

Domestic and Family Violence Protection Act 2012 **Police powers**

- Queensland police officers are often first to respond to domestic and family violence.
- The Act includes measures to support police in providing for the safety of people affected by domestic and family violence and responding to those who perpetrate violence.

Police protection notices

- Under Part 4, Division 2 of the Act, a police officer can issue a police protection notice at the time the officer attends a domestic violence incident, increasing the range of options that can be used when responding to domestic violence. It would also fill a gap in current responses by enabling an aggrieved person to be provided with immediate protection, where currently the aggrieved would have had to wait until a court could hear an application for a protection order. This approach enables police to serve a respondent at the time of the incident.
- The breach of a police protection notice is an offence with a maximum penalty of 60 penalty units or two years' imprisonment (clause 178).
- A number of safeguards are provided in the Act to ensure notices are used appropriately including:
 - a supervising officer must approve the issuing of the notice;
 - cross-notices cannot be issued against both parties to a domestic violence incident;
 - a police officer must consider the accommodation needs of a respondent for a 'cool-down condition';
 - a police officer must explain the notice to the respondent and the aggrieved person;
 - the notice is taken to be an application for a protection order to ensure future judicial scrutiny; and
 - a court hearing an offence for the contravention of a notice must consider whether the notice was properly issued in the first instance.

Detention powers – where the person who is detained is heavily intoxicated

- A person can be detained if a police officer reasonably suspects that there is a danger that the person will cause personal injury or property damage. The person can be detained for up to four hours to enable the police to prepare an application for a protection order or to obtain a temporary protection order from a magistrate. A person can also be held up to the four hour period if it is necessary for police to make arrangements for the safety of the aggrieved.
- A person can be held for a total of 8 hours from when they are first taken into custody if a police officer reasonably believes the person is intoxicated to an extent that the person is incapable of understanding the nature and effect of a document that must be given to the person under section 124.

- The Act contains provisions which will strengthen the powers of police to detain a person against whom a domestic violence order is sought if the person who is detained is intoxicated.
- Under section 119, a police officer can detain a person for up to eight hours if the person is so intoxicated that they are incapable of understanding the nature and effect of a document that is required to be given to the person when they are released from custody. 'Intoxicated' is defined to mean intoxicated by drugs or alcohol or by any other means.
- The Act enables a police officer to take a person to a place for treatment at any time during the detention period and also to be released from custody at that place if it is likely the treatment will take more than eight hours. This could occur in situations where the level of intoxication is such that there are concerns held about a person's health.
- The Act also allows a police officer to take a person to a place of safety to receive the care necessary to enable the person to recover safely from the effects of being intoxicated. The provision also contains some safeguards to ensure that the person is not taken to a place where there is a risk of harm, including domestic violence, to other persons in the place of safety.
- A person is released from custody when they are taken to the place of safety.
- These provisions will all help to ensure that police are provided with sufficient powers to deal with people who are heavily intoxicated when they are detained in relation to a domestic violence incident.

Power to direct a person to remain

- To overcome reported issues with serving documents on respondents, particularly when the respondent cannot be located or is evading service, specific provisions were inserted to allow police to serve a respondent by telling them about the order including the conditions of the order.
- Police who come across a respondent when conducting other duties, such as random breath testing, can also exercise this power to arrange for the respondent to be told about the existence of the order and of the conditions of the order. An order can be enforced against a respondent if a police officer has told the respondent about the order and the conditions of the order.
- Police will not need to use this power in every situation where they come across a respondent who is subject to an application or order that has not been served. In some situations a police officer may be confident that the respondent can be relied upon to attend a police station at his or her own convenience for the purposes of having the application or order served on them.
- The provision will also complement the new police power to issue a police protection notice by requiring respondents to remain in the company of a police officer while the

notice is being prepared and served. Again, a police officer may not need to use this power every time as some respondents may be prepared to remain voluntarily while the notice is prepared and served.

- The following safeguards are in place:
 - A person can only be directed to remain at a place that is appropriate.
 - A police officer must remain in the presence of the person while the person is required to remain.
 - The time for which a person can be directed to remain at a place is limited to one hour or a longer period of time if this is reasonably necessary. In any event, a police officer acting under this provision must act without unreasonable delay.
 - Where the police officer does not have a copy of a court order, the provisions enable a person to be told about the order and the conditions on the order. This may involve, for example, organising for another police officer at the station reading the conditions to the person over a radio or mobile phone.
 - A person must be warned that it is an offence not to comply with the direction to remain.
 - The offence of failing to comply with the direction carries a maximum penalty of 40 penalty units.
 - A person does not commit an offence if they were not the person named as the respondent in the application or the order or if the warning was not given to them.
 - A person who has a reasonable excuse for not complying with the direction may have a defence.