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Legal Affairs Community Safety Committee

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Response to the

Bail (Domestic Violence) and other Act Amendment Bill 2017

The Red Rose Foundation (previously the Queensland Domestic Violence Death Review Action Group) has been actively working for legislative and other systemic change aimed at reducing domestic violence deaths since 2004.

Our work has involved community awareness and education, holding red rose rallies following the deaths of women and children, engaging with families of bereaved, promoting research and advocating for law reform. The non-lethal strangulation legislation (*Criminal Law (Domestic Violence) Amendment Act 2015*) and the establishment of the domestic violence death review board has resulted from this work.

We applaud all efforts from Government, Opposition and Cross Benchers to address domestic violence by making interventions safer for victims and holding perpetrators accountable for their behaviour.

We believe that domestic violence is a whole of community issue which needs a bi-partisan approach from our political leaders. We also believe there is considerable expertise outside of parliament which needs to be utilized. Laws, whether their enactment or enforcement are never a one- dimensional issue. There are many organisations who need to work together to ensure that we have the best possible chance of the success of any reforms.

As stated we support all endeavors to ensure that our system responses do not put victims of domestic violence at further risk and that any unintended consequences of legislative change that may impact negatively on victims are carefully considered and addressed.

In our consideration of this Bill we provide the following comments:

Bail: The Red Rose Foundation fully supports a review of the *Bail Act 1980* with specific regard to domestic violence offenders. We have concerns with some aspects of what is proposed in Section 11(b) of the above Bill.

The definition of the domestic violence, contained within the Bill, focuses on specific crimes but excludes any thorough examination of dangerousness. We are aware the Queensland Government is developing a Common Risk Assessment Framework which will be used across both government and non-government agencies. This approach has been adopted in both Western Australia and Victoria, and accompanies the rolling out of multi-disciplinary, high-risk teams. We believe these teams can play a role in providing a more thorough brief to courts. The Court Division with the Department of Justice & Attorney general has allocated resources and personnel to the high risk teams. We believe the court needs a more comprehensive way in which to consider dangerousness.

The current urgency regarding changes to the Bail Act has arisen from the tragic death to Teresa Bradford. We will leave to the State Coroner to determine if any system failures contributed to this tragic death. Like many women who have been murdered by their partner, Teresa knew her partner

wanted to kill her. Research from Heckert & Gondolf (2004) , Campbell(2010) and others, suggest a victim's own perception of risk is one of the most significant factors relating to re-assault and homicide. The use of victim statements through the process of determining bail and parole is a critical issue which should be considered and incorporated into the bail decision making.

Non-lethal Strangulation.

Criminal Law (Domestic Violence) Amendment Act 2015

Last week, the Red Rose Foundation brought to Australia expert trainers from the Strangulation Prevention Institute USA. The trainers, Gael Strack, CEO Family Justice Centre Alliance and Dr. Bill Smock a Medical Forensic Doctor with the Louisville Police Department provided a week of expert training in both Brisbane and Mackay. During the past week, over 200 Queensland Police Officers plus 2 forensic medical officers, child protection workers, probation and parole officers as well as professionals from across the NGO Sector received training in the identification and intervention on non-lethal strangulation.

Non – Lethal strangulation as the biggest risk to future homicide: A 2008 study in the Journal of Emergency Medicine suggested that the risks of an attempted homicide increase about sevenfold for women who have been strangled by their partner. The study also found that 43 percent of women murdered in domestic assaults, and 45 percent of victims of attempted murder, had been strangled by a partner in the previous year. Gael Strack, CEO of the National Family Justice Center speaking at the Brisbane Institute February 2017

From this training we know:

- Over 50% of victims of non-lethal strangulation have no visible injuries
- Despite this, it is one of the most lethal forms of domestic violence with victims dying of stroke up to 4 years after the initial strangulation

assault. The average time of death is 4.5 years past the strangulation episode.

- Women are 7.5 times more likely to be murdered if non-lethal strangulation is a pattern of behaviour within the relationship.
- Death from strangulation can occur within minutes.
- Strangulation is overwhelmingly perpetrated by men against women.

Since enactment of the Queensland legislation over 350 people have been charged with non-lethal strangulation. It is unknown how many of these offenders have been granted bail and how many victims of domestic violence remain at risk because of this.

We also acknowledge that many 'dangerous' domestic violence perpetrators may not have criminal records but pose a significant risk to their partners and /or family. The absence of any prior criminal history, as was the case with David Bradford should not be an indicator of reduced risk. Many domestic violence related homicides, the offender may not have intersected with the police or criminal justice system although the victim may have had several contacts with domestic violence services.

The *Domestic & Family Violence Protection Act 2012* has recently been amended to allow for enhanced information sharing across agencies when there is concerns that a victim may be at risk of serious harm or death. This enhanced sharing provision should be adopted by the Court Division for consideration in bail applications.

Bail: Consideration

We propose that:

- a. Where there are safety issues in granting bail, the matter is adjourned and police, domestic violence specialists, sexual assault specialist, correctional officers, high risk team coordinators are consulted as a matter of urgency. This could occur prior to the initial bail hearing or on adjournment. This will ensure bail applications are made with a more comprehensive

examination of risk issues beyond what is contained in a court brief from Police Prosecution.

- b. All charges involving Non-lethal strangulation cases have the presumption of no-bail.
- c. All charges of serious assault including sexual assault and rape involving intimate partners also have the presumption of bail.
- d. All Charges involving threats to kill have the presumption of no bail.
- e. That decision making of (b) (c) and (d) involves a thorough risk assessment by the court which includes on-going threats to the victim / and family from other parties directed by the offender from within jail and carried out by third parties.
- f. A statement from the victim / family is tendered to the court where it is safe to do so. This will allow the court to consider the risks and threats a victim may be experiencing and their perception of those risks.
- g. We do not support the broad approach of no bail for breaches of domestic violence orders while there is still a high number of cross application / orders being made by Queensland Court. The implementation of predominant aggressor principles and practices are not adhered to resulting in many women who are victims finding themselves in the position of having an order made against them.
- h. For the same reason, we do not support the use of expired protection orders as evidence of risk and dangerousness.
- i. Consideration if a mental health assessment needs to be considered before granting bail.

Notification to Victims/ Families

We support the proposal that victim / and or families are notified when:

1. ***A bail application is made.*** Notification is made to the victim within 24 hrs. of the application being made. It needs to be clearly articulated within the bill who is responsible for doing this and the mechanisms for recording the notification.

2. ***If bail is granted:*** Before the offender is released from the watch house remand centre or prison the victim is notified and referrals are made to support services.
3. That the notification includes all information necessary to keep a victim safe including conditions of bail or parole and phone numbers of crisis services.

Tracking Devices

The Red Rose Foundation does not support the widespread use of electronic tracking devices for domestic violence offenders. During 2015, there were 19,405 contraventions of protection orders. This represented an increase of 13% on the previous year. It will require considerable change in how courts and police identify those offenders who pose the greatest risk, this would include looking at multiple breaches from the same offender, the nature and context of the breach behaviour, prior convictions and the victim's own perception of fear.

NSW is six months into a 48 month long trial of 60 domestic violence offenders. It is too early into this trial to preempt any successful or negative outcome. However, it would be interesting to see what the selection criteria was for deciding those 60 offenders, their histories relating to violence and recidivism.

Reports from South Australia show that almost 50% of pedophiles who have ankle bracelets, cut them off. They are designed to be removed for medical purposes. Once the devices have been removed, the location of the offender is unknown and police have to seek a warrant for their arrest.

This confirms the opinion of the Red Rose Foundation that tracking devices tell where an offender is but not what they are doing. The Bill does not address how victims are notified if an offender moves beyond the designated geographical boundary or removes the device. What would a heightened response to a victim include?

Connecticut USA has had success in reducing homicide and serious assault with tracking devices but this is a very comprehensive approach. The victims are provided with an alert system which has two level of alarm notifying if the offender moves outside of a defined geographical area. A domestic violence specialist and police are also immediately notified. This comprehensive system would have considerable costs associated with it but could be considered for very high risk offenders.

If a domestic violence offender is so dangerous and poses such a risk to a victim and or/family then bail should be denied.

Betty Taylor
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On behalf of Red Rose Foundation

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Authority provided and recorded in minutes by the Red Rose Foundation Board on 16th February 2017.