

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

Submission No:	67
Submitted by:	Cairns Community Legal Centre
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Our Ref: LR 2025: MLW

30 May 2025

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

Email: eacc@parliament.qld.gov.au

Submission in Response to Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

We refer to the proposed Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (“**DFVP Bill**”) and thank you for the opportunity to make a submission in response.

Background and Experience

The Cairns Community Legal Centre Inc (“**the Centre**”) is a not-for-profit community organisation that has been providing free legal services to the Cairns community since 1991. The Centre provides a wide range of generalist civil law legal services for the benefit of community members experiencing disadvantage. These include our Generalist, Family Law, Consumer Law, Discrimination and Human Rights Law and Mental Health Support Services.

Domestic and family violence legal assistance is a significant area of focus of the Centre. The Centre’s work in this area involves legal advice, information and referrals, casework and community education for both aggrieved and respondent parties to domestic and family violence protection orders (DVOs) as well as the provision of Duty Lawyer services, accredited pursuant to Legal Aid Queensland’s Specialist DV Court programme in Cairns. As DFV duty lawyers, the Centre focuses on legal assistance provision to respondents, predominantly males, who attend the Cairns Magistrates Court DFV call over.

Based on the Centre’s geographical location and specific experience in assisting respondents and males as part of the DFV specialist court, this submission draws from perspectives gained working with this demographic and their experiences of the current DVO and Police Protection Notice (PPN) regime in Queensland.

It is further noted that, although the Centre assists a large number of clients who identify as Aboriginal and/or Torres Strait Islander and populations who reside in remote and very remote areas, and while these submissions may express views that impact those populations, the Centre is not an Aboriginal or Torres Strait Islander led organisation and we do not suggest that any views expressed are of greater weight or expertise than those expressed by other such purpose-built organisations.

Summary of the Centre’s submission

In summary, the Centre’s recommendations in relation to the proposed DFVP Bill are as follows:

- 1. That the current system of automatic judicial oversight (and status quo) remain in place for all DVOs (including PPNs) with PPDs not being introduced until further investigation and consultation has taken place; or in the alternative, if PPDs are introduced, that the administrative power to issue a PPD be limited only to the power to issue standard conditions.***

For people in the community experiencing disadvantage

2. ***That a respondent should not be capable of being charged with contravention of a PPD unless personal (or a substituted service order) has been effected.***
3. ***That further consideration and investigation is undertaken into the potential impact of PPDs on enrolment in and uptake of intervention order courses and behavioural change education alternatives on offer.***
4. ***That further consideration and investigation be undertaken into the interplay between PPDs and a police officer's obligation to make referrals to appropriate HRTs and other existing integrated response programs.***

This submission does not seek to address each amendment proposed in the DFVP Bill and only provides views or feedback in circumstances where the Centre has strong concerns or can specifically draw from its own experiences in relation to a particular matter. Accordingly, the Centre's submission focuses on the proposed introduction of a Police Protection Direction (PPD) regime.

Police Protection Directions

The Centre acknowledges the challenging work undertaken by QPS in effectively responding to DFV in the community. It is a task made more difficult by increasing community demand for protection of victim survivors and holding perpetrators accountable. Further, it is acknowledged that there is a significant operational strain on police officers, exacerbated by the need to prepare for and attend court in support of the current PPN and DVO framework in Queensland.

Notwithstanding, there are well-established reasons against empowering police officers to administratively issue immediate long-term police protection directions (PPDs) without judicial oversight based on the principles of procedural fairness and natural justice, as well as further considerations of the disproportionate impact on transient, remote and very remote respondents, the incidence of successful intervention order programs and the potential impact on missed referrals for High Risk Team assessment.

Many of the primary counter-arguments against giving police the power to issue PPDs are already set out in the Explanatory Notes of the DFVP Bill.¹ The Centre acknowledges these fundamental problems with the proposed Bill and adds as follows.

Limitations on a respondent's right to procedural fairness

Principles of natural justice and procedural fairness are compromised

1. An individual's right to a fair hearing is limited, engaging principles of natural justice.² A respondent will be required to self-initiate either administrative or court review in order for the facts and evidence in their case to be considered by a Magistrate or to respond to any evidence or allegations made against them. In an attempt to circumvent this limitation on procedural fairness, It is noted that section 100B(3) requires an officer to make a reasonable attempt to locate and talk to the respondent, if they are not present at the same location as the police officer when making the PPD. This is not natural justice or procedural fairness provided by a trained judicial decision maker, and nor does it come with the opportunity to seek duty lawyer assistance, which would be on offer at most Magistrates Courts in Queensland.
2. It is a common occurrence that respondents to PPN's and DVO applications will not be present by the time police attend a reported incident, may refuse to speak with police for fear of incrimination, or may be in a heightened emotional state, compromising a respondent's ability to respond to police in a considered manner. In the absence of automatic court proceedings providing the respondent with an opportunity to provide their version of events, this initial contact with the investigating officer is their primary chance to present their version of events will often be the only time they engage with police.

¹ Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (Qld) ("Explanatory Notes") 16-18.

² Explanatory Notes, 16.

Vesting of administrative decision-making power in police

3. Decision making power is vested in a police officer, rather than a Magistrate at first instance, meaning that the rights of the respondent are arguably less secure and less thoroughly tested than if considered by a judicially-trained officer.³ Rather than this being an issue of perceived bias on the part of the police, it is a question of preparation and testing of evidence. Even if the ultimate approval for issuing a PPD is given by an officer of Senior-Sergeant rank or higher; the evidence and material gathered in support of the PPD will necessarily be of a less formal nature as it won't be prepared having regard to the rules of evidence or court (if not required for court proceedings).
4. Even though respondents will have the right to apply for administrative or court review of the police decision in order to test any allegations, the likely timeframe between the effect of the PPD conditions (which could be from the time the respondent is *told* about the PPD and conditions imposed⁴) to any application for review being heard, could be subject to significant delay depending on the relevant court's available sitting dates. In the interim, the PPD conditions remain in effect, untested, and imposing significant consequences and restrictions.
5. Further, the issuing of a PPD is an exercise of administrative power that carries significant restrictions on personal liberty with long-term (12 month) impacts. It is acknowledged that there are a number of detailed safeguards and legislated guidelines as to how this power is to be exercised by police. However, there is still room for police discretion in the exercise of the power. For example, in determining whether there are circumstances indicating that both parties may be in need of protection, and in the scope and severity of conditions imposed. Having regard to the significant restrictions on individual liberty that may be imposed by this delegation of administrative power, and the less stringent evidentiary considerations required under administrative decision making, it is submitted that judicial oversight would be more appropriate.
6. As of 26 May 2025, the standard conditions that must be imposed when a court makes a DVO ("standard conditions") include that the respondent:
 - a. *must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved; and*
 - b. *must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be domestic violence against the aggrieved.*⁵

The standard conditions already provide a level of protection for an aggrieved or named child and still impose a restriction on individual rights. If the incident subject to a proposed PPD is of such a degree that more stringent conditions are required, then presumably this high-risk level of behaviour is more appropriately dealt with by a court.

7. Further, section 100C of the DFVP Bill provides for a substantial list of circumstances in which a police officer will not be able to issue a PPD. Conceivably, there will be a large number of applications that will still need to be filed in Court and proceed in accordance with current DFV court procedure, which, if followed diligently, questions the ultimate impact PPDs will have on decreasing police operational strain.
8. It should also be noted that, as PPDs are an exercise of administrative power, every PPD considered will require police officers to apply section 58 of the *Human Rights Act 2019* (Qld) (HRA) and take into account the potential limitations on human rights that will result from each PPD issued. There is no guidance within the DFVP Bill for how this process will be followed or documented by police. Moreover, whilst a PPD will enliven a right of administrative review, it could also open police up to further complaints being made within the Queensland Human Rights Commission in relation to the exercise of administrative power and potential breaches of the HRA. This could add further operational strain and burden to police as further avenues of complaint are available.

³ Explanatory Notes, 17.

⁴ Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (Qld) cl 100R ('DFVP Bill').

⁵ *Domestic and Family Violence Protection Act 2012* (Qld) ('DFVP Act') s 56(1).

9. Moreover, consideration should be given to the consequences and accountability for police officers who fail to appropriately or effectively exercise this administrative power. Certainly, internal measures, perhaps disciplinary procedures and some sort of training will be implemented, however, when contrasted against the public accountability faced by judicial officers (in the form of published decisions, appeals) the level of accountability is, arguably, insufficient.

Propensity for unknowing contraventions

10. The service provisions contemplated for PPDs will mean that there may be circumstances where an individual is issued with a PPD, unknowingly contravenes the PPD and is arrested without ever having been served or been before a court. The new section 177A of the DFVP Act contemplated merely requires the prosecution to establish that the PPD was issued in (a) 'substantial compliance with part 4, division 1A of the DFVP Act, and (b) whether the respondent was *told* about the existence of the PPD or about the condition the respondent is alleged to have contravened.' There is no requirement for a respondent to be personally served or even given a written copy of the conditions and/or grounds on which the PPD is based, before they are able to be charged with its contravention.⁶
11. In circumstances where a PPD contains complex no contact or no approach conditions (for example, involving named associates or relatives), delivered in highly emotional circumstances, or delivered to individuals with cognitive impairments and intellectual disabilities, it is conceivable that there will be respondents who do not understand the nature and scope of the restrictions placed upon them and who will, therefore, unknowingly contravene PPDs and be charged with a criminal offence as a consequence. It is, therefore, preferable that respondents should not be capable of being charged with a contravention offence (under section 177A) unless they have been personally served, or the PPD has been subject to an order for substituted service.
12. The Centre submits that fundamental principles of procedural fairness should not be compromised to facilitate police efficiency and reduce operational impact, especially in circumstances where significant restrictions on liberty, including freedom of contact and euster from property, could be imposed without the automatic opportunity for testing by a judicial officer, as is provided by the current regime of PPNs and DVOs.

Recommendation one:

That the current system of automatic judicial oversight (and status quo) remain in place for all DVOs (including PPNs) with PPDs not being introduced until further investigation and consultation has taken place; or in the alternative, if PPDs are introduced, that the administrative power to issue a PPD be limited only to the power to issue standard conditions.

Disproportionate negative impact of PPD's on individuals who are transient, living in remote or very remote areas

Vulnerable populations' compromised ability to seek review

9. The absence of automatic judicial review of a PPD will place a significant burden on respondents to seek either administrative or judicial review and this burden will have the most detrimental impact on vulnerable respondents living in remote or very remote areas and without fixed addresses. As a result of the Centre's DFV general legal assistance services as well as its DFV specialist court duty lawyer work, the Centre believes there will be a significant proportion of vulnerable respondents who simply will not have the capacity or ability to take this step. Generally, it is the Centre's experience that these vulnerable populations will consist of people without a fixed address, people living in remote and very remote areas and specifically, Aboriginal or Torres Strait Islander people whose first language is not English and / or who lack familiarity with legal systems. As a result, PPDs, potentially with substantial restrictions on individual freedoms, and significant consequences for breach, will remain untested.
10. The process to seek review of a PPD, whether administrative or in court, will not be simple for self-represented individuals. There is a notable absence of available local legal assistance services

⁶ DFVP Bill, cl 100R.

(such as community legal centres, Legal Aid Queensland offices or affordable private legal representation) or other community support services, as well as infrequent sitting dates for DFV call overs in local Magistrates Courts in remote and very remote areas. Accordingly, people who live within these areas will face a significant challenge in seeking the appropriate assistance or support to challenge a PPD.

11. Certainly, services like the Centre, do offer remote legal advice by telephone or video conference, if requested, which can go some way to addressing these barriers. However, remote legal assistance cannot be guaranteed for all respondents and is subject to funding limitations, resource constraints and service eligibility criteria⁷ leaving the majority of people in these areas without the necessary support.

Case study – Warren's case

Warren is an older indigenous man with a primary residence in Pormpuraaw, Cape York. He travels into Cairns when needed, often for indefinite periods of time. When in town, he has no fixed address – often sleeping rough or couch surfing.

While in town, he was involved in an incident of alleged domestic violence in a public space with a person identified by police as the aggrieved while both parties were intoxicated. The incident was captured on CCTV and Warren was issued with a PPN. Warren admits to his duty lawyer that he acted with verbal aggression and hit the aggrieved female to push her away, but only because she was physically assaulting him, abusing him and wouldn't leave him alone. Warren also states that he was not in a 'couple' relationship with the aggrieved. They were known to each other but were from different regions and had no ongoing intimate relationship.

Warren was assisted by a duty lawyer and court support worker at the first mention of his matter in Court. The duty lawyer made submissions that the police application should be dismissed as the 'relevant relationship' threshold was not met. However, the aggrieved was not present in Court to give her views, and the Magistrate would not dismiss any DVO application without first having obtained the views of the aggrieved. The matter was, therefore, adjourned for police to make contact with the aggrieved, with a Temporary Protection Order made on the basis of the allegations. Complicating matters was the fact that Warren had to return home to Pormpuraaw imminently and would, therefore, be out of the reach of his Cairns-based support worker by the time the matter returned to Court. Warren was assisted to apply to appear by telephone at the next mention.

12. Warren's case demonstrates the added difficulties faced by people living in remote areas, who also move around on a transient basis. Although issued with a PPN (allegedly on an incorrect basis), the automatic right of judicial review meant that Warren was compelled to attend court within a short period of time of receiving the PPN, received the benefit of duty lawyer assistance and was able to challenge the basis of the PPN issued. It is conceivable that, had Warren been issued with a PPD instead of a PPN, and told that he would have to proactively take steps to contact a Cairns-based legal assistance service to seek legal advice, apply to seek court (or administrative) review, make submissions in support of his case; the timeframe and action required would have made the challenge too great.

Disproportionate impact from how service effected

13. It is noted that the service provisions contemplated in sections 100O to 100R outline a number of steps that police officers must take when giving a copy of a PPD to respondents, aggrieved parties and named persons. It is also acknowledged that the process is largely consistent with the current approach for PPNs.⁸ Namely, PPD's must be personally served on a respondent⁹ and the respondent must have the PPD's conditions and grounds explained to them by a police officer¹⁰ with the police officer taking reasonable steps to ensure that the person understands the nature and consequences of the PPD,¹¹ in order for the PPD to take effect. However, a failure by police to comply with section 100Q will not invalidate the PPD, and police will have the ability to tell the respondent about the PPD in any way, including by telephone, email SMS message, a social networking site or other electronic means.¹²

⁷ For example, most domestic and family violence legal assistance services focus on assisting aggrieved parties and women, rather than respondents.

⁸ DFVP Act ss 109, 113.

⁹ DFVP Bill, cl 100O(1)

¹⁰ Ibid, cl 100Q(2)(a).

¹¹ Ibid, cl 100Q(2)(b).

¹² Ibid, cl 100R(2).

14. The above provisions mean that personal service for transient, remote and very remote respondents may often not be effected due to operational difficulties and has the capacity to be substituted by a brief (and ineffective) SMS message. Under the current PPN processes, an automatic court mention means that when the respondent attends the first mention, if not otherwise served with the PPN, they are given the benefit of receiving the document when attending court. Under the proposed PPD processes, respondents may never receive the full copy of material prepared in support of the PPD if not required to attend court.
15. Again, the ability of police to shortcut personal service measures, is most likely to disproportionately impact those respondents who are transient, and living in remote and very remote areas, who lack access to easily available legal assistance and support services.

Recommendation two:

That a respondent should not be capable of being charged with contravention of a PPD unless personal (or a substituted service order) has been effected.

Ability to make intervention orders

16. The proposed DFVP Bill does not give police officers issuing PPDs the ability to make Intervention Orders (IVO) compelling respondents to attend behavioural change counselling programs. Men's behavioural change programs are increasingly being included in policy as an essential component of any long-term strategy to reduce violence against women.¹³
17. In the course of the specialist DV Court in Cairns, IVOs are commonly employed in situations where there is an ongoing relationship between the parties and respondents are willing to acknowledge that their behaviour needs improvement and consider change. Specifically, IVOs are often made (by consent of the respondent) in circumstances where the respondent is subject to a temporary protection order and the matter is adjourned for a longer period to enable the respondent to complete the IVO course. The respondent's completion of the course then becomes a relevant consideration of the Magistrate when finalising the DVO. The benefit of men's behavioural change programs being court ordered (with a respondent's consent) means that course providers are required to make a report to the court when a respondent completes (or doesn't) an IVO course, adding an extra level of accountability towards course completion.
18. Whether or not the respondent chooses to complete the course separately or through a court-ordered IVO, attending court is often the first, and only, opportunity a respondent will have to be informed about the availability of an IVO course or men's behavioural change program.
19. The issuing of PPDs in their proposed form will mean that a significant cohort of respondents will not have the opportunity for referral to an IVO course, which will result in less opportunity for men's education, counselling and behavioural change.

Recommendation three:

That further investigation and consideration is undertaken into the potential impact of PPDs on enrolment in and uptake of intervention order courses and behavioural change education alternatives on offer.

Ability to refer to High Risk Teams and integrated service responses

21. The standard conditions a court must order still impose a restriction on individual rights, and indeed, if the incident subject to a proposed PPD is of such a degree that more stringent conditions are required, then presumably this high-risk level of behaviour is more appropriately dealt with by a court.

¹³ Angela Nicholas et al, *Developing a practical evaluation guide for behaviour change programs involving perpetrators of domestic and family violence* (Research Report, Issue 17 June 2020) Australia's National Research Organisation for Women's Safety (ANROWS), 7

22. A further benefit of court oversight over high-risk DFV behaviour is the availability of referral to high-risk teams (HRTs) for integrated service response management. It is the Centre's experience within the Cairns specialist DFV court that there is a Court registry representative as part of the local HRT and that part of their role is to assess applications for DVOs filed in court for eligibility for referral to the local HRT for assessment. This registry position also functions as a kind of "stop-gap" measure in relation to police applications to ensure that these applications have also been suitably assessed in accordance with the local HRT guidelines. A reduction in police applications made to court means less applications with potentially high risk DFV eligibility being subject to potential HRT assessment. This will have impacts on ensuring appropriate referrals are made for persons using violence, in addition to the safety of victim-survivors and their children.
23. Further, Cairns is currently host to a number of integrated DFV pilot programs. These include; the co-response model of mobile early intervention between QPS and specialist DFV social workers (in Cairns, provided by Relationships Australia Queensland), and the placement of embedded specialist DFV practitioners (in Cairns, provided by the Cairns Regional Domestic Violence Service) in police stations for the provision of immediate, expert assistance to victim-survivors of DFV. The DFVP Bill makes no mention of how the new PPD regime will operate in conjunction with existing integrated response measures. For instance, there is no reference to any positive duty on police issuing PPDs to ensure that an assessment as to HRT eligibility, or in relation to any current integrated response pilot program eligibility, will be conducted.

Recommendation four:

That further investigation and consideration be undertaken into the interplay between PPDs and a police officer's obligation to make referrals to appropriate HRTs and other existing integrated response programs.

We thank you for providing us with the opportunity to make our submission in response to the DFVP Bill.

If you have any queries in relation to this submission, please do not hesitate to contact our Centre.

Yours faithfully

CAIRNS COMMUNITY LEGAL CENTRE INC

██