Women's
Legal Service Qld

17 January 2022

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Copy by email: lasc@parliament.qld.gov.au

Dear Committee Secretary

RE: Evidence and Other Legislation Amendment Bill 2021

About Women's Legal Service

Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, financial abuse, child protection and some aspects of sexual violence.

WLSQ provide state-wide assistance through our state-wide domestic violence legal helpline, and have a designated rural, regional and remote priority line to increase women's access to our service in non-metropolitan regions. We undertake outreach work at the Brisbane Women's Correctional Centre, Gatton Prison and at Family Relationship Centres in Brisbane. We also conduct domestic violence duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich and have Health Justice Partnerships with nine hospitals in Southeast Queensland providing legal advice to women patients experiencing domestic and family violence. Our specialist domestic violence units in Brisbane, the Gold Coast and Caboolture provide intensive case work and Court representation for our most vulnerable clients.

We thank you for the opportunity to provide this feedback.

Contact:

Kristen Podagiel, Interim CEO
Women's Legal Service Queensland
(07) 3392 0644

Julie Sarkozi
Solicitor
Women's Legal Service Queensland
(07) 3392 0644

WLSQ supports the introduction of a legislative framework to enable video recorded statements taken by trained police officers to be used as an adult victims' evidence-in-chief in domestic and family violence (DFV) related criminal proceedings.
WLSQ represents women who experience domestic and family violence who need to obtain a domestic and family violence protection order, as well as 'women who are respondents on Police domestic violence order applications', and echo the observations made in the Explanatory Notes, in relation to reducing where possible trauma for the complainant within the legal system. However, WLSQ does not provide criminal law services to women complainants in relation to domestic and family violence related criminal proceedings and our submission is based upon our work with victim/ survivors and their experiences of navigating the legal and justice responses to their lived experiences.

Our submission seeks to raise issues that are relevant to the operation of the proposed legislative amendments, and suggest possible additions to the draft Bill.

As highlighted in the Evaluation of the Victoria Police Digitally Recorded Evidence-in-Chief Family Violence Trial: Final Report, "…[t]he evidence base for the effectiveness of using recorded evidence in family violence proceedings is still in its infancy." [1] However, this report reveals that legislative change will only be effective if matched by:

> "…developing police capability to work effectively with these technologies that significantly change the role of police when interviewing family violence victims. Besides changing the medium by which police take a statement, recorded statements are taken typically in a different place than paper statements, in a private residence, at a different time, immediately after a family violence incident, in a different legal context, requiring formal consent, and for a different purpose, as evidence-in-chief. "[2]

Consequently, WLSQ recommends that crucial training, resourcing and support be provided to the Police Officers who will be part of the pilot programs, and then later when (if) the program rolls out to the state. In particular, the WLSQ recommendation would be that the definition of "trained police officer" at section 103E (4) Requirements for making recorded statements, be amended to:

> ***trained police officer*** means a police officer who has successfully completed a training course approved by the police commissioner, which incorporates domestic and family violence education and awareness, and trauma informed work practices, for the purpose of taking recorded statements.

Furthermore, s103E states the requirements that must be met before a recorded statement can be taken by a trained police officer are that it is made as soon as practicable after the events happened, it must be made with the complainant's informed consent, as well as other evidentiary factors that must be complied with for the evidence to be admissible. WLSQ submits that the legislation should also state that the recorded statement should be recorded in the absence of the defendant/ respondent. WLSQ believes this is crucial for the safety of the victim/ complainant and must be stated within the legislation.

WLSQ supports legislative reform which leads to reducing the trauma for victims associated with re-telling their experiences in court, providing a contemporaneous record of the victim including her demeanour and her recounting of the incident that happened recently, and the reduction of the capacity of the offender to intimidate the victim. In line with these objectives, and noting similar legislation in Victoria, WLSQ asks the Committee to consider enabling the recorded statement of a complainant to also be admitted and relied upon in the civil proceedings where the complainant or the Police are seeking a domestic and family violence protection order, and the application is contested. WLSQ reading of the proposed legislation confines the use of the recorded statement to criminal proceedings only. We would argue that the aim of limiting the trauma to victims by reducing the amount of times they need to tell their story, is also important when seeking a protection order, and the recorded statement should be available at a hearing in relation to whether or not an order should be made, which is a civil proceeding. Similarly, the recorded statement should be admissible in those proceedings as the victim/ aggrieved's evidence-in-chief, with the same rules in relation to admissibility as set out in s103H of the Bill, in relation to the aggrieved attesting to the truthfulness of the contents of the recorded statement, and being available for cross-examination and re-examination.

WLSQ notes that in the Victorian legislation which mirrors the same aims, specifically includes a section which provides for the use of the recorded statement in proceedings for domestic and family violence orders, found in the Criminal Procedure Act 2009 (Vic), section 387K(2) which states:

> "Without limiting section 65(1) of the Family Violence Protection Act 2008, the recorded statement may be used as evidence in the proceeding for the family violence intervention order."

Clause 37 of the Bill, proposing the inclusion of a new Part 6A, at section 103B Meaning of a domestic violence offence, states that a domestic violence offence is –

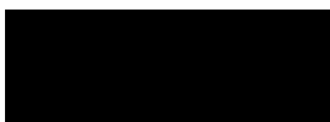
a. An offence against the Domestic and Family Violence Protection Act 2021, part 7**; and**
b. an offence against another Act committed by a person where the act or omission that constitutes the offence is also –
    i. domestic violence or associated domestic violence under the Domestic and Family Violence Protected Act 2012 committed by the person; or
    ii. A contravention of the Domestic and Family Violence Protection Act 2012, section177(2). *(emphasis added)*

WLSQ is concerned that the addition of the word "and" between s103B (a) and (b) means literally that the recorded statement can only be used when there is a domestic and family violence charge AND an offence against another Act, for example, unlawful assault. If interpreted this way, and the defendant was not convicted of the substantive offence then it seems to mean that the recording can not be relied upon to prove the separate but related domestic violence offence under the Domestic and Family Violence and Protection Act. If that is the case, and the intention of the legislature, then the unintended consequence would be to encourage defendants to defend the substantive criminal offence because if they are not convicted of this offence, the recorded statement would necessarily be inadmissible in relation to the remaining offence against the Domestic and Family Violence Protection act. WLSQ argues that this significant limitation proposed in the existing draft should be amended to reflect a wider application of the recorded statement being admissible in evidence, for

offences against the Domestic and Family Violence Protection Act **OR** an offence against another Act.

In conclusion, WLSQ support the introduction of recorded statements in proceedings related to domestic violence matters, because we also see this as an opportunity to reduce the trauma on the victim complainant, and that if provided and used with the complainant's consent, it is a real opportunity to capture the evidence of the domestic violence incident contemporaneously. WLSQ does however, have some concerns about the existing wording of the Bill, and would also like the inclusion of a section which would allow for a recorded statement to also be used in proceedings for domestic and family violence orders.

Yours faithfully,



Kristen Podagiel
Interim CEO
Women's Legal Service Queensland