



Domestic and Family Violence Protection Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Karen Struthers MP Minister for Community Services and Housing and Minister for Women

Title of the Bill

Domestic and Family Violence Protection Bill 2011.

Objectives of the Amendments

The objectives of the amendments are, firstly, to respond to issues which were identified by the Community Affairs Committee during its consideration of the Bill and, secondly, to effect minor changes which are necessary for the proposed legislation to operate effectively and achieve its objectives.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Domestic and Family Violence Protection Bill 2011.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than to amend the Bill.

Estimated cost for government implementation

There are no costs associated with these amendments.

The change in terminology addresses recommendations made by the Community Affairs Committee in its Report No. 6 on the Domestic and Family Violence Protection Bill 2011 which was tabled in Parliament on 17 November 2011. The report notes that the word *order* is not consistent with the requirement for a respondent to consent to being referred to a program or counselling. Further, non-compliance with a court order would ordinarily attract a sanction, whereas the provisions of Division 6 do not subject a respondent to any direct sanctions for non-compliance.

The new term, *voluntary intervention order*, reflects the consensual nature of the arrangement under Division 6 while still recognising that it results from a determination made by a court.

It is proposed to amend the following provisions to take into account the change in terminology:

- clause 37(2)(b)
- division 6 – division heading
- clause 69, clause heading and subsections (1), (2) and (3)
- clause 70, clause heading, clause, note 1 and note 2.
- clause 71, clause heading and clause
- clause 72, subsection (1)
- clause 73, clause heading and subsections (1), (1)(a) and (3)(b).

Part 4 Police functions and powers

Division 2 Power to issue police protection notice

Form of police protection notice

Amendments 17 to 21 propose changes that correct numbering errors.

Part 4 Police functions and powers

Division 3 Power to take person into custody

Detention period limited

Amendment 26 proposes a change to clause 119 to reflect the change to clause 124 which enables *a police officer*, instead of *the releasing police officer* to serve the application for the protection order and release conditions on the person to be released from custody.

Part 4 Police functions and powers

Division 3 Power to take person into custody

Release of person from custody

Amendment 27 proposes a change to clause 124. The clause currently provides for the 'releasing police officer' to serve the application for the protection order and release conditions on the person to be released from custody. The amendment will enable any police officer to serve the stated documents on the person to be released from custody. This amendment practically enables the applicant officer to complete and serve documents on the person to be released and then take the documents to a justice of the peace to complete the affidavit of service and file court copies. It is more difficult for watchhouse staff to access justices of the peace, so the amendment facilitates increased operational efficiency.

adjourning the court case, or failing to appear in court, so that the conviction for the most recent offence occurs more than five years after the previous conviction.

The intent of sub-clause 177(2)(a) is to enable courts to impose a higher penalty where an offender has previously been before the courts for the same or similar offending and persists with his or her offending. This is also reflected in the wording of the current breach provisions, set out in section 80 of the *Domestic and Family Violence Protection Act 1989*, which refers to the date of the commission of the most recent offence rather than the date of conviction of the most recent offence.

The amendment to sub-clause 177(2)(a) therefore changes the reference to the date of conviction for the most recent offence to the date that the most recent offence was committed. This is consistent with ensuring that the intent of the provision can be fulfilled so that the higher penalty cannot be avoided through manipulation of court processes. This provision also addresses one of the primary objectives of the proposed legislation, making perpetrators of violence accountable for their actions.

Part 8 General

Division 1 Service

Amendments 32 and 33 propose changes to clause 184 (Service of order on respondent). Currently the clause requires a police officer to personally serve a domestic violence order on a respondent.

A domestic violence order becomes enforceable against a respondent if a police officer has told the respondent about the existence of the order (clause 177(1)(c)).

The amendments will enable ordinary service on the respondent where police have advised the respondent about the existence of the order. Ordinary service allows for an order to be mailed to the respondent's last known address, or to be left at the respondent's last known address.

The amendments are in line with provisions that allow ordinary service where the respondent was present in court when the order was made. The

Schedule 1 Legislation amended

Amendment 41 proposes changes to the definitions of *domestic violence order*, *justice proceeding* and *person in the criminal justice system* as they appear in the dictionary in the Schedule of the *Justice and Other Information Disclosure Act 2008*. The changes will ensure that the Act is updated with the reference to the proposed new domestic and family violence legislation once this commences.

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