



# Ian WALKER MP

Member for Mansfield



6 March 2017

Mr Duncan Pegg MP  
Chair, Legal Affairs and Community Safety Committee  
Parliament House  
BRISBANE QLD 4000

Sent by email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Mr Pegg

## Response to written submissions

I refer to your correspondence of 15 February 2017 to the Leader of the Opposition regarding the committee review of the *Bail (Domestic Violence) and Another Act Amendment Bill 2017*.

As I referred to in my correspondence of 27 February 2017, please find enclosed a written response to issues raised and referred to in the submissions to the Bill.

If I can be of further assistance to the Committee, please let me know.

Yours sincerely

  
Ian Walker MP

Member for Mansfield  
Shadow Attorney-General & Shadow Minister for Justice  
Shadow Minister for Planning

**WRITTEN BRIEFING TO LEFAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE**  
**RESPONSE TO ISSUES RAISED IN SUBMISSIONS TO BAIL (DOMESTIC VIOLENCE)**  
**AND ANOTHER ACT AMENDMENT BILL 2017**

**Context:**

The *Bail (Domestic Violence) and Another Act Amendment Bill 2017* was introduced in the Queensland Parliament by the Leader of the Opposition, Tim Nicholls MP on Tuesday 14 February 2017.

The Bill was referred to the Legal Affairs and Community Safety Committee for consideration and review, with a report back date of Friday 17 March 2017.

I note that organisations and individuals were asked for submissions by Monday 27 February 2017. As at 3 March 2017, there were 24 written submissions on the Bill. I would like to thank those individuals and organisations who took the time to make a submission on what we consider to be a very important community safety issue. This is particularly so for the families and loved ones of victims of domestic violence who have suffered a great loss in their lives. Their dedication to the memories of loved ones lost is particularly acknowledged and appreciated.

**Response to Submissions:**

The Bill has five key objectives. Below is an analysis of issues raised and general commentary from submitters on each respective objective.

**1. Reverse the presumption of bail for an alleged offender charged with a relevant domestic violence offence**

- As acknowledged by SunnyKids, reversing the presumption of bail for alleged offenders charged with a relevant domestic violence offence does not prevent alleged offenders from seeking or securing bail. It simply makes the process harder and puts the onus on the defendant to prove why they should receive bail, rather than on the prosecutor to prove why they should not receive bail.
- I note the comments from the Gold Coast Centre Against Sexual Violence (GCCASV) that in serious cases a thorough risk assessment from police, high risk team co-ordinators, specialist domestic and sexual violence workers, correctional officers and mental health workers needs to be undertaken as part of a process of a bail hearing. It should be noted that the very purpose of a bail hearing is a risk assessment of the likeliness of an offender to either cause harm to members of the community, or themselves or not appear in further judicial proceedings. This is done by a court or police officer authorised to grant bail under the Act and the issues raised by GCCASV could form part of that process.
- I note the concerns from Sisters Inside that this provision may have the reverse effect and negatively affect women, particularly Aboriginal and Torres Strait Islander women. There was no evidence provided to justify this conclusion and it is difficult to foresee how strengthening the bail process for domestic violence related offences could diminish the community safety of victims. The issues raised by Sisters Inside could easily be raised through submissions to a bail hearing, for the consideration of the presiding judicial officer. I also refer to the submission from the Queensland



Homicide Victims Support Group which re-enforces the importance of this policy objective and other measures in the Bill.

2. Establish a special bail condition for a tracking device (or GPS tracker) to be imposed by a court or a police officer authorised to grant bail, against a person charged with a relevant domestic violence offence

- I note the concerns of The Red Rose Foundation regarding the use of GPS tracking devices for alleged domestic violence perpetrators and the fact that New South Wales are just six months into a four year trial. It is important to note that the Not Now, Not Ever report specifically recommended the use of GPS trackers for high-risk offenders and the Bill simply implements that recommendation. It should also be recognised that the provisions in the Bill simply allow a court or a police officer authorised to grant bail under the *Bail Act 1980* to consider the use of a GPS tracking device as a bail condition. The use of GPS tracking, both in Australia and other countries around the world is becoming more prevalent and the Committee might like to seek the advice from organisations who provide this technology and outline its success. The Red Rose Foundation also raised concerns about the notification process for victims. Clause 4 of the Bill notes that 'tracking device' means an electronic device capable of being worn, and not removed, by a person for the purpose of the Queensland police service finding or monitoring the geographical location of the person. The police service is bound by confidentiality provisions in the Police Service Administration Act 1990 (section 10.1). Information can be disclosed for the 'purposes of the police service'. Section 2.3 sets out the functions of the police service, which provides that the police service can disclose information obtained from the tracking device to a potential victim in fulfilment of its function to 'protect communities and all members' of the community. These provisions can be relied upon to ensure the administration of these provisions of the Bill are fulfilled.
- I note the concerns of Sisters Inside that the presumption of innocence is a fundamental principle of criminal law and that somehow this objective breaches an alleged offenders fundamental rights. Consideration needs to also be given to the fundamental rights of victims and their families and their enduring right to safety and it should be acknowledged that this bail condition by no means prejudices the innocence of the accused and could already be applied now by a court or police officer authorised to grant bail. It is a community safety measure to protect victims and their families.

3. Introduce a new system to alert the victim of a relevant domestic violence offence when the defendant applies for bail, is released on bail or received a variation to a bail condition

- I note the general support from the Queensland Council for Civil Liberties for this provision, specifically the new 11C and 11D.
- I also note and thank the Queensland Law Society for their support for this objective.

4. Introduce a mandatory reporting provisions to the parole system for when a prisoner applies for and receives parole so that a victim of domestic violence can receive information about a prisoner, even if the offence that the prisoner was convicted for is not a domestic violence offence

- It is noted that was widespread support for this policy objective.

5. Introduce a provision to allow for an urgent review of a bail decision in a higher court. The original bail decision would be stayed for up to three business days ensuring that the alleged offender would not be released during that period

- I note the support of submitters, including yourtown, that this objective is especially welcome.
- I note the concerns of Sisters Inside about a potential misuse of this urgent review provision. It should be acknowledged that a two year review of this provision has been included in the Bill to ensure that it is being used effectively to protect victims of domestic and family violence. The review is to be undertaken by the Minister and tabled in the Parliament upon completion.
- The concerns raised by the Queensland Law Society are also acknowledged. It is clear that the existing review framework under the *Bail Act 1980* needs to be strengthened to provide better protection to victims and their families. Informal advice from police prosecutors and criminal lawyers was provided that noted the general practice was to arrest a perpetrator for breaching bail, rather than reviewing a bail decision. The Bill before the Committee simply replicates an existing provision in the New South Wales legislation (section 40) in this regard, which has been in place since 2013.

#### **General comments:**

I want to thank and acknowledge the submission from Women's Legal Service Queensland for their ideas, suggestions and tireless advocacy for women suffering from domestic violence. Many of their recommendations fall outside the specific objectives of the Bill but do fall within the broader scope of what can be done to protect victims and their families from domestic violence and in that regard I would encourage their submission to be brought to the attention of the relevant Queensland Government Ministers.

Sisters Inside raised concerns about a conflict between provisions in the Bill and the Victims of Crime Assistance and Other Legislation Amendment Bill 2016 (VOCA Bill), which is also before the Queensland Parliament. This seems to be a common misconception. The VOCA Bill does not specifically refer to bail hearings, which is an important distinction. I also think it is important to ensure the specific objective of notification to victims for when a bail application is made, a bail decision is made and a variation to a bail condition is made, is outlined in the *Bail Act 1980* to ensure the effect of the objective is implemented.

Finally, the support of local governments, including the Southern Downs Regional Council and the Banana Shire Council is acknowledged and we thank them for taking the time to review the Bill.