



26 February 2017

To: Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Colleague

Re: Submission on the Bail (Domestic Violence) and Another Act Amendment Bill ("the Bill")

1. I write to you to as the President on behalf of the Association of Labor Lawyers QLD (Inc) ("LLQ").

BACKGROUND TO LLQ

2. LLQ is a group of lawyers, professionals, students and advocates who aim to assist in the implementation of progressive platforms and policies which help to achieve social justice, and as a body of lawyers, we are also concerned with the Rule of Law and the protection of Human Rights. While our members are also members of the Australian Labor Party, LLQ is independent of the party, and we are a body of members with an interest in the law.

3. LLQ supports the eradication of domestic and family violence and have recently been a sponsor and supporter of a fundraising event to assist the Women's Legal Service Queensland.

4. Members of our LLQ executive possess extensive domestic and family violence experience, as well as criminal law experience, and as a body, LLQ can contribute meaningfully to the consideration of the Bill.

BACKGROUND TO THE BILL

5. The proposed amendments to the *Bail Act 1980* (Qld) and the *Corrective Services Act 2006* (Qld) by the Bill have arisen in the circumstances where the recent tragic and untimely death of Teresa Bradford has prompted responses from the media, and both sides of politics, on what can be done to protect women who experience domestic and family violence.

6. It is fundamentally important in considering any legislative

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amendment that political positions or political stances not motivate legislative changes, and any such changes, if made, must result in an appropriate legislative scheme that not only endeavours to prevent similar deaths from occurring in these circumstances in the future, but to balance the rights and interests of all those involved and affected, including an accused person.

7. Our view is that an accused person ought not have their rights infringed unreasonably, and that in all aspects of legislative amendment, a fair balance is required between the rights of an accused who is not convicted of an offence against the safety of those who experience domestic and family violence

TERESA BRADFORD'S CASE

8. It is also important to acknowledge that the Magistrate who made the bail decision in Teresa Bradford's case has a reputation for fairness and impartiality, and his background includes being the former Queensland Police Service solicitor. He is a Magistrate who attracts the support of the legal profession at large in this case.
9. There is nothing to suggest that the matters outlined in our submission were not considered by the Magistrate involved, nor would that the matters outlined below would necessarily have made a difference to the sad outcome in Teresa's case.
10. It is in this context that LLQ does not support the Bill in its present form, but recommends a number of considerations to facilitate a more effective, and practical, legislative scheme to better protect those who experience domestic and family violence.

RECOMMENDATIONS and OTHER CONSIDERTIONS

11. The Bill not be passed in its present form and that consideration be given to the following:
 - 11.1. There be amendment listing known risk factors to assist decision makers and prosecuting authorities in identifying risk of harm and death in bail matters;
 - 11.2. There be amendment to have regard to whether an offence is a domestic violence offence;
 - 11.3. There be amendment to have regard to a history of uncharged domestic violence or relationship evidence;
 - 11.4. The requirement for notifications to victims be varied to impose a positive obligation on bail being granted, and such obligation be complied with in a set time frame, and, the obligation relate to grants of bail rather than applications only; and
 - 11.5. The other matters in the Bill be removed.
12. Reasons for the above recommendations or considerations are outlined below.

DISCUSSION

13. The proposed amendments to the *Bail Act* unnecessarily complicate the approach to the reversal of the onus of proof, and does not connect to the known risk factors of harm or death in domestic and family violence, nor does it link in with existing legislative provisions relating to domestic and family violence offences.
14. Where a person is remanded to appear before a judicial officer who must make the bail decision, the prosecuting entity (whether the police or the Office of Director of Public Prosecutions) will prepare an affidavit either objecting to or consenting to bail on conditions, setting out the reasons why either is sought.
15. With the benefit of submissions, and evidence, the judicial officer makes a bail decision much like a form of a risk assessment, of whether an accused person is an unacceptable risk of, *inter alia*, committing an offence of bail, endangering the safety or welfare of a victim of the offence with which the defendant is charged or anyone risk to else's safety or welfare, or who would otherwise interfere with witnesses or obstruct the course of justice: see s 16(1) of the *Bail Act*.
16. In making the bail decision, the judicial officer is required to have regard to relevant matters, which includes the nature of the offence: see s 16(2) of the *Bail Act*.¹
17. There are no guidelines on what is relevant in considering the nature of the offence and the Bill in its present form does not refer to the ambit of known harm or death risk factors in domestic and family violence matters.
18. The proposed Bill selects certain offences, by reference to the Serious Violence Offence schedule and other varied offences (strangulation, deprivation of liberty, stalking and arson) where not all are risk factors for death in domestic and family violence matters.
19. Legislative amendment ought to be properly evidence and research based, and not be reactionary, to prevent not only similar deaths to Teresa Bradford, but others at risk of harm and death in other circumstances.
20. There exists in the public domain many evidence based documents² that identify the known risk factors of death in domestic and family violence matters. For example, *inter alia*, past conduct of the following drastically increases the risk of harm and death:

¹ This involves consideration of the nature and seriousness of the offence; the character, antecedents, associations, home environment, employment and background of the defendant; the history of any previous grants of bail to the defendant; the strength of the evidence against the accused; if the accused is an Aboriginal or Torres Strait Islander person any submissions made by a representative of the community justice group in the defendant's community, including, for example, their relationship to their community; or any cultural considerations; or considerations relating to programs and services in which the community justice group participates.

² Queensland Law Society Domestic Violence Best Practice Guidelines, file:///C:/Users/kylie/Downloads/doc20160725_QLS_DfV_Guidelines_WEB.pdf, page 18, website accessed 25 February 2017; "Not Now Not Ever – Putting an End to Domestic and Family Violence in Queensland", <https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report>, website accessed 25 February 2017; Western Australia Department of Child Protection Risk Factors <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/2015/FactSheet5Keyriskfactors.pdf> website accessed 25 February 2017; Victoria Department of Human Services http://www.dhs.vic.gov.au/_data/assets/pdf_file/0010/718858/1_family_violence_risk-assessment_risk_management_framework_manual_010612.PDF website accessed 25 February 2017; see generally the publications by the National Strangulation Training Institute

- 20.1. Strangulation, choking or “grabbing” by the throat;
 - 20.2. Previous sexual assault by the accused;
 - 20.3. Use of, or threatened use of, a weapon, and accessibility to same;
 - 20.4. Obsessive, controlling or stalking behaviours;
 - 20.5. Actual threats to kill the victim or others;
 - 20.6. Assault while pregnant or current pregnancy
 - 20.7. Threats to kill, with or without a weapon;
 - 20.8. Harm or threats to harm animals or family pets;
 - 20.9. Mental health issues, if any; and
 - 20.10. History of substance abuse.
21. Section 16 could be amended more fully to consider the above, beyond what is contained in clause 6 of the proposed Bill.
22. Amendment that incorporates the risk factors identified above may achieve a better outcome rather than a general reversal of the onus of proof in bail matters for domestic and family violence offenders.
23. Such amendment would, align more uniformly with existing risk assessment tools that are routinely undertaken in crisis situations, child protection and family matters, and, would assist the decision maker and prosecuting entities in bail matters.
24. In addition to the above factors, consideration ought to be given to linking amendments to existing legislative infrastructure rather than introducing new sections and terms that are currently included in the Bill. For example, in a bail decision, a judicial officer could be required to consider:
- 24.1. Whether the charged offence/s is a relevant domestic violence offence pursuant to section 12A of the *Penalties and Sentences Act*³ (a section that mandates a domestic violence offence declaration for a variety of charges); and
 - 24.2. Whether there is any relevant domestic violence evidence, or history of domestic and family violence, that may be relevant to a charged offence/s pursuant to section 132B of the *Evidence Act*⁴ (a section that makes admissible domestic violence relationship evidence).
25. Such amendments would not only assist decision makers in assessing the risk of harm or death in making bail decisions, but would also guide the prosecuting entity on what needs to be addressed in the bail affidavit concerning risk of harm and death, and achieve consistency among legislative provisions and across jurisdictions

Tracking devices – Clause 4

<https://www.strangulationtraininginstitute.com/resources/library/publications/> website accessed 25 February 2017.

³ Queensland Legislation, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PenaltASenA92.pdf> website accessed 25 February 2017 and

⁴ Queensland Legislation, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/EvidceA77.pdf> website accessed 25 February 2017

26. On its face, the use of tracking devices may appear desirable.
27. However, should an offender pose such a risk of harm, one wonders if they should be released into the community, and if other safeguards that can be introduced that assist in bail decisions, like those outlined above, the risk of harm is moderated appropriately, negating the need for such devices.
28. There are also other issues with tracking devices.
29. In Queensland, tracking devices are generally limited to those monitored under the *Dangerous Prisoner (Sexual Offenders)* who are monitored in the community by the Department of Corrective Services. It does not necessarily monitor tracking across the whole of the state, but certain areas (largely metropolitan areas) where offenders reside.
30. Some inter-state courts utilise tracking devices and the victim gets an alert on their mobile phone when the offender is within a certain distance of the phone. However, that process and participation is voluntary, and, it may traumatise a victim to receive notifications in some cases i.e. particularly in small communities, or where it provides a means by which a perpetrator can cause distress remotely.

Bail Conditions – approaches to victim – Clause 4

31. Approaching residences or places as proposed in clause 4 is largely unnecessary – such provisions are routinely considered in bail applications, and in any event, under a domestic and family violence order, such a condition is common.

Right to Know of Applications – Clause 5

32. A person who applies for bail may make multiple successive applications for bail.
33. Indeed, a provision that requires notice to a person who experiences domestic and family violence of an application could enable a perpetrator of domestic and family violence who is in custody to continue to cause trauma and anxiety to their victim while on remand by making successive bail applications.
34. The proposed amendment in the Bill on one hand imposes a police obligation to advise of applications of bail within 24 hours, and otherwise, removes the time frame within which to advise.
35. Any amendment ought to be positively worded to impose an obligation on the police or not, and to advise immediately on bail being *granted*, rather than applications being made.

Section 11 and 16 amendment - Clauses 2, 3 and 6

36. This is addressed above in the risk factors discussion.

Stay on Review - Clauses 7 and 8

37. There is currently no automatic power under the *Bail Act* for a stay of bail pending review of the decision to grant bail.
38. All courts have a general and inherent power to stay decisions should the court deem it necessary to do so. It is a matter for prosecuting entities to ask the court to exercise same as the case deems fit.

Review of Domestic Violence Provisions – Clause 9

39. A provision that mandates legislative review is unnecessary.
40. In the past 2 years, considerable amendments and reviews have been undertaken in response to the *Not Now Not Ever* report, and such matters are always ongoing and within the ambit of the advocacy and lobby groups.

Corrective Services Act 2006 amendments

41. Given the position and comments above nothing further is added concerning the *Corrective Services Act*.

CONCLUSION

42. We respectfully submit that the matters outlined above be considered by the Committee in the enquiry noting as stated above, our particular interest in the eradication of domestic and family violence matters, and interest in criminal matters.
43. We thank you for your consideration and invite you to contact Ms Kylie Hillard on 0402 004 283 if you have any queries or if you require further information,

Yours Sincerely,

Kylie Hillard
President
Association of Labor Lawyers QLD (Inc)