



## Bail reform, risk assessment and high-risk teams

Coordinated responses are needed to manage high-risk domestic violence offenders (Feb 2017)



Micah Projects (incorporating Brisbane Domestic Violence Service; BDVS)  
Submission on the Bail (Domestic Violence) and Another Act Amendment Bill 2017

**Submission Title:**

**Bail reform, risk assessment and high-risk teams:  
coordinated responses are needed to manage high-risk domestic  
violence offenders.**

To: The Legal Affairs and Community Safety Committee, Queensland Parliament

February 2017

## Introduction

In a number of high-profile Australian cases, men with histories of domestic violence have murdered a family member while on bail. In January 2017, Teresa Bradford was murdered by her ex-partner and in February 2014, Luke Batty was murdered by his father, Greg Anderson. Mr. Anderson was on bail on charges of assaulting and threatening to kill Luke's mother, Rosie Batty when he killed Luke. In these and similar cases, the women and their children have endured terror and fear that they will be killed. Yet our criminal justice system has not kept them safe.

The deaths are preventable. They raise important questions about the role of criminal justice responses to domestic violence offenders.

The deaths of women and children in these circumstances have sparked community outcry. This has resulted in calls for stronger bail laws, use of tracking devices and greater support for integrated responses to high risk domestic violence offenders.

There is no quick fix in the management of high risk domestic violence offenders. Bail reform without a focus on risk assessment tools and coordinated community responses to high risk offenders, will not be effective.

## Position on this Bill (Micah Projects, inc. BDVS)

Micah Projects (inc. BDVS) welcomes the bi-partisan support for the stronger criminal justice responses to domestic violence that are occurring in Queensland. We welcome the Committee's consideration of our submission that reform of the Bail Act must not be done in isolation. It must be considered in the context of the new information sharing and high risk team strategies that are emerging in Queensland. Bail reform alone will have little positive impact unless the integrated responses and coordinated management of high risk offenders is elevated and more effectively implemented in Queensland.

Micah Projects (inc. BDVS) believes that the most effective way to prevent these deaths from occurring in the future is to:

1. Strengthen the integrated responses and multi-agency information sharing on domestic violence, including use of risk assessment tools.
2. Elevate and support the management of high risk offenders through the coordinated community responses that are emerging in Queensland.

The reform of bail laws and use of tracking devices as a condition of bail or parole may well be a useful element in the response to high risk offenders. The essential core, however, is systematic information sharing, decision-making and swift and effective responses between Police, Courts and domestic violence service providers for high risk offenders.

Micah Projects (inc. BDVS) is actively engaged in implementing an integrated response to domestic violence which features the management of high risk offenders in Brisbane and a new co-responder model between the Queensland Police Service and BDVS in the Metropolitan North region.

When these coordinated mechanisms with Police, Courts, Probation and Parole and other agencies expand and work effectively, the risk of harm and death is much more likely to be curtailed.

We welcome reforms that will provide notice to the complainants of a pending bail application, when an offender is to be released and provisions to allow for an urgent review of a bail decision. We have reservations about other provisions of this Bill.

## The Bill

Micah Projects (inc. BDVS) supports the general intent of the Bill —that is, to better manage high risk domestic violence offenders, hold them accountable for the harm they cause and reduce the risk of harm to those they violate.

The objectives of the Bill are to:

- Reverse the presumption of bail for an alleged offender charged with a relevant domestic violence offence;
- 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;
- 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 receives a variation to a bail condition;
- Introduce a mandatory reporting provision 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; and
- 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.

In this submission, we will outline our case that bail reform must be considered in conjunction with the new information sharing and integrated responses to domestic violence that are occurring in Queensland.

## About Brisbane Domestic Violence Service (Micah Projects) and our Integrated Response to Domestic Violence

Micah Projects is a community based not-for-profit organisation with a vision to create justice and respond to injustice at the personal, social, and structural levels in church, government, business and society.

We believe that every child and adult has the right to a home, an income, healthcare, education, safety, dignity, and connection with their community of choice. Domestic violence is a contributing factor to harm, hardship and housing stress experienced by women in all programs that Micah Projects provides.

Therefore, some form of support to overcome the impacts of domestic violence occurs in all programs, but we offer specialised domestic violence support to people through a range of support and advocacy services to individuals and families, including the Brisbane Domestic Violence Service and the new Safer Lives Mobile Service (SLMS) after-hours outreach service.

These services function as an integrated response to domestic violence across the Brisbane region. The services are funded by the Queensland Government through the Departments of Communities and Housing and Homelessness. The integrated response incorporates high level collaboration with the Queensland Police Service, Corrective Services and a wide range of other agencies. Specific services include:

- Outreach support and advocacy services to women and children, including short term counselling, case management and safety planning referral and practical assistance, rapid re- housing and safety upgrades.
- Co-responder domestic violence pilot *Project Phoenix* with QPS in Metro-North region, Brisbane
- Responding to Police and other referrals with after-hours outreach and support through SLMS.
- Children's counselling, referral and group work.
- Short term crisis intervention via phone and face to face.
- Establishment of men's domestic violence programs in 2016 as part of a coordinated response with courts, probation and parole.
- Case coordination and monitoring with high-risk offenders through perpetrator program and women's advocates.
- Community awareness, education and professional development on domestic violence, its contributing factors and change that is needed to overcome domestic violence.

In 2016, BDVS directly assisted more than 4800 women and children aggrieved by domestic violence.

## The Issues to be considered by the Committee

The goal that we all share is to keep those at risk of harm from domestic and family violence, safe. The Bill has that intent. Micah Projects (inc. BDVS) seeks consideration by the Committee of the following issues:

### 1. Removal of the presumption in favour of bail – unintended impacts

In a number of Australian jurisdictions — Victoria, the ACT, the Northern Territory (NT), South Australia and Tasmania — special provisions have been introduced that either displace or reverse the presumption in favour of bail where domestic and family violence offences are alleged. The South Australian family violence legislation, for example, amends the *Bail Act 1985* (SA) s 10A to include a presumption against bail for certain family violence offences involving physical violence or the threat of violence.

The evidence of on the impact of these bail reforms is limited (Douglas & Ng, 2016). It is clear, however, from cases like that of Teresa Bradford in Queensland that all court officials must give full consideration to the serious risks posed by domestic violence offenders. In the case of Teresa Bradford, her ex-partner had been in custody for assaulting and choking her in late November, 2016 yet despite posing a significant risk to her and their children, he was granted bail on January 12 2017. Police had opposed bail being granted, warning Bradford's fragile mental state made him an "unreasonable risk of causing self-harm or harm towards others".

To assist the Courts comprehensive risk assessment reports prepared with input from specialist domestic violence workers could be made available to them. The emergence of integrated responses and high risk teams that promote co-operation between Police and other agencies can be a medium through which risk assessment reports can be developed and accessed by the Courts.

It is noteworthy that following their consideration of the issues related to bail provisions, the Australian Law Reform Commission (ALRC/NSWLRC Report, 2010) did not recommend the introduction of a presumption against bail in family violence cases. It concluded that judicial officers should be required to consider whether protective bail conditions should be imposed when bail is granted in family violence cases and further, if no protection order is in place, whether one should be made.

Respected legal researchers and academics (Douglas & Ng, 2016) argue that:

“...many of the legislative changes to bail presumptions are unjustified and that the safety of victims can be sufficiently protected by a focus on the basic assessment of whether the risk that the accused will harm the victim is unacceptable, and on a careful consideration and appropriate tailoring of the conditions of the bail grant”.

A similar position is also espoused by the Queensland Law Society in a statement by the QLS President, Christine Smyth:

“The QLS is of the view the proposed reverse of onus of proof provisions touted by the state opposition when considering the release of an alleged domestic violence offender back into the community would not deliver the intended effect of improving public safety...It is the Society’s view that proposed changes could be best achieved if the existing framework in the Bail Act was utilised more effectively...And rather than implement additional custody arrangements, an independent mental health professional could be established to assist the court in any case where there was a concern around the mental health of a defendant and in which there existed the potential that a person would reoffend upon release.”

Micah Projects (inc BDVS) is generally supportive of the position taken by the ALRC, QLS and Douglas & Ng (2016). We share a concern raised by others that placing the onus of proof on offenders in applications for bail can disproportionately impact on disadvantaged people and substantially increase the prison population in Queensland, without achieving its desired effect of targeting and managing the high risk offenders.

In fact, removing the presumption of bail can have unintended consequences. Eligibility for bail is based on whether a person has safe and secure accommodation, employment, financial security, access to rehabilitative programs and a support network. In some cases that we are aware of in our homelessness programs at Micah Projects, being deemed an ‘unacceptable risk’ under the *Bail Act* is more likely to relate to a lack of access to support than a potential for violent offences.

In our experience those who receive bail are often likely to be those with access to social goods and a funded lawyer, while homeless and other vulnerable people, are detained in custody. It is reported that Indigenous peoples and some migrants are less likely to receive bail, as they are perceived to have more ‘culturally specific needs’ that must be accounted for (Gledhill, 2017). Removing the presumption of bail may disproportionately disadvantage Indigenous and unrepresented offenders. They may find it difficult to present evidence in support of an application for bail (Douglas & Ng, 2016)

For particularly ‘high risk’ offences, such as domestic violence and drug trafficking, people seem to receive bail if they have access to a ‘surety’ — a significant sum of money which will be forfeited if a person does not show up to court (Gledhill, 2017). Most people do not have access to these funds. It is our concern that by making it harder to receive bail, marginalised people will be caught in a process of further disadvantage.

We suggest that bail provisions and directions for court officials be strengthened to promote the use of risk assessments in all domestic violence matters, including bail applications and that court officials take these risks very seriously in their consideration of bail applications and conditions that they may impose where bail is granted.



## 2. High Risk Teams and Co-ordinated Community Responses

The new and emerging service system and information sharing responses to domestic violence in Queensland are very positive. They need time, effort and resources to enable their effective development. Any bail reform or use of tracking devices must be considered in the context of how these new criminal justice and service system responses are functioning. The elements of these new responses include:

- Information sharing among criminal justice, health, child safety and community service agencies.
- Co-ordinated services for those aggrieved by domestic violence and referral to assistance for perpetrators.
- Swift and effective criminal justice responses for perpetrators.
- Identification and management of high risk perpetrators.

In Brisbane, this has led to the emergence of routine meetings between QPS, Probation and Parole, BDVS and others to share information and plan responses for high risk offenders. It has facilitated the trial of a new co-responder model where specialist staff from BDVS co-respond to domestic violence occurrences with QPS officers in Metro-North region, Brisbane.

Rather than a “one size fits all” change to the presumption of bail, we need to have the risks posed by offenders comprehensively assessed by the QPS (and where possible this risk assessment should include members of a high risk multi-agency team). The court system must then take full account of this risk assessment when considering bail applications.

It is worth the Committee considering whether court officials would take the risk posed by offenders, like Mr Bradford, more seriously if the risk assessment occurred within the context of a high risk multi-agency team. We suggest that the Committee put this issue to the Chief Magistrate for a response.

BDVS staff use a comprehensive risk assessment tool called DASH that was developed by SafeLives, UK. The Multi-Agency Risk Assessment Committees (MARAC) in the UK apply the DASH in their assessment and management of high risk domestic violence offenders. Membership of the MARAC includes Police and service providers. This DASH tool is evidence-based and it is in operation across the UK. It incorporates a severity of abuse grid and other measures that enable professional judgement of risk (and mental health, substance abuse and other factors contributing to risk) to be carefully assessed and reported (SafeLives, 2017).

BDVS believe that the risk assessments, like DASH that are developed by specialist domestic violence workers can then be further developed as a very useful tool in the preparation of court reports. The Courts could then be better informed and decide to seek more specialist mental health or other reports if needed.

It is our view that increased financial support for the targeted risk assessment and management of high risk offenders, through the new high risk teams and

coordinated responses to domestic violence in Queensland, will be more effective in preventing harm and deaths than a bail measure. Furthermore, support to the high-risk teams and information sharing measures is likely to be more cost-effective than a bail reform that may well unduly incarcerate marginalized people, rather than targeting the high risk offenders.

### 3. Notice to the complainant of release and bail application.

Micah Projects (inc. BDVS) welcomes information-sharing provisions that enable a system of notification to those aggrieved by domestic violence about the pending release or bail application of their offender.

In our experience, women live with grave fear and this will enable them time to plan for their safety and any dependent children or at risk family members.

### 4. Tracking Devices

BDVS staff are of the view that tracking devices may be worthy of trialling, but there is little evidence to suggest that the time and resources required for their use is justified. The Queensland Law Society noted that "...there was no evidence to support the success of such a program – including one introduced to monitor dangerous sex offenders granted conditional release under the Dangerous Prisoners (Sexual Offenders) Act 2003... There is no proof these devices -- unless very expensive and unlimited resources are provided to police or law enforcement agencies to monitor them – actually work." (QLS, 2017).

Funds for tracking devices and their monitoring may be better spent on high risk teams across the State.

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### Brisbane Domestic Violence Service

PO Box 3278 South Brisbane BC, Q 4101  
Ph 07 3217 2544 | Fax 07 3217 2679  
bdvs@micahprojects.org.au | bdvs.org.au  
micahprojects.org.au

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