Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. give effect to legislative reform in recommendations 52 to 60 and 63 to 66 of the Women's Safety and Justice Taskforce (the Taskforce) in Chapter 3.8 of its first report, *Hear her voice – Report one – Addressing coercive control and domestic and family violence in Queensland*;

2. modernise and update sexual offence terminology in the Criminal Code in response to advocacy that the language appropriately reflects criminal conduct;

3. address stakeholder concerns regarding the operation of the sexual assault counselling privilege (SACP) framework in relation to the standing of counsellors and victims and alleged victims of sexual assault offences ('counselled persons');

4. amend the *Youth Justice Act 1992* to provide specific mitigatory circumstances relating to domestic violence;

5. amend the *Coroners Act 2003* to remove the limitation upon the number of terms of re-appointment of the State Coroner and the Deputy State Coroner;

6. amend the *Oaths Act 1867* to address issues that have arisen in the implementation of the *Justice and Other Legislation Amendment Act 2021*;

7. amend the *Telecommunications Interception Act 2009* to enable the Public Interest Monitor (PIM) to perform the role intended under the International Production Order (IPO) scheme in relation to applications for interception IPOs.

Coercive control constitutes a pattern of behaviours perpetrated against a person to create a climate of fear, isolation, intimidation and humiliation. It is an intrinsic part of domestic and family violence (DFV).

In March 2021, the Queensland Government established the independent Taskforce to examine coercive control and review the need for a specific offence of domestic violence and the experience of women across the criminal justice system.

The Taskforce's first report, *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* (the report) was released on 2 December 2021. The report makes 89 recommendations for broad systemic reforms to Queensland's DFV service and justice systems.

In May 2022, the Queensland Government's response to the report noted that the Queensland Government supported or supported-in-principle all of the recommendations.

The Taskforce recommended the creation of a new standalone offence of coercive control. However, it also made it clear that, prior to the introduction of a standalone offence, system-wide reform was needed to ensure sufficient services and supports are in place across the DFV service and justice systems, along with critical amendments to existing legislation which should be implemented immediately. This includes that systems need to respond better to coercive control through a shift from focusing on responding to single incidents of violence to focusing on the pattern of abusive behaviour that occurs over time.

In Chapter 3.8 of the report, the Taskforce recommended immediate legislative reforms that are required to strengthen Queensland's current response to coercive control. The Bill implements these recommendations through amendments to the Criminal Code, the *Domestic and Family Violence Protection Act 2012* (DFVP Act); the *Evidence Act 1977* (Evidence Act); and the *Penalties and Sentences Act 1992* (Penalties and Sentences Act). The Bill also amends the *Youth Justice Act 1992* (Youth Justice Act) to address implications arising from these recommendations for children and child offenders.

Achievement of policy objectives

The Bill will achieve the policy objectives by implementing the reforms outlined below:

Amendments in response to the Taskforce

Amendments to the Criminal Code

Amendments to Chapter 33A of the Criminal Code

The Bill will rename, modernise and strengthen the offence of unlawful stalking in Chapter 33A of the Criminal Code.

During consultation, the Taskforce received overwhelming feedback from victims of coercive control about the prevalence of stalking and harassing behaviour, particularly electronic surveillance of them and their children. The Taskforce also noted that the offence is underused by police and prosecutors in the context of coercive and controlling behaviours.

The amendments in the Bill seek to:

- reflect the association between stalking and DFV;
- ensure that traditional attitudes, practices and misconceptions do not impede the offence being utilised, where appropriate, to hold perpetrators to account;
- modernise the offence so that it reflects criminal behaviour including the interaction between stalking and coercive control;

- increase the maximum penalty for stalking that occurs in the context of a domestic relationship to reflect the nature of, and damage caused by, that behaviour; and

- encourage greater use of the offence by police and prosecutors.

The Bill will rename the offence of unlawful stalking, as it appears throughout Chapter 33A of the Criminal Code and in other legislation, to 'Unlawful stalking, intimidation, harassment or abuse.'

The amendments to Chapter 33A of the Criminal Code will broaden the type of offending captured by the offence and better reflect the way an offender might use technology to facilitate unlawful stalking, intimidation, harassment or abuse.

The additional conduct that will be captured by the offence of unlawful stalking, intimidation, harassment or abuse will include:

- contacting a person in any way using any technology and over any distance. Non-exhaustive examples are provided and include contact by telephone, mail, fax, SMS message, email, an app on a computer or smart phone or other electronic device, or an online social network;

- monitoring, tracking or surveilling a person's movements, activities or interpersonal associations without the person's consent, including through the use of technology. Non-exhaustive examples are provided and include using a tracking device or drone to track a person's movements, checking the recorded history in a person's digital device, reading a person's SMS messages, monitoring a person's email account or internet browser history and monitoring a person's account with a social media platform or online social network;

- publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of, a person;

- giving offensive material either directly or indirectly to a person, including by using a website, social media platform or online social network; and,

- a threatening, humiliating or abusive act against a person whether or not involving violence or the threat of violence (where the offence currently captures intimidating and harassing acts of that nature) with an example of that conduct being publishing a person's personal information, including for example, the person's home address or phone number on a website. The inclusion of this example is intended to capture the practice known colloquially as 'doxing'.

The other elements of unlawful stalking are unchanged by the Bill, including the requirements relating to causing the stalked person apprehension or fear of violence, or detriment, reasonably arising in all the circumstances.

The Bill will introduce a new circumstance of aggravation with a maximum penalty of 7 years imprisonment for the offence of unlawful stalking, intimidation, harassment or abuse, if a domestic relationship exists between the offender and the stalked person. A domestic relationship is already defined in section 1 of the Criminal Code to mean a relevant relationship under section 13 of the DFVP Act. Section 13 of the DFVP Act

provides that a relevant relationship is an intimate personal relationship, a family relationship or an informal care relationship. Sections 14 to 20 of the DFVP Act then in turn further define each of these relationships, which include former relationships. It is therefore intended that the circumstance of aggravation will apply both where a relevant relationship exists and has existed.

Section 359F of the Criminal Code currently permits a court to make a restraining order in relation to a charge of stalking regardless of whether the person is convicted or the prosecution ends in another way. It is an offence to contravene a restraining order, the maximum penalty for which is 40 penalty units or 1 year imprisonment.

The Bill will increase the maximum penalty for the offence of contravening a restraining order to 120 penalty units or 3 years imprisonment. The Bill also provides for a circumstance of aggravation if the person has been convicted of a domestic violence offence in the 5 years before the contravention of the restraining order. The maximum penalty for contravening a restraining order with this circumstance of aggravation will be 5 years imprisonment or 240 penalty units. That maximum penalty will apply regardless of whether the domestic violence offence was committed before or after commencement of the Bill. These maximum penalties are the same as those that apply to an offence of contravening a domestic violence order under section 177 of the DFVP Act.

Currently, section 1 of the Criminal Code defines a domestic violence offence as an offence against an Act, other than the DFVP Act, committed by a person where the act done, or omission made, which constitutes the offence is also domestic violence or associated domestic violence, under the DFVP Act, committed by the person or a contravention of section 177(2) of the DFVP Act. Under clause 23(6) of the Bill, the meaning of domestic violence offence for the purposes of the increased maximum penalties for the offence of contravening a restraining order, will include both the definition of a domestic violence offence under section 1 of the Criminal Code and an offence against Part 7 of the DFVP Act, which includes the offence of contravening a domestic violence order.

Contravening a restraining order with a circumstance of aggravation will be a misdemeanour which means that it will be an indictable offence. Clause 24 will amend section 552B of the Criminal Code to provide that an offence of contravening a restraining order with a circumstance of aggravation must be heard and decided summarily unless the defendant elects for trial by jury.

Under section 359F of the Criminal Code there is no limitation or prescription about the length of the restraining order that can be imposed by the court. The amendment in clause 23(3) of the Bill provides that when a court makes a restraining order, the default period is 5 years unless the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by a shorter period.

<u>Amendment to section 590AH of the Criminal Code (Disclosure that must always be made)</u>

Clause 26 of the Bill amends section 590AH of the Criminal Code to provide that for a relevant proceeding (as defined in section 590AD of the Criminal Code) or a summary

proceeding under the *Justice Act 1886* for an accused person who is charged with a domestic violence offence, the prosecution must give the accused person a copy of the person's domestic violence history.

The obligation to disclose a domestic violence history arises where the domestic violence history is in the possession of the prosecution as defined in section 590AE of the Criminal Code.

For this purpose, a domestic violence history means a document that states a domestic violence order or recognised interstate order made against the person, a police protection notice issued against the person and each domestic violence order made against the person under the repealed *Domestic and Family Violence Protection Act 1989*. This meaning arises because that is information already within the possession of the Queensland Police Service (QPS) and which can be produced without the need for significant manual intervention.

The amendment to section 590AH of the Criminal Code requiring disclosure of a domestic violence history is not intended to limit the material upon which the prosecution or defence might seek to rely. It is also not intended to limit any other relevant material which the prosecution might obtain or the defence might request be disclosed. The prosecution might for example, in a relevant case, seek to rely upon the existence of restraining orders made under section 359F of the Criminal Code or orders made in other jurisdictions. The defence might for example, seek the disclosure of or seek to rely upon orders where the accused person is the aggrieved.

It is not intended that the disclosure requirement in amended section 590AH of the Criminal Code would capture breach proceedings initiated by Queensland Corrective Services.

Amendments to the Domestic and Family Violence Protection Act 2012

Definition of domestic violence

Although the DFVP Act defines domestic violence to include coercive and controlling behaviours, it does not define what these are. The Taskforce found that the current definition of domestic violence in section 8 of the DFVP Act sends a confusing message about the nature of coercive control and domestic violence and may contribute to misidentification of DFV by not properly reflecting coercive control as being the key component of DFV beyond what is stated in the preamble.

The Bill will therefore amend the definitions of *domestic violence* (section 8), *emotional or psychological abuse* (section 11) and *economic abuse* (section 12) in the DFVP Act to include a reference to a 'pattern of behaviour'. Further amendments to section 8 of the DFVP Act by clause 31(2) makes it clear that domestic violence includes behaviour that may occur over a period of time, includes individual acts that, when considered cumulatively, are abusive, threatening, coercive or cause fear, and must be considered in the context of the relationship as a whole.

These amendments seek to strengthen systems' responses to coercive control, through a shift from focusing on responding to single incidents of violence to focusing on the pattern of abusive behaviour that occurs over time.

Cross applications

The Taskforce heard that the DFVP Act is not operating as intended and cross applications are being used by perpetrators as a means of continuing to control and intimidate victims, resulting in domestic violence orders being made against victims of DFV.

Clause 30 of the Bill amends the principles for administering the DFVP Act making it clear that the person who is most in need of protection in the relationship must be identified, and only one domestic violence order should be in force unless there are exceptional circumstances and clear evidence that each person in the relationship is in need of protection from the other.

The Bill also strengthens the court's response to cross applications and the making of cross orders against victims of DFV by:

- requiring applications and cross applications to be heard together;
- requiring the court to consider whether to make arrangements for the safety, protection or wellbeing of the person most in need of protection (for example, allowing the person most in need of protection to give evidence outside the courtroom);
- requiring the court to identify the person most in need of protection in the context of the relationship as a whole; and
- only allowing the court to make one order to protect the person most in need of protection, unless there are exceptional circumstances where there is clear evidence that each of the parties in the relationship are in need of protection from each other.

The Taskforce found that, in most cases, a genuine and thorough examination of all the circumstances relevant to a relationship over time, including any pattern of DFV and coercive controlling behaviour, should reveal that one person is in greater need of protection than another. Although cross applications may show a relevant relationship and that DFV has been committed by each party, the Taskforce considered that circumstances where it would be necessary or desirable to make a cross order naming the person most in need of protection as the respondent would be rare.

The Bill also provides legislative guidance to magistrates in determining the person most in need of protection. This legislative guidance is included as a definition within the DFVP Act and was developed from the recommendations and comments of the Queensland Domestic and Family Violence Death Review and Advisory Board (DFVDRAB) and through consultation with DFV stakeholders. New section 22A of the DFVP Act inserted by clause 34 of the Bill provides that a person is most in need of protection when:

- the behaviour towards them is more likely than not to be (i) abusive, threatening or coercive, or (ii) controlling or dominating causing the person to fear for their safety or wellbeing (or that of their child, another person or animal, including a pet); and

- the person's behaviour is more likely than not to be for the self-protection of themselves (or their child, another person or animal, including a pet), in retaliation of the other's person behaviour towards them (or their child, another person or animal, including a pet), or attributable to the cumulative effect of the other person's domestic violence towards them.

In deciding the person most in need of protection, the court must consider: the history of domestic violence and the relationship between the parties; the nature and severity of the harm caused to each other; the level of fear experienced by each person; which person has the capacity to seriously harm the other person, or control or dominate the other person and cause fear; and whether the persons have characteristics that make them particularly vulnerable to domestic violence. Examples of people who may be particularly vulnerable to domestic violence are provided.

In *SRV v Commissioner of the Queensland Police Service & Anor* [2020] QDC 208, it was held that cross applications require the consideration of the matters referred to in section 37 of the DFVP Act and should not be decided on the basis of the principle in section 4(2)(e) (the identification of the person most in need of protection). To make it clear that the court must identify the person most in need of protection when deciding a cross-application, the Bill provides that section 37 of the DFVP Act applies subject to new section 41G (Deciding cross applications).

Costs

The Taskforce recommended the DFVP Act be amended to specify that where a party has intentionally used proceedings as a means of committing or continuing DFV, including coercive control, the court has the power to award costs against them. The purpose of this is to 'signpost' to lawyers and systems abusers that the court has the power to award costs against people who use the legal system to continue abusive, coercive and controlling behaviour.

Clause 49 of the Bill inserts a new ground on which the court can make a costs order. The court may award costs against an applicant if the court decides to hear and dismiss the application and, in doing so, also decides that the party, in making the application, intentionally engaged in behaviour or continued a pattern of behaviour towards the respondent that is domestic violence.

The Bill inserts a note into section 157 to explain that this type of behaviour is known as systems abuse or legal abuse. This is behaviour in which a person intentionally misuses the legal system to intentionally exert control or dominance over the other person or to torment, intimidate or harass the other person.

Criminal history and domestic violence history in civil proceedings

The Taskforce recommended amendments to the DFVP Act to ensure the court is provided a respondent's criminal and domestic violence histories to help determine the risk to the aggrieved and whether to make a protection order; and to assist in best tailoring the conditions of the order to keep the victim safe.

QPS will be the agency responsible for preparing and providing the criminal history and domestic violence history to the court. The police commissioner will be required to ensure the criminal and/or domestic violence history is filed in the court before the first hearing of the application or is given to the court when the application is first heard.

The Bill provides that if the respondent does not have a criminal history or domestic violence history, the police commissioner must ensure the court is informed of that fact. The section is silent on how this may occur but it could be in writing or orally.

The Bill provides that the court must consider the respondent's criminal and/or domestic violence history when making a protection order. The court may consider the respondent's criminal and/or domestic violence history when making a temporary protection order, when making or varying a domestic violence order by consent or when varying a domestic violence order if the court thinks it is relevant to do so.

For the purpose of deciding whether to make a protection order, clause 56 of the Bill defines criminal history to include all convictions of, and charges made against, the person for an offence in Queensland or interstate. Domestic violence history is defined to include all Queensland current and expired domestic violence orders (protection orders and temporary protection orders) and police protection notices between the respondent and any other person. The definition also includes interstate orders and New Zealand orders. However, the police commissioner is obliged to provide information in the police commissioner's possession or information that, under law, the police commissioner is permitted to access and provide to the court for use in a proceeding under the DFVP Act. This means that domestic violence history will only include interstate or New Zealand orders when this information is already recorded on QPRIME or in the police commissioner's possession. Options to allow QPS to provide interstate orders that are able to be accessed and printed from the National Police Reference System are being explored.

A respondent's domestic violence history will state where a previous domestic violence order has been made by consent, which is intended to assist the court in determining the weight to place on the history as orders made by consent do not require a finding that domestic violence has occurred.

The Bill amends the DFVP Act to provide the court with the ability to make orders around the access to, use and disclosure of a respondent's criminal and domestic violence history. This ensures procedural fairness to the parties of the proceeding while protecting a respondent's privacy, preventing the misuse of information contained in a respondent's criminal or domestic violence history, and mitigates risk of systems abuse by a person making an application for a protection order for the purpose of obtaining a copy of the respondent's criminal and/or domestic violence history.

Clause 51 of the Bill inserts new section 160A which provides that the court may make an order that a person must not disclose information contained in a respondent's criminal history or domestic violence history to another person. In addition, if the court considers part or all of a respondent's criminal history or domestic violence history is not relevant to deciding the application, the court may decide the application without taking into account or hearing submissions on the particular part of the history that is not relevant. For example, if an adult respondent has a criminal history that includes offences committed when they were a child that are not related to domestic violence, the court

may make an order prohibiting certain disclosure or use of that history, or preventing that part of the history from being provided to the parties if the court decides the application without taking it into account. If a copy of the criminal history or domestic violence history has been given to a party, the court may order that the copy be returned to the court. This provision is intended to allow flexibility to the court to determine use and disclosure of criminal or domestic violence history based on the circumstances of the particular case.

If a person does not comply with the court order under new section 160A, the person may be found in contempt of court under section 50 of the *Magistrates Courts Act 1921*, unless the person had a lawful excuse (for example, a lawful excuse could include disclosing information about a respondent's criminal and/or domestic violence history to a counsellor or legal representative).

Substituted service

The DFVP Act requires applications and orders to be served personally by police officers. The Taskforce emphasised that personal service by a police officer provides an important opportunity to convey the seriousness of an order to a perpetrator, and to potentially disrupt or de-escalate a domestic violence situation. The Taskforce stated that requiring personal service and the provision of an explanation of the document is more than just process serving - it is a valuable use of police resources providing procedural fairness and an important intervention point which reinforces that DFV will not be tolerated.

The Taskforce found that personal service by police should continue unless a substituted method of service would provide increased protection to the victim. The Taskforce recommended amending the DFVP Act to enable a court, in limited circumstances, to order substituted service for documents ordinarily required to be served by a police officer.

Clause 53 of the Bill inserts new section 184A (Substituted Service) in the DFVP Act to enable the court to make a substituted service order if it is satisfied that: (1) reasonable attempts have been made to personally serve the document on the respondent; (2) serving the document in another way is necessary or desirable to protect the aggrieved; and (3) serving the document in another way is reasonably likely to bring the document to the attention of the respondent.

When serving a document under a substituted service order, the police officer must, unless it is not reasonable in the circumstances, give a copy of the document to the respondent and explain what the document is and its nature and effect. For example, if the alternate method is by email, the email should attach a copy of the document and include a statement explaining the document.

The amendments will require a court, when making a substituted service order, to specify the circumstances in which service is taken to have been effected. This is particularly relevant to substituted service of protection orders, as the respondent is required to have been served to be convicted of a breach of the order.

Reopening proceedings

Clause 50 of the Bill amends Part 5 of the DFVP Act to include new Division 3A, which outlines limited circumstances in which a proceeding may be reopened. This amendment was not a specific recommendation from the Taskforce but arose as a result of consultation on the draft Bill.

A respondent may apply to the court to reopen a proceeding if a court makes or varies a protection order and: (1) the application for the order was served on the respondent under a substituted service order; (2) the application was not, and could not reasonably have been brought to the attention of the respondent despite being served in a way stated under the substituted service order; and (3) the respondent was not present in court when the application was heard and decided.

This is intended to provide a respondent with procedural fairness in circumstances where the respondent genuinely has not been able to access the application, despite it being served in an approved manner under a substituted service order; and subsequently has not had an opportunity to make submissions to the court. Such a situation could be where an application is served via email on a respondent and the email address is incorrect due to human error.

The court may decide a reopened proceeding in any way it considers appropriate including hearing the proceeding afresh, in whole or part.

Amendments to the Evidence Act 1977

Expanding class of protected witnesses for cross-examination

The Evidence Act provides a scheme for the giving of evidence by protected witnesses. If a person is a protected witness, the defendant may not cross-examine them if the defendant is not represented by a lawyer. In this instance, the court may organise or make an order for the defendant to be given free legal assistance by Legal Aid to undertake cross-examination, unless the defendant does not want to cross-examine the protected witness or the defendant arranges their own legal representation.

The Taskforce found that there is scope for a perpetrator of domestic violence to use court proceedings as a form of systems abuse to terrorise their victim by direct in person cross-examination and this should not be allowed to occur.

The Taskforce recommended amendments to the DFVP Act to make it clear that an alleged perpetrator who does not obtain legal representation will not be able to cross-examine in-person a victim of domestic violence in relation to criminal proceedings under the DFVP Act (recommendation 54), and amendments to the Evidence Act to expand the protection of protected witnesses in cross-examination to apply to proceedings for any offence that is a domestic violence related offence, including offences in the DFVP Act (recommendation 55).

To give effect to the policy intent of both recommendations, the Bill amends the Evidence Act to create a new category of protected witness with respect to any domestic violence offence, including any offences in Part 7 of the DFVP Act (which includes an offence of contravening a domestic violence order). The prohibition on direct cross-examination is extended to this new category of protected witness, thereby bringing the complainant of a domestic violence offence within the protected witness scheme. This means that where a defendant is unrepresented, the complainant cannot be cross-

examined directly by them. If cross-examination is to occur, it will be undertaken by a lawyer.

The amendments will also include persons other than the complainant but there are some additional requirements for protected witnesses who are not the complainant - the witness: (1) must be named in a domestic violence order as an aggrieved, or a relative or associate of the aggrieved; (2) the offence must be a contravention of a domestic violence order or an offence for an act or omission that also constitute that offence; and (3) the court must consider that the person would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness. The last of these requirements reflects some of the limbs of the existing definition for a special witness in section 21A of the Evidence Act.

This protected witness status will apply to witnesses in criminal proceedings conducted in the Magistrates Court and, proceedings conducted on indictment in the Supreme and District Court. The provisions will not, however, apply to civil proceedings under the DFVP Act; in these circumstances, section 151 of the DFVP Act will continue to apply to restrict the cross-examination of protected witnesses.

Admission of evidence of domestic violence

Currently, section 132B of the Evidence Act allows for relevant evidence of the history of the domestic relationship between a defendant and complainant to be admitted in criminal proceedings. The operation of section 132B is limited, however, to offences in Chapters 28 to 30 of the Criminal Code. Chapters 28 to 30 contain offences including homicide, suicide, concealment of birth, unlawful striking or death, endangering life or health and assaults.

The Taskforce concluded that there is no logical reason for a separate approach to the admission of evidence of domestic violence based upon the chapter in which the alleged offence sits within the Criminal Code. The Bill will therefore remove restrictions on section 132B applying only to offences in Chapters 28 to 30 of the Criminal Code.

The Bill also makes evidence of domestic violence admissible whether that evidence relates to the defendant, the person against whom the offence was committed, or another person connected with the proceeding.

New section 103CA of the Evidence Act, inserted by clause 64 of the Bill, provides a non-exhaustive list of what may constitute evidence of domestic violence. It includes evidence of associated domestic violence (as defined in new section 103AB of the Evidence Act). It may also include, but is not limited to, the history of the domestic relationship between a person and an intimate partner or family member of the person.

Expert evidence

Consistent with the recommendations of the Taskforce, the Bill facilitates the admission of expert evidence in criminal proceedings about the nature and effects of domestic violence. This expert evidence may include evidence about the effects of domestic violence on any person or on a particular person.

The Taskforce found that the full context of victim experiences of coercive control is not being consistently admitted in court proceedings in Queensland. The Taskforce received submissions from women with lived experience of DFV, and domestic, family and sexual violence stakeholders, highlighting the limitations of the current laws and the present difficulty in leading evidence of coercive control. In its findings, the Taskforce noted that the patterned and cumulative nature of coercive control manifests in complex ways, is often not well understood and that domestic abuse can also cause emotional and psychological harm to a victim. The Taskforce stated that the ability to present expert evidence on these issues may be needed to aid juries and judicial officers in understanding and evaluating evidence from victims of coercive control in context, and in an informed way.

While the Taskforce noted that expert evidence of coercive control is theoretically admissible at common law and evidence of domestic violence has been led in some cases, the Taskforce received submissions indicating it is not often raised. The Taskforce also highlighted academic opinion that the onus is on individual lawyers and judges to recognise the relevance and significance of domestic violence evidence.

The Bill defines an expert on the subject of domestic violence to include a person who can demonstrate specialised knowledge, gained by training, study or experience, of a matter that may constitute evidence of domestic violence.

Consistent with the Taskforce's recommendation 64, these provisions have been modelled upon those in section 39 of the *Evidence Act 1906* (WA) (the Western Australian Act).

To aid the reception of expert evidence, the Bill modifies two common law rules of evidence which may operate to prevent an expert's evidence being received by the finder of fact, whether that be a judicial officer or a jury. The common law rules which are abrogated by the Bill provide that opinion evidence is inadmissible if it (a) answers the ultimate issue for the finder of fact's determination or (b) relates to a matter of common knowledge. In either case, the Bill provides that an expert's opinion is not inadmissible only for those reasons.

Jury directions

The Taskforce found that many members of the community do not understand how the dynamics of DFV may impact on the behaviour of victims of DFV, such as why a victim of DFV may remain in an abusive relationship.

The Bill therefore provides the court with a discretion to give jury directions that address misconceptions and stereotypes about domestic violence. The amendments seek to enable juries and judicial officers to be better informed and able to consider evidence of domestic violence that has been raised during a trial.

Consistent with the Taskforce's recommendation 65, these provisions have been modelled upon the relevant provisions in the Western Australian Act.

Amendments to the Penalties and Sentences Act 1992 and Youth Justice Act 1992

Mitigating factor in sentencing

The Bill amends the Penalties and Sentences Act to require a court, when sentencing an offender who is a victim of domestic violence, to treat the effect of the domestic violence on the offender and the extent to which the commission of the offence is attributable to the effect of the violence, as a mitigating factor, unless the court considers it is not reasonable to do so because of exceptional circumstances.

The Youth Justice Act is similarly amended to provide a mitigating factor for child offenders who are victims of domestic violence in addition to those who have been exposed to domestic violence. Unlike the Penalties and Sentences Act, the amendment to the Youth Justice Act does not exclude the operation of the mitigating factor in any circumstance, including exceptional circumstances.

Matters to be considered in determining an offender's character

Section 11 of the Penalties and Sentences Act is amended by clause 81(1) of the Bill to provide that the history of domestic violence orders made or issued against an offender, other than orders made or issued when the offender was a child, may be considered by a sentencing court when determining an offender's character. Clause 81(3) of the Bill also provides that if oral submissions are to be made to, or evidence is to be brought before, the court about the history of domestic violence orders made or issued against the offender, the sentencing judge or Magistrate may close the court for that purpose.

For the purposes of section 11 of the Penalties and Sentences Act, clause 81(3) of the Bill will provide that a domestic violence order means a domestic violence order, a police protection notice, an interstate order, an order that corresponds to an interstate order made under a repealed law of another State, a New Zealand order or a domestic violence order under the repealed *Domestic and Family Violence Protection Act 1989*. This definition of a domestic violence order in section 11 of the Penalties and Sentences Act is intentionally broader than the types of orders contemplated by the definition of a domestic violence history as defined by new section 590AH(4). This is because the intention is not to limit the types of orders to which a sentencing court may have regard in determining a person's character. It is also not intended to limit material being relied upon by either the defence or prosecution at sentence which shows that the offender was an aggrieved on a domestic violence order.

Although the amendment to section 11 of the Penalties and Sentences Act precludes the use of orders made or issued when the offender was a child for the purposes of determining their character at sentence, it is not intended to limit the potential use of those orders for other purposes, such as if for example, a sentencing court were considering making a protection order pursuant to section 42 of the DFVP Act.

Other amendments not related to the Taskforce

Amendments to the Criminal Code - Sexual offence terminology

The Bill replaces the term 'carnal knowledge' (which is utilised in sexual offences across the Criminal Code) with 'penile intercourse'. The term 'penile intercourse' is ascribed the same definition as 'carnal knowledge' and is therefore not intended to alter the concept of carnal knowledge as it has been applied to date in Queensland.

Additionally, the Bill changes the title of section 229B of the Criminal Code from 'Maintaining a sexual relationship with a child' to 'Repeated sexual conduct with a child'. The terminology within the body of section 229B is not altered in any way.

The purpose of these amendments is to update terminology only, and not to change any aspect of the substantive law.

Amendments to the Evidence Act 1977 – sexual assault counselling privilege

The Bill amends the Evidence Act to provide that a victim or alleged victim of a sexual assault offence has standing to appear at all stages of a sexual assault counselling privilege (SACP) proceeding.

Amendments to the Coroners Act 2003 – appointments

The Bill will amend the *Coroners Act 2003* to remove the limitation upon the number of terms of re-appointment of the State Coroner and the Deputy State Coroner.

Amendments to the Oaths Act 1867

Part 6 of the *Justice and Other Legislation Amendment Act 2021* (JOLA Act) amended the *Oaths Act 1867* (Oaths Act) to modernise the way that affidavits and statutory declarations could be made. The JOLA Act allows affidavits and statutory declarations to:

- be made in electronic form and signed electronically;
- witnessed over audio visual link, as an alternative to the ordinary physical approach; and
- be made in counterparts and signed by substitute signatories.

The JOLA Act also introduced new requirements for information to be included in affidavits and statutory declarations – these requirements apply to all affidavits and statutory declarations, regardless of how they are made.

Part 6 of the Bill amends the Oaths Act to address issues that have arisen in the implementation of the JOLA Act by:

- inserting new section 13F in Part 4, Division 2 to provide that an affidavit or declaration is not invalid only because it does not comply with a requirement in section 13B, 13C or 13E that does not materially affect the nature of the affidavit or declaration (for example, if the jurat of an affidavit does not contain some or all of the information required under section 13E of the Oaths Act);
- inserting new section 31CA in Part 6A, Division 1 to clarify that nothing in Part 6A limits a provision of another Act or law about the way in which, or by whom, a document is sworn, or taken or received on oath, or is made as a statutory declaration;
- inserting new section 31OA in Part 6A, Division 5, Subdivision 1A to clarify that the division only applies to a document that is an affidavit or a declaration; and

- inserting a new transitional provision, section 48, to apply new section 13F from 30 April 2022. This provision is retrospective in nature and has the effect of validating any affidavits and statutory declarations that were made since 30 April 2022 that did not comply with a requirement under section 13B, 13C or 13E.

Amendments to the Telecommunications Interception Act 2009

The Bill will amend the *Telecommunications Interception Act 2009* (Telecommunications Interception Act) to:

- require the QPS and Crime and Corruption Commission (CCC) to notify the PIM of the application for an interception IPO under the *Telecommunications (Interception and Access) Act 1979* (Cth) (Commonwealth TI Act) and provide any written affidavit material accompanying the written application;

- necessitate full disclosure from the QPS and CCC on all matters, both favourable and adverse to the issuing of an IPO to the PIM;

- require the provision by the QPS and CCC of any further information that is required by the eligible Judge or nominated Administrative Appeals Tribunal (AAT) member to the PIM; and

- entitle the PIM to appear at the hearing of the application, make submissions and question persons who have provided information in the application for the interception IPO.

Alternative ways of achieving policy objectives

Legislative amendments are the only way to achieve the policy objectives to:

- implement recommendations 52 to 60 and 63 to 66 from the Taskforce;
- update and modernise sexual offence terminology in the Criminal Code;

- provide statutory standing to a counsellor and counselled persons in all stages of a SACP proceeding;

- remove existing limitations on the re-appointment of the State Coroner and Deputy State Coroner;

- address the implementation issues arising from the amendments to the Oaths Act made by the JOLA Act; and

- give full effect to the PIM's role in the IPO scheme under the Commonwealth TI Act.

Estimated cost for government implementation

Taskforce related amendments

The Bill is likely to increase demand for courts, police and the legal profession due to the increase in the number of matters coming before the courts, as well as an increase in the complexity of matters being heard. This demand will be monitored and any costs impacts will be assessed and included in future budget processes.

Sexual offence terminology

The amendments to Criminal Code terminology are considered unlikely to have any significant financial or resourcing implications. Any costs will be met from within existing resource and budget allocations.

SACP framework

Amendments to the Evidence Act to provide standing to counsellors and counselled persons at all stages of a SACP proceeding are not expected to have any significant financial or resourcing implications. Any costs will be met from within existing resource and budget allocations.

Coronial amendments

It is not anticipated the Government will incur any additional costs as the amendments to the Coroners Act provide for an administrative process that will be undertaken within existing means.

Oaths Act amendments

There will be no implementation costs arising from the amendments to the Oaths Act.

Telecommunication Interception Act amendments

The amendments to the Telecommunications Interception Act are not expected to present any significant additional administrative or operational costs for government. Any costs relating to the PIM will be absorbed from existing agency resources.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (LSA). Potential infringements of fundamental legislative principles are addressed below.

Renaming and modernising the offence of unlawful stalking

Some aspects of the amendments to Chapter 33A of the Criminal Code to rename and modernise the offence of unlawful stalking may infringe upon fundamental legislative principles.

The amendments to the prescribed penalties in sections 359E and 359F of the Criminal Code may infringe upon the principle that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied and that a penalty for an offence should be proportionate to that offence. Those principles are relevant to consideration of whether legislation has sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LSA.

To the extent that the amendments are a departure from fundamental legislative principles, that departure is justified because the proposed penalties are proportionate to the offences and reflect the seriousness of the conduct.

The amendment to section 359F of the Criminal Code to create a circumstance of aggravation where a previous domestic violence offence has occurred, operates with a partial retrospective effect to the extent that a conviction for a domestic violence offence which occurred before the commencement of the Bill will be recognised as a previous offence for the purposes of the new circumstance of aggravation.

This amendment may infringe upon the fundamental legislative principle provided for in section 4(3)(g) of the LSA that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The retrospective operation of the amendments is limited by the requirement that the offence be committed within the five years prior to the commencement. In addition, the proposed penalty of 5 years imprisonment where the new circumstance of aggravation is charged will make penalties for breaching a restraining order consistent with the penalty for the offence of contravening a domestic violence order under the DFVP Act. Further, the purpose of the amendment is to protect the community and the safety of victim. Any departure from fundamental legislative principles is justified for these reasons.

Expanding class of protected witnesses for cross-examination

The amendments to the Evidence Act to create a new class of protected witness will prohibit a defendant from directly cross-examining those witnesses, where a defendant refuses to have a lawyer conduct that cross-examination.

This limitation on a defendant's right to cross-examine a protected witness, arguably infringes upon the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals and that it is consistent with the principles of natural justice; as set out in section 4(3)(b) of the LSA.

As a lawyer can still cross-examine the witness on behalf of the defendant and there is provision of free legal assistance by Legal Aid for that purpose, any departure from fundamental legislative principles is justified.

Provision of domestic violence history and criminal history in civil proceedings

The amendments to the DFVP Act to require the police commissioner to provide the court with a respondent's criminal and domestic violence history for all applications for a protection order or applications to vary a protection order may depart from fundamental legislative principles in relation to privacy and confidentiality given the history may contain information about the respondent's criminal or domestic violence history and/or the identity of a person not subject to the current proceedings.

This amendment may infringe upon the fundamental legislative principle provided for in section 4(3)(g) of the LSA that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

However, the departure is considered justified as protections on privacy in the DFVP Act will apply, particularly section 158, which states that a court hearing an application is not open to the public; section 159, which prevents publication of information given in evidence in a proceeding; section 160, which restricts access to documents used in a proceeding; and new section 160A which allows the court to make orders around the access to, use and disclosure of a respondent's criminal and domestic violence history. Further, the amendments align with the court's current power under section 145 of the

DFVP Act to inform itself in any way it considers appropriate, which includes the ability to request information from QPS.

The purpose of the amendments is to provide the court with the full history of a respondent's previous criminal and/or domestic violence history to assist it in accurately assessing the risk posed to the aggrieved. This is in the public interest, as it provides greater protection to victims and will assist in preventing perpetuation of DFV.

Substituted service

The amendments to provide for substituted service may depart from fundamental legislative principles in relation to the principles of natural justice, particularly procedural fairness, in that service by a substituted method may not bring the document to the attention of the respondent or the respondent may not understand the purpose and effects of the document.

This amendment may infringe upon the fundamental legislative principle provided for in sections 4(3)(b) and (g) of the LSA that legislation is consistent with principles of natural justice and does not adversely affect rights and liberties, or impose obligations, retrospectively.

The departure is considered justified as there are safeguards in the Bill and the DFVP Act that strike a balance between providing protection to a victim of DFV and the right to procedural fairness of a respondent. Safeguards include that, to make a substituted service order, the court must be satisfied that the method of alternative service is reasonably likely to bring the document to the attention of the respondent (new section 184A(b)(ii)). Further, when serving a document under a substituted service order, a police officer must, unless it is not reasonable in the circumstances, give a copy of the document to the respondent, and explain what it is and its nature and effect (new section 184A(5)). The Bill also allows the court to reopen proceedings where a respondent genuinely has not been able to access the application, despite it being served in an approved manner under a substituted service order.

In addition, appeal avenues are open to a respondent. Section 164 of the DFVP Act allows a respondent to appeal a decision of the court to make or vary a domestic violence order. A respondent may appeal their conviction and/or sentence under the *Justices Act 1886* for the offence of contravening a domestic violence order.

The amendments are considered to be in the public interest in that they give greater protection to victims of DFV by allowing the service of documents where a respondent has been deliberately avoiding service and frustrating the court process.

Amendments to the Oaths Act

New section 48, inserted by clause 78 of the Bill, is retrospective in nature. This amendment may infringe upon the fundamental legislative principle provided for in section 4(3)(g) of the LSA that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. The amendment provides assurance to persons that have made an affidavit or statutory declaration since 30 April 2022 that the affidavit or statutory declaration is not invalidated merely because it does not contain the information required by sections 13B, 13C or 13E of the Oaths Act, provided the requirement does not materially affect the nature of the affidavit. This provision has a beneficial effect and is curative or validating in nature, ensures the efficient conduct of proceedings and preserves any rights, interests and obligations accrued by persons relying on such documents being validly made.

Telecommunication Interception Act amendments

The disclosure of private or confidential information may infringe upon the right to privacy which is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LSA.

The provisions in clause 84 of the Bill require officers to provide a copy of the affidavit material to the PIM which would include personal details of the target, and police intelligence to support the application. The provision of this material to the PIM may depart from fundamental legislative principles in relation to privacy and confidentiality. However, the effect of the departure is mitigated by important safeguards. The PIM is bound by confidentiality provisions in clause 92 of the Bill and the Commonwealth TI Act which prohibit the use, recording or disclosure of protection information provided in the application. Further, section 10 of the Telecommunication Interception Act (as amended by the Bill) requires the PIM to return any documents provided by the officer in an application for a part 2-5 warrant or IPO.

The Commonwealth IPO scheme also provides safeguards in relation to the privacy and confidentiality of the target. Most notably, applications for IPO interception orders must be made to an independent issuing authority, namely an eligible Judge or nominated member of the AAT. In determining an application, the issuing authority must consider matters set out in the Commonwealth TI Act which include matters pertaining to the extent of interference with the target's privacy, the gravity of offending, other alternative methods of investigation which are available and any submissions made by the PIM.

Consultation

The Taskforce undertook extensive consultation in preparing its report. The Taskforce received over 700 submissions from stakeholders including individuals sharing their lived experience, conducted stakeholder forums throughout Queensland and held over 125 individual meetings with stakeholders including the judiciary, legislators, police, the legal profession, policy makers, academics and service providers.

The judiciary and domestic, family and sexual assault and legal stakeholders were also consulted on a confidential basis on a draft Bill. Stakeholder feedback resulting from this consultation process was considered and incorporated into the Bill where appropriate.

Heads of jurisdiction were consulted about the approach taken in relation to the proposed amendments to the Oaths Act. No consultation was undertaken with other stakeholders in relation to these proposed amendments.

Key stakeholders were also consulted during drafting of the amendments to the Telecommunications Interception Act in the Bill. Feedback received during this process was taken into account in finalising the Bill.

Consistency with legislation of other jurisdictions

Renaming and modernising the offence of unlawful stalking

The amendments to capture technology facilitated abuse as conduct that constitutes an offence under Chapter 33A of the Criminal Code will create greater consistency with all other Australian states and territories that have specifically criminalised the unlawful surveillance of a stalked person.

Expanding the class of protected witnesses in relation to cross-examination

These amendments are specific to the legislative framework of the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state.

Disclosure of domestic violence history in relevant criminal proceedings

These amendments are specific to the legislative framework of the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state.

Expanding the scope of 132B of the Evidence Act

While the amendments are specific to Queensland's Evidence Act, they are consistent with section 39A of the Western Australian Act which applies to all offences and provides for the admissibility of evidence of family violence where relevant to a fact in issue.

Expert evidence

The amendments have been modelled on section 39 of the Western Australian Act which allows expert evidence to be admitted in criminal proceedings about the nature and effects of family violence.

Jury directions

The amendments bring Queensland into closer alignment with other states and territories (namely Western Australia, Victoria and South Australia) that provide for judicial directions on family violence. These provisions are modelled on the provisions contained in the Western Australian Act.

A number of overseas jurisdictions have also enacted provisions to address issues of DFV to ensure jury directions are as comprehensible to jurors as possible. For example, England and Wales have directions aimed at countering assumptions that may arise in sexual and family violence cases and Scotland has legislated judicial directions where there is evidence of domestic abuse.

Mitigating factor in sentencing

The amendments to the Penalties and Sentences Act and Youth Justice Act will enhance alignment with other Australian jurisdictions as each criminal court in Australia has broad statutory power to consider all relevant circumstances at sentence for both adult and child offenders.

Amendments to the DFVP Act

The majority of the amendments to the DFVP Act are specific to the legislative framework of the State of Queensland. However, the amendments to allow the court to make an order for substituted service in limited circumstances are consistent with the domestic violence legislation of several other Australian jurisdictions, namely Victoria, the Australian Capital Territory and Western Australia. These jurisdictions allow a court to order service by an alternate method if the court is satisfied of various conditions. The

amendment to allow the court in particular circumstances to reopen proceedings is similar to legislation in Victoria, particularly section 122 of the *Family Protection Act 2008* (Victoria).

Sexual offence terminology

The introduction of terminology changes in the Queensland Criminal Code will enhance alignment with other jurisdictions.

The amendment to change the name of the maintaining a sexual relationship with a child offence will create greater consistency with other states and territories (namely New South Wales, Victoria, Western Australia and Tasmania) that have adopted an offence title in relation to repeated sexual conduct with a child that does not reference 'maintaining' or 'relationship'.

The amendment to change the phrase 'carnal knowledge' to 'penile intercourse' brings Queensland into closer alignment with all other States and territories as none of them utilise the term 'carnal knowledge'.

SACP framework

The amendments are specific to the legislative framework of the State of Queensland. While other jurisdictions have frameworks that deal with SACP, there is significant variation between jurisdictions in relation to the way the frameworks operate, including the standing of counsellors and counselled persons in the relevant proceedings.

Coroners Act amendments

Removing the limitation upon the re-appointment of the State Coroner and the Deputy State Coroner will align Queensland with other Australian jurisdictions as no other state or territory in Australia limits the appointment or re-appointment of State and Deputy Coroners.

Oaths Act amendments

The amendments to the Oaths Act to clarify the scope of Part 6A are specific to the legislative framework of the State of Queensland . The amendments in relation to minor non-compliance are broadly consistent with the approach taken in Victoria.

Telecommunication Interception Act amendments

The amendments to the Telecommunication Interception Act complement the IPO scheme under the Commonwealth TI Act and should be read in conjunction with that Act. Currently, Queensland and Victoria are the only jurisdictions with a PIM. This is reflected under the IPO scheme.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Act may be cited as the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022*.

Clause 2 provides that Parts 3, 4, 5 (other than sections 57, 58 and 69), 7, 9 and Schedule 1, Part 2 commence on a day to be fixed by proclamation.

Part 2 Amendment of Coroners Act 2003

Clause 3 provides that Part 2 amends the *Coroners Act 2003*.

Clause 4 amends section 70 (Appointment of State Coroner).

Subclause (1) omits subsection (2) and inserts new subsection (2) to provide that the appointment of the State Coroner is for the term stated in the instrument of appointment. Section 70(2A) is inserted to provide that the stated term must not be longer than 5 years. Section 70(2B) is inserted to provide that a magistrate may be reappointed as the State Coroner.

Subclause (2) renumbers section 70(2A) and (3) to 70(3) to (5).

Clause 5 amends section 78 (Appointment of Deputy State Coroner) to omit subsection (2) and inserts new subsection (2) to provide that the appointment of the Deputy State Coroner is for the term stated in the instrument of appointment. Section 78(3) is inserted to provide that the stated term must not be longer than 5 years. Section 78(4) is inserted to provide that a magistrate may be reappointed as the Deputy State Coroner.

Clause 6 inserts new Part 6, Division 6 (Transitional provision for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022) which provides that sections 70 and 78 apply to the appointments of the persons who hold office as the State Coroner and the Deputy State Coroner immediately before commencement.

Part 3 Amendment of Criminal Code

Clause 7 provides that this part amends the Criminal Code.

Clause 8 amends section 1 (Definitions) to omit the current definition of *carnal knowledge* and *detriment.* It also inserts references to the new definitions of *engage in penile intercourse* and *penile intercourse* in section 6, as well as a new definition of circumstances, detriment, property and stalked person in section 359A. It further inserts references to the definition of unlawful stalking, intimidation, harassment or abuse to sections 359B and 359D.

Clause 9 omits section 6 (*Carnal knowledge*) replacing it with *Meaning of engage in penile intercourse.* The provision interprets *engage in penile intercourse* to encapsulate the definition previously ascribed to carnal knowledge; that is, penile penetration to any extent of the female genitalia (including the external genitalia) or anus.

The amendment relates to terminology only and is intended to capture and not alter the legal concept of carnal knowledge.

Clause 10 amends section 211 (Bestiality).

Subclause (1) omits the term '*has carnal knowledge with or of*' and replaces it with '*engages in penile intercourse with'.*

Subclause (2) inserts new subsection (2) that provides that for the purposes of the offence in section 211, the definitions *penile intercourse* and *engages in penile intercourse* with another person in section 6 apply as if a reference in that section to another person were a reference to the animal.

Clause 11 amends section 215 (Carnal knowledge with or of children under 16).

Subclause (1) amends the offence heading to replace the term '*Carnal knowledge with or of children under 16'* with '*Engaging in penile intercourse with child'*.

Subclause (2) amends subsection (1) to replace '*has or attempts to have unlawful carnal knowledge with or of'* with '*engages or attempts to engage in unlawful penile intercourse with'*.

Subclause (3) amends subsections (3) and (4) to replace '*have unlawful carnal knowledge'* with '*engage in unlawful penile intercourse'*.

Clause 12 amends section 216 (Abuse of persons with an impairment of the mind).

Subclause (1) amends subsection (1) to replace the term '*has or attempts to have unlawful carnal knowledge with or of'* with '*engages or attempts to engage in unlawful penile intercourse with'*.

Subclause (2) amends subsection 3(a) to replace the term '*having unlawful carnal knowledge'* with '*engaging in unlawful penile intercourse'*.

Subclause (3) amends subsection 3(b) to replace the term '*have unlawful carnal knowledge'* with '*engage in unlawful penile intercourse'*.

Clause 13 amends section 217 (Procuring young person etc. for carnal knowledge).

Subclause (1) amends the offence heading to replace the term '*carnal knowledge'* with '*penile intercourse'*.

Subclause (2) amends subsection (1) to replace the term *'carnal knowledge'* with '*penile intercourse'*.

Clause 14 amends section 221 (Conspiracy to defile).

Subclause (1) replaces the term '*induce any person'* with '*induce a third person'*.

Subclause (2) replaces the term '*have unlawful carnal knowledge with or of him or her'* with *'engage in unlawful penile intercourse with the third person'*.

Clause 15 amends section 222 (Incest).

Subclause (1) amends subsection (1)(a) to replace the term '*has carnal knowledge with or of'* with '*engages in penile intercourse with'*.

Subclause (2) amends subsections (3), (4) and (8) to replace references to '*carnal knowledge'* with '*penile intercourse'*.

Clause 16 amends section 229B (Maintaining a sexual relationship with a child).

Subclause (1) amends the offence heading to replace the term '*Maintaining a sexual relationship with a child'* with '*Repeated sexual conduct with a child'*.

Subclause (2) inserts new subsection (9A) stating that the offence heading is not intended to form part of the provision despite the operation of section 14 of the *Acts Interpretation Act 1954* and is not intended to affect the interpretation or operation of the provision in any way. A note is also included to clarify that the amendments to the offence heading are not intended to change the nature or scope of the offence or the requirements for establishing an offence against the section.

Clause 17 amends section 349 (Rape) to replace the term '*has carnal knowledge with or of*' with '*engages in penile intercourse with'*

Clause 18 amends the chapter heading in Chapter 33A to insert '*, intimidation, harassment or abuse'.*

Clause 19 amends section 359B (What is unlawful stalking).

Subclause (1) amends the offence heading to replace the term '*What is unlawful stalking*' with '*What is unlawful stalking, intimidation, harassment or abuse'.*

Subclause (2) amends the term '*Unlawful stalking*' to replace it with '*Unlawful stalking, intimidation, harassment or abuse'.*

Subclause (3) amends section 359B(c)(ii) to replace the term '*by telephone*' with '*using any technology and over any distance*' and inserts examples.

Subclause (4) amends section 359B(c) to insert new subsections (iii)(a) and (iva) which captures technology facilitated abuse. New section 359B(c)(iiia) inserts '*monitoring, tracking or surveilling a person's movements, activities or interpersonal associations without the person's consent, including, for example, using technology*' and additionally inserts examples relating to this insertion. New section 359B(c)(iva) inserts '*publishing offensive material on a website, social media platform or online social network in a way that will be found by, or brought to the attention of a person*'.

Subclause (5) amends section 359B(c)(v) to insert '*, including by using a website, social media platform or online social network'*.

Subclause (6) amends section 359B(c)(vi) to replace '*or threatening*' with '*, threatening, humiliating or abusive*'.

Subclause (7) inserts in section 359B(c)(vi) an example of what constitutes publishing a person's personal information.

Subclause (8) amends section 359B(c)(iiia) to (vii) to renumber the sections 359B(c)(iv) to (ix).

Clause 20 amends section 359C (What is immaterial for unlawful stalking).

Subclause (1) amends the heading to read '*What is immaterial for unlawful stalking, intimidation, harassment or abuse'.*

Subclause (2) amends section 359C(1) and (4) to replace the term '*unlawful stalking*' with '*unlawful stalking, intimidation, harassment or abuse*'.

Clause 21 amends section 359D (Particular conduct that is not unlawful stalking).

Subclause (1) amends the heading '*particular conduct that is not unlawful stalking*' to replace it with '*particular conduct that is not unlawful stalking, intimidation, harassment or abuse'.*

Subclause (2) amends section 359D to replace the term '*Unlawful stalking*' with '*Unlawful stalking, intimidation, harassment or abuse'.*

Clause 22 amends section 359E (Punishment of unlawful stalking).

Subclause (1) amends the heading '*Punishment of unlawful stalking*' to insert '*, intimidation, harassment or abuse*'.

Subclause (2) amends section 359E(1) to insert '*, intimidates, harasses or abuses'.*

Subclause (3) amends section 359E(2), (3) and (4) to insert '*, intimidation, harassment or abuse*'.

Subclause (4) inserts new subsection (3A) to provide that a person is liable to a maximum penalty of imprisonment for 7 years if a domestic relationship exists between the person and the stalked person.

Subclause (5) amends section 359E(4) to replace the term '*Also,*' with '*Further,*'.

Subclause (6) renumbers sections 359E(3A) to (6) as sections 359E(4) to (7).

Clause 23 amends section 359F (Court may restrain unlawful stalking).

Subclause (1) amends the heading to insert '*, intimidation, harassment or abuse*'.

Subclause (2) amends sections 359F(1) and (12) to replace the term '*a charge against a person of unlawful stalking*' with '*a charge against a person of unlawful stalking, intimidation, harassment or abuse*'.

Subclause (3) amends section 359F to insert new subsections (6A) and (6B) which specify the operation of restraining orders to provide that a restraining order takes effect on the day it is made and continues in force until the day stated by the court in the restraining order; or if no day is stated, 5 years after the day the restraining order is made.

Additionally, new subsection (6B) provides that the court may order that a restraining order continues in force for a period of less than 5 years if the court is satisfied that the safety of a person in relation to whom the restraining order is made will not be compromised by the shorter period.

Subclause (4) amends section 359F(8) to provide a maximum penalty of 120 penalty units or 3 years imprisonment.

Subclause (5) inserts new subsection 359F(8A) to provide that if the person has been convicted of a domestic violence offence in the 5 years before the contravention, the person is guilty of a misdemeanour and is liable to a fine of 240 penalty units or imprisonment for 5 years.

Subclause (6) amends section 359F(12) to provide that a *domestic violence offence* includes an offence against Part 7 of the DFVP Act.

Subclause (7) renumbers sections 359F(6A) to (12) as section 359F(7) to (15).

Clause 24 amends section 552B (Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial).

Subclause (1) inserts section 552B(1)(ha) to include an offence against section 359F if the defendant is liable to the penalty mentioned in new section 359F(11).

Subclauses (2) and (3) renumbers section 552B(1)(ha) to (n) as sections 552B(1)(i) to (o).

Clause 25 amends section 578 (Charge of offence of a sexual nature) to replace the term '*having unlawful carnal knowledge with or of'* with *'engaging in unlawful penile intercourse with'.*

Clause 26 amends section 590AH (Disclosure that must always be made) to insert a provision which provides that where an offender has been charged with a domestic violence offence, the disclosure of the offender's domestic violence history forms part of the prosecution's disclosure obligation. New section 590AH(4) provides the definition for '*domestic violence history*' and '*domestic violence offence*' and provides a note referencing the definition of *domestic violence offence* in section 1 of the Criminal Code.

Clause 27 amends section 590AP (Limit on disclosure of witness contact details) to replace the term '*unlawful stalking*' with '*unlawful stalking, intimidation, harassment or abuse*'.

Clause 28 amends Part 9 by inserting new Chapter 106 (Transitional provisions for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022).

New section 756 in Chapter 106 provides that, despite the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022*,

former provisions continue to apply to offences charged before the commencement of the Act.

New section 757(1) in Chapter 106 provides that the section applies if a person commits an offence against new section 359F(10) after the commencement and the penalty in mentioned in new section 359F(11) applies to the person.

New section 757(2) provides that new section 359F(11) applies regardless of whether any of the acts constituting the domestic violence offence mentioned in new section 359F(11) were done before or after the commencement.

New section 757(3) provides that the section applies despite section 11(2) of the Criminal Code and section 20C(3) of the *Acts Interpretation Act 1954*.

New section 757(4) inserts a definition of '*new*' for the purposes of the section.

Part 4 Amendment of Domestic and Family Violence Protection Act 2012

Clause 29 provides that this part amends the *Domestic and Family Violence Protection Act 2012*.

Clause 30 amends section 4 (Principles for administering Act).

Subclause (1) amends examples in subsection (4)(2)(d) to update terminology to refer to '*Aboriginal peoples and Torres Strait Islander peoples'* and '*people with disability'*.

Subclause (2) amends subsection (4)(2)(e)*' to provide that 'the person who is most in need of protection in the relationship should be identified*'; and '*only 1 domestic violence order protecting that person should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other*'.

Clause 31 amends section 8 (Meaning of *domestic violence*).

Subclause (1) inserts '*or a pattern of behaviour*,' in the definition of domestic violence.

Subclause (2) inserts new subsection (1A) to state the behaviour or a pattern of behaviour mentioned in section 8(1) may occur over a period of time; and may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening coercive or causes fear in a way mentioned in section 8(1); and is to be considered in the context of the relationship between the first person and the second person as a whole.

Subclause (3) inserts '*or (2)*' to provide that the meaning of domestic violence as set out in sections 8(1) and (2) should not be limited when considering the list of domestic violence behaviours in section 8(3).

Subclause (4) amends section 8(2)(i) to replace the term '*unlawful stalking*' with '*unlawful stalking, intimidating, harassing or abusing'*

Subclause (5) replaces subsection (2) with subsection (3).

Subclause (6) amends section 8(5) to replace the term *'unlawful stalking'* with '*unlawful stalking, intimidation, harassment or abuse* see the Criminal Code, sections 359B and 359D'.

Subclause (7) renumbers section 8(1A) to (5) as section 8(2) to (6).

Clause 32 amends section 11 (Meaning of *emotional or psychological abuse*) to insert '*or a pattern of behaviour,'* in the definition of emotional or psychological abuse.

Clause 33 amends section 12 (Meaning of *economic abuse*) to insert '*or a pattern of behaviour*,' in the definition of definition of economic abuse.

Clause 34 inserts new section 22A (Who is the *person most in need of protection* in a relevant relationship).

New subsection (1) provides that a person (the *first person*) who is in a relevant relationship with another person (the *second person*) is the *person most in need of protection* in the relationship if, when the behaviour of each of the persons is, considered in the context of the relationship as whole:

(a) the behaviour of the second person towards the first person is more likely than not to be (i) abusive, threatening or coercive, or (ii) controlling or dominating of the first person and causing the first person to fear for their safety or wellbeing, or that of a child of the first person, another person or an animal (including a pet); or

(b) the first person's behaviour towards the second person is, more likely than not (i) for the first person's self-protection or the protection of a child of the first person, another person or an animal (including a pet), or (ii) in retaliation to the second person's behaviour to the first person, a child of the first person, another person or an animal (including a pet); or (iii) attributable to the cumulative effect of the second person's domestic violence towards the first person.

New subsection (2) provides that in deciding the person most in need of protection, the court must consider:

(a) the history of the relevant relationship and of domestic violence, between the persons; and

(b) the nature and severity of the harm caused to each person by the behaviour of the other person; and

(c) the level of fear experienced by each person because of the behaviour of the other person; and

(d) which person has the capacity (i) to seriously harm the other person, or (ii) to control or dominate the other person and cause the other person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); and

(e) whether the persons have characteristics that make them particularly vulnerable to domestic violence.

Examples of people with characteristics that may make them particularly vulnerable to domestic violence mentioned in subsection (2)(d) are provided. These characteristics are consistent with the characteristics provided in the principles for administering the DFVP Act under section 4(2)(d).

Clause 35 inserts new section 36A (Court must be given respondent's criminal history and domestic violence history).

New subsection (1) provides that the section applies if a police officer makes an application for a protection order; or the clerk of the court gives an application for a protection order to the officer in charge of a police station under section 33(2)(b); or a copy of a police protection notice issued by a police officer is filed in the court to be heard as an application for a protection order.

New subsection (2) provides that the police commissioner must ensure a copy of the respondent's criminal history and domestic violence history is filed in the court with an application or police protection notice mentioned in subsection (1)(a) or (c); or before the date and time stated in the application for the first hearing of the application; or is given to the court when the application is first heard.

New subsection (3) provides that if the respondent does not have a criminal history or domestic violence history, the police commissioner must ensure the court is informed of that fact.

Clause 36 amends section 37 (When court may make a protection order).

Subclause (1) inserts new subsection (2)(a)(iii) which provides that, in deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence, the court must consider the respondent's criminal history and domestic violence history filed in or given to the court under section 36A (as well as other matters set out in section 37).

Subclause (2) inserts new subsection (5) to make it clear that section 37 applies subject to section 41G (Deciding cross applications).

Clause 37 amends section 41C (Hearing of applications – cross applications before same court).

Subclause (1) omits section 41C(2)(a) and (b) to remove the option for the court to hear the applications separately in cases where there are concerns for the safety, protection or wellbeing of the aggrieved. Instead, new subsections (2)(a) and (b) provide that the court must hear the applications together; and in hearing the applications, consider: (i)the principle mentioned in section 4(2)(e) and (ii) whether it is necessary to make arrangements for the safety, protection or wellbeing of the person most in need of protection in the relevant relationship that exists between the persons who are the aggrieveds and respondents to the applications. A note is provided referencing sections 150 and 151, as examples, which detail the power of the court to make orders in relation

to a person giving evidence or being cross-examined as a protected witness (in civil domestic violence proceedings).

Subclause (2) omits section 41C(3).

Subclause (3) renumbers section 41C(4) as section 41C(3).

Clause 38 amends section 41D (Hearing of applications – cross applications before different courts).

Subclause (1) omits section 41D(3) and (4) and inserts a new subsection (3) to provide that the court, when hearing the applications, must consider: (a) the principle mentioned in section 4(2)(e); and (b) whether it is necessary to make arrangements for the safety, protection or wellbeing of the person most in need of protection in the relevant relationship that exists between the persons who are the aggrieveds and respondents to the applications. A note is provided referencing, as examples, sections 150 and 151 which details the power of the court to make orders in relation to a person giving evidence or being cross-examined as a protected witness (in civil domestic violence proceedings).

Subclause (2) renumbers section 41D(5) as section 41D(4).

Clause 39 inserts new section 41G (Deciding cross applications).

New subsection (1) provides that this section applies to a court hearing the original application and cross application and the variation application and cross application together under section 41C, 41D or 41E.

New subsection (2) provides that the court must decide:

(a) which of the parties to the relevant relationship is the person most in need of protection in the relationship; and

(b) the application that makes or varies the protection order that is necessary or desirable to protect the person most in need of protection from domestic violence; and

(c) if the other application is an application for a protection order - to dismiss the application; and

(d) if the other application is an application for the variation of a protection order - to vary the order by reducing its duration so that the order ends.

New subsection (3) provides that, despite subsection (2), the court may make or vary a protection order under both applications if the court is satisfied that in exceptional circumstances:

(a) there is clear evidence that each of the parties to the relevant relationship is in need of protection from the other party; and

(b) it is not possible to decide that 1 party's need for protection is greater than the other party's need for protection.

It is intended that the meaning of the term '*exceptional circumstances*' is defined in accordance with its ordinary meaning. '*Exceptional circumstances*' may describe a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special or uncommon. It need not be '*unique, or unprecedented, or very rare*', but it cannot be a circumstance that is '*regularly, or routinely, or normally encountered*'.[1] Whether exceptional circumstances are shown to exist will depend on the facts and circumstances of a particular case.

New subsection (4) provides that the relevant relationship mentioned in subsection (2) and (3) is the relevant relationship that exists between the persons who are the aggrieved and the respondent.

Clause 40 amends section 42 (When court on its own initiative can make or vary order against offender).

Subclause (1) amends section 42 to insert new subsection (2A) which provides that despite section 37(2)(a)(iii), in deciding whether to make a protection order under subsection (2), the court is not required to, but may, consider the offender's criminal history and domestic violence history.

Subclause (2) amends section 42(4) to replace subsection (3) with subsection (4).

Subclause (3) amends section 42(6) to replace subsection (5)(b) with subsection (6)(b).

Subclause (4) renumbers section 42(2A) to (10) as section 42(3) to (11).

Clause 41 amends section 43 (When Childrens Court can make or vary order against parent of a child).

Subclause (1) amends section 43 to insert new subsection (5A) which provides that despite section 37(2)(a)(iii), in deciding whether to make a protection order under subsection (2), or vary a domestic violence order under subsection (3), the court is not required to, but may, consider the parent's criminal history and domestic violence history.

Subclause (2) amends section 43(7) to replace subsection (6)(b) with subsection (7)(b).

Subclause (3) renumbers section 43(5A) to (10) as section 43(6) to (11).

Clause 42 amends section 45 (Matters court must be satisfied of) to insert new subsection (3) which provides that in deciding whether to make a temporary protection order, the court may consider the respondent's criminal history and domestic violence history if, in the court's opinion, it is relevant to do so.

Clause 43 amends section 51 (Court may make domestic violence order by consent).

[1] *Attorney-General for the State of Queensland v Marama* [2015] QSC 8 [8].

Subclause (1) amends the heading of section 51 to read *'Court may make or vary domestic violence order by consent'*.

Subclause (2) replaces section 51(5) with new section 51(5), which provides that before deciding whether to make or vary a domestic violence order under this section, the court may: (a) conduct a hearing in relation to the particulars of the application if, in the court's opinion, it is in the interests of justice to do so; and (b) consider the respondent's criminal history and domestic violence history if, in the court's opinion, it is relevant to do so.

Subclause (2) also inserts a note after new subsection 51(5)(b) which provides that the police commissioner is required to ensure a copy of the respondent's criminal history and domestic violence history is filed or given to the court. See sections 36A and 90A.

Clause 44 inserts new section 90A (Court must be given respondent's criminal history and domestic violence history).

New subsection (1) provides that the section applies if the applicant for the variation of a domestic violence order is a police officer; or the clerk of the court gives an application for the variation of a domestic violence order to the officer in charge of a police station under section 87(2)(b).

New subsection (2) provides that the police commissioner must ensure a copy of the respondent's criminal history and domestic violence history is filed in the court with an application mentioned in subsection (1)(a); or before the date and time stated in the application for the first hearing of the application; or is given to the court when the application is first heard.

New subsection (3) provides that if the respondent does not have a criminal history or a domestic violence history, the police commissioner must ensure the court is informed of that fact.

Clause 45 amends section 91 (When court can vary domestic violence order) to insert new subsection 91(3)(c) which provides that the court may consider the respondent's criminal history and domestic violence history if, in the court's opinion, it is relevant to do so, and inserts a note after new subsection (c) which reads '*The police commissioner is required to ensure a copy of the respondent's criminal history and domestic violence history is filed in or given to the court. See section 90A*.'

Clause 46 amends section 113 (Duration) to replace subsection 113(1)(a) with new subsection (a) which provides that a police protection notice takes effect when the notice is served on the respondent personally or in a way stated in a substituted service order.

Clause 47 amends section 150 (Protected witnesses) to insert a note to refer to the Evidence Act, part 2, division 6 for provisions that apply to protect the persons mentioned in subsection (1) if they give, or are to give, evidence in criminal proceedings for an offence against part 7 (of the DFVP Act).

Clause 48 amends section 151 (Restriction on cross-examination in person) to insert a note to refer to the Evidence Act, part 2, division 6, in relation to the cross-examination of protected witnesses in proceedings for an offence against the DFVP Act.

Clause 49 amends section 157 (Costs) to provide that the court may award costs against the party who made the application if the court hears and decides, in new subsection (a) to dismiss the application and in doing so, also decides that the party, in making the application, intentionally engaged in behaviour, or continued a pattern of behaviour, towards the respondent to the application that is domestic violence; or in subsection (b) to dismiss the application on the grounds that it is malicious, deliberately false, frivolous or vexatious. A note is inserted after new subsection (a) which reads '*This type of behaviour is known as systems abuse or legal abuse. It is behaviour in which a person intentionally misuses the legal system, including, for example, by starting court proceedings based on false allegations against another person, as a way to intentionally exert control or dominance over the other person or to torment, intimidate or harass the other person.*'

Clause 50 inserts new Division 3A (Reopening proceedings) into Part 5 of the DFVP Act.

New section 157A is titled '*Reopening particular proceedings decided in respondent's absence'*.

New subsection (1) provides that the respondent to an application to make or vary a protection order may apply to the court to reopen the proceeding for the application if: (a) the application was served on the respondent under a substituted service order; and (b) the application was not, and could not reasonably have been, brought to the respondent's attention, despite being served in a way stated in the substituted service order; and (c) the respondent was not present in court when the application was heard and decided.

New subsection (2) provides that the respondent must make an application to reopen the proceeding within 28 days after the day on which the respondent became aware that the protection order the subject of the application had been made or varied.

New subsection (3) provides that the court may reopen the proceeding if the court is satisfied the grounds mentioned in subsection (1) are established.

New subsection (4) provides that if the proceeding is reopened and the respondent fails to appear before the court that is to rehear and decide the reopened proceeding, the respondent may only make another application under this section with the leave of the court.

New section 157B is titled '*Effect of decision to reopen proceedings'*.

New subsection (1) provides that a decision of the court to reopen a proceeding does not affect the operation of the decision in the proceeding, or a domestic violence order made or varied in the proceeding, or prevent the taking of action to implement the decision or order.

New subsection (2) provides that the court may make an order staying the operation of the decision, domestic violence order or varied order until the reopened proceeding is decided.

New subsection (3) provides that the court may act under subsection (2) on the application of a party or on its own initiative.

New section 157C is titled '*Rehearing reopened proceeding*'.

New subsection (1) provides that the court may decide a reopened proceeding in any way it considers appropriate, including, for example, by hearing the proceeding afresh, in whole or part.

New subsection (2) provides that for an appeal against a decision the subject of the reopened proceeding, the time for starting the appeal starts on the day the court makes the decision under the reopened proceeding.

New subsection (3) provides that this division does not otherwise affect a right of appeal.

Clause 51 inserts new section 160A (Court may make order about disclosure of, or aggrieved's access to, respondent's criminal history or domestic violence history).

New subsection (1) provides that this section applies if a copy of a respondent's criminal history or domestic violence history has been filed in or given to a court hearing an application under the DFVP Act.

New subsection (2) provides that the court may order that a person must not disclose information contained in the respondent's criminal history or domestic violence history to another person.

New subsection (3) provides that an order under subsection (2) does not apply to the respondent.

New subsection (4) provides that if the court is satisfied that all or part of the respondent's criminal history or domestic violence history is not relevant to deciding the application, the court may decide the application without taking into account, or hearing submissions about, all or the part of the criminal history or domestic violence history. Examples are provided.

New subsection (5) provides that if the court decides the application under subsection (4) the court may order that:

(a) the aggrieved or the applicant, (if the applicant is not the aggrieved, the respondent or a police officer) – (i) not be given a copy of all or part of the criminal history or domestic violence history; and (ii) not be told about the contents of all or part of the criminal history or domestic violence history; and

(b) if a copy of the criminal history or domestic violence history has been given to a person mentioned paragraph (a) – the copy be returned to the court.

New subsection (6) provides that the court may make an order under this section with or without conditions.

New subsection (7) provides that the court makes an order under this section on its own initiative.

Clause 52 amends section 184 (Service of order on respondent) to amend subsection (5)(a)(ii) to provide that subsection (2) does not apply if the order, or the varied order, has been served on the respondent other than by being personally served on the respondent including, for example, by being served on the respondent in a way stated in a substituted service order.

Clause 53 inserts new section 184A (Substituted service).

New subsection (1) provides that this section applies if, under the DFVP Act, a document is required to be personally served on a respondent by a police officer and the court is satisfied that: (a) reasonable attempts have been made to personally serve the document on the respondent; and (b) and serving the document in another way is necessary or desirable to protect the aggrieved; and reasonably likely to bring the document to the attention of the respondent.

New subsection (2) provides that the court may make an order substituting another way for a police officer to serve the document on the respondent (*a substituted service order*).

New subsection (3) provides that the court must, in the substituted service order, state the circumstances in which the document is to be taken to have been served on the respondent, including, for example, when a document served by post or electronic communication is taken to have been served; or that the circumstances are on the happening of a stated event; or at the end of a stated time.

New subsection (4) provides that the court may make a substituted service order for the document on its own initiative; or on the application of a party to the proceeding to which the document relates; or on the application of a police officer.

New subsection (5) provides that when a police officer serves a document on a respondent under a substituted service order, the police officer must, unless it is not reasonable in the circumstances, give a copy of the document to the respondent; and explain to the respondent what the document is; and the nature and effect of the document.

Clause 54 inserts new sections 189A (Act applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986) and 189B (Police commissioner's obligation to give respondent's criminal history and domestic violence history to court).

New section 189A provides that the DFVP Act applies in relation to a person despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

New section 189B(1) provides that this section applies if the police commissioner is required to ensure a copy of a respondent's criminal history and domestic violence history is filed in or given to a court under section 36A or 90A.

New subsection 189B(2) provides that the obligation applies only to information in the police commissioner's possession; or that, under a law, the police commissioner is permitted to access and give to the court to be used in a proceeding under the DFVP Act.

New subsection 189B(3) provides that if a respondent's domestic violence history includes a domestic violence order made or varied with the respondent's consent under section 51, a copy of the respondent's domestic violence history is filed in or given to a court under section 36A or 90A must state that fact.

Clause 55 inserts new division 5 (Transitional provisions for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022) in Part 10.

New section 233 (Definitions for division) inserts a definition of '*new'*, for a provision of the DFVP Act, means the provision as in force from the commencement.

New section 234 (Existing applications – considering respondent's criminal history or domestic violence history*)* provides the transitional arrangement for the court considering a respondent's criminal history or domestic violence history on an existing application.

New subsection 234(1) provides that this section applies to proceedings for the following applications, whether or not the proceedings had started before the commencement: (a) an application for a protection order made but not decided before the commencement; (b) an application for the variation of a domestic violence order made but not decided before the commencement.

New subsection 234(2) provides that if, in the court's opinion, the respondent's criminal history and domestic violence history is relevant to deciding the application, the court may: (a) ask for the respondent's criminal history and domestic violence history; and (b) consider the criminal history and domestic violence history in deciding the application.

New subsection 234(3) provides that if the applicant for the application is not a police officer, the clerk of the court may ask the police commissioner for the criminal history and domestic violence history.

New subsection 234(4) provides that if the court makes a request under subsection (2)(a), or the clerk makes a request under subsection (3), the police commissioner must ensure a copy of the respondent's criminal history and domestic violence history is filed with the court before the day and time to which the hearing of the application is adjourned; or is given to the court when the hearing of the application resumes.

New subsection 234(5) provides that if the respondent does not have a criminal history or domestic violence history, the police commissioner must ensure the court is informed of that fact.

New subsection 234(6) provides that this section applies despite new sections 36A, 37, 90A and 91.

New section 235 (Existing cross applications) provides the transitional arrangements for existing cross applications which were made, but not decided, before the commencement of new sections 41C, 41D and 41G. New sections 41C, 41D and 41G apply to applications for protection orders that are filed before commencement of these amendments (but not decided).

New section 236 (Substituted service orders for existing documents) provides the transitional arrangements for substituted service orders. The new section 184A applies regardless of whether the document was made before or after the commencement.

Clause 56 amends the Dictionary in the Schedule of the DFVP Act to insert definitions for '*criminal history', 'domestic violence history', 'person most in need of protection'* and '*substituted service order'.*

Part 5 Amendment of Evidence Act 1977

Clause 57 provides that this part amends the *Evidence Act 1977*.

Clause 58 amends section 14L(1)(b) to provide that section 14L (Standing of counsellor and counselled person) applies if the court is deciding (i) whether a document or evidence relating to the counselled person or counsellor is a protected counselling communication, or (ii) an application for leave under subdivision 3.

Clause 59 amends section 21L (Application of division 6) by inserting new subsection (2) which provides that the division extends to summary proceedings under the *Justices Act 1886* for domestic violence offences.

Clause 60 amends section 21M (Meaning of protected witness) to extend the protected witness scheme to any domestic violence offence, including the offences in Part 7 of the DFVP Act.

Subclause (1) amends section 21M(1)(c) to insert after the term '*proceeding for a*', '*domestic violence offence or*'.

Subclause (2) amends section 21M(1) to insert new subsection (e) to extend the category of protected witness to the person named as the aggrieved in the domestic violence order, or a relative or associate of the aggrieved, if the court considers the person would otherwise be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless deemed to be a protected witness.

Subclause (3) amends 21M(2) to insert after the term '*that is not*', '*a domestic violence offence*'.

Subclause (4) amends 21M(3) to insert the definition for a '*domestic violence order-related offence*'.

Clause 61 replaces the heading of Part 6A with '*Evidence related to domestic relationships and domestic violence*'.

Clause 62 amends section 103A (Definitions for part) to insert definitions for the terms '*defence*', '*family member*', '*help-seeking behaviour*', '*intimate partner*', '*relative*' '*safety option*' and '*self-defence*'.

Clause 63 inserts new section 103AB (References to domestic violence include associated domestic violence). The section provides that a reference in Part 6A to '*domestic violence committed against a person by an intimate partner or family member of the person includes associated domestic violence committed against a child, relative or associate of the person by the intimate partner or family member*'. Definitions from the DFVP Act are incorporated into the provision.

Clause 64 inserts new Division 1A '*Evidence of domestic violence*' into Part 6A.

New section 103CA (What may constitute evidence of domestic violence) provides that evidence of domestic violence may include, but is not limited to, evidence of any of the matters set out in subsection (1). Subsection (2) provides that the DFVP Act is not limited by the new section.

New subsection 103CB (Evidence of domestic violence) is inserted.

New subsection 103CB(1) provides that relevant evidence of domestic violence is admissible in a criminal proceeding.

New subsection 103CB(2) provides that, without limiting subsection (1), the evidence may relate to the defendant, the person against whom the offence was committed or another person connected with the offence.

New section 103CC (Expert evidence of domestic violence) is inserted. Subsection (1) provides that expert evidence about domestic violence is admissible in a criminal proceeding. Subsection (2) provides an inclusive list of evidence which may be given by an expert. Subsection (3) sets out who, for the purposes of the section, may be an expert on the subject of domestic violence.

New section 103CD (Ultimate issue and common knowledge rules abrogated) provides that evidence of an expert's opinion given under section 103CC is not inadmissible only because the opinion is about a fact in issue or an ultimate issue; or a matter of common knowledge.

Clause 65 replaces the heading of Part 6A, division 2 with '*Recorded statements as complainant's evidence-in-chief in domestic violence proceedings*' and '*Subdivision 1 Use of recorded statements*'.

Clause 66 renumbers divisions 3 to 5 in Part 6A as Part 6A, Division 2, subdivisions 2 to 4.

Clause 67 inserts new Part 6A, Division 3 (Jury directions related to domestic violence) and inserts new Subdivision 1 (General matters).

New section 103T (Request for direction to jury about domestic violence) provides that the prosecution or defence may request jury directions in criminal proceedings where

domestic violence is an issue in the proceeding. A request for a direction may be made at any time during the proceeding and may include any or all of the matters mentioned in subdivision 2, other than section 103ZA. The judge may give the jury the requested direction unless there are good reasons for not doing so.

New section 103U (Request for direction to jury about self-defence in response to domestic violence) provides that the defence may ask for a direction to the jury about self-defence in response to domestic violence by informing the jury about the matters mentioned in section 103ZA or all or some of the matters mentioned in subdivision 2. The judge may give the jury the requested direction unless there are good reasons for not doing so.

New section 103V (Judge may direct jury about domestic violence on own initiative) provides that in relation to a criminal proceeding that is a trial by jury if domestic violence is an issue in the proceeding, the judge may give a direction on their own initiative and in the interests of justice informing the jury about - if self-defence in responses to domestic violence is an issue in the proceeding, the matters mentioned in section 103ZA; or all or some of the matters about domestic violence mentioned in subdivision 2.

New section 103W (Direction may be given before evidence is adduced and may be repeated) provides that the judge may direct a jury under sections 103T, 103U or 103V before any evidence is adduced in a proceeding. The judge may also repeat the direction at any time during the proceeding.

New section 103X (Application of subdivision 2 to trial by judge or magistrate sitting alone) applies to a criminal proceeding that is a trial by a judge or magistrate sitting alone. The provision provides that the court's reasoning must be consistent with how a jury would be directed on the matter under subdivision 2 in the particular case.

New section 103Y (No limit on court's duty to direct jury) provides that the division does not limit the matters to which the court may direct the jury about, including in relation to evidence given by an expert witness.

New subdivision 2 (Content of jury directions about domestic violence) is inserted.

New section 103Z (Content of general direction about domestic violence) identifies matters about which a judge may inform a jury in relation to domestic violence.

New section 103ZA (Direction about self-defence in response to domestic violence) provides matters of which a judge may inform a jury about self-defence in response to domestic violence.

New section 103ZB (Examples of behaviour, or patterns of behaviour, that may constitute domestic violence) provides examples of behaviour or patterns of behaviour which may constitute domestic violence about which a jury may be informed.

New section 103ZC (Factors that may influence how a person addresses, responds to or avoids domestic violence) provides further matters about which a jury may be informed if a judge informs the jury about matters mentioned in section 103Z(2)(d).

Clause 68 omits section 132B (Evidence of domestic violence).

Clause 69 amends Part 9 by inserting new Division 13 (Transitional provision for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022). New section 159 in Part 9 Division 13 provides that section 14L, as in force from commencement, applies to an application for leave under section 14G made before the commencement if a proceeding to decide the application had not started before the commencement.

Clause 70 amends Schedule 3 (Dictionary) to insert definitions for the terms '*defence*', '*domestic relationship*', '*domestic violence*', '*domestic violence order*', '*family member*', '*help-seeking behaviour*', '*intimate partner*', '*relative*', '*safety option*' and '*self-defence*'.

Part 6 Amendment of Oaths Act 1867

Clause 71 provides that this part amendments the *Oaths Act 1867*.

Clause 72 inserts new section 13F (Minor non-compliance does not affect validity of affidavit or declaration) in Part 4, Division 2 of the Oaths Act to provide that an affidavit or declaration is not invalid only because it does not comply with a requirement under section 13B, 13C or 13E that does not materially affect the nature of the affidavit or declaration. For example, an affidavit is not invalid merely because the jurat does not contain some of the information required under section 13E of the Oaths Act. Section 13F(2) provides that subsection (1) does not limit a court's power to admit an affidavit, including a purported affidavit under section 31G, in evidence in a proceeding.

Clause 73 inserts new section 31CA (Part does not limit other laws) in Part 6A, Division 1 of the Oaths Act to clarify that nothing in Part 6A limits a provision of another Act or law about the way in which, or by whom, a document is sworn, or taken or received on oath, or made as a statutory declaration.

Clause 74 inserts Subdivision 1A (Preliminary) in Part 6A, Division 5 containing new section 31OA (Application of division) which clarifies that Division 5 applies to a document that is an affidavit or declaration. This clarifies the original intention of the JOLA Act so that all references to 'documents' in the division are taken only to refer to affidavits or declarations.

Clause 75 omits the reference to the *Justice and Other Legislation Amendment Act 2021* from the Part 8 heading.

Clause 76 inserts a new Division 1 (Transitional provisions for Justice and Other Legislation Amendment Act 2021) heading for the existing transitional provisions in Part 8.

Clause 77 makes a minor consequential amendment to section 45 (Definitions for part), as a result of clause 76, to replace "part" with "division".

Clause 78 inserts new Division 2 (Transitional provision for Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022) and inserts new section 48 (Retrospective application of s 13F).

New section 48 provides that section 13F (inserted by clause 72) applies, and is taken to apply, in relation to an affidavit or declaration made from the commencement of section 34 of the JOLA Act(which commenced on 30 April 2022 by proclamation). This provision is retrospective in nature and has the effect of validating any affidavits and declarations that were made since 30 April 2022 that did not comply with a requirement under section 13B, 13C or 13E that did not materially affect the nature of the affidavit or declaration.

Part 7 Amendment of Penalties and Sentences Act 1992

Clause 79 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 80 amends section 9(2) (Sentencing guidelines).

Subclause (1) inserts section 9(2)(gb) which provides additional matters to which a court must have regard in sentencing an offender. The additional matters are: (i) whether an offender is a victim of domestic violence, and (ii) whether the commission of the offence is wholly or in partly attributable to the effect of domestic violence.

Subclause (2) inserts section 9(10B) which provides that in determining the appropriate sentence for an offender who is a victim of domestic violence, the court must treat as a mitigating factor the effect of domestic violence on the offender, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case, and the extent to which the commission of the offence is attributable to the effect of domestic violence if the commission of the offence is wholly or partly attributable to the effect of domestic violence.

Subclause (3) inserts the definition of '*domestic violence*' in section 9(12).

Clause 81 amends section 11 (Matters to be considered in determining offender's character).

Subclause (1) provides that the history of domestic violence orders made or issued against the offender, other than orders made or issued when the offender was a child, is a matter the court may consider in determining an offender's character.

Subclause (2) renumbers section (11)(aa) to (c) as section 11(b) to (d).

Subclause (3) provides that if oral submissions are to be made to, or evidence is to be brought before the court about the history of domestic violence orders made or issued against an offender, the court may be closed for that purpose. A definition of '*domestic violence order*' is also provided.

Part 8 Amendment of Telecommunications Interception Act 2009

Clause 82 provides that this part amends the *Telecommunications Interception Act 2009*.

Clause 83 omits section 6 and replaces it with a new section 6 (Application of pt 2).

Section 6 provides that this part applies if an officer of an eligible authority intends to make an application under the Commonwealth TI Act for a part 2-5 warrant; an international production application (IPO (investigative) application); or an international production application (IPO (supervisory) application).

Clause 84(1) amends section 7 (PIM must be notified) by omitting section 7(2)(b) and replaces it with a revised subsection to include reference to relevant IPO applications.

Clause 84(2) amends section 7 (PIM must be notified) by omitting section 7(3) and replaces it with a subsection to include reference to relevant IPO applications.

Clause 85 omits the reference to '*warrant*' and replaces it with part 2-5 warrant or international production order consequential to the inclusion of IPO application in Part 2.

Clause 86 omits section 9 (PIM to be given further information) and replaces it with a revised section which requires the officer give the PIM any further information required by the eligible Judge or nominated AAT member in connection with an application for a part 2-5 warrant; an IPO (investigative) application; or an IPO (supervisory) application.

Clause 87 amends section 10 (PIM entitled to appear)

Subclause *(1)* omits section 10(1) and inserts a new subsection (1).

New subsection (1) entitles the PIM to appear at the hearing of the application, make submissions to the eligible Judge or nominated AAT member and question persons as provided for under the respective Commonwealth provisions for a part 2-5 warrant; an IPO (investigative) application; or an IPO (supervisory) application.

New subsection (1) encompasses the contents of the previous subsection (2) which dealt specifically with the PIM's ability to make submissions to the eligible Judge or AAT member and alternative methods of providing submissions by phone, fax, email or any other reasonable way. The merging subsection 10(1) and 10(2) more closely reflects the relevant Commonwealth provisions.

Subclause (2) omits section 10(2)

Subclause (3) renumbers section 10(3) as section 10(2).

Clause 88 replaces section 11(1)(b) with a revised subsection to make necessary changes arising from the consequential amendment to section 10(1).

Clause 89 amends section 12 (PIM to report to Minister about noncompliance) by omitting subsection (2) and replacing it with a revised subsection to make necessary

changes consequential to the inclusion of IPO applications. Subsection (2)(b) requires the PIM not provide information relating to an IPO in a report to the Minister about noncompliance.

Clause 90 amends the heading of Part 3 to '(Record-keeping and related functions of eligible authorities relating to part 2-5 warrants)' to indicate the part only has application to part 2-5 warrants. The Commonwealth Ombudsman has oversight of the record-keeping by eligible authorities for an IPO as provided for under the Commonwealth TI Act.

Clause 91 amends the heading of Part 4 to '(Functions and powers of inspecting entity for inspections relating to part 2-5 warrant)' to indicate the part only has application to part 2-5 warrants. The Commonwealth Ombudsman is the inspecting entity for an IPO as provided for under the Commonwealth TI Act.

Clause 92 amends section 34 (General confidentiality provision) by omitting the note in subsection (1) and replacing it with a revised note consequential to the inclusion of IPO applications. The new note includes a reference to schedule 1, clause 152 (Prohibition on use, recording or disclosure of protected information or its admission in evidence) of the Commonwealth TI Act (as defined in the Dictionary).

Clause 93 inserts new Part 6 (Transitional Provision).

New section 41 (Existing part 2-5 warrant applications) provides the transitional provisions for part 2-5 warrant applications.

Subsection (1) provides that the section applies if a part 2-5 warrant application was made, but not decided, prior to the commencement of the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022*.

Subsection (2) provides that the Act, as in force before the commencement, continues to apply to a part 2-5 application which was brought prior to the commencement of the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022*.

Clause 94 amends the Schedule (Dictionary) to insert a definition of '*international production order*', '*IPO (investigative) application*', '*IPO (supervisory) application*', '*part 2-5 warrant application*' and '*part 2-5 warrant record*'.

Part 9 Amendment of Youth Justice Act 1992

Clause 95 provides that this part amends the *Youth Justice Act 1992*.

Clause 96 amends section 150 (Sentencing principles).

Subclause (1) inserts section 150(1)(ga) to provide, that without limiting paragraph (f), the court must have regard to: (i) whether the child is a victim of, or has been exposed to, domestic violence and (ii) whether the commission of the offence is wholly or partly attributable to the effect of domestic violence, or exposure to domestic violence, on the child.

Subclause (2) inserts section 150(3A) to provide that in determining the appropriate sentence for a child who is a victim of, or has been exposed to, domestic violence, the court must treat as a mitigating factor the effect of the domestic violence or exposure to domestic violence on the offender and, if the commission of the offence is wholly or partly attributable to the effect of the domestic violence or exposure to it, the extent to which the commission of the offence is attributable to the effect of the violence or exposure.

Subclause (3) inserts into section 150(6) definitions of '*domestic violence*' and '*exposed*'.

Part 10 Other amendments

Clause 97 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Part 1 Amendments commencing on assent

Part 1 of Schedule 1 of the Bill makes consequential amendments to the *Telecommunications Interception Act 2009*.

Part 2 Amendment commencing on proclamation

Part 2 of Schedule 1 of the Bill makes consequential amendments to the following Acts:

Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004
Criminal Code
Corrective Services Act 2006
Debt Collectors (Field Agents and Collection Agents) Act 2014
Disability Services Act 2006
Education (Queensland College of Teachers) Act 2005
Evidence Act 1977
Introduction Agents Act 2001
Motor Dealers and Chattel Auctioneers Act 2014
Penalties and Sentences Act 1992
Police Powers and Responsibilities Act 2000
Private Employment Agents Act 2005
Property Occupations Act 2014
Security Providers Act 1993
Status of Children Act 1978
Transport Operations (Passenger Transport) Act 1994
Transport Operations (Road Use Management) Act 1995
Victims of Crime Assistance Act 2009
Working with Children (Risk Management and Screening) Act 2000