

27 February 2017

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

By email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Hon Duncan Pegg,

### Submissions on Bail (Domestic Violence) and Another Act Amendment Bill 2017

In light of the limited consultation period provided we have limited this response to a very brief submission. We do note that the Bill raises important issues of human rights and that a longer consultation period and perhaps a referral to the Queensland Law Reform Commission is warranted.

#### Proposed domestic violence reforms

The government has announced its intention to review the application of the *Bail Act* in domestic violence cases. There are calls for a reverse onus provision. Specifically, where a person is charged with a breach of a Domestic Violence Order or an allegation of domestic violence generally (“domestic violence related offence”), Section 16(3) would be amended to include a further subcategory which enlivens a “show cause” situation.

The presumption of bail stems from the presumption of innocence which underpins our entire criminal justice system. That is, the community ought to reject the notion that a person upon allegation is deprived of their liberty during a lengthy Court proceeding. Reversing the onus for domestic violence related offences may be superficially attractive but does represent a significant erosion of our rights and liberties.

In the context of domestic violence offences, the issue is more pronounced because, although domestic violence is clearly serious, a breach of a Protection Order (for example) can encompass a large range of offending behaviour. It might include a ‘technical’ breach, such as making contact but not in a threatening way.

Upon conviction for a breach of domestic violence, jail is not regularly imposed or, if imposed, is not lengthy. There is a clear risk that if a reverse onus provision was legislated, many individuals would be refused bail and would spend much longer in custody on remand than a sentence they might receive upon conviction. This would create a most unfair system at significant public expense. There is also a clear risk of the Supreme Court being inundated with applications after a Magistrate’s refusal of bail.

An alternative way to address the issue would be to amend the *Bail Act* to require Magistrates to have specific regard as to whether the allegation is a domestically violent related offence. This could be achieved by the insertion of a new subsection under section 16(2) of the *Bail Act*. Specifically, the section would read:-

*Section 16(2)(f) – Whether the allegation is a domestic violence related offence.*

The use of the word “shall” under section 16(2) requires the Magistrate to consider these issues and, by specifically including domestic violence as a specific consideration, Magistrates will be required to consider the increased risks which might exist in a specific domestic violence case.

Yours faithfully

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Director