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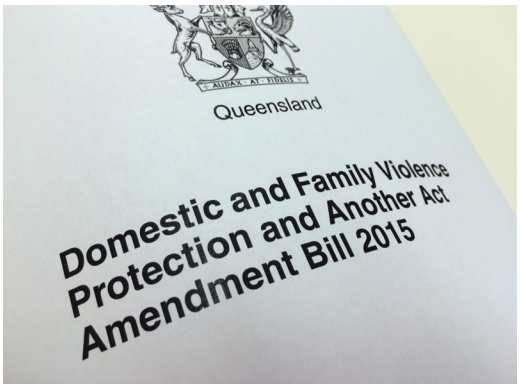

Domestic and Family Violence Protection and Another Act Amendment Bill 2015

Report No. 10, 55th Parliament
Communities, Disability Services and Domestic and Family Violence Prevention Committee
November 2015

Parliamentary Committees

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Communities, Disability Services and Domestic and Family Violence Prevention Committee

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The Committee also thanks the Member for Aspley, Member for Greenslopes and Member for Lytton for their assistance during the Committee's inquiry.

Contents

Abbreviations and Glossary

Aggrieved	The person for whose benefit a domestic violence order, or police protection notice, is in force or may be made - *Domestic and Family Violence Protection Act 2012,* section 21
ALRC	Australian Law Reform Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Bill	Domestic and Family Violence Protection and Another Act Amendment Bill 2015
CCIDFV	Cairns Collective Impact on Domestic and Family Violence
Committee	Communities, Disability Services and Domestic and Family Violence Prevention Committee
Department	Department of Communities, Child Safety and Disability Services
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DVO	Domestic Violence Order - includes a protection order and temporary protection order – *Domestic and Family Violence Protection Act 2012*, section 23
IP Act 1971	*Invasion of Privacy Act 1971*
IWSS	Immigrant Women's Support Service
Minister	Hon. Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs
PACT	Protect All Children Today Inc.
POQA	*Parliament of Queensland Act 2001*
PPRA	*Police Powers and Responsibilities Act 2000*
Protection Order	An order made against a person (the respondent) by a court for the benefit of another person (the aggrieved) if the court is satisfied that: • a relevant relationship exists between the aggrieved and the respondent • the respondent has committed domestic violence against the aggrieved, and • the protection order is necessary or desirable to protect the aggrieved from domestic violence *Domestic and Family Violence Protection Act 2012*, section 37
PSBA	Public Safety Business Agency

QCU	Queensland Council of Unions
QDVSN	Queensland Domestic Violence Network
QPS	Queensland Police Service
Respondent	A person against whom a domestic violence order, or a police protection notice, is in force or may be made - *Domestic and Family Violence Protection Act 2012,* section 21
Soroptimist International	Soroptimist International of Brisbane Inc.
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*
Temporary Protection Order	An order made in the period before a court decides whether to make a protection order for the benefit of the aggrieved – *Domestic and Family Violence Protection Act 2012*, section 23
WLS	Women's Legal Service Inc. Queensland

Chair's foreword

This Report presents a summary of the Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Domestic and Family Violence Protection and Another Act Amendment Bill 2015.

The Bill amends the *Domestic and Family Violence Protection Act 2012* to implement a further suite of recommendations made in the *Special Taskforce on Domestic and Family Violence in Queensland's* report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland*. The Bill also amends the *Police Powers and Responsibilities Act 2000* to clarify that the use of body-worn cameras by police officers in the performance of their duties is lawful.

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 Communities, Child Safety and Disability Services, the Queensland Police Service and the Public Safety Business Agency.

I commend this Report to the House.

Ms Leanne Donaldson MP

Chair

Recommendations

Recommendation 1 **11**

The Committee recommends that the Domestic and Family Violence Protection and Another Act Amendment Bill 2015 be passed.

Recommendation 2 **21**

The Committee recommends that:

- the Domestic and Family Violence Protection and Another Act Amendment Bill 2015 be amended to omit clause 4, and
- the Department of Communities, Child Safety and Disability Services reconsiders how best to ensure that the victims of domestic and family violence are afforded the opportunity to express their views and wishes, as part of its wider review of the *Domestic and Family Violence Protection Act 2012* and implementation of the Taskforce Recommendations.

Recommendation 3 **28**

The Committee recommends that the Queensland Government works with the Magistrates Courts to establish procedures and guidelines to ensure that decisions made, under section 41D of the *Domestic and Family Violence Protection Act 2012,* about which court should hear cross applications are made in a timely manner and in accordance with the principles at section 4 of the *Domestic and Family Violence Protection Act 2012.*

Recommendation 4 **28**

The Committee recommends that the Queensland Government works with the Magistrates Courts to ensure that applicants for domestic violence orders are given the opportunity to provide details about why a matter should be heard in a particular court.

Recommendation 5 **42**

The Committee recommends that the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs clarifies during the second reading debate what:

- training police officers receive in relation to the use of body-worn cameras at domestic and family violence incidents
- measures are in place to ensure that police officers are aware of, and comply with, the Queensland Police Service's policy on the use of body-worn cameras and the handling and storage of body-worn camera recordings, and
- procedures are in place to deal with non-compliance with the policy.

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 established on 27 March 2015 under the *Parliament of Queensland Act 2001* (POQA) 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 POQA 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 Domestic and Family Violence Protection and Another Act Amendment Bill 2015 (Bill) was introduced into the House on 29 October 2015 by the Hon. Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs (Minister). The Bill was referred to the Committee for examination. The Committee was required to report to the Legislative Assembly by 26 November 2015.

On 2 November 2015, the Committee wrote to the Department of Communities, Child Safety and Disability Services (Department) seeking information about the Bill. Officers from the Department, the Queensland Police Service (QPS) and the Public Safety Business Agency (PSBA) briefed the Committee on the Bill on 11 November 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 299 stakeholder organisations. The Committee received 13 submissions (see **Appendix A**). On 18 November 2015, the Department and PSBA responded to the issues raised in submissions.

The Committee held a public hearing on the Bill on 18 November 2015 to hear from invited witnesses (see **Appendix B**).

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

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

The transcript of the public briefing on 11 November 2015, correspondence from the Department, QPS and PSBA, the transcript of the public hearing on 18 November 2015, 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/07DFVPAABill2015.

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).

The Bill amends the *Domestic and Family Violence Protection Act 2012* (DFVP Act) to:

- introduce a principle that, to the extent it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision is made under the DFVP Act (Taskforce Recommendation 129)
- require a court, if it is aware of cross applications for protection orders, to hear the cross applications together and determine the person most in need of protection, unless it is necessary to deal with the applications separately, in the interests of the safety, protection and wellbeing of an aggrieved (Taskforce Recommendation 99)
- require a court to consider the imposition of an ouster condition to remove a perpetrator from the family home when making a domestic violence order (DVO), taking into account the wishes of the aggrieved (Taskforce Recommendation 117), and
- make minor and technical amendments to resolve anomalies and address operational issues.[3]

The Bill also amends the *Police Powers and Responsibilities Act 2000* (PPRA) to clarify that the use of body-worn cameras by police officers acting in the performance of their duties is lawful (Taskforce Recommendation 131).

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]

The Department has also undertaken "targeted consultations with key legal stakeholders and specialist domestic and family violence service providers on the proposed amendments to the DFVP Act".[5]

3 Domestic and Family Violence Protection and Another Act Amendment Bill 2015, *Explanatory Notes* (Explanatory Notes), pp.3-4
4 Explanatory Notes, p.5
5 Explanatory Notes, p.5

The Explanatory Notes state that "No further consultation has occurred in relation to the amendment to the *Police Powers and Responsibilities Act 2000* as the amendment is simply designed to support the use of body-worn cameras".[6]

However, at the public briefing, Chief Superintendent Matthew Vanderbyl, Commonwealth Games Group, QPS, clarified that:

> *The Police Union has been consulted throughout the development of our entire body worn video project … Given that the legislation seemingly seeks to just expunge any doubt whatsoever, that degree of consultation throughout the course and the trajectory of the overall body worn video project would seem to be satisfactory, in our view.*[7]

Committee comment

The Committee notes the consultation undertaken by the Department and QPS on the proposed amendments to the DFVP Act and PPRA.

1.5 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, QPS and PSBA and from submitters, the Committee recommends that this Bill be passed.

Recommendation 1

The Committee recommends that the Domestic and Family Violence Protection and Another Act Amendment Bill 2015 be passed.

6 Explanatory Notes, p.5

7 Chief Superintendent Matthew Vanderbyl, Commonwealth Games Group, Queensland Police Service (QPS), *Public Briefing Transcript*, 11 November 2015, p.6.

2. Policy background and context

The Bill proposes to implement a further suite of recommendations made in the Taskforce Report, following the enactment of the *Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Act* 2015 and *Criminal Law (Domestic Violence) Amendment Act 2015*; and the introduction of the Family Responsibilities Commission Amendment Bill 2015.[8]

In her explanatory speech, the Minister indicated that the Queensland Government will be introducing further legislation to implement Taskforce Recommendations. The Minister stated that the Bill, "lays a strong foundation for further reforms to help keep victims of domestic and family violence safe and hold perpetrators to account".[9]

2.1 Special Taskforce on Domestic and Family Violence in Queensland

The Taskforce, which was 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 violence.[10]

On 28 February 2015, the Taskforce Report was released which contains 140 recommendations aimed at addressing domestic and family violence in Queensland.

The Queensland Government released its response to the Taskforce Recommendations on 18 August 2015, and accepted all 121 recommendations directed at government.

The Bill implements, or partly implements, three recommendations for specific amendments to the DFVP Act, to:

- require the court to consider a family law order when making a DVO; and require the court to consider concurrent cross applications at the same time and to consider a later application in the context of an existing order (Taskforce Recommendation 99)
- require courts when making a DVO to consider whether a condition excluding the perpetrator from the home should be made, having regard to the wishes of the victim (Taskforce Recommendation 117), and

8 See Communities, Disability Services and Domestic and Family Violence Prevention Committee - *Report no.5, 55th Parliament: Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015*, October 2015; *Report no.6, 55th Parliament: Criminal Law (Domestic Violence) Amendment Bill 2015*, October 2015; *Report no.9, 55th Parliament: Family Responsibilities Commission Amendment Bill 2015*, November 2015.

9 Hon. Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs (Minister), *Hansard*, 29 October 2015, p.2591

10 *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

- provide for victim impact statements to be introduced and for mandatory consideration by the courts in civil applications for protection orders (Taskforce Recommendation 129).[11]

The Taskforce Report also recommended an overarching review of the DFVP Act to ensure it provides a cohesive legislative framework that incorporates the reforms recommended in the Taskforce Report (Taskforce Recommendation 140).[12] In making this recommendation, the Taskforce highlighted a number of issues or changes for consideration, two of which are included in minor technical amendments under the Bill – see section 6 of this report.[13]

In addition, the Taskforce Report recommended that the QPS develop and implement a strategy for increasing criminal prosecution of perpetrators of domestic and family violence through enhanced investigative and evidence-gathering methodologies (Taskforce Recommendation 131).[14] Among the various operational measures and policy options cited, the Taskforce noted the potential benefits of the enhanced use by police officers of existing operational evidence-gathering tools, including body-worn cameras.[15]

The Bill responds to this recommendation through amendments to the PPRA to support the lawful use of body-warn cameras by Queensland police officers.

11 Department of Communities, Child Safety and Disability Services (Department), *Briefing Note*, 4 November 2015, p.1
12 Department, *Briefing Note*, 4 November 2015, p.1
13 Explanatory Notes, p.3
14 Department, *Briefing Note*, 4 November 2015, p.1
15 Taskforce Report, February 2015, p.320

3. Ensuring domestic and family violence victims' voices are heard

The Taskforce heard that domestic violence victims often feel that their voices are not heard, including during court proceedings,[16] and that aggrieved women often feel removed from the process.[17] In light of these concerns, a number of submissions to the Taskforce suggested that victim impact statements should be introduced in domestic and family violence matters.[18]

In response, Taskforce Recommendation 129 recommended that "the Queensland Government amends the Domestic and Family Violence Protection Act to provide for victim impact statements to be introduced and for mandatory consideration by the courts in applications for protection orders".[19]

3.1 Proposed amendment

Section 4 of the DFVP Act sets out the principles for administering the Act. The overarching principle for the administration of the DFVP Act is that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount. Section 4 of the DFVP Act also includes a number of other principles, namely that:

- people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives minimised
- perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change
- if people have characteristics that make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics
- in circumstances where there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of domestic violence, including self-protection, the person who is most in need of protection should be identified, and
- a civil response under the DFVP Act should operate in conjunction with, not instead of, the criminal law.[20]

Clause 4 amends section 4 of the DFVP Act to include an additional principle to provide that to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under the DFVP Act.

The Department advised that the Bill does not "…provide for victim impact statements to be considered on civil applications for a domestic violence protection order… Further consideration is currently being given to enabling evidence about impacts of alleged violence to be considered by a court".[21] However, "The government response to recommendation 129 committed to ensuring that victims' voices are heard

16 Department, Briefing Note, 4 November 2015, p.5
17 Taskforce Report, February 2015, p.315
18 Taskforce Report, February 2015, p.315
19 Taskforce Report, February 2015, p.315
20 *Domestic and Family Violence Protection Act 2012*, section 4
21 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, pp.3 and 6

in all domestic violence related legal processes",[22] and the Bill "partially implements this recommendation and the Government response" by adding a principle of victim inclusion and consultation to the DFVP Act.[23]

3.2 Submissions

Concerns about the proposed amendments at clause 4

Submitters supported, in principle, that victims should be given an opportunity to express their views and wishes when applying for a DVO. However, they raised significant concerns about the approach taken in the Bill and cautioned against unintended consequences.[24]

The Immigrant Women's Support Service (IWSS), Women's Legal Service Inc. Queensland (WLS) and Australian Law Reform Commission (ALRC) emphasised that given the highly charged context of domestic violence incidents, especially where victims are fearful for their life due to violence or threats from the perpetrator, victims may not have the capacity to articulate their wishes or may choose not to do so.[25]

The ALRC noted that previous reports have documented a wide range of factors that may affect victims' testimony in this regard, or lead to withdrawals or variations of applications, including a fear of retribution, financial dependence on the perpetrator, or a hope of encouraging the perpetrator to withdraw a cross application.[26]

The WLS and Soroptimist International of Brisbane Inc. (Soroptimist International) stated that the inclusion of the provision may give added weight to the victims' views at the expense of their safety and contrary to their best interests. They were also concerned that any statement made by the aggrieved may be used against them in future court proceedings, for example in the Family Court.[27] At the public hearing, the WLS stated, in relation to applications to vary a protection order, that:

> *It sometimes takes women nine and 10 times to be able to leave these relationships and so victims will withdraw. We are just concerned if that stuff about hearing the victim's voice is in there it could supersede the issue of safety, because the court still has the ability, if she wants to withdraw the application, to still require the order to be in place but that she can have contact with him. In some circumstances it could be better for her to have that order in place and for the court to leave it imposed, because if another incident occurs you can then easily vary the order and increase the*

22 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.3

23 Department*, Briefing Note*, 4 November 2015, p.5

24 Queensland Domestic Violence Network (QDVSN), Submission no.2, Women's Legal Service Inc. Queensland (WLS), Submission no. 4, Cairns Collective Impact on Domestic and Family Violence (CCIDFV), Submission no.6, Australian Law Reform Commission (ALRC), Submission no.8, Queensland Council of Unions (QCU), Submission no. 10, Soroptimists International of Brisbane Inc. (Soroptimist International), Submission no.11, and Immigrant Women's Support Service (IWSS), Submission no.12

25 IWSS, Submission no.12, WLS, Submission no.4 and ALRC, Submission no.8

26 ALRC, Submission no.8, p.7

27 WLS, Submission no.4, p.4 and Soroptimist International, Submission no.11, pp.3-4

> *protection again rather than starting from the beginning and going through the whole process of applying again.*[28]

Soroptimist International also stated the amendment "creates a risk that where a victim is not able to demonstrate that they are in fear, or where for whatever reason they moved on and don't feel fear, that an Order is not made".[29]

The WLS were also concerned that magistrates may interpret the principle at new section 4(2)(b) of the DFVP Act as an obligation to question the victim about their views and wishes in court, and possibly in front of perpetrator.[30] The WLS stated that "…we know that is not what is intended, but magistrates are busy people who do not necessarily read explanatory memoranda of legislation, work in isolation and interpret legislation as best they can from the words that are in the legislation".[31]

Soroptimist International stated that the amendment exposes a respondent to unfairness because they will be unable to present evidence of their beliefs, views and wishes. Soroptimist International stated that a respondent will be "left at a considerable disadvantage to be unable to challenge those statements that may be made without any evidentiary basis".[32]

Furthermore, submitters suggested that the Taskforce Recommendation that informed the amendment may in itself reflect a misinterpretation of victims' concerns about not being heard in proceedings. At the public hearing, the WLS suggested that:

> *… when women say, 'I'm not heard in legal proceedings,' that does not necessarily translate over to, 'I want to make a statement in court. I want to talk in court. I want to give evidence in court.' What that really can mean is, 'I want the police officer to do the best application and make the safest application for me.*
>
> *I want the magistrate not to get mad at me because I'm traumatised and I didn't fill out the form properly and I didn't detail as much as I should have.' They are saying, 'I'm a victim of domestic violence. I'm traumatised.' That is, I suppose, our interpretation of what they are talking about in relation to being heard.*[33]

The Queensland Domestic Violence Network (QDVSN) similarly stated:

> *In going back to the task force report where the recommendation was made, it seemed to be that the main emphasis on that recommendation came from a submission from the Bar Association of Queensland, which seemed to feel that it would be a jolly good idea for the perpetrator to have to sit in court, not be able to speak, and listen to the impact that they have had on the victim. While that may be of some use … the majority of the domestic violence protection order applications are*

28 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2014, p.5
29 Soroptimist International, Submission no. 11, p.4
30 WLS, Submission no.4, p.4
31 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p.2
32 Soroptimist International, Submission no. 11, pp.3-4
33 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, pp.4-5

> *dealt with in quite a quick way and unless they go actually to a full hearing … the decisions are made on the material … within the domestic violence order application.*
>
> *Whilst we have some clients who have a concern that maybe they have not had a chance to be heard, in the main it is not necessarily around wanting to be heard about what the impact has been on them but more that they have not felt that they have been heard about what is being done and, therefore, not getting the order that they need in the first place.*[34]

A number of submitters suggested that the DFVP Act already provides adequate opportunities for victims to express their views and wishes, including in the DVO application form and affidavit process.[35] Soroptimist International suggested that "…if additional factors are introduced, it may create an extra hurdle for a victim to overcome and may also undermine the justice process".[36]

The QDVSN, Cairns Collective Impact on Domestic and Family Violence (CCIDFV) and WLS suggested that the policy objectives of the amendment might be better achieved by other measures, which may be less confronting to the victim, including:

- ensuring that an aggrieved person is able to access a frontline domestic violence support service to talk through the effects of her abuse[37]
- improved education and training of police, supported by protocols, which may assist the police in having more in-depth conversations with the women about the types of conditions required in police applications[38]
- improvements to the DVO application form, for example, clearly setting out the types of conditions that may attach to an order[39], and
- careful questioning by magistrates to find out from victims who have not filled out an application as fully as required, the necessary information to allow them to make a safe order.[40]

Submitters also highlighted that police prosecutors have limited time to speak to the aggrieved prior to hearings due to the timing of hearings and workload of magistrate courts. QDVSN stated "… if you have a court where maybe there are 50 matters being heard that morning often it is almost like a scattergun approach and people are in and out very, very quickly".[41] At the public hearing, QDVSN stated:

> *… often … police prosecutors have actually had no interaction with that person [the aggrieved] at all. So I think the fact that if they got to have a conversation with the*

34 Ms Amanda Lee-Ross, QDVSN, *Public Hearing Transcript*, 18 November 2015, p.8
35 Soroptimist International, Submission no. 11, p.2, CCIDFV, Submission no.6, p.1 and WLS, Submission no.4, p.4
36 Soroptimist International, Submission no. 11, p.2
37 QDSVN, Submission no.2, p.2
38 WLS, Submission no.4, p.3
39 ALRC, Submission no.8, p.7
40 WLS, Submission no.4, pp.3-4
41 Ms Amanda Lee-Ross, QDVSN, *Public Hearing Transcript*, 18 November 2015, p.9

> *police prosecutor prior to their matter being heard it would go along way towards them actually feeling as if somebody was listening to them.*[42]

The WLS submitted that if a legislative approach is deemed necessary, clause 4 should be amended so that rather than the victims' views and wishes being "sought before a decision affecting them is made under the Act", the views and wishes of people who fear or experience domestic violence should be *considered* before a decision affecting them is made.[43]

Views expressed about victim impact statements

While not provided for in the Bill, the QDVSN, WLS, Soroptimists International and CCIDFV stated that they did not support the use of victim impact statements to assist the courts in considering DVO applications. Submitters stated that:

- the benefits of victim impact statements are unclear
- victim impact statements will involve extra work for the victims, but will provide little assistance to the courts
- victim impact statements may inflame a perpetrator's resentment of an aggrieved person[44], and
- victim impact statements are likely to be "very unsafe" and do not translate to civil processes and may not be in the best interests of vulnerable parties.[45]

Protect All Children Today Inc. (PACT) also raised concerns about the weight given to victim impact statements in child related matters. PACT stated that "… often the effects/impacts of the crime on a child are not evident until the child becomes an adult, forms relationships, starts having their own families and so on".[46]

3.3 Department's response

The Department clarified that the Bill does not contain any provisions for victim impact statements to be used in domestic violence proceedings. Rather, the Bill adds a new principle to the DFVP Act to provide that to the extent that is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under the Act.[47]

The Department stated that "the amendment in the Bill is considered necessary, despite the ability for the court to receive and consider in evidence the views and wishes of a person who fears or experiences domestic violence".[48] The Department stated that:

> *An aggrieved person and a respondent to an application for a protection order may provide a court with information about their views and wishes through a variety of*

42 Ms Amanda Lee-Ross, QDVSN, *Public Hearing Transcript*, 18 November 2015, p.9
43 WLS, Submission no.4, p.4
44 QDSVN, Submission no.2, p.2
45 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p.5
46 Protect All Children Today Inc. (PACT), Submission no.7, p.1
47 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.9
48 Department, *Response to Questions Taken on Notice*, 13 November 2015, p.3

> *mechanisms including in evidence in the proceedings. Despite this, the Taskforce found that victims of domestic violence often feel their voices are not heard.*[49]

The Department advised that:

> *The purpose of including an additional principle is to recognise the rights of victims to be treated with respect and dignity and to have information about their views and wishes provided to the court if they would like this to occur.*
>
> *There is no mandatory requirement for a victim to provide the information to the court and it will continue to be a matter for each aggrieved person as to whether they choose to provide any information based on their personal circumstances.*
>
> *Victims will continue to be able to provide information in relation to their views and wishes to the court through a variety of mechanisms, including the application process and throughout the hearing.*[50]

The Department explained that there "… is no requirement for courts to consider information about the views and wishes of victims, which will enable the courts to exercise discretion in how they deal with information about a victim's views and wishes in individual cases".[51] The Department further advised that "… it is not anticipated that the inclusion of an additional guiding principle will impose any additional impost on the court that doesn't already exist". [52]

The Department also stated, in relation to concerns about unintended consequences and adverse impacts on victims, that:

> *The paramount principle of the Act is the safety, protection and wellbeing of people who fear or experience domestic violence, including their children. This will continue to be the overriding consideration of every decision made, and action taken, by a person involved in the administration of the Act.*[53]

In relation to concerns raised about unfairness to respondents, the Department stated that:

> *The addition of the new principle will not interfere with existing requirements for procedural fairness. Depending on the nature and content of the views and wishes expressed, a victim could be cross-examined in relation to them [the victim]…*
>
> *In addition, respondents will continue to have the ability to provide the court with any information relevant to the proceedings.*[54]

49 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.10
50 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.9
51 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.9
52 Department, *Response to Questions Taken on Notice*, 13 November 2015, p.3
53 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.8
54 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.10

At the public briefing, the Department advised that the respondent could make "submissions from the bar table on an interim hearing, or interim orders being considered by a court either directly from a respondent or through their legal representative".[55]

The Department also advised that:

> *The Implementation of other Taskforce recommendations will help minimise the potential for unintended consequences. In particular, those relating to improving police training (recommendations 134-138) and improving guidance and training for magistrates.*[56]

In relation to the concerns expressed by submitters about the use of victim impact statements, the Department indicated that "The issues raised about Victim Impact Statements being used in proceedings on application for a protection order will be taken into consideration as part of this work [its review of the DFVP Act]".[57]

Committee comment

Despite the Department's assurances that new principle will not require the courts to change their processes for dealing with applications and will not require victims to make statements in the court room, the Committee shares submitters' concerns that the amendments at clause 4 may have unintended consequences to the detriment of the best interests of victims.

The Committee also has concerns about the potentially adverse impact the amendments may have on the resources of already busy Magistrates Courts.

The Committee notes that the DFVP Act already provides opportunities for the aggrieved to express their views and wishes, and agrees with submitters that the concerns raised with the Taskforce about victims not being heard may be more appropriately addressed via non-legislative approaches.

The Committee recommends that the Department consider the approaches identified by submitters to ensure that victims' views and wishes are heard, including:

- changes to the DVO application form to provide a greater opportunity for the aggrieved to express their views and wishes
- additional training for police and judicial officers in relation to dealing with domestic and family violence victims, and
- where possible, providing more time for police prosecutors to speak to the aggrieved to ascertain their views and wishes prior to a hearing.

55 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.7

56 Department, *Response to Issues Raised in Submissions*, 18 November 2015, pp.9-10

57 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.9

Having regard to the concerns raised by submitters, the Committee recommends that clause 4 be omitted and that the Department reconsider how best to ensure that the views and wishes of victims are heard as part of its wider review of the DFVP Act and implementation of other Taskforce Recommendations.

Recommendation 2

The Committee recommends that:

- the Domestic and Family Violence Protection and Another Act Amendment Bill 2015 be amended to omit clause 4, and
- the Department of Communities, Child Safety and Disability Services reconsiders how best to ensure that the victims of domestic and family violence are afforded the opportunity to express their views and wishes, as part of its wider review of the *Domestic and Family Violence Protection Act 2012* and implementation of the Taskforce Recommendations.

4. Cross applications for protection orders

A cross application for a protection order occurs when both parties seek to establish, or vary the terms of, protection orders against each other. Currently, the DFVP Act provides that a court may hear cross applications together, but it does not require the courts to do so.[58]

The Taskforce identified significant issues about cross applications for protection orders, including:

- unmeritous cross applications for protection orders being made to deliberately delay proceedings, and
- hearings occurring and cross orders being made:
    - when they may not be necessary or desirable, and
    - in direct contravention of the principles of the DFVP Act, which require the court to identify the person most in need of protection when there are conflicting allegations of domestic violence.[59]

Taskforce Recommendation 99 recommended that the Government amend the DFVP Act to require the courts to consider cross applications together and to consider a later application between the same parties in the context of a protection order already in place.[60]

4.1 Proposed amendment

Clause 5 implements the Government's response to Taskforce Recommendation 99 by inserting new Division 1A - Cross Applications into the DFVP Act to require the courts to consider cross applications together.

At the public briefing, the Department stated:

> *If cross applications are not heard together, a court may not have all of the information before it when it is determining an application for a protection order, and this can result in a primary perpetrator of violence not being identified and orders being made against both parties … These changes will ensure that the court is required to consider the existing principles in the current section 4(2)(d) of the Act that where there are conflicting allegations of domestic violence the person most in need of protection should be identified and protected.*[61]

Identifying cross applications

New sections 41 and 41A define the term cross application and specify the circumstances where the court is required to hear applications for protection orders together, namely:

58 *Domestic and Family Violence Protection Act 2012*, section 41
59 Department, *Briefing Note*, 4 November 2015, p.4
60 Taskforce Report, February 2015, p.284
61 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript,* 11 November 2015, pp.2-3

- where there are two applications for a protection order and the same individuals are named as either an aggrieved or respondent in both the first application (original application) and the second application (cross application)
- where the same individuals have existing protection orders against each other, and each individual has made an application to the court to vary either of the current orders (respectively, an original application to vary the first order and a cross application to vary the second order), and
- where a protection order has been made (original protection order) and an application has been made to vary that order (variation application); and a new application for a protection order (cross application) has been made involving the same individuals.[62]

New Section 41B provides that where a cross application is made, parties to a proceeding for the original application, variation application or cross application who are aware of the other application have an obligation to inform the court to which the application is made.[63]

The Explanatory Notes state that "… it is intended that a police officer who has made an application to the court is required to inform the court of the existence of any other relevant application the police officer is aware of".[64] The Explanatory Notes state that new section 41B will "… ensure the court is aware of cross applications".[65]

Procedures for dealing with cross applications

Clause 5 provides a new framework for dealing with cross applications either before:

- the same court (new section 41C of the DFVP Act), or
- different courts (new section 41D of the DFVP Act).

Section 41C provides that where cross applications are before the same court, the court must deal with the applications together; unless the court considers it necessary to hear the applications separately for the safety, protection or wellbeing of the person named as the aggrieved. The court must also, in hearing the applications, identify the person who is most in need of protection.

Section 41D provides that where cross applications are before different courts, the court must consider whether to hear the applications together, or order that the application before the court be dealt with by the other court. In reaching a decision on this matter, the court must consider whether it is necessary to hear the applications separately for the safety, protection or wellbeing of the person named as the aggrieved.

New sections 41C(3) and 41D(4) specify that if the court decides to hear the applications separately, the court must give reasons for the decision.

New section 41E establishes a procedure for dealing with circumstances where there are cross applications, and the aggrieved in the first application is not served with the subsequent

62 Department, *Briefing Note*, 4 November 2015, p.4
63 Explanatory Notes, pp.7-8
64 Explanatory Notes, p.8
65 Explanatory Notes, p.8

cross application within a *reasonable period*.[66] The Explanatory Notes state that "The intention of this section is to require the courts to adjourn the proceedings if it considers that the original application was not served with the subsequent application within a reasonable time period".[67]

However, section 41E(6) provides that the court may hear a cross application either before or with the original application, with the consent of the original applicant.[68]

Adjournments and temporary protection orders

Clause 5 provides that if the court adjourns the hearing of either or both applications, it must consider making a temporary protection order.

Under section 45 of the DFVP Act, the court may make a temporary protection order against a respondent only if the court is satisfied that a *relevant relationship*[69] exists between the aggrieved and respondent and the respondent has committed domestic violence against the aggrieved.

Clause 7 deletes and replaces section 49 of the DFVP Act to require that when considering a temporary protection order after adjourning a hearing under new section 41E (Unreasonable notice of cross application), the court must also be satisfied that the order is "necessary or desirable to protect the aggrieved, or another person, named in the application pending a decision on the application".[70]

The Department advised that these provisions will "…ensure there is no gap in protection as a result of this new approach, where the hearing of cross applications is adjourned".[71]

Consideration of existing protection orders

New section 41F requires that the court consider any existing protection order and associated court records when determining a cross application involving the same individuals.

The Explanatory Notes state that this will "…ensure that the court has all available evidence, relating to any existing protection orders in place, to inform the determination of the subsequent application" and "… assist the court in identifying the person who is most in need of protection".[72]

To facilitate this, section 41F places an obligation on any party who is aware of an existing order involving the same individuals to inform the court of the existing order.[73]

66 The term *reasonable period* is defined as at least one business day before the day of the hearing of the original application or variation application, or within a longer period before the day of the hearing of the original application or variation application the court considers is reasonable in the circumstances – Domestic and Family Violence Protection and Another Act Amendment Bill 2015, clause 5 (new section 41E(11) of the *Domestic and Family Violence Protection Act 2012*)

67 Explanatory Notes, p.8

68 Explanatory Notes, p.8

69 The term *relevant relationship* is defined at section 13 of the *Domestic and Family Violence Protection Act 2012* as an intimate personal relationship, a family relationship or an informal care relationship

70 *Domestic and Family Violence Protection Act 2012,* new section 49(3)

71 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.3

72 Explanatory Notes, pp.8-9

73 Explanatory Notes, p.9

4.2 Submissions

Submitters agreed that cross applications should be heard together as much as possible, to allow the court to appropriately determine who is most vulnerable and in need of protection, and whether a protection order is necessary or desirable.[74]

The WLS stated that "it is well established that perpetrators of violence use legal proceedings and the legal process to further abuse, harass and intimidate victims of violence".[75] The IWSS provided case studies illustrating the misuse of cross applications, and also highlighted the potentially significant adverse consequences for victims when courts are unable to identify the primary aggressor.[76]

At the public hearing, the WLS stated that:

> *When those cross applications are made … to the person who is the most vulnerable and who perhaps is really the true victim it is such a slap in the face by the judicial system and it really carries with them through their other legal processes. It does affect family law proceedings given the fact that there are these cross orders. Everyone goes, 'Oh well. Everyone's as bad as one another here,' and they determine cases on that basis rather than maybe looking a little bit deeper.*[77]

The IWSS submitted that women victims of violence for whom English is not their first language may be particularly vulnerable, due to:

- difficulties communicating their version of events or refuting the counter claims of the other party, particularly in the absence of accredited interpreters
- prior fears of authority in their country of origin, and
- a potential lack of awareness or understanding of Australian laws.[78]

The IWSS suggested that early and ongoing engagement of interpreters to assist individuals for whom English is not a first language to communicate their story could also serve to facilitate more informed decisions as to who is most in need of protection.[79]

In addition, WLS suggested that the Government's current review of the DFVP Act should consider whether a finding by a court about which party is most vulnerable and in need of protection should be noted on the protection order.[80]

The QDVSN highlighted "the critical role that gendered attitudes and lack of knowledge of the dynamics of domestic violence can have on decision-making in domestic violence court hearings". The QDVSN and

74 WLS, Submission no. 4, p.2, QDVSN, Submission no.2, p.1, IWSS, Submission no.12, p.3, ALRC, Submission no.8, p.4, Aboriginal and Torres Strait Islander Legal Service (ATSILS), Submission no.5, p.2
75 WLS, Submission no. 4, p.2
76 IWSS, Submission no.12, pp.2-3
77 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p.3
78 IWSS, Submission no.12, p.2
79 Ms Maree Kaiser, IWSS, *Public Hearing Transcript*, 18 November 2015, p.19
80 WLS, Submission no. 4, p.2

ALRC submitted that further training to police, prosecutors and the judiciary will help identify who is in most need of protection and minimise cross applications.[81]

The WLS and the Queensland Council of Unions (QCU) recommended the development of a legislative process or guidelines to assist the courts in determining the most suitable registry to hear applications, under new section 41D, where there are cross applications.[82] At the public hearing, WLS stated:

> *… the courts require some guidelines about who makes the determination about which registry should be deciding the matter. What happens is that one person can file in one registry and another person file in another, and that could be in rural Queensland. There is nothing in the bill at the moment that provides guidance in relation to making a determination. Is it just first in, first served or is there some other category? I would think that safety or some issue in relation to who is the most vulnerable should be feeding into assisting the court to make that determination. We would not be wanting to advocate first in, first served because that can be a real incentive for perpetrators of violence to try to straightaway apply for applications and get in first before the victim. I think that some thought needs to be given to that.*[83]

The WLS suggested that the process would need "… some sort of preliminary decision-making about who is the most in need of protection at a preliminary stage to work out where the most appropriate jurisdiction is".[84]

4.3 Department's response

In response to WLS' and QCU's concerns about determining which court should make the decision regarding the transfer of applications to enable them to be heard together, the Department advised that in practice, the decision will be made by the court that first hears one of the applications once the cross applications is made.[85]

The Department advised, however, that, in all cases, the court is required to "determine who is the person most in need of protection, because the person who filed the first application actually may not be the person who is most in need of protection".[86]

The Department also highlighted that proposed new section 41D provides additional safeguards in relation to the decisions regarding cross applications by requiring the court to:

- consider if it is necessary to hear the applications separately for the safety, protection and wellbeing of an aggrieved person
- provide reasons if it decides to hear the applications separately, and

81 QDVSN, Submission no.2, p.1 and ALRC, Submission no.8, p.3
82 WLS, Submission no. 4, p.3 and Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p.2
83 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p2
84 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p2
85 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.2
86 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.9

- consider making a temporary protection order in circumstances where it is necessary to adjourn the hearing of an application.[87]

Further, the Department advised:

> *It is considered desirable to allow a court to have the flexibility to determine the most appropriate course of action based on the individual circumstances of the case.*
>
> *If there are safety risks in requiring a victim to attend the court in which a cross application is made, this would justify hearing the applications separately or transferring the cross application to the other court*.[88]

In relation to WLS' suggestion that the person most in need of protection be noted on the DVO, the Department stated that "in practice, the person most in need of protection will be apparent from the outcome of the applications and be recorded by the orders made by the court and the court records".[89]

With regards to training for police and judicial officers, the Department stated that it has accepted three recommendations for professional development on domestic and family violence issues directed at Magistrates (Recommendations 103 to 105) and a number of recommendations designed to improve policing (Recommendations 134 to 138), with work already underway to implement recommendations aimed at police.[90]

The Department also stated that the current review of the DFVP Act will provide an opportunity for consideration as to whether further changes to the provisions dealing with cross applications may be necessary.[91]

Committee comment

The Committee notes stakeholder support for cross applications being heard together wherever possible, and determined in accordance with the principle that the person who is most in need of protection should be identified.

The Committee acknowledges that adjourning hearings to support later cross applications may serve to prolong a victim's suffering or be seen to delay justice. The Committee concurs, however, with the Department's view that "the issues associated with adjourning court proceedings … are outweighed by the need for a court to have all of the information in a particular matter before it and to be able to make a decision around who is the person most in need of protection".[92]

The Committee also recognises that the management of cross applications lodged in different courts is inherently difficult, especially given:

87 Department, *Response to Issues Raised in Submissions*, 18 November 2015, pp.2-3
88 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.3
89 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.2
90 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.2
91 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.2
92 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.9

- the difficulties in reaching a view about the most appropriate court to hear the applications, when the particulars of an application are yet to be heard by either court
- that parties may reside in geographically distant locations, and
- that the courts may be reluctant to add to the workload of another jurisdiction.

The Department advised the Committee that it has explored the process by which decisions may be transferred to enable cross applications to be heard together during consultations with the courts and "have been reassured that this can be worked through".[93]

The Committee considers, however, that the courts would benefit from the establishment of procedures and guidelines to ensure that decisions made, under section 41D of the DFVP Act, about which court should hear cross applications are made in a timely manner and in accordance with the principles at section 4 of the DFVP Act, including the safety, protection and wellbeing of people who fear or experience domestic violence.

Recommendation 3

The Committee recommends that the Queensland Government works with the Magistrates Courts to establish procedures and guidelines to ensure that decisions made, under section 41D of the *Domestic and Family Violence Protection Act 2012,* about which court should hear cross applications are made in a timely manner and in accordance with the principles at section 4 of the *Domestic and Family Violence Protection Act 2012.*

The Committee also recommends that the Queensland Government work with the Magistrates Courts to ensure that applicants for DVOs are given the opportunity to provide details about why a matter should be heard in a particular court, especially where the applicant is aware that an earlier application for a DVO has been made or is aware that a cross application may be made.

The Committee considers such information would assist the courts in reaching a view about which court should hear cross applications under new section 41D of the DFVP Act.

Recommendation 4

The Committee recommends that the Queensland Government works with the Magistrates Courts to ensure that applicants for domestic violence orders are given the opportunity to provide details about why a matter should be heard in a particular court.

The Committee was also cognisant that cross hearings may pose additional safety concerns which require additional protective measures and supports to be put in place in order to enable victims to safely participate in proceedings, including the availability of accredited interpreters and special witness protections.

93 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.9

The Committee notes the Department's advice that:

- court staff are conscious of victims crossing paths with perpetrators, and prioritise the safe passage and accommodation within court precincts of domestic and family violence victims on court days, and
- a number of Queensland Courts also have physical facilities such as safe rooms available, as well as security officers and security cameras present.[94]

However, the Committee understands that these facilities and support options may be significantly limited and overburdened. The Committee notes that the Queensland Government is currently undertaking a comprehensive safety audit of all Queensland courts and tribunal facilities with a view towards assessing the current resourcing of courthouses. The Committee encourages the Queensland Government to ensure the likely additional impost of cross hearings is appropriately addressed, particularly in rural and regional location, where such measures are often particularly limited.

94 Department, *Response to Questions Taken on Notice*, 13 November 2015, p.1

5. Requiring courts to consider ouster conditions

Section 57 of the DFVP Act provides that in making or varying a DVO a court may impose any other conditions the court considers:

- necessary in the circumstances, and
- desirable in the interests of the aggrieved, any named person, or the respondent.

One of the conditions available to the courts is an ouster condition, whereby the respondent is excluded from the aggrieved's usual place of residence.

However, the Taskforce raised concerns that ouster conditions are not considered often enough.[95] The Department advised that court data for 1 July 2012 to 30 June 2015 indicates that ouster conditions were only included in approximately 28 per cent of cases.[96]

The Bill seeks to address this by requiring that a court making a DVO must consider imposing an ouster condition excluding the respondent from the aggrieved person's usual place of residence, including when making a temporary protection order.

5.1 Proposed amendment

Clause 8 amends section 57 of DFVP Act to require that a court consider whether to impose an ouster condition for each DVO it makes.

Clause 10 amends section 64 of DFVP Act to require that the court consider any views or wishes expressed by the aggrieved about the imposition of an ouster condition.

Clause 10 clarifies that the fact that the aggrieved does not express any views or wishes about an ouster condition being imposed "does not of itself give rise to an inference that the aggrieved does not have views or wishes about the condition being imposed".[97]

The Minister, in her explanatory speech, stated that:

> *As recommended by the task force, a court will be required to take into consideration views or wishes expressed by the aggrieved person about whether an ouster condition should be included as part of a protection order. However, whether or not an ouster condition is made will remain the discretion of the court, and the safety, protection and wellbeing of the victim and any children will continue to be the most important consideration for the court. I want to be absolutely clear that it will not be mandatory for the aggrieved to express their views and wishes about the making of an ouster condition, and if they choose not to then no adverse inference can be drawn.*[98]

95 Taskforce Report, February 2015, p.298
96 Department, *Briefing Note*, 4 November 2015, p.5
97 *Domestic and Family Violence Protection Act 2012*, proposed new section 64(2)
98 Minister, *Hansard*, 29 October 2015, p.2590

The Explanatory Notes states that these amendments are similar to the approach taken in Victoria, where "courts must consider including an ouster condition and, where appropriate, include one if the victim does not object".[99]

5.2 Submissions

The WLS, QDVSN, ALRC, QCU and IWSS supported the amendments at clauses 8 to 10.[100] The QDVSN submitted that families' lives are disrupted when they have to flee their home, leaving behind possessions, pets and lifestyle choices, all while a perpetrator may remain "… comfortably surrounded by possessions and lifestyle options".[101]

The QDVSN also stated that "We cannot over-emphasise the loss and devastation as children are forced to leave friends and school and activities, women are unable to continue their career and friendships, and wider family connections are disrupted".[102]

The ALRC highlighted that the provisions are in keeping with its recommendation that "State and territory family violence legislation should require judicial officers making protection orders to consider whether or not to make an exclusion [ouster] order … even if the person has a legal or equitable interest in such premises".[103]

The IWSS stated that "Requiring the court to consider making an ouster condition, instead of disrupting the life of the person experiencing the violence; may remove any perceived blame which she may receive from the perpetrator in retribution".[104] In addition, IWSS submitted that the granting of ouster orders, combined with appropriate safety measures, may also help to address the current shortage of refuge accommodation for women escaping abusive situations which was highlighted in the Taskforce Report.[105]

Submitters raised concerns, however, about the practical impacts of the imposition of ouster conditions. The QDVSN emphasised the importance of the court correctly identifying the party most in need of protection and taking the whole family into consideration when making an order, including minimising impacts on children.[106]

The IWSS highlighted that "consideration of the order requires careful deliberation between the benefits of stability and consistency attached to remaining in the family home against the reality of the perpetrator continuing to know of their victim's whereabouts".[107]

The WLS recognised the importance of new section 64(2)(b) of the DFVP Act which requires that the court consider a victim's views when deciding whether to impose an ouster condition, "… because it might be

99 Explanatory Notes, p.6
100 WLS, Submission no.4, QDVSN, Submission no.2, ALRC, Submission no.8, QCU, Submission no.10 and IWSS, Submission no.12
101 QDVSN, Submission no.2, p.2
102 QDVSN, Submission no.2, p.2
103 ALRC, Submission no.8, p.6
104 IWSS, Submission no.12, p.4
105 IWSS, Submission no. 12, pp.4-5
106 QDVSN, Submission no.2, p.2
107 IWSS, Submission no.12, p.4

unsafe for her to remain in the family home or usual place of residence".[108] At the public hearing, WLS stated that "For some women and children it is just too unsafe to remain in the dwelling which the perpetrator knows so well".[109]

The WLS and QCU stated that some victims may also be frightened of sharing their views with the court in front of the perpetrator, or may feel overborne or threatened to the extent that they do not actively seek a condition's imposition. The WLS and QCU, therefore, recommended that the courts be reminded of the section 4 principles, when reaching a decision about ouster conditions.[110]

Other submitters, including Soroptimist International, highlighted the importance of the timely imposition of ouster conditions, including in temporary protection orders. Chris Meibusch considered that ouster conditions are only a useful option if imposed early and immediately, as if victims have to leave home while court procedures take place, it may be too late.[111]

Submitters also raised concerns about the availability of accommodation and support services for parties to a DVO when ouster conditions are imposed. Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd. (ATSILS) stated that the amendments will lead to an increase in the number of ouster conditions imposed and, as a consequence, may cause an increase in respondent homelessness "given there is a dire lack of available hostels or shelters for men in Queensland". At the public hearing, ATSILS stated:

> *… we are concerned about the flow-on effects of ouster orders when there is insufficient accommodation for males in most towns in Queensland. Without suitable accommodation in place, should ouster orders be made a matter of course the issue of homelessness, unemployment, criminal activity and poverty for men will be exacerbated. There is also an increased possibility of breaches of domestic violence if someone has nowhere else to go but back home.*[112]

Accordingly, ATSILS recommended that provision be made for the accommodation needs of perpetrators. Ms Melanie O'Toole suggested that increased training and advocacy within the private real estate sector may be of assistance in this regard, by potentially helping to alleviate accommodation pressures within the public and not-for-profit sectors.[113]

The QDVSN, Soroptimist International and IWSS raised the importance of ensuring that a victim's home is made secure following the imposition of an ouster condition.[114] QDVSN submitted that investment is required in home security technologies such as alarms, video surveillance and secure lock systems, to provide security to victims where an ouster condition has been imposed.[115] The QDVSN and IWSS highlighted the role of the Department's Safety Upgrades Program in helping to meet these requirements.

108 WLS, Submission no.4, p.1
109 Ms Angela Lynch, WLS, *Public Hearing Transcript*, 18 November 2015, p2
110 WLS, Submission no.4, p.1 and QCU, Submission no.10, p.1
111 Chris Meibusch, Submission no.1, p.1
112 Ms Julia Anderson, Intervention, Prevention and Community Legal Education Officer, ATSILS, *Public Hearing Transcript*, 18 November 2015, p.12
113 Melanie O'Toole, Submission no.3, p.2
114 QDVSN, Submissions no.2, Soroptimist International, Submission no.11 and IWSS, Submission no.12
115 QDVSN, Submission no.2, p.2

Soroptimist International highlighted a similar program in Victoria, which has been integrated in the early response to domestic violence incidents to facilitate home safety assessments and implementation of security measures.[116]

5.3 Department's response

In relation to submitters' comments about establishing the predominant aggressor before imposing an ouster condition and minimising the impact on children, the Department stated that the principles in the DFVP Act aim to provide a decision-making framework to assist in "better identifying and protecting people who fear or experience domestic violence". For example, the principle at section 4(2)(d) of the DFVP Act provides that where there are conflicting allegations of domestic violence, the person who is in most need of protection must be identified.[117]

The Department also highlighted that section 57 of the DFVP Act already provides that the principle of paramount importance to the court when considering imposing conditions on a DVO, including ouster conditions, is the safety, protection and wellbeing of people who fear or experience domestic violence, including their children. In addition, section 64(2) of the DFVP Act provides that the courts must consider a number of factors, including relating to any child, when considering the imposition of an ouster condition.[118]

In response to submitters' comments about the importance of the timely imposition of ouster conditions, the Department stated that "The Bill clearly requires courts to consider whether or not to impose an ouster condition when making both a temporary or final order".[119]

The Department acknowledged that, in practice, improved safety upgrades for victims and more crisis accommodation services for perpetrators will be essential to help support the imposition of ouster conditions and maintain the safety of victims.[120] The Department advised that:

> *The implementation of other task force recommendations will support the legislative change. For example, recommendation 86 advocates for flexibility for service providers to offer crisis accommodation for all parties, including perpetrators. It also recommends that police operational procedures support women and children staying in the home, where safe to do so, and the expansion of the safety upgrade program, which enables the physical security of a home to be improved.*[121]

The Department stated that it "… has allocated $1,380,646 in 2015-16 for 11 services across Queensland to undertake safety upgrades to improve the security of the home of victims of domestic and family violence". The Department advised that:

116 QDVSN, Submission no.2, p.2, IWSS, Submission no.12, p.4 and Soroptimist International, Submission no.11, p.3
117 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.6
118 Department, *Response to Issues Raised in Submissions*, 18 November 2015, pp.6-7
119 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.4
120 Department, *Response to Issues Raised in Submissions*, 18 November 2015, pp.4-5
121 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.3

> *As part of the funding allocated, a proportion of brokerage funds are provided for physical upgrades to the homes of victims of domestic violence. Under the service specifications, a service may use brokerage funds for purposes with a demonstrated and direct link to supporting a service user to remain safely in their home. Brokerage funds may be used by services to provide crisis accommodation for perpetrators who are subject to an ouster condition if this is a strategy considered necessary to support a service user to remain safely in their home.*[122]

At the public briefing, the Department advised that such accommodation for perpetrators "… might be a hotel for a couple of nights, if that is suitable". The Department stated that "We absolutely recognise that it is important for the protection and safety of the victim, but they also want to be assured that the perpetrator is not then going to be left homeless or out on the street".[123]

In addition, the Department stated that the Queensland Government has, in response to Taskforce Recommendation 71, contracted an external auditor to audit current domestic and family violence services, including refuges. The Department advised that the audit will "… provide information about current service gaps and will also map demand for services" and "… the outcomes of the audit will inform the development of a long term funding and investment model that will inform future investment in the domestic and family violence service system".[124]

Committee comment

The Committee shares submitters' views that it is vitally important for the courts to identify the person most in need of protection and to consider the impact on children before imposing an ouster condition. The Committee notes the Department's advice in this regard, and is satisfied that appropriate provision is currently made in the DFVP Act to ensure this occurs.

The Committee welcomes the steps taken by the Department to ensure that appropriate safety upgrades are in place for victim's homes and that appropriate accommodation is made available to respondents when an ouster condition is imposed by the courts.

The Committee encourages the Department, in making decisions about long term funding for domestic and family violence services, to pay particular attention to the impact ouster conditions may have in Aboriginal and Torres Strait Islander communities and in rural and remote regions, where the Committee has heard that appropriate accommodation is limited.

In relation to the timely imposition of ouster conditions, the Committee notes that, in addition to temporary protection orders imposed by the courts, the police may take a respondent into custody or issue a police protection notice.[125] A police protection notice may include a cool-down condition that prohibits the respondent from going near the alleged victim or the place they are living, including any

122 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.5
123 Ms Cathy Taylor, Deputy Director-General, Child, Family and Community Services, Southern Region, Department, *Public Briefing Transcript*, 11 November 2015, p.6
124 Department, *Response to Issues Raised in Submissions*, 18 November 2015, p.6
125 *Domestic and Family Violence Protection Act 2012,* sections 101 and 116

shared home, for a period of up to 24 hours as reasonable, having regard to the circumstances of the respondent, the aggrieved and any other person.[126]

The potential fundamental legislative principles issues raised by the amendments at clauses 8 and 10 are addressed in section 8 of this report.

126 *Domestic and Family Violence Protection Act 2012*, section 107

6. Amendments to resolve anomalies and address operational issues

The Taskforce Report recommended an overarching review of the DFVP Act to ensure it provides a cohesive legislative framework that incorporates the reforms recommended by the Taskforce (Recommendation 140). This recommendation suggested two minor amendments to the DFVP Act in relation to temporary protection orders to allow:

- victims and the police to appeal a court's decision not to make a temporary protection order, and
- temporary protection orders to be made to protect a person who is seeking to be added to a protection order.[127]

6.1 Proposed amendment

In light of Taskforce Report Recommendation 140, clause 11 amends section 164 of the DFVP Act to provide that a person who seeks a temporary protection order can appeal a court's refusal to make that order. Clause 12 requires an appellant to file a copy of a notice to appeal in the court that made the decision being appealed.

Clause 13 amends section 166 to empower the appellate court to stay the operation of the decision being appealed, which may include a decision to refuse to make a protection order.[128]

Clause 6 amends section 48 of the DFVP Act to provide that a court may make a temporary protection order to protect a person who is seeking a variation to a DVO that would add them to the DVO as a named.

Committee comment

The Committee acknowledges the Department's advice that it is "taking the opportunity to clarify [the issues] in the legislation".[129] The Committee notes that the amendments are in keeping with Taskforce Recommendation 140.

127 Taskforce Report, February 2015, p.333

128 Section 164 of the *Domestic and Family Violence Protection Act 2012* identifies that appeals can be made against a court's decision to a) make a domestic violence order; b) vary, or refuse to vary, a domestic violence order; or c) refuse to make a protection order

129 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.5

7. Use of body-worn cameras by the police

On 13 September 2015, the Queensland Premier announced the urgent roll-out of 300 body-worn cameras for police on the Gold Coast, to assist in gathering evidence in relation to domestic and family violence.[130] The QPS has advised that all 300 body-warn cameras were issued to police officers by 23 October 2015.[131]

The Department advised that the deployment of the body-worn cameras forms part of the Government's response to Taskforce Recommendation 131, which recommended that the QPS "develops and implements a strategy for increasing criminal prosecution of perpetrators of domestic and family violence through enhanced investigative and evidence-gathering methodologies".[132] The Taskforce Report noted that "options for improved investigative practice may include "Enhanced use of existing operational evidence gathering tools … including body-worn video".[133]

Currently, the PPRA only makes limited mention of the use of video recordings, and there is no provision that expressly authorises the use of body-worn cameras by police officers.[134] However, the Department advised that the absence of such a provision does not make the use of body-worn cameras unlawful and noted:

> *As a generalisation, there is no right to privacy or right to one's image in Australia.*[135] *Consequently, police officers, like any other person, may photograph places and other persons when they are in a public place or lawfully at a private place.*[136]

The monitoring, recording or listening to private conversations is regulated, however, by the *Invasion of Privacy Act 1971* (IP Act 1971), which prohibits a person from using a listening device to overhear, record, monitor or listen to a private conversation.[137] Currently, police officers may be exempt from this prohibition where they are:

- a party to the conversation (section 43(2)(a) of the IP Act 1971), or
- authorised to use the listening device under the provision of an Act – for example, in keeping with Chapter 13, 'Surveillance device warrants' of the PPRA (section 43(2)(d) of the IP Act 1971).

The Explanatory Notes state that the current exemptions are likely to cover the vast majority of police interactions with members of public, as police officers generally will not be engaging in private conversations or will be a party to the conversation where private conversations do take place.

130 Department, *Briefing Note*, 4 November 2015, p.1
131 Queensland Police Service, *Response to Questions Taken on Notice*, 12 November 2015, p.1
132 Explanatory Notes, p.2
133 Taskforce Report, February 2015, p.319
134 Department, *Briefing Note*, 4 November 2015, p.3
135 The Department noted that legislation such as the *Privacy Act 1988* (Cwlth) may address certain aspects of personal privacy and there are also specific offences that prohibit photographs taken inappropriately, including sections 210 'Indecent treatment of children under 16' and 227A 'Observations or recordings in breach of privacy' of the *Criminal Code Act 1899* (Criminal Code)
136 Department, *Briefing Note*, 4 November 2015, p.3
137 The Explanatory Notes state that "a body-worn camera could be considered to be a 'listening device' under the Act as it has the ability to record a private conversation". See: Explanatory Notes, p.2

The Explanatory Notes, however, recognise that:

> *… there may be instances where an officer's body-worn camera inadvertently records a private conversation or records a private conversation to which the officer is not yet a party, and on those occasions, the police officer would be unable to rely on the exemption.*[138]

7.1 Proposed amendment

Clause 20 inserts new section 609A into the PPRA, to provide that it is lawful for a police officer to use a body-worn camera to record images or sounds while the officer is acting in the performance of their duties.

A *body-worn camera* is defined as a device worn on clothing or otherwise secured on a person which is designed to be used to record images or to record images and sounds.[139]

The Explanatory Notes state that this definition allows a police officer to wear a body-worn camera in several ways, including being attached to an officer's shirt or attached to the helmet of a motorcycle; and also ensures that the use of a body-worn camera is not authorised where the officer is not present.[140]

New section 609A(2) specifies that lawful use of a body-worn camera by a police officer includes use that is either inadvertent or unexpected, or incidental to use while acting in the performance of the officer's duties. The Explanatory Notes state:

> *... It cannot be excluded that an officer's body-worn camera may inadvertently or unexpectedly record a conversation to which the officer is not a party at that time ... For example, an officer may inadvertently activate a body-worn camera resulting in a private conversation being accidentally recorded. Similarly, an officer may be engaging with one member of the community whilst the body-worn camera unexpectedly records images or sounds relating to an offence occurring in the distance.*[141]

New section 609A also clarifies that the provision does not affect a police officer's ability at common law or under the PPRA or another Act to record images and sounds. In addition, "to remove any doubt", section 609A(4) declares that the provision authorises a police officer's use of a listening device for the purposes of the section 43(2)(d) of the IP Act 1971.[142]

7.2 Submissions

The majority of submitters who commented on clause 20 supported the amendment to clarify that the use of body-worn cameras by police officers is lawful.[143]

The QDVSN, IWSS, QCU and Soroptimists International noted that the use of body-worn cameras could provide a more comprehensive record of information at the scene, permit a greater understanding of the

138 Explanatory Notes, pp.2-3
139 Domestic and Family Violence Protection and Another Act Amendment Bill 2015, clause 20 (inserts new section 609A(5) into the *Police Powers and Responsibilities Act 2000*)
140 Explanatory Notes, p.11
141 Explanatory Notes, pp.5 and 10
142 *Domestic and Family Violence Protection Act 2012*, new section 609A(4)
143 QDVSN, Submission no.2, ATSILS, Submission no.5, QCU, Submission no.10, Soroptimist International, Submission no.11 and IWSS, Submission no.12

context of a domestic violence incident, and contribute to the body of evidence informing protection order applications and other legislative responses to domestic and family violence.[144] For example, Soroptimist International noted that:

> *… if a complaint is taken that is proximate in time by a police officer who is attending and they may be able to observe and record the red marks upon someone's face which are not readily apparent the next day, that is valuable evidence in order to document and articulate for an aggrieved person going through the domestic violence process*.[145]

The QCU and Soroptimist International stated that where a statement from the aggrieved is given to police at the time of the incident and captured on body-warn camera, this could provide evidence for a DVO application and alleviate the need for the aggrieved to recount the incidents in subsequent statements, affidavits or oral evidence. Those submitters considered that this approach may overcome the existing problem of victims being further intimidated by perpetrators and preserve the integrity of the evidence.[146]

In this regard, Soroptimists International highlighted legislation in New South Wales which supports the automatic admission of video recorded statements obtained from the victim at the scene as part of their evidence in chief.[147]

Submissions also recognised the role the lawful use of body-worn cameras may have in improving the accountability of police interventions and informing improved service responses.[148] The IWSS submitted that body-worn cameras could "… serve as a tool to assess the knowledge and skills portrayed by attending officers at an incident of domestic violence. Best practice principles could then be evidenced as being applied, such as our client's need for interpreters when required".[149] The QDVSN submitted that the use of body-worn cameras "may provide an effective means by which the level of knowledge and skills of police staff are evidenced".[150]

Despite their support for the amendments, certain submitters highlighted the importance of ensuring that appropriate safeguards are in place to avoid any unintended consequences from the use of body-worn cameras. In particular, submitters raised concerns about the "chain of evidence" and scope for recorded footage to be used in a selective manner to misrepresent the wider context of a case.

The CCIDFV submitted:

> *It is important that any footage must be unedited (or any edits do not impact on the proper context of the evidence) to be allowed into evidence. Currently, this footage can still be brought before the Court pursuant to the normal rules regarding evidence. Sometimes, an unintended consequence of proposals such as this is to disallow important challenges to such footage to ensure that it demonstrates the context*

144 QCU, Submission no.10, p.3 and IWSS, Submission no. 12, p.7
145 Ms Kylie Hillard, Soroptimist International, *Public Hearing Transcript*, 18 November, p.15
146 QCU, Submission no.10, p.3, Soroptimists International, Submission no.11, p.5 and Ms Kylie Hillard, Soroptimist International, *Public Hearing Transcript,* 18 November 2015, p.17
147 Soroptimist International, Submission no.11, p.5
148 QDVSN, Submission no.2, p.3 and IWSS, Submission no.12, p.7
149 IWSS, Submission no.12, p.7
150 QDVSN, Submission no.2, p.3

> *appropriately. The obvious issue with any kind of recorded evidence is the persuasive effect that it has. The CCIDFV is particularly worried for circumstances where the police make an application against the 'true aggrieved' and the footage might selectively make the true aggrieved look bad but not include footage where the true aggrieved is upset regarding the incident or trying to explain their story but is ignored or rebuffed.*[151]

At the public hearing, QDVSN raised the importance of:

> *… making sure that the video is not edited and there is some consideration around what gets used and what does not get used, particularly around possible issues of context with that. Where do you start and stop the use of that evidence if you are going to be using that in court to make sure that it would perhaps, for instance, highlight whether or not somebody is the true aggrieved but who might be using retaliatory or defensive actions in that particular footage?*[152]

PACT also expressed concern that "comments made by vulnerable children and young people who are frightened of their 'carer being taken away', could be used by a Defence Barrister to discredit the child's evidence and strengthen the accused's defence".[153]

In light of these concerns, submitters emphasised the importance of special equipment training and guidelines for the police regarding the operation of body-worn cameras and secure storage of recordings. The IWSS cautioned that the use of body-worn cameras must "be in conjunction with adequate training of police" to support appropriate responses to domestic and family violence, especially given victims of domestic violence "may present at the time of an incident as incoherent, distraught, or … may otherwise not fit the description of a typical victim in response to their traumatic experience".[154]

PACT submitted that such procedural guidance is necessary "to ensure that information is recorded, adequately saved and easily accessible to avoid any miscarriages of justice or the potential loss of critical evidence".[155]

7.3 Department's response

In relation to the provision of adequate training to police officers, the PSBA stated that "The QPS acknowledges domestic violence as a serious issue that affects our community and is continually evaluating the training given to operational police to ensure that it meets appropriate standards".[156]

The PSBA advised, in relation to the use of recordings in court proceedings, that:

> *The QPS has long-standing policy in relation to the presentation of evidence to courts. At all stages of court proceedings … copies of both the unedited and any edited*

151 CCIDFV, Submission no.6, p.2
152 Ms Amanda Lee-Ross, QDVSN, *Public Hearing Transcript,* 18 November 2015, p.8
153 PACT, Submission no.7, p.2
154 Ms Maree Kaiser, QDVSN, *Public Hearing Transcript*, 18 November 2015, p.20
155 PACT, Submission no.7, p.2
156 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.2

> *recordings are to be made available for the relevant prosecuting authority, defence and for production in court.*[157]

The PSBA also clarified that the amendments to the PPRA proposed in the Bill will not affect the *Evidence Act 1977.* The PSBA stated that "The admissibility of any recordings made by police body-worn cameras will continue to remain a matter to be considered by the relevant court in accordance with established common law and the provisions of the *Evidence Act 1977*".[158]

In relation to the secure storage and access to recordings made by police officers using body-worn cameras, the PSBA advised that:

> *The QPS has developed policy that addresses the storage, retention and production of recordings made by body-worn cameras. This policy outlines that recordings are:*
>
> - *to be downloaded into a QPS approved storage facility at the termination of the officer's shift, unless exceptional circumstances exist*
> - *to be downloaded and saved in full. No editing of the recording is to be made prior to this information being saved*
> - *not to be saved onto privately owned storage facilities, e.g. portable hard-drives, and*
> - *not to be viewed or shared with third parties without appropriate authorisation.*[159]

The PSBA also explained that "When these recordings are required for investigation, court production or other lawful purposes, officers are to comply with established procedures for retrieving the relevant files from a QPS approved storage facility." [160]

The PSBA stated that Soroptimist International suggestion of adopting legislation similar to NSW to allow domestic violence victims to give their evidence in chief in criminal proceedings by way of pre-recorded video taken by police needed further consideration. The PSBA noted, however, that in response to Taskforce Recommendation 133, the *Evidence Act 1977* was amended to expand the definition of *special witness* in criminal proceedings to include a victim of domestic violence. The PSBA advised that:

> *A court, of its own volition or upon application, may give a range of orders and directions in relation to special witnesses including an order to allow a video-taped recording of evidence from a special witness to be heard in a proceeding in lieu of direct oral testimony.*
>
> *… A court, in a proceeding under the Domestic and Family Violence Protection Act 2012 is not bound by the rules of evidence and may inform itself in any way it considers*

157 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.2
158 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.3
159 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.3
160 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.3

> *appropriate. This may include a court, at its discretion, considering recordings made by body-worn cameras in lieu of direct oral testimony.*[161]

Committee comment

The Committee supports the use of body-worn cameras by police officers when dealing with domestic and family violence incidents, and acknowledges the benefits such recordings may have in protecting victims and ensuring that perpetrators are held to account.

The Committee has reviewed the QPS policy relating to the use of body-worn cameras contained in the Digital Electronic Recording of Interviews and Evidence Manual.[162] The Committee is satisfied that the policy addresses the main areas of concern raised by submitters regarding the use and storage of body-worn cameras and the handling and storage of recordings made on body-worn cameras.

The Committee also notes that recordings of individuals by police officers on body-worn cameras in the performance of their duties are covered by the protections and safeguards provided for in the *Information Privacy Act 2009* and the associated Information Privacy Principles.

The Committee recommends, however, that the Minister provide further information during the second reading debate about the training police officers receive in relation to the use of body-worn cameras at domestic and family violence incidents and measures to ensure that police officers are aware of, and comply with, the policy on the use of body-worn cameras.

Recommendation 5

The Committee recommends that the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs clarifies during the second reading debate what:

- training police officers receive in relation to the use of body-worn cameras at domestic and family violence incidents
- measures are in place to ensure that police officers are aware of, and comply with, the Queensland Police Service's policy on the use of body-worn cameras and the handling and storage of body-worn camera recordings, and
- procedures are in place to deal with non-compliance with the policy.

In relation to the concerns raised by submitters about the use of recordings made by body-worn cameras in domestic violence proceedings, the Committee notes that the admissibility of any recordings made by police body-worn cameras will continue to be a matter for the relevant court in accordance with established common law and the provisions of the *Evidence Act 1977*.

The potential fundamental legislative principles issues raised by clause 20 are addressed in section 8 of this report.

161 PSBA, *Response to Issues Raised in Submissions*, 18 November 2015, p.5

162 The Digital Electronic Recording of Interviews and Evidence Manual is available at www.police.qld.gov.au/corporatedocs/OperationalPolicies/derie.htm

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 Fundamental legislative principles - rights and liberties of individuals

Clauses 8 and 10 - requiring courts to consider ouster conditions

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

Clause 8 amends section 57 of the DFVP Act to provide that when a making a DVO, a court must consider whether to impose an ouster condition on the respondent. Clause 10 provides that when deciding whether to impose an ouster condition, the court must consider any views or wishes expressed by the aggrieved.

The Committee considers that the new requirement for the courts to consider the imposition of an ouster condition when making a DVO will give rise to a greater number of respondents being the subject of an ouster condition and, therefore, being required to leave their usual place of residence.

The Committee also notes that the requirement at clause 10 to take into account the aggrieved's views and wishes would, in effect, put the onus on the respondent to actively oppose or challenge those views, rather than placing the onus on the police or aggrieved party to establish that an ouster condition is necessary.

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. However, in these circumstances, the respondent's rights and liberties, including the presumption of innocence and the right to remain in their home and have access to their children, need to be balanced against the applicant and children's right to be safe from harm or threat of harm, especially in their own home.

The Explanatory Notes state that clauses 8 and 10 are "… necessary to ensure that people who fear or experience domestic violence are effectively protected, disruption to their lives is minimised and perpetrators are held accountable for their actions". The Explanatory Notes also state that "The existing limitations and safeguards in the DFVP Act will continue to apply to the making of ouster conditions".[163]

The Committee notes that these safeguards include a requirement for the court to consider the safety of the aggrieved and any children and the particular accommodation needs of the respondent prior to imposing an ouster condition.

163 Explanatory Notes, p.4

At the public briefing, the Department also advised that the courts "… continue to be bound by natural justice and procedural fairness, so the respondent has a right of reply to anything that is put in evidence through an applicant or an aggrieved person".[164] The courts are also required to provide reasons for their decisions which will ensure that the courts are accountable for their decisions.

Committee comment

Given that the ultimate decision about the imposition of an ouster condition will rest with the courts, having regard to all the circumstances and information before them, the Committee considers, on balance, that the proposed amendments have sufficient regard to the rights and liberties of all parties to a DVO application.

Clause 20 – use of body worn cameras by the police

Clause 20 inserts new section 609A(1) into the PPRA to provide that it is lawful for a police officer to use a body-worn camera to record either images or sounds in the performance of the officer's duties. New section 609A(2) provides that the lawful use of a body-worn camera by a police officer includes:

- inadvertent or unexpected use, or
- incidental use while acting in the performance of the officer's duties.

The monitoring, recording or listening to, of private conversations is prohibited under the IP Act 1971, unless the use falls within one of the exemptions provided for in the IP Act 1971.

New section 609A(4) provides that, to remove any doubt, the use by a police officer of a body-worn camera is to be taken as be an authorised use under IP Act 1971. Accordingly, a police officer would be immune from prosecution under the IP Act 1971 for the use of a body worn camera, including inadvertent use, to record a private conversation.

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that legislation should not confer immunity from proceedings or prosecution without adequate justification.

The Explanatory Notes provide the following justification for the provisions at clause 20:

> *The use of body-worn cameras by police officers is an important development in the investigation of offences and evidence gathering by police. Body-worn cameras may provide incontrovertible evidence to assist police in protecting victims and bringing offenders to justice. The vast majority of private conversations being recorded by body-worn cameras will involve the police officer being a party to the conversation and therefore already having the right to record the conversation under the Invasion of Privacy Act 1971.*[165]

164 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public Briefing Transcript*, 11 November 2015, p.7

165 Explanatory Notes, P.5

The Explanatory Notes also state that while:

> *… it cannot be excluded that an officer's body-worn camera may inadvertently or unexpectedly record a conversation to which the officer is not a party at that time. It is considered reasonable that an officer should be protected from liability as a result of the body-worn camera being used in accordance with the authority provided by section 609A of the Police Powers and Responsibilities Act 2000 where conversations are recorded in circumstances that would otherwise amount to an offence by the officer.*[166]

Committee comment

The Committee considers that, on balance, the protections provided to police officers when using body-worn cameras to record private conversations are justified.

In reaching this view, the Committee notes that protections, in effect, are limited to circumstances where a police officer inadvertently records a private conversation when performing his or her duties. The Committee also notes the important role that recordings made by body-worn cameras may play in protecting victims of domestic and family violence and holding perpetrators to account.

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.

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.

The Explanatory Notes contain a minor error, however, under the *Consistency with fundamental legislative principles* section. The Explanatory Notes erroneously refer to clause 10 amending section 57 of the DFVP Act. The correct references should be to clause 8 amending section 57 and clause 10 amending section 64 of the DFVP Act.

166 Explanatory Notes, p.5

Appendix A – List of submissions

Sub #	Submitter
01	Chris Meibusch
02	Queensland Domestic Violence Network
03	Melanie O'Toole
04	Women's Legal Service Inc. Queensland
05	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd.
06	Cairns Collective Impact on Domestic and Family Violence
07	Protect All Children Today Inc.
08	Australian Law Reform Commission
09	Youth Affairs Network Queensland
10	Queensland Council of Unions
11	Soroptimist International of Brisbane Inc.
12	Immigrant Women's Support Service
13	Royal Australian and New Zealand College of Psychiatrists

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

Public briefing 11 November 2015
Ms Megan Giles, Executive Director, Legislative Reform, Department of Communities, Child Safety and Disability Services
Senior Sergeant John Henderson, Legislation Branch, Public Safety Business Agency
Acting Inspector Wayne Hutchings, Road Police Command, Queensland Police Service
Ms Cathy Taylor, Deputy Director-General, Child, Family and Community Services, Southern Region, Department of Communities, Child Safety and Disability Services
Chief Superintendent Matthew Vanderbyl, Commonwealth Games Group, Queensland Police Service
Public hearing 18 November 2015
Ms Angela Lynch, Community Legal Education Lawyer, Women's Legal Service Inc. Queensland
Ms Jude Marshall, Secretary, Queensland Domestic Violence Network and Manager, Mackay Domestic Violence Resource Service
Ms Amanda Lee-Ross, Chief Executive Officer, Cairns Regional Domestic Violence Service
Ms Julia Anderson, Intervention, Prevention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd.
Ms Kylie Hillard, Programme Convenor/UN Liaison, Soroptimist International of Brisbane Inc.
Ms Maree Kaiser, Senior Caseworker, Immigrant Women's Support Service
Ms Ana Alvarez, Senior Caseworker, Immigrant Women's Support Service