

# Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Amanda Camm MP, Minister for Families, Seniors and Disability Services and Minister for Child Safety and the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025.

In my opinion, the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 is compatible with the human rights protected by the *Human Rights Act*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

The Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (the **Bill**) will progress legislative amendments intended to improve police efficiencies for operational police officers when responding to domestic and family violence, and to prevent further violence or harm occurring to victims.

The Bill seeks to achieve this by:

- enabling a court to impose a monitoring device condition when making a domestic violence order (DVO) as part of a two-year pilot;
- establishing a framework for Police Protection Directions (PPDs) to improve police responses to domestic and family violence by creating efficiencies and reducing the operational impacts of the current domestic and family violence legislative framework;
- simplifying, streamlining and expanding the video-recorded evidence-in-chief (VREC) framework statewide;
- clarifying the use of video-recorded evidence in civil proceedings under the *Domestic and Family Violence Protection Act 2012* (the DFVP Act); and
- making other technical amendments to the DFVP Act to strengthen the maintenance of the Approved Provider List.

## Human Rights Issues

Domestic and family violence threatens human rights. People who fear or experience domestic violence are entitled to enjoy their rights to life (in section 16 of the *Human Rights Act*), not to be subjected to cruel, inhuman or degrading treatment (in section 17 of the *Human Rights Act*) and to mental and bodily integrity (protected by sections 25 and 29 of the *Human Rights Act*). Section 26 of the *Human Rights Act* also recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. Further, this right provides that every child has the right, without discrimination, to the protection that is needed

by the child, and is in the child's best interests, because of being a child. Domestic and family violence threatens the enjoyment of these rights. That is why overseas, it has been recognised that the state has a positive obligation to address domestic and family violence to fulfil some of these rights.<sup>1</sup>

This Bill introduces amendments to better address domestic and family violence and better protect these human rights. It is recognised that the measures introduced by this Bill will impact the human rights of people using violence (respondents), particularly their rights to privacy and freedom of movement, but it is considered that the negative impacts on those human rights are justified by the need to address domestic and family violence for the reasons outlined in this statement of compatibility.

### **Monitoring device conditions for domestic violence orders**

Clause 15 of the Bill inserts new part 3, division 5, subdivision 3 into the DFVP Act (new sections 66A to 66H). Under these new provisions, a court issuing a DVO may impose a condition requiring a respondent to wear a monitoring device for a stated period.

Currently, under sections 56 and 57 of the DFVP Act, when a court makes a DVO, it is required to include standard conditions but may also impose other conditions. New section 66B will expand the range of conditions available to a court making a DVO to explicitly include electronic monitoring conditions. Failure to comply with the condition will be an offence under section 177 of the DFVP Act. The amendments are proposed to be introduced as a pilot program and will expire on the day that is two years after the day the section commences (section 66H). The courts that may impose a monitoring device condition as part of the pilot program will be prescribed by regulation (under section 66B).

Under new section 66B, the court may impose a condition on the respondent that the respondent wear a monitoring device for a stated period, if the court is satisfied that:

- the wearing of the monitoring device by the respondent is necessary or desirable to protect the aggrieved from domestic violence, a named person from associated domestic violence or a named child from being exposed to domestic violence; and
- either the respondent has been convicted of, or is charged with, a domestic violence offence or an indictable offence involving violence against another person; or there is a history of charges for domestic violence offences made against the respondent; and
- the respondent is not required by a court or other entity to wear a monitoring device for the purpose of an entity finding or monitoring the respondent's geographical location.

The monitoring condition may be imposed only for the period the court considers reasonably necessary in all the circumstances of the case, and the court must give reasons for imposing the monitoring condition.

Section 66E authorises the chief executive to ask a prescribed entity to:

- fit the device to, or remove the device from, the respondent;
- give a safety device to the aggrieved or named person (a 'safety device' is an electronic device given to a person for the purpose of identifying risks to the safety of the person

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<sup>1</sup> *Tunikova v Russia* [2021] ECHR 1064; (2022) 75 EHRR 1.

- in relation to another person who is required to wear an electronic monitoring device under a monitoring device condition);
- remotely monitor the device fitted to the respondent and any safety device provided to the aggrieved;
- contact the respondent, aggrieved or named person in relation to an alert or notification from the monitoring device or a safety device; and
- give information relating to alerts and notifications from the monitoring device to the chief executive and another prescribed entity.

Section 66F provides that a regulation may be made setting out how information can be shared.

Clause 39 of the Bill also inserts transitional provisions into a new part 10, division 7 of the DFVP Act to clarify that a monitoring device condition may be made when varying a DVO made before the amendments, and that a monitoring device condition will continue to have effect after a court stops being prescribed or the subdivision expires. Clause 40 of the Bill inserts related definitions into the dictionary in the schedule of the DFVP Act.

### **Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

Allowing electronic monitoring conditions to be imposed would engage and may limit the following rights of both respondents and aggrieved persons under the *Human Rights Act*:

- freedom of movement (section 19);
- freedom of assembly and association (section 22);
- the right to privacy and reputation (section 25);
- cultural rights (sections 27 and 28); and
- the right to liberty (section 29).

Electronic monitoring can have deep impacts on the person being monitored. A person wearing the monitoring device will be continuously aware of its presence, which will have a very real physical, psychological and emotional burden. Depending on the model of electronic monitor used, it may be obvious to others what it is and have a stigmatising effect.

GPS monitoring also allows the authorities to systematically collect and store data showing a person's habits and movements in their daily life. By continuously monitoring the person's location, the authorities can build up a picture of the person's religious, political, sexual, and other personal affiliations and associations. The ability to share that private information in accordance with a regulation prescribed under section 66F accentuates that interference with privacy. Depending on the functionality of a safety device provided to another person (such as the aggrieved), the interference with privacy may be significant.

The person wearing the monitoring device may be deterred from going to places or associating with people they otherwise would have, because of shame or a fear of adverse consequences from the authorities or other people with access to the information. For people of particular cultural backgrounds, especially First Nations people, that may impact on their ability to maintain kinship ties or visit places with which they have a connection under their Aboriginal tradition or Island custom.

The functionality of the device may have further practical consequences for freedom of movement and liberty. For example, the requirement to keep the device charged would prevent

the person from being separated for an extended period from any place that has access to a mains power supply.

Any contravention of the monitoring device condition would expose the person to a penalty of up to 3 or 5 years imprisonment, depending on whether they have previously been convicted of a domestic violence offence.

Although the amendments are designed to protect the human rights of aggrieved persons, electronic monitoring could also negatively affect their human rights in various ways. For example, a safety device worn by an aggrieved person would disclose their personal information such as their location. Wearing a safety device could also potentially increase an aggrieved person's anxiety rather than diminish it, with negative consequences for their mental integrity.

Those impacts of electronic monitoring engage human rights in the following ways.

Freedom of movement (section 19)

The right to freedom of movement protects the right to move freely within Queensland, as well as to enter and leave the State and choose where to live. Allowing electronic monitoring will limit this right by deterring respondents from going to certain places.

Freedom of association (section 22)

Freedom of association protects the ability to associate with whomever one wishes. Allowing electronic monitoring will limit this right by deterring respondents from associating with certain people.

Privacy and reputation (section 25)

Section 25(a) of the *Human Rights Act* protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. Electronic monitoring will interfere with a respondent's bodily integrity by requiring them to wear a visible device on their body. It will interfere with their mental integrity because they will be constantly aware they are being monitored. Finally, it will interfere with their private information by allowing authorities to accumulate data about their daily life.

The amendments will also engage an aggrieved person's right to privacy by interfering with their personal information and potentially their mental integrity.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised by the DFVP Act and will therefore be lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Section 25(b) of the *Human Rights Act* protects a person's reputation from unlawful attack. Requiring a respondent to wear a device that is obvious to others and stigmatising may impact their reputation. However, as the monitoring condition would be authorised under the DFVP

Act, any impact on the person's reputation would be lawful. Section 25(b) is therefore engaged, but not limited, by the amendments.

Cultural rights (sections 27 and 28)

Section 27 of the *Human Rights Act* protects the ability of people of a particular cultural background to enjoy their culture, to declare and practise their religion and to use their language, in community with other people of that background. Section 28 recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(2) sets out particular rights which Aboriginal peoples and Torres Strait Islander peoples must not be denied. By inhibiting respondents from associating with certain people and going to certain places, electronic monitoring may limit the right to maintain kinship ties and the right to maintain a connection to land and waters in accordance with tradition or custom.

The right to liberty and security of person (section 29)

Section 29(1) provides that every person has the right to liberty and security. Section 29(2) provides that a person must not be subject to arbitrary arrest or detention.

As contravention of a monitoring device condition may expose a respondent to a term of imprisonment, the amendments may impose an incidental burden on the right to liberty.

However, the relevant aspect of the right to liberty will only be limited if the detention is arbitrary. Whether any deprivation of liberty is arbitrary will be addressed below when considering the factors in section 13.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) The nature of the right (section 13(a))

For each of the relevant rights, the nature and underlying values are as follows:

- Freedom of movement in section 19 of the *Human Rights Act* protects against restrictions on movement falling short of physical detention. It is about freedom.
- Freedom of association in section 22 of the *Human Rights Act* protects the ability of a person to maintain personal connections with others and associate with other people whenever and for whatever reason they wish.
- The right to privacy in section 25 of the *Human Rights Act* protects personal information, but also extends to an individual's private life more generally, including protection from interference with a person's physical and mental integrity. Privacy is about having control over one's own life and being let alone.
- Cultural rights in sections 27 and 28 of the *Human Rights Act* preserve the ability of people of a particular background to enjoy their culture in community with others, including their ability to maintain kinship ties.
- The right to liberty in section 29 of the *Human Rights Act* is concerned with protecting people from interference with their physical liberty.

- (b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom (s 13(b))

The purpose of the amendments is to protect the safety of aggrieved persons and to prevent further violence or harm from occurring by deterring a respondent from coming into contact with the aggrieved and by encouraging the respondent to comply with the conditions of a DVO. The prevention of domestic and family violence is a proper purpose and will promote the human rights of aggrieved persons. The amendments will also enable police to respond if a respondent contravenes the conditions of a DVO.

- (c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will help to achieve the purposes of encouraging compliance with the conditions of a DVO and reducing the risk of further domestic and family violence. Respondents are more likely to comply with the conditions of a DVO if they know they are being monitored, and if they do not comply, police will be able to respond. An independent evaluation of a similar trial of electronic monitoring in Tasmania found an overall 82% reduction in violent incidents, particularly high-risk incidents, suggesting increased safety for victims of domestic and family violence.<sup>2</sup> Electronic monitoring is not intended to be the sole mechanism to keep aggrieved persons safe but is instead intended to enhance safety planning and allow police to respond to breaches proactively.

- (d) Whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The monitoring device provisions are narrowly tailored in several ways to ensure they represent the least restrictive way to protect people from domestic and family violence:

- the court must be satisfied the wearing of the device by the respondent will be necessary or desirable to protect the aggrieved from domestic violence (section 66B(1)(a)(i));
- monitoring device conditions are reserved for particular respondents who have been convicted of, or charged with, a domestic violence or indictable offence involving violence against another person, or they have a history of charges for domestic violence offences (section 66B(1)(a)(ii));
- the court may only impose the monitoring condition for the period the court considers is reasonably necessary in all the circumstances of the case (section 66B(2));
- the court must provide reasons for imposing the condition (section 66B(3));
- the court must have regard to the respondent's living arrangements and personal circumstances, including their geographical location, and the respondent's ability to charge and maintain the device before imposing the monitoring condition (section 66C(1));
- the court must consider any views or wishes expressed by the aggrieved or named person (section 66C(1)(c));
- it will be an offence to use information relating to alerts or notifications from a monitoring device or safety device for a purpose other than the purpose for which the

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<sup>2</sup> Tasmanian Institute of Law Enforcement Studies, University of Tasmania, *Evaluation of Project Vigilance: Electronic Monitoring of Family Violence Offenders* (Final Report, July 2021) 13.

information was obtained unless authorised or permitted under an Act (section 66F(2)); and

- monitoring device conditions will be introduced on a trial basis with the subdivision expiring after 2 years unless extended (section 66H).

Consideration was given to whether there are alternative ways to achieve the purpose of the new subdivision that would further minimise the limitations on human rights. The following alternatives were considered:

- specifying the type of device that may be used as a monitoring device or a safety device, for example, to stipulate the size of a monitoring device to allow people to wear it under clothes, or to stipulate the functionality of a safety device so that it cannot be used by an aggrieved person to track the movements of a respondent;
- setting out the requirements for sharing, recording and storing information in the legislation rather than a regulation;
- only allowing a monitoring condition to be imposed on the recommendation of police as is the case in Tasmania under section 16(4)(a) of the *Family Violence Act 2004* (Tas);
- requiring the court to be satisfied that a person has previously been convicted of a domestic violence offence before imposing a monitoring device condition; and
- maintaining the current position that the court may impose other conditions under section 57 and may impose an electronic monitoring condition in other circumstances, for example, as a condition of bail.

However, these alternatives are not reasonably available. It is not possible to specify particular devices that may be used without undermining the flexibility needed for the scheme to operate during the pilot. Similarly, setting out the requirements for information-sharing in a regulation under section 66F allows the flexibility needed to adapt the requirements as the pilot proceeds. Further consideration to human rights will be considered when making any regulation under these new provisions.

Including a current charge for a domestic violence offence, or a charge for an indictable offence involving violence against another person as matters making a person eligible for a monitoring device condition recognises that monitoring devices for this cohort of respondents may increase victim-survivor safety and deter the perpetrator from committing further domestic violence. This is further recognised by providing that a court may impose a monitoring device condition where a person has a history of charges for domestic violence offences made against them, whether or not they were finalised. This recognises the effect that coercive control may have on whether a victim-survivor proceeds with a criminal process. It also recognises that a person may have committed other violent offences outside of the relevant relationship, which may be a relevant consideration for the safety of the aggrieved person.

Maintaining the status quo would also not protect the safety of aggrieved persons to the same extent. Express powers to impose monitoring device conditions in other circumstances (such as bail applications) do not apply to DVOs. It is unclear whether the court already has power to impose a monitoring device condition when imposing other conditions under section 57 of the DFVP Act. Even if section 57 did authorise such a condition, relying on that power may not be less restrictive of human rights, as it would not be subject to the safeguards set out above.

As there is no less restrictive way to protect the safety of people who fear or experience domestic and family violence by the respondent, the limits imposed on human rights are necessary to achieve that purpose.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments have the potential to impose deep limits on the human rights of people who are subject to a monitoring condition, including their freedom of movement and association, the right to privacy and cultural rights. The amendments could also limit the human rights of aggrieved person's, particularly their right to privacy. However, those restrictions on human rights are mitigated by the safeguards identified above.

On the other side of the scales, the amendments pursue the important purpose of reducing the risk of future domestic violence from occurring against an aggrieved person and their children, by monitoring a respondent's compliance with the conditions of a DVO. This will promote the human rights of victims of domestic and family violence, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25 of the *Human Rights Act*).

On balance, I consider the importance of protecting potential victims from harm outweighs the impacts on people who will be subject to a monitoring device condition.

As any impacts on the rights to privacy and liberty are proportionate, and thus are not arbitrary, those rights are not limited. To the extent that a person's freedom of movement, freedom of association and cultural rights may be limited by the amendments, the limitation is reasonable and justified.

- (f) Any other relevant factors

Nil.

### **The VREC framework**

Giving evidence in court can be traumatic to victim-survivors of domestic and family violence. Part 6A of the *Evidence Act 1977* (Evidence Act) allows adult complainants in domestic violence criminal proceedings to give their evidence-in-chief by way of a video recorded statement taken by a police officer. This framework is currently limited to summary criminal proceedings and committal proceedings in the Magistrates Courts at Ipswich, Southport and Coolangatta.

Clause 42 of the Bill replaces section 103C of the Evidence Act to expand the VREC framework to all summary criminal proceedings and committal proceedings for a domestic violence offence in Magistrates Court throughout the state. A regulation-making power to prescribe further criminal proceedings is retained.

The Bill also contains amendments to simplify and streamline the VREC framework in response to operational issues raised by the QPS with the current legislative framework. Amendments in clauses 45 and 46 of the Bill seek to simplify the language used by police and complainants under sections 103E and 103F of the Evidence Act. Amendments in clause 46 of

the Bill seek to streamline the process under section 103F of the Evidence Act for obtaining a VREC statement by requiring that the complainant's informed consent be obtained once prior to or at commencement of the VREC statement.

Clause 45 of the Bill removes requirements under section 103E of the Evidence Act for a VREC statement to be taken as soon as practicable by a trained police officer. The requirement that a VREC statement be taken by a police officer is retained.

Other amendments include providing that a VREC statement must contain an oral or written English translation if any part of the VREC statement is in a language other than English; that multiple VREC statements can be made; and including an example of an exceptional circumstance when an audio recorded statement may be used.

Clause 51 of the Bill amends the Evidence Act to clarify that the Act does not limit the use of VREC statements in proceedings under the DFVP Act. Clause 27 of the Bill amends the DFVP Act to provide an example of how the court may inform itself to include that the court may have regard to a VREC statement made for a related domestic violence proceeding within the meaning of section 103C of the Evidence Act.

### **Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

These amendments engage and will limit the following rights under the *Human Rights Act*:

- the right to freedom of expression (section 21);
- the right to privacy and reputation (section 25);
- the right to a fair hearing (section 31); and
- rights in criminal proceedings (section 32).

#### Freedom of expression (section 21)

Section 21(2) of the *Human Rights Act* protects the right to freedom of expression, including the right to seek, receive and impart ideas of all kinds in the way one wishes. This right will be limited because the VREC framework alters procedures relating to disclosure of a complainant's statement.

#### Privacy and reputation (section 25)

Section 25(a) of the *Human Rights Act* protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity. The VREC framework interferes with a complainant's right to privacy as a VREC statement captures the disclosure of a domestic violence offence, which can take place in private, as well as other information that may be sensitive and private. As a video recorded statement that can be taken shortly after an incident, it can be taken at a complainant's home and capture the complainant's demeanour and background immediately after an incident. Further, a VREC statement can be subsequently disclosed and used in court proceedings.

The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised by the Evidence Act and will therefore be lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under

section 13 of the *Human Rights Act*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

#### Fair hearing (section 31)

Section 31(1) of the *Human Rights Act* provides that a defendant and a party to a civil proceeding have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The VREC framework limits the rights of a person accused of a domestic violence offence and a respondent in a proceeding under the DFVP Act to a fair hearing due to the limitations on the disclosure of VREC statements, allowing a complainant to give evidence-in-chief by way of their VREC rather than oral testimony, and allowing a court to close the court while a VREC statement is being played during court proceedings. The VREC framework also enables an audio recorded statement to be admitted as the complainant's evidence-in-chief in exceptional circumstances.

#### Rights in criminal proceedings (section 32)

Section 32 of the *Human Rights Act* provides that a defendant is entitled without discrimination to minimum guarantees, including the right to be informed promptly and in detail of the nature and reason for the charge, the right to defend themselves personally or through legal assistance, and the right to examine or have examined witnesses.

While the proposed amendments will not limit a defendant's ability to cross-examine or put their case to a complainant, the VREC framework alters procedures relating to disclosure and how a complainant gives their evidence-in-chief. Where a defendant is self-represented, disclosure of a VREC statement is more limited.

The right to a fair hearing and rights in criminal proceedings do not require a hearing that is conducted with the most favourable procedures for the accused. Court procedures should also account for other public interests, including the interests of victim-survivors and of society generally in having a perpetrator of domestic and family violence brought to justice.

#### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

##### (a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- The right to freedom of expression in section 21 of the *Human Rights Act* protects the right to freedom of information, including a right to access government-held information.
- The right to privacy in section 25 of the *Human Rights Act* protects personal information, but also extends to an individual's private life more generally, including

protection from interference with a person's physical and mental integrity. Privacy is about having control over one's own life and being let alone.

- The right to a fair hearing in section 31 of the *Human Rights Act* provides a right for parties to be heard and to respond to allegations made against them and for courts to be unbiased and independent.
- The rights in criminal proceedings in section 32 of the *Human Rights Act* protect certain minimum guarantees about how a defendant will be treated and how the criminal proceedings will be conducted.

(b) the nature of the purpose of the limitation to be imposed by the VREC-related amendments in the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the limitation is to assist victim-survivors of domestic and family violence throughout the state to give their best evidence in court by minimising the trauma caused by re-telling their experiences in court. Improving victim-survivors' experience in court proceedings serves the purpose of supporting fairness in the criminal justice system.

Another purpose is to improve police responses to domestic and family violence by reducing the operational impacts of the current legislative framework. By improving police efficiency, the capacity of the police to respond to domestic and family violence will be increased.

These are proper purposes and will help to promote the human rights of victim-survivors of domestic and family violence, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25).

(c) the relationship between the limitation to be imposed by the VREC-related amendments in the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The VREC framework can benefit victim-survivors of domestic and family violence.

Obtaining a complainant's evidence-in-chief close to the time of an alleged offence can assist them in recalling more details about the offending, as well as capture their demeanour. This may reduce the number of contested matters and the requirement for a complainant to give evidence in court. The ability to provide a VREC statement in a location such as their home, rather than a formal written statement at a police station, may alleviate some of the trauma, stress and anxiety for victim-survivors reporting domestic and family violence. While victim-survivors may still be required to give evidence in court proceedings under cross-examination or re-examination, the VREC framework may reduce the trauma for victim-survivors in re-telling their experiences in court by minimising the oral evidence they must provide during court proceedings.

The ability to take a VREC statement, rather than a written statement, can reduce the time it takes to obtain statements and thereby improve police capacity to respond to domestic and family violence.

The amendments seek to simplify, streamline and expand the VREC framework to increase the availability of the VREC framework as an option for victim-survivors of domestic and family violence throughout the state and improve their experience during the process. The amendments also enable the QPS to be flexible to workforce capabilities while still meeting the needs of victim-survivors.

The amendments also clarify that a court may have regard to a VREC statement in proceedings under the DFVP Act and that the Evidence Act does not prevent this. This may also benefit victim-survivors who may be required to give evidence in criminal proceedings as well as proceedings under the DFVP Act, such as proceedings relating to an application to obtain or vary a domestic violence order. Where a victim-survivor has made a VREC statement in relation to a domestic violence offence related to a domestic violence order application, use of this VREC statement in the DFVP Act proceeding can assist in reducing a victim-survivor's trauma from engaging in and giving evidence in court proceedings.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The VREC framework is tailored in several ways to ensure it represents the least restrictive way to improve the experiences of victim-survivors in court proceedings and improve efficiencies and police responses to domestic and family violence.

In order for a VREC statement to be obtained, a police officer must explain certain matters, including its use and disclosure, the possibility of still being required to give evidence in court and the option to refuse to consent to the making of a VREC statement. After being informed of these matters, the complainant is required to indicate that they understand and consent in order for a VREC statement to be made. The amendments in the Bill seek to simplify and streamline this process to improve the experiences of victim-survivors and police efficiencies. The amendments also clarify that multiple VREC statements can be obtained. This framework gives victim-survivors agency to engage in a process that intrudes on their privacy.

While the statutory requirement for a trained police officer to take a VREC statement could be retained, it is considered that this is not required to facilitate the quality of VREC statements. Rather, similar to the taking of recorded statements of children under section 93A of the Evidence Act, this can be addressed by the QPS through relevant internal policy and guiding principles. This approach enables QPS to be flexible to expanding workforce capabilities while still meeting the needs of victim-survivors in an appropriate manner. For example, removing the statutory requirement will remove any perception that there is a statutory barrier preventing an appropriately trained police officer from taking a VREC statement from a complainant who is willing to provide their evidence.

Disclosure of a VREC statement is limited under section 590AOB of the Criminal Code. The prosecution must give a defendant or a defendant's lawyer a written notice advising of a VREC statement and how its conditional disclosure may occur. If the defendant has a lawyer, the lawyer will be given a copy of the VREC statement. If the defendant is self-represented, they will be allowed to view the VREC statement in certain circumstances if the prosecution or court considers it is appropriate. A transcript of the VREC statement can also be disclosed to a self-represented defendant on request. Where any part of the VREC statement is in a language other

than English, a written or oral translation must be provided. Unauthorised possession, supply, copy, or publication of a VREC statement is a criminal offence. This limited disclosure, translation requirement and associated criminal offence ensures that a person accused of perpetrating domestic and family violence can still be made aware of the adverse evidence against them but is unable to share or misuse a VREC statement in a way that may further victimise or compromise a victim-survivor's privacy.

While the VREC framework allows for the VREC statement to be used as the complainant's evidence-in-chief, the complainant is still required to be cross-examined and re-examined. Where a complainant is required to give oral testimony in court, special witness measures may be made in relation to how they give their evidence under section 21A of the Evidence Act. Special witness measures can include the presence of a support person, giving evidence via audiovisual link from another room and closing the court while the complainant gives evidence.

The ability to use an audio recorded statement as the complainant's evidence-in-chief in exceptional circumstances, such as where there is a technological error or failure, is restricted by the requirement that its use cannot unfairly prejudice the defendant.

The amendments clarify that a court can consider a VREC statement in DFVP Act proceedings. This may benefit victim-survivors who have made a VREC statement by reducing the evidence they provide in the DFVP Act proceedings.

Ultimately, notwithstanding the provisions regarding the use and admissibility of VREC statements in court proceedings, the court retains the power to exclude any or all of a VREC statement.

One option would be to maintain the status quo of the VREC framework. However, that would not improve the accessibility of the VREC framework to victim-survivors throughout the state nor address operational issues in the current legislative framework.

As there is no less restrictive way to improve the experiences of victim-survivors in court proceedings and improve efficiencies and police responses to domestic and family violence, the limits imposed on human rights are necessary to achieve those purposes.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments relating to the VREC framework strike an appropriate balance between supporting victim-survivors of domestic and family violence to provide their best evidence, reduce traumatisation through the court process and improving police efficiencies, and preserving the rights to privacy, freedom of expression and a fair hearing and rights in criminal proceedings.

The limits on the complainant's right to privacy are necessary to achieve the purpose of the VREC framework, but there are important safeguards, including informed consent and limitations on disclosure, embedded into the VREC framework.

The limits on the rights to freedom of expression and a fair hearing and rights in criminal proceedings are balanced by still allowing for limited disclosure of a VREC statement, not

interfering with a defendant's right to cross-examine a complainant and retaining the court's discretion to exclude part or all of a VREC statement.

On balance, having regard to the extent of the limitations on the rights to privacy, right to freedom of expression and fair hearing and rights in criminal proceedings, it is considered that the importance of achieving the purpose to enable victim-survivors of domestic and family violence to provide their best evidence, reduce the trauma associated with the court process and improving police efficiencies outweighs the harm caused to the limitation to the rights identified.

(f) any other relevant factors

Nil.

**Approved provider lists**

The Bill makes technical amendments to the DFVP Act to strengthen the maintenance of the Approved Provider List for intervention order programs and counselling.

Clause 16 of the Bill amends s 75 of the DFVP Act to require the chief executive to consider other criteria prescribed by regulation before making a decision to approve a provider. In deciding whether to approve a provider, the chief executive must also be satisfied that the entity has appropriate experience and qualifications to provide an approved intervention program or counselling.

The amendment does not limit any human rights. Any criteria prescribed by regulation must be accompanied by a human rights certificate for subordinate legislation. In accordance with section 58 of the *Human Rights Act*, the chief executive must ensure any decision to approve an entity is compatible with human rights, and must give proper consideration to the human rights that are relevant to the decision.

Clause 26 of the Bill includes a similar a consequential amendment to the DFVP Act providing a regulation making power to prescribe criteria for diversion program providers following commencement of amendments establishing the court based perpetrator diversion scheme for criminal offences on 26 May 2025. The consequential amendment does not limit any human rights for the same reasons.

**Police Protection Directions**

Clause 19 of the Bill inserts a new part 4, division 1A (sections 100A to 100ZD) into the DFVP Act, which will provide for **PPDs** to be issued. Other clauses of the Bill make consequential amendments related to PPDs.

Currently, the DFVP Act empowers police officers to issue a Police Protection Notice (**PPN**). PPNs are taken to be an application for a protection order and provide immediate protection to the aggrieved until the matter is able to be heard and decided by a court. A court may then make a temporary protection order or a protection order (a DVO), or dismiss the application.

PPDs would instead operate as a final 12-month direction without the matter needing to be heard by a court. They are intended to be a new tool for police officers responding to domestic and family violence in circumstances where it is appropriate for a matter not to go before a court. PPDs will operate alongside PPNs, DVOs and release conditions.

Under new section 100B, a police officer will be empowered to issue a PPD where the police officer reasonably believes the respondent has committed domestic violence, the PPD is necessary or desirable to protect the aggrieved from domestic violence, and it would not be more appropriate to take action that involves an application for a protection order.

However, under sections 100C and 100D, a police officer will not be able to issue a PPD in certain circumstances, for example, where:

- either the aggrieved or respondent is a child or a police officer;
- the respondent should be taken into custody in relation to the domestic violence, subject of the PPD;
- the respondent or the aggrieved is currently subject to a DVO or PPD, or has previously been subject to one;
- the respondent has been convicted of a domestic violence offence within the previous 2 years or has a current or outstanding charge for a domestic violence offence;
- an application for a DVO has been made but not finally dealt with;
- the respondent used or threatened to use an offensive weapon or instrument to commit domestic violence;
- there are indications that the respondent and the aggrieved are both in need of protection and the person most in need of protection cannot be identified;
- the PPD would include a child as a named person and conditions other than standard conditions are considered necessary to provide protection; or
- the direction would include a condition that would prevent or limit contact between the respondent and a child of the respondent, and the police officer knows or reasonably believes, after asking the parties, there are certain orders, agreements or proceedings on foot under the *Family Law Act 1975* (Cth) or the *Child Protection Act 1999*.

While a police officer is not able to issue a PPD where the respondent has a current or outstanding charge for a domestic violence offence, new section 100C(2) clarifies that this exclusion does not prevent a police officer issuing a PPD at the same time as starting a proceeding against the respondent for a domestic violence offence for the relevant domestic violence to which the PPD relates.

Under section 100G, the PPD will need to include standard conditions, for example, that the respondent must be of good behaviour towards the aggrieved and must not commit domestic violence against the aggrieved. In certain circumstances, a police officer will also be able to include the following additional conditions under section 100H:

- a cool-down condition applying for 24 hours and preventing the respondent from approaching or contacting the aggrieved, or from entering stated premises;
- a no-contact condition preventing a respondent from approaching, contacting or locating an aggrieved;
- an ouster condition preventing a respondent from entering or approaching stated premises; and

- a return condition which can allow the respondent to remove their personal property from stated premises under police supervision.

PPDs will continue in force for 12 months unless brought to an end earlier (section 100R). PPDs may be reviewed by the Police Commissioner under sections 100T or 100U. Under section 100Z, a person may also seek review of a PPD by the Magistrates Court, in which case the PPD will be taken to be an application for a protection order.

Contravention of a PPD will be an offence under new section 177A of the DFVP Act (inserted by clause 31 of the Bill). The offence will have a maximum penalty of 120 penalty units or 3 years imprisonment.

### **Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

Allowing police officers to issue PPDs will engage and may limit the following human rights under the *Human Rights Act*:

- the right to recognition and equality before the law (section 15);
- freedom of movement (section 19);
- freedom of expression (section 21);
- freedom of association (section 22);
- the right to property (section 24);
- the right to privacy and reputation (section 25);
- cultural rights (sections 27 and 28);
- the right to liberty and security of person (section 29); and
- the right to a fair hearing (section 31).

The significance of the impact on human rights is that police officers will be able to make decisions having large impacts on a person's daily life—including where they can go, where they can live and who they can talk to—without automatic judicial oversight.

#### Recognition and equality before the law (section 15)

The rights to equal protection of the law without discrimination and to equal and effective protection against discrimination (section 15(3) and (4)) embody the notion that all laws and policies should be applied equally and must not result in discriminatory treatment or effects. The definition of discrimination under the *Human Rights Act* includes discrimination as defined under the *Anti-Discrimination Act 1991*.

The amendments may have a greater impact on Aboriginal and Torres Strait Islander people, who are disproportionately represented in the criminal justice system and are at increased risk of misidentification as the person most in need of protection. Overrepresentation of Aboriginal and Torres Strait Islander peoples in a new PPD framework may also lead to a greater number of Aboriginal and Torres Strait Islander people being sentenced to a period of incarceration for breaching a PPD.

However, the amendments do not limit the right to equal protection of the law without discrimination in section 15(3) or the right to equal and effective protection against discrimination in section 15(4) of the HR Act, because the amendments do not directly or

indirectly discriminate based on race. The PPD framework applies equally to all persons who satisfy the conditions for the making of a PPD.

It is possible that discrimination for the purposes of the *Human Rights Act* includes discrimination on the basis of additional attributes such as an irrelevant criminal record. However, even if section 15 of the *Human Rights Act* protected against discrimination on that basis, the framework for PPDs allows regard to be had to a person's domestic violence history because it will be relevant to the decision about whether to issue a PPD. Accordingly, a person will not be treated differently on the basis of an irrelevant history.

The right to recognition and equality before the law is therefore engaged but not limited.

#### Freedom of movement (section 19)

The right to freedom of movement protects the right to move freely within Queensland, as well as to enter and leave the State and choose where to live.

A PPD issued by a police officer may impose restrictions on the movement of a respondent. For example, a PPD could include a condition preventing the respondent from coming within a certain distance of the aggrieved or a person's place of residence. The respondent's day-to-day life may be impacted as they may be prevented from attending certain locations or by having a condition placed upon them specifying they must not be within a set distance of the aggrieved.

A police officer may also include a cool-down or ouster condition that will interfere with a person's ability to choose where to live.

#### Freedom of expression (section 21)

The freedom of expression protects the freedom to seek, receive and impart ideas of all kinds in the way one wishes. This right will be limited because police officers will be empowered to make a PPD prohibiting a respondent from contacting certain individuals. Such directions may impact a respondent's ability to communicate with the aggrieved but also other people, such as friends or family members who are linked to the aggrieved.

#### Freedom of association (section 22)

Freedom of association protects the ability to associate with whomever one wishes. Police officers will be empowered to make a PPD that prohibits a respondent from contacting certain individuals or groups. Such directions may impact on a respondent's ability to associate with other people, including the aggrieved, friends and family members.

#### Property rights (section 24)

Section 24(1) provides that 'all persons have the right to own property alone or in association with others. Section 24(2) provides that 'a person must not be arbitrarily deprived of the person's property'. For the purposes of section 24, 'property' is given a broad interpretation. Deprivation includes a substantial restriction on the person's use and enjoyment of their property.

The amendments impact property rights by enabling police officers to impose cool-down and ouster conditions. Those conditions mean that a respondent cannot enjoy their right to quiet enjoyment of their property (whether freehold or under a tenancy agreement). Cool-down and ouster conditions may also exacerbate housing issues in other ways. For example, a respondent may be excluded from their home but still be subject to mortgage or rental repayments, adding to housing stress. The rights of other tenants named on a lease may be limited where a respondent is excluded from their place of residence, impacting the ability of tenants to continue to pay rent under the tenancy agreement.

A PPD will also have automatic consequences for licences under the *Explosives Act 1999* and the *Weapons Act 1990*, which may be a form of property. Those impacts are considered separately below.

The right to property will only be limited if the property is deprived arbitrarily. A deprivation of property will be arbitrary if it is capricious, unpredictable or unjust, or unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act*, it will not be arbitrary. Accordingly, whether any interference with property is arbitrary will be addressed below when considering the factors in section 13.

#### Privacy and reputation (section 25)

Section 25(a) of the *Human Rights Act* protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and bodily integrity.

The making of a PPD will necessarily interfere with a person's family. It may also interfere with a person's home, if the conditions imposed impact on their ability to continue residing in their home. Several provisions also interfere with a person's personal information. For example, under new section 100M of the DFVP Act, a police officer may ask for a respondent's contact details and address for service (though they are not obliged to give those details). The personal details of the aggrieved and respondent, such as their name, will be set out in the PPD under section 100N. Further, the Police Commissioner will be required by new section 189C to maintain a register of PPDs which will necessarily include personal information.

Whether an interference with privacy, family or home is arbitrary will be addressed below when considering the factors in section 13.

Section 25(b) of the *Human Rights Act* protects a person's reputation from unlawful attack. The making of a PPD against a person has the potential to negatively impact the person's reputation. However, as the making of a PPD would be authorised under the DFVP Act, any impact on a person's reputation from the making of a PPD would be lawful. Section 25(b) is therefore engaged, but not limited, by the amendments.

#### Cultural rights (sections 27 and 28)

Section 27 of the *Human Rights Act* protects the ability of people of a particular cultural background to enjoy their culture, to declare and practise their religion and to use their language, in community with other people of that background. Section 28 recognises that

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(2) sets out particular rights which Aboriginal peoples and Torres Strait Islander peoples must not be denied.

The proposed amendments may impact on the cultural rights of Aboriginal and Torres Strait Islander communities as a PPD may restrict an individual's movements, potentially preventing them from participating in important cultural ceremonies and community gatherings or transferring cultural knowledge and language. This can disrupt the transmission of cultural knowledge and practices. Restrictions on movement could also affect access to culturally significant sites, which are essential for maintaining cultural heritage and practices. The imposition of conditions impacting contact with a child could interfere with kinship ties, which are central to the social structure and cultural identity of Aboriginal and Torres Strait Islander communities. This could lead to social fragmentation and loss of cultural cohesion.

#### The right to liberty and security of person (section 29)

Section 29(1) provides that every person has the right to liberty and security. Section 29(2) provides that a person must not be subject to arbitrary arrest or detention.

The types of conditions which a PPD may contain do not extend to directions depriving a person of liberty. However, contravention of a PPD will be an offence under new section 177A of the DFVP Act. Due to the simplified process for issuing a PPD, there may be an increase in the number of people liable for breaching a PPD, resulting in an increase in general incarceration rates in relation to domestic and family violence.

However, the relevant aspect of the right to liberty will only be limited if the detention is arbitrary. Whether any deprivation of liberty is arbitrary will be addressed below when considering the factors in section 13.

#### Fair hearing (section 31)

Section 31(1) provides that a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right to a fair hearing may include an implied right of access to the courts.

Currently, a PPN functions as an application to the court for a protection order, meaning that temporary conditions imposed by police are reconsidered by a court as soon as possible. By allowing police officers to make a 12-month PPD, rather than having the matter dealt with through the judicial process, the respondent's right to have the matter heard by a court will depend on the respondent initiating a review by the Magistrates Court.

However, a respondent (and the aggrieved person) will have the right to seek review of the decision by the Police Commissioner and by the Magistrates Court. While the absence of automatic judicial oversight means that the right to a fair hearing is engaged, the ability of the respondent and aggrieved to access a court to review a PPD means that the right is not limited.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

The amendments to introduce PPDs engage but do not limit the right to recognition and equality before the law (section 15) and the right to a fair hearing (section 31). The amendments limit the rights to freedom of movement (section 19), freedom of expression (section 21), freedom of association (section 22) and cultural rights (sections 27 and 28). Subject to whether the interference is arbitrary, the amendments also limit the rights to property (section 24), privacy (section 25) and liberty (section 29).

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) The nature of the right (s 13(a))

For each of the relevant rights, the nature and underlying values are as follows:

- The purpose of freedom of movement in section 19 of the *Human Rights Act* is to protect the individual's right to liberty of movement within Queensland and their right to live where they wish. It protects against restrictions on movement falling short of physical detention. It is about freedom.
- Freedom of expression in section 21 of the *Human Rights Act* is essential for each person's self-fulfilment and one of the basic conditions for a democratic society.
- Freedom of association in section 22 of the *Human Rights Act* protects the ability of a person to maintain personal connections with others and associate with other people whenever and for whatever reason they wish.
- The right to property in section 24 of the *Human Rights Act* protects the dignity of having the essentials of life and is necessary for the fulfilment of other rights. Personal property like housing lies at the core of the right.
- The right to privacy in section 25 of the *Human Rights Act* protects personal information, but also extends to an individual's private life more generally, including protection from interference with a person's physical and mental integrity. Privacy is about having control over one's own life and being let alone.
- Cultural rights in sections 27 and 28 of the *Human Rights Act* preserve the ability of people of a particular background to enjoy their culture in community with others, including their ability to maintain kinship ties.
- The right to liberty in section 29 of the *Human Rights Act* is concerned with protecting people from interference with their physical liberty.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of establishing a framework for PPDs is to improve police responses to domestic and family violence by reducing the operational impacts of the current domestic and family violence legislative framework. By improving police efficiency, the capacity of the police to respond to domestic and family violence will be increased. That is a proper purpose and will help to promote the human rights of aggrieved persons, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25).

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The PPD framework will reduce the necessity for QPS officers to prepare and attend court for the purposes of a PPN. This will reduce the operational impacts for QPS and improve police capacity to respond to domestic and family violence.

(d) Whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The PPD framework is narrowly tailored in several ways to ensure it represents the least restrictive way to improve efficiencies and police responses to domestic and family violence. The scheme will:

- clearly set out the circumstances in which a PPD cannot be issued and provide matters that must be considered when deciding whether to issue a PPD (sections 100B to 100E);
- provide that a PPD cannot be issued if there are indications that both persons are in need of protection, and the person who is in most need of protection cannot be identified (section 100C);
- require a police officer to consider additional matters before including conditions other than the standard conditions (section 100H);
- require a police officer who includes a cool-down condition or an ouster condition to consider the respondent's accommodation needs and take any reasonable steps necessary to ensure the respondent has access to temporary accommodation (section 100J);
- require the approval of a supervising officer before a PPD may be issued, and require that the supervising police officer be of at least the rank of sergeant if the PPD includes a cool-down condition, and of at least the rank of senior sergeant if it includes an ouster condition or no-contact condition (section 100K);
- require a police officer to serve the PPD personally and provide a notice stating the grounds for the PPD (section 100O);
- require a police officer to explain the PPD to the respondent and take reasonable steps to ensure they understand the nature and consequences of the direction (section 100Q(2));
- require a police officer to inform a respondent of their review rights (section 100Q(3)(g));
- require a police officer to seek internal review of a PPD if new circumstances come to light that might have affected the decision (section 100T);
- allow a respondent or aggrieved person to seek prompt police or court review of a PPD (sections 100U to 100ZD);
- in a prosecution of a contravention of a PPD, require the court to consider whether the PPD was issued in substantial compliance with part 4, division 1A, and impose a burden on the prosecution to prove beyond a reasonable doubt that the respondent was told about the PPD or about a relevant condition in certain circumstances (section 177A);
- be subject to a statutory review in two years (section 192A).

Additionally, police officers will need to comply with section 58 of the *Human Rights Act* in exercising the power to issue a PPD, and in determining what conditions to impose (for example, an ouster condition). That obligation will require a police officer to consider any limits on human rights (most relevantly, the rights to freedom of movement, freedom of association, property and privacy).

The PPD scheme will also be complemented by internal training within QPS on when a PPD can and should be issued, and how to identify when a person is in need of protection.

Consideration was given to whether there are less restrictive and reasonably available ways to achieve the purpose of the PPD framework that will minimise the limitations on a person's human rights.

For example, consideration was given to maintaining the status quo of police officers issuing PPNs and courts making DVOs and, restricting the issue of PPDs to standard conditions only. However, this would not improve police efficiencies as court processes would continue to be required for PPNs and, where conditions other than standard conditions are necessary or desirable to protect a person from domestic violence.

Consideration was also given to the responses to domestic and family violence in other States and Territories. In Victoria, Western Australia, South Australia and the Northern Territory, police officers can issue short term protection orders or notices that may include some or all of the conditions available under a court issued protection order. However, those models do not provide long term protection for victims. Application to a court for a protection order is required. Those alternatives do not achieve the purpose of the PPDs and are therefore not true alternatives.

In Tasmania, police officers can issue police family violence orders for up to 12 months and include conditions such as no contact and ouster conditions, in addition to standard conditions requiring the person not engage in family and domestic violence. Tasmania is currently the only jurisdiction in Australia to empower police officers to issue 12-month protection orders without requiring court application. The PPD framework shares similarities with the Tasmanian model, however additional safeguards are built into the PPD framework to avoid some of the issues that have arisen in Tasmania (such as misidentification of the person most in need of protection) and to narrow any restrictions on human rights.

As there is no less restrictive way to improve efficiencies and police responses to domestic and family violence, the limits imposed on human rights are necessary to achieve those purposes.

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Allowing police officers to issue PPDs allows for the possibility of very deep impacts on a respondent's human rights—restricting where they can go, who they can talk to and where they can live—without automatic judicial oversight. However, to minimise the impacts on human rights as much as possible, the PPD scheme provides several safeguards. Most importantly, the respondent and others will have avenues to review the police officer's decision, both by review by the Police Commissioner and review by the Magistrates Court.

On the other side of the scales, there is a real need to improve police efficiency when responding to domestic and family violence. The QPS is under significant strain due to increasing demand across all crime types. The demand for police responses to domestic and family violence is projected to increase into the future. It is therefore crucial to establish the PPD framework to reduce the operational impacts of the current domestic and family violence

legislative framework. That is intended to free up police resources to better respond to domestic and family violence, which will ultimately promote the human rights of victims of domestic and family violence, including their rights to life (section 16), protection from cruel, inhuman or degrading treatment (section 17) and privacy (section 25 of the *Human Rights Act*).

On balance, the negative impacts of PPDs on human rights are outweighed by the importance of reducing the operational impacts of the current framework on the QPS to improve its capacity to respond to domestic and family violence.

As any impacts on the rights to privacy, property and liberty are proportionate, and thus are not arbitrary, those rights are not limited. To the extent that a person's freedom of expression, freedom of movement, freedom of association and cultural rights may be limited by the amendments, any limitation is reasonable and justified.

(f) Any other relevant factors

Nil.

**Amendment to the *Police Powers and Responsibilities Act 2000***

Clause 63 of the Bill will amend section 365 of the *Police Powers and Responsibilities Act 2000* (PPRA). Section 365 of the PPRA provides that it is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence, if it is reasonably necessary for one or more of the reasons set out in section 365(1)(a)-(f), including:

- to prevent the continuation or repetition of an offence or the commission of another offence (section 365(1)(a)); and
- because the offence is an offence against section 177 (contravention of a DVO), section 178 (contravention of a PPN) or section 179 (contravention of release conditions) of the DVFP Act (section 365(1)(j)).

Clause 63 will amend subsection (1)(j) to include an offence against new section 177A of the DFVP Act. The effect of the amendments will be that a police officer will be empowered to arrest a person without warrant where the police officer reasonably suspects a person has, or is, contravening a PPD.

Other amendments to the PPRA are dealt with elsewhere in this statement of compatibility.

**Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

Allowing police officers to arrest a person without warrant because the police officer reasonably suspects the person has committed or is committing an offence of contravening a PPD will engage, and may limit, the right to liberty and security of person under section 29 of the *Human Rights Act*.

Section 29(1) provides that every person has the right to liberty and security. Section 29(2) provides that a person must not be subject to arbitrary arrest or detention. An arrest will be arbitrary if it is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Section 29(3) provides that a person must not be deprived of liberty except on grounds, and in accordance with procedures, established by law.

If an arrest is provided for by law and proportionate to a legitimate aim, the rights in section 29(2) and (3) will not be limited. Whether any arrest or detention would be unlawful or arbitrary will be addressed below when considering the factors in section 13.

Section 29(4) provides that a person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person. Section 29(5) requires a person who is arrested or detained on a criminal charge to be promptly brought before a court.

The rights in section 29(4) and (5) are engaged but not limited by the amendments, because the existing scheme in the PPRA will require a person who is arrested:

- to be informed as soon as is reasonably practicable after arrest of the reason for the arrest (section 391); and
- to be brought before a court as soon as reasonably practicable to be dealt with according to law (section 393).

The effect of the amendment is that police officers may be able to impose significant restrictions on a person by a PPD without judicial oversight and then arrest the person for breaching the PPD without first applying for a warrant. The significance of the impact on human rights is that police officers will be able to deprive a person of their liberty without any prior judicial oversight.

Providing a power to police to arrest a person without warrant where the officer has a reasonable suspicion that the respondent has contravened a PPD may also engage other rights relevant to the introduction of the PPD framework. For the reasons set out above, any peripheral limits on those rights would be justified.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

The rights in section 29(1) to (3) are engaged and may be limited by the amendments. The rights in section 29(4) and (5) are engaged but not limited.

(a) The nature of the right (s 13(a))

The right to liberty in section 29 of the *Human Rights Act* is concerned with protecting people from interference with their physical liberty.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting a respondent's right to liberty and security where they are suspected of contravening a PPD is to protect an aggrieved from domestic and family violence.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will achieve this purpose by allowing a police officer to arrest a respondent to a PPD where the police officer reasonably suspects the respondent has contravened, or is contravening, a PPD.

(d) Whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Consideration was given to whether there are less restrictive and reasonably available ways to achieve the purpose of protecting persons from domestic and family violence that will minimise the limitations on a person's human rights.

One option would be to require a police officer to obtain a warrant for arrest. However, requiring a police officer to apply for and obtain a warrant for arrest would not allow a police officer to respond in a timely manner to the risk of domestic and family violence being committed by a respondent. It is therefore not a true alternative.

Another alternative would be for police officers to rely on their power in section 365(1)(a) of the PPRA to arrest a person without warrant to prevent the continuation or repetition of an offence or the commission of another offence. However, this alternative would not reduce the impact on liberty meaningfully. The amendment to section 365(1)(j) would simply make clear that the police officer would only need to have a reasonable suspicion that the person has breached their PPD, consistent with the current position in respect of a breach of a PPN or DVO. The safety of an aggrieved may also not be protected to the same extent if police officers were required to consider separately whether the person will continue to breach a PPD or repeat the breach before being able to arrest the person. Accordingly, this is also not a true alternative.

The scheme is tailored in several ways to ensure it represents the least restrictive way to protect persons from domestic and family violence:

- The power of arrest can only be exercised where the police officer reasonably suspects the person has committed, or is committing, an offence of contravening a PPD (section 365).
- A police officer has a duty to release an arrested person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was arrested (section 376(1)).
- A police officer has a duty to release an arrested person who is reasonably suspected of committing the offence for which the person was arrested if, within a reasonable time after the arrest, the police officer considers there is not enough evidence to bring the person before a court on a charge of the offence (section 376(3)).
- Section 377 imposes further duties to release a person where the reason for arresting the person no longer exists or is unlikely to happen again, and it is more appropriate to take the person before a court by notice to appear or summons.
- The police officer must, as soon as reasonably practicable, take the person before a court to be dealt with according to law (section 393(1)).
- If a person arrested for an offence is delivered into the custody of the officer in charge of a police station or police establishment or a watch-house manager, and it is not practicable to bring the person before a court promptly, a police officer must as soon as reasonably practicable decide whether to grant bail, issue and serve a notice to appear, or take the person before a court (s 394).

- (e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Allowing police officers to arrest a person without warrant because the officer reasonably suspects a person has contravened a PPD allows for the possibility of very deep impacts on a respondent's human rights—depriving a person of their liberty—without judicial oversight.

However, to minimise the impacts on human rights as much as possible, the PPRA scheme provides several existing safeguards. Most importantly, following this amendment a police officer may only exercise the power where they have a reasonable suspicion the person has committed, or is committing, the offence of contravening a PPD, must take the person before a court to be dealt with according to law as soon as reasonably practicable, and must discontinue the arrest if the circumstances in part 4 of chapter 14 apply.

On the other hand, protecting people from the risk of domestic and family violence is of significant importance to the community. On balance, the importance of protecting people from domestic and family violence outweighs the potential limits on a person's right to liberty.

As any impacts on the right to liberty are not arbitrary, the right in section 29(2) is not limited. As a person would be deprived of liberty under section 365 on grounds, and in accordance with procedures, established by law, the right in section 29(3) is not limited.

- (f) Any other relevant factors

Nil.

### **Amendments to the *Explosives Act 1999* and the *Weapons Act 1990***

A PPD will have consequences for a respondent's security clearance under the *Explosives Act 1999* or their licence under the *Weapons Act 1990*.

Clauses 53 to 59 of the Bill amend the *Explosives Act* to:

- require the chief inspector, in deciding whether an applicant is a suitable person to hold a security clearance under section 12B, to consider whether the applicant has been named as a respondent to a PPD;
- provide that an applicant is not a suitable person to hold a security clearance if the applicant is named as a respondent in a PPD that is in force;
- empower the Chief Inspector to ask the Police Commissioner for a written report about whether a person has at any time been named as a respondent in a PPD;
- require the Police Commissioner to give the Chief Inspector a written notice about the making of a PPD if the Police Commissioner reasonably suspects a person is an applicant for, or holder of, a security clearance; and
- provide that a PPD that is revoked or set aside is taken to have not been issued.

Clauses 73 to 82 of the Bill amend the *Weapons Act* to:

- provide that an authorised officer must consider whether a PPD has been made against a person in deciding or considering whether the person is no longer a fit and proper person to hold a licence for the issue, renewal, suspension or revocation of a licence under section 10B;

- provide that a person is not a fit and proper person to hold a licence if a PPD has been issued against the person in the 5 years prior to the day the person applies for the licence;
- provide for the automatic revocation of a respondent's licence under section 28A where a PPD is in force;
- provide that if a respondent to a PPD is a body's representative, any authority that the respondent has to possess a weapon because the respondent is the body's representative is ineffective while the PPD is in force;
- provide that a body's licence is suspended 7 days after the PPD takes effect unless, in that period, another individual is endorsed on the licence as the body's representative in substitution for the respondent;
- empower an authorised officer to disclose a PPD to an individual within a respondent's employing entity under section 29A, if an authorised officer reasonably considers the respondent has access to a weapon as part of the respondent's employment, to ensure the respondent does not possess a weapon as part of their employment;
- require a respondent to surrender their licence and weapons to a police officer under section 29B if their licence is revoked under section 28A;
- exclude a person subject to a PPD from using a weapon at an approved range under section 53.

The Bill also makes related amendments to the PPRA to deal with the disposal of weapons and the seizure of a respondent's licence and weapons.

### **Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

These amendments would engage and may limit the following rights of respondents under the *Human Rights Act*:

- the right to property (section 24); and
- the right to privacy and reputation (section 25).

#### Property rights (section 24)

The amendments will provide for the automatic revocation of a licence under the *Weapons Act* and cancellation of a security clearance under the *Explosives Act* where a PPD is made. The amendments will also require a respondent to surrender their weapons to a police officer. Weapons are a form of property. A weapons licence and security clearance may also be a form of property, especially if the licence is needed to operate a business or carry out employment. The amendments therefore engage the right to property.

The right to property will only be limited if the property is deprived arbitrarily. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act*, it will not be arbitrary. Whether any interference with property is arbitrary will be addressed below when considering the factors in section 13.

#### Privacy and reputation (section 25)

Section 25(a) of the *Human Rights Act* protects against unlawful or arbitrary interferences with a person's privacy. Privacy captures personal information but extends to a person's private life more generally, which may include the ability to establish and develop meaningful social

relations, including professional relations. For that reason, privacy may protect aspects of the right to work.

The revocation of a person's weapons licence or cancellation of their security clearance may interfere with their ability to work. The disclosure of a respondent's PPD to their employer would interfere with the respondent's information privacy as well as their professional relationships. Whether an interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Section 25(b) protects a person's reputation from unlawful attack. The revocation of a person's weapons licence or security clearance because of the making of a PPD has the potential to negatively impact their reputation. However, as the making of a PPD and the suspension of a licence or clearance would be authorised under the respective Acts, any impact on a person's reputation would be lawful. Section 25(b) is therefore engaged, but not limited, by the amendments.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) the nature of the rights

The right to property in section 24 of the *Human Rights Act* protects the dignity of having the essentials of life and is necessary for the fulfilment of other rights. Weapons for recreational use do not lie at the core of the right, but licences needed to earn a living may.

The right to privacy in section 25 of the *Human Rights Act* is about having control over one's own life, including one's professional life, and being let alone.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of revoking a respondent's licence or clearance for weapons or explosives is to ensure the safety of people who are at risk of domestic and family violence from a respondent.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will achieve this purpose by limiting the circumstances in which a respondent has access to weapons or explosives.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose. Any limits on privacy from the disclosure of a PPD to a person's employer are reduced by only authorising disclosure to the extent necessary to ensure a respondent does not possess a weapon. The

amendments will provide multiple review options for a respondent to seek the revocation of a PPD. Any impacts on a person's licence or clearance will be removed if a review is successful.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Limiting a person's ability to hold a weapons licence or security clearance, and possess weapons, may interfere with a person's personal property, privacy and their ability to work. On the other hand, protecting people from the risk of domestic and family violence is of significant importance to the community. On balance, the importance of protecting people from domestic and family violence outweighs the potential limits on a person's privacy and property rights. As any impacts on the rights to privacy and property are proportionate, the interference is not arbitrary such that those rights are not limited.

- (f) any other considerations

Nil.

### **Amendments to Residential Tenancies and Rooming Accommodation Act 2008**

Clause 70 of the Bill amends section 245 of the *Residential Tenancies and Rooming Accommodation Act 2008*. Section 245 allows a person to apply to a tribunal for an order to be recognised as the sole tenant, or a cotenant, under an agreement instead of the person's domestic associate because the person's domestic associate has committed domestic violence against the person. Clause 70 will amend section 245(4) to provide that in deciding the application, the tribunal must have regard to whether the person's domestic associate is named as the respondent in a PPD. This does not include a PPD which has been revoked or set aside, however will apply if a PPD has expired.

Clause 71 amends section 344 of the *Residential Tenancies and Rooming Accommodation Act*. Section 344 requires the tribunal to consider domestic violence issues when determining an application for a termination order of a tenancy because of damage or injury. The amendment will expand the meaning of 'domestic violence issues' to include whether the applicant's domestic associate is named as the respondent in a PPD that is still in force. This does not include a PPD which has been revoked or set aside.

### **Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

Sections 245 and 344 of the *Residential Tenancies and Rooming Accommodation Act* already allow the tribunal to remove a tenant from an agreement or make a termination order where there is domestic violence. By including the existence of PPD in the matters the tribunal must have regard to when making the decision, the amendments may place an incremental burden on the rights to choose where to live (section 19), property (section 24) and home (section 25 of the *Human Rights Act*).

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) the nature of the rights

For each of the relevant rights, the nature and underlying values are as follows:

- The purpose of freedom of movement in section 19 of the *Human Rights Act* is to protect the individual's right to liberty of movement within Queensland and their right to live where they wish. It is about freedom.
- The right to property in section 24 of the *Human Rights Act* protects the dignity of having the essentials of life and is necessary for the fulfilment of other rights. Personal property like housing lies at the core of the right.
- Section 25 of the *Human Rights Act* protects against unlawful or arbitrary interferences with one's home. The right is about having control over one's own life and being let alone.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is to protect victims of domestic and family violence where the person's domestic associate is named as a respondent in a PPD.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will help to achieve this purpose by empowering the tribunal to consider whether the person's domestic associate is named as a respondent in a PPD when deciding whether to remove a tenant from an agreement or terminate an agreement.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The amendments are narrowly tailored to achieve their purpose. The existence of a PPD will merely be a relevant consideration to be taken into account by the tribunal and will not have automatic consequences. Less restrictive ways to achieve the purpose have not been identified.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments will only place a small, incremental burden on the rights to property, to home and to choose where to live for people who have been named as a respondent in a PPD. The impact on those rights is outweighed by the importance of the purpose of the amendments. The amendments do not affect the discretion otherwise conferred on the tribunal to determine whether an order under section 245(3) or section 344 should be made.

As any impacts on the rights to property and home are proportionate, and thus are not arbitrary, those rights are not limited. The limit on the right to choose where to live is reasonable and justified.

(f) any other considerations

Nil.

**Amendments to meaning of domestic and family violence history**

Clause 61 of the Bill amends section 11 of the *Penalties and Sentences Act 1992* to allow a court to consider a PPD made against an offender in determining the character of an offender.

Clause 83 and schedule 1 of the Bill amend the following Acts to provide for a PPD to be considered as part of a person's domestic violence information or history:

- the *Child Protection Act 1999*;
- the *Disability Services Act 2006*; and
- the *Working with Children (Risk Management and Screening) Act 2000*.

Clause 83 and schedule 1 of the Bill also amend section 322 of the *Corrective Services Act* to provide that an entry can be made on the eligible person's register against a prisoner if there is or has been a PPD in force against the prisoner.

Clause 83 and schedule 1 of the Bill also amend the meaning of 'domestic violence history' in section 590AH of the *Criminal Code* to include a PPD. For a relevant proceeding or a summary proceeding under the *Justices Act 1886* for an accused person who is charged with a domestic violence offence, the prosecution will be required to give the accused person a copy of the person's domestic violence history in the possession of the prosecution.

**Human rights relevant (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)**

The amendments engage and may limit a person's rights to privacy under section 25 of the *Human Rights Act*. The right to privacy protects privacy in the narrower sense including personal information, data collection and correspondence. Police cautions take place in private and are therefore an aspect of the right to a private life. Convictions, which take place in public, become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the spent convictions regime.<sup>3</sup>

A PPD is not a criminal conviction that takes place in public. When police officers issue a PPD to a respondent, it is more like a warning that forms part of the respondent's private life. Disclosure and use of the PPD to make decisions about the respondent therefore interferes with their privacy. At some point, the right to privacy protects the ability of respondents to move on from their history of domestic and family violence if they do not present an ongoing threat.

However, the right to privacy will only be limited if the interference is unlawful or arbitrary. The interference will be authorised by the amendments and therefore lawful. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

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<sup>3</sup> *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; [2015] AC 49, 65-6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3; [2010] 1 AC 410, [27].

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)**

Any limits on these human rights are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) the nature of the rights

The right to privacy in section 25 of the *Human Rights Act* is about having control over one's own life and being let alone. It protects the ability to move on from one's past.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of including PPDs in a person's domestic and family violence history under the above Acts is to protect vulnerable people from the risk of harm.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments achieve that purpose by allowing a PPD to be considered in any applications or screening processes under those Acts.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose. The amendments are confined to legislative regimes that protect vulnerable people from harm. There are safeguards in those Acts to ensure the information is used only for the authorised purposes under the Act in section 227 of the *Disability Services Act 2006*, section 187 of the *Child Protection Act 1999*, section 384 of the *Working with Children (Risk Management and Screening) Act 2000*, and section 341 of the *Corrective Services Act 2006*. In addition, section 11(2) of the *Penalties and Sentences Act* allows a judge to close the court for the purposes of receiving a person's DVO history.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

With those safeguards in place, it is considered that the importance of protecting vulnerable people from the risk of harm outweighs the interference with the respondent's privacy, including their ability to move on from their history of domestic and family violence. Those minor impacts on their privacy are the foreseeable consequences of their own actions.

As any impacts on privacy are proportionate, and thus are not arbitrary, the right to privacy is not limited.

(f) any other considerations

Nil.

## Conclusion

In my opinion, the Domestic and Family Violence Protection and Other Legislation Amendment Bill is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

**Amanda Camm MP**

Minister for Families, Seniors and Disability Services and  
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