Parliamentary Committees



Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022

Report No. 39, 57th Parliament
Legal Affairs and Safety Committee
November 2022

Legal Affairs and Safety Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

All web address references are current at the time of publishing.

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Abbreviations

ANROWS	Australia's National Research Organisation for Women's Safety
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CCC	Crime and Corruption Commission
DFV	domestic and family violence
DFVDRAB	Domestic and Family Violence Death Review and Advisory Board
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DJAG / department	Department of Justice and Attorney-General
DV	domestic violence
DVO	domestic violence order
Evidence Act	*Evidence Act 1977*
FLP	Fundamental legislative principle
FLPA	Family Law Practitioners Association Queensland
Hear Her Voice Report / HHV1 / Taskforce Report	Women's Safety and Justice Taskforce's first report*, Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* dated 2 December 2021
HHV2	Women's Safety and Justice Taskforce's second report*, Hear her voice – Report two – Women and girls' experiences across the criminal justice system* dated 1 July 2022
HRA	*Human Rights Act 2019* (Qld)
IPO	International Production Order
JOLA Act	*Justice and Other Legislation Amendment Act 2021*
Justice Act	*Justice Act 1886*
Legal Aid / LAQ	Legal Aid Queensland
LSA	*Legislative Standards Act 1992*
Penalties and Sentences Act	*Penalties and Sentences Act 1992*
PIM	Public Interest Monitor
PLO	police liaison officer
PSA	*Penalties and Sentences Act 1992*
QCU	Queensland Council of Unions
QDVSN	Queensland Domestic Violence Services Network
QLS	Queensland Law Society
QPS	Queensland Police Service
QPU	Queensland Policy Union of Employees

QSAN	Queensland Sexual Assault Network
QYPC	Queensland Youth Policy Collective
SACP	Sexual assault counselling privilege
Taskforce	Women's Safety and Justice Taskforce
TI Act	*Telecommunications Interception Act 2009*
WLSQ	Women's Legal Service Queensland
Youth Justice Act / YJA	*Youth Justice Act 1992*

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

It is important to test the inclination for change. To not embrace the changes or recommendations in the *Hear her voice* Report is to bury our heads in the sand. The harm that men have perpetrated, and continue to perpetrate, on women and children in our community cannot be underestimated. There will continue to be devastating consequences for families and community if we ignore the issue.

My personal view is instances of domestic violence have not increased, but the willingness of aggrieved persons to come forward has increased.

Aggrieved people believe that now they will be listened to because of the courage this government has shown to bring about real social change. This does not diminish the courage of the women who have come forward, and those who continue to come forward, to report incidents of domestic violence.

We know it is also the responsibility of men to call out this behaviour. Men can no longer be passive bystanders to the domestic violence they know about. They need to step up, speak out and draw attention to the behaviour that puts women and girls at risk.

While the police have been under intense scrutiny recently because of the behaviour of a few, the fact is the police have embraced changes in this area of law. They are calling out wrong behaviour from within their own ranks and accepting change as they review policy and protocols in how they respond to aggrieved people.

Everyone acknowledges that more education and funding are needed if we are to move forward with these reforms to make women and girls feel safe and able to call out domestic violence.

I am proud to be a part of a government that doesn't shy away from an issue that others considered too hard. The government engaged with experts who had the knowledge, understanding and awareness of the trials and tribulations families have been speaking out about. These experts encouraged the harmed, the vulnerable and the disenfranchised to share their stories. The experts worked with stakeholders and survivors to co-create a future built on the courage these women and girls displayed. I am proud to say the government listened and is acting.

On behalf of the committee, I thank those individuals and organisations who made submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Executive summary

The Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, and referred to the Legal Affairs and Safety Committee (committee) on 14 October 2022.

Summary of the Bill

The Bill proposes to implement immediate legislative reforms addressing coercive control as recommended by the Women's Safety and Justice Taskforce in its report, *Hear her Voice – Report one – Addressing coercive control and domestic and family violence in Queensland.* Specifically, the Bill implements recommendations 52 to 60 and 63 to 66 of the report.[1]

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- the impact of modernising and updating sexual terminology in the Criminal Code
- amending definitions within the *Domestic and Family Violence Protection Act 2012* to include a reference to a 'pattern of behaviour'
- the potential increase in demand for court services, policing and the legal profession as a result of the proposed amendments and the effect on current resources and funding
- expanding the class of protected witnesses for cross-examination
- identifying the person most in need of protection, including addressing the risk of misidentifying victim-survivors as perpetrators
- removing restrictions regarding the admission of evidence in the history of the domestic relationship
- facilitating the admission of expert evidence in criminal proceedings about the nature and effects of domestic violence
- providing the court with the discretion to give jury directions that address misconceptions and stereotypes about domestic violence
- compliance of the Bill with the *Legislative Standards Act 1992*
- compliance of the Bill with the *Human Rights Act 2019*.

Key findings

The committee heard evidence that many of the amendments will impact court, policing and the legal profession's resources and that additional training and education would be required. The committee notes the government has already acknowledged these potential impacts and advised that resourcing will be monitored and included in future budget considerations with training and education of frontline staff also being determined as part of implementing the Bill's provisions if passed.

The committee has recommended that the Bill be passed.

[1] Explanatory notes, pp 1-2.

1 Introduction

1.1 Policy objectives of the Bill

The Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, and referred to the Legal Affairs and Safety Committee (committee) on 14 October 2022.

The objectives of the Bill are to:

1. give effect to legislative reform in recommendations 52 to 60 and 63 to 66 of the Women's Safety and Justice Taskforce (the Taskforce) in Chapter 3.8 of its first report*, Hear her voice – Report one – Addressing coercive control and domestic and family violence in Queensland* (Hear Her Voice Report/HHV1)
2. modernise and update sexual offence terminology in the Criminal Code in response to advocacy that the language appropriately reflects criminal conduct
3. address stakeholder concerns regarding the operation of the sexual assault counselling privilege (SACP) framework in relation to the standing of counsellors and victims and alleged victims of sexual assault offences ('counselled persons')
4. amend the *Youth Justice Act 1992* to provide specific mitigatory circumstances relating to domestic violence
5. amend the *Coroners Act 2003* to remove the limitation upon the number of terms of re-appointment of the State Coroner and the Deputy State Coroner
6. amend the *Oaths Act 1867* to address issues that have arisen in the implementation of the *Justice and Other Legislation Amendment Act 2021*
7. amend the *Telecommunications Interception Act 2009* to enable the Public Interest Monitor (PIM) to perform the role intended under the International Production Order (IPO) scheme in relation to applications for interception IPOs.[2]

1.2 Background

In 2021, the Women's Safety and Justice Taskforce (Taskforce) was established to examine coercive control and review the need for a specific offence of domestic violence and the experience of women across the criminal justice system. On 2 December 2021, the Taskforce released its Hear Her Voice Report and made 89 recommendations to strengthen responses to coercive control and domestic and family violence, including legislative reform and the creation of a standalone offence of coercive control. All recommendations were supported or supported-in-principle by the Queensland Government.[3]

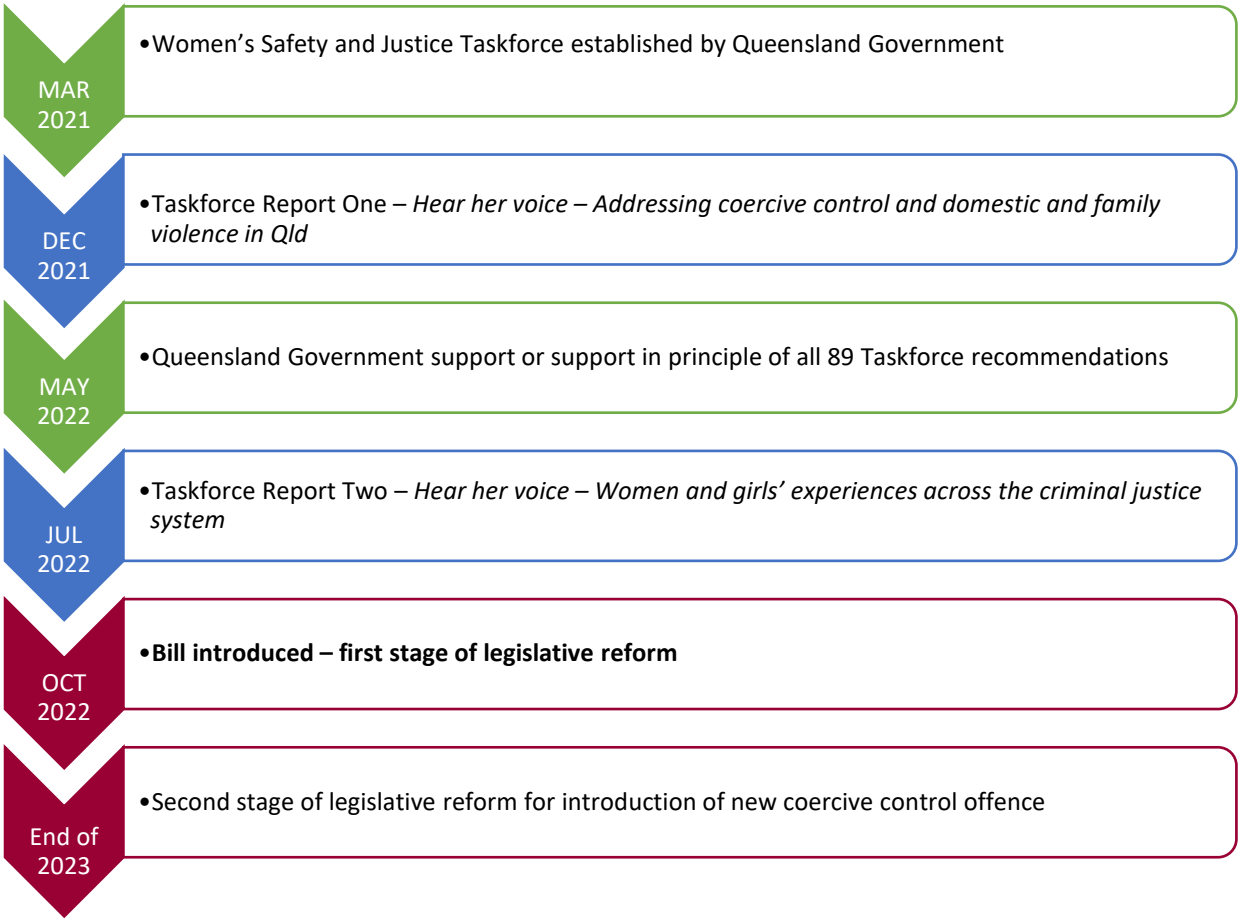
The Bill lays the foundations for ensuring the introduction of a new coercive control offence (expected to be introduced in a second stage of legislative reform by the end of 2023) will be effective in reducing domestic and family violence and mitigating any unintended consequences, particularly in relation to the misidentification of the primary aggressor and the experience of First Nations women and girls.

[2] Explanatory notes, pp 1, 2.

[3] Queensland Parliament, Record of Proceedings, 14 October 2022, p 2802.

To achieve this, the Bill implements recommendations 52 to 60 and 63 to 66 in Chapter 3.8 of the Hear Her Voice Report.[4]

Below is a timeline showing the key milestones relating to domestic and family violence policy and coercive control and the development of the Bill.



1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 be passed.

[4] Explanatory notes, pp 1, 2; DJAG, written briefing, 21 October 2022, p 3; Queensland Parliament, Record of Proceedings, 14 October 2022, p 2803.

2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty-eight submissions were received (see Appendix A for a list of submitters).

The committee received a public briefing about the Bill from the Department of Justice and Attorney-General (DJAG/department) on 24 October 2022 and received a written briefing on the Bill from DJAG on 21 October 2022 (see Appendix B for a list of officials at the public departmental briefing). The committee also received advice from DJAG responding to the submissions on 11 November 2022.

As part of its inquiries, the committee held a public hearing on 7 November 2022 in Brisbane to speak with stakeholders (see Appendix C for a list of witnesses).

The submissions, correspondence from DJAG and transcripts of the briefing and hearing are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses a number of the key issues raised during the committee's examination of the Bill.

2.1 Amendments to the Criminal Code

The Bill proposes to amend the Criminal Code to:

- rename, modernise and strengthen the offence of unlawful stalking
- provide that for a relevant proceeding (as defined in section 590AD of the Criminal Code) or a summary proceeding under the *Justice Act 1886* (Justice Act) for an accused person who is charged with a domestic violence offence, the prosecution must give the accused person a copy of the person's domestic violence history
- replace sexual offence terminology.

2.1.1 Chapter 33A - Rename, modernise and strengthen the offence of unlawful stalking

2.1.1.1 Outline of issue

The Bill proposes to rename, modernise and strengthen the offence of unlawful stalking in Chapter 33A of the Criminal Code. The Taskforce found that stalking and harassing behaviour towards victims, particularly electronic surveillance of them and their children, was prevalent in circumstances of coercive control and that the offence of unlawful stalking is underused by police and prosecutors in this context.[5]

The Bill proposes to rename the offence of unlawful stalking throughout Chapter 33A of the Criminal Code and in other legislation, to 'Unlawful stalking, intimidation, harassment or abuse' and modernise the offence by broadening the type of offending captured by the offence to better reflect the way an offender might use modern technology in this regard, including capturing unlawful electronic surveillance and creating a non-exhaustive list of ways a person can be contacted via electronic and remote means.[6]

To strengthen the offence, the Bill proposes to:

- introduce a new circumstance of aggravation with a maximum penalty of 7 years imprisonment for the offence of unlawful stalking, intimidation, harassment or abuse, if a domestic relationship exists between the offender and the stalked person (it will incorporate both former and current relationships)

5 Explanatory notes, p 2.

6 Explanatory notes, p 3; DJAG, written briefing, 21 October 2022, p 4.

- increase the maximum penalty for the offence of contravening a restraining order to 120 penalty units or 3 years imprisonment
- provide for a circumstance of aggravation if the person has been convicted of a domestic violence (DV) offence in the 5 years before the contravention of the restraining order. The maximum penalty for contravening a restraining order with this circumstance of aggravation will be 5 years imprisonment or 240 penalty units and will apply regardless of whether the DV offence was committed before or after the commencement of the Bill
- provide that the meaning of a DV offence for the purposes of the increased maximum penalties for the offence of contravening a restraining order will include both the definition of a DV offence under section 1 of the Criminal Code and an offence against Part 7 of the *Domestic and Family Violence Protection Act 2012* (DFVP Act), which includes the offence of contravening a domestic violence order (DVO)
- provide that an offence of contravening a restraining order with a circumstance of aggravation must be heard and decided summarily unless the defendant elects for trial by jury
- provide that when a court makes a restraining order, the default period is 5 years unless the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by a shorter period.[7]

2.1.1.2 Stakeholder comment

A number of submitters supported the proposed amendments to rename and modernise the offence of unlawful stalking to include unlawful harassment, intimidation and abuse, particularly in relation to capturing the use of technology to facilitate this behaviour.[8]

While supporting the intention of the amendment, the Women's Legal Service Qld (WLSQ) was concerned about potential unintended consequences that may arise from renaming the offence, including that the courts, Queensland Police Service (QPS), and prosecuting authorities might infer 'that direct intimidation, harassment or abuse are the target behaviours of the offence and read down the seriousness of the other examples of behaviour such as loitering, watching, and contacting a person'. WLSQ suggested either leaving the term 'unlawful stalking' as it is in the heading and title of the section, and including the words 'intimidation, harassment or abuse', in section 359B(c), or explicitly including a sub-section which clarifies that the heading is not intended to limit the operation of the section (in a similar, but not identical, way to the proposed clause 229B (9A) in the Bill).[9]

WLSQ also supported a further change (in italics below) to the elements of the offence of unlawful stalking in section 359B(a):

> '… conduct (a) intentionally directed at*, or that is likely to cause, offence to, or harassment or intimidation of,* a person (the stalked person)'[10]

By making this amendment, WLSQ contended that the difficulty of proving the first element of the offence, that is 'conduct a) intentionally directed at a person (the stalked person)', would be addressed. In regards to its recommendation to include 'likely to cause', WLSQ noted the phrase already appears in the Criminal Code in relation to a number of offences, most relevantly in the offence of Threatening Violence (section 75).[11]

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7 Explanatory notes, p 4.

8 See, for example, submissions 2, 3, 5, 6, 8, 14, 17, and 19.

9 Submission 6, p 2.

10 Submission 6, p 2.

11 Submission 6, p 2.

In regards to section 349B(c) of the Criminal Code, WLSQ also suggested the Bill was an opportunity to broaden the legislative intent of those Acts that fall into the category of unlawful stalking to include behaviour where perpetrators threaten to publish intimate images if the victim does not agree to sexual contact.[12]

The Queensland Youth Policy Collective (QYPC) was concerned about the circumstances in which judicial discretion remains to be exercised in relation to the period of restraining orders (clauses 22 and 23).[13]

The Queensland Sexual Assault Network (QSAN) recommended:

- stalking amendments should make provision for non-domestic and family violence (DFV) related stalking victims to be able to apply for a civil protection order or a stalking intervention order
- section 359B(b) be amended to include an additional term covering circumstances where a one-off abusive, harassing or intimidatory act which may be short term in nature but highly damaging to the victim so instances of this type of behaviour were covered by stalking laws.[14]

Several submitters expressed concern about the impact of the amendments on their resources and working operations:

- the Queensland Policy Union of Employees (QPU) contended that the amendments to restraining orders would increase policing hours with greater breach/contraventions of the orders requiring police to investigate and substantiate matters; clause 23 would increase the complexity of restraining order proceedings, particularly in cases where there was no DFVP order, which would fall on police to enforce and explain, requiring additional training and expertise within the police service to manage.[15]
- Legal Aid Queensland (Legal Aid) was concerned the following amendments would have cost implications for them:
  - expansion of definitions could lead to an increase in charges, matters before the courts, and demand for grants of aid.
  - the additional circumstance of aggravation would remove some offences currently dealt with by the Magistrates Court into the District Court, resulting in further cost implications for Legal Aid.
  - changes to the restraining order parameters may see greater litigation on the issuing of such orders.[16]

Multicultural Australia considered that the amendments relating to 'unlawful stalking' would require the simultaneous introduction of a community education and capacity building program to ensure 'awareness and understanding of the legislative changes and targeted support for perpetrators and potential perpetrators to change behaviours'.[17]

12 Submission 6, p 2.

13 Submission 26, p 4.

14 Submission 3, pp 4, 5. Full Stop Australia also supported the ability for a person to be able to obtain a civil protection order: submission 16, p 2.

15 Submission 27, pp 3, 4.

16 Submission 15, p 5.

17 Submission 8, p 7.

2.1.1.3 Department response to submissions

In response to WLSQ's concern that the amended title would narrow the use of the offence to only apply to direct acts, DJAG advised that it was being 'renamed "stalking, intimidation, harassment or abuse" as opposed to "stalking, intimidation, harassment and abuse" to minimise any misinterpretation that the title is in any way an exhaustive list of the elements of the offence'.[18]

In relation to WLSQ's recommendation to amend section 359B(2), DJAG stated that under section 359C, 'it is immaterial whether the stalked person is aware that the conduct is directed at them or whether the person doing the unlawful stalking has a mistaken belief about the identity of the person at who the conduct is intentionally directed'.[19]

In regards to WLSQ's recommendation to amend section 349B(c) to broaden the legislative intent, DJAG advised:

> That type of conduct contemplated by *"harassment or pressure for ongoing sexual contact"* is already captured in the offence of stalking. It would be superfluous to explicitly prescribe a purpose for which harassment or intimidation is committed. These circumstances would likely be explicitly recognised by a court on any sentence.[20]

DJAG responded to QYPC's concern regarding judicial discretion remaining in relation to the length of a restraining order and the wording in the provision as follows:

> This is consistent with other legislation such as the DFVP Act which gives judicial discretion as to length of DVOs. Currently, the Criminal Code does not provide for any default period for a restraining order.
>
> Currently, a restraining order may be made to benefit any person where it is considered desirable that the order be made. It is not restricted to the complainant.[21]

In response to QSAN's recommendation to include amendments that provide for non-DFV related stalking victims to be able to apply for a civil protection order or a stalking intervention order, DJAG advised that section 359F of the Criminal Code already provides for this.[22] In response to QSAN's recommendation to include a term that would cover circumstances where one act can satisfy the elements of the offence, DJAG advised that 'removing or altering the requirement that conduct engaged in on 1 occasion be "protracted" would alter the structure of the offence of unlawful stalking'. In addition, DJAG noted other offences existed to cover a one-off abusive online post, including distributing intimate images (section 223 Criminal Code Qld) and using a carriage service to menace harass or cause offence (section 474.17 of the *Criminal Code 1995* (Cth)).[23]

In regards to the likely increased demand for courts, police and the legal profession,[24] DJAG advised that 'the demand will be monitored and any costs impacts will be assessed and included in future budget processes'.[25]

Regarding Multicultural Australia's call for a community education program to build capacity and understanding of the legislative changes, DJAG stated:

> Successful implementation of the amendments will require certain implementation activities to first occur, including: training for police, lawyers and court staff, professional development for judicial officers,

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18 DJAG, response to submissions, 11 November 2022, p 31.

19 DJAG, response to submissions, 11 November 2022, p 32-33.

20 DJAG, response to submissions, 11 November 2022, p 32-33.

21 DJAG, response to submissions, 11 November 2022, p 120.

22 DJAG, response to submissions, 11 November 2022, pp 9, 10.

23 DJAG, response to submissions, 11 November 2022, pp 11, 12.

24 Explanatory notes, p 16.

25 DJAG, response to submissions, 11 November 2022, p 67.

> progress supporting amendments to the DFVP Rules and Criminal Practice Rules, system changes to the QWIC [Queensland Wide Inter-linked Courts] and court forms, updating policies and procedures and judicial benchbooks.[26]

Committee comment

We note support from stakeholders regarding the proposed amendments to rename and modernise the offence of unlawful stalking to include unlawful harassment, intimidation and abuse, particularly in relation to capturing the use of technology to facilitate this behaviour. We note the issues raised by submitters in regards to the practical aspects of the provisions as well as matters regarding resourcing and funding but are pleased to note that the expected increased demand for courts, police and the legal profession as a result of implementation of the Bill will be monitored and any costs impacts will be assessed and included in future budget processes.

2.1.2 Section 590AH - Disclosure that must always be made

2.1.2.1 Outline of issue

Clause 26 of the Bill amends section 590AH of the Criminal Code to provide that for a relevant proceeding (as defined in section 590AD of the Criminal Code) or a summary proceeding under the Justice Act for an accused person who is charged with a DV offence, the prosecution must give the accused person a copy of the person's DV history.[27]

2.1.2.2 Stakeholder comment and department response

The Bill is drafted so section 590(AH)(4) is limited to orders made against a person. WLSQ proposed that the scope be broadened to orders made against a person or 'naming the person as an aggrieved'. WLSQ explained that 'this change would provide broader context for the court, as, in many, but not all, cases, misidentified respondents will also be named as an aggrieved party'.[28]

In response, DJAG advised that the definition of a DV history has been modelled on an existing report which is produced by QPS and reflects information currently available to the QPS without manual intervention.[29] DJAG stated further:

> The disclosure provisions are not limiting; the prosecution could still disclose DVOs where the offender was the aggrieved and they could still be relied upon in a sentence by either the prosecution or defence. The difference would simply be that disclosure would not be mandated.[30]

Committee comment

We note the department's response in addressing the submitter's concerns.

2.1.3 Sexual offence terminology

2.1.3.1 Outline of issue

The Bill replaces the term 'carnal knowledge' (which is utilised in sexual offences across the Criminal Code) with 'penile intercourse'. The term 'penile intercourse' is ascribed the same definition as 'carnal knowledge' and is therefore not intended to alter the concept of carnal knowledge as it has been applied to date in Queensland.

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26 DJAG, response to submissions, 11 November 2022, p 42. For more information on DJAG's priorities in this space, including the development of a consistent evidence based and trauma-informed framework to support training, education and change management across all parts of the DFV and justice system, see DJAG's response to submissions, 11 November 2022, pp 43, 44.

27 Explanatory notes, pp 4-5. For more information, see DJAG, written briefing, 21 October 2022, p 23.

28 Submission 6, p 3.

29 DJAG, response to submissions, 11 November 2022, p 34.

30 DJAG, response to submissions, 11 November 2022, p 35.

Additionally, the Bill changes the title of section 229B of the Criminal Code from 'Maintaining a sexual relationship with a child' to 'Repeated sexual conduct with a child'. The terminology within the body of section 229B is not altered in any way.

The purpose of these amendments is to update terminology only, and not to change any aspect of the substantive law.[31]

2.1.3.2 Stakeholder comment – 'carnal knowledge'

Submitters supported that the language used to describe sexualised violence be updated;[32] for example, the Queensland Council of Unions (QCU) stated that the amendment 'aligns with a shift from victim blaming' and is 'nation leading and welcomed'.[33] Micah Projects agreed that the Bill would mitigate the risk of victim blaming.[34] However, submitters raised the following matters:

- QSAN submitted that using the 'graphic words' of 'penile intercourse with a person' may adversely impact the victim, as they would be 'continually subjected to' the phrase in police and court proceedings and interactions. QSAN recommended adopting the Tasmanian term of 'penetrative sexual abuse of a child' as it would also encompass a wider range of abuse and would be 'more reflective of a victim's experience of rape'.
- The Queensland Law Society (QLS) was opposed to the adoption of the term 'penile intercourse' because of its discriminatory effect and that it was 'out of step with every other Australian jurisdiction', which have replaced the suite of offences using the term 'carnal knowledge' with 'gender neutral language that captures a broader scope of conduct'. QLS stated that using this term suggested certain offences can only be perpetrated by male offenders, and it had the potential to leave female offenders open to more serious charges such as rape.[35]
- Legal Aid and QPU supported the inclusion of 'mouth' in the definition of penile.[36] Other submitters such as No to Violence also supported broadening the term, stating 'other body parts and other instruments can be used in a sexualised violent act'.[37]

2.1.3.3 Department response to submissions

In response to QSAN's concerns and submitters' recommendation to broaden the definition, DJAG advised:

> Amendment to the term 'carnal knowledge' is being prioritised in light of the persistent calls for changes from survivor-advocates since the Royal Commission into Institutional Child Sexual Abuse released its Criminal Justice Report in 2017.[38]

DJAG reiterated that the intention of the amendment is not to substantively alter the scope or operation of offences, which does not currently include insertion of a penis into a mouth, but noted that penile-oral penetration and other forms of sexual offending are captured by other offence provisions in the Criminal Code, including rape and sexual assault.[39]

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31 Explanatory notes, pp 13-14.

32 knowmore, submission 2, p 5; QSAN, submission 3, p 2, No to Violence, submission 5, p 5; Women's Legal Service Qld, submission 6, p 1; Full Stop Australia, submission 16, p 2; Queensland Council of Unions, submission 19, p 4, Queensland Law Society, submission 23, pp 1, 2.

33 Submission 19, p 5.

34 Submission 18, p 10.

35 Submission 23, pp 1, 2. See also QLS answer to question taken on notice, 14 November 2022.

36 Submission 15, p 5; submission 27, p 3.

37 Submission 5, p 5

38 DJAG, response to submissions, 11 November 2022, pp 6, 7.

39 DJAG, response to submissions, 11 November 2022, pp 7, 22, 66, 67, 86, 87, 126.

In response to QLS's concern that the term 'penile intercourse' was discriminatory and would have unintended consequences, DJAG advised:

> While the offences only apply to persons who have a penis, 'penile intercourse' is not considered to be gendered language as it relates to physical anatomy and is defined to include a surgically constructed penis, whether provided for a male or female.
>
> It is acknowledged that the differentiation between penile penetration and other forms of sexual penetration and activity is inconsistent with the approach taken in other Australian jurisdictions, however this is the result of fundamental differences in the nature and construction of the Criminal Code.[40]

2.1.3.4 Stakeholder comment – 'Maintaining a sexual relationship with a child'

Several submitters were concerned about the proposed amended title of section 229B of the Criminal Code from 'Maintaining a sexual relationship with a child' to 'Repeated sexual conduct with a child'. QSAN and No to Violence recommended changing it to wording that reflected the 'serious of the offence against children over a period, sometimes years' and removed 'any degree of perceived mutuality'.[41] In this regard, a number of submitters recommended the terminology be amended to 'persistent sexual abuse of a child' which would reflect the seriousness of the crime and be consistent with other jurisdictions (NSW, ACT, Victoria and Tasmania) and with the advocacy work of Grace Tame. (No to Violence recommended 'repeated child sexual abuse'.)[42]

knowmore provided a general comment that progressing the amendments in clauses 8 to 17 and 25 of the Bill without considering the more substantial reforms recommended by the Taskforce 'sets the stage for a piecemeal and disjointed response to the Taskforce's second report'.[43]

2.1.3.5 Department response to submissions

In response to submitters' concerns, DJAG advised they had reviewed the legislative frameworks in other Australian states and territories and had not identified any gaps in the conduct criminalised under the Criminal Code in relation to child sexual abuse compared to other jurisdictions.

DJAG also noted that a review and comparative analysis of child sexual abuse legislation in Australia currently being undertaken by the Australian Institute of Criminology and Commonwealth Attorney-General's department and they would consider the findings of the review once available.[44]

With regard to QSAN's preference for the wording 'penetrative sexual abuse' DJAG advised:

> The new offence title has been the subject of deliberate and strategic construction to minimise the potential for any unintended consequences in the Queensland-specific context.
>
> Queensland was the first Australian jurisdiction to enact an offence that reflected an ongoing course of sexual conduct with a child. Since introduction, the offence has been the subject of a significant amount of interpretation and jurisprudence, including by the HCA [High Court of Australia].
>
> The drafting of the offence is intended to ensure the ongoing effective operation of the offence. There are concerns introducing concepts such as 'persistent' or 'abuse' into the offence may result in the narrowing of the scope of the offence limiting the range of offending behaviours captured, making convictions more difficult to secure, and compromising victim-survivor's access to justice.
>
> For example, the concept of 'persistent' risks introducing a notion that there must be no temporal 'gap' in the offending conduct, or that the conduct must occur 'constantly or regularly'.

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40 DJAG, response to submissions, 11 November 2022, p 87.

41 Submission 3, p 2; submission 5, p 5.

42 QSAN, submission 3, p 2; No to Violence, submission 5, p 5; knowmore, submission 2, pp 5, 7-9, 10, 11; Ending Violence Against Women Queensland, submission 13, p 2; Full Stop Australia, submission 16, p 2; Queensland Youth Policy Collective, submission 26, p 5.

43 Submission 2, p 6.

44 DJAG, response to submissions, 11 November 2022, pp 6, 7.

> As the Taskforce noted in HHV2 [*Hear her voice – Report two*] it is important that well-intentioned changes to language do not have unintended detrimental impacts.[45]

In response to knowmore's concern that the amendments would be 'piecemeal and disjointed' and that legislative changes should wait until consideration of HHV2, DJAG advised that the sexual offence terminology amendments are being 'prioritised in light of the persistent calls for changes from survivor-advocates' since the Royal Commission into Institutional Child Sexual Abuse released its report in 2017.[46]

Committee comment

We note submitters' concerns regarding provisions to rename sexual offence terminology, including, for example, concerns about the impact of the words on victim-survivors; that the wording will limit the type of abuse covered; that the wording could be considered discriminatory and have unintended consequences resulting in some perpetrators being charged with more serious offences; and that the wording did not reflect the seriousness of the offence. However, we note the responses from DJAG addressing each matter and that other types of abuse are captured by other offence provisions in the Criminal Code.

2.2 Amendments to the *Domestic and Family Violence Protection Act 2012*

The Bill proposes to amend the DFVP Act.

2.2.1 Sections 8, 11 and 12 - Definitions of domestic violence, emotional or psychological abuse, and economic abuse

2.2.1.1 Outline of issue

As the Taskforce found the current definition of domestic violence in the DFVP Act is not clear about the nature of coercive control and may contribute to misidentification of DFV, the Bill amends the definitions of *domestic violence* (section 8), *emotional or psychological abuse* (section 11) and *economic abuse* (section 12) in the DFVP Act to include a reference to a 'pattern of behaviour'. Other amendments to section 8 of the DFVP Act (clauses 31 to 33) aim to clarify that domestic violence includes behaviour that may occur over a period of time, includes individual acts, that, when considered cumulatively, are abusive, threatening, coercive or cause fear, and must be considered in the context of the relationship as a whole.[47]

2.2.1.2 Stakeholder comment

Australia's National Research Organisation for Women's Safety (ANROWS) supported the amendments to include reference to a 'pattern of behaviour', as this approach was consistent with their evidence that recognises DFV, specifically coercive control, as a pattern of behaviour within relationships that results in fear. ANROWS noted that appropriate training and resources would be required to implement the amendments, particularly within QPS.[48]

Multicultural Australia supported the amendments that would include reference to a 'pattern of behaviour' but was of the view that, to achieve the objectives of the Bill, it was 'critical' to implement 'targeted, early intervention strategies aimed at preventing the perpetration of coercive control'.[49]

In relation to the proposed inclusion of 'or a pattern of behaviour', WLSQ was concerned that 'triers of fact and prosecutors will continue to focus on incident-based violence, albeit a number of incidents – as opposed to the dynamics of the relationship and the power imbalance' and suggested other

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45 DJAG, response to submissions, 11 November 2022, pp 6, 7, 8, 9.

46 DJAG, response to submissions, 11 November 2022, p 3.

47 Explanatory notes, p 5.

48 Submission 24, p 1.

49 Submission 8, p 7.

amendments to section 8 of the DFVP Act to include the words 'with particular reference to power, control and dependency' in section 8 (1A)(c).[50]

Legal Aid supported the amendments but noted they could increase the complexity of considerations for the court in DV applications and an increase in orders made with an increase in conditions, which may mean a potential increase in demand for grants of aid.[51] QPU was also concerned that clauses 31 to 33 that would broaden the definition of 'domestic violence' would increase the complexity in DV incidents, thereby putting additional resourcing pressure on not only the police, but courts and lawyers.[52]

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) queried what particular training would be given to judicial and police officers, lawyers and relevant support services regarding how to determine what a '"pattern of behaviour" constitutes within the complex and nuanced family dynamics of Aboriginal and Torres Strait Islander families'. ATSILS also queried how the proposed amendments would be applied in different scenarios.[53]

Although not proposed in this Bill, ATSILS was opposed to the creation of a standalone criminal offence of 'coercive control' for the following reasons:

- existing civil and family and domestic violence laws in Queensland already contain pathways for addressing and obtaining remedies for coercive control
- creation of a coercive control offence would give rise to a lack of certainty in the law and its application
- the proposed amendments, leading to the creation of a criminal offence for coercive control, will compound the existing disadvantage and discrimination that Aboriginal and Torres Strait Islander peoples already experience and increase their reluctance to report DFV.[54]

2.2.1.3 Department response to submissions

In response to matters raised by ANROWS, DJAG advised that it is 'prioritising the development of a consistent evidence based and trauma-informed framework to support training and education across all parts of the DFV and justice system' and will be informed by the voices of people with lived experience and developed in collaboration with experts in the service sector, academia and policing.[55]

In regards to submitters' comments regarding the need for training, DJAG advised, 'options will be explored in relation to how to best implement and embed training and education for all frontline and other relevant staff across government, as well as funded non-government agency staff'.[56]

In response to WLSQ's concerns about the words 'or a pattern of behaviour', DJAG advised:

> The Bill implements the findings and recommendations of the Taskforce to amend the definition of 'domestic violence' to make it clear that it includes a series or combination of acts, omissions or circumstances over time in the context of the relationship as a whole that may reasonably result in harm

50 Submission 6, p 4.

51 Submission 15, p 6.

52 Submission 27, p 4.

53 Submission 28, p 7.

54 Submission 28, pp 2, 3, 5. QYPC, submission 26, was also concerned regarding First Nations women being affected due to frequent misidentification of victims as perpetrators.

55 DJAG, response to submissions, 11 November 2022, pp 101, 102.

56 DJAG, response to submissions, 11 November 2022, pp 101, 102.

to the victim. The Taskforce recommended that this be done by making amendments to sections 8, 11 and 12 of the DFVP Act.[57]

As noted in section 2.1.1.3 above, DJAG has acknowledged that the Bill is likely to increase demand for Legal Aid and policing resources and that this will be monitored and any costs assessed and included in future budget processes.[58]

In response to ATSILS's concern that the Bill will compound the existing disadvantage and discrimination that Aboriginal and Torres Strait Islander peoples already experience, DJAG advised that a 'whole-of-government strategy and action plan is being developed to ensure the criminal justice system responds in a culturally informed way when responding to Aboriginal and Torres Strait Islander people'. The strategy and action plan will be developed in partnership with Aboriginal and Torres Strait Islander communities. DJAG also advised that it had noted ATSILS's feedback in relation to the offence of coercive control and will consider that as part of the process of developing that offence.[59]

Committee comment

We note both the support from submitters to include reference to a 'pattern of behaviour' into relevant definitions within the DFVP Act, as well as the issues raised, including, for example, the need for appropriate training and additional resources, particularly within QPS; the increase in complexity of considerations for the court in DV applications and an increase in orders made with an increase in conditions which would potentially increase demand for grants of aid; and that the Bill would compound the existing disadvantage and discrimination that Aboriginal and Torres Strait Islander peoples already experience.

We note the response from DJAG addressing these matters and are pleased to note that an evidence based and trauma-informed framework will be introduced across the DFV and justice system, informed by people with lived experience and experts in the service sector, academia and policing; that training and education for frontline staff is being considered to ensure that they are skilled in identifying 'a pattern of behaviour' and, specifically, elements of coercive control; that the increased demand for Legal Aid, court and policing resources will be monitored and included in future budget considerations; and that a whole-of-government strategy and action plan is being developed to address concerns about disadvantage and discrimination. We also note that recommendation 16 of the report titled *A call for change – Commission of Inquiry into Queensland Police Service responses to domestic and family violence* tabled 21 November 2022 recommends that, within 12 months, QPS improves its training in relation to domestic and family violence.

Recommendation 2

The committee recommends that the Queensland Government develops its consistent evidence based and trauma-informed framework to support training and education and change management across all parts of the DFV and justice system as soon as possible, and reports back on its progress within 12 months of the tabling of this report.

2.2.2 Cross applications and person most in need of protection

2.2.2.1 Outline of issue

The Taskforce found that cross applications are being used by perpetrators as a means of continuing to control and intimidate victims, resulting in DV orders being made against victims of DFV. Clause 30

[57] DJAG, response to submissions, 11 November 2022, p 35.

[58] DJAG, response to submissions, 11 November 2022, p 68.

[59] DJAG, response to submissions, 11 November 2022, pp 139, 140.

of the Bill amends the principles for administering the DFVP Act to clarify that the person who is most in need of protection in the relationship must be identified, and only one DV order should be in force unless there are exceptional circumstances and clear evidence that each person in the relationship is in need of protection from the other. The Bill also strengthens the court's response to cross applications requiring applications and cross applications to be heard together. Clause 34 inserts new section 22A to provide legislative guidance to magistrates in determining the person most in need of protection.[60]

2.2.2.2 Stakeholder comment

Submitters generally expressed support for clause 30 as it would assist with identifying the person most in need of protection and that DFV is a pattern of behaviour.[61] QPU noted, however, that it was 'not always easy to identify a perpetrator in an incident' especially in situations where the person in need of the most attention is not always readily available, which requires investigation, a process that can be time consuming for police. QPU contended that the amendment, while supported, would increase the burden to police without additional resources being provided.[62]

While a number of submitters supported the insertion of new section 22A into the DFVP Act to provide guidance to courts on how to identify the person most in need of protection, several issues were raised.[63] Legal Aid and QPU queried how the evidence required to determine this might be gathered and presented, especially for clients from culturally and linguistically diverse backgrounds and/or who have recently experienced trauma.[64]

Several stakeholders were concerned with the list of factors inserted under new section 22A(2) that a court must consider in deciding which person in a relevant relationship is the person most in need of protection. Caxton Legal Centre stated that making the factors mandatory considerations for a finding of the person most in need of protection, would, on a practical level, add to the amount of evidence that must be put before and considered by the court. Caxton Legal Centre suggested that the list does not need to be mandatory for the factors to be used.[65] QPU agreed, stating the burden of evidence would 'massively blow out the practical intention of this section' and 'require increased workloads on Police'.[66]

QLS recommended that section 22A 'be re-drafted to ensure the courts have sufficient discretion and appropriate flexibility to consider all factors relevant to the particular circumstances of the case'—or at a minimum, provide that courts may have regard to any other relevant factors.[67]

Caxton Legal Centre also raised a number of other issues:

- that ss22A1(b)(ii) was 'problematic' as the 'option to acts of retaliation is likely to have the unintended consequence of s22A(1)(b)(ii) being misused by the perpetrator against the person most in need of protection'.

60 Explanatory notes, p 6.

61 See, for example, Legal Aid Queensland, submission 15, p 6.

62 Submission 27, p 4.

63 Examples of support for clause 34 that inserts new section 22A into the DFVP Act include submissions 8, 15, 16, 19, 22, 24, and 27.

64 Submission 15, p 6; submission 27, p 5.

65 Submission 1, p 2.

66 Submission 27, p 5.

67 Submission 23, pp 1, 2.

- that ss22A(2)(d)(i) and (ii) not be included as it is unclear how 'capacity' is to be measured and as a result has the potential for 'racial and other types of discriminatory profiling of both perpetrators and aggrieveds'.[68]

Caxton Legal Centre suggested putting section 22A(2) before section 22A(1) as it would be 'more logical in terms of how the evidence would need to be presented, submissions made and conclusions drawn'.[69]

ANROWS sought assurance that victim and survivor safety would not be diminished by the requirement to hear cross applications together (clause 37) and that a degree of flexibility would be enshrined to accommodate exceptional circumstances which may warrant separate hearings.[70]

In regard to clause 39 that inserts new section 41G (Deciding cross application), QLS was concerned the threshold for making cross orders was too high and that there may be cases where 'it remains appropriate to issue cross orders because both parties engage in domestic violence'. QLS suggested any disparity in behaviour could be dealt with by way of different conditions in the orders.[71] QLS explained further:

> The requirement that there be exceptional circumstances may have the unintended consequence of discouraging magistrates from agreeing to resolve hearings by the making of cross orders (noting the magistrate has an over-riding discretion to consider any resolution proposed by the parties), resulting in more hearings and in some instances further strain on co-parenting relationships.[72]

QLS also noted that the proposed threshold for making cross orders may not account for relationships where a gendered approach is not applicable such as in gay or lesbian relationships.[73]

Family Law Practitioners Association Qld (FLPA) was also concerned about new section 41G as it would 'remove much of the broad discretion available to a court when determining cross applications noting that the principles under section 4 are already a mandatory consideration under s37(2) of the Act when determining whether an order is necessary or desirable in any case'. FLPA noted a number of other potential issues that could arise from the introduction of this new section: a person most in need of protection may not apply for the order because they doubt their ability to prove either they are the person most in need of protection or that there are exceptional circumstances in their case; hesitation from police to apply for a protection order on behalf of the aggrieved; and the potential risk of misidentification of perpetrator and victim.[74]

It is noted that several submitters, including QSAN and Full Stop Australia, supported that the making of cross orders should only be made in exceptional circumstances.[75] The Red Rose Foundation stated that exceptional circumstances should be defined.[76]

The Red Rose Foundation supported the cross application amendments but suggested including the words 'living in fear' to help identify the person most in need of protection.[77]

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68 Submission 1, p 3.

69 Submission 1, p 2.

70 Submission 24, p 2.

71 Submission 23, pp 2, 3.

72 Submission 23, p3.

73 Submission 23, p3.

74 Submission 12, p 2.

75 Submission 16, p 1; submission 3, p 4.

76 Submission 14, p 2.

77 Submission 14, p 2.

ATSILS stated that proposed amendments with respect to cross applications and identifying the 'person most in need of protection' would appear to be 'predicated on a simplistic, binary view of family and domestic violence (in that there is one victim and one perpetrator)', and that it does not appear to contemplate the complicated nature [of] family and domestic violence and, in particular, the complex and nuanced dynamics in Aboriginal and Torres Strait Islander families and intimate relationships'.[78]

Aged and Disability Advocacy Australia supported the amendments but stated that the appropriate use of these legislative provisions would 'hinge upon acceptance and significantly improved understanding of domestic and family violence', including developing a program of education.[79]

Misidentifying victim-survivors as perpetrators

Some submitters commented on the issue of misidentifying victim-survivors as perpetrators, particularly for marginalised groups such as Aboriginal and Torres Strait Islander peoples, people from migrant and refugee backgrounds and members of the LGBTIQA+ community.[80] ANROWS explained how misidentification can occur:

> … misidentification of victims and survivors as perpetrators of DFV can occur where women do not present as the stereotypical and "ideal victim", especially if they don't appear to be "powerless" or "submissive". Nancarrow (2016, 2019) notes that women who engage in self defence are more likely to use weapons in order to address their strength disadvantage and can sometimes therefore cause more visible injuries. When incident-based responses to DFV, which often prioritise physical violence, are used by police or courts, women using self-defence can be misidentified as perpetrators. This can contribute to women's imprisonment and disproportionately impacts Aboriginal and Torres Strait Islander women. Misidentifying victims and survivors as perpetrators of DFV can also undermine their confidence in the legal system and deny them access to appropriate support.
>
> The misidentification of victims and survivors as perpetrators of DFV can also occur where a perpetrator engages in systems abuse through legal processes. Systems abuse is defined as the "abuse or manipulation of legal systems and processes by perpetrators to exert power and control over the victim/survivor". In the context of cross-applications and cross-orders, perpetrators can perpetrate systems abuse by making retaliatory applications for protection orders. Cross applications and cross-orders can be intended to intimidate the victim and survivor to withdraw their own application, or can be used to deplete the victim's and survivor's financial and emotional resources.[81]

QYPC supported the Bill but suggested that it be coupled with significant reform of the criminal justice system to combat the misidentification of victims and perpetrators and ensure QPS members understand and appropriately respond to situations of domestic violence involving First Nations People.[82]

To mitigate the risk of misidentifying victim-survivors as respondents in DFV matters, WLSQ proposed that the disclosure provision be broadened to orders made against a person or 'naming the person as an aggrieved' and that specific material be included in the Magistrates Court Benchbook.[83]

No to Violence urged caution in regards to the amendment that would require police to provide a copy of the respondent's criminal and DV history to the court due to the impact this may have on vulnerable defendants. In regards to the parameters of this requirement, No to Violence stated:

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78 Submission 28, p 9.

79 Submission 22, p

80 See, for example, submissions 5, 6, 11, 23, and 26.

81 Submission 24, pp 2-3. NB: references have been removed from quote. Refer to original source for more information.

82 Submission 26, p 1.

83 Submission 6, p 3.

> The requirement to do so should be used to prove an intent to cause fear or harm, and to coerce and control another person. If such a practice is to occur, care must be taken to ensure a defendant's criminal history is only used to demonstrate patterns of behaviour and to help engender informed judgement of their further risk to offend.[84]

No to Violence called for the development of police and judicial officer training and risk assessments regarding misidentification of the predominant aggressor to be undertaken in parallel to the introduction of any legislation.[85] Several other submitters also supported training for police and others involved, including judicial officers.[86] ANROWS stated that, while training on legislative concepts for police and judicial officers was needed, it was not enough to ensure that understanding was translated into action. Training, guidance and resourcing were required for this to occur.[87]

2.2.2.3 Department response to submissions

In response to submitter issues regarding clause 34 (person most in need of protection) and the insertion of new s22A in the DFVP Act, DJAG advised:

> Section 22A provides legislative guidance for magistrates that aligns with current research, including findings and recommendations from the DFVDRAB [Domestic and Family Violence Death Review and Advisory Board] and was developed in consultation with several DFV stakeholders.
>
> …
>
> Section 22(2) ensures the court considers these relevant factors to determine who the person most in need of protection is and to reduce the misidentification of victims as perpetrators. This does not prevent the court from considering any other factors. The court is to determine a proceeding on the balance of probabilities and is not bound by the rules of evidence and may inform itself in any way to considers appropriate (section 145 of the DFVP Act).
>
> Further guidance for magistrates in the application of this provision will be included in the DFV Bench Book.[88]

In response to issues raised by Caxton Legal Centre about section 22A(1)(b)(ii), DJAG advised:

> Section 22A has been drafted in line with the Office of the Queensland Parliamentary Counsel's drafting practice. The purpose of section 22A is to define the term *person most in need of protection*. Subsections (1) and (2) are to be read together with subsection (1) defining who the person most in need of protection is, and subsection (2) providing the factors that the court must consider in making a decision about whether the decision applies to a person.[89]

In response to Caxton Legal Centre's comments about section 22A(2)(d) and it including the risk of perpetrator profiling, DJAG advised that the section 'is just one factor amongst a range of factors to be considered in the context of the relationship as a whole'.[90]

In response to QLS's recommendation that section 22A(2) be redrafted to ensure the courts have sufficient discretion and appropriate flexibility to consider all factors relevant to the circumstances of the case, DJAG advised that the 'considerations in section s22A(2) are generally consistent with the factors identified by the DFVDRAB as important factors for the court to consider to help determine

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84 Submission 5, pp 3-4.

85 Submission 5, pp 3-4.

86 See, for example, Caxton Legal Centre, submission 1, p 2; Integrated Family and Youth Service Administration Sunshine Coast, submission 11, pp 2, 5; and Aboriginal and Torres Strait Islander Legal Service Qld, submission 28, p 6.

87 Submission 24, p 3.

88 DJAG, response to submissions, 11 November 2022, pp 128-129.

89 DJAG, response to submissions, 11 November 2022, p 2.

90 DJAG, response to submissions, 11 November 2022, p 2.

the person most in need of protection and were further developed through consultation with several DFV stakeholders'.[91]

DJAG advised it would consider FLPA's comments in relation to new section 41G and engage in ongoing consultation as part of the process of developing that offence.

DJAG responded to the request from the Red Rose Foundation to define 'exceptional circumstances' in the cross application amendments, stating that the explanatory notes advise that the meaning of the term is 'defined in accordance with its ordinary meaning':

> *'Exceptional circumstances'* may describe a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special or uncommon. It need not be 'unique, or unprecedented, or very rare', but it cannot be a circumstance that is 'regularly, or routinely, or normally encountered'. Whether exceptional circumstances are shown to exist will depend on the facts and circumstances of a particular case.[92]

In response to the Red Rose Foundation's suggestion to include the words 'living in fear', DJAG advised it was unnecessary as this section 'includes behaviour by a second person that is controlling or dominating of the first person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet)'.[93]

DJAG addressed ATSILS's concerns regarding amendments to cross applications, including that they do not appear to consider factors relevant to Aboriginal and Torres Strait Islander families and intimate relationships, as well as the potential for misidentification of the perpetrator:

> As noted by the Taskforce, in most cases, a thorough examination of all the circumstances relevant to a relationship over time, including any pattern of DFV and coercive controlling behaviour, should reveal that one person is in greater need of protection than another.
>
> …
>
> By requiring applications and cross application to be heard together, the court will be able to consider the relationship as a whole – this is to support the court to determine who is most in need of protection in the context of the relationship.[94]

In response to Aged and Disability Advocacy Australia's call for a program of education, as noted in sections 2.1.1.3 and 2.2.1.3 above, DJAG acknowledged that 'implementation activities' and training for all touchpoints in the DFV system would be required and that the department was developing a framework in collaboration with stakeholders to support this. DJAG also advised the following:

> In response to Recommendation 51 of HHV1, the Queensland Government is also developing a trauma-informed and intersectional strategy for Court Services Queensland and Community Justice Services. Relevant policies and procedures and training modules will be updated to reflect the strategy and align with Recommendation 23.
>
> DJAG aims for implementation activities to occur progressively throughout the first half of 2023.[95]

In regards to concerns around misidentification of victim-survivors as perpetrators, DJAG advised:

> The Bill aims to reduce the misidentification of the victim as a perpetrator. The Bill includes amendments to the DFVP Act to better identify the person most in need of protection in the relationship (defined in clause 34 - s22A), including to consider the behaviour of each person in the context of their relationship as a whole. The expanded definition of 'domestic violence' to recognise a pattern of behaviour, will also

91 DJAG, response to submissions, 11 November 2022, p 89.

92 DJAG, response to submissions, 11 November 2022, pp 63, 64.

93 DJAG, response to submissions, 11 November 2022, p 63.

94 DJAG, response to submissions, 11 November 2022, pp 145-146.

95 DJAG, response to submissions, 11 November 2022, p 85.

contribute to the consideration of the relationship as a whole, and clarify that harm can be cumulative (to better identify the victim and perpetrator).

In considering cross-applications, the court must determine the person most in need of protection in the relationship as a whole, rather than in relation to each application or alleged incident.

- information about the nature and impact of DFV including coercive control;
- emphasise that DFV is a pattern of behaviour over time in the context of the relationship as a whole;
- provide guidance on how to identify the person most in need of protection in the relationship - guidance on using plain English and trauma informed language; and
- content to address myths about family violence - reflect the legislative amendments recommended by the Taskforce.[96]

DJAG further advised:

The Bill requires the court to consider whether to make arrangements for the safety, protection or wellbeing of the person most in need of protection. Section 150 of the DFVP Act lists the types of orders a court can make for a protected witness (i.e. aggrieved, named child, relative or associate of the aggrieved) - for example, allowing the person most in need of protection to give evidence outside the courtroom.[97]

Committee comment

We note that submitters were generally supportive of provisions relating to cross applications and identifying the person most in need of protection. However, a number of matters were raised in relation to the provisions, including, for example, that identifying the person most in need of protection sometimes required detailed investigation which can significantly impact police resources and that there was a risk of misidentifying victim-survivors as respondents in DFV matters.

Several matters were also raised regarding new section 22A, including queries about how evidence would be gathered and presented for people from culturally and linguistically diverse backgrounds and/or who have recently experienced trauma; that the list of factors a court must consider in deciding which person in a relevant relationship is the person most in need of protection would add to the amount of evidence that needed to be gathered and presented; and that these factors did not need to be mandatory. In regards to new section 41G, there were concerns that the threshold for making cross orders was too high, and it would remove the broad discretion available to a court when determining cross applications.

As noted in the section above, DJAG has identified the intent of the provisions (enabling the court to consider relevant factors to determine who the person most in need of protection is in order to reduce the misidentification of victims as perpetrators) and its reasons for drafting new section 22A in the way it has. DJAG also advised it will consider comments regarding new section 41G when the offence is drafted.

We note DJAG's advice in relation to mitigating the risk of misidentifying victim-survivors as respondents in DFV matters: that the amendments are aimed at better identifying the person most in need of protection in the relationship by considering the behaviour of each person in the context of a relationship as a whole and that the expanded definition of 'domestic violence' will also contribute to the consideration of the relationship as a whole and clarify that harm can be cumulative.

[96] DJAG, response to submissions, 11 November 2022, pp 33-34.

[97] DJAG, response to submissions, 11 November 2022, pp 102-103.

2.2.3 Costs

2.2.3.1 Outline of issue

Clause 49 of the Bill inserts a new ground on which the court can make a costs order: if the court decides to hear and dismiss the application and, in doing so, also decides that the party, in making the application, intentionally engaged in behaviour or continued a pattern of behaviour towards the respondent that is domestic violence. The Bill also inserts a note in section 157 that this behaviour is known as systems abuse or legal abuse and occurs when a person intentionally misuses the legal system to intentionally exert control or dominance over the other person or to torment, intimidate or harass the other person.[98]

2.2.3.2 Stakeholder comment and department response

QLS and QCU supported the amendments relating to costs.[99]

QLS submitted that section 157 could be amended to enable 'aggrieveds to apply for costs against respondents in certain limited circumstances'.[100] DJAG advised that section 157 already allows for this, stating 'any party, including an aggrieved, may make submissions to the court for an order for costs to be made where the court has heard and dismissed an application and made a finding under section 157 of the DFVP Act'.[101]

ATSILS agreed with the amendment but questioned whether an applicant who does not have legal advice and has mistakenly made an application or has not thought it through will be penalised.[102] DJAG advised:

> This is intended to encompass situations, for example, where an individual has made an otherwise baseless application or cross application for the purpose of intimidating or harassing the other person. A person who has mistakenly made an application rather than made an application on purpose to intimate or harass the other person would not meet this threshold.[103]

Committee comment

We are satisfied with the department's response to the issues raised.

2.2.4 Criminal history and domestic violence history in civil proceedings

2.2.4.1 Outline of issue

The Taskforce recommended the court is provided with a respondent's criminal and domestic violence histories to help determine the risk to the aggrieved and whether to make a protection order, and to assist in best tailoring the conditions of the order to keep the victim safe. Clauses 35 and 44 of the Bill insert new sections 36A and 90A respectively, requiring the police commissioner to ensure the criminal and/or domestic violence history is filed with the court prior to the first hearing of the application, or ensure the court is informed that the respondent does not have a criminal or domestic violence history. Clauses 40 to 43 provide that the court must consider the respondent's criminal and/or domestic violence history when making a temporary protection order, when making or varying a domestic violence order by consent or when varying a domestic violence order if the court thinks it is relevant to do so.

Clause 51 of the Bill inserts a new section 160A to provide the court with the ability to make orders around the access, use and disclosure of the respondent's criminal history and domestic violence

98 Explanatory notes, p 7.

99 Submission 19, p 3; submission 23, p 3.

100 Submission 23, p 3.

101 DJAG, response to submissions, 11 November 2022, p 91.

102 Submission 28, p 9.

103 DJAG, response to submissions, 11 November 2022, p 146.

history to ensure procedural fairness. Protecting a respondent's privacy prevents the misuse of information contained in the respondent's criminal history or domestic violence history and mitigates risk of systems abuse by a person making an application for a protection order for the purpose of obtaining a copy of the respondent's criminal history or domestic violence history.

Clause 56 of the Bill defines criminal history to include all convictions of and charges made against the person for an offence in Queensland or interstate.

If the court does make an order (under new section 160A) and the person does not comply with the court order, they may be found in contempt of court under section 50 of the *Magistrates a Courts Act 1921*, unless the person has a lawful excuse.[104]

2.2.4.2 Stakeholder comment

QYPC suggested that the requirement for a criminal history to be provided should include criminal histories in other Australian states and territories. QYPC also noted the Bill would not explicitly require that a perpetrator's DV history be provided to a court at breach hearings, resulting in courts potentially being without all the information relevant to sentence or otherwise deal with an offender in breach hearings for DV orders.[105]

QPU expressed confusion in relation to the effect of section 160A (clause 51) on the disclosure requirements envisioned in new sections 36A (clause 35) and 90A (clause 44) and suggested the Bill clarify this to ensure that the disclosure of criminal history and DV history is not lost in legal argument.[106]

QPU also noted that additional resources would be required from QPS to affect the requirements imposed by new sections 36A and 90A.[107] QCU shared the concerns of QPU about the impact on police resourcing, stating 'that the proposed legislation further adds to an already heavy workload of police', and the legislation had not appropriately quantified what the additional cost and human resourcing requirements would be.[108]

ATSILS was concerned about the confidentiality of the criminal history and DV history of a respondent and recommended the orders be made available for inspection only, rather than by way of copies.[109]

The Red Rose Foundation stated that DFV protection orders and past DFV history should also be admissible in criminal court proceedings.[110]

While Multicultural Australia supported these amendments in principle, they expressed concern that the definitions of 'criminal history' and 'domestic violence history' were too broad, and there was a risk that this would compromise the right to a fair hearing for the accused. Multicultural Australia recommended that the provision be amended 'to achieve a greater balance between the rights of victim-survivors and perpetrators'.[111]

QFCC noted the Bill did not amend the *Youth Justice Act 1992* [Youth Justice Act/YJA] in relation to criminal history and domestic violence history and expressed concern that, as children as young as 13 years are reported to have been respondents in DV proceedings, the Bill will have implications for

104 Explanatory notes, pp 7-8; DJAG, written briefing, 21 October 2022, p 25.

105 Submission 26, pp 4, 5.

106 Submission 27, p 5.

107 Submission 27, p 5.

108 Submission 19, p 4.

109 Submission 28, p 9.

110 Submission 14, p 3.

111 Submission 8, p 8.

children either as an accused person or as an aggrieved or respondent party. QFCC recommended that the distinctions between adult and child currently reflected in the DFVP Act be mirrored in the Bill.[112]

2.2.4.3 Department response to submissions

DJAG responded to the matters raised by QYPC as follows:

- the Bill includes a definition of 'criminal history' under the DFVP Act to include all convictions and charges made against the respondent for an offence in Queensland or elsewhere.
- re suggestion that DV history be provided to a court at breach hearings: in a civil context, the obligation is on the QPS to provide a respondent's criminal history or DV history (also defined) to the court for all applications for a DVO (police initiated and private) — if it is in the possession of the Police Commissioner or the Police Commissioner, under law, is permitted to access and provide the information to the court for use in a DV proceeding. Amendments to section 590AH of the Criminal Code will require the disclosure of a DV history to an accused person where the person is charged with a DV offence. For these amendments, a DV offence would include the offence of contravening a DV offence under the DFVP Act.[113]

In response to the Red Rose Foundation's suggestion that DFV protection orders and past DFV also be admissible in criminal court proceedings, DJAG advised:

> The amendment does not require the tender of the history, rather – as is the case with other evidence disclosed in criminal proceedings including criminal histories – its tender will be a matter for a prosecutor's discretion. By making the DV history something which is required to be disclosed permits an accused person to have access to all material which may be used in a prosecution against them and enables that person to provide any instructions to their legal representative about that history.
>
> Clause 81 of the Bill will introduce an offender's DV history as a matter to which the sentencing court may have regard for determining an offender's character under section 11 of the *Penalties and Sentences Act 1992* (PSA).[114]

DJAG clarified how the provisions would work in response to both ATSILS's concern the provisions would cause challenges for Aboriginal and Torres Strait Islander respondents and QPU's concern that there would be a 'grey area' around when the information must be disclosed to other parties:

> The DFVP Act contains confidentiality provisions that will apply to a respondent's DV history and criminal history.
>
> Section 159 of the DFVP Act makes it an offence for a person to publish particular information given in evidence in a DV proceeding. Publishing means 'publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication'.
>
> In addition, the Bill (clause 51) will include a new section (section 160A) to allow the court to make an order about the disclosure or access of a respondent's criminal history or DV history.
>
> A person who disobeys an order may be found in contempt of court under section 50 of the *Magistrates Courts Act 1921* (unless they have a lawful excuse).
>
> If the court is satisfied that all or part of the respondent's criminal history or DV history is not relevant to deciding an application, the court may order that the relevant part of the history is not provided to a party.

[112] Submission 20, p 2.

[113] DJAG, response to submissions, 11 November 2022, p 121.

[114] DJAG, response to submissions, 11 November 2022, pp 65-66.

> Even if the court does not make an order, under new section 160A, in relation to disclosure, section 159 of the DFVP Act will apply to prohibit publication of a respondent's DV history and/or criminal history.[115]

In response to Multicultural Australia's concern the definitions were too broad and this could compromise the right to a fair hearing for the accused, DJAG advised that the Bill allows the court to make an order about the disclosure of or access to a respondent's criminal history or DV history (clause 51. Further, DJAG advised that the amendment to section 590AH of the Criminal Code (clause 26) in relation to the disclosure of a DV history to an accused person for certain offences would 'ensure that the accused person has an opportunity to review and understand any evidence which may be relied upon during the prosecution'.[116]

In relation to QFCC's concerns about the impact of the provisions on children, DJAG advised that the Bill does mirror the distinctions between adult and children as currently reflected in the DFVP Act and that, under section 22 of the DFVP Act, a child can only be named as an aggrieved or respondent if the child is in an intimate personal relationship or an informal care relationship (i.e. not in a family relationship).[117] DJAG added:

> The Bill proposes an amendment to the YJA to insert a specific mitigatory provision related to the effect of the DV or exposure to DV on the child and the extent to which the offence is attributable to the effect of violence.
>
> An amendment to section 11 of the PSA which permits a court to use a DV history to determine an accused person's character other than a history of DVOs made or issued when the offender was a child.[118]

Committee comment

We note police resourcing was raised as an issue again in relation to these provisions. We also note the following concerns: maintaining the confidentiality of the criminal history and DV history of a respondent and ATSILS's recommendation the orders be made available for inspection only rather than by way of copies; that DFV protection orders and past DFV history should also be admissible in criminal court proceedings; that the definitions of 'criminal history' and 'domestic violence history' were too broad and that there was a risk this would compromise the right to a fair hearing for the accused; and the provisions would adversely impact children.

2.2.5 Substituted service

2.2.5.1 Outline of issue

The DFVP Act requires applications and orders to be served personally by police officers. The Taskforce emphasised that personal service by a police officer provides an important opportunity to convey the seriousness of an order to a perpetrator, and to potentially disrupt or de-escalate a domestic violence situation. The Taskforce found that personal service by police should continue unless a substituted method of service would provide increased protection to the victim.

Clause 53 of the Bill inserts new section 184A (Substituted Service) in the DFVP Act to enable the court to make a substituted service order if it is satisfied that:

(1) reasonable attempts have been made to personally serve the document on the respondent

(2) serving the document in another way is necessary or desirable to protect the aggrieved

[115] DJAG, response to submissions, 11 November 2022, pp 129-130.

[116] DJAG, response to submissions, 11 November 2022, p 45.

[117] DJAG, response to submissions, 11 November 2022, p 81.

[118] DJAG, response to submissions, 11 November 2022, pp 82-83.

(3) serving the document in another way is reasonably likely to bring the document to the attention of the respondent.[119]

2.2.5.2 Stakeholder comment

QPU was supportive of the substituted service amendments (clauses 52 and 53), particularly new section 184A that would provide for electronic or further substituted service as it would allow police to undertake 'other facets of policing related to domestic and family violence'.[120]

While supportive of these amendments, Legal Aid noted that substituted service may add further complexity to the process, an increased opportunity for error and delay in proceedings, and difficulty for police who may struggle with the existing service requirements. In this regard, Legal Aid noted that 'police may be reluctant to proceed with a contravention of the protection order if the Respondent has been served in a substituted manner'.[121]

WLSQ and QYPC were concerned that 'police officer' was not defined to include police liaison officer (PLO), resulting in police officers being the sole people capable of effecting service in 'another way'.[122]

ATSILS stated that the proposed amendments would cause challenges for Aboriginal and Torres Strait Islander respondent parties. For example, the individual may not have access to text messages or emails or may not be used to receiving messages in that way and therefore may not become aware information has been sent to them.[123]

In regard to clause 46 which provides for a notice to be served on the respondent personally or in a way stated in a substituted order, QPU stated:

> The continuing complication of the domestic and family violence legal framework puts increased pressure on Police to be 'legal experts' and provide information to respondents upon service. The QPU is concerned that this expertise should not solely rest on the shoulders of Police, we believe that as the system continues to get more complicated there is a need for innovation and multi-disciplinary support across all the parts of the domestic and family violence system.[124]

2.2.5.3 Department response to submissions

In relation to concerns about police providing this service and the potential reluctance police may have to proceed with a contravention charge where the order has been served under substituted service, DJAG advised the purpose of the amendment is to address the specific circumstances where a respondent deliberately evades service to frustrate the court process, which leaves victims without the protection of a DVO for a longer period of time.[125]

In response to the concern that 'police officer' was not defined to include a PLO, DJAG advised that the Taskforce recommended that PLOs be allowed to serve documents under the DFVP Act but noted that before any legislative amendments are progressed, 'further consideration and consultation with stakeholders (particularly First Nations peoples) is required to understand the potential impacts and how best to give effect to the recommendation'.[126]

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119 Explanatory notes, p 9.

120 Submission 27, p 7.

121 Submission 15, p 9.

122 Submission 26, p 5; submission 6, p 4.

123 Submission 28, p 10.

124 Submission 27, p 6.

125 DJAG, response to submissions, 11 November 2022, p 69.

126 DJAG, response to submissions, 11 November 2022, p 122.

To address matters raised by ATSILS, DJAG clarified that the provisions are 'intended to ensure applications and protection orders are explained to parties, and that the aggrieved and respondent understand the nature and effect of the relevant documents'.[127]

In response to QPU's concerns relating to clause 46, DJAG advised:

> The Taskforce found that documents should continue to be personally served by police officers under the DFVP Act, except in limited circumstances. It recommended amendments to enable a court, in particular circumstances, to order substituted service for documents, where it would provide greater protection to the aggrieved.
>
> The Taskforce found that personal service is more than process serving and is a valuable use of police resources which provides procedural fairness and an intervention point to reinforce that DFV will not be tolerated.
>
> Personal service provides procedural fairness to a respondent, as a police officer will explain the document to the respondent, as well as any consequences of not complying with the document. Personal service is also intended to give police an important opportunity to intervene, disrupt and de-escalate DV.[128]

Committee comment

We note the concerns of submitters in relation to the substituted service provisions. We also note DJAG's response on how the provisions are intended to operate in order to ensure applications and protection orders are explained to parties and that the aggrieved and respondent understand the nature and effect of the relevant documents, which we consider as being essential for procedural fairness to a respondent as well as providing greater protection to the aggrieved.

2.2.6 Reopening proceedings

2.2.6.1 Outline of issue

Clause 50 of the Bill amends Part 5 of the DFVP Act to include new Division 3A, which outlines limited circumstances in which a proceeding may be reopened. This amendment was not a specific recommendation from the Taskforce but arose from consultation on the draft Bill.

Under the Bill, a respondent may apply to the court to reopen a proceeding if a court makes or varies a protection order and:

(1) the application for the order was served on the respondent under a substituted service order

(2) the application was not, and could not reasonably have been brought to the attention of the respondent despite being served in a way stated under the substituted service order

(3) the respondent was not present in court when the application was heard and decided.[129]

2.2.6.2 Stakeholder comment and department response

While Legal Aid supported the insertion of section 157A (Reopening particular proceedings decided in respondent's absence), they were concerned that nothing preserved 'the welfare of the Aggrieved in accordance with the objects and principles of the legislation'. In this regard, Legal Aid recommended an explanation be included with examples in relation to the new sections and that:

> The Respondent should be required to establish that they would be harmed or prejudiced in some significant way if the stay is not ordered, which consideration should prevail. The paramount consideration should always be the safety of the Aggrieved.[130]

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127 DJAG, response to submissions, 11 November 2022, p 148.

128 DJAG, response to submissions, 11 November 2022, pp 130-131.

129 Explanatory notes, p 10.

130 Submission 15, pp 7-8.

QPU supported Legal Aid's recommendation.[131]

In response, DJAG advised:

> The purpose of the provision to reopen proceedings is to address particular circumstances where an application for a protection order is served under a substituted service order, and the respondent genuinely does not become aware of the document despite it being served in the substituted manner.
>
> Allowing the court to make an order staying the operation of the decision until the reopened proceeding is decided is consistent with the appeal provisions in Division 5 of the DFVP Act. This would include a decision to make a TPO [temporary protection order] or final protection order.
>
> As provided in the Explanatory Notes to the Bill, an example of when a proceeding may be reopened is when an application is thought to be served on a respondent via email under a substituted service order, and the email address is incorrect due to human error.[132]

ATSILS recommended consideration be given to including a discretionary power of the court to extend the 28-day time limit to act if sufficient grounds are put before the court.[133] DJAG advised that 'the requirement to make an application to reopen proceedings within 28 days of the respondent becoming aware of the order balances procedural fairness rights of the respondent with the need for certainty of the aggrieved'.[134]

Committee comment

We note the issues raised addressing concerns about ensuring the welfare of the aggrieved if proceedings are reopened and ATSILS's recommendation to include discretionary power of the court to extend the 28-day time limit to act if sufficient grounds are put before the court. However, we also note that DJAG clarified that the intent of the provision is not to adversely impact the aggrieved but to reopen proceedings only in particularly circumstances when the respondent genuinely has not become aware of the document served under a substituted service order, such as would occur with an incorrect email address and human error. We support the view that an application to reopen proceedings within 28 days of the respondent becoming aware of the order balances procedural fairness rights of the respondent with the situation for the aggrieved.

2.3 Amendments to the *Evidence Act 1977*

The Bill proposes to amend the *Evidence Act 1977* (Evidence Act).

2.3.1 Expanding class of protected witnesses for cross-examination

2.3.1.1 Outline of issue

The Bill amends the Evidence Act to create a new category of protected witness with respect to any domestic violence offence and extends the prohibition on direct cross-examination to this new category of protected witness. This means that where a defendant is unrepresented, the complainant cannot be cross-examined directly by them. If cross-examination is to occur, it will be undertaken by a lawyer.[135] These amendments also include persons other than the complainant but there are additional requirements for protected witnesses who are not the complainant.[136]

This proposal relates to recommendations 54 and 55 of the Hear her Voice Report.

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131 Submission 27, p 7.

132 DJAG, response to submissions, 11 November 2022, p 69.

133 Submission 28, p 10.

134 DJAG, response to submissions, 11 November 2022, p 149.

135 Explanatory Notes, p 10.

136 Explanatory Notes, p 11.

2.3.1.2 Stakeholder comment and department response

The expansion of the class of protected witnesses and the removal of the right of an unrepresented accused to cross-examine certain protected witnesses was supported by a number of stakeholders, including No to Violence, Multicultural Australia and Legal Aid.[137]

No to Violence applauded this proposal and also noted that 'the introduction of similar provisions in NSW local courts during 2021 might be instructive'. No to Violence also welcomed the 'ability of a vulnerable witness to give evidence without being within the presence of the accused, including by remote means'. No to Violence noted that these changes will ensure that witnesses 'can provide their best evidence without fear and without being subject to the intimidatory tactics that are often employed by perpetrators in a court setting'.[138]

Legal Aid noted that 'clauses 59 and 60 of the Bill amending *Evidence Act 1977,* Part 2, Division 6 provisions in relation to protected witnesses will have the most significant financial impact on LAQ'. Legal Aid further notes that these changes 'will require LAQ to provide an entirely new service to a large number of defendants not previously entitled to be legally aided'.[139]

Regarding Legal Aid's concerns about the financial impact of the proposed amendments, the department responded:

> As acknowledged in the Explanatory Notes, the Bill is likely to increase demand for Legal Aid Queensland. This demand will be monitored and any costs impacts will be assessed and included in future budget processes.[140]

2.3.2 Admission of evidence of domestic violence

2.3.2.1 Outline of issue

The Bill will remove the restrictions on section 132B regarding the admission of evidence of the history of the domestic relationship applying only to offences in Chapters 28 to 30.

The Bill also makes evidence of domestic violence admissible whether that evidence relates to the defendant, the person against whom the offence was committed, or another person connected with the proceeding.

Clause 64 of the Bill inserts new section 103CA of the Evidence Act that provides a non-exhaustive list of what may constitute evidence of domestic violence.[141]

2.3.2.2 Stakeholder comment and department response

There were a number of stakeholders who were generally supportive of the proposal under the Bill regarding the removal of restrictions under section 132B of the Evidence Act concerning the admission of the history of the domestic relationship. See, for example, submissions from QSAN, Multicultural Australia and the QCU.[142]

The Red Rose Foundation also supported this amendment but suggested that DFV protection orders and past DFV also be admissible in criminal court proceedings. The Red Rose Foundation noted that '[s]ome seriously violent perpetrators are walking away from Criminal Courts because prior DFV records or current Protection Orders are inadmissible'.[143]

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137 See submission 5, p 5; submission 8, p 9; submission 15, pp 2-4.

138 Submission 5, p 5.

139 Submission 15, p 3.

140 DJAG, response to submissions, 11 November 2022, p 66.

141 Explanatory notes, p 11.

142 Submission 3, p 1; submission 8, p 9; submission 19, p 3.

143 Submission 14, p 15.

Regarding Red Rose Foundation's concerns, the department responded as follows:

> Amendments to section 590AH of the Criminal Code in clause 26 of the Bill will require the disclosure of a DV history to an accused person where the person is charged with a DV offence. For these amendments, a DV offence would include the offence of contravening a DV offence under the DFVP Act.
>
> The amendment does not require the tender of the history, rather – as is the case with other evidence disclosed in criminal proceedings including criminal histories – its tender will be a matter for a prosecutor's discretion. By making the DV history something which is required to be disclosed permits an accused person to have access to all material which may be used in a prosecution against them and enables that person to provide any instructions to their legal representative about that history.
>
> Clause 81 of the Bill will introduce an offender's DV history as a matter to which the sentencing court may have regard for determining an offender's character under section 11 of the Penalties and Sentences Act 1992 (PSA).[144]

WLSQ was 'conceptually supportive' of providing the court with a full picture of a respondent's criminal and domestic violence history to help decide whether an order is needed and to assist in best tailoring the conditions to keep the victim safe. However, the WLSQ expressed concerns 'about the potential consequences of this change for those women who are misidentified as respondents in domestic and family violence matters'.[145] WLSQ submitted that:

> WLSQ is aware of many women, including First Nations women and CALD women, who are misidentified as respondents and, often because of their acute vulnerability, consent without admissions to orders. There is a risk that the use of this history might compound their misidentification in the absence of other reference material. To mitigate this risk, WLSQ proposes that the disclosure provision be broadened, and that specific material be included in the Magistrates Court Benchbook.[146]

The department responded to WLSQ's concerns as follows:

> The Bill aims to reduce the misidentification of the victim as a perpetrator. The Bill includes amendments to the DFVP Act to better identify the person most in need of protection in the relationship (defined in clause 34 - s22A), including to consider the behaviour of each person in the context of their relationship as a whole. The expanded definition of 'domestic violence' to recognise a pattern of behaviour, will also contribute to the consideration of the relationship as a whole, and clarify that harm can be cumulative (to better identify the victim and perpetrator).
>
> In considering cross-applications, the court must determine the person most in need of protection in the relationship as a whole, rather than in relation to each application or alleged incident.
>
> The DFVP Act Benchbook will be reviewed and updated to reflect the amendments contained in the Bill.[147]

Also as noted in section 2.2.2.4, No to Violence urged caution concerning:

> … the Bill's requirement that police provide a copy of the respondent's criminal and domestic violence history to the court, due to the impact this may have on vulnerable defendants. The requirement to do so should be used to prove an intent to cause fear or harm, and to coerce and control another person. If such a practice is to occur, care must be taken to ensure a defendant's criminal history is only used demonstrate patterns of behaviour and to help engender informed judgement of their further risk to offend.[148]

144 DJAG, response to submissions, 11 November 2022, pp 65-66.

145 Submission 6, p 2.

146 Submission 6, p 3.

147 DJAG, response to submissions, 11 November 2022, pp 33-34.

148 Submission 5, pp 3-4.

2.3.3 Expert evidence

2.3.3.1 Outline of issue

The Bill facilitates the admission of expert evidence in criminal proceedings about the nature and effects of domestic violence in line with recommendation 64 of the Hear Her Voice Report. The Bill defines an expert on the subject of domestic violence to include a person who can demonstrate specialised knowledge, gained by training, study or experience, of a matter that may constitute evidence of domestic violence.[149]

2.3.3.2 Stakeholder comment and department response

Overall, stakeholders were positive about the proposed provision regarding the admission of expert evidence in criminal proceedings about the nature and effects of domestic violence.[150]

QSAN recommended that the expert evidence on sexual and DV be broad enough to include practice knowledge or acceptance in the relevant communities as experts.[151]

The department responded to QSAN's recommendation as follows:

> Proposed section 103CC of the Evidence Act sets a baseline for requisite expertise before an expert's evidence may be admitted. Such expertise may be demonstrated through specialised knowledge, gained by training, study or experience. Experts recognised by the sexual violence and/or DFV sectors may very well be qualified to reach this threshold. There is a need to include this threshold.[152]

The Queensland Domestic Violence Services Network (QDVSN) recommended that there be an embedded process to ensure the safety of protected witnesses (for example employees from DFV Services providing specialist analysis or evidence). QDSVN also recommended that expert witnesses should be able to demonstrate their work and the evidence they are providing to the court is aligned with the preamble of the DFVP Act which embeds the gendered nature of DV.[153]

The department responded as follows to QDVSN's recommendations:

> Expert witnesses are not protected witnesses in the legal sense contemplated under Part 2, Division 6 of the Evidence Act. Experts are only entitled to the ordinary protections that any witness in a court room setting is entitled to. The extra protections in the protected witness scheme and special witness provisions are reserved for the courts most vulnerable witnesses.
>
> …
>
> Subsection (3) of proposed section 103CC of the Evidence Act states that an expert on the subject of DV includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of a matter that may constitute evidence of DV.
>
> The non-exhaustive list of matters that may constitute evidence of DV is provided at proposed section 103CA. It is anticipated that experts in these matters may include psychiatrists, psychologists, social workers and academics.
>
> It could be expected that evidence given by the expert both in a report and in oral evidence will have overlap with the preamble to the DFVP Act, however, whether this occurs will depend upon the circumstances of each case and the aspect of the case upon which the expert is called to give an expert opinion.

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149 Explanatory notes, p 11.

150 See, for example, the submissions from QSAN (submission 3, p 1), Multicultural Australia (submission 8, p 9) and the Red Rose Foundation (submission 14, pp 1-2).

151 Submission 3, p 7.

152 DJAG, response to submissions, 11 November 2022, pp 15-16.

153 Submission 4, p 2.

> However, it will ultimately be for the judge in a proceeding to decide whether a professed expert is sufficiently versed in a special field of knowledge and, that their opinion is based solely or substantially on their specialised knowledge, before the evidence will be deemed admissible. In a jury trial, it will then be up to the jury to assess and accept/reject the expert's opinion, giving it the weight that they see fit.[154]

Red Rose Foundation submitted that in relation to matters of strangulation, rape and grievous bodily harm, they have seen acquittals due to 'the lack of expert testimony presented to the court'. The Red Rose Foundation also noted that it would be helpful if a list of experts and their qualifications and experience was available.[155]

The department's response to Red Rose Foundation's comments included the following:

> The Taskforce report states that, before commencement of these amendments, further work will be required with legal stakeholders, the DFV sector and academic institutions to develop understanding of where expertise lies within Queensland and Australia and develop resources that will assist lawyers to find the expert evidence they need.[156]

The WLSQ was overall supportive of this proposal but with the following caveat:

> [W]e note the need to ensure that this evidence is limited to the areas set out in s103CC (2)(a) and (b) and not expanded to allow evidence either from unqualified witnesses or in relation to other topics, such as the bringing of complaints, relationship evidence generally, or community attitudes.[157]

The department noted the feedback from the WLSQ on this issue and provided the following response:

> It is noted that the provisions to be inserted into the Evidence Act by clause 64 of the Bill are directed towards *evidence of domestic violence* as that phrase is understood having regard to proposed section 103CA of the Evidence Act. It is also noted that proposed section 103CC provides a baseline for requisite expertise of a proposed expert witness. Objections to the admissibility of a purported expert witness' evidence may still be raised.
>
> It is noted that section 590AB of the Criminal Code requires that an accused person disclose the identity, opinions, findings and reports of a proposed expert. In circumstances where an accused person relies upon an expert, it will be incumbent upon the prosecution to test and challenge any evidence having regard to the case it seeks to put forward.[158]

ANROWS supported the proposal but cautioned:

> … that care must be taken in the definition of an expert in criminal proceedings relating to DFV matters as this provision has the potential to be exploited in practice by perpetrators and their allies.[159]

Regarding ANROWS' concerns, the department responded:

> Section 590B of the Criminal Code requires that an accused person who intends to adduce expert evidence must provide the other parties with the name of the expert and any finding or opinion which is proposed to be adduced. Further, as soon as practicable before the trial date, section 590B(1)(b) of the Criminal Code requires that the report of the expert upon which the opinion or finding is based be provided to the other parties. A judge may fix times by which this information is to be provided.
>
> These requirements for disclosure by an accused person under the Criminal Code provide an opportunity for the prosecution to be apprised of matters which are intended to be relied upon by an accused person

154 DJAG, response to submissions, 11 November 2022, pp 17-19.

155 Submission 14, p 2.

156 DJAG, response to submissions, 11 November 2022, p 65.

157 Submission 6, pp 4-5.

158 DJAG, response to submissions, 11 November 2022, p 37.

159 Submission 24, p 6.

> ahead of a trial which provides an opportunity for the prosecution to rebut any expert opinion sought to be given in a trial. Issues around the admissibility of such evidence may be challenged ahead of a trial.[160]

The QLS, however, questioned the necessity of the proposed new s103CC provision '[g]iven expert evidence that is relevant and admissible at trial is already routinely admitted'.[161]

The department responded as follows to this point raised by the QLS:

> Contrary to the QLS submission that expert evidence is routinely admitted at trial, the Taskforce noted that whilst expert evidence of coercive control is theoretically admissible at common law and evidence of DV has been led in some cases, the Taskforce received submissions indicating it is not often raised.[162]

2.3.4 Jury directions

2.3.4.1 Outline of issue

The Bill provides the court with a discretion to give jury directions that address misconceptions and stereotypes about domestic violence in line with recommendation of the Hear Her Voice Report. In this context, the Taskforce found that community members did not always understand how DFV may impact the behaviour of DFV victims, for example, why a victim of DFV may continue to remain in a relationship which is abusive. The amendments seek to enable juries and judicial officers to be better informed and able to consider evidence of domestic violence that has been raised during a trial.[163]

2.3.4.2 Stakeholder comment and department response

Overall, the proposal to provide the court with a discretion to give jury directions about domestic violence matters was welcomed by numerous submitters.[164]

ANROWS noted that:

> … the amendment allows for the prosecution or defence to ask the judge to direct the jury at any time during the proceeding. As the request for jury directions is optional, there is a risk that juries may not receive relevant information to address commonly held stereotypes and misconceptions unless the prosecution and/or defence are aware of the amendment and choose to request these directions. ANROWS recommends further clarification or refinement of the amendment to ensure that the default is that juries are provided with the directions.[165]

QSAN supported in principle the proposal concerning jury directions relating to DFV (including sexual violence), however QSCAN raised the concern that 'the system needs to ensure these are not misused by perpetrators'. QSAN provided a possible example of this:

> DFV can be established by one incident (which may be a homicide). It would exacerbate injustice and grief for a family for the perpetrator to argue that they were the victim and for jury directions to be given in such circumstances.[166]

QSAN also recommended that proposed new section 103Z (1) be as consistent as possible with the DFVP Act definition and therefore it should include emotional abuse, verbal abuse, and intimidation and threats and the use of the term 'economic abuse' rather than financial abuse.[167]

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160 DJAG, response to submissions, 11 November 2022, pp 111-2.

161 Submission 23, p 5.

162 DJAG, response to submissions, 11 November 2022, pp 95-97.

163 Explanatory notes, p 12.

164 See, for example, submissions from WLSQ (submission 6, p 5), Multicultural Australia (submission 8, p 9), No to Violence (submission 5, p 5) and Red Rose Foundation (submission 12, p 1).

165 ANROWS (submission 24, pp 5- 6).

166 Submission 3, p 5.

167 Submission 3, pp 5-6.

QDVSN recommended that the proposal include a mechanism for ensuring a consistent approach to directing juries. For example, the QDVSN recommended that a script be developed 'to clearly support the jury to better understand and be aware of what may occur or identifiable in a DFV case – and not simply what one Judicial Officer decides is relevant'.[168]

Regarding QSVSN's recommendations, the department noted that:

> The detailed and prescriptive nature of the potential jury direction in new section 103Z is already a significant change to the existing approach to jury direction provisions in the Evidence Act, which are far less prescriptive and detailed. The amendments also maintain the general discretion of the court to give jury directions that are appropriate and relevant to a given case.
>
> The Supreme and District Court Benchbooks provide guidance to assist the judiciary when summing up a case to the jury; they include sample jury directions to be tailored to the facts of a particular case.
>
> Successful implementation of the amendments will require certain implementation activities to first occur, including: training for police, lawyers and court staff, professional development for judicial officers, progress supporting amendments to the DFVP Rules and Criminal Practice Rules, system changes to the QWIC and court forms, updating policies and procedures and judicial benchbooks. Through these activities, the judiciary will be provided guidance in relation to the application of the new jury directions.[169]

The Queensland Indigenous Family Violence Legal Service submitted that consideration should also be given to 'allowing for jury directions specifically addressing experiences of domestic violence from the perspective of Aboriginal and Torres Strait Islander victim-survivors of domestic violence'.[170]

QLS noted that it had 'significant concerns' regarding about the current drafting of the provisions in the Bill regarding jury directions. The QLS' suggestions included certain specific changes to the wording of the Bill so that the provisions are 'facilitative and not directive and remain subject to a trial judge's overall discretion to ensure a fair trial' and 'consistent'.[171]

The department responded to the QLS comments and noted that:

> The provisions in the Bill provide Queensland judges with the discretion to give the direction, by noting that the judge **may** give the jury the requested direction unless there are good reasons for not doing so.[172]

Multicultural Australia also supported the amendments to require jury directions but emphasised the importance of cultural capability training for the judiciary, to ensure nuanced understanding, particularly for refugees or those with a refugee-like experience.[173]

The department responded to Multicultural Australia's concern as follows:

> The scope of proposed section 103CA of the Evidence Act is to give some guidance about evidence which may constitute evidence of DV. The section envisages evidence could be given about social, cultural or economic factors that affect a person, or an intimate partner or family member of a person who has been affected by DV.
>
> Section 103CC permits an expert to give evidence about the effect of domestic violence on a particular person. The connection between these two sections means that an expert can give evidence about the

168 Submission 4, pp 1-2.

169 DJAG, response to submissions, 11 November 2022, pp16- 17.

170 Submission 9, p 5.

171 Submission 23, pp 5-6.

172 DJAG, response to submissions, 11 November 2022, p 100.

173 Submission 8, p 9.

effect of DV on a particular person who has been subjected to DV. This would include matters relating to race, poverty, gender identity or expression, sex characteristics, disability or age.[174]

2.3.5 Sexual assault counselling privilege

2.3.5.1 Outline of issue

The Bill amends the Evidence Act to provide that a victim or alleged victim of a sexual assault offence has standing to appear at all stages of a sexual assault counselling privilege (SACP) proceeding.[175] The purpose of this amendment is to address 'immediate stakeholder concerns regarding the practical workability of the sexual assault counselling privilege framework'.[176]

2.3.5.2 Stakeholder comment and department response

Of the stakeholders that commented on the proposal regarding SACP, there was overwhelming support for the draft Bill provisions.[177]

The submission from the QYPC provided the following additional context to the proposals under the Bill in this regard:

> The Sexual Assault Counselling Privilege ("SACP") framework was introduced by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld). The SACP framework limits the disclosure and use of confidential communications between a victim of sexual assault (a "counselled person") and a counsellor during a proceeding under the *Domestic and Family Violence Protection Act 2012* (Qld) ('*Domestic Violence Act*').
>
> Under sub-div 3 of the *Evidence Act 1977* (Qld) ("the *Evidence Act*"), a party to a proceeding relating to a domestic violence order can seek leave to compel the production or disclosure of a protected counselling communication. However, neither the counsellor nor the counselled person currently have standing to participate in the proceedings relating to the application for leave.
>
> The counsellor and counselled person are uniquely positioned to inform the Court about the physical, emotional and psychological harm the counselled person is likely to suffer if the Court were to admit the communication into evidence. Granting them standing in these proceedings would enhance the Court's ability to effectively decide, under s 14H of the *Evidence Act*, whether the public interest in admitting the communication substantially outweighs the public interest in preserving the confidentiality of the communication and protecting the counselled person from harm.
>
> Therefore, the QYPC welcomes the proposed amendment to s 14L(1)(b) of the *Evidence Act* to also give the counsellor or counselled person standing in these circumstances.[178]

The department noted these comments made by the QYPC its response to submissions.[179]

Committee comment

We commend the expansion of the class of protected witness to include domestic violence related offences and the removal of the right of an unrepresented alleged perpetrator to cross-examine in-person a victim of domestic violence. These amendments will allow victims to provide evidence in a proceeding without fear and intimidation and without potentially suffering further emotional harm and distress.

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174 DJAG, response to submissions, 11 November 2022, pp 47-48.

175 Explanatory notes, p 14.

176 Explanatory speech, p 2806.

177 See, for example, QSAN (submission 3, p 1), Red Rose Foundation (submission 14, p 1) and Queensland Council of Unions (submission 19, p 1).

178 Submission 26, p 7.

179 DJAG, response to submissions, 11 November 2022, p 122.

2.4 Amendments to the *Penalties and Sentences Act 1992 and Youth Justice Act 1992*

The Bill proposes to amend the *Penalties and Sentences Act 1992* (Penalties and Sentences Act) and *Youth Justice Act 1992* (Youth Justice Act).

2.4.1 Mitigating factor in sentencing

2.4.1.1 Outline of issue

The Bill amends the Penalties and Sentences Act to require a court, when sentencing an offender who is a victim of domestic violence, to treat the effect of the domestic violence on the offender and the extent to which the commission of the offence is attributable to the effect of the violence, as a mitigating factor, unless the court considers it is not reasonable to do so because of exceptional circumstances.

The Youth Justice Act is similarly amended to provide a mitigating factor for child offenders who are victims of domestic violence in addition to those who have been exposed to domestic violence. Unlike the Penalties and Sentences Act, the amendment to the Youth Justice Act does not exclude the operation of the mitigating factor in any circumstance, including exceptional circumstances.[180]

2.4.1.2 Stakeholder comment and department response

In relation to this proposal, Multicultural Australia submitted that it supported the proposed amendments which require the court, when sentencing an offender who is also a victim of domestic violence, to treat the extent to which the offence is attributable to the impact of that violence as a mitigating factor. Multicultural Australia also stated that it considered 'empowering the court to consider all relevant factors in sentencing important in protecting the right to recognition and equality before the law of all defendants'.[181]

Legal Aid submitted that the proposed amendments to section 9 of the Penalties and Sentences Act 'will lead to delays in proceedings and additional court dates to enable a court to be satisfied of the factors set out in clause 80, in particular those set out in (gb)(ii)'.[182]

Legal Aid further anticipated that:

> … the establishment of these factors, in particular those outlined in the new ss(10B) at times will require evidence, including an opinion from an expert in order to be able to satisfy a court of the "effect of the domestic violence" and the commission of the offence being "the extent to which the commission of the offence is attributable". This will not only lengthen the time for sentence proceedings, but also increase costs to LAO to fund reports to substantiate such claims. It is highly unlikely a sentencing court would place any weight on unsubstantiated claims of such attribution.[183]

The department's response to Legal Aid's comments is set out below:

> Existing section 132C of the Evidence Act deals with fact finding on sentencing in a criminal proceeding.
>
> Under this section, a sentencing judge or magistrate may act on an allegation of fact (which includes information or evidence) that is admitted or not challenged. If an allegation of fact is not admitted or is challenged, the judge or magistrate can still act on the allegation if satisfied on the balance of probabilities that it is true. The Bill does not alter this position.
>
> Depending on whether DVOs have been made or there have been criminal charges laid, then some of the material evidencing that a person has been a victim of DV may be within the possession of and requested from the prosecution.

[180] Explanatory notes, p 13.

[181] Submission 8, p 9.

[182] Submission 15, p 9.

[183] Submission 15, p 9.

> As acknowledged in the Explanatory Notes, the Bill is likely to increase demand for Legal Aid Queensland. This demand will be monitored and any costs impacts will be assessed and included in future budget processes.[184]

QPU also expressed concern that these amendments to section 9 of the Penalties and Sentences Act will lead to delays in proceedings and additional court dates to enable a court to be satisfied of the factors set out in clause 80. In this regard, the QPU submitted that subsection (gb)(ii) was 'particularly concerning', due to the fact that the 'extra mitigating factors will require investigation to satisfy the court before a decision is reached'.[185]

QPU noted that proposed amendments to the Youth Justice Act are similar to the proposed changes in Clause 80 of the Penalties and Sentences Act and that it had 'similar concerns' with these proposed amendment. While QPU welcomed the overall intention of the proposal, it noted that the establishment of mitigating factors would require evidence to substantiate them.[186]

The department responded to the QPU's comments noted above as follows:

> Existing section 132C of the Evidence Act deals with fact finding on sentencing in a criminal proceeding.
>
> Under this section, a sentencing judge or magistrate may act on an allegation of fact (which includes information or evidence) that is admitted or not challenged. If an allegation of fact is not admitted or is challenged, the judge or magistrate can still act on the allegation if satisfied on the balance of probabilities that it is true. The Bill does not alter this position.
>
> Depending on whether DVOs have been made or there have been criminal charges laid, then some of the material evidencing that a person has been a victim of DV may be within the possession of and requested from the prosecution.[187]

2.4.2 Matters to be considered in determining an offender's character

2.4.2.1 Outline of issue

Clause 81(1) of the Bill amends section 11 of the *Penalties and Sentences Act* to provide that the history of domestic violence orders made or issued against an offender, other than orders made or issued when the offender was a child, may be considered by a sentencing court when determining an offender's character.

Clause 81(3) of the Bill also provides that if oral submissions are to be made to, or evidence is to be brought before, the court about the history of domestic violence orders made or issued against the offender, the sentencing judge or Magistrate may close the court for that purpose.[188]

2.4.2.2 Stakeholder comment and department response

QPU submitted that it supported the proposal under the Bill to amend section 11 of the Penalties and Sentences Act.[189] These comments made by QPU were noted by the department.[190]

2.5 Amendments to the *Coroners Act 2003*

The Bill will amend the *Coroners Act 2003.*

184 DJAG, response to submissions, 11 November 2022, pp 73-74.

185 Submission 27, p 9.

186 Submission 27, p 9.

187 DJAG, response to submissions, 11 November 2022, pp 137 and 139.

188 Explanatory notes, p 13.

189 Submission 27, p 9.

190 DJAG, response to submissions, 11 November 2022, p 137.

2.5.1 Appointments

2.5.1.1 Outline of issue

The Bill will amend the *Coroners Act 2003* to remove the limitation upon the number of terms of re-appointment of the State Coroner and the Deputy State Coroner.[191]

2.5.1.2 Stakeholder comment

ATSILS were supportive of the amendments submitting that as '…coronial matters can take many years to be finalised', the longer tenure would allow the same officer to 'have carriage of a matter to completion'.[192] QPU were also supportive of the amendments and welcomed the 'changing of terms for the State Coroner and Deputy State Coroner'.

2.6 Amendments to the *Oaths Act 1867*

The Bill will amend the *Oaths Act 1867* (Oaths Act).

2.6.1 Affidavits and statutory declarations

2.6.1.1 Outline of issue

Part 6 of the Bill amends the Oaths Act to address issues that have arisen in the implementation of the *Justice and Other Legislation Amendment Act 2021* (JOLA Act) by:

- inserting new section 13F in Part 4, Division 2 to provide that an affidavit or declaration is not invalid only because it does not comply with a requirement in section 13B, 13C or 13E that does not materially affect the nature of the affidavit or declaration (for example, if the jurat of an affidavit does not contain some or all of the information required under section 13E of the Oaths Act)
- inserting new section 31CA in Part 6A, Division 1 to clarify that nothing in Part 6A limits a provision of another Act or law about the way in which, or by whom, a document is sworn, or taken or received on oath, or is made as a statutory declaration
- inserting new section 31OA in Part 6A, Division 5, Subdivision 1A to clarify that the division only applies to a document that is an affidavit or a declaration
- inserting a new transitional provision, section 48, to apply new section 13F from 30 April 2022. This provision is retrospective in nature and has the effect of validating any affidavits and statutory declarations that were made since 30 April 2022 that did not comply with a requirement under section 13B, 13C or 13E.[193]

2.6.1.2 Stakeholder comment and department response

QYPC was supportive of the amendments but cautioned that documents witnessed over audio-visual link 'create a dangerous avenue for perpetrators of coercive control' as the special witness is only able to see what is in their camera's field of view and are unable to 'ensure they are swearing their oath or making their affirmation free from undue pressure or influence from a perpetrator standing off-camera'.[194] DJAG advised that the amendments referred to by QYPC do not relate to the Bill's amendments to the Oaths Act but to amendments to the Oaths Act by the JOLA Act to allow affidavits and statutory declarations to be made over AV link. DJAG further advised:

191 Explanatory notes, p 14.

192 Submission 28, p 10

193 Explanatory notes, p 14.

194 Submission 26, p 8

> As stated in the Explanatory Notes and the Statement of Compatibility for the JOLA Act, allowing affidavits and statutory declarations to be witnessed over AV link can increase the risk of the document being made under duress or coercion.

The JOLA Act included a number of procedural requirements and safeguards to mitigate those risks.[195]

2.7 Amendments to the *Telecommunications Interception Act 2009*

The Bill amends the *Telecommunications Interception Act 2009* (TI Act) to complement provisions in the *Commonwealth Telecommunications (Interception and Access) Act 1979* (the Commonwealth Act) which give a role to the Queensland PIM in relation to applications for interception IPOs.[196]

2.7.1 Queensland Public Interest Monitor and applications for interception of International Production Orders

2.7.1.1 Outline of issue

The Bill will amend the TI Act to:

- require the QPS and Crime and Corruption Commission (CCC) to notify the Public Interest Monitor (PIM) of the application for an interception IPO under the *Telecommunications (Interception and Access) Act 1979* (Cth) and provide any written affidavit material accompanying the written application
- necessitate full disclosure from the QPS and CCC on all matters, both favourable and adverse to the issuing of an IPO to the PIM
- require the provision by the QPS and CCC of any further information that is required by the eligible Judge or nominated Administrative Appeals Tribunal member to the PIM
- entitle the PIM to appear at the hearing of the application, make submissions and question persons who have provided information in the application for the interception IPO.[197]

2.7.1.2 Stakeholder comment and department response

The QPU, although cautious around the amendments, hopes 'these reforms will make the system more efficient for Police'.[198] DJAG advised it was unknown how frequently the IPO scheme will be used by Queensland law enforcement agencies and will need to be monitored by the QPS and Crime and Corruption Commission once the scheme becomes operational.[199]

Committee comment

We are satisfied with DJAG's response and are pleased to note that the IPO scheme will be monitored to determine impact on QPS.

[195] DJAG, response to submissions, 11 November 2022, pp 122, 123.

[196] DJAG, written briefing, 21 October 2022, p 31.

[197] Explanatory notes, p 15.

[198] Submission 27, p 10

[199] DJAG, response to submissions, 11 November 2022, p 139.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee examined the Bill for fundamental legislative principles, in particular:

- Penalties should be reasonable and proportionate—retrospectivity: Clauses 22, 23 and 28
- Right to privacy and confidentiality—retrospectivity: Clauses 35 to 36, 40 to 45, 51 and 54 to 55
- General rights and liberties—reasonable and fair: Clause 49
- Natural justice—retrospectivity: Clauses 50, 53 and 55
- Retrospectivity: Clause 55
- Natural justice—reasonable and fair: Clause 60
- Right to privacy and confidentiality—reasonable and fair: Clauses 62 to 64
- Retrospectivity: Clauses 69 and 78
- Right to privacy and confidentiality: Clauses 82 to 89 and 92.

Committee comment

We are satisfied that the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

4.1 Human rights compatibility

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[200]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[201]

[200] HRA, s 39.

[201] HRA, s 8.

The HRA protects fundamental human rights drawn from international human rights law.[202] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility.

4.1.1 Clause 9: potentially discriminatory definition

The Bill replaces the antiquated terminology of 'carnal knowledge' with that of 'penile intercourse'. While the term 'carnal knowledge' does deserve replacement, 'penile intercourse' potentially excludes victims from the legislation. Specifically, the focus on 'penile intercourse' still assumes penetrative sex perpetrated by a male, and it ignores the possibility of sexual violence being perpetrated by women, whether in general or specifically in same-sex contexts where neither of the participants have a penis. Therefore, the proposed change in the Bill can be seen as discriminatory against potential victims and not compatible with human rights norms and expectations.

Committee comment

We find that the Bill is generally compatible with human rights. However, regarding the matter outlined above, given the advice from DJAG that a) the term 'penile intercourse' is not considered to be gendered language and therefore discriminatory because it relates to physical anatomy, including a surgically constructed penis whether provided for a male or female; b) amending the terminology to 'penile intercourse' is for the purpose of modernising the language, not to substantively alter the scope or operation of the offence; and c) other types of abuse are captured by other offence provisions in the Criminal Code, we are satisfied the limits on the human rights outlined above are reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[203]

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Committee comment

The statement of compatibility tabled with the introduction of the Bill contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

[202] The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

[203] For more information, see sections 2.1.3.3 and 2.1.3.5.

Appendix A – Submitters

Sub #	Submitter
001	Caxton Legal Centre
002	knowmore
003	Queensland Sexual Assault Network
004	Queensland Domestic Violence Services Network
005	No to Violence
006	Women's Legal Service Queensland
007	Confidential
008	Multicultural Australia
009	Queensland Indigenous Family Violence Legal Service
010	Small Steps 4 Hannah Foundation
011	Integrated Family and Youth Service Administration Sunshine Coast
012	Family Law Practitioners Association Qld
013	Ending Violence Against Women Queensland
014	Red Rose Foundation
015	Legal Aid Queensland
016	Full Stop Australia
017	Challenge DV
018	Micah Projects
019	Queensland Council of Unions
020	Queensland Family and Child Commission
021	YFS Legal
022	Aged and Disability Advocacy Australia
023	Queensland Law Society
024	Australia's National Research Organisation for Women's Safety
025	Queensland Council for Civil Liberties
026	Queensland Youth Policy Collective
027	QLD Police Union of Employees
028	Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Sakitha Bandaranaike, Director, Strategic Policy and Legal Services
- Ms Jo Hughes, Acting Director, Strategic Policy and Legal Services
- Ms Adele Bogard, Acting Director, Strategic Policy and Legal Services
- Ms Kate McMahon, Principal Legal Officer, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

Queensland Family and Child Commission

- Mr Luke Twyford, Principal Commissioner

Queensland Police Union

- Mr Ian Leavers, President
- Mr Luke Moore, Policy & Project Officer
- Ms Clair Parsons Policy & Project Officer

Qld Indigenous Family Violence Legal Service

- Ms Thelma Schwartz, Principal Legal Officer
- Mr Kulumba Kiyingi, Senior Policy Officer

Multicultural Australia

- Ms Christine Castley, Chief Executive Officer
- Ms Rose Dash, Chief Client Officer
- Ms Emma Phillips, Research & Advocacy Manager

Australia's National Research Organisation for Women's Safety

- Ms Padma Raman, Chief Executive Officer

Queensland Law Society

- Ms Kara Thomson, President
- Ms Rebecca Fogerty, Vice President
- Ms Sarah-Jane MacDonald, Member, QLS Domestic and Family Violence Law Committee
- Dr Brooke Thompson, Policy Solicitor

Caxton Legal Centre

- Ms Colette Bots, Director, Family, Domestic Violence and Elder Law Practice

Queensland Sexual Assault Network

- Ms Angela Lynch, QSAN Secretariat

Queensland Youth Policy Collective

- Miss Catherine Bugler, Founder

Statements of Reservation

Statement of Reservation – Laura Gerber MP, Deputy Chair, Member for Currumbin and Jon Krause MP, Member for Scenic Rim

The LNP recognises the dire need for the Government to step up and make genuine progress toward making our state safer for women and children.

While this Bill enacts some important updates to our justice system in dealing with domestic, family and sexual violence, there have been concerns raised at the unintended consequences of a number of these reforms by stakeholders. The enactment of these amendments will need to be monitored closely in order to identify any potential issues early.

The amendments will also need adequate training and education put in place around them to ensure their effectiveness, in line with recommendations from multiple reports to date.

This Government has demonstrated its inability to be responsive to recommendations in a timely and effective manner. Over the seven years in power, hundreds of recommendations have been handed down by various reviews and many have been duplicates where no, or little action has been taken.

Without evaluation of measures, there will be no real progress made.

The concerns around the need for increased resourcing were particularly significant. The required resources for Legal Aid and QPS will need to be proactively managed and monitored closely as these amendments are enacted. It cannot be the case that the Government waits for disaster to respond.

There were also concerns raised about the choice in language for the modernisation of sexual offence terminology. The LNP supports those at the coalface in their evaluation of these terms. They have the most insight into the impact of these changes to victims and the community.

The LNP will continue to support action to keep women and children safe, we must have more than announcements, the Government needs to deliver on their promises for the sake of our state.

Laura Gerber MP

Deputy Chair

Member for Currumbin

Jon Krause MP

Member for Scenic Rim

Statement of Reservation – Sandy Bolton MP, Member for Noosa

This Statement of Reservation is in response to the Legal Affairs and Safety Committee's *Report No 39 on the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022*.

The Bill brings in changes to address coercive control, which is a 'pattern' of behaviours perpetrated against a person to create a climate of fear, isolation, intimidation, and humiliation, and it does this by expanding the 'unlawful stalking' offence in the Criminal Code.

There are several key issues with the Bill identified during the inquiry that the recommendations within the Report have not addressed.

Funding

Predominant for a number of submitters, including Legal Aid Queensland, the Queensland Police Union, and the Queensland Council of Civil Liberties, was the deep concerns around resourcing implications to ensure the intent of the Bill is delivered. While recognising that the Government has recently introduced increased funding for women in the criminal justice system and for the victims of domestic and family violence, there has been no specified allocations for the areas submitters raised that may require substantial budgetary increases, particularly in two key areas.

First, the criminal justice system will be impacted with an increase in the number of cases that will arise from this legislation, as well an increase in the complexity of the cases. As raised by the Queensland Police Union, this will result in the Queensland Police Service requiring substantial increases in resources for training and to gather the evidence required, which will flow through to the Director of Public Prosecutions and to Legal Aid Queensland, as well as non-government organisations supporting Queenslanders in the justice system. Many of these organisations are constantly overwhelmed and underfunded, and we cannot keep adding to their workloads without adding to their funding.

At the public hearing, the Queensland Police Union estimated that an additional 500 experienced and trained officers will be required as a result of this Bill, during a period where recruitment is increasing difficult.

Second, because the proposed laws are tackling coercive control, which given the lack of general understanding on what coercive behaviour consists of in demonstrating the 'pattern' the offence refers to, will require extensive, age and cultural relevant, education campaigns to be effective. As we heard from Multicultural Australia, with such diversity in cultural norms in relationships, the education and capacity building for communities and community leaders will need to be targeted, particularly for indigenous and multicultural communities. An example of how to do this was the 'Peace Building Model', which is an early intervention and prevention model for culturally and linguistically diverse communities, developed by the community, to provide tools and training to respond to domestic and family violence in their community.

Departmental responses acknowledged that the Bill would result in increased demand for the police, courts, and the legal profession; however, specifics on what resourcing might be allocated and to where and for what purpose, was not clarified, just that it would be considered in future budgetary processes.

Even with the Government's assurances that the Bill's introduction will be monitored and any cost impacts will be assessed and considered in future, having seen poor outcomes from previous

legislative amendments where reassurances were given and yet inadequate funding resulted in a failure to quickly implement recommendations, we can no longer be content with words. For such instrumentally important pieces of legislation, it is equally important that adequate resources be identified and committed concurrently with the Bill.

Terminology

Submitters supported the move away from the outdated term carnal 'knowledge'; however, several, including the Queensland Sexual Assault Network, raised issue with the alternative 'penile intercourse'. This was in relation to the impact of the graphic nature of the words on victims, and that the term is not aligned with every other Australian jurisdiction, which have offences that use gender neutral language and that capture a broader scope of conduct.

The department's response was that the change to terminology is being prioritised in light of persistent calls for changes from survivor-advocates since the 2017 Royal Commission, and to avoid substantively altering the scope or operation of offences, resulting in the use of that particular terminology.

Submitters do not support changing one unsatisfactory term for another, with the Queensland Law Society stating that they do not support amending the definition of 'carnal knowledge' without also reviewing its use throughout the Criminal Code, which would have been an appropriate approach.

The details in the legislation

There were several other areas where stakeholders raised issues regarding terms in the Bill, which have not been adequately addressed.

In assessing 'the person most in need of protection', capacity to control or harm is a factor. As identified by Caxton Legal Centre, this is problematic as 'capacity' is undefined and will inevitably require practitioners and judicial officers to engage in a process of discriminatory profiling.

Also, when courts determine the 'the person most in need of protection', they may only make cross orders in 'exceptional circumstances'. The Queensland Law Society have highlighted that this threshold is very likely too high.

Stalking does not only occur within domestic arrangements and both Full Stop Australia and the Queensland Sexual Assault Network raised concerns that victims of stalking must satisfy the definition of 'domestic relationship' to be eligible to obtain a civil protection order. This excludes some Queenslanders from protection, including boyfriends/girlfriends not cohabiting, or people not in relationships at all such as cases of fixated/obsessive persons.

Implementation of legislation

The examination of this Bill has been complex and made especially difficult with a timeframe that was inadequate for legislation that is vital in saving lives.

With so many aspects raised that have not been sufficiently addressed by government responses, nor within the committee's Recommendation 2, it is imperative that the instrumental efforts of the Women's Safety and Justice Taskforce and the recommendations in its *Hear Her Voice* report are not diminished.

To achieve this, I ask that the Government confer with stakeholders via the existing Women's Safety and Justice Taskforce led by Margaret McMurdo to monitor the implementation of this legislation, quickly identify any shortfalls in resources or unintended consequences, provide feedback in the

development of revised offenses and terminology, and provide advice to the Minister at the 12- and 24-month marks after the legislation comes into effect. In addition, at these times, provide an update to the Legal Affairs and Safety Committee.

As one submitter said, we cannot fail in this endeavour. However, regardless of the best intentions and legislation, if resources are inadequate, we may fail. And that is not an option.

My appreciation to our Chair and fellow members of our committee during this examination which has been at times extremely challenging, and to our Secretariat for doing an outstanding job in all ways including untangling the complexities.

Sandy Bolton MP

Member for Noosa

Date – 24 November 2022