

Review of the *Domestic and Family Violence Protection Act 1989*  
**Consultation report 2011**



**Act as one against domestic and family violence.**



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## Message from the Minister

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This is the first major overhaul of Queensland's domestic and family violence legislation in 20 years. The suggestions for change from the domestic violence sector, police, justice, health workers and others dealing with this issue on the frontline, as well as individuals and families directly affected, have been consistent and have provided a clear course of action for reform.

Legislation dealing with domestic and family violence needs to ensure that victims are protected and that perpetrators are made accountable for their actions.

The review of the *Domestic and Family Violence Protection Act 1989* provides an opportunity to assess the current legislation and ensure it is meeting these objectives.

I am very pleased that so many people have taken the time to contribute to the review by attending the statewide consultation forums and providing written and online submissions.

In addition to your input through the forums and formal submissions, the review process will include examination of new practices and developments from other national and international jurisdictions. This will ensure policy positions are well informed and contribute to achieving an effective response to domestic and family violence.

I would like to thank all respondents who took the opportunity to have their say on the consultation paper. Your experience and knowledge have provided valuable insights into critical issues involving domestic and family violence and how these issues may be better addressed.



**Karen Struthers MP**

Minister for Community Services and Housing  
and Minister for Women

## Introduction

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As part of the review of the *Domestic and Family Violence Protection Act 1989*, the Department of Communities undertook an extensive consultation process from March to May 2010.

The terms of reference for the review were developed to facilitate analysis of a range of issues relevant to the legislation and to stakeholders' interests. The focus for the review involved:

1. ensuring the legislation supports the implementation of *For our Sons and Daughters: A Queensland Government strategy to reduce domestic and family violence 2009–2014*
2. ensuring the legislation reflects contemporary understandings of domestic and family violence — for example, the types of relationships and behaviours covered by the legislation
3. examining existing mechanisms and alternative options to ensure the legislation:
  - protects those who experience domestic and family violence from further violence
  - provides for the safety and wellbeing of children and young people affected by domestic and family violence
  - holds those who commit domestic and family violence accountable
4. examining the efficiency and effectiveness of the operation of the legislation, including its intersection with other Acts, and determining whether any legislative refinements are necessary
5. examining other matters pertaining to the efficiency and effectiveness of the legislation as required by the Minister.

## How was consultation undertaken?

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A consultation paper was developed which focused on the following areas identified as underpinning best practice in domestic violence legislation:

- prevention
- civil and criminal approaches
- protection of victims
- perpetrator accountability
- system planning and coordination.

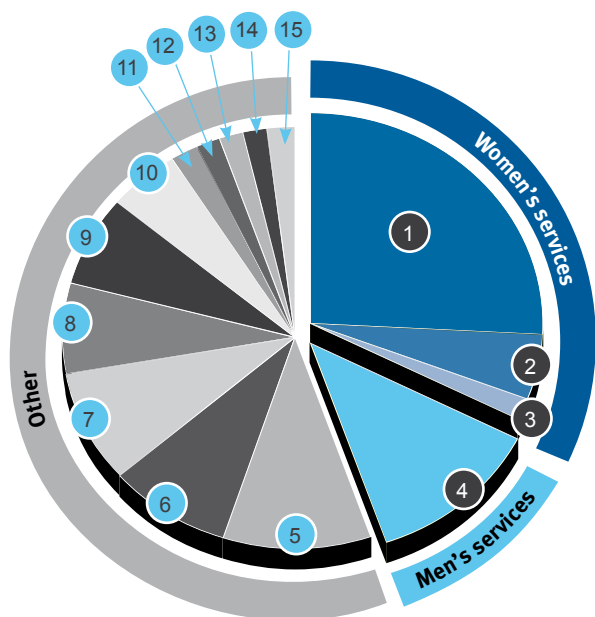
These areas were identified through the development of the *For our sons and daughters: A Queensland government strategy to reduce domestic and family violence 2009–2014* and from research, input from stakeholders to the Department of Communities over recent years, and legislation and practices in other jurisdictions.

The consultation paper was distributed via a letter from the Minister to key stakeholders and was published on the Department of Communities website ([www.communities.qld.gov.au](http://www.communities.qld.gov.au)) and Get Involved website ([www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)).

Overall, 214 submissions were received in response to the consultation paper. These comprised 79 written submissions (43 from organisations, seven from government agencies and 29 from individuals) and 135 responses through the Get Involved website (four from organisations, 131 from individuals).

## Who made submissions?

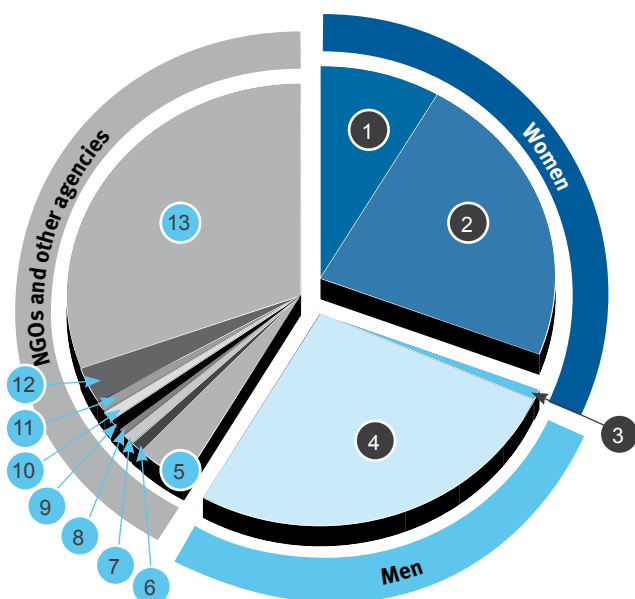
### Submissions from organisations



Women's Services	
1	Domestic violence
2	Housing/accommodation
3	Health
Men's Services	
4	Domestic violence
Other	
5	Legal
6	Child and youth
7	Religious/charity affiliations
8	Peak bodies
9	Professional bodies/associations
10	Aboriginal and Torres Strait Islander services
11	Research/academic
12	Migrant services
13	Culturally and Linguistically Diverse (CALD)
14	Elder support services
15	Disability services

### Submissions from individuals

Individuals provided the greatest number of submissions through the Get Involved web site. Of the individuals who responded, 40 did not provide any identifying information.



Women	
1	Victims
2	Community
Men	
3	Victims
4	Community
Non-government organisations (NGOs) and other agencies	
5	Legal
6	Academic
7	Migrant services
8	CALD
9	Aboriginal services
10	Torres Strait Islander services
11	Child and youth
12	Other
13	No details provided

## Regional consultation forums

Twenty-two consultation forums were held across 17 regions in Queensland. These forums were attended by 365 people. The statewide consultation process sought feedback on a range of issues relating to domestic violence legislation and policy. Those consulted included the Queensland Police Service, the Department of Justice and Attorney-General, court staff, Legal Aid Queensland, individuals, stakeholders and the community.

## Results of consultation

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The following are the main themes which emerged from the consultation:

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

## Regional differences

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A number of variations in responses were identified in the forum consultations according to the different locations around the state, including:

- While there was support for including changes to the legislation to increase the use of ouster conditions, there was concern raised outside south-east Queensland that ouster conditions may not be as effective in remote and regional areas.
- There was increased support for the use of police issued orders in areas outside south-east Queensland as it was felt that they would provide an immediate response and safety for the aggrieved. This was viewed as a solution where court sittings are infrequent and may involve a delay of some weeks.
- Support was expressed in regional areas for increased referral to behaviour change programs. However, the availability of programs and the difficulty of respondents being able to travel to programs were raised as issues of concern.
- Women in regional or remote locations experiencing domestic violence are less likely to report the violence and are more likely to remain in the relationship. This was particularly the case for Aboriginal and Torres Strait Islander women.

## What were the responses to key issues?

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The following sections summarise the results of consultation. These are organised according to the structure of the consultation paper and provide an overview of the most commonly expressed views and ideas. A few quotes from submissions are provided where relevant but they do not represent government policy or opinion.

### Prevention

#### Definition of domestic and family violence

How domestic and family violence is defined has implications for how this type of violence is treated by police, the courts and the community.

In written and online responses, 122 respondents<sup>1</sup> (61 per cent) indicated that the current definition of domestic and family violence is inadequate and should include additional forms of abuse.

*There are many forms of abuse and different ways in which it shows and is expressed. The wider the definition, the better we are able to understand the different meanings of abuse. The tension between flexibility and clarity is at issue here.*

Participants at 21 of the statewide consultation sessions expressed the view that the current definition needs to be broadened to include all forms of abuse and there needs to be more clarity in the definitions.

The Victorian legislation was cited as a good example for dealing with this aspect of the legislation. It was considered that the definition should be more comprehensive and draw on s5(1) of the *Victorian Family Violence Protection Act 2008* which covers physical, sexual, emotional, psychological, economic, threatening and coercive behaviours, including naming exposure to children as a form of abuse.

There was support (59 responses) for the inclusion of emotional abuse and financial abuse in the definition of behaviours, though the difficulty with obtaining evidence for these types of abuse was noted. In 21 of the 22 statewide consultations, there was support for the inclusion of emotional and economic abuse, though some concern was expressed about the impact of net widening on resources. However, it was largely considered that more clarity in the legislation would lead to greater consistency in decision-making and would be helpful for those involved, including police.

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<sup>1</sup> 'Respondent' is used in this report to refer to those who contributed to the review through a written submission or a response through the Get Involved website. Perpetrators of domestic violence are usually referred to as 'offenders' to avoid confusion.

Nineteen respondents indicated that the legislation should acknowledge the power and control dynamics of domestic violence which is based on exploitation of power imbalances. Fourteen of these indicated that fear, intimidation and threats need to be acknowledged in the definition of domestic violence. Seven respondents specified that electronic means of harassment should be included in the definition.

A further seven respondents indicated that the legislation should reflect the gendered nature of domestic violence. Three of these took the view that this could be captured in the legislation by separating out violence involving intimate partners and violence involving other domestic relationships.

Sixty-four respondents indicated that sexual abuse should be specifically included in the definition of domestic violence. Any reference to sexual violence should provide a broader context to intimate violence, though it should not be considered that civil protection orders are the best or only way to address such behaviours.

## Relationships covered by the Act

The current legislation defines domestic relationships as spousal relationships, intimate personal relationships, family relationships, and informal care relationships. How domestic relationships are defined and interpreted by police, the courts and the community has implications for how acts of violence are dealt with and therefore whether the mechanisms in the *Domestic and Family Violence Protection Act 1989* can be applied.

Comments made by respondents indicated support for the relationship categories in the current legislation. However, 72 respondents (36 per cent) suggested that there needs to be some fine-tuning of these categories. While the current relationship categories were supported in 18 of the statewide consultation sessions, in 13 of these sessions the following changes were also proposed:

- in-laws should be included, as well as ex-partners' new partners and their families
- any person who is regarded as being like a family member should be included, such as a child who normally resides with the victim.

As noted in the previous section, three respondents advocated for a reduction in the categories of relationships currently covered in the *Domestic and Family Violence Protection Act 1989* and for differentiating between domestic and non-domestic violence, either within the Act or through different pieces of legislation.

Seventeen respondents indicated that the concept of 'intimate personal relationships' needed to be clarified and the wording 'enmeshed', used in the current legislation, should be removed. This is because of the ambiguity associated with the term and because it is difficult to prove. It was also suggested in 10 of the statewide consultation sessions that the definition of 'intimate personal relationships' requires clarification.

*The category of 'intimate personal relationship' and the term 'enmeshment' as covered under the Domestic and Family Violence Protection Act 1989 provide a number of interpretation challenges...an intimate personal relationship can exist without 'enmeshment' and whether or not the relationship involves a sexual relationship.*

It was also suggested in ten of the statewide consultation sessions that the definition of 'intimate personal relationships' requires clarification. Some stakeholders called for the definition to include people in dating relationships, while others were reluctant for any further broadening of relationships covered by the Act due to concerns that the intention of the legislation would be lost. However, there was little support for separating domestic and family relationships, though the Townsville session was of the view that the legislation is for the protection of people with an emotional connection and who are reluctant to use the criminal justice system.

Among the written responses of those commenting on this issue there were differing opinions regarding whether short-term or casual dating relationships should be included in the definition of domestic relationships.

Those who supported the inclusion of all dating relationships cited the broader understanding of contemporary relationships, including older people who form relationships for companionship but wish to retain their independence. In addition, with the emergence of technology, the affordability of travel, and changes to banking habits, people are conducting relationships differently and this has implications for the concept of intimate personal relationships.

Those who considered that short-term or casual dating relationships should not be included noted the intent of the legislation in covering intimate personal relationships where there is reliance and/or dependency for emotional and physical security or wellbeing. Two submissions and one statewide consultation session considered that internet dating should also be included since the abuser has the power to use personal information electronically to harass the victim.

Ten respondents commented on the issue of whether formal carers should be included in the definition of domestic relationships. Of these, most supported the inclusion of formal carers in domestic relationships, however, the higher level of vulnerability of people who require care was also noted, raising questions about whether orders are a suitable response in these cases.

In one statewide consultation session, the view was expressed that formal carers should be included in the legislation to prevent fraud and institutional abuse, while another session stressed the importance of maintaining the domiciled nature of relationships.

## Principles enshrined in the Act

The current legislation does not include principles, however the purpose sets out the intent of the legislation. This intent is to provide for the safety and protection of a person, if a defined domestic relationship exists, by allowing the court to make a domestic violence order.

Of the 158 responses that commented on the issue of whether principles should be included in the legislation 85 (54 per cent) pointed out the benefits of including principles, in particular:

- sending a message to the community that domestic violence is unacceptable
- providing guidance to those using the legislation.

Support for the inclusion of principles was expressed in 20 of the statewide consultation sessions.

The New South Wales legislation was mentioned in the context of guiding principles by 15 respondents and three referred to elements of the preamble in the Victorian legislation. These reflect the promotion of non-violence, the unacceptability of family violence, the gendered nature of domestic violence, the emphasis on the level of fear and who is in need of protection. The principles in the *Child Protection Act 1999* were also cited as a good example:

*As both of these pieces of legislation deal with complex social issues, guiding principles are an ideal place to set out the rights and responsibilities of those affected by matters dealt with in the Act, the intention of the Act, the context of the powers of those who enact the Act.*

The following were some areas cited for inclusion in the principles:

- the unacceptability of domestic violence
- domestic violence as a violation of human rights
- the gendered nature of domestic violence and the use of power and control
- the need to prevent and reduce violence
- protecting the aggrieved
- protecting children who are exposed to domestic violence
- treating victims at all times with dignity, respect, courtesy and understanding.

Fifty-three respondents commented on who should be guided by principles. In general, the view was that principles should serve a dual purpose of sending a message to the community about domestic

violence as well as providing guidance to those using the legislation including magistrates, registrars, judges, court staff, women's domestic violence services, and family support services.

Respondents who did not think principles should be included (23) considered that this reduced the workability of the legislation and allowed for soft options, or did not make any 'real world' difference to how the Act functioned.

## Civil and criminal approaches

### Balance between civil and criminal responses

In Queensland, the legal response to domestic violence relies on a combination of civil domestic violence orders and criminal sanctions. Failure to comply with the terms of a domestic violence order is a breach which is a criminal offence and is dealt with in the criminal jurisdiction of the courts.

A majority of respondents (104) (71 per cent) agreed there needed to be a change in the balance between the civil and criminal responses to domestic violence. While the value of the civil process was acknowledged (especially regarding its accessibility and the lower burden of proof required), it was generally accepted that the criminal process should exist in parallel with the civil process.

In 13 of the statewide consultation sessions, there was support for a mixture of civil and criminal responses. However, in 10 sessions participants indicated support for a stronger criminal justice approach.

Reasons given in support of an increased criminal justice approach included:

- the need to enforce a zero tolerance message and ensure accountability of perpetrators
- recognition that assault within the home is a crime and should not be treated differently from any other assault
- a perception that the current approach is ineffective. A view that breaches of orders are not adequately enforced or the resulting penalties are inadequate.

The suggested means for achieving an increased criminal justice focus were varied. Suggestions included:

- an amendment to section 67 which currently places obligations on police in investigating suspected domestic violence incidents to require them to consider obtaining evidence and charging a substantive criminal offence, in addition to applying for a domestic violence order, if sufficient evidence exists
- an increased focus on police investigation techniques to ensure less reliance is placed on the victim's statement and evidence is procured from other sources, such as other witness statements, medical evidence, or photographs of injuries

- using the current range of offences under the *Criminal Code*, but recognising the commission of these offences in a domestic context as a circumstance of aggravation, given the betrayal of trust that results when a person commits acts of violence against a spouse or other family member.

Twenty-six respondents were supportive of the development of a pro-arrest approach where criminal charges are laid regardless of the wishes of the victim. Eighteen respondents suggested that police should gather enough evidence (a 'pro-investigation' approach) to reduce the pressure on the victim. Processes would also be required to address the elevated risk to the victim after an offender is charged and to reduce the trauma associated with giving evidence.

*...a pro-investigation approach [should] be implemented to ensure that current criminal responses are applied appropriately, for example: assault, stalking, arson, grievous bodily harm, deprivation of liberty.*

There were 80 responses supporting the creation of a separate, stand-alone offence of committing domestic violence and 35 responses indicated that such an offence is not necessary. At four statewide consultation sessions there was support for the creation of a separate, stand-alone offence and at eight, views were expressed against creating a separate offence. Many stakeholders in these sessions indicated that the current range of offences is sufficient to address behaviours which can constitute domestic violence. It was suggested, however, that there is a need to improve processes so that police more readily charge and prosecute criminal offences.

Those against the creation of a separate offence indicated that this was because there are already a number of offences within the *Criminal Code* which cover behaviours that can constitute an act of domestic violence. It was also suggested that a separate domestic violence offence may reinforce the notion that offences occurring within a domestic context are less serious than other criminal offences.

*...we argue that, if the offence of committing domestic violence is created, this definition may mitigate its severity. Mandatory police prosecution of offenders under the relevant section of the Queensland Criminal Code such as assault, causing grievous bodily harm, or assault occasioning bodily harm would serve as a greater disincentive to commit an act of domestic violence.*

Those who supported a separate offence of committing domestic violence noted that this could cover behaviours which are not adequately addressed in the current *Criminal Code* and could also complement the civil domestic violence order. It would help to enforce a zero tolerance message by establishing that domestic violence is a crime.

There were 49 responses indicating that breaches needed to be enforced more consistently, especially breaches involving non-

physical violence. In addition, there needs to be consistency among magistrates in imposing appropriate penalties.

Those who indicated that the existing range of offences was not adequate suggested additional offences such as damage to a person's livelihood, sexual deviation, psychological abuse and manipulation. Seven respondents considered that attempted strangulation should be included as this is a known precursor to domestic homicide.

## Identifying who is in need of protection — cross-applications

The current Queensland legislation does not contain guidelines for who is most at risk and in need of protection in a domestic violence incident. The result can be that it may be difficult to ascertain the party who is the real perpetrator of the violence in the relationship when police attend an incident.

There was support for the development of responses aimed at identifying who most needs protection and recognition of the importance of identifying the predominant aggressor to address the issue of cross-applications. Of the 122 responses to this issue, 100 (82 per cent) indicated that the legislation should be amended to enable this identification. This was also the view in 14 of the statewide consultation sessions. A number of contributors considered that the term 'predominant aggressor' is preferable to 'primary aggressor' as the latter is incident-focussed whereas the former expression takes into account the history and dynamics of the relationship.

While there was recognition of the importance of identifying the main aggressor to address the issue of cross-applications, views were mixed about whether this should be addressed in legislation or by revising police policy and training. It was pointed out that police officers need to be able to determine who has the most potential for doing the most harm and whether actions were done in self-defence.

It was also considered that police need to ensure there is appropriate investigation of domestic violence incidents and that this investigation should be guided by the framework established for identifying the person most in need of protection.

## Protection of victims

### Children and domestic and family violence

Australian statistics<sup>2</sup> reveal that a large number of people who

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<sup>2</sup> *Personal Safety Survey, Australia, 2005*. Australian Bureau of Statistics (2006).

experienced violence from a current or previous partner had children in their care during the relationship. In addition, there is some evidence that there are negative effects on children as a result of this violence. However, the current Queensland legislation does not specifically provide for the protection of children in this context.

At 13 of the statewide consultation sessions, stakeholders suggested that the legislation should include the protection of children in its principles. Of the 134 written responses on this issue, 109 (81 per cent) suggested that the legislation should specifically include the protection of children in its purpose.

However, 19 (14 per cent) respondents did not believe there needed to be changes to the legislation in this area:

*There are adequate laws already in place to protect children and these laws should be fully utilised before resorting to changing the Act... such as child safety and juvenile justice legislation. It is important that incidents such as bullying are not captured under the Act.*

*Careful consideration needs to be given to the intersection between the Family Law Act and the Domestic and Family Violence Protection Act to ensure there are no unintended consequences. It may be wise to await the outcomes of the Australian Law Reform Commission inquiry into the Family Law Act before making any decisions on changes to the Act.*

Expressions of caution were raised regarding the inclusion of children related to ensuring the correct perpetrator is identified, domestic violence orders being used as quasi Family Law orders and the potential for orders to be used to prevent contact.

Ninety-nine respondents (77 per cent) supported amending the definition of domestic violence to include situations where children witness or are exposed to domestic violence. However, it was pointed out that including children in the definition may draw them into the court system and also place a focus on children being harmed as a result of a parent being unable to protect them. This could lead to reluctance to report violence due to concerns about possible interventions from Child Safety Services.

A total of 45 respondents expressed support for children exposed to domestic violence being named on orders. It was suggested that there is currently an inconsistency between the domestic violence legislation and the child protection legislation. The definition of 'harm' in the child protection legislation is broad enough to capture exposing children to domestic violence as a form of abuse.

While nine respondents expressed the view that children exposed to domestic violence should be automatically named on orders, six others suggested the legislation should contain stronger directions to the court about when children should be named on orders, but this should not be automatic. In one statewide consultation session, it

was stated that the test for naming children on orders could include whether they had witnessed or been exposed to domestic violence. In a number of sessions it was recognised that witnessing domestic violence causes harm to a child but some saw this more in the realm of child protection. Some sessions noted that it is currently difficult to have children named on orders.

There was no clear consensus either in written submissions or in the consultation forums on the issue of children being able to apply for a domestic violence order against a family member. Of the 121 written responses on this issue, 74 considered that children, or adults on behalf of children, should be able to apply for a domestic violence order against family members. The Victorian legislation was cited, noting that an application for a domestic violence order can be made by a child over 14 years with leave of a parent or leave of the court.

A total of 39 respondents opposed allowing children to apply for orders in the context of violence in a family relationship noting:

- the potential for manipulation by one parent who uses a child to take out an order against the other parent
- a risk that children may take out frivolous or vexatious applications against a parent to ‘get back at’ or punish that parent
- confusion between acts which constitute discipline and acts of domestic violence
- issues around determining a child’s capacity to make an application and participate in proceedings, and the provision of legal advice and representation to child applicants
- the application of the *Child Protection Act 1999* to these situations — it was noted that the *Domestic and Family Violence Protection Act 1989* is not geared to provide the requisite intensive family interventions, follow-up support, review and supervision. Instead, it relies on administration by police, potentially exposing children and their family to criminality.

In the statewide consultation forums, there were mixed views regarding the inclusion of children as the aggrieved and respondent/offender where family relationships exist. At almost half of the sessions, there was support for children, or adults on behalf of children, to apply for a domestic violence order against a family member. Of these it was acknowledged that age restrictions and processes to provide support would be required. Responses were mixed at other sessions and there were also sessions where a clear response against enabling children to make applications against family members was evident.

One hundred respondents addressed the issue of whether children should be able to be named as respondents in the context of violence in family relationships. Of these, 71 considered that the legislation should enable domestic violence orders to be taken out against children in a family relationship with the aggrieved. However, this support was guarded and sometimes subject to the proviso that

any criminal justice responses for breaches should be confined to restorative justice approaches or therapeutic interventions such as counselling.

At almost half the statewide consultation sessions, there was support for family members to be able to name a child as a respondent to a domestic violence order. Those who opposed orders being taken out against children in family relationships (32 respondents) raised issues around ensuring that children understand orders and the consequences of breaching orders, including the potential for increased involvement of children in the criminal justice system and increased homelessness.

There were 39 respondents who considered that changes were desirable to the way consent orders are made so that the offender understands the conditions and consequences of the order. The following concerns were expressed regarding consent orders: the effect of devaluing the order; the lack of accountability of perpetrators; implications for the safety of women and children; and the resulting weakened response to domestic violence in the Family Law Court.

## Aboriginal and Torres Strait Islander people and domestic and family violence

The current domestic violence legislation in Queensland does not make specific reference to additional requirements or issues that may apply to domestic violence involving Aboriginal and Torres Strait Islander people, especially in communities.

There were 31 respondents that considered the current domestic relationship definition clearly includes the wider concept of family which is relevant to Aboriginal and Torres Strait Islander communities, while 30 others believed the definition needed to provide more detail (for example, a reference to kinship principles) and recognise cultural family structures and responsibilities. Six respondents considered the current legislation offered insufficient protection to children and young people and did not adequately represent complex family or intimate relationships that exist within Aboriginal and Torres Strait Islander communities.

One Aboriginal and Torres Strait Islander organisation considered that payback was a big issue for victims of domestic violence in communities. Victims are often further abused by family or associates of the perpetrator as a result of customs and it was recommended that this be referred to in the legislation so that victims could obtain protection. Respondents considered ineffective and inefficient penalties can lead to inappropriate 'payback' and the criminal justice system appearing weak.

Seven respondents identified the different dynamics and issues associated with domestic violence in Aboriginal and Torres Strait Islander communities and the need to tailor responses to meet

the needs of the communities. It was noted that many victims of domestic violence in Aboriginal and Torres Strait Islander communities have reported they would like the violence to stop but would prefer the relationship to remain intact.

There was support for simplifying the application process where multiple respondents are involved, such as members of a family group, in order to avoid a situation where multiple applications are required for each family member who is a respondent. The legislation needs to cover the whole family and enable provision for Aboriginal and Torres Strait Islander people who may be victims of elder abuse.

In the statewide consultation forums, other matters raised concerning Aboriginal and Torres Strait Islander people included issues of health and remoteness which impacted on the effectiveness of current responses. Possible strategies raised to provide more effective responses included: the use of restorative justice (eight), holistic programs including family counselling and healing centres (seven), Murri Court (eight), and temporary police-issued orders (six).

## Immediate police response

In some jurisdictions in Australia, police can issue domestic violence orders without the court's intervention. Under the Queensland domestic violence legislation, a police officer is required to undertake an investigation and, after forming a reasonable belief that domestic violence has occurred and is likely to recur, can then apply for a domestic violence order on behalf of the victim.

Sixty-nine respondents indicated that changes are required to the legislation regarding temporary orders including: increasing the detention time from four hours to eight or 12 hours to enable an aggrieved sufficient time to contact support services and organise any alternative accommodation, and to give the offender sufficient time to 'sober up', the automatic extension of temporary orders until such a time as an offender is served with a final order, and more consistent guidelines and processes for temporary orders.

Twenty-one respondents indicated that the current provisions which incorporate judicial oversight already provide police with the ability to respond to urgent domestic violence incidents.

Having some form of police-issued protection orders was supported by 77 respondents for the following reasons:

- police have a role in responding to domestic violence incidents which provides them with a good perspective on the situation
- this would enable immediate protection for the victim and greater safety
- the victim may be unwilling to make an application for a protection order.

In 12 of the statewide consultation forums there was support for short-term police-issued orders (up to the first court date) and in 11 of the sessions support was expressed for an increase to the detention time available to police where a person has been taken into custody following a domestic violence incident.

Those who opposed police-issued orders cited the need to maintain the police role of enforcing the law and the need to maintain the integrity of the legal system. Others expressed the view that such powers should not be considered until appropriate frameworks for identifying the predominant aggressor had been established.

Responses concerning the circumstances under which police could issue an order contained distinct cautions:

- that police orders only be issued in straightforward cases — more complex matters would need to go before a magistrate
- police must be well-trained and the legislation should contain appropriate guidelines
- police must be allowed enough time to conduct a thorough investigation of the situation.

Thirty-five respondents considered police should only be able to issue orders in cases where there is extreme violence or danger, or there have been significant injuries.

*...in circumstances where the victim is in immediate danger, with a temporary order only able to be varied by a magistrate.*

## Understanding legal processes

Some people may be disadvantaged in their understanding of the processes and outcomes of proceedings relating to applications for domestic violence orders which can operate as barriers to their accessing the system.

There was support for changes to the legislation in this area. Of the 103 responses on this issue, 71 respondents supported these changes. Twenty-seven of these considered that people with a limited understanding of English should have access to interpreters. This was also the view in 11 of the statewide consultation sessions. Fifteen respondents considered the legislation should include a person's statutory right to an interpreter in these circumstances, similar to the South Australian and Victorian legislation.

In seven locations in the statewide consultation forums, participants commented on the need for legal processes to operate in plain English and, in six locations, for the order to be explained. In areas outside South-East Queensland, there was stronger support for the use of interpreters for people with limited understanding of English. One session reported there may be a gap in the current legislation concerning the court's ability to be satisfied about a person's capacity. A few forums raised the need for there to be further consideration of the situation for people with a disability, including intellectual disabilities.

Eighteen respondents indicated that financial and legislative provisions are necessary to ensure that people are provided with the necessary support to enable them to understand legal processes.

A specialist organisation thought the following issues needed to be addressed:

- Specific protocols in working with individuals from culturally and linguistically diverse communities and those from non-English speaking backgrounds to ensure that service responses are culturally appropriate.
- Inclusion in the legislation of a statutory right for people from non-English speaking backgrounds to access professional interpreting and translating services in all court proceedings as evidenced in other jurisdictions.
- The Act to include an obligation on the registrar to ensure the provision of a professional interpreter in all court proceedings.
- Changes to legislation and policy to ensure administrative procedures are met (specific dialect and gender preferences; interpreter confidentiality and code of conduct; recruitment and training especially for some community languages with interpreter shortages; legal training made available to interpreters).

Five respondents considered it should be the court's responsibility to ensure people have fair and equal access to the court process and fund interpreters and legal aid for both parties. They considered that the use of interpreters should be consistent and be used by police and refuges as well as the courts.

Three respondents considered court processes should be simplified to cater for people who are disadvantaged in their understanding of these processes. They suggested:

- simplifying civil and criminal procedures, with the new Act written in plain English and translated into relevant languages
- applications for domestic violence orders translated into relevant languages
- a duty solicitor being available for legal advice
- making provisions for people with intellectual disabilities.

Twelve respondents suggested there should be more access to legal assistance for people who need it, including more legal aid and advocacy funded by the government. Other respondents considered there was a need for domestic violence advocates, support workers, friends in court, court liaison officers, and recognised entities<sup>3</sup>. In addition, courts need to be informed and more aware of issues if a person with a disability attends court. Changes may be required to the legislation to ensure that appropriate support workers or family members can assist vulnerable individuals.

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<sup>3</sup> Recognised Aboriginal and Torres Strait Islander entities may be individuals or organisations that are appropriate to be consulted about a child's protection and care under an agreement between the Department of Communities and the entity.

## Perpetrator accountability

### Breaches of domestic violence orders

A breach of a domestic violence order is a criminal offence which attracts particular penalties with implications for perpetrator accountability.

In four of the statewide consultation sessions, it was claimed that fines are ineffective as a deterrent to domestic violence. It was also claimed in four of the sessions that a person's criminal history should show the true nature of the breach and not just be recorded as 'breach'.

A total of 111 respondents commented on the issue of how the links between breach provisions and related criminal offences could be made more effective. Of these, 86 considered there was a need for legislative amendments to strengthen the links between breach provisions and related criminal offences since the current breach processes do not hold perpetrators sufficiently accountable for their actions.

Four respondents suggested that, where the behaviour constituting the breach also constitutes a criminal offence, the relevant criminal offence should be charged in addition to the breach. Taking the onus off the victim for pressing criminal charges was considered to limit the danger for the aggrieved.

A total of 108 respondents commented on the nature of penalties. Of these, 99 considered penalties for breaches should be increased or expanded so perpetrators are held more accountable. Three respondents suggested that breach offences should be tiered as in Tasmania with different penalties associated with different behaviours. One respondent recommended two tiers of breaches — one constituted by non-criminal behaviour and the other by behaviour which also constitutes a criminal offence.

Three respondents suggested that the current penalties provided for in the domestic violence legislation were adequate but were inconsistently applied. It was suggested that a table of penalties could set out different penalties depending on numbers of previous convictions and behaviours and would ensure penalties for breaches were consistently applied.

A total of 72 respondents considered the current range of sentencing options for breaches was not adequate. Many noted that fines and imprisonment may not produce the most effective outcomes. This was also the view in four of the statewide consultation sessions. Behaviour change or perpetrator programs received support from nine respondents as an alternative option to fines and jail, although there are issues as to resourcing, availability and research around the effectiveness of such programs (considered further on page 24).

Four respondents recommended there be an increase in the maximum sentence available so that a court dealing with a breach would be able to impose a sentence that reflects the nature of the criminal charge.

*The current range of sentencing options for breaches is not adequate. There is a maximum period of imprisonment for a breach of [two years] despite the...level of violence that may have constituted a charge of grievous bodily harm or assault occasioning bodily harm.*

*It would be our submission that the maximum period of imprisonment for a breach of a domestic violence order be extended to seven years for a first offence and up to 10 for consecutive offences.*

## Use of an ouster condition

An ouster condition applied to a domestic violence order excludes the offender from a residence shared with the protected person, even where the offender has a legal or equitable interest in the property.

Seventy-three respondents believed there should be changes to the legislation in relation to ouster conditions including:

- setting out directions to magistrates to consider whether an ouster condition should be imposed in each application
- providing for a different set of considerations as to when ouster conditions should be imposed which prioritises keeping women and children in their home
- ensuring that appropriate risk assessments are undertaken when ouster conditions are being considered as it may not always be the safest option
- the extension of the current safety upgrades project statewide.

Responses highlighted the service implications and challenges regarding the ouster condition including risk assessments, safety upgrades, support for the aggrieved, behaviour change programs for offenders and housing for both the victim and the perpetrator. However, it was acknowledged that there are advantages for victims and children in enforcing the ouster condition.

*...it is of paramount importance to minimise the disruption to children when domestic violence occurs. As with all protection measures there may be some individuals who choose to flout this law and take advantage of laws that are meant to protect vulnerable persons — it is the vulnerable persons that are most at risk, if they are not protected. To allow victims to remain in the home may return to them some of the power that has been stripped of them whilst being in the abusive relationship.*

In 19 of the statewide forums there was support for legislative amendments to make the ouster condition more effective. Concern was raised, however, that ousters may not be as effective in some remote and regional areas, for example, mining areas where accommodation is provided by the employer and where alternative accommodation is likely to be scarce or expensive.

## Behaviour change programs

There has been an increasing trend nationally to focus on placing accountability and responsibility on perpetrators of domestic and family violence and one of the strategies to address this has been to incorporate behaviour change programs into domestic violence proceedings whether at the civil or criminal stage.

There was support for the use of behaviour change (or perpetrator) programs. A total of 101 respondents believed behaviour change programs should be mandatory and 14 considered they should be voluntary. At the statewide consultation sessions support was expressed in 19 locations for increased referral to behaviour change programs as a condition on protection orders and at breach stages. However, stakeholders recognised the difficulties in providing services in remote and regional areas in terms of availability, accessibility and securing appropriately qualified staff to facilitate programs.

One professional organisation considered that behaviour change programs needed to give consideration to certain critical issues:

- established and operate on principles of safety to women and children
- established as part of an overall collaborative response to domestic and family violence
- incorporate on-going risk management
- incorporate follow up with female partners
- adhere to best practice standards
- have heightened and swift responses for non-compliance and re-offending
- allow for the development of culturally specific programs for Aboriginal and Torres Strait Islander people and those from culturally and linguistically diverse backgrounds.

Mandating programs was considered by four respondents to only be an option under the following circumstances:

- a credible program addressing all behaviours defined as domestic violence exists
- suitable programs are widely available
- programs have been evaluated and demonstrate best practice.

There was a mixture of views, however, as to whether such programs should be imposed at the civil order stage, as a sentencing option, or both:

- twelve respondents considered behaviour change programs should be imposed only at the protection order stage. These responses focused on the educative and preventative process and linked programs with victim support. However, it was pointed out that these programs need well-trained facilitators and have to be adequately monitored and evaluated. They would also need to be culturally appropriate
- seventeen respondents considered behaviour change programs should be mandatory at breach (sentencing) stage on the basis that offenders would be less likely to participate voluntarily
- 41 respondents supported behaviour change programs being able to be imposed at both the order and sentencing stages.

Notwithstanding the support for behaviour change programs, a number of issues and concerns were raised as to the implementation of programs including:

- availability and resourcing, which is particularly relevant to regional and remote areas
- finding suitably qualified facilitators
- accreditation of programs
- monitoring compliance of offenders.

## System planning and coordination

### Confidentiality and information sharing

Ninety respondents supported the development of integrated or coordinated responses to domestic violence and agreed there are circumstances where information about the parties needs to be shared. Information sharing is seen to be an important factor in facilitating risk and safety assessment for victims and in ensuring all relevant factors are considered by a court when sentencing offenders.

Three respondents referred to coordinated approaches occurring in Duluth, London, the Australian Capital Territory and Tasmania as being useful guides. It was also suggested the experiences gained from the Rockhampton *Breaking the Cycle* pilot should be considered by the Government in the context of integrated responses.

There was no clear consensus as to whether such integrated approaches should be accompanied by legislative change or whether they could operate under the current privacy regime by way of memoranda of understanding and protocols between the relevant organisations, as is the case in Rockhampton. In the statewide consultation forums, while it was agreed that processes are required to facilitate information sharing, it was not considered that legislative

amendments are necessarily required for this. However, there was seen to be a need for increased development of integrated responses when dealing with domestic and family violence.

Two respondents referred to the Queensland Compact's *Good Practice Guide for Data Sharing and Confidentiality* draft document, which deals with data and information collection, sharing and use between government departments and community based agencies. It was suggested this could form a useful basis for developing a legislative framework.

On four occasions, respondents referred to potential unintended consequences that may arise as a result of information sharing. The impact of the current Queensland Police Service's policy of mandatory referral to Child Safety Services on reporting of domestic violence incidents was noted in this regard. In addition, information presented to courts has to be treated with the same caution that is given to any (untested) evidence raised in proceedings. One organisation expressed cautious support for information sharing, with several provisos, such as:

- all systems receiving such information are set up to ensure the ongoing focus on victim safety and autonomy, offender accountability, and system responsibility is embedded in the procedures and processes of the organisation or agency at all levels
- all workers with access to such information are specifically and regularly trained regarding the intricacies of domestic and family violence, power and control, victim and perpetrator presentation, gender, risk assessment, safety planning and indicators of escalating risk
- consideration is given to the unintended consequences of such sharing (for example, that victims are less likely to come forward if they think that they will lose their children).

In general, respondents agreed that processes are required to facilitate information sharing but it was not considered that legislative amendments are necessarily required for this. However, there was seen to be a need for increased development of integrated responses as well as increased training for police, the judiciary, and community sector service providers.

## Other issues

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Additional issues which were raised can be divided into three categories:

- legislative issues not specifically covered in the consultation paper, such as issues relating to service of documents and notifying those named on a domestic violence order
- the impacts of the legislation including the claimed use of domestic violence orders as leverage for family law proceedings and the use of the legislation for false or vexatious applications
- service issues, for example, community education, training for police and magistrates, and increased legal, health, mental health, victim support and accommodation services, particularly in rural and remote areas.

## Next step

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The next step in the review of the *Domestic and Family Violence Protection Act 1989* is the development of recommendations for government consideration. All written responses and input from the statewide consultations will be carefully considered during this process.





