Domestic and Family Violence Protection Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Domestic and Family Violence Protection Bill 2011.

Policy objectives and the reasons for them

The review of the *Domestic and Family Violence Protection Act 1989* is one of the key initiatives under *For our Sons and Daughters: A Queensland Government strategy to reduce domestic and family violence 2009-2014.*

The Queensland Government strategy was developed to address the significant human and economic costs of domestic violence. Women and children die or suffer significant physical or emotional trauma as a result of domestic and family violence, work and educational opportunities are affected, lives are disrupted and many victims of this type of violence become homeless.

In 2009-2010, the Queensland Police Service recorded 49,372 domestic and family violence occurrences, an increase of 11.5 per cent on the previous year, and laid 8033 charges for breach of a domestic violence order. Of the 62 recorded homicides in 2009-2010, 17 were identified as being related to domestic violence.

The Queensland Government strategy has the following aims:

- to better protect victims by breaking the cycle of violence as early as possible;
- to support communities to promote respectful relationships;
- to provide effective safety and support programs for people who experience domestic and family violence; and
- to respond to people who use domestic and family violence early and hold them accountable.

The Domestic and Family Violence Protection Bill 2011 addresses the aims of the Queensland Government strategy and focuses on effective and timely responses to provide for the safety of victims of domestic violence and their children and ensuring that perpetrators of violence are held accountable. As contemporary legislation, the Bill will make the law accessible to the community.

Domestic and family violence is not tolerated in Queensland. The Bill promotes this message through a preamble, which reflects:

- the aims of the Queensland Government strategy and the National Plan to Reduce Violence Against Women and their Children;
- Australia's obligations under international conventions relating to the elimination of violence against women and children; and
- views expressed during consultation.

The Bill places greater responsibility for the use of violence on perpetrators of violence and increases the ability of the court to focus on the safety and wellbeing of victims.

The Bill also reflects contemporary understandings of domestic and family violence, particularly regarding the types of relationships and behaviours covered by the legislation. The nature and characteristics of domestic and family violence are reflected in the Bill and comprise behaviours used to exert power and control over another person. In addition, the definition of domestic and family violence specifically includes economic, emotional and psychological abuse. The definition also includes behaviour that is physically or sexually abusive, threatening or coercive, or behaviour that in any other way controls or dominates another person. The definition is comprehensive and captures the range of behaviours that, in a contemporary sense, are understood to characterise domestic violence.

In the 22 years since the *Domestic and Family Violence Protection Act 1989* was introduced, the community's awareness of this form of violence has increased. This has been accompanied by a significant increase in the numbers of domestic violence applications, from 2957 in 1990 to 22,754 in 2009-2010. A more contemporary definition of domestic violence will assist police, the courts, support services and the community in identifying this type of violence and responding effectively to the safety needs of victims.

Lastly, the Bill aims to ensure that the person who is most in need of protection is identified. This is particularly important where

cross-applications are made, which is where each party to a relationship alleges domestic violence against the other and which often result in cross-orders.

During consultation, stakeholders reported a disproportionate number of cross-applications and cross-orders and expressed the concern that in many instances domestic violence orders are made against both people involved.

This is inconsistent with the notion that domestic violence is characterised by one person being subjected to an ongoing pattern of abuse by another person who is motivated by the desire to dominate and control them. Both people in a relationship can not be a victim and perpetrator of this type of violence at the same time.

A cross-application may be used by a respondent to continue victimising the aggrieved person, to exact revenge or to gain a tactical advantage in other court proceedings.

Also, violence used in self-defence and to protect children can be misconstrued as domestic violence if a broader view of the circumstances is not taken.

Achievement of policy objectives

The Bill introduces a new Act to replace the *Domestic and Family Violence Protection Act 1989*. This presents an opportunity to clarify and re-structure existing provisions to enable the Act to be more readily accessed by the community.

Structure of the Bill

The Domestic and Family Violence Protection Bill 2011 is structured chronologically. It begins by introducing some of the important definitions in the Act, then progresses to explaining important concepts about the operation of the Act, outlining the powers of the court to make orders, police functions and powers, procedural matters, appeals, and miscellaneous provisions.

The Bill aims to provide greater clarity and structure by using plain language, a logical order to the provisions, introducing more divisions and sub-divisions, and using clear headings for sections, parts and divisions. The proposed structure of the Bill will provide greater clarity to those who interpret and apply its provisions; particularly people who are self-represented in proceedings.

Preamble, main objects of the Bill and principles for administering the Act

The Bill places a greater emphasis on the policy objectives behind the Bill by:

- including a statement by Parliament about the context in which the Bill is set, as a preamble;
- clarifying the main objects of the Act; and
- introducing a set of guiding principles.

The Bill includes a preamble which provides the opportunity for the Queensland Parliament to make a clear statement that domestic and family violence is a violation of human rights and, as such, is not acceptable in Queensland communities. The preamble recognises domestic and family violence in the context of relevant international obligations, contemporary social values and human rights. It also identifies the nature, dynamics and impacts of domestic and family violence and recognises the civil response set out in the Act should operate with, not instead of, the criminal law.

In contrast to the stated purpose of the *Domestic and Family Violence Protection Act 1989,* the main objects provision of the Bill contains a broader reference to the underlying objectives, namely to prevent or reduce domestic violence, maximise the safety and protection of victims and minimise the disruption to their lives, and to ensure that perpetrators are held accountable for their actions.

The Bill sets out principles to provide a framework for the Act's administration. The principles are to provide guidance to police, lawyers, courts and members of the community when applying and interpreting the Act.

The provisions dealing with the objects of the Act, the guiding principles and the preamble will bring the Queensland legislation in line with the domestic and family violence legislation in other jurisdictions. They are also consistent with recommendations made by the Australian Law Reform Commission in its *Family Violence – A National Legal Response* report, released in November 2010, and with feedback from consultation for the review of the *Domestic and Family Violence Protection Act 1989.*

Definition of domestic violence

The *Domestic and Family Violence Protection Act 1989* currently defines domestic violence through a series of specific behaviours, including wilful injury, wilful damage of property, intimidation or harassment of a person, and indecent behaviour without a person's consent.

The definition of 'domestic violence' set out in clause 8 of the Bill reflects the contemporary understanding of domestic violence, and includes behaviour that is physically or sexually abusive, emotionally, psychologically or economically abusive, threatening or coercive, or behaviour that in any other way controls or dominates another person causing fear.

This definition takes account of recommendations made by the Australian Law Reform Commission in its *Family Violence – A National Legal Response* report, released in November 2010, current research, feedback from consultation and definitions used in other jurisdictions.

Grounds for making a protection order

The current grounds of which a court must be satisfied in determining whether or not to make a protection order are that:

- an act of domestic violence has occurred;
- a domestic relationship exists; and
- the person who committed domestic violence is likely to commit domestic violence again or, if the act of domestic violence was a threat, that the person is likely to carry out the threat.

The Bill replaces the 'likelihood' element with a requirement that a court be satisfied that an order is necessary or desirable to protect an aggrieved from domestic violence. This change focuses the court on the protective needs of the aggrieved and whether imposing conditions on the respondent's behaviour is necessary or desirable to meet these needs. The court may still consider evidence which suggests that domestic violence may occur again, or a threat may be carried out, however the court does not need to be satisfied that such an event is 'likely'. Further, a court can look at other factors, including whether an aggrieved is in fear, when it is determining this element.

The new grounds also require a court to consider the guiding principles in deciding whether an order is necessary or desirable for the protection of the aggrieved. The priority of the Bill is the safety and wellbeing of the

aggrieved and the grounds for making a protection order are directed toward achieving this aim. These measures are also consistent with the objective of ensuring that orders are only made for the benefit of the person who is in need of protection and are intended to reduce inappropriate cross applications and cross-orders.

Naming children on orders

Currently, the *Domestic and Family Violence Protection Act 1989* does not provide any specific guidance to a court when it is considering whether to include a child as a named person on a domestic violence order. When a person, including a child, is named on an order, the respondent's behaviour towards the named person is subject to the conditions which relate to that person. The general requirements for including a relative or associate on an order apply, and these refer to the occurrence, or likely occurrence, of an act of 'associated domestic violence', which is violence directed at a relative or associate.

The effects on children of witnessing or being exposed to domestic violence are well documented and can include medium and long term psychological harm. The Bill includes specific considerations for including children on orders which include whether naming the child is necessary or desirable to protect the child from being exposed to domestic violence. What it means for a child to be 'exposed' to domestic violence is defined in clause 10 as the child seeing or hearing, or otherwise experiencing the effects of domestic violence committed by a respondent. A non-exhaustive list of examples of being exposed to domestic violence is set out in the provision.

Police functions and powers

The Bill includes some changes to the powers that police officers have when they are responding to domestic violence incidents or dealing with people who have committed acts of domestic violence. This will increase the capacity of the police to provide quick and effective responses for victims of domestic violence. These changes include:

- Obligation of police officer to investigate domestic violence: The *Domestic and Family Violence Protection Act 1989* places an obligation on a police officer to investigate suspected domestic violence and to take action, as appropriate, to respond. The Bill makes it clear that this obligation is in addition to a police officer's responsibility to investigate a criminal offence and also includes a

requirement for an officer to make a written record of his or her reasons for not taking any action after an investigation.

- New power to issue a police protection notice: A police protection notice is a short-term response to low to medium-level domestic violence incidents that will provide immediate protection to the aggrieved. A notice will act as an application to the court for a protection order. A police protection notice also includes the option of a 24 hour 'cool-down' condition, whereby the respondent to the notice is required to leave a stated premises and not approach or contact the aggrieved during the 'cool-down' period. A respondent who breaches a notice can be charged with an offence which may result in up to 2 years imprisonment. Police protection notices will be particularly effective in remote and rural areas where courts sit less frequently.

- Police powers of detention: The detention powers of police are to be used in high risk situations, where there is a danger of injury to a person or damage to a person's property. The proposed changes will allow a person's detention to continue for up to 8 hours while a person is intoxicated and incapable of understanding the requirements of an order, application, or release conditions, and for up to 4 hours where a person's demeanour may present an ongoing danger of injury or property damage. Police officers will also have the ability to apply to a magistrate for an extension of the initial four hour detention period for a further four hours in limited circumstances. The detention powers are subject to strict requirements and include obligations to record particulars about the detention in the enforcement acts register that is required to be kept under the *Police Powers and Responsibilities Act 2000*.

- Power to require a respondent to remain for the purpose of service: This power will enable police to require a person named as a respondent to an application or order to remain at a location for the time reasonably necessary for the police officer to serve the respondent or advise the respondent of the conditions of an order if the officer does not have a copy of the order. This power will also apply while a police protection notice is issued and served. This will improve the safety of victims of domestic and family violence by increasing the opportunities for police to ensure that service requirements are met which means that protection orders can be made by the court and domestic violence orders can be enforced.

Conditions and intervention orders

A domestic violence order protects an aggrieved by imposing conditions on the behaviour of the respondent. The Bill includes changes to the law about the conditions that can be imposed on a respondent which are designed to increase the safety of victims of domestic violence and to make perpetrators more accountable for their behaviour:

- New order for respondent to attend an intervention program or counselling: The Bill includes a new provision which provides a clear power for a court to make an order requiring a respondent to attend an approved intervention program or approved counselling.
- Ouster conditions: The relevant provisions set out matters for the court to consider when a request is made for an ouster condition and will also require the court to provide reasons for imposing, or not imposing, an ouster condition when one is sought. Ouster conditions prevent a respondent from remaining at, entering or attempting to enter certain premises. This may include premises where the respondent and the aggrieved live or lived together, or where the aggrieved or a named person lives, works or frequently goes. Exposure to, or fear of, domestic violence is a leading cause of homelessness. The Bill increases the clarity about the considerations for the court in order to ensure that ouster conditions are made safely, to protect victims of violence.
- New condition relating to protection of unborn child: This condition will enable a court to make an order for the protection of an unborn child where an aggrieved is pregnant at the time a domestic violence order is made. The condition takes effect when the child is born. This is to address the concern that an aggrieved does not have the capacity to apply for a variation of an order to include, as a named person, a recently born child in the period of time immediately following his or her birth. This period of time can be a time where an aggrieved and a new born child are particularly vulnerable.

Penalty for breach of a domestic violence order

A further measure included in the Bill to increase the accountability of perpetrators of domestic and family violence is an increase in the maximum penalty available for the offence of contravening a domestic violence order. The maximum penalty will increase to three years imprisonment. This penalty is the jurisdictional limit of the Magistrates Court.

This will provide additional scope for courts to sentence offenders in relation to the more serious forms of behaviour that can constitute a breach of a domestic violence order. It may also provide an opportunity for increased distinction of penalties applied between first offenders and those who have previous convictions.

Alternative ways of achieving policy objectives

An increased criminal response to domestic and family violence would provide an alternative way of meeting the identified policy objectives.

Feedback from stakeholder consultation noted support for the civil domestic and family violence legislation, but also a high level of support for criminal responses to operate in parallel to the civil process.

The option of creating additional criminal offences for behaviour that is domestic violence was rejected because civil legislation is more accessible than a criminal process. A civil process enables a victim of domestic and family violence to make an application for a domestic violence order independently of the police. The standard of proof is lower than for criminal proceedings and this means less evidence is required to obtain a domestic violence order than to obtain a criminal conviction. While a domestic violence order carries the threat of criminal sanctions if it is not complied with, the making of an order does not immediately subject the respondent to a penalty. This is important, as victims of domestic and family violence often want the violence to stop, but do not want the respondent punished.

While an increased criminal response has the potential to achieve some of the policy objectives, particularly increasing the accountability of people who use domestic and family violence in their relationships, the risk would be that some victims of violence would fail to seek protection. Many victims experience guilt for accessing the civil law system for protection and this would increase if the civil response was retired in favour of an increased criminal law response. Other possible unintended outcomes include possible loss of income for the main breadwinner of the family if a fine or imprisonment resulted and many orders are sought where people continue to reside together as a couple. A criminal response in these circumstances may be counter-productive and could create further disadvantage and difficulty for many people.

The Bill provides an accessible civil legal response for people seeking protection from domestic and family violence and aims to prevent future

acts of violence, rather than focusing, as the criminal law does, on punishing an offender for past behaviour.

Estimated cost for government implementation

Agencies involved in responding to domestic violence in Queensland have assessed the cost of implementing the new legislation. Costs will include training, IT and data system modification and the development and production of forms, policies, procedures and information resources. These costs will be funded from within existing resources.

The Queensland Police Service has identified a number of reforms that will impact on operational policing in particular, broadening the definition of domestic violence, the introduction of police protection notices and the requirement to consider whether a child should be included on a domestic violence order. While some of these reforms may require additional police time in responding to domestic and family violence incidents, other reforms may result in savings in police time.

The Department of Communities has also received additional funding to expand the safety upgrade initiative to a total of six sites. This initiative supports the issue of ouster conditions by providing safety audits and extra security for people affected by domestic violence who obtain an ouster condition.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation should make rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review –

***Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)**

Clause 101—Police officer may issue police protection notice

Clause 101 of the Bill allows a police officer to issue a protection notice against a person (the respondent) in certain circumstances. The police protection notice will include the conditions that the respondent be of good behaviour towards the aggrieved and not commit domestic violence and

may, at the issuing police officer's discretion, include a condition requiring the respondent to remain away from stated premises for up to 24 hours.

The police protection notice is a power exercised administratively by a police officer, which has the potential to affect the rights, liberties and obligations of people who are subject to the notice.

The reason for allowing for police protection notices is to address a gap in the current range of responses available to police officers when they attend a domestic violence incident. A police officer's ability to ensure protection for an aggrieved is in place in a timely way can be limited by the availability of a court to hear an application for a domestic violence order. Many domestic violence incidents occur outside of the local court's business hours and, in some rural and regional areas, the local court may not sit frequently.

Under the *Domestic and Family Violence Protection Act 1989*, police officers can:

- apply directly to a magistrate outside of business hours for an urgent temporary protection order; or
- can detain a respondent for up to four hours and release the respondent on conditions which are similar to the conditions of a domestic violence order.

These responses are restricted to situations where there is a degree of urgency or a danger that the respondent will injure someone or damage their property. Otherwise, police may only make an application on behalf of the aggrieved and wait for the application to come before the court. There can be a delay of several days, or longer in remote areas, before the court hears the application and, during this time, the aggrieved is not protected by an order. In some situations, if the police cannot later locate the respondent to serve an application or a resulting order, the aggrieved may not be protected at all.

A police protection notice will provide an immediate response to many domestic violence incidents by enabling police to serve a notice while attending the incident. The notice contains the same standard conditions as a court issued domestic violence order and provides the option of a 24 hour 'cool-down' condition, which requires the respondent to stay away from stated premises and not contact the aggrieved. As well as providing immediate protection for an aggrieved, a police protection notice overcomes problems with later locating and serving a respondent.

A number of safeguards have been incorporated into the Bill to strike the balance between protection of the victim and upholding the rights and liberties of individuals, including:

- In issuing a notice, the police officer must:
    - be satisfied it is "necessary or desirable to issue the notice to protect the aggrieved" (clause 101(d));
    - obtain the approval of a supervising police officer to issue the notice (clause 102);
    - if imposing a cool-down condition to remove the respondent from the premises, consider the respondent's accommodation needs (clause 108);
    - explain the notice to the respondent and the aggrieved and take reasonable steps to ensure that they understand the notice and the consequences (clause 110);
    - personally serve the notice on the respondent (clause 109).
- The notice is taken to be an application for a protection order to trigger future judicial scrutiny (clause 112). Where there is an existing domestic violence order in place, and the police officer is unaware, it will take precedence over the notice to the extent of any inconsistency between the notice and the order (clause 114).
- The maximum period of time that can elapse before a police protection notice will be considered by a court is 28 days. In most areas, where the local court sits at least once a week, the police protection notice will have to be considered within 5 business days after the notice is issued (clause 105).
- A court, in hearing an offence for the contravention of the notice, must consider whether the notice was properly issued in the first instance (clause 178(3)).
- A police protection notice will only contain one standard condition - that the respondent be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved (clause 106). The optional 24 hour 'cool-down' condition is the only other condition that can be imposed.

In light of these safeguards, an appropriate balance has been struck between the rights and liberties of the individual and the safety of the aggrieved.

Legislation should make rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review –

***Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)**

Clause 178—Contravention of police protection notice

A breach of a police protection notice issued under clause 101 of the Bill constitutes an offence under clause 178 which carries a maximum penalty of 60 penalty units or 2 years imprisonment. The application of criminal sanctions, where the conditions of the notice are breached, has an impact on the rights, liberties and obligation of the person who has breached the notice.

The protective purpose of a police protection notice is compromised if there is not a serious consequence for breaching the conditions of the notice. That is, if there is no consequence for breaching an order or the consequence is limited to a fine, a respondent may not take the conditions on the order seriously. As discussed in the context of police protection notices, there are a number of safeguards to the issuing of the notice.

The quantum of the maximum penalty for breach of a civil notice is justified by the need to ensure an effective police response for victims of domestic violence. The safeguards that apply to the issue of the notice, and the requirement for a court hearing the prosecution of a breach of a notice to consider whether the notice was properly issued provide adequate protection for the rights and liberties of an offender who is charged with breaching a police protection notice.

Legislation should be consistent with the principles of natural justice and make rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review –

Legislative Standards Act 1992, section 4(3)(a) and 4(3)(b)

Clause 119—Detention period limited to four hours

Clause 121—Police officer may apply for extension of detention period

Clause 119 of the Bill expands the reasons for which a police officer, in responding to a domestic violence incident, may detain a respondent for up to 4 hours or 8 hours. Clause 121 allows for a police officer to apply to a magistrate for an extension of the detention period for a further 4 hours in limited circumstances.

Where detention occurs under the Bill, there is an impact on the rights and liberties of an individual and there is a potential for the denial of the principles of natural justice.

Currently, the *Domestic and Family Violence Protection Act 1989* allows a person to be detained until a domestic violence order is made by a court or magistrate, or an application for an order is completed and served on the person. The Act also allows police to continue to detain a person until arrangements which are necessary to safeguard the aggrieved have been completed. In any of the circumstances outlined, the period of detention cannot exceed four hours.

The Bill expands the current police powers of detention as follows:

- By providing for additional grounds on which a person can continue to be detained for a period of up to four hours:
    - for a period of up to eight hours where a police officer reasonably believes the person is intoxicated to the extent of being incapable of understanding the nature and effect of a domestic violence order, application or release conditions (clause 119(2)(b)); and
    - for a period of up to four hours where a police officer reasonably believes a person's behaviour is so aggressive or threatening that it would present a continuing risk of injury to a person or property damage (clause 119(2)(c)).
- By allowing a magistrate to order an extension of the initial four hour detention period for up to a further four hours (clause 121). A magistrate can extend the detention if satisfied that the nature and seriousness of the alleged domestic violence requires the extension. The magistrate must also be satisfied that the extension is necessary to make arrangements for the safety of the aggrieved or a child, or to address the concerns a police officer has in relation to the respondent's or aggressive behaviour.

The Bill proposes a number of safeguards for situations where police are proposing to use the powers of detention including:

- A police officer must reasonably suspect that a person has committed domestic violence and that there is a danger of injury or property damage before taking the person into custody (clause 116).
- A police officer must not question a person about a criminal offence while being held in custody under these provisions (clause 120). This

means the detention power cannot be inappropriately used as a means of eliciting information from the person.

- The person must be released if a court hears an application for a domestic violence order during the initial four hour detention period and dismisses the application or decides not to make an order (clause 119(1)(a)(ii) and (iii)).
- An application for an extension of the detention period must be made to a magistrate before the initial four hour detention period expires (clause 121).
- The person detained, or the person's lawyer, must be advised of an application for an extension (clause 121(4)) and be given an opportunity to present submissions to the magistrate, provided this would not unduly delay the application (clause 121(10)).
- A Magistrate can only extend the detention where the nature and severity of the domestic violence incident requires the extension (clause 122(1)(a)).
- There are additional safeguards that apply where a child is taken into custody (clause 126).
- Amendments to the *Police Powers and Responsibilities Regulation 2000* will make it clear that detaining a person under the Bill is an *enforcement act* and must be recorded in the register of enforcement acts. This will also activate safeguards within the *Police Powers and Responsibilities Act 2000,* including provisions enabling people to access information from the register.

With these safeguards in place, the detention powers are justified on the basis that they provide police with the opportunity to protect the aggrieved or a child from further acts of violence.

Legislation should make rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review –

***Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)**

Clause 125—When police officer must release person on conditions

Clause 179—Contravention of release conditions

Clause 125 allows a police officer to release a person on the conditions that the releasing police officer considers appropriate (clause 125(2)) when a

person is being released from custody in situations where it has not been possible to bring a person before a court within the period of detention. Clause 179 provides for a maximum penalty of 60 penalty units or 2 years imprisonment if a person contravenes release conditions.

The imposition of release conditions is an administrative act that affects the rights and liberties of an individual.

Clause 125 adopts the current provisions of the *Domestic and Family Violence Protection Act 1989* which enable a person to be released on conditions. Release conditions are of a similar nature and effect as conditions on a domestic violence order. They can include no contact conditions and name a child, relative or associate of an aggrieved as a named person.

The main changes from the current provisions can be summarised as follows:

- Where a court makes a domestic violence order after release conditions have been imposed on a respondent, the release conditions can continue in force until the order is served on the respondent. If the court does not make an order, the conditions cease to have effect (clause 125(5)).
- If a court makes a temporary protection order in the same terms as the release conditions, the temporary protection order is taken to have been served on the respondent when it is made (clause 125(6)).
- There is an increase in the maximum penalty for breach of release conditions, from 12 months to 2 years imprisonment.

The release condition provisions in the Bill do not significantly alter the circumstances in which release conditions are imposed; that is, upon release of a person taken into custody. The current safeguards for release conditions have been continued with only minor modifications to ensure clarity and consistency with other provisions.

The safeguards can be summarised as follows:

- The application which accompanies the release conditions must be heard within five business days of release. The current timeframe is 7 calendar days. Otherwise, the police officer should apply for a temporary protection order (clause 129(2)).
- The conditions imposed as standard release conditions are set out in the Bill (clause 125(3) and (4)) which will ensure greater familiarity

with the nature and effect of release conditions. Currently, these conditions are set out in the *Domestic and Family Violence Protection Regulation 2003.*

- The requirements for entering information relating to a person's detention in a register have been transferred to the *Police Powers and Responsibilities Regulation 2000* and the *Police Powers and Responsibilities Act 2000.* This will ensure consistency with other requirements relating to the recording of police actions and trigger the existing safeguards that exist under that Act.

These safeguards balance the need to provide immediate protection to victims when domestic violence is sufficiently serious to justify a person being taken into custody, with the protection of the rights of the person taken into custody. They do so by providing more explicit guidance to the police about the conditions that can be imposed, the requirements for entering information into the register and allowing for judicial scrutiny of the application as soon as possible.

Legislation should provide sufficient regard to the rights and liberties of an individual

***Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)**

Clause 134—Power to direct person to remain at place

Clause 134 creates a power for a police officer to issue a direction to a respondent to remain in a particular place to enable service of an application for a protection order, a domestic violence order or police protection notice.

The imposition of a direction for a person to remain at a place impacts on the rights and liberties of an individual.

Under clause 134 of the Bill, a police officer will have the power to issue a direction to a person to stay in a particular place for one hour, or a longer time reasonably necessary, to allow an officer to serve the person with the order, notice or application. Where a police officer does not have a copy of an order in his or her possession, the provision enables a police officer to make arrangements for a person to be told about the existence of the order and the conditions imposed by the order. It is an offence to fail to comply with such a direction without a reasonable excuse (clause 134(8)). A maximum penalty of 40 penalty units applies.

The reason for this provision is to address situations where police have trouble locating a respondent for the purposes of service. In some

instances, respondents who are aware of a pending application or order may deliberately avoid service.

The provision also enables police to meet the service requirements of the Bill when they locate a respondent in the course of undertaking other work, such as random breath testing, and they do not have a copy of the order with them. An order can still be enforced against a respondent (under clause 177(1)(c) and clause 177(4)) if a magistrate is satisfied that the respondent has been told by a police officer about the existence of the order and the relevant conditions.

Lastly, the provision complements the new police protection notice provisions by enabling police to direct a person to remain at a place while the notice is issued and served.

The following safeguards apply to this provision:

- There is an obligation on the police officer to advise the recipient of the direction and that failure to comply with the direction without reasonable excuse is an offence (clause 134).
- There is a defence of 'reasonable excuse' which applies to this offence (clause 134(8)). The defence is deliberately wide so that magistrates who are dealing with these offences can consider a broad range of circumstances.
- The police officer must serve the notice, order or application without unreasonable delay (clause 134(5)).
- The maximum penalty does not include a prison sentence. This is consistent with the penalty provisions under section 791 of the *Police Powers and Responsibilities Act 2000* for contravening a direction or requirement.

These safeguards balance the rights of the respondent with the need to ensure the safety of an aggrieved by enabling the court and police processes to operate more smoothly, thereby justifying any breach of the fundamental legislative principles.

Legislation should provide for freedom of communication and the desirability for open courts to promote the proper administration of justice

Clause 158—Courts to be closed

Clause 159—Prohibition of publication of certain information for proceeding

The Bill proposes that domestic violence proceedings be conducted in a closed court and that there be restrictions on publishing information about proceedings to the public.

These provisions are not consistent with principles relating to the freedom of communication and the desirability for open courts.

Section 81 of the *Domestic and Family Violence Protection Act 1989* (Courts to be closed) has been carried over to the Bill (clause 158). Although clause 158 provides that the court hearing an application under the Act must close the court, the court retains its discretion to open the proceedings or part of the proceedings to the public or a specific person. This provision continues to allow for an aggrieved to have a support person present. Under clause 42 of the Bill, a court may make or vary a protection order where it convicts a person of an offence involving domestic violence. These proceedings must be held in open court, however, as with any criminal proceedings, a court can order that persons be excluded from proceedings (see section 70 of the *Justices Act 1886).*

While courts of law are generally open to the public to promote the proper administration of justice, the nature of the matter being dealt with does allow for some discretion in the application of this principle. A similar example is provided in proceedings that involve children. The provisions of section 99J of the *Child Protection Act 1999* and section 20 of the *Childrens Court Act 1992* enable a court to be closed. Given the highly sensitive nature of domestic and family violence, and the fact that children are often involved in proceedings, allowing for courts to be closed is considered to be justified in the circumstances.

Clause 159 of the Bill prevents information given in evidence or information that is likely to identify, or lead to the identification, of a party, witness, or child concerned in proceedings under the Bill from being published to the public. A person who publishes such information can be prosecuted. The maximum penalty for an individual is 100 penalty units or

2 years imprisonment and for a corporation is 1,000 penalty units. This provision complements the 'closed court' provisions of clause 158.

Publish is defined in clause 159(3) in terms of publishing 'to the public'. This is wider than the current meaning of publish in section 82 of the *Domestic and Family Violence Protection Act 1989,* which also refers to 'a section of the public'. This means that the Bill does not need to specify all of the exemptions that are referred to in the current provision. The proposed definition of *publish* will not include a person who is required to copy or forward documents to another person where this is undertaken in the course of representing or assisting a person who is involved in proceedings.

The exceptions, set out in clause 159(2), include: circumstances where the court orders publication; notices which are displayed in court; publication of genuine research or in a recognised series of law reports, where individuals are not able to be identified; or where consent has been obtained by the individuals to whom the information relates.

It is considered that these provisions effectively balance the need to protect individuals from the publication of highly sensitive and personal information and the need to facilitate the openness and accountability of court processes. Court processes are still subject to scrutiny, through publication in recognised law reports and genuine research, and also through the appeal provisions in part 5, division 5 of the Bill. Further, a court has the discretion to open a court in appropriate circumstances.

Legislation should provide sufficient regard to the rights and liberties of an individual

***Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)**

Clause 63—Ouster condition

The Bill proposes that a court can issue an ouster condition that prevents a respondent from remaining at premises, entering or attempting to enter premises, or approaching within a stated distance of premises (clause 63(1)). This condition can apply to premises in which the respondent has a legal or equitable interest, or where the aggrieved and respondent live or have lived together (clause 63(2)).

The making of an ouster condition impacts on the rights and liberties of an individual.

The effect of an ouster condition is largely carried over from the provisions of the *Domestic and Family Violence Protection Act 1989* (sections 25 and

25A). Additional guidance is provided in the Bill about the matters that are to be considered by a court when it is deciding whether to make an ouster condition (clause 64(2)). Also, clause 64(3) requires a court to give reasons for imposing or not imposing an ouster condition when one is sought.

The overriding consideration for the court in deciding whether to impose any condition, including an ouster condition, is that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount. Further, the court only considers whether to impose conditions on a respondent after first deciding that the respondent has committed domestic violence against the aggrieved.

The matters to be considered by a court include a number of matters specific to the needs of the aggrieved and any child living with the aggrieved (clause 64(2)(a) to (f)) and the accommodation needs of the respondent (clause 64(2)(g)). By setting out these specific considerations, the court will have increased guidance on matters relevant to the safety, welfare and wellbeing of the aggrieved and any children of the aggrieved in imposing an ouster condition, while retaining the need to consider the accommodation needs of the respondent.

Although the Bill does not prevent an ouster condition being made in the absence of notice to a respondent, this should only occur in situations where a temporary order is sought on an urgent basis before there is an opportunity to serve a respondent (clause 47). The ouster condition only becomes enforceable once the respondent is served. The respondent will have the opportunity to present submissions to the court at the next return date.

The considerations included in the ouster provisions enable the court to balance considerations relevant to the safety and welfare of the aggrieved and any children of the aggrieved with the accommodation needs of the respondent. The processes in the Bill for hearing matters ensure that a respondent is provided with an opportunity to respond to an application for an ouster condition. In addition, the requirement to provide reasons ensures there is transparency in how the considerations have been applied in the decision-making process.

Legislation should provide sufficient regard to the rights and liberties of an individual *Legislative Standards Act 1992,* section 4(2)(a) and 4(3)(a)

Clause 83—No exemption under Weapons Act

Clause 83 provides that the people mentioned in the clause, who would otherwise be exempt from holding a weapons license due to the nature of their employment, are not entitled to this exemption if they are named as a respondent to a domestic violence order.

The provision impacts the rights and liberties of individuals.

Clause 83 largely adopts the provisions of section 23 of the *Domestic and Family Violence Protection Act 1989* (Weapons Act to apply to respondents otherwise exempt). This provision has the potential to affect a person's employment. For example, a police officer employed by the Queensland Police Service who is a respondent to a domestic violence order would be restricted to duties which do not involve the possession or use of a weapon during the period of time that the order is in force.

This provision operates automatically which means a magistrate does not have discretion to over-rule it.

The following safeguards operate in relation to this provision:

- The exemption is limited to the duration of the order and a court can only make a protection order if the grounds for making an order (in clause 37) are met, unless the respondent consents to the making of the order (under clause 51).
- A court is required to explain to a respondent the implications of a domestic violence order, including those which relate to weapons (clause 84).
- A respondent has a right to respond to an application for a domestic violence order, except where an application is heard urgently before service can be effected. A protection order can only be made in the absence of the respondent if a court is satisfied that the respondent has been served with the application.
- A respondent has a right of appeal in relation to the making of a protection order (part 5, division 5).

The provision is considered necessary given the risk to the safety of an aggrieved and any children of the aggrieved if a respondent is allowed to have access to weapons during the time that a domestic violence order is in

force. The safeguards listed above are considered sufficient to alleviate concerns as to the rights and liberties of the respondent.

Legislation should provide sufficient regard to the rights and liberties of an individual *Legislative Standards Act 1992,* section 4(2)(a) and 4(3)

Clause 47—Temporary protection order when respondent has not been served

Clause 47 enables a court to make a temporary protection order against a respondent when the respondent has not been served with a copy of the application for a protection order and is not present in court. The court can make an order if it is satisfied that the making of a temporary protection order is necessary or desirable to protect the aggrieved, or another person named in the application for a protection order, from domestic violence, despite the respondent having not been served with the application for the protection order.

Providing the court with the ability to make a temporary protection order when the respondent has not been served has the potential to impact on the rights and liberties of an individual.

The Bill retains the ability of a court to make a temporary protection order without proof of service from section 39D of the *Domestic and Family Violence Protection Act 1989*. Section 39D provides that a court can make an order if it appears that the aggrieved or a named person is in danger of personal injury or if property of the aggrieved or a named person is in danger of substantial damage.

Clause 47 replaces the current test for making an order where service has not occurred and requires a court to consider whether the making of the order is necessary or desirable to protect the aggrieved, or another person named in the application, from domestic violence despite the respondent having not been served. This is broader than the current test and will include situations where there are concerns about the respondent's reaction to receiving an application for a protection order. These concerns may be overcome if the respondent is served with a temporary protection order at the same time as the application is received, so that the aggrieved is immediately protected from the point the respondent has notice of the application.

An order made under clause 47 will generally be made without the court having heard from the respondent or a person acting on behalf of the respondent. However, such an order can only be made on a temporary basis

and the respondent will have an opportunity to respond to the application, and the making of a temporary protection order, at the next return date after he or she is served. Further, a respondent cannot be punished for a breach of the conditions of the order until the respondent has been served with the order or advised by a police officer of the conditions of the order (clause 177(1)). The considerations which must be applied by a court before such an order is made appropriately reflect situations where there is urgency or concern about the respondent committing domestic violence during the time that would normally elapse between service of an application and hearing the application.

Legislation should provide sufficient regard to the rights and liberties of an individual *Legislative Standards Act 1992,* section 4(2)(a) and 4(3)

Clause 39—Hearing of application – non-appearance of respondent

Clause 39 sets out a range of options for a court when a respondent has been served with an application for a protection order but does not appear in court. One of the options a court has is to hear and decide the application in the absence of the respondent. When this occurs, a court is entitled to make a protection order if it is satisfied that the grounds for making the order are sufficiently addressed in the application.

Providing the court with the ability to hear and decide an application when the respondent does not appear has the potential to impact on the rights and liberties of an individual.

Clause 39 largely adopts section 49 of the *Domestic and Family Violence Protection Act 1989*. It is necessary to retain this provision to ensure the safety of victims of domestic violence by providing for efficient court processes which are not affected by the respondent's attitude to the proceedings. The safeguards to clause 39 can be summarised as follows:

- There is a requirement to personally serve an application on the respondent (clause 34).
- The application must state the consequences if the respondent does not appear in court, including the possibility of an order being made in the respondent's absence.
- The application served on the respondent must also state the grounds of the application (clause 32) and be endorsed with the date, time and place for hearing the application (clause 33).
- A respondent can appeal a decision of a magistrate to make a protection order under part 5, division 5 of the Bill.

Legislation should provide sufficient regard to the rights and liberties of an individual or confer immunity from proceeding or prosecution without adequate justification. ***Legislative Standards Act 1992,*** **section 4(2)(a) and 4(3)(h)**

Clause 180—Aggrieved or named person not guilty of offence

Clause 180 provides that an aggrieved or another person named in a domestic violence order does not, under section 7 of the Criminal Code, aid, abet, counsel or procure the commission of an offence of contravening a domestic violence order, police protection notice or release conditions because the person encourages or allows conduct by the respondent that contravenes the order, notice or conditions.

This clause may impact the rights and liberties of an individual and would prevent the prosecution of a person who may otherwise be prosecuted for an offence under section 7 of the Criminal Code.

The effect of clause 180 is to provide immunity from prosecution when an aggrieved could be considered to have consented to the respondent breaching an order, notice or release conditions. An example is when an aggrieved to a domestic violence order invites a respondent to premises despite knowing the order prohibits the respondent from having contact with the aggrieved.

Section 7 of the Criminal Code enables persons who aid, counsel or procure another person to commit an offence to be charged with the commission of the offence.

The Australian Law Reform Commission in its 2010 report *Family Violence – A National Legal Response* refers to situations where this has occurred in Australian jurisdictions and noted this is contrary to the policy behind protection orders, which are intended to be enforced against the person who uses the violence and not the victim. Further, the threat or potential of a criminal charge may act as a disincentive for victims to report breaches and there is the possibility of victims being re-victimised through a criminal court process. As a result, the ALRC recommended that a person protected by a protection order should not be charged with, or found guilty of, an offence of aiding, abetting, counselling or procuring the breach of a protection order.

While the practical effect of clause 180 is that respondents can be prosecuted for breaches in circumstances where the aggrieved would, but for the operation of this clause, otherwise be liable, this reflects the current

approach used by police when dealing with these situations. Police officers have discretion in deciding whether to charge and prosecute a respondent and, where a person is charged and prosecuted, the complicity of the aggrieved in the breach could be used to mitigate the sentence.

Ultimately, the effectiveness of the breach provisions rely, firstly, on ensuring that victims of domestic violence are not discouraged from reporting breaches and, secondly, that respondents to orders are responsible for ensuring that they comply with the conditions of the order. The Bill contains a number of requirements on courts and police officers to explain to respondents the consequences of breaching orders. These considerations justify any potential breach of fundamental legislative principles which may arise from the implementation of clause 180.

Legislation should provide sufficient regard to the rights and liberties of an individual or confer immunity from proceeding or prosecution without adequate justification. ***Legislative Standards Act 1992,*** **section 4(2)(a) and 4(3)(h)**

Clause 190—Protection from liability

Clause 190 provides a member of the Queensland Police Service with immunity from civil liability for an act done, or omission made, honestly and without negligence under this Act. This provision is necessary to ensure that police officers, acting appropriately, can effectively use the provisions in the Act, some of which may encroach on a person's civil liberties, without being concerned about the possibility of litigation. Police officers who are responding to domestic violence incidents are often faced with very challenging situations and may be required to make decisions quickly to provide adequate protection for victims of domestic violence. The term 'member of the Queensland police service' includes civilian members of the police service who are required to undertake actions in support of operational police officers.

Clause 190 does not provide total immunity – a police officer acting in good faith may still incur civil liability if his or her actions are negligent or in bad faith. Subclause 190(2) also enables a person who is adversely impacted by the actions of a member of the Queensland police service to have recourse against the State where they are prevented by subclause 190(1) from claiming against the member of the Queensland police service.

The need to provide police officers with the ability to effectively utilise their powers, in good faith, when responding to domestic violence

incidents justifies any potential breach of fundamental legislative principles which may arise from the implementation of clause 190.

Consultation

Three periods of consultation with community stakeholders were undertaken during the review of the *Domestic and Family Violence Protection Act 1989* and drafting of the Bill.

The first occurred from November to December 2009 and included meetings with a diverse range of non-government stakeholders to help develop the scope of the review and identify issues to be canvassed in a consultation paper. The early consultations revealed strongly held views about some fundamental aspects of the Act, for example, the adequacy of the criminal justice response, the appropriateness of police-issued orders and the intersection of the Act with Commonwealth and other state legislation.

The second stage of consultation commenced with the release of the 'Review of the *Domestic and Family Violence Protection Act 1989*: Consultation paper 2010' in March 2010. The consultation paper was available to the public on the Department of Communities and GetInvolved websites and was mailed out to over 400 domestic and family violence sector and other service providers. The consultation paper provided the community with information and possible options for reform of the domestic and family violence laws.

A comprehensive, statewide public consultation strategy was implemented from March to May 2010, including calls for responses to the consultation paper and participation at the 22 public consultation sessions held across 17 regions in Queensland. A total of 214 responses to the consultation paper were received and 365 people attended the public consultation sessions.

The consultation paper focussed on five main policy areas including prevention, civil and criminal approaches, protection of victims, perpetrator accountability and system planning and coordination. These areas were identified through the development of the Queensland Government strategy, research, input from stakeholders and practises in other jurisdictions.

The 'Review of the *Domestic and Family Violence Protection Act* 1989: Consultation report 2011' was released to provide the public with the

results of consultation. The following main themes emerged from the consultation:

- Changes to the definition of domestic and family violence which acknowledge the unacceptability of domestic violence, the range of abuses it comprises, and the power and control dynamics which underpin this form of violence are desirable.
- The current relationship categories are largely adequate, though some clarification is required, especially regarding 'intimate personal relationships'.
- Principles should be included in the legislation as they would assist in achieving a consistent approach in the interpretation of the Act.
- A greater criminal justice approach should exist in parallel with the civil process to enforce the message that domestic violence is unacceptable.
- The impact on children who are witnesses to domestic violence needs to be reflected in the legislation.
- Legislative guidance is required for victims of domestic violence who are from culturally and linguistically diverse backgrounds so that they have fair and equal access to justice processes.
- Offenders need to be made accountable for their actions and consideration should be given to the use of behaviour change programs to reduce the severity or likelihood of domestic violence.
- Short-term police-issued orders and an increase in the detention time available to police for a person taken into custody would contribute to victim safety and perpetrator accountability by demonstrating an immediate response to domestic violence.
- System reforms are required particularly for training those implementing the legislation and to facilitate information sharing and integrated approaches.

The third stage of consultation commenced with the public release of an exposure draft Bill on 28 July 2011 on the Department of Communities website. Members of the public were invited to provide feedback up until 8 August 2011 and 24 submissions were received.

Written submissions were received from a wide range of stakeholders including community members, domestic and family violence services and legal services. Feedback was largely positive and constructive.

In addition, consultation with 55 representatives of the domestic and family violence and legal service sectors about the exposure draft Bill was conducted during an intensive 2 day workshop on 1 and 2 August 2011. Participation was by invitation and care was taken to ensure suitable representation from the domestic and family violence sector, relevant parts of the legal sector, the Minister's Domestic and Family Violence Strategy Implementation Advisory Group, regional Queensland, organisations representing the interests of Aboriginal and Torres Strait Islander people, people with a disability, older people, men's programs, people who are lesbian, gay, bisexual, transgender and intersex and people from other cultures.

Feedback regarding the intent, language and readability of the exposure draft Bill was very positive. The inclusion of a preamble, principles and new definition of domestic and family violence all received favourable comment from participants of the consultation workshop. Measures to increase the safety of victims and increase the accountability of perpetrators of domestic and family violence such as introducing police protection notices, providing clearer guidance for the courts about the naming of children on orders and the issue of ouster conditions were also received favourably.

Minor amendments were suggested to some of the language contained in the draft consultation Bill. Feedback particularly referred to increasing the focus on the safety of the aggrieved and highlighting that the responsibility for the use of violence rests with the respondent. As far as possible, the Bill reflects the feedback provided.

Consistency with legislation of other jurisdictions

The new legislation will align with the majority of other jurisdictions, many of which have reviewed their domestic and family violence legislation in recent years. The responses in other jurisdictions to some of the main aspects of the new legislation are outlined below.

Purpose, principles and preamble

Most Australian domestic and family violence legislation contains clauses which set out their purpose. The legislation of New South Wales, Victoria and the Australian Capital Territory contain a preamble or principles, in addition to the purpose, which provides guidance to those involved in the administration of the legislation.

Definition of domestic violence

In all jurisdictions, domestic violence includes assault or personal injury, including sexual assault, and intentional damage to a protected person's property, and threats of such behaviour. Intimidation, or behaviour that is harassing or offensive, is included in the definition of domestic violence in all jurisdictions.

In Victoria, Tasmania and the Northern Territory, economic abuse is expressly included as a form of domestic violence. Emotional, or psychological abuse, is included in Victorian, Tasmanian and soon to be commenced South Australian legislation.

Defining relationships

All states have a domestic or spousal relationship category in their domestic violence legislation. There is also similarity among the states in the other relationships that are included, and these mostly align with the proposed Queensland legislation.

Variation occurs with some states identifying a wider range of people who can be protected including, New South Wales, Northern Territory and New Zealand, which include people living in the same household, without having to show any other relationship.

Intimate personal relationships are defined in the Western Australian and the soon to be commenced South Australian legislation as relationships in which the lives of the person are, or were, interrelated and the actions of one person affects, or affected, the other person. The Northern Territory is the only jurisdiction that provides protection against violence in any dating relationship

Children and domestic and family violence

Domestic violence legislation in Western Australia, the Northern Territory, and the Australian Capital Territory (ACT) enables a court to include children on an order where the court is satisfied there is an unacceptable risk (ACT) or reasonable fears (Western Australia and the Northern Territory) that the child will be exposed to domestic violence. In Victoria, a court may, of its own initiative include a child on an order, or make a separate order for the child, if satisfied that the child has been subjected to family violence and is likely to be subjected again to family violence. In New South Wales, where a court makes an order against a person who has a child, the court must include the child on the order unless there are good reasons for not doing so.

The Northern Territory legislation defines 'exposed' to include witnessing the effects of a violent incident such as observing bruising on a victim of violence. In Victoria, 'family violence' is defined to include behaviour that causes a child to hear, witness, or otherwise be exposed to the effects of, or behaviour that constitutes family violence.

Police Protection Notice

Victoria, Western Australia, South Australia, the Northern Territory and New Zealand have introduced legislation to allow police to issue a short term order or notice as a mechanism to prevent domestic violence prior to an application being heard and determined by a court. Tasmania has a framework that allows police to issue a full domestic violence order for up to 12 months without judicial review.

In Victoria and the Northern Territory police may issue a protection notice in circumstances where the matter cannot be immediately heard by a court or a court order cannot be immediately obtained. In Tasmania, Western Australia and South Australia the standard is lower and only requires an officer to be satisfied that domestic violence has occurred or is likely to be committed.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 outlines the short title of the Act.

Commencement

Clause 2 provides that the Act commences on proclamation.

Division 2 Main Objects

Main objects

Clause 3 outlines the main objects of the Act. These objects are achieved by allowing a court to make domestic violence orders, providing police with the power to issue police protection notices, and imposing consequences for contravening a domestic violence order or police protection notice.

Principles for administering Act

Clause 4 outlines principles to guide those involved in administering the Act. The principles aim to provide a decision-making framework to support those involved in administering the Act and to assist in better identifying and protecting people who fear or experience domestic violence.

Subclause 4(1) provides that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount. This is to be the overriding consideration for every decision made, and action taken, by a person involved in the administration of the Act

The other principles, which are subject to subclause 4(1), are set out in subclause 4(2).

Division 3 Interpretation

Dictionary

Clause 5 refers to the dictionary in schedule 2 for the definition of particular words used in the Act.

Meaning of *court*

Clause 6 defines *court* in the context of the Act.

Part 2 Operation of Act

Division 1 Preliminary

Purpose of this part

Clause 7 states the purpose of part 2 is to explain how domestic violence is dealt with under the Act and define important terms used in the Act.

Division 2 Domestic Violence

Meaning for *domestic violence*

Clause 8 provides a definition of *domestic violence*. It is more comprehensive than the definition of domestic violence in section 11 of the *Domestic and Family Violence Protection Act 1989*. The definition in clause 8 focuses on behaviours, rather than acts, and reflects a contemporary understanding of the nature and dynamics of domestic violence.

Subclause 8(1) describes the behaviour that constitutes domestic violence and requires a *relevant relationship* (defined in clause 13) to exist between the two people referred to in the provision. To assist with interpretation, subclause 8(2) sets out a non-exhaustive list of examples of behaviour that can constitute domestic violence. There are examples of behaviour that will come within the scope of subclause 8(1) that are not listed in this subclause.

Subclause 8(3) refers to a person who counsels or procures someone else to engage in behaviour which, if engaged in by that person, would be domestic violence. This covers situations where a person counsels or procures a third party to perpetrate the violent or abusive behaviour against a person with whom the first person is in a relevant relationship. If the person who counselled or procured the behaviour had engaged in that behaviour himself or herself, the person would have committed domestic violence. For the purpose of this Act, the person is taken to have committed the domestic violence.

Subclause 8(4) clarifies that the civil standard of proof – the balance of probabilities – applies for establishing whether certain behaviour is domestic violence, even if the behaviour could also constitute a criminal offence and may not have been proved beyond a reasonable doubt.

Subclause 8(5) defines *coerce*, *unauthorised surveillance* and *unlawful stalking*.

Meaning of *associated domestic violence*

Clause 9 defines *associated domestic violence* as behaviour mentioned in the definition of *domestic violence* (clause 8) by a respondent towards a person who has a particular relationship to, or association with, an aggrieved.

Meaning of *exposed* to domestic violence

Clause 10 provides that a child is *exposed* to domestic violence when the child hears, sees or otherwise experiences the effects of domestic violence committed by a respondent against an aggrieved. A non-exhaustive list of examples is provided to illustrate the definition. For this definition, it does not matter:

- whether the respondent intended to expose the child to domestic violence; or
- whether the child was present when the domestic violence occurred, as long as the child experiences the effects of domestic violence as illustrated by some of the examples in the clause, including the child observes bruises or injuries of a person who has been physically abused.

Meaning of *emotional and psychological abuse*

Clause 11 defines *emotional or psychological abuse* as behaviour that torments, intimidates, harasses or is offensive to another person. To guide interpretation of the definition of emotional or psychological abuse, this clause includes a non-exhaustive list of examples of behaviour that may constitute emotional or psychological abuse. The examples provided are consistent with the contemporary understanding of the nature and dynamics of domestic and family violence.

Meaning of *economic abuse*

Clause 12 provides a definition of *economic abuse.* To guide interpretation of the general definition of economic abuse, this clause includes a non-exhaustive list of examples of behaviour that may constitute economic abuse. The definition includes two broad categories of behaviour that constitute *economic abuse* and is framed by reference to the dynamics of domestic violence. This definition and examples distinguish reasonable behaviours relating to financial decisions which arise in the normal course of a relationship from those which are coercive, deceptive, or unreasonably controlling without a person's consent.

Division 3 Relevant Relationships

Meaning of *relevant relationship*

Clause 13 lists the relationships that are covered by the Act and are described as *relevant relationships*. A *relevant relationship* is*:* an *intimate personal relationship,* a *family relationship;* or an *informal care relationship*. For domestic violence to occur under the Act, it is necessary for the perpetrator and the victim of the violence to be in an intimate personal, family or informal care relationship.

Meaning of *intimate personal relationship*

Clause 14 defines *intimate personal relationship* as a spousal relationship, an engagement relationship, or a couple relationship.

Meaning of *spousal relationship*

Clause 15 defines *spousal relationship* and *spouse*.

Section 36 of the *Acts Interpretation Act 1954* defines a *spouse* as including a de facto partner. *De facto partner* is defined in section 32DA of the *Acts Interpretation Act 1954* and, in particular, includes partners who are of the same gender.

The definition of a person's *spouse*, in subclause 15(2), includes another person who is a parent or former parent of a child of the person. Together with subclause (3), this recognises that a relevant relationship exists between two adults who have the parentage of a child in common, even if

the two adults did not, or do not, have another type of relationship between them.

Meaning of *parent*

Clause 16 defines *parent*. The definition is broad and includes a person who has or exercises parental responsibility for a child. For these purposes, how the person came to be exercising parental responsibility for the child is irrelevant. The definition also includes a person who, under Aboriginal tradition or Torres Strait Islander custom, is regarded as a parent of the child.

Not included as a parent is a person temporarily standing in the place of a parent and a foster or kinship carer for the child under the *Child Protection Act 1999*.

Meaning of *engagement relationship*

Clause 17 defines an *engagement relationship*.

Meaning of *couple relationship*

Clause 18 defines a *couple relationship*. The term *couple relationship* replaces the *intimate personal relationship* category from section 12A of the *Domestic and Family Violence Protection Act 1989.* As noted above in relation to clause 14, the term *intimate personal relationship* is carried over from section 12A but is given the broader meaning of referring collectively to a spousal relationship, an engaged couple relationship and a couple relationship. The new definition of *couple relationship* aims to overcome some of the reported problems associated with section 12A, in particular the requirement that the lives of the parties to the relationship were 'enmeshed'.

Clause 18 requires a court to consider the objective factors that underpin or evidence the existence of a couple relationship and does not rely on how the parties to the relationship themselves view, define or describe the relationship. A couple relationship goes beyond a relationship that exists merely because the parties date or dated each other on a number of occasions (subclause (6)). A court is to have regard to the factors set out in clause 18(2) in determining whether two people are in a relationship as a couple.

Clause 18(3) sets out additional factors which, unlike clause 18(2), are a series of closed questions, none of which are conclusive. A court may still determine that two people are in a couple relationship if some or all of the matters referred in subclause (3) are absent from the relationship. Clause 18(5) provides that the gender of the parties involved in the relationship is not a relevant consideration in determining whether or not a couple relationship exists.

The new definition of *couple relationship* is intended to capture a broader range of relationships than those envisaged in clause 12A. Examples of the types of relationships the definition of *couple relationship* has been framed to cover include:

- Two elderly people who form a relationship based on companionship or an interest in travelling could be in a *couple relationship*. The two people may not reside together and may not be financially dependent on each other, but still be in a relationship that involves trust, emotional dependence and commitment, and frequent contact such that it can be characterised as a *couple relationship*.

- Two young people who form a relationship while they are still each residing with their parents could be in a *couple relationship*. The relationship could be largely comprised of contact through a social networking website and may not be a relationship of a sexual nature, but the relationship could involve frequent contact between the parties and declarations of their trust and commitment towards one another.

Relationships in which domestic violence occurs can also involve one party being manipulated by the other. For example, a woman forms what she believes is a committed and monogamous relationship with a man. She can prove through email correspondence and the evidence of common friends they have had regular contact over a period of time, the relationship is sexual and that they both initiated contact with each other. They both called and emailed the other, and he returns her calls and emails. The woman ends the relationship and the man becomes violenct and begins to harass her. When interviewed by police, the male partner denies they were in a relationship, although admits to them having casual sex on a few occasions. The man is in a de facto relationship with another woman. Despite the man's statements about the nature of the relationship and involvement with another women, the court can look objectively at evidence that can be presented about the frequency of contact and that it is initiated by both parties, the degree of intimacy between them and the existence of a sexual

relationship and conclude that the two people had a relationship as a couple.

Meaning of *family relationship* and *relative*

Clause 19 defines the terms *family relationship* and *relative*. A *family relationship* exists between two persons if one of them is or was a relative of the other. A *relative* can be a former relative, and the definition of *relative* includes three examples of people who could be regarded as *former relatives*. The definition of *relative* also includes a wider concept of relative that may exist in some communities or cultures, and examples of this are also set out in the provision.

Meaning of *informal care relationship*

Clause 20 sets out the meaning of an *informal care relationship*, which requires one person to be dependent on another person, a carer, for help in an activity of daily life.

Subclause 20(2) provides that an informal care relationship does not exist between a child and a parent of a child. *Child* is defined in the Dictionary to the Act as an individual under 18 years of age. An adult child can therefore be in an informal care relationship with his or her parent.

Subclause (3) provides that an informal care relationship does not exist if one person is engaged to help the other under a commercial arrangement.

However, subclause 20(4) qualifies the term *commercial arrangement*. Paragraph (a) recognises that a commercial arrangement can exist even if no fee is paid for the help provided. Paragraph (b) recognises that a carer who receives a pension or allowance for providing the care, or who is reimbursed for out of pocket expenses, is not providing the care under a commercial arrangement.

Paragraph (c) addresses situations which may appear to be a commercial arrangement because of the payment of a fee. However, if the person being cared for only pays the fee because the person is being threatened, coerced or intimidated into making the payment by the carer, or the carer is otherwise committing domestic violence against the person to induce the payment, then the arrangement is not a commercial arrangement. For example, an elderly person has been assisted by another person to do his or her shopping could be threatened or coerced to provide money to the other person, in circumstances that amount to *economic abuse* as defined in

clause 12. This situation would not be regarded as a *commercial arrangement* because the arrangement has come about from behaviours which amount to economic abuse. The elderly person would be entitled to apply for a domestic violence order on the basis of the abuse and the existence of an informal care relationship.

Division 4 Overview

Who is an *aggrieved* and who is a *respondent*

Clause 21 explains the terms *aggrieved* and *respondent*.

The clause clarifies that only one person can be named as an aggrieved in an application for a domestic violence order, a domestic violence order or police protection notice. However, more than one person may be named as a respondent in a domestic violence order or an application for a domestic violence order. Only one person can be named as the respondent in a police protection notice.

Child as aggrieved or respondent

Clause 22 provides that a child may be named as an aggrieved or a respondent in an application for a domestic violence order, a domestic violence order or a police protection notice if an intimate personal relationship or an informal care relationship exists between a child and the other party named in the application, order or notice.

A child can *not* be named as an aggrieved or respondent where there is a family relationship between the child and the other party. *Child* is defined in the dictionary in the Schedule as an individual under 18 years of age. An adult child can therefore be named as an aggrieved or respondent where there is a family relationship of child and parent between that person and the other party named in the application.

As noted in subclause 22(3), this provision does not prevent the registration of an interstate order under part 6. In some other states and territories, a child can be named as an aggrieved or a respondent in that jurisdiction's equivalent of a domestic violence order where domestic violence occurs within a family relationship.

A child can be protected from domestic violence in the family home by being named on an order which is made for the benefit of another person as

the aggrieved. The aggrieved may be the child's parent or another person with whom the child usually lives. Clause 24 explains how this can occur.

What orders can a court make to prevent domestic violence

Clause 23 outlines the orders the court can make to prevent domestic violence. The clause defines a *domestic violence order* as being a protection order or temporary protection order. *Temporary protection order* is also defined.

The clause clarifies that the court may make an order even where the person against whom the order is made is not notified about an application or does not appear in court. The substantive provisions of the Bill that allow the court to do this include clauses 39 (Hearing of application—non-appearance of respondent), 47 (Temporary protection order when respondent has not been served) and 94 (Hearing of application—non-appearance of respondent).

Who can a domestic violence order protect

Clause 24 outlines who a domestic violence order can protect in addition to the aggrieved. Subclause 24(1) lists the four categories of people, namely: a child of the aggrieved; a child who usually lives with the aggrieved; a relative of the aggrieved; and an associate of the aggrieved. Subclause 24(2) defines *a child who usually lives with the aggrieved* and subclause 24(3) defines who is an *associate* of the aggrieved. A non-exhaustive list of examples of people that could be associates of the aggrieved is provided.

Subclause 24(4) provides that a person mentioned in subclause 24(1) protected by being specifically named in the domestic violence order under clauses 52 (Naming relative or associate of aggrieved) or 53 (Naming child). A specifically named person is referred to as a *named person* throughout the Bill.

Who can apply for a protection order

Clause 25 details who can apply for a protection order. Subclause 25(1)(d) envisages other legislation authorising another person to apply for a protection order on behalf of an aggrieved, such as the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* which are mentioned in the examples to this paragraph.

Subclause 25(2) defines an authorised person for an aggrieved and provides an example of when a court may find a person is authorised by an aggrieved even though there is no written authority.

Subclause 25(3) provides that a person who is authorised to apply for a protection order under subclause 25(1) also has the authority to make other applications or bring other proceedings under this Act that arise from the application for the protection order. An example of other applications or proceedings is an application for variation of a domestic violence order.

When can a court make a protection order

Clause 26 outlines when a court can make a protection order. This can occur pursuant to an application for a protection order or when a court is presiding over a criminal proceeding for an offence involving domestic violence or a child protection proceeding. Part 3 (Domestic violence orders), division 1 (Protection orders) contains the court's powers in relation to making protection orders.

When can a court make a temporary protection order

Clause 27 outlines when a court can make a temporary protection order. Part 3 (Domestic violence orders), division 2 (Temporary protection orders) sets out the court's powers in relation to temporary protection orders.

What are the conditions of a domestic violence order

Clause 28 outlines the conditions of a domestic violence order. The clause makes it clear that when a child is named on a domestic violence order, the court must impose a condition that the respondent not expose the child to domestic violence. Part 3 (Domestic violence orders), division 5 (Conditions of domestic violence orders) deals specifically with the court's obligations and discretion with respect to imposing conditions on domestic violence orders.

What happens if circumstances change after a domestic violence order is made

Clause 29 provides that a person can apply for a variation of an order under clause 86 if circumstances change after a domestic violence order is made.

The clause provides two examples to illustrate changes of circumstances which may provide a basis for variation of an order.

What can happen if a respondent does not comply with a domestic violence order

Clause 30 outlines the action that may be taken if a respondent does not comply with a domestic violence order. Subclause 30(2) provides that anybody can complain to a police officer if a respondent is not complying with the order.

What is the effect of an interstate order

Clause 31 provides that an interstate order can be registered in Queensland under part 6. *Registered interstate order* is defined in the dictionary in the schedule of the Act and means an interstate order that is registered under clause 172 (Registration of interstate order). Clause 174 sets out the effect of an interstate order being registered in Queensland.

Part 3 Domestic Violence Orders

Division 1 Protection orders

Application for protection order

Clause 32 sets out who can apply to a Magistrates Court for a protection order. Subclause 32(2) sets out the requirements for the application.

The requirement to file the application in court can be read with clause 153 which enables documents to be filed by electronic or computer-based means.

Fixing of date, time and place for hearing

Clause 33 outlines the steps that must be taken in relation to the date, time and place for a hearing. The purpose of this clause is to ensure the copy of the application that is served on or given to the respondent or aggrieved (respectively) states the date, time and place for the hearing of the

application. The requirements differ depending on whether the applicant is a police officer (subclause 33(1)) or not a police officer (subclause 33(2)).

Paragraph (2)(a) requires the clerk of the court to write the date, time and place for the hearing on a copy of the application. The *Acts Interpretation Act 1954*, section 36 defines *writing* to include any mode of representing or reproducing words in a visible form. This means the clerk of the court can affix the date, time and place onto a copy of the application in a number of ways, including by using a stamp or a printer.

Service of application

Clause 34 requires a police officer to personally serve a copy of the application on the respondent. The copy of the application must also state the consequences of the respondent failing to appear in court. Subclause 34(3) provides that, where an application is made by a police officer, the application can be served on the respondent before it is filed in court.

Copy of application must be given to aggrieved

Clause 35 states that a copy of the application must be given to the aggrieved when the aggrieved is not the applicant for the protection order. However, failure to do this does not render the proceedings or any resulting order a nullity.

The requirements for providing a copy of the application to an aggrieved are less onerous than the requirement to personally serve a respondent. It may create an unnecessary impost for police officers to personally serve an aggrieved in all instances, particularly if the aggrieved has relocated to a remote location to escape the domestic violence. It is important to ensure that the aggrieved is notified of the proceedings and provided with the opportunity to be involved. However, the appearance of the aggrieved is not crucial because another person is the applicant in this circumstance.

Applicant may ask clerk of court for hearing before respondent is served

Clause 36 allows an applicant to ask a clerk of the court for a hearing before the respondent is served so that a temporary protection order can be made. To allow this to happen, this provision applies despite the requirement in clause 34 for the respondent to be personally served with a copy of the application.

This provision recognises there may be situations in which an applicant considers it is necessary for the aggrieved to be protected by a temporary protection order urgently or before the respondent is given notice of the application. Clause 40 (Hearing of application—before respondent is served) allows the court to begin to hear the application before the respondent has been served and clause 47 (Temporary protection order when respondent has not been served) sets out the power of the court to make a temporary protection order before the respondent has been served.

When court may make protection order

Clause 37 outlines when a court can make a protection order. Subclause 37(1) provides that a court may make a protection order if it is satisfied of three things:

(a) a relevant relationship exists between the aggrieved and respondent; and

(b) the respondent has committed domestic violence against the aggrieved; and

(c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.

The requirement for a court *to be satisfied* is referred to in a number of provisions throughout the Bill which require the court to make a decision. Subclause 145(2) provides that these words import the civil standard of proof, the balance of probabilities.

Paragraphs 37(1)(a) and (b) require consideration of the definitions of *relevant relationship* and *domestic violence* in clauses 13 and 8 respectively. The *necessary or desirable* element in paragraph (c) is not defined. This focuses the court on the purpose and effect of a protection order, which is the protection of the aggrieved from domestic violence, and thus whether an order is needed or advisable in the circumstances to achieve this. This enables a court to consider a wide range of matters and, unlike section 20 of the *Domestic and Family Violence Protection Act 1989*, does not require a court to be satisfied there is *likelihood* that domestic violence will occur again. Evidence of a risk of domestic violence reoccurring may still provide some assistance to the court, however the court can look beyond this and consider factors which are more specific to the aggrieved, such as whether or not the aggrieved is in fear of the respondent.

Subclauses 37(2) and 37(3) set out other matters that a court must or may (respectively) refer to in deciding whether an order is necessary or desirable to protect an aggrieved from domestic violence. Paragraph (2)(b) requires the court to apply the principles in clause 4 when deciding whether to make a protection order. The principle in subclause 4(1) requires the court to give the safety, protection and wellbeing of people who fear or experience domestic violence, including children, paramount consideration in making this decision. The principle in subclause 4(2)(d), in particular, will provide some assistance to a court when it is faced with conflicting accounts from the parties, or allegations that both parties are committing acts of violence. These issues can assist the court in considering cross-applications.

Hearing of application—appearance of respondent

Clause 38 outlines how an application will be heard if the respondent appears before the court. The court may hear and decide the application, adjourn the application or dismiss the application. However, subclause 38(3) provides that the court may not dismiss the application without deciding it unless there is no appearance by the applicant, a police officer, a service legal officer or any other person eligible to apply for the protection order. An applicant can make a further application after an application is dismissed in the circumstances set out in subclause 38(3).

Subclause 38(3) does not preclude a court dismissing an application in other situations, after a court has considered the merits of the application and made a decision. For example, a court can dismiss an application after it has decided that the application is malicious, deliberately false, frivolous or vexatious.

Hearing of application—non-appearance of respondent

Clause 39 outlines how an application will be heard if the respondent fails to appear and the court is satisfied that the respondent has been served with a copy of the application. The court has three options which are set out in subclause 39(2). The option in paragraph (a) enables a court to hear and decide the application in the absence of the respondent.

Hearing of application—before respondent is served

Clause 40 provides for the hearing of an application before a respondent is served. In these circumstances, the court has the power to adjourn the

application whether or not the court makes a temporary protection order. Clause 47 allows the court to make a temporary protection order if the respondent has not been served with a copy of the application.

Clause 187 (Court to give notice of adjournment to absent respondent) ensures the respondent is given notice of the date, time and place to which the hearing of the application is adjourned.

Hearing of cross-applications

Clause 41 deals with cross-applications for a protection order and allows a court to hear an original application and a cross-application together. Where the cross-application relates to a protection order that has been made, clause 41 allows the court to take into account the court records for the original application.

When court on its own initiative can make or vary order against offender

Clause 42 gives the court the power to make or vary an order against an offender on its own initiative when the court convicts the offender of an offence involving domestic violence. A person can be convicted of an offence after pleading guilty or after the court has conducted a trial or other hearing on the matter.

Offence involving domestic violence is defined in the dictionary in the schedule to include an offence against clauses 177, 178, and 179. Behaviour that results in an offence against these provisions may not necessarily amount to *domestic violence* as defined in clause 8. For example, a respondent to a domestic violence order can be convicted of an offence of contravening a condition of the order that the respondent not have any contact with the aggrieved person on the basis of making a single telephone call. The telephone call, by itself, may not amount to domestic violence and so, without the definition in the dictionary, the court would not be able to consider varying the domestic violence order under clause 42. However, any other criminal offence must involve behaviours which constitute *domestic violence* as defined in clause 8 to be *an offence involving domestic violence*.

Clause 42 enables a court to make a protection order, subject to the requirements of clause 37 being met, and to vary an existing domestic violence order.

Subclause 42(4) provides that, before a court makes an order under this provision, the offender, the prosecuting authority for the offence and, if reasonably practicable, the aggrieved or the person who would be named as the aggrieved, must be given reasonable opportunity to present evidence and to prepare and make submissions about the making or variation of the order.

In some situations, for example to enable compliance with subclause 42(4), a court can adjourn the matter of the making of a protection order or varying of a domestic violence order, and can make a temporary protection order in the interim. The court must explain the things set out in subclause 42(6) to the offender when the proceeding is adjourned. If the offender fails to appear at the next court date, the court has the three options set out in subclause 42(7).

Subclause 42(8) provides that proceedings under this provision are to be held in open court, unless the court orders the court be closed. This is despite clause 158 which provides that proceedings under the Act are generally not open to members of the public.

Clause 42(9) provides that clause 42 does not limit the power of the court to make any other order against the offender. In most situations, where courts are sentencing offenders, the courts will be using one of a number of sentencing options under the *Penalties and Sentences Act 1992*. Other pieces of legislation can also enable a court to make additional orders when sentencing an offender. For example, under section 359F of the Criminal Code, a court can impose a restraining order against a person who is charged with the offence of unlawful stalking.

Clause 42(10) makes it clear that the civil standard of proof applies to a court when it is making decisions under this provision.

When Childrens Court can make or vary order against parent of a child

Clause 43 outlines when the Childrens Court can make or vary an order against a person involved in child protection proceedings. This provision recognises that matters raised during child protection proceedings can provide a basis for making a protection order or varying a domestic violence order. In other situations, the court may be required to vary the terms of a domestic violence order to ensure consistency between the terms of that order and the order the court proposes to make in the child protection proceedings.

A court making a protection order under this provision must be satisfied that there are grounds for making the order under clause 37 and that the person who would be named as the aggrieved is a parent of the child and a party to the child protection proceedings (subclause 43(2)). If a domestic violence order is already in force against a parent of a child who is party to the child protection proceedings the court must consider the order and whether, in the circumstances, the order needs to be varied (subclause 43(3)).

The court can make a protection order or vary a domestic violence order under these provisions on its own initiative or on application by a party to the child protection proceedings (subclause 43(4)). There are requirements to give each party a reasonable opportunity to make submissions about the making or varying of the order (subclause 43(5)). As with the clause 42, a court has the power to adjourn the matter of the making or variation of the order and can make a temporary protection order in the interim (subclause 43(6)(b)). There are requirements to explain the consequences for not appearing at the next court date (subclause 43(7). Those consequences can include making a protection order or varying a domestic violence order in the absence of the parent (subclause43(8)(a)).

Division 2 Temporary protection orders

When court may make temporary protection order

Clause 44 outlines the circumstances in which a court may make a temporary protection order. *Temporary protection order* is defined in subclause 23(3) to mean an order made in the period before a court decides whether to make a protection order for the benefit of an aggrieved.

Matters Court must be satisfied of

Clause 45 states that a court may make a temporary protection order if it is satisfied a relevant relationship exists between the aggrieved and the respondent and that the respondent has committed domestic violence against the aggrieved.

However, a court is not required to be satisfied of these things if the court makes a temporary protection order after adjourning the hearing of an application for variation of a domestic violence order. In this situation, clause 48 will apply.

Standard of evidence

Clause 46 provides the court with a wide discretion to consider evidence the court considers sufficient and appropriate given the temporary nature of the order. This recognises the nature of proceedings where a temporary protection order is sought. Often, this will be in situations of some urgency relating to the need to protect the aggrieved, where there are significant time constraints, and the parties to proceedings may not be in a position to produce evidence of the standard that would ordinarily be expected at a final hearing of the application. Clause 46 also recognises the temporary nature of the orders and that there is an opportunity, at a later stage, for a more comprehensive hearing to be conducted.

Temporary protection order when respondent has not been served

Clause 47 allows the court to make a temporary protection order against a respondent where the respondent has not been served with a copy of the application and, as a result, the respondent is not present in court. There could be a number of reasons why the respondent has not been served with a copy of the application. It may be the respondent has not been located by the police or that the applicant is concerned that putting the respondent on notice of the application before a temporary protection order is made will put the aggrieved at an increased risk of domestic violence. This provision is related to clause 36, which enables an applicant to seek a hearing for a temporary protection order before the respondent is served. A court can make a temporary protection order in these circumstances where it is satisfied that the making of the order is necessary or desirable to protect the aggrieved or another person named in the application from domestic violence, despite the respondent having not been served with a copy of the application for a protection order. This consideration applies in addition to the considerations set out in clause 45.

An order made under clause 47 will typically be made in circumstances of some urgency where there are immediate concerns for the safety of the person sought to be named as the aggrieved or another person sought to be named. There may also be concerns as to how a respondent may react when served with an application – for example, the service of the application may prompt a violent response, in circumstances where the respondent would not (at that point in time) be bound by the conditions of an order.

Temporary protection order in relation to application for variation

Clause 48 provides that a court may make a temporary protection order when it is considering an application for variation of a temporary protection order if the court is satisfied that the temporary protection order is necessary or desirable to protect the aggrieved, or another person named in the domestic violence order, from domestic violence, pending a decision on the application. If the application seeks to vary a temporary protection order, the court can cancel the original order and make a new temporary protection order.

Temporary protection order in relation to cross application

Clause 49 refers to a *cross application*, which arises when a person, who is named as a respondent to an application which is already before the court, decides to make an application for a domestic violence order which names the aggrieved (in the original application) as the respondent. Clause 49 applies if the cross application is not served on the aggrieved at least 1 business day before the hearing of the original application. Subclause 49(2) provides what a court is required to do in relation to the hearing of the cross application. Subclause 49(3) provides that a court can make a temporary protection order in relation to the cross application if the requirements set out in paragraphs (a) and (b) are met.

Form of temporary protection order

Clause 50 provides that a temporary protection order can have the same terms as a protection order. For example, a temporary protection order can include named persons and can include any of the same conditions that can be included on a protection order.

Division 3 Consent orders

Court may make domestic violence order by consent

Clause 51 provides that if the respondent in a domestic violence order is an adult and the parties either consent, or do not object, to the making of the order, a court may make or vary a domestic violence order without being satisfied of the grounds for making a protection order or varying a domestic

violence order. The court must be satisfied that a *relevant relationship* exists between the aggrieved and the respondent.

The court may make a consent order whether or not the respondent admits to any or all of the behaviour stated in the application.

If the respondent is a child, the court can only make an order if it is satisfied that the requirements of clause 37 or 45 (as applicable) are met.

Despite the parties' consent, or absence of their objection, the court retains the option of conducting a hearing in relation to the particulars of the application and to refuse to make or vary an order if the court believes this would pose a risk to the safety of an aggrieved, any person named in the order, or child affected by the order. The court may form this opinion because the court considers the conditions of the order proposed by the parties are not sufficient for the protection of the aggrieved or a named person, given the nature of the violence that is alleged in the application.

Subclause 51(3) and (4) set out additional requirements that relate to applications made by authorised persons and police officers. Subclause 51(7) provides that a court must still comply with the requirements set out in clause 54 and 84 which deal with obligations to consider naming children and explaining proceedings and orders respectively.

Division 4 Naming persons in domestic violence orders

Naming relative or associate of aggrieved

Clause 52 provides that a court may name a relative or associate of an aggrieved in a domestic violence order if it is satisfied that naming the relative or associate is necessary or desirable to protect that person from domestic violence. For the purposes of clause 52, *relative* does not include a child who is covered by clause 53.

Naming child

Clause 53 provides that a court may name a child of the aggrieved, or a child who usually lives with the aggrieved, in a domestic violence order if the court is satisfied that naming the child is necessary or desirable to protect the child from associated domestic violence or from being exposed to domestic violence committed by the respondent.

The term *exposed to domestic violence* is defined in clause 8. The term *child who usually resides with the aggrieved* is defined in subclause 24(2).

When court must consider naming child

Clause 54 provides that a court must consider naming a child when hearing an application to make or vary a domestic violence order, or when it is considering making or varying an order within its criminal or child protection jurisdiction, if the application or any other information discloses the existence of a child of the aggrieved or a child who usually resides with the aggrieved. This requirement applies whether or not an application seeks to name the child on an order.

Power of court to obtain information about child

Clause 55 outlines when the court has the power to obtain information from the chief executive (child protection) about a child to assist in deciding whether to name the child in the order or impose a condition under division 5. Any information obtained from the chief executive is provided to all parties to the order, except when that information could increase the risk of domestic violence to the aggrieved or a child.

Division 5 Conditions of domestic violence orders

Domestic violence order must include standard conditions

Clause 56 outlines the standard conditions that a domestic violence order must include. This includes the additional standard conditions that must be imposed when a named person (both an adult and child named person) is included on the order.

These conditions are taken to have been included on any domestic violence order made by a court, even if the court does not include these conditions on the order.

Court may impose other conditions

Clause 57 gives the court a wide power to impose other conditions on a domestic violence order. When making a decision about imposing

conditions on a domestic violence order, the court must place paramount importance on the safety, protection and wellbeing of people who fear or experience domestic violence, including children.

Conditions relating to behaviour of respondent

Clause 58 sets out a number of examples of conditions which relate to the behaviour of the respondent. The conditions listed are not to be taken to restrict the court's power in clause 57 to 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.

Conditions relating to recovery of personal property

Clause 59 deals with conditions which require a respondent to return personal property to an aggrieved, or allow an aggrieved access to personal property, or to recover personal property, or do any act necessary or desirable to facilitate these things. The court must specify the particular property in the conditions included on the order. Subclause 59(2) deals with additional conditions relating to police supervision and prohibiting a respondent from approaching premises while the personal property is being returned, accessed or recovered.

Contact by lawyer not prohibited

Clause 60 relates to a condition imposed pursuant to paragraphs 58(d) or (e) that prohibits a respondent from asking someone else to contact or locate an aggrieved or named person. Subclause 60(1) provides that such a condition does not prohibit a respondent from asking a lawyer to contact an aggrieved or named person, or asking another person, including a lawyer, to contact or locate an aggrieved or named person for a purpose authorised under an Act. *Lawyer* is defined to mean a lawyer who is representing the respondent in relation to a proceeding. This provision is intended to apply to situations where the actions of the lawyer are legitimately connected with legal proceedings, and not situations where (for example) a respondent asks a friend, who is a lawyer, to act on his or her behalf for purposes which are not related to legal proceedings.

Contact by victim advocate not prohibited

Clause 61 also refers to a condition that prohibits a respondent from asking someone else to contact or locate an aggrieved or named person. Subclause 61(1) provides that, subject to the requirements set out in paragraphs (a), (b) and (c), such a condition does not prohibit a victim advocate from contacting or locating the aggrieved or named person. Clause 61(2) defines *victim advocate* to mean a person engaged by an approved provider to provide advocacy for, and support of, an aggrieved or named person. An entity is approved as an *approved provider* under clause 75.

Condition limiting contact between parent and child

Clause 62 provides that a court may impose a condition limiting the contact between a respondent and a child of the respondent only to the extent necessary for the child's safety, protection and wellbeing. A note to this provision provides a reference to the principle of paramount importance set out in clause 57(2).

Ouster condition

Clause 63 gives the court the power to impose an ouster condition on the respondent in relation to stated premises. Subclause 63(1) sets out the things that an ouster condition imposed by a court can prohibit a respondent from doing in relation to stated premises. There are notes to the relevant provisions of the *Residential Tenancies and Rooming Act 2008,* and to clauses 139 and 140 which facilitate tenancy applications being heard at the same time as applications for a protection order or for variation of a domestic violence order. Subclause 63(2) sets out premises which can be included in an ouster condition as stated premises. This includes, at paragraph (a), premises in which the respondent has a legal or equitable interest.

Ouster condition relating to aggrieved's usual place of residence

Clause 64 provides clear guidance to the courts about the matters that should be considered in deciding whether to include an ouster condition which relates to an aggrieved's usual place of residence. Subclause 64(2) sets out the range of matters to be considered by the court, which are to apply in addition to the matters set out in subclauses 57(1) and (2). Clause

64(3) requires the court to give reasons for imposing or not imposing an ouster condition.

Return condition

Clause 65 requires a court to consider imposing a return condition when it imposes an ouster condition. The return condition allows the respondent to return to stated premises to recover stated personal property, or (where the respondent is still at the stated premises) to remain at the premises to remove stated personal property.

Subclause 65(2) restricts the recovery or removal of property which may be required to meet the daily needs of the person who continues to reside at the stated premises. The type of property intended by this clause is illustrated by the examples of household furniture and kitchen appliances, such as a refrigerator or microwave oven.

Subclauses 65(3) and (4) set out the requirements for imposing times and timeframes relevant to the return condition, if the return condition is not to be supervised by a police officer, depending on whether or not the respondent was present in court when the return condition was made.

Supervision by police officer of ouster condition or return condition

Clause 66 states that, before an ouster condition or return condition can be imposed, the court must consider the level of supervision that will be required by a police officer in relation to these matters.

Condition for protection of unborn child

Clause 67 provides that the court may impose a condition for the protection of an unborn child that will take effect once the child is born. The court can make the condition if satisfied that the aggrieved is pregnant and the order is necessary or desirable to protect the child from associated domestic violence, or being exposed to domestic violence after birth. The condition requires the respondent to be of good behaviour towards the child, not commit associated domestic violence against the child, and not expose the child to domestic violence. The condition can be imposed whether or not the respondent is the father of the child.

Division 6 Intervention orders

Definition for div 6

Clause 68 defines *counselling*. The counselling must be provided by an approved provider (see clauses 69(1) and 75). The counselling need not be intended specifically to address domestic violence issues and can relate to other harmful behaviour which is related to domestic violence. This could include, for example, counselling for substance abuse issues which are related to a person's domestic violence behaviours.

Court may make intervention order

Clause 69 states that the court may make an intervention order that requires the respondent to attend either or both an approved intervention program by an approved provider or counselling by an approved provider. Subclause 69(2) provides that the order can be made only if the court is satisfied that an approved provider is available to provide the approved intervention program or counselling at a location which is reasonably convenient for the respondent to attend. Subclause 69(3) sets out the requirements of the intervention order.

Intervention order to be explained

Clause 70 outlines what must be explained to the respondent about intervention orders before issuing an intervention order.

Respondent to agree to making or amending of intervention order

Clause 71 states that the court may only make or amend an intervention order if the respondent is present in court, agrees with the order that is made or amended, and agrees to comply with the order as made or amended.

Assessment of suitability of respondent

Clause 72 sets out the process for assessment of suitability of a respondent, the factors to be considered by the approved provider in assessing a respondent's suitability, and the requirements for providing a notice to the

court stating that the respondent is (or is not) suitable. If the respondent is not suitable, a notice must also be given to the commissioner of police.

Contravention of intervention order

Clause 73 provides that an approved provider must notify the court and the police commissioner if the respondent contravenes an intervention order within 14 days of becoming aware of the contravention. Subclause 73(3) provides that the requirements relating to notice of the contravention do not apply if the approved provider is satisfied that the contravention is minor and the respondent has taken steps to remedy the contravention or has otherwise complied with the order.

Notice of completion

Clause 74 provides that an approved provider must notify the court and the police commissioner within 14 days of the respondent completing the approved intervention program or counselling that the intervention is complete.

Approval of providers and intervention programs

Clause 75 provides that the chief executive may approve an entity as an approved provider and may approve a program as an approved intervention program, and outlines the matters that must be considered in the approval process. Subclause 75(4) requires the chief executive to keep an up-to-date list of approved providers and approved intervention programs, and to provide a copy of the list to the Chief Magistrate.

Division 7 Relationship between domestic violence orders and family law orders

Definition for div 7

Clause 76 defines *family law order* for the purposes of division 7. The definition includes orders which are made under the *Family Law Act 1975* (Cwlth) and *Family Court Act 1997* (WA).

Applicant must disclose family law order

Clause 77 sets out the circumstances in which an applicant must inform the court about a family law order or provide a copy of the family law order to a court.

Court may consider family law order

Clause 78 provides that, before deciding to make or vary a domestic violence order, the court must have regard to any family law order of which the court has been informed. Subclause 78(1)(b) allows a court to consider the power that a court has, pursuant to section 68R of the *Family Law Act 1975* (Cwlth) and section 176 of the *Family Court Act 1997* (WA), to revive, vary, discharge or suspend a family law order in the circumstances described. A court considering exercising this power must give parties to the proceeding an opportunity to present evidence and prepare submissions, unless the court is considering making a temporary protection order under clause 47. Subclause 78(2) provides that the court must not diminish the standard of protection provided by a domestic violence order for the purpose of facilitating consistency between the domestic violence and family law orders.

Division 8 Weapons

The note at the commencement to the division contains references to provisions in the *Weapons Act 1990* which concern the effect of a domestic violence order on provisions in the *Weapons Act.*

Definition for div 8

Clause 79 defines the term *possess* for the purposes of division 8.

Court must consider matters relating to weapons

Clause 80 only applies if the respondent is present in court or a police officer is the applicant or otherwise appears in the proceeding. Subclause 80(2) sets out a number of questions a court must ask in relation to any weapons license a respondent may have, and any weapons a respondent may possess or have access to in relation to the respondent's employment. Subclause 80(3) then provides that the matters referred to in subclause

80(2) can form the basis of information that is included on the domestic violence order. The provision of this information on the order does not limit the court's responsibility to explain certain things to a respondent, in accordance with clause 84, and the requirement to include a written explanation on the order in accordance with clause 85 (subclause 80(4)).

Condition relating to thing used as a weapon

Clause 81 sets out the circumstances in which a court may impose a condition prohibiting the respondent from possessing a thing that has previously been used or threatened to be used as a weapon to perpetrate domestic violence.

Domestic violence order must include information about weapons

Clause 82 states that a domestic violence order must include as much information as possible about the weapons a respondent possesses. This is to ensure that a police officer has as much information as is possible when the police officer exercises a power under an Act to obtain or seize a weapon.

No exemption under Weapons Act

Clause 83 provides that if a person is named as the respondent in a domestic violence order, the Weapons Act applies to the person for the duration of the order despite section 2 of the *Weapons Act 1990*. Section 2 of the Weapons Act exempts a person from the requirement to hold a weapons license if that person works in one of the listed areas of employment. This means, for example, that a person employed by the Queensland Police Service does not require a weapons license for his or her work which may involve possession of or access to weapons.

Clause 83 reverses this exemption for a number of types of employment, but this does not include people who's employment is governed by Commonwealth legislation (such as members of the armed services or Australian Federal Police). The effect of clause 83 is that a person who falls within one of the categories listed in subclause 83(1) is not entitled to the benefit of section 2 of the Weapons Act for the period of time that the person is a respondent to a domestic violence order. In these circumstances, a person would not be able to use, or have access to, a weapon during the course of his or her employment, otherwise the person

may be committing an offence under the Weapons Act. Clause 83 operates in addition to other provisions of the Weapons Act which deal with domestic violence orders, some of which are referred to in the notes at the commencement of the Division.

Division 9 Explanation of domestic violence orders

Court to ensure respondent and aggrieved understand domestic violence order

Clause 84 sets out the court's obligation to explain certain matters to parties involved in proceedings under the Act. Subclause 84(1) outlines the court's obligation to explain to parties to a proceeding the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court. This provision only applies where the aggrieved or respondent is personally before the court for the first time.

Subclauses 84(2) and 84(3) set out the matters that a court must explain to the respondent and aggrieved respectively when the court is about to make a domestic violence order and the relevant party is before the court. These obligations can arise at the same time as the obligations referred to in subclause 84(1), if the court makes a domestic violence order at the time of a party's first appearance, or at a different time, if the court makes an order after a party's first appearance.

Subclause 84(4) provides that a court can use services or help from other people to assist the court in discharging its obligations under clause 84. Some examples of the services or help that a court may consider appropriate are provided.

Domestic violence order to include written explanation

Clause 85 provides that the court must include, with the copy of the order served on the respondent and given to the aggrieved, a written explanation containing the relevant information that is referred to in clause 84.

Division 10 Variation of domestic violence orders

Application for variation

Clause 86 outlines who can apply for a variation of a current domestic violence order and what the variation can relate to. Subclause 86(5) sets out the requirements for the form and content of the application for variation.

A variation of a domestic violence order that is sought by, or on behalf of, a named person can only relate to the naming of the person in the order or a condition of the order relating to the named person.

Fixing of date, time and place for hearing

Clause 87 outlines the procedures that must be followed after an application for a variation of a domestic violence order is prepared. Where the applicant is a police officer, the process is set out in subclause 87(1), while subclause 87(2) outlines the process where the applicant is not a police officer. In both instances, the date, time and place for hearing the application must be noted on a copy of the application.

Service of application

Clause 88 provides that a police officer must personally serve a copy of the application for a variation of a domestic violence order on a respondent if the applicant for the variation is a person other than the respondent. The copy of the application must clearly state the consequences of the respondent failing to appear in court. If the applicant is the respondent a police officer must personally serve a copy of the application on the aggrieved and any named person in the application for the variation.

Copy of application must be given to aggrieved

Clause 89 applies to applications for variation where the applicant is not the aggrieved or the respondent. The clause states that a copy of the application for variation must be given to the aggrieved, any named person who is affected by the application for the variation, and to an authorised person (if an authorised person for an aggrieved applied for the domestic violence order).

Particular applicants may ask clerk of court for hearing before respondent is served

Clause 90 provides that an applicant for a variation of a domestic violence order, other than a respondent, may request a hearing before the respondent is served. This hearing would be sought for the purpose of the court making a temporary protection order under division 2. The considerations set out in clause 47 will be applied by the court when it is deciding whether or not to make a temporary protection order in these circumstances.

When court can vary domestic violence order

Clause 91 outlines the circumstances when a court can vary a domestic violence order and the matters that a court must consider when deciding whether to vary an order. If an order is varied, the court must make a copy of the domestic violence order (the *varied order*) that states the details and conditions of the domestic violence order after the variation.

Considerations of court when variation may adversely affect aggrieved or named person

Clause 92 outlines the factors the court must have regard to when considering whether to make a variation to a domestic violence order which may reduce the protection of the aggrieved or any named person. Examples of variations that may reduce the protection of a person are set out under subclause 92(1). Clause 92(3) specifies that the court may only vary the order if the variation would not compromise the safety, protection or wellbeing of the aggrieved or a named person.

Hearing of application—appearance of respondent

Clause 93 provides for how a court may proceed with the hearing of an application for a variation when a respondent appears before the court. Subclause 93(3) deals with situations where a court can dismiss an application without deciding it. This refers to a situation where the applicant, who is not the respondent, has not appeared and does not have any other eligible person appearing on their behalf. This provision does not limit other powers a court may have to dismiss an application after a court has made a decision (for example: if the court decides that the application is malicious, deliberately false, frivolous or vexatious).

Hearing of application – non-appearance of respondent

Clause 94 sets out how a court may proceed with the hearing of an application for a variation when a respondent does not appear before the court and the court is satisfied that the respondent has been served with a copy of the application. One of the options a court has (in paragraph 94(2)(a)) is to hear and decide the application in the absence of the respondent.

Police commissioner to be given copy of application for variation

Clause 95 states that a court must not vary a domestic violence order unless the police commissioner has been given a copy of the application for the variation. This is to assist the police service to decide whether it is necessary to be involved in the variation proceedings. Under clause 146, a police officer or service legal officer may appear in any proceeding under the Act.

Division 11 Duration of domestic violence orders

Start of domestic violence order

Clause 96 specifies when a domestic violence order takes effect. Despite an order generally taking effect on the day it is made, a respondent does not commit an offence by contravening an order unless the respondent was present in court when the order was made or until the order is served on the respondent or the respondent is told by a police officer about the existence of the order (clause 177).

Where an existing domestic violence order is in force involving the same parties, the new domestic violence order will commence at the end of the existing order or on another day decided by the court. If a court intends that the new domestic violence order commence forthwith, then the court may also vary the order to reduce the duration of the order so that it finishes on the same day that the court makes the new order.

End of protection order

Clause 97 specifies when a protection order ends. The default period for duration of a protection order is two years after the making of the order;

however a court can state on the order another day on which the order ends. As subclause 97(2) allows the court to provide that a protection order continues in force for a period beyond 2 years if satisfied there are special reasons for doing so, the end date the court may state on the order may be earlier or later than two years after the order is made.

A court can also, subsequently, vary an order to reduce or increase the duration of the order.

End of temporary protection order

Clause 98 outlines the various events that can end a temporary protection order. This differs from section 34B of the *Domestic and Family Violence Protection Act 1989* which generally provides that a temporary protection order ends when the order is returnable before the court, unless the court extends the order.

Clause 98, paragraph (a) provides that where a court makes a protection order and the respondent is in court, the temporary protection order ends on the date the protection order is made.

Paragraph (b) provides that where a court makes a protection order and the respondent is not in court, the temporary protection order ends on the earliest of the three listed events:

- when the respondent is served with a copy of the protection order;
- when the protection order otherwise becomes enforceable under section 177 (for example, when a police officer tells the respondent about the existence of an order under clause 177(1)(c)); or
- when the protection order ends.

The last event envisages a situation where a respondent cannot be located to be served with or told about a protection order. In those circumstances, the temporary protection order will remain in force for the same period of time as the protection order.

Paragraphs (c) and (d) provide for situations where a court refuses to make a protection order or the application for the protection order is withdrawn.

When variation of domestic violence order takes effect

Clause 99 outlines when a variation of a domestic violence order takes effect. This will depend on whether or not the respondent was in court

when the court varied the order. If the respondent was not in court, then the varied order takes effect when the respondent is served with a copy of the order or the order becomes enforceable under clause 177.

Subclause (2) provides that the existing domestic violence order remains in force until the varied order takes effect. This means the respondent can be convicted under clause 177 of an offence of contravening the original order when the behaviour that constitutes the contravention occurs after the court varies the domestic violence order but before the variation takes effect.

Part 4 Police functions and powers

Division 1 Investigatory function

Police officer must investigate domestic violence

Clause 100 places an obligation on police to investigate domestic violence incidents thoroughly and to either take appropriate action or record the officer's reasons for not taking action.

Subclause 100(1) provides that a police officer must investigate or cause to be investigated a complaint, report, or circumstance that gives rise to a reasonable suspicion that domestic violence has been committed. If an officer's investigation of the incident leads the officer to reasonably believe that domestic violence has been committed, subclause 100(2) sets out the range of options available to the police officer. Paragraph (f) provides that the police officer can take any other action appropriate in the circumstances, and the example refers to taking a person to another place to receive treatment. This could also include charging a person with a criminal offence, including the offence of contravening an existing domestic violence order. This option is strengthened by subclause 100(5), which states that clause 100 does not limit a police officer's responsibility to investigate whether a criminal offence has been committed.

If a police officer decides no action should be taken, subclause 100(3) requires the police officer to make a record of his or her reasons for not taking any action.

Division 2 Power to issue police protection notice

Police officer may issue police protection notice

Clause 101 enables a police officer to issue a police protection notice where the police officer is at the same location as the respondent and reasonably believes the respondent has committed domestic violence and that a notice is necessary to protect the aggrieved from domestic violence. The requirement that the police officer be at the same location as the respondent does not necessarily require the police officer to issue the notice when attending a domestic violence incident, although this will generally be the case. A police officer may not be able to locate a respondent until some time after the incident, although the officer can only issue the notice after locating the respondent.

The police officer must reasonably believe that no domestic violence order or police protection notice is currently in place which involves both of the parties to the incident that the police officer is investigating, in the circumstances set out in paragraph (c). The police officer must also reasonably believe that the respondent should not be taken into custody under division 3, and must first obtain the approval of a supervising officer to issue the notice.

Approval of supervising police officer required

Clause 102 requires that an appropriately authorised supervisory officer, who is not the investigating officer, must approve the issue of the police protection notice. The approval can be sought and given verbally, but the police officer must make a written record of matters relating to the approval, in accordance with subclause 102(4).

Cross-notice not permitted

Clause 103 prohibits a police officer from issuing a second police protection notice in the circumstances set out in the clause. In circumstances where the police officer is unable to identify the person who is in need of protection, the police officer is not prevented from making applications to a court for the benefit of both parties, in accordance with the usual processes set out in part 3.

Contact details and address for service

Clause 104 provides that the police officer must ask the respondent for contact details (which is defined in the dictionary in the schedule) and an address to be used for service of documents under the Act. The respondent is not obliged to comply with this request. However, as provided in subclause 104(5), section 40 of the *Police Powers and Responsibilities Act 2000,* and the related offence provision of section 791 of that Act (contravene direction or requirement of police officer) can still apply to situations where a police officer attending to a domestic violence incident asks for a person's name and address. Clause 104 has been included to assist police and court staff to serve any documents that may arise in the future, such as a domestic violence orders, intervention orders or a notice of adjournment. This provision will also facilitate respondents being advised of the time, date and place of a mention date in another Magistrates Court where the local Magistrates Court for the respondent is sitting more than 28 days after the day the notice is issued (see clause 111).

Form of police protection notice

Clause 105 specifies the details that must be included in a police protection notice including the standard condition and any cool-down condition that may be imposed. The clause also outlines the advice that must be provided to the respondent in the notice about the resulting court processes, including the fact that the notice operates as an application for a protection order.

Subclause 105(2) provides that the date specified in the notice must be within 5 business days of the next sitting date of the local Magistrates Court for the respondent, if the local Magistrates Court for the respondent does not sit at least once a week. *Local Magistrates Court for the respondent* is defined in the dictionary in the schedule. Where the local Magistrates Court sits more than 28 days after the issuing of the notice, clause 111 provides the clerk of the court to make arrangements for the matter to come before the court within 28 days and the respondent must be notified of the other court date. These matters must be included in the advice provided to the respondent in the notice, in accordance with clause 105(1)(j) and (l).

Standard condition

Clause 106 provides that a police protection notice must include the standard condition that the respondent be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved. A police protection notice cannot include persons other than an aggrieved as named persons, nor can the notice include additional conditions, other than a cool-down condition included under clause 107. This does not prevent a court subsequently imposing additional conditions or naming a child, relative or associate on a domestic violence order made when the notice is returned before the court.

If a police officer needs to urgently impose additional conditions or name other parties, then an option other than a police protection notice would be more appropriate.

The refenencee

Cool-down condition

Clause 107 gives a police officer the option to include a 'cool-down' condition requiring the respondent to refrain from doing any or all of the things set out in subclause 107(1) paragraphs (a) to (c). A police officer can impose the condition if the police officer reasonably believes that the condition is necessary or desirable to protect the aggrieved from domestic violence.

The cool-down condition contains some of the features of an *ouster condition* in that it can prohibit a respondent from entering or remaining at stated premises and can also prohibit the respondent from contacting an aggrieved. The main difference is that a cool-down condition only lasts a maximum of 24 hours whereas an ouster condition can last for the life of an order. A cool-down condition is intended to provide an immediate response for situations where there is a risk that the violence will persist or escalate if the respondent remains at the premises in the short-term. A cool-down condition is not intended to apply to situations where there are significant concerns about the safety of an aggrieved or another person associated with the aggrieved. In those situations, other emergency responses, such as taking the respondent into custody under division 3 or applying for an urgent temporary protection order under division 4 may be more appropriate.

Police officer must consider accommodation needs

Clause 108 outlines a police officer's obligations to consider the accommodation of the respondent when a cool-down condition is imposed. Additional considerations apply where a police officer reasonably believes the respondent is a child (subclause 108(2)).

Service

Clause 109 provides the service requirements of a police protection notice. The notice must be personally served on the respondent, and the notice takes effect at this time. The personal service requirement does not apply in relation to the aggrieved, meaning that police can use other means of providing the notice to the aggrieved, such as by post or leaving it at any alternate accommodation the aggrieved has arranged. This recognises that the aggrieved may not wish to remain at the scene of a domestic violence incident and should not be prevented from leaving for the purposes of securing other accommodation or attending to medical or other needs.

Explanation

Clause 110 outlines a police officer's obligation to explain a police protection notice to a respondent, aggrieved, or a parent of a child. Subclause 110(2) requires the police officer to explain the notice to the person and to take reasonable steps to ensure the person understands the nature and consequences of the notice. Subclause 110(3) sets out the matters that must be included in the explanation.

Filing

Clause 111 sets out the filing requirements for a police protection notice with the local Magistrates Court for the respondent. There are additional requirements where the date for the hearing at the local Magistrates Court is more than 28 days after the notice was issued, and the matter is to be mentioned in another court that does sit within 28 days. Subclause 111(2) also outlines the obligations of the clerk of the other Magistrates Court.

Police protection notice taken to be application for protection order

Clause 112 states that a notice operates as an application for a protection order made by a police officer. While the police protection notice only

contains a standard condition, with the optional cool-down condition lasting a maximum of 24 hours, the police officer (as applicant) or the aggrieved can ask the court to make a domestic violence order which includes additional conditions or includes a relative, associate or child as a named person.

Duration

Clause 113 outlines the duration of a police protection notice. If the court makes a domestic violence order, the police protection notice continues until the order is served on the respondent or becomes enforceable under clause 177 (for example, if a respondent has been told about the existence of the order). From this time, the respondent would be bound by the conditions imposed by the domestic violence order.

If the court makes a temporary protection order which includes the same conditions as the police protection notice (other than the cool-down condition), the temporary protection order is taken to be served on the respondent when it is made.

If the court does not make a domestic violence order, and adjourns the application, or if the court dismisses the application for the protection order, then the police protection notice ceases to have effect from the time of the adjournment or dismissal.

The references to 'application for the protection order' in this clause refer to the application that resulted from the police protection notice. Clause 112 provides that the police protection notice is taken to be an application for a protection order made by a police officer.

Existing domestic violence order

Clause 114 provides that if a police officer issues a police protection notice when there is a domestic violence order in place between the aggrieved and respondent, the respondent must comply with both the notice and the order, however if it is not possible to comply with both then the domestic violence order prevails.

This situation is generally not expected to arise, given clause 101(c) requires an officer to reasonably believe no domestic violence order has been made prior to issuing a police protection notice. However, there may be situations where a previous domestic violence order is not detected by a

police officer who issues a notice, for example, if the court order was issued against the respondent under a different name.

Division 3 Power to take a person into custody

Definition for div 3

Clause 115 defines *detention period.*

Police officer may take person into custody

Clause 116 allows a police officer to take a person into custody if the officer reasonably suspects the person has committed domestic violence and there is danger the person could injure another person or damage another person's property.

Person must be taken to holding cell or watch-house

Clause 117 provides that a person taken into custody must be transported to a holding cell or watch-house and delivered into the custody of a particular person as soon as reasonably practicable.

Police officer must apply for protection order

Clause 118 states that a police officer must apply for a protection order as soon as reasonably practicable after a person is taken into custody and, if it is reasonably practicable, arrange for the person to be brought before a court for the application to be heard while the person is still in lawful custody. If it is not practicable to bring the person before the court, the application must specify the date for the hearing of the application in the local Magistrates Court, in accordance with subclause 118(4).

Detention period limited

Clause 119 outlines the factors relevant to determining the length of time that a police officer may hold a person in custody, up to a maximum period of 4 hours or 8 hours, (the *detention period*) from when the person is first taken into custody under clause 116.

Subclause 119(1) provides that a person can be held until the later of the matters referred to in paragraphs (a) to (c). Paragraph (a) refers to a

situation where it is reasonably practicable for a person to be brought before a court while the person is still in lawful custody. If a court decides not to make a domestic violence order or dismisses the application, the person must be released immediately. Paragraph (b) relates to a situation where it is not reasonably practicable to bring the person before a court, and enables a person to be held in custody until the application for the protection order is prepared and the releasing officer is able to serve the person with a copy of the conditions on which the person is released from custody as required by clause 124(d). Paragraph (c) refers to a situation where a police officer obtains a temporary protection order under division 4, and enables a person to be held in custody until the temporary protection order is made and the releasing officer is able to serve the person with a copy of the temporary protection order as required by clause 124(c).

Subclause 119(2) sets out additional matters which can result in a person being held in custody beyond the matters referred to in subclause 119(1). A person can be held in custody until the later of the matters referred to in paragraphs (a) to (c). The length of time depends on the time taken for a police officer to:

- make arrangements for the safety of the aggrieved or a child (paragraph (a))
- be no longer concerned that the person is intoxicated to the extent that the respondent is incapable of understanding the nature and effect of an application, order or release conditions that must be given to the person under clause 124 on being released from custody (paragraph (b))
- be no longer concerned the person's behaviour is so aggressive or threatening that it would present a continuing danger of personal injury or property damage (paragraph (c)).

Person not to be questioned about offence

Clause 120 prohibits a police officer from questioning a person in custody about any offence or suspected offence. This provision does not prevent police from continuing a concurrent investigation into a criminal offence which may arise from a domestic violence incident. However, the powers in division 3 must only be used for their intended purpose of removing a danger of personal injury or property damage and not as a means of furthering other purposes. Similarly, the detention power should not be used as an adjunct to the powers under the *Police Powers and*

Responsibilities Act 2000 that can be used to detain a person for questioning about an indictable offence. If a decision is made to question a person who is detained under division 3, the police officer should complete the obligations under clauses 118, 124 and 125, release the person from custody and then consider using the appropriate powers of the *Police Powers and Responsibilities Act 2000*.

Police officer may apply for extension of detention period

Clause 121 allows the period of detention to extend beyond four hours, but only if ordered by a magistrate. Subclause 121(2) outlines the process for a police officer to apply for an extension and subclause 121(3) provides that the person or the person's lawyer is entitled to make submissions about the application for extending the detention period. Subclause 121(4) sets out the notice requirements for the application and subclause 121(5) deals with the form and content of the application. Subclause 121(6) provides that the police officer must tell the magistrate whether or not the person or person's lawyer wants to make submissions and whether there is any factor (including the intoxication of a person) that may affect the person's ability to communicate to the magistrate.

Subclause 121(7) allows an application to be made remotely, by phone, fax, radio, e-mail or similar facility.

When detention period may be extended

Clause 122 provides that a magistrate may extend the detention period if the magistrate is satisfied of the matters set out in clause 122(1)(a), (b) and (c). The clause states that an order extending the detention period must not exceed 4 hours.

Extended detention period limited to 8 hours

Clause 123 provides that, if an application for an extension of a detention period is made before the detention period ends, the detention ends at the earliest of the times listed in paragraphs (a), (b) or (c). The maximum period of detention under division 3, including the initial detention period allowed under clause 119 and any extension granted under clause 122, is 8 hours.

Release of person from custody

Clause 124 requires a police officer releasing a person from custody to provide the person with a copy of an application or order, or to personally serve a copy of the release conditions, that arises from a person's detention under division 3.

When police officer must release person on conditions

Clause 125 provides that, where it has not been reasonably practicable to bring a person before a court for the hearing of an application, the releasing police officer must release the person from custody on release conditions. Subclause 125(2) and subclause 125(3) set out the requirements for release conditions and the types of conditions that must be included. Subclause 125(4) deals with release conditions which name a child or relative of an aggrieved. Subclause 125(5) deals with the duration of release conditions. If a court makes a domestic violence order, the release conditions remain in force until the order is served or becomes enforceable under clause 177. However if the court makes a temporary protection order in the same terms as the release conditions, the temporary protection order is deemed to have been served on the respondent at the time it is made.

Particular safeguards for detention of child

Clause 126 provides particular safeguards for a child taken into custody. If the respondent is a child, the child must be taken into custody only as a last resort and for the least amount of time that is justified in the circumstances. The child must only be held in custody in a way that allows the child to be held separately from any adults being held in custody at the same place. Subclause 126(4) provides that the police officer has obligations to notify certain people that the child has been taken into custody. The clause does not apply to a person taken into custody who the police officer believes, on reasonable grounds, is an adult (subclause 126(5)).

When person may be taken to place for treatment

Clause 127 outlines the circumstances where a police officer may take a person to another place to receive treatment necessary for the respondent's welfare, including, for example, a hospital or medical practice.

Subclause 127(2) provides that, if the police officer reasonably believes that the treatment will not be completed within the detention period or any

extension of the detention period, the police officer must release the person from custody then take the person to the place where he or she will receive the necessary treatment. In this circumstance, the requirements that usually apply when taking a person into custody under this division do not apply – for example the police officer is not required to prepare an application for a protection order or release the person on release conditions. However, a police officer can still take any other action such as issuing a police protection notice against the respondent or making an application for a protection order.

When intoxicated person may be released from custody and taken to place of safety

Clause 128 outlines the circumstances in which a police officer can release an intoxicated person from custody and take the person to a *place of safety*. Subclause 128(9) defines *place of safety* and provides some examples. Like the clause 127 provisions, clauses 118, 124, and 125 do not apply, and the police officer is not precluded from taking other action under the Bill.

Division 4 Power to apply for urgent temporary protection order

When police officer may apply for temporary protection order

Clause 129 provides that a police officer may apply for a temporary protection order in order to protect the aggrieved where an application for a protection order will not be decided sufficiently quickly by the court and the police officer reasonably believes that a temporary order is needed to protect the aggrieved.

Subclause 129(1)(a) requires an application for a protection order against the person to have been prepared. This may be an application prepared by a police officer or another person on an earlier occasion that has already been filed and is pending before the court. If there is no existing application, a police officer who intends to apply for a temporary protection order under this section must first prepare an application for a protection order.

Subclause 129(2) sets out a situation where a police officer must apply for a temporary protection order. This obligation arises if a person has been

released from custody on conditions and the date for the hearing of the protection order is more than 5 business days after their release.

Making of application

Clause 130 outlines how a police officer must make an application for a temporary protection order. The application must be made to a magistrate and may be made by way of telephone, fax, radio, email or other similar facility.

When magistrate can make temporary protection order

Clause 131 outlines the requirements for a magistrate to be able to make a temporary protection order under division 4. Subclause 131(1) sets out the matters of which a magistrate is required to be satisfied. Subclause 131(2) sets out the steps that must be taken by a magistrate who makes a temporary protection order. Subclause 131(3) outlines the process when the magistrate refuses to make the temporary protection order.

Form of temporary protection order

Clause 132 deals with the form of a temporary protection order made under division 4. Subclause 132(1) imposes a requirement on the police officer who obtains the order to prepare and file a copy of the order. Subclause 132(2) outlines the details a police officer must include in the copy of the temporary protection order, which must be in the approved form. Subclause 132(3) provides that the court date in the copy of the order (as per subclause 132(2)(c)) should be within 28 days or, if there is no suitable date within this period, the first available date. Subclause 132(4) requires the clerk of the court to give a copy of the order to the magistrate who made the order. Subclause 132(5) requires the magistrate to review the copy of the order and, if accurate, sign the order.

Service

Clause 133 requires a police officer to serve a temporary protection order on a respondent and to give a copy to the aggrieved.

The temporary protection order needs to be accompanied by the application for a protection order if the police officer does not reasonably believe the respondent and aggrieved have received the application. This would be the case if the application for the urgent temporary protection

order was made in relation to an existing application for a protection order that had been filed, served and was currently before the court.

Division 5 Other Police Powers

Power to direct person to remain at place

Clause 134 gives a police officer the power to direct a respondent to remain at an appropriate place to serve the person with an application for a protection order or a domestic violence order, or, if the police officer does not have a copy of the order, notify the person about the conditions imposed by the order. A police officer can also use this power when the police officer intends to issue a police protection notice against a person.

This provision addresses situations where police may be experiencing difficulties in locating a respondent for the purposes of service of applications or orders. Police officers may come across a respondent while they are conducting other duties, for example random breath testing, and this provides police with an opportunity to ensure that the respondent is served with the application or order. It is not expected that police officers would use this power in every situation that they come across a respondent, as there are likely to be many situations where the respondent voluntarily cooperates with the officer who is attempting service or issuing a police protection notice.

Subclause 134(8) provides that it is an offence to contravene a direction under this provision without reasonable excuse. Subclause 134(9) provides that a person does not commit an offence if the person is proved not to be a respondent in an application for a domestic violence order or a domestic violence order, or if the warning required in subclause 134(4) has not been given. Subclause 134(4) requires the police officer to warn the person that it is an offence not to comply with the direction unless the person has a reasonable excuse.

The time that a person can be directed to remain is limited by subclause 134(3), and the police officer is required to act without unreasonable delay in doing the things which are referred to in the provision (subclause 134(5)). There is also a requirement that a police officer remain in the presence of the person while the person is required to remain at the appropriate place (subclause 134(7).

Acting in aid of police powers

Clause 135 provides that an authority conferred on one police officer can apply to any other police officer who is acting in aid of that officer.

Part 5 Court Proceedings

Division 1 Jurisdiction

Conferral of jurisdiction

Clause 136 provides for the jurisdiction of the court to hear and determine any application made to the Court under this Act and to perform any function or exercise any power given to the court under the Act. Subclause 136(2) enables a Magistrates Court in any district to hear and decide a proceeding started in a Magistrates Court in any other district.

Constitution of Magistrates Court

Clause 137 states that the Magistrates Court exercising jurisdiction under this Act must be constituted by a magistrate. However, a Magistrates Court constituted by 2 or more justices may deal with the matters set out in subclause 137(2) paragraphs (a) and (b), despite the provisions of sections 29(3) and (4) of the *Justices of the Peace and Commissioners for Declarations Act 1991*. Subclauses 137(4) and 137(5) refer to the power of a Magistrates Court constituted by 2 or more justices, and exercising criminal jurisdiction under section 552C(3) of the Criminal Code, to make a domestic violence order.

Concurrent criminal proceeding

Clause 138 refers to situations where there are civil proceedings under the Act which are related to criminal proceedings in that they both arise out of the same conduct. The aim of clause 138 is to ensure that matters raised in the civil proceedings (those listed in subclause 138(2)) are not used in the related criminal proceedings without the leave of the court presiding over the criminal proceedings. This protects the interests of the person who is charged with the offence, by placing limitations on the admissibility of

evidence which may be untested and subject to different evidentiary requirements. It also removes an impediment which may otherwise discourage a court from hearing the civil application before the criminal proceedings are finalised. This is appropriate given the object of maximising the safety, protection and wellbeing of people who experience domestic violence.

Subclause 138(3) provides that an application, proceeding or order under the Act does not affect any related criminal proceedings or any civil liability of a person. Subclause 138(4) provides that a person may be punished for an offence arising from the related criminal proceedings despite any order made under this Act. This makes it clear that the sentencing court should not feel constrained in relation to its sentencing options by the outcomes from the court hearing the civil application.

Tenancy application may be made in Magistrates Court

Clause 139 provides that if a person applies for a protection order or variation of a protection order, the person can also apply to the Magistrates Court instead of QCAT for an order under the *Residential Tenancies and Rooming Accommodation Act 2008*, sections 245,321 or 323. This provision enables the tenancy application to be heard with domestic violence proceedings which may be appropriate where the issues in the two proceedings overlap.

Tenancy application may be removed to Magistrates Court

Clause 140 applies when there are proceedings for a protection order and a tenancy application already on foot. It enables an aggrieved or respondent to apply to the Magistrates Court to have the tenancy application transferred to the Magistrates Court in the circumstances set out in subclause 140(1).

Procedures applicable to tenancy applications before Magistrates Court

Clause 141 outlines the procedures that apply to tenancy applications before the Magistrates Court.

Division 2 Practice and Procedure

Application of Uniform Civil Procedure Rules

Clause 142 states that, for proceedings under this Act before the Magistrates Court, the *Uniform Civil Procedure Rules 1999* applies to the extent that this Act expressly states that the rules apply and to the extent that the application of the rule is not inconsistent with this Act. The particular chapters and rules of the *Uniform Civil Procedure Rules 1999* that apply are set out in subclause 142(2))

Application of usual laws where necessary

Clause 143 refers to the application of the laws which are relevant to proceedings before a Magistrates Court or magistrate or proceedings in the Childrens Court.

Directions

Clause 144 sets out the court's power to issue directions.

Evidence

Clause 145 provides for greater flexibility in the manner in which proceedings in the Bill are conducted by excluding the rules of evidence and allowing the court to determine how it is informed about relevant matters. Subclause 145(2) provides that the civil standard of proof applies to provisions in the Bill which require a court to make a decision about a matter.

This clause recognises the nature of the proceedings, where applications are frequently made on an urgent basis and at short notice, and parties to proceedings are often self-represented.

Right of appearance and representation

Clause 146 states that the parties to a proceeding may appear in person or be represented by a lawyer. Subclause 146(2) provides that a police officer or service legal officer (as defined in the dectionary in the Schedule) has a right of appearance in any proceeding. This can include proceedings where the applicant is someone other than a police officer.

Representation of aggrieved

Clause 147 provides that a police officer, service legal officer or an authorised person for the aggrieved may appear and act on behalf of the aggrieved in a proceeding. Subclause 147(2) provides for circumstances where an authorised officer makes an application and the court decides that the authorised person is unable to assist the court.

Child can not be compelled to give evidence

Clause 148 states that a child, other than a child who is an aggrieved or a respondent, can only be called to give evidence in proceedings under this Act with the leave of the court and only if the child is 12 years or older, represented by a lawyer and agrees to give evidence. Subclause 148(4) outlines the factors the court must consider when deciding whether to allow the child to give evidence. Subclause 148(6) provides that a child who gives evidence can only be cross-examined with the leave of the court.

Child must be allowed to obtain legal representation

Clause 149 provides that a child must have reasonable opportunity to obtain legal representation if the child is named in an application for a protection order as either an aggrieved or a respondent.

Protected witnesses

Clause 150 outlines a number of orders that a court can make when a *protected witness* is giving evidence in proceedings. Subclause 150(1) defines *protected witness* for the purpose of these provisions and subclause 150(2) outlines the different orders that a court can make. A court can make an order of its own initiative or on the application of a party to the proceeding. Subclause 150(3) provides that a court must make certain orders under subclause 150(2) where the protected witness is a child.

Restriction on cross-examination in person

Clause 151 outlines the circumstances in which a court can restrict a self-represented respondent from cross-examining a *protected witness* (as defined in clause 150(1)). Subclause 151(2) outlines the factors that a court must take into account when it is considering, on its own initiative or upon application by a party, whether to order that the respondent not cross-examine a protected witness in person. Subclause 151(3) provides

that the court must make an order under these provisions where the protected witness is a child. Subclause 151(4) sets out the information that a court must give to the respondent, and the requirements it must impose on the respondent, when it makes an order under these provisions.

Special witnesses

Clause 152 provides that section 21A of the *Evidence Act 1977* (Evidence of special witnesses) is not affected.

Electronic documents

Clause 153 sets out circumstances in which police officers or clerks of the court can use electronic or computer-based means when dealing with some documents in proceedings. Subclause 153(3) provides that requirements in the Bill to serve or give a copy of an application or order to a person can be met if the copy is generated from an electronic version of the document.

Division 3 Other powers of court

Court may issue subpoena

Clause 154 states that a court hearing an application under this Act may issue a subpoena requiring the attendance of a person before the court to produce documents, to give evidence, or to do both of these things.

Power of court if failure to cooperate under subpoena

Clause 155 provides that if a person subpoenaed under clause 154 fails to cooperate in court without reasonable excuse, the court can treat the failure as contempt of court. Section 50 of the *Magistrates Court Act 1921* deals with the power of the Magistrates Court to punish a person for contempt of court and the maximum penalties that apply.

Provisions concerning warrants

Clause 156 outlines the circumstances in which a court should issue a warrant for a respondent to be taken into custody to be brought before the court. Subclause 156(2) provides that the provisions of the *Bail Act 1989* apply when a person is taken into custody under a warrant.

Costs

Clause 157 states that each party to a proceeding for an application under this Act must bear their own costs unless the court hears and decides the application and dismisses it on the grounds the application is malicious, it deliberately false, frivolous or vexatious, in which case the court may award costs against the party who made the application.

Division 4 Confidentiality

Court to be closed

Clause 158 states that the court hearing an application under this Act will be closed unless the court opens proceedings or part of the proceedings to the public or specific persons. An example of a specific person the court may open the proceedings to is an employee of an organisation that is responsible for providing support to parties to a domestic violence proceeding. Subclause 158(3) clarifies that an aggrieved is entitled to have an adult accompany them throughout the proceedings to provide support and other assistance.

Prohibition on publication of certain information for proceeding

Clause 159 restricts the publication of information relating to proceedings. Subclause 159(1) provides that any information given in evidence or information that identifies or is likely to identify a stated person must not be published. The penalty for contravention of this clause is, in the case of a corporation, a fine of 1000 penalty units and, in the case of an individual, a fine of 100 penalty units or imprisonment for 2 years. Subclause 159(2) provides the circumstances in which the publication of particulars is permitted.

Subclause 159(3) defines *information* and *publish* for the purposes of the provision. The definition of *publish* refers to publishing *to the public* which is more limited than the definition of publish in section 82 of the *Domestic and Family Violence Protection Act 1989*. The reason for the prohibition to be limited to publication to the public is to ensure that necessary communication of information related to the proceedings is not hampered. For example, this definition will not prohibit information about the parties to a proceeding from being disclosed in the following circumstances:

- a clerk in the Magistrates Court can provide a copy of a court list to a person who is employed by a domestic violence support service to provide court support for persons involved in proceedings
- a person named as an aggrieved in a domestic violence order can notify the principal of a school attended by the person's child that the order prohibits the child's father from having contact with the child and that the police should be called if the father presents at the school
- a person named as an aggrieved in a domestic violence order can provide a copy of the order to a government department that provides housing assistance to support a claim for priority housing
- a person named as a respondent in a domestic violence order can provide a copy of an order to a service provider that the respondent approaches to seek assistance in addressing the person's behaviour.

Prohibition on obtaining copies of documents for proceeding

Clause 160 imposes restrictions on persons, who are not involved in proceedings, from obtaining copies of records of proceedings or documents used or tendered in proceedings.

Research

Clause 161 sets out the circumstances in which the relevant chief executive can authorise a document mentioned in clause 160 to used for *approved research* (defined in the dictionary in the schedule) by a *qualified person* (defined in subclause 161(3)). Subclause 161(2) imposes restrictions on the use of a document for research.

Notification of police commissioner

Clause 162 sets out the requirement for the police commissioner to be notified by the clerk of the court of the applications or orders listed in subclause 162(1). The notification must be made within 1 business day after the day the application is made or the order is granted.

Notification of adult guardian

Clause 163 sets out the circumstances in which a court may inform the adult guardian in writing where the court makes a domestic violence order involving an adult with impaired capacity.

Division 5 Appeals

Who may appeal

Clause 164 provides that a person aggrieved by particular decisions has a right of appeal.

How to start appeal

Clause 165 outlines the processes necessary to start the appeal process. The clause states the information that the notice of appeal must contain and on whom it must be served. Subclause 165(4) outlines when the notice of appeal must be filed with the clerk of the appellate court. Subclause 165(5) provides that the court can extend the period for filing the notice of appeal.

Effect of appeal on decision

Clause 166 outlines the effect of an appeal process on the decision being appealed.

Police commissioner has right to appearance

Clause 167 gives the police commissioner the right to appear and be heard before the appellate court on an appeal.

Hearing procedures

Clause 168 provides for the appeal to be decided on the court's records of the original hearing, except that the appellate court may conduct a re-hearing in whole or in part.

Powers of appellate court

Clause 169 lists the powers the appellate court has when deciding an appeal. Subclause 169)(2) provides that the appeal is final and conclusive – no other right of appeal lies from the decision of the appellate court.

Part 6 Registration of interstate orders

Application to register interstate order in Queensland

Clause 170 states that an application to register an interstate order in Queensland must be made to the clerk of the Magistrates Court in the appropriate form. *Interstate order* is defined in the dictionary in the schedule to mean an order made by a court of another State, a Territory or New Zealand under a law of the other State, Territory or New Zealand that is prescribed under a regulation.

Clerk of court to obtain copies of order and proof of service

Clause 171 provides that the clerk of the court must obtain a certified copy of the order and proof of its service. The copy and proof must be obtained quickly and may be obtained using a fax machine or other electronic means.

Registration of interstate order

Clause 172 sets out the procedure for registering interstate orders in the court.

Duty of clerk of court after order is registered

Clause 173 outlines the duties of the clerk of the court after an order is registered. Subclause 173(2) specifies that notice of the registration is not to be given to the respondent unless the aggrieved consents.

Effect of registration of interstate order

Clause 174 provides that once registered in Queensland, an interstate order has the same effect as a protection order and may be enforced as though it was a protection order that had been served on the person.

Variation or cancellation of registered interstate order

Clause 175 provides that an application may be made to vary or cancel an interstate order as it applies in Queensland, vary the period during which the registered interstate order has effect in Queensland, or cancel the registration of the interstate order. Subclause 175(2) sets out the persons

who can apply to a court under clause 175, and subclause 175(3) sets out how a court may determine the application.

Applicant need not notify person against whom interstate order was made

Clause 176 provides that the applicant need not notify the person against whom the interstate order was made. This applies to situations where there is an application for registration of an interstate order or an application for a variation of a registered interstate order. Subclause 176(2) provides that a court may hear and determine the application in the absence of the person against whom the interstate order was originally made, and provides that a court must not refuse to hear and determine the application merely because that person has not been given notice of the application. Subclause 176(3) refers to the enforceability of orders which are registered after being modified or adapted under subclause 172(4) or varied under clause 175, in circumstances where notice has not been given to the person against whom the interstate order was originally made.

Part 7 Offences

Contravention of domestic violence order

Clause 177 deals with the offence of contravening a domestic violence order. Subclause 177(1) states that the provision applies to respondents against whom a domestic violence order has been made where the respondent was either (a) present in court when the order was made; or (b) served with a copy of the order; or (c) told by a police officer about the existence of the order.

Subclause 177(3) sets out the way in which a respondent can be told about the existence of an order. Some of the examples indicate that this does not have to occur during a face-to-face conversation but could be, for example, by telephone. Subclause 177(4) requires a court to be satisfied that the police officer told the respondent about a condition that the respondent is alleged to have contravened. Subclause 177(5) provides that the prosecution bear the onus of proving, beyond reasonable doubt, that the respondent has been told about the existence of an order, or a condition of an order.

Subclause 177(2) provides that a respondent must not contravene the order. Paragraph (a) applies the maximum penalty of 120 penalty units or 3 year imprisonment where the person has been convicted of a similar offence within the preceding 5 years. A transitional provision applies the penalty set out in paragraph (a) to relevant previous convictions under section 80 of the *Domestic and Family Violence Protection Act 1989*.

Paragraph 177(2) (b) sets out the maximum penalty that can be applied to contravening an order in all other instances.

Contravention of police protection notice

Clause 178 provides that it is an offence to contravene a police protection notice once a respondent has been served with a copy of the notice. The maximum penalty for this offence is 60 penalty units or 2 years imprisonment. Subclause 178(3) provides that a court hearing proceedings for an offence under this provision must consider whether the police protection notice was issued in substantial compliance with Part 4, Division 2. The words 'substantial compliance' will enable a court to distinguish between minor or technical deficiencies and those which are more substantial and bring into question the basis upon which the notice was issued.

Contravention of release conditions

Clause 179 provides that it is an offence for a respondent released from custody on release conditions to contravene the release conditions, with the maximum penalty being 60 penalty units or 2 years imprisonment.

Aggrieved or named person not guilty of offence

Clause 180 prohibits an aggrieved or other person named in an order, release conditions or police protection notice from being charged or punished under clauses 177, 178 or 179 for encouraging, permitting or authorising conduct by a respondent that contravenes a domestic violence order, police protection notice or release conditions. This provision recognises that orders, notices and release conditions impose conditions on a respondent, and the responsibility for complying with the conditions rests solely with the respondent. This clause overcomes the possibility of a person being charged in relation to an order, notice or release conditions that has been come about for the primary purpose of ensuring that person's safety and protection from future acts of domestic violence.

Prosecution of offences

Clause 181 provides that proceedings for offences are summary proceedings and are governed by the provisions of the *Justices Act 1886.* Subclause 181(2) provides that a complaint for an offence must be laid by a police officer.

When proceeding for offence may start

Clause 182 outlines when a proceeding for an offence must be commenced.

Part 8 General

Division 1 Service

The note at the start of the division flags the application of the service provisions in chapter 4 of the *Uniform Civil Procedure Rules 1999.*

Service allowed on all days

Clause 183 provides that service of documents authorised or required under this Act are permitted on any day of the week, including Good Friday and Christmas Day.

Service of order on respondent

Clause 184 outlines how a domestic violence order, variation to a domestic violence order and an intervention order must be served on a respondent. Subclause 184(2) requires personal service by a police officer. Subclause 184(4) sets out a different process for when a respondent is present in court when an order is made or varied. Subclause 184(5) provides that failure to comply with clause 184 does not invalidate a domestic violence order or intervention order. This recognises that a respondent can still be guilty of an offence of contravening a domestic violence order when the respondent was not present in court, and was not served with a copy of the order, but was told about the existence of the order and the relevant conditions by a police officer as envisaged by clause 177(1)(b).

Court to give domestic violence order to other persons

Clause 185 sets out the requirements for providing copies of domestic violence orders to persons who have an interest in the proceedings.

Court to give intervention order to aggrieved

Clause 186 sets out the requirement for the clerk of the court to supply a copy of an intervention order to the aggrieved.

Court to give notice of adjournment to absent respondent

Clause 187 sets out the procedure for providing notice of adjournment to a respondent who was not present in court when the adjournment was made. This applies to an adjournment of an application for the making or variation of a domestic violence order and when a court is considering making a domestic violence order in its criminal or child protection jurisdiction. There are different requirements depending on the circumstance set out in subclause 187(2) and subclause 187(3).

The requirements to give a written notice of an adjournment in subclause 187(2) are less stringent than the subclause 187(3) requirements because it is recognised that the respondent has already been put on notice about the proceeding and the possible outcomes if he or she does not attend court. A notice can be given to a respondent by (for example) post, and the clerk of the court does not have to comply with subclause 187(2) in the circumstances outlined in subclause 187(5).

Giving of document to child

Clause 188 sets out the additional requirements that must be considered if a document is to be given to, or served on, a child. Clause 188 applies to all documents authorised by or required to be given to, or served on, a child under the Bill, including release conditions and police protection notices.

Subclause 188(2) refers to the requirement to give the document on a parent of the child, and restrictions on giving the document to the child at or in the vicinity of the child's school. *Parent* is defined in subclause 188(7). Subclause 188(3) outlines the circumstances where a court may dispense with a requirement to give a copy of a document to a parent of a child.

Subclause 188(2) is silent on when a document must be given to a parent. This enables a court to make a determination under subclause 188(3), when a police officer is seeking to dispense with the requirement, at the first court date after a police officer has issued a police protection notice or served an application for a protection order in relation to a child, or released a child from custody on release conditions.

Subclauses 188(4) and (5) provide that the age of a person is to be ascertained on the day the document is to be given to the person and that the obligations in the clause do not apply if the person required to give or serve the document believes on reasonable grounds the child is an adult. Subclause 188(6) provides that failure to comply with clause 188 does not invalidate a domestic violence order, police protection notice or release conditions.

Division 2 Miscellaneous provisions

Evidentiary provision

Clause 189 sets out some evidentiary provisions which are designed to streamline proceedings, particularly criminal proceedings, involving contravention of a domestic violence order or police protection notice. Subclause 189(2) provides that a document purporting to be a copy of a protection order, a temporary protection order or a varied order shall be taken to be evidence of the making of the order and the matters contained in order. This does not preclude a respondent producing evidence which contradicts information contained in the order.

Subclause 189(3) relates to police protection notices and enables a police commissioner to sign a certificate stating that the matters referred to are evidence of what the certificate states.

Subclause 189(4) imposes requirements on a prosecuting authority that intends to rely on a certificate under subclause 189(3) in a criminal proceeding. *Prosecuting authority* is defined in subclause 189(7). Subclause 189(5) provides that a defendant challenging a matter stated in a certificate must, at least 15 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged. The certificate then stops being evidence of the matter to be challenged (subclause 189(6)).

Protection from liability

Clause 190 provides that members of the Queensland police service do not incur civil liability for acts done or omissions made under the Act if they were carried out honestly and without negligence. The term 'members of the Queensland police service' is wide enough to include civilian members of the police service. This provision enables police officers to respond effectively to domestic violence incidents, and to utilise their powers in good faith, without being pre-occupied about the possible legal consequences. Subclause 190(2) provides that civil liability attaches to the State where subclause 190(1) prevents the liability attaching to a member of the Queensland police service.

Approved forms

Clause 191 refers to the processes for approving forms to be used under the Act.

Review of Act

Clause 192 states that the Minister must review the operation of this Act as soon as practicable after the day that is 5 years after the commencement of this provision. Subclause 192(2) outlines the matters that must be included in the review. Subclause 192(3) requires the report of the review to be tabled in the Legislative Assembly.

Regulation-making power

Clause 193 bestows on the Governor in Council the power to make regulations under this Act.

Part 9 Repeal provision

Repeal

Clause 194 repeals the *Domestic and Family Violence Protection Act 1989*, No.42.

Part 10 Transitional provisions

Clauses 195 to 214 set out transitional provisions that relate to the repeal of the *Domestic and Family Violence Protection Act 1989*.

Part 11 Amendments

Part 11 makes consequential amendments to the following Acts

- the Criminal Code
- the *Evidence Act 1977*
- the *Police Powers and Responsibilities Act 2000*
- the *Police Powers and Responsibilities Regulation 2000*

Part 12 Minor and consequential amendments

Legislation amended

Clause 230 states that Schedule 1 amends the Acts it mentions.

Schedule 1—Legislation amended

Schedule 1 makes consequential amendments to the following Acts

- the *Adoption Act 2009*
- the *Child Protection Act 1999*
- the *Commission for Children and Young People and Child Guardian Act 2000*
- the *Family responsibilities Commission Act 2008*
- the *Magistrates Act 1991*

- the *Mental Health Act 2000*
- the *Penalties and Sentences Act 1992*
- the *Residential Tenancies and Rooming Accommodation Act 2008*
- the *Tow Truck Act 1973*
- the *Weapons Act 1990*

Schedule 2—Dictionary

Schedule 2 is the dictionary, which defines particular words used in the Bill.