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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

27 February 2017

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: lacsc@parliament.qld.gov.au

Dear Research Director

Bail (Domestic Violence) and Another Act Amendment Bill 2017

I am writing to comment on the *Bail (Domestic Violence) and Another Act Amendment Bill 2017* (the **Bill**).

Background

Sisters Inside is an independent community organisation that advocates for the collective human rights and interests of women and children affected by the criminal justice system, and works alongside women and children to address their immediate, individual needs.

Our work is guided by our underpinning *Values and Vision*¹. We believe that prisons are an irrational response to social problems that serve to further alienate socially marginalised groups in our communities, especially Aboriginal and Torres Strait Islander women and girls. All of our work is directly informed by the wisdom of criminalised women and, wherever possible, Sisters Inside employs staff with lived prison experience.

Sisters Inside is uniquely placed to contribute to this inquiry. Almost all women in prison are survivors of violence and abuse, experienced both as adults and children². Recent data published by the Productivity Commission shows that Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised as a result of family violence than non-Indigenous women³.

It is widely accepted that men are the predominant perpetrators of domestic violence against women. However, in our experience, women are increasingly being imprisoned for using physical violence against perpetrators of domestic violence⁴. In particular, Aboriginal and Torres Strait Islander women are more likely to be imprisoned for violent offences against abusive partners and family members⁵.

Reversal of presumption of bail

We do not support the proposed amendment to section 16 of the *Bail Act 1980* (Qld) (the **Act**) in relation to “relevant domestic violent offences”.

We note the proposed definition of “relevant domestic violence offences” is effectively limited to serious violent offences that constitute domestic violence or associated domestic violence, or that breach a domestic violence order in place under the *Domestic Violence Protection Act 2012* (Qld) (the **DVP Act**).

Even though the proposed amendment is limited to violent offences, we are concerned that reversing the presumption of bail will negatively affect women, especially Aboriginal and Torres Strait Islander women, who these laws are designed to protect.

According to data provided to Sisters Inside by Queensland Corrective Services, in 2014-15 and 2015-16 breach of the DVP Act was the tenth most common offence type for which women were in prison (either on remand or sentence)⁶. In 2015-16, 299 women were serving sentences of imprisonment for assault-type offences, and 36 women were serving sentences for breaches of the DVP Act, as their most serious offence⁷.

Based on our experience and available research, we draw the following conclusions:

- the high offence count for breaches of the DVP Act confirms our concern that many women in prison for violent offences commit these offences in the context of domestic violence and extreme histories of victimisation⁸; and
- Aboriginal and Torres Strait Islander women are more likely to fight back with violence against an abusive partner due to fear of police discrimination and child removals, and they are also more likely to be criminalised due to system racism⁹.

We have requested more detailed data from Queensland Corrective Services and Queensland Courts about women’s imprisonment for domestic violence offences. We would be happy to provide this data to the Committee after we receive it.

Amendments relating to bail conditions

We do not support amendments to section 11 of the Bail Act to allow conditions requiring a person on bail to wear a tracking device.

The presumption of innocence is a fundamental principle of criminal law. When a person is on bail, generally they have not been convicted of an offence and may not have entered a plea of guilty. In these circumstances, GPS tracking is very intrusive and represents a breach of fundamental rights.

There is very little evidence to support the position that GPS tracking improves compliance with domestic violence orders or, by extension, bail conditions¹⁰. Even though GPS tracking may assist police, courts and women (if they are given a tracker) to monitor an alleged perpetrator’s movements, it does not, of itself, prevent men from attacking women.

A range of bail conditions already exist and are routinely imposed in domestic violence matters. For example: curfews, residential conditions, regular reporting to police and non-contact conditions. It is arguably onerous to impose these conditions as well as a GPS tracking condition.

We also note that the proposed amendment does not provide for any risk assessment before the GPS tracking condition to be imposed. In its final report, the Special Taskforce on Domestic and Family Violence in Queensland stated¹¹:

...recognising the paramount importance of victim safety, protection and well-being, the Taskforce also considers the use of GPS monitoring for perpetrators should be directly linked to the identification of high risk for the aggrieved and as a tool to mitigate this risk.

Unless the GPS tracking condition is linked with identified risk, separate to the apparent “risk” that a person has been charged with a violent offence, it is likely to unfairly impact women charged with reactive violence offences.

We note NSW is currently trialling the use of GPS tracking for high-risk domestic violence perpetrators, however its application to bail is limited to situations where a victim/survivor is protected by an apprehended domestic violence order with geographical¹². Given the costs of implementing GPS tracking as a bail condition, as well as the limitations in the New South Wales Scheme, we suggest it would be inappropriate to implement the proposed amendment in Queensland.

The proposed new section 11(4B) is not necessary. In our experience, non-contact conditions and geographic restrictions are routinely imposed on women granted bail for domestic violence-related offences.

Notification for survivors of domestic violence regarding bail and parole

We agree that women should be told if an alleged perpetrator is applying for bail for domestic violence offences and if the alleged perpetrator is released on bail.

We note the *Victims of Crime Assistance and Other Legislation Amendment Bill 2016 (VOCA Bill)* proposes the introduction of a charter of victims’ rights, which would effectively require police and other government officers to notify survivors of domestic violence when bail is granted to an alleged perpetrator. Government officials who breach the processes for implementing the proposed “rights” may be subject to disciplinary action¹³. However, we note that it is not clear whether this right would be extended to situations where partners or family members commit crimes against one another¹⁴. This may exclude women charged with reactive violent offences.

In our view, it would not make sense for both the VOCA Bill and this Bill to be passed.

We are also cautious about the impact that the proposed amendments may have on women charged with reactive violence offences. Notifying violent partners of their release on bail may put these women in danger.

We consider that it may be more appropriate to implement a notification obligation through policy, rather than legislation, to maintain discretion for cases involving women as alleged perpetrators. The policy should bind the Queensland Police Service and DPP, and should be publicly available.

We do not support the proposed amendments to the *Corrective Services Act 2006* (Qld). We note that the Queensland Parole System Review suggested that the Victims Register should remain limited to offences of violence and sexual offences and identified the potential burden that would be imposed if we expected survivors of domestic violence to register as a victim¹⁵.

Recommendation 84 of the Parole Review outlines several improvements to information sharing practices by the Assessment and Parole Unit in relation to prisoners who were

respondents to domestic violence orders when they entered prison. This recommendation has been accepted by the Government.

Urgent review of bail decisions

We do not support the insertion of new section 19CA into the Bail Act to allow for the temporary stay of release decisions. In our view, this provision undermines the authority and discretion of a judicial officer to grant bail, as it is likely to only be used in situations where the bail is opposed.

In practice, this amendment is likely to operate to keep people in prison for three extra business days because matters cannot be listed in the Supreme Court promptly. This would create operational and administrative difficulties for government agencies and legal representatives, without any evidence that this process would actually protect women.

Please contact me on _____ if you would like to discuss anything further.

Yours faithfully

Debbie Kilroy

Chief Executive Officer
Sisters Inside Inc

¹ Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm

² See generally, Debbie Kilroy, 'Women in prison in Australia' (Paper presented at Current Issues in Sentencing Conference, National Judicial College of Australia and ANU College of Law, Canberra, 6-7 February 2016) and Suzi Quixley and Debbie Kilroy, *Working with criminalised and marginalised women: A starting point* (2011, 2nd edn, Sisters Inside).

³ Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators* (2016), 4.103

⁴ Katherine Gregory, 'Female domestic violence victims being punished for acting in self defence, say advocates', *ABC News (online)*, 6 July 2016. Available at: <http://www.abc.net.au/news/2016-07-06/advocates-call-for-change-to-domestic-violence-laws/7575194>.

⁵ See generally, Mandy Wilson et al, 'Violence in the lives of incarcerated Aboriginal mothers in Western Australia' (2017) *SAGE Open*.

⁶⁶ Received via email from Sonia Maloberti, A/Principal Adviser, Performance, Strategy and Governance, 16 December 2016. This data counts the prevalence of "active" custodial offence types for women in prison on remand or sentence, not individual women. In 2014-15, women in prison had 210 offence records for breach of the DVP Act. In 2015-16, women in prison had 227 offences for breach of the DVP Act. The conclusions we have drawn from this data are supported by academic research that shows a rise in cross-applications for domestic violence orders, especially where those cross-applications are supported by police: Heather Douglas and Robin Fitzgerald, 'Legal processes and gendered violence: Cross-applications for domestic violence protection orders' (2013) 36(1) *University of New South Wales Law Journal* 56.

⁷ *Ibid.* This data does not include women serving sentences for assaults on police, where this is recorded separately.

⁸ Anti-Discrimination Commission of Queensland, *Women in Prison Report* (March 2006), 108.

⁹ Mandy Wilson, above n 5. See also Flat Out Inc, Submission to Royal Commission into Family Violence (Victoria), 29 May 2015, especially the case studies. This is consistent with findings from the Victorian Commissioner for Aboriginal Children and Young People that men's violence against women was one of the main reasons for removal into out-of-home care for 95% of Aboriginal children: FVPLS Victoria, Submission to the Royal Commission into Family Violence (Victoria), June 2015, 15-16.

¹⁰ See, eg Standing Committee on Social Issues, NSW Legislative Council, *Domestic violence trends and issues* (August 2012) 273-274.

¹¹ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* (February 2015), 309

¹² Sean Nicholls, 'NSW state budget 2016: GPS tracking for high-risk domestic violence offenders', *Sydney Morning Herald (online)*, 11 June 2016. Available at: <http://www.smh.com.au/nsw/nsw-state-budget-2016-gps-tracking-for-highrisk-domestic-violence-offenders-20160609-gpfz5z.html>.

¹³ *Victims of Crime Assistance Act 2009* (Qld), s 7(2) (as it is to be amended).

¹⁴ *Ibid*, s 5(2).

¹⁵ Walter Sofronoff QC, *Queensland Parole System Review: Final Report* (November 2016), 230 [1175].