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)
Ms S. Cash (Executive Assistant)

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

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2011

Brisbane

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Committee met at 9.04 am

CHAIR: Good morning. I declare open the hearing for the examination of the Domestic and Family Violence Protection Bill 2011. Thank you for your interest and your attendance here today. The committee has resolved to allow television and media coverage of today's hearing.

The committee has advised the public of the inquiry by advertising in the print media. The Community Affairs Committee has a responsibility under section 93 of the Parliament of Queensland Act 2001 to examine bills in its portfolio area. 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 here today: Ms Fiona Simpson, member for Maroochydore and deputy chair of the committee; Mr Michael Choi, member for Capalaba; Mr Peter Dowling, member for Redlands; Mr Aidan McLindon, member for Beaudesert; and Mr Jason O'Brien, 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 hearings 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. I therefore 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. The findings of the committee will be the subject of a report to the parliament. The committee is to provide a report to the parliament by 22 November 2011. A copy of the committee's report will be forwarded to all witnesses.

The public hearing program today will be as follows, and it will be adjusted to meet any time differences caused by a slightly late start: 9 am to 9.30 am, the Minister for Community Services and Housing and the Minister for Women, the Hon. Karen Struthers; 9.30 am to 10 am, Mr Ken Hendrie; 10 am to 10.30 am, the Queensland Law Society.

Before we commence, may I ask that mobiles and pagers be switched off or put on silent mode. If you are aware that your phone can interfere with broadcasting—and there are certain ringtones that do cause a problem—please do not put your phone on silent because it can affect the recording.

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

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

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

CHAIR: I welcome the minister.

Ms STRUTHERS: Thank you, Mr Chairman. It is good to be with you and the members again today. I am joined by senior staff of the Department of Communities: Di Raeburn, Megan Giles and Brad Swan, who are sitting here with me today. I welcome other community members and members of organisations who have a keen interest and who have been involved in the development of the new Domestic and Family Violence Protection Bill. I cannot help commenting that it is quite apt to be in this room. It is quite symbolic that we are dealing with domestic violence legislation here when in the old days it was probably only men smoking cigars and drinking port. They would not have been talking about domestic violence, I would not think. So it is quite apt that we are bringing this discussion to this hallowed room because it is a very important issue, and there has been significant progress particularly over the last 20 years.

This is the first major overhaul of this legislation in 20 years. It was first introduced in 1988. I made some comments to you yesterday and you raised some issues about which you wanted further information. Do you require for the benefit of members of the public an overview of the bill, or are you wanting to cut straight to the issues you raised yesterday?

CHAIR: Perhaps you could provide a quick overview of the legislation and then go to the specific answers to the matters that were raised yesterday, because that may very well raise further questions for members of the committee.

Ms STRUTHERS: Essentially, domestic violence is all too common. There were over 50,000 police occurrences to deal with domestic violence matters in Queensland last year, and as a result of that over 22,000 domestic violence protection orders were made in Queensland courts. That is a lot of people who are living in fear and a lot of people who are being harmed. We are absolutely determined as a government to make sure we have the strongest laws possible to deal with this issue. So it is both the Criminal Code and its application to assaults and other offences, and this is the civil legislation that provides for protection orders. The whole idea here is to protect those who are at risk of future harm.

This legislation strengthens the police powers. It brings in a new power for police to make police issued orders and has a number of other powers associated with that. I am happy to go into that a little more if you want to through your questioning.

We are also giving greater guidance to the courts and the police around the definition of domestic violence—a clearer, broader definition to encompass emotional, sexual and all other forms of abuse that in the past have not necessarily been clearly picked up as domestic violence incidents. We are keen to ensure there is that clarity around the definition of what constitutes domestic violence.

We are giving greater guidance to the courts in the use of ouster orders. There are a number of other provisions in this legislation that strengthen the support for those who are victimised by domestic violence. In the majority of cases it is women and children who are most at risk and who are harmed to a greater degree, but in some cases it is certainly men who are subject to violence as well. This issue crosses all socioeconomic and cultural boundaries. It is not unique to any one particular group of people.

I want to comment again, as I did yesterday, that I have been very encouraged as I have travelled around the state and met with both community service providers supporting victims and survivors of domestic violence and the excellent work they do but also the police. The police have made incredible changes in their practices in the last five to 10 years in their training, the support they provide and the system of domestic violence liaison officers, and the feedback and quality control of the system they have is quite outstanding. There is still room for improvement, and that is what this bill seeks to do.

CHAIR: Perhaps, Minister, you could outline those matters that were specifically raised yesterday.

Ms STRUTHERS: One of the issues you raised with me was why there is no penalty for breach of an intervention order. As we discussed yesterday, an intervention order is separate to the main domestic violence protection order. It is really there as, I guess, a focus to encourage perpetrators of violence, and in most cases the men, to take up the opportunity for counselling or participation in a perpetrator program. We want them to have the carrot of being encouraged into those rather than mandated into those.

Yesterday we discussed some of the issues—the pros and cons—of mandatory programs. We have not applied a criminal sanction to these orders. We want people to put their hand up and voluntarily be part of them. We do not want them to think, 'If I have this as a condition of the main order and I breach it, then I am in breach of the order and liable for criminal sanction.' That is essentially the reason for that. I am quite satisfied that that is probably the best way to go.

CHAIR: My concern—and I raised it, if you recall, Minister—was not so much about the punishment or any action for the breach generally, but I think if someone puts their hand up and says, 'Yes, I will do it,' courts sometimes have the suspicion that it is only being done to get the matter out of the way and hopefully it will go. But where the person consents, surely it should be brought to their attention that if they consent and then they do not do it there is going to be some sanction.

Ms STRUTHERS: I guess the other way of looking at it is that if someone consents to doing it and they do not do it and they are not changing their behaviour, they are at risk of further events and activities that lead them into trouble with the police. If they take responsibility, participate in a program and take the opportunity to get some skills in managing their anger or behaviour, hopefully life might be a little better for them. We are trying to be incentive based with the intervention order, but certainly the protection order itself—the common conditions are that they must desist from domestic violence and there are conditions around where they can go, who they can see at times and those sorts of things—contains punitive measures. Do you want me to move on?

CHAIR: Yes, please.

Ms STRUTHERS: I think you will be hearing more from a participant shortly, but one of the issues you raised with me was the requirement for a supervising officer to be a police officer whom the Police Commissioner has authorised to approve the issue of police protection notices rather than a more senior officer who is at least of a rank such as sergeant. I guess we have taken the view here that it is important, particularly in regional parts of Queensland, where the most senior officer at a station at a particular time may be of the rank of senior constable, that we do not prescribe the rank. We have gone with the commissioner authorising who those officers may be. So that is the reason we have not designated the rank.

CHAIR: In a regional police station—and even down to two-person stations—even if the senior officer were to be a senior constable the next officer of closest rank may well be someone within the district of the rank of sergeant. The way it reads to me is that it has to be somebody of inspectorial rank or above. That can be problematic in some country areas.

Ms STRUTHERS: I might just get Di to offer further explanation, but it is not my understanding that it has to be that senior level rank.

Ms Raeburn: No. We were working on the advice of the Queensland Police Service when we developed the requirements for who the supervising officer must be. There are existing supervisory arrangements within the Queensland Police Service and it may well be that the shift supervisor either within the district or for more regional areas, if they need to contact the police communications centre, could be an officer of senior constable or sergeant rank and could be more junior to the investigating officer who is attending the scene.

It is essential that this mechanism can operate at any time of the day or night. Its main function is to be an immediate response to domestic and family violence. Many incidents are outside of business hours—in the middle of the night and on weekends. It is also making sure that we can tap into the existing Queensland Police supervisory arrangements for those times of the day and night, both in urban and regional centres. It could certainly well be that the officer who is authorised by the Queensland Police Commissioner may be the senior constable of the local station. It could well be a senior constable or sergeant who is a shift supervisor within either a district or the communications centre.

Ms STRUTHERS: I might just add to that. From my understanding in meeting with, for instance, the domestic violence liaison officers who are appointed around the state, many of them appear to be senior constables. They are the people who are very experienced at this and are known within their district for having a good knowledge of the law and its application. I am of the view that we should not be prescribing a rank. I am not sure if that is exactly what you were intending or what the person who requested this be considered was intending. I think it certainly needs to be open to be an authorised person rather than prescribing a rank level.

Mr O'BRIEN: It was my line of questioning yesterday. That is how it does not work? How does it work practically then? Does the commissioner nominate five or six officers across the region or on each shift does a particular officer have to be nominated? I know it may be difficult for you talk on behalf of the police.

Ms Raeburn: It is certainly stepping a little bit beyond my knowledge, but I understand that there is rostered on every shift a person in a position of supervisor. That is certainly the case within each district at every time of the day and night. There is always a shift supervisor who is rostered on. That is the case in other parts of the Police Service too—within communications and so on. There are existing delegations that will then cover a person who is rostered to a shift supervisor position. We are certainly just looking at augmenting those existing delegations.

CHAIR: If we have dealt with that area, Ms Simpson has a question about a different area.

Ms SIMPSON: My question is in relation to implementation and the training that is required and the funding to predominantly upskill the police and what this may mean operationally. I appreciate this legislation comes through your department, but in your interface with police could you advise us as to what is envisaged as far as allocations of funding to assist in that change are? What does this mean operationally? Will there be additional ongoing resources required to make sure that this is effective in its implementation in the field?

Ms STRUTHERS: On your first point about the training, as I said, the police have really lifted their game with their training and have anticipated changes within the legislation and have been developing new training arrangements. I was successful with a budget bid to enhance funding for police training. I think they got all they asked for. I cannot recall the exact amount, but they have certainly been given an extra allocation in this year's budget for police training in anticipation of legislation being passed. In the event that it does not, then they still acknowledge that they have to improve their practices around a pro-investigative approach and other things that they need to do. I feel satisfied that that is covered off.

I think your second point was about practical implementation and what was involved. My understanding from the police is that it is not necessarily about additional resources but a better way of doing things. In my meetings with the police and from my participation in the stakeholder meetings as part of the consultation, the police have acknowledged that they will be funding most of this internally as part of their day-to-day operations and they see the need for improved practices.

Our whole aim is to reduce the occurrences—50,000 occurrences, which is up seven per cent. That is partly a positive thing in that this has largely been seen as a private family matter over the years. It is now a very public matter. People are taking public responsibility and reporting incidents and encouraging those affected to speak out and get help. As a consequence, it is not a surprise you will see a spike. But ultimately, our aim is to reduce those repeat occurrences. A lot of these are repeat occurrences where the police are going to the same house or the same couple over a period of a year or so. They see that they are managing this internally, but there was an additional allocation for training in the budget.

Ms SIMPSON: Would we be able to have on notice what the allocation is?

Ms STRUTHERS: I may be able to get that now if someone has that. We will see how we go in the next few minutes.

Ms SIMPSON: The supplementary to that is around the interventions and understanding that this will be a voluntary approach with regard to intervention orders and what people agree to do. Could you indicate to us what the availability is currently as to intervention programs for perpetrators and whether there is work being done to expand that throughout the regions?

Ms STRUTHERS: As I was discussing yesterday, there has been a national call through our national strategy on ending violence against women and children for mandatory reporting and higher standards in those programs. They are very variable. Some programs get good outcomes and others are a bit dodgy, frankly. We have set up a men's helpline state-wide. I visited that service last week. They provide a telephone support service and information for men. Then there are various organisations around the state that run men's programs. On the Gold Coast I think Lifeline, Centrecare and others have programs. The domestic violence service works in conjunction with those.

At times there is collaboration between the domestic violence regional services and specific organisations so that there are co-workers—a woman and a man—running the program. There are different models. Some have men working with men only. I have not got with me at the moment, but we can certainly supply it to you, a list of available services, but part of the problem is that they are not in every location and they are not all meeting certain standards. So it would be very hard to mandate men to attend. It would have to be part of the assessment of a magistrate, 'Is this person likely to benefit from a program? Are they willing to participate? Is there a suitable program readily available?' Given technology, we need to look at online resources, too. But again, the federal government is supporting work on national standards around these programs and we are cooperating with that.

Mr McLINDON: There is a lot of good intent in the proposed legislation. As an example, I had a lady come into my office who is fearful for her life and that of her children. She does not want to pursue that. What recourse does she have? It is hard to capture that in legislation if they do not come forward. With the 50,000 cases that you are talking about there must be an element of people who are not coming forward but the problem may be widely known by neighbours or family friends. Is there any discretion or what recourse have they in trying to bring light to that even though they may not want to?

Ms STRUTHERS: I guess a couple of options would be worth considering and advising her about. One would be to call dvconnect or a domestic violence service and get advice on what she may need to do to protect herself if she is staying in a violent relationship. Secondly, what support she may need if she does want to leave. She may want to leave without taking criminal or civil action under this legislation or the current legislation. Services can support, particularly in the case you are describing, a woman and possibly her children to move, to relocate or to go into a refuge.

Criminal sanctions or civil action through this legislation are but one remedy. You are quite right: sometimes people, for fear of retaliation, for the sake of the kids, for financial reasons or whatever, do not want to take legal action. They may need to take some very decisive action to protect themselves and their children.

I feel very encouraged by the quality of the work and the support and advice that is provided by our system of regional domestic violence services. The other players in this are the Centrecares, the Lifelines and the community neighbour centres. There are a lot more people who are trained in domestic violence and are aware of how to manage it, aware of the issues, aware of the cycle of violence.

I saw some research a number of years ago that indicated that on average women went through 23 violent incidents before they actually left. They are tough decisions. You have to consider kids. You have to think about if your faith tells you that you are married and you have to stick with that vow. It is a very hard thing to break. So these services are well trained in managing those issues. It sounds like you have been very empathetic with her. If you want to follow it up, I would suggest that one of the domestic violence services would be a good point of contact.

I have to correct the record. I indicated that I was successful in a bid for funding for the police. I think as the negotiations continued they actually indicated that they would fund it internally. So I was mistaken there. I recall earlier in the year we were looking at the cost of additional training, but with agency discussions it was resolved that the nature of the training would be such that they would manage that internally. I apologise for that.

CHAIR: There are a still a couple of other matters that were raised yesterday—

Ms STRUTHERS: The family law interface.

CHAIR: Yes.

Ms STRUTHERS: Would you like me to comment on those?

CHAIR: Yes, please.

Ms STRUTHERS: You raised the issue of family law interface. You raised an issue about the sentencing of breaches. I think the other one was if an ouster order is made but, if the person who stays in the house does not have the capacity to maintain the financial cost of that, what happens. Can I go through each of those?

CHAIR: Yes, please.

Ms STRUTHERS: Firstly, in with relation to the interface with the Family Law Act and practices of the Family Law Court, you were quite right in indicating that there are often issues around privacy and the inadequate sharing of information. Initially, the court will rely on information provided by the parties about any family law orders which are in force. This bill requires applicants to disclose the existence of a family law order of which they are aware. A court, which is not confident that a copy of a family law order provided to the court is the latest order made by the court, is likely to refrain from acting on the basis of that order or would adjourn the matter so that further inquiries can be made.

As I indicated yesterday, there has been a lot of good work done through the Australian Law Reform Commission, led by the Attorney-General, Robert McClelland. I have had meetings with him. He is personally very determined to clarify and improve the practices between the Family Law Act and its jurisdiction and state jurisdictions. That work is ongoing. In the meantime, we are trying to work with the courts as cooperatively as we can so that there is full disclosure and a full context put to the court in determining these matters, particularly where children are involved.

CHAIR: Minister, earlier you mentioned IT not in relation to this. Western Australia, as you know, has a separate family court to the Family Court of Australia, and I understand there are in fact protocols in place whereby they can identify common clients because of those protocols as between Family Court, Magistrates Court and anything to do with domestic violence. Has any consideration been given to those protocols in Queensland? Have there been any discussions?

Ms STRUTHERS: I will check whether Di knows more about that than I do, which is highly likely.

CHAIR: I mentioned protocols but it might be called a memorandum of understanding—whatever words they are given.

Ms STRUTHERS: Maybe if I just comment first up. The Western Australian model is a Western Australian state based Family Court, so they would have clearer lines of cooperation through state based guidelines and legislation, but I will check with Di as to what meetings and discussions we have had with our federal counterparts in relation to this and whether, in an ongoing way as part of the implementation, there may be benefit in a working group at a state level or something like that.

CHAIR: Just to clarify that, there are also protocols in Tasmania whereby they can make a protection order but they can adjourn it to have any order they make scrutinised in terms of the Family Court registry.

Ms Raeburn: There are certainly options for any state court in Queensland to adjourn the hearing of a domestic violence matter if it requires further information, and the state court could ask the parties to obtain official sealed copies of Family Court orders to provide to the state court.

Because at the time we were conducting the review the Australian Law Reform Commission inquiry was proceeding, we did not also look into the similar areas that that inquiry was covering. As I indicated yesterday, the Commonwealth and the state Attorneys-General have agreed to look at the recommendations that came out of that report. Some of those recommendations included information sharing between different levels of courts. With the Western Australian model, because the state legislature of Western Australia can influence the laws that govern that Family Court it is in a different situation to Queensland.

CHAIR: I was aware of the separate Family Court, but the fact that Tasmania is in the same position as Queensland in relation to the Family Court of Australia had a different application.

Ms STRUTHERS: Do you want me to go to the next issue?

CHAIR: Yes, please.

Ms STRUTHERS: I think the member for Maroochydore asked yesterday how courts will deal with breaches to ensure that sentencing is appropriate and consistent. The bill provides for increased penalties for breach offences—up to three years jail for breaches of domestic violence orders. There is certainly greater scope to impose sentences that reflect a range of behaviours that can constitute a breach of a domestic violence order.

As I was saying yesterday, even with the clarification and the broadening of the definition of domestic violence itself, that should help police and the courts in pursuing breaches. I gave an example yesterday of the ongoing intimidation by a particular offender who had an order. He persisted in pursuing this woman and her children and finally left a book on her doorstep with a page mark at a page on which a woman's throat was being slit—clearly an act of intimidation and harassment, a signal that 'you're next', that kind of message. He was finally breached on that, having been linked to the book through either DNA or fingerprints. That will assist in breaches being pursued.

There were over 7,000 breaches of domestic violence orders last year, so there is quite a significant rate of breaches. Almost one-third of orders are breached. It is a significant problem. Men have to take these seriously and be held accountable for them. That is why we have increased the penalty to three years.

Mr CHOI: Minister, you mentioned increasing penalties for breaches of domestic violence orders up to three years, which is welcome. Section 178 of the bill also contains provision for breaches of a police protection notice but there is seemingly no provision for penalties for breaches of a domestic violence intervention order. Can you take us through the rationale for that?

Ms STRUTHERS: The breaches will apply to the police issued notices, because that is all part of the main domestic violence protection order. The intervention you have described is a separate order. It is really the one we discussed earlier. It is there to be an incentive or encouragement for perpetrators to put up their hand to participate in a counselling program. We have not pursued a court mandated process in this bill, but we are encouraging the courts to consider using intervention orders to order perpetrators to attend a counselling program or to participate or to see a counsellor. We did not want that to be—

Mr CHOI: Mandated.

Ms STRUTHERS:—criminally sanctioned. We wanted that to be an incentive based order and, through encouragement, get men to be accountable and take responsibility for their behaviour.

CHAIR: Minister, I did not have all of this detail yesterday so I do apologise. Although the penalties have been increased and are quite substantial, I bear in mind that domestic violence is quasi-criminal only and the standard of proof used to make an order is not the criminal standard of proof; it is proof on the balance of probabilities. A breach of that order is still quasi-criminal, but the penalties in some cases are even in excess of criminal penalties for the same offence. Has there been any consideration to equality of offences?

Ms STRUTHERS: Let me just step through some of the issues you have raised. This is but one remedy. This is the civil remedy. This is not a punishment for a particular assault or act of violence. This legislation is designed to protect people who are most at risk of future harm, so it is civil. The Criminal Code should still apply. As I discussed yesterday, one of the weaknesses in our system—and it is common in Australia and around the world—is that, because of the nature of domestic violence being in intimate relationships, there has been a reluctance to pursue the criminal pathway. We have come off a base of it being a private family matter. We are improving community attitudes, policing and criminal justice responses, but essentially the Criminal Code is there to be applied as well.

In a lot of these cases I would be cautioning against using 'quasi-criminal'. A lot of these incidents are seriously criminal behaviour. The member for Cook knows in terms of Indigenous violence that Indigenous women are 30 times more likely to be hospitalised as a result of domestic violence than are other women in other communities around Queensland. The level of violence is severe in some of those instances. This is really there as a protection from further violence. When that is breached, that should then be dealt with on par with criminal behaviour. You kind of have one chance. When you break that chance—and, as I said, one-third of domestic violence orders are breached. They could be repeat offenders in some of these cases which would elevate those statistics, but essentially you have an order, you have been given guidance from the court about your behaviour, and if you breach that order then we apply a penalty. But it is still up to the court to determine the extent of that penalty. They may not impose a jail sentence. It is really for the courts to use their discretion about the nature of the breach and the pattern of breaching.

Ms SIMPSON: I have a question to do with ouster orders. We all agree that there is a need to empower women and to keep them as safe as possible in their own homes. I recognise what you said yesterday in regard to homelessness that comes from women who flee a domestic violence situation. I just wondered what follow-up research there is in respect of how effective ouster orders have been in keeping women safe in their own homes given that, even with security improvements to their homes, people can feel still very vulnerable. What is the incidence of violence against predominantly women in their own homes where the offender has been removed?

Ms STRUTHERS: That is a good question. I am happy to answer that. I recently met with the board of the Australian Housing and Urban Research Institute. It is a national research institute that our government contributes funding towards for research. It has done a position paper on safety upgrades and ouster orders. Most of the research at the moment is UK based research. The results are mixed, really. Women are feeling safer and feeling better that they can stay in their own homes in their own communities and that kids can go to their own schools, but some of them remain terrified that future violence will occur. It is not a panacea, but it is certainly the right path in enabling women and children predominantly to stay in their own community and establish those social networks and links that are very important to them.

The research has been mixed. There has been some Victorian and New South Wales research—Stay Safe, I think, is their program; ours is Safety Upgrades, which I think we have to persist with. We cannot have everyone fleeing to refuges. We cannot have everyone fleeing interstate. We have to make a stand. This is where I have found the police have been very good, particularly on the Sunshine Coast. They have some very good senior police and a domestic violence liaison officer who is working closely with Centacare with the Safety Upgrades program there. They told me a couple of months ago that 71 women and their children were enabled through this program to stay in their own homes and their own community. They indicated to me that not all of them feel safe, but they are feeling a lot better that they have support locally and they are able to at least have a go at staying in their own home. Some of them have moved on, but this would have been 70 women who they packed up in a car or put on a bus and sent off to a refuge somewhere. I might just clarify, too, while we are on this issue—

CHAIR: Minister, I am sorry, I do not want to cut you short but we have exceeded time.

Ms STRUTHERS: I just have a quick point of clarification because I did make an error in saying that I was successful in a budget bid for the police. The budget bid that I took to the Cabinet Budget Review Committee provided $2.286 million for Safety Upgrades; $3.815 million for the Rockhampton trial, which is

an innovative trial which the police are involved in as our service providers; and $1.433 million to strengthen Indigenous domestic violence support services. The police actually had not progressed with a bid specifically for their training. They will be supported through that Rockhampton trial. They felt that they would fund the training as they are doing at the moment in-house. I just wanted to clarify that, Mr Chairman.

CHAIR: Thank you, Minister. We have exceeded our time. I did have a change which had been made to the agenda but not to my notes. Our next witness is the Queensland Law Society and they do have to be at another committee meeting. Could I just ask to put two matters on notice? One is in relation to ouster orders and making sure that people can stay in their house if the ouster order has been against a person. Who would be meeting the costs of it?

Ms STRUTHERS: Yes.

CHAIR: The second one relates to clause 51(1), which allows for the making of an order by consent or if not opposed by the person. There is a change of onus in that, for a respondent to take positive steps to oppose or challenge the making of the order rather than the police establishing the orders necessary. I know that it says 'by consent' or 'do not oppose the making of the order'. I will give you an outline of that anyway, if you could take that on notice.

Ms STRUTHERS: Thank you for your consideration.

CHAIR: Thank you very much, Minister. I realise we have exceeded the time but I think it was necessary to get that detail.

Ms STRUTHERS: I could chat all day on this so you are lucky that you restricted me.

CHAIR: We do not have all day, I am sorry, Minister.

AWYZIO, Ms Deborah, Council Member, Queensland Law Society

D'CRUZ, Ms Raylene, Policy Solicitor, Queensland Law Society

DUNN, Mr Matt, Principal Policy Solicitor, Queensland Law Society

CHAIR: Would you like to make a brief opening statement?

Ms Awyzio: The Queensland Law Society welcomes and supports the new bill in general. We support the increase in penalties that you have just been discussing. In picking up on some of the discussion that just took place, I think there was an issue raised in respect of intervention orders. It may be something that you might want to consider as part of the penalties that you can impose for a breach of domestic violence orders—whether it is worthwhile considering whether an intervention order should be made in those circumstances against somebody who is found guilty of breaching the order. The way that it is drafted now, it requires the consent of somebody to have an intervention order made. That might be a consideration that takes into account those issues that you were raising.

We also welcome the clarification of breaches of the domestic violence legislation and clarification that an aggrieved party would not be found guilty of breaching a domestic violence order by being found to aid and abet a contravention. That is very good recognition of the position of victims of domestic violence where they go through a cycle of violence. There are some times when they may be resuming relationships. I think that provision in the new bill is a very good provision. It takes into account that cycle that they are involved in. We also support the fact that there is going to be a review of the legislation in five years. The legislation does include a provision for information to be provided for research purposes. That is welcomed.

I just wanted to mention clause 51, which was just referred to, in relation to consent orders. That is a provision which is supported by the Queensland Law Society. What was happening in practice is that there are obviously lots of applications for domestic orders made and people would go to the court and be willing to enter into domestic violence orders by way of consent. The way that the current legislation is drafted, it actually provides that the court has to still make a finding that an act of violence has occurred even if the parties are entering into those arrangements by consent.

The proposed amendment to section 51 removes that requirement which, in practical terms, would mean that more people may be willing to consent to the making of a domestic violence order because there does not have to be that consequent finding that there has been an act of domestic violence committed. The order can provide that it is made without admission as to the facts that are provided for in the application. The Law Society welcomes the amendments proposed.

CHAIR: I hear what you are saying about clause 51(1), but that was not the full thrust of my question. The current application is as you outlined, and I appreciate that. But it is still relevant in terms of punishment of a quasi criminal matter where the onus is placed on a respondent to take positive steps to oppose or challenge the making of an order. The clause states—

If the parties to a proceeding for a domestic violence order, or a variation of a domestic violence order, consent to the making of the order, or do not oppose the making of the order, the court may make the order ...

As you are aware, the clause goes on to outline certain requirements. The onus is placed back on the respondent. Bearing in mind that the respondent in a lot of these cases could well be, although there is support through the court system, a person who is not fully appreciative of what is happening, this is changing their legal rights. The committee will have to look at that in terms of fundamental legal principles, because that is changing the onus of proof.

Ms Awyzio: Is there any proof required if it is going to be by consent? All that has to be proven then is that there is a relevant relationship.

CHAIR: The act actually imposes on police officers the requirement to investigate. In this instance, there is no requirement to establish that the order is necessary. To give you a scenario, if that is the case, then, regardless of what else happened, if a person is before the court on an application that has been bought by the police on behalf of an aggrieved and the person says, 'I will agree to the order,' then it is placing a heavy onus on the respondent when they may not have legal assistance.

Ms Awyzio: I do not understand the onus because what they are applying for is for the domestic violence order to be made.

CHAIR: The respondent is not. The respondent is having an obligation put on them because the section says 'or do not oppose the making of the order'. So the onus is then back on the respondent. I appreciate that the focus of the bill is to protect mostly women and children at risk. Perhaps you could comment on that.

Ms Awyzio: So the onus on the respondent in relation to not opposing the order—

CHAIR: Mostly in relation to not opposing the order. The respondent has to actually take positive steps to oppose or challenge it.

Ms Awyzio: And they do that by electing whether they appear in court or not.

CHAIR: I think I will have to take that comment on notice. They are there because they are summoned to be there. The minister is taking that on notice also. It has been addressed, but it has come up in the scrutiny of legislation outline.

Ms Awyzio: If there are any issues with that particular provision and if it has to be redrafted to take into account those principles that you have indicated, I think it could be beneficial to actually be very clear about it—that is, that under that provision, if you are making orders by way of consent, the magistrate making the order is able to make a notation on the order that it is made without admission as to the facts in the application. I know there has been a different approach by different magistrates in the state as to how they interpret the current legislation and whether they can actually make that order at the moment.

Mr CHOI: In terms of intervention orders, from the answer given by the minister I got the impression that the intention of the bill is to leave that to the courts. What I was not 100 per cent sure about is how the court would deal with noncompliance of intervention orders. What tools are available to the courts?

Ms Awyzio: Did you say, 'Deal with the requirements'?

Mr CHOI: Yes. My understanding from the minister's answer is that intervention orders are intended to be used as an encouragement. What I did not understand is what tools are available to the courts if intervention orders are not being complied with. You also mentioned that in your opening statement. What does the Law Society have in mind?

Ms Awyzio: We welcome the ability for parties to enter into intervention orders. A lot of times with domestic violence legislation a lot of people who are taking advantage of that legislation to protect themselves are also involved in Family Court proceedings involving parenting arrangements for their children. So anything where there is provision for perpetrators of domestic violence to take positive steps to rehabilitate themselves, for want of a better expression, is supported by the Law Society.

The only issue that we wanted to raise in respect of that, and I think it was raised with the minister directly, is the ability to resource that. It is a very good principle and policy to put in place but it does have to be appropriately resourced and it has to be easy. As the legislation provides, the chief executive has to provide that list so that it is readily accessible to all magistrates and so it is very easy for them to raise that with people who are appearing in front of them and encourage that to occur.

In relation to being penalised for breaching an order if you agreed to voluntarily enter into an intervention order, I think it is different from breaching a domestic violence order. The way that the legislation is drafted now, they are voluntarily entering into that type of arrangement. I would not see any purpose for them being penalised for breaching that because there are other provisions. You would hope that they have gained something from it. If they are actually going to breach the domestic violence order then the aggrieved is covered and has protection because there are offences in relation to that.

Ms SIMPSON: This is a follow-up to that. It is probably a statement more than a question. If it is entered into voluntarily it is probably more appropriate for it to be noted as an agreement rather than an order. An order has a sense of it being mandated rather than it being something that people have entered into voluntarily. Do you feel that may publicly look like something different to what the bill is trying to achieve?

Ms Awyzio: I think that is right. I think it is good to set it up as a voluntary thing so somebody who recognises that they have committed an act of domestic violence and wants to improve themselves and improve their family's position can enter into such an order. I do not think it would be appropriate for them to be penalised, particularly when it could be for circumstances outside their control. These types of programs often operate over a period of time. It may be that something happens which means that they cannot fulfil the total requirement of the program that they have voluntarily consented to enter into.

Ms SIMPSON: I perhaps have not stated that quite so clearly. It strikes me that the intention of the act is that it is an agreement and yet it is actually worded as an order. An order would seem to be something that is handed down on somebody—a compliance issue—where this is something that people have entered into voluntarily and there is no penalty for noncompliance. It strikes me as more of an agreement than what would normally constitute an order.

Ms Awyzio: I agree with your statement in relation to that. Matt just indicated to me that somebody who is entering into that type of program is also going to benefit when it comes to any concurrent Family Court proceedings that are in place in relation to children. Hopefully, that provides some motivation for them to continue in the program as well.

Mr Dunn: Can I add to the point about agreements. The word 'undertaking' might be an appropriate word as well in the circumstances, because that is really what it is. It is something that someone is undertaking to do. If they do not fulfil their undertaking again that is evidence for a parenting matter or may also be evidence in relation to an application for an actual order at some later stage as well.

CHAIR: The act refers to it as an order, not as an undertaking. An undertaking in law has a very specific meaning. Isn't that moving the deckchairs on the *Titanic*?

Mr Dunn: It certainly would be, but I am not proposing that it should be a solicitor's undertaking in the circumstances. Perhaps the common understanding of what an undertaking is is something that someone takes upon themselves to do and they enter into voluntarily, so that aspect is possibly where you were heading with that question. An agreement is something that both parties need to come to to have an agreed position, an agreed way forward and consent on both sides.

Ms SIMPSON: Maybe I am splitting hairs, but the intention here is to create a way for people to move through their behaviour and get help. It is entered into voluntarily yet it is called an order. I wonder if it is possible there is an unintended consequence, by it being called an order, for people not aware of the intentions of the act to see it as some form of a penalty rather than a mechanism to improve behaviour that has been entered into voluntarily.

Ms Awyzio: I think, though, that the way the legislation is drafted and the requirement on a magistrate to explain what an intervention order is and to make clear that the party who is prepared to enter into it is consenting to that would probably overcome some of those difficulties.

Ms SIMPSON: Supplementary to that, that may be so in the legal context but, as we know what happens in the public context, if it is found that someone has an intervention order, a lot of people publicly would see that as being like a domestic violence order against somebody. That has quite a different public understanding and connotations than something that has been entered into voluntarily. I just wonder if the language around this may have unintended consequences when the intention is to break the cycle and have people enter into this voluntarily and not have, dare I say it, the stigma of a domestic violence order against their name.

Ms Awyzio: I do take your point on that. I think in some jurisdictions—maybe in New Zealand—an intervention order is the terminology they give to a domestic violence order. So maybe it is more appropriate to call it an intervention arrangement or something like that.

CHAIR: Can I ask you to explain a couple of things in your subsequent submission, more particularly in relation to No. 2 on page 1? You suggest the inclusion of a class of persons. I am a little mystified about how that class of persons will relate to the current aggrieved. It appears to me very wide. You note as persons who should be included in the class persons who have previously suffered physical, emotional or domestic abuse or violence. How do you suggest that could be included? It does not limit when that was suffered, it does not limit where it was suffered, it does not limit by whom it was suffered, it does not mention how any sort of evidence can be presented as to whether or not that was suffered, whether that evidence would have ever been considered by a court that it had been suffered.

Ms Awyzio: I think the submission was made in line with noted research about the cycle of domestic violence, and it is quite common for somebody who was in that cycle, a victim of domestic violence, to enter into numerous relationships that involve domestic violence. I think that is where the submission comes from. The section that we are talking about is the general principles section that applies. I think it still reflects a lot of the principles behind this legislation, that we are trying to protect people who are involved in this cycle of domestic violence. I think it was made on that basis.

Mr Dunn: I was going to mention people who had been subjected to a cycle of violence previously who may be more vulnerable to that in the future, even necessarily being in the same relationship, as was mentioned before. The minister said that there are a number of actual instances of violence before someone makes the final and very significant step to break that. As the minister said, it can be as many as 23, which is a shocking amount. I think this is just to recognise that there can be people who are in the middle of that cycle of violence and they may well be more likely to be vulnerable to further instances.

CHAIR: Yes, but to put that in an act has larger significance than someone who is in that cycle, does it not? In the wording that you have used, persons who have previously suffered physical, emotional, domestic abuse or violence where the police are investigating matters in relation to a specific incident or incidents—there may well be matters where they may be aware that the aggrieved has been involved with that before; that may come up in their investigations—doesn't the wording that you have suggested cast the net very wide?

Mr Dunn: It does in the circumstances, but possibly that is meant as an example of the people who may be particularly vulnerable and that class of persons may be within the class of persons that may be vulnerable in those circumstances. Perhaps we may need to amend the wording slightly to reflect that the person might be in a current relationship or not moved out of a relationship where there are acts of violence occurring. That was the general thrust of the issue. It was simply that someone who is currently suffering or has suffered and is in that cycle of violence is someone who is particularly vulnerable to domestic violence by the nature of their circumstances.

CHAIR: The second matter of concern related to children's issues. You deal with it under clauses 53 and 54. I appreciate the privacy provisions in relation to a lot of this legislation, and in actual fact the court in the making of a domestic violence order is a closed court. If an order were to be made which contains a child or children, how would it be possible for a police officer, or anyone who is called to enforce that order, to know the basis of that order where you deidentify the child? In my experience, orders that are made now, if they are made in relation to a child, actually name the child of whatever age and the child is not deidentified because that child who is included on an order, as a person who has suffered domestic violence, would in fact be the subject of a breach if a breach occurred, or could be.

Mr Dunn: I think the rationale behind that particular proposal which came from our children's law committee was that the public register should be deidentified.

CHAIR: But the public register is not open to anyone. The court is actually in camera for the making of an order and any other person, such as police officers or people dealing with it, would be subject to specific restrictions about disclosing confidential information. It just mystifies me how they can ever identify

a child if you deidentify the child in the order. I took it to mean that you wanted to deidentify, because it says when a child is named on a DVO the details of the child should be deidentified in order to preserve the identity of the child. I am mystified as to how that could work in practice, not would work.

Ms Awyzio: I actually agree that children's names do have to be clear on the order because that is a way that they are going to be protected. By deidentifying them, they are not going to be protected. As Matt indicated, that came from our children's law committee, which focuses more on the privacy of children and the problems that children may face if their names are in certain databases because they were a protected person under a domestic violence order and whether that causes them any difficulties in the future. That was, I think, the reasoning behind that, but I do agree that their names do have to be on the order, otherwise they cannot be protected.

CHAIR: The other one that raised a query for me, because I am not sure how far you are suggesting we should consider extending it, relates to a person aggrieved. You raise the query in the context of child protection proceedings. That possibly could be Family Court proceedings. How far do you take aggrieved persons? How far do you suggest it should be taken? Should all parties to the child protection proceedings, Family Court proceedings, be considered aggrieved persons for the purpose of an appeal? The reason I say Family Court proceedings is that you deal with a separate representative which is mostly mentioned in the context of family law proceedings. With regard to aggrieved persons, you mentioned the department, young people—I think the child is certainly an aggrieved person if they are a part of that order—and separate representatives. You are suggesting in that the separate legal representative?

Ms Awyzio: Yes. They are a party to those proceedings and their role is to protect the interests of the child in those proceedings.

CHAIR: So you are suggesting that the definition of 'aggrieved' should be expanded to cover people covered under an order?

Ms Awyzio: No. I think we are just asking for it to be clear as to what it does include so that there is no misinterpretation of the provision where some people who feel they may be aggrieved could bring in an appeal.

CHAIR: Was there anything further in relation to that? Did anyone have a question for the society?

Ms Awyzio: I wanted to refer to clause 34(3), which provides that an application can be served by a police officer on a respondent before it has been filed in court but if they do it is deemed to be served. I have some concerns in respect of that provision because, yes, by serving it on the respondent without filing it first they will have notice of what is being alleged but they will not have notice of when it is going to be in court. Then if they are deemed to be served but they do not really have notice of when they are required to attend in court, that could be a difficulty.

CHAIR: Actually, you raised a query about service but it was in relation to clause 188.

Ms Awyzio: In our submission.

CHAIR: No, that is fine—34(3). I have that.

Ms Awyzio: I am sorry, I think it is provided somewhere else as well.

CHAIR: You deal with 188 in your submission, and that is in relation to giving a document to a child, but clause 34(3) reads—

To remove any doubt, it is declared that, if an application ... is made by a police officer, the application may be served on the respondent before the application is filed in the court.

Ms Awyzio: I just think that could cause a problem of respondents deemed to be served but may not have notice of when.

CHAIR: At least to know that that is the application that is to go before the court and to have a hearing date.

Ms Awyzio: The only other issue I wanted to flag is in respect of clause 158, which provides for the court to be closed. This is only a minor issue. Obviously, that is supported. The legislation at (2) states—

2 The court considers that it is in the public interest to hear the proceeding in open court because the aggrieved and respondent are well-known to the public and a closed court may result in an inaccurate representation of the proceeding.

That raises some concern. I do not understand what interest there would be in having an open court in those circumstances. Somebody in a public position may be more reluctant to make an application for a domestic violence order and then there is that specific example that the court may not be closed

CHAIR: The minister mentioned the police proceeding on a criminal matter. A criminal offence would not be a closed court unless it was on application or at the choice of the magistrate. In actual fact, if a criminal matter were to be heard then there would have to be very compelling reasons why the court would be closed, even if it is dealing with an issue which may constitute domestic violence.

Ms Awyzio: Yes, but I do not understand why you would, as an example in the legislation, single out somebody well known to the public. I think that that person is less likely to make an application. That does not mean that they are less in need of protection.

Mr McLINDON: Which was my concern before. That could be enough to prevent someone from pursuing it if they knew it could go public. It does not really state at whose discretion it is. It is just at the court's discretion; is that right?

Mr DOWLING: It does seem a double standard.

CHAIR: It has some other connotations also. I take your point.

Ms Awyzio: As I mentioned briefly in my opening statement, the resources issue is obviously always important to legal practitioners and how that legislation will operate in practice. Those two very good provisions in there about the chief executive of the Department of Communities, child protection, to provide information as quickly as possible, that can be quite onerous. There is a similar provision that applies in the Family Court arena where matters are in what is called a Magellan list, that involve allegations of sexual abuse or serious physical violence. There is a protocol set up currently with the current Department of Communities, Child Safety, providing information to the Family Court. They do that fairly quickly. It may be worthwhile using the same sort of procedures, but because of the volume of work that may be involved in this domestic violence legislation it may require more resources. Thank you.

CHAIR: You had nothing further?

Mr McLINDON: I had one quick question for the panel. Are you happy with five years being the review period—I know there is not enough resources to review legislation every 12 months—given that there probably will be, and you have identified some, potential teething problems? You would probably get a good idea in two or three years.

Ms Awyzio: I think five years is good if the intention is to use some of the provisions in the legislation to gather data and do some research. I think five years is probably a good time frame.

CHAIR: If you have nothing further, I would like to thank you very much for your input. The committee will certainly give consideration to the matters raised.

Ms Awyzio: Thank you for the invitation to attend.

HENDRIE, Mr Lance Kenneth, Private Capacity

CHAIR: Could you please your state your name and the capacity in which you appear before the committee?

Mr Hendrie: My full name is Lance Kenneth Hendrie. I go by Ken. I am here as a member of the public. I am a White Ribbon ambassador. I have been involved in domestic violence since the legislation came in and before that in my work capacity, but I am actually here as a member of the public.

CHAIR: Would you like to make a brief opening statement?

Mr Hendrie: I am new to this, I am sorry. My understanding was I have made my submission and I would be asked questions. So I have nothing else to present.

Ms SIMPSON: Thank you very much for making the submission. We appreciate that you have to do this as a public citizen. Are you able to explain some of the practical issues of implementation in the field?

Mr Hendrie: I can give you personal opinions on them. I cannot comment on QPS policy, no.

Ms SIMPSON: That would be very helpful. At the end of the day we want to know that legislation in application actually works and what is required to be more effective to support people to help keep people safe and also to deal with where bad relationships escalate and there can be ongoing threats of violence. If I could just ask a practical question: in respect of the existing legislation versus the new legislation, do you feel that police have the ability, say, to separate parties and take them away from the point of conflict in order to question them further? Is that a provision that is utilised now or is there a tendency to question them in situ?

Mr Hendrie: The only provision under the present legislation to take someone away is to detain them for the purpose of making an application. There are provisions that have to exist before that can happen. There has to be a reasonable belief domestic violence has occurred and there is danger of injury to the person or danger to the person's property. That is the only time they can detain a person for the purpose of making an application. Then they have to take them straight to a facility.

Ms SIMPSON: I do not know what it is like to have to investigate something in the field in the midst of a heated situation, but is it a difficulty not being able to remove a party temporarily for the purposes of investigating and questioning people separate and out of that situation?

Mr Hendrie: It can be inconvenient. It can be difficult at times. However, we have managed it since the legislation came into place in 1989. Most parties are spoken to at the scene. They are separated by the officers who attend. It can be difficult at times.

Ms SIMPSON: With the new legislation there is the onus to investigate further. I appreciate the intention of that. In practice trying to establish very quickly or as quickly as possible what actually may be happening could be quite difficult. How long does it take police in the field to work through these things on average? It would be hours, would it not?

Mr Hendrie: Honestly, it depends on the situation. There is no standard time frame, unless the person has been detained and then you have four hours. They must be released after four hours.

Ms SIMPSON: To detain a person, what provisions are utilised?

Mr Hendrie: Sorry?

Ms SIMPSON: You said unless the person has been detained then you have four hours to question them. How does that work?

Mr Hendrie: They are taken into custody for four hours from the time they are detained. From that time of detention, police then must release them from custody after four hours—no longer. They can question about the domestic violence, but they cannot question about any other offences. They must have completed the application within that four hours. Yes, there is a time frame. If the person has to be taken from A to B and that is two hours, then the effective time to do anything is two hours because the travel time is included in the overall time frame.

Mr O'BRIEN: When you say they cannot be questioned about other offences, the domestic violence may include a range of offences, assaults and what have you, surely they can be investigated?

Mr Hendrie: No, they cannot. They can investigate the domestic violence and obtain evidence for the application, but that evidence cannot be used for criminal matters. We cannot interview them for a criminal offence for the detention. The legislation states that.

CHAIR: Can I follow on from that? As I understood what the minister outlined, now police are encouraged to investigate other than just the domestic violence under the terms of the new legislation.

Ms SIMPSON: I thought it was that they needed to do more investigation to establish there had been domestic violence in situ.

CHAIR: I did not want to interrupt you.

Mr O'BRIEN: Mr Hendrie, did you have an opportunity to listen to the minister's evidence this morning?

Mr Hendrie: No, sir.

Mr O'BRIEN: Sorry, I thought you had come in for that. Part of your submission was concerns about getting the orders or the notifications signed off by another officer.

Mr Hendrie: The police issue protection notices?

Mr O'BRIEN: Yes.

Mr Hendrie: Not the concern of getting it signed off by an authorising officer, the issue I submitted there was the fact that the way it is worded in the legislation at the moment provides for the commissioner to provide the delegation as to who that authorising officer is. The offence section then says that the court should take into consideration as to whether the police issued notice was issued in accordance with the relevant section, which then means that we have to prove that delegation of authority was done. There have been cases in relation to this delegation of authority where, because that paper was not produced to a court, the matter in question has been dismissed on a technicality.

The advice I have been given is that by changing the legislation slightly to have a definition 'an authorising officer is a person', then that takes away the need for delegation by the commissioner. It also then takes away the need to prove that delegation in the subsequent proceedings for an offence against the police issued notice. That was my concern, not the fact that we have to have an authorising officer.

Mr O'BRIEN: I suppose you are delving into operational matters of the police which I suspect are a bit beyond the scope of the committee. What the minister said today, and I would like you to comment on it if you could, is that there is a general authorisation that is given to shift supervisors for a region and it is likely that that person would hold the authorisation. I do not think I am verballing the minister there. I think that is a correct representation of what she said. That authorisation exists for a range of different matters, including the domestic violence matters.

Mr Hendrie: Ranks have different authorities.

Mr O'BRIEN: Sure. She indicated this morning it could be a person of a lower rank than the investigating officer. It could, in fact, be a senior constable in some circumstances.

Mr Hendrie: In the legislation it says a person delegated by the commissioner. The commissioner would have to decide who that person is, what rank they are, and we would have to prove that delegation for any subsequent offences. If the legislation specified it then that need, that extra burden in proving an offence, is taken away. That is all.

Mr DOWLING: So really it is more about the process.

Mr Hendrie: The spirit of the legislation is to protect the victims. My submission is that, by having that issue there, because it is a legal technicality it places an extra burden that should not be there and therefore jeopardises the protection of the victims—not necessarily from a policing point of view; the police will deal with whatever they have to—but from the victim's point of view the need to have the police prove that in every case is an unnecessary burden.

CHAIR: It is an evidentiary provision that imposes that burden.

Mr Hendrie: When a slight change of the bill now could alleviate that problem.

CHAIR: This probably affects people from Mr O'Brien's area more than others, because the electorate of Cook does not have police stations and detention areas close by.

Mr O'BRIEN: There are plenty of police stations and plenty of detention areas, in fact. It has a police station in every community. It has a higher police-to-population ratio than anyone here.

CHAIR: You suggest putting a proviso at 119(3)(b) to exclude the time spent travelling to a watch-house. At the moment the proposed subsection states—

However, the person must not be held in custody for more than the following period (the ***detention period***) ...

The first one relates to proposed paragraph 116(2)(b), which is in relation to drunkenness or intoxication. Proposed paragraph (b) states—

Otherwise—4 hours from when the person is first taken into custody under section 116.

I understand that what you are suggesting is to exclude any vehicle time.

Mr Hendrie: What I am suggesting is that the detention time starts from when they arrive at the watch-house, because that is the time at which an investigation can be conducted. During the travel time, the police involved cannot do an investigation; they are travelling. Something can happen in that travel time—and it does not have to be in Cook. In my area, Eidsvold is two hours from Bundaberg. If they travel from Eidsvold with a person, they have two hours to do the necessary application and paperwork, and that does not seem to benefit the aggrieved. Therefore, once again, it is affecting the safety of the person we are meant to protect.

I know that the new legislation addresses some issues with the ability to apply to a magistrate to extend it, but it is only in certain provisions. The drunkenness has been addressed because there is a time there for that. Yes, definitely, if we have to travel, it really is a concern, in some areas more than others. For the majority of times and the places, if it is still the time you hit the watch-house it may only be five minutes.

CHAIR: But there could also be other circumstances independent of that amount of time. On the way there, if anything arose that needed attention there still could be that extra lapse of time that does not allow the work to be done.

Mr Hendrie: The bill allows for the person to be taken to another place in case they are injured or something, and then the detention can continue after that, whereas it does not exist at present.

Mr CHOI: Mr Hendrie, in your submission you mention intervention orders. Were you here when the minister and the Law Society commented on that?

Mr Hendrie: I heard part of it, sir.

Mr CHOI: I am struggling with it at the moment. I can understand the argument from both sides—yours as well as the Law Society's. Are you aware of any other jurisdictions and how they deal with this particular issue?

Mr Hendrie: As far as intervention orders are concerned, I believe that we are asking them to consent to change their behaviour. All I am suggesting by having a penalty is that we hold them accountable for that decision. That is a problem with our society nowadays: no-one wants to be held accountable for what they do. Any penalty that would be imposed for failing to comply with an intervention order is only going to be imposed if they fail to keep their word. If they are serious about changing their behaviour, a penalty for contravening that intervention order is never going to be used because they are going to go along and take part in the behavioural change program and/or counselling, whichever the case may be, and they are going to try to address those issues. We are not talking about the people who are committed to change. If they are not committed to change, they will not consent to an intervention order in the first place. But if they do consent to it, I believe they should be held accountable for that decision.

CHAIR: To go a little further, the Law Society's submission was that, in fact, as a penalty for a breach of an order, an intervention ruling rather than a consent order should be imposed on a person. Obviously they have not taken into account anything that has been said to them in the first place if they are finally charged with a breach of the order that is made, independent of having the initial intervention order.

Mr Hendrie: It was not until I was involved in a conference with SPEAK that I finally became aware that there was no penalty for intervention orders. I thought the intervention order was a condition that was put on the protection order, which is what happens in some places now. I know that magistrates in Gympie and Bundaberg will ask them if they wish to do a behavioural change program. If they consent, it becomes a condition of the order which then, if they breach it, becomes a penalty as per the order. Once again, you mentioned that the word 'order' means that you are being told to do something, but we are saying that they are consenting to it. That is neither here nor there.

As to what the penalty may be or what the consequences may be for contravening that intervention order, I am not suggesting that it be punitive. But there should be some consequence other than just the parties, as it says in the legislation now, notifying the courts and the Queensland Police Service within seven days. The person making that commitment should be held accountable for their behaviour. Otherwise it is possible that, on advice from somebody else, they will consent to an intervention order, having no intention of going to it, to be seen more favourably by the court in the first place. Then there is no change. There is no safety for the victim; they are still living with that fear because domestic violence is not incident based. It is a course of conduct. It is aimed at controlling a person. They do not behave like that toward other people.

Ms SIMPSON: You say that currently the courts can consider forms of intervention that are not prescribed in legislation.

Mr Hendrie: At the moment the section in the legislation states 'a condition for the benefit of the aggrieved or respondent'. I cannot remember the exact wording of it. They are interpreting that to say, 'Yes, if they consent to this then I will put a condition on the order that they attend a behavioural change program by Lifeline'—or whatever the case may be—'and attend within a certain period'. From Bundaberg's point of view, the contravention of that condition basically means that they just do not turn up. That is the only time I would be interested in pursuing a contravention of that condition. If they attend and they partake, they have done what they are supposed to do. I am not asking the facilitator of the program to provide the evidence to say that this person has not taken part. It is nice and simple: if they do not attend, they have not complied with the condition. Other magistrates will say that the legislation does not allow for that condition and they will not implement it by order. Different magistrates have different interpretations.

CHAIR: I am aware that the magistrates in Central Queensland will put it on as a condition of the order and it is a breach if they do not do it. It depends on magistrates, as you say. I appreciate that.

Ms SIMPSON: Has it been upheld in courts as a breach of condition with penalties that have flowed?

CHAIR: I do not know.

Ms SIMPSON: Perhaps that is something for us to find out a little more about.

CHAIR: As I suggested, the Law Society's submission was that they did not seem to want it put on the initial order, even if it was made by consent. However, I understood them to suggest that, on any breach of an initial order that a respondent is charged with, some sort of counselling or intervention order be part of the penalty imposed for a breach of the original order.

Mr Hendrie: What you are talking about there is two different levels of intervention—

CHAIR: I appreciate that. The first one is when the order is made and there is no sanction if a person puts up their hand and says, 'Yes, I will attend.' They have a consent; they have put their hand up to say, 'Yes, I will attend,' but then they do not attend. There is no sanction other than the organisation notifying the court and the police.

Mr Hendrie: That is under the bill at the moment.

CHAIR: That is under the bill as it stands, yes. As I understand their proposal, and I will have another look at it, they were not suggesting that that change but that in any subsequent breach of the order, which would not include not attending under the intervention order, it be made a condition of the penalty that is imposed.

Mr Hendrie: So it then becomes mandated.

CHAIR: It then becomes mandated.

Mr Hendrie: As I said, they are two different issues.

CHAIR: Yes.

Mr Hendrie: The first one is by consent. The second one being mandated has to be done through Probation and Parole, because it is part of a penalty and sentence. Probation and Parole have to overview the program, which is what the Gold Coast does and there are a couple of others in the state.

CHAIR: Also California uses that.

Mr Hendrie: All over the United States they do that and in most of Europe. If the penalty for not complying with an intervention order when you say that you will attend and do not is that it then becomes mandated. That is a penalty and they are held accountable. That may be the only penalty that is necessary, but I submit that something should be done to make them accountable for their opinion. If they do attend, these are the ones where we want to stop the breaches happening and reduce those 10,000 a year that we have been reporting. If we can reduce those, we are winning.

Ms SIMPSON: Can I ask a follow-up to that. Could you explain what happens on the Gold Coast?

Mr Hendrie: The Gold Coast domestic violence service has an integrated response and they have a mandated program. If a person is convicted of a breach, part of their sentencing may be to attend a program. The Gold Coast program—and I am not an expert on it—is loosely based on the Duluth program from America. It is controlled and overviewed by Probation and Parole. If they do not attend or they do not participate properly, it is reported to Probation and Parole and they get breached by Probation and Parole as part of their penalty. That is loosely how it works. It is a 26-week program. The penalty for that may be that they have to start over again. You would have to talk to the Gold Coast service to get more information on that.

Ms SIMPSON: I think we do need to talk to some of the services that have been doing this to get some feedback as to what the evidence has been for effectiveness. This is probably more of a research question, and I do not know if this evidence would be in your hands, but where homicide occurs as the outcome of a serious attack, particularly homicide, as a result of domestic violence, would it be fair to say that there has usually been a long history leading up to that moment where the more severe action occurs?

Mr Hendrie: I have not researched domestic homicide. You could argue that, yes, where it happens there has been a long history of domestic violence. Whether that history has been reported to the police and whether they have been involved is another argument. Certainly an investigation afterwards would probably show that, if it is domestic related and there is domestic abuse, it is not an incident based thing; it is a course of conduct.

There is a new program called AVERT Family Violence. I was actually hearing about that the other day. One caption in there really stood out to me. One of the facilitators said that a woman told her that 15 years ago her husband hit her and that was the only act of domestic violence. She asked, 'He's never hit you again?' The woman said, 'No, he never had to. He did it once, he never had to.' How do you control that? That is in this training program. It is very compelling, even from my point of view and I have been doing this for 26 years.

CHAIR: Does anyone else have anything for Mr Hendrie? I certainly do not. Was there anything that you wanted to add? I realise that there probably is half a day's worth to add.

Mr Hendrie: There is a lot I could say but, no, I will not, thank you.

CHAIR: Thank you very much for your input. It has raised queries and the committee members will be following up on that. Thank you for your concerns. You obviously have a deep concern for this legislation.

Mr Hendrie: Before I go, can I just reiterate that the comments I have made today are personal comments. It is not the policy of the Police Service.

CHAIR: We appreciate that.

Mr Hendrie: I am not here in work time. I actually have to go back and work tonight. This is my time.

CHAIR: We appreciate that. Certainly that has been our approach.

Mr O'BRIEN: I would be very disappointed if there were any ramifications for you professionally as a result of you giving evidence here today. I would certain hope that that is not the case.

Mr Hendrie: It will not be. I got the support of my district officer, my inspector and the district commissioner of the north coast region before I came down here. However, I reiterate that I am not here as a police officer.

CHAIR: We appreciate that, Mr Hendrie. Once again I thank you for your input. It has caused us to go off on another tangent also, but never mind. We have to deal with that. Thank you very much.

Ms SIMPSON: Thank you very much for your time.

CHAIR: We have no further witnesses. Therefore, that will conclude today's hearing. Thank you all for your attendance at the public hearing. I believe that we have gathered some valuable information that will assist in the examination of the bill. I also thank the parliamentary staff who have assisted with today's hearing, particularly our research directorate, who have worked through thick and thin to have everything prepared for today. I now declare the meeting closed.

Committee adjourned at 10.47 am