Parliamentary Committees

Criminal Law (Domestic Violence) Amendment Bill 2015

Report No. 6, 55th Parliament

Communities, Disability Services and Domestic and Family Violence Prevention Committee

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Acknowledgements

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Contents

Abbreviations

AASW	Australian Association of Social Workers – Queensland Branch
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Attorney-General	Attorney-General and Minister for Justice and Minister for Training and Skills
BAQ	Bar Association of Queensland
Bill	Criminal Law (Domestic Violence) Amendment Bill 2015
Committee	Communities, Disability Services and Domestic and Family Violence Prevention Committee
Criminal Code	*Criminal Code Act 1899*
Department	Department of Justice and Attorney-General
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DVO	Domestic Violence Order
EDON	EDON Place Women's Domestic Violence Service Inc.
Evidence Act	*Evidence Act 1977*
PACT	Protect All Children Today Inc.
PSA	*Penalties and Sentences Act 1992*
QLS	Queensland Law Society
Taskforce	*Special Taskforce on Domestic and Family Violence in Queensland*
Taskforce Report	*Not now, not ever: putting an end to domestic and family violence in Queensland*
WLS	Women's Legal Service Inc. Queensland
WWILD-SVP	Women with Intellectual and Learning Disabilities – Sexual Violence Prevention Association

Chair's foreword

This Report presents a summary of the Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Criminal Law (Domestic Violence) Amendment Bill 2015.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill and participated in the public hearing. I also thank the Committee's Secretariat, the Technical Scrutiny Secretariat, the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services.

I commend this Report to the House.

Leanne Donaldson MP

Chair

Recommendations

1. Introduction

1.1 Role of the Committee

The Communities, Disability Services and Domestic and Family Violence Prevention Committee (Committee) is a portfolio committee of the Legislative Assembly which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Communities, Women, Youth, Child Safety and Multicultural Affairs
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.[2]

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 Committee process

The Criminal Law (Domestic Violence) Amendment Bill 2015 (Bill) was introduced into the House on 15 September 2015 by the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills (Attorney-General). The Bill was referred to the Committee for examination. The Committee was required to report to the Legislative Assembly by 9 October 2015.

On 16 September 2015, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill. Officers from the Department and the Department of Communities, Child Safety and Disability Services briefed the Committee on the Bill on 18 September 2015.

On 18 September 2015, the Committee wrote to the Department to confirm the Questions Taken on Notice at the public briefing and to seek further information. The Department responded on 22 September 2015.

The Committee invited submissions on its website and by notice to subscribers to updates on the work of the Committee. The Committee also directly invited submissions from 286 stakeholder organisations. The Committee received 21 submissions (see **Appendix A**). On 29 September 2015, the Department responded to the issues raised in submissions.

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194, Standing Rules and Orders of the Legislative Assembly

2 Standing Rules and Orders of the Legislative Assembly, Schedule 6

The Committee held a public hearing on the Bill on 30 September 2015 to hear from invited witnesses and the Department (see **Appendix B**).

The transcript of the public briefing on 18 September 2015, correspondence from the Department, the transcript of the public hearing on 30 September and the submissions received and accepted by the Committee are published on the Committee's website: http://www.parliament.qld.gov.au/work-of-committees/committees/CDSDFVPC/inquiries/current-inquiries/05CriminalLawDVBill.

The Committee resolved not to publish three submissions from individual members of the public due to the personal nature of their content. The Committee had regard to the victim's accounts provided in these submissions during its consideration of the Bill.

1.3 Policy objectives of the Bill

The objectives of the Bill are to implement recommendations made in the *Special Taskforce on Domestic and Family Violence in Queensland's* (Taskforce) report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland* (Taskforce Report), to:

- enable charges for criminal offences to indicate whether they occurred in a domestic violence context and provide for domestic violence offences to be noted on a person's criminal history (Taskforce Recommendation 119)
- increase the maximum penalty for breaches of Domestic Violence Orders under the *Domestic and Family Violence Protection Act 2012* (Taskforce Recommendation 121), and
- amend the *Evidence Act 1977* to provide that existing protections for special witnesses apply to victims of domestic violence (Taskforce Recommendation 133).[3]

1.4 Consultation on the Bill

The Explanatory Notes refer to the extensive consultation undertaken by the Taskforce in preparing its report, including meetings with 367 different groups of victims, service providers and community leaders. The Explanatory Notes state that this consultation informed the Taskforce Recommendations implemented by the Bill.[4]

Since the introduction of the Bill, the Department has consulted the heads of court jurisdictions, the Queensland Law Society (QLS), the Bar Association of Queensland (BAQ), other legal stakeholders, and key domestic and family violence organisations. The Department also intends to consult key legal and domestic and family violence support services and stakeholders prior to debate on the Bill to identify and resolve any operational and technical issues.[5]

In addition, the Explanatory Notes state that the "Parliamentary Committee consultation process will provide a forum for stakeholders and concerned community members to provide their views on the provisions of the Bill."[6]

3 Criminal Law (Domestic Violence) Amendment Bill 2015, *Explanatory Notes* (Explanatory Notes), pp.1-2
4 Explanatory Notes, p.3
5 Department of Justice and Attorney-General (Department), *Briefing Note*, 22 September 2015, p.8
6 Explanatory Notes, p.3

Committee comment

The Committee acknowledges that the proposed reforms in the Bill have been 'fast tracked' in light of recent tragic domestic and family violence incidents, including deaths in South East Queensland and, therefore, the scope for consultation on the Bill prior to its introduction has been limited.

However, the Committee reminds the Department that the Committee's consultation process when examining a Bill, including inviting submissions from stakeholders, is not a substitute for government consultation in the policy development stage of drafting a Bill.

The Committee acknowledges the consultation the Department has undertaken since the Bill's introduction, and its intention to undertake further consultation with service providers and stakeholders prior to debate on the Bill.

1.5 Related Bill

The Committee examined the Bill in parallel with the Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015, which also implements recommendations made by the Taskforce.

The Committee's report on this Bill can be found on the Committee's website:

http://www.parliament.qld.gov.au/work-of-committees/committees/CDSDFVPC/inquiries/current-inquiries/04CoronersBill.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including its policy objectives, and consideration of the information provided by the Department and from submitters, the Committee recommends that this Bill be passed.

Recommendation 1

The Committee recommends that the Criminal Law (Domestic Violence) Amendment Bill 2015 be passed.

2. Policy background and context

2.1 Introduction

In Queensland, nearly half of all homicides over the past eight years have been linked to domestic and family violence. From 1 January 2006 to 31 December 2013, 180 deaths occurred in Queensland in the context of domestic and family violence. The number of deaths occurring in the context of domestic and family violence is increasing.[7]

In 2013-14, there were 66,016 occurrences of domestic and family violence reported to the Queensland Police Service. This equates to over 180 incidents of domestic and family violence being reported every day across the State. Seventeen homicides relating to domestic and family violence occurred in Queensland in 2012-13.[8]

In Australia, on average, two women die each week at the hands of a violent partner, husband or father.[9]

Both the Queensland and Commonwealth Governments have committed to tackle this scourge on our communities. The Queensland Government has committed $28.2 million funding in 2015-16 to preventing domestic and family violence[10], while the Commonwealth has recently announced a $100 million package of measures to provide a safety net for women and children at high risk of experiencing violence nationally.[11]

2.2 Special Taskforce on Domestic and Family Violence in Queensland

The *Special Taskforce on Domestic and Family Violence in Queensland*, chaired by the Hon. Quentin Bryce AD CVO, was established on 10 September 2014.

The Taskforce's role was to define the domestic and family violence landscape in Queensland, and make recommendations to inform the development of a long-term vision and strategy for Government and the community, to rid our State of domestic and family violence.[12]

On 28 February 2015, the Taskforce Report *Not now, not ever: putting an end to domestic and family violence in Queensland* was released. The Taskforce Report contains 140 recommendations which are comprehensive and cover all aspects of the way government, police, lawyers and the courts deal with domestic and family violence. The recommendations provide direction as to how and where

7 Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015, *Explanatory Notes*, p.2

8 *Special Taskforce on Domestic and Family Violence in Queensland* Report, *Not now, not ever: putting an end to domestic and family violence in Queensland* (Taskforce Report), February 2015, p.6

9 Attorney-General, *Hansard*, 15 September 2015, p.1739

10 Department of Communities, Child Safety and Disability Services, *Queensland Budget 2015-16 - Service Delivery Statement*, p.8

11 Australian Government Joint Media Release, *Women's Safety Package to Stop the Violence,* accessed on 24 September 2015 from: http://www.malcolmturnbull.com.au/media/release-womens-safety-package-to-stoptheviolence

12 Taskforce Report, February 2015, p.6

improvements can be made with the ultimate aim of reducing and preventing domestic and family violence. [13]

The Queensland Government released its response to the Taskforce Recommendations on 18 August 2015, and has accepted all 121 recommendations directed at government. The Government will spend $31.3 million over four years on a range of initiatives aimed at tackling domestic and family violence.[14]

The Department is leading the implementation of over 30 Taskforce Recommendations aimed at reforming the law and justice system's response to domestic and family violence.[15]

2.3 Recent public domestic and family violence incidents

Following recent public domestic and family violence incidents, including deaths in South East Queensland, the Government has committed to fast track reforms to increase perpetrator accountability and enhance community protections against this form of violence.[16]

These fast-tracked reforms include a number of criminal law reforms recommended by the Taskforce.

2.4 Taskforce recommendations implemented by the Bill

The Bill implements the following Taskforce Recommendations:

- the Queensland Government makes provision in legislation for domestic and family violence related convictions to be recorded, consistent with the approach adopted in New South Wales (NSW) (Recommendation 119)
- the Queensland Government considers the sufficiency of penalties to hold perpetrators to account for repeat contraventions of Domestic Violence Orders (Recommendation 121), and
- the Attorney-General, in consultation with the Chief Magistrate and Chief Judge, implements alternative evidence procedures for victims of domestic and family violence providing evidence in related criminal matters to reduce the trauma of this experience, including legislative amendment and/or procedural changes. Consideration should be given to allowing for admissibility of any video recordings made at the time of initial police intervention (Recommendation 133).[17]

13 Department, *Briefing Note*, 22 September 2015, p.1
14 Attorney-General, *Hansard*, 15 September 2015, p.1739
15 Department, *Briefing Note*, 22 September 2015, p.1
16 Explanatory Notes, p.1
17 Department, *Briefing Note*, 22 September 2015, p.1

3. Definition of domestic violence offence

Clause 3 amends the *Criminal Code Act 1899* (Criminal Code) to introduce a definition of *domestic violence offence* for various provisions in the Bill. The term *domestic violence offence* is defined as:

> *… an offence against an Act, other than the Domestic and Family Violence Protection Act 2012, committed by a person where the act done, or omission made, which constitutes the offence is also:*
>
> *(a) domestic violence or associated domestic violence, under the Domestic and Family Violence Protection Act 2012, committed by the person; or*
>
> *(b) a contravention of the Domestic and Family Violence Protection Act 2012, section 177(2).*[18]

The term *domestic violence* is defined as behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a *relevant relationship* that:

- is physically or sexually abusive
- is emotionally or psychologically abusive
- is economically abusive
- is threatening
- is coercive, or
- in any other way controls or dominates the second person and causes the second person to fear for their safety or wellbeing or that of someone else.[19]

The term *associated domestic violence* covers any of the above behaviours towards a child of the aggrieved, a child who usually lives with an aggrieved, a relative of the aggrieved or an associate of the aggrieved.[20]

The term *relevant relationship* is defined as an intimate personal relationship, a family relationship or an informal care relationship.[21]

3.1 Submissions

Women with Intellectual and Learning Disabilities - Sexual Violence Prevention Association (WWILD-SVP) recommended that the definition of *domestic violence offence* be amended to include paid care relationships to acknowledge the kinds of abuse and control that can happen in those contexts.[22]

18 *Domestic and Family Violence Protection Act 2012*, section 177(2) makes provision for the contravention of a domestic violence order
19 *Domestic and Family Violence Protection Act 2012*, section 8
20 *Domestic and Family Violence Protection Act 2012*, section 9
21 *Domestic and Family Violence Protection Act 2012*, section 13
22 Ms Leona Berrie, Manager, Women with Intellectual and Learning Disabilities - Sexual Violence Prevention Association, *Public Hearing Transcript,* 30 September 2015, p.12

3.2 Department's response

The Department of Communities, Child Safety and Disability Services advised that it is currently undertaking "a wholesale review of the Domestic and Family Violence Protection Act" which will include consideration of whether to include *paid carers* in the definition of *relevant relationships*, thereby bringing such relationships into the definition of *domestic violence offence*. [23]

23 Ms Cathy Taylor, Deputy Director-General, Child, Family Community Services and Southern Regions, Department of Communities, Child Safety and Disability Services, *Public Hearing Transcript*, 30 September 2015, p.26

4. Notation of domestic violence offences

Currently, in Queensland, convictions for criminal offences which have been committed in the context of domestic and family violence are recorded like any other crime and do not recognise the specific nature of the abuse.[24]

The Department advised that "Should the offender subsequently appear before the court on another criminal offence which occurs in a domestic and family violence context, the prosecutor and court are unlikely to be aware of that context of the offender's previous offending".[25]

As part of reforms to increase perpetrator accountability for their conduct, the Taskforce recommended that the Queensland Government make provision in legislation for domestic and family violence related convictions to be recorded, consistent with the approach adopted in NSW (Taskforce Recommendation 119).[26]

The Taskforce noted that in NSW convictions for certain offences committed against persons with whom the offender is in a defined family relationship, are specifically identified in the perpetrator's criminal record. The Taskforce stated that "This allows courts to consider the perpetrator's history and conduct in subsequent sentencing for similar matters, and sends a strong message to perpetrators that violence in a domestic setting is unacceptable and will not be tolerated".[27]

4.1 Proposed amendments

Clause 4 amends section 564 of the Criminal Code to provide that an indictment for an offence may state that the offence is also a *domestic violence offence* (see definition at Section 3 of this report). Clause 5 amends section 572 of the Criminal Code to provide that a court may amend a charge to state that an offence is also a *domestic violence offence*.

Clause 14 makes corresponding amendments to section 47 of the *Justices Act 1886* to provide that a complaint for an offence may state that the offence is also a *domestic violence offence*. Clause 15 amends section 48 of the *Justices Act 1886* to provide that a court may amend a complaint to state that an offence is also a *domestic violence offence*.

Clause 18 inserts new section 12A into the *Penalties and Sentences Act 1992* (PSA) to provide that if a court, in convicting an offender of an offence, is satisfied that the offence is also a *domestic violence offence,* the court must order, if the conviction is recorded, that the conviction be recorded as a conviction for a *domestic violence offence*. If the conviction is not recorded, the court must order that the offence be entered in the offender's criminal history as a *domestic violence offence*.

24 Department, *Briefing Note*, 22 September 2015, p.3
25 Mr David Mackie, Director-General, Department, *Public Briefing Transcript*, 18 September 2015, p.10
26 Taskforce Report, February 2015, p.305
27 Taskforce Report, February 2015, p.303

The Department stated that the new provision "does not interfere with the court's discretion as to whether to formally record a conviction against an offender or where an offender's criminal history can be taken into account. So the court still has that discretion to not record a conviction".[28]

New section 12A(3) provides that if a court makes an order that a conviction be recorded or entered in an offender's criminal history as a *domestic violence offence*, a prosecutor may apply to the court for an order that a previous offence, for which the offender has been convicted, is also recorded as a conviction for a *domestic violence offence* or entered in the offender's criminal history.

New section 12A(4) states that an application to the court must include enough information for the court to make a decision. New section 12A(5) provides that the court may request further information from the prosecution.

New 12A(6) provides that if, after considering the application, the court is satisfied a previous offence is a *domestic violence offence*, the court must order that the offence be recorded as a conviction or entered into an offender's criminal history as a *domestic violence offence*.

New section 12A(8) provides that where a court is satisfied that an error has been made in the recording or entering of an offence as a *domestic violence offence*, it may on application or on its own motion, correct the error.[29]

Clause 19 inserts a new regulation-making power to prescribe matters that relate to the recording of convictions for *domestic violence offences*, or making entries in criminal histories about *domestic violence offences*.

In her explanatory speech, the Attorney-General stated that:

> *This signposting will ensure that a perpetrator's criminal history clearly illustrates any pattern, or increased frequency or escalation, in domestic violence which can then be considered by the court and police when considering matters such as bail and in sentencing the offender. It also provides greater protection of victims against future violence and the timely identification of this type of conduct by relevant agencies to reduce incidents of escalated violence, including domestic homicide.*[30]

4.2 Submissions

The majority of submissions supported the proposed amendments.[31] Protect All Children Today Inc. (PACT) stated that reporting a person's domestic violence history will provide more appropriate

28 Ms Natalie Parker, Acting Assistant Director-General, Strategic Policy and Legal Services, Department, *Public Briefing Transcript*, 18 September 2015, p.11

29 Explanatory Notes, p.7

30 Attorney-General, *Hansard*, 15 September 2015, p.1739

31 Submission no.1, EDON Place Women's Domestic Violence Service Inc. (EDON), p.1, Submission no.2, Protect All Children Today Inc. (PACT), p.1, Dr Silke Meyer, Postdoctoral Research Fellow, University of Queensland, Submission no.13, p.1, Aboriginal and Torres Strait Islander Legal Services (Qld) Ltd (ATSILS), p.1, Submission no.16, Women's Legal Service Inc. Qld (WLS), p.9, Submission no.20, BoysTown, p.2 and Submission no.21, Centacare, p.2

sentencing, based on an accurate reflection of an offender's past behaviour.[32] Dr Silke Meyer, Postdoctoral Research Fellow, Institute for Social Science Research, University of Queensland, stated that the amendments would "demonstrate to victims, perpetrators and society that violence within the family home is no longer being tolerated and that it is therefore being taken as seriously as any other form of violence occurring outside domestic settings".[33]

EDON Place Women's Domestic Violence Service Inc. (EDON) highlighted the importance of relevant agencies having timely access to an offender's criminal history in order for the proposed amendments to be effective.[34] Similarly, Women's Legal Service Inc. Queensland (WLS) stated that notation of an offender's criminal history needs to be done in a way that is accessible for the courts, law reform commission research and academic research.[35]

The QLS and BAQ, however, raised concerns about the court's ability to retrospectively classify prior convictions as *domestic violence offences*. The QLS stated that this approach was "… fraught with danger in that the context in which the earlier offence occurred may not have been explored at the time of the conviction".[36] At the public hearing, Mr Shane Budden, Manager, Advocacy and Policy, QLS provided the following example:

> *… if it is an assault occasioning bodily harm from two years previously, the question of whether or not it occurred in a domestic relationship may not have been explored. The two parties involved in the offence may have a different view as to whether or not that did occur in a domestic relationship. It will be too late at the latter offence for that to be explored given that what has likely happened in those circumstances is a plea of guilty has been made on an agreed statement of facts and a very brief statement of facts probably through a QP9 or something of that nature.*[37]

Similarly, the BAQ raised concerns that:

> *… any previous offence, whether the offender was convicted by trial or by guilty plea, where no consideration of the impact of future amendments to Domestic and Family Violence legislation could have been contemplated is now to be regarded as a relevant offence in sentencing an offender for a new domestic violence offence.*[38]

The BAQ stated that the proposed amendments would create significant unfairness to a person being sentenced for a newly defined *domestic violence offence* and that the retroactive operation of proposed new section 12A(6) of the PSA should be removed.[39] The QLS recommended that, if the amendments are to apply retrospectively, a more robust process around the prosecution's application should be

32 Submission no.2, PACT, p.1
33 Submission no.4, Dr Silke Meyers, p.1
34 Submission no.1, EDON, p.2
35 Submission no.16, WLS, p.5
36 Submission no.9 , Queensland Law Society, p.2
37 Mr Shane Budden, Manager, Advocacy and Policy, Queensland Law Society, *Public Hearing Transcript*, 30 September 2015, p.3
38 Submission no.17, Bar Association Queensland, p.2
39 Submission no.17, Bar Association Queensland, p.2

established, including what the court must take into account and what information the prosecution must include in their application.[40]

4.3 Department's response

The Department stated that the proposed amendments would help to ensure that information about a person's pattern of offending in a domestic and family violence context is more readily identifiable to the court.[41]

In relation to EDON and WLS's concerns about access to information, the Department advised that it has accepted all of the Taskforce Recommendations to allow information sharing as part of an integrated service delivery response. The Department stated that "the broader sharing of information between government and non-government entities is a complex issue". The Department advised that it is actively exploring current information sharing barriers across agencies in response to Taskforce Recommendation 78.[42] The Department also stated that it is currently considering its capacity to capture data on the recording of notations on charges and convictions that occur in a domestic and family violence context to ensure that it can be reported on.[43]

The Department stated that it will consider what legislative provisions are needed to support information sharing as part of its broader review of the *Domestic and Family Violence Protection Act 2012* (DFVP Act).[44]

In response to the QLS and BAQ's concerns about the retrospective nature of proposed new section 12A(6) of the PSA, the Department stated there is no power for the court to examine a person's past criminal history, unless they have been charged and convicted of a domestic violence offence. The Department further advised that, for a notation to be made by the courts in relation to a past conviction, an application must be made by the prosecution to the courts. The courts must also be satisfied that the offence (which the person has been previously convicted of) occurred in a domestic and family violence context.[45]

The Department advised that, in practice, the prosecution will, when making an application to the court, provide information to the court about previous convictions through a range of documents, for example police information at the time of the offence (the QP9), transcripts of evidence from any trial and sentencing remarks made by the courts when sentencing the offender for previous convictions. The

40 Submission no.9, Queensland Law Society, p.2
41 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.15
42 Taskforce Recommendation 78 recommends that the Queensland Government introduce enabling legislation to allow information sharing between agencies (government and non-government) within integrated responses, with appropriate safeguards. This would include legislative protection for the sharing of information without consent if a risk assessment indicates it is for the purpose of protecting the safety of the victim and their immediate family
43 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.15
44 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.16-17
45 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.13

Department also stated that the defence will be able "to make submissions about whether an offender's previous convictions are relevant or not".[46]

The Department also noted that "a sentencing court can already have regard to a person's criminal history and must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to: the nature of the previous conviction; its relevance to the current offence; and the time that has elapsed since the conviction (see section 9(10) of the PSA)".[47]

Committee comment

The Committee notes that the proposed amendments mirror those at section 12 of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*. The Committee also notes that the power to make a notation in an offender's criminal history that an offence occurred in a domestic and family violence context is being used in NSW. For example, in 2014, 663 directions were made for convictions to be recorded as a domestic violence offence in NSW.[48]

The Committee also notes the Department's ongoing work to ensure that unnecessary barriers to information sharing between agencies are removed, including its review of the DFVP Act. The Committee looks forward to examining any future legislation in this regard.

Non-government members of the Committee did not support the retrospective nature of new section 12A(6) of the PSA.

The potential fundamental legislative principles raised by the new section 12A(6) of the PSA are discussed at Section 8 of this report.

46 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.14
47 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.13-14
48 Department, *Briefing Note*, 22 September 2015, p.7

5. Increase of maximum penalty for breaches of domestic violence orders

A Domestic Violence Order (DVO) is a civil order made by a Magistrates Court that imposes conditions to protect a person from future domestic violence. A DVO can either be a protection order or a temporary protection order (a protection order made before the court hears and decides the application for a protection order).

The DVO requires the respondent (the person who is the subject of the order) to be of good behaviour and not commit domestic violence against the aggrieved.[49]

The court can also impose other conditions in a DVO, where necessary or desirable to protect the aggrieved. For example, a DVO may include a condition that the respondent must not come within a certain distance of the aggrieved, must not contact the aggrieved by telephone or text, or must not contact any children of the aggrieved. An ouster condition (where the perpetrator is excluded from the home) can also be included in an order.[50]

Generally, a DVO continues in force for up to two years. However, a court may order that a DVO continues in force for more than two years, if it is satisfied there are special reasons for doing so.[51]

If a respondent breaches a DVO, a criminal offence is committed. The current maximum penalty for breaching a DVO is:

- in circumstances where the respondent has been convicted of an offence under the DFVP Act within the previous five years – 120 penalty units or three years imprisonment, or
- otherwise – 60 penalty units or two years imprisonment.[52]

The Taskforce Report noted that in the 2013-14 financial year, 80.6 per cent of all custodial sentences for breaches of a DVO were for less than 12 months.[53]

The Taskforce was concerned that "… current legislation may not effectively recognise the pattern of behaviour which underpins domestic and family violence and apply appropriate sanctions". The Taskforce Report, therefore, recommended that the Queensland Government considers the sufficiency of penalties to hold perpetrators to account for repeat contraventions of DVOs (Taskforce Recommendation 121).[54]

5.1 Proposed amendment

Increase maximum penalties

Clause 7 amends section 177 of the DFVP Act to provide that the maximum penalty for breaching a DVO is:

49 *Domestic and Family Violence Protection Act 2012*, section 56
50 *Domestic and Family Violence Protection Act 2012*, sections 57 to 67
51 *Domestic and Family Violence Protection Act 2012*, section 97
52 *Domestic and Family Violence Protection Act 2012*, section 177
53 Taskforce Report*,* February 2015, p.305
54 Taskforce Report, February 2015, p.305

- if, within five years of the breach of the order, the respondent has been convicted of a *domestic violence offence* – 240 penalty units or five years imprisonment, or
- otherwise – 120 penalty units or three years imprisonment.

The term *domestic violence offence*, in this regard, includes a *domestic violence offence*, under section 1 of the Criminal Code (i.e. a criminal offence which is also domestic violence or associated domestic violence, for example, an assault in a domestic violence context) or an offence against Part 7 of the DFVP Act (for example, a breach of a DVO or police protection notice).

Prosecution of offences

Clause 8 inserts new section 181 of the DFVP Act to provide that a criminal offence, under the DFVP Act, that has a penalty of more than three years will be an indictable offence. However, new section 181 provides that a proceeding on a charge for such an indictable offence will be heard summarily (at the Magistrates Court by a judge). It should be noted that the maximum term of imprisonment that may be made on a summary conviction of an indictable offence by a Magistrates Court is three years.

New section 181(6), however, provides that a Magistrates Court must abstain from dealing summarily with a charge for an indictable offence, if satisfied that the defendant may not be adequately punished on summary conviction (maximum sentence three years' imprisonment) or on application by the defence that because of exceptional circumstances, the charge should not be heard summarily.

The Explanatory Notes state that:

> *The policy intent behind increasing the maximum penalties for breach of domestic violence orders is to provide greater deterrence for perpetrators of domestic violence and to reinforce the community's view that domestic violence is not acceptable and will not be tolerated.*[55]

The Department stated that "The amendments to the DFVP Act in the Bill reinforce the community's view that domestic violence is unacceptable and perpetrators will be held account for their use of such violence".[56]

5.2 Submissions

The submissions broadly supported the proposed amendments, noting that they would bring Queensland in line with other Australian jurisdictions and are consistent with the Taskforce Recommendations.[57]

However, the Queensland Catholic Education Commission considered that early intervention programs, for example skilling perpetrators in conflict resolution, developing healthy relationships and effective communication, were also required to effectively address domestic and family violence.[58]

55 Explanatory Notes, p.6
56 Department, *Briefing Note*, 22 September 2015, p.3
57 Submission no.1, EDON, p.1, Submission no.2, PACT, p.1 Submission no. 3, UnitingCare Community, pp.1-2 and Submission no.11, Australian Association of Social Workers – Queensland Branch (AASW), p.1
58 Submission no.5, Queensland Catholic Education Commission, p.3

UnitingCare Community highlighted the need to ensure that increased penalties do not have unintended consequences. This may include domestic and family violence victims who take retaliatory defensive violence being at risk of sanction, victims being at risk of violence as retribution and a risk of reduction in reporting by victims due to a fear that the primary financial provider (the perpetrator) may be incarcerated or required to pay monetary penalties.[59]

Dr Meyer, WLS, BoysTown and Aboriginal and Torres Strait Islander Legal Service Inc. (Qld) (ATSILS) questioned the effectiveness of increasing existing maximum penalties, as a deterrent, without evidence that current maximum penalties are being used and exhausted.[60] At the public hearing, Dr Meyer stated that "New South Wales has similar maximum penalties for their domestic violence breaches. Last year they released a report on 3,500 cases they reviewed which clearly shows that those maximum penalties are never exhausted" and "the average custodial sentence handed out for breaches is four months".[61]

Gold Coast Centre Against Sexual Violence Inc. suggested that research should be conducted comparing sentences for breaches of DVOs before and after the proposed amendments.[62]

At the public hearing, the QLS stated that "in addition to a deterrent aspect and a rehabilitative aspect, there is a punitive aspect to penalties". The QLS also stated increase penalties may have a deterrent effect "… in a secondary sense, in that, if a person commits an act of domestic violence and they realise that if they do it again the consequences will be more extreme, they may seek the sort of help that will actually prevent the offence from occurring in the first place …".[63]

WLS and Australian Association of Social Workers – Queensland Branch (AASW) also raised concerns about the monitoring and enforcement of current breaches of DVOs, including concerns that the police fail to act when notified of breaches of existing DVOs.[64] At the public hearing, WLS stated that:

> *Women have been in court, they have a court order, they have a protection order, they have been told by the magistrates in front of the court, 'If there is a breach, this is a criminal penalty. You need to go to the police'. And when they go to the police the police fob them off and say, 'It's your word against his'.*[65]

Dr Meyer and ATSILS considered that funding to create and enforce higher penalties may be better invested in rehabilitation and intervention programs and addressing the underlying causes of domestic and family violence, such as excessive alcohol consumption, housing, education and health.[66]

59 Submission no.3, UnitingCare Community, p.3

60 Submission no.4, Dr Silke Meyer, Submission no.13, ATSILS, Submission no.16, WLS and Submission no.20, BoysTown

61 Dr Silke Meyer, Postdoctoral Research Fellow, Institute of Social Science Research, University of Queensland, *Public Hearing Transcript*, 30 September 2015, p.6

62 Submission no.19, Gold Coast Centre Against Sexual Violence Inc., p.3

63 Mr Shane Budden, Manager, Advocacy and Policy, Queensland Law Society, *Public Hearing Transcript*, 30 September 2015, p.3

64 Submission no.16, WLS, pp.4-5 and Submission no.11, AASW, p.1

65 Ms Angela Lynch, Community Legal Education Lawyer, WLS, *Public Hearing Transcript*, 30 September 2015, p.21

66 Submission no.4, Dr Silke Meyer, pp.1-2 and Submission no. 13, ATSILS, p.2

At the public hearing, Dr Meyer stated that "Simply increasing sentences is probably not going to solve the problem of perpetrators breaching domestic violence orders". Dr Meyer contended that "We need to generate social change and a change in social attitudes" and "Any kind of punishment, as with any other kind of criminal response in a punitive sense, needs to come with a rehabilitative or an intervention mechanism".[67]

5.3 Department's response

The Department stated that the proposed amendments implement Taskforce Recommendation 121,[68] and respond to the Taskforce's concerns that "current legislation may not effectively recognise the pattern of behaviour which underpins domestic and family violence and apply appropriate sanctions".[69]

The Department acknowledged that the majority of offenders do not currently receive the existing maximum penalties when being sentenced for a breach of a DVO. However, the Department stated that:

> *… interpreting the data for sentencing outcomes for breaches of domestic violence orders can be complex due to system limitations and the various ways that data is collected to identify the total number of domestic violence orders that are breached over a given year.*[70]

The Department also stated that the reason why a particular penalty has been imposed may be "influenced by other factors such as whether the contravention of a domestic violence order was dealt with along with a more significant substantive offence and the type of condition that was breached".[71]

In addition, the Department stated that "There may also be circumstances where an offender is not charged with a breach under section 177 of the DVFP Act, but a more serious substantive criminal offence".[72]

In relation to submitters' concerns about the current use of existing penalties, the Department stated that it is the role of the courts to determine the appropriate sentence to impose in a particular case, in line with the guiding sentence principles in the PSA.

The Department highlighted the importance of judicial discretion in sentencing, and stated that:

> *The task of sentencing offenders requires the careful balancing of competing considerations. The court must construct a sentence which not only reflects the seriousness of the crime, the need for punishment deterrence and that the community denounces that sort of conduct engaged in by the offender but also one which will promote the rehabilitation of the offender.*[73]

67 Dr Silke Meyer, *Public Hearing Transcript*, 30 September 2015, pp.6-7
68 Taskforce Recommendation 121 recommends that the Queensland Government considers the sufficiency of penalties to hold perpetrators to account for repeat contraventions of Domestic Violence Orders
69 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.2
70 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.3
71 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.3
72 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.3
73 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.6

The Department informed the Committee of "the new court bench book to support every magistrate in Queensland by providing a clear judicial and procedural framework for dealing with family violence matters so they can deliver a high level of consistency in how the law is applied statewide".[74]

In relation to submitters' concerns about unintended consequences associated with an increase in penalties, the Department advised that:

> *… the judge or magistrate is … responsible for deciding the appropriate sentence in individual cases having regard to a range of factors, including the maximum penalty for the offence and any other relevant circumstances (which may include the impact that a particular type of penalty may have on the victim).*[75]

With regards to investment in rehabilitation and intervention programs, the Department stated that:

> *Recommendation 71 in the Taskforce Report requires the Queensland Government to undertake an immediate audit of services to ensure adequate resources are available to meet demand for specialist domestic and family violence services, including perpetrator intervention initiatives and specialist shelters.*[76]

The Department informed the Committee that it has engaged an independent and external provider to undertake a "comprehensive state-wide audit of domestic and family violence services in Queensland".[77]

In addition, the Department stated that "The Queensland Government has committed to make a referral to the Queensland Law Reform Commission to investigate alternatives to incarceration, including but not limited to justice reinvestment[78] and court-ordered parole".[79]

Committee comment

The Committee notes that a maximum penalty for a breach of a DVO of five years is in line with other Australian jurisdictions, including, for example, the Australian Capital Territory, Victoria and Tasmania.[80]

The Committee considers that raising the maximum penalty for breaches of DVOs will not, in isolation, address domestic and family violence in Queensland's communities.

The Committee notes, however, that the proposed amendments are part of a broader package, including the new specialist family violence court trial in Southport and new court bench book, aimed at increasing perpetrator accountability, supporting victims in criminal proceedings and achieving consistency in how the laws are applied State-wide. The Committee also notes the Government's ongoing review of rehabilitation and intervention programs to help tackle domestic and family violence.

74 Mr David Mackie, Director-General, Department, *Public Briefing Transcript*, 18 September 2015, p.11
75 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.5-6
76 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.4
77 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.4-5
78 *Justice reinvestment* involves the use of funds that would ordinarily be spent on incarcerating people for development programs and services aimed at addressing the causes of crime in communities that have high imprisonment rates
79 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.8
80 Explanatory Notes, pp.3-4

If the Bill passes, the Committee recommends that the Department monitors the use of the new maximum penalties for breaches of DVOs and commissions research into their effectiveness as a deterrent to offenders committing domestic violence offences.

Recommendation 2

The Committee recommends that, if the Bill passes, the Department of Justice and Attorney-General monitors the use of the new maximum penalties for breaches of domestic violence orders and commissions research into their effectiveness as a deterrent to offenders committing domestic violence offences.

6. Special witness protection for domestic violence victims

The Attorney-General, in her explanatory speech, stated that:

> *A recurring theme in submissions to the task force is that victims are traumatized by having to repeatedly retell their stories. When criminal charges are laid, police report that there is often difficulty pursuing the prosecution given a reluctance of the victim for fear of continuing with the criminal prosecution.*[81]

The Taskforce reported that victim's fears are based on: the realities of their life circumstances, including isolation; lack of information about available support options; fear of the perpetrator and/or perpetrator's family; the foreboding nature of the court process ahead; and perception (or knowledge) that such proceedings will end the relationship with the perpetrator or any penalty applied upon conviction will create hardship for the family.[82]

The Legal Affairs and Community Safety Committee's *Inquiry on strategies to prevent and reduce criminal activity in Queensland* recommended that that the Taskforce consider "more systematic provision of options to allow victims of domestic and family violence to give evidence via audio-visual link, closed circuit television and other means, and to otherwise minimise unnecessary court appearances".[83]

The *Evidence Act 1977* (Evidence Act) currently makes provision for *special witnesses* to give evidence outside of the court room or away from the alleged perpetrator, for example via audio-visual link or by video recording. The term *special witnesses* includes a person who, in the court's opinion, would be likely to suffer severe emotion trauma or likely to be so intimidated as to disadvantage the witness.

While it is arguable that the definition of *special witness* would cover victims of domestic violence, the Taskforce heard that these provisions are "rarely used, raising the question of whether this is a problem created by the law or an implementation issue".[84]

Accordingly, the Taskforce recommended that the Government, in consultation with the Chief Magistrate and Chief Judge, implement alternative evidence procedures for victims of domestic and family violence providing evidence in related criminal matters to reduce the trauma of this experience (Taskforce Recommendation 133).

6.1 Proposed amendment

Clauses 10 and 11 amend the definition of *special witness* at section 21A of the Evidence Act to include a person:

- against whom domestic violence has been or is alleged to have been committed by another person, or
- who is to give evidence about the commission of an offence by the other person.

81 Attorney-General, *Hansard*, p.1740
82 Taskforce Report, February 2015, p.319
83 Legal Affairs and Community Safety Committee, *Inquiry on strategies to prevent and reduce criminal activity in Queensland*, Report No.82, 2014, p.271
84 Taskforce Report, February 2015, p.320.

The effect of the amendment to section 21A of the Evidence Act would be that a court may order or direct that an alleged victim of domestic violence, when giving evidence, be afforded one or more of the following protections:

- excluding the person charged with the offence from the court room
- obscuring the person charged from the view of the special witness
- excluding all persons, other than those specified by the court, from the court room
- allowing the special witness to give evidence in a room other than the courtroom and from which all persons other than those specified by the court are excluded, including by audio visual link
- approving a support person be present in the court for the special witness
- approving video-taped recorded evidence from the special witness be viewed and heard in court proceedings instead of direct testimony, and
- any other order or direction the court considers appropriate for the special witness - for example: rest breaks; directing the questions be kept simple; directing that the questions to a special witness be limited by time; and limiting the number of questions put to a special witness.[85]

The Department advised that the:

> *… proposed amendments … will have the benefit of removing the application process for status as a special witness for victims of domestic violence. Thus, victims will no longer be required to prove to the court that they would likely suffer emotional trauma if made to give evidence in the usual way*.[86]

6.2 Submissions

The submissions overwhelmingly supported the amendments to the Evidence Act to provide that victims of domestic and family violence are afforded the protections granted to special witnesses.[87] Dr Meyer stated that:

> *It is important to empower victims by offering additional protections in court proceedings. Victims having to face their perpetrators (and in some cases having to comply with being cross-examined by the perpetrator where the perpetrator chooses to self-represent) in court is counterproductive in court proceedings that are aimed at victim protection and empowerment. In addition, it continues to fuel the frustration of law enforcement professionals who initiate and oversee court proceedings where*

85 Department, *Briefing Note*, 22 September 2015, p.5

86 Department, *Briefing Note*, 22 September 2015, p.5

87 Submissions no.1, EDON, Submission no. 2, PACT, Submission no.4, Dr Silke Meyer, Submission no.9, Queensland Law Society, Submission no.10, North Queensland Combined Women's Services Inc., Submission no.11, AASW, Submission No.12, Immigration Women's Support Services, Submission no.13, ATSILS, Submission no.14, Queensland Sexual Assault Network, Submission no.16, WLS, Submission no.20, BoysTown and Submission no.21, Centacare Brisbane

> *victims no longer have the strength or courage to provide accurate evidence in court because of the physical presence of the perpetrator.*[88]

However, submitters raised concerns that courts, in particular in rural and regional locations, are not adequately equipped to provide domestic and family violence victims with the protections afforded to special witnesses.[89] PACT stated that courts also need secure environments for victims and their families to wait, protected from harassment from perpetrators.[90] Dr Meyer stated that:

> *… perpetrators do use intimidating non-verbal tactics in court proceedings and also leading up to court proceedings, which is why research has always made … recommendations around separating victims and perpetrators leading up to a court hearing in terms of waiting areas as well as during the court proceedings.*[91]

At the public hearing, the QLS stated that consideration also needs to be given to having "funding available … if a hearing or trial needs to be moved from a courthouse with insufficient facilities to one that does have those facilities".[92]

In addition, submitters recommended that the Government put in place similar protections for all victims of sexual violence who are giving evidence in criminal proceedings, irrespective of age.[93]

The Immigrant Women's Support Service also recommended that safe and culturally responsive mechanisms be made available in court proceedings to facilitate greater participation and inclusion of victims, particularly those from culturally and linguistically diverse backgrounds.[94]

6.3 Department's response

The Department informed the Committee that "The majority of the courts in larger centres of Queensland already have the facilities and necessary technology for special witnesses". However, the Department acknowledged that the amendments may result in an increased demand on these facilities.[95]

88 Submission no.4, Dr Silke Meyer, p.1

89 Submissions no.1, EDON, Submission no.2, PACT, Submission no.4, Dr Silke Meyer, Submission no.9, Queensland Law Society, Submission no.10, North Queensland Combined Women's Services Inc., Submission no.11, AASW, Submission no.12, Immigration Women's Support Services, Submission no.13, ATSILS, Submission no.14, Queensland Sexual Assault Network, Submission no.16, WLS and Submission no.20, BoysTown

90 Submission no.2, PACT, p. 1

91 Dr Silke Meyer, *Public Hearing Transcript*, 30 September 2015, p.7

92 Mr Shane Budden, Manager, Advocacy and Policy, Queensland Law Society, *Public Hearing Transcript*, 30 September 2015, p.5

93 Submissions no.10, North Queensland Combined Women's Services Inc., Submission no.12, Immigration Women's Support Services, Submission no.14, Queensland Sexual Assault Network, Submission no.15, Brisbane Rape and Incest Survivors Support Centre, Submission no.16, WLS and Submission no.19, Gold Coast Centre Against Sexual Violence Inc.

94 Submission no.12, Immigrant Women's Support Service, p.2

95 Department, *Briefing Note*, 22 September 2015, p.6

The Department stated that:

> *A number of regional court registries have remote witness rooms and the rollout of the new Affected Child witness digital recording pilot for the higher courts, will allow for the remote recording of evidence.*
>
> *While not all courtrooms across Queensland have all of facilities that are available to special witnesses under section 21A, various workarounds are utilised including mobile witness screens, taking the evidence of a witness from another room, and sharing resources, where required. Other workarounds may also be possible, such as utilising other video-conferencing facilities in the community.*
>
> *The Queensland Government has also committed to a comprehensive audit of all Queensland Courts and tribunal facilities, with a view to ensuring the Government understands what is the current resourcing of courthouses. The audit will look at where there are: appropriate soundproof interview rooms, access for mobility impaired persons, facilities to assist persons with disabilities, videoconferencing facilities and E-filing.*[96]

The Department informed the Committee that it has already commenced its audit. The Department advised that the first phase of the audit will involve an assessment of all existing facilities with a view to having an accurate baseline of what is available in each courthouse. The audit will incorporate all aspects of court technology, including the distribution of pre-recording and videoconferencing facilities. The information gathered by the audit will then be analysed to identify precisely what facilities and equipment should be present at each courthouse given the caseload and case type handled at each courthouse.[97]

In relation to submitters' recommendation that the Government put in place similar protections for all victims of sexual violence who are giving evidence in criminal proceedings, irrespective of age, the Department stated that it would raise these concerns with the Government.[98]

The Department stated that the Queensland Government has committed to identifying best practice for interpreter services for civil domestic and family violence court proceedings, in line with Taskforce Recommendation 116.[99] The Department stated that it is "anticipated that implementation of this recommendation will facilitate greater participation of, and support for, victims from culturally and linguistically diverse backgrounds".[100]

96 Department, *Briefing Note*, 22 September 2015, p.6
97 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.10-11
98 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.11
99 Taskforce Recommendation 116 recommends that the Department of Justice and Attorney-General identifies opportunities to streamline systems for engagement of interpreters for civil domestic and family violence court proceedings to ensure best practice
100 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.12

Committee Comment

The Committee notes that the Department is currently undertaking an audit of all court facilities. The Committee recommends that the Department prioritise its audit and, based on the findings of its audit, take steps to ensure that courts in Queensland can adequately accommodate domestic and family violence victims providing evidence as special witnesses, and their families.

Recommendation 3

The Committee recommends that the Department of Justice and Attorney-General prioritises its audit of Queensland court facilities and, based on the findings of its audit, takes steps to ensure that courts in Queensland can adequately accommodate domestic and family violence victims providing evidence as special witnesses, and their families.

During its examination of the Bill, the Committee raised concerns about the protections afforded to victims of domestic and family violence during court proceedings which do not involve the giving of evidence, for example when applying for a DVO. The Committee seeks clarification from the Attorney-General about what protections are afforded to domestic and family violence victims in such circumstances.

Recommendation 4

The Committee recommends that the Attorney-General clarifies during the second reading debate what protections are afforded to victims of domestic and family violence in court proceedings which do not involve the giving of evidence, for example when applying for a domestic violence order.

7. Other recommendations to address domestic and family violence

While not strictly related to the proposed amendments in the Bill, submitters made a number of other suggestions to tackle the issue of domestic and family violence including:

- assisting perpetrators to access appropriate intervention services, for example counselling or therapy, which could lead to better overall outcomes for families and reduce recidivism[101]
- providing complementary proactive strategies in schools to: support development of student protection case management systems; provide specialist advice on identification of domestic and family violence; provide response pathways and support for those impacted by domestic and family violence; encourage support of whole-of-school approaches to student wellbeing (including respectful relationships); and clarify the impact of domestic and family violence legislation and the requirements placed on school staff[102]
- adequate funding for a linked computer system between courts and police, so that there are minimal delays between the courts issuing DVOs and ruling on breaches and police responses,[103] and
- the introduction of the *Clare's Law Protocol* from the United Kingdom, where a woman can access an intimate partner's or prospective partner's criminal history in order to make informed decisions about pursuing an intimate relationship. NSW has created a register of offenders with domestic violence convictions and Apprehended Violence Orders modelled on the *Clare's Law Protocol*.[104]

7.1 Department's response

The Department stated that the Queensland Government has accepted Taskforce Recommendation 122[105] and is committed to implementing strategies to increase perpetrators' participation in intervention programs.[106]

In relation to the recommendation to provide proactive strategies in schools, the Department stated that it had accepted the Taskforce Recommendations relating to the development of a communication strategy (Recommendation 20) and the introduction of programs in State schools (Recommendation 24) in order to provide comprehensive and complementary strategies for combatting domestic and family violence.[107]

101 Submission no.2, PACT, p.1
102 Submission no.5, Queensland Catholic Education Commission, p.3
103 Submission no.11, AASW, p.2
104 Submission no.11, AASW, p.2
105 Taskforce Recommendation 122 recommends that the Queensland Government identifies and implements strategies to increase perpetrators' participation in interventions, including a pilot on mandatory attendance, with the evaluation of the pilot to inform future decisions about broader use of mandatory perpetrator interventions
106 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.17
107 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.17

The Department stated that the Queensland Government had accepted Taskforce Recommendation 91[108] and will continue to prioritise the eDV and Single Person Identifier project to ensure that information is shared between police and courts in a timely manner. The Department also stated that it "is working with the Queensland Police Service to develop a consistent best practice model to minimise delays between the Court making an order and Police being notified of the order".[109]

In relation to the suggestion that a *Clare's Law Protocol* be introduced, similar to the United Kingdom, the Department stated that:

> *It is essential that any disclosure scheme is considered in the context of a broader integrated service response and ensuring individuals are provide with appropriate support at the time any information is disclosed to them. Multi-agency responses are at the core of the system operating in the United Kingdom.*[110]

108 Taskforce Recommendation 91 recommends that the Queensland Government prioritise the eDV project and the Single Person Identifier project for completion as soon as practically possible within a defined time limit

109 Department, *Response to Issues Raised in Submissions*, 29 September 2015, pp.17-18

110 Department, *Response to Issues Raised in Submissions*, 29 September 2015, p.16

8. Fundamental legislative principles and explanatory notes

Section 4 of the *Legislative Standards Act 1992* 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, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

8.1 Rights and liberties of individuals

Clause 7 - Increased maximum penalties for breaches of domestic violence orders

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 7 amends section 177 of the DFVP Act to increase the maximum penalty for breaching a DVO. The proposed amendment raises the current maximum penalty of 120 penalty units or three years imprisonment to 240 penalty units or five years imprisonment where, within five years before the breach of a DVO, the respondent has been previously convicted of a *domestic violence offence*. For other instances, where there is a breach of a DVO, the maximum penalty is increased from 60 penalty units or two years imprisonment to 120 penalty units or three years imprisonment.

The reasonableness and fairness of treatment of individuals is a relevant factor when deciding whether legislation has sufficient regard to the rights and liberties of individuals. Penalties should also be proportionate to the offence they are addressing. In this instance, the increased penalties mean an offender may receive a greater penalty than they would previously have received for the same offence.

The Explanatory Notes state that:

> *The increase in penalties is considered justified due to the seriousness of the offences, particularly where there is a pattern of domestic violence behaviour involved. The increase also brings maximum penalties closer in line with those applying in some other Australian jurisdictions …*[111]

The Department of Communities, Child Safety and Disability Services also advised that the potential fundamental legislative principles issue is "… justified in the community interest in ensuring that there are effective and appropriate sanctions in place for patterns of behaviour that underpin domestic and family violence".[112]

111 Explanatory Notes, p.3

112 Ms Megan Giles, Executive Director, Legislative Reform, Department of Communities, Child Safety and Disability Services, *Public Briefing Transcript*, 18 September 2015, p.12

Committee comment

The Committee considers, on balance, that the proposed increase to the maximum penalties is justified in order to deter people from committing acts of domestic and family violence. The Committee notes that the increased penalties are only maximums and the courts retain the judicial discretion to impose a less than maximum penalty where appropriate. Accordingly, the Committee considers that Clause 7 has sufficient regard to the rights and liberties of individuals.

Clause 18 - Notation of domestic violence offences

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

Clause 18 inserts new section 12A(6) into the PSA to provide that a court, on application from the prosecution, may order that an offence for which the offender has previously been convicted be recorded as a conviction for a *domestic violence offence*.

The Explanatory Notes state that:

> *Although this further information is being added retrospectively, it will assist in ensuring that an offender's pattern of domestic violence behaviour is more easily identifiable on a person's criminal history and therefore ensures that offenders can be sentenced more appropriately. It also provides greater protection for victims against future violence through timely identification of this type of conduct by agencies to reduce escalated violence.*[113]

The QLS and the BAQ raised concerns that any previous offence, whether the offender was convicted after trial or by guilty plea, where no consideration of the impact of future amendments to domestic and family violence legislation could have been contemplated, is now to be regarded as a relevant offence in sentencing an offender for a new domestic violence offence (see Section 4 of this report).

At the public hearing, the Department explained that:

> *… before the court can make that order in relation to past convictions they must be dealing with an offence that is currently before the court for which the person has been convicted and they were charged on the complaint or the indictment having been noted that that is a domestic violence offence. In essence, that trigger to examine the criminal history of previous convictions only arises when that other offence which they are dealing with and making an order about under subsection (2) is noted already as a domestic violence offence. There is no power for the court to just examine a person's past conviction.*[114]

113 Explanatory Notes, p.3

114 Ms Julie Rylko, Acting Director, Strategic Policy, Department, *Public Hearing Transcript*, 30 September 2015, p.27

The Department also highlighted that "… the application in relation to those past convictions is made by the prosecution" and "… subsection (4) it talks about the information that the prosecution has to provide in making that application about the past convictions. Then very clearly in subsection (6) the court must be satisfied that the previous offence is a domestic violence offence".[115]

At the public hearing, the Department stated that:

> *Those notations do not change in substance the offence that they [the offender] have been convicted of, so it is [for example] an assault occasioning bodily harm. The purpose of the provision is to identify that that assault occasioning bodily harm occurred in a domestic violence context.*[116]

The Department highlighted that a court may already have regard to a person's criminal history and must treat each previous conviction as an aggravating factor, if the court considers that it can reasonably be treated as such having regard to the nature of the previous conviction, the relevance of the current offence, and the that time that has elapsed since the previous conviction.[117]

The Committee sought clarification from the Department about whether a previous conviction, being newly and retrospectively recorded by the courts as a *domestic violence offence*, under new section 12A(6) of the PSA, could be counted as a previous conviction of a *domestic violence offence* for the purposes of new section 177 of the DFVP Act; and, therefore, if the previous conviction was received in the last five years, engage the new maximum penalty of five years imprisonment for a breach of a DVO.

In response, the Department confirmed that:

> *… the higher maximum penalty of five years imprisonment under section 177 will apply to a person who has a previous criminal conviction for an offence which falls within the new definition of a "domestic violence offence" in section 1 of the Criminal Code. This amendment expands the circumstances in which the highest maximum penalty can be imposed beyond those offences committed under the DFVP Act (as is presently the case).*[118]

The Department stated that:

> *This extended application of section 177(2) of the DFVP Act to domestic violence offences … is considered justified … on the basis that that perpetrators should be held to account for repeated criminal conduct which occurs in a domestic violence context regardless of whether a conviction relates to a breach of a domestic violence order or*

115 Ms Julie Rylko, Acting Director, Strategic Policy, Department, *Public Hearing Transcript*, 30 September 2015, p.27

116 Ms Julie Rylko, Acting Director, Strategic Policy, Department, *Public Hearing Transcript*, 30 September 2015, p.27

117 Department, *Correspondence*, 29 September 2015, p.2

118 Department, *Correspondence*, 29 September 2015, p.2

> *another criminal offence. A sentencing court will retain discretion in relation to the appropriate penalty to be imposed.*[119]

In addition, the Department of Communities, Child Safety and Disability Services stated that:

> *… it brings [domestic violence offences] into line with breaches of domestic violence [orders]. What we would not want to do is have an arrangement whereby a breach of a domestic violence order actually gets a higher penalty than multiple and escalating offending under the Criminal Code of assaults occasioning bodily harm … Yes, it does really challenge fundamental legislative principles, and certainly we are saying that on this occasion we believe it is justified. We are not pretending that it does not. We are saying we believe it is justified.*[120]

Committee comment

The Committee notes that the proposed amendments apply only to a limited class of individuals, i.e. an individual who has been convicted by the courts of a *domestic violence offence*. The Committee also notes that retrospective notation of a previous offence as a domestic violence offence is not automatic and that the decision, in this regard, is entirely at the discretion of the courts based on the information before the court, including the information provided in the prosecution's application.

In relation to new section 12A(6) of PSA's interaction with the maximum penalty for a breach of a DVO under section 177 of the DFVP Act, the Committee notes that the actual penalty imposed will also be at the discretion of the court.

Finally, the Committee notes the policy intent to ensure that an offender's pattern of domestic violence behaviour is identifiable on a person's criminal history and that offenders are sentenced in the context of accurate and pertinent information, with the overriding aim of protecting victims of domestic violence.

Non-government members of the Committee did not support the retrospective nature of new section 12A(6) of the PSA.

8.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* provides that an Explanatory Note must be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

The Committee notes that Explanatory Notes were tabled with the Bill on its introduction in the Legislative Assembly.

Under the *Consistency with fundamental legislative principles* section, the Explanatory Notes erroneously refer to clause 17 as being about the notation of domestic violence offences when, in the final version of the Bill as introduced into the Legislative Assembly, clause 18 is the correct clause.

119 Department, *Correspondence*, 29 September 2015, p.2

120 Ms Cathy Taylor, Deputy Director-General, Child Family Community Services and Southern Regions, Department of Communities, Child Safety and Disability Services, *Public Hearing Transcript*, 30 September 2015, p.28

The Committee considers that the Explanatory Notes are fairly detailed and contain the information required by Part 4 of the *Legislative Standards Act 1992* and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of submissions

Sub #	Submitter
001	EDON Place Women's Domestic Violence Service Inc.
002	Protect All Children Today Inc.
003	UnitingCare Community
004	Dr Silke Meyer
005	Queensland Catholic Education Commission
006	Confidential
007	Confidential
008	Confidential
009	Queensland Law Society
010	North Queensland Combined Women's Services Inc.
011	Australian Association of Social Workers – Qld Branch
012	Immigrant Women's Support Service
013	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd.
014	Queensland Sexual Assault Network
015	Brisbane Rape and Incest Survivors Support Centre
016	Women's Legal Service Queensland
017	Bar Association of Queensland
018	Queensland Centre for Domestic and Family Violence Research
019	Gold Coast Centre Against Sexual Violence Inc.
020	BoysTown
021	Centacare Brisbane

Appendix B – List of witnesses at public briefing and public hearing

Public briefing 18 September 2015
Mr David Mackie, Director-General, Department of Justice and Attorney-General
Ms Natalie Parker, Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General
Ms Victoria Moore, Acting Director, Strategic Policy, Department of Justice and Attorney-General
Ms Julie Rylko, Acting Director, Strategic Policy, Department of Justice and Attorney-General
Ms Megan Giles, Executive Director, Legislative Reform, Department of Communities, Child Safety and Disability Services
Public hearing 30 September 2015
Mr Michael Fitzgerald, President, Queensland Law Society
Mr Shane Budden, Manager, Advocacy and Policy, Queensland Law Society
Dr Silke Meyer, Postdoctoral Research Fellow, Institute for Social Science Research, The University of Queensland
Ms Stephanie Anne, Manager, Zig Zag Young Women's Resource Centre Inc. and Secretary, Queensland Sexual Assault Network
Ms Leona Berrie, Manager, Women with Intellectual and Learning Disabilities - Sexual Violence Prevention Association
Ms Angela Lynch, Community Legal Education Lawyer, Women's Legal Service Inc. Queensland
Ms Susan Beattie, Manager, Domestic and Family Violence Death Review Unit, Office of the State Coroner
Ms Natalie Parker, Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General
Ms Victoria Moore, Acting Director, Strategic Policy, Department of Justice and Attorney-General
Ms Julie Rylko, Acting Director, Strategic Policy, Department of Justice and Attorney-General
Ms Cathy Taylor, Deputy Director-General, Child, Family Community Services and Southern Regions, Department of Communities, Child Safety and Disability Services

Statement of Reservation

The Honourable Mark McArdle
Member for Caloundra
Shadow Minister for Health

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PO Box 3998 Caloundra DC Q 4551
Ph: (07) 5329 4100
Email: caloundra@parliament.qld.gov.au

Thursday, 8 October 2015

Ms Leanne Donaldson MP
Chair
Communities, Disability Services and Domestic
And Family Violence Prevention Committee
Via email: CDSDFVPC@parliament.qld.gov.au

Dear Chair,

Statement of Reservation

The LNP Opposition is concerned with the retrospective nature of the penalty provisions contained in the *Criminal Law (Domestic Violence) Amendment Bill 2015* (the Bill).
We share the concerns raised by the Queensland Law Society (QLS) in their submission and at the public hearing on 30 September and also the Bar Association of Queensland (BAQ) in their submission to the Committee.
Specifically, Mr Budden from the QLS made valid points in relation to potential unintended consequences from reclassifying offences at the public hearing:

> ***Mr McARDLE:*** *You raise clause 18 in your submission and the retrospective nature of the penalty provision. Could you explain that a bit further? I have read your submission.*
> ***Mr Budden:*** *Sure. One of the issues in relation to reclassifying offences that has occurred in the past is that the elements of the new offence probably were not explored at the original time. I am not suggesting that someone would be encouraged to plead guilty because they are going to get a lesser sentence. They would only be advised to plead guilty if their lawyer said they have made the case against you. What they might not explore are the terms of this offence. For example, if it is an assault occasioning bodily harm from two years previously, the question of whether or not it occurred inside a domestic relationship may not have been explored. The two parties involved in the offence may have a different view as to whether or not that did occur in a domestic relationship. It will be too late at the later offence for that to be explored given that what has likely happened in those circumstances is a plea of guilty has been made on an agreed statement of facts and a very brief statement of facts, probably through a QP9 or something of that nature.*
> *The danger we see is that you have pleaded guilty to an offence which can be turned into a different offence or a greater offence and the elements of all of that have not been addressed in the initial phase. However, if you move forward from this point—if any offence could be reclassified after this bill comes through—then you are well and truly aware and your legal advisers can say, 'Are you in a relationship with this person, because this may be*

something that comes down the track and we need to explore this now?' whereas that opportunity is denied with an offence that happened two or three years ago.

Officers from the Department of Justice and Attorney-General confirmed that the Bill allows a former conviction to be retrospectively changed to a domestic violence conviction.

Further, the QLS state in their submission that:

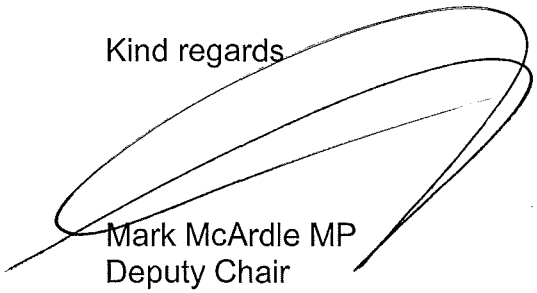
Given the mandatory nature of the provisions in the proposed section 12A(6), the Society suggests that consideration be given to amending the provision to ensure that it can only apply to convictions which occur following the commencement of the amendments.

The BAQ submits that:

BAQ submits that the proposed amendments to the Penalties and Sentences Act 1992 ought to be reworded to clarify that there is no retroactive operation of section 12A(3).

The LNP Opposition would agree with those comments and will elaborate further during the Second Reading Debate.

Kind regards



Mark McArdle MP
Deputy Chair
Communities, Disability Services and Domestic and Family Violence Prevention Committee
Shadow Minister for Health
Member for Caloundra