



**Royal Commission**  
into Family Violence

**WITNESS STATEMENT OF CHRISTINE EDNA WINIFRED BOND**

I, Christine Edna Winifred Bond, Senior Lecturer, of Gold Coast (Southport), in the State of Queensland, say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

**Current role**

2. I am a Senior Lecturer and Director of Postgraduate Studies at the School of Criminology and Criminal Justice, Griffith University. I have recently taught courses at both the undergraduate and postgraduate levels, such as Quantitative Social Research, Doing Criminology, Courts, Sentencing and Justice, and Introduction to Criminology and Criminal Justice.

**Background and qualifications**

3. I have a PhD, Masters degree in Social Science, a Masters degree in Arts, a Bachelor of Laws (with Honours) and a Bachelor of Arts.
4. I have conducted a substantial amount of research into sentencing and discretion in criminal justice, with a particular focus on domestic violence and social inequality. I also have a strong interest in research into Indigeneity, race, ethnicity, gender, youth and police.
5. In the past I have held positions at the University of Queensland and Queensland University of Technology. I have also worked as a Research Officer for the Criminal Justice Commission in Queensland.

**Australian Domestic Violence Protection Order legislation and Victim Safety**

6. Domestic violence protection orders have increasingly become the central legal response to the prevention of family and domestic violence in Australia. The last decade has seen considerable amendments to domestic violence protection order legislation in Australian jurisdictions, with the aim of ensuring greater access to justice

and protection for victims of domestic violence. My research article "Australian Domestic Violence Protection Order Legislation: A Comparative Quantitative Content Analysis of Victim Safety Provisions", attached to this statement and marked "CB 1", (co-authored with Samantha Jeffries and Rachael Field) analysed the extent to which domestic violence protection order legislation in each Australian state and territory protects and promotes the safety of victims. (This study only focuses the legislation itself.)

7. Based on past research, we adapted a set of criteria with four dimensions to assess the effectiveness of the legislation in improving victim protection. These dimensions include:
  - 7.1. the protective scope of the legislation;
  - 7.2. specified matters to be considered by the court when granting orders;
  - 7.3. procedural mechanisms; and
  - 7.4. available order options.

#### **The Protective Scope of Protection Order Legislation**

8. The protective scope of the legislation refers to who is protected by the legislative provisions and from what forms of domestic violence. The growing body of commentary and research into domestic violence has revealed that domestic violence can occur in a diverse range of relationships. Consequently, in most jurisdictions the types of relationships covered by protection order legislation have expanded to include:
  - 8.1. primary and secondary domestic violence victimisation on children;
  - 8.2. elder abuse at the hands of family members and other carers;
  - 8.3. abuse within dating relationships;
  - 8.4. violence against Indigenous women within contexts of extended kinship structures; and
  - 8.5. domestic violence in same-sex intimate partnerships.
9. The definition of domestic violence in Australian protection order legislation has also evolved from the stereotypically masculine understanding of violence, being physical violence. The definition of domestic violence generally now encompasses a broad

range of abuse including sexual, emotional, psychological and economic. These amendments acknowledge that abuse may take many different forms and make it clear to victims, perpetrators and the community the unacceptability of this behaviour in intimate and other familial/carer relationships.

### **Specified Matters to be considered when granting Final Orders**

10. All domestic violence legislation outlines factors that the courts must consider when determining whether or not to grant protection orders. I believe that the courts should focus on factors relevant to the victim, such as their financial, employment, psychological or social needs. It is critical to the victim's psychological well-being and security that protection order legislation promotes their right to continue living in their own homes.
11. Research demonstrates that when women are able to remain at home during the protection order process, they are less vulnerable to homelessness and associated poverty. In contrast, perpetrator-focused legislative factors such as the possibility of orders having a negative impact on the perpetrator's financial position, their accommodation needs or their contact with their children, are likely to reduce the victim safety focus of legislation. These directives symbolically reinforce patriarchal assumptions around gender and home ownership, as opposed to recognising the paramount concern of victim safety. Based on our coding, the *Family Violence Protection Act 2008* (the Victorian legislation) ranked relatively well on victim-oriented matters to be considered in granting. The Victorian legislation contained over 75% of the identified victim-focused matters for consideration.

### **Procedural Mechanisms for Applications and Hearings for Protection Orders**

12. It is important that the procedural mechanisms involved in applying for and granting protection orders promote the victim's access to justice. Therefore the legal grounds or tests used by the courts to decide whether to grant a protection order should prioritise the victim's perspective and experiences over the perpetrator's.
13. In Australia, the legal tests for protection orders are usually based on the victim's fear or on the perpetrator's intent or conduct. A subjective test of the victim's fear of violence, with reasonable grounds which must be satisfied on the balance of probabilities, is most likely to promote victim safety. Unlike the offender test, the fear test does not require waiting for a violent act to occur before an order can be made.

Furthermore, a victim focused test does not enable the perpetrator to rationalise their intent or conduct through blame, excuse-making or minimising, as the court's focus is on the effects of the conduct, rather than the motives behind the conduct or the conduct itself.

14. Additionally, certain provisions make it easier and less daunting for victims to apply for protection orders. These include provisions which do not require a perpetrators' presence when granting orders (including emergency, interim and final orders) and victim evidence-giving provisions that prohibit perpetrators from cross-examining victims. Other pro-victim safety provisions such as allowing victims to give evidence through alternative arrangements (via telephone or closed circuit television etc.) and the ability for victims to have a support person in the courtroom may alleviate some of the emotional burden that victims may experience when applying for protection orders. The provision of procedural mechanisms to improve victim access to, and protection during, the application process was the least well-achieved dimension for all jurisdictions. Although the Victorian legislation was ranked fourth (below Northern Territory, South Australia/New South Wales (tied), and Western Australia), the legislation only provided for approximately 38% of the identified victim-supportive procedural mechanisms.

#### **Protection Order Options**

15. The availability of emergency (or police) powers and interim orders can provide victims with protection pending the outcome of the final court hearing. However, the duration and conditions imposed on these orders has a critical impact on victim protection. For instance, legislation that grants emergency orders that remain in force for extended periods, with unrestricted conditions, provide victims with much more protection than jurisdictions which only permit emergency orders for short periods and with a limited range of conditions. Similarly, legislation that restricts the duration of final orders and require victims to apply for an extension, is less victim safety focused than statutes which allow final orders to remain in place until a revocation application is made.
16. Furthermore, legislation should not require a consideration of a victim's behaviour towards the perpetrator when determining whether to extend or revoke protection orders. This approach promotes the patriarchal ideology of victim provocation and blame.

### **Research Results of Australian Domestic Violence Protection Order Legislation**

17. The results of our study attached to this statement and marked "CB 1" indicate that the victim safety dimension that is best achieved across Australian jurisdictions is the protective scope of the legislation (i.e. the applicable relationships and definitions of domestic violence). The provision of procedural mechanisms to improve victim access to, and protection during, the process of obtaining a protection order is the least well-achieved dimension of victim safety for all jurisdictions.
18. These finding suggests that changes to definitions of domestic violence and expanding the types of relationships that fall within legislative frameworks may be more easily made than reforms that potentially challenge traditional legal processes (such as perpetrators' rights to be present and address accusations; and men's rights to remain in their homes).
19. When comparing the jurisdictions, the Northern Territory ranked the highest of all Australian jurisdictions on the victim safety score, with South Australia and Victoria also ranked relatively highly.

### **Suggestions for future reform to Australian Domestic Violence Protection Order legislation**

20. As domestic violence and protection orders are issues covered by state and territory laws in Australia's federal system, a critical element of best practice in an effective national response to domestic violence is the uniformity of policy and legislation across all jurisdictions. The variation of victim safety scores between jurisdictions raises serious questions about inequality of treatment for victims of domestic violence across Australia.
21. The Australian and New South Wales Law Reform Commissions (2010) have argued for consideration of a common interpretative framework, rather than prescriptive national legislation, across Australian protection order legislation. If this framework is implemented, it should at a minimum, include core or standard definitions of domestic violence, legislative purposes, grounds for obtaining protection orders, and applicable relationships.

## **Sentencing practices for Domestic Violence offences versus Non-Domestic Violence offences**

22. Historically, domestic violence was thought to be a private, victimless matter that did not affect the public order and subsequently of little concern to the criminal justice system. Over the last three decades there has been ideological shifts in Western government discourse, legislation, criminal justice policy and practice that suggest domestic violence is now considered a serious crime with far reaching harmful consequences.
23. Symbolically, the types of sentences imposed in domestic violence cases, compared to other offences, could be seen as an important indicator of whether domestic violence is considered a serious crime. My research study "Similar Punishment?: Comparing Sentencing Outcomes in Domestic and Non-Domestic Violence Cases", attached to this statement and marked "CB 2", (co-authored with Samantha Jeffries) analysed the sentencing trends of domestic violence and non-domestic violence offences.
24. Using a population of cases sentenced in the New South Wales lower courts, we found that when sentenced under statistically similar circumstances domestic violence offenders are less likely to be sentenced to prison, compared to those convicted of crimes outside of domestic contexts.
25. Furthermore, of those imprisoned, domestic violence offenders receive significantly shorter sentence terms. We found that on average a domestic violence principal offender receives a 21 day shorter prison sentence compared to other violent principal offenders in the lower courts. This finding suggests that crimes committed within intimate or familial relationships are treated more leniently in sentencing than those committed in other circumstances.
26. Our analysis of sentencing of offenders to non-custodial orders in domestic and non-domestic settings is also outlined in my PowerPoint presentation titled "Alternatives to Prison: Exploring Non-Custodial Sentencing of Domestic Violence Offenders in NSW's Lower Courts" attached to this statement and marked "CB 3".
27. The conclusion of sentencing disparity between domestic and non-domestic violence criminal cases remains cautious, as we cannot completely take account of the context

of the case. In particular, we can only adjust for the seriousness and type of offence; the data does not provide information on the context of the offence itself.

### **Focal Concerns Perspective**

28. Broadly speaking, the possible explanations for any sentencing disparity between domestic and non-domestic violence cases sit within the theoretical explanation of focal concerns. I discuss this approach in our article marked "CB 2" and attached to this statement. The focal approach suggests that sentencing is determined by judicial assessments around three focal concerns:

- 28.1. Blameworthiness and harm;
- 28.2. Risk and community protection; and
- 28.3. Practical constraints and consequences.

### **Blameworthiness and harm**

29. The focal concern of blameworthiness centres on the judicial assessment of an offender's culpability and the degree of harm caused by the offending. The seriousness of an offender's crime and their past criminal behaviour are vital to this appraisal. It may be that judges view offences within a domestic context as being less harmful to the community at large. For instance, crimes between family members and intimate partners are typically understood as being driven by strong emotions, embedded in pre-existing and complex interpersonal relationships among the parties involved. The presence of strong emotion, especially anger, can act to decrease attributions of offender culpability because it reduces the perceived presence of intent or premeditation. Thus, stereotypical assumptions of domestic violence perpetrators as lacking in self-control could reduce blameworthiness and subsequent sentence severity.

30. Furthermore, judicial assumptions or stereotypes around provocation or victim fault in domestic violence cases may also impact assessments of offender blame and in turn, sentencing severity. Research suggests that crimes between individuals known to each other are more likely to generate images of victim participation than crimes involving strangers.

31. Current knowledge about domestic violence suggests that traditional aggravating and mitigating circumstances may need to be re-thought by judges. For example, harm

may need to be conceptualised more broadly than injury to the individual victim. Research demonstrates that the negative impact of domestic violence extends well beyond individual victims to wider society. Additionally, the emotional context of the domestic violence offending, and arguments about victim provocation, should not be seen as mitigating culpability. Domestic violence perpetrators frequently blame their victims to legitimise their offending and obscure the true motive behind the abuse, which is often to exercise control over the victim.

### **Risk and community protection**

32. The focal concern of risk or community protection involves judicial predictions about the future dangerousness of an offender. Domestic violence offenders could be perceived as less risky than stranger offenders because they pose minimal threat outside of the specific, private relationship in which the violence occurred.
33. Stranger offenders are perceived as more dangerous, unpredictable, and indiscriminate, compared to non-stranger offenders, who respond to particular situations and are thus less likely to recidivate. This assessment ignores the strong likelihood of repeat victimisation and escalation that often characterises intimate partner violence. Research suggests that victims of domestic violence are in fact more vulnerable to future harm, and thus, we should expect judicial assessments of increased risk.

### **Practical constraints and consequences**

34. According to this perspective, there are practical concerns that the courts may take into account when making sentencing determinations, including the need to ensure a regular case flow through the court, (for example, entering a guilty plea may reduce sentence severity because it speeds up the process), the social costs of sentencing on the offender's family, as well as societal expectations.
35. In the domestic violence context, there are specific social costs of incarcerating the offender which may negatively affect the victims of the violence. For instance, the victim may experience economic hardship through the loss of their assumed primary breadwinner during incarceration. Additionally, the incarceration may further damage the victim-offender relationship and fragment broader familial ties, especially between parents and children.



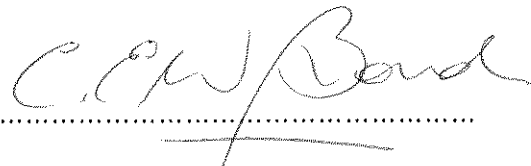
36. I believe that these factors are equally relevant in non-domestic violence cases, but they may be considered differently in domestic violence cases. In contrast to non-domestic violence, the social costs to families in cases of domestic violence may be more likely in the decision to not incarcerate. The incarceration of the abuser may provide a much needed respite from the violence, a sense of short-term security and an opportunity to heal.

#### **Sentencing of Indigenous Offenders**

37. I note that I have published other works in this area, specifically in relation to Indigenous offenders, including "Taking the Problem Seriously?: Sentencing Indigenous and Non-Indigenous Domestic Violence Offenders" which is attached to this statement and marked "CB 4". This study (co-authored with Samantha Jeffries) analyses the intersection between Indigenous status, and imprisonment sentencing decisions, in domestic and non-domestic violence contexts. The findings of this study suggest that Indigenous domestic violence offenders were more likely to receive a prison sentence compared to non-Indigenous domestic violence offenders. In the study the focal concerns sentencing perspective is discussed as a possible explanation for our findings.

#### **Publications**

38. Attached to this statement and marked "CB 5" is a list of my publications as at July 2015.



**Christine Edna Winifred Bond**

Dated: 4 August 2015