

Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014

Explanatory Notes

Title of the Bill

The short title of the Bill is the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014* (the Bill).

Objectives of the Bill

The objective of the Bill is to make various amendments to increase penalties for offenders who commit breaches of domestic and family violence orders, and to provide financial and practical support for victims of domestic and family violence. The Bill amends:

- the *Domestic and Family Violence Protection Act 2012* to increase the penalties for offenders who breach domestic violence orders, protection notices or release conditions for offenders where that breach involves acts of physical violence;
- the *Evidence Act 1977* to make admissible evidence of the history of domestic violence in a court proceeding where the offender and victim are involved in a domestic or family relationship;
- the *Penalties and Sentences Act 1992* to change the sentencing guidelines to provide that where offences involve domestic or family violence, that is to be considered an aggravating factor at sentencing. Offenders will not be able to successfully argue that the fact that the act of violence was committed in a domestic or family relationship as a mitigating factor in any sentence of the court. If the offender can satisfy the court that they were previously the victim of the offender in an abusive domestic relationship, the court will not be required to apply the circumstance of aggravation when sentencing the offender ;
- the *Victims of Crime Assistance Act 2009* to ensure that the fundamental principles of fair and dignified treatment, privacy and information to victims applies to victims of domestic violence, and that all victims of domestic violence, including non-criminal domestic violence, can obtain assistance under the victims of crime assistance scheme.

Reasons for the Bill

Across Queensland, incidents of domestic and family violence increased by around 10% over the last year. Steps must be taken to reduce the incidence of domestic violence in our community, and to support victims of domestic violence. This Bill also aims to make sensible amendments to clarify that victims of domestic violence,

whether criminal or non-criminal violence, shall be eligible for the compensation and services that are available to all victims of crime in Queensland.

Achievement of the objectives

The Bill strengthens the sentencing guidelines contained in the *Penalties and Sentences Act 1992* to ensure that, where an offence is committed in the context of a domestic or family relationship, and that offence involves an act of violence, that a court sentencing an offender convicted of such an offence must consider this to be a circumstance of aggravation.

Safeguards have also been inserted into the Bill to ensure that the circumstance of aggravation will not apply to offenders who have subjected to acts of domestic violence at the hands of the victim in an abusive domestic relationship prior to the offence.

The Bill increases the penalties for offenders who breach domestic and family violence orders where those breaches involve an act of violence.

By making compensation and services available to victims of non-criminal domestic violence through the provisions of the *Victims of Crime Assistance Act 2009*, the Bill will provide practical assistance to victims of domestic and violence, such as counselling, medical expenses, loss of earnings, relocation expenses and costs associated with securing the victim's place of residence or business

Alternatives to the Bill

There is no alternative method of achieving the objectives other than by legislative amendment.

Estimated Cost for Government Implementation

Any costs associated with implementation of the Bill will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

Consultation

Further consultation will take place with domestic violence advocacy groups. Further consultation will occur with the Queensland Law Society, the Queensland Bar Association and other stakeholders during the Committee process, and what is an appropriate timeframe for implementation of the changes.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill to be fixed by proclamation.

Act amended

Clause 3 provides that the Act amends the *Domestic and Family Violence Protection Act 2012*.

Clause 4 amends section 177 to increase the maximum penalty for contravening a domestic violence order to 120 penalty units or 3 years' imprisonment if the offence involves an act of physical violence.

Clause 5 amends section 178 to increase the maximum penalty for contravening a police protection notice to 120 penalty units or 3 years' imprisonment if the offence involves an act of physical violence, and to provide that in any other case the maximum penalty is 60 penalty units or 2 years' imprisonment.

Clause 6 amends section 178 to increase the maximum penalty for contravening release conditions to 120 penalty units or 3 years' imprisonment if the offence involved an act of physical violence and to provide that in any other case the maximum penalty is 60 penalty units or 2 years' imprisonment.

Clause 7 provides that the Act amends the *Evidence Act 1977*.

Clause 8 amends section 132B to allow the court to hear relevant evidence of the history of domestic violence committed or alleged to have been committed by the defendant. It also provides that evidence of the history of the domestic relationship between the defendant and the person against whom the domestic violence was directed is admissible in evidence.

Clause 9 provides that the Act amends the *Penalties and Sentences Act 1992*.

Clause 10 amends section 9 to declare that when sentencing an offender, a court must consider it to be an aggravating factor if the offence involved, wholly or partly, domestic violence committed by the offender.

The amendment also removes any doubt that where an offence is committed in the context of a domestic or family relationship, the fact of the relationship cannot be used to as a mitigating factor at the time of sentencing.

However, the court will not be required to apply the circumstance of aggravation if the offence involves the application of section 304B of the Criminal Code; or if the victim of the offence has previously committed acts of domestic violence against the offender in the course of an abusive domestic relationship.

Clause 11 provides that the Act amends the *Victims of Crime Assistance Act 2009*.

Clause 12 amends the long title of the Act to provide that it provides assistance to victims of domestic violence in addition to victims of crime.

Clause 13 amends the short title of the Act to provide that it provides assistance to victims of domestic violence in addition to victims of crime.

Clause 14 amends section 3 to provide assistance to victims of domestic violence by amending the purposes of the Act to include acts of domestic violence that may not constitute an offence.

Clause 15 amends the section 4 definition section to provide that, in relation to non-criminal domestic violence, any word described in the dictionary includes any reference necessary for the application.

Clause 16 amends section 6 to clarify that, for the purpose of declaring the principles of the Act, a victim includes a person who is a victim of non-criminal domestic violence.

Clause 17 inserts new section 7A to clarify that for the purposes of fair and dignified treatment, privacy and information about services that may assist the victim, a reference to a victim includes a reference to a non-criminal domestic violence victim.

Clause 18 inserts new section 16A to provide that part 3 of Chapter 2 of the Act applies to victims of non-criminal domestic violence.

Clause 19 inserts new section 20A to provide that part 1 of Chapter 3 of the Act applies in relation to a non-criminal domestic violence victim.

It achieves this by providing that:

- a reference to a victim includes a reference to a non-criminal domestic violence victim;
- a reference to an act of violence includes a reference to non-criminal domestic violence behaviour; and
- a reference to a crime includes a reference to an act or omission constituting non-criminal domestic violence behaviour.

It also clarifies that the chapter does not entitle a secondary victim of non-criminal domestic violence behaviour to the payment of financial assistance.

Clause 20 amends section 37 to provide that for Part 4 of Chapter 3, for a non-criminal domestic violence victim to be eligible for assistance, they need not have been injured, but must have suffered harm.

Clause 21 expands section 39 to provide that for the purposes of subsection (1)(g), exceptional circumstances includes non-criminal domestic violence behaviour directed at a non-criminal domestic violence victim.

Clause 22 amends Schedule 2 to provide that category D payments apply to victims of non-criminal domestic violence victims.

Clause 23 amends the Schedule 3 dictionary to include definitions for domestic violence, non-criminal domestic violence behaviour and non-criminal domestic violence victim.

For a person to be considered a victim of non-criminal domestic violence, the offender's behaviour must be the subject of an investigation by a police officer under section 100 of the *Domestic and Family Violence Protection Act 2012*, and the police officer must take certain action which is prescribed in the Act.