ATSILS
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562
Level 5, 183 North Quay, Brisbane Qld 4000
PO Box 13035, George Street, Brisbane Qld 4003
07 3025 3888 | Freecall 24/7: 1800 012 255
07 3025 3800
info@atsils.org.au
www.atsils.org.au

19th March 2025

Ms Danielle Distefano
Director
Criminal Justice Policy and Legislation
Attorney-General's Department
Commonwealth Government
Level 34
600 Bourke Street
Melbourne VIC 3000

By email: Danielle.Distefano@ag.gov.au

Dear Ms Distefano,

Re: Commonwealth Workplace Protection Orders Bill 2024

Thank you for the opportunity to provide comments on the Commonwealth Attorney-General's Department's (**AGD**) consultation on the Implementation Guidance for the Commonwealth Workplace Protection Orders Bill 2024 **(Bill).** This Bill, if enacted, will establish a Commonwealth Workplace Protection Order (**CWPO**) regime for the purpose of safeguarding Commonwealth workers from personal violence and harmful behaviours in Commonwealth workplaces. The proposed regime contains strict liability offence provisions for breach of a CWPO with penalties of a fine and/or 2-year term of imprisonment. Whilst we acknowledge that the safety of Commonwealth workers and protection against acts of violence is a legitimate concern, in our view, the Bill goes too far and has the potential to criminalise the already marginalised, i.e., those with cognitive impairment/s and/or disabilities, mental health concerns, and/or those that are victims of trauma who do not and cannot be expected to act in a "normative way", especially given the serious legal ramifications for being subject to a CWPO and breaching one. In our view, the safety of Commonwealth workers in undertaking their duties can be achieved within existing frameworks, supplemented by additional measures, as will be outlined in this submission.

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

On 11 March 2025, AGD held a group consultation with members of NATSILS (National Aboriginal and Torres Strait Islander Legal Services) with respect to this matter. We understand that the purpose of this consultation was to provide feedback to ensure that there were no unintended consequences for Aboriginal and Torres Strait Islander people in the implementation of these laws, should the Bill be enacted. During this online consultation, we were encouraged by the Commonwealth Attorney-General's Department to send through comments in writing, which is the purpose of this submission.

Before we outline feedback on this consultation, we wish to put on record our concerns regarding the apparent lack of consultation with Aboriginal and Torres Strait Islander Legal Services prior to the hearings being conducted for this Bill (which AGD advised during the online consultation had already taken place and were undertaken as private hearings). We note the Commonwealth government's obligations under the National Agreement on Closing the Gap, the targets contained therein including with respect to

reducing overincarceration levels and the obligations contained therein to co-design solutions and work with and develop the community-controlled sector in delivery of solutions. Additionally, we also wanted to note our concerns regarding representations made by the AGD during the online consultation that Aboriginal and Torres Strait Islander legal services would not be receiving additional funding to be able to provide legal services for individuals impacted by this proposed regime, nor could we use existing funding for this purpose. We understand that, due to strong objections to this position in the online consultation, the AGD is looking into the issue of funding and will report back to us when possible.

Comments on the Bill

Whilst we acknowledge and appreciate that the safety of Commonwealth workers whilst undertaking their duties is a legitimate concern, we feel that the Bill, as drafted, goes too far and has the potential to criminalise some of the most marginalised individuals in our society. In particular, we are concerned about lack of due process, the right to legal representation/legal advice in particular in the context of consent orders and personal service on a respondent and insufficient consideration of mental health examination and defences.

Below is a list of particular concerns that we have regarding the Bill.

- Clause 32 of the Bill provides that CWPOs cannot be made against a person under 14 years of age. In our view, this should be 18 years of age. Aside from Queensland and the recent 'adult crime, adult time' laws, a 17-year-old is sentenced differently and under different legislation than adults due to their age and lack of maturity. If a 17-year-old was in a civil matter, they would need a litigation guardian. Someone under 18 cannot vote, drink alcohol, or smoke. It is unrealistic to expect a 14 to 17 old to fully understand the nature of this new Bill and the impacts that it can have.
- The proposed CWPO regime contains 4 types of CWPO: an interim order; an urgent interim order; a final order; and a consent order. A consent order is where both parties agree to the making of the CWPO and its conditions. A court can make the order without proof or admission that the respondent engaged in personal violence. There is nothing in the Bill that relates to facilitating legal advice for the respondent before they decide whether to consent or not consent to the making of a consent order and its relevant conditions. We anticipate that the majority of individuals that will fall within the cohort of individuals displaying relevant behaviour are those with mental health issues, victims of trauma, cognitive impairment/s and/or disabilities. Accordingly, we are concerned about their access to critical legal assistance before providing consent noting the serious legal

consequences that apply should a CWPO be imposed and, particularly, should they breach the CWPO in future.

- Clause 25(2) of the Bill provides that conditions may include, inter alia, that the respondent not communicate or associate with or cause another person to communicate or associate with a specified Commonwealth worker or a specified class of Commonwealth workers. This is extremely broad and unnecessarily so. The respondent should only be responsible and have legal culpability for their behaviour and not the behaviour of third parties.
- The court has a very broad discretion with respect to the conditions that it might apply, and this includes limiting a person's ability to communicate with a Commonwealth worker or class of Commonwealth workers and limiting access to a Commonwealth workplace. Relevantly, clause 24, which relates to the content of a CWPO, provides that the CWPO must include information on alternative procedures or arrangements where the CWPO impacts on access to Commonwealth benefits or services or the capacity to engage in political communication. We note that item 10 of the Explanatory Memorandum states (contradictory thought it appears):

  > *A WPO must not prevent a person from accessing government services and benefits, which they may otherwise be eligible for, or prevent a person from engaging with their electoral representative, or exercising their right to political communication. If a condition proposed to be imposed on the respondent by the WPO would prevent those things, the application must include alternative procedures or arrangements for how the respondent may continue access to those services or engagement. The WPO itself would also include those procedures or arrangements.*

  However, the Bill is silent upon the consequences to the relevant government agencies if they do not allow individuals who are subject to a relevant CWPO to use the specified alternative procedures.
- In considering what is "necessary and desirable", the court must consider certain matters, per clause 25(3), including, inter alia, any previous personal violence engaged in by the respondent. We consider this to be significantly prejudicial, in particular, if the person has mental health issues, cognitive impairment/s and/or is a victim of trauma that might not behave in a 'normative' way.
- In considering what is "necessary and desirable", the court must consider certain matters, per clause 25(3), including, inter alia, 'any protective orders in force against the respondent' as its own discrete category. We have significant concerns as to whether this includes State issued domestic violence orders as this might disproportionately and unfairly prejudice some Aboriginal and Torres Strait Islander individuals given overrepresentation and some of the contributing factors for the same. We draw your attention to the findings of the recent Independent

Commission of Inquiry into Queensland Police Service responses to Domestic and Family Violence contained within the report 'A Call for Change' (2022), which stated:

In considering how cultural issues impacting the QPS investigation of domestic and family violence contribute to the overrepresentation of First Nations peoples the Commission identified that First Nations peoples are both over-policed and under-policed. This practice, combined with an increased focus on policing domestic and family violence and other cultural issues within the QPS, has contributed to the overrepresentation of First Nations peoples in the criminal justice system.

Common police practices, attitudes and beliefs particularly disadvantage First Nations women, who may be misidentified as the perpetrator of domestic and family violence and/or may not be identified or properly supported as a victim-survivor of domestic and family violence. (p18)[1].

We are concerned as to how this regime might compound disadvantage in light of the above.

- A CWPO may be varied or revoked on application by the respondent or an authorised person and there is a mandatory obligation on an authorised person to apply to a court for a CWPO to be revoked if the authorised person is satisfied that the grounds on which the order was made no longer exist (clause 27). In practice, we expect that the authorised person would only review these matters periodically and it would be in the best interests of the respondent of a CWPO to themselves or have their legal representative agitate the authorised person to apply for revocation of the CWPO without delay to avoid the potential for adverse legal ramifications on the respondent.
- We are significantly concerned that conduct in contravention of a CWPO is a strict liability offence with a penalty of 2 yrs imprisonment or 120 penalty units or both. That is a significant penalty especially given the strict liability. We again, draw your attention to the vulnerability of individuals that we anticipate will be impacted by this regime.

Although we have not been consulted on our views on the Bill itself, given it has already moved through the hearings process, we have chosen to put our concerns regarding the Bill in writing. For the reasons outlined above, we do not support the Bill.

In our view, the safety of Commonwealth workers in undertaking their duties can be achieved within existing frameworks, supplemented by additional measures.

[1] https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf

We draw attention to the government's obligations under the National Agreement on Closing the Gap (**NACTG**). The NACTG is about overcoming fractured, siloed service delivery. In our view, better outcomes could be achieved by AGD/Services Australia establishing a legal-health partnerships to service this particular group of individuals (i.e., co-located health and legal services). Existing Health Justice Partnerships with community-controlled organisations already exist. As an example, Centrelink officers could undertake outreach in those health justice partnerships one day a week. In our view, this would create an *upstream* approach to address the challenging cases early and reduce the number of lost individuals rattling around at a front counter.

This approach would also avoid the potential negative implications of criminalising already marginalised individuals.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer