

Queensland Family and Child Commission Submission

To: Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee

Date: 5 September 2016

Topic: Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to have the opportunity to provide the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) with information and advice relating to the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 (the Bill).

The QFCC has provided direct feedback to the Department of Communities, Child Safety and Disability Services, throughout the development of the Bill.

This submission aims to provide the Committee with a short summary of our support of the objectives of the Bill, with recommendations as to how it might be strengthened.

Queensland Family and Child Commission

PO Box 15217

Brisbane City East QLD 4002

Web: <http://www.qfcc.qld.gov.au/>

[Redacted]

Submission contact:

Ben Revi, Senior Advisor

[Redacted]

Domestic Violence Orders, Intervention Orders and Perpetrator Intervention Programs

QFCC supports:

- amendments to s92(2)(d) of the *Domestic and Family Violence Protection Act 2012* to ensure “the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount”
- removing the word “voluntary” from intervention orders, to emphasise that, once agreed, it is mandatory for a respondent to comply with the order
- stipulating the court should consider any failure to comply with an intervention order when deciding about Domestic Violence Orders.

QFCC recommends:

- provisions relating to intervention orders to be strengthened to better support the aggrieved
- mandated attendance at perpetrator intervention programs
- additional timeframes be made available for Aboriginal and Torres Strait Islander remote communities

QFCC’s position

The QFCC strongly supports provisions in the Bill which explicitly place paramount importance on the safety, wellbeing and protection of people, including children. The QFCC also supports removing the word ‘voluntary’ from intervention orders, to emphasise that it is mandatory for respondents to comply with an intervention order once agreed.

To strengthen this principle, the QFCC recommends changes to the process by which intervention orders are decided. At present, a court can make an intervention order if the respondent is present, and agrees to its terms. This process, and the result, may impact adversely on aggrieved parties.

The QFCC recommends the inclusion of mandated attendance at perpetrator intervention programs (PIP) in the *Domestic and Family Violence Protection Act 2012* (the Act). This would require a respondent to attend a PIP where:

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

The QFCC recommends consideration be given to including provisions to allow individuals living in remote areas, including Aboriginal and Torres Strait Islander communities, lengthier timeframes to apply and respond to applications.

Supporting QFCC’s position

Intervention orders are made by the court when the respondent is present. This may require the aggrieved party and respondent to be in court at the same time, potentially causing the aggrieved to feel threatened. This type of environment may influence the aggrieved party to agree to the terms of an intervention order.

Mandating attendance at perpetrator intervention programmes (PIPs) would further strengthen the objectives of the intervention order. PIP encompasses a range of community and formal (correctional) program-based responses, focussed on addressing the underlying causes of offending behaviours and their predisposed attitudes and beliefs about violence.

Research has demonstrated that a singular focus on punishing perpetrators will not bring about behaviour change. This is why PIPs form a substantial part of the Council of Australian Governments' *National plan to reduce violence against women and their children* (the National Plan), including mandated attendance.¹ 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"².

In New Zealand, s51D of the *Domestic Violence Act 1995* holds that the court must direct a respondent to undertake an assessment and attend a 'non-violence programme', unless there are no such programs available, or the court decides there is a good reason for not making that direction.³

The QFCC believes including mandatory attendance at a court ordered PIP, similar to that of New Zealand, would strengthen Queensland's approach to domestic and family violence matters. This would ensure the respondent is first given the opportunity to attend programs through intervention orders and amend their behaviours, the courts would also have the power to mandate repeat offenders to seek assistance and help where appropriate.

Family law issues, children and same sex parents

QFCC supports:

- the systematic inclusion of the views and opinions of children, where developmentally and age appropriate

QFCC recommends:

- the establishment of consistent recognition of same sex parents within State legislative instruments relating to domestic and family violence matters.

QFCC's position

The QFCC is pleased the Bill retains opportunity for the views and opinions of children to be considered while deciding domestic and family violence matters, under s148 and s149 of the Act. This is in keeping with the explicit principle that the safety and wellbeing of people, including children, is paramount.

¹ Council of Australian Governments, 2011, *National plan to reduce violence against women and their children 2010-2022*, <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>, accessed 25 August 2016.

² Queensland Government, Special Taskforce on Domestic and Family Violence, 2015, *Not now, not ever: Putting an end to domestic and family violence in Queensland*, p. 234.

³ *Domestic Violence Act 1995* (New Zealand), section 51D.

To ensure these legislative provisions can be given full effect, the QFCC recommends system-wide consideration of the views and opinions of children when deciding domestic and family violence matters. This could be improved by giving child-friendly support to children and young people to help them make their opinions heard during proceedings.

The QFCC also recommends explicit recognition of same sex parents in legislation around domestic and family violence in Queensland. This allows for the protection of aggrieved parties and their children are protected.

Supporting QFCC's position

The QFCC has previously advocated, when considering family law issues in the context of domestic and family violence, courts empower children impacted by these issues to be heard and voice their opinions while avoiding any decision-making burden placed on the child. Furthermore, children should be enabled to seek assistance and advice from a support person or legal advocate to represent their interests.

It is important to consider the impact of domestic and family violence protection orders on a child in the context of their ongoing care and protection needs. This is supported by Article 12 of the United Nations Convention on the Rights of the Child, which declares, "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".⁴

On the issue of same sex parents, Commonwealth law does not currently recognise same sex parenting when making family law orders for non-biological parents, which is inconsistent with the broader definition of a parent under Queensland law. Under s68R of the *Family Law Act 1975* (Cth), state courts have the power to address such an inconsistency;⁵ however, in practice, this power may not be consistently applied in every case.

For example, if an aggrieved party applied to the Commonwealth Family Law Court in relation to a Queensland Domestic Violence Order, but that person was a non-biological parent in a same sex relationship, their share care arrangements would not be recognised. There is some concern that the inconsistent application of family law and domestic and family violence arrangements may lead to a failure to properly enforce Domestic Violence Orders.⁶ The Bill does not currently include measures to address this inconsistency.

⁴ UNICEF, 1996, *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 August 2016.

⁵ Taylor, A., Ibrahim, N., Wakefield, S., Finn, K., 2015, "Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement", *Landscapes*, issue 16, p.7.

⁶ Taylor, A., Ibrahim, N., Wakefield, S., Finn, K., 2015, "Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement", *Landscapes*, issue 16, p.7.

Cross applications

QFCC recommends:

Removing the ability for cross-orders by consent. Where there are conflicting allegations of violence, the magistrate must decide who is the respondent and who is the aggrieved.

QFCC's position

The QFCC has previously advocated for cross-orders by consent to no longer be used in domestic and family violence matters in Queensland. Cross-orders allow two parties to file applications against each other, a process that can be exploited by respondents to domestic and family violence complaints.

The QFCC recommends, in circumstances where both parties make applications, a magistrate take the time to determine who is the aggrieved and who is the respondent in each case. QFCC has also previously recommended that while the magistrate considers the merits of each party where there is no clear aggrieved or respondent, it may be useful to allow the court to make temporary protection orders. This could be achieved by amending s45(1) of the *Domestic and Family Violence Protection Act 2012*.

Support for QFCC's position

Cross applications, where the respondent to one application can apply to the court for an order against the aggrieved, may provide an opportunity to a respondent to passively continue abusive behaviours by manipulating the court system.⁷

The number of cross applications have been 'steadily increasing in recent years', both in absolute number and in proportion to the total number of Domestic and Family Violence Orders (in the specific context of heterosexual spousal relationships).⁸

Aggrieved parties and support workers have reported that cross-applications can trivialise the original aggrieved party's claims of violence and abuse, and can be used as a tactic with the goal of having both parties withdraw their applications. They place both parties at risk of interacting with the criminal justice system, and are difficult for police to enforce, given competing protection conditions.⁹

⁷ Queensland Government, Special Taskforce on Domestic and Family Violence, 2015, *Not now, not ever, Putting an end to domestic and family violence in Queensland*, p. 268.

⁸ Douglas, H., Fitzgerald, R., 2013, "Legal processes and gendered violence: Cross-applications for Domestic Violence Protection Orders", *University of New South Wales Law Journal*, no. 56.

⁹ *Ibid.*

Duration of Domestic Violence Orders

QFCC supports:

- amendment to s97 to extend the duration of Domestic Violence Orders from two to five years, while allowing the court to determine a duration longer than five years if the court considers it necessary to protect the aggrieved from domestic violence
- restatement of the principle that the safety and wellbeing of people, including children, is paramount, allowing the extension of domestic violence beyond five years where necessary or desirable.

QFCC's position

The QFCC has previously advocated for the court to be allowed to impose Domestic Violence Orders of significant length where circumstances require ongoing protection, and that Queensland develop consistent protocols for the duration of Domestic Violence Orders where children are listed as parties to proceedings.

The QFCC therefore strongly supports the objective of the current Bill to extend the duration of Domestic Violence Orders to five years. We are also pleased to acknowledge the Bill gives the court discretion to order a protection order continue "for any period the court considers necessary or desirable to protect the aggrieved".

Support for QFCC's position

Individuals experience stress and trauma when they are required to continually apply for extensions of domestic violence orders to maintain their ongoing protection. This includes evidence of long-term stalking, harassment and physical abuse in some cases. By expanding the duration of domestic violence orders to five years and beyond, the Bill will provide added protection for these aggrieved parties, and reduce the impact ongoing court requirements might have on their safety and wellbeing.

Open court hearings

QFCC recommends:

Domestic and family violence proceedings to be open, except in specific circumstances.

QFCC's position

The current Bill does not make amendments to the presumption of closed court proceedings for domestic and family violence matters.

The QFCC has previously advocated that domestic and family violence proceedings be held in open court with the following exceptions:

- 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
- where the judge determines extenuating circumstances exist.

In determining whether to close proceedings, the court may also consider whether an open hearing would give an opportunity to the respondent to shame the aggrieved.

Supporting QFCC's position

Currently, s158 of the *Domestic and Family Violence Protection Act 2012* holds that 'a court hearing an application under this Act is not to be open to the public', except where the court is openly hearing another proceeding concerning the same events as the domestic and family violence matter, or where the aggrieved and respondent are well-known to the public and a closed court may result in an inaccurate representation of the proceedings.

This presumption of closed court proceedings may be considered inconsistent with the principle of open justice. The conduct of proceedings in public is an essential quality of an Australian court of justice.¹⁰ The QFCC believes the default position should be that proceedings are heard in open court, with the exception of predetermined circumstances..

This view is also held by the Australian Law Reform Commission, and is in keeping with other jurisdictions across Australia. Generally, there is a presumption that domestic and family violence matters will be held in open court, with provisions for closed proceedings in certain circumstances.¹¹ These provisions include:

- in NSW, where a child is seeking protection or is a witness
- in Victoria, if the court considers it necessary to prevent a family member or witness from undue distress¹²
- in Western Australia, if the applicant requests a hearing in the absence of the respondent
- in the ACT, if the court considers it in the interests of justice
- in the Northern Territory, if a child is seeking protection or a vulnerable witness gives evidence.¹³

Furthermore, consultation on the *Not Now, Not Ever* report revealed stakeholders are seeking ways to better hold perpetrators accountable for their conduct.¹⁴ Public hearings, where appropriate, would help to give effect to that recommendation.

¹⁰ 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 25 August 2016.

¹¹ Australian Law Reform Commission, 2010, *Family Violence – A National Legal Response*, https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf, accessed 1 September 2016, p. 857-858.

¹² The National Council to Reduce Violence against Women and their Children, 2009, *Domestic violence laws in Australia*, https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf, accessed 1 September 2016, p. 79.

¹³ Australian Law Reform Commission, 2010, p. 857-858.

¹⁴ Queensland Government, Special Taskforce on Domestic and Family Violence, 2015, *Not now, not ever, Putting an end to domestic and family violence in Queensland*, p. 13.

Information sharing

QFCC supports:

Amending s169B of the *Domestic and Family Violence Protection Act 2012* to allow information sharing without consent, where a person's safety and protection requires information to be shared.

The QFCC acknowledges the amendments contained in the Bill which support government and non-government agencies sharing information without the consent of the people involved, where required to ensure the safety and wellbeing of the aggrieved party and any children.