

# **DOMESTIC VIOLENCE LEGISLATION AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **PART 1—PRELIMINARY**

#### **GENERAL OUTLINE**

#### **OBJECTIVES OF THE LEGISLATION**

The proposed legislation will amend the *Domestic Violence (Family Protection) Act 1989* by extending its coverage to include people who are abused within intimate personal relationships, by their relatives and within informal care relationships.

#### **REASONS FOR THE BILL**

The *Domestic Violence (Family Protection) Act 1989* aims to provide protection against domestic violence and to prevent violence occurring in spousal or spouse-like relationships. The Act provides a mechanism where a person, someone authorised on behalf of the person or a police officer, may apply to the court to obtain a domestic violence order. A domestic violence order is a civil order, which includes conditions that restrain, restrict and prohibit the behaviour of the perpetrator of domestic violence (the respondent) to a domestic violence order. Children, relatives and associates of the aggrieved named in a domestic violence order can also be protected by being listed on an order. Where a respondent to a domestic violence order breaches the order, the breach constitutes a criminal offence for which the respondent may be punished by fine and/or imprisonment.

Over the past five years the Department of Families in conjunction with the Queensland Domestic Violence Council (QDVC), has conducted a review of the *Domestic Violence (Family Protection) Act 1989*. The review identified a need to provide a civil legislative response to abuse between

family members, abuse of people by their informal carers and abuse in some dating relationships.

The aim of the Domestic Violence Legislation Amendment Bill 2001 is to ensure the safety and protection of people who have been abused in:

- spousal relationships;
- intimate personal relationships;
- family relationships; and
- informal care relationships.

The Bill aims to provide a consistent approach to domestic and family violence in personal relationships to ensure an equitable and efficient legislative response to all people affected by domestic and family violence.

Specifically, the amendments seek to: -

- change the name of the Act to the '*Domestic and Family Violence Protection Act 1989*';
- extend the Act to people who are abused in domestic relationships;
- allow children under 18 to bring and be respondents to applications for domestic violence orders in intimate personal relationships and informal care relationships;
- include special provisions for the protection and support of children under 18;
- strengthen provisions about temporary protection orders;
- transfer most of the sections about weapons to the *Weapons Act 1990*;
- clarify some provisions relating to weapons;
- extend the number of people who can apply for a domestic violence order on behalf of an aggrieved person;
- extend the police duty to investigate suspected incidents of domestic violence; and
- transfer the police duty to seize weapons when a domestic violence order is made to the *Police Powers and Responsibilities Act 2000*.

Many individuals and organisations contributed to the review and the amendments. These include domestic violence services, representatives from the ageing, disability and children's sectors, community legal centers, including indigenous services, the magistracy, the Children's Court, the Supreme Court, the Queensland Domestic Violence Council, the Queensland Law Society, the Queensland Police Service, Department of Justice and the Attorney-General, Disability Services Queensland and Legal Aid Queensland.

### **ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION**

The Government acknowledges that implementing the new provisions will have resource implications for both government and community organisations. Significant work has been done collaboratively across key government departments to highlight budget requirements for full implementation of the new provisions.

It is expected that over the first two to three years of implementation, there will be a gradual increase of people in non-spousal domestic relationships accessing the new legislative provisions. Increased funding will be provided at a level that corresponds with the gradual and progressive utilisation of the new provisions over this time.

### **RESULTS OF CONSULTATION**

Most government agencies indicated their support for the proposed amendments. There was government and community support for developing a legislative framework for providing protection to people abused in non-spousal, domestic relationships.

In December 1999, prior to the release of the Exposure Draft Bill, the Minister for Families released the paper: *Legal Protection against Family Violence, Abuse by Informal Carers and Abuse Within Dating Relationships* for community consultation. The paper was distributed to over 1000 organisations and individuals. In addition, 35 community consultation forums were held across the State in 30 locations. Thirty-six written submissions were also received. A round-table conference involving key stakeholders was convened to advise on a number of legal issues raised in the consultation process.

In April 2001, the Exposure Draft of the Bill was distributed to over 800 key stakeholders for written comment. These stakeholders included government agencies, the judiciary, community legal centres, domestic

violence agencies, and to organisations representing and providing services to young people, the elderly, people with disabilities, people from non-English speaking backgrounds and Aboriginal and Torres Strait Islander people.

An Information paper, outlining key proposed amendments was also circulated. As part of the consultation process, a second round table conference was held with 17 representatives from diverse sectors to discuss legal aspects of the Bill. In addition, specific discussions also occurred around children's issues, indigenous issues and issues for people with disabilities.

Forty written submissions were received. Almost half of these submissions were from domestic violence agencies. The remaining were from government agencies, community legal centres, the judiciary, organisations representing and providing services to young people, people with disabilities, the elderly, and Aboriginal and Torres Strait Islander people. Two submissions were received from individuals.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

The proposed amendment to remove Section 28 (Weapons licences for work purposes) may raise concerns about impinging on the rights and liberties of individuals.

Section 28 enabled a court to make an order allowing a respondent to keep a weapons licence if they could demonstrate that they required a weapon for work purposes and had not used or threatened to use a weapon when committing an act of domestic violence.

This section was inconsistent with the *Weapons Act 1990*. Under amendments made to the *Weapons Act 1990* in 1996, a person is not a fit and proper person to hold a weapons licence if a domestic violence order, other than a temporary protection order, has been made against the person within the preceding 5 years. The amendments reflected a resolution of the Australasian Police Ministers Council (following the Port Arthur massacre) dealing with national uniform gun controls.

The unreported District Court appeal decision of Peacock v Crowley (1998) confirmed the inconsistency. It confirmed an earlier Magistrates Court decision to refuse an application for a weapons licence by a respondent spouse following the expiration of a domestic violence order. The Court considered that, even if the respondent spouse had been allowed

to possess a weapon and hold a licence under section 28, or the domestic violence order had been revoked or set aside on appeal, the *Weapons Act 1990* would have prevented an application for a licence from being successful.

The District Court criticised the provisions of the *Domestic Violence (Family Protection) Act 1989*. However, it appears that the Court was not aware that amendments to the *Weapons Act 1990* had created the anomaly and that those amendments were in accordance with national firearms policy.

To avoid uncertainty and inconsistency, it was decided to clarify the situation by removing section 28. It is considered that this amendment is necessary to ensure consistency between national firearms policy and State legislation. It is also consistent with previous Cabinet decisions for the Department of Families and the Queensland Police Service to resolve the inconsistencies between the two Acts. Further, the amendment is considered to be an important policy objective in the public interest.

## **NOTES ON CLAUSES**

Many of the proposed amendments are similar to or the same as the current provisions. Changes have been made to reflect the new terminology that is required as a result of the broadening of the Act. Minor amendments have been made to reflect current drafting practice. New provisions have been inserted which explain the broadening of the legislation to cover non-spousal domestic violence. Other changes reflect policy decisions such as the relocation of the weapons provisions to the *Weapons Act 1990* and the *Police Powers and Responsibilities Act 2000*.

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act will commence on the day fixed by proclamation.

## **PART 2 – AMENDMENT OF DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989**

*Clause 3* provides that this part and schedule 1 amend the *Domestic Violence (Family Protection) Act 1989*.

*Clause 4* amends the long title to reflect the broadening of the Act to provide protection against violence committed or threatened to a person who has, or previously had, a spousal, intimate personal, family or informal care relationship.

*Clause 5* amends section 1 (Short Title) to the *Domestic and Family Violence Protection Act* to reflect the broader coverage.

*Clause 6* replaces section 3 .

A new section 3 is inserted, which states that the dictionary in schedule defines particular words used in the Act.

The clause also inserts a new section 3A which outlines the main purpose of the Act, which is to provide for the safety and protection of persons who are abused or have been abused in domestic relationships by preventing further domestic violence occurring and allowing a court to make domestic violence orders. Domestic relationships is a new concept and the term is further categorised into:

- (a) spousal relationships;
- (b) an intimate personal relationship;
- (c) a family relationship; and
- (d) an informal care relationship.

The Bill provides for each of these relationships to be defined in the Act.

Domestic violence orders are not available for domestic violence in family relationships where it involves a child.

*Clause 7* omits section 8 (Meaning of ‘weapons licence’) because the relevant provisions have been relocated to the *Weapons Act 1990*.

*Clause 8* replaces the heading of Part 2 of the Act (Understanding Domestic Violence (Family Protection) under this Act) and inserts a new heading for Part 2 entitled an ‘Explanation of how domestic violence is dealt with under this Act’.

*Clause 9* replaces section 10 (Purpose of this part) by adding that the purpose of this part is to explain how domestic violence is dealt with under the Act.

*Clause 9* also replaces section 11 (What is domestic violence). The definition of domestic violence remains the same except that it is not limited to spousal violence.

The existing examples have been relocated to reflect which particular act of domestic violence they demonstrate. For example, wilfully injuring a de-facto's pet is listed as an example under 'wilful damage to the other person's property'.

A further example of domestic violence is included to reflect the expansion of the legislation. Financial abuse that involves wilful injury, intimidation or harassment or damage to property or threats to do any of these acts will be covered under the Act.

*Clause 9* also inserts new section 11A (Which relationships are domestic relationships for this Act) which defines the new concept 'domestic relationship'. A 'domestic relationship' is either a spousal relationship, an intimate personal relationship, a family relationship, or an informal care relationship.

It also states that the relationship must exist between two persons and that either one aggrieved or an authorised person for one aggrieved may make an application for a protection order naming one or more than one respondent.

*Clause 10* amends section 12 (Who is a spouse?) and inserts a new heading 'What is a spousal relationship and who is a spouse'. The clause inserts a new subsection to define a spousal relationship as a relationship between spouses. The definition of spouse remains the same.

*Clause 11* inserts new sections 12A–12F as follows:

*Section 12A* (What is an intimate personal relationship) introduces a new concept of 'an intimate personal relationship'. The clause covers two types of relationships:

- (1) Relationships where the persons are or have been engaged to be married to one another. This includes a person who is 'promised' or betrothed under a cultural or religious tradition, such as in non-English speaking background communities or someone who may be 'betrothed' through parental agreement in traditional Aboriginal culture.

- (2) Persons who are or have dated each other and their lives have become enmeshed so that the actions of one of them affect or affected the actions or life of the other. The relationship does not have to be of a sexual nature and same-sex relationships are included.

An example of the latter category would be a girlfriend and boyfriend who although not engaged and not living together have been dating for 10 months. The couple have joint bank accounts and are saving money to go overseas together for three months.

The clause is not intended to cover those people who have merely dated on a number of occasions.

The clause lists several indicia that may be indicative of an intimate personal relationship. One or more of these factors may assist the courts in determining whether the relationship can be an intimate personal relationship. The court may consider the circumstances of the relationship (including trust and commitment), the length of time for which the relationship has existed or did exist, the frequency of contact, and the level of intimacy between the persons.

*Clause 12B* (Meaning of ‘family relationship’ and ‘relative’) defines a family relationship and relative. A family relationship is defined as the relationship between relatives. A ‘relative’ of a person is defined as:

- someone who would ordinarily be considered to be or to have been connected to the person by blood or marriage;
- Someone who is reasonable to regard as a relative especially considering that for some people the concept of relative may be wider than is ordinarily understood.

Examples are set out as part of section 12B(2).

The relatives of a person living in a de facto relationship are to be determined by treating the person as if they were married to their de facto partner. This means that the partner’s parents would be relatives of the person.

*Section 12C* (What is an informal care relationship) defines an ‘informal care relationship’. The clause defines an ‘informal care relationship’ as a relationship in which a person is dependent on someone else for help with activities of daily living. Activities of daily living may include dressing, preparing meals or shopping. The help must be needed because of a disability, illness or impairment relating to the person.

The help must also be provided in an informal way. This means that care provided under an arrangement, for example by Meals on Wheels or by Blue Care is not covered by the Bill.

This provision does not apply to a parent-child relationship. A care relationship that involves the payment of a fee will also be excluded as will care provided in an institution or a nursing home. However, relationships where the carer receives a pension or allowance from the Commonwealth Government for providing the care are covered by the definition.

In addition, if domestic violence occurs or occurred and it relates to the arrangement to pay a fee then that situation would be covered, regardless of whether a fee is paid. For example, if the carer demands the proceeds of the person's pension or superannuation cheque and threatens to injure the person unless the proceeds are paid, this would be an informal care relationship.

Examples are set out as part of the section.

*Section 12D* (Children as applicants and respondents generally) applies to children who are the aggrieveds or respondents to applications for protection orders.

It stipulates however that a child can be named in an order either as an aggrieved or respondent only when there is a spousal relationship, intimate personal relationship or in an informal care relationship existing between the child and the other party named in the order. It also states (Subsection 3) that this does not limit the interstate orders that may be registered under part 3, division 3.

The clause also sets out the procedures for serving documents on children under 16 and children 16 or over . This could include copies of applications for protection orders, temporary protection orders and protection orders. As part of the consultation feedback, concern was expressed that young people should be able to obtain a protection order without loss of privacy and as a result, the following provisions have been included:

- If the child is under 16 years of age, all documents must be served on the child and a parent of the child. Service should not be effected at the child's school unless there is no other place where service may be reasonably effected.
- If the child is 16 years or more, there is no requirement for service of any documents on the parents unless the court orders otherwise to protect the child's interests. There is an additional

requirement that service of documents on the young person be done as discreetly as possible.

A policy decision was made to choose 16 years, because at this age a child is old enough to leave school, receive government benefits, and secure employment.

‘Other party’ means the respondent or any one of the respondents named in the domestic violence order or aggrieved named in the domestic violence order.

‘Parent’ has the meaning given in the *Child Protection Act 1999*, section 11.

*Section 12E* (Child who is party but is not represented) applies to children who are named in an application as either an aggrieved or respondent. The clause makes it clear that the court cannot proceed to hear and determine the matter without first being satisfied that the child has had reasonable opportunity to obtain legal representation and has decided not to be represented.

If the child is an aggrieved and has a police officer, lawyer or an authorised person representing them, then this section does not apply.

*Section 12F* (Who is an aggrieved and who is a respondent) defines an ‘aggrieved’ and a ‘respondent’. The terms replace the reference to ‘aggrieved spouse’ and ‘respondent spouse’ to reflect the broader coverage of the Act.

It also enables more than one person to be named as the respondent.

*Clause 12* amends section 14 (Who can apply for a protection order?) by extending the range of people who can apply for a domestic violence order on behalf of an aggrieved to include:

- a guardian or administrator appointed under the *Guardianship and Administration Act 2000*;
- the adult guardian if the aggrieved does not have capacity to make the application themselves; or
- a person who is acting as an attorney under an enduring power of attorney.

Under the current section, a person who is authorised in writing by an aggrieved can apply for a protection order. By the amendment the authorisation does not only need to be in writing, provided the court believes a person is authorised by the aggrieved to appear on the aggrieved’s behalf. There may be some situations, such as a physical

disability, where the aggrieved cannot provide written authorisation. An example of an authorisation that was not provided in writing is provided in the clause.

The clause also makes it clear that if a person is authorised to make an application on behalf of the aggrieved, the authorised person can also make other applications under the *Domestic Violence (Family Protection) Act 1989* such as bringing an application to vary or revoke a protection order.

*Clause 13* inserts a new section 14A (Court to explain order to aggrieved or respondent before the court). This clause applies to all aggrieveds and respondents who appear personally before the court. The clause outlines the court's duty to explain applications and orders.

The court must first satisfy themselves that the aggrieved and respondent understands:

- (a) the nature, purpose and legal implications for the application; and
- (b) the legal implications of the court making an order.

This clause should be read in conjunction with section 50 (Court to ensure respondents and aggrieveds understand domestic violence orders).

Non-compliance with the section does not make an order invalid.

*Clause 14* amends section 15 (Who can a domestic violence order protect?) and implements a change in terminology from 'aggrieved person' to 'named person' to avoid confusion. A named person is a relative or associate of an aggrieved and they can be protected by being included on the protection order. The term 'relative' is now defined in *clause 12B* (Meaning of 'family relationship' and 'relative'). The term 'associate' is the same as the current definition in section 15 of the Act.

Examples of associates are set out as part of the section.

*Clause 15* amends section 17 (What are the conditions of a domestic violence order) by omitting the reference to words 'the respondent spouse must not possess a weapon, unless the court otherwise orders'. This means that the standard conditions of an order are that:

- (a) the respondent must be of good behaviour and must not commit any acts of domestic violence or associated domestic violence; and
- (b) that the respondent must comply with any other conditions imposed by the court and stated in the order.

The reference to the inclusion of the provisions relating to weapons has been removed as that issue is now dealt with under the *Weapons Act 1990* as part of an alignment of provisions. The new Section 24 (see clause 19 of the Bill) enables a court to ask about a respondent's weapon and include information on the protection order about the application of the *Weapons Act 1990* or about weapons in the respondent's possession.

*Clause 16* (What can happen if a respondent does not comply with an order) omits sections 18 and 19. Section 18 defined 'weapon' which is now covered by the *Weapons Act 1990*. A new section 18 has been inserted which is the same as the current section 19 with updated terminology. If a respondent does not comply with a domestic violence order, including a registered interstate order, a police officer can charge the respondent with an offence. An aggrieved, named person or anyone else can complain to a police officer that the respondent is not complying with the order.

*Clause 17* amends section 20 (Power of court to make orders to protect spouse against domestic violence) by extending the heading to the 'Power of court to make orders to protect person with a domestic relationship'. The grounds for the court making an order against the respondent are the same as outlined in the current section 20.

*Clause 18* amends section 21 (Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc....) by deleting the reference to 'spouse'. The power of the court to make orders to protect relatives and associates of an aggrieved against domestic violence remains the same.

*Clause 19* replaces section 23 (Protection order must include standard conditions about weapons etc.), section 23A (Action by court if respondent spouse has access to weapons through employment) and section 24 (Arrangements for surrender of revoked or suspended licenses etc.).

The current sections 23A and 24 are proposed to be inserted as section 29A and 29B in the *Weapons Act 1990*. See clause 51 of the Bill.

The new section 23 is a re-write of the current section 23(6). Because of the complicated nature of section 23(6), the provision has been written in a more specific way rather than by using complicated cross references.

The new clause states that the *Weapons Act 1990* applies to some people for the duration of the domestic violence order despite anything to the contrary in the *Weapons Act 1990*.

By way of background, the *Weapons Act 1990* applies to individuals who use weapons for private purposes. The *Weapons Act 1990* however, does

not apply to people who are employed in specified occupations (e.g. police officers and members of the armed services) when exercising their duties of employment. This means that these employees do not need weapons licence to possess weapons at work.

The new section lists those specific occupations and it means that a respondent to a domestic violence order will not be able to possess a weapons licence for any purpose including work.

The clause also inserts a new section 24 (Matters relating to weapons). The new section requires a court to make inquiries about a respondent's weapons licence or weapon in the respondent's possession, and their relevance for employment purposes. In making inquiries about whether the respondent may access any weapon as part of their employment, the court may make inquiries about:

- the respondent's employer, including their name and address; and
- the employment arrangements relating to the weapon,

In making those inquiries, the court may ask any person about the relevant information, including the aggrieved if they are present.

Then after making its inquiries and if it is reasonable, the court may include in the order one or more of the following information:

- a statement that when an order is served on the person the *Weapons Act 1990* applies to the person;
- any weapons licence or weapon in the respondent's possession; and
- any weapon the respondent may access as part of the respondent's employment or because the *Weapons Act 1990* does not apply.

*Clause 20* amends section 26 (Special condition for thing that has been used as a weapon) by firstly changing terminology to reflect the broader coverage. The application of the section remains the same. That is, the section applies where the court is satisfied that the respondent:

- (a) has used, or threatened to use, a thing in committing an act of domestic violence against the aggrieved, or a named person; and
- (b) is likely to use the thing again or carry out the threat.

The clause also provides further examples of a 'thing' such as an antique firearm, crossbow or speargun and a cricket bat. If the respondent is prohibited from possessing the 'thing', then it is taken to be weapon and is

dealt with under the *Weapons Act 1990*. Most provisions relating to weapons have been transferred from the *Domestic Violence (Family Protection) Act 1989* to the *Weapons Act 1990*.

*Clause 21* omits section 27 (No weapons licence for duration of domestic violence order) and section 28 (Court may allow respondent spouse to possess weapons in limited circumstances).

The provisions in section 27 are dealt with in the *Weapons Act 1990*. This amendment ensures that weapons matters are dealt with under the *Weapons Act 1990*.

The effect of omitting section 28 is that a respondent to a domestic violence order will not be able to possess a weapons licence for any purpose including work.

The section was removed to avoid uncertainty and inconsistency with the *Weapons Act 1990* because of amendments made that Act in 1996. Sections 10(2), 10(6) and 18 of the *Weapons Act 1990* make references to a person who has a domestic violence order made against them.

*Clause 22* amends section 29 (Domestic violence orders include information about weapons) by providing that the court must specify as much information as possible about the weapons possessed by any respondent. The purpose of the section is to ensure that police officers have sufficient information available to obtain weapon(s). For this purpose, any information about a thing under section 26(2) needs also to be included in the order.

*Clause 23* inserts a new section 31 (Court may inform other entities about matters of concern). A court that makes a domestic violence order may inform the Adult Guardian in writing about the domestic violence if it considers that there is an adult with impaired capacity who is being abused. Any such referral is at the court's discretion.

*Clause 24* replaces section 34 (Start of domestic violence orders and their duration) with sections 34, 34A and 34B. The proposed section 34 is a restatement of current section 34 (1) and provides for when a domestic violence order takes effect.

The proposed section 34A is a restatement of current section 34(2), (3) and (4) and outlines the duration of a protection order.

The proposed section 34B is a restatement of current section 34(5) and also includes new provisions. These new provisions allow a court to order that a temporary protection order continue to apply to a respondent who is not present in court when a domestic violence order is made. Because the

temporary protection order continues to apply, the respondent can be found to have breached the order. The temporary protection order will end when the respondent has been served with a copy of the domestic violence order.

These new provisions were inserted to resolve the problems relating to service when the respondent was not present when a protection order was made. A respondent cannot currently be charged with breaching the protection order unless they are present in court, they have been served with a copy of the order or they have been advised by a police officer of the conditions of the order. This meant that some aggrieved were unprotected from the time the temporary protection order ended to the time the resulting protection order was served on the respondent.

*Clause 25* inserts a new section 39AA (Court may set aside a summons) that allows a person who has been summonsed as a witness in domestic violence proceedings to ask the court to cancel the summons. The grounds for cancelling the summons include want of relevance, privilege or oppressiveness. The court can also set aside the summons on its own initiative.

If the court does cancel the summons, it may also order that the costs of the person who was summonsed be paid.

This section was inserted as it appeared that summonses were being issued in domestic violence hearings where the real object of the summonses was not to elicit relevant evidence or documents but to harass the witness or the applicant for the order or to obtain information or documents for other proceedings.

*Clause 26* inserts a new section 39H (Court may make temporary protection order relating to respondent being released from custody on conditions under section 71) which clarifies a further situation when a court may make temporary protection order. (sections 39A to 39G all deal with the court's powers to make temporary protection orders).

The section covers the situation where:

- the respondent has been taken into custody because of domestic violence; and
- it is not practicable to bring the respondent before the court for the application for a protection; and
- that the circumstances do not require the police to make an application by the telephone, facsimile etc.

In this case, the police are required to complete an application for a protection order and the respondent is released from custody on certain conditions, including appearing at the next court date.

This new section allows a court to make a temporary protection order against the respondent where it seems that the application for an order will not be decided quickly or no more than 7 days after that person was released from custody.

*Clause 27* amends section 50 (Court to ensure certain spouses understand domestic violence orders) to reflect the broader coverage of the legislation. It allows notice to be given to a person regarding what happens to the person's weapon's licence when an order is made.

*Clause 28* amends section 54 (Applications by telephone, facsimile etc.) by replacing section 54(1). The amendments provide the circumstances when a police officer may apply under section 54 and cross-reference to other sections of the Act that allow or require this type of application.

*Clause 29* amends section 72 (Duty of police officers to apply for protection order in certain circumstances). The provision states the police officer's duties and corrects a cross-reference. It is the same as the current section 72 of the Act and is a minor technical amendment.

*Clause 30* omits section 74 (Police actions after protection order is made). In accordance with policy, this section has been transferred into section 372A of the *Police Powers and Responsibilities Act 2000*. See clause 41 of the Bill.

*Clause 31* omits section 75A (When a police officer to give receipt for weapons licence or weapon). The provision is dealt with in the *Weapons Act 1990* with the insertion of new section 29B. See clause 51 of the Bill.

*Clause 32* amends section 81 (Courts to be closed) to clarify that court proceedings may be open to the public or specific persons. It also clarifies that an aggrieved is allowed to have a support person who is an adult throughout the court proceedings.

*Clause 33* inserts a new section 81A (Child not to be witness or swear affidavit). This section prevents children being called as witnesses or remaining in court in domestic violence proceedings unless a court specifically allows this to occur. In addition, affidavits of children will not be admissible unless the court has made an order allowing the child to swear the affidavit. This section still allows a person, including a legal representative, to interview a prospective child witness and prepare an

Affidavit, however, the person must seek leave of the court before asking the child witness to swear the affidavit.

If the court orders that a child can be called as a witness, consideration must be given to whether the evidence should be given by way of video or other electronic means.

The section does not apply to children who are aggrieveds or respondents.

*Clause 34* amends section 87 (Approved forms) to reflect the additional clauses in section 34 (see *Clause 24*). This is a minor technical amendment.

*Clause 35* amends section 89 (Regulations) by changing the heading to 'Regulation-making power' and omitting the reference to 'items that are weapons for the purposes of the Act' as this is now dealt with under the *Weapons Act 1990*.

*Clause 36* inserts a new part 8, division 3 and schedule, 'Division 3 – Transitional provisions for Domestic Violence Legislation Amendment Act 2001'

A new section 97 (Definitions for div 3) is inserted and re-defines the words 'commencement', 'new Act' and 'old Act' for the purposes of the division.

A new section 98 (New Act to the extent it relates to intimate personal, family or informal care relationships does not apply to domestic violence etc. committed before the commencement) is inserted. This section makes it clear that people in intimate personal relationships, informal care relationships or family relationships will only be able to obtain a domestic violence order where domestic violence has occurred after the Bill has commenced.

People who are abused by their spouses will continue to be able to obtain a domestic violence order where the domestic violence occurred before the commencement of the Bill.

A new section 99 (Revocations and suspensions of weapons licence before commencement and retention of weapons for earning a livelihood) is inserted. The section makes it clear that if one of the following occurred before the commencement of the new *Domestic and Family Violence Protection Act 1989*, they continue to have effect after the commencement of the new *Domestic and Family Violence Protection Act 1989*:

- (1) where a respondent's weapons licence is revoked or suspended under section 23 of the old *Domestic Violence (Family Protection) Act 1989*;
- (2) where the *Weapons Act 1990* applied to a respondent under the old section 23(6); or
- (3) where an order was made under the old section 28(2), which allowed the respondent to keep a weapon for work purposes.

A new section 100 is inserted. This section is a transitional section to ensure continuity of the domestic violence orders and application for protection orders by ensuring that a reference to an aggrieved spouse, an aggrieved person or a respondent spouse are read as an aggrieved, a named person or a respondent. The clause also inserts a schedule ('Dictionary') which defines words and phrases for the purposes of the new *Domestic and Violence Protection Act 1989*.

The clause also inserts a schedule ('Dictionary') which defines words and phrases for the purposes of the new *Domestic and Family Violence Protection Act 1989*.

- The following definitions remain the same:
  - approved form, associate, associated domestic violence, authorised person, commissioner, court, damage, domestic violence, interstate order, justice, Magistrates Court, ouster condition, possession, premises, property, protection order, registered interstate order, small claims tribunal, temporary protection order, tenancy application, variation, watch-house manager, whereabouts.
- The following definitions have been included to reflect the broadening of the legislation:

**“adult guardian”** means the adult guardian appointed under the *Guardianship and Administration Act 2000*, section 199.

**“aggrieved”** see section 12F(1).

**“child”**, means an individual under 18 years.

**“child”**, of an aggrieved, means an individual under 18 who is—

- (a) a biological, adopted, step or foster child of the aggrieved; or
- (b) in the care or custody of the aggrieved.

**“child”**, of a respondent, means an individual under 18 who is—

- (a) a biological, adopted, step or foster child of the respondent; or
- (b) in the care or custody of the respondent.

**“Childrens Court”** means the Childrens Court under the *Childrens Court Act 1992*.

**“Childrens Court magistrate”** means a Childrens Court magistrate under the *Childrens Court Act 1992*.

**“clerk”**, of a court, means—

- (a) if the court is a Magistrates Court—the clerk of the court; or
- (b) if the court is the Childrens Court – the person who, under the *Childrens Court Act 1992*, holds the same position as the clerk of the Magistrates Court, or registrar of the District Court, at which the relevant matter is dealt with; or
- (c) if the court is the District Court—a registrar, within the meaning of the *District Court Act 1967*, of the court; or
- (d) if the court is the Supreme Court—a registrar of the Supreme Court.

**“domestic violence order”** see section 13(2)

**“family relationship”** see section 12B(1).

**“informal care relationship”** see section 12C.

**“intimate personal relationship”** see section 12A.

**“named person”** see section 15(3).

**“relative”** see section 12B(2) to (5).

**“respondent”** see section 12F(3).

**“spousal relationship”** see section 12(1).

**“spouse”** see section 12(2) to (4).

**“weapon”** means a weapon under the Weapons Act.

**“Weapons Act”** means the *Weapons Act 1990*.

**“weapons licence”** means a licence under the Weapons Act.

- The following definitions have been omitted due to relocation of provision to the *Police Powers and Responsibilities Act 2000* and the *Weapons Act 1990*:

effective individual within the employing entity, employment, licensed armourer, licensed dealer, otherwise surrender.

### **PART 3—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000**

*Clause 37* specifies that this part amends the *Police Powers and Responsibilities Act 2000*.

*Clause 38* amends section 28 (Prescribed circumstances for searching persons without warrant) by extending the section to ‘a thing that the person is prohibited from possessing under an interstate domestic violence order’.

*Clause 39* amends section 30 (Prescribed circumstances for searching a vehicle without warrant) by extending the section to ‘a thing that the person is prohibited from possessing under an interstate domestic violence order’.

*Clause 40* amends section 198 (Arrest without warrant) to reflect the new name of the *Domestic Violence (Family Protection) 1989 Act* after this Bill amends it.

*Clause 41* inserts a new section 372A (Police actions after domestic violence order is made). This essentially is the same as the old section 74 of the *Domestic Violence (Family Protection) Act 1989* which states what the police might do about a respondent’s weapons licence and weapons when a domestic violence order is made. The timeframe for seizure of weapons when the respondent is not at their place of residence has changed to reflect advice received from the Queensland Police Service.

*Clause 42* amends schedule 1 (Acts not affected by this Act) to reflect the new name of the Domestic Violence Act .

*Clause 43* amends schedule 4 (Dictionary) to redefine a ‘domestic violence order’ and an ‘interstate domestic violence order’.

**PART 4—AMENDMENT OF WEAPONS ACT 1990**

*Clause 44* inserts part 4, which amends the *Weapons Act 1990*.

*Clause 45* amends section 2 (Application of Act) by specifying that any operation of the section is subject to section 23(2) of the *Domestic and Family Violence Protection Act 1989*.

*Clause 46* amends section 5 (Definitions) and omits the definitions of ‘domestic violence order’, ‘interstate domestic violence order’, and ‘temporary protection order’ and replaces them with a new or amended definitions that reflect the name change from *Domestic Violence (Family Protection) Act 1989* to *Domestic and Family Violence Protection Act 1989*:

- **“domestic violence order”** means a domestic violence order under the *Domestic and Family Violence Protection Act 1989*, and includes an interstate domestic violence order.
- **“interstate domestic violence order”** means an interstate domestic violence order under the *Domestic and Family Violence Protection Act 1989*, whether or not the interstate order is registered under that Act.
- **“protection order”** means a protection order under the *Domestic and Family Violence Protection Act 1989*, and includes an interstate domestic violence order corresponding to a protection order.
- **“representative”** of a body for sections 27A and 28A, means the representative of a licensee that is a body, whether incorporated or unincorporated, who is endorsed –
  - (a) on the licensee’s licence as the licensee’s representative; or
  - (b) on a permit to acquire issued to the licensee as the licensee’s representative.
- **“respondent”** means a person named in a domestic violence order as the respondent.
- **“temporary protection order”** means a temporary protection order under the *Domestic and Family Violence Protection Act 1989*, and includes an interstate domestic violence order corresponding to a temporary protection order.

*Clause 47* inserts a new section 27A (Suspension of licence related matters after a temporary protection order is made). This section essentially remains the same as section 27 of the *Weapons Act 1990*. This section suspends the weapons licence of a person who is a respondent to a temporary protection order. This is a minor technical amendment.

*Clause 48* amends section 28 (Suspension of licence) by inserting a new heading 'Suspension of licence by giving suspension notice'.

*Clause 49* inserts a new section 28A (Revocation or suspension of licence and related matters after a protection order is made). The main effect of the section is that it revokes the weapons licence of a person who is a respondent to a final domestic violence order.

*Clause 50* amends section 29 (Revocation of licence) by inserting a new heading 'Revocation of licence by giving revocation notice'. This is a minor technical amendment.

*Clause 51* inserts new sections 29A (Action by court if respondent has access to weapons through employment) and 29B (Arrangements for surrender of suspended or revoked licences etc.). These new sections are the relocated sections 23A and 24 of the *Domestic Violence (Family Protection) Act 1989*.

Section 29A applies where a respondent's weapon's licence is revoked under a domestic violence order and the respondent has access to weapons as part of their employment.

In this case, the authorised officer (defined in section 153 of the *Weapons Act 1990*) must consider the following:

- (1) the circumstances of the employment;
- (2) the person's access to weapons;
- (3) the employment arrangements, including considering who the respondents employer or their partner (if in a partnership) is ('the effective individual'), and
- (4) whether to provide a copy of the domestic violence order to that effective individual.

The section also places restrictions on the effective individual relating to the disclosure of the order or information about the order.

Section 29B outlines the process for the suspension or revocation of licences after an order is made. If the respondent was present in court when the domestic violence order was made and has a weapons licence, the respondent must either:

- (a) immediately give that licence to a police officer, if they brought their licence to court; or
- (b) if they did not bring their licence to court, immediately arrange with the police officer to return the licence within one day after the day the court made the order.

If the respondent is not present in court, the respondent must as soon as practicable and no later than one day after they have been given a copy of the order:

- (a) give any weapons licence to a police officer; and
- (b) give any weapon they possess to a police officer.

The only exception to this rule is if the respondent was personally served at their residence. In this case the respondent must immediately give any weapons licence and weapon to the police officer unless they can provide a reasonable excuse for not doing so.

The section also has a provision relating to the surrender of weapons and weapons licences if the respondent does not comply with the section.

*Clause 52* inserts a new section 34AA (Effect of an appeal against a domestic violence order). The clause amends the *Weapons Act 1990* to ensure that a person who has had a domestic violence order made against them and then set aside on appeal is not prevented from possessing a weapons licence.

## **PART 5—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

*Clause 53* (Consequential amendment of other Acts in schedule 2) makes minor and consequential amendments to the *Child Protection Act 1999*, the *Criminal Offence Victims Act 1995*, the *Dispute Resolution Centres Act 1990*, the *Explosives Act 1999*, the *Penalties and Sentences Act 1992* and the *Residential Tenancies Act 1994*.

Schedule 1 makes minor amendments and required terminology changes to the *Domestic Violence (Family Protection) Act 1989*.