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24 September 2015

Chair
Communities, Disability Services and Domestic Violence
and Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By email : cdsdfypc@parliament.qld.gov.au



Dear Sir

Thank you for inviting the Bar Association of Queensland (“BAQ”) to provide a submission in relation to domestic and family violence legislative amendments. Due to the short timeframe this is a succinct submission. However, BAQ is available to elaborate further on this submission if required.

On 17 November 2014 BAQ provided a submission to the Special Taskforce on Domestic and Family Violence in Queensland (“the Taskforce”). In that submission six topics¹ were outlined for consideration by the Taskforce prior to the publication of its final report.

BAQ relies on the matters covered in the previous submission to the Taskforce where relevant.

The Department of Justice and Attorney-General has now requested submissions relating to the two pieces of amending legislation² drafted in response to the recommendations of the Taskforce.

Two brief points are submitted for consideration.

1. The Taskforce report recommended³ the recording of domestic and family violence convictions and that the maximum penalties for domestic and family violence offences be increased:

¹ To consider removing the adjectives Domestic and Family from the Act, but adding the noun “Abuse”: the Violence and Abuse Act; To consider the pros and cons of: criminalising violence and abuse in an intimate (or formerly intimate) relationship; or, amending the Criminal Code assault, GBH, etc provisions to include that if such violence occurs in a “relationship” as defined in the civil Act, then, that is an aggravating circumstance; Education; Victim Impact Statements for Protection Order proceedings; Costs; and Resources.

² Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015 and Criminal Law (Domestic Violence) Amendment Bill 2015

³ Recommendations 117 & 119 of the Taskforce Report published 28 February 2015 accessed at: <https://www.communities.qld.gov.au/gateway/end-domestic-and-family-violence/queensland-government-response>

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- 1.1 BAQ notes the increase to the maximum penalties as proposed. BAQ also notes recording of the information that the offence committed was a domestic violence offence;
 - 1.2 BAQ welcomes the retention of judicial discretion as to whether or not to formally record a conviction of such an offence;
 - 1.3 However, of concern to BAQ is that there appears to be retroactive operation of the newly increased penalty provisions. Clause 18⁴ provides that, on a prosecution application, a previous offence⁵ may be recorded as a conviction for a domestic violence offence or entered in the offender's criminal history as a domestic violence offence. BAQ is concerned that any previous offence, whether the offender was convicted after trial or by guilty plea, where no consideration of the impact of future amendments to Domestic and Family Violence legislation could have been contemplated is now to be regarded as a relevant offence in sentencing an offender for a new domestic violence offence. BAQ submits that application of the amendments to that effect could, in practice, create significant unfairness to a person being sentenced for a newly defined domestic violence offence. There may be circumstances where a police QP9 statement of facts or a schedule of facts may not fully reflect the factual circumstances of the offending to be retrospectively considered. BAQ submits that the proposed amendments to the *Penalties and Sentences Act 1992* ought to be reworded to clarify that there is no retroactive operation of section 12A(3).
 - 1.4 Recent proposed changes to mental health legislation are likely to overlap with a number of the proposed domestic and family violence provisions in that Court Liaison Officers may be asked to assess and report on persons accused of committing domestic and family violence related offences. BAQ submits that the potential impact on the workload of Court Liaison Officers should be considered when resourcing that service;
 - 1.5 Magistrates may require additional training in the application of mental health related considerations to the management of criminal charges specifically arising from domestic and family violence.
2. The proposed changes to the *Coroners Act 2003* are supported by BAQ:
 - 2.1 BAQ supports the establishment of an independent Domestic and Family Violence Death Review Board. The independence of this Board will provide key oversight of the review of domestic and family violence related deaths in Queensland. It is noted that the Review Board processes are intended to ensure that domestic and family violence related deaths, even if the death is or may be the subject of investigation by a coroner, may be reviewed by the Board. The Board review is, therefore, independent of any investigation conducted by a coroner. That the Chairperson of the Board is

⁴ Criminal Law (Domestic Violence) Amendment Bill 2015 – Clause 18 - Insertion of section 12A to *Penalties and Sentences Act 1992*

⁵ That appears to include an offence committed prior to the enactment of these amendments - Criminal Law (Domestic Violence) Amendment Bill 2015

legislated to be the Coroner or Deputy Coroner is of some concern. It is considered that the relationship between the Board and the Office of the State Coroner may involve conflict of interests at times. BAQ submits that this issue ought to be carefully monitored to ensure that any conflict between the complimentary, but possibly at times competing, roles is identified and appropriately managed at an early stage. The Board is required to make recommendations to the Minister for implementation by relevant entities to prevent or reduce further domestic and family violence related deaths;

- 2.2 Adequate resourcing of the Board and clear demarcation between its functions and the functions of the Coroner will be critical administrative issues to be determined thereby ensuring the Board's effective function.

Thank you for your consideration of this submission.

Yours faithfully



Shane Doyle QC
President