Queensland Indigenous Family Violence Legal Service

27 February 2017

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

Attention: The Acting Research Director

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

Dear Committee Members,

Matters for submission: *Bail (Domestic Violence) and Another Act Amendment Bill (Qld) 2017:*

I refer to your email of 15 February 2017 and thank you for this opportunity to provide submissions in relation to the proposed *Bail (Domestic Violence) and Another Act Amendment Bill 2017 (*'the Amendment Bill').

Please find below submissions made on behalf of the Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ("QIFVLS") that we ask be accepted for your consideration.

Who we are:

QIFVLS was established in 2010 when four (4) legal services became one (1), Cape York Family Violence Prevention Legal Service, Indigenous Family Violence Legal Outreach Unit, Indigenous Families Support Unit and Helem Yumba Family Violence Prevention Legal Service. This was followed in 2014 with additional service delivery to the Brisbane Local Government Area.

QIFVLS is a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program ("FVPLSP") through Department of Prime Minster and Cabinets Indigenous Advancement Strategy ("IAS"). FVPLSP fills a recognised a gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

QIFVLS is a unique, specialised and culturally safe frontline legal service that supports access to justice and keeps victims of family violence safe. QIFVLS addresses the need to reduce violence and increase safety in Indigenous communities.

QIFVLS provides services in the areas of domestic and family violence; family law; child protection; sexual assault and victims assist Queensland applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings. QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 50 Aboriginal and Torres Strait Islander communities throughout Queensland.

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1. *Reversal of the presumption of bail for an alleged offender charged with a relevant domestic violence offence.*

Clause 6 of the Amendment Bill, read in conjunction with Clause 3 deals with the reversal of the presumption of bail.

Currently section 9 of the *Bail Act 1980* (Qld) ('the Act') recognises that the Court has the power to grant bail to a person held in custody on a charge of an offence for which they have not been convicted. Section 9 is in keeping with the fundamental basis of the rule of law: that a person accused of an offence is entitled to a fair hearing before a court or jury of one's peers, to determine guilt or innocence.

It is clear from a review of the current Act, that there is an identifiable gap in relation to the provision of safety and protection for victims of domestic and family violence.

At present, section 16 of the Act details the limited circumstances in which a court or police officer (commonly referred to as watch house bail and provided for in section 7) may refuse the grant of bail unless a defendant can *show cause* as to why the defendant's detention in custody is not justified.

Section 16 (3) of the Act sets out the circumstances in which a defendant will be placed in a show cause situation. None of those subsections specifically relate to the commission of a domestic violence offence or a demonstrable criminal history of contraventions of domestic violence protection orders for example.

QIFVLS supports the proposed reversal of the presumption of bail for an alleged offender charged with a relevant domestic violence offence. This proposed amendment will clearly address the identifiable gap in section 16 of the Act, with its primary focus being on the safety and protection of a victim (and more often than not, a primary victim's children) of domestic and family violence.

However, QIFVLS observes that the Amendment Bill is silent in relation to the reversal of bail for an alleged juvenile offender pursuant to the provisions of the *Youth Justice Act* 1992. This observation is made as due to recent legislative amendment in Queensland, a juvenile is now recognised to be a person up to and including 17 years of age. (This amendment will come into effect within 12 months upon proclamation).

In relation to the *Youth Justice Act 1992*, decisions about bail are generally discussed within Part 5 of the *Youth Justice Act 1992*. Section 48 (3) of the *Youth Justice Act 1992* then sets out the following matters that the Court or Police Officer should be aware of in determining the questions of whether to grant bail. There is no express provision in the current section 48(3) of the *Youth Justice Act 1992* to take into account the commission of a relevant domestic violence offence or a demonstrated criminal history of contravening domestic violence orders. This is clearly an identifiable gap.

This gap within section 48(3) of the *Youth Justice Act 1992* is even more noticeable when one looks at the full extent of the proposed amendments under the Amendment Bill. Both clause 5 and Clause 7 make specific reference to amending the operation of the *Youth Justice Act 1992*. It is clear therefore that the Amendment Bill is intended to apply to juvenile offenders. However, it is perplexing to exclude those juvenile offenders from similar considerations for the grant of bail.

In QIFVLS experience we have provided legal advice and legal representation to juvenile victims of domestic and family violence who have sought a domestic violence protection order against a juvenile offender. Surely juvenile victims of domestic and family violence should also be afforded the same protections with similar amendments being made or considered to be made to the *Youth Justice Act* 1992?

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2 Clause 4: Amendments to the conditions of bail – the use of a tracking device:

QIFVLS has concerns in relation to the implementation and use of a tracking device as a condition of bail.

It is QIFVLS submissions that the implementation of clause 4 of the Amendment Bill in respect to the use of a tracking device would unreasonably divert much needed funds and resources where it is needed most, being the front line of service delivery. There is, for example, a pressing need for the creation of more safe places for women and children to access in remote and rural Queensland when escaping violence as well as the investment in culturally appropriate perpetrator intervention programs in community and in prisons.

Further there has not been made available a cost analysis for the implementation of this measure. At present, the use of a GPS tracking device as a special bail condition is subject to trial in New South Wales and confined to those determined to be 'high risk domestic violence offenders'.

If it is Parliament's intent to implement Clause 4, it is QIFVLS submission that consideration should be given to confining the use of a GPS tracking device to those alleged offenders determined to be '*high risk domestic violence offenders*', as is the case in New South Wales. The term, '*high risk domestic violence offender*' should also be defined within legislation.

3. A domestic violence alert system for a victim – Clause 5:

QIFVLS supports the proposed domestic violence alert system for a victim in relation to notice of an application for bail (or its variation) as well as decisions relating to release.

This proposed amendment will clearly provide a victim with relevant information so that a victim is fully informed about the movements/ release of an offender who has been charged/ found guilty of a domestic violence offence.

QIFVLS supports the expansion of the 'eligible persons' register' under the *Corrective Services Act 2006* to include victims of domestic and family violence, even if the prisoner is in jail for an unrelated offence. This proposed amendment is clearly framed with the safety and protection of the victim in clear focus.

However, the only issue in relation to a domestic violence alert system is that either the prosecutor, other person appearing on behalf of the Crown (for example, a Police Prosecutor); the Court or Police must provide this information within 24 hours after they become aware or a notice of a bail application/ variation is given. This requirement will place a great deal of pressure on both the Police/ Police Prosecution Corps as well as the Courts, who are already struggling with existing caseloads in the Magistrates Courts.

Consideration must be given to properly investing in resourcing the Police/ Police Prosecution Corps and the Courts so that they are able to comply with a 24 hour turn-around for the provision of information to a victim.

4. Urgent review of a bail decision and a stay of a release order – Clause 7

At present, sections 19B and 19C of the Act deal with the review of bail decisions. Both sections are silent about the stay of a release order. This proposed amendment will clearly address the identifiable gap in section 19B and 19C of the Act, with its primary focus being on the safety and protection of a victim (and more often than not, a primary victim's children) of domestic and family violence.

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By creating within legislation, a provision for the stay of a release order, pending the outcome of an urgent review, empowers victims with not only information but the element of time in which to implement safety measures or to flee their current location so as to avoid being easily found by an alleged offender. QIFVLS therefore supports the proposed amendments contained within clause 7.

Yours faithfully
Queensland Indigenous Family Violence Legal Service

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