to investigate these claims.[28] In response, the Department of Justice noted that the amendments would not alter the standard of proof for fact finding at

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20 Explanatory Note, Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld) 1.
21 *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (n 9) ss 80, 96.
22 *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act* (n 7) ss 83(2), 100(2).
23 YJA (n 3) ss 150(3)(gb), (6).
24 DFVPA (n 8) s 10.
25 Women's Safety and Justice Taskforce (n 1) vol 2, 303.
26 Ibid vol 2, 303; vol 3, 708.
27 Legal Affairs and Safety Committee, *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022* (Report No. 39, 57th Parliament, November 2022) 33, citing Submission 15, 9.
28 Ibid 34, citing Submission 27, 9.

sentence, some information relevant to a person's victimisation could be requested from the prosecution, and the demands on LAQ funding would be monitored.[29]

- Once the Bill was passed but before the legislated changes commenced, her Honour Judge Fantin highlighted the practical challenge for courts could be determining the extent to which the offence was attributable to the effects of DV.[30] As sentencing proceedings in Queensland commonly rely on oral sentencing submissions and *ex tempore* sentencing remarks, her Honour was concerned that oral submissions may not adequately assist a court, although the standard of proof is on the balance of probabilities.[31]

These anticipated challenges informed our research focus on types of DV victimisation, circumstances of the offending, evidence used, how these factors relate to culpability (blameworthiness) and other sentencing purposes, and practical challenges.

About this research

We are aware of no previous research examining how Queensland's DV general factors and mitigating factor are being interpreted and applied in practice. Existing research, however, has explored related issues such as the role and treatment of trauma in sentencing decisions,[32] and judicial narratives on domestic and family violence.[33] Of most relevance is Bettison's examination of whether the sentencing guidelines in the UK adequately recognise coercive control as a mitigating factor.[34] Bettison considered this to be unclear and recommended further research, particularly focusing on whether the effects of coercive control are applied 'as a personal mitigation factor or as a culpability factor'.[35]

The current research contributes to this emerging body of work by providing an early exploration of how Queensland's legislated provisions are operating in practice, including its relevance to culpability and sentencing purposes.

Specifically, the aims of this research were to explore:

1. how the DV general factors and mitigating factor are being interpreted and applied to adults,[36] and
2. the evidence used to support a finding about the effects of DV and/or the extent to which the offence was wholly or partially attributable to the effects of DV.

Data sources

This research drew on three complementary data sources:

1. **Appellate authorities from the Court of Appeal and District Court:** Appellate authorities provide guidance on the interpretation and application of sentencing principles and may correct errors in first-instance sentencing, offering insight into how courts understand the DV general factors and mitigating factor. Appellate authorities were sourced from the Supreme Court Library Queensland for the period 1 August 2023 to 13 August 2026. To identify relevant cases, all appellate decisions published during the observation period were reviewed and all relevant decisions were included. This process identified six

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29 Ibid 33–4 citing DJAG, response to submission, 11 November 2022, 73–4, 137, 139.

30 Judge Tracy Fantin, *The Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022: What Can We Expect?* (Speech, Judicial CPD series, Cairns, 23 February 2023) 10.

31 Ibid, citing *Evidence Act 1977* (Qld) s 132.

32 See, eg, Victoria Jackson et al, 'Trauma-Informed Sentencing of Serious Violent Offenders: An Exploration of Judicial Dispositions with a Gendered Perspective' (2021) 28(5) *Psychiatry, Psychology and Law* 748; Katherine J McLachlan, 'The Relevance of Trauma as a 'Mental Disorder or Abnormality' in Sentencing: An Australian Case Study' in *Neuroscience in Criminal Justice Systems: The Positive Impact of Neurojustice* (Routledge, 2026); Anusha Kenny and Natalia Antolak-Saper, 'The Role of Trauma as a Mitigating Factor in the Sentencing of Offenders: The Victorian Experience' (2025) 46(2) *Adelaide Law Review* 370.

33 Jonathan Pears and Patricia Easteal, 'Judicial Narratives and 'Reality': A Thematic Analysis of References to Family Violence in Sentencing Remarks for the Offence of Threat to Kill' (2025) 14(2) *Laws* 15.

34 Vanessa Bettinson, *Coercive Control as Mitigation at Sentencing* (Sentencing Academy, 2024).

35 Ibid 12, 14.

36 The scope of the research was limited to adults sentenced under the PSA (n 3), as the YJA (n 3) contains distinct sentencing principles and considerations and has different requirements and use of presentence reports.

Court of Appeal and eight District Court Appeal decisions that expressly considered either the DV general factors or the mitigating factor.

2. **First-instance sentencing remarks from the Supreme and District Courts:** Sentencing remarks are a record of what a judicial officer said in the sentencing hearing and often contain information about the offence, the sentenced person and victim, and the reasons for making a sentencing order. To supplement the small appellate dataset, a sample of 80 first-instance sentencing remarks from the Supreme and District Court involving adults was identified and analysed. The remarks were accessed from the Queensland Sentencing Information Service (QSIS), and relevant cases identified using a keyword search.[37] The observation period was 1 August 2023 to 30 April 2026, which included cases available on QSIS on 15 May 2026. Our sample was limited to the Supreme and District Courts and there were no Magistrates Courts remarks.
3. **Targeted stakeholder consultation:** Stakeholder insights helped validate the observations and provided practical examples and perspectives not visible in the appellate authority or sample of sentencing remarks, as well as broader social and contextual insights. Key observations from the analysis were presented to members of the Queensland Sentencing Advisory Council's Aboriginal and Torres Strait Islander Advisory Panel[38] on 27 August 2026, and to the Practitioner Consultative Forum[39] on 2 September 2026.

Analytic approach

We undertook a content analysis of the first-instance sentencing remarks. This involved developing a structured coding framework to extract key information from each case, including the offender-victim relationship, the nature of the offence, the type of DV victimisation, and the evidence relied upon when assessing the effects of DV, how judicial officers recognised DV victimisation and articulated the effects of DV and the extent that the offending was wholly or partially attributable to the effects of DV. This approach organised the unstructured data in a way that permitted us to make observations about judicial interpretation and application of the DV general factors and mitigating factor.

More detail about the sampling approach for sentencing remarks, coding frame and the limitations of this research, appear in the **Appendix**.

Features of the cases we reviewed

We provide a broad description of the cases we reviewed, to help to contextualise the observations that follow.

- Around half of the sampled cases were personal violence offences, with women sentenced in about one-half of these matters. Drug offences accounted for one-quarter of the sampled cases and women were sentenced in about two-thirds of these cases. A smaller number of cases were sexual offending, property offending and offences against the administration of justice. The types of offences in our sample generally reflect the type of matters in the higher courts.
- The sentencing remarks we reviewed contained more women offenders than men offenders.
- A broad range of DV victimisation appeared in the sentencing remarks, including intimate partner violence, family violence, childhood exposure to DV, historical victimisation and cumulative experiences of trauma and disadvantage.
- In the sample, the type of DV victimisation and its proximity to the offending tended to differ by the gender of the offender. For men, DV victimisation was most often childhood exposure to, or historical experiences of, DV. For women, the DV victimisation tended to occur when the offender was in an intimate partner relationship and the DV victimisation tended to be temporally proximate to the offending.

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37 For more information about these search terms, see the **Appendix**.

38 The Aboriginal and Torres Strait Islander Advisory Panel comprises up to eight individual members who provide expert advice to the Council on how to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system: Sentencing Advisory Council Queensland, 'Meet the Aboriginal and Torres Strait Islander Panel' (Web Page, 13 August 2026) <https://www.sentencingcouncil.qld.gov.au/about-us/aboriginal-and-torres-strait-islander-panel>.

39 The Practitioner Consultative Forum members include individuals from the judiciary, prosecutors and defence practitioners.

Observations

Our review of appellate authorities and a sample of sentencing remarks of adults sentenced in the higher courts resulted in 13 observations about the interpretation and application of DV general factors and mitigating factor.

These observations related to:

- Identifying a victim of DV and engaging the legislated factors (**observations 1–4**)
- How the legislated factors are applied (**observations 5–7**)
- Evidence and the role of expert reports (**observations 8–10**)
- How DV victimisation informs culpability and sentencing purposes (**observation 11**), and
- Challenges and complexities (**observations 12–13**).

Members of the Practitioner Consultative Forum broadly agreed that the observations reflected sentencing practice. Their insights helped validate the observations and provided additional practical context, examples and perspectives. Their insights are included in some observations as well as in the discussion and future directions presented later in this *Research Brief*.

Identifying a victim of DV and engaging the legislated factors

Despite the wide range of DV victimisation identified in the sample of sentencing remarks, there was relatively little judicial discussion about what constitutes a 'victim of DV'. This suggests that courts adopt a broad approach to the concept, consistent with the broad definition of DV.[40] Rather than focusing on whether a person falls within a particular category of victim, courts tended to focus the nature of victimisation, its effects and its relevance to offending. We observed a diverse, complex and context specific ways in which the experiences of DV may relate to the offending behaviour.

OBSERVATION #1

Courts interpret a 'victim of DV' broadly, according to the facts and circumstances of the case.

The only time the court discussed what constitutes a 'victim of DV' was in respect of the threshold for the DV mitigating factor.

In one case, the judge noted the PSA does not define a 'victim of DV' and considered whether 'exposed to DV' could constitute victimisation for the DV mitigating factor. In this case, a causal source of her mental state was her past trauma and exposure to DV:

> My tentative view, in the absence of a confining definition, is that [exposure to DV] ought be regarded, under s 9(10B) as themselves also victims of domestic violence … I, in any event, take into account as a mitigating consideration that a significant causal source of the defendant's emotional inability to avoid her descent into anger, and eventually violent rage at her mother, was her unnurturing and traumatic upbringing in a household in which she was exposed to domestic violence.
>
> **Supreme Court Judge, sentencing a woman for personal violence (DV offence) (SR #9)**

This example illustrates that courts may take a broad approach to identifying a victim of DV and although the PSA does not expressly refer to exposure to DV,[41] its absence does not prevent a court from considering its effects or the extent they were attributable to the offending.[42] More generally, the limited judicial discussion suggest that courts

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40 DFVPA (n 8) s 8.

41 Cf YJA (n 3) s (150)(6).

42 Recognising the effects of exposure to DV is also consistent with DFVPA (n 8) preamble 5, 7, 9; s 3(b); also the expressed recognition of exposing a child as an aggravating factor: PSA (n 3) ss 12A(iii), 9(10D).

are less concerned with being prescriptive and exhaustive for who qualifies as a victim of DV, and more concerned with assessing the nature and consequences of the victimisation in the circumstances of the case.

OBSERVATION #2

There were examples of courts applying the DV general factors and mitigating factor in circumstances that were contemplated by the WSJT recommendation.

In the sample of sentencing remarks, there were examples where the DV victimisation was proximate to the offending and the effects of DV were expressed as relevant to the offending. These examples demonstrate the kinds of situations that the WSJT intended in their recommendation: where a person offended in an abusive relationship and the offending was connected to their victimisation, including through coercion, self-preservation or retaliation.

> I am satisfied that it is appropriate to infer that your conduct in assisting this man to carry on his [drug trafficking] business was caused by the vulnerability of the position you were in, in a violent, abusive relationship.
>
> **Supreme Court Judge, sentencing a woman for drug offending (#36)**

> There is a much wider factual dynamic that matters to this case. He was in your house and he was unwelcome by you. He was in breach of an order of protection where you were the aggrieved. All those matters add to your subjective belief, but they also matter to [the DV mitigating factor], in terms of an exceptionality of circumstances pertaining to the impact of domestic violence on offenders, and there is, to my mind, evidence of that upon you …
>
> **District Court Judge, sentencing a woman for personal violence (DV offence) (SR #14)**

Consistent with the circumstances contemplated by the WSJT, the DV mitigating factor has assisted the court to understand the impacts of DV and how coercion, fear, vulnerability or constrained decision-making contribute to the offending.

OBSERVATION #3

There were examples of courts applying the DV general factors and mitigating factor in a broader range of contexts than contemplated by the WSJT recommendation.

In most of the sentencing remarks sample, DV victimisation related to historical abuse, childhood exposure to DV or past experiences of family or intimate partner violence. This suggests that the DV mitigating factor is being applied in a broader range of circumstances than those contemplated by the WSJT.

For example, when sentencing a man for trafficking in dangerous drugs, the court said:

> [I] took into account things such as the history of domestic violence and the impact it had … for you, in the context of [the DV general factor], but more specifically, the adverse psychological effects of that childhood, and [apply the DV mitigating factor]. I accept in your case … domestic violence and other trauma has had a direct causal relationship on your offending and has left you more vulnerable to making poor life decisions, and I take that vulnerability into account when I sentence you.
>
> **Supreme Court Judge, sentencing a man for drug offending (SR #17)**

This illustrates that courts are applying the DV general factors and mitigating factor to recognise the long-term effects of DV victimisation and trauma. This broader application reflects the victim-offender overlap and the many ways in which DV victimisation may be linked to offending.[43]

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[43] The victim-offender overlap reflects that there is a strong association between offending and victimisation. See eg, Queensland Treasury, *The Overlap between Offending and Victimisation in Queensland* (Crime Research Report, 2023) 2; Office of the Federal Ombudsperson for Victims of Crime, *(Not All) Hurt People Hurt People: Re-Thinking the Victim-Offender Overlap* (Report, June 2021) 2; MS Tillyer and EM Wright, 'Intimate Partner Violence and the Victim–Offender Overlap' (2014) 51(1) *Journal of Research in Crime and Delinquency* 29, 30.

OBSERVATION #4

The DV general factors are relevant considerations, but only the effects of DV and extent it contributed to the offending are mitigating.

In *R v SEP*,[44] the Court of Appeal explained that experiencing DV as a child 'was a relevant consideration generally' however, 'the adverse psychological effects of a childhood blighted by such abuse upon the applicant fell to be treated as a mitigating factor'.[45] Similarly, 'whether the offending was wholly or partly attributable to those effects was generally relevant … and the extent to which it was attributable was a mitigating factor'.[46]

This distinction suggests that a court may accept that a person experienced or was exposed to DV without necessarily finding that the experience alone warrants a reduction in sentence. This interpretation is reinforced in *R v MEW*,[47] a case involving sexual offending against a child, where it was found that the sentencing judge did take MEW's exposure to DV into account, but the evidence was not sufficient to enliven the DV mitigating factor, meaning there was no error by the sentencing judge for failing to ameliorate the sentence because of it.[48]

There were also examples of this approach in the sentencing remarks. In a drug offending case, the court accepted the DV victimisation was generally relevant, but there was insufficient evidence that the offending was attributable to the effects of DV victimisation:

> you have previously been in a bad domestic violence relationship, and … you were the subject of abuse as a child … In the circumstances of the current case, there is no evidence to reach a view as to the extent that the current offending is attributable to the effect of the violence. However, it is appropriate to consider that you were the victim of domestic violence as part of the overall factual matrix taken into account in arriving at an appropriate sentence.
>
> **Supreme Court Judge sentencing a woman for drug offending (SR #24)**

This remark illustrated courts are making this distinction in considering the threshold for the DV mitigating factor.

How the legislated factors are applied

The sample of sentencing remarks suggests that the DV general factors and mitigating factor have established DV victimisation as a routine sentencing consideration in Queensland as intended. However, it was not always possible to identify when a court was engaging the DV general factor, the DV mitigating factor, or both.

In over half of the sample of sentencing remarks, courts did not refer to the specific legislated provision. However, where they did, courts most often referred to both provisions together. This made it difficult to draw distinctions between the operation of the DV general factors and the mitigating factor. Nevertheless, appellate authority and some of the sentencing remarks in the sample indicate that courts are distinguishing between recognising DV victimisation as a relevant consideration and assessing whether its effects are mitigating.

OBSERVATION #5

The DV general factors and mitigating factor appear to support routine consideration of DV victimisation.

The Court of Appeal has acknowledged that the legislated amendments were intended to promote greater consistency in the treatment of DV victimisation as a sentencing consideration.[49] In the sample of sentencing remarks, judges commonly referred to the legislated factors or otherwise considered whether the sentenced person was a victim of

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44 *R v SEP* [2025] QCA 117 ('*SEP*').
45 Ibid [25] (Brown JA, North and Henry JJ).
46 Ibid.
47 *R v MEW* [2025] QCA 220 ('*MEW*').
48 Ibid [29]–[30] (Bowskill CJ, Bradley JA and Wilson J agreeing).
49 *R v BEM* [2024] QCA 175, [19] (Mullins P, Boddice JA and Kelly J) ('*BEM*').

DV, suggesting that it has encouraged courts to routinely regard whether offending behaviour is attributable to the effects of DV.

> Now, you have had your difficulties in your previous life. You have experienced domestic violence, which I am required, under section 9(10B), of the *Penalties and Sentences Act*, to have regard to.
>
> **Supreme Court Judge, sentencing a woman for drug offending (SR #22)**

Appellate authority also confirms an expectation that sentencing courts expressly engage with DV victimisation when it is raised.[50] This supports that the legislated provisions have established a routine consideration, capable of constituting an appealable error.

Practitioners reported that there may still be a lack of awareness and familiarity about the DV general factors and mitigating factor, particularly in the Magistrates Courts. This suggests that while there may be a more routine consideration of DV victimisation by courts when it is raised, it may still be inconsistently raised in broader practice.

OBSERVATION #6

Courts frequently recognise DV victimisation even where no express finding is made about the effects or whether the offending was wholly or partially attributable.

In the sample of sentencing remarks, courts did not always refer to the specific legislated provisions. As a consequence, it was difficult to identify whether courts were applying the DV general factors alone, whether the effects of DV amounted to the DV mitigating factor or whether, and extent to which, the offending was wholly or partially attributable to the effects of DV. For example, in a case where a woman was sentenced for assaulting another woman in a nightclub, the court said:

> You have been the victim of domestic violence by being subjected to it and witnessing it as a child, and being the victim of it yourself in adult relationships. I accept that that is a relevant sentencing factor now because of section 9(2)(gb) and section 9(10B) of the Penalties and Sentences Act.
>
> **District Court Judge, sentencing a woman for personal violence (SR #2)**

This is broadly consistent with the approach explained by the Court of Appeal in *BEM*, that where the DV mitigating factor is raised, the only finding required is whether exceptional circumstances justify **not** treating the effect of DV as mitigating.[51] There is no mandated way the DV mitigating factor must be reflected in the sentence imposed.

This means that there can be limited explanation for how and why the effects of DV are mitigating.[52] For example, in *R v BFC*,[53] Brown JA was satisfied the sentencing judge accepted the applicant was a victim of DV and that it partially contributed to her offending, and in referring to it as 'matters in your favour' was sufficient, noting that the sentencing judge 'was not required to do more'.[54]

OBSERVATION #7

The DV general and mitigating factors are part of the instinctive synthesis.

Australian sentencing practice applies the principle of 'instinctive synthesis' where courts consider all relevant factors together to produce a single sentence, rather than applying a mathematical process of adding and subtracting.[55]

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50 *Alexander v Commissioner of Police* (2024) 4 QDCR 84, 88 [20] (Smith DCJ); *Carter v Commissioner of Police* [2024] QDC 141, [18], [24] (Allen KC, DCJ).

51 *BEM* (n 49) [20] (Mullins P, Boddice JA and Kelly J) (emphasis in original).

52 Eg, *Julian v Commissioner of Police* [2024] QDC 173, [64] (Smith AM DCJA); citing *BEM* (n 49) [19]–[20].

53 *R v BFC* [2026] QCA 8 ('*BFC*').

54 Ibid [13] (Brown JA, Bond and Doyle JJA agreeing).

55 *Markarian v The Queen* (2005) 228 CLR 357, 373–4 [37] (Gleeson CJ, Gummow, Hayne and Callinan JJ) ('*Markarian*').

In *BEM*, the Court of Appeal held that the DV mitigating factor is part of the ordinary process of instinctive synthesis.[56] This means the mitigating effect of DV victimisation, 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. Subsequent appellate authorities,[57] and the sentencing remarks reviewed, were also consistent with this approach.

> it appears that it is one of the various factors to be weighed up by the Court in arriving at the appropriate and just sentence, but is not given any particular primacy by Parliament in the way that the provisions have been inserted into section 9 of the Penalties and Sentences Act.
>
> **Supreme Court Judge, sentencing a woman for personal violence (SR #1)**

> the [PSA] does not ascribe mandatory effect to any of those provisions, nor does it tell me anything about the relative weight that I have to give them …
>
> **Supreme Court Judge, sentencing a woman for drug offending (SR #45)**

The remarks illustrate that, while the effects of DV must be treated as mitigating unless there are exceptional circumstances, the weight and significance of the factor is a matter of judicial discretion. While this is consistent with the approach to sentencing in Australia and could explain why the distinction between the DV general factors and mitigating factor was not always clear in the sample of sentencing remarks, it may also reflect the challenge for practitioners in establishing how the effects of DV victimisation contribute to offending.

Evidence and the role of expert reports

The sentencing remarks reviewed suggest that courts accept a wide range of information and materials to establish that a person has experienced DV and to assist the court in understanding its effects. Stakeholders described additional types of evidence which can assist a Magistrates Court as time, resources and access to expert evidence in those courts is limited.

The sample of sentencing remarks also suggested that while expert evidence can be valuable, it does not always establish that the offending was wholly or partially attributable to the effects of DV and courts will critically assess all the evidence.

OBSERVATION #8

Courts accept a wide range of evidence to establish DV victimisation. While expert reports can strengthen the evidentiary basis for DV mitigation, courts can rely on other sources.

As a general principle, where a fact is relied on to mitigate a sentence, there must be some information or material capable of establishing that fact, proved on the balance of probabilities.[58] We did not observe any authority suggesting that the DV general factors or mitigating factor displaced this general sentencing principle.

In sentencing remarks, judges referred to a broad range of evidence types informing DV victimisation, including:

1. expert reports prepared by a psychiatrist or psychologist
2. agreed statements of fact (the facts as agreed between the prosecution and the defence)
3. domestic violence protection orders (DVO), a DV history report, police information from attending a prior incident
4. statements from witnesses about the DV

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56 *BEM* (n 49) [20] (Mullins P, Boddice JA and Kelly J).

57 *SEP* (n 44) [26] (Brown JA, North and Henry JJ); *BFC* (n 53) [12]–[13] (Brown JA, Doyle and Bond JJA agreeing); *R v PBP* [2024] QCA 210, [41] (Boddice JA, Mullins P and Bradley J agreeing).

58 *Bugmy v The Queen* (2013) 249 CLR 571, 594 [41] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ) ('*Bugmy*'); Evidence Act 1977 (n 31) s 132C; for a discussion of the burden of proof: Richard Fox, 'Case Note The Burden of Proof at Sentencing: Storey's Case' (1998) 24(1) *Monash University Law Review* 194, 199–200.

5. text messages between the sentenced person and their abuser, photographs of injuries
6. self-reported evidence from the sentenced person (in the form of an expert report, testimony under cross-examination, affidavit, letter to the court, and/or bar table submissions)
7. reports from an early intervention service provider, and
8. prior sentencing remarks.

This is broadly consistent with the practice prior to the DV general factors and mitigating factor, where victimisation could be established through various information sources.[59]

From the sample, evidence of DV victimisation was commonly supported by expert reports, however, it was almost equally as common for sentencing remarks not to refer to the evidence that was relied on.

Expert reports, when they were used, were most commonly a psychological report, and frequently appeared to assist the court to understand the offender's history of DV victimisation, the effects of DV and any connection between those effects and the offending.[60] For example:

> It is also of significance that a report has been provided to the court, which does support there being a nexus between the trauma that you have endured and – and the drug addiction which is also reflected in the current offending.
>
> **Supreme Court Judge, sentencing a woman for drug offending (SR #57)**

> [The report] talks about the relationships you have had with men who have been violent towards you … [With your most recent partner] Every second day there was domestic violence, which led to police intervention. There were domestic violence orders. He returned home to bash you. He refused to leave. He headbutted you. There were threats to kill. There were rapes on you. You got a sexually transmitted disease from him. So it was in that context you [supplied drugs to him and engaged in drug trafficking]. And you used drugs to escape your memories of this. So whilst it is not condoned, it is understandable.
>
> **Supreme Court Judge sentencing a woman for drug offences (SR #35)**

Members of the Practitioner Consultative Forum reported that expert reports are costly, time consuming and difficult to obtain for Magistrates Courts matters. For publicly funded matters, Legal Aid funding for an expert report has strict eligibility and merit criteria.[61] Therefore, obtaining expert evidence to support claims that offending was attributable to the effects of DV may not always be practical or achievable for matters in the lower courts.

As a result, practitioners relied on other forms of supporting material including: information from the prosecution regarding current and former DVOs; counselling records; reports from treating general practitioners; Community Justice Group reports; letters from support services including Court Link services;[62] affidavits from the offender or family members; information from Victim Assist and material contained in the Brief of Evidence such as text messages, to support submissions about coercion, fear and vulnerability in the absence of an expert report. For example, one practitioner described a Magistrates Courts case involving theft offences where the offender explained they stole fuel and grocery items because of financial stress from fleeing an abusive relationship. The prosecutor confirmed a temporary DVO named the offender as the aggrieved person, satisfying the Magistrate of DV victimisation and supporting the submission that the offending was partly attributable to its effects.

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59 Consistent with the broad ability for a court to receive any appropriate information: PSA (n 3) s 15; see eg, *R v Wallace* [2015] QCA 62, affidavit [16]; oral evidence [24]; expert evidence [24], [32]; police reports from prior incidents [29]; affidavit from family [30] (Margaret McMurdo P, Gotterson JA and Douglas J agreeing) ('*Wallace*'); *R v UQD* (2021) 12 QLR letter from child witness to abuse: [14]–[15] (Davis J); *R v Burge* [2024] QCA 161, Social worker report and police covert tapes: 17–8 (Mullins J, McMurdo P agreeing, Jerrard JA agreeing in separate reasons); *R v McLean* [2021] QCA 70, police recorded phone call, letter from abuser to sentenced person; supporting letter from friend: [8]–[12] (Sofronoff P, McMurdo and Mullins JJA agreeing) ('*McLean*').

60 This is consistent with the purpose of pre-sentence reports: McLachlan (n 32) 109.

61 See, 'Pre-Sentence Report', *Legal Aid Queensland* (Web Page, 30 November 2020) <https://www.legalaid.qld.gov.au/About-us/Policies-and-procedures/Grants-Handbook/What-do-we-fund/Nature-and-extent-of-funding/Criminal-law-1/Expert-reports-in-criminal-law-matters/Pre-sentence-report>.

62 Court Link is a bail-based program operating in specific locations: Queensland Courts, 'Court Link', *Queensland Courts* (Web Page, 15 July 2026) <https://www.courts.qld.gov.au/the-courts/magistrates-court/court-programs/court-link>.

Collectively, the sample of sentencing remarks and stakeholder feedback suggest that courts are willing to consider a broad range of evidence to establish DV victimisation. However, practitioners noted that the level of supporting evidence generally increases with offence seriousness and where it is argued that the offending was attributable to the effects of DV.

OBSERVATION #9

An expert report does not necessarily establish that offending was wholly or partially attributable to the effects of DV victimisation.

Although expert reports were frequently relied on in the sample of sentencing remarks, their presence did not always result in a finding that the offending was wholly or partly attributable to the effects of DV.

In some cases, reports did not express an opinion on the extent that the effects of DV were attributable to the offending.

> While there is no evidence [in the report or otherwise] upon which to clearly quantify the impact of that abuse and violence that you may have been subject to, it is a factor that has been identified in the material, and the court can take that into account as mitigating feature in respect of the overall sentence.
>
> **Supreme Court Judge, sentencing a woman for drug offending (SR #28)**

In other cases, the court regarded the opinion expressed in the report as limited because of inconsistencies with other evidence. For example:

> As I have said, the psychiatrist reports are of some assistance, but not great assistance. There are so many contradictory facts upon which the opinions are based, it is difficult to glean a great deal, or great – get a great deal of comfort from them.
>
> **Supreme Court Judge sentencing a woman for personal violence (DV offence) (SR #8)**

This suggests that courts will assess the quality and persuasiveness of expert opinions with other evidence. Therefore, obtaining an expert report requires careful consideration of the value, cost, and time involved in preparing expert reports for this purpose.

OBSERVATION #10

Courts critically assess claims that offending was wholly or partially attributable to the effects of DV victimisation against the objective facts of the offending.

In some cases, courts accepted the existence of DV victimisation, but its connection to the offending was too indirect or the courts applied a critical lens, considering how the effects of DV are consistent with other objective evidence, such as the statement of facts. For example, when sentencing a woman for dangerous driving causing grievous bodily harm, the court held:

> I accept that there are matters personal to you, arising from your background - including your being a victim of domestic violence - as outlined by [the report writer], as to why you may have felt discomfort raising with your supervisor that you were in no way permitted to drive a vehicle .... But those matters, in my view, could not be said to have any more direct nexus to your having, in fact, driven the vehicle unlicensed or, more particularly, operating the vehicle dangerously, as you did.
>
> **District Court Judge sentencing a woman for personal violence (SR #12)**

Similarly, when sentencing a woman for being a party to sexual offending against her son, the court assessed her claims that there was coercion and DV by the co-offender against the statement of fact:

> As to whether you are a victim of domestic violence or subject to the coercive control of your partner, the objective facts become relevant. It was protracted offending, certainly not isolated conduct. There was no overt force obvious to compel what otherwise seems to have been your active and enthusiastic involvement … Although it has been quite a difficult task … on the balance of probabilities, I am prepared to find that [the co-offender] was domestically abusive in the relationship. The objective facts fall short in my mind to confirming that he exerted the control for you to otherwise offend.
>
> **District Court Judge, sentencing a woman for sexual offending (DV offence) (SR #26)**

These examples suggest that courts will independently assess whether the effects of DV were relevant to the offending and whether there might be other evidence which supports or contradicts the connection. This suggests that the persuasive value of any evidence, whether expert reports or otherwise, depends on its quality, how strongly it can demonstrate a link between the effects of DV and the offending and its consistency with the broader factual circumstances of the case.

How DV victimisation informs culpability and sentencing purposes

Prior to the introduction of the DV mitigating factor, the Court of Appeal had recognised that the effects of DV could limit choices, reduce moral blameworthiness, and may affect the relevance of sentencing purposes such as deterrence and rehabilitation.[63] For example, in *R v O'Sullivan, Ex parte Attorney-General (Qld)*,[64] the Court of Appeal accepted that the co-offender's prolonged DV victimisation constrained her ability to protect herself and her child, and reduced her moral culpability for the offending.[65]

The WSJT intended that the DV mitigating factor would encourage greater and more consistent consideration of how the effects of DV can affect a person's mental state and decision-making ability, recognising that these effects may reduce a person's moral culpability and are relevant to a proportionate sentence.[66] However, the sentencing remarks reviewed more commonly discussed DV victimisation as part of the offender's background and personal circumstances than as a factor reducing moral culpability, or being relevant to offence seriousness or sentencing purposes.

OBSERVATION #11

The mitigating effect of domestic violence victimisation is often implicit, and rarely expressed as being linked to culpability or sentencing purposes.

The sample of sentencing remarks reviewed suggests that courts do not commonly articulate the mitigating effect of DV as being relevant to culpability or sentencing purposes.

More often, the experience of DV and its effects were considered mitigating because it was part of the offender's background and personal circumstances and contextualised the offending (but not mitigating because it reduced culpability or was relevant to sentencing purposes). For example:

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63 See, *Wallace* (n 59) for the effects of DV to reduce capacity and moral blameworthiness: [37], increased prospects of rehabilitation: [40] (McMurdo P, Gotterson JA and Douglas J agreeing); *R v O'Sullivan and Lee; Ex parte A-G (Qld)* (2019) 3 QR 196, for reduced moral culpability: 249–50 [174], [177] (Sofronoff P, Gotterson JA, Lyons SJA) ('*O'Sullivan*'); *R v MacKenzie* [2000] QCA 324, reduced culpability: [21]–[22] (McMurdo P), reduced deterrence: [67] (Dutney J)); reduced personal deterrence: *McLean* (n 59) [25] (Sofronoff P, McMurdo and Mullins JJA agreeing).

64 *O'Sullivan* (n 63).

65 Ibid 249–50 [175], [177] (Sofronoff P, Gotterson JA, Lyons SJA).

66 Women's Safety and Justice Taskforce (n 1) vol 2, 303, vol 3, 707.

> I take the domestic violence to which you were exposed in your formative years into account although its influence as a mitigating factor is modest. The only extent to which it could be said the commission of your offences is attributable to the effect of the domestic violence is vague and indirect, and causative only in the sense that, along with the other disadvantages personal to you, it left you ill-equipped to behave with emotional maturity without resorting to violence in your behaviour towards loved ones in your adulthood.
>
> **Supreme Court Judge sentencing a man for personal violence (DV offence) (SR #80)**

In some cases, courts balanced the mitigating effects of DV with the seriousness of the offence. For example, when sentencing a man who had raped two females on two different occasions, one his adult intimate partner and the other a 14-year-old child acquaintance, the court held:

> [Your counsel] identifies the contextual background to the offending and your deprived childhood, in which you were the victim of domestic violence. Your counsel says those features are, of course, relevant as they inform the fact that you have post-traumatic stress disorder. That post-traumatic stress disorder informs your drug abuse, and your drug abuse in turn, whilst not an excuse but an explanation, informs why you violated these young women in the way that you did. And so, to that extent, that is a further factor to be taken into account in mitigation in your matter. However, as I indicated to your counsel, that cannot overwhelm the other sentencing considerations in this matter.
>
> **District Court Judge, sentencing a man for sexual violence (DV Offence) (SR #71)**

In a smaller number of cases in the sample of sentencing remarks, reduced culpability was inferred. For example, when sentencing a woman for drug offending the court explained:

> there is a subtlety to the way that a person in your position acts and can be expected to act. There is nothing black and white about being in a situation like this. People make decisions to do things that they would never make in another circumstance. Your judgment is clouded, your ability to advocate for yourself is clouded, and the evidence before me, I find, is of an overwhelming circumstance where the abusive situation that you were in, the court should find, was a reason why you did what you did.
>
> **Supreme Court Judge, sentencing a woman for drug offending (#36)**

Examples where DV victimisation reduced moral culpability

Cases in the sample of sentencing remarks suggest that culpability often involved additional factors such as mental illness, post-traumatic stress disorder, childhood deprivation or broader disadvantage. For example, when sentencing a man for sexual violence, while he had been exposed to and experienced DV as a child, it was the principles expressed in *Bugmy* and *Verdins* that reduced his moral culpability:

> I'm satisfied in this case the significant childhood trauma suffered by the defendant, including his broken attachment to his birthparents, his sexual abuse, the fact that he was brought up by a community surrounded by alcohol abuse and domestic violence does mitigate his moral culpability, and that that is less than the culpability of an offender whose formative years have not been marred in that way.
>
> I have also been asked to take into account that childhood deprivation and the diagnosis of post-traumatic stress disorder, as well as the other disorders that I have referred to, and the defendant's cognitive difficulties support the reduction of his moral culpability on the basis of the principles in *R v Verdins* (2007) 16 VR 269.
>
> **District Court Judge, sentencing a man for sexual violence (SR #37)**

Examples where DV victimisation reduced objective seriousness

Although uncommon, there were examples where courts expressly linked DV victimisation to a reduction in the objective seriousness of the offending. For example, when sentencing a woman who supplied drugs to her partner in a correctional facility at his request, the court considered she acted out of fear which reduced the objective criminality:

> in assessing your objective criminality, I cannot ignore that your then partner initiated all of this, including the plan to use your son to introduce the drugs into the prison. Your counsel submitted that there had been other occasions in the past where you were put upon to act out of fear, and this was another example of that.
>
> **Supreme Court Judge, sentencing a woman for drug offending (SR #46)**

Examples where DV victimisation was linked to the purposes of sentencing

There were also some examples where courts expressly explained how the effects of DV were relevant to sentencing purposes. For example, when sentencing a man for attempting to pervert the course of justice because he contacted the complainant on behalf of his son who was the alleged offender, the court accepted the effects of DV on him by the son was relevant to his capacity for reasoning and reduced the relevance of denunciation:

> [the effects of DV] reduced your capacity for reasoning and judgement around the time of the offending, such that such judgment was likely to be impaired and that your actions were perpetuated by that sense of cognitive distortions regarding what should be done in the situation. And then, it can be said, a lack of complete understanding of the severity of what you are setting out to do … That particularly means that the need for denunciation of your conduct is diminished …
>
> **District Court Judge, sentencing a man for attempt to pervert the course of justice (SR # 23)**

However, the reduced relevance of sentencing purposes such as deterrence, commonly occurred where there was also mental illness. For example, when sentencing a woman who assisted her abusive partner to attempt to escape punishment for murder, it was argued that deterrence should be reduced because of her mental health and experience of DV. However, the court reduced deterrence by reference to general principles relevant to mental health:

> The mental health issues identified in [the psychologists' report] are not of a level as might be considered in the cases of including *R v Yarwood* [2011] QCA 367, where your criminal culpability is significantly reduced. Here, it is a factor that needs to be taken into account and there is an amelioration of both general and personal deterrence, but those factors are not altogether avoided.
>
> **Supreme Court Judge, sentencing a woman for personal violence (SR #1)**

While the effects of DV may be relevant to reducing some sentencing purposes, it may increase the need for community protection. For example, when sentencing a woman for causing grievous bodily harm to her intimate partner and wounding a friend, community protection was a key sentencing purpose:

> Your long-term use of illicit drugs and your immersion in the chaotic life that goes with that, including domestic violence within those relationships, has no doubt shaped the person that you were in May 2022 when this offending was committed … These are offences of violence, and I must therefore have primary regard to the need to protect the community from you. Your propensity to act out violently in situations of stress, that you are ill-equipped, or at least have been ill-equipped, to manage in a sensible and law-abiding way, supports the conclusion that the community needs to be protected from you.
>
> **District Court Judge, sentencing a woman for personal violence (domestic violence offence) (SR #50)**

These observations illustrate that the effects of DV can be relevant to culpability, reduced deterrence or the increased need for community protection, but this was not common in the sample.

Challenges and complexities

The WSJT recognised that some DV perpetrators may attempt to falsely characterise themselves as victims of DV, or seek to rely on isolated acts of retaliatory violence to reduce their culpability through the DV mitigating factor.[67] The WSJT highlighted the importance of decision-makers being trained to be able to identify and appropriately evaluate such claims.[68] While we could not make any observations about this, we observed that relationship dynamics and competing narratives of victimisation can create challenges and complexities for practitioners and courts.

OBSERVATION #12

Complexities arise when a co-offender is also alleged to be causing DV victimisation for the sentenced person.

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67 Ibid vol 2, 303; vol 3, 708.

68 Ibid vol 3, 708.

Where a co-offender is alleged to have perpetrated DV against the sentenced person, reliance on the DV mitigating factor can create a factual dispute. This dynamic was evident in several cases in the sample of sentencing remarks and stakeholders also identified this was a challenge in practice. For example, in one case, the sentenced person did not maintain that her offending was wholly or partly attributable to the effects of DV victimisation by her co-offender despite it being raised in an expert report:

> To the extent that there are further allegations of physical abuse against you by [the co-offender] in the psychological report, that is not maintained … I accept … and without making any adverse findings concerning you, [the co-offender], that you, [the sentenced person], have at various stages of your life, including in recent times, been a victim of, or exposed to, domestic violence. That is relevant to an understanding of your adverse personal circumstances, which provides some context to your criminal history, but it cannot otherwise be of significant weight here, for example, in consideration of your level of criminality in this offending for which you are being sentenced today.
>
> **District Court Judge, sentencing a woman and two male co-offenders for property offences (SR #73)**

OBSERVATION #13

The breadth of the definition of DV can create complexities when applying the DV mitigating factor.

The broad statutory definition of DV[69] means courts may be required to consider DV victimisation in a wide range of factual circumstances. These included cases of isolated acts of violence in a relevant relationship, retaliatory conduct and relationships where both parties engaged in behaviour capable of meeting the definition of DV. For example, when sentencing a man for DV offending against his intimate partner, the court said:

> There has been a discussion in this case about whether you should be treated as a victim of domestic violence yourself. I accept that there is evidence that in this relationship there was abuse by the complainant and damage to your property, which would qualify as domestic violence. However, your conduct far outweighs any conduct by the complainant … I do accept that this was a particularly difficult relationship, that there was abuse prior to [the offending]. So I do take that into account.
>
> **District Court Judge, sentencing a male for personal violence (DV offence) (SR #52)**

We also observed examples where an isolated act in a relevant relationship met the definition of DV. For example, when sentencing a man for the grievous bodily harm of an acquaintance, the court discussed the relevance of his brother punching him earlier in the evening:

> you had been a victim of domestic violence shortly before the incident in the sense that you had been assaulted by your brother, [J], who is not the complainant, at some point before this even or in the hours preceding it. That made you angry, and combined with your intoxication, meant that you lashed out at [B] when you perceived him as calling you out for a fight.
>
> **District Court Judge sentencing a man for personal violence (SR #11)**

In both these examples, while these events would always have been considered by the sentencing court as part of the context of the offending, the DV mitigating factor encourages the articulation of the sentenced person being a victim of DV.

Where both parties have engaged in conduct that meets the definition of DV, there is not a requirement in the DV mitigating factor to distinguish between patterns of coercive and controlling behaviour and acts of resistance or self-protection.[70] In some of these instances, labelling an offender as a victim of DV may reduce offender accountability for the sentenced conduct. For example, in one case, a man burnt his ex-partner's linen on the front lawn because she didn't return home when asked. When she saw this, she grabbed a mop and damaged his windscreen in

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69 DFVPA (n 8) s 8.

70 See Heather Nancarrow, *Unintended Consequences of Domestic Violence Law* (Palgrave Macmillan) 81–2 who argues the definition of DV is a 'problematic formula' of 'proscribed action + relevant relationship = domestic violence', that continues to capture unintended victims such as women who use violence in response to coercive control.

response. Following an argument, she grabbed a hockey stick and hit him, and he also hit her with the hockey stick causing bodily harm. At his sentence, the court said:

> Both general and personal deterrence are important sentencing considerations here, as is community denunciation. There are, however, a number of mitigating factors … you yourself have been a victim of domestic violence, both previously and on the day.
>
> **District Court Judge, sentencing a man for physical violence (DV offence) (SR #40)**

The complexities with the definition of DV is also highlighted by the interaction between the DV mitigating factor and the DV aggravating factor. A stakeholder from a previous review on the DV aggravating factor told the Council they were of the view that courts seemed to be more willing to accept aggravating factors than mitigating ones, and that the DV aggravating factor conflicted with and overrode the DV mitigating factor, leading to 'disproportionately harsh outcomes for criminalised women', limiting courts' ability to deliver fair sentencing.[71] In some sentencing remarks in the sample, courts were balancing competing narratives and aggravating and mitigating factors:

> I accept that you have been the victim of domestic violence and witness to domestic violence as a child and as an adult. In the circumstances, the effect of that domestic violence is a mitigating factor in sentencing you today. However, countering that of course is that this is a domestic violence offence, which is an aggravating factor, and I am not persuaded that there are exceptional circumstances. I consider perhaps in effect that the two counter each other.
>
> **District Court Judge sentencing a woman for personal violence (DV offence) (SR #42)**

This illustrates how the DV mitigating factor may require courts to resolve complex factual disputes, assess competing accounts of relationship dynamics and balance the mitigating effect of DV victimisation with other aggravating factors.

[71] Queensland Sentencing Advisory Council (n 6) 126 citing Submission 10 (Sisters Inside Inc) 9.

Discussion and future directions

Our analysis indicates that the DV general factors and mitigating factor are being applied broadly. Courts are applying the new legislated factors in circumstances contemplated by the WSJT—such as when offending is attributable to the coercion, fear, vulnerability or constrained decision-making from an abusive relationship—and to a broader range of cases where the effects of DV form part of a history of disadvantage, trauma, substance misuse or mental ill-health. While our sample of sentencing remarks included men and women, women were more common in cases discussing the DV general factors and mitigating factor.

The gendered nature of our sample, broad interpretation and application of the new legislated factors are consistent with other research:

- Women's offending behaviour is frequently reported to occur within the context of intimate partner violence and ongoing victimisation.[72] As the sample of sentencing remarks is from the higher courts, where imprisonment is more likely, it is also consistent with research that imprisoned women disproportionately experience multiple traumatic events of victimisation, including DV, childhood sexual abuse, neglect, coercive control and violence.[73]
- Experiencing or being exposed to DV as a child can have long-term impacts on behaviour, cognitive development, mental and physical health and socio-economic position.[74] Exposure to DV increases the risk of developing a mental disorder and frequently leads to higher rates of PTSD, generalised anxiety disorder, and alcohol use disorder.[75] The trauma caused by DV may negatively impact emotional regulation, impulse control and decision-making capacity,[76] which may increase the likelihood of offending behaviour.[77]
- The victim-offender overlap recognises that experiencing victimisation is a risk factor for criminal offending; offenders can be more vulnerable to victimisation; and a person may be a victim and an offender in the same incident.[78]

We found that courts generally accept a broad range of evidence to establish DV victimisation, and expert reports are not always required.[79] While expert evidence can strengthen the evidentiary basis for finding the offending was attributable to the effects of DV, courts critically evaluate all evidence, including expert opinions, with the broader facts and circumstances of the case. Stakeholders reported that obtaining and presenting evidence explaining the relationship between DV victimisation and offending can be difficult, particularly in the Magistrates Courts where time, resources, Legal Aid funding and access to expert evidence are often limited, and it is not always practical or

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72 Tolmie et al (n 1) 183 citing Suzanne C Swan and David L Snow "The Development of a Theory of Women's Use of Violence in Intimate Relationships" (2006) 12 *Violence Against Women* 1026; and Susan L Miller and Michelle L Meloy "Women's Use of Force: Voices of Women Arrested for Domestic Violence" (2009) 12 *Violence Against Women* 89.

73 See, Jo Roberts, 'Domestic Abuse as a Driver to Women's Offending' in Isla Masson and Natalie Booth (eds), *The Routledge Handbook of Women's Experiences of Criminal Justice* (Routledge, 2023) 124; Australia's National Research Organisation for Women's Safety (n 1) 5; Prison Reform Trust, *'There's a Reason We're in Trouble': Domestic Abuse as a Driver to Women's Offending* (2017) 3, and research noted in Vicky Seaman and Orla Lynch, 'Chapter 8: Perpetrators and Victims: Women, Double Deviance and the Criminal Justice System' in Isla Masson and Natalie Booth (eds), *The Routledge Handbook of Women's Experiences of Criminal Justice* (Routledge, 2023) 75; Marie Segrave and Bree Carlton, 'Women, Trauma, Criminalisation and Imprisonment…' (2010) 22(2) *Current Issues in Criminal Justice* 287, 297. 'Improving outcomes for incarcerated women', *Queensland Corrective Services* (6 March 2019, Webpage) <https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/>.

74 The Bugmy Bar Book (n 2) 6–7, [23]–[29]; *Child Maltreatment and Criminal Justice System Involvement in Australia* (n 2) 12; Holt, Buckley and Whelan (n 2) 797.

75 The Bugmy Bar Book (n 2) 9 [34].

76 Allan N Schore, 'Relational Trauma and the Developing Right Brain: An Interface of Psychoanalytic Self Psychology and Neuroscience' (2009) 1159(1) *Annals of the New York Academy of Sciences* 189, 198.

77 Vittoria Ardino, 'Offending Behaviour: The Role of Trauma and PTSD' (2012) 3(1) *European Journal of Psychotraumatology* 1, 1.

78 Amaia Iratzoqui, 'Domestic Violence and the Victim/Offender Overlap Across the Life Course' (2018) 62(9) *International Journal of Offender Therapy and Comparative Criminology* 2801, 2803; for an exploration of the victim-offender overlap in Queensland, see Queensland Treasury (n 43).

79 Consistent with PSA (n 3) s 15, for a discussion on hearsay evidence at sentence see *R v Bassi* (2021) 9 QR 522, 539–40 [70]–[71], (Sofronoff P, Davis J, Williams J).

achievable for all matters. In addition, stakeholders emphasised that independent corroboration is not always available as experiences of DV may never be reported to police, witnessed by family members or documented in a way that can be easily presented to a court. This can make it difficult to establish the effects of DV beyond the client's instructions and self-reporting.

While this research observed courts routinely considering DV victimisation, stakeholders reported that due to practical constraints, DV victimisation is not always fully explored or articulated in sentencing, and there is still a lack of familiarity with the legislated provisions. Stakeholders acknowledged it can be difficult to obtain sufficient information from defendants about their DV victimisation and past trauma in the Magistrates Courts. For example, duty lawyers often have a limited opportunity to obtain detailed instructions and additional information, particularly if there is a need for the matter to be resolved and not adjourned. Stakeholders noted that as experiences of DV are often traumatic, sensitive and complex, defendants may be reluctant to disclose their experiences to a lawyer they have only just met or have had limited contact with.

The Aboriginal and Torres Strait Islander Panel members further noted that when representing Aboriginal and Torres Strait Islander peoples, practitioners should have cultural awareness and understand how colonisation and a history of discrimination and disadvantage have contributed to distrust or fear of the criminal justice system and may compound feelings of vulnerability when discussing traumatic experiences with lawyers. One Panel member explained that when discussing past experiences, there is a need to understand them in the broader historical context as 'there is a weight there and the weight is real … and will always be there'.

This research also observed that DV victimisation was often recognised as part of an offender's background and personal circumstances, but less frequently explained by reference to culpability, offence seriousness or sentencing purposes. This does not mean that courts failed to consider the effects of DV, as there were examples where the court balanced and weighed the effects of DV as part of instinctive synthesis. It is likely this reflects a lack of familiarity with the legislated provisions and practical challenges for practitioners to identify, prove and articulate how the offending was attributable to the effects of DV. Therefore, in some cases, the effects of DV may not have been fully explored or articulated, limiting the courts' ability to consider its relevance beyond personal background and context.

How the effects of DV are relevant to assessments of culpability and sentencing purposes ultimately depends on both the legal framework and the way decision-makers can identify, understand and articulate the dynamics and impacts of DV.[80] In the sample of sentencing remarks, there were clear examples of courts taking into account the dynamics of DV. In other cases, this was less evident. While this could reflect that the DV victimisation considerations were not as relevant to those cases, the WSJT emphasised the importance of training across the justice system to support a social entrapment understanding of DV.[81] This approach is consistent with broader research, which suggests social entrapment provides a more complete account of victimisation by recognising patterns of coercion, control and constrained decision-making rather than focusing solely on discrete incidents of violence.[82] The Aboriginal and Torres Strait Islander Panel also supported further education for decision-makers on recognising patterns of coercive control, primary victimisation and retaliatory violence. They considered that misinformed and out-dated understandings of DV can mean the system may still reinforce, rather than correct, misunderstandings about the dynamics of abuse. These concerns extend to how courts balance the offender's experiences of DV as a mitigating circumstance with recognition of the harm suffered by the victim of the offence, ensuring the sentencing process acknowledges both mitigating circumstances and the victim's dignity.

As our understanding of the direct and indirect impacts of the effects of DV victimisation continues to evolve, this research suggests additional guidance could assist courts and practitioners, particularly in matters where expert evidence is unavailable, by providing a principled basis for assessing the mitigating effect of DV and explaining its relevance to sentence outcomes. Greater transparency in this process may also strengthen victim understanding of sentencing factors and public confidence in sentencing.

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80 Tolmie et al (n 1).

81 Ibid.

82 See Heather Douglas et al, 'Facts seen and unseen: improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims)' (2020) 32(4) *Current Issues in Criminal Justice* 488, 489; Leah Sharman, Heather Douglas and Robin Fitzgerald, *Review of domestic violence deaths involving fatal and non-fatal strangulation in Queensland* (The University of Melbourne/The University of Queensland, 2021) 6–7.

Insights from established sentencing principles

Offence seriousness is assessed by reference to two components: harm and culpability (blameworthiness).[83] Assessing culpability involves considering a person's intent, motive and other circumstances such as whether they acted knowingly, negligently or in response to the victim's misconduct.[84] Other situational and personal factors include young age, or whether the person suffers from a mental illness or intellectual impairment. Culpability can also impact the assessment of harm where it is relevant to the person's choice.[85]

Traditionally, mitigating factors reduce sentence severity because they diminish a person's moral culpability. Many well-established mitigating factors including mental impairment and cognitive disability and experiences of childhood abuse, neglect or trauma, have developed through common law.[86] Over time, courts have articulated principles explaining how these factors affect moral culpability and can be relevant to sentencing purposes such as just punishment, denunciation, deterrence and rehabilitation.

The DV mitigating factor is a distinct legislated factor within Queensland's sentencing framework. It is the only factor in the PSA and YJA that is expressly mitigating.[87] While the express recognition of DV victimisation reflects a deliberate legislative choice to ensure its mitigating significance is considered in sentencing, the DV mitigating factor currently lacks a well-developed body of sentencing principles explaining how and why it mitigates the sentence.

Existing sentencing principles relating to mental illness, childhood deprivation and disadvantage may provide a useful framework for this ongoing development.

Judicial guidance on mental illness—the *Verdins* principles

The PSA requires a court to have regard to a person's intellectual capacity[88] but does not otherwise define 'intellectual capacity' or provide guidance on its relevance to sentencing. Consequently, common law has developed settled principles, now commonly referred to as the *Verdins* principles.[89]

> It is of the nature of the sentencing discretion that views will differ as to how, and to what extent, impaired mental functioning may reduce the blameworthiness of the offender's conduct. The effect on the court's assessment of culpability will, of course, vary with the nature and severity of the condition, and with the nature and seriousness of the offence. It is not appropriate for an appellate court to be prescriptive in this regard, nor is it possible to be exhaustive.
>
> It may assist sentencing judges, nevertheless, if we list the various ways in which impaired mental functioning has been held – correctly, in our view – to be capable of reducing moral culpability.
>
> Impaired mental functioning at the time of the offending may reduce the offender's moral culpability if it had the effect of:
>
> (a) impairing the offender's ability to exercise appropriate judgment;
>
> (b) impairing the offender's ability to make calm and rational choices, or to think clearly;
>
> (c) making the offender disinhibited;
>
> (d) impairing the offender's ability to appreciate the wrongfulness of the conduct;
>
> (e) obscuring the intent to commit the offence; or
>
> (f) contributing (causally) to the commission of the offence.[90]

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83 Andrew Von Hirsch, 'Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale' (1983) 74(1) *The Journal of Criminal Law and Criminology* 209, 214.

84 Ibid.

85 Andrew Ashworth, *Sentencing and Criminal Justice* (5th ed, Cambridge University Press, 2010) 134.

86 Thomson Reuters, 'Australian Sentencing' [500.100].

87 PSA (n 3) s 9(10B); YJA (n 3) s 150(6). While other statutory considerations, such as blameworthiness, character, antecedents, age and intellectual capacity, guilty plea, cooperation with authorities, or the effects of systemic disadvantage and intergenerational trauma on a sentenced person who is an Aboriginal or Torres Strait Islander person commonly operate in mitigation, the PSA and YJA do not expressly characterise them in that way.

88 PSA (n 3) s 9(2)(f).

89 *R v Verdins* (2007) 16 VR 269, 269 (Maxwell P, Buchanan and Vincent JJA); cited with approval in *R v Adam* (2022) 10 QR 343; considered in *R v Goodger* [2009] QCA 377.

90 *R v Verdins* (n 89) [25]–[26] (Maxwell P, Buchanan and Vincent JJA), quoted in *R v Adam* (n 89) 361–2 [44] (Kelly J, Sofronoff P and Mullins JA agreeing).

The focus is not on the diagnosis but 'what the evidence shows about the nature, extent and effect of the mental impairment'.[91]

McLauchlan argues that the *Verdins* principles may be applied to recognise trauma as a form of 'impaired mental functioning', as it is a cognitive and neurophysiological impairment that is associated with impaired functioning and criminogenic behaviour.[92] McLauchlan argues expert reports 'can and should include: (a) how trauma equates to 'a mental impairment'; (b) the relationship between trauma and the propensity to offend; (c) how trauma may 'reduce moral culpability of the offending conduct'.[93]

Similarly, as the effects of DV victimisation can be described as trauma,[94] the effects of which may also be recognised under the *Verdins* principles. For example, research and expert evidence increasingly recognise that prolonged experience and exposure to DV can affect an individual's perception of available choices, agency and capacity to respond to their circumstances.[95] In some cases, these effects may help explain offending behaviour and reduce moral culpability.[96] The *Verdins* principles lists how mental impairment is relevant to sentencing purposes:

1. The condition may reduce the moral culpability of the offending conduct, as distinct from the offender's legal responsibility. Where that is so, the condition affects the punishment that is just in all the circumstances; and denunciation is less likely to be a relevant sentencing objective.
2. The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.
3. Whether general deterrence should be moderated or eliminated as a sentencing consideration depends upon the nature and severity of the symptoms exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of sentence or both.
4. Whether specific deterrence should be moderated or eliminated as a sentencing consideration likewise depends upon the nature and severity of the symptoms of the condition as exhibited by the offender, and the effect of the condition on the mental capacity of the offender, whether at the time of the offending or at the date of the sentence or both.
5. The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health.
6. Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment.[97]

Mental impairment usually operates as mitigating where it reduces moral culpability, but in some cases, this does not displace the relevance of community protection. Mental impairment can be aggravating where the person is considered resistant to reforming.[98]

Judicial guidance on deprived background and disadvantage

The relevance of childhood deprivation and disadvantage to sentencing is well established, but the High Court of Australia in *Bugmy* recognised that giving weight to conflicting sentencing purposes is difficult:

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91 *R v Verdins* (n 89) 271 [8] (Maxwell P, Buchanan and Vincent JJA).

92 McLachlan (n 32) 114.

93 Ibid 114–5.

94 There are broad definitions of trauma, see, Kenny and Antolak-Saper (n 32) 1; McLachlan (n 32) 98–9.

95 Bettinson (n 34) 8.

96 *O'Sullivan* (n 63).

97 *R v Verdins* (n 89) [32] (Maxwell P, Buchanan and Vincent JJA) restating the principles in *R v Tsiaras* [1996] 1 VR 398. This approach has also been adopted in Queensland, see, *R v Goodger* [2009] QCA 377 [19]; *R v Collard* [2019] QCA 105 [3], [48]; *R v Yarwood* [2011] QCA 367 (2011) 220 A Crim R 497; *R v Adam* (n 89) [41]–[44].

98 *R v Goodger* (n 89) [25] (Keane JA, Fraser JA and Atkinson J) citing *Channon v The Queen* (1978) 20 ALR 1, 4 –5.

> An offender's childhood exposure to extreme violence and alcohol abuse may explain the offender's recourse to violence when frustrated such that the offender's moral culpability for the inability to control that impulse may be substantially reduced. However, the inability to control the violent response to frustration may increase the importance of protecting the community from the offender.[99]

Subsequent authorities have confirmed that a deprived background and disadvantage must be given meaningful weight, even where competing sentencing considerations remain significant. For example, in *NK v R,*[100] the NSW Court of Appeal set out an approach to applying the *Bugmy* principles:

1. By considering only personal circumstances, assess whether a person's background reduces their moral blameworthiness.
2. If moral culpability is reduced, evaluate how this reduction affects the purposes of sentencing (punishment, denunciation, rehabilitation, deterrence, or community protection). For example, reduced culpability may lessen the emphasis on denouncing the conduct. However, this reduction may be counterbalanced by the need to prioritise general deterrence or community protection.
3. Even if the reduction in moral culpability is partially or fully offset by other sentencing purposes, the person's disadvantaged background must still be given 'full weight' in every sentencing decision, as affirmed in *Bugmy*.[101]

These principles are particularly relevant to the DV general factors where an offender has a history of abuse or has been exposed to DV. Experiences of DV, whether in childhood or adulthood, may provide important context for understanding offending behaviour and assessing moral culpability. However, a reduced moral culpability, must be weighed with all the objective and subjective circumstances of the case, as well as the purposes of sentencing.[102]

As explored in *Bugmy*, the impact and effect of a dysfunctional upbringing does not diminish over time.[103] This is also supported by the WSJT who acknowledged that '[t]he impacts of coercive control can last a lifetime'.[104] Therefore, there could be similar judicial guidance for the effects of DV, depending on the individual circumstances of the case and supporting evidence.

Judicial guidance on intoxication and mitigation

Intoxication frequently arises alongside histories of trauma, DV and a mental illness diagnosis.[105] The PSA states that voluntary intoxication is not a mitigating factor.[106] However, courts recognise that there may be exceptional cases that justify a consideration of the underlying factors contributing to substance use, provided there is evidence of a causal connection between those factors and the offending. In this way, it is the other factor, not the intoxication, which is mitigating.[107]

This reasoning may provide useful guidance in cases involving DV victimisation. The sample of sentencing remarks suggested that some victims of DV use alcohol or other substances to manage trauma or psychological distress. Where evidence establishes that the effects of DV contributed to substance use and the offending, courts may still take into account DV victimisation as mitigating while maintaining the established principle that voluntary intoxication is not mitigating.

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99 *Bugmy* (n 58) 595 [44] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).
100 *NK v R* [2025] NSWCCA 137.
101 Ibid [110]–[113] (Yehia J, Ball JA agreeing. Fagan J also agreed but provided additional observations).
102 *Munda v Western Australia* (2013) 249 CLR 600, 619 [53].
103 *Bugmy* (n 58) 595 [44] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).
104 Women's Safety and Justice Taskforce (n 1) vol 1, 58.
105 See, *R v Adam* (n 89) 354 [24] (Kelly J, Sofronoff P and Mullins JA agreeing).
106 PSA (n 3) s 9(9A).
107 *R v Adam* (n 89) 356–7 [31], [33] (Kelly J, Sofronoff P and Mullins JA agreeing).

Conclusion

This *Research Brief* provides the first exploration of how Queensland's DV general factors and mitigating factor are operating in practice. The observations suggest that the reforms have established DV victimisation as a routine sentencing consideration for adults, and courts recognise the diverse and complex ways offending can be attributable to the effects of DV. At the same time, the research highlights that the key challenge is not in identifying DV victimisation itself, but evidencing, articulating and assessing how the offending is attributable to the effects of DV and how that link is relevant to culpability and the sentencing purposes. As this is an emerging area of sentencing, continued judicial guidance, practitioner education and research may assist in promoting greater consistency, transparency and understanding of how the effects of DV are relevant to sentencing.

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The Council acknowledges the valuable expertise and perspectives contributed by members of the **Aboriginal and Torres Strait Islander Panel**. Their insights informed our consideration of the broader cultural, historical and social factors that impact how practitioners communicate and obtain information about DV victimisation experiences from defendants, and the value of, and need for, ongoing resourcing for Community Justice Group reports.

The Council also expresses its gratitude to the members of the **Practitioner Consultative Forum** for sharing their practical experiences with the operation of the DV general factors and mitigating factor, and for their candid reflections on the challenges in practice.

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AI use disclosure statement

Artificial intelligence tools were used in the development of an initial codebook for the context analysis (Claude Opus 5, accessed through use.ai), and as an editorial and drafting support tool (Microsoft 365 copilot). All coding, analysis and interpretation of the primary data sources were undertaken by a human researcher.

Appendix

This appendix provides further information about the sampling approach for sentencing remarks, and the limitations of this work.

Sampling approach for sentencing remarks

Supreme and District Court sentencing remarks

Transcripts of sentencing remarks provide an important record of what a judicial officer said in court during the sentencing hearing. They contain valuable information about what happened during the offence, information about the sentenced person and victim, and provide an opportunity to analyse what judicial officers say when explaining the reason for making a particular sentencing order.

We reviewed 80 sentencing remarks from the Supreme and District Courts, sourced from the Queensland Sentencing Information Service (QSIS). A free-text keyword search was conducted of the QSIS website using the terms: "10B" OR "gb" OR ("victim domestic"~5) OR ("effect domestic"~5).

The terms “10B” and “gb” were selected to identify cases in which the court expressly referred to the provisions of the PSA relating to DV general factors and the mitigating factor. However, because sentencing remarks are typically delivered orally and *ex tempore*, judicial officers do not always cite legislated provisions when discussing these factors. Accordingly, additional search terms were included to capture cases where the concepts underlying the provisions were discussed without express statutory reference. The phrases ‘*victim of domestic violence’* and ‘*effect of domestic violence’*—and variations of those phrases within five words of proximity—were selected because they are used in the PSA and were believed to be used frequently in judicial consideration of the DV general factors and mitigating factor. It is acknowledged that undertaking a search in QSIS for specific language or terminology is necessarily limited.

This approach was intended to maximise the identification of relevant sentencing remarks and reduce the risk of excluding cases in which the DV general and mitigating factor were considered, but not expressly linked to the legislated provisions. Other phrases were explored, such as ‘history of being abused’ and ‘prejudicial upbringing’, but resulted in a higher number of results and the phrase was considered too generic. After jurisdictional screening, the keyword search returned 351 sentencing remarks. We identified a sample of those for analysis.

Identifying a sample

On 15 May 2025, QSIS had 10,651 sentencing remarks in the data period. The QSIS search using the criteria above returned 351 first-instance sentencing remarks from the Supreme and District Courts.

A sample of 80 remarks was decided upon by the coder, who deemed that the sample was sufficient to draw clear observations about how the DV mitigating factor is being interpreted and applied in the higher courts. While there will always be other unique examples, the recurring themes in the data have been identified, and are sufficient for the paper’s aim.

This research adopts a purposive sampling approach, which is suited to the exploratory nature of this work. A purposive approach is a non-probability sampling method that focuses on selecting cases that are expected to have the most value, relevance, or significance to the research objectives.[108] The purposive sample of 80 cases was arrived at using the following three strategies:

1. We included 22 cases identified via the QSIS search as the ‘most relevant’ to the reform (using the search criteria listed above, and based on the QSIS search algorithm). Specifically, we identified the 11 ‘most relevant’ cases with a woman offender, and the 11 ‘most relevant’ cases with a man offender.

[108] Ilker Etikan, Sulaiman Abubakar Musa and Alkassim, 'Comparison of Convenience Sampling and Purposive Sampling' (2016) 5(1) *American Journal of Theoretical and Applied Statistics* 1, 2.

2. We included a further 50 cases that were identified via the same QSIS search, where the cases were sorted in reverse chronological order. This did exclude some cases that had no date entry when exported to Excel.
3. We included a final 8 cases identified in a previous analysis of sentencing remarks.[109]

Codebook

A descriptive codebook was developed for content coding and assigning quotes to codes, illustrated in Table 1.

Table 1: Sample of sentencing remarks codebook

Code	Description
OFF_GENDER	1. Male 2. Female 3. Not stated
OFF_TYPE	1. Drugs – e.g., trafficking 2. Personal violence – e.g., assaults, robbery 3. Sexual Violence – e.g., rape 4. Property – e.g., fraud, burglary 5. Other – e.g., offence against the administration of justice
VIC_AGE	1. Adult 2. Child under 18 3. Not stated 4. N/A (not a crime against a person)
CATEGORY_VIC_RELATIONSHIP	1. Family 2. Former intimate partner 3. Intimate partner 4. Known 5. Stranger 6. No victim identified (ie not stated) 7. Not a crime against a person – e.g., drug trafficking
9(10A)_APPLIED	1. Yes 2. No 3. Relevant relationship but not stated
ROLE_OF_ABUSER	1. Victim 2. Principal 3. Co-offender / party 4. Involved 5. Not involved 6. N/A
DV_VICTIMISATION_TYPE	1. Exposed as a child 2. Exposed as a child – repeated 3. Exposed as a child – immediate family 4. Exposed as a child – immediate family – repeated 5. Exposed as a child – extended family 6. Exposed as a child – extended family – repeated 7. Experienced DV as a child 8. Experiences DV as a child - repeated 9. Experienced DV as a child – immediate family 10. Experienced DV as a child – immediate family – repeated 11. Experienced DV as a child – extended family 12. Experienced DV as a child – extended family – repeated 13. Experienced DV as a child – IPV 14. Experienced DV as a child – IPV – repeated 15. Experienced Coercive Control – child 16. Current Coercive Control victim

[109] Queensland Sentencing Advisory Council (n 6) 121–2.

	17. Past Coercive Control victim 18. Past Coercive Control victim – repeated 19. Current IPV victim 20. Former IPV victim 21. Former IPV victim – repeated 22. Current Family DV victim 23. Former Family DV victim 24. Former Family DV victim – repeated 25. Informal care
PROX_TO_OFFENDING	1. Proximate – isolated 2. Proximate – multiple experiences / led to DVO as aggrieved 3. Distant – isolated 4. Distant – multiple experiences / led to DVO as aggrieved
DV_FACTOR_SPECIFIED	1. 9(10B) + (gb) 2. 9(10B) 3. 9(10B)(a) 4. 9(10B)(a)+(gb) 5. 9(10B)(b) 6. 9(10B)(b)+(gb) 7. 9(2)(gb) 8. Not stated
EFFECT_DIRECT_INDIRECT	1. Direct 2. Indirect 3. Not stated
ATTRIBUTABLE	1. Wholly attributable 2. Partially attributable 3. Partially attributable – significant 4. Partially attributable – limited 5. Not attributable 6. Not stated
MITIGATING_WEIGHT	1. Personal mitigation 2. personal mitigation – explanatory 3. personal mitigation - contextual 4. Mitigating – reduced culpability 5. Mitigating – reduced offence seriousness 6. Purposes – reduced personal deterrence 7. Purposes – reduced general deterrence 8. Purposes – reduced punishment 9. Purposes – reduced denunciation 10. Purposes – increased rehabilitation 11. Limited / A little weight 12. Not mitigating – exceptional circumstances[110] 13. Not stated
EXPERT_EVIDENCE	1. Psychiatrist 2. Neuropsychologist 3. Psychologist 4. Pre-sentence 5. GP 6. Other expert 7. Expertise not stated 8. No expert 9. Not stated
OTHER_EVIDENCE	1. Submission from bar table 2. Statement of fact

[110] There were no cases of exceptional circumstances being applied in the sample.

	3. Letters about experience i.e., from family member 4. DV history – mention of a DVO as an aggrieved 5. DV history – mention of a DVO as a respondent 6. DV history – mention of a DVO cross-orders 7. Crim history of abuser to prove victimisation 8. Statement from offender 9. Police information 10. Other 11. Not stated
EVIDENCE_WEIGHT	1. A lot of weight 2. Taken into account 3. Limited weight 4. No weight 5. Not stated
OTHER_FACTORS	1. Cognitive impairment 2. Mental illness – diagnosed 3. Mental illness – symptoms 4. Drug and alcohol misuse 5. Systemic disadvantage 6. Prejudicial/traumatic upbringing 7. Personality traits/vulnerable 8. Other 9. Not stated

Limitations

The five key research limitations are set out below. As the primary intention of this research was to explore and observe how courts have interpreted and applied the reform in practice since its introduction in August 2023, the Council was confident these limitations did not restrict the potential benefits associated with the sentencing remarks and consultation.

The observations are biased to higher courts' interpretation and application of the DV mitigating factor.

The QSIS collection is limited to higher court sentencing remark transcripts, and lower court transcripts are not generally transcribed. As these factors are not able to be identified from lowers courts' data captured administratively, it would be financially prohibitive to obtain a sample of transcripts from the Magistrates Courts.

To address this limitation, we consulted with relevant targeted stakeholders about how the DV general factors and mitigating factor were operating, with a focus on Magistrates Courts.

Stakeholder views do not represent the views of all relevant stakeholders.

We consulted with members of the Council's Practitioner Consultative Forum and the Aboriginal and Torres Strait Islander Advisory Panel to share key observations for validation and discussion, and obtain practical insight and examples of how the DV general factors and mitigating factor are being applied in the higher courts and the Magistrates Courts.

These participants were purposively selected, and their perspectives are shaped by their professional roles and experiences. Therefore, the stakeholder feedback reported in this paper may not reflect the full range of experiences and views about how the DV general factors and mitigating factor are being interpreted and applied. For this reason, their views were used to provide context to the observations and to identify practical challenges.

The patterns and observations may not be representative of all relevant sentenced cases.

As this is an emerging area of sentencing law, this research adopted an explorative, qualitative approach. It drew on appellate guidance, a sample of sentencing remarks and targeted stakeholder consultation to report on recurring patterns and make observations. The patterns and observations provide insights but should not be taken as conclusions as to how the reform is operating more broadly or whether it is achieving its objectives.

Sentencing remarks are not a complete source of sentencing information.

What judges say in their remarks does not necessarily reflect all the factors considered in determining the sentence. How a factor is expressed may not reflect the true influence of the court's attitude towards it. Therefore, when analysing the sample of sentencing remarks, the focus was not on whether the DV general factors or mitigating factor statutory provisions were recited, but rather, whether the remarks showed DV victimisation was present, and how this was acknowledged and taken into account consistent with the reform. While sentencing remarks may not always reflect the complete thought process of a judicial officer, they are the best resource available to communicate the logic, reasons, factors and purposes that influenced the decision.

The weight of the mitigating factors cannot be identified.

Because of the instinctive synthesis approach to sentencing, there is no standard mathematical way that mitigating factors can reduce a sentence.[111] This is another reason why it is not possible to quantify with precision the extent or weight given to specific factors or purposes and their relevance. The weight or otherwise of the DV general and mitigating factor can only be estimated and was not a focus of this research.

[111] Sarah Krasnostein and Arie Freiberg, 'Pursuing Consistency in an Individualist Sentencing Framework: If You Know Where You're Going, How Do You Know When You've Got There?' (2013) 76(1) *Law and Contemporary Probelms* 265, 269.

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