COMMUNITY AFFAIRS COMMITTEE

Members present:

Mr P.A. Hoolihan MP (Chair)
Ms F.S. Simpson MP
Mr M.W. Choi MP
Mr P.J. Dowling MP
Mr A.P. McLindon MP
Mr J.D. O'Brien MP

Staff present:

Dr K. Munro (Research Director)
Ms M. Telford (Principal Research Officer)

PUBLIC HEARING—EXAMINATION OF THE DOMESTIC AND FAMILY VIOLENCE PROTECTION BILL 2011

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 11 OCTOBER 2011

Brisbane

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Committee commenced at 8.02 am

CHAIR: I declare the public meeting with the Minister for Community Services and Housing and Minister for Women on the Domestic and Family Violence Protection Bill 2011 open. Thank you for your interest and for your attendance here today. The committee has resolved to allow television and media coverage of today's meeting.

The Community Affairs Committee has a responsibility under section 93 of the Parliament of Queensland Act 2001 to examine bills in its portfolio areas. Under the act the committee is to examine the policy to be given effect by the legislation and the application of fundamental legislative principles.

Before proceeding further, I would like to introduce the members of the committee present today. They are Ms Fiona Simpson, the member for Maroochydore and deputy chair of the committee; Mr Michael Choi, the member for Capalaba; Mr Peter Dowling, the member for Redlands, Mr Aidan McLindon, the member for Beaudesert; and Mr Jason O'Brien, the member for Cook. My name is Paul Hoolihan. I am the member for Keppel and the chair of the committee.

The Community Affairs Committee is a committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which adopts a non-partisan approach to its proceedings. Although the committee is not swearing in witnesses, I remind all witnesses that these proceedings are a formal process of the parliament. As such, any person intentionally misleading the committee is committing a serious offence.

I also remind witnesses that Hansard will be making a transcript of the proceedings. Therefore, I ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace. It is the committee's intention that the transcript of the hearing be published. Before we commence, may I ask that mobiles and pagers be switched off or put on silent mode. I now call the Minister for Community Services and Housing and Minister for Women and departmental officers.

STRUTHERS, Hon. Karen, Minister for Community Services and Housing and Minister for Women

GILES, Ms Megan, Director, Community Policy, Non-Government Organisations, Child Safety and Families Strategic Policy and Performance, Department of Communities

RAEBURN, Ms Di, Manager, Community Policy, Child Safety, Youth and Families Policy and Performance, Department of Communities

SWAN, Mr Brad, Deputy Director-General, Communities, Child Safety, Youth and Families, Department of Communities

CHAIR: Minister, would you like to make a brief opening statement?

Ms STRUTHERS: Thank for you for the opportunity to present information about this new domestic violence legislation. You have had a big workload and you have been going through that very well. Thank you for the opportunity this morning to go through the details of this bill. We will be back again later in the week for a public hearing.

I wanted to introduce senior staff from my department. They are the people who have been doing the hard yakka on this. They are Megan Giles, Brad Swan and Di Raeburn. There are other people across the agency who have been involved. This bill is the culmination of many months of consultation. We have had meetings in around 17 locations around Queensland. I have attended some of those. Overwhelmingly at those meetings community service providers, victims of domestic violence or survivors of domestic violence themselves, the police and others have all given a big tick to the current legislation saying that, in the last 20 years, it has provided a lot more protection than has ever been provided in the past. So the current laws are serving us reasonably well. But there are five or six key areas that were common across those meetings and in submissions where people wanted to see change. Largely, that was to strengthen the provisions of the orders. This is civil legislation. It relates to orders to protect people from further harm. The whole context of this legislation is not punishing for criminal behaviour—that is under the Criminal Code—but providing those who are at risk of future harm protection from that future harm.

A number of people have given us really good feedback. Our staff, to their credit, have done a very good job balancing all those, at times, conflicting details—not generally the principles. I think most people were at one with the major changes; it was really a matter of getting down to the details. Our staff have done an excellent job.

We have broadened the definition and provided clarity around the definition and pattern of abuse that needs to be understood in domestic violence relationships. We have given police stronger powers. Police issued orders is a new thing. Some people were a little cautious about additional police powers; others saw it as very important that, particularly in regional parts of Queensland, police had an immediate opportunity to put an order in place to protect someone from future harm without having to get a magistrate straight up. I am happy to talk more about that as well.

Within those orders, the police can provide a cooling-off period of 24 hours and require the perpetrator of the violence to leave a family home. They can detain a perpetrator for up to eight hours. It was considered important to allow, particularly in cases where it might be women and children at harm, them time to flee or for things to settle down at home or for maybe the perpetrator to get through a pretty rough hangover and settle down. Largely, we are talking about male perpetrators although probably in five or six per cent of cases women are also perpetrating violence.

One of the things people said to us around the state was that there has been an emerging practice of cross-applications—that is, the police will attend, things get all too tricky and complex and it is full of heat and drama and they seek an order or an application on both parties. That has been occurring in about eight per cent of cases. It was never intended that this would be an order just to settle things down for the moment. It was always supposed to be an order to protect those most at the risk of harm. So this legislation gives greater guidance to the police and others to actually investigate who is most at risk and who needs the order. If there are criminal charges, then they should apply the Criminal Code. If there are assaults or whatever, that applies as well. This is really about identifying who is most at risk of future harm and putting an order in place or applying for an order.

In the last year or so the police have attended over 50,000 occurrences. Of those, there have probably been around 24,000 or so applications that have been made and granted in courts around Queensland. It is very important that we have strong legislation. It is also important that we have good guidance to the courts about the powers available to them.

One of the provisions in the current legislation is ouster orders, but they have rarely been used. An ouster order allows the court to impose an order on the perpetrator of the violence to leave the home. This legislation gives greater guidance to the courts to use that provision. What we have seen in places like the Sunshine Coast—all around the state—is women having to flee and then ending up in the social housing system or on the social housing register as basically homeless people. If the perpetrator of the violence stopped the violence, they would have a family home. So homelessness for women is largely occurring because of domestic violence. We are trying to get a system in place in Queensland. We have a program operating on the Gold Coast, the Sunshine Coast and other parts of Queensland called Safety Upgrades where we e can actually work with services like Centrecare to assess the home. If there is a need for security systems, risk management strategies, links back to the police, or whatever, that can be done in a comprehensive and planned way and an ouster order can be applied so that the perpetrator stays away, as much as you control that through an order, and the women and children can stay in the home. We want to try to achieve a system where we have stronger laws, stronger powers for police and a very clear message that women and children—the majority of the cases involve women and children—need to be safe in their own home and not have to flee.

I visited dvconnect, a state-wide service, the other day and saw their board. They have both a manual and an electronic system. They have all the refuges around the state on it and, basically, at any given time they are all full. There are vacancies at certain times in the day or certain days of the week but, basically, they are all full. They do not need to be full if we can actually keep women safe in their own homes and not having them flee.

I believe this legislation is a great step forward. The laws generally have been serving us well. This is the first major overhaul in 20 years and in key areas of the law it strengthens the powers, particularly of the courts and police, to hold perpetrators accountable for their actions and to protect those who have been victimised. I am happy to respond to any questions.

Mr O'BRIEN: Thank you for the introductory comments. I obviously support the legislation. I would just like you to go into more detail on the additional police powers that the bill provides.

Ms STRUTHERS: Basically, the police have, as in other jurisdictions, the power to issue a notice straightaway. A police issued notice is something we have not had in Queensland before. Basically, they can do that straight up and then they will need to get the matter before a court.

Mr O'BRIEN: What are some of the things that could be in the notice?

Ms STRUTHERS: Basically, it could have the cooling-off condition—that the perpetrator is to leave the house for 24 hours. I will go through some of the conditions they must be satisfied with. Then there are general conditions they have. The perpetrator must stay away or must desist from violence. In issuing a notice, a police officer must be satisfied the notice is necessary or desirable to protect the aggrieved from domestic violence, obtain the approval of a supervising police officer to issue the notice, consider the accommodation needs of the respondent if imposing a cool-down condition, explain the notice to the respondent and aggrieved person, take reasonable steps to ensure they understand the notice and its consequences and personally serve the notice on the respondent. The notice becomes an application for a protection order to ensure the notice is considered by a court.

In terms of the time lines, the maximum period of time that can elapse before a police protection notice is considered by a court is 28 days. In most areas, where a local court sits at least once a week the notice will have to be considered within five business days. We are trying to take account of a lot of your communities, for instance, where there is not a regular sitting of the court or certainly not a weekly or daily sitting. In urban areas it is much easier to bring a matter straight before a court.

Mr O'BRIEN: What must the officer satisfy themselves of with regard to accommodation? If the bloke gets punted, what does the officer need to do? You said they need to be satisfied that the person has alternative accommodation to go to. Does that not weaken—

Ms STRUTHERS: The police are responding to this issue pretty well across the state. I have noticed a remarkable change in the last 10 years. They will ask, 'Do you have accommodation to go to?' They will know their service system or they will give him the number for the men's help line. They are not meant to just say, 'Right, out you go and off you go.' In fact, in terms of safety, it is much better if they know where he is going and that he is not going to be continuing to harass and cause strife. Again, on remote communities it is very difficult. They are going to have work with community leaders to actually have family and others try to take some responsibility here. If it is criminal charges and if there is an assault—and many of these instances are serious criminal offences—he will be in the watch-house.

Mr O'BRIEN: Have you seen the submission that the committee has received from Ken Hendrie?

Ms STRUTHERS: I have not, actually. It was briefly mentioned to me, but I have not seen it in detail.

Mr O'BRIEN: Should we be asking these tomorrow? Shall we wait until tomorrow so that the minister has an opportunity to see the submission?

Ms STRUTHERS: I am happy to take a question on notice.

Mr O'BRIEN: Mr Hendrie has raised not concerns but the rank at which a supervising officer is to sign off on the notice. The legislation is for an inspector; is that right? He suggested it be—

Ms STRUTHERS: For a DVO, is it an inspector? Do you want us to answer or do you want us to take it on notice?

Mr O'BRIEN: We can do it tomorrow; you can take it on notice. Please yourself.

Ms STRUTHERS: I will have a read of his submission. I might just say for your benefit in praising the police that one of the systems they have done really well—and you probably know these people in your own areas—is domestic violence liaison officers. Those officers in any given region have to go through all the DV occurrences in their region and pick up on any particular problems and give feedback to those officers. So they have an internal system of checks and balances. I have met with a number of these people in their training sessions and in their state-wide meetings. It is a really good feedback loop of providing support to officers to understand the legislation and how best to apply it. For instance, on the issue of cross-applications, many of the DVLOs are giving feedback. They are asked, 'Why did you take out an application on both parties?' They have to do a 'please explain'. If they are satisfied as the senior officer that it is okay, it is okay. If they are not, they then give them feedback about the intent of the act. There is some really good work happening there. This legislation tries to strengthen that. The police training will be enhanced in order for police to understand the dynamics of domestic violence and how best to take action.

Ms SIMPSON: Minister, I wish to ask a question in respect of those cross-orders. Could you explain a little bit more how these new provisions would operate, given that there has been this history of people with cross-orders? How do you envisage the new provisions?

Ms STRUTHERS: Firstly, with the police issued notices they will not be able to apply orders on both parties. They will have to take a pro-investigative approach and assess who is most at risk. That puts the onus on them to do the work first-up. In relation to the applications before the courts, we are certainly seeking to give greater guidance to the courts around the dynamics in domestic violence. So right from the definition we have in this bill through to other provisions in the act, we are actually giving greater guidance to the courts that what we are looking at here is a pattern of ongoing power and control, a pattern of abuse. It is not a one-off. Say, for instance, in retaliation a person gives their partner a whack and the police arrive and see that. They need to assess whether that is a criminal assault at that point. Is there a need for an order? These orders are really there, as I said, to protect the person most at risk of future harm, not as a punishment for a current behaviour. It is to get both the courts and the police to understand the dynamics of what is happening here and certainly, where possible, avoid cross-applications and have a pro-investigative approach.

CHAIR: Just to follow on from that, Minister, whilst accepting that that is what the police may be required to do, there is still nothing at all that stops a person who has an order brought against them from bringing an application on their own behalf at a later time as a cross-order, is there? Before you answer that, what you have indicated may well be a pro-investigative type of approach during the initial stages, but there is nothing stopping the person against whom that police issued notice is given from bringing their own application at a later time.

Ms STRUTHERS: I will give my understanding and then I will check with our staff. My understanding is that, you are right, they can take their own application. Given the definition in this legislation and the pattern of abuse that is required to be established to be satisfied that it is a domestic violence incident, the courts will have to be satisfied that there is an ongoing pattern of abuse and that someone is at risk of

future harm. Let us be real here. We know that people get into some very complicated personal and conflictual relationships. There is a bit of tit for tat. There is a bit of, 'You said this,' and, 'I said this,' and, 'I'm going to do this.' So it does get very difficult. We are trying to give greater guidance for the understanding of the pattern and the cycle of ongoing abuse. That is what we are trying to protect here.

If there is a weakness in our system, it is the lack of application of the criminal provisions, and this legislation cannot do too much about that. We actually need police and courts—particularly police in attending incidents—to actually apply the criminal law. The court must consider the person most at risk before granting a cross-order. You cannot tell a magistrate what to do, but we will be working with the Chief Magistrate in training and education of magistrates and the training of police because we really want them to understand this pattern of abuse and identify who is most at risk.

When this legislation first came in 20 years ago, I was working in this sector. None of us even envisaged a cross-application, and now there are 8,000 of the things. It is one of those unintended things that took hold somehow. Some of you might know Zoe Rathus, who was leading the Women's Legal Service at the time. Recently I saw Zoe at one of the consultations and I asked, 'Did you ever envisage that this would happen?' and she said no. The nature of human dynamics is such that, particularly in the policing of domestic violence over the years, they have found it in their minds easier, fairer—whatever—to apply for orders on both parties. It does not really help anybody not to understand who is most at risk and apply the order accordingly by the application.

CHAIR: I guess in one way I am going a little bit beyond the police intervention order. A lot of times it is not the police who bring both the orders; one of the parties who has an order against them will go out and make their own application. In a lot of cases, any evidence that might emerge out of that can indicate that there has been quite substantial violence from both sides. When it comes down to the balance of probabilities, in my experience a lot of the magistrates erred on the side of caution and said, 'Well, both of them are at future risk so I will make orders against both of them.' If you have a look at the 8,000 cross-applications you will find that a big percentage of them are made by consent rather than by a decision of a magistrate. I always had a concern about that as a lawyer.

I am not even sure that this goes as far as I would like to see it go. I appreciate what you are saying—at least it is a step—but I do not think it will ever remove those cross-applications. I have another real concern about those sort of cross-applications that may well be made by consent because at some future time there will be an application to the Family Court. It has always been a concern that when they are made by consent there is never any evidence given under oath and then you go to affidavit material in the Family Court in which both sides allege 'this has happened' and then it is flick-passed to a federal magistrate or a judge as to whether or not the children are in any sort of danger or whether there was, in fact, the level of domestic violence. I have had an experience where, on the basis of what was said in the Family Court, an application has been brought in the Magistrates Court to vary the order in relation to going to the family home and in actual fact taking or having the child for contact visits.

Ms STRUTHERS: You have a few parts to that.

CHAIR: Yes, I appreciate that.

Ms STRUTHERS: I am glad that you are giving this the full consideration that you are. They are very important and difficult issues. Firstly, the intent is not to get rid of all cross-applications. It was an unintended activity or consequence, but in some cases it might be justified. It is not to get rid of it; it is to limit its use to where it is needed. I think that responds to one of the first points you made.

Secondly, in relation to consent orders, a number of these matters are dealt with by consent. That is both good and bad. The good of that is that hopefully it can settle things down, parties accept responsibility and away they go. Also, it is done under duress in some cases to just settle it down, to get someone off your back, to get the police out of there or whatever. There are a whole lot of dynamics in this stuff that is really difficult.

Unless you are there on the spot in every case, you can only go with the generalities. Here, what we are trying to achieve is at least a much better pro-investigative approach by the police to assess who is most at risk. It does have implications for future family law matters. If, for instance, there is a cross-application and both parties, be it two men, a man and a woman or whatever, have orders on them and they have not made admissions—it has been by consent—that may be something that is considered by a family law magistrate. I am not across all the detail of how it intersects with the family law. My very accomplished staff here will know the detail if you want more on this and we can maybe pursue that on Wednesday.

It is difficult and you cannot really cover every contingency, but to the best of our ability we are trying here to provide fairness and safety. Ultimately, holding perpetrators accountable is a very important part of this legislation with stronger police powers. We are extending the penalty for breaches of orders. There were something like 7,000 or 8,000 breaches of orders last year. You all know situations where people are living in grave fear. The bit of paper that is the application and the order does not stop that behaviour. Police and others have to go to drastic lengths and, in some cases, people move interstate, change their identity and away they go and try to make a new life. It is really on a continuum here of what might be a lower level sort of behaviour and then there are others who are really subjected to many, many years of abuse and harassment. It is difficult, and the consent orders do make things easier at times. If there is consent then, bang, the stamp is on it and off you go. It does mean in some cases it is done under duress. It can, as you noted, have implications for family law matters.

Mr CHOI: In terms of incidents of DV other than between spouses and partners and, similarly, with increasing evidence of DV between children and elderly parents or grandchildren and elderly grandparents, how has that been captured with this new bill? Are there any special provisions to address the uniqueness of that kind of relationship?

Ms STRUTHERS: My understanding is that these orders can apply to adult children—not those under 17. They can be named in orders so that they can gain protection within the conditions of the order. But you are right: there is an emerging problem. We all see it through our local offices where some people are at the end of their tether; they just cannot control an adult child. These orders can apply in those situations.

Mr CHOI: So there is no difference between a partner and an adult child in terms of how the issue is dealt with?

Ms STRUTHERS: You would have to be satisfied that there is a pattern of abuse; that the power and control pattern is in that case. It can be very difficult, though. People tend not to want to take action against a son or daughter. These orders can apply.

Mr McLINDON: Minister, are DV liaison officers required to intervene before a court order or after? What level of intervention do they have?

Ms STRUTHERS: You mean when I talk about the feedback?

Mr McLINDON: Yes.

Ms STRUTHERS: It is not at a certain point. It is basically just a routine part of their work. They see all the DV occurrences through their district and they go through that every week, every month. So some matters that they give feedback on may have already gone to court. It is not a totally foolproof system, but it is a very important feedback and training and learning system. For instance, the member for Capalaba raised the case of an elderly parent or an older parent being harassed or violated by a son. In a case I heard of recently that a DVLO spoke to me about, a tradesman rang the police because he was at the house and he could hear the mother getting assaulted upstairs. The police arrived. He had gone and they took no action. The DVLO asked why. They could have taken a criminal charge and even under the current law made an application for a DV order. That is the sort of system. That officer then had to do a please explain. I do not know that that was remedied. But for future practice he would then know he has those two avenues.

Mr McLINDON: It is improving process; it is not necessarily getting involved in the mediation.

Ms STRUTHERS: Yes. I guess if they give the feedback before a matter comes back they can then work with the prosecution corps and provide additional information or follow something up. It is not foolproof, but to their credit the police have done a good job in training and supporting their staff right around the state. That has been a system that has been building up and improving over the last decade. Let me just clarify: in terms of the current law with adult children it does apply, does it not? Yes. So in terms of the changes now it is really the definition of domestic violence that captures whether magistrates and police would need to be satisfied that it is not just a one-off assault or something, there really has to be a pattern of abuse and someone who is at risk of further harm.

Ms SIMPSON: I was just wondering if the minister would be able to explain what the processes are. We have the legal processes, which obviously have to focus on keeping people safe. But when the police are called out, and I appreciate you are not responsible for the operational side of the police, these laws are to empower them to do their job to keep people safe. What may potentially change with this legislation in the typical processes in how they approach that scenario? That is one part of my question. Another part would be to understand what support services come alongside of not only the victim or victims, but also the interventions with respect to the perpetrators, at that point, as opposed to when we get further down the track with intervention orders, with the programs that they may be required to take.

Ms STRUTHERS: We might pursue this more in the public hearing, but let me start with your last part first. In terms of the perpetrator programs, we have not mandated perpetrator programs. There has been debate nationally and internationally about whether you court mandate orders as part of a condition of these orders. Some jurisdictions do it, others do not. In response to that, basically the courts will use their local knowledge. In Rockhampton, where we have a very intensive coordinated trial underway of an integrated response to domestic violence, the magistrates are working very cooperatively with the police and service providers and those men will generally be ordered to be part of a program. The programs are variable around the state and around the nation. The Commonwealth government, through the National Plan to Reduce Violence against Women and Children, is tossing up this idea, too. One of the outcomes is do we mandate, do we not? They are looking at developing guidelines for perpetrator programs. But until all that takes hold and you actually have guidelines and certain standards within these programs, they are very variable and you could not really mandate it. It is effective for some perpetrators, others it does not have much of an impact on.

The first part of your question I think related to what actions can the police take and what is different in this. I think what I have covered in relation to police protection notices, the police issued notices, is a big change. That really strengthens the power of the police to take action immediately. In terms of the service system, Queensland has a very good state-wide service system and dvconnect is at the hub of that, being a crisis service that can take the calls from women in distress or police and others who are seeking help for someone and support them through a process. They even will use brokerage funds to house people. They

have preferred motels that they know around the state. In some locations where there is not immediate access to a refuge they will organise for women to be picked up and housed with their children. It is a very good system of support that is available. The police work in well with dvconnect. They will generally attend at a bus stop or wherever to help people and to keep them safe. I have been very pleased with the way I have seen police in various regions, in Mount Isa and other places, really cooperating well with the domestic violence services.

CHAIR: Minister, you mentioned ouster orders. The new act actually uses the term 'ouster condition' which in actual fact was not included in the original act, although the court could impose conditions to keep a person away. What provision appears, and if it does where does it appear, as to what will happen for an aggrieved if they are left in a premises? I notice that clause 63(2) makes declarations in relation to legal or equitable interests. If an aggrieved person remains in the premises, if the perpetrator is the subject of an ouster condition—I know they can get a return condition—what provision is made for a continuation of the support for that person in terms of maintaining the premises? I appreciate it is technically a Family Court property matter, I suppose, or an income matter, but that may not come before a court for months and you have perhaps a woman and children as the aggrieved living in a premises where the perpetrator may well be the only wage earner and is not prepared to make any payments. Surely in the long-term that could, in fact, work against the aggrieved in that they will not even have a home to be in.

Ms STRUTHERS: Again, you have gone to the core of these intimate relationships and the financial connections and things that are involved. No law can really cater for every aspect of our living arrangements. I might ask Megan or Di to talk about that, because some of it is the interface with the Family Law. In terms of men being required to leave and then some of those other conditions that the chairman has spoken of, does anyone want to respond to that? Do you want us to get back to you in more detail on Wednesday?

CHAIR: I would appreciate it. It is of concern.

Ms STRUTHERS: I do not want to put you on the spot, but if there is something you want to add now? Or we can deal with it on Wednesday.

CHAIR: I do not mind if you take it on notice.

Ms Raeburn: Mr Hoolihan, essentially you answered the question at the outset in that the Domestic and Family Violence Protection Bill does not have an objective of making property orders between the parties or determining income matters; it is purely about safety. So, yes, it is a matter for the Family Court if there is to be a division of assets or ongoing maintenance. I appreciate that that may not come before the Family Court immediately. It may be that the need for financial upkeep of the house, to pay the mortgage et cetera, is a factor that actually guards against an ouster condition actually being the appropriate order in that instance.

Ms STRUTHERS: My understanding would be if someone initially gets an ouster order and it is proving difficult or they want a variation, they may seek a variation. They may sell the house. This legislation cannot cover every contingency in these deeply personal matters. The point you are raising is a very important one and it may be that it is a reason a person may not seek an ouster order, or a court may not give an ouster order or there may be a variation. People will have to deal with their personal circumstances. If the house is not affordable for a person—for example, a woman and children without a decent income—it may be sold. These are the terrible consequences of this sort of stuff.

CHAIR: They are the decisions, though, that have to base the ouster order if that is one of the outcomes, perhaps.

Ms Raeburn: Just a further point, there are provisions in the Residential Tenancies and Rooming Accommodation Act that give the Queensland Civil and Administrative Tribunal power to make orders about tenancies. QCAT can actually make orders to remove a perpetrator as a tenant from a lease and to replace an aggrieved. We have included provisions also that allow those applications to be combined and heard in the Magistrates Court along with domestic violence applications. That is one mechanism that does allow some sort of future certainty to be provided. It does not address the issue that you raised about the aggrieved's financial ability to meet the rental payments, but it certainly is a measure to provide some legal certainty about security of that housing.

CHAIR: There is a penalty for breaching domestic violence orders, but there is no penalty for breaching an intervention order other than the approved provider giving notice when they become aware of the contravention. That is an intervention program or counselling under 69.

Ms STRUTHERS: We landed here after debating this issue and hearing people's comments on it. It is hard to impose a criminal sanction on intervention orders that are consent based. It is a civil consent based environment we are working with here. I think we would find it extremely difficult if a person did not meet those conditions of the intervention order.

CHAIR: The intervention order, as I understand it, is in fact part of the domestic violence order. It is not a separate order.

Ms STRUTHERS: Yes. So, if they do not meet a counselling condition or—

CHAIR: That is right. That does not breach the order? It seems incongruous to me. If they have an order and they breach the order then there is a penalty for breaching the order.

Ms STRUTHERS: Again I will just check with Megan. Are we concerned, for instance, where there are not counselling programs?

CHAIR: There are parts of the state where there will not be, but I think the section itself says they can only make an intervention order if an approved provider is available to provide that or the counselling at a location is reasonably available.

Ms STRUTHERS: Mr Chairman, it is a separate order, but I understand what you are saying about giving it teeth. Do you mind if we take that on notice and have another look at it? Part of the problem is even if there is a condition that you must attend counselling—

CHAIR: And the respondent agrees. So the respondent is aware of it, but there is no actual penalty for breaching an intervention order; it is only for the breach of an order. I wondered how they were tied together. Clause 69 reads—

If a court makes or varies a domestic violence order, the court may make an order (an ***intervention order***)

Now certainly I know that is not mandatory

That requires the respondent to attend either or both of the following —

If the order is made by consent and there is an approved provider, and that is the only part of the order that they do not comply with, I would have thought that would have been a breach of the order in any event, would it not?

Ms STRUTHERS: They are separate orders, but can we take that on notice and I will have another discussion with staff. We want to be as strong as we can in relation to requiring people to undertake the conditions that are applied, but it does get difficult. You want them to consent. You want there to be an incentive to put up their hand to do a program. If there is a looming criminal sanction if they do not they may say they do not want to do it. It is that difficult position where you are trying to get someone to consent to go to a program. We are not mandating it, but you are trying to get their consent to that and then if there is a criminal sanction it makes it difficult. That is where we have landed in terms of applying no criminal sanction. Let us have another look at it. That is the benefit of the committee process.

CHAIR: I can understand that as a carrot rather than as a big stick. If you could have a look at that.

Ms STRUTHERS: We can chat about that again on Wednesday.

CHAIR: That will be fine.

Mr CHOI: Minister, during your opening statement you made mention of the fact that the stakeholders responded to you by saying that they want more protection for victims from future harm. Can you elaborate on how that is being addressed in this bill?

Ms STRUTHERS: Basically, the whole approach is for the police to take a pro-investigative approach—so for them to understand the dynamics of domestic violence and assess who is most at risk. For instance, at the moment, as I said, one of the weaknesses in our system is that the Criminal Code is not being applied as it should. Some of our key people that you may hear from on Wednesday who are part of a domestic violence advisory group that advise me have been to Canada. Canada has a family law court that is criminally based, so these matters are dealt with, firstly, within a criminal context and then civil orders are a secondary thing. So they actually hear the criminal nature of the behaviour and assess that. I am not across the details, so bear with me.

What some stakeholders have said in the course of these discussions is that you are strengthening the civil response through this bill, which is good, but you have to keep on the police and the courts to take these matters seriously as criminal matters. For instance, a concern about the cross-orders is that it allows the police a bit of an easy option—'Here we go. Settle down. We've an order here on both of you.'

This example is generalising, but if it is a little Asian woman who is two feet tall against a big fellow and he has a go in the kitchen and she turns around and she has a knife and when the police arrive she is holding the knife or she has it up against him, on the face of it they might think, 'Okay, she's the one. We'll take action against her.' But in terms of risk of future violence, they have to be satisfied about the pattern that has been going on in that relationship, who has been doing what to who and how and for what period, and who is really at risk of future harm. On the nature of the criminal matter, if she has assaulted him, pursue an assault charge, or if he has assaulted her, pursue an assault charge. What we are not seeing is the application of the criminal law. I guess in many of these cases people are aware of the domestic violence legislation and the ability to have an order on someone, but really it is about protection from future harm. They really need to assess who is at risk here.

CHAIR: In terms of that, the bill proposes that the police must investigate domestic violence. Was any thought given to the fact that, even with the investigation, they should be obliged to make an application for a protection order? In New South Wales, they must make an application if an offence has been committed, is being committed, is imminent or is likely to be committed unless there is a good reason not to do so. Has any consideration been given to the fact that they must not just investigate but they must make an application?

Ms STRUTHERS: Can I just check in relation to the direction to the police? Do you want to speak to that, Di, in terms of what the chair has said in relation to the police must make an order. We are not requiring them to make an order but we are requiring them to investigate.

Ms Raeburn: The reason we have not required them to make an application for an order is that the circumstances will differ on every occasion. It may be that there is an existing order in place so the appropriate action for the police officer would be to charge the person with a breach of the domestic

violence order. It may be that the officer determines to seek a variation to the existing order; it may be that the police attend and it is actually not a domestic violence incident, even though it was recorded as such when the police officers were sent to the location.

The focus is on police investigating. The police are actually going to support the rollout of the new legislation with stronger investigative resources and tools for them. They are reworking the operations procedures manual to support that. It may be that the respondent has a mental illness and it is not appropriate on the spot to issue a police protection notice or to initiate proceedings without further investigation of the person's mental capability. Because there are a range of circumstances that police might encounter when they attend a scene, the focus is on enhancing the investigation so that police then have the information to make an informed decision about how to proceed.

Ms STRUTHERS: The other point that people made to me, too, was that to require them to take an order kind of gives them the remedy as a civil remedy rather than pursuing the criminal remedies too. Some stakeholders were saying to me, 'Don't say they must take an order because in fact we want them to apply the Criminal Code and assess whether there's been an assault or some sexual violation that might be under the Criminal Code.' This is one remedy.

I guess what we are trying to do here, as I said, is identify the person or people who are most at risk of future harm—this is a civil order—but we have to elevate the significance of and the utility of the Criminal Code in these matters. It has taken a long time. You would all understand that 20 years ago this was seen as a private family matter. People did not want to intervene and that is why—full praise to the police—they have really turned the system and the culture around but we are still not at a point where we ought to be. Where we ought to be is both fully investigating criminal behaviour that has occurred and, as a secondary thing, applying an order. It is sort of the other way around: they are using the domestic violence legislation as their primary tool. So we are trying to change that. We are strengthening this tool but also, with the police training and other work we do, we clearly want to get across the message to also apply the Criminal Code.

Ms SIMPSON: Can I ask a question about breaches of DV orders and what occurs when there is a breach? How is the law currently applied and what is proposed under this? Will there be any difference in regard to how breaches of DV orders will be handled under this legislation?

Ms STRUTHERS: Again, right from the definition of DV through to the police powers, it is not just one thing that changes as police get to understand the behaviour better. For example, another event that was drawn to my attention through the consultation was of a man who had been with a woman for three months—and, sadly, she had a baby to him—and he kept harassing her. Her father helped her relocate, whacked in a security system and thought it would all be over but it was not. He then kept doing all sorts of things for 18 months. Finally, he left a book on her doorstep with a page mark to an incident where a woman was getting her throat slit. So it was clearly an act of intimidation. Who would do that other than Bozo? The police had been unable or unwilling to take him on any of these other behaviours, and he was sort of clever enough to not quite breach an order—for example, to be just outside the 100 metres or 200 metres, to be at her workplace but out on the fence line or whatever. A smart police officer took the book and took a DNA sample and guess whose DNA was on the book? Mr Bozo's.

What happened to Mr Bozo? He was in breach of an order, he was back to court and he is now living with his parents in some other part of the state. It was resolved because, finally, a diligent police officer thought this woman had had enough. Her kids were frightened; they were terrified. The police officer said in the consultation what really turned it for her was the terrified kids. This behaviour was absolutely terrifying them.

This improves and clarifies the definition of what constitutes domestic violence so that it applies to the breaches as well. So it is emotional abuse, it is intimidation, it is patterns of harassment and all that sort of stuff that goes on over a period of time that erodes people, that wears them down, that frightens the life out of them, including the kids. That is where it is important to see the legislation in its entirety and that is what the police will be doing in their training. They will be doing scenarios of emotional abuse and intimidation, getting their thinking around these other things that are serious and the impact that those behaviours have on people who are vulnerable.

Ms SIMPSON: Where there are actual proven cases of breaches and people going before the court, there is research that shows that there are not necessarily a lot of convictions recorded. So there is still this issue of how the court system looks at the penalty and the consequences of a breach. Has there been consideration given to whether this is an area that needs to be strengthened?

Ms STRUTHERS: Again, I will check with Di. I had not properly prepared her well enough; I thought Wednesday was the day we would put the spotlight on. In terms of the breaches, my understanding is the definition of 'domestic violence' is the key here. Once they understand that these other behaviours constitute domestic violence, that applies with the breaches. Di, is there anything in relation to how we have managed the breaches in the guidance to the courts that might respond to the member for Maroochydore?

Ms Raeburn: The one other measure that we have taken is to increase the penalties that are available to the courts. As a signal through the courts that these breaches are a more serious offence, they carry a higher penalty. They are matters that are heard in the Magistrates Court. So we have increased the maximum penalty to the maximum penalty that is able to be sentenced by a Magistrates Court, which is

three years imprisonment. That is the other signal that we are sending to the court: that these breaches are more serious. Also, as the minister said, by broadening the definition we are capturing a lot more behaviours in the condition requiring a respondent to be of good behaviour and not commit domestic violence.

Ms STRUTHERS: In relation to that example I gave of the book, on the face of it people would think, 'What sort of behaviour is that?' It is that kind of intimidation that in the past has not really been taken seriously, but that is the worst kind of fear-engendering behaviour, because it is basically putting you on notice that you will be next.

CHAIR: It is also a criminal offence if Bozo realised it under the stalking legislation, but you have to get police officers to do that and I know that is quite difficult to prove. I have another matter that has been raised with me by a member of the legal profession and it relates to the recognition about varying a family law order and being required to disclose the order. This example comes from a practical situation. Even with colocated courts—that is, where there is a Family Court registry and a Magistrates Court registry in the same building—the Family Court registry has no obligation to provide family law orders as they are made to the Magistrates Court. The legislation requires the disclosure of the order. How can a magistrate ensure—and I realise they have jurisdiction under the Family Law Act—that the order that is put before them which they vary is the most up-to-date order? Is there any consideration being given to the court being able to obtain the latest order from the Family Court registry? It is those silo things where registries do not talk to one another that is the real problem. I just wondered what had been done.

Ms STRUTHERS: The federal Attorney-General, Robert McClelland, has overseen a major review of the interface between the family law jurisdiction and state based jurisdictions, particularly around domestic violence legislation. I might just check whether some of those recommendations have taken effect and how we are including those in our bill.

Ms Raeburn: The issue of the Family Court being able to provide a copy of information to a state body is a matter for federal law. In reforming the state law we do not have the ability to influence the powers of the Family Court or the laws governing confidentiality of the Family Court to provide information to a state court.

As the minister indicated, the Australian Law Reform Commission did hold an inquiry into the intersection between federal and state laws as they deal with family violence. The inquiry that they have concluded looked at the state domestic violence laws and then how they intersect with the criminal law and other laws. The states and the Commonwealth are embarking on a journey of looking at all of those recommendations and looking at recommendations for reform nationally. There were a number of recommendations that went to information sharing and to ensuring that the courts had the information they needed. No conclusions have been made and no reform has come out of that process as yet at the federal level, but it is certainly something that has been flagged and is being looked at.

CHAIR: The reason for asking is that it is very interesting that they cannot be given anything due to privacy, yet a state magistrate has jurisdiction under the Family Law Act to deal with children. They do not have jurisdiction in relation to property over $20,000, but they do have jurisdiction in relation to children. They are being asked by somebody to vary an order that they do not even know is the latest possible order. They have no way of getting that information. I do not think it is really fair to a magistrate to be placed in that position. Surely the Commonwealth has to realise that, too?

Ms Raeburn: It is certainly a matter that has been flagged through that process.

CHAIR: I appreciate what you are saying. It goes back to my point about silos.

Ms Raeburn: We certainly have made more specific the provisions in the Domestic and Family Violence Protection Act that deal with a magistrate being asked to exercise that power under the Commonwealth act. The corresponding provisions under the current act do not require the parties to provide a copy of the order if they have one. We have also now couched the obligation of the court to consider varying that Family Court order on the precondition that the magistrate does have a copy of the order in front of him or her and is satisfied that it is the final order and that there will be some benefit in varying it.

CHAIR: I still have another query about that, but we are going to run out of time. My difficulty with that is that, even though the magistrate is being required to accept that order as being the latest order, there is still no guarantee that it is. It depends on who is making the application as to what order they give to whoever is acting for them. I appreciate what you are saying. I know all the background to that argument between state and federal jurisdictions. I think it will remain a problem.

Ms Raeburn: We are certainly not compelling the magistrate to be satisfied that it is the final order. The magistrate is not required to act if the magistrate is not satisfied that he or she has the latest information.

CHAIR: Thank you very much, Minister and advisers. I believe that the committee has gathered some valuable information that will help us in our examination of the bill. I would like to thank the Parliamentary Service staff, our research staff and the minister's office staff who have assisted with today's meeting. The committee resolves that, pursuant to section 50(2) (a) of the Parliament of Queensland Act 2001, the committee authorises for publication the public evidence given before it this day.

Committee adjourned at 9.04 am