

## Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

<b>Submission No:</b>	63
<b>Submitted by:</b>	Caxton Community Legal Centre and HopgoodGanim Lawyers
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<b>Submitter Comments:</b>	

### By online lodgement

Dear Members of the Education, Arts and Communities Committee (**the Committee**)

Thank you for the opportunity to make this submission on the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (Qld) (Bill)*.

### About Caxton Legal Centre and HopgoodGanim Lawyers

This submission has been prepared by Caxton Community Legal Centre (**Caxton**) in collaboration with HopgoodGanim Lawyers.

Caxton is Queensland's oldest and largest generalist and specialist community legal centre. Caxton is an independent, non-profit community organisation whose purpose is to promote and protect human rights in Queensland through access to justice. Since Caxton's establishment 49 years ago, their objective has been to provide free legal and social support services to people who experience disadvantage, including those experiencing DFV, and those charged with domestic violence offences.

HopgoodGanim Lawyers has been providing legal assistance to survivors of DFV for 50 years. We are a leading Australian legal services provider at the forefront of expertise and service delivery in our key client markets. We provide exceptional outcomes to our Australian and international clients from our offices in Brisbane and Perth, spanning the east and west coasts of the country. We have a dedicated pro bono legal practice who work with the broader firm and our community partners to deliver our [Pro Bono Impact Strategy](#). Our pro bono impact strategy is focused on delivering long-term changes in three impact areas: First Nations communities, environmental disasters and domestic and family violence.

### Cultural Acknowledgement

In making this submission we acknowledge the traditional custodians of the lands and waters across Queensland and Australia and pay our respects to their Elders past and present. We acknowledge the disproportionate impact of domestic and family violence (**DFV**) experienced by First Nations peoples as well as the disproportionate representation of First Nations peoples in the criminal justice system. We acknowledge that this is a direct consequence of their historical and continuing dispossession, cultural disruption and enforced assimilation.

### Acknowledgement of policing DFV

In making this submission, we would also like to acknowledge the difficulties associated with policing DFV in Queensland. As noted in the 2022 Report for the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence (the **Police Inquiry**):<sup>1</sup>

*'domestic and family violence is responsible for homicide, suicide, permanent disabilities and injuries including psychological injuries. Victims are left traumatised, homeless, destitute and broken.'*

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<sup>1</sup> *A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (Report, November 2022) ('*A Call for Change*') 10  
<https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf>.

*Children are scarred and grow up with lifelong mental health issues which can manifest to drug use and criminal offending.'*

Police are the front-line response to DFV. They are under-resourced, as acknowledged in the Explanatory Notes for the Bill, 'they are reclining under the sheer number of calls for help'.<sup>2</sup>

We acknowledge that they do not yet, have the appropriate training, systems and structures in place to support them in responding to DFV.

## Submission on the Bill

Our submission is focused on the proposed introduction of Police Protection Directions (**PPDs**) into the *Domestic and Family Violence Protection Act 2012* (Qld) (**DFVP Act**).

We do not support the introduction of PPDs.

The Bill identifies that the objectives of PPDs are to improve efficiencies for police responding to DFV and reduce the operational impacts of the current DFV legislative framework. Police officers will be able to issue PPDs when responding to DFV that do not require further court consideration. The PPDs will be effective for 12 months. It is proposed that, providing police with the power to issue PPDs will support frontline efficiencies by removing the necessity for operational police officers to prepare for and attend court for the purposes of providing long-term protection.

In our view, PPDs will not increase the safety of victim-survivors (**survivors**) and will not improve police efficiency. The reasons for this are summarised below and then discussed in more detail further in our submission.

### PPDs will increase not decrease police inefficiencies

1. A key objective of the PPD framework is to improve efficiencies for police responding to DFV. We have undertaken a comparison of the administrative burden on Police brought about by the PPN and PPD frameworks which is shown in Figure 1 below. This comparison shows that the PPD framework only reduces the administrative burden on police if there is no review of the PPD. If there is a review of a PPD, the framework creates a significantly greater burden on police than the current PPN framework and court process.

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<sup>2</sup> Queensland, *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025: Explanatory Notes* (Explanatory Notes, 2025) <https://documents.parliament.qld.gov.au/bills/2025/3250/Domestic-and-Family-Violence-Protection-and-Other-Legislation-Amendment-Bill-2025---Explanatory-Notes-d49a.pdf>.

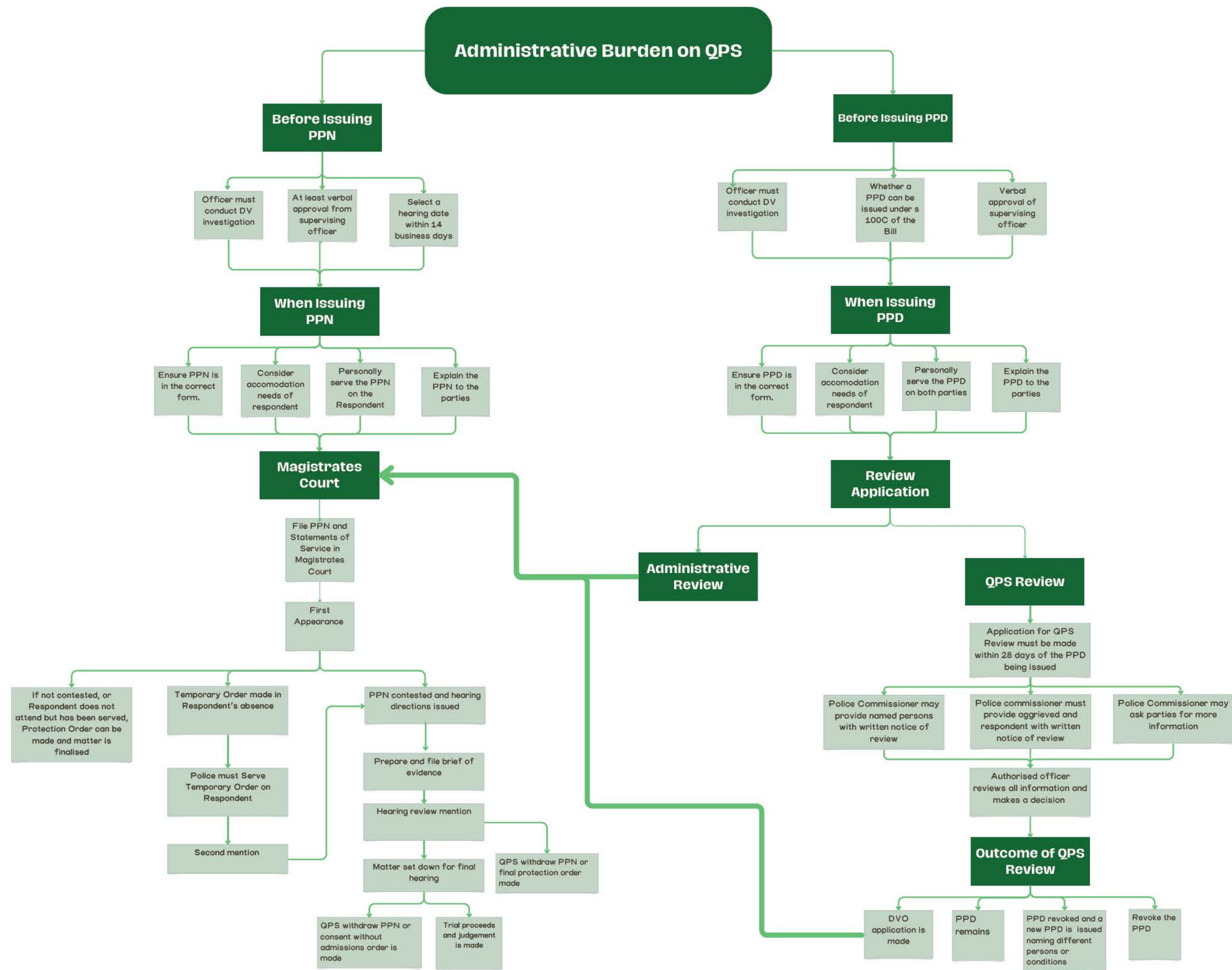


Figure 1.

### PPDs erode the role of judicial oversight

2. Judicial oversight is embedded in Queensland's DFV response framework. Under the current law, Police Protection Notices (**PPNs**) provide police with sufficient emergency powers to impose short-term protection conditions, but importantly, they are linked to a requirement that the matter be brought before a court promptly, ensuring that judicial scrutiny is maintained.
3. The introduction of PPDs represents a considerable shift away from the rigour of a court-supervised process toward one that attempts to ensure safety through restrictions on a person's liberty, housing, or family contact based solely on a limited police intervention and discretion. This dilutes the legal safeguards for the aggrieved and the respondent afforded by judicial oversight and increases the risk of arbitrary or disproportionate interference with human rights.

See **Schedule 1** for more detail.

### PPDs expand police powers without accountability

4. The PPD framework removes mandatory external oversight and police accountability. Unlike the current DFV framework, external accountability for the police decision to issue a PPD will only occur if a person (most likely a respondent) initiates a court review of the PPD.
5. Police accountability is essential to uphold the integrity of law enforcement, deter misconduct, and restore or enhance public confidence in policing. External accountability, such as the judicial oversight mentioned above, provides for greater public confidence in the police force.
6. This is particularly important in the context of police responses to DFV in Queensland where significant systemic structural and cultural problems have been recently identified and only in the early stages of rectification.<sup>3</sup>
7. In circumstances where public confidence in police responses to DFV is already low, expanding police powers and reinforcing their discretion as the gatekeeper to safety, without mandatory external accountability, may deter survivors from reporting DFV at all.

See **Schedule 2** for more details.

### PPDs will fragment the current service system framework and undervalue the role of specialist DFV courts

8. It is intended that PPDs will decrease the number of people who attend court where there is DFV within their relationship. Consequently, these people, including survivors and users of violence, will not benefit from the wrap-around supports available under the current service system frameworks and specialist DFV courts.

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<sup>3</sup> *ACall for Change* (n 1).

9. Without these supports, survivors may become less safe, and users of violence may become less accountable for their behaviours, having missed the opportunity to engage in intervention programs at the earliest possible point in time.
10. It is our experience from representing thousands of people at the first hearing date that this represents one of the best opportunities for early intervention to increase safety and address the social impacts for victim-survivors and people using violence.

See **Schedule 3** for more details.

### PPDs favour an incident-based response and create a two-tier justice system

11. As one of the key objectives of PPDs is to improve police efficiencies, by design, the PPD framework favours an incident-based response. An incident-based approach to DFV is insufficient for addressing DFV due to its focus on discrete events and physical violence, which fails to capture the ongoing nature of coercive control. Conversely, a trauma-aware and risk-informed approach considers the full context of the relationship and the cumulative impact of coercive control, leading to more effective prevention and intervention strategies. By promoting an incident-based response to DFV, there is a risk survivors will become less safe and users of violence become less accountable. An incident-based response to DFV is also inconsistent with Queensland's most recent DFV legislative reform to criminalise coercive control which came into effect on 26 May 2025.
12. Relevantly, as part of this incident-based response, PPDs rely heavily on rapid triaging of the level of seriousness of observed violence. All DFV is serious. The PPD regime is predicated upon there being classes of DFV that can be administratively dispensed with – not serious enough to make it in front of a judicial officer, not serious enough to attract all the benefits of holistic supports built around the first court date. This creates an undesirable two-tier justice system.

See **Schedule 4** for more details.

### PPDs will increase the risk of misidentification of the person most in need of protection

13. Several factors contribute to the misidentification of respondents under the current DFV regime. The reliance on incident-based approaches by police, rather than assessing the context of the relationship in a trauma-informed and risk-informed approach, often leads to incorrect legal responses. The use of weapons and visible physical injuries can increase the likelihood of a survivor being misidentified as an aggressor, as police may not distinguish between self-defence and offensive injuries. Other factors include the parties' prior history, substance use, who contacts the police first, trauma and communication challenges (among others).
14. The introduction of PPDs is likely to exacerbate the misidentification of the person most in need of protection, as seen in Tasmania where similar laws have led to increased rates of misidentification.
15. Lack of judicial oversight, an incident-response framework and lack of access to the court support services provided under the current DFV framework (unless the parties seek a court

review of the decision to issue a PPD) will increase the risk of misidentification of a person most in need of protection going unchecked.

16. This will lead to more harm to survivors including potential loss of employment, homelessness and impact on immigration status and perpetrators of abuse will not be held accountable for their behaviours.

See **Schedule 5** for more details.

### PPDs will increase criminalisation and disadvantage of Queensland's most vulnerable people

17. The PPD framework will exacerbate the criminalisation and disadvantage of communities already facing disproportionate representation in the criminal justice system, including First Nations communities, culturally and linguistically diverse (**CALD**) communities, the LGBTQIA+ community and people with mental health conditions.
18. A combination of factors have led to the over-representation of these communities under the current DFV regime. These include fear of authority and distrust of police, language and communication barriers, frequent misidentification and for First Nations communities, the colonial legacy of systemic biases and historical injustices resulting in their over-criminalisation.
19. Lack of judicial oversight, an incident-response framework and lack of access to the court support services provided under the current DFV framework (unless the parties seek a court review of the decision to issue a PPD) places these communities at increased risk of being issued with a PPD and incarceration for contravening a PPD.

See **Schedule 6** for more details.

### PPDs are misaligned with human rights obligations

20. DFV is a significant human rights violation. Police play a critical role in ensuring the safety, autonomy and protection of survivors. Police need to balance the rights to protection and safety with participation and self-determined outcomes.
21. As a public entity under the *Human Rights Act 2019* (Qld) (**HRA**), police have obligations to ensure that their actions and decisions align with human rights principles and they must give proper consideration to human rights when making decisions.<sup>4</sup>
22. We submit that the PPD framework has the potential to limit a number of human rights which are protected under the HRA. Specifically, the right to a fair hearing, the right to recognition and equality before the law, the right to property and the right to liberty and security of a person.
23. We further submit that the PPD framework will put a human rights complaint out of reach for many individuals who might otherwise be entitled to make a complaint to the Queensland

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<sup>4</sup> *Human Rights Act 2019* (Qld) s 48 ('HRA').



Human Rights Commission.<sup>5</sup> Without automatic engagement with duty lawyers and support systems at court, it is unlikely that the aggrieved or misidentified respondent will understand their rights under the HRA or seek available redress.

See **Schedule 7 for further details.**

### PPDs divert attention away from evidence-led measures and systemic solutions to DFV and shift the cost-burden to other parts of the system

24. PPDs are a novel police-led proposal , not based on any known trial or evaluation. There is no evidence base showing they will reduce police workload, speed up case resolution, or improve outcomes for either the victim-survivor or person using violence. This lacks the kind of empirical support typically required for justice reforms with significant human rights implications.
25. With the greatest of respect but with victim-survivors centred as the ‘rights-holders’ owed a duty by Queensland’s DFV response to uphold their human rights, this places victim-survivors in the role of ‘guinea pigs’ forced into an untested, police-controlled system with no judicial oversight and no proven benefit. It is policy by assumption, not by evidence. At a minimum, such measures should have been trialled with rigorous safeguards, independent evaluation and input from those most affected.

See **Schedule 8 for further details.**

### Recommendations if PPDs are introduced

26. Though we do not support the introduction of PPDs, if the Committee decides to proceed with PPDs, we recommend the following changes to the Bill:
  - a. Repeal s100B(3) and amend the Bill so that a PPD cannot be issued unless the Police have spoken to the respondent. This is a natural justice issue noting that a Court cannot make a protection order unless there has been service of the application on the respondent;
  - b. Subsection 100C(1)(a) should also include a person with impaired capacity and a person who was detained under an Emergency Examination Authority due to the incident that led to Police attendance;
  - c. Subsections 100C(1)(e) – (g) should be amended so as to apply to both the respondent and/or aggrieved (this goes to potential misidentification issue); and
  - d. Amend s100ZD(1)(c). If a court sets aside a PPD upon review, then proceedings pursuant to s177A against the ‘respondent’ should not be commenced and any proceedings that have already been commenced should be withdrawn. A person should not be liable for a criminal offence of contravention of a PPD (especially after the PPD has been set aside) when the PPD should not have been issued in the first place.

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<sup>5</sup> Ibid s 65.



## Schedule 1

### PPDs will erode judicial oversight

27. Judicial oversight is embedded in Queensland's DFV response framework. Under the current law, Police Protection Notices (**PPNs**) provide police with sufficient emergency powers to impose short-term protection conditions, but importantly, they are linked to a requirement that the matter be brought before a court promptly, ensuring that judicial scrutiny is maintained. In contrast, PPDs contemplate a broader police power that may be used independently of any court application or without mandatory judicial review within a short timeframe. This represents a considerable shift away from a court-supervised process toward one that allows significant restrictions on a person's liberty, housing, or family contact to be imposed solely on police authority.
28. Consistency in promoting safety is built into this judicial oversight. We mention here that significant work has gone into promoting this consistency through the **Queensland Domestic and Family Violence Protection Act 2012 Benchbook** which serves as a comprehensive resource designed to assist judicial officers in the consistent and informed application of the DFVP Act. Its primary purpose is to ensure that cases involving DFV are handled with a uniform understanding of the law, thereby promoting fairness and the safety of all parties involved. By offering a standardised reference it helps harmonise the treatment of DFV cases across different courts and regions within Queensland. It includes insights into the complexities of DFV to inform a more nuanced judicial response. It aligns with national initiatives, such as the National Domestic and Family Violence Bench Book, to ensure coherence in DFV jurisprudence across Australia.
29. The authority to impose coercive legal restrictions such as exclusion from the family home or no-contact conditions beyond a period of immediate risk to safety, must rest with an independent judiciary, not with police officers acting unilaterally in the field. Judicial oversight serves as a critical safeguard to ensure that restrictions on a person's liberty, family life, and freedom of movement are lawful, necessary, and proportionate in all the circumstances. It allows for proper consideration of evidence, procedural fairness, and the rights of all parties involved, including the opportunity to be heard. Where urgent protection is required, the appropriate solution is to ensure that police and courts are adequately resourced to deliver fast-tracked, appropriate, safety-promoting and fair protections, rather than expanding police powers at the expense of fairness, accountability and public trust.
30. Police officers play a critical role in frontline response and public safety, but they are not designed or equipped to perform the nuanced task of balancing competing human rights in the way that courts are. Police are trained to respond rapidly to incidents, assess risk and enforce the law, often under time pressure, with incomplete information and in emotionally charged environments. Their primary orientation is toward enforcement, protection, and public order, not legal interpretation or rights adjudication.
31. In contrast, courts are independent and impartial adjudicative bodies specifically mandated to weigh evidence, consider legal arguments, and apply principles of procedural fairness, proportionality and human rights compatibility. Where rights come into tension, for example,

between the right to safety and the right to liberty or family, courts are structurally and procedurally better placed to navigate those tensions fairly. Empowering police to make decisions that significantly affect individuals' rights without judicial oversight risks disproportionate or inconsistent outcomes, particularly for marginalised groups who already face over-policing and systemic disadvantage.

## Schedule 2

### PPDs expand police powers without accountability

32. Police accountability is essential to uphold the integrity of law enforcement, deter misconduct, and restore or enhance public confidence in policing. Both internal and external accountability mechanisms play crucial roles. Internal accountability ensures that police take responsibility for the integrity of their organization, while external accountability provides greater public confidence in that integrity.

#### Current Framework for External Accountability

33. As mentioned in Schedule 1, under the current framework, external accountability for the police when issuing a PPN or when making a Domestic Violence (**DV**) application begins at the first mention before a Magistrate. However, under the PPD framework, external accountability is not automatic. It only occurs if a person, most likely a respondent, independently applies to the Magistrates Court for a court review of the PPD within a 12-month period.

#### The Necessity of Mandatory External Accountability

34. External police accountability should not be optional in Queensland. The Police Inquiry highlighted several critical issues that necessitate mandatory external oversight. These findings include:<sup>6</sup>
- **Sexism and Misogyny:** The inquiry found significant problems with sexism and misogyny within the QPS. Police officers have confirmed that inconsistent and, at times, inadequate responses stem from negative attitudes towards women or beliefs in myths about DFV.
  - **Cultural and Social Shortfalls:** The Inquiry found that there are often shortfalls in QPS's response to DFV when one or both parties identify as First Nations, LGBTIQ+, have a culturally and linguistically diverse (CALD) background, are young or elderly, have a cognitive, intellectual, or physical disability, are experiencing mental health issues, or have other complex needs.
  - **General Aversion to DFV:** A general cultural aversion exists among police officers towards responding to DFV, irrespective of any attitudes or beliefs about the people involved.
  - **Sense of Futility and Burnout:** Police officers reported a sense of futility about their response to DFV, believing their actions do not make a difference. Additionally, a substantial proportion of officers reported fatigue and burnout related to DFV matters due to workload and attitudes.
  - **Leadership Awareness and Racism:** The Inquiry found that QPS leadership is aware of cultural aversions within the organization, and that racism is a significant problem. The QPS had not, at the time, sufficiently prioritized developing cultural capability, leading to responses that do not meet community expectations.
  - **Distrust Among First Nations Peoples:** Intergenerational distrust and fear of police among First Nations peoples create additional barriers to reporting DFV, often resulting in interactions at crisis points.

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<sup>6</sup> A Call for Change (n 1) 17.

- **Internal Conduct and Complaints System:** The Inquiry found that the internal conduct and complaints system was not sufficiently accessible, responsive, or transparent to ensure community confidence in the QPS or to maintain police officers' confidence in their organization.

35. While we acknowledge that the QPS is working to address many of the recommendations made by the Police Inquiry to improve its responses to DFV, respectfully, through our work in listening to the stories of our clients and representing them to take out and respond to domestic violence applications, we continue to observe that many of these issues still exist.

36. Though there is evidence of some positive change, including notable instances where individual police officers provide insightful, appropriate and supportive responses to DFV, there has not been sufficient time to overcome these challenges and rebuild public confidence to the level required to remove mandatory external accountability within the DFV framework. Mandatory external accountability, as exists under the current DFV framework, is crucial to ensure the integrity and effectiveness of police responses to DFV in Queensland.

### Schedule 3

#### PPDs will fragment the current service system framework and undermine specialist DFV courts

37. The Special Taskforce on Domestic and Family Violence, underscored the importance of court-based wrap-around supports in its Not Now, Not Ever Report. The Taskforce recommended establishing specialist DFV courts to provide integrated, victim-focused responses within the justice system.
38. In response, the Queensland Government implemented a trial Specialist Domestic and Family Violence Court in Southport in 2015. An evaluation of this trial highlighted several benefits of the wrap-around support model:
- Enhanced collaboration: the specialist court fostered strong collaborative relationships between the judiciary, domestic violence services, police prosecutors, and duty lawyers, leading to improved coordination of matters and services.
  - Improved victim-survivor experience: victims reported higher satisfaction and perceived procedural fairness compared to those in conventional courts.
  - Increased understanding: both victims and perpetrators demonstrated better self-reported understanding of court outcomes.
  - Increased perpetrator accountability including that the specialist nature of the court contributes to offender accountability:  
*'I think people have a sense that when they're appearing in this jurisdiction [the specialist court] that it's kind of a big deal, so I think that probably increases their sense of accountability' (criminal duty lawyer)*<sup>7</sup>
39. The Specialist Domestic and Family Violence Court model currently operates in Southport, Beenleigh, Mount Isa, Townsville and Palm Island, Brisbane and Cairns. Caxton provides a respondent duty lawyer service to the Brisbane Specialist Domestic and Family Violence Court four days each week. Caxton also has a social worker who attends the Court each of those days who specialises in working with female respondents.
40. While not all domestic violence courts are specialist courts, most courts do at least provide a duty lawyer service.
41. At specialist domestic and family violence courts or other domestic violence courts offering support services, the first hearing date represents the optimal opportunity for both parties who attend court to be linked into services that promote safety (for the aggrieved) and accountability (for the respondent). These services include:

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<sup>7</sup> Queensland Courts, *Evaluation of the Domestic and Family Violence Court Trial in Southport: Summary and Final Report* (Report, 2017) 12  
[https://www.courts.qld.gov.au/data/assets/pdf\\_file/0007/515428/dfv-rpt-evaluation-dfv-court-southport-summary-and-final.pdf](https://www.courts.qld.gov.au/data/assets/pdf_file/0007/515428/dfv-rpt-evaluation-dfv-court-southport-summary-and-final.pdf).

For the aggrieved:

- Duty Lawyer Service
- Engagement with Social Workers for safety planning and other supports
- Referrals to crisis support, including refuge accommodation
- Referrals for further legal advice including family law and immigration law
- Referrals for supports including but not limited to mental health supports, substance abuse issues and counselling

For the respondent:

- Duty Lawyer Service
- Engagement with Social Workers for support as well as to identify candidates as early as possible who demonstrate a willingness and commitment to change their behaviours with supports and programs
- Engagement with Specialist Men's Services, such as Anglicare, for the purpose of same-day practical supports to register with behaviour change programs
- Homelessness supports for respondents who are ousted and rendered immediately homeless
- Referrals for further legal advice including family law and immigration law
- Referrals for supports including but not limited to mental health supports, substance abuse issues and counselling

42. The support provided by duty lawyers to clients includes advice, negotiations and, in a majority of cases, representation. Duty lawyers critically examine the evidence in each matter and can hear a fulsome account of a client's version of events at a time when the client is less heightened than when Police attended. In Caxton's experience, it is common for duty lawyers to be provided with details and evidence from clients that can significantly change the landscape of a matter. This includes evidence that makes it clear that Police have misidentified the respondent, evidence which shows that more conditions should be made to protect the aggrieved than sought by Police in their application and/or evidence which demonstrates that conditions sought by Police are impractical and likely to criminalise vulnerable clients
43. Social workers at the court provide clients with support, including safety planning for the aggrieved, and referrals for both the aggrieved and respondent. Through their conversations with clients, Caxton's social workers often identify other social needs that, if appropriately addressed, will reduce the risk of further domestic violence. Our social workers provide clients with appropriate referrals, including "warm referrals" to ensure these needs are addressed.
44. It has long been acknowledged that if Queensland is serious about addressing the insidious issue that is domestic and family violence within our society, then perpetrator behaviour must be addressed. Crucially, respondent duty lawyers, in conjunction with social support workers, have the unique opportunity at a first hearing date to engage with people using violence. This engagement is the primary opportunity to talk about behaviours and attitudes, to link in with perpetrator programs (including via an Intervention Order), and to manage other social issues such as mental health, addition and homelessness.

45. Unique to the Brisbane DFV Specialist Court, Caxton provides a Family Advocacy and Support Service (**FASS**) social worker who specialises in assisting female Respondents, most of whom are identified at the first court mention as being the person most in need of protection. In addition, Caxton's social worker operates in close collaboration with the Anglicare Men's Support Worker to offer social supports to male Respondents. Through this collaboration DFV specialist court stakeholders are able to identify respondents who are willing to engage in programs and ongoing supports, or who face various intersectional barriers (e.g. mental health issues, intellectual impairment, disability) and require additional support to achieve the goal of keeping families, women and children safer.
46. The Brisbane specialist court has recently introduced integrated support from the Brisbane Murri Elders Community Justice Group (**CJG**) to provide culturally sensitive and appropriate support to First Nations respondents and aggrieveds. The CJG is made up of local Elders who can ensure that First Nations attendees feel supported, represented and as comfortable as possible whilst at Court. They also provide First Nations clients with referrals to cultural activities run by the Brisbane Murri Elders so that clients can have ongoing, culturally appropriate support. Whilst the introduction of the CJG at the Brisbane Court is a new one, Caxton's duty lawyers have already noted the incredible value brought by the Elders to our First Nations clients. CJGs support the operation of other specialist courts in Townsville, Mount Isa, Beenleigh, Palm Island and Cairns.
47. In the absence of the opportunity for early intervention by linking in both aggrieved and respondent parties with these wrap around supports upon first contact with the court system (the day of the first court mention) there is a very real and dangerous risk that parties remain unsupported and disconnected from support services. The PPD process will at best unduly delay this opportunity considerably, because parties who do seek court review will not gain timely access to these supports, or at worst and of most concern, will result in a complete missed opportunity for change for users of violence and for increased safety for survivors. A quick police referral by way of providing relevant phone numbers for services does not compare to the considered, impartial, and where needed "warm" referrals that specialist DFV court stakeholders provide.
48. The introduction of PPDs risks undermining the benefits gained from these integrated court-based supports that were strongly endorsed by the Taskforce. The Not Now, Not Ever reforms aimed to create a coherent, coordinated response centred around courts as a hub of support and accountability. PPDs introduce a parallel mechanism that sidesteps those improvements, fragmenting the system again. It is our submission that this fragmentation is ultimately likely to lead to less safe outcomes for people experiencing domestic and family violence and more likely to keep DFV behind closed doors.
49. We have demonstrated the difference between the pathways for support for survivors and users of violence through the PPN and PPD processes in Figure 2, which shows the current support services through the court process, and Figure 3, which demonstrates the lack of support through the PPD framework.



50. This 'sidestep' appears to be acknowledged in the Bill and deemed inappropriate for children. The reason children are excluded is to ensure they can access legal representation and benefit from the further supports and opportunities provided by the court process. This reasoning should, in our view, apply equally to adults. PPDs will deny, or at least significantly disrupt, easy access for adult parties to the wrap-around supports provided through the current DFV court systems framework. PPDs will put much more strain on Police to assess and make appropriate referrals to both short-term and long-term supports, being solely responsible for this in the cases where PPDs are used; realistically Police are not going to do this when focussed on the efficiencies to be gained through this regime. PPDs will therefore put the onus on survivors and users of violence to independently access the social and legal frameworks available to them at their first attending court date. PPDs will reduce the likelihood that users of violence will access support to change their behaviours and PPDs will also reduce the likelihood that survivors will access the supports that they require. Consequently, survivors will be made less safe under a PPD.

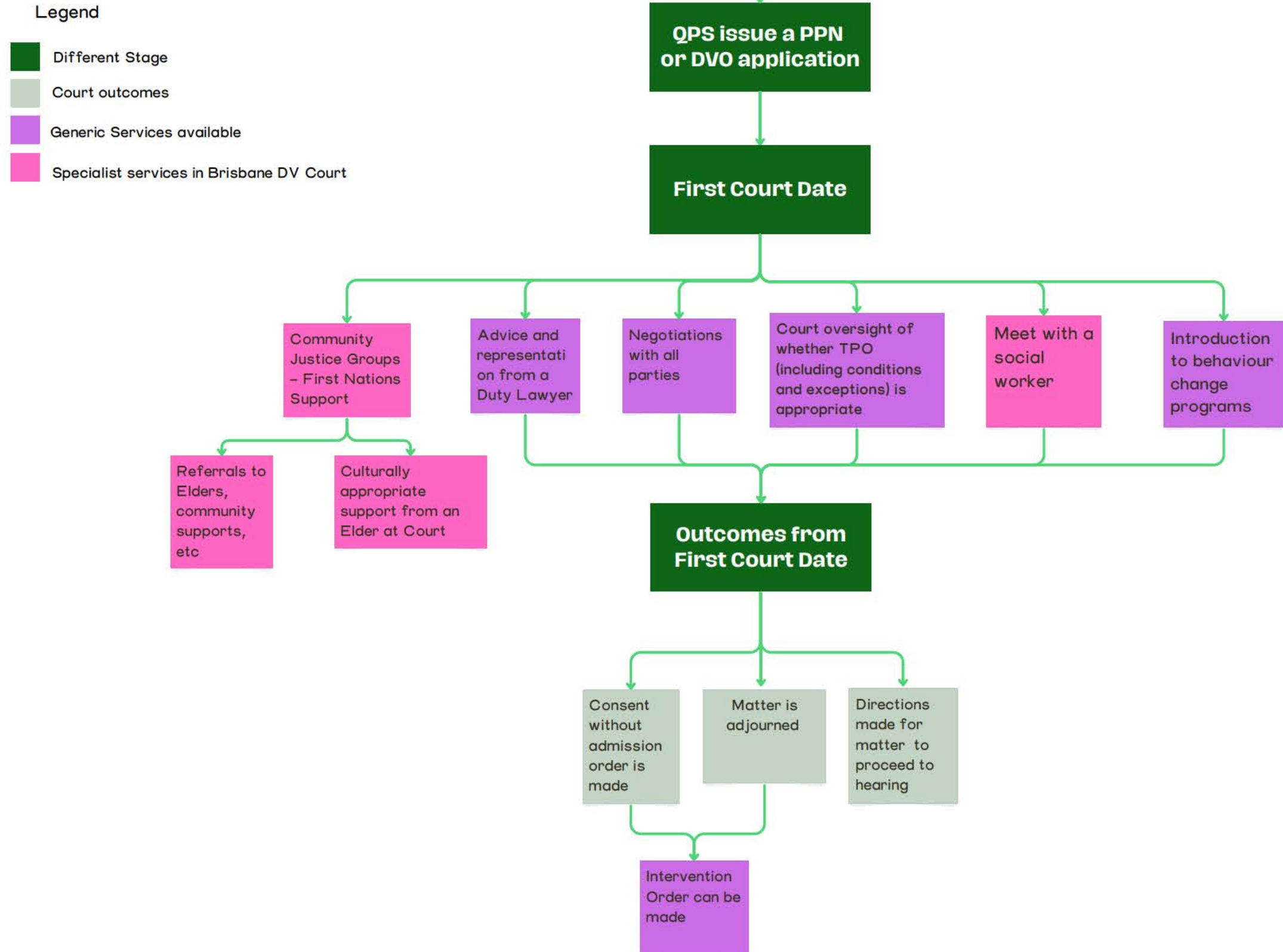


Figure 2.

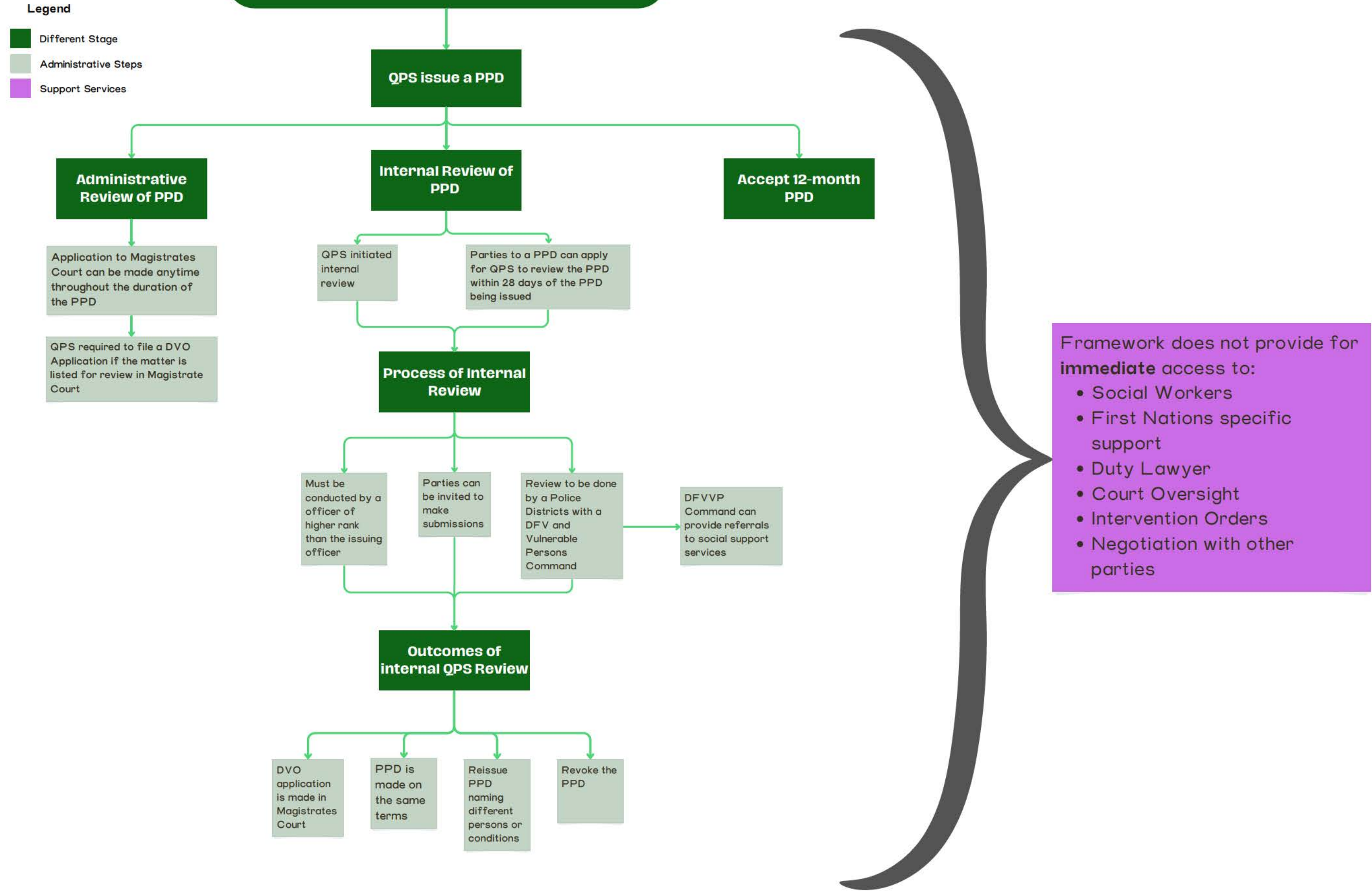


Figure 3.

## Schedule 4

### PPDs favour an incident-based response over a risk-informed, trauma-aware, and systems-based approach

51. An incident-based approach to DFV is insufficient for addressing DFV due to its focus on discrete events and physical violence, which fails to capture the ongoing nature of coercive control or fear-based compliance that may not be evident in a single encounter.
52. Conversely, a trauma-aware and risk-informed approach considers the full context of the relationship and the cumulative impact of more subtle behaviours and types of abuse including coercive control, leading to more effective prevention and intervention strategies.
53. As one of the key objectives of PPDs is to improve police efficiencies. By design, the PPD framework favours an incident-based response
54. This is evidenced, in part, by the circumstances, identified in the Bill, where police officers must not issue PPDs. That is, circumstances that are deemed by police to be too serious for a PPD. These circumstances include:
  - a. where the respondent should be taken into custody in relation to the relevant DFV. This is to acknowledge the seriousness of the matter and ensures that a person who is taken into custody goes before a court, and is not released with a PPD. This exclusion appears to differentiate between 'serious' DFV and 'not serious' or 'less serious' DFV. Further clarity is required to understand what is 'serious' DFV and what is not. There is a risk that the more obvious discrete events and physical abuse (i.e. abuse that can be seen) is deemed more serious than the hidden coercive control, neglect, psychological, emotional, economic and financial abuse. If not investigated thoroughly, the depth of these hidden abuses may not be identified and either deemed appropriate for a PPD (when a survivor actually needs a 5 year DVO to be properly protected) or dismissed entirely. This risks creating a two-tiered justice system by introducing a lower standard of legal process and protection for certain DFV matters considered less serious at the moment of investigation but more serious upon judicial scrutiny at a later date.
  - b. The most common complaint Caxton receives from survivors is that police fail to act, fail to give an explanation to survivors for any decision made not to take action, and when no action is taken due to a decision made about the circumstances, they fail to facilitate other supports. In Caxton's experience, failure to act commonly arises for clients where:
    - i. The parties are separated and there are concurrent parenting disputes;
    - ii. The survivor is from a diverse background or has lower socio-economic status;
    - iii. The survivor is an older person and the alleged perpetrator is a family member providing some care and/or living with the older person;
    - iv. The relationship is non-heterosexual; or
    - v. The survivor is a male in a heterosexual relationship.

## Case Study

*Monica is a young mother who became a client of Caxton following a referral from a social worker based at a women's refuge. Her husband had carried out acts of domestic violence throughout their relationship, including strangulation and sexual violence. One incident resulted in facial injuries that impacted her ability to consume food and drink. QPS had previously attended the home on three occasions but had not taken any action. The children were present each time.*

*Our lawyer liaised closely with the social worker who referred Monica to us. As a priority, we assisted with the drafting and filing of an Application for a Protection Order on Monica's behalf. During the first court mention, the presiding magistrate queried why QPS were not involved. Our lawyer highlighted the lack of QPS action in the past. The Magistrate ordered QPS to urgently serve the Application on Monica's husband and suggested QPS take carriage of the matter. We obtained a Temporary Protection Order at the next mention. Several adjournments later, Monica's husband sought legal advice and indicated an intention to file a cross-application against our client. At this time, QPS advised they would not assist in either application.*

*The Police Prosecutor then agreed to contact QPS's Vulnerable Persons Unit ('VPU') to assist Monica. We advocated to the Police Prosecutor on Monica's behalf to ensure that the VPU contacted her. In addition to detailing Monica's vulnerabilities to the Police Prosecutor, we regularly reached out to confirm whether Monica had been contacted as there was considerable delay in response times.*

*Monica's husband proceeded with filing a cross-application for a Protection Order against Monica. After multiple requests and robust advocacy, QPS agreed to assist with respect to Monica's application only.*

- c. where the respondent has been convicted of a DV offence within the previous 2 years, or a proceeding for a DV offence against the respondent has been started but not disposed of. It is proposed that this safeguard recognises the significance of past DV offending. Though we don't disagree with this safeguard in principle, it does support a framework that points to the more obvious incidents or past incidents of DFV. A more risk-informed and trauma-aware approach would acknowledge that some of the more insidious forms of DFV remain unreported by survivors and will not be easily identified as 'serious' via the incident-based response encouraged by the PPD framework.
- d. where the respondent has used, or threatened to use, an offensive weapon or instrument to commit the DV. This safeguard recognises that a perpetrator's access to, or use of weapons, is a lethality indicator. We do not disagree with this safeguard in principle. It does however further support a narrative and underlying framework that promotes physical abuse and violence as more 'serious' DFV and other hidden behaviours or types of abuse as less serious. This is inconsistent with our learnings from the Women's Safety and Justice Taskforce, 'Hear Her Voice' Report 1 where survivors shared that coercive control can be more damaging than physical violence as it destroys

a person's self-agency and sense of safety.<sup>8</sup> In addition, in the experience of our Aggrieved clients, including older Aggrieved men and women who experience coercive control by their adult children or grandchildren, coercive control can eventually culminate in a physical act of violence, even in situations where there has been no physical violence at all for many years until that point.

55. Other considerations for police when assessing the appropriateness of a PPD include:

- a. whether the respondent may cause serious harm to the aggrieved or a named person if the respondent commits further domestic violence;
- b. whether additional powers of a court in making a protection order may be necessary or desirable (such as imposing a monitoring device condition);
- c. whether either party has a conviction for a domestic violence offence; and
- d. whether the respondent is not present at the same location as the police officer.

56. Except for the final dot point, these further considerations all support the same underlying framework that requires police, when responding to an incident, to differentiate between 'serious' and 'less serious' or 'not serious' DFV.

57. Caxton's clients already commonly report police responding more quickly and appropriately where they are clearly physically injured than they do when they are reporting coercive control and other non-physical domestic violence.

58. Anecdotally, through the clients we assist four days per week at the domestic violence duty lawyer office we have observed a gradual increase in police protection order applications that are primarily based on allegations of coercive control without any physical incidents, which is a step in the right direction. However, meaningful change is in its infancy and we have not to date observed this to be applied regularly or consistently by the police. We continue to see trends in the police responses being more appropriate only when physical violence is present.

59. DFV, outside of physical violence, is often not well understood by police or responded to, especially in these situations:

- a. Economic abuse – police rarely identify this form of abuse and never seek orders that will provide economic safety for the aggrieved. This is a particular problem for women with children and older persons being abused by family members. There is, to our knowledge, no training provided to police about what orders police can seek under the legislation to provide for economic safety. There is a general reluctance to consider how police can

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<sup>8</sup> Women's Safety and Justice Taskforce, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report, Women's Safety and Justice Taskforce, 2021) <https://www.womenstaskforce.qld.gov.au>.

respond to economic abuse and a fear that any steps taken to address this issue is straying into the family law/spousal maintenance/civil law jurisdiction.

- b. Social isolation and neglect – where the aggrieved has a disability and/or care needs or where the aggrieved experiences social isolation as a part of coercive controlling behaviours, the policing response is underwhelming. Examples of social isolation/neglect are sometimes cited in an application for a protection order as an accompanying circumstance to physical violence but, again, it is only a new thing for us to see police action based solely on non-physical violence.

- 60. With the intention of seeking to improve police efficiencies, this underlying framework favours an incident-based response over a more holistic risk-informed, trauma-aware and systems-based approach.
- 61. An incident-based response to DFV is also inconsistent with the criminalisation of coercive control which commenced on 26 May 2025, Queensland's most recent DFV legislative reform. The criminalisation of coercive control in Queensland was legislated with bipartisan support. On commencement of the offence, Minister for the Prevention of Domestic and Family Violence, Amanda Camm said 'the new coercive control laws would see a shift in focus from responding to single incidents of violence to the patterns of abusive behaviours that occur over time.'<sup>9</sup>
- 62. Respectfully, we consider PPDs to be inconsistent with Queensland's shift in focus from single incidents of violence and abuse to identifying patterns of behaviour over time.
- 63. By promoting an incident-based response to DFV, there is a risk survivors will become less safe and users of violence become less accountable under a PPD framework.

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<sup>9</sup> Queensland Government, 'Queensland's Coercive Control Laws Now in Force' (Media Release, 2025)

JOINT MEDIA STATEMENT: Queensland's coercive control laws now in force - Ministerial Media Statements.



## Schedule 5

### PPDs will increase the risk of misidentification

#### Rates of misidentification

64. A 2017 analysis of domestic homicides by the Queensland Domestic Violence and Family Violence Death Review and Advisory Board (the **Board**) found that almost half (44.4%) of adult female victims had previously been identified by police as the respondent in DFV occurrences on at least one occasion.<sup>10</sup>
65. Women who experience intersectional disadvantage are most commonly mis-identified by the police as the Respondent when they are in fact the person most in need of protection. The Board found that First Nations women were particularly likely to be misidentified as perpetrators, with victims being recorded as 'both respondents and aggrieved parties' in 'nearly all' of the cases reviewed.<sup>11</sup>
66. The misidentification of respondents by police continues to be an ongoing issue.
67. Caxton's Domestic Violence Duty lawyer service assists people, including many women, who have been misidentified as the Respondent when they are in fact the person most in need of protection. For many of these women, the time and stress of pursuing an order to protect themselves, in a context where the police are against them, cause them to be reluctant to pursue an order for their own protection. In our experience, this can occur even when the police are aware of a history of violence by the male partner.
68. The case below illustrates the issue of misidentification of women as Respondents.

#### *Case Study*

*Nikita initially attended at Caxton's Domestic Violence Duty Lawyer service as the Respondent to a police application, after an incident where she had accidentally cut her ex-partner, Bob, in self-defence while holding a bread knife. Bob had come to the house uninvited, kicked the front screen door in, and started an argument. He punched Nikita repeatedly in the presence of their two-year-old.*

*Based on this same incident, Bob was charged and imprisoned for breach of a protection order that had been made against him a few months earlier naming Nikita as the Aggrieved. The order only contained conditions that Bob be of good behaviour and not commit violence against Nikita. There had been a lengthy history of serious physical violence against Nikita by Bob, resulting in Nikita being hospitalised multiple times.*

*Following long-term counselling Nikita self-identified as a victim of the cycle of domestic violence. Under pressure and having been threatened by Bob that he would kill her if she took legal action against him, Nikita had previously been unwilling to seek the help of the police to obtain more*

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<sup>10</sup> Domestic and Family Violence Death Review and Advisory Board, [\*2016-2017 Annual Report\*](#) (Report, 2017) 82.

<sup>11</sup> Ibid.

*conditions on the protection order. She had told the police that she did not want an order protecting her at all.*

*Caxton's service assisted Nikita to seek the dismissal of the police application against her and also prepared a variation application and successfully obtained extra conditions against Bob including not to approach within one hundred metres of Nikita and their child. At that stage police were still unwilling to withdraw the application against Nikita and the matter was listed for final hearing. It was only after Caxton's service prepared and lodged affidavit material for Nikita, detailing how she was the person most in need of protection, that police finally withdrew the application against Nikita. It had taken a four-month court process to reach this outcome.*

*Nikita informed Caxton that it had taken her many years of counselling to reach a point where she had the strength to participate in a court process and that without the assistance of a lawyer she would not have opted to endure the arduous court process that resulted from her having been misidentified as a Respondent.*

69. As illustrated through this case study, we frequently find that our clients who are misidentified female respondents are reluctant to contest an application that has been made against them unless they have already engaged with supports, such as counselling supports, that have contributed to building resilience to be able to withstand an intimidating, lengthy and confusing court process.

70. The introduction of PPDs will only exacerbate police misidentification of respondents and would likely result in more harm to victim-survivors, particularly when they are not provided with protection.

#### Factors influencing misidentification

71. Research indicates that there are a number of factors influencing the misidentification of respondents by police. We submit that the following factors will also contribute to the misidentification of respondents on a PPD.

72. **Incident-based approaches:** Police continue to rely on an incident-based approach to DFV, rather than an assessment of violence in the context of a relationship.<sup>12</sup> This results in inconsistent and often incorrect legal responses to DFV as an incident-based approach does not properly consider the way victim-survivors use and resist violence and does not capture coercively controlling violence.<sup>13</sup> Identifying a pattern of coercively controlling behaviour can be difficult and requires significant time and financial investment to ensure survivors are appropriately supported and protected.<sup>14</sup> PPDs favour an incident-based response framework and will result in the continued and potentially increased misidentification of the person most in need of protection.

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<sup>12</sup> *A Call for Change* (n 1) 47.

<sup>13</sup> *Ibid.*

<sup>14</sup> Leanne Collingburn et al, 'Proving a "Pattern of Behaviour": Queensland's Coercive Control (Civil Protection) Reforms in Practice' (2025) 1 *QUT Centre for Justice Briefing Paper Series - Practitioner and Event Papers* 1, 1-4, [Proving a 'pattern of behaviour': Queensland's coercive control \(civil protection\) reforms in practice.](#)

73. **Use of weapon:** Multiple studies and our own experience have shown that the use of a weapon increases the likelihood of a party being named as a respondent.<sup>15</sup> This is a significant factor, particularly when survivors will use nearby household items in self-defence against their partner.<sup>16</sup> The use of a household item as a weapon can result in the assumption that they are the primary aggressor. If police are called out to a DFV incident where a survivor has used a weapon in self-defence, there is a high possibility that they will be identified as the respondent and a PPD will be issued against them. In the case study referred to above, the misidentified female respondent had used a bread knife in self-defence.
74. **Visible injury:** Similar to the use of a weapon, visible injuries to a party increases the likelihood of police identifying the non-injured party as the respondent. In circumstances where both parties have suffered an injury, research indicates that police are not always well trained in distinguishing between self-defensive and offensive injuries.<sup>17</sup> This becomes an issue when police use injuries as an indicator of which party is the primary aggressor. As identified above, if police are called to a DFV incident and do not properly consider whether an injury was inflicted in self-defence, or if one party's injuries take longer to become visible, it is likely that a survivor who acted in self-defence will be identified as a respondent on a PPD.
75. **Prior history:** Survivors who are misidentified as the respondent are often less likely to have criminal or domestic violence history when compared to the true respondent.<sup>18</sup> However, the identification of survivors as respondents has damaging consequences when they are recorded as a perpetrator and responded to in this way through subsequent interactions with police and the court.<sup>19</sup> We detail these consequences further below.
76. **Substance use:** Where a survivor is under the influence of alcohol or other substances, there is a higher chance that they will be misidentified as the respondent. This is likely because police view the survivor as unreliable or responsible in some way for the incident.<sup>20</sup>
77. **Who contacted police:** There is also some evidence the actions of responding police officers to DFV incidents may be influenced by the person who contacts police. Research suggests that where a female suspect contacts the police, the likelihood of them being arrested increases, whereas a male suspect contacting the police decreases the likelihood of their arrest.<sup>21</sup> In practice, survivors are likely to be less inclined to engage in the justice system out of fear of being 'punished'.

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<sup>15</sup> Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Research Report, ANROWS, 2019) 10 <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2019/10/25104930/Nancarrow-PMINOP-RR.3.pdf>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid 27-8; Madeleine Ulbrick, 'Officer she's psychotic and I need protection: Police misidentification of the 'primary aggressor' in family violence incidents in Victoria' (Policy Paper 1, Monash University, April 2020) 12.

<sup>18</sup> Ibid 28.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

78. **Systems abuse:** The misidentification of survivors as respondents also occurs when the actual perpetrator uses the justice system to exert further control over the survivor. In these circumstances, the true respondent will use tactics such as claiming the survivor was the primary aggressor, injuring themselves, calling police first and having a calm demeanour when police attend the scene.<sup>22</sup> We submit that these tactics are likely to continue to influence who police identify as the respondent on a PPD.
79. **Trauma:** Many survivors experience trauma as a consequence of DFV. This trauma can manifest in many ways, not all of which conform to how victims are stereotypically expected to act. Police may misinterpret these behaviours as indicators of low credibility or instability. There is a risk that an incident-based response, as supported by the PPD framework, will increase the likelihood of a person presenting with trauma being misidentified as a respondent party.
80. **Communication challenges:** Often police will attend an incident and speak to the person who they can more easily communicate with. Caxton regularly assists First Nations women, CALD women and women who are deaf misidentified as Respondents because they are unable to communicate with police in English or do not communicate in a way that police perceive a victim 'should' communicate. This applies also to survivors who are distressed, agitated and in a heightened state when police arrive to an incident (for example, if they are impacted by trauma). Conversely, this also applies if the survivor is presenting as not distressed enough or otherwise uncooperative.

#### Impact of misidentification

81. There are a number of significant negative impacts that result when a survivor is misidentified as a perpetrator of DFV. Some of the impacts that our clients have experienced include:
- a. Children being removed;
  - b. Loss of employment;
  - c. Loss of Blue Card or Yellow Card;
  - d. Homelessness;
  - e. Self-harm and suicide attempts;
  - f. Loss of relationships of support;
  - g. Inability to access particular services; and
  - h. Impact on immigration or visa status.

#### *Case Study*

*Margaret is deaf and Aboriginal. She has care of her grandchildren through Child Safety because her daughter had a drug problem. Her daughter, hoping to get custody back, made a bizarre report of violence against her which resulted in police coming out to the house, communicating only with the hearing daughter and taking out a Domestic Violence Order against Margaret. When Margaret tried*

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<sup>22</sup> Ibid.

*to communicate with the police and gesticulate, they would saw her waving her arms around and interpreted that as aggression.*

*The DVO triggered a notification to blue card who then revoked her positive notice. This caused child safety to take the kids off her and place them temporarily with her daughter (the children's mum).*

*Margaret went to court multiple times to get the DVO revoked. In the meantime, the children ended up in general foster care.*

*Eventually when the DVO was removed, she got her blue card back and then the kids came back to her too. But it all took six months.*

#### PPDs are likely to increase rates of misidentification

82. Tasmania is currently the only jurisdiction in Australia that has similar laws to the proposed PPDs with Tasmania Police having the authority to issue final 12-month Police Family Violence Orders (PFVOs) which can only be revoked by the Magistrates Court. However, there is growing evidence that the PFVOs do not have the intended effect, with increasing rates of police issuing PFVOs to victims of DFV who have been misidentified as the respondent.<sup>23</sup> Data from the ABC shows that PFVOs issued by police against female respondents is more than triple the rate of those issued by courts and the subsequent revocation of the PFVO by the court is a lot higher for women than men.<sup>24</sup> There is a clear risk that if PPDs are introduced in Queensland, we will encounter the same problems that are occurring in Tasmania and the issue of misidentification by police will continue to grow.

#### PPDs and impacts of misidentification

83. We submit that PPDs will not only result in the same consequences as identified above under the current DFV regime, but will also deprive both survivors and true respondents from essential support services. As discussed in Schedule 3, without an automatic requirement to attend court, those who are most in need of protection will be unable to immediately access protective services, such as advocacy support, counselling and other social services. Similarly, the true respondent will not be given immediate access to legal and social supports, including the opportunity to engage in early intervention through a behaviour change program. Although parties will have the ability to apply to the court for a review of the PPD, they may be unlikely to do so due to the time, expense and risk of re-traumatisation, particularly in circumstances where the survivor has been misidentified as the respondent.

84. Duty lawyers commonly assist both aggrieved and misidentified respondents who express that they do not support the making of a protection order out of fear that they will be at risk of

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<sup>23</sup> Engender Equality, *Misidentification of the Predominant Aggressor in Tasmania: Practitioner perspectives from Engender Equality* (Report, 2022).

<sup>24</sup> Hayley Gleeson, 'Tasmania Police are still mistaking family violence victims for abusers. For too many women, correcting the record is impossible' (Web Page, 19 November 2023) <<https://www.abc.net.au/news/2023-11-19/tasmania-police-misidentifying-family-violence-victims-abusers/103102134>>; Hayley Gleeson, 'Tasmania's police family violence orders are supposed to keep victims safe. But experts say they're backfiring on women' (Web Page, 5 March 2023) <<https://www.abc.net.au/news/2023-03-05/tasmania-police-family-violence-orders-misidentifying-victims/102037672>>.

further harm by the user of violence if they are blamed for the police decision to seek an order or blamed for supporting the police. On this basis we expect that many misidentified female respondents will be too afraid to seek any review of a PPD to avoid putting themselves or their children at increased risk of harm.

## Schedule 6

### PPDs will increase criminalisation and disadvantage of Queensland's most vulnerable people

85. The PPD framework will increase the criminalisation and disadvantage of communities already disproportionately criminalised and facing disadvantage. This includes, but is not limited to, First Nations communities, CALD communities, the LGBTQIA+ community and people who are impacted by mental health conditions.
86. We have outlined below the reasons for this increased criminalisation and disadvantage for each community.
87. Respondents will need to weigh up whether to accept a 12-month PPD or risk a 5-year DVO by commencing legal proceedings. This decision may be made in highly pressured circumstances, often without access to legal advice, support services, or a clear understanding of their rights. In practice, this creates a coercive dynamic where respondents, particularly those who are vulnerable, misidentified, or from marginalised communities, may feel compelled to accept the PPD simply to avoid the perceived risk of a more severe outcome
88. The consequences of the respondent contravening the PPD are, of course, criminalisation, with the Bill creating a new offence of contravening a PPD, which will carry a maximum penalty of 120 penalty units or 3 years imprisonment. The prosecution will bear the onus of proving beyond reasonable doubt that the respondent was told by a police officer about the PPD and understood the PPD. This places a significant onus on police, particularly when dealing with parties where English is a second language, where the parties are under the influence of alcohol or drugs, where the parties are impacted by trauma, mental health conditions or other cognitive disabilities or where parties have an innate distrust of police.
89. In circumstances, however, where the PPD framework lacks judicial oversight, favours an incident-response framework and denies parties access to the court support services made available at the first hearing date under the current DFV framework (unless the parties seek a court review of the decision to issue a PPD), these communities are at greater risk of being issued with a PPD. They are also at greater risk of incarceration for breaching a PPD under the new section 177A offence for not fully appreciating the nature and consequences of a PPD

### First Nations people

90. As a consequence of the historical and continuing dispossession, cultural disruption and enforced assimilation, First Nations people are already overrepresented within the criminal justice system generally and as survivors and perpetrators of DFV. First Nations prisoners accounted for 36% of



all prisoners in Australia as of 30 June 2024,<sup>25</sup> despite making up approximately 3.8% of the Australian population.<sup>26</sup>

91. In the context of DFV, despite representing only 4.6% of the population of Queensland, First Nations people have made up 14% of aggrieved parties and 15.4% of respondent parties who have been named on a final DVO in Queensland so far in 2024-25.<sup>27</sup>
92. The overrepresentation of First Nations people under the current DFV regime, suggests they are likely to be overrepresented within the new PPD framework
93. This will result in a greater number of First Nations people being subject to the consequences of contravention, including incarceration, for breaching a PPD under the new section 177A offence.<sup>28</sup>

#### CALD communities

94. More than 28% of Australia's population was born overseas and more than 23% of the population speak a language other than English at home.<sup>29</sup> Although cultural and linguistic diversity is not an explicit indicator of disadvantage, many people from CALD backgrounds may be vulnerable to DFV due to risk factors such as visa status, language barriers or lack of community supports and networks.<sup>30</sup>
95. People from CALD backgrounds face difficulties when accessing support for DFV including: language and communication barriers, fear and distrust of authorities due to pre-settlement experiences and lack of CALD-specific information.<sup>31</sup>
96. This research is consistent with our own experience assisting clients from CALD communities. It is our experience that women from CALD backgrounds receive less protection from the system than English-speaking women. Cultural and language barriers they face contribute to their under representation as Aggrieved parties in court
97. CALD women require more support to assert their story and seek protection as the true aggrieved when they have been wrongly identified as the respondent or aggressor by the misuse

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<sup>25</sup> Australian Bureau of Statistics, *Prisoners in Australia* (Web Page, 30 June 2024) <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#:~:text=The%20age%2Dstandardised%20imprisonment%20rate,had%20experienced%20prior%20adult%20imprisonment>>.

<sup>26</sup> Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Web Page, 30 June 2021) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021>>.

<sup>27</sup> Ibid.

<sup>28</sup> Statement of compatibility, p 16.

<sup>29</sup> Australian Bureau of Statistics, *Cultural diversity of Australia* (Web Page, 20 September 2022) <<https://www.abs.gov.au/articles/cultural-diversity-australia>>.

<sup>30</sup> Australian Institute of Health and Welfare, 'Family, domestic and sexual violence', *People from culturally and linguistically diverse backgrounds* (Web Page, 15 February 2025) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>>.

<sup>31</sup> Ibid.

of the system designed to protect them. The use of female interpreters and properly qualified DV duty lawyers and support staff is an important part of protecting these women

98. Our service assists women who are fearful to leave abusive partners who are the sponsor of their spousal visa. Abusive partners use the threat of withdrawing sponsorship, causing women fear of being forced to leave Australia or alternatively fear of remaining in Australia with no financial support. This issue is exacerbated for women with children
99. In other cases, CALD women are named as respondents to protection order applications brought by their partners as a way for their partner to end an arranged marriage or try to retrieve a dowry payment
100. It is not clear how the introduction of PPDs will address these difficulties. Where there are language and communication barriers, it is unlikely that parties will understand the nature of the PPDs, particularly where there is no immediate interpreter service available. Research has shown that it is not uncommon for police to fail to use interpreters when speaking with or interviewing members of the CALD community about their experiences of DFV.<sup>32</sup>
101. While it is acknowledged that language and communication difficulties are likely encountered when a PPN is first issued, parties from CALD backgrounds have access to interpreter and other support services when they attend the first court date. Without automatic access to these resources, respondent parties are at greater risk of contravening a PPD they do not understand the nature of the conditions. This will result in higher chances of CALD respondents facing increased criminalisation. As respondent duty lawyers it is not uncommon for us to assist CALD respondents who speak limited or no English, who either do not understand the PPN conditions fully, or at all. We observe this to be the case regardless of whether the police did the right thing by using an interpreter in an attempt to explain PPN conditions to the respondent, or whether they failed to use an interpreter. This issue will only remain unchecked and amplified under a PPD model, further diminishing the rights of CALD clients to recognition and equality before the law.

#### LGBTQIA+ communities

102. LGBTQIA+ people are generally overrepresented in the Australian criminal justice system, and are vulnerable to trauma, systemic discrimination and social stigmatisation.<sup>33</sup> While it is more difficult to find data on rates of DFV among the LGBTQIA+ communities within Australia due to underreporting,<sup>34</sup> a 2019 survey of 6,835 LGBTQIA+ participants found that 61% had

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<sup>32</sup> *A Call for Change* (n 1) 186.

<sup>33</sup> We acknowledge that national reporting on LGBTQIA+ people is often limited by lack of data, but see for example: Tony Butler et al, 'Sexual Behaviour and Sexual Health of Australian Prisoners' (2013) 10(1) *Sexual Health* 64; Paul L Simpson, Danika Hardiman and Tony Butler, 'Understanding the Over-Representation of Lesbian or Bisexual Women in the Australian Prisoner Population' (2019) 31(3) *Current Issues in Criminal Justice* 365.

<sup>34</sup> Rebecca Gray, Tommy Walker, Jen Hamer, Timothy Broady, Jessica Kean, Joycelyn Ling and Brandon Bear, *Developing LGBTQ programs for perpetrators and victims/survivors of domestic and family violence* (Research Report, May 2020) 21.

experienced intimate partner violence before.<sup>35</sup> This data and other research indicate that members of the LGBTQIA+ community experience DFV at higher rates than the community average.<sup>36</sup>

103. There has historically been a poor relationship between the police and LGBTQIA+ communities which acts as a barrier to the reporting of DFV. Other barriers that are faced by LGBTQIA+ people when accessing help for DFV include: experiences and/or fear of discrimination; the use of frameworks based on heteronormativity to determine who perpetrates and experiences violence (for example, determining the primary aggressor based on perceived masculinity or assigned sex at birth); the belief that their experience will not be understood and/or taken seriously; and, the lack of data to indicate the need for services.<sup>37</sup>
104. PPDs are likely to further disadvantage LGBTQIA+ people who are experiencing DFV as it is likely that respondents will continue to be misidentified by police on the basis of appearance, or responding police officers may be unable to recognise types of DFV that are specific to LGBTQIA+ people.

#### Mental health

105. Mental health conditions, including mental illness and other manifestations such as psychological distress or trauma, can be a risk factor for the perpetration and/or victimisation of DFV. A study of 560 people who had used DFV found that more than 51% screened positive for post-traumatic stress disorder and just under 1 in 3 had anxiety or depression.<sup>38</sup> More broadly, people with mental health issues are overrepresented in the criminal justice system with approximately 50% of incarcerated people in Queensland suffering from a mental health disorder.<sup>39</sup>
106. Survivors who experience mental health conditions have reported feeling as though police do not listen or respond appropriately to DFV (Commission of Inquiry into QPS responses to DFV, p 189). In some instances, police only take action with respect to mental health issues and do not respond to DFV as police often view victim-survivors as hysterical or unreliable when there are intersecting mental health issues.<sup>40</sup>
107. Caxton regularly assist Respondents (men and women) who present with significant mental health issues that are not well managed, including schizophrenia, bipolar disorder, borderline

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<sup>35</sup> Australian Institute of Health and Welfare, 'Family, domestic and sexual violence', *LGBTIQA+ people* (Web Page, 28 February 2025) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqa-people>>.

<sup>36</sup> *A Call for Change* (n 1) 182.

<sup>37</sup> Australian Institute of Health and Welfare, 'Family, domestic and sexual violence', *LGBTIQA+ people* (Web Page, 28 February 2025) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqa-people>>.

<sup>38</sup> Australian Institute of Health and Welfare, 'Family, domestic and sexual violence', *Factors associated with FDSV* (Web Page, 28 February 2025) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/factors-associated-with-fdsv>>.

<sup>39</sup> Footsteps Community Services, *Navigating the Intersection of Mental Health and the QLD Criminal Justice System* (Web Page, 27 September 2024) <<https://footstepscs.com.au/navigating-mental-health-criminal-justice-system-qld/#:~:text=The%20prevalence%20of%20mental%20health,risk%20of%20incarceration%20and%20reoffending.>>>.

<sup>40</sup> *A Call for Change* (n 1) 189.

personality disorder and drug and alcohol dependency issues. These illnesses can seriously impact on a person's ability to regulate their behaviour including using specific behaviours within a relationship that are coercive and controlling, not necessarily with what may be referred to as the 'criminal' intent to do so. It is Caxton's experience that there is a greater risk that these persons will be the Respondent to a protection order and/or breach a protection order. Consequently, there is a risk that these persons will also be Respondents to a PPD and breach of a PPD which may have the unintended consequence of placing women and men with serious mental health issues/disability at a greater risk of arrest and incarceration.

108. Persons who suffer from dementia or other illnesses resulting in cognitive decline may also be adversely affected by PPDs. Caxton has assisted older persons with a diagnosis of dementia who have become physically violent towards their partner (often in the caring role) during a state of dementia-induced agitation, resulting in an application for a protection order being made against them by police. This issue is heightened when applications are made against a person whose capacity impairment is to such an extent that they cannot understand the effect of a protection order, rendering the order redundant and inappropriate. This issue, replicated within the context of a PPD framework, would result in unenforceable PPDs being issued, combined with a lack of access to wrap around supports when no review is applied for. Even with access to the specialist court support services under the PPN model, it is notoriously difficult to find appropriate supports for parties with impaired capacity who fall into this category. The issue of capacity impairment is complex, nuanced, and not appropriate to leave for the police to solely manage, which will be the consequence and responsibility faced by police under a PPD framework. Requiring the police to navigate the complexities of capacity impairment places an unfair burden on them.

### *Case Study*

*Betty, aged 75, was named as the Respondent to a police application after she suffered a mental health episode one evening, resulting in her husband of fifty years phoning the police and ambulance for assistance. Recent tensions within the marriage, coupled with Betty's recent trial and error of new medication for her depression and anxiety, had triggered Betty's mental health episode. When police attended their home, her husband informed them she had tried to strangle him and bitten him. That night Betty presented as erratic and unsettled and was unable to articulate her concerns to the police. The ambulance took her to the hospital and the police simultaneously applied for a domestic violence order naming her as the Respondent.*

*When Caxton first met Betty at the Domestic Violence Duty Lawyer service it came to light that her husband had been aggressive towards her that night, including twisting her arm. Betty had bitten him in self-defence when he would not let go of her arm.*

*The police refused to withdraw the application against Betty, in spite of Betty's husband telling police that he did not fear for his safety and did not want an order against his wife.*

*We subsequently assisted Betty to lodge a cross application, which meant Betty had to go through the trauma of further court attendances. Fortunately, a change of medication had improved Betty's*

*anxiety levels enabling her to have the fortitude to make the decision to defend the police application and pursue a cross application with the help of our lawyer.*

*The legal process had become so unsettling for Betty that the night before her cross application was due to be mentioned in court for the first time, she was hospitalised again. Subsequently, Betty opted not to go through the stress of proceeding to a final hearing and the matter resolved with each party consenting without admissions to a protection order requiring them both to be of good behaviour and not commit domestic violence against one another. Betty and her husband were both committed to relationship counselling.*

### **Case study**

*Jane suffers agoraphobia, PTSD and transient seizures and had not left the house alone for many years. She received ongoing treatment and support from her psychologist and psychiatrist. The police applied for a protection order against Jane, naming her partner of two years, Tom, as the Aggrieved, after an allegation by Tom that she had tried to strangle him during an altercation. Tom had phoned the police under the guise of seeking assistance. When police attended at the residence, they accused Jane of being vague. Jane reported having been in shock when the police arrived. After observing minor scratch marks on Tom, the police misidentified Jane as the aggressor.*

*Jane described to our domestic violence duty lawyer a history of coercive control by Tom against her throughout their relationship. This included threatening to leave Jane knowing she was dependent on him; demanding she cook dinner in the middle of the night, then criticising the food; repeatedly telling Jane that she will end up in the psychiatric ward; threatening to burn down the house; threatening to break Jane's late husband's property; threatening to make baseless phone calls to Child Safety to take away Jane's grandchild from her daughter; and holding a knife and taunting Jane to "go ahead and kill me".*

*We assisted Jane to lodge a cross application against Tom. After four months of multiple adjournments and Tom's failure to attend court, the police application against Jane was dismissed and an order with multiple conditions was made against Tom to protect Jane. It was highly distressing for Jane to attend court on each occasion. Had she not been misidentified as the Respondent and had the police correctly identified her as the person most in need of protection, they would have applied for the order on her behalf and she would not have had to endure this lengthy process.*

109. It is likely that PPDs will further disadvantage both respondent and aggrieved parties who are suffering from mental health conditions and/or cognitive decline. For respondents, there may be a lack of understanding about the nature and consequences of a PPD which may result in higher rates of criminalisation if the direction is contravened. For aggrieved parties, police may not take their experiences seriously and may only respond to intersecting mental health issues in which case a PPD is unlikely to be issued and the survivor does not receive appropriate protection.

## Schedule 7

### PPDs are misaligned with human rights

110. DFV is one of the most serious human rights violations in Australia. The impact of the involvement of Police in DFV matters cannot be understated, particularly where it can lead to further distress or inadvertent systemic abuse of the parties involved. A human rights-based approach puts the onus on police to ensure the realisation of a woman's/victim's rights to safety, autonomy and protection, especially within the context of coercive control.
111. Police need to be fully equipped to understand the nuances of DFV from a human rights lens and what the impact of the human rights legislation means to policing. This means understanding that the legislation for DFV is human rights legislation in that it creates an obligation for police to engage in a proportionate balancing of the rights to protection and safety with the rights to participation and self-determined outcomes. It also means that when engaging with these laws, there needs to be some consideration about how they are advancing human rights principles. Police may not be equipped to ensure these human rights are realised because their role is as enforcers of the law and not necessarily to support families experiencing DFV in the way that is needed.
112. The Convention on the Elimination of Discrimination of All Forms of Discrimination against Women requires governments to exercise 'due diligence' to prevent and respond to domestic and family violence against women. This means that in enforcing DFV laws police must take reasonable and effective measures to address DV. A human rights-based approach requires police to be transparent and accountable for the decision to issue or not to issue a PPD.
113. The decision to issue or not issue a PPD can result in many forms of harm to the victim.
114. Caxton and HopgoodGanim Lawyers assist people, including older people, to make a private application for a protection order in circumstances where police have failed to exercise 'due diligence' and take action in coercive controlling intimate partner and intergenerational violence situations. In these cases, it is our experience that there is no clear articulation of why the set of circumstances reported to police did not satisfy the threshold for taking action. There is no record of the balancing of the proportionality test. There is no sufficient explanation provided to the survivor and/or it is explained as a private family matter that police will not intervene in. There has also been a failure to provide sufficient referral options to parties to empower them to understand their rights to safety and access community, legal, health and other supports to mitigate the risk of family violence escalating. There is also no accountability for the decision. Both of these scenarios will be exacerbated under a PPD framework.
115. Further, we submit that a framework that permits police officers to issue PPDs without judicial scrutiny or accountability risks limiting a number of human rights protected in Queensland.

### Right to recognition and equality before the law

116. The right to recognition and equality before the law is protected by section 15 of the HRA. The introduction of PPDs engages specifically with the right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination.<sup>41</sup> These rights mean that all laws and policies should be applied equally and must not result in discriminatory treatment or effects.<sup>42</sup> Discrimination means direct or indirect discrimination on the basis of certain attributes, for example sex, age, impairment, race.<sup>43</sup> This requires police to not only provide interpreters on issuing a PPD, but to demonstrate cultural awareness and sensitivity when dealing with people of diverse backgrounds.
117. The compatibility statement indicates that PPDs do not limit these rights because they do not directly or indirectly discriminate based on race.<sup>44</sup>
118. We disagree with this statement. PPDs could have a negative impact on Aboriginal and Torres Strait Islander people, who are disproportionately represented in the criminal justice system and are at increased risk of misidentification as the person most in need of protection.<sup>45</sup> PPDs may equally have negative impacts on people from CALD backgrounds, older people and people with mental health and cognitive disabilities.
119. Caxton has noticed several cases where:
- a. Women or victims have been misidentified as the Respondent because the police have failed to use independent and/or qualified interpreters when interviewing the parties, sometimes relying on the other party to interpret or translate for them.
  - b. Police have applied for a protection order based solely on the statement of one party because the other party did not have an interpreter (for both non-English speaking persons as well as persons with a hearing impairment).
  - c. Both victims and perpetrators have said the facts alleged in the application for a protection order have been misrepresented (either exaggerated or underrepresented) due to the lack of interpreter being used.
  - d. Police have failed to properly engage with an older victim complaining about familial violence especially where the alleged perpetrator is an informal carer and/or there is suspicion/assertion of cognitive decline.
120. PPDs are likely to exacerbate the existing issues that Aboriginal and Torres Strait Islander people face under the current DFV regime and wider criminal justice system. For example, a disproportionate number of Aboriginal and Torres Strait Islander people are already named on DVOs, charged with contraventions of DVOs and significantly more likely than non-Indigenous

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<sup>41</sup> *Human Rights Act* (n 4) ss 15(3), (4); Human Rights Bill 2018, Explanatory Notes, page 3.

<sup>42</sup> Human Rights Compatibility Statement, 16.

<sup>43</sup> *Anti-Discrimination Act 1991* (Qld), s 7; Human Rights Act 2019 (Qld) sch 1.

<sup>44</sup> Human Rights Compatibility Statement, 16.

<sup>45</sup> *Ibid.*



people to receive a sentence of imprisonment for a contravention of a DVO.<sup>46</sup> Similarly, Queensland data indicates that Aboriginal and Torres Strait Islander people, particularly women, are overrepresented among respondents when a PPN is issued by police.<sup>47</sup> Therefore, it is likely that Aboriginal and Torres Strait Islander people will be disproportionately impacted by PPDs and their right to recognition and equality before the law will be limited.

#### Right to a fair hearing

121. The right to a fair hearing is protected by section 31 of the HRA. The right to a fair hearing means that a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.<sup>48</sup> The right to a fair hearing may also include an implied right of access to the courts.<sup>49</sup>
122. The lack of judicial oversight when issuing a PPD will limit a party's right to a fair hearing and access to the courts.
123. The current process of police issuing a PPN means that the application for a protection order and any conditions imposed on the respondent are considered by the court as soon as possible. This gives the respondent the opportunity to engage with the justice system and obtain immediate legal advice and other support. It also allows the aggrieved to seek legal advice and other social supports. This is demonstrated by the flow charts in Schedule 3. By giving police the opportunity to issue a PPD without automatic judicial oversight means that the onus to access the right to a fair hearing and engage with the wider justice system falls on the respondent (or the aggrieved) who have to initiate a review of the PPD through the Magistrates Court. This is a significant issue where a survivor has been misidentified as the respondent as the survivor will be in a vulnerable position, likely experiencing trauma. It is unlikely that a survivor in this position will have the ability to seek out legal assistance, particularly in circumstances where they may not be able to afford private representation or do not qualify for Legal Aid. The combination of these factors means that the right to a fair hearing is significantly impacted by the introduction of PPDs.

#### Right to property

124. The right to property is protected by section 24 of the HRA. The right to property means that all persons have a right to own property alone, or with other people.<sup>50</sup> It also means that a person must not be arbitrarily deprived of their property.<sup>51</sup>

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<sup>46</sup> Heather Douglas and Robin Fitzgerald (2018) 'The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander people' *International Journal for Crime, Justice and Social Democracy* 7(3), 43.

<sup>47</sup> Ibid, 49.

<sup>48</sup> *Human Rights Act* (n 4) s 31(1).

<sup>49</sup> Human rights compatibility statement, 19.

<sup>50</sup> *Human Rights Act* (n 4) s 24(1).

<sup>51</sup> *Human Rights Act* (n 4) s 24(2).

125. The introduction of PPDs impact property rights by allowing police officers to impose cool-down and ouster positions.<sup>52</sup> These types of conditions mean that a respondent cannot enjoy their right to quiet enjoyment of their property. This right is particularly impacted and limited where a -survivor is misidentified as a respondent. Unless the survivor takes steps to initiate a review of the PPD, they may find themselves ousted from their property for a period of 12 months. The consequences of this may be homelessness for the survivor, particularly in circumstances where they are financially dependent on their abuser.
126. Caxton assisted a male Respondent who had been ousted via Temporary Protection Order from his home where he had been living with the Aggrieved, his now ex-partner, prior to the ouster being made. Shortly after the ouster order was made, the Aggrieved left the home to move to a different city. The Respondent was left homeless, for months unable to return to the now vacant home which he owned, until such time as he was able to eventually seek and obtain a variation of the order.
127. Under the PPD model the risk of homelessness occurring under similar circumstances will likely increase because it is left solely to the police to determine at the time of their attendance (most often a time-limited, resource-limited occasion where they may be managing heightened behaviours) whether an ouster is needed. In these instances any inappropriate decision made by the police to issue a PPD with an ouster disproportionately impacts the respondent's right to property.

#### Right to liberty and security of a person

128. The right to liberty and security of a person is protected by section 29 of the HRA. This right means that a person must not be subject to arbitrary arrest or detention.<sup>53</sup>
129. Although the types of conditions which a PPD may contain do not deprive a person of liberty, this right may be impacted when a person is arrested for a contravention offence. Contravention of a PPD will be inserted into the DFVP Act under a new section 177A. Given the lack of judicial oversight involved in issuing PPDs, there is likely to be an increased number of respondents who became subject to orders and as identified in this submission, there is a significant risk of misidentification. This also means there is likely to be an increase in the number of people who breach a PPD, which may result in an increase in general incarceration rates for DFV.
130. The compatibility statement acknowledges that the right to liberty will only be limited if detention is arbitrary. We submit that given the likelihood of police misidentifying respondents on a PPD, there is a high chance that victim-survivors who contravene a PPD will be subject to sanctions, which may include imprisonment. Research indicates that although many survivors attempt to leave their abusers, many return.<sup>54</sup> This leaves the survivor at high risk of

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<sup>52</sup> Human rights compatibility statement, 17-8.

<sup>53</sup> *Human Rights Act* (n 4) s29(2).

<sup>54</sup> Yael Lahav, 'Hyper-Sensitivity to the Perpetrator and the Likelihood of Returning to Abusive Relationships' (2023) *Journal of Interpersonal Violence* 38(1-2).

contravening the conditions of the PPD if they return to their abuser. As a result, the right to liberty will be limited for survivors who are subject to sentences of imprisonment for contravening a PPD in circumstances where they have been misidentified as the respondent.

## Schedule 8

### PPDs will divert attention away from evidence-led measures and systemic solutions

131. The focus of the PPD model is police efficiency however there is no transparency about what efficiencies are to be gained (in real terms) and what evidence is being relied upon to demonstrate that this “trial” will actually achieve those efficiencies. There is no evidence that we are aware of that indicates that the solution to increasing safety for women and children lies in granting the police all-encompassing, quasi-judicial, immediate power to issue what is for all intents and purposes the equivalent of a 12-month court order.
132. PPDs fly in the face of over two decades of Australian research on DFV responses which consistently emphasise the need for: specialist, trauma-informed courts and services; integrated, multi-agency responses; judicial oversight and procedural fairness; evidence-legal identification of risk and coercive control; and accountability and support for both aggrieved and respondent. As a police-led initiative PPDs are out of step with the direction of Australian DFV research, reversing hard-won gains in DFV system reform.
133. For example, the evaluation of the Southport Specialist DFV Courts referred to herein, emphasises the importance of enhanced collaboration between the judiciary, support services, police prosecutors and duty lawyers in providing a best practice response to DFV. This is in stark contrast to the PPD model which effectively eliminates collaborative opportunities at the same time as inappropriately imposing total responsibility for responding to DFV on the police (in situations where no party seeks review by a court).
134. By diverting people away from court-based DFV responses, PPDs may save time in the short term but externalise costs to other parts of the health, justice and social service systems. If people miss out on the service and supports that courts provide, several significant downstream costs are likely to arise including: increased risk of repeat or escalating violence due to failure to address underlying drivers of violence; repeat police call-outs; greater strain on emergency services, hospitals and crisis accommodation; and increased pressure on legal aid and community legal centres for individuals who later seek help to overturn a PPD.