Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

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

Attention: Karl Holden

Via email transmission: hcdsdfvpc@parliamentqld.gov.au

ATSILS (Qld) Ltd. Submission to HCDSDFVPC on Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") welcomes and appreciates the opportunity to make a submission on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016 ('the Bill').

PRELIMINARY CONSIDERATION: OUR BACKGROUND TO COMMENT

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. 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 initiative (which includes related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which, for over four decades, has practised at the coalface of the justice arena,

we 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.

ATSILS provides legal assistance to both victims and perpetrators of domestic violence. Domestic violence is indeed a grave issue. It is well documented that Aboriginal women are more likely to experience domestic violence than women of the mainstream population. We are in support of the proposed amendments to the extent they strengthen protection for victims.

To fully address domestic violence, root causes such as poverty and social and economic disadvantage must be tackled. A holistic approach is required to address these issues including more culturally competent services and programs designed and delivered by Aboriginal & Torres Strait Islander people to their own communities.

ATSILS is generally in support of the proposed amendments. However, we have some concerns in relation to the draft legislation as outlined below.

ATSILS' comments on the Bill

Clause 17 proposes the replacement of section 97 of the Act and appears to set a minimum five-year duration for protection orders. We note that the default period is currently 2 years. A five- year order could place significant hardship/restrictions on a respondent, with one such category being respondents seeking to resolve parenting issues. The proposed amendment provides that the court is allowed the discretion to make orders for less than five years if satisfied there are reasons for doing so. ATSILS' concern is who will provide the relevant information to the court to arrive at a decision that an order for a period of less than 5 years should suffice. Unrepresented respondent parties with limited education, language barriers or lack of capacity and little understanding of the court process will surely not be afforded procedural fairness in such instances.

Further, respondent parties might be persuaded to consent to such orders without understanding the consequences of doing so.

The extension of protection orders to 5 years is concerning given the use of protection orders in some instances for tactical purposes to assist applicants with family law disputes. In other

instances a genuine victim might be subjected to a protection order by an accomplished or persuasive perpetrator. There are also instances when victims are subject to cross orders by perpetrators as an extension of their abusive behaviour.

Anecdotal evidence from ATSILS practitioners in remote and regional areas is that respondents are often told they do not have to attend court when protection order applications are served on them.

Legal representation is essential in such circumstances for advocacy and negotiation purposes.

Police Protection Notices ('PPN'): Clauses 28 and 29 set out service requirements including a requirement for the police to tell a respondent about a PPN. Proposed section 113 provides that, although personal service is required for a PPN, it may be enforceable if the police have told the respondent about its existence and the conditions therein by telephone, email, SMS, social networking site or other electronic means. Proposed amendments also provided that when a person is released from custody and a PPN is issued, police must serve the person and explain the notice.

Clause 45 proposes the replacement of section 175 pertaining to contravention of PPN's and that the prosecution bears the onus of proving beyond a reasonable doubt that the respondent has been told by a police officer about the existence of a PPN and the contravention thereof.

ATSILS' concern is that the requirement to advise the respondent, if carried out, could satisfy the obligation on the police. However, if that information is not understood by the respondent or if that information is not fully provided to the respondent such will surely place the respondent at risk of breach. It follows that breach could result in increased incarceration of Aboriginal and Torres Strait Islander parties.

Respondents living in remote or regional locations are significantly disadvantaged in that they will have limited access to legal advice. As previously stated respondents are often told they do not have to attend court when served with a protection order application.

Clause 40 proposes police powers to direct a person to move to and remain at another place and remain there for the purpose of application for a protection order or issue of PPN and informing about increased penalties, for contravening a PPN. Some clarification is required in regard the expansion of powers at section 134. Section 134A (5) states a police officer may direct a person to remain or move to a place and remain for up to 2 hours and in doing so inform the person they are not under arrest or in custody during this time. Section 134F however states that it is an offence not to comply with this direction.

Proposed section 169F enables a police officer to refer parties to DV services without their consent in instances where risk is assessed as high. There appears to be no provision for referring Aboriginal and Torres Strait Islander parties to culturally competent services. There is currently a paucity of such services. The effectiveness of referring Aboriginal and Torres Strait Islander parties to mainstream services in remote and regional area is doubtful.

New section 169J at clause 44 overrides a persons' existing right under the *Criminal Law* (*Rehabilitation of Offenders*) *Act* 1986 and enables information sharing about all convictions for domestic violence offences to be shared, notwithstanding the expiry of the relevant rehabilitation period. ATSILS agrees this is beneficial to victims but also sees potential disadvantage to a rehabilitated respondent party who for example, might have had a single such incident in the past.

ATSILS thanks the committee for this opportunity to provide feedback and wishes it every success with its deliberations.

Yours faithfully

Shane Duffy
Chief Executive Officer