

Queensland Family and Child Commission Submission

To: Department of Communities, Child Safety & Disability Services

Date: 29th February, 2016

Topic: Review of the *Domestic and Family Violence Protection Act 2012*

Submission summary:

This submission aims to provide the Department of Communities, Child Safety and Disability Services with research, information and advice to inform the review of the *Domestic and Family Violence Protection Act 2012*.

Note: This submission will limit its response to questions contained in the Terms of Reference which relate to the broad context of the QFCC's mandated functions and responsibilities.

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Department of Communities, Child Safety, Disability Services (DCCSDS) regarding the Review of the *Domestic and Family Violence Protection Act 2012* with particular regard to the views of children and young people on how DFV affects their lives.

The QFCC recognises domestic and family violence reform as a priority in ensuring a safe future for children and their families. Domestic and family violence, in all forms, is a violation of basic human rights. Everyone regardless of their sex, religion, nationality, race, language, relationship, or living arrangements, has the right to feel safe and be safe in public and at home.¹ This paper aims to draw attention to the ongoing reforms across the child protection sector and the recommendations and finding of the *Not Now, Not Ever* report.

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¹ *Special Taskforce on Domestic and Family Violence (2015) Not now, not ever – Putting an end to Domestic and Family Violence in Queensland*, p 7.

Contextualising domestic and family violence in Queensland

Domestic and family violence is an insidious and entrenched problem in Queensland and Australian society.² The stories and experiences of men and women from across the state captured by the Queensland Special Taskforce into Domestic and Family Violence have shaped a picture of the impact of domestic violence from both a gender and vulnerability perspective. The stories have highlighted the traumatising effects of domestic and family violence on individuals and family functioning, the impacts of the legal system on domestic and family violence survivors and the deficiencies in support service access and the barriers to accessing these vital services.

Of particular consideration to the Queensland Family and Child Commission (QFCC) is the effect of domestic violence on children. While there is growing recognition of the need to provide protection to children of the aggrieved, it does not always garner the level of national attention required and often fails to be included in broader discussions regarding responding to and addressing domestic violence matters, despite the significant impacts to both immediate and long term outcomes for that child. A child's experience of domestic and family violence is defined as "witnessing, exposure to, or seeing domestic violence"³. This implies a child is traumatised by watching an act of domestic and family violence as it occurs, however witnessing incorporates far more than observing a fight between partners. It can also involve:

- hearing violence
- being forced to watch or participate in assaults
- being forced to spy on a parent
- being told they are to blame for the violence because of their behaviour
- being accidentally injured or hurt in utero
- being used as a weapon or hostage, and/or
- defending a parent against or intervening to stop violence.⁴

Data relating to the prevalence of children's involvement in, or exposure to domestic and family violence across Australia is limited. Given this difficulty in assessing the extent of children's exposure to domestic and family violence,⁵ data from Queensland's Child Death Register held by the QFCC indicates that during 2014-2015:

- a history of DFV was known in the lives of five children who suicided
- a history of DFV was known in two families of children who died as a result of fatal assault and neglect, and
- eight families had a known history of DFV in relation to children who died from Sudden Unexpected Death in Infancy.

Aboriginal and Torres Strait Islander families' context

'Family violence' is the term preferred by Aboriginal and Torres Strait Islander people to describe many different forms of violence that occur within families because the concept includes a broad range of marital

² Australia's National Research Organisation for Women's Safety (2015) *Compass – Perpetrator interventions in Australia: key findings and future directions*, preface

³ Campo, M., Kaspiew, R., Moore, S., Tayton, S. (2014) *Children affected by domestic and family violence: A review of domestic and family violence prevention, early intervention and response services*, Australian Institute of Family Studies, p 2.

⁴ Humphreys, C (2007) *Domestic Violence and child protection: Challenging directions for practice*, Issues Paper 13, Australian Domestic & Family Violence Clearinghouse.

⁵Special Taskforce on Domestic and Family Violence (2015) *Not now, not ever – Putting an end to Domestic and Family Violence in Queensland*, p 301.

and kin relationships in which violence may occur⁶. Aboriginal and Torres Strait Islander people may consider family violence as instances where violent events occur within the larger family network which includes aunts, uncles, grandparents, cousins and others in their wider community.

Australian Aboriginal women are 45 times more likely than non-Aboriginal women to be subject to domestic and family violence, and are more likely to be seriously injured than non-Aboriginal victims.⁷ Violence is also a significant cause of morbidity and mortality in Australian's Aboriginal and Torres Strait Islander population with women predominantly being the victim,⁸ with considerable evidence suggesting that Aboriginal and Torres Strait Islander women being far more likely to suffer domestic violence and sustain more injuries than their non-Indigenous peers.⁹ Despite these findings however, police are the applicants in more than 95 percent of domestic violence orders in remote Aboriginal and Torres Strait Islander communities.¹⁰

Memmott et al. (2001; sighted in AIHW) presented three broad categories or causes of violence in Aboriginal and Torres Strait Islander communities:

1. Precipitating causes – particular events which precede and trigger a violent act by the perpetrator.
2. Situational factors – circumstances in the social environment of the respondent.
3. Underlying factors – the historical circumstances of Aboriginal and Torres Strait Islander people which make them vulnerable to being either a respondent or an aggrieved person to a violent event.¹¹ This includes the violent dispossession of land and continuing cultural dispossession of the past 200 years. The effect of these events have resulted in particular social, economic, physical, psychological and emotional problems for Aboriginal and Torres Strait Islander people, which is reflected in the high level of violence in their communities¹²

Underlying factors in particular hold significant importance to the development of culturally appropriate policy and practice. Aboriginal and Torres Strait Islander people are also less likely to report domestic violence to police. Fear and distrust of police, the justice system and government agencies may become obstacles that police have to encounter, more so for people from Aboriginal and Torres Strait Islander (QIFVLS, 2014). Data indicates that even though Indigenous women are more likely to be victims of domestic violence,

⁶ MacDonald in, (2006), *Family violence among Aboriginal and Torres Strait Islander people*, p15, Australian Institute of Health and Welfare (AIHW)

⁷ Creative Spirits, (2015), *Domestic and Family Violence*, <http://www.creativespirits.info/aboriginalculture/people/domestic-and-family-violence>, Accessed 22/02/2016

⁸ Australian Institute of Health and Welfare (AIHW), (2006), *Family violence among Aboriginal and Torres Strait Islander people*, p2

⁹ MacDonald in, (2006), *Family violence among Aboriginal and Torres Strait Islander people*, p3, Australian Institute of Health and Welfare (AIHW)

¹⁰ Queensland Indigenous Family Violence Legal Service, (2015), *Submission to the Legal Affairs and Community Safety Committee – Strategies to prevent and reduce criminal activity*, p3

¹¹ MacDonald in, (2006), *Family violence among Aboriginal and Torres Strait Islander people*, p3, Australian Institute of Health and Welfare (AIHW)

¹² Australian Institute of Health and Welfare (AIHW), 2006, *Family violence among Aboriginal and Torres Strait Islander peoples*, pg.3

1. Is the current test for issuing a DVO appropriate or should changes be considered?
2. Should any changes be considered to the type of relationships covered by the Act?

The QFCC recommends:

- The safety and protection of children and young people as the paramount consideration in the issuing of domestic and family violence order/s.
- Provisions relating to undertakings be strengthened to better support the aggrieved and remove the “voluntary” nature of the respondent’s responsibilities in relation to an agreement.
- Additional timeframes be made available for Aboriginal and Torres Strait Islander remote communities.

QFCC’s position

QFCC supports the role of Domestic and Family Violence Protection Orders (DVO) in taking the required steps to formally address domestic and family violence and allowing for the protection of children. The principles of the *Domestic and Family Violence Protection Act 2012* (the Act) also provide for the most vulnerable members of the community, children and young people.

The QFCC supports the continuation of provisions relating to DVO currently provided for within the Act, including relationship types, whom may apply for an order, applicable conditions of an order and police powers. The QFCC believes that these provisions all adequately provide for the protection of the aggrieved and for the children’s immediate and ongoing safety.

However, the QFCC identifies concerns in the courts ability to allow respondents to a DVO application (where children are listed) to make undertakings to the court and the subsequent agreement of the respondent to comply with voluntary terms and thus avoid the formality of making a DVO. The QFCC recommends that provisions relating to undertakings be strengthened to better support the aggrieved and remove the “voluntary” nature of the respondent’s responsibilities in relation to an agreement.

Supporting QFCC’s position

The current test for issuing a DVO provides an aggrieved (and their children) with protective mechanisms, applicable to their own individual circumstances and extended family, where there has been or there is a risk of domestic and family violence occurring.

Under Part 2, s26 of the Act, a court can make a protection order if:

- (a) *an application for a protection order is made to the court by any of the persons mentioned in section 25(1);*
- (b) *the court convicts a person of an offence involving domestic violence; or*
- (c) *the court is the Children’s Court hearing a child protection proceeding.*

Currently an application for a DVO is brought before a Civil Magistrates Court for mention. In the event that a DVO condition has been breached, the respondent is then brought before a Magistrate in a state Criminal Court. Where an aggrieved has immediate concerns regarding their safety they can approach the clerk of the court to seek that a temporary protection order be made, prior to a respondent being served, which may also list their children. The QFCC believes that the current mechanisms provide for both an immediate and longer term arrangement to be sought by an aggrieved person while also allowing for those children who are also present in the home to be protected under the same order.

The QFCC also recommends that specific recommendation be given to individuals living in remote communities who may be required to be given lengthier timeframes. For example, Aboriginal and Torres Strait Islander communities where there is limited access to courts.

The provisions under the Act which allow for the courts to consider undertakings, made by the respondent, as part of their decision making process when deliberating for the establishment of a DVO, places individuals and children at significant risk. The QFCC specifically raises concerns regarding the use of undertakings rather than a formal DVO as follows:

- Aggrieved parties feel personally threatened or intimidated being physically co-located with the respondent in court and therefore influence their agreement to undertakings/voluntary terms offered by the respondent.
- Where there is no DVO in place, an individual cannot be found to be in breach of that order.
- The voluntary nature of undertakings mean that there is no formal follow up by police or the court to ensure the agreed actions have taken place.

3. How could domestic and family violence courts' consideration of family law issues be improved?

The QFCC recommends:

- The systematic inclusion of the views and opinions of children, where developmentally and age appropriate and consideration of those views raised within the family law context.
- The establishment of consistent recognition of same sex parents within both Commonwealth and State legislative instruments relating to domestic and family violence and family law matters.

QFCC's position

QFCC recommends the ongoing paramount consideration of Magistrates deliberating on domestic and family violence and family law matters be the safety and protection of the aggrieved and the child or young person affected by the presence of violence in the home.

QFCC recommends in formal Domestic and Family Violence court proceedings (applications, amendments, revoking orders) children, where age and developmentally appropriate, are provided the opportunity to express their views or opinions, including their views raised within a Family Law Court matter such as custody arrangements following a separation or the establishment of shared care arrangements. It is vitally important for courts to consider the impact of domestic and family violence protection orders on a child in congruence with their ongoing care and protection needs. This is supported by Article 12 of the United Nations Convention on the Rights of the Child that requires: '*Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account*'.¹³

The QFCC recommends revision and focussed collaboration to resolve inconsistencies between state and Commonwealth legislative instruments, including the consistent legal recognition of same sex parents to ensure aggrieved parties and their children are protected from domestic and family violence.

Supporting QFCC's position

Both the *Domestic and Family Violence Protection Act 2012 (Qld)* and *The Family Law Act 1975 (Cth)* are driven by the best interests of the child as being of paramount consideration to all aspects covered under each act. *The Family Law Act 1975* (the FL Act) provides that DVOs made under state legislation are considered in relevance to two aspects of decision making about parenting orders:

- *when determining what orders are in the child's best interests pursuant to s60 (c)(c) ; and*¹⁴
- *when ensuring that a parenting order is consistent with a protection order and does not expose a person to an unacceptable risk of family violence pursuant to s60(c)(g).*¹⁵

When Domestic and Family Violence courts give consideration to family law issues, outcomes should give priority consideration to the following:

¹³ United Nations, n.d, *United Nations Convention on the Rights of the Child*, www.unicef.org.au, Accessed 09/02/2016

¹⁴ Commonwealth Government, (1975), *Family Law Act (Cth)*

¹⁵ Commonwealth Government, (1975), *Family Law Act (Cth)*

- Enforcing all measures necessary to protect children from future harm, including suspending or amending family contact with a respondent as required.
- Consideration of the child’s psychological adjustment to separation and include recovery from parental acrimony (in family law matters) and protection from further conflict.¹⁶
- Empower the child to be heard and voice their opinions, while avoiding placing any decision making burden on the child.¹⁷
- Enable children to seek assistance and advice from a support person or legal advocate to represent their interests.
- Provide for the protection and best interests of the child.¹⁸

Family court action is usually navigated during a period of considerable stress, frequently following separation from the respondent, and can occur concurrently with other proceedings such as negotiating protection orders and prosecuting assault charges (Braaf & Meyering, 2009). Moreover, as previously noted, this is also a time when women and children are at particular risk. Several authors (Bancroft, Silverman, & Ritchie, 2012; Chessler, 2011; Sudermann & Jaffe, 1999) point out that many women find themselves re-victimised by the system, including having to withstand efforts intended to demonstrate they are unfit mothers, and the associated possibility of losing their children to the perpetrator.¹⁹ Concerns relevant to dealing with family court issues linked to children’s ongoing safety include women not feeling confident or safe in disclosing the details of domestic violence as well as inexperienced court personnel in dealing with such matters. The safety and well-being of children and young people must be put ahead of a child having a meaningful relationship with both parents where a respondent places their ongoing safety at risk.²⁰

The courts recognise the close connection between family breakdown and violence, and the detrimental impact on both adult victims and children living with family violence. Protecting family members, and particularly children, from the effects of family and domestic violence is central to all determinations of what is in a child’s best interest.²¹

Consistent legislative instruments – Commonwealth and State

“s109 of the Constitution provides that in the event of inconsistency between state and Commonwealth legislation, the Commonwealth legislation shall prevail and the state legislation is invalid to the extent of the inconsistency”²²

The *Family Law Act 1975* (Cth) has established a presumption that parents will equally share parental responsibility for their children after separation. This presumption however does not hold as a default position where family violence and/or child abuse has occurred. Allegations of violence or child abuse and responses to such allegations are pivotal. Where there is joint parental responsibility after separation, the

¹⁶ McIntosh, J, (2007). *Child Inclusion as a principle and as evidence-based practice: Applications to family law services and related sectors*, Australian Institute of Family Studies (AIFS)

¹⁷ McIntosh, J, (2007). *Child Inclusion as a principle and as evidence-based practice: Applications to family law services and related sectors*, Australian Institute of Family Studies (AIFS)

¹⁸ New South Wales Government, n.d, *Child Wellbeing and Child Protection – NSW Interagency Guidelines, Principles of Engagement, Keep Them Safe*

¹⁹ Roberts, D, Chamberlain, P & Delfabbro, P, (2014), *Women’s Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis*, pages 599-615

²⁰ Australian Domestic and Family Violence Clearinghouse, (2011), *The impact of family violence on children*, pg5, University of New South Wales

²¹ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/what-is-family-violence/what-is-family-violence>

²² Commonwealth of Australia, *Constitution Act*

federal Court has a responsibility, subject to the particular circumstances to consider making orders for the children to spend equal or else substantial or significant periods of time with each parent.²³

The *Domestic and Family Violence Act 2012* currently states individuals making application for a Domestic Violence Order must advise the court of existing Family Law Court orders for their consideration. A magistrate currently holds the power to make a domestic violence order which suspends or amends a respondent's contact with a child to keep them safe for a period of up to two years, and indefinitely. For example, In the event that a respondent applied to the Family Law Court to amend an existing Family Law Court order (subject to a current domestic violence order), from a same sex relationship, and was not a biological parent, they would not be recognised by the court in relation to shared care arrangements. This would also make specific conditions within a domestic violence order made in a Queensland court non-enforceable as a parent is not legally recognised.

When domestic and family violence courts give consideration to outcomes from family law proceedings where same sex parents are involved, courts need to consider the implications of the current inconsistency between the state and federal jurisdictions legal definitions of a parent when deliberating. Commonwealth law does not currently recognise same sex parents in the making of family law orders for non-biological parents. The state must consider the implications of this inconsistency when making domestic and family violence applications and address, where family law matters intersect, any disparities for children's safety and consider non-enforceable conditions. Under s68R of the *Family Law Act 1975* (Cth), Queensland courts are empowered, inter alia, when making protection orders to vary family law orders to address any inconsistencies. In practice, the use or otherwise of this power must impact on enforcement, meaning if some conditions of an order are unenforceable due to an inconsistency, this may result in a failure, in practice, to enforce any of the order".²⁴

²³ Moloney, L., Smyth, B., Weston, R., Richardson, L.Q., Gray, M., (2007), *Allegations of family violence and child abuse in family law children's proceedings*, Australian Institute of Family Studies

²⁴ Australia's national research organisation for women's safety,(2015),*Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement*, Landscapes, issue 16, pg.7

4. Where there are conflicting allegations of violence, should the court be able to make cross orders by consent?

The QFCC recommends:

- Cross-orders by consent are no longer utilised. Where there are conflicting allegations of violence, the magistrate must decide who the respondent is and who is the aggrieved.
- The inclusion of an additional provision under Part 3, Division 4, s45(1) which recognises cross-application considerations.
- The current Bench Book be reviewed to provide additional information to improve consistency in decision making processes relating to cross-applications.

QFCC's position

In keeping with the other recommendations contained in this submission, the QFCC will again reiterate that all decisions relating to domestic and family violence matters should consider the immediate and ongoing safety and wellbeing needs of the aggrieved and their children, while holding the respondent to account for their behaviour.

In relevance to cross orders, the QFCC has noted a number of concerns which have also been addressed within several state and national publications on this topic. To address these concerns, the QFCC has recommended amendment to the existing legislation to better provide for the aggrieved.

Supporting QFCC's position

The domestic and family violence process is a complex and difficult system to understand and navigate²⁵. While the law 'should be seen to be a powerful tool to articulate society's values on what is acceptable and not acceptable behaviour'²⁶, the legal process can also provide opportunities to a respondent to passively continue abusive behaviours by manipulating the court system²⁷.

Implications of cross-applications on the aggrieved

While this extension of abusive behaviours can be manifested in a number of ways, aggrieved parties who provided feedback to the Special Taskforce into Domestic and Family Violence in Queensland (the Special Taskforce) highlighted the lodgement of cross-applications as a deliberate controlling and abusive act of a perpetrator. Of particular concern in relation to cross-applications is the finding of the Australian Law Reform Commission that in Queensland, 'domestic violence support workers have claimed that the number of cross-applications (made by private parties and police) and cross-orders have been steadily increasing in recent years'.²⁸ Fitzpatrick (in UNSW Law Journal) also reported that the occurrence of cross-applications in Queensland is rising in both absolute number and in proportion to the total Domestic and Family Violence Orders (DVO; in relation to hetero-sexual spousal relationships).²⁹

²⁵ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 268

²⁶ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 274

²⁷ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 268

²⁸ University of New South Wales Law Journal, Douglas, H., Fitzgerald, R, (2013), *Legal processes and gendered violence: Cross-applications for Domestic Violence Protection Orders*, Journal No.56

²⁹ University of New South Wales Law Journal, Douglas, H., Fitzgerald, R, (2013), *Legal processes and gendered violence: Cross-applications for Domestic Violence Protection Orders*, Journal No.56

While there is limited research in the area of cross-applications and their impact and effect on the aggrieved and the long term violence outcomes to support the QFCC's position, a study completed by Wangmann echoed the findings of the Special Taskforce by confirming:

*'cross-applications are used by some men as a tactic to bring about mutual withdrawal and that in some cases cross-applications must also be seen as a possible extension of the violence and abuse itself.'*³⁰

Aggrieved parties and domestic violence support works have also reported that cross-applications:

- can trivialise or completely silence the original aggrieved party's claims of violence and abuse.
- do not promote responsibility and accountability of the offender to acknowledge and address violent behaviour. The presence of a cross-order also places parties at risk of a breach charge and interfacing with the criminal justice system.
- are difficult for police to enforce, given competing protection conditions. This restriction is of particular concern for the ongoing protection and safety of the aggrieved parties and their children in the home environment.³¹

Concerns regarding cross-applications and orders under the *Domestic and Family Violence Act 2012* (the Act)

The principles for administering the Act set out in Part 1, s4(e) requires that, *'in circumstances in which there are conflicting allegations of domestic violence or indication that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified'*.³² However, the process of making cross-orders by consent does not recognise that there is one perpetrator and one aggrieved party. This inconsistency is also included in the explanatory notes of the *Domestic and Family Violence Act 2012* Bench Book (the Bench Book)³³. Given the contradictory and complex nature of cross-orders by consent, the QFCC recommends that cross-orders by consent no longer be utilised. Where cross-applications are lodged, the court be required to use the evidence and all other relevant information to make a judgement on who is in most need of protection and who is the respondent.

Where a court is required to consider a cross-application where the cross-application is lodged after the deadline, an adjournment should be sought and a temporary protection order applied until the next court date (where appropriate). To support this, the QFCC also recommends amendment to provisions included in s45(1) to reflect an additional provision:

- (1) A court may make a temporary protection order against a respondent only if the court is satisfied that—*
- (a) a relevant relationship exists between the aggrieved and the respondent; and*
 - (b) the respondent has committed domestic violence against the aggrieved; or*
 - (c) a cross-application has been adjourned and there is no clear aggrieved or respondent.*

³⁰Wangmann referenced in Douglas, H., Fitzgerald, R, (2013), *Legal processes and gendered violence: Cross-applications for Domestic Violence Protection Orders*, Journal No.56, University of New South Wales (UNSW) Law Journal

³¹ University of New South Wales Law Journal, Douglas, H., Fitzgerald, R, (2013), *Legal processes and gendered violence: Cross-applications for Domestic Violence Protection Orders*, Journal No.56

³² Queensland Government, (2012), *Domestic and Family Violence Act*

³³ Queensland Government, (2015), *Domestic and Family Violence Protection Act Bench Book*, p32

Inconsistent practice

As with a number of concerns raised within the discussion paper and terms of reference guiding the review of the Act, aggrieved parties have raised through the Special Taskforce and in the research undertaken across the country, that there is inconsistency in the Magistrates consideration of cross-applications and making of cross-orders including cross-orders by consent. In their submission to the Special Taskforce, the Women's Legal Service noted that this inconsistency impacts on the ability of the legal counsel to advise their client and provide realistic advice in matters relating to domestic and family violence and the outcomes of protection order applications.³⁴

The QFCC recommends that the current Bench Book be reviewed to consider how it might be developed to provide for consistent decision making in relation to domestic and family violence matters and what other information might be relevant.

³⁴ Queensland Government, Special Taskforce on Domestic and Family Violence, 2015, *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 272

6. Is there a need to make any changes to the current provisions in relation to the duration of orders?

The QFCC recommends:

- Establish consistent protocols for DVO duration where children are listed as parties to proceedings.
- Extend provisions to allow the court to impose and order of 'significant length, where circumstances require ongoing protection'.

QFCC's position

QFCC recommends greater consistency in the making of DVOs, specifically in relation to order duration and in particular the consistent application of the maximum timeframes of two or more years where children are listed as parties to a domestic and family violence order application.

Domestic and family violence courts in Queensland are currently able to make a DVO for a period of two years or in special circumstances. The QFCC recommends the inclusion of an additional provision allowing the court to impose an order of significant length, where circumstances require ongoing protection similar to the provisions utilised by Tasmania.

Supporting QFCC's position

Under s97 (2) of the Act a magistrate may make a domestic violence order for a period of up to two or more years with special reasons. Across Australia there is no consistent approach to deciding the duration of a DVO. Some states do not limit the duration to a set period but rather, accord the duration with the time needed to ensure the safety and wellbeing of the aggrieved and any child residing in the home:

State/Territory	Current duration of Domestic and Family Violence orders
Queensland	<ul style="list-style-type: none"> • the day that is 2 years after the day the protection order is made. However, if the court is satisfied that there are special reasons for doing so, the court may order that a protection order continues in force for a period of more than 2 years.
Tasmania	<ul style="list-style-type: none"> • for such period as the court considers necessary to ensure the safety and interests of the person for whose benefit the order is made
South Australia	<ul style="list-style-type: none"> • a protection order is indefinite unless stated otherwise
Victoria	<ul style="list-style-type: none"> • a period is specified in the order, for the specified period unless it is sooner revoked by the court or set aside on appeal

A domestic and family violence order can be extended by an aggrieved person making an application to the court prior to a current order expiring. However research referenced in response to this questions details the stress and trauma experienced by individuals when they are required to continually apply for extension of domestic violence orders to maintain their ongoing protection. In consideration of the potential

reoccurring subjection of the aggrieved to continually approach the court for an extension of a DVO, the QFCC would suggest the inclusion of an additional provision allowing the court to impose an order of significant length, where circumstances require ongoing protection similar to the provisions utilised by Tasmania.

In Queensland during the period of 2013-2014 the number of domestic violence applications made by Queensland Police Service were 16,936, Private application 8,725 and breaches of order were 16654.³⁵ The 2013-2014 Queensland Courts Annual report details that a total of 25,276 domestic and family violence orders applications were received, 35,411 orders were made and 5,216 applications were dismissed.³⁶

Given the evidence of long-term stalking, harassment and physical abuse engaged in by some respondents, 'courts cannot presume that a batterer's attempts to control and injure the abused victim will end in a month, a year, or ten years'. Women are often faced with the problem of having to go back to court to renew their orders every two years, and may face being told that they no longer have grounds for an order. All order duration decisions should give paramount consideration to ensuring the ongoing safety and wellbeing of the aggrieved and their children. The strengthening of the duration provisions and the subsequent granting of orders which extend for an appropriate period of time which suits each individual case, will assist in promoting and strengthening community confidence in the formal protection available through the courts in relation to domestic violence.

³⁵ Queensland Police Service, (2013-2014), *Annual Statistics Review*

³⁶ Magistrate Court of Queensland, (2013-14), *Magistrates Courts of Queensland Annual Report 2013-2014*

7. Should court proceedings under the Act be open and/or information about these proceedings be published?

The QFCC recommends:

- Domestic and Family Violence proceedings to open with the exception of specific circumstances where the court must be closed.

QFCC position

The QFCC recommends that domestic and family violence proceedings be open with the following exceptions, where the court is to be closed:

- A child is listed as an aggrieved or is involved in any manner within the proceedings.
- A child is listed as the respondent.
- Where the aggrieved party or their advocate requests proceedings be closed*
- In the instance of cross orders.
- Where proceedings are in respect to a prescribed sexual offence, the court require this section of proceedings to be undertaken in a closed court.³⁷
- Where the judge determines extenuating circumstances and no request to close the court has been made.

*Where the court considers an aggrieved parties application to close proceedings consideration must be given to the nature of the domestic violence event, and whether the openness of proceedings is seen as an extension of violence or potential opportunity for the respondent to shame the aggrieved.

In relation to the publication of proceedings, the QFCC would recommend the discretion to publish proceedings is made by the Magistrate in consideration of the exceptions listed above.

Supporting QFCC's position

The principle of open justice is a fundamental aspect of the justice system in Australia and the conduct of proceedings in public is an essential quality of an Australian court of justice.³⁸ Despite this fundamental principle, there are circumstances where by the QFCC believes that court proceedings should be closed:

Protecting children

- *A child is listed as an aggrieved or is involved in any manner within the proceedings.*
- *A child is listed as the respondent.*

Children who have provided their opinions and views to support the hearing or who are listed on the order as an aggrieved party, should not be subjected to public scrutiny. Not only is the decision to keep the proceedings closed a protective factor for the child, it is also suggested in accordance with the Articles 13 and 16 of the United Nations Convention on the Rights of the Child to which Australia is a ratified party:

- **Article 13** – Children have the right to get and to share information, as long as the information is not damaging to themselves or to others.

³⁷ Judicial Commission of New South Wales, (2014), *Closed court, suppression and non-publication orders*, http://www.judcom.nsw.gov.au/publications/benchbks/criminal/closed_court_and_non-publication_orders.html, Accessed 24/02/2016

³⁸ Judicial Commission of New South Wales, (2014), *Closed court, suppression and non-publication orders*, http://www.judcom.nsw.gov.au/publications/benchbks/criminal/closed_court_and_non-publication_orders.html, Accessed 24/02/2016

- **Article 16** - Children have a right to privacy. The Law should protect them from attacks against their way of life, their good name, their family and their home.³⁹

Protecting the aggrieved

- *Where the aggrieved party or their advocate requests proceedings be closed.*
- *In the instance of cross orders.*
- *Where proceedings are in respect to a prescribed sexual offence, the court require this section of proceedings to be undertaken in a closed court.⁴⁰*

As part of the important work undertaken by the Special Taskforce in to Domestic and Family Violence in Queensland (The Taskforce) to bring together their comprehensive report and subsequent recommendations, the Taskforce spoke with many and varied communities across Queensland. From these community discussions, the Taskforce reported that it was frequently acknowledged that the legal process can be very difficult for victims to navigate and can at times lead to further trauma. Improving the availability and quality of evidence about family violence is an important part of promoting better outcomes for aggrieved parties.⁴¹

Information relating to domestic and family violence can be highly sensitive and is personal in nature⁴². Many survivors (aggrieved) of domestic and family violence find legal proceedings to be challenging in ways specifically linked to the trauma that they experienced.⁴³ The National Centre on Domestic Violence, Trauma and Mental Health discusses that even though the process of confronting their abuser in court may be, in the long run, and empowering experience for the aggrieved, the legal process can exacerbate the sense of being afraid and extend to the respondent an opportunity to control unrelated aspects of the environment.⁴⁴ The QFCC suggests, that by providing the aggrieved with the power to leave a proceeding open allows the aggrieved to pull back some of the control not normally experienced in their relationship with the respondent.

³⁹ United Nations, n.d, *A simplified version of the United Nations Convention on the Rights of the Child*, <http://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/childfriendlycrc.pdf>, Accessed 24/02/2016

⁴⁰ Judicial Commission of New South Wales, (2014), *Closed court, suppression and non-publication orders*, http://www.judcom.nsw.gov.au/publications/benchbks/criminal/closed_court_and_non-publication_orders.html, Accessed 24/02/2016

⁴¹ Australian Government, (2010), Australian Law Reform Commission, *Evidence of Family Violence*.

⁴² Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 233

⁴³ National Centre on Domestic Violence, Trauma and Mental Health, (2013), *Preparing for court proceedings with survivors of domestic violence*.

⁴⁴ National Centre on Domestic Violence, Trauma and Mental Health, (2013), *Preparing for court proceedings with survivors of domestic violence*.

8. What role should perpetrator intervention programs play in legal response to domestic violence?

The QFCC recommends:

- In addition to the Voluntary Intervention Order provisions, the inclusion of mandated attendance to perpetrator intervention programs, when:
 - the respondent has previously agreed to a VIO but not completed the program.
 - there is a reasonably accessible and matched PIP close to the respondent's residence.
 - the respondent has been previously been declared suitable to attend a PIP.
 - mandated attendance is supported by other stakeholders relevant to the order.

Subsequent recommendations (practice context):

- Improved integrated response to domestic and family violence matters, including strengthened provisions relating to information sharing.
- Improved accessibility to tailored intervention programs.
- Improved focus on support for aggrieved parties and their children.

QFCC's position

In addition to the current provisions relating to Voluntary Intervention Orders (VIO) within the *Domestic and Family Violence Act 2012*, the QFCC also recommends that the Domestic and Family Violence court also be provided the power to direct a respondent's mandatory attendance to a perpetrator intervention program (PIP), where:

- the respondent has previously agreed to a VIO but not completed the program.
- there is a reasonably accessible and matched PIP close to the respondent's residence.
- the respondent has been previously been declared suitable to attend a PIP.
- mandated attendance is supported by other stakeholders relevant to the order.

Supporting QFCC's position

PIP encompasses a range of community and formal (correctional) program based responses for perpetrators of domestic and family (and sexual) violence. A key aspect of the varying types of intervention programs for perpetrators of domestic and family violence is a focus on addressing the underlying causes of offending behaviours and their predisposed attitudes and beliefs toward violence. Importantly, these types of intervention programs are used extensively across the world, however there is no one consistent approach to program design, content or manner and mode of delivery.⁴⁵

While there is a relevancy and a legal requirement, in some circumstances, to punish offenders, research has demonstrated that a singular focus on only punishing perpetrators will not bring about behaviour change.⁴⁶ It is for this reason that perpetrator intervention programs form a substantial part of the *National plan to reduce violence against women and their children* (The National Plan). The *Not now, not ever* report also highlighted that an 'effective integrated response to domestic and family violence would be incomplete without an appropriate range of services to address and change the violent behaviour of perpetrators'.⁴⁷

⁴⁵ Australian National Research Organisation for Women's Safety, (2015), *Compass – Research to policy and practice*, p5

⁴⁶ Commonwealth Government, Council of Australian Governments, (2015), *National plan to reduce violence against women and their children*, pg. 29

⁴⁷ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an*

At a national level, attendance at PIPs is included as a specific action under the National plan to reduce violence against women and their children (the National Plan). The Council of Australian Governments endorsed National Plan lists the following action item for all states and territories: ‘*enforce attendance at mandatory domestic violence and sexual assault perpetrator programs,*’ as a strategy to reduce the risk of recidivism.

Internationally, New Zealand’s formal response to respondent programs is legislated under the *Domestic Violence Act 1995, part 2A* and specifically provides a suite of programs designed to be provided to both the aggrieved and the respondents to a DVO. Additionally, the legislation also provides the relevant Secretary (or Chief Executive in the context of our legislation) the power to grant, suspend or cancel and approval of a person to attend or services provider to offer all intervention and support programs. The Secretary is also required under the legislation to publish and maintain an internet site which contains the details of all service providers.

With the commissioning of magistrates for the purpose domestic and family violence and a steadily increasing court based professional knowledge of domestic and family violence matters, the QFCC believes there is now scope to provide the courts with appropriate powers to direct a perpetrator to attend a PIP. However, we do not suggest that the current provisions relating to VIO be removed, rather suggest the inclusion of mandatory attendance at a court ordered PIP where:

- the respondent has previously agreed to a VIO but not completed the program.
- there is a reasonably accessible and matched PIP close to the respondent’s residence.
- the respondent has been previously been declared suitable to attend a PIP.
- mandated attendance is supported by other stakeholders relevant to the order.

The QFCC believes that by adding criteria to mandated attendance directions ensures that a respondent is first given the opportunity to voluntarily attend programs and amend their behaviours and proactively work towards the wellbeing of their family. The addition of mandatory attendance will however provide the courts with the power to force repeat offenders to seek assistance and help where appropriate.

Other considerations

While the move to allow mandatory attendance at PIPs is an integral part of the broader strategy to improve the safety and wellbeing of aggrieved parties and their children, it will also need to be supported in a number of other ways to ensure success:

- **Integrated response** – The decision to mandate a respondent to PIP must be made with consideration of the opinions of other service providers and their recommendations relating to the respondent. Throughout the decision making process, consideration should also be given to the views and wishes of the victim.
- **Improved accessibility to tailored intervention programs** – Both the Taskforce and the National Plan discuss the need for greater respondent accessibility to PIPs and an increase in the number of places made available each year.⁴⁸ The Taskforce also discusses the need for initiatives to be tailored to different levels of readiness and based on risk-need-responsivity principles and increased availability of culturally appropriate initiatives.⁴⁹ Improved tailored initiatives should also extend to

end to domestic and family violence in Queensland, pg. 234

⁴⁸ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 235

⁴⁹ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 235

the programs offered to sentenced offenders for domestic and family violence or sexual violence related offences.

- **Strengthened information sharing provisions** – While the provisions relating to information sharing are discussed at length in questions 11-13 of this submission, strengthened and improved information sharing between service providers, courts, government departments, police, aggrieved parties and respondents is an important factor in the success of the integrated response to domestic and family violence. The introduction of enabling legislation to allow information sharing between agencies to support integrated responses is also recommended by the Taskforce (Recommendation 78).⁵⁰

Support for the aggrieved and their children

While the provision of PIPs to respondents relating to domestic violence is a mechanism for establishing a safer environment for the aggrieved and their children, practice and procedures should also equally provided the aggrieved parties with the required support and assistance following a violent event. While there is no way victim support should become a mandated requirement, we do advocate for an increased focus by service providers to ensure that victims are provided with appropriate support following a violent event, throughout and following the court process and in support of their involvement in respondents PIP process.

In the context of respondent PIPs the Domestic and Family Violence taskforce argued that to operate with an appropriate level of accountability within PIPs, there needs to be contact, supported by an appropriately skilled worker or victim advocate, with the victim.⁵¹ Facilitating this process is also seen to be an important safety mechanism for the victim, so that they can be made aware of incidents, escalation of violence or increased risk of further violent behaviour against them.⁵²

⁵⁰ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 233

⁵¹ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 234

⁵² Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 234

10. What role should police issued notices play in the legal response to domestic and family violence?

The QFCC recommends:

- Extension of provisions contained under Part 4, Division 2, s105 of the *Domestic and Family Violence Act 2012* to include dependent children.

Subsequent recommendations (practice context):

- Establishment of consistent policing responses to domestic and family violence and regular training to support in these practices.
- Provision of training to police officers in relation to the information contained within the police protection notices and the requirements/needs of the court.

QFCC position

The QFCC recommends extension of the existing provisions under *Domestic and Family Violence Act 2012* (the Act), Part 4, Division 2, s105 to allow the police officer to include the names of all dependent (or co-dependent) children residing with the aggrieved, in the Police Protection Notice.

The Queensland Police Service consider additional training and support mechanisms for police officers to establish a consistent and effective response to issuing police protection notices and ensuring they are effective tools for ongoing court processes as required.

Supporting QFCCs position

Aggrieved parties and their children

Police play a key role in responding to domestic and family violence⁵³ and making initial decisions relating to the protection and safety of the aggrieved and their children, even if those decisions are contrary to their wishes, to provide for their protection. Women frequently don't advocate for themselves and their children in relation to domestic and family violence and often do not progress matters to formally request a DVO. While the reasons for this are varied, research suggests that DVOs are not progressed out of fear for their (the aggrieved) own and their children's personal safety, social isolation, financial reliance, cultural and religious beliefs, legal issues, promises from abusive partners and from pressure of families and friends.

Currently, a Police Protection Notice only serves to protect one aggrieved person and contains mandatory provisions which require the respondent to be of good behaviour toward the aggrieved.⁵⁴ Though prevalence data relating to domestic and family violence, particularly in relation to a child's exposure to domestic violence is minimal, there have been indications in earlier research that a child may be directly targeted by the perpetrator of domestic violence.⁵⁵ The QFCC strongly recommends the amendment of Part 4, Division 2, s105(1)(d) from 'stating the name of the aggrieved' to 'stating the name of the aggrieved and the dependent children residing in the home'. By actioning this amendment the initial protection and cooling off provisions afforded the aggrieved will also be extended to address the safety and wellbeing needs of all children within the home.

⁵³ Australian Law Reform Commission, (2010), *Family violence – A National Legal Response: Police and Family Violence*, p367

⁵⁴ Department of Communities, Child Safety and Disability Services, (2015), *Terms of Reference, Review of the Domestic and Family Violence Protection Act 2012*, p10

⁵⁵ Domestic Violence Prevention Centre, n.d., *Impact of Domestic Violence on Children*.

General considerations

Reviews into police issued orders within other Australian jurisdictions have found that the ability of police to issue a protection notice is well received by victims and service providers and within the Western Australia (WA) review, submissions confirmed that police orders were thought to increase victim safety.⁵⁶ The WA review also found that support for the continuation of police protection notices was noted across all urban, rural and remote areas.⁵⁷

Information about family violence incidents that police attend is only as good as the information entered by operational police into their recording systems.⁵⁸ In order for the Police Protection Notice to better support and provide information to other service providers and record evidence to assist the court process, specialised domestic and family violence training relating to the specific needs of the court for all police officers may be beneficial. Additionally the appointment of the Deputy Commissioner (Regional Operations) within the Queensland Police Service, as suggested by the Special Taskforce into Domestic and Family Violence in Queensland (Recommendation 137), may assist district staff in ensuring policing and application of police protection notices is consistent, and suitably addresses the courts requirements, across the state.

⁵⁶ Australian Law Reform Commission, (2010), *Family violence – A National Legal Response: Police and Family Violence*, p369

⁵⁷ Australian Law Reform Commission, (2010), *Family violence – A National Legal Response: Police and Family Violence*, p369

⁵⁸ Australian Government, Australian Institute of Criminology, (2008), *Trends and Issues in crime and criminal justice*, No.367

11. What types of information do you think need to be shared? For what purpose? Between which entities?

12. When should information about a person be shared without their consent?

13. What protections and safeguards do you think should be in place about the sharing of information?

The QFCC recommends:

- Decision making processes relating to information sharing considers the safety and wellbeing of children and the aggrieved as the paramount consideration.
- The establishment of a document similar to the New South Wales (NSW) Government, *Domestic Violence Information Sharing Protocol* to provide clarity and consistent process in relation to information sharing.

Supporting QFCC position

As discussed within the response to question 8, the QFCC believes that an integrated response to domestic and family violence is a critical part of the overall response to domestic and family violence prevention in our community. There are a number of considerations that need to be made to effectively support and improve collaboration and to establish an efficient and effective integrated response to domestic and family violence.

Information sharing

The integrated approach requires government and non-government service providers to approach domestic and family violence prevention in a collaborative manner and improve the provision of services as well as the sharing of information in a way that balances the safety needs of domestic violence victims with an individual's right to privacy.⁵⁹

Given the multifaceted nature of domestic and family violence, there are a significant number of service providers which may be included in, or require information relating to a domestic and family violence event, a respondent or even an aggrieved person and their children. These services can include: police, justice, health, welfare, education, child protection and victim support services. The information provided and shared between these service providers is primarily used to increase the safety, welfare and wellbeing of aggrieved parties and children, refer aggrieved parties to appropriate services, identify and manage domestic violence events, hold respondents accountable and prevent further domestic violence related death, injury, illness and disability.⁶⁰

Sharing information without consent

Legislative provisions contained within the *Domestic and Family Violence Act 2012* should provide support to allow for government and non-government agencies to share information with integrated responses and provide protection for the sharing of information without consent⁶¹ (when required to protect the safety of the aggrieved or their family). However, the existing legislation guiding information sharing without consent is complex.⁶² Each sector or agency that may intersect with domestic and family violence for example: child

⁵⁹ New South Wales Government, *Domestic Violence Information Sharing Protocol*, http://www.domesticviolence.nsw.gov.au/_data/assets/file/0019/301177/DV-info-Sharing-Protocol.pdf, Accessed 24/02/2016

⁶⁰ New South Wales Government, *Domestic Violence Information Sharing Protocol*, http://www.domesticviolence.nsw.gov.au/_data/assets/file/0019/301177/DV-info-Sharing-Protocol.pdf, Accessed 24/02/2016

⁶¹ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 231

⁶² Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 231

protection, Justice, professional associations, government and non-government agencies all of which are required to act within the obligations and restrictions of their applicable legislative instrument.

In the context of the child protection sector, to which the QFCC has specific mandated functions for, the recent Child Protection Commission of Inquiry (Carmody Inquiry) recommended that to support the provision of information between service providers at an earlier stage, where a threshold of risk met for a child, that professionals from particular prescribed entities share information with support services *without* consent⁶³. This immediate sharing of information is driven by the risk threshold and safety needs of the child and isn't meant as a default replacement for the responsibility of the tertiary child protection system first seeking consent of all parties. The QFCC suggests that this model may be able to be adapted and applied to the domestic and family violence context.

Protection and safeguards

While all information sharing should be undertaken in the appropriate context and direction of the guiding legislative instrument, the QFCC also recommends that all decision making relating to information sharing always consider the safety and wellbeing of the child and aggrieved party as the paramount consideration.

The QFCC also recommends the establishment of a document similar to the New South Wales (NSW) Government, *Domestic Violence Information Sharing Protocol* be created, including broad consultation with stakeholders, and circulated throughout Queensland. The NSW protocol brings together and outlines all information sharing protocols under intersecting legislations and clearly establishes protocols, principles and objectives for information sharing between service providers. Additionally, the protocol document also addresses victim referral and support which has also been raised as a recommendation under the response to question 8 of this submission.

⁶³ Queensland Government, Special Taskforce on Domestic and Family Violence, (2015), *Not now, not ever, Putting an end to domestic and family violence in Queensland*, pg. 231