

7 March 2017

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

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

Dear Research Director

Re: *Bail (Domestic Violence) and Another Act Amendment Bill 2017*

The Bar Association of Queensland welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee to inform its consideration of and examination of the *Bail (Domestic Violence) and Another Act Amendment Bill 2017*.

Policy Objective One: Reverse the Presumption of Bail for an alleged offender charged with a relevant Domestic Violence Offence

The Association does not support reversing the presumption of bail for an alleged offender charged with a relevant Domestic Violence Offence as defined in the Bill. The presumption of a right to bail is based upon an understanding of the importance of the presumption of innocence. Its denial represents a fundamental undermining that presumption.

The Association is opposed to any attempt to erode or curtail a principle as fundamental to the criminal justice system as the presumption of innocence or any attempt to undermine the importance of the right to liberty in the absence of a criminal conviction.

The current framework of the *Bail Act 1980* strikes the appropriate balance between protecting victims and upholding the presumption of innocence for people charged with offences of domestic violence.

Policy Objective Two: Establishment of Special Bail Conditions for a Tracking Device

The Explanatory Notes to the Bill provide that "it is not possible to estimate the financial impact for government" concerning the proposed reforms. This is a matter of particular concern in respect of mandatory consideration of a special bail condition for a tracking device by a court or police officer authorised to give bail in respect of persons charged with a relevant domestic violence offence as provided by clause 4 - s 11(4C) of the *Bill*.

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There is no information to suggest that the QPS will be funded to provide officers to monitor these devices round the clock or even to make random checks. Such a provision should not come into force without a proper allocation of resources.

In any event, the current s 11 of the *Act* provides sufficient accommodation for the imposition of a special condition for a tracking device in the appropriate circumstances. The need for mandatory consideration of such a condition in the context of all offences of domestic violence offences is not justified or even explained in the Explanatory Notes to the Bill.

The proposed subs 11(4C) provides discretion to a police officer authorised to grant bail to impose a special condition for a tracking device. There exists significant potential for the misuse of such a discretion to garner evidence and information for use in the prosecution of an alleged offender. This would be a direct circumvention of the important checks and balances that apply to the investigation of criminal activities provided by the *Police Powers and Responsibilities Act*.

It is appropriate that such a power as significant as ordering a person to be tracked constantly, should be exercised only by a judicial officer, and not those tasked with the investigation and prosecution of alleged offences.

Policy Objective Three: Introduction of a System to Alert Victims about Bail Decisions

The Association supports reform to the *Bail Act* providing for the provision of relevant information to victims of domestic violence about bail decisions. Knowing about and understanding bail decisions is clearly important to the safety and peace of mind of alleged victims of domestic violence.

There are, however, two major issues:

- (a) First, in order to maintain the proper appearance of the independence of the courts, the appropriate source of such information ought to be the prosecuting authorities, not the Court;
- (b) Second, the Association is deeply concerned about the possibility that in the event victims were notified about bail applications (that is the hearing date for such an application) they may well go to the media which would have the potential to cause significant disruption to the process. On the other hand, it is important that alleged victims be informed as soon as possible about the result of any bail decision which may have a potential impact upon their personal security or that of their families.

The Association would support a system being put in place whereby shortly prior to an application for bail being heard, the prosecuting authorities confirm the whereabouts of any alleged victims and emergency contact details so that they are in a position to contact such alleged victims immediately a decision to grant bail to an alleged perpetrator is made. Such a system does not interrupt or curtail the presumption of innocence but does allow for alleged victims to be made aware if and when the alleged perpetrator is released.

The implementation of such a service should also be preceded by a proper costing of it so as not to unduly interfere with the smooth operations of either the prosecuting

authorities or the court registries, if the courts are to have responsibility for providing the information.

Policy Objective Four: Introduction of a Mandatory Reporting Provision to the Parole System for when an offender applies for and receives Parole

For the reasons outlined immediately above, the Association supports reform to the *Corrective Services Act 2006* providing for the provision of relevant information to victims of domestic violence and other eligible persons about a prisoner.

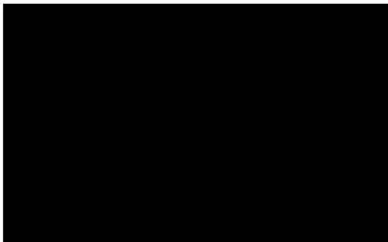
Policy Objective Five: Introduction of a Provision for an Urgent Review of the Bail System

The Association does not support the imposition of a separate system of urgent review for bail decisions made in respect of persons charged with a relevant domestic violence offence.

There is already a system in place for the review of bail decisions. In any such review there is no legislative presumption for the suspension of a judicial decision to grant bail. The policy reasons for a separate regime applying only to domestic violence offences is unclear.

Again, the Association opposes any legislative imposition on the right to liberty in the absence of a criminal conviction.

We trust that this submission is of assistance. If I can be of any further assistance, please do not hesitate to contact me on [REDACTED]



President ✓