Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

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Committee Secretary
Education, Arts and Communities Committee
Parliament House
George Street
Brisbane Qld 4000

Submitted via web portal: EACC - Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 - Submission

Re: Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 ('the Bill')

About HUB Community Legal

HUB Community Legal is a generalist community legal centre based in Inala. We provide outreach services to Goodna, Yarrabilba, Springfield and Ipswich. Our service provides Domestic and Family Violence duty lawyer services in Ipswich, Richlands, Beenleigh and Beaudesert. We also regularly advise clients in matters of family law, domestic and family violence and child protection.

Whilst we welcome the opportunity to provide a submission to the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 Inquiry ('the Inquiry').

Submission

It is submitted that any changes to the Domestic and Family Violence (DFV) legislation should reflect recommendations made by the Women's Safety and Justice Taskforce. Any change must have the safety and wellbeing of the aggrieved as the priority policy objective.

Whilst we support some amendments in the Bill, such as the further use of video-recorded evidence-in-chief in the correct context, we do not support reforms such as police protection directions (PPDs).

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We oppose the introduction of Police Protection Directions (PPDs)

We strongly oppose the introduction of PPDs out of concern that there will not be any improvement in efficiency and will have other negative consequences. While the issuing of a PPD would not require the matter go before a court, police will still be required to obtain and document the approval of a supervising police officer, personally serve the PPD on the respondent and explain to them the PPD conditions, domestic and family violence, contravention consequences, and the right to review by the Police Commissioner or Magistrates Court. The issuing police officer also must prepare and serve a signed written notice of the grounds for issuing the PPD on the respondent.

If the respondent elects to have the PPD reviewed, they can start with the Police Commissioner who can consider the submissions of all parties, and then have the matter further reviewed by the Magistrates Court, utilising more police resources.

The existing police protection notice ('PPN') regime requires similar steps to the existing system. Before issuing a PPN, police must obtain and document the approval of a supervising police officer, personally serve the PPN on the respondent and explain to them the PPN conditions, domestic violence, contravention consequences, and that it constitutes an application to the Magistrates Court. The issuing police officer must also prepare and serve a signed written notice of the grounds for issuing the PPN on the respondent and file the application and grounds with the Magistrates Court.

As a matter of procedure, where a PPN is made and there is evidence of service on the respondent, the matter can be finalised to a 5-year domestic violence order if the respondent does not attend court.

Arguably, further resources will be expended by police in dealing with the dual review process, as the only difference is that the material does not need to be filed by police with the Magistrates Court until the respondent makes an application.

It is likely that PPDs will need to be referred to the Magistrates Court to address parenting matters. PPD's do not allow the issuing police officer to include exceptions to conditions. It is typical at the first mention for a court to include exceptions for parenting matters so that the family are not forced to apply to the family court where a parenting agreement can adequately address safety and custody of the children.

It is envisaged in the Bill that such exceptions be added by stating that a condition is invalid to the extent of inconsistency with a family law order, an order or care agreement under the Child Protection Act. It further states a PPD must not be issued if it will include a child of the respondent as a named person or a condition that would prevent contact between the respondent and their child if there are proceedings started but not finally dealt with under the Family Law Act or Child Protection Act. As such, where children are involved and court orders have not been sought in respect of the children, it is impractical to make a PPD as opposed to a PPN, as the PPD will have to be amended in the Magistrates Court for practical effect. An aggrieved will otherwise be trapped by the PPD, unable to make care arrangements for children without the time and expense of pursuing family court orders.

The Bill sets out a significant list of circumstances where a PPD cannot be issued by police (s100C prohibition, s100D restrictions with children), these include: -

- where the aggrieved or respondent is a child or police officer;
- the respondent should be taken into custody in relation to the domestic violence and another person is at risk of injury or property is at risk of being damaged;
- there is a current or past Protection Order or recognised interstate order regardless of who was named as respondent and aggrieved;
- a PPD is or has previously been in force;
- the respondent has been convicted (not charged) of a DV offence within the past two (2) years or a proceeding for a DV offence has been started but not finally disposed of;
- a protection order application has been made against the respondent but not finally dealt with ;
- the respondent threatened or actually used a weapon to commit the DV; or
- where there are indications that both persons are in need of protection and the person most in need of protection cannot be identified.

These circumstances are in addition to the restriction from issuing a respondent with a PPD if it is reasonably believed that it is necessary or desirable to protect a child of, or who usually lives with, the aggrieved from associated domestic violence or being exposed to DV by the respondent, and a condition more than the mandatory good behaviour ***condition*** *is* necessary to provide adequate protection.

The practicality of these restrictions is that there will be very few occasions where a PPD can be issued. We acknowledge that this is a regrettable statement, while also endorsing the response currently provided by Queensland's Domestic and Family Violence Act.

It appears, on its face, with the restrictive circumstances in which a PPD can be issued, that they are to be used in response to lower level or "minor" acts of domestic violence.

Where police consider children need protection, a PPN is inevitably required due to the limitations of the PPD. The unfortunate reality is that many children are exposed to DFV in Queensland, and consideration must be given to their protection. The PPD scheme does not allow for their protection in the way that a PPN does.

Realistically, a PPD will only be issued if a respondent has no previous DV history and the incident of domestic violence is more minor. This is the cohort which benefits most from being in the Magistrates Court, accessing intervention program providers, receiving referrals to address the root cause of the incident. By issuing a PPD, these supports are not made readily available, and the cycle of violence is more likely to continue with further domestic violence in the future due to the lack of psychosocial education and supports.

Threatening the rule of law: risks of not separating Police and Judiciary

It is inappropriate to expect police officers to act as a quasi-court and to subvert the knowledge and oversight of a court.

Officers attending domestic violence jobs will be expected to make decisions on complex legal matters including whether a relevant relationship exists, whether the respondent has committed an act of domestic violence against the aggrieved, and that an order is necessary or desirable. These are legally defined terms with nuance which have been the subject of countless appeals to provide further definition and context. The oversight provided by the court is needed to ensure access to a fair hearing, and due process. The independence and impartiality of the judiciary are crucial to ensure domestic violence orders are made only in the correct circumstances.

The court's process of reviewing an application for a protection order can take multiple forms. In some, it is simply reviewing the material to ensure the three elements are satisfied and that service has been affected before a final order is made with or without consent. In others, the matter progresses to a hearing. Before the hearing occurs, the court issues directions where all parties are afforded the opportunity to provide fulsome evidence through affidavit. In some ways, this is the submission of each party to support a review of the application which has been made. During the hearing, it is possible for cross-examination to occur. The Magistrate may also ask a party for additional information, as the court may inform itself however it likes. At the conclusion of the hearing, the court then determines whether or not the three elements are met, which determines whether a final order is made.

The Bill proposes that a PPD could be reviewed by the Police Commissioner. It would allow the respondent and aggrieved to make submissions about the review within a period of at least seven (7) days. The Police Commissioner can also ask for information the Commissioner considers necessary to decide the review. While both submissions and the provision of information by request are both optional, the format of these reviews is very similar to that of a Magistrates Court constituted for a domestic violence application hearing, wherein both the respondent and aggrieved have filed their information for consideration and the decision maker can request additional information to assist them in formulating their decision. In such way, the Police Commissioner acts as a quasi-court.

To seek a Magistrates Court review of the PPD, an application can be made by any party at any time while the PPD is in effect. This is to be given to the Police Commissioner as soon as practicable after filing. Within one (1) business day of receiving the application, a copy of the direction, notice of grounds, and a notice to be served on the parties that the matter will be listed for hearing of the review application. The application is to be listed for hearing at the earliest opportunity and not later than 14 business days after the material has been filed, and the hearing details to be given to parties. The documents must then be served on the applicant and other parties.

The PPD is then taken to be an application for a protection order, with the police as applicant. Part 3 of the DFV Act applies to the court hearing of the review application, such that the Court can make a temporary protection order or adjourn the application with no temporary order. The Bill also states that the Court may make an order setting aside the PPD or dismissing the application for review (s100ZD(2)). If the PPD is set aside, the PPD is taken never to have been issued and does not form part of the

respondent's DV history (s100ZD(3)). If the review application is dismissed, the PPD continues unaffected, and a further review application can only be made with leave of the court (s100ZD(4)).

It is our submission that a PPD which has been set aside not forming part of a person's domestic violence history is an intentional policy choice, designed to reflect procedural fairness. It fails to recognise, though, that there is a high likelihood that a respondent will not have had an opportunity to consider the grounds of the PPD before having to argue that the PPD should be set aside and no temporary order made. If a TPO is made, this would then remain on their DV history even if a final order is not made following a hearing where the original PPD is dismissed. This risk stems from s44(2) allowing the grounds to be made otherwise known to the court, and the potentially swift turnaround between the PPD being issued and the matter being listed for review.

Where a PPD, like a PPN or protection order, will affect a person's eligibility to hold an employment related licence, it is important that they be afforded the opportunity to have the matter considered promptly, and so waiting for police to complete the statement is not possible. This will prejudice the respondent's ability to instruct a duty lawyer or lawyer otherwise to appear. The making of a temporary order is an interim hearing where an interim order is made, that has significant consequences to all parties. If respondents are prejudiced in their ability to defend and oppose the application, the right to a fair hearing is disproportionately affected.

While the court can already, under the existing legislation, have the grounds made otherwise known to the Court, the grounds are completed as part of the PPN or application process. These must be filed before the hearing of the application, or if earlier, fourteen (14) days after the notice was issued (s111). As such, it will be standard practice for the officer to prepare these, whereas there is likely to become a backlog for PPDs as they are not immediately required. The courts have taken consideration of service of the grounds before making a TPO, and in some respects, the consequences of this are lesser, as a PPN will continue to be shown on a DV history even if no TPO is made.

Misidentification of person most in need

The explanatory notes highlight that 'Tasmanian domestic violence workers have reportedly warned of a 'misidentification crisis', with applications to revoke PFVOs allegedly increasing by 102 per cent in the six years leading to June 2023, and with applications by female respondents jumping 154 per cent.' Under s100C(i) of the Bill it states that a police officer must not issue a police protection direction against the respondent if the officer reasonably believes that there are indicators that both persons in the relationship are in need of protection and the person who is in most need of protection in the relationship cannot be identified. This is not a sufficient safeguard to assist Police with the misidentification of the person most in need of protection, being the true aggrieved.

It is the nature of DFV incidents that Police who attend focus on a crisis response. The information gathered during this time does not provide sufficient information, particularly about the context of the relationship so that the police can always identify a true aggrieved. A DFV incident will often result in both parties being in heightened emotional states. People who have experienced DFV often present with complex behaviours, especially where an aggrieved has been reactive to the violence perpetrated against them for their own safety.

It is becoming increasingly more common that perpetrators of coercive control weaponise the system to make themselves appear as an aggrieved at a DFV incident. This leads to the mis-identification of the actual person in need of protection. It is often only when the matter proceeds to court that the true aggrieved can be identified. The oversight of the court is essential in ensuring the person most in need of protection can be correctly identified.

Addressing Domestic and Family Violence – PPDs likely to increase risk

It is our submission that the implementation of the PPD scheme will not address domestic and family violence, and that breaches will likely increase where a PPD, rather than a PPN, is issued.

While the proposed s100Q requires police explain a number of factors to the respondent, including the terms of the order, what domestic violence is and what constitutes a breach, it further states that a failure to comply with this requirement does not invalidate or otherwise affect the PPD. Additionally, while

personal service of the PPD would be required pursuant to s100O, the PPD takes effect when the respondent has been notified of it, including by text or email (s100R(2)).

This creates a multitude of problems. Firstly, if the respondent is notified of the PPD by electronic means, there is no guarantee that they are aware of the PPD having been made and its terms. The respondent could then be charged for a breach of the PPD, adding to the workload of Police who have to respond to and prosecute the offence. The aggrieved would also not be afforded protection, as the respondent would not be aware of the conduct they needed to cease.

This is compounded where there are barriers to a person's understanding of the terms of the PPD, potentially due to illiteracy, language barrier or intellectual disability. The terms of a PPD will mirror the existing wording of PPNs and DVOs. The conditions of orders are not simple sentences, and depending on the drafting, can become long running sentences with 'or' used multiple times to the point of losing the thread of the sentence.

Even without barriers, it is possible that a respondent issued with a PPD will not understand the magnitude of the document which they are served. It is highly likely that as a PPD would not require the respondent to attend court, that they would interpret the PPD as a non-binding request, information leaflet or indication of the sort of order that could be made against them in the future. The difficulty with this is that the order will be breached out of ignorance, and no safety actually afforded to the ag grieved.

Additionally, consideration should be given to the benefit derived by respondents attending the Magistrates Court and accessing support services. In most courts, an intervention program provider has a representative at the court on the day domestic violence applications are heard. This allows direct intervention and access where supports may otherwise not be known to the respondent or engaged with. It is common practice for the Magistrate and duty lawyer, if sought, to refer a respondent to speak with the intervention program provider present so that domestic violence can be holistically addressed.

By issuing a PPD, supports available for respondents may not be made known to them. Without these programs offering psychosocial education and supports, the likelihood of the respondent committing future domestic violence drastically increases and the safety of the aggrieved is therefore reduced.

Video Recorded Evidence-in-Chief (VREC) framework

We support the extension of VREC in Magistrates Courts across the state alongside victim-centred training for police. This reform supports an aggrieved from being re-traumatised by having to retell their evidence to courts. However, the use of VREC should not affect the ability or necessity for an aggrieved to give evidence in court proceedings under cross-examination or re-examination.

Under s151 of the DFVP Act 2012, respondents can be restricted from conducting cross-examination in person of an aggrieved by way of the court's own initiative or on the application of a party to the proceeding, when cross-examination is likely to cause the aggrieved to suffer emotional harm or distress or be so intimidated as to be disadvantaged as a witness. Under r22(g) DFVP Rules the court can issue directions for a proceeding regarding how a respondent or respondent's lawyer may cross-examine an aggrieved. A DFVP court may make an order that the respondent who is not represented by a lawyer may not cross-examine an aggrieved. The DFVP Act and Rules already provides for the courts discretion to issue directions for the cross-examination of an aggrieved for their protection while also ensuring that respondents still have the right to challenge the prosecution's evidence by way of cross-examination. VREC should be subject to the same rules to ensure that respondents can know and test evidence being used by the prosecution.

We do not support the removal of the requirement for police to be trained to take VREC. The quality of VREC would be impacted by an untrained police officer taking an aggrieved's statement. The explanatory notes state that 'A trained police officer is currently defined as an officer who has successfully completed a DFV training course, approved by the police commissioner, for the purpose of taking recorded statements'. DFV training is necessary to ensure police officers are using trauma informed practice and are able to recognise the complex nature of DFV trauma presentations, and be able to support an aggrieved to provide evidence, leading to better quality of evidence. It would not be appropriate for an untrained police officer to take the statement of an aggrieved as it places the aggrieved at risk of being triggered or re-traumatised, impacting the quality and reliability of the evidence being used against the respondent. To ensure the integrity of evidence is maintained it would be more appropriate to wait for a DFV trained police officer to be available to obtain VREC evidence.

Electronic monitoring trial

We do not support the introduction of the electronic monitoring device ('EMD') pilot program. We cannot support an amendment where the government in their own explanatory notes acknowledges that the pilot program is in contravention of the *Legislative Standards Act 1992*, specifically that there are legislative gaps to be filled at a later date by subordinate legislation. The amendments as proposed make significant reference to the fact that the pilot program will be prescribed by a regulation, to be drafted at a later date. The stated purpose of this is to allow for flexibility, but certainty, consistency and predictability are needed.

The pilot program is proposed to increase safety planning for an aggrieved against a respondent who might be considered a "high-risk" offender. In considering whether an EMD should be fitted, a court is to be satisfied that the respondent has either been convicted of, or is charged with a domestic violence or an indictable offence involving violence against another person. However, for the purposes of the pilot program, there is no distinction between respondents where they have been convicted of a violent offence, or someone who has been charged but the charges were later withdrawn. There is also not a distinction between the seriousness of the contraventions of the domestic violence order. The Magistrate when making their decision, is likely not to have the factual basis of the breaches before them and only the respondent's criminal history or DV history.

The pilot program also will see difficulty on the imposition of conditions of no approaching or attempting to approach the aggrieved or named persons. In our service's experience in conducting duty lawyer services, some courts have the tendency to impose no approach conditions of significant distance, for example 500 metres or 1 kilometre. Where a significant distance is imposed and parties to an application remain in the same area, it stands to reason that a respondent will contravene the protection order many times without knowledge of where the aggrieved is. Further, we submit that where significant distances are imposed, but the respondent is not actually within a range to cause harm to the aggrieved, any monitoring and alert devices would cause an aggrieved undue anxiety where there is no apparent or actual threat of harm, for example: -

> *A respondent has been ordered to not approach an aggrieved within 500 metres. The aggrieved lives nearby a highway on a side road. The respondent uses the highway each day to travel to and from work. Each time the respondent drives by, they are unknowingly within the 500-metre*

proximity and the EMD would be sending an alert. The aggrieved is fearful every morning and every evening that they are being stalked or harassed by the respondent.

The respondent in the above scenario would likely be charged with contravening a domestic violence order. This would then require the police to file charges, have the issue of bail but the respondent is likely to make submissions on why any charges should be withdrawn. This requires the police to commit more time and resources to DV matters, and therefore does not increase the efficiency of handling DV matters.

Conclusion

Thank you for the opportunity to provide this submission to the Inquiry. Should you wish to contact us for any further information please do not hesitate to do so. We can be contacted by email at [redacted] or by phone at [redacted]

Yours sincerely,

[redacted]

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On behalf of HUB Community Legal