

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2026

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Amanda Camm MP, Minister for Families, Seniors and Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the Domestic and Family Violence Protection Legislation Amendment Bill 2026. In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Domestic and Family Violence Protection and Other Legislation Amendment Bill 2026 (the Bill) progresses amendments to the *Domestic and Family Violence Protection Act 2012* (DFVP Act) intended to streamline police responses to domestic and family violence (DFV), strengthen justice responses to persons using violence, and improve the accessibility and safety of court processes for victim-survivors.

The Bill supports the Government's commitment to Queenslanders being safe in their homes and communities.

This is intended to be achieved through amendments to the DFVP Act that:

- streamline the legislative framework for police responding to DFV through amendments to the police protection direction (PPD) framework, repeal the framework for police protection notices (PPNs) and amend the custody framework;
- strengthen justice responses to DFV by establishing new offences for repeated contravention of a PPD or domestic violence order (DVO), and increasing the maximum penalty for contravention of a PPD;
- enhance protections for victim-survivors in court proceedings by clarifying the process related to restricting cross-examination, and clarifying how sensitive material is viewed, obtained or copied during and after civil DFV court proceedings;
- support community safety outcomes by enabling police to access electronic monitoring information for DFV and other law enforcement purposes; and
- expand the Electronic Monitoring Pilot to operate statewide and require courts to consider imposing a monitoring device condition (MDC) in particular circumstances.

Streamlining police responses to DFV

Currently, the DFVP Act provides police officers with the ability to issue various protection measures in response to DFV, including a PPD or PPN.

Currently, PPNs are taken to be an application for a protection order and provide immediate protection to the aggrieved until the matter is able to be heard and decided by a court. PPDs were implemented statewide from 1 January 2026 as a tool for streamlining the police response to DFV. PPDs enable police to provide an on-the-spot, 12-month direction to a person using violence with similar conditions to a DVO, where the officer reasonably believes it would not be more appropriate to take an action which involves an application to the court for a protection order. A PPD becomes enforceable as soon as it is served on the respondent.

There are currently several legislated circumstances where a PPD cannot be issued and police must take another option, including issuing a PPN or making an application to the court for a protection order. Early frontline feedback from the Queensland Police Service (QPS) indicates the PPD framework has potential to support more efficient use of the capacity of frontline police, while ensuring that immediate protection that supports the safety and wellbeing of victim-survivors can be provided. In some circumstances, this may be more desirable for victim-survivors whom may prefer for their matter to be dealt with outside of court.

Clauses 12 to 39, and 52 of the Bill makes amendments to the DFVP Act to:

- enable police to issue PPDs without restriction by removing the circumstances which currently prevent a police officer from issuing a PPD in sections 100C, 100D and 100L of the DFVP Act;
- omit circumstances in section 100E of the DFVP Act that police are required to consider when issuing a PPD, with guidance to instead be provided in operational policy;
- clarify the relationship between an existing DVO where a PPD is issued;
- expand the conditions available for police to include on a PPD, and enable police to include exceptions to conditions;
- enable cross-PPDs to be issued in exceptional circumstances;
- establish a process for a PPD to be filed with the court, and taken by the court to be an application for a protection order (similar to the current process for PPNs);
- extend the duration of a PPD from 12 months to 3 years;
- expand the circumstances where a senior police officer is able to amend a PPD;
- remove the process for police review of a PPD;
- omit the framework for PPNs;
- amend and contemporise the custody framework by omitting release conditions, and by requiring a PPD to be issued on release of a respondent from custody that may be filed as an application for a protection order at police discretion or as required under the DFVP Act; and
- extend the timeframe for the statutory review of the PPD provisions.

These significant amendments to the PPD framework establish PPDs as the primary response for frontline police responding to DFV, where an officer is authorised or required to take action under the DFVP Act. The amendments aim to simplify the legislative framework for police, reduce complexity in operational processes and support the frontline to respond to DFV efficiently.

Consequential amendments across the statute book are necessary to support the amendments to the PPD framework. The amendments align with the DFVP Act and promote clarity and consistency in the operation of the statute book.

Clause 17 (new section 100EA) provides that a police officer will be required to file a PPD as an application for a protection order, or application to vary a protection order, where:

- (a) a protection order, temporary protection order or recognised interstate order relating to the respondent and the aggrieved is in force and the officer determines additional conditions are desirable to protect the aggrieved (regardless of who is or was the respondent and who is or was the aggrieved);
- (b) a proceeding relating to an application for a protection order or application to vary a protection order is already before a court;
- (c) the police officer knows, or reasonably believes, the PPD would interact with or be inconsistent with a family law order, or an order or agreement made under the *Child Protection Act 1999* (Child Protection Act);
- (d) a condition would prevent or limit contact between the respondent and a child of the respondent, regardless of whether any family law order or child protection order or agreement is in place;
- (e) the aggrieved requires conditions that only a court may impose, including a MDC; or
- (f) cross-directions are issued, whether the PPDs are issued at the same time or a new PPD is issued while another is in force. In these circumstances, both PPDs will be filed with the court to be considered as a cross-application under existing pt 3, div 1A of the DFVP Act.

Police officers will not be limited to filing a PPD in these circumstances and will continue to consider whether it would be more appropriate to take an action that involves an application for a protection order (section 100B of the DFVP Act).

PPDs will be able to include a broader range of conditions that the issuing police officer considers necessary or desirable to protect the aggrieved and any named person. This includes no-contact conditions, ouster conditions, return conditions, recovery conditions and cool-down conditions. Police may also include any exception to a condition the police officer issuing the direction considers necessary or desirable, to accommodate varying circumstances that police officers may encounter.

The Bill also extends the current duration of PPDs from 12 months to 3 years. DVOs are typically issued for a duration of 5 years, and will remain available where protection may be required for longer than 3 years.

As courts cannot amend a PPD, the Bill expands the ability for the police commissioner to amend a PPD to: remove a named person included in error; or remove a condition imposed in error; or reflect a change to the name of the respondent, or their contact details or address for service; or reflect a change to the name of the aggrieved or a named person; or to correct a minor error.

The Bill omits release conditions from the DFVP Act (clause 37) and requires that, as soon as practicable after a person is taken into custody under section 116 of the DFVP Act, a police officer must issue a PPD and consider whether to make an application for a protection order (clause 34). Upon issuing a PPD, a police officer must make an application for a protection order if a mandatory filing circumstance under the new section 100EA applies, and may at their discretion file the PPD as an application for a protection order if appropriate. If the PPD is to be filed as an application for a protection order, the officer must also consider whether it is necessary and desirable to apply for a temporary protection order. If a PPD is already in force and names the person in custody as either the aggrieved or respondent, it is not necessary for a further PPD to be issued, unless it is considered necessary to impose additional or different conditions to protect the aggrieved. Police must also consider whether a temporary protection order is required.

The Bill provides a safeguard against misidentification by providing an exception to the requirement to issue a PPD, if the police officer identifies that the person in custody is the person most in need of protection (PMINOP). The officer will still be required, consistent with existing section 100 of the DFVP Act, to investigate a reasonable suspicion of DFV, and consider whether it is necessary or desirable to take any action to protect a person from DFV. This may include issuing a PPD. This ensures the PMINOP is not automatically named as the respondent on the PPD issued or filed as an application for a protection order (clause 34, amendment to section 118 DFVP Act), and allows flexibility to ensure police are able to investigate and provide appropriate protections based on the circumstances. If an officer determines the person in custody is the PMINOP, they must release the person from custody as soon as practicable.

Strengthening justice responses to DFV

Establishing a new offence for repeated contravention of a DVO or PPD

Currently, if a respondent repeatedly contravenes a DVO or PPD in Queensland, they may be charged under the DFVP Act with a separate offence for each contravention, or a single charge may be laid which captures the whole date range for the contraventions. However, there is currently no specific offence or higher maximum penalty for committing several contraventions in a short period of time, and the existing circumstance of aggravation for

contravention of a DVO only applies where a respondent has previously been convicted of a domestic violence offence.

The Bill establishes new offences for repeated contraventions of a DVO or PPD under clauses 46 and 48. The new repeated contravention offences recognise short-term repeated contraventions as a distinct and escalating risk compared to a single contravention, with the repetitive offending behaviour reflecting an increase in seriousness over a standalone contravention. Similar offences have been established in Victoria and New South Wales.

Creation of the new repeated contravention offences signals a clear legislative intent that strong penalties should apply for repeated contraventions, and supports police and prosecutors to respond to repeated contraventions by providing clearer charging options. The higher maximum penalty for the new offences may strengthen personal and general deterrence for this more serious conduct, and signals the community's denunciation of this harmful behaviour.

Strengthening penalties for contravention for a PPD

Clause 47 of the Bill amends section 177A (Contravention of a police protection direction) to apply the existing circumstance of aggravation for contravention of a DVO to a PPD, providing the same higher penalty for contravention of a PPD where the respondent has been convicted of a domestic violence offence within the previous 5 years. This will align the maximum penalty for contravention of a PPD with the maximum penalty for contravention of a DVO.

The Bill will also require a court to consider whether to make a DVO under section 42 of the DFVP Act when hearing a proceeding for an offence for contravention of a PPD. This is consistent with the current requirement under section 42(4) of the DFVP Act for a court to consider whether an existing DVO needs to be varied when convicting an offender of a domestic violence offence. In these circumstances, the court may on its own initiative vary the order.

Expanding circumstances in which a court may make or vary a DVO in a criminal proceeding

Section 42(2) of the DFVP Act allows a court, on its own initiative after convicting a person for a DFV offence, to make a protection order against the offender. In doing so, the court may consider the offender's criminal history and DFV history.

Under section 42(4) of the DFVP Act, if a protection order is already in place, the court:

- must consider the order and whether, in the circumstances, the order needs to be varied; and
- may, on its own initiative, vary the order.

Clause 6 amends section 42 of the DFVP Act to allow a court, on its own initiative, to make or vary a temporary protection order (TPO) or DVO at any time when hearing a proceeding for a domestic violence offence. This removes the requirement for a respondent to be convicted before the court may make a TPO or DVO on its own initiative. As with current section 42, the

court will still need to be satisfied under section 37 of the DFVP Act that a protection order could be made against the offender.

Amendments to the Bail Act 1980

Clause 64 of the Bill amends section 16 of the *Bail Act 1980* (Bail Act) to reflect the introduction of the new offences for repeated contravention of a DVO or PPD, and the increased maximum penalty for contravention of a PPD. Section 16 (Refusal of bail generally) establishes a framework for considering domestic violence offences in bail decisions, including requirements to consider the risk of further domestic violence and, in prescribed circumstances, refuse bail for certain serious offences unless the defendant shows cause why their detention is not justified. The amendments to section 16 of the Bail Act include reference to the offences of repeated contravention of a DVO, repeated contravention of a PPD and contravention of a PPD as domestic violence offences for the purpose of the bail framework, ensuring that these offences are subject to the same bail considerations and show cause requirements that currently apply to contravention of a DVO in prescribed circumstances.

Enhancing protections for victim-survivors in court proceedings

Restricting cross-examination in subsequent court proceedings

Clause 40 of the Bill amends section 150 of the DFVP Act to create an additional category of ***protected witness*** consisting of a person named as the aggrieved in a protection order (***first aggrieved***) and, subsequently named the respondent in a further application. This will allow the court to make an order for the wellbeing and protection of the first aggrieved, or their relative or associate, for the purposes of giving evidence in a subsequent proceeding involving the same individuals. This protection will extend to limiting an unrepresented person's ability to cross-examine the person under section 151 of the DFVP Act.

This amendment is intended to ensure that the first aggrieved may continue to access the protections available to a protected witness in a subsequent proceeding in which they are named as respondent. It does this by preventing the person named as the respondent (***first respondent***) in a protection order from directly cross-examining the first aggrieved in a subsequent proceeding, where the respondent has made an application for a protection order against the aggrieved. This reform aims to reduce potential harm to victim-survivors in court and reduce opportunities for systems abuse. Where cross orders have been made, the reform also enables the court to consider whether to make arrangements for the safety and wellbeing of both the aggrieved and the respondent when giving evidence during a subsequent proceeding relevant to either order.

Clarifying how sensitive evidence is viewed, obtained or copied during and after DFV civil proceedings

Clauses 42 to 44 of the Bill amend sections 160 and 161A and, insert a new section 160AA of the DFVP Act to restrict parties to a proceeding under the DFVP Act from viewing or obtaining a copy of sensitive material unless the court makes directions as to how that material is to be viewed. The meaning of ***sensitive material*** under new section 160AA(1) includes:

- **sensitive evidence** within the meaning of the *Criminal Code Act 1899* (Criminal Code), section 590AF;
- a **recording** within the meaning of the *Evidence Act 1977* (Evidence Act), section 21AY;
- a **recorded statement** within the meaning of the Evidence Act, section 103A (VREC statement);
- a transcript of a recorded statement; and,
- a **section 93A criminal statement** or a **section 93A transcript** within the meaning of the Evidence Act, schedule 3 (Dictionary).

This amendment aims to provide clarity on how sensitive evidence is handled under the DFVP Act, in DFV civil proceedings.

It is expected this type of evidence will only be considered during DFV proceedings where a party to the proceeding files sensitive materials in a Brief of Evidence, or files a VREC for consideration during the proceedings.

The effect of these amendments will be the application of offences relating to unauthorised possession, supply or copying of sensitive materials in criminal proceedings will also apply in civil proceedings under the DFVP Act.

Expanding police powers to request electronic monitoring information

Monitoring information and information sharing

The Bill amends the DFVP Regulation to enable the Police Commissioner to request monitoring information relating to a monitoring device from the prescribed entity responsible for monitoring the device if the Police Commissioner reasonably suspects the requested information would help:

- to assess whether there is a threat to a person's life, health or safety because of domestic violence;
- to lessen or prevent a threat to a person's life, health or safety because of domestic violence; or
- for any other law enforcement purposes.

The entity will be required to provide the information when requested, but will only be required to provide information which is in the entity's possession or to which the entity has access.

Expanding the scope of the Electronic Monitoring Pilot

During the 2024 State Election campaign, the Queensland Government publicly committed to an electronic monitoring pilot (EM Pilot), with the capability to fit monitoring devices on up to 500 persons using violence. The Government subsequently committed to making 150 electronic monitoring devices available by the end of 2025.

To give effect to the Government Election Commitment, the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2025* (Amendment Act) inserted part 3, division 5, subdivision 3 (monitoring device conditions) into the DFVP Act to establish MDCs as a new condition on a DVO, available to prescribed courts in particular circumstances.

The overall intent of the EM Pilot is to promote victim-survivor safety and enable police to respond to breaches of DVO conditions in response to electronic monitoring alerts. MDCs are not intended to keep victim-survivors safe in and of themselves, but instead complement existing integrated safety planning. MDCs also seek to deter respondents from breaching DVO conditions, such as no-contact conditions.

Expanding pilot to operate statewide

Currently, the DFVP Regulation prescribes the following two locations where courts can impose a MDC:

- the Magistrates Court held in Caboolture in the Caboolture Magistrates Courts District (section 1B(a)); and
- the Magistrates Court held in Townsville in the Townsville Magistrates Courts District (section 1B(b)).

Clause 57 of the Bill amends the DFVP Regulation to facilitate expansion of the EM Pilot statewide, and provide that a Magistrates Court in Queensland can impose a MDC on a DVO where it is necessary or desirable to protect an aggrieved from domestic violence.

Mandatory consideration of monitoring device conditions

Prescribed courts currently have discretion to impose MDCs when making or varying DVOs for eligible respondents (section 66B of the DFVP Act). While this discretion will be maintained, clause 8 inserts new section 66BA of the DFVP Act to mandate that courts must consider making MDCs when making DVOs with non-standard conditions.

The amendments will encourage Magistrates across Queensland to make full use of MDCs, while preserving judicial discretion to impose conditions that are necessary or desirable in the particular circumstances to protect the aggrieved from domestic violence.

Additional amendments to the EM pilot

All provisions of the DFVP Act and DFVP Regulation related to the EM Pilot automatically sunset on 1 October 2027, 2 years from their commencement.

Acknowledging the extent of reforms to the EM Pilot, clause 11 of the Bill extends the sunset provision under section 66H of the DFVP Act (currently 1 October 2027) to allow sufficient time for fulsome monitoring and evaluation data to be collected in relation to the EM Pilot, including data with regard to the expansion and other reforms proposed. Provisions related to the EM Pilot will sunset on 31 January 2028.

Human Rights Issues

Human rights relevant to the Bill

DFV is a violation of human rights. People who fear or experience DFV are entitled to enjoy the right to life (in section 16 of the *Human Rights Act 2019* (HR Act)), the right not to be subjected to cruel, inhuman or degrading treatment (in section 17 of the HR Act), and the right to mental and bodily integrity (protected by sections 25 and 29 of the HR Act), all of which can be adversely impacted by DFV. DFV also threatens rights under section 26 of the HR Act, which recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. Further, this section provides that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. DFV threatens the enjoyment of all of these listed rights.

The proposed amendments aim to better address DFV and better protect the human rights of victim-survivors. I recognise that the measures introduced by this Bill will impact the human rights of people using violence (respondents and offenders). However, I consider the negative impacts on those human rights are justified by the need to protect against DFV, limit and prevent the harm caused by persons using violence and, protect the human rights of people who fear or experience DFV for the reasons outlined in this certificate.

I have considered each of the rights protected by part 2 of the HR Act. In my opinion the amendments in the Bill engage the following human rights under the HR Act:

- the right to recognition and equality before the law (section 15);
- freedom of movement (section 19);
- freedom of expression (section 21);
- freedom of association (section 22);
- right to property (section 24);
- right to privacy and reputation (section 25);
- protection of children within their best interest (section 26);
- cultural rights (sections 27 and 28);
- right to liberty and security of person (section 29);
- right to a fair hearing (section 31);
- rights in criminal proceedings (section 32);
- right not to be tried or punished more than once (section 34); and,
- retrospective criminal laws (section 35).

Amendments that promote human rights

In my opinion, the following human rights under the HR Act are promoted by the Bill:

- right to enjoy human rights without discrimination (section 15(2));
- right to life (section 16);
- protection from torture and cruel, inhuman or degrading treatment (section 17);
- privacy and reputation (section 25);
- protection of families and children (section 26); and
- right to liberty and security of person (section 29).

In addition, it is my opinion that the following human rights may be promoted by the amendments to strengthen police and justice responses to persons using violence, whose use of DFV otherwise limits the enjoyment of these rights by victim-survivors:

- freedom from forced work (section 18);
- freedom of movement (section 19);
- freedom of thought, conscience, religion and belief (section 20);
- freedom of expression (section 21);
- freedom of association (section 22);
- taking part in public life (section 23);
- property rights (section 24);
- cultural rights – generally (section 27);
- cultural rights – Aboriginal and Torres Strait Islander peoples (section 28);
- right to education (section 36); and
- right to health services (section 37).

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Streamlining police responses to DFV

Streamlining the legislative framework for police responses DFV and enabling PPDs to be the primary police response to DFV will engage and may limit the following rights under the HR Act:

- right to recognition and equality before the law (section 15);
- freedom of movement (section 19);
- freedom of expression (section 21);
- freedom of association (section 22);
- right to property (section 24);
- right to privacy and reputation (section 25);
- rights of children (section 26);
- cultural rights (sections 27 and 28);
- right to liberty and security of person (section 29); and
- right to a fair hearing (section 31).

The Bill may impact on these human rights by enabling police officers to respond to DFV by issuing a PPD in any circumstance, ultimately limiting a respondent's ability to engage in daily life with the aggrieved and any named persons – including limiting where the respondent can go, where they can live and who they can talk to – without judicial oversight.

The right to recognition and equality before the law – section 15

Section 15 of the HR Act provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. All laws should be equal, and policies should be applied equally and must not result in discriminatory treatment of effects (section 15(3)). The definition of discrimination under the HR Act includes discrimination as defined in the *Anti-Discrimination Act 1991* (Anti-Discrimination Act).

The amendments to the PPD framework may have a greater impact on Aboriginal and Torres Strait Islander peoples, who are overrepresented in the criminal justice system as both victims and persons using violence. More PPDs being issued may also lead to a greater number of Aboriginal and Torres Strait Islander peoples being criminalised for contravening a PPD.

Aboriginal and Torres Strait Islander peoples may also be impacted disproportionately by the consequential amendment to the *Penalties and Sentences Act 1992* (PSA) by clause 79 to insert PPDs as matters to be considered in sentencing an offender, as it will require a court to consider, as an aggravating factor in sentencing, that a domestic violence offence was committed in breach of a PPD.

Aboriginal and Torres Strait Islander women are also at an increased risk of misidentification, as this cohort faces disproportionately high rates of DFV. As the Bill enables the issuing of cross-PPDs under the DFVP Act, there is a risk that a victim-survivor who is misidentified as the respondent and primary aggressor in the relationship, may be treated unequally or discriminated against for their potential use of retaliatory violence.

However, the amendments do not limit the right to equal protection of the law without discrimination in section 15(3) or the right to equal and effective protection against discrimination in section 15(4) of the HR Act, because the amendments do not directly or indirectly discriminate based on race. The PPD framework applies equally to all persons who satisfy the conditions for the making of a PPD. As such, the right to recognition and equality before the law is engaged but not limited.

Clause 92 requires that consideration be given to whether a person is or has been subject to a PPD in deciding whether to make a Firearm Prohibition Order (FPO) in relation to the person. This requirement will increase the risk of people subject to PPDs also being subject to significant restrictions under an FPO on their ability to possess, acquire or access firearms, and to enhanced compliance and enforcement powers, including powers that may affect persons associated with the subject of the order. This may limit the right to equal treatment before the law.

Freedom of movement – section 19

The right to freedom of movement (section 19) protects the rights of persons who are lawfully within Queensland to move freely within Queensland, as well as to enter and leave the State and choose where to live. The right places an obligation on the state not to act in a way that unduly restricts freedom of movement.

A PPD issued by a police officer may impose restrictions on the movement of a respondent, including imposing a condition preventing the respondent from coming within a certain distance of the aggrieved or a person's place of residence, or requiring a respondent to present at a certain location at a specific time (e.g. for a court proceeding).

The respondent's day-to day life may be impacted by the PPD, as conditions imposed may prevent them from attending certain locations (e.g. their home or somewhere else the aggrieved frequently visits) or by having a condition placed upon them specifying they must not be within a set distance of the aggrieved for the time the PPD is in force. A police officer may also include

a no-contact or ouster condition that will interfere with a person's ability to choose where to live.

A person's right to move freely within Queensland will also be limited for a period of time, if they are brought into custody under section 116 of the DFVP Act. Under the existing custody framework, section 116 of the DFVP Act currently provides that a person taken into custody by a police officer must be taken to a holding cell at a police station or police establishment, or to a watch-house. Clause 35 of the Bill also amends section 119 of the DFVP Act to provide that a person's right to move freely will be limited until conditions have been imposed on the respondent for the protection of the aggrieved (and any named persons) through the making and taking effect of a PPD, or until an alternative circumstance outlined in the amended section 119 has occurred.

The right to freedom of movement will only be limited if these existing safeguards in the custody framework are unlawfully exceeded by a police officer, including limitations on the length of time that a person can be lawfully detained, where a person may be lawfully detained, and how to safely manage the detention of a child.

Freedom of expression – section 21

The freedom of expression protects the freedom to seek, receive and impart ideas of all kinds in the way one wishes. This right will be limited because police officers will be empowered to make a PPD in any circumstance, which may include conditions that prohibit a respondent from contacting the aggrieved, any named persons, or other relevant people including friends or family members of the aggrieved.

Freedom of association – section 22

Under section 22 of the HR Act, every person has the right to freedom of association with others. A condition on a PPD may restrict a respondent from contacting certain individuals or groups. These conditions may impact on a respondent's ability to associate with other people, including the aggrieved, named persons, friends and family members.

The imposition of conditions impacting contact with a child or a person close to the respondent could interfere with kinship ties, which are central to the social structure and cultural identity of Aboriginal and Torres Strait Islander communities. This could lead to social fragmentation and loss of cultural cohesion.

The right to property – section 24

Section 24 of the HR Act provides all persons the right to own property and protects against the deprivation of that property other than in accordance with the law. For the purposes of section 24, 'property' is given a broad interpretation. Deprivation includes a substantial restriction on the person's use and enjoyment of their property.

As noted above, a police officer can impose cool-down and ouster conditions which may prevent a respondent from enjoying their right to quiet enjoyment of their residential property (whether freehold or under a tenancy agreement).

Cool-down and ouster conditions may also exacerbate housing issues in other ways. For example, a respondent may be excluded from their home but still be subject to mortgage or rental repayments, adding to housing stress. The impacts of which may be heightened during periods of emergency when accessing alternative accommodation may be difficult. The rights of other tenants named on a lease may be limited where a respondent is excluded from their place of residence, impacting the ability of tenants to continue to pay rent under the tenancy agreement.

Relevantly, the Bill also enables police to make a condition on a PPD related to the recovery of personal property by the aggrieved. For return and recovery conditions, police will have discretion to consider whether allowing the condition to take effect (i.e. allowing the respondent to return to their home to recovery personal property items that they may need) should be supervised by police for the safety of the aggrieved and any named persons.

The right to property will only be limited if the property is deprived arbitrarily. A deprivation of property will be arbitrary if it is capricious, unpredictable or unjust, or unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether any interference with property is arbitrary will be addressed below when considering the factors in section 13.

The right to privacy and reputation – section 25

Section 25(a) of the HR Act protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally.

The right to privacy protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. Enabling PPDs to become the primary DFV response for police, may result in more frequent interference and engagement with families. A PPD may also interfere with a person's home, if the conditions imposed impact on their ability to continue residing in their home.

The ability to issue PPDs in a broader range of circumstances will also interfere with a person's personal information. For example, a police officer may ask for a respondent's contact details and address for service under section 100M (though they are not obliged to give those details). The personal details of the aggrieved and respondent, such as their name, will also be set out in the PPD under amended section 100N.

The insertion into the *Family Responsibilities Commission Act 2008* (FRC Act) by clause 76 of an additional circumstance where the police commissioner is required to give notice to the Family Responsibilities Commission (FRC) following the issuing of a PPD to a child, if that child or a parent lives or has lived in a welfare reform community area, may impact the right to privacy of children and their parents. This will be authorised under the FRC Act, therefore making the sharing of the personal information lawful. However, it may engage both the respondent's and aggrieved person's right to privacy.

Whether an interference with privacy, family or home is arbitrary will be addressed below when considering the factors in section 13.

Section 25(b) of the HR Act protects a person's reputation from unlawful attack. The making of a PPD against a person has the potential to negatively impact the person's reputation, particularly if it was issued in error. However, as the making of a PPD would be authorised under the DFVP Act, any impact on a person's reputation from the making of a PPD would be lawful. Section 25(b) is therefore engaged, but not limited, by the amendments.

The rights of children – section 26

The right to protection of families and children recognises that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests because they are a child. This right extends to the guarantee of institutional protection of the family, and positive measures for protection of children by the society and the State.

'The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the [child's human rights] and the holistic development of the child.'¹ The content of this right is informed by the Convention on the Rights of the Child, in which article 37(b) provides that, 'the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.'²

Currently, PPDs cannot be issued if the aggrieved or respondent is a child. The Bill alters this position and provides that a police officer may name a child as an aggrieved or a respondent on PPD, where an informal care relationship or intimate partner exists between the parties. The proposed amendments engage and possibly restrict rights under section 26 of the HR Act, as a child may be subject to conditions if named as a respondent to a PPD, including a cool-down condition, a no-contact condition, ouster condition, return condition or a recovery condition.

This will also be the case in relation to the additional circumstance where the police commissioner is required to provide a notice to the FRC on the issuing of a PPD to a child, if that child or their parent lives or has lived in a welfare reform community area. Despite being authorised under the FRC Act once the amendment is made, this requirement may engage and potentially restrict the rights of that child under section 26 of the HR Act, as it will bring that child and their family within scope of the FRC's functions. However, providing a notice to the FRC may also support children in living in community, including engaging them in local, confidential case conferencing and connecting them with community support services.

Cultural rights – section 27 and 28

Section 27 of the HR Act protects the ability of people of particular cultural background to enjoy their culture, to declare and practise their religion and to use their language, in community with other people of that background. Section 28 recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(2) sets out

¹ Committee on the Rights of the Child, *General Comment No 19 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) 2.

² Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

particular rights which Aboriginal peoples and Torres Strait Islander peoples must not be denied.

Aboriginal and Torres Strait Islander communities have unique cultural practices and traditions that may be affected the ability to imposed PPDs in broader circumstances. PPDs may restrict an individual's movements, potentially preventing them from participating in important cultural ceremonies and community gatherings. The imposition of conditions impacting contact with a child could interfere with kinship ties which are central to the social structure and cultural identity of Aboriginal and Torres Strait Islander communities. Restricting movements and contact could disrupt the transmission of cultural knowledge, practices and language. These impacts may be exacerbated as PPDs will be able to be issued where the aggrieved or respondent is a child. Restrictions on movement could also affect access to culturally significant sites, which are essential for maintaining cultural heritage and practices.

PPDs being issued in more circumstances may also lead to tensions or conflicts within communities, especially if the directions are perceived as unjust or culturally insensitive.

Notice of a PPD issued to a child must be provided to the FRC by the police commissioner where that child or a parent lives or has lived in a welfare reform community area, which may infringe on their right to maintain their identity, kinship ties and local authority. However, providing the FRC with notice of the PPD issued allows community leaders to take the lead in addressing the causes of the DFV giving rise to the PPD, including by enabling the FRC to provide culturally tailored support services to the child and their family.

The right to liberty and security of person – section 29

Section 29(1) of the HR Act provides that every person has the right to liberty and security. Section 29(2) provides that a person must not be subject to arbitrary arrest or detention.

A person can be lawfully arrested and taken into custody if a police officer, while conducting an investigation under section 100 of the DFVP Act, reasonably suspects that the person has committed domestic violence and another person is in danger of personal injury by the person, or property is in danger of being damaged by the person. Section 615 of the *Police Powers and Responsibilities Act 2000* also provides that it is lawful for a police officer exercising or attempting to exercise a power under an Act to use reasonably necessary force to exercise the power. The right to liberty and security will only be limited if a person is brought into custody unlawfully, or a police officer unlawfully exceeds the safeguards built into the amended custody framework under the DFVP Act.

It is possible that a more serious contravention of a PPD, including the breach of a non-standard condition (e.g. a no-contact or ouster condition), may warrant a longer time in detention. However, the sentence and potential period of incarceration imposed is a matter for the courts and the right to liberty will only be limited if the detention is arbitrary. Whether any deprivation of liberty is arbitrary will be addressed below when considering the factors in section 13.

The right to a fair hearing – section 31

Section 31(1) provides that a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right to a fair hearing may include an implied right of access to the courts.

Currently, a PPN is taken to be an application to court for a protection order, meaning every PPN is subject to judicial consideration. At the first mention, the court can either let the PPN lapse or make a TPO. A TPO and a protection order must include the standard conditions, although the court may impose any other condition necessary or desirable to protect the aggrieved or a named person.

By omitting the PPN framework from the DFVP Act and allowing police officers to make a 3 year PPD, rather than allowing long-term protection to be considered by the court, the parties' right to have the matter heard by a court will depend on the initiation of a court review, or an officer filing a PPD. By vesting final consideration and decision-making power in a police officer rather than a judicial officer, the rights of the individual are arguably less secure.

Because the Bill removes the police review process from the DFVP Act, it also removes the review avenue for a named person. A named person will not be able to seek a court review, however, may ask police to amend a PPD to remove them, which the police commissioner may do if satisfied the person was named in error.

In the absence of court oversight of a PPD, this means that there may be circumstances where a person is issued with a PPD, contravenes the PPD and is arrested without having ever been before a court. The amendments to the custody framework may also result in a person being brought into custody under section 116 of the DFVP Act and then released with a PPD, without proceeding to court through an application for a protection order. This intrudes on a person's right to natural justice and procedural fairness, exacerbated in instances where the person may not understand the PPD or may have been misidentified as the person using violence.

While the absence of automatic judicial oversight engages the right to a fair hearing, the ability of the respondent and aggrieved to apply for a court review of the PPD means the right is not limited.

Strengthening justice responses to DFV

The Bill will establish new repeated contravention offences for DVOs and PPDs, increase the maximum penalty for contravening a PPD, require courts to consider whether a DVO should be made when finalising or adjourning proceedings for a contravention of a PPD, and expand the circumstances in which a court may make or vary a DVO during proceedings for a domestic violence offence.

These reforms engage and may limit the following rights under the HR Act:

- recognition and equality before the law (section 15);
- protection of families and children (section 26);
- right to liberty and security of person (section 29);
- fair hearing (section 31);

- rights in criminal proceedings (section 32);
- right not to be tried or punished more than once (section 34)

The right to recognition and equality before the law – section 15

Section 15 of the HR Act provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. All laws should be equal, and policies should be applied equally and must not result in discriminatory treatment of effects (section 15(3)). The definition of discrimination under the HR Act includes discrimination as defined in the Anti-Discrimination Act.

Aboriginal and Torres Strait Islander peoples are disproportionately represented among respondents in DFV proceedings and within Queensland's criminal justice system more broadly. The introduction of repeated contravention offences, with a higher maximum term of imprisonment than applies to a standard contravention offence, and the increase in maximum penalties for particular contraventions of a PPD, may have a disproportionate impact on Aboriginal and Torres Strait Islander peoples through exposure to increased custodial penalties.

The amendment to section 42 may also have a greater impact on Aboriginal and Torres Strait Islander peoples by expanding the circumstances in which a court may, on its own initiative, make or vary a TPO or DVO in connection with a domestic violence offence proceeding. To the extent that Aboriginal and Torres Strait Islander peoples are disproportionately represented in DFV proceedings, they may be more likely to be affected by the expanded operation of these protective powers.

However, the amendments do not limit the right to equal protection of the law without discrimination in section 15(3) or the right to equal and effective protection against discrimination in section 15(4) of the HR Act, because the amendments do not directly or indirectly discriminate based on race and, apply equally to all persons convicted of an offence. As such, the right to recognition and equality before the law is engaged but not limited.

Protection of families and children – section 26

Section 26(2) provides that every child has the right, without discrimination, to the protection that is needed by the child and is in the child's best interests. This right extends to the guarantee of institutional protection of the family, and positive measures for protection of children by the society and the State.

‘The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the [child’s human rights] and the holistic development of the child.’³ The content of this right is informed by the Convention on the Rights of the Child, in which article 37(b) provides that, ‘the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.’⁴

As the Bill will amend the PPD framework to enable a police officer to name a child as a respondent on a PPD, the repeated contravention offences and increased penalties for

³ Committee on the Rights of the Child, *General Comment No 19 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) 2.

⁴ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

contraventions of a PPD may increase the likelihood that some respondents, including children, are detained or are subject to longer periods of detention. To that extent, the amendments may limit the rights of children under section 26(2).

Conversely, the amendment to section 42 is intended to strengthen the ability of courts to provide ongoing protection to aggrieved persons and children in circumstances where a criminal offence cannot be established beyond reasonable doubt. To the extent the amendment enables protective intervention to occur earlier or in a broader range of circumstances, it may promote the rights of children who are exposed to DFV and are entitled to the protection needed in their best interests.

Right to liberty and security of person – section 29

The right to liberty and security of person in section 29 of the HR Act protects individuals from arbitrary arrest or detention and requires that any deprivation of liberty be lawful and justified.

The new repeated contravention offences impact this right by increasing the severity of detention through the availability of higher penalties and by enabling the offence to be made out in a wide range of circumstances without a specific distinction between less serious and more serious contraventions in the construction of the offence, which may have the effect of increasing the time some people spend in custody.

The Bill may further limit the right to liberty and security of person by increasing the maximum penalty for particular contraventions of a PPD from 120 penalty units or 3 years imprisonment to 240 penalty units or 5 years imprisonment where the respondent has previously been convicted of a domestic violence offence within the preceding 5 years. While sentencing remains a matter for the court having regard to the circumstances of the individual case, the amendment increases a respondent's exposure to imprisonment and may have the effect of increasing the period of detention imposed in some cases.

The amendments to the Bail Act may also limit the right to liberty and security of person by extending the existing bail decision-making framework under section 16 of that Act to the offences of repeated contravention of a DVO, repeated contravention of a PPD and contravention of a PPD. As a result, bail decision-makers will be required to consider the risk of further domestic violence when determining whether to grant bail to persons charged with those offences and, in prescribed circumstances, defendants may be required to show cause why their detention is not justified. The amendments may increase the likelihood that some defendants are remanded in custody or spend longer periods in custody before trial. However, the amendments do not create any new power to detain a person or remove the court's discretion to grant bail. Rather, they increase the circumstances in which a defendant's liberty may be restricted.

A person's right to liberty may also be impacted by the amendment that requires a court to consider the fact that an offence was also a contravention of a PPD as an aggravating factor on sentencing (clause 79, amendment to section 9(10D) of the PSA which may increase a perpetrator's sentence where the relevant circumstance applies. This may lead to an increase in sentences of imprisonment that require the perpetrator to serve actual time in custody. This would directly deprive a perpetrator of their liberty. It is relevant, however, that this

circumstance could previously be considered by a sentencing court despite not being explicitly identified in section 9 of the PSA.

The amendment to section 42 may also engage this right by expanding the circumstances in which a respondent may become subject to a TPO or DVO. While the amendment does not itself create any new criminal liability or power of detention, a TPO or DVO imposes legally enforceable restrictions on a respondent and may, if subsequently contravened, expose the respondent to criminal consequences. The amendment therefore impacts the rights and liberties of respondents by expanding the circumstances in which a court may consider exercising its existing protective powers.

Right to a fair hearing – section 31, and rights in criminal proceedings – section 32

The right to a fair hearing in section 31 of the HR Act provides that a defendant and a party to a civil proceeding have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 32 of the HR Act provides that a defendant is entitled without discrimination to minimum guarantees, including the right to be informed promptly and in detail of the nature and reason for the charge, the right to defend themselves personally or through legal assistance, and the right to examine or have examined witnesses.

The new repeated contravention offences may limit these rights by requiring defendants to simultaneously contest all three contraventions alleged, with potentially less overall time to seek advice or challenge evidence on each individual allegation.

The offences require the court to consider multiple alleged contraventions as constituent elements of a single offence. In doing so, a defendant is required to respond not only to the individual allegations but also to the allegation that the requisite number of contraventions occurred within the prescribed period. This may impact an individual's rights to procedural fairness by broadening the factual matters that must be determined in a single proceeding and increasing the legal consequences arising from the alleged conduct.

The structure of the new offences may also cause confusion for defendants, who must navigate a more complex charge that incorporates several discrete incidents of criminal conduct, increasing the risk they cannot effectively participate in their hearing, particularly if they are self-represented.

The Bill may also engage these rights by increasing the maximum penalty for particular contraventions of a PPD where the respondent has previously been convicted of a domestic violence offence. Introducing an aggravating circumstance creates a more complex penalty structure for the offence, requires proof of an earlier conviction, and increases the potential consequences of offending flowing from that earlier conviction.

Further, the Bill requires a court to consider whether a DVO should be made when finalising or adjourning proceedings for a contravention of a PPD. While the amendment does not require a court to make a DVO and does not alter the existing statutory criteria for making an order, it broadens the matters that may arise for consideration in proceedings relating to contraventions of a PPD and may result in additional legal consequences flowing from the charged conduct.

Similarly, the amendment to section 42 may engage these rights by permitting a court to consider whether to make or vary a TPO or DVO during a proceeding for a domestic violence offence, including where the proceeding is adjourned or ultimately ends without a conviction. This expands the circumstances in which respondents may need to address issues relating to protection orders in the context of criminal proceedings and may result in protective orders being considered notwithstanding that criminal liability has not been established. Noting this decision can be made at any point during proceedings, it may be that the respondent (defendant) is still gathering evidence to present at their criminal hearing. This evidence may ultimately be relevant to considerations regarding the making of a DVO. While the amendment preserves the existing statutory criteria and the discretion of the court, it broadens the procedural circumstances in which these issues may arise and may increase the complexity of proceedings for some defendants.

As with the repeated contravention offences, these amendments may impact the ability of defendants to navigate the justice system and understand the consequences arising from proceedings, impacting their right to participate effectively in their hearing and engage in the proceedings.

Right not to be tried or punished more than once – section 34

Section 34 of the HR Act upholds the rule against double jeopardy and protects against a person being tried or punished more than once for an offence for which they have already been finally convicted or acquitted. It provides fairness for people accused of crimes and prevents repeated attempts to convict.

The repeated contravention offences engage this right because they rely on earlier contraventions as constituent elements of a later offence. The aggravated contravention offence for a PPD also engages this right because the higher maximum penalty applies where the respondent has previously been convicted of a domestic violence offence within the preceding 5 years. Accordingly, the previous conviction operates as a factual precondition for the increased penalty.

However, the Bill contains safeguards to ensure that a respondent cannot be convicted of both the repeated contravention offence and standard contravention offence where the offences rely on the same conduct, consistent with protections provided by section 16 of the Criminal Code and section 45 of the *Acts Interpretation Act 1954* (AIA). In the case of the aggravated PPD contravention offence, the previous conviction is relied upon only to establish the circumstance of aggravation enlivening the higher maximum penalty for the new offending. The earlier conviction remains final and is not reopened or punished again.

The amendment therefore engages, but does not limit, the right protected by section 34 of the HR Act.

Enhancing protections for victim-survivors in court proceedings

Clarify the process for restricting self-represented respondents from cross-examination

These amendments engage and will limit the following rights under the HR Act:

- the right to a fair hearing (section 31)

Right to a fair hearing – section 31

The right to a fair hearing in section 31 of the HR Act provides that a defendant and a party to a civil proceeding have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The amendments limit the rights of parties in a proceeding under the DFVP Act to a fair hearing, by providing the court the ability to restrict cross-examination by an unrepresented party in circumstances where two protection orders are made between the same individuals, or where a respondent named in a protection order makes a subsequent application for protection against the aggrieved named in the protection order.

Clarify how sensitive evidence is disclosed and access during and after DFV civil proceedings

These amendments engage the following rights under the HR Act:

- the right to a fair hearing (section 31).

The right to a fair hearing – section 31

The right to a fair hearing in section 31 of the HR Act provides that a defendant and a party to a civil proceeding have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The amendments will restrict parties to the relevant proceeding under the DFVP Act from viewing, examining or obtaining a copy of sensitive materials, unless the court makes an order or directions as to how sensitive material is to be viewed, examined or obtained. Viewing, examining or obtaining copies of sensitive materials without direction of the court, or outside of the conditions provided by the court, is not a legitimate purpose and subject to offences under section 103Q (Unauthorised possession of, or dealing in, recorded statements or transcripts of recorded statements) and section 103S (Publishing recorded statements or transcripts of recorded statements prohibited) of the Evidence Act and, section 590AX (Unauthorised copying of sensitive evidence) of the Criminal Code.

The amendments will specifically engage the right to a fair hearing by limiting unrepresented respondents to a proceeding under the DFVP Act from viewing, examining or obtaining a copy of sensitive materials (subject to court order). Whilst a respondent's right to a fair hearing is fundamental, the concept of a fair hearing extends beyond the interests of the respondent to those of the aggrieved, victim-survivor, witnesses and the community generally. Accordingly, a fair trial does not require a hearing with the most favourable procedures to the accused.

Expanding police powers to request electronic monitoring information

These amendments engage and may limit the following rights under the HR Act:

- the right to privacy and reputation (section 25);

The right to privacy and reputation – section 25

Section 25(a) of the HR Act protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. The current DFVP Regulation engages the right to privacy as it allows authorities to accumulate and share data containing a respondent's personal information (for example, their location).

The proposed amendment would significantly increase the potential limit on that right, by permitting sharing of monitoring information in a wider range of circumstances and applying a lower threshold for that information be shared. In particular, the right is engaged by the amendment allowing the Police Commissioner to request monitoring information for any other law enforcement purpose where the lower threshold of reasonable suspicion that that information will assist that purpose is met.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised by the DFVP Act and will therefore be lawful. An arbitrary interference with privacy is one which is capricious, or results from conduct which is unpredictable, unjust or unreasonable (in the sense of not being proportionate to the legitimate aim sought). While this test does not necessarily require the kind of proportionality analysis required by s 13(2) of the HR Act, if an interference is proportionate under section 13 of the HR Act, it will not be arbitrary.

Accordingly, whether any limitation on the right to privacy is reasonable and demonstrably justifiable will be addressed below when considering the factors in section 13.

Amendments to electronic monitoring provisions

These amendments engage and may limit the following rights under the HR Act:

- recognition and equality before the law (section 15);
- freedom of movement (section 19);
- freedom of assembly and association (section 22);
- the right to privacy and reputation (section 25);
- cultural rights (sections 27 and 28); and
- the right to liberty (section 29).

Recognition and equality before the law (section 15)

Section 15(3) of the HR Act ensures that all laws and policies are applied equally and do not have a discriminatory effect. Public entities, as well as courts and tribunals, are required to treat all people equally when applying the law. Section 15 also requires that the laws themselves provide equal protection for everyone. Sometimes it will be necessary for certain groups to be treated differently in order to have equal protection of the law.

Section 15(4) provides a right to equal and effective protection against discrimination. This includes protection against acts or decisions that have a disproportionate impact on people who have an attribute or characteristic, for example, age, sex, gender identity or race. The definition of discrimination under the HR Act includes discrimination as defined under the Anti-Discrimination Act.

It is likely that the amendments will have a greater impact on Aboriginal and Torres Strait Islander peoples, due to their overrepresentation in the criminal justice system as both victims and persons using violence. As the Bill expands the EM Pilot statewide, it is anticipated to result in more Aboriginal and Torres Strait Islander persons being subject to a MDC.

However, the amendments do not limit the right to equal protection of the law without discrimination under section 15(3) or the right to equal and effective protection against discrimination under section 15(4) of the HR Act, because the amendments do not directly or indirectly discriminate based on protected attributes, including race. MDCs apply equally to all persons using DFV who satisfy the eligibility criteria and are before a court.

Freedom of movement – section 19

Section 19 of the HR Act preserves the right to freedom of movement and protects the right to move freely within Queensland, as well as to enter and leave the State and choose where to live. The fundamental value which the right expresses is regarded as an indispensable condition for the free development of the person and society.

Respondents wearing monitoring devices may be deterred from going to places they otherwise would have, because of shame or a fear of adverse consequences from the authorities or other people with access to the information. For people of particular cultural backgrounds, especially Aboriginal peoples and Torres Strait Islander peoples, this may impact their ability to maintain kinship ties or visit places with which they have a connection under Aboriginal tradition or Island custom.

The functionality of the device may have further practical consequences for freedom of movement and liberty. For example, the requirement to keep the device charged would prevent the respondent from being separated for an extended period from any place that has access to a mains power supply.

The amendments to require courts to consider imposing a MDC when making a DVO with non-standard conditions and to expand the pilot statewide will increase the number of respondents who have a MDC imposed on their DVO. As such, the amendments will limit the right to freedom of movement and liberty for a wider cohort of respondents.

Freedom of assembly and association – section 22

Freedom of association under section 22 of the HR Act protects the ability to associate with whomever one wishes. As with the limitation of the right to freedom of movement, respondents wearing monitoring devices may be deterred from going to places or associating with people they otherwise would have, due to shame or a fear of adverse consequences from the authorities or other people with access to the information. For people of particular cultural backgrounds,

especially Aboriginal or Torres Strait Islander peoples, that may impact on their ability to maintain kinship ties or visit places with which they have a connection under Aboriginal tradition or Island custom.

The right to privacy and reputation – section 25

Section 25(a) of the HR Act protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information and data collection. It also extends to a person's private life more generally, protecting the individual against interference with their physical and mental integrity, including appearance, clothing, gender and sexuality.

GPS monitoring allows authorities to systematically collect and store data showing a person's habits and movements in their daily life. Electronic monitoring will also interfere with a person's bodily integrity by requiring them to wear a visible device on their body and, will interfere with their mental integrity because they will be constantly aware they are being monitored.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised by the DFVP Act and the DFVP Regulation and will therefore be lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Cultural rights – sections 27 and 28

Section 27 of the HR Act provides that all persons with particular cultural, religious, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion, and use their language in community with other persons of that background.

Section 28 recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(2) sets out particular rights which Aboriginal peoples and Torres Strait Islander peoples must not be denied. By inhibiting respondents from associating with certain people and going to certain places, electronic monitoring may limit the right to maintain kinship ties and the right to maintain a connection to land and waters in accordance with tradition or custom.

By inhibiting respondents from associating with certain people and going to certain places, electronic monitoring may limit the right to maintain kinship ties and the right to maintain a connection to land and waters in accordance with Aboriginal tradition or Island custom.

The right to liberty – section 29

Section 29(1) of the HR Act provides that every person has the right to liberty and security. Section 29(2) provides that a person must not be subject to arbitrary arrest or detention.

As contravention of a MDC may expose a respondent to a term of imprisonment, the amendments may impose an incidental burden on the right to liberty.

However, the relevant aspect of the right to liberty will only be limited if the detention is arbitrary. Whether any deprivation of liberty is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *HR Act 2019*)

Any limits on these human rights are considered reasonable and justified under section 13 of the HR Act as follows.

Streamlining police responses to DFV

(a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- The right to recognition and equality before the law in section 15 of the HR Act provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. All laws should be equal, and policies should be applied equally and must not result in discriminatory treatment of effects. The definition of discrimination under the HR Act includes discrimination as defined in the Anti-Discrimination Act.
- The purpose of freedom of movement in section 19 of the HR Act is to protect the individual's right to liberty of movement within Queensland and their right to live where they wish. It protects against restrictions on movement falling short of physical detention. It is about freedom.
- Freedom of expression in section 21 of the HR Act is essential for each person's self-fulfilment and one of the basic conditions for a democratic society.
- Freedom of association in section 22 of the HR Act protects the ability of a person to maintain personal connections with others and associate with other people whenever and for whatever reason they wish.
- The right to property in section 24 of the HR Act protects the dignity of having the essentials of life and is necessary for the fulfilment of other rights. Personal property like housing lies at the core of the right.
- The right to privacy in section 25 of the HR Act protects personal information, but also extends to an individual's private life more generally, including protection from interference with a person's physical and mental integrity. Privacy is about having control over one's own life and being let alone.
- The right to protection of families and children under section 26 of the HR Act recognises that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.
- Cultural rights in sections 27 and 28 of the HR Act preserve the ability of people of a particular background to enjoy their culture in community with others, including their ability to maintain kinship ties.
- The right to liberty in section 29 of the HR Act is concerned with protecting people from interference with their physical liberty.

- The right to a fair hearing in section 31 of the HR Act provides a right for parties to be heard and to respond to allegations made against them and for courts to be unbiased and independent.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Establishing PPDs as the primary police response to DFV will simplify the legislative framework for police, reduce complexity in operational processes and support the frontline to respond to DFV efficiently. These amendments will help to promote the human rights of aggrieved persons, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25).

Requiring that consideration be given to whether a person has been or is subject to a PPD in deciding whether to make an FPO in relation to the person will increase the risk of people subject to PPDs being subject to further significant restrictions under the FPO, and to enhanced compliance and enforcement powers.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Establishing PPDs as the primary police intervention instrument aims to simplify the legislative framework for police, reduce complexity in operational processes and support the frontline to respond to DFV efficiently.

While being subject to additional restrictions and enhanced compliance and enforcement under the FPO framework as a result of being subject to a PPD may limit the right to equal treatment before the law, any differential treatment is based on objective risk-related criteria and is directed towards the legitimate purpose of preventing firearm-related harm and enhancing community safety. The limitation is considered reasonable and proportionate, given the serious risks associated with firearm access in the context of domestic and family violence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The expanded PPD framework includes the following safeguards to ensure it represents the least restrictive way to improve efficiencies and frontline police responses to DFV:

- Police will retain the power to apply to a court for a protection order in addition to making a PPD, and will be required to consider making an application for a protection order when making a PPD (clause 14, amendment to section 100B of the DFVP Act).
- In certain circumstances, the officer issuing the PPD must make an application for a protection order by filing the PPD with the court (clause 17, new section 100EA of the DFVP Act). These circumstances include:
 - (a) where a DVO (or recognised interstate order) relating to the respondent and the aggrieved is in force and the officer determines additional conditions are desirable to protect the aggrieved (new section 100EA(a) of the DFVP Act);

- (b) a proceeding relating to an application for a protection order or application to vary a protection order is already before a court (new section 100EA(b) of the DFVP Act);
 - (c) the police officer knows, or reasonably believes, the PPD would interact with or be inconsistent with a family law order, or an order or agreement made under the Child Protection Act (new section 100EA(c) of the DFVP Act);
 - (d) a condition would prevent or limit contact between the respondent and a child of the respondent, regardless of whether any family law order or child protection order or agreement is in place (new section 100EA(d) of the DFVP Act);
 - (e) additional conditions are necessary or desirable to protect the aggrieved, that only a court may impose, including a MDC (new section 100EA(e) of the DFVP Act); or
 - (f) cross-directions are issued, whether the PPDs are issued at the same time or a new PPD is issued while another is in force. In these circumstances, both PPDs will be filed with the court to be considered as a cross-application under existing pt 3, div 1A of the DFVP Act (new section 100EA(f) DFVP Act).
- While a police officer will be required to file a PPD as an application for a protection order or application to vary a protection order where a condition will prevent or limit contact between the respondent and a child of the respondent (clause 17, new section 100EA(d) of the DFVP Act), the court may determine upon hearing the application that conditions limiting contact with a child are necessary.
 - To provide flexibility and discretion to police when determining appropriate conditions on a PPD and restrictions on a respondent's freedom of movement, the Bill provides that a police officer may consider including an exception to a condition that is necessary or desirable (clause 19, amendment to section 100H of the DFVP Act). Including an exception may enable a condition to more appropriately reflect the protections required, according to the parties' unique circumstances.
 - The Bill enables a police officer to include various conditions on a PPD that would allow a respondent or an aggrieved to continue to have access to, or to recover, their personal property, that otherwise may have been limited by a condition on a PPD (clause 20, new sections 100HD and 100HE of the DFVP Act).
 - While a police officer may issue a cross-direction, this power is expressly only available in exceptional circumstances (clause 22, new section 100JA of the DFVP Act).
 - The Bill requires that an officer proposing to issue a PPD must seek approval by an independent senior officer, with at least senior sergeant approval required for more restrictive conditions (e.g. ouster condition) (clause 23, amendment to section 100K of the DFVP Act).
 - An officer is required to explain the PPD to the parties (existing section 100Q DFVP Act), including what will happen if the PPD is filed with the court as an application for a protection order and, how the PPD interacts with an existing DVO (clause 26, amendment to section 100Q of the DFVP Act).
 - A PPD which is set aside by the court in any circumstance is taken to have never been issued and therefore will not form part of the respondent's DFV history (new section 100QC of the DFVP Act). This is consistent with the current effect of a court setting aside a PPD following a court review (current section 100D of the DFVP Act).

- Police officers will not be able to issue repeat or superseding PPDs in a way that extends protection for the same aggrieved person beyond a duration of 3 years from the commencement of the first PPD (for example, by issuing a new PPD for a further 3 years a year after the first PPD was issued) (clause 28, amendment to section 100R of the DFVP Act).
- In recognition of the removal of the police review process and to support police to efficiently correct errors on PPDs, the Bill expands the circumstances in which a PPD may be amended or revoked if issued in error. A revoked PPD is taken to have never been issued and is removed from the respondent's DFV history, and any criminal proceeding related to contravention of the PPD discontinued (clause 29, replacement of section 100S of the DFVP Act). The police commissioner will be able to amend a PPD to:
 - (a) remove a named person included in error; or
 - (b) remove a condition imposed in error; or
 - (c) reflect a change to the name of the respondent, or their contact details or address for service; or
 - (d) reflect a change to the name of the aggrieved or a named person; or
 - (e) on the request of a named person—to remove the named person or remove a condition imposed in error relating to the named person; or
 - (f) to correct a minor error.
- A statutory review of the PPD framework will be required to commence as soon as practicable 1 year after commencement of the amended provisions, to allow fulsome operation and evaluation of both the original and amended provisions (clause 52, amendment to section 192A of the DFVP Act).
- The respondent, aggrieved, an authorised person for the aggrieved or a person acting under another Act for the aggrieved may apply for a court review (existing part 4, division 1A, subdivision 5 of the DFVP Act).
- The Bill safeguards against misidentification by providing an exception to the requirement to issue a PPD, if the police officer identifies the person in custody as the PMINOP. In this circumstance, the police officer will be required to investigate, or cause to be investigated, any reasonable suspicion of domestic violence (existing section 100 DFVP Act). Section 100 of the DFVP Act provides that a police officer must consider whether protection is necessary or desirable for the person, for example, by making a PPD naming the person in custody as the aggrieved. This safeguard ensures the PMINOP is not automatically named as the respondent on the PPD issued or filed as an application for a protection order upon release from custody, and provides police flexibility to investigate and provide appropriate protection based on the individual circumstances (clause 34, amendment to section 118 of the DFVP Act).
- A person brought into custody under section 116 of the DFVP Act must not be held in custody for more than 8 hours from when the person is first taken into custody if a police officer reasonably believes the person is intoxicated to an extent that the person is incapable of understanding the nature and effect of a document that must be given to a person under existing section 119 of the DFVP Act.
- A person brought into custody under section 116 of the DFVP Act, but subsequently identified by police as the PMINOP, will be released from custody when a police officer

forms a reasonable belief that the person in custody is the PMINOP (clause 35, amendment to section 119 of the DFVP Act).

- A police officer can only apply to a Magistrate for an order extending the detention period for the person in custody if the police officer reasonably believes the person's behaviour is so aggressive or threatening that it presents a continuing danger of personal injury or property damage (existing sections 119(3)(b) and 121(1) of the DFVP Act).
- If a person taken into custody under section 116 of the DFVP Act is a child, the child must only be taken into custody as a last resort and for the least time that is justified in the circumstances, and only held in custody in a way that allows the child to be held separately from any adults being held in custody at the same time (existing section 126 of the DFVP Act).
- A police officer may take a person brought into custody under section 116 of the DFVP Act to another place at which the respondent may receive treatment necessary for the respondent's welfare (such as a hospital or medical practice) while they are in detention (existing section 127 of the DFVP Act).
- If a person taken into custody under section 116 of the DFVP Act is intoxicated and it is more appropriate for the person to be taken to a place of safety at which the person can receive the care necessary to enable the person to recover safely from the effects of intoxication, the police officer must take the person to a place of safety and release the person from custody at that place (existing section 128 of the DFVP Act).
- A court hearing proceedings for a contravention of a PPD must consider:
 - whether the PPD was issued in substantial compliance with part 4, division 1A of the DFVP Act (clause 47, amendment to section 177A of the DFVP Act);
 - whether the respondent was told about the existence of the PPD or about the condition the respondent is alleged to have contravened (existing section 177A(4) of the DFVP Act); and
 - whether the court should make a protection order under section 42 (clause 47, amendment of section 177A of the DFVP Act).
- When making a DVO under section 42, the court may choose to include more restrictive conditions if they are considered necessary or desirable to protect the aggrieved and any named persons (for example, imposing an MDC).

Additionally, police officers will need to comply with section 58 of the HR Act in exercising the power to issue a PPD, and in determining what conditions to impose (for example, an ouster condition). That obligation will require a police officer to consider any limits on human rights (most relevantly, the rights to freedom of movement, freedom of association, property and privacy).

Consideration was given to whether there are less restrictive and reasonably available ways to achieve the purposes of the Bill that will minimise limitations on a person's human rights.

For example, consideration was given to maintaining the status quo which limits the issue of PPDs to circumstances where it would not be more appropriate for the matter to proceed to

court. This is supported by a list of legislated restrictions in current sections 100C, 100D, and 100L of the DFVP Act, which include where:

- the respondent or aggrieved is a child;
- a DVO is in force or has previously been in force between the parties;
- a PPD against the respondent is in force or has previously been in force;
- the respondent has a recent conviction for a domestic violence offence;
- the PPD would name a child and requires conditions other than standard conditions;
- there are indications that both persons in the relationship are in need of protection; and
- the person who is most in need of protection cannot be identified.

However, maintaining the existing limitations would not improve police efficiencies, as court processes would still be required in an unnecessarily broad range of circumstances which could in many instances be dealt with more expeditiously by police.

As there is no less restrictive way to streamline police responses to DFV, the limits imposed on human rights are necessary to achieve those purposes.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Expanding the PPD framework is likely to result in more PPDs being issued across Queensland, as the primary police response to DFV under the DFVP Act. This objective may impact more respondents' human rights—restricting where they can go, who they can talk to and where they can live—without judicial oversight. To minimise the impacts on human rights as much as possible, the PPD framework will be subject to several safeguards (outlined in detail above). Most importantly, the respondent, aggrieved, an authorised person for the aggrieved or a person acting under another Act for the aggrieved may apply for a court review of a PPD.

On the other side of the scale, an increasing demand for service has impacted the ability of QPS to respond effectively to DFV, including demand across all crime types, exacerbated by the evolving and complex nature of DFV. Without more streamlined tools to respond to DFV, the QPS is not able to meet the increasing demand and community expectations. Providing police with an expanded power to issue PPDs without restriction will support frontline efficiency by removing the necessity for operational police officers to prepare for and attend court for the purposes of providing long-term protection to victim-survivors.

On balance, the negative impacts of the amendments in the Bill on human rights are outweighed by the importance of reducing the operational impacts of the current framework on police to improve frontline capacity to respond to DFV.

As any impacts on the rights to privacy, property and liberty are proportionate, and thus are not arbitrary, those rights are not limited. To the extent that a person's freedom of expression, freedom of movement, freedom of association and cultural rights may be limited by the amendments, any limitation is reasonable and justified.

(f) any other relevant factors

Nil.

Strengthening justice responses to DFV

(a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- The right to recognition and equality before the law under section 15 of the HR Act protects the right of all persons to equal recognition, equal protection and equal treatment before the law without discrimination.
- The protection of families and children under section 26 of the HR Act recognises the importance of protecting families and ensuring children receive the protection needed in their best interests.
- The right to liberty and security of person under section 29 of the HR Act protects individuals from arbitrary arrest or detention and requires that any deprivation of liberty be lawful and justified.
- The right to a fair hearing and rights in criminal proceedings under sections 31 and 32 of the HR Act protect access to an independent and fair court process, procedural fairness, and meaningful participation in proceedings.
- Section 34 of the HR Act protects the right of a person not to be tried or punished more than once for an offence for which they have already been finally convicted or acquitted in accordance with law.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Queensland continues to experience significant and growing pressure on its domestic and family violence system. Contraventions are contributing to this pressure, with the Queensland Government Statisticians Office reporting an 8.6 per cent increase in ‘breach of DVO’ offences in 2024-25 compared to 2023-24, with a total of 71,000 offences in the recorded crime data.⁵ Human rights may be limited where it is necessary and proportionate to achieve a legitimate objective, including protecting people, and their human rights, from DFV and preventing future harm.

The Bill establishes new repeat contravention offences (clause 46, new section 177AA; and clause 48, new section 177AB), introduces a circumstance of aggravation for contraventions of a PPD, amends application of the bail framework to contraventions of DVOs and PPDs, broadens the court's ability to consider and make protective orders in connection with domestic violence offence proceedings, and requires a court to consider whether a DVO should be made when finalising or adjourning proceedings for an offence of contravening a PPD.

The purpose of the reforms is to:

- recognise the heightened risk associated with rapid and repeated contraventions of protective orders and directions;
- interrupt patterns of escalating DFV offending before more serious harm occurs;

⁵ [Crime report, Queensland, 2024–25](#)

- provide stronger and more appropriate legal consequences for non-compliance with court orders and police directions;
- improve accountability for persons using DFV who repeatedly disregard domestic violence protections;
- strengthen both personal and general deterrence and highlight the importance to community safety of denouncing such risky and harmful behaviour;
- recognise the seriousness of domestic violence regardless of whether the relevant protection is provided through a DVO or a PPD; and
- strengthen protection for victim-survivors, whose rights to life, security, equality and protection from violence are directly threatened by repeated and escalating domestic and family violence.

Ultimately, consistent with these purposes, the reforms recognise that protecting victim-survivors from violence and promoting the human rights of people who fear or experience DFV, are consistent with a free and democratic society that based is on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations imposed by the reforms to contravention offences and their penalties are directly linked to, and help achieve, the purposes of the reforms.

In relation to the new repeated contravention offences, the primary limitation arises from the increased exposure to criminal liability and imprisonment, engaging the right to liberty and security of person under section 29 of the HR Act. The offences are directed at a particular pattern of offending behaviour, namely repeated contraventions of a DVO or PPD within a short period. By creating a higher maximum penalty where a respondent commits three contraventions within a 28-day period, the Bill enables courts to impose penalties that better reflect the cumulative seriousness of repeated offending. The increased exposure to detention is therefore directly connected to the purpose of responding to escalating patterns of offending, promoting offender accountability and deterring further domestic violence.

The repeated contravention offences also engage the rights to a fair hearing and rights in criminal proceedings under sections 31 and 32, because criminal liability depends on establishing a more complex offence construction with multiple alleged contraventions within a prescribed period. These features are central to the design of the offence and are the means by which it distinguishes repeated offending from an isolated contravention. Without reference to earlier contraventions, the offence could not identify or respond to the pattern of behaviour and persistent non-compliance with protective orders and directions, which it is intended to target.

The increase in maximum penalties for aggravated contraventions of a PPD is also directly connected to the purpose of the reforms. This amendment principally engages the right to liberty and security of person under section 29 by increasing a respondent's exposure to imprisonment where they commit a contravention of a PPD after previously being convicted of a domestic violence offence. As the Bill expands the role of PPDs as the primary frontline police response to DFV, aligning the aggravated maximum penalty for contraventions of a PPD with that which applies to contraventions of a DVO reflects the seriousness of breaching a

police-issued protective direction and reinforces compliance with lawful interventions designed to protect aggrieved persons from harm.

The amendment also engages the right not to be tried or punished more than once in section 34 of the HR Act because a previous domestic violence offence conviction operates as a factual precondition for the higher maximum penalty. This feature is directly connected to the purpose of the aggravating circumstance, which is to recognise the increased seriousness of continued offending by a respondent who has previously been convicted of a domestic violence offence and to impose stronger consequences for ongoing non-compliance with protective interventions.

The Bail Act amendments are also directly connected to the purpose of preventing future harm and strengthening protections for victim-survivors. The amendments engage the right to liberty and security of person under section 29 of the HR Act, because defendants charged with repeated contravention offences and contraventions of a PPD will be brought within the existing domestic violence bail framework in section 16 of the Bail Act. This ensures that, when determining bail for persons charged with those offences, decision-makers must consider the risk of further domestic violence and, in prescribed circumstances, defendants may be required to show cause as to why their detention is not justified. The amendments support the appropriate management of risks associated with non-compliance with protective DFV instruments, while promoting consistency by ensuring comparable offending behaviour is subject to equivalent bail considerations regardless of whether the relevant protection arose from a DVO or a PPD.

The requirement for a court to consider whether a DVO should be made when finalising or adjourning proceedings for a contravention of a PPD is likewise connected to the purpose of preventing future harm. The amendment engages the rights to a fair hearing and rights in criminal proceedings under sections 31 and 32 because it expands the matters that may arise for consideration in proceedings concerning a contravention of a PPD. A respondent who has contravened a PPD has already failed to comply with a protective direction issued in response to domestic violence concerns. Requiring the court to consider whether a DVO should be made assists in identifying circumstances where ongoing protection may be required and reduces the risk that a respondent who has demonstrated non-compliance with a PPD is not subject to appropriate and continuing protective arrangements. While the amendment does not require a court to make a DVO, it promotes consideration of whether additional protection is necessary in the circumstances of the case and therefore assists in achieving the protective purpose of the reform.

The amendment expanding the circumstances in which a court may make or vary a TPO or DVO during domestic violence offence proceedings is also connected to the purpose of preventing future harm and strengthening protection for victim-survivors. The amendment engages the rights to a fair hearing and rights in criminal proceedings under sections 31 and 32 because it broadens the circumstances in which a respondent may become subject to a protection order, including where a criminal proceeding is adjourned or ultimately ends without a conviction. However, this feature is central to the purpose of the reform. The amendment recognises that criminal proceedings and protection order proceedings serve different functions and operate according to different standards of proof. By allowing the court to consider whether a protection order is necessary based on the evidence before it, rather than the outcome of the

criminal proceeding alone, the reform reduces the risk that an aggrieved person is left without appropriate protection where domestic violence cannot be established beyond reasonable doubt but protective intervention may nonetheless be justified. The amendment also promotes the protection of families and children under section 26 by enabling courts to respond more effectively to ongoing risk.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Consideration was given to whether there were any less restrictive and reasonably available alternatives to achieve the purposes of the reforms.

In relation to the repeated contravention offences, alternatives considered include maintaining the existing offence framework for contraventions of DVOs and PPDs and relying on non-legislative solutions to address repeated contraventions, for example by adopting operational or administrative policies aimed at increasing the rate at which initial or ‘first’ contraventions are responded to and charged accordingly. Another alternative would be to increase penalties or introduce a further circumstance of aggravation for the existing contravention offences.

However, these alternatives would not achieve the purpose as effectively. Non-legislative solutions would continue to require repeated contraventions to be addressed individually and would not provide a distinct legislative response to patterns of escalating non-compliance that signals they should be treated more seriously. A non-legislative response would also not have the same impact in regards to the denouncement of domestic violence and importance to community safety. Relying solely on increasing penalties or introducing new circumstances of aggravation for individual contraventions would not provide the same capacity to recognise and respond to the specific cumulative seriousness of repeated offending behaviour.

In particular, introducing an equivalent repeated contravention circumstance of aggravation for contraventions of a DVO or PPD may have limited practical utility. Where the prior contraventions are separately charged and prosecuted, reliance on those same contraventions to aggravate the sentence for a further contravention offence may give rise to concerns that the offender is being punished twice for the same conduct, infringing on section 34 of the HR Act.

Alternatively, where the prior contraventions are not charged and the behaviour constituting these is instead relied on solely as an aggravating factor for the purpose of sentencing, the decision not to charge the more serious (aggravated) offence risks offending the foundational principle in *The Queen v De Simoni* (1981) 147 CLR 383. That principle establishes that a sentence must be imposed for the offence for which a person is convicted, and cannot be increased on the basis of uncharged conduct amounting to a more serious available offence.

In relation to the increase in maximum penalties for aggravated contraventions of a PPD, alternatives considered include increasing the maximum penalty by a lesser amount. This alternative would not recognise the increasingly significant role of PPDs as a protective mechanism under the DFVP Act and would continue to distinguish between aggravated contraventions of PPDs and aggravated contraventions of DVOs despite both potentially involving similar conduct involving non-compliance with protective mechanisms intended to protect the aggrieved from further DFV. Aligning the maximum penalties provides a more consistent legislative response to comparable offending conduct.

In relation to the Bail Act amendments, an alternative option would be to maintain the existing position whereby the section 16 bail refusal framework applies to contraventions of a DVO but not to the repeated contravention offences or contraventions of a PPD. However, this would not achieve the purpose of the reform as effectively. Contraventions of a PPD and repeated contravention offences are likely to often involve conduct presenting comparable levels of risk, criminality and harm to victim-survivors. Excluding those offences from the existing bail framework would create inconsistent bail outcomes and may result in the risk of further DFV being assessed differently based solely on whether the aggrieved is protected by a PPD or a DVO, rather than the actual conduct of the respondent.

In relation to the requirement for courts to consider whether a DVO should be made following a contravention of a PPD, alternatives considered include leaving the matter entirely to prosecutorial application or judicial initiative. However, these alternatives may increase the risk that opportunities to consider the need for ongoing protection are overlooked. The amendment does not require a court to make a DVO, does not alter the existing statutory criteria applying to DVO applications, and does not remove judicial discretion. Rather, it requires consideration of whether a DVO may be appropriate in circumstances where a respondent has already failed to comply with a protective direction.

In relation to the amendment expanding the circumstances in which a court may make or vary a TPO or DVO during domestic violence offence proceedings, an alternative option would be to maintain the existing requirement that a respondent be convicted of a domestic violence offence before the court may exercise these powers on its own initiative. However, this alternative would not achieve the purpose of the reform as effectively. Limiting the court's power to circumstances where a conviction has been recorded may result in an aggrieved person not receiving the protection of a TPO or DVO despite evidence before the court that could justify protective intervention under the civil framework established by the DFVP Act. Further, the amendment does not alter the existing statutory criteria for making or varying a TPO or DVO, the applicable standard of proof, or the court's discretion. Rather, it expands the procedural circumstances in which the court may consider exercising existing protective powers. Retaining the current requirement would therefore provide a lesser level of protection without materially reducing the impact on human rights.

A number of safeguards exist in relation to the new repeated contravention offence and circumstance of aggravation. Conviction of a repeated contravention offence remains subject to proof beyond reasonable doubt of each individual contravention. Courts retain discretion in relation to sentencing for all contravention offences and can impose an appropriate penalty in all the circumstances. Existing procedural protections, including access to legal representation, rights of appeal, judicial oversight and established criminal process safeguards, continue to apply. Neither the mandatory consideration of a DVO following a PPD contravention nor the amendment to section 42 creates a presumption that a protection order must be made. Importantly, the amendments do not alter the substantive requirements that must be satisfied before a court can make or vary a TPO or DVO and preserve the court's discretion in each case.

Accordingly, it is not considered there are any less restrictive and reasonably available alternatives that would achieve the purposes of the reforms to the same extent while continuing to provide equivalent protection for victim-survivors.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The reforms may impose significant limitations on the rights of some respondents. The repeated contravention offences and increased maximum penalties for aggravated contraventions of a PPD increase exposure to criminal liability and imprisonment. The Bail Act amendments may also limit the right to liberty by increasing the likelihood that some defendants charged with repeated contravention offences or contravention of a PPD will be required to satisfy the existing show cause requirement in order to be granted bail. The repeated contravention offences may require defendants to respond to multiple allegations within a single proceeding and rely upon a broader factual matrix than would otherwise arise for a single contravention offence. The requirement for courts to consider whether a DVO should be made following a contravention of a PPD, and the expansion of the circumstances in which a court may make or vary a TPO or DVO during domestic violence offence proceedings, may also result in some respondents becoming subject to protection orders in a broader range of circumstances, including where a criminal proceeding has not resulted in a conviction.

As outlined above, these impacts are, however, moderated by significant safeguards.

Importantly, the reforms pursue the important objective of protecting victim-survivors from DFV, preventing future harm and strengthening accountability for persons using DFV who repeatedly disregard lawful protections. DFV violence can have profound consequences for victim-survivors and their children, including impacts on safety, dignity, autonomy and wellbeing.

The reforms promote the human rights of victim-survivors as provided under the HR Act, including the right to life (section 16), protection from cruel, inhuman or degrading treatment (section 17), protection of families and children (section 26), and liberty and security of person (section 29). The section 42 amendment in particular promotes these rights by reducing the risk that a victim-survivor is left without appropriate protection solely because criminal liability cannot be established to the criminal standard of proof.

On balance, the importance of protecting victim-survivors and reducing the risk of future DFV outweighs the limitations imposed on the rights of respondents who have failed to comply with a court order or police direction intended to prevent harm and risk. Any limitations are proportionate to the legitimate objectives pursued and are reasonable and demonstrably justified in accordance with section 13 of the HR Act.

- (f) any other relevant factors

Nil.

Enhancing protections for victim-survivors in court proceedings

Clarify the process for restricting self-represented respondents from cross-examination

- (a) the nature of the right

Section 31 of the HR Act, discussed above, provides a right for parties to be heard and to respond to allegations made against them and for courts to be unbiased and independent. What constitutes a ‘fair’ hearing will depend on the facts of the case and, in the context of a criminal proceeding, will involve a triangulation of the interests of the victim, the accused, and the community. The principle of ‘equality of arms’ is also an essential requirement for a fair hearing, meaning that each party must be given a reasonable opportunity to present their case.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The amendments to section 150 and 151 may limit the right to a fair hearing by preventing an aggrieved from cross examining a respondent in an application for a subsequent protection order or an application to vary a protection order, in circumstances where both the respondent and aggrieved are named in a protection order.

The primary purpose of the limitation is to prevent the direct questioning of a victim-survivor by an unrepresented party, to preserve their dignity and minimise the opportunity for a person using violence using court proceedings to perpetrate systems abuse which further harms victim-survivors.

The intention is to provide the court the ability, in certain circumstances, to restrict the direct cross-examination of a respondent by the aggrieved. Thereby, preventing, for example, a person using violence (original respondent) from directly cross examining a victim-survivor (original aggrieved) during a subsequent proceeding where the person using violence (the aggrieved to the application) has made an application for another protection order against the same victim-survivor (the respondent to the application).

This ensures cross-examination cannot be used as mechanism for systems abuse by persons using violence in these circumstances.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

A range of measures have been adopted or developed in various jurisdictions in recent years to improve the position of vulnerable witnesses and enable them to give better quality evidence, however, problems in cross-examination persist. For example, cross applications and cross orders are used by perpetrators as a means of continuing to control, intimidate and terrify victims. They are also a mechanism for systems abuse by the perpetrator by falsely alleging violence or used in retaliation for a protection order by the victim.

The limitations imposed by the Bill directly help to achieve its purpose by reducing opportunities for perpetrators to use court processes as a means of continuing abuse, intimidation or coercive control. By restricting personal cross-examination in these circumstances, the amendments support victim safety and participation in proceedings, and assist in ensuring that evidence can be given without the additional trauma associated with direct questioning by the perpetrator.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive ways to achieve the purpose.

As sections 150 and 151 already provide the court the ability to restrict a respondent from personally cross-examining an aggrieved during proceedings under the DFVP Act, the amendments operate to clarify the application of an existing protection within the DFVP Act in circumstances where a respondent makes a subsequent application for a protection order against the aggrieved. If the amendments were not made, the protection granted to the aggrieved in the original proceedings would not carry over to subsequent proceedings and, the original respondent would be able to perpetuate systems abuse by directly cross-examining a person in need of protection.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Without the amendments, the DFVP Act may provide respondents who make a subsequent application for protection against an aggrieved with an unfair advantage that may compromise the object of the Act to protect victim-survivors against DFV, and which may provide an opportunity for systems abuse by persons using violence. Court procedures should account for other public interests, including the interests of victim-survivors and of society generally in having a person using DFV held accountable for their violence. The amendments are considered reasonable and justifiable to ensure victim-survivors are protected during proceedings, and will promote an appropriate balance between procedural fairness and the prevention of systems abuse, further victimisation and disadvantage to victim-survivors.

- (f) any other relevant factors

Nil.

Clarify how sensitive evidence is disclosed and access during and after DFV civil proceedings

- (a) the nature of the right

The right to a fair hearing in section 31 of the HR Act provides a right for parties to be heard and to respond to allegations made against them, and for courts to be unbiased and independent.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to protect against the potential misuse of sensitive materials and prevent systems abuse in civil proceedings under the DFVP Act. It does this by limiting opportunities for the inappropriate and exploitative copying and dissemination of sensitive materials which victim-survivors may need to disclose in order to access court processes. Improving victim-survivors' experience in court proceedings and protecting victim-survivors from further abuse via court processes. This also serves the purpose of supporting fairness in the criminal justice system.

These are proper purposes and will help to promote the human rights of victim-survivors of DFV, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25).

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The prevention of systems abuse and the protection of victim-survivor safety and wellbeing cannot be actualised without restricting parties to a relevant proceeding under the DFVP Act from viewing or possessing a copy of sensitive materials, subject to appropriate power in the court to make directions as to how sensitive materials are to be disclosed or viewed.

Without the limitation through the amendments, the DFVP Act otherwise currently provides a legitimate pathway for respondents to obtain a copy of sensitive materials which can be used to further victimise and harm the aggrieved. This carries the risk of the DFVP Act being used in the perpetration of systems abuse, as the current DFVP Act may not sufficiently restrict a respondent as a party to a proceeding from viewing or obtaining a copy of these types of evidence during or after a proceeding under the DFVP Act.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive ways to achieve the purpose.

If the amendments were not made, respondents would continue to have unrestricted access to sensitive materials, and victim-survivors would be further exposed to harm and trauma as a result of systems abuse.

It should be noted that, while the amendments introduce a restriction on a party to view or obtain a copy of sensitive materials, they also provide an exception for the court to make an order as to how the evidence may be viewed or obtained in appropriate circumstances.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that the protection from further abuse against an aggrieved outweighs the right of the respondent to unlimited access to sensitive material in order to understand the nature of the allegations against them. It is in the interest of the victim-survivor and the public interest that persons using DFV are held accountable for their use of DFV. The potential prejudice to the respondent from the restriction on viewing or obtaining a copy of sensitive materials is mitigated by the ability of the court to make an order as to how the evidence may be viewed in appropriate circumstances, for example under the supervision of an appropriate person.

- (f) any other relevant factors

Nil.

Expanding police powers to request electronic monitoring information

(a) the nature of the right

Section 25(a) of the HR Act protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. Privacy is about having control over one's own life and being left alone.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment, to assist police to assess and respond to threats to a person's life, health or safety because of domestic violence, is a proper purpose. Measures to improve the effectiveness of law enforcement (and the associated prosecution of crime) are also proper purposes, noting that DFV may occur within a wider context of risk to personal and public safety due to the behaviour of respondents.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation pursuant to the amendment will achieve the purpose by allowing QPS to receive monitoring information in a timely manner where it is needed to assess or respond to threats to a person's life, health or safety because of domestic violence, or to support other legitimate law enforcement actions, such as the investigation of suspected criminal conduct or the enforcement of compliance with the DFVP Act and other laws.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The information sharing framework under the DFVP Act and DFVP Regulation contain a number of safeguards, including:

- section 1G of the DFVP Regulation, which sets out a limited range of purposes for which monitoring information in relation to a MDC imposed on a respondent may be shared;
- section 66F(2) of the DFVP Act, which provides that a person who obtains information relating to a monitoring device or safety device, and uses that information for a purpose other than those permitted by section 66F, commits an offence and is subject to a maximum penalty of 100 penalty units or 2 years imprisonment; and,
- section 66G of the DFVP Act, which provides that information gathered from a monitoring device can only be used in a proceeding (other than a domestic violence proceeding) with the leave of the court.

Other means potentially available to the Police Commissioner to obtain the information include court summons, subpoenas or warrants. However, these means are likely to involve an additional administrative burden and delay. They do not achieve the purpose with the same effectiveness, particularly in emergent situations where time is of the essence to the ability of police to detect and respond to risks to personal or public safety.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Information collected from a monitoring device is deeply personal and can include data related to a person's daily movements and habits which can be used to build a picture of a person's religious, political, sexual, and other personal affiliations and associations.

While a respondent subject to a MDC has been found to meet the criteria for a monitoring device to be fitted (that is, it is necessary or desirable to protect an individual from domestic violence by the respondent), the purpose for which the device was fitted is not one that is consistent with a general loss of privacy at all times. Permitting that information to be shared for purposes outside of the scope of the EM Pilot is potentially a significant deepening of the intrusion on privacy rights.

Balanced against this impact on the privacy rights of the respondent is the importance of the law enforcement purposes for the information sharing, including responding to and reducing risks arising from domestic violence. While there is a wide spectrum of potential investigative and enforcement purposes—some of which might be of comparatively less public importance—many of those law enforcement purposes will be of significant public benefit (for example, in relation to the investigation of a serious violent offence). It is in the public interest that police are able prevent criminal conduct and that people who commit serious offences are brought to justice.

To the extent any individual law enforcement purpose is at the more 'minor' end (such as general data collection), the use of such information is unlikely to be reasonable or proportionate; that is a matter that can be assessed under s58 of the HR Act at the time the potential request is being considered. Moreover, safeguards under sections 66F and 66G of the DFVP Act and section 1G of the DFVP Regulation will continue to apply..

On balance, it is considered that the considerable contribution to public safety and to law enforcement outweighs the significant impact on individual privacy.

As the impact on privacy is proportionate, and thus is not arbitrary, the right to privacy is not limited.

- (f) any other relevant factors

Nil.

Expansion of the Electronic Monitoring Pilot

- (a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- the right to recognition and equality before the law under section 15 of the HR Act asserts that every person has the right to recognition before the law, has the right to enjoy their human rights without discrimination, is entitled to equal protection of the law and has the right to protection against discrimination;

- the purpose of freedom of movement in section 19 of the HR Act protects against restrictions on movement falling short of physical detention. It is about freedom;
- the right of freedom of association under section 22 of the HR Act protects the ability of a person to maintain personal connections with others and associate with other people whenever and for whatever reason they wish;
- the right to privacy in section 25 of the HR Act protects personal information, but also extends to an individual's private life more generally, including protection from interference with a person's physical and mental integrity. Privacy is about having control over one's own life and being let alone;
- Sections 27 and 28 of the HR Act preserve the ability of people of a particular background to enjoy their culture in community with others, including their ability to maintain kinship ties; and
- the right to liberty under section 29 of the HR Act is concerned with protecting people from interference with their physical liberty.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the EM Pilot is to promote the safety and wellbeing of victim-survivors of DfV and to prevent further violence or harm from occurring by deterring a respondent from coming into contact with the aggrieved and by encouraging the respondent to comply with the conditions of a DVO. The purpose of the amendments to the EM Pilot is to expand the pilot statewide and remove barriers to its operation. To the extent that the amendments support the operation of the EM Pilot, the amendments promote the safety and wellbeing of victim-survivors, which is a legitimate purpose for limiting particular human rights.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation of human rights resulting from the amendments will help to achieve the stated purposes by increasing the circumstances in which a MDC may be made by a court. This will be achieved by expanding the pilot statewide, requiring courts to consider making a MDC when making a DVO with non-standard conditions, and removing one of the factors which a court must take into account in making a MDC. Respondents are more likely to comply with the conditions of a DVO if they know they are being monitored, and if they do not comply, police will be able to respond.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Consideration was given to whether there are less restrictive and reasonably available ways to achieve the purposes of the Bill that will minimise limitations on a person's human rights.

Alternatives considered included maintaining the existing pilot locations and duration, or extending the duration of the EM Pilot without expanding it. However, these alternatives would not achieve the purpose as effectively, as they would limit the scope of the EM Pilot and the diversity of locations captured. Expanding the pilot to operate statewide offers an opportunity to expand the number of eligible matters, thereby supporting a more robust evaluation.

The amendments have also been designed to minimise limitations on human rights. While courts will be required to consider whether to impose a MDC, courts retain discretion not to impose the condition where satisfied it is not necessary or desirable to protect the aggrieved from domestic violence. An alternative approach of introducing a mandatory requirement to impose electronic monitoring in all eligible matters would represent a more restrictive approach. Retaining judicial discretion ensures that electronic monitoring may only be imposed where appropriate in the circumstances of the particular case. Accordingly, the amendments represent the least restrictive option for achieving the stated purpose, building on the existing framework established for the EM Pilot.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that the impact of the limitations of the human rights of respondents subject to electronic monitoring is outweighed by the benefit gained by the amendments. The amendments will support the further expansion and operation of the EM Pilot, meaning that a larger cohort of high-risk respondents will potentially be subject to electronic monitoring. This will have the effect of promoting the safety and wellbeing of a larger cohort of victim-survivors.

- (f) any other relevant factors

Nil.

Conclusion

In my opinion, the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2026 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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