Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

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

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

Dear Committee Secretary

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

Thank you for the opportunity to provide feedback on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (**the Bill**) and for the additional time to provide this submission. The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's solicitors. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by QLS's Domestic and Family Violence, Criminal Law and Human Rights and Public Law committees, whose respective members have substantial expertise in matters relevant to the Bill.

Executive Summary/Key Points:

- QLS holds serious concerns about the police protection direction regime proposed in the Bill, including in respect of misidentification of the person most in need of protection, increased breaches of orders and the flow on effects of same and impacts on the family law system.
- If such a regime is to be enacted, QLS recommends it be narrowed both in respect of the conditions that can be imposed and the duration of police protection directions.
- QLS supports the police protection direction amendments being reviewed after two years (proposed s 192A).
- QLS urges appropriate resourcing and thorough evaluation of the GPS monitoring pilot.

- QLS supports measures aimed at minimising trauma for victims and do not oppose the proposed legislative amendments that will expand the VREC scheme to Magistrates Courts statewide.
- QLS does not support the legislative amendments that will remove the requirement for a VREC to be made as soon as possible and by a trained police officer, modify the informed consent provisions and replace the complainant's acknowledgement, or declaration under the *Oaths Act 1867* with a declaration at the end of a recorded statement. While QLS supports video recorded statements in domestic and family violence proceedings in principle, there are complexities with the proposed amendments that require further consideration.

Police Protection Directions

Overarching concerns

The Bill contains substantial amendments to the *Domestic and Family Violence Protection Act 2012* (**DFVP Act)** to introduce a framework for police protection directions (**PPD**). QLS was not consulted on this change prior to the introduction of the Bill.

QLS strongly supports evidence-based measures that prevent domestic and family violence (**DFV**), supports victims and protects them from further harm, and holds perpetrators to account. QLS recognises the significant time impost on police of responding to domestic and family violence matters and preparing matters for court. However, QLS does not agree the solution to these difficulties is to provide for significant and long-term directions to be made by police without judicial oversight. A PPD regime was not recommended in the comprehensive reports of the Women's Safety and Justice Taskforce or the Commission of Inquiry into Queensland Police Service responses to DFV.

We consider that the strengths of the current domestic violence order (**DVO**) system will be undermined by the PPD framework and there will be unintended consequences leading to vulnerable people missing out on protection or suffering the effects of being misidentified as the perpetrator. We also query whether the efficiency gains upon which the PPD scheme is premised will be realised, given the potential for extensive reviews.

Inappropriate police power

Fundamentally, empowering frontline police (with the approval of a remote sergeant or senior sergeant) to exercise what should be judicial functions, on the basis that they reasonably believe it would not be more appropriate to take action that involves an application for a protection order (proposed s 100B), is fraught with danger and inappropriate for the police service. Replacing the potential for a five-year protection order to be crafted by the court with the advantage of evidence led at a hearing, with a 12-month direction issued by police will be a regressive step in protecting vulnerable people. QLS is significantly concerned this approach will lead to aggrieved persons being placed at risk by an initial PPD lacking features which may otherwise have been reasonably achieved before the court, and – as discussed further below - more broadly disadvantaged in the context of parallel family law proceedings (where features of an order and findings in relation to same may materially influence the outcome).

We are also concerned that, upon expiration of a 12-month PPD, a vulnerable aggrieved may find it more difficult to obtain a longer, more protective order if the respondent has not been charged with contravening the PPD but nonetheless still presents a danger to the aggrieved.

Misidentification

Misidentification by police of the person most in need of protection, particularly in relation to First Nations women, is a well-known problem, identified in the *Hear Her Voice* reports and *A Call for Change*. While we acknowledge the QPS has embarked on a program of additional training since those reports were published, it remains the case that police investigating alleged DFV are confronted with difficult circumstances, where a variety of factors may interfere with their ability to properly consider the full context and correctly identify the person most in need of protection. Police are required to make 'kerbside' judgments where the primary aggressor may seem calm while the person most in need of protection may present as heightened and erratic. The consequences of police judgments being incorrect will be more severe when the result is a 12-month PPD rather than a police protection notice (**PPN**), which would generally come before a Magistrates Court within 14 business days, with the magistrate then deciding whether a temporary protection order is required (**TPO**) while an application for a protection order proceeds. We do not consider the ability to seek review by the court (or by QPS) is in any way equivalent to the current regime which requires all matters seeking protection orders to proceed before the court.

There is a significant risk that vulnerable Queenslanders will be misidentified and stuck with the consequences of a 12-month PPD they do not have the resources or energy to challenge. These PPDs may also impact on housing (if they include an ouster condition), and employment, particularly where the ability to hold a Blue Card is impacted.

QLS notes the significant concerns regarding misidentification in the police family violence order system in Tasmania.[1]

In considering this Bill, QLS submits the committee must keep front of mind the way the amendments could present a risk of harm to a victim who is misidentified as the perpetrator and named as respondent to a PPD as well as whether the amendments will achieve their purpose in relation to a properly identified respondent.

Increase in breaches

QLS is concerned one of the unintended consequences of the PPD reforms will be an increase in alleged breaches of PPDs, compared to breaches of DVOs. We note breaches of PPDs will be subject to the same penalty as a breach of a DVO under s177(2)(b).

[1] *Tasmania's police family violence orders are supposed to keep victims safe. But experts say they're backfiring on women* - ABC News: https://www.abc.net.au/news/2023-03-05/tasmania-police-family-violence-orders-misidentifying-victims/102037672, which references: Engender Equality (2022). *Misidentification of the Predominant Aggressor in Tasmania: Practitioner perspectives from Engender Equality 2023* https://engenderequality.org.au/wp-content/uploads/2023/07/Engender-Equality-Misidentification-of-the-Predominant-Aggression-Research-Discussion-Paper-2023.pdf

Breaches may occur because a person using violence who is a respondent to a PPD takes it less seriously than a court order or because respondents misunderstand the nature of the direction.

Respondents to PPDs (including misidentified victims) will be less likely to seek legal advice and therefore less likely to have a full understanding of what they are permitted or prohibited from doing under the direction and the broader ramifications of the direction, including in terms of employment and working with children checks. A PPD could be the beginning of a cascade of breaches and consequences occurring before a respondent ever seeks legal assistance.

We recognise the proposed framework requires police to explain the PPD to the respondent, but do not consider this to be an appropriate substitute for the opportunity to obtain legal advice, particularly given there may also be communication difficulties arising from cultural or language barriers, substance use, or mental health issues.

Intervention and accountability

In addition to a lack of judicial oversight and lack of court involvement making it less likely a respondent will seek legal advice, the fact respondents will not come before the court presents additional problems, including the loss of opportunity for the court to link parties with other services, including behaviour change programs. Significantly, removing the matter from the purview of the court also suggests some DFV is less serious and allows the perpetrator to avoid experiencing the court's disapproval of their conduct, which can be an important part of holding perpetrators to account.

Victim-survivor agency

QLS also considers the PPD framework has the potential to undermine the main objects and principles of the DFVP Act (ss 3 and 4, particularly s 4(2)(b) regarding the views and wishes of victims being sought before a decision affecting them is made). While the views or wishes expressed by the aggrieved about whether an application for a protection order should be made are a matter a police officer *may* consider under proposed s 100B(2)(d), there is no requirement to consider the aggrieved person's views or wishes about whether a PPD is made, and with what conditions.

Our members report they already observe significant impacts on victim-survivors of DFV in respect of loss of agency over their decision making once a report is made to police and police apply to the court for a DVO. This is ameliorated somewhat by the aggrieved being able to attend court and articulate if they do not want an order made (notwithstanding past DFV having occurred). The court can then balance the views and wishes of the aggrieved in considering whether to make an order and with what conditions. Should victim-survivors, particularly First Nations people, perceive that their views and wishes are even less likely to be considered they may be less likely to report domestic violence to police at all, increasing their risk of harm.

Family Law

QLS also submits there is the potential for significant impacts on the family law system, which are not addressed in the Bill or explanatory notes.[2] It does not appear PPDs will be considered *family violence orders* under the definition in the *Family Law Act 1975 (Cth)* (**FLA**), meaning provisions such as s 60CC(2A)(b) of that Act, which requires a court, when considering what arrangements would promote safety, to consider any family violence order that applies or has applied to the child or a member of the child's family. Further, when considering what order to make, s 60CG requires the court, with some qualifications, to ensure the order is consistent with any family violence order.

In the absence of family violence orders made by a court in Queensland, the Federal Circuit and Family Court of Australia (Division 1 and Division 2) (**FCFCOA**) will have less reliable information at hand about the risks of family violence to parents and children or caregivers, when considering orders regarding children (notwithstanding that information sharing provisions will allow the court to have access to police information). This may result in the FCFCOA being called upon more often to make its own findings regarding the incidents of family violence, resulting in increased use of resources and potential delay in making appropriate orders in respect of vulnerable carers and children.

Similarly, with the amendments to the FLA effected by the *Family Law Amendment Act 2024* (Cth) which takes effect from 10 June 2025, it is now clear the effect of family violence is a relevant consideration in determining the division of property and finances following breakdown of a relationship. Where allegations of family violence have not been tested by a State Court , and the certainty findings at that level can provide to litigants appearing in the FCFCOA, it may be an aggrieved party will be put to greater cost and experience greater uncertainty in the federal jurisdiction where proceedings are protracted to allow a finding of family violence to be made; the delay in finalising matters presents a real risk to vulnerable parties and children.

The presence of a PPD rather than a family violence order may also have implications for the application of s 102NA regarding protections against being cross-examined personally by the other party. There may also be implications in respect of the ability of parties to apply for family law injunctions and the operation of s 114AB of the FLA.

Comments on drafting

We note that the purpose of PPDs (s 100A), is to provide a way for police to respond, "*in circumstances when it would be appropriate not to bring the matter before a court*" and that a police officer may issue a direction if the officer reasonably believes that the requirements of s 100B(1) are met, being:

a) the respondent has committed domestic violence
b) a PPD is necessary and desirable to protect the aggrieved from domestic violence
c) none of the circumstances mentioned in s 100C or 100D(2) apply and

[2] We note s 100D regarding children of the respondent and the prohibition on issuing PPDs where there are child protection or family law proceedings or orders. However, PPDs may be made prior to family law proceedings being instigated, in circumstances where DVOs would be made under the current DFVP legislation.

d) it would not be more appropriate to take action that involves an application for a protection order.

Proposed s 100B(1) does not require the police officer to reasonably believe there is a relevant relationship between the respondent and the aggrieved, but otherwise requires police to make similar findings to those a court would be required to make under s 37 of the DFVP Act (ie paragraphs (a) and (b) above). While it is accepted police make these assessments for the purpose of issuing PPNs, QLS submits it is not appropriate for police to make these findings where the outcome is a direction that will be in place for 12 months. These findings should remain the jurisdiction of the court, where the police, aggrieved and respondent can all be heard within the context of well-defined procedures and with the benefit of legal representation for the aggrieved and respondent, if desired. The court can then craft appropriate orders based on the material placed before it.

Proposed s 100C sets out the circumstances when police *must not* issue a police protection direction. If police protection directions are to be introduced, QLS considers these exclusions to be generally appropriate. However, while most of the exclusions are clear, some will require the police officer to exercise judgment in circumstances where they may not have sufficient information or where the persons involved have not had an opportunity to properly convey their version of events (for example due to heightened emotion or manipulation of the police interaction by the other party). For example, the police officer may not identify the circumstances in s 100C(1)(i) (ie there are indications that both persons are in need of protection and the person most in need cannot be identified), instead believing that they have identified the person most in need of protection. In addition to the obvious risk presented in such a scenario, in our view, this unduly undermines the right to fair hearing in civil proceedings under s 31(1) of the *Human Rights Act 2019* (Qld) (**Human Rights Act**).

Section 100E provides a list of other circumstances that must be considered by a police officer who is considering issuing a PPD, though the existence of those circumstances does not prevent a PPD from being issued or invalidate a PPD that is issued. Once again, QLS is concerned that police are being empowered to make decisions that should be made by a court. Effectively, the opportunity for the court to decide to exercise certain powers would be denied on the basis of a pre-emptive decision by police that the court would not decide to exercise such powers. In this regard, we highlight s 100E(1)(a)(ii) relating to circumstances where additional powers of a court may be necessary or desirable to protect the aggrieved.

Section 100G provides that a PPD must include the standard conditions. Section 100H provides that additional conditions may be included, being the same conditions that can be imposed on a PPN under s 106A. If PPDs are to be introduced, QLS submits they should be restricted to the standard conditions only. Any matter that requires conditions beyond the standard conditions should be heard by a court. We are extremely concerned about the ability of police (even with the requirement for approval by a senior sergeant) to impose conditions, such as ouster conditions, for one year in contrast to the ability to impose those conditions on a PPN, which generally lasts 14 business days or less. Once again, the amendments propose to empower police to consider matters that ought to be heard by a court and, in the case of ouster, explicitly sets out that police must consider matters that are ordinarily weighed up by a court (ie the matters mentioned in s 64(1)(a) to (h) and (2)).

There are significant concerns that decisions made by police in this vein, without information from all affected parties and the ability of all affected parties to receive legal advice regarding the consequences of such long-term decisions, could result in:

- People being removed from homes to which they have a legal entitlement, or criminalising the presence of people in homes to which they have a legal entitlement, in breach of s 24(2) of the Human Rights Act. This may have the effect of rendering people homeless.
- People being prevented from moving freely within the state (in breach of s 19 of the Human Rights Act), including to access health services and/or education (in breach of s 36-37 of the Human Rights Act) which may be at a location frequented by the aggrieved.
- People who do not have sufficient capacity to understand and comply with directions of this nature being criminalised as a result (e.g. people with intellectual impairment, people with disabilities and children). This could be construed as a breach of substantive equality protected under s 15 of the Human Rights Act. Courts are in a unique position to have greater training and resources to assess the capacity of people and the ability to mandate a litigation guardian, and police may lack the necessary time and resources for the same.

These rights must be considered by police when making decisions under the Human Rights Act. It is accepted that the above rights are not absolute and may be limited in a justified and proportionate manner under the human rights legislative framework, however we are concerned that any such limitation will not justified given the long-term nature of the limitation imposed without judicial consideration and adequate avenue for review. A comparison is the existing PPN cool down conditions or move on directions that police may issue from a public place which similarly impact these rights but are strictly temporary. We are further concerned that a person who seeks to review a decision by the police will be in an effective reverse-onus position that impedes their right to a fair hearing and equality before the law.

Section 100K sets out the requirements for a supervising police officer to approve the PPD. As mentioned above, approval of a senior sergeant is required if the PPD is to include an ouster condition. Approval can be sought and given verbally, including in person, by telephone, radio, internet or other similar facility (s 100K(3)). While we appreciate that the mode of approval is intended to allow for swift action, we are concerned that these very serious, long-term directions, which involve weighing a number of factors, may be approved via, for example, a conversation over police radio.

Section 100L prohibits a police officer from issuing a PPD naming a respondent to an existing PPD as an aggrieved and the aggrieved to the existing PPD as a respondent. While we appreciate that the intent is not to issue cross-directions, and we note that s 100R provides for an end to a PPD when a PPN is issued or another order made, we query whether the interplay between PPDs, PPNs, TPOs and protection orders has been fully vetted for unintended consequences.

Section 100N describes the form of the PPD. We note that it does not include the reasons for issuing the PPD, but rather must state that the respondent be given written notice stating the grounds as soon practicable after the direction takes effect. While we agree that it is essential that respondents be given reasons for the imposition of the direction, we expect that these notices will take significant time to prepare, eroding the efficiency gains upon which the PPD regime is premised.

We query why s 100N(2) only provides that the PPD *may* make certain statements regarding the possibility of a review to the court. In our view, notwithstanding the requirement in s 100Q(3)(g) that a police office must explain the rights to seek review of the PPD, a summary of review rights should be included as part of the PPD to ensure that both the aggrieved and respondent are aware of those rights.

In terms of reviews more generally, we consider the inclusion of s 100T sensible, to allow police to initiate review where new circumstances come to light. However, we query the utility of the s 100U police review process, where there is an appropriate mechanism for review, being the Magistrates Court. The internal police review under s 100U will require extensive police resources and introduces another process for respondents and aggrieved persons to grapple with, including the requirements under s 100W to make submissions within as little as 7 days, which may be challenging for both respondents and aggrieved persons, especially without legal advice or if there are communication barriers. We submit that the better course is to provide for court review only.

Possible alternatives

QLS appreciates the intent of the PPD framework, in terms of efficiency gains for frontline police officers and fast protection for victims of DFV. However, given the significant concerns raised above, we submit that the scope of PPDs is too broad and their duration too long.

QLS strongly recommends that if the PPD framework is to be enacted, that PPDs be limited to the standard conditions only so that matters where other conditions are required are heard by the court.

As an alternative to introducing PPDs, there may be some merit in allowing for a shorter police-issued direction where the persons involved in an incident responded to by police have no significant domestic violence history, there is low risk and police are able to link the relevant persons with support services. The relevant persons could then be revisited by police within 14 days and a decision made at that time regarding whether a longer-term order should be sought. We appreciate that this would have implications for police resourcing but submit that it would be a more appropriate course of action to respond to lower risk DFV scenarios.

GPS Monitoring Pilot

QLS acknowledges electronic monitoring can be a useful complement to other safety measures. We note the pilot program supported by the proposed amendments will need to be appropriately funded to ensure sufficient monitoring and maintenance of the devices and to respond quickly to breaches.

QLS is aware GPS monitors fitted under current laws can be subject to tampering, which is generally dealt with by a charge of wilful damage. While we note tampering with a monitor fitted pursuant to a DVO could result in the respondent being charged with a breach of the DVO, there may also be scope for a new criminal offence to cover any tampering with electronic monitors, on the basis a wilful damage charge does not properly reflect the criminality of interfering with a GPS monitor.

QLS also notes the recent High Court jurisprudence regarding the legality of imposing electronic monitoring conditions in civil order schemes.[3] The High Court has recognised ankle monitors often represent an intrusion into liberty and bodily integrity and can constitute punishment.[4] Significant care must therefore be taken in regulating and evaluating the pilot.

VREC

QLS supports measures aimed at minimising trauma for victims. Accordingly, we do not oppose the proposed legislative amendments that will expand the VREC scheme to Magistrates Court statewide.

Clause 45 Amendment of s 103E (Requirements for making recorded statements)

QLS does not support this amendment.

QLS has concerns about the proposed amendment to remove 'the complainant's acknowledgement, or declaration under the *Oaths Act 1867* (**Oaths Act**), 'with a 'declaration' by the complainant.

Given the importance of truth in criminal proceedings, the term 'declaration' is not appropriate as it does not align with the other provisions in the *Evidence Act 1977*, Oaths Act and *Justices Act 1886* in terms of the standards required of a declaration of truth.

Additionally, it is likely this proposed amendment will generally make the process of giving evidence at hearings more confronting. The basis for this concern is that the defence may be more likely to scrutinize, through cross-examination, the witness 'declaration' and surrounding circumstances. The proposed amendments also open the possibility of similar enquiries being made by judicial officers to ensure the witness understood the significance of the declaration given while giving the video recorded evidence.

Further, the proposed amendment will enable parties to raise legal arguments about the weight to be given to the video-recorded evidence statements versus sworn testimony where the sworn evidence is required to comply with the provisions of the Oaths Act.

These types of issues would be counterintuitive to the stated objectives.

Clause 46 Amendment of s103F (When recorded statement is made with informed consent)

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3 YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs (2024) 99 ALJR 1; [2024] HCA 40.

4 Ibid at [58]-[62].

QLS does not support the proposed amendments to change the current statutory provisions that require obtaining consent both before and at the commencement of the statement being given. Primarily, this view is held for the following reasons.

Absent the solemnity of the process of swearing to the truth of a written statement, it is vital that a complainant understands that they are making a complaint, from which, another person will or may be charged with a serious criminal offence. The current dual consent process is also a safeguard which ensures that the complainant is aware that it is an offence to make such a complaint if anything in it is knowingly false. This is not only an important safeguard for an accused person, but also goes some way to avoiding the likelihood of rigorous cross-examination later in the legal process in relation to the complainants understanding of the implications of the statement they have made.

In addition, members of the Criminal Law Committee report that in their experience, complainants will often later say that they were not aware their conversation with police, at the time of the incident would, or could, form the basis for a criminal complaint that leads to the accused being charged with a serious criminal offence. This can lead to distress when complainants inform the Department of Public Prosecutions that they do not wish to proceed with the complaint but are told that it will proceed irrespective of their wishes. Accordingly, it is important that complainants are properly informed, prior to the taking of a video recorded statement and at the time the video recorded statement is taken, and therefore understands the purpose and effect of the recorded statement before it is given. The net effect of the proposed amendment to section 103F, together with the proposed replacement of section 103E(3) with a declaration, is victims will potentially be less informed of the implications of giving a VREC, including its use for the purpose of supporting a serious criminal offence charge.

Use of recorded statements in other proceedings

As a general position, we consider the usual rules of admissibility in relation to the contents of the video evidence should continue to apply, and the Court must retain an overriding discretion to exclude evidence or require evidence-in-chief to be given in person if it is in the interests of justice to do so.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on (07) [redacted].

Yours faithfully

[redacted]

Genevieve Dee

President