

Women's Legal Service

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

27th February 2017

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

Dear Sir/ Madam,

WOMEN'S LEGAL SERVICE QLD (WLSQ) SUBMISSION ON THE BAIL (DOMESTIC VIOLENCE) AND ANOTHER ACT AMENDMENT BILL 2017

The Women's Legal Service Queensland (WLSQ) is a community legal centre that provides Queensland wide specialist legal information, advice and representation to women in matters involving domestic violence, family law and child protection. We also employ allied domestic violence social workers who assist clients to obtain a holistic response from our service. We offer a range of services including domestic violence duty lawyer services at Holland Park, Caboolture and Ipswich, family law advice at two family relationships centres at Logan and Mt Gravatt and outreach to the Brisbane Women's Correctional Centre. We also employ a specialist rural, regional and remote lawyer who operates a RRR telephone line one day per week. Additionally, we have recently commenced the operation of specialist domestic violence units in Brisbane and the Gold Coast and a health justice partnership with the Logan Hospital. WLSQ was established in 1984 and has an extensive history of working with vulnerable women. In 2016, we assisted over 11 000 women.

In addition to these services, we also provide community legal education on topics including domestic violence and family law to community workers in metropolitan Brisbane and, with the assistance of corporate grants and charitable trusts, to workers in rural and regional Queensland. In 2016, WLSQ provided education forums and client clinics in Miles, Chinchilla, Dalby and Toowoomba.



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WLSQ is extremely pleased to see some progress in relation to Bail Laws and thanks the LNP Opposition for their work in presenting this Bill so quickly, in response to community concern.

We believe there are some important ideas for reform contained within the Bill. However, we would have preferred a public review into the issue, which would have promoted broad ranging public and stakeholder feedback, similar to the current Victorian approach. Moving straight to a legislative review limits broader public input from agencies who are not so familiar with legislation, legal drafting and parliamentary process.

For more information about the Victorian response, please see:

<https://engage.vic.gov.au/bailreview>

Recommendation 1

That the Queensland government establish an urgent public review into the bail scheme, as it relates to domestic violence adopting a similar approach to the current Victorian Review, with a focus on legislative and practical reforms to manage risk and maximise community safety.

We now provide some over-arching comments about how the bail system could be improved vis a vis safety for victims of domestic violence, their children and the community.

1. Over-arching comments about bail process

1.1 Court should be notified of “domestic violence” cases

When domestic violence is a crime, it is a crime like no other. Perpetrators can present as charming to other people, work colleagues and the wider community. They have lived with their victims and have intimate knowledge of their movements, habits, where they reside, their routines, their friends, family and where they work. They can be extremely dangerous to their victims and children despite not having any previous record of violent crime, any previous history with the police, any previous or current mental health issues or without having ever been physically violent towards their victim. There can also be high likelihood of ongoing contact because of family relationships, having had children together, protracted property settlement and other litigation and shared community connections. There can be a propensity for some offenders to have such a need for ongoing control over their partner and children that court orders and restrictions can be meaningless to them. For some perpetrators their need for control is so great they will engage in the ultimate act of control by killing their partner and/or their children and/or themselves.

WLS believes because of the risks in these relationships, it should be specifically brought to the attention of magistrates that the case involves domestic and/or family violence. This may be achieved by alerting magistrates that the case involves domestic and/or violence consistent with the definition as contained in the *Domestic and Family Violence Protection Act 2012*.

Recommendation 2

*That the Bail Act 1980 be amended so that it is **mandatory** that the magistrate/court be notified that a bail application involves a domestic and/or family violence matter.*

Recommendation 3

That the definition of domestic and family violence offence is consistent with the definition of domestic and family violence as set out in the Domestic and Family Violence Protection Act 2012.

Recommendation 4

That once the court is alerted that a bail application involves a domestic and/or family violence offence then the following legislative pathway is triggered, as set out below.

1.2 Victims should have the right to be heard about bail

Some victims may be too frightened to voice their concerns to the court about bail but the law should at least give victims the option to be heard.

Recommendation 5

That Section 16 (2) (f) of the Bail Act 1980 be amended to allow domestic violence victims the opportunity to be heard on bail applications and for the court to take this into account in determining “unacceptable risk”.

Recommendation 6

That the Bail Act 1980 be amended to reflect that no inferences should be drawn by the court if a victim chooses not to be heard.

1.3 Evidence about the impact on the victim and/or children and/or other family members

Evidence about the impact on the victim and/or children and/or other family members should be gathered by the police and put before the court for consideration in bail applications involving domestic violence offences.

For example, the police could advise the court that if the accused were released on bail the impact on the family would include the victim having to go into refuge, move away from their home, remove the children from their school/ day care, leave her employment, restrict or avoid social media, restrict or avoid interaction with friends and family as the risk is too high to her, if he was released.

Another scenario might be that the victim is concerned if he is not released on bail that she will not have an income and she is dependent on him and/ she would not obtain child support for the children as he won't be able to work.

Both of these impacts are relevant considerations for the court.

Recommendation 7

That the Bail Act 1980 be amended to make it mandatory for evidence of the impact on the victim, their children and family members of a bail decision be gathered by the police and provided to the court for their consideration, in determining bail.

1.4 Domestic violence risk assessment

It is essential that we incorporate domestic violence risk assessment as evidence, routinely considered by magistrates, when making bail determinations.

Despite a commonly held community assumption, domestic violence is not a mental health issue or caused by alcohol and drug misuse. Domestic violence is about the ongoing exertion of power and control over other family members by a perpetrator. It rarely stops at separation and in fact research shows that domestic violence escalates and is more likely to have deadly consequences, at and around the time of separation.

Of course, it is not uncommon for mental health, alcohol/ drugs and domestic violence to coalesce in families at the one time. People who have mental health and/or addiction issues require specialised care, resourcing and community support. However, the presence of domestic violence changes everything as it means other people in that person's immediate family *may* be at risk. Perpetrators with mental health concerns and/or drug and alcohol issues are an increased threat to their partners and families.

Domestic violence risk assessments are based on academic research, practice knowledge and recommendations over a decade or more from domestic and international Domestic Violence Death Review Committees. The *Not Now: Not Ever* Report recommended (Recommendation 77) that the Queensland Government develop a best practice common risk assessment framework for domestic violence and also establish high risk teams (Recommendation 76). Work is therefore well underway in relation to embedding the use of risk assessments in the broader community and some high risk teams are already operating. High Risk teams are teams of individuals and agency representatives who work together on high risk domestic violence cases, essentially getting system's responses right to reduce risk to women and children living in the community. At its most basic, it is about keeping women and children alive.

Specialist domestic violence agencies currently use domestic violence risk assessment on a daily basis as do other agencies, such as the police. These risk assessments assess the level of the perpetrator's dangerousness and his propensity for lethality or to inflict serious injury on his victims. Risk assessment assist with the agencies' response, resourcing allocation and prioritisation. It only makes sense that these risk assessments should be routinely sourced and utilised in the courts. As should reports from accredited perpetrator programs, or other programs that the accused may have been involved and/or completed.

We note Section 12 of the Family Violence Act in Tasmania referring to bail requires the court to *mandatorily consider any available risk screening or rehabilitation program assessments, among other things*. There is therefore precedent for this approach in Australia.

With a common domestic violence risk assessment approach being developed and rolled out in Queensland in the near future, it simply makes sense that this evidence is routinely considered by the court when making bail determinations.

1.5 How would this evidence be obtained?

The police should be obligated to obtain evidence of a domestic violence risk assessment. This might occur by obtaining a copy of a domestic violence risk assessment in a bail application from the High Risk team (if one is operating in that district and the family have been accepted into this response) or from an "authorised provider".

An authorised provider could be defined under regulation and might include agencies such as DV Connect, DV regional services, managers of Women’s Refuge or domestic violence social workers.

An approved “domestic violence risk assessment” form could be developed for use in these circumstances, incorporating all the recognised DV risk indicators for completion by the authorised provider. An authorised provider could also include the police who undertake and utilise such risk screening and assessment, in their work.

The DV risk indicators involve a consideration of such matters as recent separation, access to weapons, strangulation, extreme jealousy, use of sexual violence, increase in severity of violence, controlling all of victim’s activities, illicit drug use, alcohol abuse, suicidal ideation of perpetrator.

Recommendation 8

That the Bail Act 1980 be amended that the court must consider a domestic violence risk assessment when making determinations about bail in domestic violence matters.

Recommendation 9

That it is the responsibility of the police to provide the court and the parties with a copy of a domestic violence risk assessment from an authorised provider and any other relevant reports of domestic violence, including any reports from accredited perpetrator programs.

Recommendation 10

That the government via regulation nominate who is an “authorised providers” of domestic violence risk assessments for use in the courts, including in bail applications.

Recommendation 11

That a pro forma domestic violence risk assessment form be developed for use in these circumstances, by authorised providers.

1.6 Reversal of presumption in high risk cases

WLS notes that Section 16 (3) of the Bail Act currently provides for an accused to “show cause” in certain circumstances why bail should be granted. Apart from those circumstances already covered by the existing show cause requirement, we support an extension in matters involving domestic violence to include:

- Where the victim is currently being assisted by a High Risk team
- Matters involving the offence of strangulation (because of the overwhelming evidence that this is a highly dangerous activity and often a precursor to murder)
- Matters where the domestic violence risk assessment assesses the victim and/or children as being at high risk of death and/or serious injury from the perpetrator
- Matters involving a breach of a domestic violence order in the course of committing the breach the accused is alleged to have used or threatened to use violence and/or the alleged offence involves a charge of stalking.

Recommendation 12

That Section 16(3) of the Bail Act be extended so that the accused in domestic violence offences should also show cause in the following circumstances:

- *Where the victim is currently being assisted by a High Risk team*
- *Matters involving the offence of strangulation*
- *Matters where the domestic violence risk assessment assesses the victim and/or children as being at high risk of death and or serious injury from the perpetrator*
- *Matters involving a breach of a domestic violence order in the course of committing the breach the accused is alleged to have used or threatened to use violence and/or the alleged offence involves a charge of stalking.*

Recommendation 13

That the current Section 16 (3) can also apply to domestic violence offences and result in a show cause for bail. If the existing provision does not result in a show cause for bail in a domestic violence matter, then the court must then consider the additional provision outlined above in making a determination about “show cause”.

1.7 The right of victims to information about court events that impact on them

We support victims being given this information. The reality is, unless it is made someone’s responsibility it will not get done. We recommend that the police are probably best placed to keep victims informed of important and key court events involving their court matter.

Recommendation 14

That victims be kept informed by the police of key court events including bail applications and bail outcomes (including bail conditions and any changes to bail conditions).

1.8 The need for victim advocates

The criminal justice process can be brutally confronting and a confusing process, for all involved including victims. As women’s services have advocated for some time if women who are survivors of domestic violence (and sexual violence) are going to use the criminal justice process then they require specialised support to stand with them through every step of the way – from reporting to police, court processes, giving evidence and after the trial outcome.

These advocates could assist communication between the police, ODPP and the victim and provide advocacy where necessary and practical support.

Recommendation 15

That specialised domestic violence victim’s advocates be funded to specifically assist and support victims throughout the criminal justice process.

1.9 The need for victim specific legal responses by specialised services

Victims have no legal representation in the criminal justice system. This does not mean they do not have a need for legal assistance. There is a current gap in service provision in that victims do not have anywhere specific to obtain this legal service. A victim specific legal service would be able to work with victim advocates and assist victims in providing them advice about the system, their place in it and they may be able to assist with advocacy and communication with other agencies including the ODPP.

Recommendation 16

That a victim specific legal service be funded to provide legal help to victims of domestic violence who are involved in the criminal justice system.

1.10 Consistency with the Domestic and Family Violence Protection Act 2012

The reality is most domestic violence offences in Queensland do not result in criminal charges but are dealt with under the civil protection process as set out in the Domestic and Family Violence Protection Act 2012. There can be a variety of complex reasons that this occurs.

This Domestic and Family Violence Protection Act 2012 in Division 3, provides in certain circumstances where the police reasonably suspect the respondent may be a danger to someone else and/or property the police may take a respondent into custody and they may be held for a period of up to 8 hours without charge. If no charges are laid they can be released back into the community after the making of a temporary protection order.

These can also be highly dangerous individuals but the Bail Act and its protective considerations and court oversight are not triggered, as no criminal charges are laid.

This creates a system's anomaly. WLS believes both systems should be consistent, with the safety of victims of domestic violence and their children being the paramount consideration.

WLS believes there is a need to review how domestic violence is dealt with in the criminal justice system as a whole. The *Not Now: Not Ever Review* was working on a very tight time frame and did not have time to deal with all aspects of the criminal justice system but only certain aspects. For example, strangulation.

We believe there is merit in a whole of system's review being undertaken.

Recommendation 17

That Queensland Government establish a review of the criminal justice system's response to domestic violence, in regard to increasing perpetrator accountability and victim safety.

2 Bail (Domestic Violence) Amendment Bill 2017

In response to the current legislation we make the following comments:

2.1 Section 2 paragraph 4 (Amendment of Section 11)

WLS is not opposed to the used of tracking devices on offenders if it increases women and children's safety. We would probably prefer to wait for a trial and evaluation as recommended by the Not Now: Not Ever Report (Recommendation 123) before recommending their widespread use.

Recommendation 18

That the trial of tracking devices be undertaken as recommended by the Not Now: Not Ever report inclusive of a cost benefit analysis to understand whether they increase women and children's safety and whether there are any unintended consequences before a widespread rollout.

2.2 Section 2 paragraph 5 (right to receive notices of bail)

Our preferred approach has been outlined previously. WLS believes that there should be an obligation on police to determine whether a matter involves domestic and/or family violence and bring this to the court's attention.

In our suggested legislative pathway, if the police are obligated to make enquiries and find out if an offence involves domestic and/or family violence, they should also be in contact with the victim to both determine their attitude to bail and/or the impact any bail decision will have on them and put this evidence before the court to assist the court in its deliberations about "unacceptable risk".

The police should also be obligated to notify the victim immediately of any decision regarding a bail outcome. Notifying within 24 hours would not be safe in some circumstances.

2.3 Section 2 Paragraph 5 (4) – person at risk of domestic violence

WLS believes the use of domestic violence risk assessments are a well-accepted and sounder approach to determining risk and should be routinely used in bail applications involving domestic violence offences. Please refer to our approach previously outlined.

2.4 Section 2 Paragraph 7 (stay of decision to release until appeal/ review)

WLS believes there is some merit in this and supports this approach.

2.5 Amendment of Corrective Services Act 2006

WLS supports the amendments that would entitle a victim of domestic violence (who may not be a victim of the offence that the prisoner has been incarcerated) to have knowledge about a prisoner's release date and other necessary information to assist their decision making about their safety.