

Domestic and Family Violence Protection Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Karen Struthers MP Minister for Community Services and Housing and Minister for Women

Title of the Bill

Domestic and Family Violence Protection Bill 2011.

Objectives of the Amendments

The objectives of the amendments are, firstly, to respond to issues which were identified by the Community Affairs Committee during its consideration of the Bill and, secondly, to effect minor changes which are necessary for the proposed legislation to operate effectively and achieve its objectives.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Domestic and Family Violence Protection Bill 2011.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than to amend the Bill.

Estimated cost for government implementation

There are no costs associated with these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments have not been the subject of consultation.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Commencement

Amendment 1 proposes a change to clause 2 which provides for the Act to commence on a day to be fixed by proclamation. The amendment provides for the Act to commence on 17 September 2012 and provides clarity for government and non-government stakeholders regarding when the legislation will commence.

Part 3 Domestic Violence Orders

Division 6 Intervention orders

Amendments 2 to 16, 31, 34-38, 42 and 43 propose changes to Part 3, Division 6 of the Bill, and to other parts of the Bill that currently refer to the term *intervention order*, to reflect a change in terminology from *intervention order* to *voluntary intervention order*.

The change in terminology addresses recommendations made by the Community Affairs Committee in its Report No. 6 on the Domestic and Family Violence Protection Bill 2011 which was tabled in Parliament on 17 November 2011. The report notes that the word *order* is not consistent with the requirement for a respondent to consent to being referred to a program or counselling. Further, non-compliance with a court order would ordinarily attract a sanction, whereas the provisions of Division 6 do not subject a respondent to any direct sanctions for non-compliance.

The new term, *voluntary intervention order*, reflects the consensual nature of the arrangement under Division 6 while still recognising that it results from a determination made by a court.

It is proposed to amend the following provisions to take into account the change in terminology:

- clause 37(2)(b)
- division 6 – division heading
- clause 69, clause heading and subsections (1), (2) and (3)
- clause 70, clause heading, clause, note 1 and note 2.
- clause 71, clause heading and clause
- clause 72, subsection (1)
- clause 73, clause heading and subsections (1), (1)(a) and (3)(b).

Part 4 Police functions and powers

Division 2 Power to issue police protection notice

Form of police protection notice

Amendments 17 to 21 propose changes that correct numbering errors.

Part 4 Police functions and powers

Division 2 Power to issue police protection notice

Standard condition

Amendments 22 and 23 propose changes to clause 106. The amendments will provide consistency by wording the standard condition in the same way at clauses 28, 106 and 125 and involves adding the word ‘must’ in two places at clause 106.

Part 4 Police functions and powers

Division 3 Power to take person into custody

Police officer may take person into custody

Amendments 24 and 25 propose changes to clause 116. The amendments will provide clarity about the circumstances in which a police officer may take a person into custody.

The current wording of this provision refers to ‘another person’s property’ being in danger of being damaged by the respondent. This may create uncertainty about whether the police are able to take a person into custody as the definition of ‘property, of a person’ in the dictionary is broad and includes property that a person does not own, but also uses and enjoys. This raises questions about whether property is still ‘another person’s property’ if the respondent is a joint owner of the property, the respondent is a person who has the use and enjoyment of the property, or the respondent is the sole owner of the property, but another person (including the aggrieved) usually has the use and enjoyment of the property.

The amendments provide that where police are conducting an investigation under clause 100, a police officer reasonably suspects a person has committed domestic violence and property is at risk of being damaged by the person, the person may be taken into custody.

Part 4 Police functions and powers

Division 3 Power to take person into custody

Detention period limited

Amendment 26 proposes a change to clause 119 to reflect the change to clause 124 which enables *a police officer*, instead of *the releasing police officer* to serve the application for the protection order and release conditions on the person to be released from custody.

Part 4 Police functions and powers

Division 3 Power to take person into custody

Release of person from custody

Amendment 27 proposes a change to clause 124. The clause currently provides for the 'releasing police officer' to serve the application for the protection order and release conditions on the person to be released from custody. The amendment will enable any police officer to serve the stated documents on the person to be released from custody. This amendment practically enables the applicant officer to complete and serve documents on the person to be released and then take the documents to a justice of the peace to complete the affidavit of service and file court copies. It is more difficult for watchhouse staff to access justices of the peace, so the amendment facilitates increased operational efficiency.

Part 5 Court Proceedings

Division 4 Confidentiality

Prohibition on obtaining copies of documents for proceeding

Amendments 28 and 29 propose changes to clause 160. The amendments address a recommendation by the Community Affairs Committee which was directed towards ensuring that there is no legislative barrier to the flow of information between Magistrates Courts, the Queensland Police Service and the Family Court of Australia.

Sub-clause 160(1) restricts access to court records for domestic violence proceedings under the Bill. Sub-clause 160(2) sets out a number of exceptions to the restriction in sub-clause 160(1). One of the exceptions, in paragraph (f), refers to ‘another Queensland court, if the copy of the record or document is relevant to a proceeding before that court’. It is proposed to change the reference from ‘Queensland court’ to ‘Australian court’ which includes a court of the Commonwealth, a State or a Territory.

The amendments will make it very clear that documents in proceedings under the Bill, such as domestic violence orders, can be provided to the Family Court of Australia or the Federal Magistrates Court if they are relevant to proceedings in those courts.

Part 7 Offences

Contravention of domestic violence order

Amendment 30 proposes an amendment to clause 177. Sub-clause 177(2)(a) provides for an increased penalty (3 years imprisonment instead of 2 years imprisonment) where a person has a previous conviction under Part 7 within the previous 5 years.

The current wording of this provision refers to the time at which the offender is convicted for an offence under the sub-section (the most recent offence). There is a potential for offenders to avoid the higher penalty by manipulating the court process. This could be done by unnecessarily

adjourning the court case, or failing to appear in court, so that the conviction for the most recent offence occurs more than five years after the previous conviction.

The intent of sub-clause 177(2)(a) is to enable courts to impose a higher penalty where an offender has previously been before the courts for the same or similar offending and persists with his or her offending. This is also reflected in the wording of the current breach provisions, set out in section 80 of the *Domestic and Family Violence Protection Act 1989*, which refers to the date of the commission of the most recent offence rather than the date of conviction of the most recent offence.

The amendment to sub-clause 177(2)(a) therefore changes the reference to the date of conviction for the most recent offence to the date that the most recent offence was committed. This is consistent with ensuring that the intent of the provision can be fulfilled so that the higher penalty cannot be avoided through manipulation of court processes. This provision also addresses one of the primary objectives of the proposed legislation, making perpetrators of violence accountable for their actions.

Part 8 General

Division 1 Service

Amendments 32 and 33 propose changes to clause 184 (Service of order on respondent). Currently the clause requires a police officer to personally serve a domestic violence order on a respondent.

A domestic violence order becomes enforceable against a respondent if a police officer has told the respondent about the existence of the order (clause 177(1)(c)).

The amendments will enable ordinary service on the respondent where police have advised the respondent about the existence of the order. Ordinary service allows for an order to be mailed to the respondent's last known address, or to be left at the respondent's last known address.

The amendments are in line with provisions that allow ordinary service where the respondent was present in court when the order was made. The

clerk of the court either gives a copy to the respondent at court, or sends a copy to the respondent's last known address.

The amendments provide that where a police officer has told the respondent about the existence of a domestic violence order, service of the order may be by ordinary service, rather than personal service. The changes allow for service by post, or by leaving a copy of the order at the respondent's last known address, and enable the respondent to receive the order as soon as possible after being informed of its existence.

Part 11 Amendments

Division 4 Amendment of Police Powers and Responsibilities Regulation 2000

Insertion of new s45A

Amendments 39 and 40 propose amendments to clause 229, which inserts a new section 45A in the *Police Powers and Responsibilities Regulation 2000*. This section prescribes the details that must be recorded in the register of enforcement acts when a police officer detains a person under Part 4, Division 3 of the Bill. The *Police Powers and Responsibilities Act 2000* imposes a requirement on the police service to keep a register of enforcement acts.

The requirement to record information in a register of enforcement acts provides an important accountability measure for police.

The current provisions do not refer to actions taken by a police officer pursuant to clause 127 (where a police officer takes a person held in custody to a place for treatment) and clause 128 (where a police officer takes an intoxicated person held in custody to a place of safety).

The amendment imposes additional requirements on police officers to record information which is relevant to actions taken by a police officer under clause 127 or clause 128 in respect of a person who has been detained under Part 4, Division 3.

Schedule 1 Legislation amended

Amendment 41 proposes changes to the definitions of *domestic violence order*, *justice proceeding* and *person in the criminal justice system* as they appear in the dictionary in the Schedule of the *Justice and Other Information Disclosure Act 2008*. The changes will ensure that the Act is updated with the reference to the proposed new domestic and family violence legislation once this commences.

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