Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014

Report No. 81
Legal Affairs and Community Safety Committee
November 2014
Legal Affairs and Community Safety Committee

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The Committee acknowledges the assistance provided by Mrs Yvette D’Ath MP, in her capacity as Shadow Attorney-General and Shadow Minister for Justice.
Contents

Abbreviations iv
Chair’s foreword v
Recommendations vi

1. Introduction 1
1.1 Role of the Committee 1
1.2 Inquiry process 1
1.3 Policy objectives of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014 2
1.4 Context 3
1.5 Background 5
1.6 Consultation on the Bill 5
1.7 Should the Bill be passed? 6

2. Examination of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014 7
2.1 General observations about submissions 7
2.2 Amendments to the Domestic and Family Violence Protection Act 2012 8
2.3 Amendments to the Evidence Act 1977 11
2.4 Amendments to the Penalties and Sentences Act 1992 13
2.5 Amendments to the Victims of Crime Assistance Act 2009 16
2.6 Further issues raised in submissions 20

3. Fundamental legislative principles 22
3.1 Rights and liberties of individuals 22
3.2 Institution of Parliament 22
3.3 Explanatory Notes 22

Appendix A – List of Submissions 25
Appendix B – Special Taskforce on Domestic and Family Violence in Queensland 26
Dissenting Reports 28
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACL</td>
<td>Australian Christian Lobby</td>
</tr>
<tr>
<td>ATSILS</td>
<td>Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd</td>
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<td>Bill</td>
<td>Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014</td>
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<tr>
<td>Committee</td>
<td>Legal Affairs and Community Safety Committee</td>
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<tr>
<td>Crime Inquiry</td>
<td>Legal Affairs and Community Safety Committee’s Crime Inquiry</td>
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<td>DV Act</td>
<td>Domestic and Family Violence Protection Act 2012</td>
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<td>FDV</td>
<td>Family and domestic violence</td>
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<td>NCWQ</td>
<td>National Council of Women of Queensland Inc.</td>
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<td>PACT</td>
<td>Protect All Children Today Inc.</td>
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<td>Premier</td>
<td>Honourable Campbell Newman MP, Premier of Queensland</td>
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<tr>
<td>QIFVLS</td>
<td>Queensland Indigenous Family Violence Legal Service</td>
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<tr>
<td>Shadow Attorney-General</td>
<td>Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice</td>
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<td>Taskforce</td>
<td>Special Taskforce on Domestic and Family Violence in Queensland</td>
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<tr>
<td>VCA Act</td>
<td>Victims of Crime Assistance Act 2009</td>
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<td>WLS</td>
<td>Women’s Legal Service</td>
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Chair’s foreword

This report presents a summary of the Legal Affairs and Community Safety Committee’s examination of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014.

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 this Bill. I also thank the Committee’s Secretariat, the Member for Inala and Leader of the Opposition, Honourable Annastacia Palaszczuk MP and Mrs Yvette D’Ath MP, in her capacity as Shadow Attorney-General and Shadow Minister for Justice.

I commend this report to the House.

Ian Berry MP
Chair
Recommendations

Recommendation 1

The Committee recommends the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014 not be passed.
1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the Parliament of Queensland Act 2001 and the Standing Rules and Orders of the Legislative Assembly. The Committee’s primary areas of responsibility include:

• Justice and Attorney-General;
• Police Service; and
• Fire and Emergency Services.

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

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

The Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014 (Bill) is a Private Members’ Bill, introduced into the Legislative Assembly on 22 May 2014, by the Member for Inala and Leader of the Opposition, Honourable Annastacia Palaszczuk MP. The Bill was referred to the Committee for consideration.

In accordance with Standing Order 136(1), the Committee must report to the Legislative Assembly on or before 24 November 2014.

1.2 Inquiry process

On 29 May 2014, the Committee wrote to the Honourable Campbell Newman MP, Premier of Queensland (Premier), seeking a whole-of-government response to the Bill, and to the Honourable Annastacia Palaszczuk MP, seeking advice on the Bill, and invited subscribers and stakeholders to lodge written submissions.

On 30 June 2014, the Premier advised the Committee that the Government would not be providing a submission on the Bill, stating the Government did not wish to pre-empt the outcome of the Committee’s Crime Inquiry.

On 8 September 2014, the Committee received advice from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice (Shadow Attorney-General), and eight written submissions from stakeholders (see Appendix A).

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2 Letter from The Honourable Campbell Newman MP, Premier of Queensland, 30 June 2014. See section 1.4 of this report for further details on the Crime Inquiry.
3 Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, 8 September 2014.
1.3 **Policy objectives of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014**

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:

- *Domestic and Family Violence Protection Act 2012* to increase the penalties for offenders who breach domestic violence orders, protection notices or release conditions, where that breach involves acts of physical violence;
- *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;
- *Penalties and Sentences Act 1992* to change the sentencing guidelines to provide that domestic or family violence is to be considered an aggravating factor at sentencing for an offence. This is to be the case, unless the victim of the offence has otherwise committed domestic violence against the offender in the course of an abusive domestic relationship. Additionally, offenders will not be able to successfully argue that the fact the act of violence was committed in a domestic or family relationship is a mitigating factor in any sentence of the court. However, if the offender can satisfy the court that the victim previously committed acts of domestic violence against them in an abusive domestic relationship, the court will not be required to apply the circumstance of aggravation when sentencing the offender; and
- *Victims of Crime Assistance Act 2009* to ensure 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.

In her Introductory Speech, the Honourable Annastacia Palaszczuk MP stated:

> The bill sends a clear message both to perpetrators and the wider community that domestic and family violence is not acceptable. People who attack their spouses and partners will face increased punishments. It will send a message that those relationships come with a special duty.

The Explanatory Notes identify the reasons for the Bill, citing an approximate 10% increase in incidents of domestic and family violence across Queensland 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.
1.4 Context

The Committee has conducted its inquiry into the Bill simultaneously with its ongoing Crime Inquiry, and notes the establishment and commencement of the Premier’s Special Taskforce on Domestic and Family Violence in Queensland (Taskforce).

Crime Inquiry

The Crime Inquiry was referred to the Committee by the Legislative Assembly on 22 May 2014, and has the following terms of reference:

That the Legal Affairs and Community Safety Committee conduct an inquiry on strategies to prevent and reduce criminal activity, by examining:

- the trends and type of criminal activity in Queensland, having regard to available crime statistics and issues in relation to unreported crime;
- the social and economic contributors to crime;
- the impacts of this criminal activity on the community and individuals, including the social and economic impacts;
- the effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, justice reinvestment, early intervention, alternative dispute resolution, and other models used in national and international jurisdictions;
- the experiences of Queenslanders with regard to the criminal justice system, including the experiences of victims of sexual violence and/or domestic violence including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes; and
- possible strategies to increase collaboration and co-operation between various participants in the criminal justice system.

Further, the Committee is to recommend measures to curb criminal activity, reduce rates of recidivism, and build a safer community.

In undertaking the inquiry the Committee is to:

- hold public and private hearings across Queensland;
- ensure such hearings include an examination of available crime statistics for the relevant area or region; and
- take public and private submissions.

Further, that the Committee report by 31 October 2014.7

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As part of the Crime Inquiry, the Committee has sought submissions from the public and stakeholders which address the terms of reference.  

The Committee notes the terms of reference for the Crime Inquiry specifically require the Committee to examine the experiences of victims of domestic violence. While the Committee is unable to foreshadow the outcome of its Crime Inquiry, it acknowledges the Crime Inquiry may potentially address issues which are pertinent to the policy objectives of this Bill.

In accordance with the terms of reference, the Committee was to report to the Legislative Assembly on the Crime Inquiry by 31 October 2014. On 16 October 2014, the Legislative Assembly extended the reporting date for the inquiry to 28 November 2014. The Committee’s report will be available to the public in due course. The Committee encourages parties with an interest in the policy objectives of the Bill, and in the issue of domestic and family violence generally, to visit the Committee’s website to view a copy of its report at that time.

Special Taskforce on Domestic and Family Violence in Queensland

The Taskforce’s website states:

*The Premier has established a Special Taskforce to review domestic and family violence in Queensland.*

*Domestic and family violence is an insidious and private type of violence that affects not just those subjected to the violence and their families, but the whole community.*

*In Queensland last year more than 64,000 incidents of domestic and family violence were reported and almost 13,000 breaches of domestic violence orders occurred.*

*Queensland’s domestic and family violence support system is complex, and includes a number of Queensland Government departments administering policy, legal, housing, health and other support services. There are also many organisations whose tireless efforts provide invaluable support to Queenslanders experiencing domestic and family violence.*

*The Queensland Government is determined to take a lead role in preventing domestic and family violence. The Taskforce—chaired by the Honourable Quentin Bryce AD CVO, former Governor-General of Australia—is the first step.*

According to the website, feedback from Queenslanders has informed the Taskforce’s final terms of reference (see Appendix B). The review will include extensive, state-wide community engagement and consultation.

The Committee notes the Taskforce’s terms of reference are greater in scope than the policy objectives of the Bill. While the Committee is unable to foreshadow the outcome of the Taskforce, it acknowledges the Taskforce may potentially address issues which are pertinent to the policy objectives of this Bill.

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8 Submissions closed on 18 July 2014.
1.5 Background

In her Introductory Speech, the Hon. Palaszczuk MP identified domestic and family violence as among the most serious of offences:

As a community, domestic violence is one of the most widespread and insidious crimes we face. Let us be clear: this is an issue for men and women, and the impact it has on children and the wider family members. It is an issue that can permeate through entire families, often engulfing generation after generation.\(^{11}\)

In speaking of the impacts of domestic violence, Hon. Palaszczuk MP referred to potential long-term psychological and emotional trauma:

Some children who witness this horror never recover. Domestic violence does not discriminate by class, wealth, race, age or sexual preference, and we must acknowledge the extent of this problem. The sad fact is that every week in this country a woman is killed by a partner.\(^ {12}\)

The Hon. Palaszczuk MP also provided relevant statistics:

While these tragedies are occurring each week, the ABS says the rate of victims reporting is less than 20 per cent. The horrific rate of this crime is estimated to cost our economy $14.6 billion per year. As a community, each and every one of us must accept responsibility to support families in crisis, provide assistance for offenders and victims, and take a stand against violence.

Last month the Opposition revealed that police applications for domestic violence increased by 9.5 per cent last year. At the same time breaches of domestic violence orders increased by 11 per cent.\(^ {13}\)

1.6 Consultation on the Bill

The Explanatory Notes do not identify consultation undertaken prior to, or in concert with, drafting the Bill. Rather, future consultation is anticipated:

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.\(^ {14}\)

Committee Comment

The Committee notes that consultation did not take place prior to the Bill’s introduction and that the form future consultation will take, is unclear. The Committee also notes that submissions raised relevant issues, beyond the scope of the Bill, that may have been incorporated into the Bill, had prior consultation taken place (see sections 2.6 and 3.3).

\(^{11}\) Record of Proceedings (Hansard), 22 May 2014, page 1804.
\(^{12}\) Record of Proceedings (Hansard), 22 May 2014, page 1804.
\(^{13}\) Record of Proceedings (Hansard), 22 May 2014, page 1804.
\(^{14}\) Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, page 2.
Should the Bill be passed?

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

The Committee has considered the form and policy intent of the Bill and while the Committee acknowledges the Bill’s merits, it does not consider the Bill should be passed before Queenslanders have an opportunity to consider the recommendations from the Committee’s Crime Inquiry, and the report of the Premier’s Special Taskforce on Domestic and Family Violence in Queensland.

Accordingly, the Committee determined the Bill should not be passed.

Recommendation 1

The Committee recommends the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014 not be passed.
2. Examination of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014

This section discusses issues raised during the Committee’s examination of the Bill. General observations about submissions received are followed by consideration of the issues raised. The issues are addressed in the order appearing in the Bill.

2.1 General observations about submissions

The Australian Christian Lobby (ACL) commended the Opposition for introducing the Bill, supporting the Bill in its current form, and encouraged:

...the Committee, Labor, and all parties to consider the importance of addressing the sexualisation of society as part of the broader discussion of respecting and protecting women and children from abuse.\(^{15}\)

Similarly, Protect All Children Today Inc. (PACT) greatly appreciated ‘...the opportunity to provide comment on this Bill and commend[ed] the Government [sic] for their efforts in trying to reduce crime in Queensland’.\(^{16}\)

The Bar Association of Queensland had ‘...no concerns about the proposed amendments, all of which appear apt to fulfil the stated objectives’.\(^{17}\)

Despite supporting the objectives of the Bill, the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) questioned the necessity of the proposed amendments to the *Penalties and Sentences Act 1992*.\(^{18}\) This report details those proposed amendments in section 2.4.

Although considering the Bill to be a step in the right direction, the Queensland Indigenous Family Violence Legal Service (QIFVLS) suggested the steps do not go far enough.\(^{19}\) The QIFVLS included various suggestions and recommendations in its submission.

Whilst acknowledging the initiative in the Bill, the National Council of Women of Queensland Inc. (NCWQ) presented the Committee with various suggestions for change. Despite its criticisms, it commended attempts to ‘...clarify some of the elements to what has become known as “non-criminal” domestic violence’, and strongly supported, in principle, the objectives of the Bill.\(^{20}\)

The submission received by the Women’s Legal Service (WLS) addressed both the Crime Inquiry and the Bill. The WLS noted the Bill ‘...raises many complex policy and legal issues about responding to FDV [family and domestic violence]’, and recommended these issues ‘...be considered in detail by a Domestic Violence and Sexual Violence Taskforce’.\(^{21}\) It made various preliminary observations in relation to the objectives of the Bill.

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\(^{15}\) Australian Christian Lobby, Submission No. 5, page 4.

\(^{16}\) Protect All Children Today Inc., Submission No. 1, page 2.

\(^{17}\) Bar Association of Queensland, Submission No. 6, page 1.

\(^{18}\) Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 3, page 1.

\(^{19}\) Queensland Indigenous Family Violence Legal Service, Submission No. 4, page 3.


\(^{21}\) Women’s Legal Service, Submission No. 8, page 23.
2.2 Amendments to the Domestic and Family Violence Protection Act 2012

Proposed changes

The Bill proposes to amend the Domestic and Family Violence Protection Act 2012 (DV Act) to increase the penalties for offenders who breach domestic violence orders, protection notices or release conditions, where that breach involves acts of physical violence.

Clause 4 of the Bill amends section 177 of the DV Act to increase the maximum penalty for contravening a domestic violence order to 120 penalty units or three years’ imprisonment if the offence involves an act of physical violence.22

Clause 5 amends section 178 of the DV Act to increase the maximum penalty for contravening a police protection notice to 120 penalty units or three 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 two years’ imprisonment.23 Clause 6 amends section 178 of the DV Act to make an identical increase to the maximum penalty for the contravention of release conditions.24

Issues raised in submissions

The ACL supported the proposed amendments to the DV Act to increase the maximum penalty for contravening a domestic violence order, police protection notice, or release conditions.25

PACT and the NCWQ conveyed similar support. PACT claimed ‘…this will likely lead to the enhanced protection of children and young people’.26 The NCWQ suggested increased penalties may decrease violence but stated that the amendments will also ‘need to be supported by implementation and be upheld by the judicial system’.27

Alternatively, the QIFVLS expressed concerns an increase in maximum penalties is unlikely to translate into an increase in actual penalties imposed:

The system introduced to protect victims of domestic violence is not acting as an effective deterrent to perpetrators. Increasing maximum penalties is one option to act as a deterrent to breaches of domestic violence orders. However, increasing the maximum penalty that may be imposed by a Magistrate will not automatically lead to an actual increase in penalties that are imposed upon offenders. The maximum penalty is rarely imposed, and is by law reserved for the most serious examples of an offence.28

In order to affect an increase in penalties actually imposed on offenders, the QIFVLS supported the introduction of legislated minimum penalties, or a scheme that clearly contemplates an increase in penalties for subsequent offences. The QIFVLS state:

For example, section 35 of the Family Violence Act 2004 (TAS) provides for an increasing scale of maximum penalties for a first offence, second, third, and fourth or subsequent offence (which allows for imprisonment not exceeding five years). Such a scheme

25 Australian Christian Lobby, Submission No. 5, page 3.
26 Protect All Children Today Inc., Submission No. 1, page 1.
communicates clearly the seriousness of family violence offences, and particularly repeated offending of that nature. If such a scheme is introduced, corresponding legislative reform is required to enable previous convictions to be relied upon without the necessity of the cumbersome process currently required by section 47 of the Justices Act 1886 (Qld).29

In her report on submissions, the Shadow Attorney-General responded to the issues raised by the QIFVLS:

Mandatory sentencing is likely to be unsuccessful, or at best imprecise, in achieving the aim of reducing rates of domestic violence. The courts must always retain a discretion in sentencing, to ensure that the individual circumstances of the offence, and the offender, are taken into account. Increasing the maximum penalty for breaches of domestic violence beyond three years would mean that domestic violence breaches could no longer be heard in the Magistrates Court.30

The QIFVLS offered further commentary. It observed the proposed increased maximum penalties apply if a contravention involves ‘physical violence’, and agitated for clarification of that term in the DV Act:

Defence solicitors will inevitably attempt to argue that the particular act constituting their client’s breach does not constitute ‘physical violence’. For example, damage to property may not be included, whereas throwing property at the victim arguably should be. There is potential for uncertainty as to when the increased maximum penalty is enlivened. Incorporating a clear and concise definition of ‘physical violence’ within the Act at the time of amendment would assist the Courts and legal practitioners in applying the legislation to real-life scenarios.31

In response, the Shadow Attorney-General considered the court best placed to determine what might constitute an act of physical violence in the circumstances: ‘To attempt to define the term might have the unintended consequence of limiting the circumstances in which this circumstance of aggravation might be applicable’.32

Although supporting the proposed amendments, the WLS emphasised that its preferred approach to strengthening the response to domestic and family violence would be for the offender to be charged with the underlying offence, as well as the breach of the domestic violence order, redressing an overwhelming tendency to pursue only civil responses or charges for breaches, and not the underlying assault or other criminal behaviours.33

In acknowledging that there is no simple ‘quick fix’, the WLS argued the necessity of a multi-faceted approach to decreasing the rates of family domestic violence in Queensland, questioning:

...why the increase in penalties only relates to acts of physical violence as this would not cover other nonphysical but highly dangerous activities such as stalking and threats to kill.34

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30 Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 1.
32 Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, pages 2-3.
33 Women’s Legal Service, Submission No. 8, page 23.
34 Women’s Legal Service, Submission No. 8, page 23.
Committee Comment

The Committee acknowledges the opposing views presented regarding the Bill’s proposed increases to penalty provisions, and notes the Shadow Attorney-General’s comments regarding mandatory sentencing and judicial discretion, and the possibility of unintended consequences in defining ‘physical violence’.

The Committee also notes the WLS’s submission outlining the necessity for a multifaceted approach to decreasing rates of domestic violence in Queensland.

During the course of its Crime Inquiry, the Committee received evidence that for the most part, penalties imposed for contraventions of domestic violence orders in Queensland are relatively low; and the escalation of penalties for repeat offending appears to be fairly minimal. Stakeholders widely identified, as also noted in the QIFVLS’s submission on this Bill, that the current imposition of low or inappropriate penalties largely reflects a tendency for inconsistency and minimisation in application, rather than a lack of available legal recourses. While the proposed increase in penalties is reasonable, and generally in keeping with the magnitude of maximum penalties in other jurisdictions; the Committee is concerned that the proposed increase in penalties may not achieve the desired effect without supplementary action. As the Australian and New Zealand Law Reform Commissions noted in their 2010 report *Family Violence – A National Legal Response* (the ALRC Report):

> Increasing maximum penalties will not necessarily lead to the imposition of sentences with higher maximum penalties—particularly in light of statistical data and stakeholder observations which support the proposition that courts do not, generally, tend to impose the maximum penalty for breach of a protection order.

The Committee also notes considerable concerns about a tendency for legal responses to trivialise or minimise ‘non-criminal’ acts of domestic violence as minor matters or being less significant than physical assaults. Such differential responses are particularly dangerous in the context of systemic abuses of power. The Committee recognises that, for example, a small electronic communication can constitute a dangerous assertion of control and/or intimidation; and as the WLS submitted:

> Perpetrators of violence will often test out the orders by making small infringements and waiting to see if there are any repercussions.

Some stakeholder groups have accordingly suggested that the issue that should shape a penalty, is perhaps not whether a breach involves physical or non-physical violence, but the degree of its impact on the victim.

While supporting the amendments to the Act in principle, the Committee believes that the relevant clauses could be refined with further input, to more comprehensively address these issues and send a more consistent message that violence of any kind will not be tolerated.

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37 Legal Affairs and Community Safety Committee, Inquiry into strategies to prevent and reduce criminal activity in Queensland, Women’s Legal Service, Submission No. 60, page 17.

2.3 Amendments to the Evidence Act 1977

Proposed changes

Clause 8 of the Bill amends section 132B of the Evidence Act 1977 to:

- allow the court to hear relevant evidence of the history of domestic violence committed, or alleged to have been committed, by the defendant; and
- provide 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.\(^{39}\)

Issues raised in submissions

In relation to admissibility of evidence of the history of domestic violence in a court proceeding where the offender and victim are involved in a domestic or family relationship, PACT stated:

...we believe this history is important information for the judiciary to consider when imposing a sentence, as domestic violence often involves an ongoing pattern of behaviour, rather than a series of isolated incidents.\(^{40}\)

Similarly, the ACL supported the amendments allowing the relevant history of the domestic relationship, including domestic violence, to be admissible in evidence.\(^{41}\)

The NCWQ communicated its full support for the proposed amendments, commenting: ‘...it seems absurd that this is and has not been previously included...’.\(^{42}\)

However, the WLS adopted a different view, preferring the incorporation of a history of domestic violence ‘...to be considered in detail by an expert Taskforce’ and expressing concern ‘...about unintended consequences for victims of FDV [family and domestic violence]’.\(^{43}\)

The QIFVLS added further weight to the argument the proposed amendments may potentially be used to the detriment of victims. It commented generally on its daily observations as a legal service assisting Indigenous victims of domestic and family violence:

...it has become apparent to QIFVLS that it is common for a perpetrator to use the system to their advantage. This includes making application for a Domestic Violence Order before the victim is able to, or applying for a cross-order, and accusing the victim of being the perpetrator. Often, an oppressed and disempowered victim will consent without admissions to an order being made, or not attend the hearing to avoid confrontation with the applicant who is in fact the main perpetrator. A victim may also retaliate following years of unreported abuse, at which point the perpetrator makes a complaint to the police. The Domestic and Family Violence Protection Act 2012 (Qld) itself recognises the complexity of such relationships. Section 4(d) requires the identifying of “the person who is most in need of protection”.\(^{44}\)

\(^{39}\) Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, page 3.
\(^{40}\) Protect All Children Today Inc., Submission No. 1, page 2.
\(^{41}\) Australian Christian Lobby, Submission No. 5, page 3.
\(^{43}\) Women’s Legal Service, Submission No. 8, page 23.
\(^{44}\) Queensland Indigenous Family Violence Legal Service, Submission No. 4, page 3.
Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014

Examination of the Bill

Specific to the Bill, the QIFVLS asserted the proposed amendments to the Evidence Act 1977, contain no such direction, requirement or recognition of the complexity of violent relationships:

\[ \text{It is likely that those sections will be used by perpetrators to paint themselves as the victim and present an inaccurate and skewed picture of the relationship and their offence. Conversely, it certainly is important to protect the victim who does eventually retaliate towards the main perpetrator.} \]

In consideration of these views, the Shadow Attorney-General observed:

\[ \text{The amendments to the Evidence Act allow relevant evidence of the history of the domestic relationship between the defendant and the person against whom the domestic violence was directed to be admissible in evidence, including a history of domestic violence. If a victim of domestic violence retaliates and appears as a defendant, that history will be available to the Court. The section doesn’t specify the effect to which it can be put, and can be used in an exculpatory way.} \]

Admissibility of similar fact evidence

Section 132A of the Evidence Act 1977 states:

\[ \text{In a criminal proceeding, similar fact evidence, the probative value of which outweighs it potentially prejudicial effect, must not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of that evidence is a question for the jury, if any.} \]

The Committee considered the application of the proposed amendment in clause 8(1)(b) - to broaden the scope of section 132B to include alleged domestic violence, with section 132A of the Evidence Act 1977, and considered the possibility of a conflict between the application of these provisions.

Committee Comment

The proposed amendments allow a history of domestic violence, either committed by the defendant, or between the defendant and the person against whom the domestic violence was directed, to be admitted as evidence.

The Committee notes that PACT, ACL and the NCWQ support the proposed amendments whereas the WLS expressed concerns about unintended consequences, and the QIFVLS suggested the proposed amendments may be used to the victim’s detriment and do not recognise the complexities of violent relationships.

The Committee also notes the Shadow Attorney-General’s observation that the proposed amendments do not specify the effect to which they may be put, and that they may be used in an exculpatory way.

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45 In this regard, the QIFVLS also included the Bill’s proposed amendments to section 9 of the Penalties and Sentences Act 1992, which are discussed in section 2.4 of this report.


47 Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 2.
2.4 Amendments to the Penalties and Sentences Act 1992

Current law

Section 9 of the Penalties and Sentences Act 1992 provides for sentencing guidelines, including matters to which a court must have regard in sentencing an offender. Section 9(2)(f) of the Penalties and Sentences Act 1992 identifies ‘the presence of any aggravating or mitigating factor concerning the offender’ as one such matter.

Proposed changes

The Explanatory Notes state:

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 [been] subjected to acts of domestic violence at the hands of the victim in an abusive domestic relationship prior to the offence.48

The proposed amendments also remove 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 as a mitigating factor at the time of sentencing, however:

...[t]he 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.49

Section 304B relates to the offence of killing for preservation in an abusive domestic relationship.50

Issues raised in submissions

PACT strongly supported the amendments to the Penalties and Sentences Act 1992 that change the sentencing guidelines to remove 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 as a mitigating factor at time of sentencing: ‘We believe that crimes of this nature are likely to have a greater negative impact on adult and child victims and witnesses due to the breach of trust’.51

The ACL supported the Bill’s proposed clarification that domestic violence must be considered an aggravating factor.52

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48 Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, page 2; Clause 10 of the Bill inserts new section 9(2A) into the Penalties and Sentences Act 1992 and inserts a definition of ‘abusive domestic relationship’ into section 9(13) of that Act.
50 Criminal Code 1899, section 304B.
51 Protect All Children Today Inc., Submission No. 1, page 1.
52 Australian Christian Lobby, Submission No. 5, page 3.
ATSILS questioned whether the Bill’s proposed amendments were necessary and, in this context, specifically identified the proposed change to section 9 of the *Penalties and Sentences Act 1992*.\(^{53}\)

In reply, the Shadow Attorney-General explained the amendments had been drafted in response to reported experiences of victims of domestic violence, specifically:

\[\text{...in response to situations where the fact that the offence occurred in the context of a domestic relationship has been argued in mitigation of sentence in proceedings. The amendments ensure that, not only can it not be considered a mitigating circumstance; it must be considered an aggravating circumstance. These amendments will enforce in the minds of Queenslanders that domestic violence will not be regarded as a lower grade of offence, and ensure it will be treated as a serious matter by the courts.}\] \(^{54}\)

Section 2.3 of this report detailed the concerns of the QIFVLS relating to the Bill’s proposed amendments to the *Evidence Act 1977*, namely that the amendments contain no direction, requirement or recognition of the complexity of violent relationships, and will likely result in perpetrators painting themselves as the victim. The QIFVLS shared identical concerns for the proposed amendments to the *Penalties and Sentences Act 1992*.

Additionally, the QIFVLS contended the amendments focus the attention of the court on the relationship between the defendant and the victim of the current offence, which reinforces a ‘blaming of the victim’ mentality:

\[\text{It is common for defence solicitors to point out that the defendant has offended repeatedly against the same victim in mitigation of penalty, and for Magistrates to ask whether the previous offences involved the same victim. There is an implication that someone who is a repeat victim somehow ‘deserves it’ or is less worthy of empathy. A focus on the current relationship may act in favour of a defendant and ignore a pattern of violence by the defendant against a series of victims.}\] \(^{55}\)

In response, the Shadow Attorney-General noted the amendments to the *Penalties and Sentences Act 1992* expressly provide:

\[\text{...the court will not be required to apply the circumstance of aggravation if the offence involves the application of section 304B of the Criminal Code; or if the victim of the offence has previously committed acts of domestic violence against the offender in the course of an abusive domestic relationship.}\] \(^{56}\)

The Shadow Attorney-General further observed the proposed amendments:

\[\text{...also expressly provide that the prohibition on the fact of a history of domestic violence in a domestic relationship being treated as a mitigating factor doesn’t apply where the victim of an offence has previously been a perpetrator of domestic violence in a domestic relationship.}\] \(^{57}\)

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\(^{53}\) Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission No. 3, page 1.

\(^{54}\) Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 5.

\(^{55}\) Queensland Indigenous Family Violence Legal Service, Submission No. 4, page 3.

\(^{56}\) Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 2.

\(^{57}\) Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 2.
In relation to the intended incorporation of domestic violence as an aggravating factor, the WLS argued the matter should be carefully considered by an expert taskforce to avoid unintended consequences:

*Whether to establish a specific aggravated offence with a higher maximum penalty or to consider the issue in sentencing as an aggravating factor are complex issues. The Australian Law Reform Commission in its report on Family Violence gave considerable attention to these alternatives and also to the establishment of a specific standalone offence of domestic violence.*

Committee Comment

These amendments aim to ensure that where an offence involving violence is committed in the context of a domestic or family relationship, the court must consider this to be an aggravating circumstance; except in circumstances where the offender has been subjected to acts of domestic violence by the victim.

The Committee notes that PACT and the ACL support the proposed amendments, whereas ATSILS questioned the necessity for reform and highlighted scope for unintended consequences in application.

The Committee notes the Shadow Attorney-General’s explanation that the proposed amendments aim to ensure that offences involving violence in a domestic and family relationship must be considered an aggravating circumstance, notwithstanding that the court will not be required to apply the circumstance of aggravation where the victim of an offence has previously been a perpetrator of domestic violence in a domestic relationship.

Further, the Committee notes the WLS’s submission and agrees that further consideration be given to incorporating domestic violence as an aggravating factor, and the manner in which this might occur. Stakeholders have to-date expressed particular interest in this issue during the course of the Crime Inquiry, and may seek to provide further input on particulars in the future. For example, at the Crime Inquiry’s public hearing in Southport on 28 July 2014, Ms Rosemary O’Malley of the Domestic Violence Prevention Centre Gold Coast stated:

> ...One of the things that really stands out for me that needs to change is that in lots of other offences like stealing, if it is stealing as a servant it carries a more serious penalty than just stealing. If it is an aggravated sexual offence against a child, if you have a relationship with that child, it is aggravated sexual offence. So in lots of other types of offending, being in a relationship with someone is actually an aggravating factor, except for domestic violence where it seems to be a mitigating factor—somehow she has chosen to be in the relationship so it is not as serious as public violence. I think that is one of the things that has to change if we really think about that...

> [T]he attitude... that violence that has happened in a relationship is less serious than public or street violence is one of the things that keeps it underreported, and it is such huge numbers.*

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58 Women’s Legal Service, Submission No. 8, page 23.
Similarly, the Services and Practitioners for the Elimination of Abuse (SPEAQ) noted in their submission to the Crime Inquiry:

In offences other than Domestic Violence, e.g. assault, rape, if the offence occurs within the context of a relationship of trust, this is treated as an aggravating factor, and the severity of the penalty is increased. If assault or rape occurs within a domestic relationship, which is a relationship of trust, it is considered as Domestic Violence and penalties are lighter.

This distinction leads to the inconsistent application of justice, and must be addressed if the justice system is to send strong messages of deterrence to those perpetrating the violence.60

2.5 Amendments to the Victims of Crime Assistance Act 2009

Proposed changes

The Explanatory Notes state:

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 violence, such as counselling, medical expenses, loss of earnings, relocation expenses and costs associated with securing the victim’s place of residence or business.61

Accordingly, clauses 11 to 23 of the Bill propose amendments to the Victims of Crime Assistance Act 2009 (VCA Act).

Clauses 12 and 13 respectively amend the long and short title of the VCA Act to include reference to domestic violence, in addition to crime. Clause 14 provides assistance to victims of domestic violence by amending the purposes of the VCA Act to include acts of domestic violence that may not constitute an offence.62

Clause 16 clarifies that, for the purpose of declaring the principles of the VCA Act, a victim includes a person who is a victim of non-criminal domestic violence.63

The Bill proposes a number of changes which clarify a reference to a victim includes a reference to a non-criminal domestic violence victim,64 and specify that existing sections of the VCA Act apply to victims of non-criminal domestic violence.65

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64 Clause 17 of the Bill inserts new section 7A into the Victims of Crime Assistance Act 2009 providing this clarification for the purposes of fair and dignified treatment, privacy and information about services that may assist the victim; Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, page 4.
65 Clauses 18, 19 and 22 of the Victims of Crime Assistance Act 2009; Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, pages 4-5.
In relation to Part 4 of Chapter 3 of the VCA Act, clause 20 of the Bill provides that a non-criminal domestic violence victim need not have been injured, but must have suffered harm, to be eligible for assistance. 66

For a specific part of the VCA Act, clause 21 proposes to expand exceptional circumstances to include non-criminal domestic violence behaviour directed at a non-criminal domestic violence victim. 67

Clause 23 amends the dictionary in the VCA Act to include definitions for ‘domestic violence’, ‘non-criminal domestic violence behaviour’ and ‘non-criminal domestic violence victim’. 68 The Bill’s definition of domestic violence is the same definition included in the DV Act. The Explanatory Notes provide:

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. 69

Issues raised in submissions

The QIFVLS conveyed its support for the proposed reforms to the VCA Act. 70 PACT offered its support for any legislative amendments that better protect victims of, and witnesses to, domestic violence, especially vulnerable children and young people: ‘We appreciate the broadening of the Victims of Crime Assistance Act 2009 to include both victims of criminal and non-criminal domestic violence’. 71

Additionally, it commended the provision that the victim need not to have been injured, but must have suffered harm, to be eligible for practical assistance:

We believe the emotional distress caused by various controlling behaviours encompassed by domestic violence can have far reaching and long-term effects on victims and witnesses. Social research provides mounting evidence of the damaging effects on the development of children who are exposed to domestic violence. 72

Similarly, the ACL supported the proposed amendments ensuring that victims of domestic violence, including non-criminal domestic violence and including victims who do not suffer a physical injury, are eligible for assistance under the VCA Act:

This is an important aspect of this bill. Victims of domestic violence may suffer not only from severe physical, emotional, and psychological injuries, but from significant financial pressure as well. Indeed, the ability to leave a dangerous domestic situation may be magnified by a financial dependence upon the perpetrator. For example, the Australian Domestic & Family Violence Clearinghouse at the University of New South Wales cited several ways in which victims of domestic violence suffer financial burden, including:

• Homelessness;

69 Queensland Indigenous Family Violence Legal Service, Submission No. 4, page 3.
70 Protect All Children Today Inc., Submission No. 1, page 1.
71 Protect All Children Today Inc., Submission No. 1, page 1.
Loss of income due to unemployment, with many women, in particular, having difficulty finding work due to trauma, fear for their safety, and instances of violence at work; and

Health costs, including increased illness, disability, and disease.\(^{73}\)

Whilst appearing to generally support the existing definition of 'domestic violence' in the VCA Act, the NCWQ recommended deletion of the words 'non-criminal' from the Bill.\(^{74}\) Instead, it favoured the inclusion of words defining domestic violence as part of a preamble to the Bill:

Clause 23 [of the Bill] states that these are included in the dictionary at the end of this Bill. We feel the preamble is far better positioning as it both recognises and expresses the importance in an overarching statement of what is in reality “criminal” domestic violence.\(^{75}\)

In reply, the Shadow Attorney-General noted the Bill extends the compensation payable to victims of domestic violence under the VCA Act to instances where the acts of domestic violence alleged may not constitute an offence, and asserted:

It is therefore necessary to include a definition of 'non-criminal' as the Victims of Crime Assistance Act 2009 currently applies to all criminal acts of domestic violence, however there may be some acts of domestic violence which, of themselves, do not constitute a criminal offence.

The definition is being inserted in the schedule to the Bill where, as a matter of drafting they are ordinarily contained and, in this case, they presently sit. To attempt to draft a preamble which contained definitions to certain words contained in a Bill would create uncertainty in the meaning and application of the legislation.\(^{76}\)

Further, the NCWQ suggested the meaning of domestic violence be expanded to include abuse in cultural and religious/faith: ‘In today’s world, so much attention is given to racism, and cultural choices and differences, that we feel this would also clarify the very real violence in the areas of faith and culture'.\(^{77}\)

In relation to the Bill’s proposal that a non-criminal domestic violence victim need not have been injured, but must have suffered harm, to be eligible for assistance, the NCWQ queried who defines the level of harm and whether it includes psychological damage:

“Psychological damage” may not be either evident or diagnosed for some time following the initial evidence of domestic violence. This is critical to the victim receiving payment of financial assistance at a later date.\(^{78}\)

In response, the Shadow Attorney-General outlined the procedure a victim must follow in making an application for assistance:

...a victim must provide evidence that there has been ‘harm’. As with all applications under the scheme, determinations are made by Victims Assist. Assistance is then provided in accordance with the level of harm and the amount of assistance required.

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\(^{73}\) Australian Christian Lobby, Submission No. 5, page 3.


\(^{76}\) Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 4.


The Act currently provides a definition of injury which includes ‘mental illness or disorder’. This will apply.\(^{79}\)

Additionally, the NCWQ drew attention to the use of the term ‘non-criminal’, considering it suggested no crime has been committed in a context where such acts are pre-emptive of what may become criminal behaviour:

> We do not believe that, emotional and financial abuse is in fact, non-criminal, as this very act of bullying is a crime against another person. It is soul destroying and destructive not only to the recipient but any siblings in the family unit, where en-acted within such a family but may include the ageing and disabled. Women have lost houses, assets, their careers and businesses through manipulation and blackmail.\(^{80}\)

The Shadow Attorney-General recognised emotional and financial abuse has a devastating effect on victims and identified this as the reason ‘...why the amendments have been proposed to ensure that victims of emotional and financial abuse may also have access to the victims of crime compensation scheme’.\(^{81}\) However, given the absence of a specific law making that behaviour a criminal offence in Queensland, she noted ‘...it is necessary to differentiate between acts of domestic violence that constitute an offence, which currently come within the Act, and those that don’t’.\(^{82}\)

The WLS supported the idea that the fundamental principles of justice apply to victims of domestic violence: ‘We agree in principle with the approach that victims of domestic violence, including non-criminal domestic violence be compensated through the victims of crime scheme’.\(^{83}\) The WLS continued:

> It is our understanding the Victims of Crime Assistance Act is currently being reviewed and that this issue has been raised as a point of discussion. It is our understanding that the Attorney-General’s Department may well be considering legislative ways for this to occur, including a consideration of other legislative schemes and how they establish evidence of domestic violence without involving a police notification.\(^{84}\)

In light of this context, the WLS concluded it ‘...may be prudent to wait for this review to be undertaken before making any changes to the legislation’, and expressed concern ‘...this bill may allow perpetrators of FDV to be eligible for compensation against the victim’.\(^{85}\)

Committee Comment

The Committee notes the Bill proposes to extend compensation payable to victims of domestic violence where the alleged domestic violence may not constitute an offence. The NCWQ questioned the assessment of the level of harm and whether it includes psychological damage. The Committee notes the Shadow Attorney-General’s explanation that the victim must provide evidence of harm for assessment by Victims Assist in terms of ‘injury’ which includes ‘mental illness’ or ‘disorder’. The Committee also notes the NCWQ’s submission that ‘non-criminal’ suggests that no crime has been committed.

\(^{79}\) Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, page 4.


\(^{83}\) Women’s Legal Service, Submission No. 8, page 23.

\(^{84}\) Women’s Legal Service, Submission No. 8, page 23.

\(^{85}\) Women’s Legal Service, Submission No. 8, page 23.
The Department of Justice and Attorney-General is currently conducting a review of the VCA Act. Accordingly, the Committee agrees with the WLS’s submission that legislative amendments to the VCA Act may, at this stage, be pre-emptive.

The Committee notes the importance of providing compensation to victims of domestic violence, as also crucially reinforced by a wide number of submitters to the Crime Inquiry. However, the Committee acknowledges there may be unintended consequences, both practically and psychologically, in using the terminology proposed by the Bill.

2.6 Further issues raised in submissions

In its submission, the NCWQ made the following additional comments and suggestions:

- **Joint account holders should have equal access and equal communications from the bank and their advisers.**

- **It is well known that financial abuse is highlighted as a key source of domestic violence as it traps spouses (many who are women) into staying in toxic relationships, subsequently affects, and is known to place children at risk.**

- **We also recommend that approaches be made through the appropriate Departments to both contemporary and large employers to have provisions in their employment agreements, for those affected by domestic violence to attend court and medical appointments. e.g. Westpac, ANZ, Griffith University. We believe this would contribute to the safety and sanity of victims, their families and networks.**

The QIFVLS submitted that the Committee should consider legislative reforms in line with the Tasmanian ‘Safe At Home’ whole-of-government strategy for responding to family violence: ‘That is, a model that ensures that police and courts give primacy to the safety of the victim/s throughout the process’.  

It provided the following example, arguing the Committee should consider the inclusion of similar provisions in the Queensland legislation, to provide robust protection to victims:

> ...section 12 of the Tasmanian Family Violence Act 2004 (TAS) requires that bail not be granted unless the judge, court or police officer is satisfied that release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child. Section 13 specifically provides that a court may consider as an aggravating factor the fact that a child was present or on the premises at the time of the offence, or knew that the affected person was pregnant.

Further, the QIFVLS claimed that many Queensland Magistrates now consider themselves unable to grant or extend Domestic Violence Orders, as part of the sentencing hearing for an offence:

> The practical impact is that although a perpetrator is sentenced for serious domestic violence against the victim, the Order protecting the victim has often lapsed by the time of sentence. The victim is left without protection that could and should, be reinstated or imposed as a matter of course as part of the sentencing process for criminal domestic and family violence. It is submitted that the Committee should consider amending the

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Act to strengthen and re-enliven that process of granting or extending protection orders at the time of the hearing of the complaint.89

In response to additional issues raised by the NCWQ and QIFVLS, the Shadow Attorney-General referred to the Taskforce, which she stated will undertake a comprehensive and co-ordinated review to make Queensland as safe and secure as possible for women and families: ‘There will be opportunity for additional measures not already included in the Bill to be put forward to the taskforce for its consideration’.90

Committee Comment

The Committee acknowledges the additional matters raised, and notes their relevance to domestic and family violence policy development, rather than specific clauses in the Bill.

The Committee notes the Shadow Attorney-General’s response, and suggests that had consultation taken place prior to the Bill’s introduction, these issues may have been considered within the scope of this inquiry.

In overall consideration of the number of issues raised, the Committee notes that domestic violence is simultaneously being considered within the Crime Inquiry, as part of the Department of Justice and Attorney-General’s review of the DVA Act, and by the Premier’s Special Taskforce on Domestic and Family Violence in Queensland.

Whilst the Committee acknowledges the Bill’s merits, given the ongoing nature of these related inquiries, the Committee recommends the Bill not be passed.

89 Queensland Indigenous Family Violence Legal Service, Submission No. 4, pages 3-4.
90 Letter from Mrs Yvette D’Ath MP, Shadow Attorney-General and Shadow Minister for Justice, Attachment 2, 8 September 2014, pages 3 and 5.
3. **Fundamental legislative principles**

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 Legislative Assembly.

3.1 **Rights and liberties of individuals**

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. Whether a bill has sufficient regard for to the rights and liberties of individuals depends on whether, for example, the bill is unambiguous and drafted in a sufficiently clear and precise way.

Clause 23 inserts three new definitions into the Schedule 3 Dictionary in the VCA Act. Of those definitions, the definition for *non-criminal domestic violence victim* refers, in paragraph (b), to ‘the police officer does a thing mentioned in that Act [DV Act], section 100(2)(a), (c), (d) or (e)’.

The ‘Note’ for the definition then lists the actions of a police officer as covered in section 100(2)(a), (c), and (d) with a bullet point and blank space left which presumably is meant to list the action covered by section 100(2)(e), being that the police officer applies ‘to a magistrate for a temporary protection order under division 4’.

It appears that the bullet point and blank space is merely a typographical omission, which should have referred to the actions of a police officer under section 100(2)(e) as outlined above.

Committee Comment

The Committee is satisfied the Bill has sufficient regard to the rights and liberties of individuals.

3.2 **Institution of Parliament**

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. Whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill: allows for the delegation of legislative power only in appropriate cases and to an appropriate person; sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and authorises the amendment of an Act only by another Act.\(^91\)

Committee Comment

The Committee is satisfied the Bill has sufficient regard to the institution of Parliament.

3.3 **Explanatory Notes**

Part 4 of the *Legislative Standards Act 1992* requires an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

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\(^91\) *Legislative Standards Act 1992*, section 4(4).
The Explanatory Notes were tabled with the introduction of the Bill. The notes are rudimentary but essentially contain most of the minimum about of information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins. The Explanatory Notes however are not compliant with section 23(1)(g) of the Legislative Standards Act 1992 because they do not advise the extent, if any, to which consultation was carried out for the Bill, instead referring to an intention that ‘further’ consultation will take place with domestic violence advocacy groups (see below). In addition, the Explanatory Notes are vague in their evaluation of the Bill’s compliance with the fundamental legislative principles, stating only that ‘The Bill is generally consistent with fundamental legislative principles’.92

Consultation

The Explanatory Notes do not comply with section 23(1)(g) of the Legislative Standards Act 1992 relating to consultation. Section 23(1)(g) establishes that an explanatory note for a Bill must include a brief statement of the extent to which consultation was carried out in relation to the Bill.

In contrast, the Explanatory Notes state:

Further consultation will take place with domestic violence advocacy groups.93

The Department of the Premier and Cabinet’s Guidelines for the preparation of Explanatory Notes, state the following regarding consultation:

When preparing this statement:

• consider that, in principle, consultation should occur with affected key stakeholders at all stages of the regulatory cycle – the explanatory notes should explain how consultation has occurred and if not, why not;

• the groups or persons consulted should be suitably identified (preferably by means of a list); and

• additional information about the consultation process may be required depending on the nature and importance of the bill – this might include:
  
  o the form of consultation;
  
  o a summary of the views expressed;

  o the resultant impact of the consultative process on the content of the bill; and

  o if no consultation occurred, the reasons for that.94

The Explanatory Notes also state:

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.95

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95 Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014, page 2.
Committee Comment

The Committee notes that although the Explanatory Notes state that ‘further consultation will take place’, there is no statement outlining what, if any, initial consultation has taken place, and that the second reference to ‘further consultation’ refers to the Committee’s consideration of the Bill. It is not appropriate for the Bill to refer to the Committee’s considerations as ‘further consultation’, nor is it appropriate to refer to ‘further consultation’, without outlining the initial consultation that was undertaken.
## Appendix A – List of Submissions

<table>
<thead>
<tr>
<th>Sub #</th>
<th>Submitter</th>
</tr>
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<tbody>
<tr>
<td>001</td>
<td>Protect All Children Today Inc.</td>
</tr>
<tr>
<td>002</td>
<td>National Council of Women of Queensland Inc.</td>
</tr>
<tr>
<td>003</td>
<td>Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd</td>
</tr>
<tr>
<td>004</td>
<td>Queensland Indigenous Family Violence Legal Service</td>
</tr>
<tr>
<td>005</td>
<td>Australian Christian Lobby</td>
</tr>
<tr>
<td>006</td>
<td>Bar Association of Queensland</td>
</tr>
<tr>
<td>007</td>
<td>Brisbane Domestic Violence Service</td>
</tr>
<tr>
<td>008</td>
<td>Women’s Legal Service</td>
</tr>
</tbody>
</table>
Appendix B – Special Taskforce on Domestic and Family Violence in Queensland

Domestic violence is everyone’s concern. As a community, we have a responsibility to stop the behaviour and attitudes that feed into the cycle of domestic violence and to look after one another.

Domestic violence can affect anyone, regardless of age, gender or wealth. The social and economic cost to individuals, their families and the community is enormous. There has been a tragic increase in domestic and family violence incidents over the last few years. Levels of domestic violence in Queensland have increased by more than 10% since 2010-2011. In 2013 alone, there were:

- 64,246 occurrences of domestic violence (up from 57,963 in 2012);
- 14,659 domestic violence applications made by police (up from 12,845 in 2012);
- 8,241 domestic violence applications made privately (up from 7,444 in 2012);
- 12,828 breaches of domestic violence court orders (up from 10,997 in 2012); and
- 17 domestic and family violence related homicides (of the total 49 homicides).

The estimated annual cost of domestic and family violence to the Queensland economy is between $2.7 billion and $3.2 billion.

Queensland’s domestic and family violence support system is complex, and includes a number of Queensland Government departments administering police, legal, housing and other support services. The tireless efforts of many organisations around the state that support Queenslanders experiencing domestic and family violence also needs to be acknowledged.

The Queensland Government is committed to taking a strong leadership position and working in partnership with the community to eliminate domestic and family violence.

Special Taskforce

- The Premier, the Honourable Campbell Newman, MP, has appointed a Special Taskforce (the Taskforce) to investigate domestic and family violence in Queensland.
- The Taskforce is chaired by the Honourable Quentin Bryce AD CVO and comprises four Members of Parliament (two LNP members, one opposition member and one independent), two expert community representatives and an Indigenous representative.
- The Taskforce will be charged with defining the domestic and family violence landscape in Queensland and will recommend ways the Queensland Government and community might reduce the incidence of this insidious form of violence.
- The Taskforce will reach into all Queensland regions as part of an extensive program of consultation with key stakeholders and the community.

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Asset of the Taskforce will make recommendations to the Queensland Government, to inform the development of a domestic and family violence strategy to achieve a long term vision, where all Queenslanders can live free from violence from a partner or family member, and where children do not have to see or experience family violence.

- In conducting its review, the Taskforce will undertake extensive, state-wide community engagement and consultation, recognising the need for shared responsibility across government, business, media, non-government organisations, communities, families and individuals in seeking to achieve the long term vision.

- In conducting its review, the Taskforce will seek input from relevant experts, including those with knowledge of, and experience in, family law matters, and issues involving Aboriginal and Torres Strait Islander communities, those from culturally and linguistically diverse backgrounds, same sex relationships, people in rural and remote areas and people with disability.

- The Chair of the Taskforce will make recommendations, by way of a report, to the Premier by 28 February 2015. The report will be tabled in Parliament as soon as practicable after the Premier receives the report.

- The Taskforce will be supported by a secretariat provided by the Department of the Premier and Cabinet.

Terms of Reference

In making its recommendations, the Taskforce is to have regard to, but is not to be limited by, the following matters:

- Educating and engaging Queenslanders to create a community that supports respectful relationships, practices positive attitudes and behaviours and promotes a culture of nonviolence

- Early intervention to identify those who are at the greatest risk of violence, to ensure action is taken to protect those at risk of being subject to domestic and family violence and to change the behaviour of those who use violence

- Holistic, coordinated and timely responses to domestic violence, including building community confidence in the reporting and investigation of domestic and family violence and ensuring that those who are subject to domestic and family violence receive immediate and effective protection and support

- Ensuring that Queensland’s law and order responses, including police, prosecutors and courts, provide an effective response to domestic and family violence, to deter perpetrators from committing violence, and hold them accountable for their behaviour

- Considering ways in which strategies for ensuring protection from domestic and family violence in Queensland best complement relevant systems and processes (including within the family law jurisdiction) to provide just outcomes and maximise the safety of families

- Defining the scope of violence, assault and abuse to be addressed in a domestic and family violence strategy and whether it would be appropriate for such a strategy to focus on particular or defined sections of the community in order to have the most impact.
Dissenting Reports
18th November 2014

Ian Berry MP, Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Re: Domestic and Family Violence Protection and Other Legislation Amendment Bill 2014.

I write to advise that I do not support the Committee’s recommendation that the Bill not be passed.

I will set out details of my reasons during the debate on the Bill.

Yours sincerely

Peter Wellington MP
Member for Nicklin
19 November 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Chair

Re: Domestic and Family Violence and Other Legislation Amendment Bill 2014

I am writing to register my dissent from the Committee’s report into the Domestic and Family Violence and Other Legislation Amendment Bill 2014.

I have substantial concerns about several aspects of the Committee’s report into this Bill.

At a time when evidence shows that domestic and family violence is increasing in the community, the Committee should be willing to recommend this Bill to the Government.

Numerous stakeholders advised the Committee that they supported the objectives of the Bill. Any issues raised by stakeholders or the Committee in relation to the drafting of the Bill could be addressed through proposed amendments. However the Committee chose not to take that opportunity and instead rejected the Bill as a whole.

This is a Bill that warrants genuine debate before the parliament on an issue important to all in our communities.

Further details about the Opposition’s reservations will be outlined in Parliament during the second-reading debate on the Bill.

Yours sincerely

Yvette D’Ath