Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

Submission No:	56
Submitted by:	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

ATSILS
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562
Level 5, 183 North Quay, Brisbane Qld 4000
PO Box 13035, George Street, Brisbane Qld 4003
07 3025 3888 | Freecall 24/7: 1800 012 255
07 3025 3800
info@atsils.org.au
www.atsils.org.au

30th May 2025

Committee Secretary
Education, Arts and Communities Committee
Parliament House
George Street
Brisbane Qld 4001

By email: eacc@parliament.qld.gov.au

Dear Committee Secretary,

Re: Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

Thank you for the opportunity to provide comments on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (**Bill**) which proposes to make amendments to the *Domestic and Family Violence Protection Act 2012* (**DFVP Act**), *Evidence Act 1977* (**Evidence Act**) and other legislation including, notably, to: introduce a legislative framework wherein police are given new expanded powers to be able to issue a 12-month 'Police Protection Direction' (**PPD**) when responding to a domestic and family violence (**DFV**) incident; introduce an electronic monitoring pilot for 'high-risk DFV perpetrators'; and expand the Video-Recorded Evidence-in-Chief framework to all Magistrates Courts in Queensland. We strongly oppose the proposed PPD for a number of reasons including, fundamentally, the lack of due process considering the removal of court oversight on the imposition of the PPD and concerns regarding the negative implications of the proposed regime, particularly for Aboriginal and Torres Strait Islander individuals, given the well-documented concerns relating to QPS responses to DFV incidents involving Aboriginal and Torres Strait Islander party/parties, that PPDs are likely to result in a disproportionate impact on the already marginalised including those with disabilities, neurocognitive impairments, literary challenges and mental illness, and PPDs are likely to worsen progress towards Closing the Gap targets to reduce incarceration levels of Aboriginal and Torres Strait Islander individuals (for example, in situations where a PPD should never have been

issued, but due the lack of court oversight, this would be unlikely to be identified to be challenged by legal representation, until a breach occurs).

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

Closing the Gap

Any proposed amendments to the domestic and family violence protection framework, must simultaneously involve careful consideration of commitments under the National Agreement on Closing the Gap (**NACTG**), such that any proposed amendments to the existing regime do not inadvertently worsen progress towards targets to reduce incarceration rates of Aboriginal and Torres Strait Islander persons and that there is a strong focus on addressing the root causes of DFV behaviours.

As at the time of writing, overincarceration of Aboriginal and Torres Strait Islander persons persists, despite the commitments contained in the NACTG. The Closing the Gap Information Repository provides up-to-date data (sourced from the Australian

Bureau of Statistics) in relation to how the nation, states and territories are tracking towards the priority reforms and targets in the NACTG.

With respect to Target 10 of the NACTG, which provides that by 2031, the rate of Aboriginal and Torres Strait Islander adults held in incarceration will be reduced by at least 15%, the Closing the Gap Information Repository provides that:

- at the National level, the target is, in fact, worsening and that as at 30 June 2024, the age-standardised rate of Aboriginal and Torres Strait Islander prisoners was 2,304.4 per 100,000 adult population, which is an increase from the previous year at 2,041.5 per 100,000 adult population in 2022; and
- at the Queensland level, the target is also worsening.[1]

The causes for over-representation of Aboriginal and Torres Strait Islander persons in the criminal justice system are complex and multi-faceted. Such was the subject of analysis and commentary in QSAC's 2021 Connecting the Dots Report, in which existing criminological literature relating to the causes of over-representation was discussed[2]. In particular, contextual factors to relevant offending were raised, including the impacts of unemployment and generational unemployment, lack of educational attainment, poverty, low socio-economic status, homelessness, complex health needs including mental health and physical and/or cognitive impairment, alcohol and substance abuse (including the impact of the same on individuals in utero) and intergenerational trauma. Also discussed was criminological literature that recognised differential treatment faced by Aboriginal and Torres Strait Islander persons in interactions with the criminal justice system including over-policing resulting in higher incidences of arrest, conviction and imprisonment[3].

Cultural context

Aboriginal and Torres Strait Islander women and men are at a far greater risk of being a victim of domestic violence than non-Indigenous men and women. The Australian Institute of Criminology statistical report entitled 'Homicide in Australia 2021-22' reveals that in 2021-22:

(a) Aboriginal and Torres Strait Islander females aged 15 years and over were 33 times more likely to be hospitalised due to family violence than non-Indigenous women; and

---

[1] Productivity Commission (Cth), *Closing the Gap Information Repository*, (2024), available at <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area10>.

[2] Queensland Sentencing Advisory Council (Qld), *Connecting the dots: the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland*, Sentencing Profile (March 2021) 4-10.

[3] Note 3.

(b) Aboriginal and Torres Strait Islander men were 27 times more likely to be hospitalised due to family violence than non-Indigenous men[4].

Higher rates of family violence within Aboriginal and Torres Strait Islander communities must be viewed in the context of the ongoing impacts of intergenerational trauma and entrenched systemic disadvantage. Further, whilst we acknowledge that domestic and family violence on the whole is a gendered issue, family and intimate relationship dynamics, in particular when considering cultural context, are inherently complex and not always binary in nature (i.e., one person is the perpetrator and is always the perpetrator, and one person is the victim and is always the victim).

In our coalface experience in representing clients in relation to domestic violence matters, we have seen complex dynamics time and time again, such as scenarios that might involve circumstances of mutual abuse and/or an individual being subjected to prolonged abuse by their partner leading them to, one day, react with violence. An additional layer of complexity can be demonstrated by a common scenario that we see with our clients, particularly from Far North Queensland, where a woman who has been subjected to prolonged abuse from their partner, one day, having 'had enough', reacts by throwing a rock or flinging a mug at their partner. The woman is subsequently charged by police as being the perpetrator of a domestic violence offence[5].

Accordingly, due regard to cultural context is critical when considering proposed amendments to the DFV protection regime to properly assess any negative and unintended or counter-intuitive implications of the same.

[4] H Miles, E Faulconbridge & S Bricknell, *Homicide in Australia 2021–22,* Statistical Report no. 45. Canberra: Australian Institute of Criminology.

[5] We note that the misidentification by police of Aboriginal and Torres Strait Islander women as perpetrators of domestic violence offences was evidenced in the 2022 Independent Commission of Inquiry into Queensland Police Service Response to Domestic and Family Violence.

Comments on the Bill

Police Protection Directions

We strongly oppose the introduction of the proposed PPD on the basis that it lacks due process (i.e., embedded court oversight) and that will have numerous negative implications and potentially counter-intuitive implications particularly for Aboriginal and Torres Strait Islander parties. Our concerns with the proposed regime are outlined below.

PPDs impact a person's human rights and confer quasi-judicial powers to frontline police officers

A protection order, or direction (as is proposed), can restrict the liberty of a person, evict them from their home, prevent their contact with family members, i.e., forced separation, and restrict or separate an individual from community and/or kinship relationships. They can have significant impacts on children and give rise to a risk of child removal. Upon review of the Bill, it appears that, should a police officer seek to impose an ouster or non-contact condition, apart from the requirement to obtain approval from the relevant supervising officer (which could be undertaken by a quick phone call) and the requirement to consider the accommodation needs of the respondent, there are no limitations on the nature/specifications of the ouster or no-contact conditions that would be imposed. In our practice, we have seen conditions imposed which prohibit a party from attending anywhere between a 100 metre radius from a particular location to one kilometre radius or more, thereby placing the respondent in a very difficult situation of being unable to go about their daily life, including undertaking grocery shopping, attending on relatives, having contact with children (unless a family law exception is provided for), meeting cultural obligations, attending family events or sorry business. There have been instances where police officers have issued PPNs prohibiting a client from attending an entire geographical area, for example, Stradbroke Island, a regional council area or an even larger geographical area. Court oversight has enabled our lawyers to promptly dispute such grossly disproportionate conditions and have them revised to be proportionate.

Whilst police have a very important role to play in attending to DFV incidents as frontline responders, police officer are not judicial officers. The court oversight which is embedded into the existing PPN process, operates as a crucial safeguard to ensure that, in the context of the imposition of an order with serious and long-term consequences on the parties and any children (as the case might be), the parties have the opportunity to be promptly heard in a court of competent jurisdiction. This is

fundamental to the rule of law and consistent with an individual's right to a fair hearing pursuant to section 31 of the *Human Rights Act Qld 2019.* The proposal essentially confers quasi-judicial power to police officers. Not only is this wholly inappropriate, it is a very dangerous precedent to set.

DFV matters are inherently complex and especially so when considering cultural context

As noted in our Introductory Comments earlier, for DFV matters, we typically see very complex dynamics at play. The challenging circumstances that are often common at the scene of a DFV incident include parties having heightened emotions with the possibility of one or more individuals involved being under the influence of drugs and/or alcohol. Moreover, though, there is often a lot more to what is going on than at face value and there are a number of factors that can get in the way of getting to the bottom of each person's experience, including longstanding mistrust of police (i.e., they might not be forthcoming with police), fear of child removal and language barriers. There might be scenarios where there is mutual abuse, longstanding coercive control, systems abuse, etc. And whilst we appreciate that the proposed model tries to address issues some of these complexities, the reality is that courts are better equipped than frontline police to evaluate complex evidence. Not only does court oversight promote transparency and accountability in the use of such expansive powers, it also promotes public confidence in the justice system to overcome avoid perceptions of unfairness or bias in decision-making by police when issuing such orders or directions.

Sufficient consideration of the views of the aggrieved

Whilst we acknowledge that the proposed regime states that one of the matters that police must consider in deciding whether or not to issue a PPD is any views or wishes expressed by the aggrieved about whether an application for a protection order should be made, in practice, we very rarely see instances in which Aboriginal and Torres Strait Islander parties are involved where the police have considered the wishes of the aggrieved. In many instances, our clients continue to depend on the other party for assistance with caring for children (especially if they have a child with special needs) and instruct us that they have raised such with the police and they do not agree to a protection order being imposed, and despite this, PPNs are imposed.

Potential conflicts with existing orders, agreements or proceedings under the Child Protection Act 1999 or the Family Law Act 1974

We note proposed s100D of the DFVP Act which provides that where a PPD would include a child of the respondent as a named person or includes a condition that would prevent or limit contact between the respondent and a child of the respondent, a police officer must not issue the PPD 'if the officer knows or reasonably believes that a family law order or an order or care agreement under the *Child Protection Act 1999* is in force or a proceeding relating to the child under the *Child Protection Act* or the *Family Law Act* has been started but not finally dealt with'. However, it is unclear as to how police are to check if there are such relevant circumstances, e.g., if there is a parenting order or a child protection order in place. Under the circumstances (at the scene of a DFV incident), the parties might not be in a fit state to advise of the same or the aggrieved might omit that information.

Police officer to explain the PPD to the respondent

Whilst the proposed regime provides that the police officer that issues the PPD must explain the PPD to the parties, we are concerned about the extent to which this will be undertaken. Our concerns are founded upon regular feedback from our practitioners of, for example, respondent parties being told by police that they do not have to attend court when domestic violence documentation is served upon them by a police officer.

Police officer's obligation to consider the accommodation needs of the respondent

We note that pursuant to proposed section 100J of the DFVP Act, for PPDs that are intended to include a cool-down or ouster condition, the police officer is obligated to 'consider the accommodation needs of the respondent' and 'take any reasonable steps necessary to ensure the respondent has access to temporary accommodation'. We anticipate that this will be particularly problematic for individuals that live in remote communities where access to alternative accommodation is little to non-existent.

Service of the PPD on the respondent

According to proposed s100O(2) of the DFVP Act, 'as soon as practicable' after the PPD takes effect, the police officer that issued it must prepare and serve on the respondent a signed written notice stating the grounds for issuing the direction. In our view, this should be amended to 'no later than 5 business days' or some such definite

time period. Under the current regime, we have represented clients in matters where we have had consecutive adjournments, with police submitting to the court that they have not been able to locate the respondent for service.

Cultural issues within QPS

Also relevant, are the cultural issues within QPS that were identified in the Independent Commission of Inquiry into QPS responses to DFV impacting, in particular, Aboriginal and Torres Strait Islander people, including police misidentifying victims as perpetrators, evidence of racism and misogyny, the over-policing of Aboriginal and Torres Strait Islander individuals as respondents and under-policing of Aboriginal and Torres Strait Islander individuals as victims. The evidence that came out of the Commission of Inquiry justifies concerns regarding police making the right calls at the scene of a DFV incident and we continue to hold concerns regarding the same, especially in remote areas where training/experience might not sufficiently equip a police officer to deal with such complexities and cultural considerations such as those outlined in this submission.

Police efficiency as a justification for the proposed PPD regime is wholly inappropriate

Based on the supporting materials, the policy objective behind the proposed PPD framework, is not victim safety; it is police efficiency. The Explanatory Notes state that Queensland Police Service (**QPS**) 'is under significant strain due to increasing demand across all crime types, exacerbated by the evolving and complex nature of domestic and family violence' and that the proposed amendments in the Bill, 'will improve productivity for operational police officers when responding to DFV' and 'empower police officers to administratively issue immediate long-term protection directions without filing an application for a proceeding before a court'[6]. Police efficiency is a wholly inappropriate justification for entirely removing the safeguard of court oversight when considering the fact that the proposed PPD will be, essentially, a 12-month protection order with serious legal consequences should it be contravened (i.e., proposed s177A of the DFVP Act provides that breach of a PPD will be an offence with a maximum penalty 120 penalty units or 3 yrs imprisonment).

We have significant concerns that police officers would, as a matter of convenience, issue a PPD given the discretion allowed to determine if the matter should be brought before the court. This appears to transfer to the police officer the role that should be

[6] Pages 1-2, Explanatory Notes to the Bill.

in the hands of a judicial officer who gives proper consideration to all facts, circumstances and evidence prior to making an order.

Misidentification

The issues relating to misidentification of the primary aggressor by police in a DFV incident when interacting with Aboriginal and Torres Strait Islander parties are well documented. Aboriginal and Torres Strait Islander victims might not always present as the 'perfect victim'; they might choose not to cooperate with police or be abusive in their interactions with police. The reasons for this might include trauma, historic mistrust of police, the fear of child removal, and more. Such is a big contributor to police misidentifying victims as the primary aggressors of DFV.

To demonstrate another level of complexity, we offer the following example: a domestic violence order application was made against a party by the police on behalf of a daughter who was under the influence of drugs and was yelling abuse and carrying on at her father, resulting in him having to vacate his own home and move into a tent. We took this matter up in court at the next mention and had it resolved.

We acknowledge that proposed section 100C of the DFVP Act provides that if a police officer reasonably believes that there are indications that both persons in the relationship are in need of protection and the person who is most need of protection in the relationship cannot be identified, this is no substitute for court oversight, given the existing concerns relating to misidentification by police as it relies upon police discretion to make such a determination.

Plugging a stream of clients that would ordinarily seek legal assistance promptly after an order/notice is issued

We are concerned that, in practice, if our clients are not provided with a court date (as they would be if a PPN was issued), they are unlikely to seek legal advice from us. What we anticipate will occur is that a PPD will be imposed and the first we will hear of it is when it is breached. By then, the family unit has already been subjected to significant impacts, which we could otherwise have provided legal assistance for and possibly ameliorated.

Impact on the already marginalised

We hold significant concerns regarding how this proposed regime will impact individuals that have disabilities, neurocognitive impairments, intellectual impairments

or challenges or those with mental health issues – who are overrepresented in our client cohort. These individuals might find it very difficult if not be unable to understand what is happening if a PPD is issued, and might not fully comprehend the consequences, even though a police officer considers that they have explained such. We are concerned as to how a police officer will satisfy themselves in regard to the capacity of a respondent. It is possible that there remains a miscommunication, misunderstand or total lack of comprehension of what has occurred. If the individual then breaches the order, they are in danger of having the order extended as well as possibly being subject to the monitoring regime. These marginalised individuals are also unlikely to seek legal advice or assistance, unless they are supported by someone. We further note that proposed section 100C of the DFVP Act provides a list of circumstances in which a police officer must not issue a PPD. Notably, one of those circumstances is where the aggrieved or respondent is a child. The reason for this is described in the Explanatory Notes as follows 'to ensure children are enabled to access legal representation and benefit from the further supports and opportunities provided by the court process'. We are in agreement that children should have the ability to access legal representation and due process. However, the same should apply to those who have a disability, neurocognitive impairments, neurocognitive condition, literacy challenges and/or mental health issues.

Administrative review

According to the Bill, the prescribed period for applying for an administrative review of a PPD is 28 days after the notice stating the grounds for issuing it is served upon the respondent, and the reviewing officer must decide the review request within 28 days. We are concerned that an affected party might not seek legal assistance in a timely manner to allow for a review to be initiated. This is especially so for those that have disabilities, cognitive impairments and/or mental health issues.

Recommendations in lieu of introducing a PPD regime

We strongly recommend:

- The implementation of a state-wide co-responder model where, at the scene of a DFV incident, a local, i.e. place-based community-controlled organisation responds to the scene along with police, to allow for community-based resolution and better outcomes for the particular couple/family; and
- The establishment of widely available, culturally competent/safe rehabilitation programs and healing programs to address root causes of DFV behaviours/offending. In the context of Aboriginal and Torres Strait Islander offenders, to have the best chance of success, rehabilitation programs must be

delivered by community-controlled organisations preferably within the local community that the individual belongs, to provide the cultural safety required to promote engagement by the individual. We are aware that there is a very limited number of culturally safe rehabilitation/healing programs throughout the State, especially in rural and remote areas. We see this as an area where there needs to be additional funding to empower local community-controlled organisations to expand delivery of such programs. We note that such would reduce the incidence of DFV by addressing the root causes of offending and such would contribute to freeing up police resources.

Other comments

If, despite our concerns as outlined in this submission, the government is minded to enact the PPD regime, we strongly recommend that proposed s192A of the DFVP Act which provides that the Minister must ensure the operation of the PPD provisions is reviewed as soon as practicable after 2 years have elapsed since commencement include as an additional term of this review, whether there have been negative implications on Aboriginal and Torres Strait Islander persons in the context of the targets contained in the National Agreement on Closing the Gap.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer