Parliamentary Committees



Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023

Report No. 63, 57th Parliament
Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

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All web address references are current at the time of publishing.

Contents

Abbreviations, acronyms and terms

Abbreviation	Definition
ALA	Australian Lawyers Alliance
ATSILS	Aboriginal and Torres Strait Islander Legal Service
Attorney-General	Honourable Yvette D'Ath, Attorney-General and Minister for Justice, Minister for the Prevention of Domestic and Family Violence
Bail Act	*Bail Act 1980*
Bill	Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023
BRISSC	Brisbane Rape and Incest Survivors Support Centre
Caxton	Caxton Legal Centre
CLSO Act	*Criminal Law (Sexual Offences) Act 1978*
Criminal Code	*Criminal Code Act 1899*
committee	Legal Affairs and Safety Committee
Criminal Justice Report	*Criminal Justice* report of the Royal Commission into Institutional Responses to Child Sexual Assault
DFV	Domestic and family violence
DFV Media Guide	Domestic and Family Violence Media Guide
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DFVP Regulation	Domestic and Family Violence Protection Regulation 2023
DJAG	Department of Justice and Attorney-General
DVOs	Domestic Violence Orders
Dr Wallis et al	Dr Rebecca Wallis, Dr Joseph Lelliott, Dr Faiza El-Higzi and Professor Blake McKimmie
Evidence Act	*Evidence Act 1977*
Evidence Regulation	Evidence Regulation 2017
Fundamental Legislative Principles	FLPs
GCCASV	Gold Coast Centre Against Sexual Violence
Hear her voice – Report 1	Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland
Hear her voice – Report 2	Hear her voice – Report Two – Women and girls' experiences across the criminal justice system
Human Rights Act	*Human Rights Act 2019*
HIV	Human immunodeficiency virus
Justices Act	*Justices Act 1886*
knowmore	knowmore Legal Service
LAQ	Legal Aid Queensland
Legislative Standards Act	*Legislative Standards Act 1992*
Longman	*Longman v The Queen* [1989] HCA 60
Markuleski	*R v Markuleski* (2001) 52 NSWLR 82
NQWLS	North Queensland Women's Legal Service
Penalties and Sentences Act	*Penalties and Sentences Act 1992*
PPN	Police protection notice
PPR Act	*Police Powers and Responsibilities Act 2000*
QCCL	Queensland Council of Civil Liberties
QCEC	Queensland Catholic Education Commission

QCU	Queensland Council of Unions
QCOSS	Queensland Council of Social Service
QHRC	Queensland Human Rights Commission
QIFVLS	Queensland Indigenous Family Violence Legal Service
QLS	Queensland Law Society
QLRC	Queensland Law Reform Commission
QLRC Review	Queensland Law Reform Commission's *Review of consent laws and the excuse of mistake of fact*
QMHC	Queensland Mental Health Commission
QPP et al	Queensland Positive People, HIV/AIDS Legal Centre & the National Association of People with HIV Australia
QPS	Queensland Police Service
QPS Commission of Inquiry report	A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence Report
QPU	Queensland Police Union of Employees
QSAN	Queensland Sexual Assault Network
QYPC	Queensland Youth Policy Collective
Recording of Evidence Regulation	Recording of Evidence Regulation 2018
Respect Inc et al	Respect Inc; Scarlet Alliance, Australian Sex Workers Association; and DecrimQLD
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Assault
RSARA	Rape and Sexual Assault Research and Advocacy
Security Providers Act	*Security Providers Act 1993*
STI	Sexually transmitted infection
Taskforce	Women's Safety and Justice Taskforce
TPO	Temporary protection order
Working with Children Act	*Working with Children (Risk Management and Screening) Act 2000*
Youth Justice Act	*Youth Justice Act 1992*
Zig Zag	Zig Zag Young Women's Resource Centre

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This Bill implements a host of recommendations from multiple inquiries, including the Hear her Voice reports from the Women's Safety and Justice Taskforce, the Commission of Inquiry into the Queensland Police Service, and the Royal Commission into Institutional Responses to Child Sexual Abuse. Years of investigations, reviews, hearings and submissions at both levels of government across Queensland have shown one thing – the need for change.

This Bill is about change. Changing how we think about and treat consent. Changing how the criminal justice system responds to coercive or controlling behaviour. Changing how juries are to be directed, how first-time domestic violence offenders can be channelled towards rehabilitation, and what considerations exist when deciding bail and sentencing.

Above all, this Bill is about one thing—changing the experience of girls and women who journey through the police and court system, a system that is designed to protect them and give them justice. A system that has sadly let many of them down.

It is not enough to call out the behaviour, draw attention to the statistics or have an awareness campaign. It is not enough to have White Ribbon Day or the International Day for the Elimination of Violence Against Women. Deep, structural reform is necessary. This Bill achieves that, amending over 10 pieces of legislation including the Criminal Code, the Evidence Act, the Domestic and Family Violence Protection Act, Penalties and Sentences Act and the Youth Justice Act.

It is an honour and privilege to be a part of a government that is tackling one of the greatest social issues of our time. A government that has sat down with stakeholders, listened to the experts, heard the stories of victim-survivors and examined the facts. A government that is carrying out major reform, rather than tinkering at the edges. A government that is making things happen so that no one is left behind.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

And to all those affected by sexual or domestic and family violence, who have shown the courage to speak at a hearing or make a submission on this Bill or any other inquiry; to those who have sheltered victim-survivors and their children; to those who have advocated for victim-survivors or represented them in court; or who have simply provided a place for them to gather in safety; I say this—we hear you.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Executive Summary

The Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly by the Hon Shannon Fentiman, Minister for Health, Mental Health and Ambulance Services and Minister for Women on 11 October 2023. The Bill was referred to the Legal Affairs and Safety Committee (committee) for detailed consideration.

Summary of the Bill

The objectives of the Bill are to:

- implement the Queensland Government's response to Recommendations 74-79 by the Women's Safety and Justice Taskforce (Taskforce) in the Taskforce's first report, *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland*
- implement the Queensland Government's response to Recommendations 7, 43-44, 56, 58-59, 76-77, 80-82, 86, 110 and 126 from the Taskforce's second report, *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system*
- abolish or reform particular jury directions, re-examining Recommendations 65 and 66 of the Criminal Justice Report of the *Royal Commission into Institutional Responses to Child Sexual Assault in light of the recommendations from the Taskforce reports*
- implement the Queensland Government's response to Recommendations 20 and 50 from the *Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence Report, A Call for Change*
- amend the *Domestic and Family Violence Protection Act 2012* to allow a court to make an order to extend a police protection notice in exceptional circumstances.

The Bill will amend multiple pieces of primary and subordinate legislation that cover criminal offences, the rules of evidence, penalties, sentencing, bail and domestic and family violence.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- a legal framework for an affirmative model of consent
- situations where consent to a sexual act cannot occur or there may be a mistake of fact
- coercive control as a criminal offence
- engaging in domestic violence to aid a respondent as a criminal offence
- domestic violence diversion scheme and protection orders
- new excuse for the offence of not reporting reasonable belief of a child sexual offence
- jury directions and evidence during sexual offence proceedings
- bail considerations
- sentencing considerations.

Conclusion

The committee recommends that the Bill be passed.

The committee has made 5 further recommendations to ensure the Bill is implemented in a manner that achieves its objectives.

1 Introduction

1.1 Background and referral

Attorney-General, media release, 11 October 2023

The Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 will implement the Government's response to a second tranche of reforms recommended by the Women's Safety and Justice Taskforce, including amending the Criminal Code to establish the offence of coercive control.[1]

On 11 October 2023, the Hon Shannon Fentiman, Minister for Health, Mental Health and Ambulance Services and Minister for Women, introduced the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 into the Queensland Parliament.

The Bill was referred to the Legal Affairs and Safety Committee for detailed consideration and to report back to the Legislative Assembly on 24 November 2023. On 16 November 2023, the Committee of the Legislative Assembly resolved to extend the reporting date for the inquiry to 19 January 2024**.**

The Bill includes reforms based on recommendations from multiple reviews and inquiries into domestic and family violence (DFV), the criminal justice system and policing. These inquiries include:

- *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* (Hear her voice – Report 1)
- *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* (Hear her voice – Report 2)
- *Criminal Justice Report* of the Royal Commission into Institutional Responses to Child Sexual Assault (Criminal Justice Report)
- *A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence Report* (QPS Commission of Inquiry report)

The following table[2] shows the timeline of these inquiries and release of reports:

Table 1: Timeline of inquiries and reports

March 2021	Women's Safety and Justice Taskforce (Taskforce) established
• Taskforce to undertake reviews into the experience of women across the criminal justice system	
December 2021	Hear her voice – Report 1 released by the Taskforce
• Examines coercive control and the need for a specific DFV offence • Made 89 recommendations	
May 2022	Commission of Inquiry established into Queensland Police Service
• Commission of Inquiry to examine Queensland Police Service (QPS) responses to DFV • Inquiry was part of the response to the recommendations of Hear her voice – Report 1	
July 2022	Hear her voice – Report 2 released by the Taskforce
• Examines women's experiences in the criminal justice system • Made 188 recommendations	
November 2022	Commission of Inquiry report released
• Made 78 recommendations	

[1] Hon Yvette D'Ath MP, former Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, 'New Property Law Bill introduced to Parliament', media release, 23 February 2023.

[2] Explanatory notes, pp 1-2.

1.2 Policy objectives of the Bill

According to the explanatory notes,[3] the Bill's policy objectives are:

Table 2: Policy objectives of the Bill

Hear her voice Report 1 – Addressing coercive control and domestic and family violence in Queensland

- Legislate against coercive control

Hear her voice Report 2 – Women and girls' experience across the criminal justice system

- Give effect to the government's response to multiple recommendations on:
  - domestic and family violence
  - sexual violence
  - publication restrictions
  - women and girls as accused persons and offenders
  - creating an affirmative model of consent

Criminal Justice Report – Royal Commission into Institutional Responses to Child Sexual Abuse

- Reform jury directions, re-examining certain recommendations in light of Hear her voice – Report 2

Commission of Inquiry into Queensland Police Service responses to domestic and family violence

- Implement the Government's response to 2 DFV recommendations from the inquiry

Amendments to the Domestic and Family Violence Protection Act 2012

- Amend the Act to allow a court to extend a police protection notice in exceptional circumstances

The Bill amends multiple pieces of legislation, including the:

- *Bail Act 1980* (Bail Act)
- *Criminal Code Act 1899* (Criminal Code)
- *Domestic and Family Violence Protection Act 2012* (DFVP Act)
  - Domestic and Family Violence Protection Regulation 2023 (DFVP Regulation)
- *Evidence Act 1977* (Evidence Act)
  - Evidence Regulation 2017 (Evidence Regulation)
  - Recording of Evidence Regulation 2018 (Recording of Evidence Regulation)
- *Justices Act 1886* (Justices Act)
- *Penalties and Sentences Act 1992* (Penalties and Sentences Act)

[3] Explanatory notes, p 1.

- *Police Powers and Responsibilities Act 2000* (PPR Act)
- *Security Providers Act 1993* (Security Providers Act)
- *Working with Children (Risk Management and Screening) Act 2000* (Working with Children Act)
- *Youth Justice Act 1992* (Youth Justice Act)

The Bill also repeals the *Criminal Law (Sexual Offences) Act 1978* (CLSO Act) and makes related consequential and transitional amendments.

1.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (Legislative Standards Act) and the *Human Rights Act 2019* (Human Rights Act).

1.3.1 *Legislative Standards Act 1992*

The committee's assessment of the Bill's consistency with the Legislative Standards Act is discussed below.

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.[4]

The Bill raises the following issues of fundamental legislative principles (FLPs):

- regarding rights and liberties of individuals:
    - reversal of the onus of proof in criminal proceedings without adequate justification
    - adequate protection against self-incrimination
    - ambiguous drafting
    - new offences being appropriate and reasonable
    - penalties being proportionate to the offence
- regarding the institution of Parliament:
    - regulation-making powers
    - complainant privacy orders.

Committee comment

The committee is of the view that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament. Any relevant considerations of FLPs are discussed in section 2 of this report.

[4] Legislative Standards Act, s 4(2).

1.3.2 *Human Rights Act 2019*

A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.[5]

The committee's assessment of the Bill's compatibility with the Human Rights Act considered the potential issues and limitations on the following human rights raised by the Bill:

- right to liberty and security of person
- right to privacy
- rights to protection of families and children
- right to recognition and equality before the law
- right to protection from torture and cruel, inhuman or degrading treatment
- cultural rights of Aboriginal and Torres Strait Islander people.

Committee comment

The committee is satisfied that any potential limitations on human rights proposed by the Bill are demonstrably justified. Any relevant considerations of human rights issues are discussed in section 2 of this report.

A Statement of Compatibility was tabled with the introduction of the Bill as required by section 38 of the Human Rights Act. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 be passed.

[5] Human Rights Act, s 8.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Affirmative consent and mistake of fact framework

- The Bill proposes to amend the Criminal Code to insert an affirmative model of consent and expands the situations where their consent is invalidated, withdrawn or not agreed to.[6]
- The Bill criminalises stealthing as a circumstance of non-consent.[7]
- The Bill removes intoxication as a consideration when deciding whether a defendant had a reasonable but mistaken belief as to consent.[8]
- The Bill adds an affirmative consent safeguard provision for defendants with cognitive or mental health impairments if, on the balance of probabilities, the impairment was a substantial cause of the defendant not saying or doing anything to ascertain consent.[9]

2.1.1 Background

Hear her voice – Report 2 made detailed recommendations to amend the Criminal Code's provisions around consent and mistake of fact in relation to consent. Recommendation 43 in particular included:

a) consent must be freely and voluntarily 'agreed' rather than 'given'

b) the non-exhaustive list of circumstances in which consent cannot be freely and voluntarily agreed at section 348(2) be expanded to reflect the circumstances set out in section 61HJ of the *Crimes Act 1900* (NSW)

c) if the person who alleges the sexual violence has suffered resulting grievous bodily harm, those injuries must be taken to be evidence of a lack of consent unless the accused person can prove otherwise

d) no regard must be had to the voluntary intoxication of an accused person when considering whether they had a mistaken belief about consent to sexual activity

e) an accused person's belief about consent to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity

f) the requirement in (e) above does not apply if the accused person can show, on the balance of probabilities, that they have a cognitive impairment, mental impairment or another type of impairment that impacted on the accused person's ability to communicate and that impairment was a substantial cause of the person not doing or saying anything.

g) the amendments in (e) and (f) above will not commence until:

- the expert panel for sexual offence trials has been established (recommendation 80), and
- appropriate and equitable funding has been provided to the Office of the Director of Public Prosecutions and Legal Aid Queensland to obtain any necessary expert reports.[10]

According to the explanatory notes, the Taskforce found that the existing definition, where consent is 'given' rather than 'agreed', was outdated and framed women and girls as sexual gatekeepers. They

6 Explanatory notes, pp 4-8.

7 Explanatory notes, pp 8-9.

8 Explanatory notes, p 9.

9 Explanatory notes, pp 9-10.

10 Hear her voice – Report 2, p 17.

found that 'agreed' better reflected community standards regarding equality and mutual respect in sexual relationships.[11]

2.1.2 Amendments

2.1.2.1 Affirmative consent and situations where there is no consent

The Bill proposes to amend the existing consent framework in the Criminal Code to provide for an affirmative model of consent, implementing recommendations 43 and 44 of Hear her voice – Report 2.[12]

According to the explanatory notes, the Bill amends section 348 of the Criminal Code to define consent as 'free and voluntary agreement', rather than 'given'. It also provides new subsections to help in the understanding of affirmative consent, stating:

- a person may withdraw consent to an act at any time
- a person who does not offer physical or verbal resistance to an act is not, by reason only of that fact, to be taken to consent to the act
- a person does not consent to an act just because they consented to:
    - a different act with the same person
    - the same act with the same person at a different time or place
    - the same act with a different person
    - a different act with a different person.[13]

The Bill also moves the list of circumstances where there is no consent to a new section 348AA and expands this non-exhaustive list. The Bill follows the recommendations of the Taskforce and bases this new section on section 61HJ of the *Crimes Act 1900* (NSW).

The Bill provides that there is no consent when:

- the person doesn't say or doesn't do anything to communicate consent
- the person has no cognitive capacity to consent
- the person is affected by alcohol or drugs to the point they are incapable of consenting
- the person is affected by alcohol or drugs to the point they are incapable of withdrawing consent
- the person is unconscious or asleep
- the person participates in the act out of fear of force or harm to themselves, someone else, an animal or their property, regardless of whether that harm occurs
- the person participates in the act out of coercion, blackmail or intimidation
- the person (or another person) is unlawfully confined or detained
- the person participates in the act because of a false or fraudulent representation about the nature or purpose of the act
- the person participates in the act with another person because the person is mistaken about the identity of the other person, or that they believe the other person is their spouse

11 Explanatory notes, p 4.

12 Explanatory notes, p 4.

13 Bill, cl 13, s 348; Explanatory notes, p 5.

- the person is a sex worker and participates in the act because of a false or fraudulent representation that the person will be paid or rewarded for the act
- a person makes a false or fraudulent representation about having a serious disease to another person, and they then transmit that disease to that other person
- a person participates in the act with another person on the basis that a condom is being used, but then the other person doesn't use a condom, tampers with the condom, removes the condom or becomes aware that it is no longer effective, yet continues (known as 'stealthing').[14]

2.1.2.2 Mistake of fact

The Bill amends section 348A of the Criminal Code, which deals with mistake of fact in relation to consent. Under the existing law, intoxication is not relevant to whether a belief is 'reasonable' but can be considered when deciding whether the belief was honestly held.

The Bill provides that voluntary intoxication by alcohol, drugs or other substances, is not to be considered at all when deciding whether a defendant had a reasonable but mistaken belief as to consent.[15]

The Bill also provides that:

> A belief by the person that another person consented to an act is not reasonable if the person did not, immediately before or at the time of the act, say or do anything to ascertain whether the other person consented to the act.[16]

The Taskforce noted that people with cognitive or mental health impairments 'could be unfairly disadvantaged by the introduction of a requirement to show that they took reasonable steps to ascertain consent'.[17]

As such, the Bill states that this additional requirement to say or do something to ascertain consent, will not apply where:

- a defendant had a 'cognitive or mental health impairment' at the time of the sexual act, and
- the impairment was a substantial cause of the defendant not saying or doing anything.[18]

The defendant will be required to prove the impairment was a substantial cause of them not saying or doing anything, on the balance of probabilities.

The Bill defines 'cognitive impairment' and 'mental health impairment' in new sections 348B and 348C, and models them on the definitions in the *Crimes Act 1900* (NSW). They include impairments that are already known to the law and require the impairment to be such as to affect functioning in daily life to a material extent.[19]

14 Bill, cl 13, s 348AA(1); Explanatory notes, pp 5-9.

15 Explanatory notes, p 9.

16 Bill, cl 14, s 348A(3).

17 Hear her voice – Report 2, p 215.

18 Bill, cl 14, s 348A(4).

19 Explanatory notes, p 10.

2.1.3 Stakeholder views

2.1.3.1 Affirmative consent

Many stakeholders supported the implementation of an affirmative consent model.[20] The Queensland Mental Health Commission (QMHC) agrees that the existing definition, which requires consent to be 'given' rather than 'agreed', 'was outdated and framed women and girls as sexual gatekeepers and that "agreed" better reflects community standards'.[21]

Several stakeholders provided feedback on the wording of the provisions. Zig Zag Young Women's Resource Centre (Zig Zag), Queensland Sexual Assault Network (QSAN), Rape and Sexual Assault Research and Advocacy (RSARA) and Gold Coast Centre Against Sexual Violence (GCCASV) all recommended adding the word 'informed' to the definition of consent to read 'free, voluntary and *informed* agreement [italics added]'.[22]

Brisbane Rape and Incest Survivors Support Centre (BRISSC) recommended additional changes so that the definition read 'explicit, informed and voluntary agreement to participate in a sexual act, which can be withdrawn at any time'.[23]

QSAN recommended that new section 348(2) be amended to state that 'a person may withdraw consent to an act at any time *by words or actions* [italics added]'.[24] RSARA took a different view and recommended removing this subsection entirely, stating it undermines affirmative consent.[25]

QSAN recommended that section 348(3) be amended to remove 'immediately' and include 'or each subsequent act' to read:

> A belief by the person that another person consented to an act is not reasonable if the person did not, before or at the time of the act *or each subsequent act*, say or do anything to ascertain whether the other person consented to the act [italics added].[26]

RSARA recommended new section 348(3) read 'A person does not consent to an act if the person does not say or do anything to communicate consent to the act'.[27]

Respect Inc; Scarlet Alliance, Australian Sex Workers Association; and DecrimQLD (Respect Inc et al) recommended amending new section 348AA(1)(k)(i), which states that there is no consent when there is a mistake about the identity of the other person, to make it clear the section is about posing as someone's spouse. Respect Inc et al stated that sex workers use pseudonyms for privacy and safety reasons as a common practice and the section as drafted could have unintended consequences for sex workers.[28]

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20 BRISSC, submission 4, p 3; Broken to Brilliant, submission 13, p 2; QYPC, submission 19, p 2; Dr Wallis et al, submission 22, p 1; QCU, submission 32, p 4; NQWLS, submission 30, p 1; QMHC, submission 31, p 1; Full Stop Australia, submission 36, p 5; QPU, submission 37, p 2.

21 QMHC, submission 31, p 1.

22 Zig Zag, submission 12, p 3; QSAN, submission 14, p 6; RSARA, submission 18, p 1; GCCASV, submission 35, p 4.

23 BRISSC, submission 4, p 3.

24 QSAN, submission 14, p 7.

25 RSARA, submission 18, p 1.

26 QSAN, submission 14, p 8.

27 RSARA, submission 18, p 1.

28 Respect Inc et al, submission, 26, p 3.

Zig Zag and QSAN recommended that the list of circumstances where there is no consent under new section 348AA(1) be expanded to include where 'a person is incapable of consenting or incapable of withdrawing consent because they are being strangled or because of some other act'.[29]

ATSILS was concerned the affirmative consent model will make the law uncertain and create significant implications for Aboriginal and Torres Strait Islanders because it shifts the burden of proof onto the accused[30] and false allegations could lead to false convictions.[31]

2.1.3.2 Stealthing

The stakeholders who commented on stealthing were largely in agreement that stealthing voided consent.[32]

Submitter 3 recommended broadening this subsection to include other forms of birth control than condoms, including those claiming to be sterilised.[33]

2.1.3.3 Consent and serious disease

There was significant discussion on consent being voided by the transmission of a serious disease under new section 348AA(1)(m).

QCU expressed concern about the subsection, with QCU stating that 'any criminalisation of misrepresentation of [STI] status is likely to have contrary outcomes than the intent of other public safety measures'.[34]

The Queensland Human Rights Commission (QHRC) was concerned that the definition of 'serious disease' doesn't provide adequate clarity and precision, and noted it is not confined to sexually transmitted infections (STIs).[35] QHRC recommended narrowing the scope so that the subsection only apply to STIs.[36]

QYPC recommended amending the subsection, stating that in its current form it:

- criminalises someone who unknowingly transmitting STIs
- discourages people from talking about STIs prior to sex
- assigns someone who unknowingly transmits an STI the same guilt as someone who commits rape.

QYPC recommended the wording in the provision be changed from 'false or fraudulent representation' to one of the below forms:

- *knowingly* false or fraudulent representation [italics added]
- fraudulent representation.[37]

BRISSC recommended that fraudulent representations of STI and human immunodeficiency virus (HIV) status should only be considered when there is a risk of transmission.[38]

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29 Zig Zag, submission 12, p 3; QSAN, submission 14, p 7.

30 ATSILS, submission 8, p 2.

31 ATSILS, submission 8, p 3.

32 BRISSC, submission 4, p 5; Respect Inc et al, submission 26, p 4.

33 Submission 3, p 1.

34 QCU, submission 32, p 9.

35 QHRC, submission 10, pp 8-9.

36 QHRC, submission 10, pp 9-10.

37 QYPC, submission 19, p 7.

38 BRISSC, submission 4, p 7.

Queensland Positive People, HIV/AIDS Legal Centre & the National Association of People with HIV Australia (QPP et al) stated it does not support applying criminal law to the transmission of STIs. QPP et al stated that if the subsection were to be enacted, 'it is most likely to be solely used in prosecutions of people living with HIV'.[39]

QPP et al recommended the section be removed, stating that:

- criminalisation contradicts Queensland and national government commitments to address legal barriers to achieving HIV strategy targets
- there are provisions under the Criminal Code and the Public Health Act for managing people with HIV if they behave in a manner that puts others at risk
- the provision in its current form stigmatises HIV and discriminates against people living with HIV, exposing them to potential psychological and physical harm and violence.[40]

Legal Aid Queensland (LAQ) stated that false representations about serious disease and transferring it during sex is already addressed under existing Criminal Code provisions.[41] QPU, like QPP et al, recommended removing the subsection from the Bill entirely.[42]

Respect Inc et al did not support the subsection, stating that:

Respect Inc et al, submission 26, p 4

HIV and STI transmission are primarily a public health issue. Scientific advances in treatment and prevention have significantly reduced the likelihood of transmission. Australia's effective response to HIV recognises that it is education and not criminal offences that are the appropriate mechanism through which to reduce HIV transmission.

2.1.3.4 Non-payment of a sex worker

Stakeholders differed on their positions with regard to non-payment of a sex worker being a circumstance where consent was voided under new section 348AA(1)(l).

QYPC 'did not see the merit' and noted that the conduct was already criminalised under sections 218 (procuring sexual acts by coercion etc) and 408C (fraud) of the Criminal Code. QYPC went on to state that 'classifying this as rape may have the effect of complicating – rather than clarifying – the definition of "rape" for the courts, juries and the wider community'.[43]

QHRC questioned why non-payment of a sex worker is being addressed through consent laws rather than in a standalone 'coercion' offence as recommended by the Queensland Law Reform Commission (QLRC) in its *Review of consent laws and the excuse of mistake of fact* (QLRC Review) in 2018.[44]

LAQ did not consider the amendment necessary and maintains, as per its submission to the QLRC Review, that:

> The offence of rape carrying a maximum penalty of life imprisonment should not be aligned with circumstances relating to the recovery of money. This is fraud, not rape.[45]

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39 QPP et al, submission 27, p 3.

40 QPP et al, submission 27, p 4. The provisions are section 143 of the Public Health Act (recklessly putting someone else at risk of contracting a controlled notifiable condition or recklessly transmitting a controlled notifiable condition) and section 320 of the Criminal Code (offence of grievous bodily harm).

41 LAQ, submission 25, pp 3-4.

42 QPU, submission 37, p 2.

43 QYPC, submission 19, p 23.

44 QHRC, submission 10, pp 8-9.

45 LAQ, submission 25, p 3.

LAQ submitted that wider reform, including decriminalising the sex-work industry, would improve sex workers' access to justice and make it easier for sex workers to do business and access legal protections.[46]

QPU was concerned that the provision would 'unintentionally reduce the seriousness of all sexual offences' and stated that a 'failure to pay or otherwise provide an agreed reward should be an offence of dishonesty and treated accordingly'.[47]

Respect Inc et al strongly supported the provision, stating:

Respect Inc et al, submission 26, p 3

In sex work, a key aspect of consent is payment or reward for the services negotiated. If the payment or reward is not made or is withdrawn, consent is also withdrawn. When the payment or reward, and therefore consent, is not made or withdrawn, sex with a sex worker becomes rape.

2.1.3.5 Mistake of fact

Stakeholders provided a variety of responses to the mistake of fact provisions.

BRISSC believes that a reasonable belief regarding consent ought to be considered in the context of power and control, with an acknowledgement that refusal is not always available if the other person is in a position of power or authority.[48]

RSARA recommended that the mistake of fact provisions state that a belief is not honest or reasonable 'if the person knew or believed that a circumstance outlined in s 348AA [Circumstances in which there is no consent] exists in relation to the complainant'.[49]

Zig Zag recommended that new section 348(3) be amended to state:

> A belief by the person that another person consented to an act is not reasonable if the person did not, immediately before or at the time of the act *and/or at the time of any subsequent act*, say or do anything to ascertain whether the other person consented to the act *or any subsequent act* [italics added].[50]

RSARA also proposed amendments to new section 348(3), recommending the subsection read as:

> A belief by the person that another person consented to an act is not reasonable if the person did not say or do anything to ascertain whether the other person consented to the act, *and to the act continuing* [italics added].[51]

QSAN made comprehensive recommendations to the mistake of fact provisions and proposed that:

- section 348A(4)(b) be amended to include the words as follows 'and not understanding/ comprehending what may have been communicated to them by words or actions'
- section 348B(1)(b) be amended to include that the impairment be required to be an 'ongoing, permanent' impairment
- section 348B(1)(c) be amended to remove the phrase 'for other reasons' and/or that it be limited to be of a similar nature to the example provided in that section
- section 348C(1)(a) be amended to delete the words 'temporary', 'mood' and 'volition'

46 LAQ, submission 25, p 3.

47 QPU, submission 37, p 2.

48 BRISSC, submission 4, p 5.

49 RSARA, submission 18, p 2.

50 Zig Zag, submission 12, p 4.

51 RSARA, submission 18, pp 1-2.

- section 348C(1)(c) be amended to remove the term 'emotional wellbeing'
- section 348C(2) be amended to remove 'anxiety disorder' and an 'affective disorder'
- section 348B(2) be amended to remove 'for other reasons' and/or that it be limited to be of a similar nature to the example provided in that section.[52]

QSAN recommended that 'to avoid unnecessary delays in the criminal justice system and to minimise adverse impact on the victim survivor', the accused should undergo preliminary testing to ensure they have a significant impairment for clinical and diagnostic purposes to prevent 'unworthy applications'.[53]

Zig Zag also proposed amendments to the sections regarding cognitive and mental health impairments, stating that:

- new section 348B(1)(b) ought to be limited to cognitive impairments that are 'permanent'
- new section 348B(1)(c) ought to refer to 'clinically significant' disturbances that impair judgement or behaviour
- new section 348C(1)(a) ought to align with the definitions under the *Mental Health Act 2016*
- references to anxiety disorder and affective disorder be removed from new section 348C(2)[54]

The Public Advocate was concerned as to how the defence of mistake of fact will apply and impact those with impaired decision-making ability, and how widely it will apply given people with mental illness can be found not legally responsible for their actions. The Public Advocate was also concerned that the safeguard provision is discriminatory, potentially leading to a perception that the legislation assumes a person with a mental illness or cognitive impairment cannot understand the concept of consent.[55]

2.1.3.6 Positions of authority offences

The Queensland Catholic Education Commission (QCEC) supported the Bill's intent to implement the recommendations of the Women's Safety and Justice Taskforce, particularly reforms around coercive control and how the criminal justice system treats DFV.[56]

QCEC noted that the Bill does not implement recommendations from the Criminal Justice Report around the creation of a 'position of authority' offence. Such an offence applies when a victim is 16 or 17 years of age (and thus of the age of consent) and consents to sex with a person who is in a position of authority over them, such as a teacher or sports coach.[57]

QCEC noted that such a sexual relationship could result in disciplinary action by the perpetrator's employer, but the behaviour is not a crime, meaning:

> [N]o complaint is ever made to police, no charge ever laid, and no case prosecuted. When offending behaviour occurs, the adult can simply resign, leaving no trail in the legal system.[58]

52 QSAN, submission 14, pp 8-10.

53 QSAN, submission 14, p 10.

54 Zig Zag, submission 12, p 4.

55 Public Advocate, submission 7, p 2.

56 QCEC, submission 34, p 1.

57 QCEC, submission 34, p 2.

58 QCEC, submission 34, p 2.

QCEC states that such behaviour 'involves serious breaches of trust and misuse of authority' and 'believes the Queensland Government should implement the recommendations of the Royal Commission with respect to position of authority offences'.[59]

2.1.4 Department response

2.1.4.1 Affirmative consent

DJAG noted the recommendations from submitters to add or make changes to the definition of affirmative consent. DJAG advised that the definition incorporates the recommendation from the Taskforce and that interstate jurisprudence would assist in understanding, specifically why 'informed' was not included:

DJAG, correspondence, 6 November 2023, pp 70-71.

In the Victorian Court of Appeal decision of *R v Yeong* (a pseudonym), the majority considered the construction of the term 'free agreement', discussed a broad and narrow conception of the term, and noted under a broader conception, 'free agreement' reflects a 'capacity to make an informed decision as to whether or not sexual activity should take place and the conditions on which it does so'.

The majority concluded that in light of the text of the provisions, having regard to the purpose of the provisions, and noting the intentional departure from the common law, that the broader conception was appropriate.

Given free and voluntary agreement implies informed agreement and noting the recommendation of the Taskforce, 'informed' has not been included in the definition.

DJAG noted the feedback from Respect Inc et al about the potential misuse of the identity subsection in circumstances where there is no consent. DJAG stated that the approach taken in the Bill is identical to the equivalent provision in the *Crimes Act 1900* (NSW), section 61HJ(1)(j).

DJAG referred to the explanatory notes and stated that new section 348AA(1)(k) applies where a defendant pretends to be someone they are not, such as the person's partner, and this induces the person to participate in the act. It is modelled on section 61HJ(1)(j) of the *Crimes Act 1900* (NSW) and is similar to existing section 348(2)(f) in the Criminal Code.[60]

DJAG stated that the provision is not intended to criminalise conduct based on a person's representations about their gender or sexual characteristics. It is not intended to apply to situations where a person uses a name different from their legal name for safety or privacy reasons. It is intended to address circumstances where a person agrees to participate in sexual activity under a misapprehension as to whom they are engaging in those sexual activities with, or mistakenly believing that the other person is their spouse.[61]

2.1.4.2 Stealthing

DJAG noted the support for the stealthing provisions. Regarding the recommendation to expand the provision to apply to other fraudulent representations, DJAG stated that:

> The approach in the Bill which is restricted to condoms is consistent with the recommendation of the Taskforce and the approach in other jurisdictions.[62]

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59 QCEC, submission 34, p 2.

60 DJAG, correspondence, 3 November 2023, p 22; Explanatory notes, p 7.

61 DJAG, correspondence, 3 November 2023, p 22.

62 DJAG, correspondence, 3 November 2023, pp 102-103.

2.1.4.3 Consent and serious disease

DJAG noted the concern for false or fraudulent representations about serious disease and its transmission to another person being a circumstance where there is no consent. DJAG stated that the approach in the Bill is designed to:

> [P]romote honest dialogue, to permit informed agreement and avoid deceptive conduct, where that conduct has significant health implications for a complainant. It is consistent with an affirmative model of consent.[63]

DJAG stated that the provision requires actual transmission of the disease, adding that this recognises diseases which are treatable to the point that the risk of transmission is very low. DJAG stated:

> This policy approach also recognises that a person should only be criminally responsible for a sexual offence in circumstances where there are serious consequences such as actual infection flowing from their fraudulent conduct.[64]

DJAG stated the requirement for the transmission of the disease aims to address concerns that arise from Canada's approach.[65]

According to DJAG, while HIV and STI transmission are primarily a public health issue, fraudulent misrepresentations about serious sexually transmitted diseases strike at the heart of a person's right to make a free and informed decision about whether to participate in a sexual activity with another person. DJAG noted feedback from some submitters that stated criminal law does not reduce disease burden. DJAG noted that:

DJAG, correspondence, 3 November 2023, pp 24-25.

> [T]he policy intention of the provision is not reduction of transmission of disease, but in keeping with a model of affirmative consent, is the promotion of honest communication and informed agreement between persons who agree to participate in sexual activity. The transmitter of the disease is not being criminalised for having a disease, but for making a false or fraudulent representation about it in the context of sexual activity.

Regarding statements that the provision is aimed solely at persons who live with HIV, DJAG stated that the threshold for serious disease, as defined in the Criminal Code, is a high standard. DJAG anticipates that the prosecution may need expert evidence to prove that the disease meets the requirements of that definition.[66]

2.1.4.4 Non-payment of a sex worker

DJAG noted the feedback from Respect Inc et al that is supportive of the amendments.[67]

DJAG noted the feedback from QHRC, LAQ and QYPC that non-payment of sex workers should be treated as fraud rather than a circumstance where there is no consent. DJAG noted the following:

- the Taskforce recommended Queensland adopt section 61HJ of the *Crimes Act 1900* (NSW) which provides there is no consent where there is 'fraudulent inducement'
- the Taskforce considered whether non-payment of a sex worker should constitute a circumstance of non-consent but noted the QLRC was currently considering the issue and that as such it was not appropriate to make findings or recommendations about it

63 DJAG, correspondence, 3 November 2023, p 23.

64 DJAG, correspondence, 3 November 2023, p 24.

65 DJAG, correspondence, 3 November 2023, p 28.

66 DJAG, correspondence, 3 November 2023, p 25.

67 DJAG, correspondence, 3 November 2023, p 22.

- the QLRC in its 2023 report, *A Decriminalised Sex Work Industry for Queensland*, noted the Taskforce looked at consent laws in Hear her Voice – Report 2 and did not recommend any changes to the Criminal Code on this issue.
- the QLRC said that making specific amendments to the consent provisions in the Criminal Code, outside the context of a wider review of sexual offences and consent laws, could have unintended consequences
- The QLRC also noted that decriminalisation is a necessary first step to remove existing barriers to sex workers' access to these laws and needed to be supported with other non-legislative measures, including educating and building positive relationships with police and other authorities, and educating sex workers about their legal rights and obligations.
- in Tasmania, New South Wales, and the Australian Capital Territory, there is no consent where the person participates in, agrees, or submits to the sexual activity because of fraud, fraudulent inducement or fraudulent misrepresentation. This can capture non-payment of a sex worker, but the circumstance is not expressed in a form that explicitly captures that circumstance.
- the Bill adopts the Victorian approach of explicitly capturing non-payment of a sex worker
- the approach in the Bill explicitly recognises that non-payment of a sex worker is a violation of consent, which is consistent with the approach in Victoria.[68]

DJAG noted the comments from QYPC that whether there is payment may not conclusively be determined for some time, depending on how payment is made. DJAG noted that each case will need to be judged according to its unique circumstances to determine what was agreed between the parties to ascertain whether the conduct comes within the proposed provision. DJAG noted this provision is similar to other provisions, where the fraudulent conduct may not become apparent for some time.[69]

DJAG noted QYPC comments concerning sex workers employed by a brothel. Whether the provision would apply in a given case depends on the circumstances. However, the provision requires that the sexual act is participated in because of the false or fraudulent representation as to payment or reward.

DJAG anticipates it is unlikely in circumstances where a sex worker receives a wage, that a customer would have made such a representation to the sex worker or that the sex worker would have participated in the act because of that (i.e. because the sex worker in those circumstances would likely have participated in part on the basis of the wage and the representation would have been made to the brothel).[70]

2.1.4.5 Mistake of fact

DJAG noted the recommendations from BRISSC about a reasonable belief and positions of power or control over the complainant, along with RSARA's suggestions about reasonable belief and knowing about a circumstance in which there can be no consent.

DJAG stated, in response to BRISSC:

- what is reasonable is a question of fact for jurors, and in the case of reasonableness, the diverse and unique experience brought by jurors is used to determine 'reasonableness' to an objective standard
- the Bill introduces jury directions which address various misconceptions, including some that are underpinned by power and control

[68] DJAG, correspondence, 6 November 2023, pp 82-83.

[69] DJAG, correspondence, 6 November 2023, pp 83-84.

[70] DJAG, correspondence, 6 November 2023, p 84.

- section 348AA includes circumstances where there is no consent, for the purposes of determining whether the complainant consented, which include where a person participates because of coercion, blackmail or intimidation, or where they are overborne by the abuse of a relationship of authority, trust or dependence.[71]

DJAG stated in response to BRISSC and RSARA:

- proposed section 103ZX has a jury direction that where a defendant knew or believed that circumstances mentioned in s348AA(1) existed, that is sufficient to show the defendant did not reasonably believe the person was consenting to the act
- the Bill includes jury directions to this effect based on the *Jury Directions Act 2015 (Vic)*.[72]

Regarding the recommendation by Zig Zag about consent and subsequent acts, DJAG noted that the amendments go further than what was recommended by the Taskforce, and the approaches taken in New South Wales, Victoria and the Australian Capital Territory, in that it requires that ascertaining consent has to be done immediately before or at the time of the act, as opposed to within a reasonable time before. DJAG stated that the change was made following consultation where the potential impact of use of the term 'reasonable' on prosecutions was noted by various stakeholders.[73]

DJAG noted the recommendations by QSAN and Zig Zag to change the definitions and application of the cognitive and mental health impairments provisions. DJAG stated that:

- the definitions of cognitive and mental health impairment are based on the definitions in New South Wales law and informed by extensive work of the New South Wales Law Reform Commission published in:
    - *Report 135, People with cognitive and mental health impairment in the criminal justice system – Diversion*
    - *Report 138, People with cognitive and mental health impairment in the criminal justice system – Criminal responsibility and consequences.*
- both definitions go beyond the New South Wales provisions and include the additional requirement that the impairment affects functioning in daily life to a material extent
- section 348A(3)(b) requires the impairment to be a substantial cause of the person not saying or doing anything
- the definition of mental health impairment in section 348C requires the disturbance to be regarded as 'significant for clinical diagnostic purposes'
- the approach taken in the Bill implements the Taskforce's recommendation in line with the Queensland Government's response, noting the Taskforce said that inclusion of a safeguard was critical if an affirmative model of consent was adopted
- the definition of cognitive impairment in section 348A requires proof of the 3 elements in section 348B(1). This requires:
    - an 'ongoing impairment' (referred to in (a) and (b))
    - proof that the impairment was the result of 'damage to or dysfunction, developmental delay or deterioration of the person's brain or mind' (referred to in (c))

[71] DJAG, correspondence, 6 November 2023, p 99.

[72] DJAG, correspondence, 6 November 2023, pp 98, 100.

[73] DJAG, correspondence, 6 November 2023, p 100.

- this definition excludes transitory conditions from the definition of cognitive impairment
- the 3 elements from section 348B(1) can arise from a condition listed in 348B(2) or 'other reasons'
- the inclusion of 'for other reasons' is to ensure the definition is flexible enough to cover conditions otherwise meeting the 3 elements in section 348B(1), but which do not fall within the conditions listed in section 348B(2)
- the presence of cognitive impairment listed in section 348B(2) will not mean that the person automatically has an impairment for the purposes of section 348B, and the impairment must meet the elements in section 348B(1).[74]

DJAG stated that consultation on conditions included in section 348C(2) (anxiety disorders, affective disorders, psychotic disorders, and substance induced mental disorders) are disorders that, depending on the individual and their particular diagnosis, may affect communication. The provision also explicitly excludes impairments that result from the temporary effect of ingesting a substance. DJAG stated that:

- the approach taken in the Bill is consistent with the approach taken in the Mental Health Court regarding:
    - mental health impairments
    - the conditions covered
    - exclusion of voluntary intoxication
- the definitions have their origin in psychiatry and are carefully crafted to capture appropriate impairments.[75]

Regarding the vetting of defendants who intend to claim cognitive or mental health impairments as part of a defence of mistake of fact, DJAG acknowledged that obtaining expert evidence may delay proceedings and lengthen the trial process.

DJAG stated that the Bill seeks to minimise delay by requiring notice of intention to rely on expert evidence for the purposes of the safeguard provision to be provided within 14 days of finalisation of the committal proceedings (new section 590BA).

'Screening' would still require a full assessment and completion of a report. Where the report obtained does not support the presence of a relevant impairment, it is expected that reliance would not be placed on the safeguard provision.[76]

Committee comment

The committee recognises the enormous interest in this part of the Bill and the impact that legislating affirmative consent will have for Queensland. Changing the definition of consent fundamentally alters multiple offences in the Criminal Code and sets higher standards for the community.

Education

The committee notes that education and collaboration are the key to effective implementation of these systemic changes to Queensland's consent laws. The Queensland Government must ensure that relevant departments coordinate amongst themselves, while also consulting with peak bodies and DFV service providers, to develop and roll out a suitably comprehensive education campaign.

74 DJAG, correspondence, 3 November 2023, pp 36-37.

75 DJAG, correspondence, 3 November 2023, pp 38-39.

76 DJAG, correspondence, 3 November 2023, pp 38-39.

This education campaign should explain the details of the reforms to consent and coercive control. The campaign must be thoroughly circulated through the community, including in schools. The content must be accessible for First Nations people, culturally and linguistically diverse Queenslanders and the cognitively impaired.

Identity provisions

The committee heard that some stakeholders are concerned about the identity provisions being used against sex workers or transgender people. The committee also notes the response from DJAG that these provisions are for when a person engages in sexual activity with someone whom they believe is their spouse. The explanatory notes state that the wording is modelled on the *Crimes Act 1900* (NSW) and that it is not intended to penalise someone based on representations about their gender or sexual characteristics.

Definitions of consent

Committee notes that the definition of consent in section 227A of the Criminal Code (Observations or recordings in breach of privacy) was not amended alongside similar sections to reflect the new definition of consent being 'freely and voluntarily agreed'. The Queensland Government may wish to consider amending section 227A section to align it with other similar offences, such as section 223 (Distributing intimate images), section 227B (Distributing prohibited visual recordings) and section 229A (Threats to distribute intimate image or prohibited visual recording) of the Criminal Code.

Transmission of a serious disease

The committee notes the submissions and testimony by members of the community who live or have lived with HIV regarding situations where there is no consent. The submissions of QPP et al stated that around 10 per cent of HIV-positive people in Queensland (approximately 600) are unaware of their status, and that these laws risk driving these 600 individuals further underground, making them less likely to come forward and test. QPP et al also stated that these laws risk making HIV a public health matter as far out as 2040.

The committee considers this may undermine the earlier work by the Queensland Government in removing co-payments for HIV medication, making HIV medication free for those living in Queensland. The committee recommends further analysis of the diseases to be covered by the non-consent provisions of the Criminal Code, and removing, or delaying the commencement of, these provisions until the review is completed.

Position of authority offence

The committee notes the submission of QCEC and recommendations 27-29 of the Criminal Justice Report that endorse 'position of authority' offences. The committee also notes recommendation 42 of Hear her voice – Report 2, which recommended addressing 'sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority'. The committee urges the Queensland Government to implement the third tranche of reforms to address this issue.

Wording of provisions

The committee notes the many considered recommendations from stakeholders regarding the wording of certain provisions, such as the definition of affirmative consent, including words such as 'informed' or 'explicit', consent to subsequent acts, the withdrawal of consent, communicating consent, what constitutes an honest and reasonable mistaken belief and the framework around cognitive and mental health disorders.

Recommendation 2

The committee recommends the Queensland Government, in collaboration with the Department of Justice and Attorney-General, Department of Education, Queensland Police Service, Queensland Health, peak bodies from the DFV and sexual violence support sector, and First Nations and multicultural organisations, develop and implement an education campaign that includes material that is age appropriate, culturally sensitive and suitable for persons with impaired capacity, to support the proposed reforms. This campaign should increase awareness about the abusive nature and legal implications of technology-facilitated abuse and develop resources for online safety and digital literacy.

Recommendation 3

That the Queensland Government reviews the operation of the *Criminal Code Act 1899* provisions relating to consent and the transmission of serious diseases to ensure they capture an appropriate range of diseases, and considers amending the Bill to remove the provision relating to the transmission of a serious disease pending the outcome of that review.

2.2 Offence of coercive control

- The Bill proposes to amend the Criminal Code by establishing the criminal offence of coercive control.[77]
- The offence applies when a person commits domestic violence against a person they are in a relationship with, on more than one occasion, with the intention of coercing or controlling that person, and the conduct would be reasonably likely to cause that person harm.[78]
- The offence will be limited to those in a 'domestic relationship', which uses the 'relevant relationship' definition from the DFVP Act. The Bill adopts the definitions of 'domestic violence', 'economic abuse' and 'emotional or psychological abuse' that are 'broadly consistent' with the DFVP Act.[79]

2.2.1 Background

The primary focus of Hear her voice – Report 1 was 'to consider and report on how to best legislate against coercive control and whether a specific offence of 'commit domestic violence' is needed'.[80]

The Taskforce concluded in Recommendation 78 to amend the Criminal Code and introduce an offence of coercive control. The Taskforce recommended that:

- the legislation should be introduced to Parliament by 2023
- the offence be modelled on the coercive control offence in Scotland with adjustments to reflect Queensland's laws, systems and needs.[81]

77 Explanatory notes, p 10.

78 Bill, clause 20, new section 334C.

79 Explanatory notes, p 11.

80 Hear her voice – Report 1, p viii.

81 Hear her voice – Report 1, p 741.

2.2.2 Amendments

The Bill amends the Criminal Code to establish the criminal offence of coercive control. According to the explanatory notes, establishing the offence in the Criminal Code with Queensland's most serious criminal offences, recognises the seriousness of the conduct.[82]

The Bill limits the offence to persons in a domestic relationship, which is defined at section 1 of the Criminal Code as a relevant relationship under the DFVP Act. This definition encompasses:

- past and present intimate partner relationships
- wider family relationships
- informal care relationships.

According to the explanatory notes, the Bill uses definitions of domestic violence, economic abuse, emotional or psychological abuse, and related terms broadly consistent with those contained in the DFVP Act. The Bill, where appropriate, modifies those definitions to ensure they reflect the breadth of coercive control behaviours.[83]

Unlike the definitions under the DFVP Act, the definitions for the offence do not include reference to 'a pattern of behaviour', as the offence already captures the patterned nature of coercive control through the requirement to establish a course of conduct.

The offence of coercive control applies only to adults. The offence criminalises conduct of an adult where:

- the person is in a domestic relationship with another person
- the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than one occasion
- the person intends the course of conduct to coerce or control the other person
- the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm
    - 'harm' is defined in the Bill to mean any detrimental effect on the person's physical, emotional, financial, psychological or mental wellbeing, whether temporary or permanent
    - the prosecution is not required to prove that the person intended each act of domestic violence that constitutes the course of conduct, when considered in isolation, to coerce or control the other person.[84]

The Bill provides that it is immaterial whether:

- the domestic violence was directed at another person or the property of another person (this is intended to capture behaviour which seeks to coerce or control a victim by impacting or threatening a child, family member or other person or their property)
- the conduct actually caused harm to the other person or, whether the other person was aware of unauthorised or unreasonable surveillance or economic abuse at the time of the course of conduct.[85]

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82 Explanatory notes, pp 10-11.

83 Bill, cl 20, s 334A; Explanatory notes, p 11.

84 Bill, cl 20, s 334C; Explanatory notes, p 11.

85 Bill, cl 20, s 334D; Explanatory notes, p 12.

The Bill allows a court hearing a charge of coercive control to make a restraining order against the defendant, whether the person is found guilty or not guilty or the prosecution ends in another way, similarly to the existing restraining order provisions in relation to the offence of stalking, intimidation, harassment or abuse.[86]

The Bill provides that upon an indictment charging a person with the crime of coercive control the person may alternatively be convicted of the crime of unlawful stalking, intimidation, harassment or abuse if that offence is established by the evidence.[87]

2.2.3 Stakeholder views

2.2.3.1 General overall support

Many submitters supported the inclusion of the new offence of coercive control in the Criminal Code.[88] For example, NQWLS considered that:

NQWLS, submission 30, p 3

> [T]he proposed draft of the new offence can be effective in capturing the specific types of behaviours that are designed to have the effect of one person in a domestic relationship coercing or exerting control over the other person, and to be reasonably likely to cause the other person harm.

2.2.3.2 Need for further consideration and improvements

A number of submitters noted that the draft provision required further consideration and could be improved.[89] For example, Red Rose Foundation suggested consideration be given to:

- patterns of behaviour that are either religiously or culturally imposed
- the escalation of control over time
- the difficulty in obtaining evidence to prosecute an offence of coercive control
- the need for training of government and non-government organisations to gain a common understanding of coercive control.[90]

Mackenzie Mitchell Solicitors and Dr Terry Goldsworthy and Dr Mathew Raj (Dr Goldsworthy and Dr Raj) raised concerns about the breadth of the provision, in particular the definitions and examples provided.[91]

2.2.3.3 Criminalisation approach criticised

The Australian Lawyers Alliance (ALA) is concerned that the criminalisation of coercive control is an ineffective way of educating communities on an issue that is entrenched in social and cultural attitudes. ALA submitted that the draft provision requires too many preconditions to operate in the way that it is intended. ALA also submitted that this new provision 'is likely to be effected by unintended consequences'.[92]

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86 Bill, cl 20, s 334E.

87 Bill, cl 20, s 334F.

88 QCU, submission 32, p 9; NQWLS, submission 30, p 3; Red Rose Foundation, submission 33, p 2; Submission 6, p 2.

89 Red Rose Foundation, submission 33, p 4; Mackenzie Mitchell Solicitors, submission 15, p ; QLS, submission 41, p 3.

90 Red Rose Foundation, submission 33, p 4.

91 Mackenzie Mitchell Solicitors, submission 15, p 1; Dr Goldsworthy and Dr Raj, submission 29, p 4.

92 ALA, submission 5, p 5.

QYPC identifies that the Bill does not mention any rehabilitation programs and also noted that the most common penalty used in Scotland is a community-based diversionary response.[93]

2.2.3.4 Required number of actions

The necessity to prove a persistent pattern of behaviour and the fact that standalone acts could not be considered coercive control concerned stakeholders, including the QLS, QCCL and NQWLS.[94]

2.2.3.5 Lack of actual harm requirement

The lack of actual harm requirement in proposed new sections 334C(1)(d) and 334D(2) was raised by Dr Goldsworthy and Dr Raj and QCCL.[95] In the submission from Dr Goldsworthy and Dr Raj, they note:

> It is somewhat at odds with general principles of crime and punishment to create an offence which carries a maximum penalty of 14 years' imprisonment where, conceivably, no injury, harm, or, indeed, awareness by the victim of any acts by the accused, have occurred.[96]

2.2.3.6 Lack of need for particulars

LAQ submitted that the lack of the need for particulars in proposed new section 334C(5) 'erodes the presumption of innocence and the burden and standard of proof'.[97] In its submission, LAQ elaborates on this concern and references section 31(2)(a) of the Human Rights Act:

LAQ, submission 25, p 4

> If the prosecution is not required to allege the particulars of any act of domestic violence constituting an offence that would be necessary if the act were charged as a separate offence, a defendant is placed at a significant disadvantage in the preparation of their case by not being informed in detail as to the nature and reason for the charge.

2.2.3.7 Misidentification

A number of submitters, including ALA, Zig Zag, Mackenzie Mitchell Solicitors and QYPC, raise the issue of the potential for the misidentification of victims and/or perpetrators under the proposed new offence.[98]

2.2.3.8 Impact on Aboriginal and Torres Strait Islander People

Concerns were also raised in submissions about the impact of this proposed new provision on Aboriginal and Torres Strait Islander people, especially women.[99] For example, ALA noted recent research which found that 'almost a third of Aboriginal and Torres Strait Islander women killed in domestic violence homicides had been previously identified by police as domestic violence perpetrators'.[100] QHRC also submitted that:

> Any law that creates a new criminal offence should be carefully scrutinised in light of Queensland's commitment to 'Closing the Gap' as the consequences may include an increased overrepresentation of First Nations people in the criminal justice system. Of particular concern is the potential criminalisation of women who are themselves victims of domestic violence.[101]

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93 QYPC, submission 19, p 19.

94 QCCL, submission 17, pp 5-6; NQWLS, submission 30, p 3; QLS, submission 41, p 3.

95 Dr Goldsworthy and Dr Raj, submission 29, p 7; QCCL, submission 17, p 5.

96 Dr Goldsworthy and Dr Raj, submission 29, p 7.

97 LAQ, submission 25, p 4.

98 ALA, submission 5, p 8; Zig Zag, submission 12, p 5; Mackenzie Mitchell Solicitors, submission; QYPC, submission 19, p 17.

99 ALA, submission 5, p 8; QHRC, submission 10, pp 5-6; QYPC, submission 19, p 17.

100 ALA, submission 5, p 10.

101 QHRC, submission 10, p 5.

2.2.3.9 System readiness and resourcing etc

Various submitters, such as ALA, NQWLS and QCU, also raised the issues of system readiness, funding, attitudinal change and community education. For example, QCU stated:

QCU, submission 32, p 10

As outlined in the Explanatory Notes the introduction of the Bill is likely to increase the demand for courts, police, the legal profession and funded domestic, family and sexual violence service providers given the anticipated increase in reporting and matters being brought before the courts.

The QCU is disappointed that the matter of funding and resourcing is deferred and that any cost increases will be 'monitored' then assessed for future budget processes. … That the Bill will create additional workload for these workers is recognised, yet no provisions are established to prevent the impact of this increase on the workers is deeply problematic.

LAQ raised for consideration that the introduction of new offences has financial and workload implications for stakeholders, including LAQ's Criminal Law Services specifically in terms of duty lawyer cases and grants of aid.[102]

2.2.3.10 Maximum penalty and harm threshold

Concerns were raised by stakeholders about the excessive nature of the maximum penalty (14 years) of the proposed new coercive control offence, especially when compared with other jurisdictions and given that the threshold is now 'harm' rather than the narrower approach of 'serious harm' or 'severe harm'.[103] Zig Zag also did not support a 14 year maximum penalty and recommended a 7 year maximum.[104]

2.2.4 Department response

2.2.4.1 Need for further consideration and improvements

In response to stakeholder concerns about the implementation work to support this amendment, DJAG noted that:

> [T]he amendments to introduce a coercive control offence, and related amendments, will, if the Bill is passed, commence on a date to be fixed by proclamation. This will enable implementation work to occur to support the operationalisation of the amendments, including training and instruction to police, and updating of prosecution guidelines and the Queensland Police Service Operations Procedure Manual.[105]

Responding to the issue raised by stakeholders concerning the breadth of the offence, DJAG commented:

DJAG, correspondence, 6 November, pp 10-11

The legislative intention was to remain consistent with the Taskforce recommendation and capture conduct that constitutes domestic violence as defined by the DFVP Act. In response to stakeholder feedback, however, some amendments were made to the definition of economic abuse, emotional or psychological abuse, and unauthorised surveillance. This aspect of the offence nonetheless broadly aligns with the Taskforce's recommendation.

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102 LAQ, submission 25, p 4.

103 ATSILS, submission 8; LAQ, submission 25, p 4.

104 Zig Zag, submission 12, p 6.

105 DJAG, correspondence, 6 November 2023, pp 10-11.

2.2.4.2 Criminalisation approach criticised

In response to ALA's concerns about adopting a law-enforcement approach to the issue, DJAG noted '[t]he decision to criminalise coercive control is a policy matter for Government' but added that the Taskforce recommended the creation of a criminal offence to deal with coercive control.[106]

Regarding QYPC's concerns about the availability of diversionary response, DJAG points out that the Bill introduces a court-based diversion scheme, designed for first time offenders who have breached a DVO or PPN.[107]

2.2.4.3 Required number of actions

DJAG noted that the 'coercive control' offence is in response to the Taskforce's recommendation to introduce a 'course of conduct' offence which punishes 'multiple acts or omissions' and the drafting of the provision is in line with the Taskforce recommendations in this regard.[108]

2.2.4.4 Lack of actual harm requirement

In terms of stakeholder concerns about the lack of actual harm requirement, DJAG referred to the Taskforce consideration that 'the focus of the offence should be on the behaviour of the perpetrator as opposed to the impact on the victim'.[109] DJAG also referred to the Taskforce recommendation that:

> [T]here should be no requirement to prove the victim was actually caused harm, and suggested that the legislation should make it clear that the prosecution only needs to prove that the course of conduct would be of a nature that was likely to cause the victim to suffer harm reasonably arising in all of the circumstances.[110]

2.2.4.5 Lack of need for particulars

In relation to the issue of particularisation, DJAG noted that proposed new section 334C(5) mirrors another course of conduct offence in the Criminal Code being the offence of *Repeated sexual conduct with a child* (section 229B(4) of the Criminal Code).[111] In this regard, DJAG also noted:

> The Bill does not preclude a defendant from making a pre-trial application under s590AA seeking a direction for further and better particulars, should particulars be insufficient.[112]

2.2.4.6 Misidentification

Regarding the issue of potential misidentification of victims and perpetrators, DJAG noted that the Taskforce acknowledged this risk and that the Taskforce also stated that the 'success of the new offence will hinge on there being sufficient leadup time prior to commencement'.[113]

2.2.4.7 Impact on Aboriginal and Torres Strait Islander People

DJAG noted the concerns raised by numerous submitters in relation to the potential impact on Aboriginal and Torres Strait Islander people. DJAG referred to the appointment of Queensland's inaugural First Nations Justice Officer and the establishment of the First Nations Justice Office in 2022-23 and stated:

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106 DJAG, correspondence, 6 November 2023, p 12.

107 DJAG, correspondence, 6 November 2023, p 13.

108 DJAG, correspondence, 6 November 2023, pp 13-14.

109 DJAG, correspondence, 6 November 2023, p 14.

110 DJAG, correspondence, 6 November 2023, p 14.

111 DJAG, correspondence, 6 November 2023, p 17.

112 DJAG, correspondence, 6 November 2023, p 17.

113 DJAG, correspondence, 6 November 2023, p 17.

DJAG, correspondence, 6 November, pp 19-20

Together they are leading development of a whole-of-government and community strategy to contribute to addressing over-representation of First Nations peoples in Queensland's criminal justice system and supporting work to improve the cultural capability of the justice system. The strategy is intended to be in place prior to commencement of the coercive control offence amendments.

2.2.4.8 System readiness and resourcing etc

DJAG noted the feedback from submitters regarding system readiness, funding, attitudinal change and community education. DJAG noted the Queensland Government is continuing to prevent and respond to domestic and family violence and sexual violence by implementing the government response to recommendations arising from the Taskforce reports. In relation to the likely increase in demand for courts, police, the legal profession and funded domestic, family and sexual violence service providers, DJAG responded:

> This demand will be monitored and any cost impacts will be assessed and included in future budget processes. Legal and judicial professional development was identified by the Taskforce as critically important to achieving the policy intention behind the criminalisation of coercive control. [114]

2.2.4.9 Maximum penalty and harm threshold

DJAG responded to the concerns regarding the maximum penalty of 14 years and the harm threshold by explaining that they are both aligned with the Taskforce's recommendations.

Committee comment

The committee notes the general support for the inclusion of the new offence of coercive control.

The committee notes the concerns by QLS and LAQ that the prosecution is not required to particularise an act of domestic violence that makes up the offence of coercive control to the same extent that would be necessary if it were charged as a separate offence.

The committee also notes DJAG's response and evidence in the public briefing that the provision mirrors the approach taken for the offence of section 229B (*Repeated sexual conduct with a child*) of the Criminal Code, which is also a course of conduct offence. Although the prosecution is not required to particularise every individual act, it is still required to particularise the offence.

The committee further notes this follows the recommendations of the Taskforce as victims, due to various reasons (including the impact of trauma on memory), are not able to sufficiently particularise the individual acts of coercive control to the extent necessary for them to be charged as separate criminal offences.

The committee recommends the Queensland Government reviews the offence within 24 months and again within 5 years to identify and address any unintended consequences. The committee also recommends the Queensland Government work with various relevant entities including First Nations and culturally and linguistically diverse Queenslanders to assess any impacts.

[114] DJAG, correspondence, 6 November 2023, p 21.

Recommendation 4

The committee recommends the Queensland Government conducts a review of the proposed amendments within 24 months of the implementation of the Bill and again within 5 years of the implementation of the Bill to determine and address any unintended consequences that may have arisen by the proposed amendments. The review should include formal opportunities for victim-survivors, parties to DFV proceedings and other stakeholders to provide input.

The committee also recommends the Queensland Government considers the need for mandatory data collection and reporting requirements for the new offences proposed by the Bill from entities including primary health carers, ambulance, emergency departments, police, justice, legal services and social services, to ensure accurate monitoring, assessment and evaluation can be undertaken.

2.3 Protection orders, diversion scheme and offence of engaging in domestic violence to aid respondent

- The Bill proposes to amend the DFVP Act around protection orders. Courts will be required to consider temporary orders when hearing applications for a protection order; may extend police protection notices in exceptional circumstances; and consider the length of a protection order.[115]
- The Bill proposes to create a domestic violence diversion scheme for adult defendants.[116]
- The Bill proposes to create an offence of 'engaging in domestic violence to aid respondent'. The offence applies to people who facilitate domestic abuse (for example, by contacting, intimidating or surveilling a person) on behalf of a perpetrator named in a domestic violence order. The offence is aggravated if the conduct occurs for reward.[117]
- The Bill proposes to add a new standard condition to domestic violence orders. The condition is that a perpetrator cannot counsel or pay someone else to engage in behaviour that, if engaged in by the perpetrator, would be domestic violence.[118]

2.3.1 Background

2.3.1.1 Temporary protection orders and requirement to consider duration of order

The Commission of Inquiry report concluded that section 113(3)(c) of the DFVP Act has the potential to leave victim-survivors unprotected during proceedings for a protection order. According to the Commission of Inquiry report:

> Section 113 of the DFVP Act has the effect that if, in a busy callover, a Magistrate does not make a Temporary Protection Order when a Police Protection Notice (PPN) comes before the Court, the PPN will cease to operate, leaving a victim-survivor unprotected in the period between then and the adjourned proceedings.[119]

The Commission of Inquiry report recommended that section 113(3)(c) be repealed to ensure ongoing protection of DFV victims.[120]

The Commission of Inquiry report also recommended that the DFVP Act clarify the court's discretion to make orders of less than 5 years' duration where circumstances require. This recommendation was

115 Explanatory notes, pp 13-15.

116 Explanatory notes, p 16.

117 Explanatory notes, pp 18-19.

118 Explanatory notes, p 19.

119 Commission of Inquiry report, p 129.

120 Commission of Inquiry report, p 24.

made in response to findings that protection orders that are not tailored to the needs of each relationship can be counterproductive and are more likely to lead to an offence of breaching of a protection order, and that a 5 year order may not always be appropriate.[121]

2.3.1.2 Domestic violence diversion scheme

The Taskforce found in Hear her voice – Report 1 that there is a need to divert DFV perpetrators before they enter the criminal justice system. This diversionary scheme should apply to respondents who:

- have breached their first DVO for the first time
- entered a plea of guilty (so that they can be brought back into the criminal justice system if they refuse to complete the program or continue to offend)

The Taskforce recommended that if a perpetrator completes the diversion program, no conviction or finding of guilt should be recorded. This gives an incentive to take part in diversion as opposed to continuing through the criminal justice system.[122]

2.3.1.3 Offence of 'engaging in domestic violence to aid respondent'

The Taskforce noted advice that victims were subjected to abuse not only by their perpetrator but also by the family and friends of the perpetrator and others hired to locate and monitor them.

The Taskforce's recommendation 75 was to establish a domestic violence facilitation offence under the DFVP Act. The offence would criminalise conduct where:

- a person enables, aids, or facilitates domestic violence against another person on behalf of a respondent to a domestic violence order; and
- where that person knew or ought reasonably to have known that the other person was named as an aggrieved on a domestic violence order.[123]

The offence will be aggravated if it is committed for reward, such as a private investigator working for a fee.[124]

The Taskforce also recommended that being convicted for such an offence would disqualify a person from holding a private investigator's licence.[125]

2.3.1.4 New standard conditions to domestic violence orders

Hear her Voice – Report 1 included a recommendation that the DFVP Act be amended to add standard conditions to DVOs. These conditions would state that perpetrators subject to a DVO must not counsel or procure another to engage in behaviour that, if engaged by the perpetrator, would be domestic violence.[126]

The Taskforce stated that these amendments are intended to operate with the new offence of 'engaging in domestic violence to aid respondent' and improve the safety and well-being of victims of domestic and family violence by 'decreasing domestic and family violence being committed against victims by private investigators or friends and family of the perpetrator'.[127]

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121 Explanatory notes, p 14.

122 Hear her voice – Report 1, p 347.

123 Hear her voice – Report 1, p xlii.

124 Hear her voice – Report 1, p xlii.

125 Hear her voice – Report 1, p xxvi.

126 Hear her voice – Report 1, p xxvi.

127 Hear her voice – Report 1, p 739.

2.3.2 Amendments

2.3.2.1 Temporary protection orders and requirement to consider duration of order

According to the explanatory notes, stakeholder feedback identified that repealing section 113(3)(c) of the DFVP Act could have unintended consequences, one being that a person who was misidentified as the perpetrator would remain wrongfully subjected to a PPN, even when a court has determined a temporary protection order (TPO) should not be made.

The Bill instead amends the DFVP Act to require a court, to consider whether a TPO should be made on the first return date of an application, if:

- the court adjourns an application for a protection order and
- the court does not make a DVO or extend a PPN.[128]

The Bill also amends the section 37 of the DFVP Act to provide that a court which makes a protection order must consider the period for which the order is to continue in force. The explanatory notes state that the amendments clarify a court's existing ability to decide the period for which a protection order is to continue in force, having regard to the matters listed in section 97 of the DFVP Act.[129]

2.3.2.2 Domestic violence diversion scheme

The Bill proposes to amend the DFVP Act to establish a court-based domestic violence diversion scheme for adult defendants. The purposes of the diversion scheme are to:

- intervene at an early stage to promote behavioural change
- hold the defendant accountable for acts of domestic violence for which the defendant has accepted responsibility
- facilitate rehabilitation
- eliminate domestic violence from the defendant's behaviour and the community
- reduce the risk of harm to, and increase the safety of, victims.[130]

The explanatory notes state that the scheme is intended to apply to defendants who are charged for the first time for an offence of contravening a DVO or PPN. Defendants must have accepted responsibility for the alleged facts and showed a willingness to participate in a diversion program.

The Bill provides that the court must be satisfied that the facts of the alleged offence (or offences) are not otherwise charged as an indictable offence. The Bill also gives the court the discretion to decide whether the defendant meets the eligibility criteria for the scheme, having regard to the seriousness of the alleged offence or the defendant's criminal history.[131]

The explanatory notes state that, when deciding whether or not to order a defendant into a diversion scheme, the court must consider:

- the suitability assessment report (carried out by an approved diversion scheme provider)
- the principles in section 4 of the DFVP Act
- any other relevant matter, including any expressed wishes of the person named as the aggrieved in the DVO or PPN.[132]

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128 Bill, clause 30, new section 113(3)(c); Explanatory notes, pp 13-14.

129 Explanatory notes, pp 14-15.

130 Explanatory notes, p 16.

131 Explanatory notes, p 16.

132 Explanatory notes, p 17.

The Bill is explicit in providing that the court must not make a diversion order unless satisfied it would not pose an unacceptable risk to the safety, protection, and wellbeing of:

- an aggrieved or named person
- a person who is in a relevant relationship with the defendant
- a person employed or engaged by the approved provider.[133]

Mechanisms are in place to enable the variation or revocation of a diversion order. In the event the court revokes a diversion order, the defendant must enter a plea to the charge of the alleged offence.

The Bill includes immunity provisions regarding:

- the defendant accepting responsibility before the court
- potential admissions made by the defendant during a suitability assessment.

These immunity provisions exclude the above from being used in evidence against the defendant for an offence, and police cannot use evidence derived from these statements for offence proceedings. The explanatory notes state that this is intended to encourage defendants to participate in the scheme.[134]

The Bill also contains provisions outlining an approved provider's obligations to the court regarding the diversion scheme. These include:

- conducting a suitability assessment
- providing a suitability assessment report to the court within 14 days of the assessment
- reporting to the court if the defendant fails to report for a suitability assessment
- reporting to the court on any contraventions of the diversion order
- notifying the court if the defendant has completed a diversion program.[135]

The Bill provides that when the notice of completion is received by the court, the diversion order and the plea for the alleged offence ends and the defendant is not required to enter a plea. The charge is taken to be dismissed by the court and the defendant is taken to be discharged and is not liable to be further prosecuted for the alleged offence.[136]

2.3.2.3 Offence of 'engaging in domestic violence to aid respondent'

The Bill proposes to amend the DFVP Act to establish a new offence of 'engaging in domestic violence or associated domestic violence to aid respondent'.

The offence applies to an adult who, without reasonable excuse, engages in behaviour against a person who is an aggrieved or named person in a DVO, PPN or release conditions, if that behaviour would constitute domestic violence if it were done by the respondent to that DVO, PPN or release conditions.

The offence applies where the person engages in that behaviour with the intent of aiding the respondent, and the person knew, or ought reasonably to have known that the other person was the aggrieved or a named person in a DVO, PPN or release conditions.

The maximum penalty for the offence is:

133 Explanatory notes, p 17.

134 Explanatory notes, p 17.

135 Explanatory notes, p 17.

136 Explanatory notes, p 17.

- 120 penalty units or 3 years' imprisonment, or
- 240 penalty units or 5 years' imprisonment if a benefit (such as financial reward) is derived from engaging in the behaviour.

The explanatory notes state that this is intended to reflect the seriousness of circumstances where a perpetrator may ask third parties, including hiring private investigators, to locate and monitor an aggrieved.[137]

The Bill also amends the Security Providers Act to include the new offence as a disqualifying offence for security providers. The explanatory notes state this implements recommendation 77 of Hear her voice – Report 1.

While recommendation 77 specifically referred to private investigators, the amendment will apply to all categories of licence under the Security Providers Act (including bodyguards, crowd controllers, private investigators, security advisers and installers of security equipment).[138] This is in keeping with the approach taken under the Security Providers Act with respect to disqualifying offences.[139]

2.3.2.4 New standard conditions to domestic violence orders

The Bill amends the DFVP Act to require the inclusion of a new standard condition in DVOs that a respondent:

- must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be associated domestic violence against the aggrieved, a named person or a child
- must not organise, encourage, ask, tell, force or engage another person to do something that exposes the child to domestic violence.[140]

The explanatory notes state that the Bill uses plain language to ensure the condition can be readily understood by a respondent and that comprehension of order conditions is a key factor in ensuring compliance.

The explanatory notes state that the purposes of these amendments are:

- to educate respondents that counselling or procuring another person to assist them in abuse of a person protected by a DVO will result in a contravention of the order
- to reduce the incidence of respondents counselling or procuring others to abuse the aggrieved and protected persons
- to reduce the incidence of abuse of aggrieved and protected persons by extended family, friends and private investigators.[141]

2.3.3 Stakeholder views

2.3.3.1 Temporary protection orders and requirement to consider duration of order

North Queensland Women's Legal Service (NQWLS) welcomed the requirement for the court to consider making a temporary protection order at the first hearing of an application, noting that

137 Explanatory notes, p 18.

138 Security Providers Act, ss 4, 9.

139 Explanatory notes, pp 18-19.

140 Explanatory notes, p 19.

141 Explanatory notes, p 19.

'[w]hilst this is the practice of most magistrates in Cairns and Townsville, it should be a uniform requirement by courts under the DFVP [Act]'.[142]

QLS was of the view that PPNs should not continue after the first court date, stating:

QLS, submission 41, p 7

PPNs are made by police through a less robust process than orders made by a court. This increases the risk of misidentification of victims and perpetrators and therefore the wrong person being subject to the PPN. The magistrate should be required to decide whether to issue a temporary protection order.

NQWLS supported the amendment to require a court to consider the appropriate duration for an order, but recommended a note at section 97 of the DFVP Act to 'explicitly state that a Court can make an order for a period longer than 5 years if it is necessary or desirable to protect the aggrieved from domestic violence'.[143]

NQWLS argued this was necessary as 'a perception persists with judicial officers that a protection order can only be made for 5 years or less'. NQWLS gave the following justification for protection orders that exceed 5 years:

> One such example is that of a client of our service who was a victim-complainant in extremely serious domestic violence criminal charges (including multiple rapes and assaults.) The perpetrator was sentenced to six years of actual imprisonment and a protection order was made at sentence.
>
> However, the duration of the order was only for a period of five years. This meant there was no protection for the victim or her children when her former partner was to be released. Our client was extremely anxious, and her anxiety became debilitating at the thought of potential retribution. Her mental health deteriorated significantly as the release date approached.
>
> This unfortunate situation could have been avoided if the learned District Court judge had considered the circumstances of the matter and made a protection order that was effective for an appropriate period of time after the release of the perpetrator. We can only surmise that the presiding judicial officer was under the impression that five years was the maximum duration of a protection order.[144]

2.3.3.2 Domestic violence diversion scheme

Multiple stakeholders were supportive of a diversion program for DFV offenders. ATSILS, Multicultural Australia, NQWLS, QLS and QPU were supportive of a scheme to divert offenders away from the criminal justice system.[145] QPU noted that:

QPU, submission 37, p 3

Diversionary schemes have the potential to break the violence cycle from the perspective of the offender. All too often police see victims escape from a particular perpetrator, only for that perpetrator to go on and enter a new relationship and create a new victim.

Stakeholders noted that the diversion programs needed to be widely available and culturally-nuanced. LAQ 'encourages the sufficient funding and resourcing of diversion programs' and stated that delays in services disincentive participation, particularly for first-time offenders.[146]

142 NQWLS, submission 30, p 5.

143 NQWLS, submission 30, p 5.

144 NQWLS, submission 30, p 5.

145 ATSILS, submission 8, p 5; Multicultural Australia, submission 9, pp 2-3; NQWLS, submission 30, p 6; QPU, submission 37, p 3; QLS, submission 41, p 7.

146 LAQ, submission 25, p 5.

Multicultural Australia noted the limited opportunities to multicultural communities, including early intervention programs, and recommended resourcing culturally safe and appropriate support services for non-English or culturally diverse backgrounds.[147]

QLS stated 'attention must be given to the level of resourcing required to ensure that such programs are available, particularly in rural, regional and remote areas'.[148] NQWLS noted that the scheme only works if approved providers are available 'to both male and female defendants, including in rural and regional areas'. NQWLS noted that:

- Cairns has only one approved provider available and it is for men
- Cairns and Townsville do not have approved providers for First Nations men
- Queensland has no approved providers for women or minors.

NQWLS stated that 'structural unfairness' arises when providers are not available for certain cohorts in key locations across Queensland, impacting these cohorts when it comes to criminal justice outcomes, employment and eligibility to hold blue or yellow cards.[149]

Several stakeholders recommended expanding the scheme in various ways. ATSILS recommended that the scheme be made available to a 'wider cohort of offenders, given the prevalence of domestic violence generally'.[150] LAQ was concerned the eligibility for the scheme was too limited and that 'defendants with one prior conviction for a domestic violence offence would still arguably be classified as early intervention'.[151] QLS stated that 'accused persons who have been the subject of an order that they have complied with should not be deemed ineligible'.[152]

NQWLS strongly believed that the scheme should also apply to youth offenders, stating that the scheme could equip 'young people already using intimate partner violence and controlling behaviours … with better relationship skills going into adulthood'.[153]

Stakeholders provided a range of feedback on how the scheme would apply regarding the defendant's requirement to accept responsibility for the facts and its use, or lack thereof, in later proceedings:

- QLS supported the defendant not being required to enter a guilty plea, but noted this 'may result in a protracted diversion process that will require close monitoring'.[154]
- LAQ supported the defendant accepting responsibility being one of the diversion scheme's eligibility requirements and the immunity provisions for participating in the scheme, but LAQ noted that the immunity provisions do not extend to admissions made while participating in a diversion program. LAQ recommended the immunity provisions cover admissions made during a diversion program 'to promote full and frank disclosure and encourage active participation in the program'.[155]

147 ATSILS, submission 8, p 5; Multicultural Australia, submission 9, pp 2-3.

148 QLS, submission 41, p 9.

149 NQWLS, submission 30, p 6.

150 ATSILS, submission 8, p 5.

151 LAQ, submission 25, p 5.

152 QLS, submission 41, p 8.

153 NQWLS, submission 30, p 6.

154 QLS, submission 41, p 8.

155 LAQ, submission 25, p 5.

- Caxton submitted that there is a barrier to perpetrators accepting the facts in that they may accept some, but not all, of the facts of the alleged offence.[156]
- Broken to Brilliant noted that immunity provisions could apply to conduct within a diversionary program, but was concerned that admissions to police cannot be used in proceedings, and advocated for its removal, stating the provisions will 'lead perpetrators to agree to go to a diversionary program solely to avoid an offence, ensure information can't be used as evidence and avoid conviction'.[157]
- QPU proposed a model that involves an initial conviction, then gives the perpetrator the opportunity to complete the diversion program. The conviction would be expunged if the defendant successfully completed the program. QPU stated that perpetrators would be more likely to participate as it would remove a conviction from their criminal history.[158]

2.3.3.3 Offence of 'engaging in domestic violence to aid respondent'

Stakeholders generally supported the creation of the facilitation offence in the proposed section 179A of the Criminal Code.

QIFVLS[159] and NQWLS welcomed the introduction of this offence, with NQWLS stating:

NQWLS, submission 30, p 7

Consistent feedback from women and girls experiencing domestic violence is that other members or the respondent's family or associates of the respondent, engage in acts of domestic violence against the victim in support of the respondent.

This is especially prevalent with victims from a culturally diverse background and in First Nations communities, although the feedback we receive is that it is a widespread issue across all communities.

Multicultural Australia supported the intent behind the creation of this offence, but was concerned that it has significant potential to adversely affect multicultural communities without adequate system-wide and cultural change.[160]

Stakeholders questioned how the offence would operate in specific situations.

QLS was concerned the wording of the offence was not sufficiently clear, specifically the nature of the aid provided by the defendant to the respondent. QLS questioned whether the aid was limited to committing further DFV, or included aiding them in legal proceedings or other matters. QLS stated that:

> The broad wording may criminalise conduct that is not intended to be captured. For example, a person who is an occupier of premises may provide CCTV footage of an incident between the respondent and aggrieved to the respondent for the purpose of defending proceedings against them, where the respondent is themselves prohibited from recording the aggrieved.[161]

QLS recommended that new section 179A(1)(b) be amended as follows:

156 Caxton, submission 23, p 2.

157 Broken to Brilliant, submission 13, p 12.

158 QPU, submission 37, p 3.

159 QIFVLS, submission 39, p 7.

160 Multicultural Australia, submission 9, p 2.

161 QLS, submission 41, pp 9-10.

> [T]he domestic violence behaviour is engaged in with the intent of aiding the respondent to the order, notice or conditions to commit or continue *to commit domestic violence against the aggrieved or named person* [italics added].[162]

NQWLS believed new section 179A(1)(c) raises problems as it requires the prosecution to prove the defendant 'knew or ought reasonably to have known' that the other person was an aggrieved or named person on an order, PPN or release conditions.

NQWLS also points out 'anomalies within the provisions of ss 177 and 178 and the proposed s 179A with regard to when the contravention can be charged'. NQWLS explains:

> [I]f the respondent commits domestic violence they cannot be charged with a contravention of the order (unless the act is a standalone offence) but the person who knows about the order and commits domestic violence (that may not be a standalone offence) with the intention of aiding the respondent can be charged and penalized up to three years imprisonment.[163]

QIFVLS stated the need for a 'safeguard provision' to account for circumstances such as an elderly parent or relative (who themselves is a victim of DFV by the adult perpetrator) who is unwittingly influenced or coerced into facilitating abuse on behalf of the perpetrator.[164]

Broken to Brilliant recommended that the offence be worded in 'such a way that a person cannot assist another person to perpetrate domestic violence, regardless if there is a DVO in place at the time'.[165]

2.3.3.4 New standard conditions to domestic violence orders

Caxton and NQWLS support the inclusion and plain English wording of the proposed additional standard condition.[166]

QIFVLS also supported the new standard condition, and recommended that:

QIFVLS, submission 39, p 7

> [T]he wording in the new standard condition on the protection order should place an emphasis on plain English and more simplified drafting so that a respondent and the aggrieved can more easily understand the condition.

QIFVLS also supported the amendment that clarifies contact via a lawyer or through a person for an authorised purpose is permitted.[167]

2.3.4 Department response

2.3.4.1 Temporary protection orders and requirement to consider duration of order

DJAG noted the views of NQWLS regarding the temporary protection orders and requirements to consider the duration of the order but did not comment further.[168]

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162 QLS, submission 41, p 10.

163 NQWLS, submission 30, p 8.

164 QIFVLS, submission 39, p 7.

165 Broken to Brilliant, submission 13, p 13.

166 Caxton, submission 23, p 3; NQWLS, submission 30, p 8.

167 QIFVLS, submission 39, p 7.

168 DJAG, correspondence, 6 November 2023, p 53.

2.3.4.2 Domestic violence diversion scheme

In response to LAQ's submission concerning sufficient funding, DJAG responded that 'additional funding of almost $3 million per year has been allocated to help mainstream perpetrator intervention services meet increased demand and better support victim-survivors'.[169]

DJAG noted NQWLS's submission in relation to 'the need for the scheme to be accessible to male and female defendants and in rural and regional areas' and related concerns. DJAG responded as follows:

> Subject to passage, providers and programs for the diversion scheme will be approved by the chief executive (DJAG) (section 135T of the DFVP Act). The Bill provides that the scheme applies only if there is an approved provider who can provide an approved diversion program or counselling for the defendant under the scheme, which allows the scheme to be delivered in specific locations where programs are available and providers have been approved.
>
> As noted in the departmental written briefing, consideration is currently being given to the establishment of the scheme in one location initially to enable policies, procedures and resource impacts to be tested before any further consideration of broader roll out.
>
> DJAG notes the feedback in relation to the nature and availability of intervention scheme providers. This feedback will be considered as part of implementation.[170]

In relation to ATSILS' and LAQ's concerns about the eligibility limitations of the scheme, DJAG noted that:

DJAG, correspondence, 6 November 2023, p 45

… a defendant may be eligible for the scheme if they have been charged with more than one offence of contravening a DVO or PPN provided that the charges are for offences of a similar character or committed in prosecution of a single purpose and there is a strong factual and temporal connection between or among the offences (subsections 135C(2)(a) and (b)).

DJAG further noted that:

> … the Taskforce recommended that the diversion scheme be limited to defendants facing a single charge of contravention of a protection order, who have only ever been named as a respondent on one DVO and have never breached that DVO before (page 731 of Report One).
>
> The scheme as drafted allows a court greater discretion than recommended by the Taskforce, in response to feedback which observed that differing charging practices between individual police officers may result in similar conduct by different defendants being charged as either one or multiple charges of contravention. DJAG considers that this is an appropriate limited departure, having regard to the intent of the Taskforce recommendation.[171]

In response to NQWLS' submission that the scheme should apply to youth offenders, DJAG noted the scheme is not intended to apply to defendants who are children as recommended by the Taskforce.[172]

Regarding the varied stakeholder feedback on the immunity provisions, DJAG noted that 'feedback has been divided as to the inclusion and the extent of immunity provisions in the Bill. The Bill seeks to balance this feedback.[173]

[169] DJAG, correspondence, 6 November 2023, p 43.

[170] DJAG, correspondence, 6 November 2023, p 43.

[171] DJAG, correspondence, 6 November 2023, p 45.

[172] DJAG, correspondence, 6 November 2023, p 44.

[173] DJAG, correspondence, 6 November 2023, p 51.

2.3.4.3 Offence of 'engaging in domestic violence to aid respondent'

In relation to the proposed new offence of 'engaging in domestic violence to aid a respondent', DJAG noted that 'community readiness for changes to the law in Queensland will be supported through broad community education campaigns and tailored responses for diverse population groups'.[174]

In relation to stakeholders' questions concerning how the offence would operate in specific situations, DJAG commented that the amendment has been drafted to be consistent with the Taskforce.[175]

Committee comment

The committee notes the feedback from submitters. The committee is pleased to note DJAG has allocated additional funding of almost $3 million per year to help perpetrator intervention services meet increased demand and better support victim-survivors.

The committee notes DJAG's advice that consideration is being given to establishing the scheme in one location to assess and revise the scheme prior to consideration of a broader roll out. The committee therefore recommends the Queensland Government reviews the scheme within 24 months of implementation and report back to the committee on the implementation of the scheme and proposed broader roll out.

Recommendation 5

The committee recommends the Queensland Government conducts a review of the perpetrator diversion scheme within 24 months of the scheme's implementation. The review should involve consultation and input with the Aboriginal and Torres Strait Islander community, peak bodies within the DFV and sexual violence support sector, the Queensland Police Service and the courts.

The review should examine the scheme's eligibility criteria and its availability for participants across Queensland. The review should particularly examine whether the scheme is delivered in places with the greatest need and that it is culturally safe, appropriate and responsive to First Nations people and culturally and linguistically diverse Queenslanders.

2.4 New excuse for offence of failing to report a child sexual offence

- The Bill proposes to amend the offence of 'failing to report belief of a child sexual offence committed in relation to a child' in the Criminal Code.[176]
- The amendments will extend to adults with a confidential, professional relationship with a child (such as a counsellor) and for children who are 16 years old to align with Queensland's existing age of consent.[177]

2.4.1 Background

Under the Criminal Code, it is a misdemeanour if an adult fails to report to the police information that led them to believe a sexual offence is being or was committed against a child by another adult.

There is a non-exhaustive list of reasonable excuses, including:

- the adult reasonably believes the information has already been reported to police

[174] DJAG, correspondence, 6 November 2023, pp 53-54.

[175] DJAG, correspondence, 6 November 2023, pp 53-57.

[176] Explanatory notes, pp 3-4.

[177] Explanatory notes, pp 3-4.

- the adult has already reported the information under another law
- the adult gains the information after victim has become an adult, and the victim does not want the information to be reported
- reporting the information would put someone in danger.[178]

In Hear her voice – Report 2, the Taskforce recommended a review of the reasonable excuses to the offence and:

> … to consider including an additional reasonable excuse that covers the provision of sexual assault counselling and medical care.[179]

The explanatory notes state that this offence can be an obstacle for service providers helping vulnerable youth. Mandatory reporting and the prospect of criminal justice interventions reduced trust and led to young people disengaging with their service providers.

The explanatory notes also state that the offence limits young persons' autonomy when dealing with their experience.[180]

2.4.2 Amendments

The Bill proposes to change the offence by:

- amending one of the existing reasonable excuses – existing section 229BC(4)(c)
- adding another excuse to the list of reasonable excuses – new section 229BC(4)(e).

The current section 229BC(4)(c) makes it an excuse that if an adult gains the information after the child becomes an adult, and the adult reasonably believes the victim does not want the information to be disclosed to police. The Bill will change the excuse to apply when the adult gains the information after the child turns 16.

The explanatory notes state:

> The effect is that an adult, who receives information from a 16- or 17-year-old child victim will have a reasonable excuse for not reporting the matter to police, if that child has expressed a desire not to involve police. This amendment will provide greater autonomy to alleged victims aged 16 to 17 years old and brings the provision in line with the current age of sexual consent in Queensland.[181]

The Bill adds an excuse with the new section 229BC(4)(e). The excuse applies to circumstances when the adult gains the information:

- as a 'relevant professional' while acting in that professional capacity
- through a confidential professional relationship with the child
- there is an express or implied obligation of confidentiality between the adult and the child
- the adult reasonably believes there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.[182]

According to the explanatory notes, the Bill defines a relevant professional as medical practitioners, psychologists, registered nurses, midwives, social workers, and counsellors.

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178 Criminal Code, s 229BC(4).

179 Hear her voice – Report 2, p 11.

180 Explanatory notes, pp 3-4.

181 Explanatory notes, p 4.

182 Bill, cl 9.

A 'counsellor' is defined broadly, and consistently with the sexual assault counselling privilege scheme. A person may be considered a counsellor based on their work, and their experience, without having a tertiary qualification or being a member of a professional body.[183]

The explanatory notes state that the excuse balances the policy objectives of maintaining professional confidentiality with the need to report sexual abuse to police where the alleged offender presents an ongoing risk.[184]

2.4.3 Stakeholder views

Several stakeholders broadly supported the amendments but had questions and recommendations on how the excuse operates, including the professionals covered by the excuse and the age of the child.

BRISSC, Queensland Council of Social Service (QCOSS), NQWLS and QCU supported the amendments.[185] QPU supported the amendments as long as there was an 'overriding consideration where the professional reasonably believes non reporting will pose no real risk of serious harm to the child (or any other child)'.[186]

Several stakeholders recommended the child's capacity be taken into consideration rather than solely referring to their age.

Zig Zag and GCCASV recommended that the defence not rely on the child's strict age, but rather their competency under the Gillick test (a child who is assessed as Gillick competent is deemed capable of making their own medical decisions).[187] Full Stop Australia also recommended that the excuse should apply to young persons who are assessed as having the capacity to decide whether they want their matter reported to police.[188]

QSAN recommended that the amendments better reflect a child's choice and capacity to report sexual violence to the police (subject to the need to protect another child from harm), arguing that such an approach would be more consistent with international law regarding the rights of children.[189]

Zig Zag, QSAN and GCCASV recommended that the class of professions covered by the excuse include those who are eligible to become members of the Australian Association of Social Workers.[190] Stakeholders also recommended the following professions be covered by the excuse:

- legal professionals[191]
- youth workers[192]
- Aboriginal youth workers, or drug and alcohol caseworkers.[193]

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183 Explanatory notes, p 4.

184 Explanatory notes, p 4.

185 BRISSC, submission 4, p 2; QCOSS, submission 24 p 1; NQWLS, submission 30, p 1; QCU, submission 32, p 4.

186 QPU, submission 37, p 2.

187 Zig Zag, submission 12, p 2; GCCASV, submission 35, p 3; Queensland Government, *Guide for health professionals: Medical decision making for children and young people in care*; Queensland Health, *Capacity Assessment for Mental Health Treatment (Gillick Competence) – Child and Youth: Guide for use*.

188 Full Stop Australia, submission 36, p 4.

189 QSAN, submission 14, p 5.

190 Zig Zag, submission 12, p 3; QSAN, submission 14, p 6; GCCASV, submission 35, p 3.

191 NQWLS, submission 30, p 1.

192 BRISSC, submission 4, p 2; Full Stop Australia, submission 36, p 4.

193 Full Stop Australia, submission 36, p 4.

QCOSS encouraged ongoing review and guidance 'to incorporate increased decision making participation for children and young people where appropriate'. QCOSS also noted that the excuse may require clarification when other staff in an organisation become aware of relevant information in addition to staff members who have a confidential professional relationship with the child.[194]

BRISSC also recommended that a reasonable excuse to the offence could be a worker referring the person to a relevant service who is required to undergo mandatory reporting.[195]

Broken to Brilliant took an opposing view and argued that all professionals should be required to report any disclosure for investigation, and that the requirement to report should extend to teachers, sporting coaches, after-school-care workers, child-care workers and anyone who require a Blue card for their work.[196]

2.4.4 Department response

In response to the concern of Broken to Brilliant that all professionals should be required to report any disclosure, DJAG considered that the Bill, as currently drafted, 'will capture a range of people who work in the community with young people'.[197] DJAG also commented that '[t]he requirement for the person to be a member of the Australian Association of Social Workers ensures that the excuse applies to a clearly defined category of professional group'.[198]

Regarding the suggestions of various submitters of the inclusion of youth workers and other professions, DJAG noted that 'there is scope to further prescribe classes of people by regulation, which will ensure future flexibility'.[199]

In terms of the concern of a number of submitters that the defence not rely on the child's strict age, but rather their competency under the Gillick test, DJAG commented that it is 'necessary to set a specific age at which a child can express a wish for an offence not to be reported without their consent'. DJAG further noted that:

DJAG, correspondence, 6 November 2023, p 112

To adopt the Gillick principle would require the adult, who received the relevant information, to conduct an assessment as to the child's competency. Different adults may reach different conclusions about a particular child's competency. To ensure consistent application and outcomes, the approach in the Bill was preferred in which only a child over 16 years can express an unwillingness to have information reported to police, and that such unwillingness would form the basis of a reasonable excuse for the adult.

Whilst some professionals may be equipped to make such an assessment, the offence applies to adults generally. The reasonable excuse at section 229BC(4)(c) also applies to all adults and is not limited to certain professional groups.

Committee comment

The committee notes the general support for this amendment. The committee was pleased to note DJAG's comment that there is scope to further prescribe classes of persons through the regulation giving future flexibility for the provision.

194 QCOSS, submission 24, p 2.

195 BRISSC, submission 4, p 2.

196 Broken to Brilliant, submission 13, p 2.

197 DJAG, correspondence, 6 November 2023, pp 109-110.

198 DJAG, correspondence, 6 November 2023, p 109.

199 DJAG, correspondence, 6 November 2023, p 109.

The committee also notes submitters suggestions that section 229BC(4)(c) should be changed from 16 years to a 'Gillick competent child' and notes DJAG's comments that not all professionals are equipped to make such assessment.

The committee is therefore satisfied it is necessary to provide clarity and certainty for all professionals, to set a specific age at which a child can express their desire for an offence not to be reported without their consent.

2.5 Evidence in sexual offence proceedings

- The Bill proposes to amend the Evidence Act to require courts to prohibit improper questions put to a witness in any proceeding, or to inform the witness that the improper question need not be answered. This duty would apply regardless of whether an objection is raised to a question.[200]
- The Bill proposes to repeal the CLSO Act and move relevant provisions, with modernised wording, to the Evidence Act. The relevant provisions include the requirement that courts be closed when the sexual offence complainant is giving evidence; and the prohibition of questions relating to a complainant's sexual reputation.[201]
- The Bill proposes to amend the Evidence Act to expand the admissibility of preliminary complaint evidence to proceedings for sexual offences and domestic violence offences.[202]

2.5.1 Background

2.5.1.1 Improper questions

According to the explanatory notes, the Taskforce heard of many examples where victim-survivors of sexual assault 'were traumatised by brutal and apparently irrelevant cross-examination'. The Taskforce noted that judges cannot be relied upon to intervene in every situation and that prosecutors, due to tactics or experience, may not object to these questions.[203]

The Taskforce recommended that the Evidence Act be amended 'to include examples of improper questions including those provided at section 41 of the *Evidence Act 1995* (NSW)'.[204]

2.5.1.2 Special rules for sexual offence proceedings

Sections 4 and 5 of the CLSO Act contain special rules of evidence for sexual offence trials. Section 4 generally prohibits evidence and questions regarding the complainant's sexual reputation, while section 5 requires the public to be excluded when the complainant is giving evidence.

The Taskforce recommended that sections 4 and 5 of the CLSO Act be moved into dedicated parts of the Evidence Act and the Youth Justice Act dealing with evidence for sexual offences proceedings. The Taskforce also recommended that the sections be amended so that:

- leave of the court to ask questions about a complainant's sexual reputation should not be granted unless the court is satisfied that the value of any evidence about a complainant's sexual activities outweighs any distress, humiliation, embarrassment or other prejudice that the complainant may suffer as a result of its admission

200 Explanatory notes, p 19.

201 Explanatory notes, p 20.

202 Explanatory notes, p 24.

203 Explanatory notes, p 19.

204 Hear her voice – Report 2, p 19.

- the court should be closed when a complainant is giving evidence, whether during a pre-recording of evidence in court or remotely; during the playing of the pre-recorded evidence at trial or on appeal; and while the complainant is giving evidence in person in court.[205]

2.5.1.3 Preliminary complaint evidence

Preliminary complaint evidence refers to disclosures made by the complainant before their first formal witness statement to police. Preliminary complaint evidence is generally inadmissible, but section 4A of the CLSO Act makes an exception for sexual offence proceedings.

In sexual offence proceedings, people who received a disclosure from the complainant can give evidence as to what the complainant told them and the surrounding context. The evidence may only be used to assess the complainant's credibility and does not independently prove anything.[206]

According to the explanatory notes, the Taskforce observed that sexual offences are similar to DFV offences as they involve intimate contact between 2 people and most frequently occur in private, making them difficult to prove.

The Taskforce recommended moving section 4A of the CLSO Act to its own division in the Evidence Act and expanding the admissibility of preliminary complaint evidence to proceedings related to domestic violence offences.[207]

2.5.2 Amendments

2.5.2.1 Improper questions

The Bill amends the Evidence Act to impose a duty on a court to prohibit the improper questioning of witnesses during cross-examination in any proceeding. This duty applies regardless of whether the prosecution objects to the questioning.

If improper questioning occurs, the court must:

- disallow the question, or
- inform the witness that the question need not be answered.

The Bill provides a non-exhaustive list of what an improper question is, including questions that are:

- misleading or confusing
- unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive
- put to the witness in a manner that is belittling, insulting or otherwise inappropriate
- has no basis other than a stereotype.[208]

The Bill provides that a question is not improper merely because:

- it challenges the truthfulness of the witness, or the consistency or accuracy of any statement made by the witness
- requires them to discuss a subject they consider to be private or distasteful.[209]

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205 Explanatory notes, p 20; Hear her voice – Report 2, pp 19-20.

206 CLSO Act, section 4A(6); Explanatory notes, p 24.

207 Explanatory notes, p 24; Hear her voice – Report 2, p 22.

208 Bill, cl 56, s 21(2).

209 Bill, cl 56, s 21(5).

If the court fails to disallow an improper question, or fails to inform the witness that it need not be answered, this will not affect the admissibility of any answer given by the witness.[210]

2.5.2.2 Special rules for sexual offence proceedings

The Bill proposes to repeal the CLSO Act and move relevant provisions, with modernised wording, to the Evidence Act.

These provisions include:

- the requirement that courts be closed when the sexual offence complainant is giving evidence, regardless of the way the complainant gives that evidences (for example by videoconference or pre-recording)
- the requirement for the judge to direct the jury not to draw inferences as to the defendant's guilt or the probative value of the evidence, due to the closure of the court.[211]
- the requirement to not allow evidence or questions about a complainant's sexual reputation unless the court is satisfied that the evidence has substantial probative value or is a proper matter for cross examination, and that it is in the interests of justice having regard to a number of matters, including:
    - distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or admission of the evidence
    - the risk that the evidence may arouse in the jury discriminatory belief or bias, prejudice, sympathy or hostility
    - the need to respect the complainant's personal dignity and privacy
    - the right of the defendant to fully answer and defend the charge
    - any other relevant matter.[212]

2.5.2.3 Preliminary complaint evidence

The Bill inserts new section 94A of the Evidence Act. This provision will appear alongside other provisions that concern the admissibility of statements and representations.

New section 94A expands the admissibility of preliminary complaint evidence to proceedings for both sexual offences and domestic violence offences. New section 94A maintains the existing preliminary complaint provision in section 4A of CLSO Act.[213]

2.5.3 Stakeholder views

2.5.3.1 Improper questions

BRISSC and Dr Rebecca Wallis, Dr Joseph Lelliott, Dr Faiza El-Higzi and Professor Blake McKimmie (Dr Wallis et al) supported the amendments on improper questions.[214] knowmore Legal Service (knowmore) also supported the amendments on improper questions, stating '[t]hese are important provisions given the traumatising experiences endured by so many victims and survivors during cross examination'.[215]

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210 Bill, cl 56, ss 21(8).

211 Explanatory notes, p 20.

212 Bill, clause 59, new section 103ZM; Explanatory notes, p 21.

213 Explanatory notes, p 24.

214 BRISSC, submission 4, p 5; Dr Wallis et al, submission 22, p 4.

215 knowmore, submission 20, p 4.

Full Stop Australia strongly supported the amendments regarding the court's duty to disallow improper questions. Full Stop Australia noted that cross-examination by the defence which focuses on 'why victim-survivors "didn't just say no," picks apart victim-survivors' credibility over imperfect recall of (often trivial) events, and otherwise perpetuates damaging stereotypes'.[216]

Full Stop Australia recommended expanding the improper questions to include disallowing questions that are contrary to affirmative consent principles. Full Stop Australia explains:

Full Stop Australia, submission 36, p 8

For example, defence counsel would not be allowed to question a witness about what they did to express non-consent, as proposed s 348AA(1)(a) in the Bill specifies that a person does not consent to an act if they did not say or do anything to communicate consent … Quilter and McNamara's research shows that questioning that runs contrary to affirmative consent laws is still happening in jurisdictions that have adopted those laws (and also have laws on improper questioning). It is therefore important that this is made explicit.

Full Stop Australia also recommended that 'distressing' be added to the list of improper questions disallowed under the proposed section 21(2)(b) of the Evidence Act. Currently, the subsection proposes to disallow questions that are 'unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive'.[217]

Broken to Brilliant recommended that answers to improper questions should be inadmissible to discourage the use of improper questions.[218]

2.5.3.2 Special rules for sexual offence proceedings

QHRC supported the Bill's amendments to the hearing process to alleviate the trauma and humiliation that victims of sexual crimes may experience during a trial.[219] QHRC noted that the amendments may have a broader positive societal effect in encouraging victims of crime to come forward and may increase the successful prosecution rate of these crimes.[220] Overall, the QHRC considered the proposed changes to complainant evidence in sexual offence trials to be reasonable and balanced.[221]

Dr Wallis et al noted the repeal of the CLSO Act and welcomed its consolidation into the Evidence Act, stating it 'assists a great deal in making the relevant applicable law in this context clearer and more accessible to all relevant parties'. Dr Wallis et al considered that the 'further protections against questioning on sexual activity' are 'useful ways to clearly articulate the rules relevant to the appropriate management of trials'.[222]

BRISSC and knowmore supported the amendments around relating to removing the general public from the court while the complainant is giving evidence.[223]

knowmore noted that the provisions regarding questions of a complainant's sexual activities 'do not go as far as the Taskforce recommended' but nevertheless 'support these provisions to the extent that they represent a considerable improvement on the current provisions in section 4 of the *Criminal Law (Sexual Offences) Act 1978*'.[224]

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216 Full Stop Australia, submission 36, pp 7-8.

217 Full Stop Australia, submission 36, p 8.

218 Broken to Brilliant, submission 13, p 13.

219 QHRC, submission 10, p 10.

220 QHRC, submission 10, p 11.

221 QHRC, submission 10, pp 11-12.

222 Dr Wallis et al, submission 22, p 4.

223 BRISSC, submission 4, p 5; knowmore, submission 20, p 4.

224 knowmore, submission 20, p 4.

Full Stop Australia supported 'limiting the admissibility of evidence as to sexual activities of the complainant' and recommended 'total exclusion of evidence regarding the sexual reputation of the complainant'.[225]

Full Stop Australia noted that the Bill permits applications on introducing evidence about a complainant's sexual reputation to be heard in the absence of the complainant. Full Stop Australia does not think this is appropriate under any circumstances and recommended any such applications always be heard with the complainant being present.[226]

Full Stop Australia recommended that, when determining an application to permit evidence of a complainant's sexual reputation under proposed section 103ZM, the court's consideration of the 'age of the complainant and the number and nature of the questions that the complainant is likely to be asked' be moved to its own subsection that reads:

> The court is to consider whether the age of the complainant, and the number and nature of the questions that the complainant is likely to be asked, are likely to exacerbate distress, humiliation or embarrassment to the complainant.[227]

QYPC noted a concern regarding the transmission of serious disease and evidence regarding the complainant's sexual reputation. QYPC argued that if consent were vitiated by a false or fraudulent representation about having a serious disease, the defendant may argue the complainant was infected by someone else, and 'that in practice this would result, in effect, a trial of the complainant's promiscuity'.

QYPC recommended the Attorney-General and DPP:

QYPC, submission 19, pp 8-9

[S]eek advice as to the best practice to protect complainants in trials of offences of rape / sexual assault where consent was vitiated by the defendant allegedly making a false or fraudulent representation as to their STI status. Such advice should consider the wellbeing of the complainant and how this can be balanced against the rights of the defendant.

2.5.3.3 Preliminary complaint evidence

QLS noted that 'the rationale for the inclusion of domestic violence offences is sound, insofar as there are parallels that can often be drawn between that type of conduct and sexual offending'. QLS supported the court's discretion to exclude such evidence if it is unfair to the accused to admit it.[228]

QLS stated that a risk in allowing preliminary complaint evidence leads to longer and more expensive trials and an increased risk of mistrials 'due to a jury's misuse of that evidence despite directions'. QLS believes this risk outweighs any benefit from using that evidence, 'which can be of little value to either defence or prosecution'.[229]

Dr Wallis et al considered the amendments around the admissibility of preliminary complaint evidence:

> [T]o be an appropriate extension to enable appropriate contextualisation of a complainant's behaviours in response to an offence. It also helps to promote consistency across the criminal justice regimes that exist for domestic violence and sexual offences. [230]

225 Full Stop Australia, submission 36, p 8.

226 Full Stop Australia, submission 36, pp 8-9.

227 Full Stop Australia, submission 36, p 9.

228 QLS, submission 41, pp 6-7.

229 QLS submission 41, p 7.

230 Dr Wallis et al, submission 22, p 4.

knowmore expressed disappointment that:

knowmore, submission 20, p 7

[T]he Bill does not include any amendments to expand the admissibility of preliminary complaint evidence so that it may be used as evidence of the facts in issue in sexual offence proceedings, in contrast to the consultation draft Bill circulated in July 2023.

2.5.4 Department response

2.5.4.1 Improper questions

DJAG noted the feedback and overall support for the proposed amendments to impose a duty on a court to prohibit the improper questioning of witnesses during cross-examination in any proceeding.[231]

In relation to concerns raised by Broken to Brilliant in relation to a failure by the court to disallow improper questions, DJAG responded:

DJAG, correspondence, 6 November 2023, pp 115-116

Proposed section 21(8) of the Evidence Act provides that a failure by the court to disallow an improper question under the section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

A failure by the court to disallow an improper question is not proposed to affect the admissibility of any answer given as it is not intended for the legislation to open a new avenue of appeal for accused persons. This approach is also consistent with comparable provisions in the Commonwealth, the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia and the Northern Territory.

2.5.4.2 Special rules for sexual offence proceedings

DJAG noted the feedback and general support for the proposed amendments to the hearing process to alleviate the trauma and humiliation that victims of sexual crimes may experience during a trial.[232]

2.5.4.3 Preliminary complaint evidence

DJAG noted the feedback and general support for the proposed amendments to the admissibility of preliminary complaints in sexual assault and domestic violence offences.[233]

Committee comment

The committee notes the Bill will repeal the CLSO Act and move the relevant provisions into the Evidence Act using modern legislative drafting standards and contemporary language.

The committee notes the wide support for the amendments including the QHRC comments that the proposed changes are reasonable and balanced.

The committee has heard on many occasions, including during its recent inquiry into assistance provided to victims of crime, of the triggering and traumatic impact that appearing in court can have on a victim-survivor. This is particularly prevalent when the complainant is subject to cross-examination which, due to the adversarial nature of the legal system, can be needlessly harsh and unforgiving to sexual offence complainants.

231 DJAG, correspondence, 6 November 2023, pp 113- 115.

232 DJAG, correspondence, 6 November 2023, pp 59- 60.

233 DJAG, correspondence, 6 November 2023, pp 59- 60.

The committee is pleased to see amendments that aim to promote the dignity of the complainant and reduce distress, humiliation and embarrassment for people appearing in already difficult and sensitive court proceedings.

2.6 Jury directions

- The Bill proposes to amend the Evidence Act to provide for a number of jury directions during sexual offence and domestic violence trials, including directions about consent, mistake of fact, memory, trauma, absence of injury, lack of a complaint, timeliness of a complaint and evidence of a post-offence relationship. The Bill also provides for when a judge should ascertain if these directions are required and when such directions can be made during the trial.[234]
- The Bill proposes to amend the Criminal Code to prohibit a judge from using phrases such as 'dangerous or unsafe to convict' or 'scrutinise with great care' when directing the jury in relation to the uncorroborated evidence of a witness.[235]
- The Bill proposes to amend the Evidence Act to abolish the jury direction attributed to *R v Markuleski* (2001) 52 NSWLR 82, known as a Markuleski direction.[236]

2.6.1 Background

2.6.1.1 Jury directions and misconceptions about sexual violence

According to Hear her voice – Report 2, the Taskforce heard that myths about sexual violence are continuing to influence trials. The Taskforce heard that social media messages on dating apps and the appearance of victim-survivors are being used to invoke common misconceptions in the minds of jurors and cast doubt on the complainant.[237]

The Taskforce concluded that jurors need to be better directed in complex criminal trials and recommended introducing jury directions on misconceptions about sexual violence. The Taskforce recommended that jury directions address the following:

- the circumstances in which non-consensual sexual activity occurs
- responses of a victim to non-consensual sexual activity when it occurs
- lack of physical injury to the victim-survivor, violence or threats made by the accused person
- victim-survivor responses to giving evidence about an alleged sexual offence at trial
- behaviour and appearance of a victim-survivor at the time of an alleged sexual offence
- perceived flirtatious or sexual behaviour (such as holding hands or kissing) implying consent to later sexual activity.[238]

2.6.1.2 Directions on uncorroborated witness evidence and Markuleski directions

In the Criminal Justice Report, the Royal Commission discussed jury directions made during sexual offence trials, particularly when the offence occurred many years ago and the evidence involved uncorroborated witness evidence.

234 Explanatory notes, pp 22-23.

235 Explanatory notes, p 10.

236 Explanatory notes, p 25.

237 Hear her voice – Report 2, p 347.

238 Hear her voice – Report 2, pp 22-23.

The Royal Commission stated that some jury directions contain assumptions by judges about the behaviour and memory of sexual offence complainants. These assumptions are then repeated by other judges with limited, if any, supporting research.[239]

One direction was from *R v Markuleski* (2001) 52 NSWLR 82 (*Markuleski*), where the New South Wales Court of Criminal Appeal heard an appeal in a child sexual abuse case. The offending had occurred around 20 years earlier, and the case was largely 'word against word'.

The direction was used for trials were multiple charges are brought against an accused. In *Markuleski*, the accused had been:

- convicted on 4 counts of indecent assault
- convicted on one count of sexual intercourse
- acquitted on another count of sexual intercourse.

The majority of the court held that, as a general rule in these cases, the trial judge should direct the jury that a reasonable doubt with respect to the complainant's evidence, on any count, ought to be taken into account in their assessment of the complainant's overall credibility.[240]

The Royal Commission considered that the arguments against *Markuleski d*irections are:

> [C]onsiderably more persuasive than the arguments in favour of it… Queensland and any other states or territories in which Markuleski directions are required should consider introducing legislation to abolish any requirement for such directions.[241]

Another direction came from the High Court case of *Longman v The Queen* [1989] HCA 60 (*Longman*), where the court stated:

> The jury should have been told that, as the evidence of the complainant could not be adequately tested after the passage of more than 20 years, it would be dangerous to convict on that evidence alone unless the jury, scrutinizing the evidence with great care, considering the circumstances relevant to its evaluation and paying heed to the warning, were satisfied of its truth and accuracy.[242]

The submitters to the Royal Commission said that directions like *Longman* made prosecutions extremely difficult, no matter how strong or credible those prosecutions were.

The Royal Commission was satisfied that no state or territory should retain these jury directions, making the following recommendation in their Criminal Justice Report[243] regarding uncorroborated witness evidence:

> Legislation should provide that the judge must not direct, warn or suggest to the jury that it is 'dangerous or unsafe to convict' on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be 'scrutinised with great care'.

2.6.2 Amendments

2.6.2.1 Jury directions and misconceptions about sexual violence

The explanatory notes state that the Bill amends the Evidence Act to introduce jury directions for sexual offences consistent with recommendation 77 of Hear her voice – Report 2. These include:

239 Criminal Justice Report: Parts VII – X and appendices, p 147.

240 Criminal Justice Report: Parts VII – X and appendices, p 130.

241 Criminal Justice Report: Parts VII – X and appendices, p 193.

242 *Longman v The Queen* [1989] HCA 60, [30].

243 Criminal Justice Report: Executive Summary and Parts I - II, p 89.

- directions about the circumstances in which non-consensual sexual activity occurs, responses to non-consensual sexual activity, lack of physical injury violence or threats, responses to giving evidence, the behaviour and appearance of the complainant
- directions about differences in the complainant's account, lack of complaint or delay in making complaint and evidence of post-offence relationship
- prohibitions on giving certain directions in relation evidence of complainants who delay in making a complaint (or who do not make a complaint).[244]

Judges must give directions:

- if there is a good reason to do so or
- if requested by a party to the proceeding, unless there is a good reason not to give the direction.

The judge may also ask the parties if evidence will be brought that would require them to give a direction to the jury.[245]

The Bill also proposes to allow judges to ask the parties if there is evidence that would require jury directions to domestic violence trials to create 'greater consistency' with the new sexual offence jury direction provisions[246] (currently, the Evidence Act only allows the prosecution or defence to ask the judge to direct the jury).[247]

The explanatory notes state that jury directions are intended to ensure juries receive better directions and reduce the extent to which rape myths influence their deliberations and decisions.[248]

2.6.2.2 Directions on uncorroborated witness evidence and Markuleski directions

The explanatory notes state that the Bill implements recommendations 65 and 66 of the Royal Commission's Criminal justice Report by:

- amending the Criminal Code to prohibit judges from using phrases such as 'dangerous or unsafe to convict' or 'scrutinise with great care' when directing the jury in relation to the uncorroborated evidence of a witness[249]
- amending the Evidence Act to abolish *Markuleski* directions.[250]

The Bill provides that a judge is not prevented from making a comment on the evidence that is appropriate to make in the particular circumstances of the case and in the interests of justice.[251]

2.6.3 Stakeholder views

Dr Wallis et al considered the 'inclusion of a range of directions that serve to better inform juries about what they may and may not consider' as a useful amendment to articulate appropriately-managed trials.[252]

244 Explanatory notes, p 22-23.

245 Bill, cl 59, ss 103ZP, 103ZQ.

246 Explanatory notes, p 23.

247 Evidence Act, s 103T.

248 Explanatory notes, p 23.

249 Explanatory notes, p 10.

250 Explanatory notes, p 25.

251 Explanatory notes, pp 10, 25.

252 Dr Wallis et al, submission 22, p 4.

BRISSC supported the amendments and recommended that the jury directions be required by legislation rather than be left to the judge's discretion. BRISSC stated that '[t]his approach is supportive of dispelling rape myths and biases that are pervasive in society'.[253]

QSAN, Zig Zag, GCCASV and Full Stop Australia recommended that judges be required to issue directions on misconceptions about sexual violence at the beginning of the trial and at any other time when requested by a party to the proceedings.[254] Full Stop Australia noted that making directions mandatory at the start of trials would 'mitigate the risk of juries building a narrative based on misconceptions'.[255]

Legal stakeholders tended to support jury directions being optional and left to the discretion of the judge. QLS stated its general position was that provisions on jury directions should:

QLS, submission 41, p 6

[B]e facilitative and not directive, and remain subject to a trial judge's overall discretion to ensure a fair trial. Further, it is important that directions are linked to the matters in issue in the proceedings, otherwise there is a risk of irrelevant directions being provided to the jury.

QLS recommended that, to reduce the risk of irrelevant directions being given to the jury, directions be required if 'the requested direction is relevant and it is in the interests of justice'.[256]

LAQ also advocated against the use of 'must' in the legislated jury directions contained in new sections 103ZY, 103ZZ, 103ZZA, 103ZZB, 132B and 132BAA. LAQ stated judges should have discretion when directing juries on each case as appropriate. LAQ supported the use of 'may' in the directions contained in new sections 103ZS, 103ZT, 103ZU, 103ZV, 103ZW and 103ZX, stating it meant the parties could 'ventilate and litigate the applicability and utility of such directions, and for the Court to exercise its discretion in relation to whether or not to give such directions and how to frame them'.[257]

Several stakeholders had specific recommendations about particular directions:

RSARA recommended removing 'of itself' from new sections 103ZU(b) and 103ZV, and moving new section 103ZX, which involves directions on mistake of fact, to the Criminal Code. RSARA also recommended amending section 103ZW to replace 'The judge may direct the jury that it should not be assumed that a person consented to sexual activity because the person' with 'The judge may direct the jury that the following matters are irrelevant to consent'.[258]

Submitter 3 recommended for new section 103ZY, which deals with jury directions on differences in the account of a sexual offence complainant:

- omitting or revising subsections (2)(a)(iii) and (iv). Informing jurors that 'it is common for there to be differences in accounts of a sexual offence' and 'both truthful and untruthful accounts of a sexual offence may contain differences' may confuse jurors and lead them to disregard serious concerns about inconsistencies in witness testimony.
- include a provision within the section in which it is emphasised that jurors must assess the complainant's truthfulness and reliability on the whole of the evidence before them, as '[t]his

253 BRISSC, submission 4, p 6.

254 QSAN, submission 14, p 12; Zig Zag, submission 12, p 5; GCCASV, submission 35, p 5; Full Stop Australia, submission 36, p 10.

255 Full Stop Australia, submission 36, p 10.

256 QLS, submission 41, p 6.

257 LAQ, submission 25, p 6.

258 RSARA, submission 18, p 2.

would ensure that jurors consider all of the circumstances in assessing a complainant's reliability, given that this is often a critical inquiry in sexual assault matters'.[259]

GCCASV made recommendations for new section 103ZZ(2)(c), which prohibits a judge from directing the jury that absence or delay of complaint is relevant to the complainant's credibility, unless there is sufficient evidence to justify the direction. GCCASV believes the phrase 'unless there is sufficient evidence to justify the direction' should be deleted and stated that 'there should not be any reason' to justify such a direction.[260]

Full Stop Australia recommended:

- amending new section 103ZT, stating 'the current drafting is weak, confusing and arguably undermines proposed s 348AA(1)(a) of the Bill'[261]
- amending new sections 103ZU(b) and 103ZV(b), stating that in its current form, the provision 'could unconsciously play into rape myths calling victim-survivor credibility into account'[262]
- strengthening the new section 103ZW to 'specify that the circumstances described in subsections (a) to (e) have nothing to do with whether a complainant consented, and should be disregarded in consideration of whether consent was present'[263]
- removing new section 103ZY(2)(a)(iv) and (b) as 'the issue of imperfect recall being a common response to trauma is already sufficiently dealt with by subclauses (i)-(iii)' and 'reference to "untruthful accounts" is inappropriate and potentially dangerous, as it seems to us to inadvertently reference harmful myths that people lie about being sexually assaulted'[264]
- removing 'of itself' from new section 103ZZ(2)(a) as they 'are concerned that this might unconsciously undermine the credibility of victim-survivors… We are concerned that caveating this direction might have the effect of reinforcing such myths'.[265]

2.6.4 Department response

DJAG noted that '[t]he Bill introduces jury directions which address various misconceptions, including some that are underpinned by power and control'.[266]

In relation to the comments made by BRISSC regarding the discretionary nature of many of the new directions, DJAG responded:

DJAG, correspondence, 6 November 2023, pp 116-117

The proposed amendments provide that the judge must give one or more of the directions in relation to consent and mistake of fact if there is a good reason to give the direction, or if requested to give the direction by a party to the proceeding, unless there is a good reason not to give the direction. This is consistent with the approach in New South Wales and similar to the approach in Victoria.

The proposed amendments impose a mandatory requirement on the judge to give directions in relation to consent and mistake of fact, subject to the judge exercising their discretion regarding

259 Submission 3, p 2.

260 GCCASV, submission 35, p 5.

261 Full Stop Australia, submission 36, p 11.

262 Full Stop Australia, submission 36, p 11.

263 Full Stop Australia, submission 36, p 12.

264 Full Stop Australia, submission 36, p 12.

265 Full Stop Australia, submission 36, pp 12-13.

266 DJAG, correspondence, 6 November 2023, p 99.

whether there are 'good reasons' to give, or not give, the direction. This reduces the risk of directions being given which are not relevant to the evidence in a particular case.

For other directions introduced by the Bill (including in relation to differences in the complainant's account, lack of complaint or delay in making a complaint, and evidence of a post-offence relationship), the judge must give the directions if evidence is given, or likely to be given, that tends to suggest the issues addressed by the directions. This is consistent with the approach in Victoria.

In relation to the submitters' comments that jury directions be given at the beginning of a trial, DJAG referred to Taskforce conclusion regarding the benefit of giving directions to a jury at the time that the relevant evidence is being presented in court, so that the jury can consider the evidence in the proper context.

In relation to the submitters' comments that jury directions be given at the beginning of a trial, DJAG referred to Taskforce conclusion regarding the benefit of giving directions to a jury at the time that the relevant evidence is being presented in court, so that the jury can consider the evidence in the proper context.

Regarding the submitters' comment about providing jury directions 'at any other relevant time when requested by a party to the proceeding', DJAG noted that 'the proposed amendments allow a judge to repeat a direction at any time in the criminal proceeding' and that '[i]t is anticipated that the parties to the proceeding would be able to make submissions regarding the exercise of the judge's discretion to repeat directions'.[267]

In response to the LAQ's submission, DJAG noted that proposed sections 103ZY, 103ZZ, 103ZZA, 103ZZB, 132B and 132BAA of the Evidence Act, which require or prohibit certain directions, are comparable to provisions in Victoria.

In response to RSARA's comments regarding sections 103ZU(b) and 103ZV, DJAG responded:

> Proposed section 103ZU of the Evidence Act has been based on the provision in New South Wales and previously used the term 'necessarily', rather than 'of itself'. During consultation on a consultation draft copy of the Bill, feedback raised concerns with how this may unconsciously play into rape myths. The term 'necessarily' has been replaced with 'of itself' in response to this feedback, while still ensuring that the direction does not cause unfairness to the defendant.[268]

In response to RSARA's comments regarding section 103ZW, DJAG responded:

> The language used in proposed section 103ZW of the Evidence Act is consistent with equivalent provisions in New South Wales and Victoria.
>
> This language recognises that while the matters listed should not form the basis of an assumption that a person consented to a sexual activity, there may be circumstances when those matters are otherwise relevant and should not be disregarded. For example, where a complainant consumed alcohol, this may be relevant to proposed section 348AA(1)(c) of the Criminal Code (clause 13 of the Bill) which provides that a person does not consent to an act if the person is so affected by alcohol or another drug as to be incapable of consenting to the act.[269]

In response to Submitter 3's comments regarding section 103ZY DJAG responded:

> The Proposed section 103ZY(2)(b) of the Evidence Act will require the judge to direct the jury (where relevant) that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.
>
> It is up to the jury to decide whether they accept the whole of a witness's evidence, or only part of it, or none of it. The jury is generally given a direction to this effect in the judge's summing up.[270]

[267] DJAG, correspondence, 6 November 2023, p 118.

[268] DJAG, correspondence, 6 November 2023, p 121.

[269] DJAG, correspondence, 6 November 2023, p 121.

[270] DJAG, correspondence, 6 November 2023, p 122.

Committee comment

The committee notes the support and concerns of submitters regarding the amendments.

The committee recognises the law can be quite complex and difficult for jurors. Jurors are drawn from members of the community and are not expected to have a deep understanding of legal principles and case law.

The committee appreciates the need for judges to provide direction and clarity to the jury. Jurors must abide by these directions as part of the process for reaching their verdict. Not all cases are the same and therefore jury directions will differ with the varying facts and parties.

The committee therefore agrees with DJAG's response that the judge should be given discretion to determine whether there is a requirement for the direction to be given as too many directions are likely to confuse an already difficult process for jurors.

The committee further notes a judge has the discretion to give the same direction at multiple times during the trial if needed if the judge believes will assist to clarify the rules of law for jurors.

2.7 Bail considerations

- The Bill proposes to require police and courts to consider the impact that refusal of bail, or bail conditions, would have on those that rely on the defendant for care. The intent is to have police and courts to take a more holistic view of a person's life (specifically, their caregiving responsibilities) when assessing whether to grant or refuse bail.[271]
- The amendments are to the Bail Act and the Youth Justice Act in order to apply to adults and youth offenders.[272]

2.7.1 Background

According to the explanatory notes, the Taskforce found that women are more likely to be refused bail, and because of their circumstances and vulnerabilities may be disproportionately impacted by existing laws around bail.

The Taskforce observed that refusing of bail seriously limits a woman's ability to seek legal assistance, and to plan for the care of dependent children. The Taskforce recommended that, when deciding whether to grant bail, the effect on a person's family and dependants should be considered.[273]

2.7.2 Amendments

The Bill proposes to amend the Bail Act to require police officers or courts considering bail to consider the impact that refusal of bail, or a bail condition, would have on those who depend on the defendant for care, such as children.

The Bill refers to those who have a 'family relationship' and 'informal care relationship' with the defendant, and defines them with reference to the DFVP Act. The Bill mirrors these amendments in the Youth Justice Act for youth defendants.

The explanatory notes state that the amendments are intended to require police and courts to take a more holistic view of a person's life (specifically, their caregiving responsibilities) when assessing bail applications and encourage bail conditions that are more easily complied with.[274]

271 Explanatory notes, p 3.

272 Explanatory notes, p 3.

273 Explanatory notes, p 3.

274 Explanatory notes, p 3.

2.7.3 Stakeholder views

BRISSC was broadly supportive of bail conditions attempting to bridge the gender gap but was concerned this could be misused by perpetrators, and recommended that the safety of the victim-survivor should be prioritised during bail considerations.[275]

QHRC supported the amendments to bail laws that require the consideration of the likely effect of refusal of bail. QHRC stated that amendments must weigh the rights of families, children and First Nations people's cultural rights with individual and community rights to liberty and security.[276]

Broken to Brilliant recommended that DFV victims be notified prior to or at the release of a perpetrator on bail to ensure the victim is informed and, if necessary, take safety measures.[277]

Full Stop Australia recommended that the proposed bail considerations not apply for offenders who are in custody for a DFV offence, or offenders who have a history of DFV offences.[278]

NQWLS, QCU and QPU all supported the amendments,[279] while QCOSS welcomed the expanded bail considerations relevant to children.[280]

2.7.4 Department response

DJAG noted the feedback from the stakeholders in regard to the proposed changes to bail provisions under the Bill. In specific response to BRISSC's concerns about the section being misused by perpetrators, DJAG stated:

DJAG, correspondence, 6 November 2023, p 131

The term "primary caregiver" was chosen for these provisions, rather than "dependant", to narrow any potential for misuse. The amendments will not displace the requirement in section 16(1) of the Bail Act 1980 (Bail Act), which provides that a decision maker refuse to grant bail if there is an unacceptable risk the defendant would commit an offence or endanger the safety or welfare of another person.

Regarding Broken to Brilliant's suggestion that DFV victims be notified prior to or at the release of a perpetrator on bail, DJAG referred to the Charter of Victims' Rights contained in Schedule 1AA of the *Victims of Crime Assistance Act 2009* and noted that the prosecuting authority would usually notify a complainant about an upcoming bail application, and the outcome 'including any special bail conditions imposed that may affect the victim's safety or welfare'.[281]

Committee comment

The committee notes the support of submitters for the amendments to the Bail Act.

The committee notes the concerns about the section being misused by perpetrators and also notes DJAG's response that the term primary caregiver had been chosen to help alleviate the potential for misuse.

275 BRISSC, submission 4, p 6.

276 QHRC, submission 10, pp 6-7.

277 Broken to Brilliant, submission 13, p 2.

278 Full Stop Australia, submission 36, p 3.

279 NQWLS, submission 30, p 1; QCU, submission 32, p 3; QPU, submission 37, p 2.

280 QCOSS, submission 24, pp 3-4.

281 DJAG, correspondence, 6 November 2023, pp 131-132.

2.8 Criminal history and sentencing considerations

- The Bill proposes to amend the Criminal Code and Justices Act to allow domestic violence complaints and indictments to state whether the offence was against a child. If a defendant is convicted, the Bill provides that their criminal history will show the domestic violence offence was committed against a child.[282]
- The Bill proposes to amend the Penalties and Sentences Act to require a court, when sentencing an offender for a domestic violence offence, to treat the following circumstances as aggravating:
  - the domestic violence offence was committed against a child
  - a child was exposed to domestic violence when the offence occurred
  - the domestic violence offence was in breach of an order or release conditions under the DFVP Act.[283]
- The Bill proposes to amend sentencing considerations under the Penalties and Sentences Act and the Youth Justice Act. Sentencing courts would be required to consider the hardship of a sentence on an offender, having regard to characteristics such as age, sex, gender identity, disability, parental status or religion.[284]

2.8.1 Background

2.8.1.1 Recording offences that expose a child to domestic violence

In Hear her voice – Report 1, the Taskforce formed the view that harm caused to children should be explicitly recorded on the verdict and judgment record that is produced by the court (this is a written document which records the outcome of a court proceeding).[285]

The Taskforce recommended that the Penalties and Sentences Act be amended so that:

> [A]n offender's criminal history accurately reflects whether the domestic violence offence they have committed has also caused a child to be exposed to domestic and family violence.[286]

2.8.1.2 Aggravating factor in sentencing when offence is against a child or exposes a child to DFV

The Taskforce considered in Hear her voice – Report 1 that offending which exposes a child to DFV is particularly serious and should be taken into consideration when sentencing.[287]

The Taskforce recommended the Penalties and Sentences Act to be amended so that, for the purposes of sentencing, it would be an aggravating factor if a child was exposed to domestic violence during the conduct of a domestic violence offence.[288]

2.8.1.3 Requirement to consider characteristics, hardship, victimisation/abuse, systemic disadvantage and intergenerational trauma

According to Hear her Voice – Report 2, the Taskforce was concerned by what it heard from women and stakeholders about relevant factors such as victimisation history, trauma, and hardship to both women and their children not being presented to the courts, or not being adequately considered.[289]

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282 Explanatory notes, p 13.

283 Explanatory notes, p 13.

284 Explanatory notes, p 26.

285 Hear her voice – Report 1, p 753.

286 Hear her voice – Report 1, p 742.

287 Hear her voice – Report 1, p 752.

288 Hear her voice – Report 1, p 742.

289 Hear her voice – Report 2, p 561.

The Taskforce recommended in Hear her voice – Report 2 to amend the Penalties and Sentences Act to:

- require the court to consider the hardship that any sentence would impose on the offender in consideration of an offender's characteristics, including gender, sex, sexuality, age, race, religion, parental status, and disability
- require the court to consider, if relevant, the offender's history of abuse or victimisation
- require the court to consider probable effect that any sentence or order under consideration would have on any of the person's family or dependants, whether or not the circumstances are 'exceptional'
- expand subsection 9(2)(p) to clarify that cultural considerations include the impact of systemic disadvantage and intergenerational trauma on the offender.[290]

2.8.2 Amendments

2.8.2.1 Recording offences that expose a child to domestic violence

The Bill also amends section 12A of the Penalties and Sentences Act, so that an offenders' criminal history must now also reflect when they are convicted of a domestic violence offence committed against a child, or a domestic violence offence that exposed a child to domestic violence.

The explanatory notes state that these amendments are intended to enable future courts, police, prosecutors, and corrective services officers to easily identify patterns of behaviour against the same or different victims.

The Bill amends the Criminal Code and the Justices Act to allow indictments and complaints to state (or be amended to state) that an offence is a domestic violence offence committed against a child, or that exposed a child to domestic violence.[291]

2.8.2.2 Aggravating factor in sentencing when offence is against a child or exposes a child to DFV

The Bill amends section 9 of the Penalties and Sentences Act to require a court to treat the following circumstances as aggravating when sentencing an offender for a domestic violence offence:

- if an adult offender is convicted of a domestic violence offence committed against a child
- if an offender is convicted of a domestic violence offence and a child was exposed to the domestic violence during the commission of the offence
- if an offender is convicted of a domestic violence offence that was also a contravention of an order or release conditions under the DFVP Act, or of an injunction.[292]

2.8.2.3 Requirement to consider characteristics, hardship, victimisation/abuse, systemic disadvantage and intergenerational trauma

The Bill inserts a new requirement for the court to consider the hardship that any sentence imposed would have on the offender, having regard to the offender's characteristics, including:

- age
- disability
- gender identity
- parental status
- race

[290] Hear her voice – Report 2, p 563.

[291] Explanatory notes, p 13.

[292] Explanatory notes, p 13.

- religion
- sex
- sex characteristics
- sexuality
- any history of the offender being victimised or abused.[293]

The Bill adds a requirement for the court to consider the effect that any sentence imposed would have on a person with whom the offender is in a family relationship and for whom the defendant is the primary caregiver, or a person with whom the defendant is in an informal care relationship. Where a defendant is pregnant, the Bill requires a court to consider the probable effect of the sentence on the child, once born.

The Bill states that these relationships and child considerations will operate regardless of whether exceptional circumstances exist. This is intended to override the common law principle that any hardship suffered by the person's family and dependants can only mitigate a sentence in 'exceptional circumstances'.[294]

Further, in the case of Aboriginal or Torres Strait Islander offenders, the Bill proposes that courts must consider any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender.[295]

These amendments will be mirrored across the Penalties and Sentences Act and the Youth Justice Act to capture adult and youth offenders.

2.8.3 Stakeholder views

2.8.3.1 Recording offences that expose a child to domestic violence

The QCU noted that recording these types of offences will impact employment opportunities, especially those that require a blue card or a criminal history check, and stated that:

> [I]t is pertinent that agencies, employers and regulatory bodies anticipate the increased demand that this legislation will create and implement processes to manage this increase.[296]

2.8.3.2 Aggravating factor in sentencing when offence is against a child or exposes a child to DFV

NQWLS and QCU supported the amendments that require a court to treat DFV offences that were against a child or exposed a child to DFV as aggravating factors when considering sentencing.[297]

2.8.3.3 Requirement to consider characteristics, hardship, victimisation/abuse, systemic disadvantage and intergenerational trauma

QCOSS supported the expansion of sentencing considerations proposed by the Bill, stating the expanded sentencing considerations 'represent an important step forward in approaching justice differently'.[298]

Multicultural Australia supported the sentencing amendments to the Penalties and Sentences Act and the Youth Justice Act, stating that:

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293 Explanatory notes, p 26.

294 Explanatory notes, p 26; Hear her voice – Report 2, p 563.

295 Explanatory notes, p 27.

296 QCU, submission 32, p 13.

297 NQWLS, submission 30, p 10; QCU, submission 32, p 12.

298 QCOSS, submission 24, p 4.

> We consider empowering the court to consider all relevant factors in sentencing important in protecting the right to recognition and equality before the law of all defendants.[299]

ATSILS stated its strong support for the proposed amendments that require the court to have regard to cultural considerations, including systemic disadvantage and intergenerational trauma, when the person being sentenced is an Aboriginal and/or Torres Strait Islander person.[300]

QHRC and knowmore also supported the requirement for courts to have regard to cultural considerations for Aboriginal and/or Torres Strait Islander persons, as well as consideration of an offender's history of being victimised or abused.[301]

NQWLS supported the amendments that require the court to consider an offender's history of being abused or victimised.[302] However, NQWLS stated that the Penalties and Sentences Act already has scope to include relevant cultural considerations, and expressed concern that:

NQWLS, submission 30, p 10

> [E]xpanding the sentencing guidelines to broadly include 'systemic disadvantage' and 'intergenerational trauma on the offender', signals the wrong message to victim-survivors. Essentially, this could be seen as an elevation of the rights of First Nations men who commit domestic violence, at the expense of the rights of First Nations women and children to live free of violence.
>
> We argue that victims-survivors of domestic violence would themselves suffer 'systemic disadvantage' by the inclusion of these considerations in the sentencing guidelines. Furthermore, victim-survivors experience trauma from the impact of domestic violence that may compound any intergenerational trauma they experience. It would be unjust to elevate the offender's trauma over their victim's trauma.

Submitter 3 also did not support systematic disadvantage being included as a sentencing consideration. The submission stated that disadvantage and personal background is already considered when sentencing and that:

> [T]he inclusion of 'systematic disadvantage' would encourage mitigation simply due to the disadvantage suffered by a group to which an offender belongs; the offender themselves may have suffered no disadvantage at all.[303]

BRISSC expressed concern that the sentencing provisions could lead to perpetrators receiving light sentencing.[304]

2.8.4 Department response

2.8.4.1 Recording offences that expose a child to domestic violence

In response to QCU's concern about how the recording of these types of offences will impact employment opportunities, especially those that require a blue card or a criminal history check, DJAG responded that the blue card check 'needs to be as comprehensive and rigorous as possible'.[305]

299 Multicultural Australia, submission 9, p 9.

300 ATSILS, submission 8, p 6.

301 QHRC, submission 10, p 7; knowmore, submission 20, p 5.

302 NQWLS, submission 30, p 10.

303 Submission 3, p 3.

304 BRISSC, submission 4, p 7.

305 DJAG, correspondence, 6 November 2023, pp 36-37.

2.8.4.2 Aggravating factor in sentencing when offence is against a child or exposes a child to DFV

DJAG noted the feedback from NQWLS and QCU in relation to the amendments to the Penalties and Sentences Act supporting the amendments that require a court to treat DFV offences that were against a child or exposed a child to DFV as aggravating factors when considering sentencing.[306]

2.8.4.3 Requirement to consider characteristics, hardship, victimisation/abuse, systemic disadvantage and intergenerational trauma

DJAG noted the general support from stakeholders concerning the amendments to sentencing considerations requiring characteristics, hardship, victimisation/abuse, systemic disadvantage and intergenerational trauma be taken into account.[307]

DJAG commented that the Taskforce was prescriptive that the amendments should require a court to consider, among other things, an offender's characteristics including race, the impact of systemic disadvantage and intergenerational trauma on the offender and the probable effect that any sentence or order under consideration would have on any of the person's family or dependants.[308]

In relation to concerns raised by Submitter 3 that the inclusion of 'systemic disadvantage' as a sentencing consideration is not appropriate, DJAG noted that 'the effect of systemic disadvantage and intergenerational trauma "on the offender", as opposed to generally. Therefore, the consideration will be specific to the offender, as per the submitter's suggestion'.[309]

DJAG responded to the concerns of NQWLS that the amendments relating to systemic disadvantage and intergenerational trauma operate unjustly by elevating the offender's trauma over their victim's trauma by stating that:

DJAG, correspondence, 6 November 2023, pp 135-136

> [T]hese amendments will not serve to elevate the rights of a particular group over the rights of a complainant in a case involving domestic violence. A sentencing court is required to balance a number of features in arriving at a sentence. Other features – such as the seriousness of the offence, any injury, damage or loss caused by the offence, and any physical mental or emotional harm - will also be considered and balanced.

Committee comment

The committee notes the general support for the amendments.

The committee notes concerns by some submitters that the provisions may result in the undesirable situation where an offender's trauma may be elevated over their victim's grievance.

The committee notes DJAG's response that the amendments will not elevate the rights of a particular group over another, rather the amendments require a sentencing court to balance and consider all factors.

The committee notes that sentencing principles require consideration and do not mandate a particular outcome, and that it will be left to the discretion of the court regarding whether an offender's history of victimisation or intergenerational trauma is significant and relevant enough to impact their sentence.

306 DJAG, correspondence, 6 November 2023, p 58.

307 DJAG, correspondence, 6 November 2023, pp 132-136.

308 DJAG, correspondence, 6 November 2023, pp 133-135.

309 DJAG, correspondence, 6 November 2023, p 135.

2.9 Publishing information on sexual offence or domestic and family violence proceedings

- The Bill proposes to amend the DFVP Act and DFVP Regulation to allow accredited media entities to apply for transcripts of DVO applications and publish information, but not information that identifies or is likely to lead to the identification of parties to the application or a child.[310]
- The Bill proposes to modernise the language in the CLSO Act regarding the limits on publication of sexual violence offences (such as publishing information that identifies the complainant), and move these provisions to the Evidence Act.[311]
- The Bill proposes to amend the Evidence Act and the Recording of Evidence Regulation to authorise the release of transcripts of sexual offence proceedings for approved research purposes at reduced or no cost.[312]

2.9.1 Background

2.9.1.1 Open justice during domestic and family violence proceedings

Open justice is one of the basic elements of a fair trial. Having open justice means legal proceedings are held in courts that are open to the public and subject to public or professional scrutiny. Without open justice, abuses of the law can occur.[313]

There are few exceptions to the open justice rule. One exception occurs during civil proceedings for domestic violence orders, where the victim is protected from having their identity disclosed. The rationale is that this privacy gives confidence to victims and aims to make it easier for them to report and seek help.[314]

The Taskforce examined this exception to open justice. In Queensland, DVO applications are civil law matters that occur in closed court and cannot be reported on publicly. The Taskforce rejected the idea of making DVO applications occur in open court, but did find some benefit in media being able to access and publicly report on DVO applications provided that the reporting did not identify or lead to the identification of victim-survivors or their children.

The Taskforce recommended the DFVP Act be amended to:

- allow accredited media entities to apply for de-identified transcripts of proceedings
- require the court to consider whether the releasing of transcripts is in the public interest and subject to the principles of the DFVP Act
- clarify that the prohibition on publication does not extend to criminal proceedings under the DFVP Act.

The Taskforce recommended these amendments take place alongside a reviewed Domestic and Family Violence Media Guide (DFV Media Guide) as recommended under Hear her voice – Report 1.[315]

310 Explanatory notes, p 15.

311 Explanatory notes, p 25.

312 Explanatory notes, p 26.

313 *John Fairfax & Sons Limited v Police Tribunal of NSW* (1986) 5 NSWLR 465, [476]–[477]; *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378, [44]; *Russell v Russell* (1976) 134 CLR 495, 520.

314 Hear her voice – Report 2, p 56.

315 Hear her voice – Report 2, pp 374-375.

2.9.1.2 Limits on publishing information on sexual offences

Queensland has limits on publishing information relating to sexual offence proceedings. For example, the public are excluded from the court while the complainant is giving evidence and the identity of the complaint is not to be published at large.[316]

The Taskforce found that empowering people who are victim-survivors of sexual violence to share their story publicly can be an important part of the healing process. It may also contribute to positive social change to address and prevent sexual violence.

The Taskforce recommended that law reform should occur so that victim-survivors are empowered to tell their story, consent to the publication of their identity, and determine what is published and how that information is published.[317]

2.9.1.3 Access to transcripts for research purposes

The Taskforce observed in its report that:

> A significant impediment to evidence-informed reform of the criminal justice system's response to sexual offending is a lack of high-quality research into what occurs during criminal trials.[318]

The Taskforce noted that the CLSO Act has no framework to allow for the release of transcripts for 'prescribed research' similar to those that exist under the *Child Protection Act 1999*.

The Taskforce recommended that the CLSO Act be amended to:

> [E]nable the Director-General of the Department of Justice and Attorney-General to release transcripts of proceedings for sexual offences for approved research purposes on the basis that anonymity of victim-survivors would be preserved…

The Taskforce also recommended that the Recording of Evidence Regulation be amended to allow these transcripts to be provided for free or at reduced cost.[319]

2.9.2 Amendments

2.9.2.1 Open justice during domestic and family violence proceedings

The Bill proposes to amend the DFVP Act to:

- allow accredited media entities to publish information if the information does not identify (and is not likely to lead to the identification of) a person as a party, witness or a child
- allow a judicial officer to release a transcript of a DVO application proceeding to an accredited media entity.

When deciding whether to release a transcript to an accredited media entity, the judicial officer must:

- consider the safety, protection and wellbeing of people who fear or experience domestic violence, including children, as paramount[320]
- receive an undertaking from the accredited media entity to comply with the DFV Media Guide
- be satisfied that it is in the public interest to give the authorisation.[321]

316 CLSO Act, ss 4-5.

317 Hear her voice – Report 2, pp 363-364.

318 Hear her voice – Report 2, p 363.

319 Hear her voice – Report 2, pp 23-24.

320 DFVP Act, s 4.

321 Explanatory notes, p 15.

It will remain an offence to publish information that identifies, or could lead to the identification of, a party to the proceeding, a witness or a child.[322]

The Bill proposes to clarify the DFVP Regulation and state that the prohibition on publishing information does not extend to criminal proceedings under the DFVP Act.[323] The Bill also amends the DFVP Regulation to provide that publication is not permitted (of information that is either in the public domain or in which the community has a legitimate interest) where that would identify a child.[324]

2.9.2.2 Limits on publishing information on sexual offences

The Bill proposes to amend the provisions that govern the publication of information around sexual offence proceedings. The explanatory notes state the amendments implement recommendation 81 of Hear her voice – Report 2 by:

- modernising these provisions in contemporary language and moves them from the CLSO Act to the Evidence Act.
- maintaining the existing prohibition on publishing identifying information about a complainant
- providing for exceptions to the publication offence where:
    - an adult or child complainant has self-published
    - an adult complainant has given written consent
    - a child complainant has given written consent and there is supporting evidence from a doctor or psychologist verifying the child has capacity to consent and understands what it means to be publicly identified as a victim of a sexual offence.[325]
- the publication prohibition does not apply if the complainant is deceased and so the Bill establishes victim privacy orders, where a person with sufficient interest may apply to the court for a complainant privacy order.[326]

2.9.2.3 Access to transcripts for research purposes

The Bill proposes to implement the last components of recommendations 81 and 82 of Hear her voice – Report 2 by:

- amending the Evidence Act to allow the chief executive to release transcripts of sexual offence proceedings for approved research purposes
- amend the Recording of Evidence Regulation to allow these transcripts to be provided for free or at reduced cost (the research will need to have approval by a human research ethics committee).[327]

322 DFVP Act, s 159.

323 Explanatory notes, p 15.

324 Explanatory notes, pp 15-16.

325 Explanatory notes, p 25. In each of these exceptions, the publication must not identify or be likely to identify another sexual offence complainant or a child who is a complainant, defendant or witness in a criminal proceeding for a sexual offence. Publication must also be in accordance with any limits set by the complainant.

326 Explanatory notes, p 26. The framework is based on the *Judicial Proceedings Reports Act 1958 (Vic)*.

327 Explanatory notes, p 26.

2.9.3 Stakeholder views

Stakeholders generally supported the amendments but had differing recommendations when it came to children and deceased victim-survivors.

2.9.3.1 Open justice during domestic and family violence proceedings

Caxton suggested that when a media entity applies for de-identified transcripts of DFV proceedings, all parties should be:

- notified of the application
- given the opportunity to make submissions on the application
- be notified that a copy of the transcript will be provided to the media, including how it will be de-identified to comply with the legislation.[328]

NQWLS agreed with the amendments regarding transcripts from DFV proceedings, specifically the 'sections that provide for accredited media entities to publish de-identified information regarding proceedings under the DFVPA and to apply for access for a copy of record of a proceeding'.[329]

The QPU supported the publication of DFV proceedings transcripts on the basis that victims and children would not be identified. The QPU noted that particular care would be needed when authorising reporting in rural locations, where people may be more readily identifiable.[330]

2.9.3.2 Limits on publishing information on sexual offences

Submitter 3 was concerned that children lack the capacity to properly understand the consequences of waving their anonymity as sexual offence complainants and recommended that the consent of the child's parent or guardian be required. Submitter 3 also recommended provisions that address online content that breaches the anonymity restrictions of the new section 103ZZN, including provisions that penalise online publishers who publish identifying information.[331]

QSAN argued that the provisions around publishing information on sexual offence proceedings are complex and that community information must be available immediately.[332] RSARA also recommended that the provisions be simplified regarding publishing identifying information for sexual offence complainants to ensure it is accessible to the community.[333]

knowmore strongly supported the amendments on sexual offence proceedings, and says that the 'provisions place the views and wishes of complainants at the forefront'.[334] knowmore did not support the provisions that end the prohibition on publishing a sexual offence complainant's identifying information upon the complainant's death, considered the 'complainant privacy order provisions are also needlessly complex' and was concerned that the burden of protecting a complainant's anonymity would fall on their relatives.[335]

NQWLS supported the inclusion of defences where an adult sexual offence complainant consented to the publication of identifying matters, but had 'major concerns' about a child complainant consenting to have their identity published. NQWLS stated that 'a child is highly unlikely to understand what it means to be identified as a victim of a sexual offence' and added:

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328 Caxton, submission 23, p 3.

329 NQWLS, submission 30, p 6.

330 QPU, submission 37, p 3.

331 Submission 3, pp 1-2.

332 QSAN, submission 14, p 13.

333 RSARA, submission 18, p 2.

334 knowmore, submission 20, p 6.

335 knowmore, submission 20, p 6.

NQWLS, submission 30, p 9

[U]nless someone has had the experience of being identified as a child victim of a sexual offence, they cannot possibly provide meaningful advice or counsel a child contemplating publishing or allowing publication of their sexual assault story, let alone be sure the child understands what publication will mean to them.

NQWLS recommended that children should not be penalised for publishing their story, but that exception should not apply for publishers who publish without a child's consent.[336]

2.9.3.3 Access to transcripts for research purposes

QIFVLS supported the amendments but raised privacy issues regarding the researcher being authorised to contact the parties to a DFV proceeding, particularly vulnerable parties from marginalised communities and in whom English is not their first language.

QIFVLS asks if there would be a procedure whereby the court, a legal representative or a cultural support worker from a community-controlled organisation would be the first person to contact the parties.[337]

2.9.4 Department response

In relation to the comments made by Submitter 3 and NQWLS, DJAG noted that 'additional protections are provided for child complainants who provide consent to publication; because of immature age they may be vulnerable to exploitation or lack the capacity to understand the consequences of publication'.[338] These protections include requiring a supporting statement, to be provided by a doctor or psychologist, to affirm the child has capacity and understands the consequences of being identified as a victim and losing anonymity. DJAG also noted that:

> The Bill does not require a supporting statement for children who self-publish, noting concerns from stakeholders during consultation on the draft Bill which highlighted the potential of criminalising children who self-publish without a supporting statement.[339]

DJAG noted knowmore's concerns about the provisions in the Bill regarding publishing the identifying information of a deceased complainant. DJAG considered that:

DJAG, correspondence, 6 November 2023, p 129

[T]he approach in the Bill will appropriately balance the diverse interests that arise in such cases, ensuring that family is not criminalised, and that there is appropriate media reporting (supported by the recommended media guide), while still giving an avenue for concerned family members to protect the privacy of deceased victims by applying to the court for a complainant privacy order.

Committee comment

The committee notes the recommendations by submitters that all parties should be notified of the application to publish a de-identified transcript and given the opportunity to make submissions on the application.

336 NQWLS, submission 30, p 9.

337 QIFVLS, submission 39, p 9.

338 DJAG, correspondence, 6 November 2023, p 128.

339 DJAG, correspondence, 6 November 2023, p 129.

The committee also notes DJAG's response that the Bill does not include a specific requirement to serve an application as this may be triggering for victims or instigate further domestic violence. The committee is satisfied that the de-identifying requirements of the Bill mean the parties and witnesses should not be identified in any reporting.

The committee is pleased to note section 103ZZL clarifies the prohibition of publishing identifying information in relation to a complainant by social media as well as traditional methods such as print and television.

The committee also notes concerns that the prohibition on publishing a sexual offence complainant's identifying information ended upon their death. The committee notes DJAG's response to submitters concerns regarding publishing identifying information of a deceased complainant and that there is an avenue for concerned family members to protect the privacy of deceased victims by applying to the court for a complaint privacy order. However, the committee is concerned about the publishing of identifying information about deceased First Nations people as it is aware that the reproduction of the names and photographs of deceased persons is restricted in some areas of indigenous Australia during periods of mourning. The committee has made a recommendation on this matter.

Recommendation 6

The committee recommends the Queensland Government considers amending section 103ZZN(3), to require that, in the event the complainant is of Aboriginal or Torres Strait Islander descent, publishing entities consult with the relevant First Nations' organisations prior to publishing identifying details about the complainant.

2.10 Out of scope – Deepfakes

2.10.1 Background

A deepfake is a digital photo, video or sound file of a real person that has been edited to create an extremely realistic but false depiction of them doing or saying something that they did not actually do or say.[340]

Targeting or preventing deepfake distribution was not a specific target or outcome of the various inquiries that informed the Bill, however several of the Bill's amendments are related to the distribution or threat to distribute images and recordings.

2.10.2 Amendments

The Bill proposes to amend the Criminal Code provisions regarding:

- distributing intimate images (section 223)
- distributing prohibited visual recordings (section 227B)
- threats to distribute intimate image or prohibited visual recording (section 229A).

The amendments change the definition of consent to:

> [C]onsent means free and voluntary agreement by a person with the cognitive capacity to make the agreement.[341]

[340] Commonwealth eSafety Commissioner, 'Deepfake trends and challenges – position statement', www.esafety.gov.au/industry/tech-trends-and-challenges/deepfakes.

[341] Bill, cls 10-12.

2.10.3 Stakeholder views

The submission from QYPC raised the issue of deepfakes. According to QYPC, ready access to deepfake technology can be used by malicious actors to create material that portrays individuals in sexual acts that never occurred. These images can be 'very difficulty to distinguish from real images'. This difficulty in distinguishing them from real images poses a 'particularly insidious' threat for potential victims. [342]

QYPC lists the risks of deepfake material to victims, including:

- emotional distress, humiliation and reputation damage
- threats to the safety and well-being
- harassment, intimidation or extortion.[343]

QYPC submitted that AI technology is becoming more advanced and more accessible, and recommends the Bill be amended to include 'a specific criminal offence in relation to deepfake intimate images'.[344]

2.10.4 Department response

DJAG noted the comments from QYPC but stated the subject is outside the scope of the Bill.[345]

Committee comment

The committee notes that the proposed amendments in the Bill will update the consent framework for the distribution of intimate images and prohibited visual recordings.

The committee notes QYPC's argument for a broader suite of reforms to protect future victims from the creation and distribution of deepfake materials. The committee notes that QYPC has used the Victorian *Crimes Act 1958* as an example, where to 'produce' an image includes creating the digital creation of an image.[346]

The committee notes the department's response that preventing deepfakes is outside the scope for this Bill. Nonetheless, the committee encourages the Queensland Government to undertake additional investigation and consideration of this issue.

342 QYPC, submission 19, p 10.

343 QYPC, submission 19, p 11.

344 QYPC, submission 19, pp 12-13.

345 DJAG, correspondence, 6 November 2023, p 92.

346 *Crimes Act 1958* (Vic), s 53O.

Appendix A – Submitters

Sub #	Submitter
1	Name Withheld
2	Name Withheld
3	Name Withheld
4	Brisbane Rape & Incest Survivors Support Centre
5	Australian Lawyers Alliance
6	Name Withheld
7	The Public Advocate
8	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
9	Multicultural Australia
10	Queensland Human Rights Commission
11	Australian Christian Lobby
12	Zig Zag Young Women's Resource Centre Inc.
13	Broken to Brilliant
14	Queensland Sexual Assault Network
15	Mackenzie Mitchell Solicitors
16	TASC National Limited
17	Queensland Council for Civil Liberties
18	Rape & Sexual Assault Research & Advocacy
19	Queensland Youth Policy Collective
20	knowmore Legal Service
21	Queensland Network of Alcohol and Other Drug Agencies
22	Dr Rebecca Wallis, Dr Joseph Lelliott, Dr Faiza El-Higzi and Professor Blake McKimmie
23	Caxton Legal Centre Inc
24	Queensland Council of Social Service Ltd
25	Legal Aid Queensland
26	Respect Inc; Scarlet Alliance, Australian Sex Workers Association; and DecrimQLD
27	Queensland Positive People; HIV Aids Legal Centre & The National Association of People with HIV Australia
28	Queensland Council for LGBTI Health
29	Dr Terry Goldworthy & Dr Mathew Raj
30	North Queensland Women's Legal Service
31	Queensland Mental Health Commission
32	Queensland Council of Unions

33 Red Rose Foundation

34 Queensland Catholic Education Commission

35 Gold Coast Centre Against Sexual Violence Inc

36 Full Stop Australia

37 Queensland Police Union of Employees

38 Melissa Halliday

39 Queensland Indigenous Family Violence Legal Service

40 Name Withheld

41 Queensland Law Society

42 ADA Australia

43 Maternity Choices Australia

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Leanne Robertson, Assistant Director General, Strategic Policy
- Sonya Reesby, Executive Director, Program Management Office and Sector Reform
- Kate McMahon, Acting Director, Women's Safety and Justice Team, Strategic Policy
- Bridie McQueenie, Acting Principal Legal Officer, Women's Safety and Justice Team, Strategic Policy
- Kellie Jones, Principal Legal Officer, Women's Safety and Justice Team
- Emma Hislop, Senior Legal Officer, Women's Safety and Justice Team

Appendix C – Witnesses at public hearing – Monday, 6 November 2023

Caxton Legal Centre

- Colette Bots, Director - Family, Domestic Violence and Elder Law Practice

Queensland Sexual Assault Network

- Angela Lynch, Executive Officer
- Katherine Hills-Vink, Team Leader, Recovery and Healing, Domestic Violence Action Centre; Service Against Sexual Violence; Member, Queensland Sexual Assault Network (via videoconference)

Dr Rebecca Wallis, Lecturer, School of Law, University of Queensland

Dr Joseph Lelliott, Senior Lecturer, School of Law, University of Queensland

Dr Faiza El-Higzi, Postdoctoral Fellow, School of Psychology, University of Queensland

Queensland Youth Policy Collective

- Alana Bonenfant

Multicultural Australia

- Christine Castley, Chief Executive Officer
- Kalpalata Iyer, Manager, Research and Advocacy

Australian Christian Lobby

- Rob Norman, Queensland Director

Queensland Positive People

- Mark Counter, President
- Melissa Warner, Chief Executive Officer

HIV/AIDS Legal Centre

- Alex Stratigos, Principal Solicitor

Respect Inc

- Mandy Bliss, State Co-ordinator

Scarlet Alliance, Australian Sex Workers' Association

- Mish Pony, Chief Executive Officer (via videoconference)
- Elena Jeffreys, Policy and Advocacy Manager

DecrimQLD

- Janelle Fawkes, Campaign Leader

Appendix D – Witnesses at public hearing – Wednesday, 8 November 2023

Queensland Law Society

- Rebecca Fogerty, Vice President
- Dominic Brunello, Chair, Criminal Law Committee
- Emily O'Hagan, Member, Domestic & Family Violence Law Committee

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Heather Corkhill, Principal Policy Officer

Queensland Council of Social Services (videoconference)

- Aimee McVeigh, Chief Executive Officer
- Lauren Bicknell, Research and Policy Officer

ADA Australia

- Geoff Rowe, Chief Executive Officer
- Vanessa Krulin, Solicitor and Senior Policy and Research Officer

Full Stop Australia (videoconference)

- Karen Bevan, Chief Executive Officer
- Emily Dale, Head of Advocacy

Queensland Police Union of Employees

- Shane Prior, Vice President
- Luke Moore, Policy and Projects Officer

The Public Advocate

- John Chesterman, Public Advocate
- Yuu Matsuyama, Senior Legal Officer

Queensland Council of Unions

- Jacqueline King, General Secretary
- Penny Spalding, Women's Officer

Queensland Indigenous Family Violence Legal Service (teleconference)

- Kulumba Kiyingi, Senior Policy Officer

Queensland Catholic Education Commission

- Allan Blagaich, Executive Director
- Patrick MacDermott, Senior Policy Officer, Governance & Strategy

Statement of Reservation

Statement of Reservation – Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023

The LNP want to see a Queensland where people are safe in their own homes and communities. The scourge of domestic and family violence has only increased and it is right we take action to do all we can to reduce the pervasive nature of this behaviour, and the number of victims, in our community.

While the LNP supports the intention of many aspects of this Bill, we hold significant concerns at the current drafting, and do not believe this report has adequately dealt with issues raised by stakeholders.

In responding to the recommendations of the Women's Safety and Justice Taskforce, the bill introduces some novel concepts in Queensland's legal framework. It alters some well established and understood laws that have been subject to intense scrutiny in recent times by both the Queensland Law Reform Commission and this Parliament. In doing so there is concern uncertainty will replace certainty and long established principles that underpin our criminal justice system will be weakened or in some cases abandoned. If this is the case then there must be a clear and obvious benefit in doing so. If this benefit cannot be established the real risk is that change will worsen an already unacceptable situation for both complainants and respondents and lead to delay, expense and uncertainty. Thorough and proper consideration is therefore essential. Regrettably this has not occurred to the extent necessary for such a significant piece of legislation.

It is concerning that once again we are forced to point out this Government's lack of consultation, especially when it comes to major changes such as those contained in this Bill. Despite the Women's Safety and Justice Taskforce clear recommendation regarding the length of time for consultation prior to the introduction of Coercive Control as an offence, it was not followed.

> *"The Bill including the new offence should be released as a consultation draft for a period of at least three months before it is introduced into Parliament. This consultation should include legal, domestic and family violence, and Aboriginal and Torres Strait Islander stakeholders, and people with live experience of domestic and family violence."*[1]

The Department confirmed to the Committee the consultation draft was released on 18 July 2023 and feedback closed on 4 August 2023. Just 14 business days. That is the length of time this third term Labor Government gave to stakeholders to ensure they got this Bill right.

Had more time be given, perhaps some of the issues raised would have been dealt with earlier. As the Queensland Law Society (QLS) submitted, *"In its present form, the offence is a disservice to both complainants and accused persons, and the wider community. It will be too difficult for juries to understand. It will produce unjust outcomes."*

It is worth noting that while most submitters are positive about the intention of the Bill, many expressed concerns with the current drafting of significant parts of the Bill. While some of these concerns were identified, we do not believe they were sufficiently addressed in the committee report.

We would like to highlight some of these concerns.

The provisions introducing the offence of coercive control, and the questions raised about their effectiveness and legal certainty, have not been addressed.

[1] Hear Her Voice Report 1, Recommendation 78

One of the concerns raised was around the exclusion of the common law requirements for particularity and jury unanimity. The taskforce recommended,

> *"In practice, it is foreseeable that the offence of coercive control could comprise of multiple particularised acts which are relied upon by the prosecution to prove the offence and may also be able to be charged as separate criminal offences on the indictment. The victim may also describe acts which can be relied upon by the prosecution to prove the offence of coercive control that are unable to be sufficiently particularised to be charged as separate criminal offences.*
>
> *The Taskforce suggests that consideration should be given to including a provision similar to that contained within the offence of Maintaining a sexual relationship with a child"*

It is important to note that both the particularisation of acts and the non-particularisation of acts was proposed, and the suggestion of the offence including similar provisions to that of maintaining a sexual relationship with a child was for consideration. It was not recommended it was required to be framed this way. This is why it was essential that due time be given to stakeholders to consider any draft Bill. Without that time, it is clear there is still great concern the Bill as currently drafted will result in unjust outcomes.

QLS stated, *"We are very concerned that the new provision does not require specific intent at the time of each act alleged to constitute the course of conduct. The offence needs to be redrafted with proper regard to conventions of drafting, the need for certainty and core human rights principles. We say that the culmination of these amendments—not just the new coercive control offence but also the Evidence Act amendments and the mandatory requirement for jury directions—is going to create unprecedented evidentiary challenges. This will result in protracted trials. There will be an amplified interrogation of the facts and the matters that underpin a charge of coercive control."*

In reflecting on the Law Society's presentation to the Committee, the Queensland Human Rights Commission stated, *"I think the Law Society is saying that legislating against coercive control is a good concept. They have had the opportunity to look very precisely at the drafting of the bill in a way that is informed by practical application of the law in the courts, in a way that we would not have exposure to. Having heard what the Law Society have said this morning in relation to the fair trial issues, I think they are issues that we would largely adopt."*

Legal Aid Queensland similarly stated, *"LAQ is also concerned that the proposed section 334C(5) erodes the presumption of innocence and the burden and standard of proof. If the prosecution is not required to allege the particulars of any act of domestic violence constituting an offence that would be necessary if the act were charged as a separate offence, a defendant is placed at a significant disadvantage in the preparation of their case by not being informed in detail as to the nature and reason for the charge."*

The report similarly restates the new section mirrors section 229B(4) of the Criminal Code. For a major change to a serious criminal offence where common law particularity is removed, it would have been helpful to see further examination of the issue.

Similarly, the concern raised by numerous stakeholders that the threshold of harm is not high enough for the seriousness of the offence, was barely covered and warrants consideration given other jurisdiction use the threshold or 'serious harm' as opposed to 'harm'.

Affirmative consent was also broadly supported by stakeholders, yet many again raised issues with the current drafting.

QLS raised the issue of the drafting of section 348 and its application for long term couples, *"The law needs to be flexible to accommodate the wide and complex range of human communicative behaviours. For example, a long term married couple may have spontaneous sexual intercourse without any prior explicit communication because their history enables them to understand each other's non-verbal behaviours. Strictly interpreted, however, the couple falls foul of s348(3). This is an inappropriate extension of the criminal law… Take the long-term married couple example again. Suppose that five years later they are divorced. Person A subsequently alleges that the "spontaneous sexual intercourse" was rape. Why should Person B be prevented from saying that s/he believed there was consent arising from the context of their previous long-term loving relationship where sex was often initiated on the basis of non-verbal cues and without physical resistance."*

This was raised by other submitters including Queensland Council of Civil Liberties yet was not canvassed at all in the report. There were also concerns raised regarding the broad criterion of harm constituting a lack of consent.

For the public to have confidence in these new laws, and to ensure injustice is not perpetrated, these issues must be addressed.

It cannot be enough to only discuss some of the more minor concerns raised by learned and serious stakeholders. This report should have reflected the significant issues raised by submitters, and it is the Opposition's opinion that at present this is seriously deficient. These serious issues have largely been ignored.

The LNP would like to re-emphasise the critical need for community education, training, and resources for the sector prior to the proclamation of this Bill. The introduction of these offences cannot be another example of this third-term Labor Government making an announcement and not following through with the action required. We will not see more women and children safe without a strong education campaign. It is also not fair on services to bear the brunt of this change and the Government wait for a crisis in service delivery to provide the resources needed.

Again, we reiterate the LNP's support for safer communities. However, we will not make our communities safer without working with stakeholders to get the right legislation in place and minimise unintended consequences.

Laura Gerber MP
Deputy Chair
Member for Currumbin

Jon Krause MP
Member for Scenic Rim