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27th February 2024

Commissioner
Queensland Police Service
GPO Box 1440
Brisbane QLD 4001

By email: DFV&VPC.ImplementationTeam@police.qld.gov.au

Dear Commissioner,

Re: Consultation relating to *Delivering Modernised, Victim Focused Policing Responses Through Collaboration*

Thank you for the opportunity to provide comments on the Queensland Police Service (QPS) consultation paper entitled *Delivering Modernised, Victim Focused Policing Responses Through Collaboration (Consultation Paper)* which contains a number of proposed domestic and family violence initiatives including, inter alia, the introduction of a new framework which would enable police officers to issue a 12-month protection order with standard conditions without having to make an application to the court and the ability for police officers to serve documents under the *Domestic and Family Violence Protection Act 2012 (DFVP Act)* electronically. We are strongly opposed to the introduction of a new police-issued protection order (PIPO) on the basis that it would circumvent due process and an individual's rights to a fair hearing, that it is likely to disproportionately negatively impact individuals who might have language and/or literacy barrier/s that might be unable to give free and informed consent at the time and those that might be influenced by gratuitous concurrence. We also strongly oppose the proposed ability for police officers to serve documents under the DFVP Act electronically for a number of reasons including that individuals living in remote areas might have limited/intermittent access to the internet and, therefore, might not have the ability to regularly check electronic communications via email.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

We express our significant disappointment in the very short timeframe provided for feedback in relation to this consultation, given the face-to-face consultation in which the policy objectives for the proposed reforms were explained was hosted by QPS and DJAG on Friday afternoon on 23 February 2024 and formal written feedback was required to be provided by Monday 26 February 2024 (i.e., the next business day). This is an entirely insufficient amount of time to be able to properly consider what are substantial proposed amendments to the existing legal framework, including expanded police powers. Such a truncated timeframe for review and feedback makes it difficult to provide meaningful input and, unfortunately, compromises the consultation process.

The Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence (**Commission**) was established to respond to concerns about the effectiveness of QPS in addressing domestic and family violence (**DFV**)

incidents. One of the Commission's terms of reference also related to investigating whether any cultural issues within QPS contributed to the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

In its 2022 Report, the Commission identified:

- significant cultural issues within QPS involving sexism, misogyny and racism which impacted on QPS' responses to DFV¹; and
- failures by police officers to act in accordance with legislative frameworks and procedures, failures to appropriately assess risk, failures to pursue criminal charges and failures to accurately identify the person most in need of protection².

The findings in relation to QPS's conduct when dealing with Aboriginal and Torres Strait Islander individuals in the context of DFV incidents was damning.

The Commission found that (not an exhaustive list):

- QPS investigation of DFV has contributed to the overrepresentation of Aboriginal and Torres Strait Islander peoples by both over-policing as police-assessed respondents and under-policing as victim-survivors;
- QPS had not sufficiently prioritised developing cultural capability within the organisation, that its members lacked the foundational knowledge to understand the impacts of colonisation, racism and other historical and contemporary issues that shape how First Nations peoples experience police which has left QPS responses lacking of cultural awareness and inadequate;
- *"racism is a significant problem within the QPS. It manifests in unfair and discriminatory behaviours directed toward First Nations QPS members, Police Liaison Officers, officers from other cultural backgrounds and members of the community. The culture of fear and silence in the QPS operates to inhibit the making of complaints which means that racism is likely to be under-reported."*;
- QPS has not always dealt with racist conduct by its own staff appropriately, heavily relying on the Local Management Resolution (LMR) method which has not adequately dealt with the conduct and left poor culture to fester; and
- common police practices, attitudes and beliefs disadvantage Aboriginal and Torres Strait Islander women who are often misidentified as the perpetrator of DFV and are often not adequately supported as victim-survivors of DFV.

¹ Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence (Qld), *A Call for Change*, Report (2022) 14.

² Note 1.

Cultural change takes time. Now it is proposed that police officers be provided with even more power, to impose orders on individuals, relying on their abilities to identify the person most in need of protection and explain obligations in a clear and culturally safe manner to the relevant parties involved. As we are aware from the findings of the Commission, the QPS seemingly has some way to go in being able to discharge these tasks in line with community expectations.

The responsibility of making the correct decision at the right time is an onerous one in such circumstances to place upon police officers - and the outcome of failures in discharging this obligation for the individuals involved in, or impacted by, a DFV incident, including children, can range from negative to devastating.

Comments on the consultation

Proposed introduction of a new framework allowing police officers to issue a 12-month protection order with standard conditions without having to make an application to court

We do not support the proposed introduction of a PIPO on the basis that we have significant concerns regarding the impact of an order such as this on our client base and, particularly, for those from disadvantaged backgrounds. Further, taking away judicial oversight at first instance (rather than on 'appeal'), and the related ability to access legal assistance prior to such an order being put in place, is an extraordinary undermining of civil liberties and fundamental human rights.

Our concerns regarding the proposed PIPO regime are outlined below.

1. Consent

The Consultation Paper states that one of the safeguards to the proposed PIPO regime is that both parties must consent to a PIPO being imposed. We do not consider such to be a safeguard, but one that could instead open an entirely different set of challenges for the following reasons:

- we question whether consent can be freely given by the relevant parties at the scene of a DFV incident, given the common factors at play including, for example, heightened emotions, fears relating to police involvement, fears relating to potential consequences for children involved, where one or more individuals have consumed alcohol and/or drugs, the potential impact of the same on their capacity to comprehend what is happening and provide informed consent from a legal standpoint;

- gratuitous concurrence is a very real and present concern for many of our clients, especially in the circumstances where they perceive that if they do not consent, they might be charged with an offence/s; this is even more significant if the individual is separated from the other party/parties to the incident (as occurs when a QPS DV callout occurs) and the individual is advised, for example, “well, your partner has consented”. The police are also not infrequently viewed as being ‘authority figures’ – hence ‘gratuitous concurrence’ being very much a potential factor in decision-making processes.

2. Mandatory standard conditions are not specified

We note that the Consultation Paper states that PIPOs will be subject to “mandatory standard conditions”, however, the materials do not specify what these conditions are. We are unsure as to whether this will include the good behaviour condition only, or other conditions, accordingly we are unable to provide meaningful comment on this aspect of the proposal.

3. Reaching the standard of ensuring that a perpetrator is immediately aware of the order and the consequences of breaching it

The Consultation Paper states, on page 5:

The PIPO will enable police officers to administratively issue a protection order for 12 months. This will allow police officers to provide immediate, ongoing protection for a victim-survivor at the time of the incident, and ensure the perpetrator is immediately aware of the order and the consequences of breaching.

We are unclear on what QPS considers will constitute meeting the threshold of ensuring the perpetrator is immediately aware of the order and the consequences of breaching. It is clear that the mere issuing of a PIPO to the alleged perpetrator will not meet this threshold. Further, in our experience, we understand that many parties in such situations will simply say what they need to say in order to get out of the situation as quickly as possible. We also commonly see instances where clients will breach Temporary Protection Orders (TPOs) and Domestic Violence Orders (DVOs) after they are made in court (and also PPNs), citing a lack of clear understanding of the extent of their obligations. A first responding officer explaining the conditions of a protection order to a person who could be anxious, elevated in emotions, mentally unstable, under the influence of drugs and/or alcohol, etc., will be hard pressed to ensure a clear and enduring understanding of conditions and consequences for breaching in many cases.

Uncertainty as to what constitutes a police review of a PIPO

The Consultation Paper states, on page 5, that “a PIPO can only be issued with the approval of a senior officer and the issuance of a PIPO must be reviewed by another senior officer and an officer with DFV expertise”. However, it does not provide a clear explanation of what a police review might entail, nor does it extrapolate on what constitutes “DFV expertise”. Accordingly, we are unclear of what this will mean in practicality and what effect it would have if, for example, the second senior officer forms an opinion that the PIPO should not have been issued, but the officer who is deemed to have “DFV expertise” disagrees.

4. Uncertainty as to the revocation process for PIPOs

Whilst the Consultation Paper states, on page 6, that:

a PIPO can be revoked by a senior officer to the supervising officer, without requiring court intervention. This ensures a timely response to any issues regarding misidentification of the victim as a perpetrator,

it does not provide any extrapolation on the what the actual process entails for revocation. Therefore, it is difficult to provide comment in this regard.

5. Appeal mechanisms will not overcome concerns regarding lack of due process at the outset

With respect to appeal, we note that appeal mechanisms are only effective when parties are sufficiently aware and proactive to seek assistance in pursuing such rights. In our experience, we have observed that:

- exercising of appeal rights is already a scarce occurrence in the context of TPOs;
- clients of our service frequently do not approach us before court and/or being held in custody (particularly if charges arose from the same incident); and
- there exists difficulties in individuals contacting legal representatives before the matter comes before a court.

By way of an example, in a recent matter, we had two open criminal law files for a client. The client had been served with a TPO and application, but did not know to raise it with us. Following a court appearance with one of our lawyers on the criminal charges, they were immediately video-linked to a separate court for the hearing of the application where they consented to the order. They rang us later to advise.

6. PIPO should cease if QPS does not file the originating application by the time of the first court mention

The Consultation Paper states, on page 6, that “if a PIPO is appealed, it will remain in force until a protection order is issued by the court to ensure victim safety while allowing court oversight”. In our view, the PIPO should cease if QPS does not file the originating application referred to by the time of the first court mention.

7. Lack of meaningful substance in the proposal to address First Nations considerations

The Consultation Paper contains some discussion about groups, including First Nations people, who “can face greater challenges in accessing appropriate supports”. However, the materials do little to suggest there will be anything tangible done as part of this proposed model to ensure appropriate training for officers and understanding of these issues and how they will be impacted by PIPOs. Current experience is that “referrals” are very infrequent and at most something discussed by an officer to a DFV support service after they have taken the relevant action they deem necessary in a situation. In our experience, body-worn camera footage of these interactions frequently demonstrates this.

8. If the Queensland Government is intent on trialling the PIPO regime

In the event that, despite our significant concerns as outlined above, the Queensland Government is minded to trial the PIPO regime:

- It is imperative that this not occur in the region of Far North Queensland given the particular linguistic and other barriers/socio-economic disadvantages that many of our clients in that region experience. Additionally, the access to support services and legal services in the Far North is very limited. We would recommend that the Queensland Government consider another location for the pilot, for example, Townsville.
- We strongly recommend that there be a legislative requirement for police to ensure/facilitate that an alleged Respondent speaks with a legal representative before they can be asked if they consent to the proposed order (even this is not a silver bullet, given that a legal practitioner might not be available to provide assistance over the phone at the precise time that they are needed, however, it does afford an additional safeguard).

Enabling police officers to nominate a mention date for Police Protection Notices

We strongly oppose the proposal to enable police officers to nominate a mention date for PPNs. In our view, as QPS is able to impose ouster or no-contact conditions on PPNs, permitting delays that are beyond the current 5-day period has the real potential to give rise to issues and elicit unnecessary breaches with misunderstandings. For example, individuals that are subject to ouster conditions might require access to belongings and not having alternate places to reside for prolonged periods, hence often returning home contrary to the PPN at the risk of breach. The Consultation Paper states, at page 9, that “the current 5-business day arrangement does not promote the best interests of victim-survivor which is impacted by the lack of flexibility afforded to police officers in terms of sufficient time, to submit well-informed material to the Court or initial service to be affected”. However, this scenario is already appropriately provided for with the Court’s discretion to impose a TPO at the first mention. It is very unlikely that a court would dismiss an application outright if QPS asserted that material in support of the application was still being compiled or investigations were still on foot.

Enabling the court to make a protection order under section 51 of the Domestic and Family Violence Protection Act 2012 without the aggrieved’s consent, where appropriate to do so

We do not support the proposal to enable the court to make a protection order under section 51 of the DFVP Act without the aggrieved’s consent. Whilst we appreciate the policy objectives behind this proposed amendment, especially in consideration of cultural context, domestic and family violence is inherently complex in nature. It is important that the autonomy and agency of the aggrieved party is respected. Making orders without the aggrieved party’s consent has the potential to undermine their ability to make decisions for their own health and safety (and potentially any children involved). It is important that they feel as if they have control of the legal processes that affect them. In certain circumstances, issuing orders without the consent of the aggrieved party could create further harm, for example, it may elicit retaliation from the perpetrator and thereby, in fact, put the aggrieved at risk rather than preserve their safety. Making orders in the absence of consent also may have historical sensitivities, and foster further mistrust of legal systems, given the progression towards decision-making to be shared rather than imposed.

Enabling electronic service of domestic and family violence related documents

We strongly oppose the proposal to enable electronic service of documents pursuant to the DFVP Act. As is acknowledged in the Consultation Paper, on page 13, “police officers take many actions that can have serious legal ramifications for a person” and

“where these ramifications arise from court proceedings or under administrative decision-making frameworks, there are requirements that the relevant documents are personally served on a person. This is in recognition of the importance of the document to the person and the need to ensure that the person has knowledge of the document.”

Any proposal for electronic service of documents in the place of physical service assumes that every individual has equal access to the internet and regularly access electronic mail. This is simply not the case, especially in regions such as Far North Queensland and other remote areas where there is limited/intermittent access to the internet.

Furthermore, it is possible that an individual that does not have a personal email address might provide an email address for a friend or relative for relevant communications. What is proposed in those circumstances?

It appears that the primary reason for this proposed change is the administrative efficacy of police. In our view, administrative efficacy is not a good enough reason to compromise the ability of an individual to have knowledge of decisions made and/or orders made that have serious legal ramifications against that person.

We thank you for the opportunity to provide feedback on the Consultation Paper.

Yours faithfully,

Shane Duffy
Chief Executive Officer