

Submission to the Legal Affairs and Community Safety Committee

Domestic and Family Violence Protection and Other
Legislation Amendment Bill 2014



**Queensland Indigenous Family
Violence Legal Service**





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**Queensland Indigenous Family Violence Legal Service Submissions to the Legal
Affairs and Community Safety Committee**

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1 Introduction

The Legal Affairs and Community Safety Committee (Committee) is considering the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014* (Qld).

The Committee is required to report to the Parliament by 24 November 2014.

QIFVLS is committed to assisting Indigenous Australians who are victims of domestic and family violence and/or sexual assault. QIFVLS does this by delivering culturally appropriate and free legal and support services and community education services. QIFVLS has offices in Far North Queensland, North Queensland, the Gulf and West Queensland, Central Queensland and Brisbane.

2 Submissions on the legislative proposal

2.1 An increase in maximum penalties is unlikely to translate into an increase in actual penalties imposed

One of the reasons cited for the introduction of this Bill is that domestic violence is increasing. Of particular concern, breaches of Domestic Violence Protection Orders are increasing. The system introduced to protect victims of domestic violence is not acting as an effective deterrent to perpetrators. Increasing maximum penalties is one option to act as a deterrent to breaches of domestic violence orders. However, increasing the maximum penalty that *may* be imposed by a Magistrate will not automatically lead to an actual increase in penalties that are imposed upon offenders. The maximum penalty is rarely imposed, and is by law reserved for the most serious examples of an offence.

In order to affect an increase in penalties actually imposed on offenders, the Committee could consider the utility of legislated minimum penalties or a scheme that clearly contemplates an increase in penalties for subsequent offences. For example, section 35 *Family Violence Act 2004* (TAS) provides for an increasing scale of maximum penalties for a first offence, second, third, and fourth or subsequent offence (which allows for imprisonment not exceeding 5 years). Such a scheme communicates clearly the seriousness of family violence offences, and particularly repeated offending of that nature. If such a scheme is introduced, corresponding legislative reform is required to enable previous convictions to be relied upon without the necessity of the cumbersome process currently required by section 47 *Justices Act 1886* (Qld).

2.2 The definition of 'physical violence' should be clearly articulated in the Act

The proposed amendments include increasing the maximum penalty if a contravention involves physical violence. The term 'physical violence' should be clearly defined in the *Domestic and Family Violence Protection Act 2012* (Qld) itself. Defence solicitors will inevitably attempt to argue that the particular act constituting their client's breach does not constitute 'physical violence'. For example, damage to property may not be included, whereas throwing property *at* the victim arguably should be. There is potential for uncertainty as to when the increased maximum penalty is enlivened. Incorporating a clear and concise definition of 'physical violence' within the Act at the time of amendment would assist the Courts and legal practitioners in applying the legislation to real-life scenarios.



2.3 Potential for amendments to be used to the detriment of victims

As a Legal Service assisting Indigenous victims of domestic and family violence on a daily basis, it has become apparent to QIFVLS that it is common for a perpetrator to use the system to their advantage. This includes making application for a Domestic Violence Order before the victim is able to, or applying for a cross-order, and accusing the victim of being the perpetrator. Often, an oppressed and disempowered victim will consent without admissions to an order being made, or not attend the hearing to avoid confrontation with the applicant who is in fact the main perpetrator. A victim may also retaliate following years of unreported abuse, at which point the perpetrator makes a complaint to the police. The *Domestic and Family Violence Protection Act 2012* (Qld) itself recognises the complexity of such relationships. Section 4(d) requires the identifying of “the person who is most in need of protection”.

The proposed amendments to section 9 *Penalties and Sentences Act 1992* (Qld), and section 132B *Evidence Act 1977* (Qld) contain no such direction, requirement or recognition of the complexity of violent relationships. It is likely that those sections will be used by perpetrators to paint themselves as the victim and present an inaccurate and skewed picture of the relationship and their offence. Conversely, it certainly is important to protect the victim who does eventually retaliate towards the main perpetrator.

The amendments to section 9 *Penalties and Sentences Act 1992* (Qld) focus the attention of the court on the relationship between the defendant and the victim of the current offence, which reinforces a ‘blaming of the victim’ mentality. It is common for defence solicitors to point out that the defendant has offended repeatedly against the same victim in mitigation of penalty, and for Magistrates to ask whether the previous offences involved the same victim. There is an implication that someone who is a repeat victim somehow ‘deserves it’ or is less worthy of empathy. A focus on the current relationship may act in favour of a defendant and ignore a pattern of violence by the defendant against a series of victims.

2.4 Increased recognition and support for family violence victims in the *Victims of Crime Assistance Act 2009* (Qld)

The proposed reforms to the *Victims of Crime Assistance Act 2009* (Qld) are supported by QIFVLS.

3 Recommendations for legislative reform

Although the proposed reforms represent a step in the right direction to reduce family violence and protect victims, these steps do not go far enough. It is submitted that the Committee should consider legislative reforms in line with the Tasmanian ‘Safe At Home’ whole-of-government strategy for responding to family violence. That is, a model that ensures that police and courts give primacy to the safety of the victim/s throughout the process.

For example, section 12 of the Tasmanian *Family Violence Act 2004* (TAS) requires that bail not be granted unless the judge, court or police officer is satisfied that release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child. Section 13 specifically provides that a court may consider as an aggravating factor the fact that a child was present or on the premises at the time of the offence, or knew that the affected person was pregnant. The Committee should consider the inclusion of similar provisions in the Queensland legislation, to provide robust protection to victims.

Another issue that arises in practice is that many Queensland Magistrates (certainly in Cairns) now consider themselves unable to grant or extend Domestic Violence Orders as part of the sentencing hearing for an offence. The practical impact is that although a perpetrator is



sentenced for serious domestic violence against the victim, the Order protecting the victim has often lapsed by the time of sentence. The victim is left without protection that could and should, be reinstated or imposed as a matter of course as part of the sentencing process for criminal domestic and family violence. It is submitted that the Committee should consider amending the Act to strengthen and re-enliven that process of granting or extending protection orders at the time of the hearing of the complaint.

The Queensland Indigenous Family Violence Legal Service would welcome the opportunity to engage in further consultation or expand upon these submissions.