LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Mr SSJ Andrew MP (teleconference)
Ms JM Bush MP
Mr JE Hunt MP (videoconference)
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Mr B Smith—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 6 November 2023

Brisbane

MONDAY, 6 NOVEMBER 2023

The committee met at 10.06 am.

CHAIR: Good morning. I declare open the public hearing for the committee's inquiry into the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023. My name is Peter Russo. I am the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me here today are Laura Gerber, member for Currumbin and deputy chair; Steven Andrew, member for Mirani, who is on the phone; Jonty Bush, member for Cooper; Jason Hunt, member for Caloundra via videoconference; and Jon Krause, member for Scenic Rim.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings, and images may appear on the parliament's website or social media pages. I ask everyone to turn their phones off or to silent mode.

BOTS, Ms Colette, Director, Family, Domestic Violence and Elder Law Practice, Caxton Legal Centre

CHAIR: Good morning and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Bots: Good morning. My name is Colette Bots. I am the Director of the Family, Domestic Violence and Elder Law Practice at Caxton Legal Centre. I would like to acknowledge the traditional owners of the lands on which we meet, the Turrbal and Yagara people, and pay my respects to elders past, present and emerging.

Caxton Legal Centre is a community legal centre with over 40 years experience working with victim-survivors, users of domestic violence including as respondent duty lawyers at the specialist domestic and family violence courts in Brisbane, and older persons experiencing domestic and family violence and coercive control in the form of elder abuse. Through our Seniors Legal and Support Service, which incorporates various health justice partnerships across Greater Brisbane, Moreton Bay North and Logan-Beaudesert, our multidisciplinary lawyer/social worker model recognises that an older person's right to autonomy and to make decisions about their own lives is not diminished by the ageing process. In the context of coercive control, this means being entitled to choose what kinds of supports and interventions they want to keep them safe, except in limited circumstances. The interventions they choose may not be legal interventions.

We would like to take the opportunity to briefly refer to two matters outlined in our written submission. Firstly, in spite of the clear messaging of zero tolerance for elder abuse that the coercive control offence creates, we anticipate both challenges and opportunities in the way this offence will be utilised to respond to elder abuse. We foresee as a challenge that many older persons will not be in support of the police charging their adult child under the offence. Many of our clients are reluctant to pursue a protection order through a civil jurisdiction against their adult child, let alone willing to engage in a criminal process. In that regard, one of the challenges for police will be to engage in a proportionate balancing of an older person's right to protection, safety and life with their rights to self-determination. The challenge for police will be to ensure that they do not investigate these matters through an ageist or paternalistic lens and to ensure that older persons' voices are heard. We also recognise the potential for new opportunities to respond to elder abuse under the coercive control offence through co-responding and greater collaboration between the police and specialist elder abuse services in matters of coercive control towards older persons.

Secondly, in relation to the diversion orders scheme, we reiterate our concerns around the requirement for a defendant to accept responsibility for a set of facts outlined by the prosecution as one of the eligibility criteria. Our submission is that the screening process for eligibility for a diversion order should be based on research around what motivates users of violence to engage in diversion programs, not based on whether they agree to a set of alleged facts. While we do not have that specific research to hand, speaking from the experience of our social workers and lawyers we find that some of the most common motivational factors for engagement in programs include a strong desire to continue a relationship with their partner safely and a strong desire to keep a relationship with their children safely. We also see motivational engagement driven by desire for self-improvement, desire to address traumas, or, in some cases, genuine remorse, but in our experience even the most genuinely remorseful respondents almost never agree with the prosecution's version of events in its entirety. I thank you for the opportunity to speak to the committee today and welcome any questions the committee may have.

Mrs GERBER: Thank you, Colette, for your submission and for appearing today. I am particularly interested in the intersection of the new sections in this bill relating to coercive control and elder abuse, and I fully appreciate the oral submission you have just made in relation to the family dynamics at play around the context of elder abuse and the fact that some parents do not want to pursue their children, despite the fact that they are being abused, whether that is physical, emotional or financial abuse. In terms of this bill, I was not able to glean from your submissions or your oral testimony whether there is anything more that can be done in terms of amending the bill or any further recommendations that this committee could make to protect from elder abuse specifically?

Ms Bots: We do not have any particular recommendations about what an amendment might be, but we are thankful for the opportunity to talk about how it might affect older persons. I would like to take the opportunity to point out one of the ways in which it could be used to respond to elder abuse in a different way. Under the definition of 'psychological abuse', one of the examples that is referred to is interfering with a person's access to or communication with friends, family or service providers.

Mrs GERBER: Is this in the bill?

Ms Bots: Yes, that is under the coercive control offence under the definition of 'psychological abuse'. It is one of the dot points.

Mrs GERBER: Section 334C, yes.

Ms Bots: I believe it is towards the end of the dot points. I also note that that particular example is not one of the examples contained in the Domestic and Family Violence Protection Act, so it is something new. I wanted to point out that particular example because it is something that we would commonly refer to as 'social abuse'. We come across that a lot in our practice in various different ways. To give a very brief example, one way might be when an older spouse has had to relocate into a nursing home without their spouse for health reasons. At that point a family member—it could be a step-child—will step in and prevent all contact between those two partners who have been together for many years. They will often gain the support of nursing home staff by falsely alleging that they have all power under an enduring power of attorney. They might also make allegations about that older person's capacity that may be false. We find that in these types of situations it is very difficult for us to respond effectively. Sometimes it is impossible for us to even get in contact with the older person at all. That is an identified gap in the current legal response.

Our hope upon reading the drafting of this coercive control offence is that there is potential in the future to be able to use this coercive control offence to contribute to that legal response to elder abuse. We imagine that it would be a very long-term kind of thing. I am not expecting that this is something that could happen overnight. There is still a lot of culture change that needs to happen in terms of co-responding, but that is one of the opportunities we did see.

Mrs GERBER: That brings me to my next question but still looking at the issue of elder abuse and applying these laws. This is the criminal standard of burden of proof beyond reasonable doubt. How do you foresee that coming into play if there is some sort of impairment, whether it be early onset dementia where there might be periods of lucidity but periods of not being lucid? Can you give us your perspective on whether or not there are likely to be successful prosecutions in relation to the application of the criminal law in circumstances like that?

Ms Bots: Absolutely. I will note, though, that we are not criminal law practitioners at Caxton, so please bear that in mind as I give my response. We acknowledge that there will be those types of evidentiary difficulties. There is potential for that. Having said that, though, there are many other clients who do not have those capacity issues. It tends to be one of the lenses through which we view elder abuse. We automatically seem to turn to those who do not have capacity and pay less attention to those who have some level of impaired capacity, as you have indicated.

Mrs GERBER: Yes. I am not talking about elder abuse in the form of someone with capacity and it being a clear-cut case. That is a clear-cut case. I am talking about those cases where it is not clear-cut and where potentially the defence will be able to establish that there is some temporary form of impairment or more a long-term form of impairment and how you foresee this bill playing out and whether there are any recommendations the committee could make in relation to that.

Ms Bots: I understand. I will say in relation to the evidentiary burden that it is often the case that those older people will have various people around them who would be able to attest to what has happened—not necessarily family members, because I concede that the family dynamics can be very complex, but perhaps service providers. Many of our clients might have services coming into their home. They might have priests coming into their home or cleaners, gardeners and so on. That is an idea I can put forward. I do not have any recommendations in relation to how the bill could be amended, though.

Ms BUSH: Thank you, Colette, for your submission and for all of the work that you do. A person's right to protection balanced with the right to self-determination is an issue for a number of cohorts in addition to our older Australians. I have a couple of questions following on from the member for Currumbin. It sounds like you are broadly supportive of the bill, subject to a few recommendations that you have made. The intersection with elder abuse sounds like you are not so much making a legislative amendment but perhaps more of a policy consideration around a co-responder model. I do not want to put words in your mouth, but have I interpreted that correctly?

Ms Bots: You have interpreted that correctly. Yes, that is right.

Ms BUSH: Is that something that is occurring at the moment or are there models that you could recommend we turn our mind to?

Ms Bots: It is. Thank you for that question. At the moment at Caxton Legal Centre, through our Seniors Legal and Support Service, we have already commenced co-responding with the QPS. It is on an informal and ad hoc basis, but we have had success in matters where we have done joint home visits with our lawyer, our social worker and a member of the vulnerable persons unit. Sometimes those will result in applications for protection orders being made. Other times it might be at the election of the older person that it will not go down that path but they will report to us that they felt a lot safer with that involvement of the police. What the police can do that we cannot do at our service is speak to that user of violence. We are also in a privileged position where we are currently providing training to the QPS on elder abuse. That is one of our main points of discussion together with the QPS. We have very strong hopes that there will be increased co-responding into the future between services like ours and the police.

Ms BUSH: The vulnerable persons unit does a fantastic job in responding to older people and people with disability in providing a whole range of responses. I know that you probably cannot go too far into this, but how has that been working? Have you found any problems? My concern would be: if someone's safety is at risk, can those services be engaged quickly enough to respond versus having to wait to co-respond? Some of those aspects around time frame are on my mind.

Ms Bots: That makes sense. In the event that it is emergent—and we make this very clear to our clients from the outset—it would default back to calling triple-0 to seek police support. The co-responding model that I am talking about fits in well with coercive control because we know that it is a long-term play of events. Most of our clients have been enduring abuse in their homes with their adult child living with them for many years being emotionally abusive. They have usually tolerated that for five, 10, 15 or 20 years. It is not necessarily emergent. As we know through the nature of coercive control, whether it is in the context of elder abuse or otherwise, it can and does lead to that act of physical violence. Sometimes that is when our clients come to us and tell us, 'We are ready to take action now.' Sometimes those clients have already spoken to the police previously but had a negative experience, so we do see it as part of our role to try to help build up that relationship as well.

While I am talking about the co-responder model, in terms of what we can offer the police, we have already established that rapport with the client. We have that trust. We have both the social worker and the lawyer working together with the client. We are almost always assisting them with multiple legal issues. It might be that they are experiencing financial abuse and have several proceedings underway as well. With the client's consent, we can offer a lot of that information to the police without them having to go into that.

Ms BUSH: My other questions are in relation to some of your suggestions about the diversion orders scheme. You have explained it quite well in your opening statement but can you perhaps unpack that a little bit more around the suitability of some of those diversion criteria?

Ms Bots: Absolutely. As I said, what we are seeing most of the time as some of the primary motivators is that they have a reason they want to better themselves and that they have acknowledged they need to. We understand through the way the provisions are drafted that there is a requirement, after agreeing to a diversion order, for their suitability to be assessed. We just point that out because there are other opportunities to ensure we are dealing with a defendant who wants to be accountable.

One of the difficulties our practitioners foresee is that we will have to be advising these clients firstly that they have to agree—I beg your pardon, not agree. They have to accept responsibility for that set of facts but then, secondly, we are going to have to tell them that they do not have to plead guilty to that set of facts. We respectfully submit that that is quite counterintuitive. We foresee these problems because, even in the context of assisting respondents, we find that it is often a great struggle for them just to understand the concept of consenting without admissions to an order which is actually a lot more straightforward than what is proposed under the diversion orders scheme.

Ms BUSH: I am the going to reflect on that a little bit, and I might come back to you, but that does help me understand it.

Mrs GERBER: I want to come back to elder abuse. In the context of this bill being able to address what effectively I see as a gap in the law in relation to being able to protect vulnerable people from elder abuse, I am looking at the sections that might be applicable. I can see that there are subsections here that could fall within the definition of elder abuse. What I do note is that the first hurdle is having to establish that there is a domestic relationship. I am seeking some advice as to whether or not that is defined within the bill, but I do not think it is.

My question is: if we are talking about elder abuse—I understand that this may be applicable in certain circumstances—wouldn't we be better off to have targeted legislation like the ACT did in 2021 in relation to criminalising elder abuse? I understand that might be outside the scope of this bill, but I just wanted to canvass that with you while you are here.

Ms Bots: Absolutely. My understanding is that, in terms of the definition of domestic relationship, it refers back to the Domestic and Family Violence Protection Act and tells us that it is the same definition. That is how we figured out that elder abuse would fall under this, because those family relationships are defined in the DV act. I beg your pardon: what was your other question?

Mrs GERBER: My question was around having to first establish those hurdles. If we are talking about being able to specifically address the social and societal issue of elder abuse, wouldn't we be better off to have targeted legislation towards that offending, like the ACT did in 2021, which specifically targets that circumstance of elder abuse? We have seen it with the Public Trustee. We have seen those cases that have slipped through the cracks. We have seen it as an issue that is on the rise in our communities. That is my question to you. I am not saying instead of this. I am saying this is great.

Ms Bots: Absolutely. I do understand what you are saying. In principle, we do agree with that—that we would be better off to make it explicitly clear that it is understood that elder abuse is a crime or that coercive control is elder abuse. I might have to briefly default back to our concerns around the fact that we do not think many older people will be very willing to utilise the offence, whether it is specifically labelled as elder abuse or in its current form. Forgive me, but I will default back to that because it is difficult for me to overcome that hurdle.

I will say that we have various different client cohorts. Some might be CALD cohorts—First Nations cohort. Some of our clients are very reluctant to use that phrase 'elder abuse', so it is difficult for me to give a very clear view on that at this point because that is also one of the factors that I have in mind. It would not necessarily be helpful—

Mrs GERBER: In the ACT it is the Crimes (Offences Against Vulnerable People) Legislation Amendment Act. The terminology that is used is sensitive to the complexities in relation to the issue. I would expect that Queensland could do the same thing.

Ms Bots: We would absolutely be supportive of a more explicit reference to older people.

Mr HUNT: Thank you very much for your submission. In terms of the messaging that you would like to see going out into the community going forward—call it education, messaging, communications—what do you think are the critical points to hit as we communicate these changes to the broader community?

Ms Bots: In terms of messaging to the community, I think one of the key points is that, no matter our walk of life, we all are potential noticers of elder abuse. Those who work in hospitals are very well placed to identify elder abuse. That is why we have those health justice partnerships. Service providers who go into older people's homes, hairdressers—all of these people are in a position to notice elder abuse. One of our key messages would be, although it sounds very simple, to take a stand against

elder abuse. Another one would really just be to reiterate that older people experience coercive control as well. From what we see, there is a lot less attention on older people who are experiencing it, because there is a tendency to minimise it as, 'Well, that's their choice. They want to let their son live with them,' and so on and so forth when, similar to domestic violence, what is happening in that family home is domestic violence and not behaviour that can be condoned. Those would be our two messages to the community.

Ms BUSH: I have a question from your submission around when the media applies for a transcript of proceedings. I think you have suggested that all parties should be given the opportunity to make a submission or notify that a copy of the transcript has been given. Can you expand a little bit on the background to that?

Ms Bots: Sure. Under the principles of the act, in section 4, it is indicated that an aggrieved person should be able to have that say in decisions that are made. It is our view that an important factor is allowing them the opportunity to put forward their views about how they feel or whether they object to the media being given a copy of the transcript by the courts. We have acknowledged in our submission that it might be the case that some aggrieved parties do not want to know about it, that they might find it triggering, but at the same time there are other aggrieved parties who might find it empowering to be able to say to the court, 'Yes, I want this to be made public.' That is what we were thinking when we made those submissions.

We did also briefly mention that there could be adverse consequences in terms of respondents maybe having adverse reactions. We referred to the importance of making sure those support services are in place, if they are needed, which essentially is what the specialist courts are doing for those areas that are privileged enough to have those courts in place. It is probably worth noting that, going forward, in any event all legal practitioners will be required to advise their clients that it is a possibility that the transcript will be released to the media. We would presume that that would help to mitigate any of those concerns.

Ms BUSH: In terms of the co-responder model that you have mentioned—I do not want to make work for you—is there a simple one-pager or something that you could send through to the committee? I would not mind understanding where it is operating, how long it has been operating for and any kind of interim evaluation or early observations you have on it.

Ms Bots: I wish that I did have something in writing to give you. I do not actually have any written documents about the co-responder model. It is very much something we are building up, promoting and advocating for at the moment. I could hand up a short publication that explains the specialist elder abuse multidisciplinary model. Would that be useful?

Ms BUSH: That would be great, thank you. Are you happy to take that on notice?

Ms Bots: Thank you.

CHAIR: At page 3 of your submission you state that you are supportive of clause 27, which amends section 37 of the Domestic and Family Violence Protection Act, requiring the court to consider the appropriate period for which orders are to continue in force. Would you be kind enough to expand for the committee on how you think this amendment would assist respondents and aggrieved parties, especially, as you touched on in your opening submission, those parties who wish to continue the relationship or are still residing together?

Ms Bots: Yes, absolutely. As we have indicated in our submission, we are very regularly assisting those misidentified respondents. We are very supportive of the amendments that have already come into effect on 1 August, in particular in relation to the person most in need of protection, but the reality is that, on the ground, change is still much slower and we are still in the very early stages. That is why we pointed out that we continue to see in recent months—as recently as last week—matters where we are dealing with misidentified respondents. As I have indicated in the submission, often these parties are just not in a position to exercise their right to contest or to exercise their right to lodge a cross-application. It might be because they have those caregiver responsibilities. Usually it is because there are a number of intersecting stressors in their life—they might be addressing mental health issues—but they are just not choosing that pathway. They are instead choosing to consent without admissions to an order. We say that this provision is helpful in the interim. Obviously our hope is that in the future the 'person most in need' provisions will be used more effectively but, for the time being, the only recourse available to those aggrieved parties is a shorter order. If we were very fortunate, we would be meeting these misidentified respondents at the optimal time, which would be when they have already received a lot of ongoing support and a lot of ongoing counselling. When we are simply lucky enough to meet them at that time they will contest, they will lodge cross-applications and they will succeed but, unfortunately, they are a real minority.

Again, I go back to your question in terms of the benefit. It is not good enough per se but, as I said, we view it as an interim improvement. Because they are not going to contest, at least they do not have to have that order placed on them for a really long time. We are seeing these matters where the male aggrieved party has expressed that they are not fearful and has expressed that they are not in support of the police application. It is almost as if it is on a technicality because there has been an act of self-defence or there has been an act of violence but an order is not necessary or desirable. They are still being made by consent.

CHAIR: I understand, too, that consenting to an order without admissions has some legal ramifications that perhaps are not exactly in keeping with the rule of law.

Ms Bots: Exactly, yes. When we are assisting those types of clients, we have to tell them, 'Well, if there's an argument and the police are called out, you are the one at risk—not your husband.' The problem is that they just want to get out of the court system—both of them—no matter what the cost. We will literally be assisting these parties while they have a pram with a baby in the court and this woman who is consenting without admissions, and the best we can do for them is get them a 12-month order.

CHAIR: Your suggestion is that, for example, there be provision to be able to make an order for a month, two months or three months?

Ms Bots: Yes, because if that were possible then at least this would get it over and done with, so to speak, for that family so that they can move on with their lives rather than having this order in place for a year that is just not necessary.

CHAIR: I have lost track of how those orders are made in the courts. Is there provision to make orders for counselling or ongoing support in the orders or are they just a blanket order?

Ms Bots: Not generally in the orders. Within the specialist court system there are those supports present in court. If we were talking about a true respondent, they will obviously be encouraged to engage in intervention orders programs, but that is just not relevant to these clients. Perhaps it is possible, but we rarely see counselling included on the order. We are making submissions on it, though. We will make sure the court knows that the family or the couple are receiving counselling together.

CHAIR: It would require the act to be amended to allow the judiciary to make those coupling orders, for want of a better description?

Ms Bots: Potentially. I think arguably it is probably possible. The magistrates have a lot of discretion. If practitioners are brave and creative, we could potentially ask for that anyway, but it is not the done thing. Perhaps, as you indicated, it might be a possible amendment.

Mrs GERBER: Have you by chance had an opportunity to read the Queensland Law Society's written submission to the bill?

Ms Bots: I am actually a member of the QLS Domestic and Family Violence Committee. I was not part of the subcommittee that contributed to the drafting of their submission. I have probably read a draft form. I do not believe I have read the final form.

Mrs GERBER: I have just been informed by the secretariat that the committee has not in fact published it yet. We approved the publication of it this morning, but you will not have had an opportunity to read it because I do not think it is up on the website yet. Perhaps there is no point in me asking the question.

Ms Bots: I am happy for you to ask. We will see if I can answer.

Mrs GERBER: I will give you some time to read it. The QLS raises a lot of points, so I will give you time to read the submission and we will go from there.

CHAIR: On page 3 of your submission—I may have covered some of this, and if I have I apologise—there is support for additional standard conditions, which probably was going towards what I was talking about previously. Section 56 of the Domestic and Family Violence Protection Act refers to protection orders and police protection notices. Can you give the committee some more information on how you see supporting victims and removing the misplaced perception that a person who is not a party to a protection order can engage in violent behaviours against aggrieved in support of the respondent? Is that too wordy?

Ms Bots: Would you mind repeating the question for me?

CHAIR: Basically, we noted that you are in support of the standard conditions of section 56 of the Domestic and Family Violence Protection Act. The information we are seeking relates to parties who are not protected under the order who are not a party to the protection order who can engage in violent behaviour against aggrieved in support of a respondent.

Ms Bots: Yes, sure. Most of the time, we come across those kinds of situations where the person who is a non-party is a new partner who is over-involving themselves in the situation between the respondent and the aggrieved. Often we will see that reflected in the protection order applications where it has become apparent that the new partner, who is a non-party, was present at the incident or contributing to the incident. It has been our experience that some respondent clients—up until these amendments are made, presumably—seem to be seeking that loophole: 'What would happen if somebody else committed the violence?' or 'It's not my fault because they did it. I didn't do it.' That is why we are in support of this section because, although we have always strongly discouraged those clients from taking any kind of adverse action or encouraging the violence or facilitating the violence, it is now going to be clearer than ever for us to advise on that and to say that it is against the law to do that—to make it very clear for them.

Mrs GERBER: I want to clarify something that I said, which was not a reflection on the committee secretariat, in relation to the publication of documents. Due to the tight time frame for this scheduling, the Queensland Law Society submitted their written submission to us on Friday. The secretariat has published it as soon as we can. We have approved the publication as soon as we can. I wanted to give you that clarification.

CHAIR: We are going over time now.

Mr KRAUSE: My question is in relation to the Queensland Law Society submission, which I think you said you may have seen.

Ms Bots: I may have seen a draft in some form, yes.

Mr KRAUSE: They express their disappointment that the drafting about the coercive control offence was not open for three months consultation. They go on to say that it is 'unnecessarily complex', 'too wide' and 'will produce unjust outcomes'. Could you comment on that from the Queensland Law Society, in your review of the bill?

Ms Bots: I would not necessarily agree with that as a broad statement, because the areas where we have identified issues are really only the brief submissions that we have made. Just to clarify, they have said that it is unnecessarily complex; was that it?

Mr KRAUSE: 'Unnecessarily complex', 'too wide' and 'will produce unjust outcomes'. There is more to it, but that is in their opening statement.

Ms Bots: Sure. As I said, I probably would have to fall back to what I have said. From Caxton's perspective, the opportunities for those unjust outcomes are the ones that we have already identified—for example, in relation to the diversion orders scheme. One of our main concerns was that we cannot stop people who are motivated to change on a technicality from going through with the diversion orders program. I say that because that is perhaps one example where we are concerned that something could be unjust. I will note, though, that we have not made submissions in relation to the other acts.

Mr KRAUSE: Thank you. I think we are up against time.

CHAIR: Thank you for your evidence today, Colette. It has been very helpful and fulsome.

Ms Bots: Thank you for the opportunity.

CHAIR: There is the pro forma that you were going to send over.

Ms Bots: The specialist elder abuse service?

CHAIR: Yes. Could you have that to the committee by close of business on Friday, 10 November?

Ms Bots: Yes, certainly.

HILLS-VINK, Ms Katherine, Team Leader, Recovery and Healing, Domestic Violence Action Centre; Service Against Sexual Violence; Member, Queensland Sexual Assault Network (via videoconference)

LYNCH, Ms Angela, Executive Officer, Queensland Sexual Assault Network

CHAIR: Thank you for joining us today. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Lynch: My name is Angela Lynch. I am the executive officer at the Queensland Sexual Assault Network.

Ms Hills-Vink: I am the team leader of the Recovery and Healing team at the Domestic Violence Action Centre. I am a member of the Queensland Sexual Assault Network and I oversee the Service Against Sexual Violence Ipswich.

Ms Lynch: The Queensland Sexual Assault Network is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services providing services to women, children and men in relation to sexual violence trauma counselling. In general, QSAN supports the new laws relating to amendments to sexual violence around consent, mistake of fact and jury directions and thanks the Queensland government for the bill today. These amendments, especially around affirmative consent, mistake of fact and jury directions, are the culmination of much work and advocacy over decades from victim-survivors and the sexual violence and women's sector.

Our main concerns relate to the drafting of the mistake-of-fact excuse and ensuring this is tightened up and the right balance is struck. A reasonable mistake-of-fact excuse negatives consent because of a misapprehension or a lack of understanding about the intent to commit a crime. It should complement and not duplicate the mental health tribunal where a determination is being made about whether a person is fit to stand trial. There is a danger that the current drafting in relation to mistake of fact is too broad and, as a result, can be open to misuse, unnecessarily lengthening proceedings and negatively impacting on victim-survivors in the court process.

We also recommend further changes to the failure-to-report offence where there has been clear overreach, and we would recommend a pulling back to ensure against the overcriminalisation in our community. I have provided examples on page 6 of our submission in relation to where that overcriminalisation occurs, even despite the changes that are being currently put before parliament.

Finally, I will turn to funding. QSAN has had a well-established public position for over a decade that our services are not adequately funded to ensure victim-survivors of sexual violence in Queensland obtain timely and quality responses, with wait times in some areas being up to 12 months. At least at one service, the wait time and acute rate has ballooned out to seven to eight weeks, which is unacceptable. Reported sexual violence in Queensland has increased for the 20th straight year in relation to rape and attempted rape. Prevalence rates are increasing, the victims are getting younger and the acts of violence are getting more violent.

As we are well aware from recent high-profile cases in Queensland, sexual violence predators can be prolific in their offending and inflict a large amount of harm and trauma on numerous victims. This in turn places additional pressures on our services. Our services are also bracing for the rollout of consent education in schools. We support that, but there will be a likely increase in disclosures that will occur, as recent data tells us that 28.5 per cent of Australian children have experienced child sexual abuse. Though appreciated, QSAN services only received a very small increase in the last budget. However, the significant gap remains because of chronic underfunding over decades.

Recent research by the Central Queensland University for the federal government found that in 2021 Queensland had 132 victim-survivors of reported sexual violence per 100,000 head of population, an increase from 99 per 100,000 in 2020. This information about victim-survivor numbers had never been available before this research was published. As only 13 per cent of victim-survivors ever report to the police, it would appear that nearly 1,000 Queenslanders each week experience sexual violence. When we compare our funding to a sister service in northern Tasmania, they receive funding three times that of Queensland services based on a per head of population basis. Tasmania, which is one of the poorest states in Australia, is clearly prioritising the needs of sexual violence victim-survivors over Queensland, one of the richest states in Australia. We recommend that the Queensland government engage urgently with QSAN to provide urgent funding increases to respond to demand issues and engage with us in a 10-year plan for sustainable funding and growth.

Mrs GERBER: Thank you for your appearance today and all of the work that you do. I want to go to the first part of your oral submission in relation to consent and mistake of fact. I want to refer to the QLS submission and, again, I apologise that you may not have had the opportunity to see it.

Ms Lynch: I have not read it. I do not know about it. Perhaps I can guess, but I do not know about it.

Mrs GERBER: I will put to you first that, in their opening statement, the QLS submitted, 'We are disappointed that the drafting of the coercive control offence was not open for at least'—

Ms Lynch: I am not speaking to coercive control; I am only speaking to consent.

Mrs GERBER: That is fine, but I am just quoting from their opening statement so that you have some context as to what I am talking about. The QLS has said in its opening statement—

> We are disappointed that the drafting of the coercive control offence was not open for at least three months of consultation prior to its introduction, as set out in recommendation 78 of the first *Hear Her Voice* report.

Turning to mistake of fact and the meaning of consent in clause 13, the QLS submitted—

> We also note that the proscriptive approach adopted in the drafting of s348AA—

which is the circumstances on which there is not consent—

> will increase, not decrease, the focus on the alleged complainant's evidence, and therefore reliability and credibility. This is contrary to some of the stated concerns in the Women's Justice and Safety Taskforce reports.

Given your involvement in that, I am interested in your perspective.

Ms Lynch: I think that section is really taken from New South Wales, which has had those particular bits in relation to, specifically, what does not amount to consent. That has been in law in New South Wales for a long period. It has been well utilised. There have not been specific issues that we are aware of that have been raised in relation to that so we do not agree.

Mrs GERBER: That is fine. In relation to the notion that—

Ms Lynch: Can I also say that with this law it is really important to be as clear as possible. The law actually has a very important role to play not only in relation to the court setting itself and making a determination about the guilt or innocence of someone; it actually has a really important relationship with our community in relation to prevention and education. Being as clear as possible about what is consent and what may not be consent is really helpful for many of our services that go into schools every day and educate on those issues. If we can say, 'This is what the law says,' we can be really clear with young people about what is acceptable in our society in relation to these relationships.

Mrs GERBER: That is part of my question. I refer to section 348(3). Subsections (1), (2) and (4) on consent are already in law. They pretty well did not need to be reiterated in this bill. However, subsection (3) is the new part and it states—

> 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.

That is what I am referring to. The argument is that that is trying to limit or mitigate the application of mistake of fact in circumstances where a defendant might say that there was consent when there was no verbal consent. In terms of the application of that in the criminal law, I am interested in your perspective when it says that the law needs to be flexible to accommodate the wide and complex range of human communicative behaviours and whether or not you foresee that there might be some adverse consequence of this. Could something else be done in the bill to try to mitigate that so that it reflects the full gambit of complex behaviours? I am mostly referring to the QLS submission in relation to this. I understand that you have not had the benefit of being able to read that.

Ms Lynch: I think that section is really reflecting a recommendation of the Queensland Women's Safety and Justice Taskforce, which heard lots of evidence in relation to the freeze response. A really common response, when victims of sexual violence are essentially being attacked or being subjected to sexual violence, is to actually freeze. I am just wondering if Katherine wanted to talk to that at all as a frontline worker.

Ms Hills-Vink: Yes, I can, if the committee would like. Trauma responses vary from victim-survivor to victim-survivor. We know from evidence that fighting back and running away are two really common responses that are known in the community. However, when those are not options the body tries to preserve itself and keep itself safe, and often that means freezing and stopping as that is assessed as the safest thing that can be done in that moment. Many of the people we work with in our service report feeling frozen, stuck, being unable to move, walk away, run. Their muscles may feel like

jelly. These are really common descriptions used by people we support. That response is a physiological response based on our nervous system and it is how we are designed to operate. Any law that understands that that is a physiological process and response to trauma is really important to ensure that is understood by the law.

Mrs GERBER: I understand that situation. My question was probably more targeted to the example the QLS has given. Do you mind if I read it out, because it might help? The QLS has said—

> The common law also recognises, however, that, depending on the context, silence may also constitute consent. 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)

Providing that example, again they say that that section, because there has been, they believe, inadequate consultation in the drafting of it—

> This will produce convictions that occasion a miscarriage of justice. 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.

In that circumstance, do you see that there would be a miscarriage of justice? In that circumstance, could that be a valid prosecution?

Ms Lynch: This law in relation to affirmative consent has been a law in Tasmania since 2004.

Mrs GERBER: Has it ever been used in that way?

Ms Lynch: It has been utilised without these kinds of issues being considered as an issue. Our laws as currently drafted are based on the New South Wales drafting. Again, that law has been in place for a year or so, I think, and there have not been those issues raised. Also, at the time these issues went through in New South Wales I think 25 or 26 eminent Queen's Counsel separated themselves from the New South Wales Bar Association and defence counsel and said that they agreed with the laws going through in New South Wales and did not stand with the Bar Association in relation to their concerns. That is what happened in New South Wales.

Mrs GERBER: How many successful prosecutions have there been in relation to this in New South Wales and Tasmania?

Ms Lynch: Tasmania has been in since 2004 so I have no idea what the number of prosecutions is. I have no idea. It has been in for 17 years. In New South Wales I am not sure what the numbers are.

Mrs GERBER: Would you be able to inform the committee as to whether or not it has increased successful prosecutions?

CHAIR: If that question is outside—

Ms Lynch: Our field of knowledge.

CHAIR: I do not know if it is outside, but it may be too onerous for you.

Ms Lynch: No, I am not going to look over the prosecutions in Tasmania. I do not have time.

CHAIR: It may be information that is readily available from another source, but as the chair of the committee I do not expect you to use your limited resources to go down that path.

Ms Lynch: No, I do not have time to do that.

Ms BUSH: Thank you for your submission, for appearing today, for the work that you do and for your opening statement. I want to echo your concerns around funding and thank you for the advocacy you are doing in that space. I want to move quickly through your recommendations, because there are a few here that interest me. In terms of recommendation 5 around including the word 'informed' in the definition of consent, I can probably interpret why that is there, but do you want to speak to that briefly?

Ms Lynch: Katherine, do you want to speak to the issue of consent and being informed in relation to that?

Ms Hills-Vink: I can definitely speak in practice and as a specialist counsellor working in this space. We describe consent for our clients as something that is freely given, reversible, enthusiastic, informed and specific. That means that there is a level of insight and awareness as to what will occur prior to agreeing. You cannot agree to something if you do not understand it. We encourage participants in our programs to understand what it is that they are consenting to. Consent ideally has all of those elements. Informed consent is really important in ensuring that people understand what they are consenting to and that consent happens continuously—it is an ongoing, continuous process. People should be given the right to consent to something that they understand fully and understand the risks of.

Ms BUSH: The fact that you have included the word 'informed' and not the other words—'reversible', 'specific' and 'enthusiastic'—tells me that there is something about that particular word, in addition to 'free' and 'voluntary' that we have there, that you think is important for this bill; is that correct?

Ms Lynch: The fact that it is something that has come from the sexual violence sector that they see in their work and that it would be around issues in relation to perhaps even different types of sexual acts that there has to be that kind of informed consent—that it just does not happen, that there has to be that agreement that both people are going to take part in that.

Ms BUSH: In terms of your recommendation about making it explicit that consent is required for different stages, do you not feel that that is captured enough under 348AA?

Ms Lynch: I think being explicit as much as possible around each act or each stage. It is around prevention and education. If you are going into schools, you are then going to be talking to what consent is and that the elements of it include in relation to each changed act or each stage. We are just making it as explicit as possible so that people understand. You want there to be healthy relationships and engaged sexual relationships. You do not want to be in a situation where you have to end up in court. You want to avoid that.

Ms BUSH: And probably going to the point that legislation sets the tone for community expectations as well.

Ms Lynch: Definitely.

Ms BUSH: In terms of recommendation 9 around the additional circumstance where a person is incapable of consenting or withdrawing consent because of strangulation, I think a lot of people might be surprised at the degree to which that might occur. Did you want to expand on that a little bit?

Ms Lynch: Did you want to talk to that, Katherine? Do you have any information about strangulation?

Ms Hills-Vink: From a frontline perspective, we are seeing a growing number of people report non-lethal strangulation occurring during both consensual as well as sexual assault with an intimate partner but also other sexual relationships and contact. We see that there is a very high prevalence of this with young people and young women presenting at our service with very limited knowledge and understanding of the risks associated with non-lethal strangulation, regardless of whether it is part of a healthy sexual relationship that is consensual and affirming or it is a part of domestic and family violence behaviour, for example. We believe that consent regarding strangulation is very difficult because strangulation can cause loss of consciousness in 30 to 60 seconds. It is a high-risk indicator of lethality with enhanced domestic and family violence but also for those people engaging in it in other relationships. We would encourage there to be consideration of strangulation as a lethal form of violence regardless of the context in which it occurs and understanding that people cannot consent to be killed or seriously harmed.

Ms BUSH: Again, do you feel that the sections under 348AA where there is no consent do not go far enough to capture that particular type of offending behaviour for strangulation?

Ms Lynch: Yes, that is right, and just sort of noting that it is becoming much more of a common occurrence and giving some particular note to that in the legislation.

Ms BUSH: Finally, could you expand on the recommendations around impairments with mistake of fact?

Ms Lynch: Sorry, which one is that?

Ms BUSH: Some of the concerns around the extent of impairments and getting that balance right, which is tricky.

Ms Lynch: I do not have the legislation in front of me. We really feel that it should be an ongoing, permanent impairment, that there should not be any temporary impairment. We want removal in relation to the mental health impairment—the term 'emotional wellbeing', which we think just broadens it too much and is very generalised and not diagnosable. We also want the anxiety and an affective disorder, which is essentially going to be depression, removed. We believe that this will open up the excuse at the moment, on a prima facie basis, and it really is going to have a big impact, if people are going to be pursuing this, of really slowing down matters in the courts. This ultimately also has an impact on the victim-survivor, because the more it slows down the increased likelihood the victim-survivor is not going to be able to take the pressure of the whole trial process and they may well decline to continue. It is getting that balance right. At the moment, the impairment under a mental health impairment includes temporary impairment, which we think needs to be removed. It could also arguably

include a substance induced mental disorder which could be voluntary, even though another section says that that is not possible. There is a discrepancy between those two sections, so there are some issues that need to be sorted in relation to opening the issue up too much, I think.

Mr KRAUSE: I want to go back to a previous line of questioning about whether the word 'informed' should be inserted into proposed new section 348AA. I have some questions about informed consent and how whether one fully understands activities that are to be engaged in would be proven in the context of things. Firstly, in terms of your submission, would you anticipate that fully understanding having informed consent would apply to physical activity only or, further to that, any emotional or psychological activity that would be related to acts?

Ms Lynch: Sorry, I am not quite understanding you.

Mr KRAUSE: If you want to insert the word 'informed' into consent, does that informed consent about the activity extend only to the physical activity to be engaged in or to any related emotional or psychological activities that go along with those physical activities? In terms of the activities and risk, which is in your submission, you say that there needs to be fully informed consent given to activities and risks associated with them.

Ms Lynch: I would think it is mostly associated with the physical activity. The concern of the Sexual Assault Network is often associated with that issue of strangulation and that it is more commonly something that is occurring, which Katherine was talking about, both in an informed way and a way where people are not informed about it. However, often young women are not informed about the risks associated with the act of strangulation. In relation to the word 'informed', I would say they are wanting it to be in there mostly because of that concern around strangulation—how it is increasingly being used and how young women are not aware of the risks of both serious injury and death from that activity. If they were informed, they would probably not go ahead with it.

Mr KRAUSE: It is directed towards a very specific set of circumstances.

Ms Hills-Vink: For me, informed consent really refers to this concept, which the committee may understand, of informed consent in the health setting—that you are agreeing to a treatment or a procedure with your doctor but understanding the entirety of what will occur before it happens. For example, you go into a doctor's office to receive a B12 injection and the doctor explains the process, the risks, the benefits, the possible negative side effects and how long you will be in there, so it is a negotiated, understood process before it happens. Informed consent means that you are freely agreeing to it and that you understand what you are giving consent to so there are not any surprises.

What we are introducing is a language that allows people to engage in healthy sexual relationships where they openly communicate what is going to occur and they are both willing and consenting participants to each and every act that occurs during sex. This reframes consent to being something that is fully understood—rather than my experience on the ground, which is seeing that the majority of women are experiencing horrific sexual violence from men forcing them to engage in acts that they did not agree to, that they did not wish to participate in and that they felt they had no voice to say no to. That is what is happening every day in Queensland, unfortunately: men are forcing women to participate in sexual acts that they do not agree to and that they do not understand or want. We are trying to shift the story to make informed consent so that it is an open conversation and people are not getting surprised and they are not having the will of another person forced upon them.

Mrs GERBER: On my reading of this section, it would cover the circumstance that Katherine has just described. What would be the added benefit of putting 'informed' in there?

Ms Lynch: It would make it beyond doubt. It would just add greater weight to the position—

Mrs GERBER: You already have to prove it beyond reasonable doubt.

Ms Lynch: Yes, but it would just add greater weight to the issue of the agreement, that it is fully informed. It would just add greater weight to it.

Mr HUNT: Could you speak to your recommendation on page 11 and compare and contrast the proposed bill and the Victorian model?

Ms Lynch: Did you say page 11 or recommendation 11?

CHAIR: No, recommendation 23.

Ms Lynch: Recommendation 23, right.

CHAIR: Do you want to repeat the question?

Mr HUNT: I am looking for you to compare and contrast the Victorian model.

Ms Lynch: This is in relation to a jury direction around a general assumption not informing a reasonable belief in consent. They have another provision that is contained in a jury direction. It is a direction on general assumption. It is around assumptions and biases should not inform the belief that there is consent. You cannot just presume that a certain person or a certain woman is going to consent in certain circumstances. You still have an obligation to engage and reach an agreement about that; you cannot just assume because of a biased belief. That is contained in a jury direction. We would say that that should actually be contained in the legislation and then backed up by a jury direction. You are really saying that it is not reasonable to make assumptions, essentially, about people or certain kinds of people.

Mr HUNT: What sorts of assumptions do you think—

Ms Lynch: You could make an assumption that a person dressed in a certain way or an Asian woman is ready for sex, is willing to give sex, wants to have sex with you because she is an Asian woman. We are saying that you should not be making these general assumptions about people—about how they are, how they dress, their background or their ethnic background—and assume that they are willing to have sex with you. You actually have to engage in a conversation with that person, not make those assumptions, and if you do make those assumptions it is not reasonable. We want that in the law.

CHAIR: Also occupation?

Ms Lynch: Absolutely, occupation as well, and maybe that they dress in a certain way.

CHAIR: In relation to recommendation 2 on page 6, could you expand on the Gillick competency test?

Ms Lynch: The Gillick competency test is a test that is routinely used by medical doctors, health professionals and other professionals, including solicitors, in making determinations about whether a young person has the capacity and ability to make certain decisions. A doctor may see a 15-year-old and determine under the Gillick competencies that they are a young person who has the capacity, ability and understanding of all of the consequences to go on the contraceptive pill or something of that nature. It is really asking that this legislation be more accommodating of young people's agency if the professional who is engaging with them acknowledges that that young person may make a decision that they do not want to go to the police in relation to the sexual violence that they have suffered. They could have very good reasons for not doing that—and also subject to obviously safety issues. There could be other safety issues that could override that. Really, it is taking into account that that young person has the capacity and understanding and has very good reasons for maybe not wanting to go to the police and that the law accommodates that.

CHAIR: That brings to a conclusion this part of the hearing. I do not think there were any questions taken on notice. Thank you for your written submissions and thank you for your time today.

EL-HIGZI, Dr Faiza, Postdoctoral Fellow, School of Psychology, University of Queensland

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

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

CHAIR: Good morning and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Dr Wallis: I am joined by my colleague Dr Joseph Lelliott, who is a senior lecturer in the school of law at UQ, and my other colleague Dr Faiza El-Higzi, who sits within the School of Psychology as a postdoctoral research fellow at the University of Queensland. Obviously our submission also included Professor Blake McKimmie, and he has sent through a couple of things to feed through as well. He is also within the School of Psychology. It is useful, I think, to begin by saying that we are a loose consortium of people with a variety of different levels of expertise in different spaces, so some of the questions will be better referred to one or the other of us. Similarly, our content is reflective of our various different specialties, so we are kind of not all speaking as one voice on everything. We will make that clear to you where we can.

We only have a few things to say in addition to what we have provided in our written submission. As a summary, we are broadly supportive of the affirmative consent model. We see it as something that extends practice and is broadly uniform with what is happening in other jurisdictions. We are cautiously supportive of the coercive control offence. We have some concerns about the structure—the breadth—of that offence, particularly in relation to the framework of harm as it sits in that space. We have a similar small point to make about the framework of harm as it sits as part of the affirmative consent model as well. We also note that the offence is quite a serious offence. It sits with a maximum penalty of 14 years, which makes it a serious criminal offence, reflective of some of the serious behaviours we see and the serious consequences we see in that space. Nonetheless, that has some particular issues for where it might be misapplied or where there might be ambiguity in its application. We are also very supportive of the idea of diversion regimes in this space and, where they are appropriate, being able to address harm in that way in a preventive fashion as much as possible.

Beyond those kinds of specific comments, we really would like to endorse the ongoing conversation about the need for community education. In particular, we are concerned about community education being tailored and bespoke to particular communities. I am sure that Dr El-Higzi can speak more to that, but obviously that also would include First Nations people, young people, older people—really quite well thought through, well-funded, well-resourced frameworks for that communication of the law beyond just the criminal law as being a communicative thing in itself.

Also in that same space, obviously as researchers we are very concerned about the need to have a good evidence base for some of the way in which this plays out and the need for ongoing evaluation and review of what is happening in practice, not just with respect to the offence itself but also what that might mean for criminal procedure through from investigation, pre-trial decision-making—things like delay and particularly the experience of victim-survivors through that process but also of respondents in that context. I think that is all we need to say in our opening statement. Thank you.

Mrs GERBER: Can you expand for the committee on what you mean when you were talking about your concerns around harm and fear in its application to consent, or was it coercive control that you were referring to?

Dr Wallis: It actually sits in both spaces, so this kind of broad idea about harm being defined in some way, and I think actually Dr Lelliott might be the best person to speak to that question.

Mrs GERBER: Perhaps just for my benefit you could provide some practical examples of what you are talking about so that I can put it in context.

Dr Lelliott: Yes, of course. Just in relation to that issue of harm, that point goes to—and this is sort of outlined in the submission—that it is potentially very broad in how it is framed in relation to consent as a vitiating factor or a factor where there is no consent in that model as proposed. I note that it is based off the New South Wales provisions, but I would note that, to the best of my knowledge, I believe in New South Wales the same provision says 'serious harm', and that is I think what I am kind of recommending in that submission. That is, without that word 'serious', this potentially becomes very broad. It is the fear of any type of harm, and the examples that are given in that list are social harm, psychological harm and emotional harm. That list is not a closed list, either; it is just examples of the types of harm that could be encompassed.

Mrs GERBER: Reputational harm?

Dr Lelliott: Reputational harm is another one.

Mrs GERBER: Economic or financial?

Dr Lelliott: Yes. People engage in sexual activity for potentially many reasons, and there could be multiple reasons as well, and there are potentially some difficulties there around the breadth of that provision. I think the word 'serious' potentially could be considered as an addition to it.

Mrs GERBER: Thank you. So that is in relation to the application of harm in relation to the meaning of consent. Then when talking about coercive control, is it the same line of argument that you are saying—that is, it should articulate serious harm as opposed to just a broad harm?

Dr Lelliott: Yes. I might pass to Rebecca in a second, but I might just say that I think my point broadly is the same on that one, particularly given the severity of the coercive control offence and the fact that it attracts a maximum penalty of 14 years.

Dr Wallis: I would add that in the coercive control framework it is perhaps a little bit more difficult, because you are trying to pick up behaviours that may in themselves be small or may from an objective view be not necessarily something that you would immediately describe, as one behaviour, as being serious. It is the cumulative pattern of behaviours that we see so, as you are thinking about limiting the harm framework in that space, thinking about how that can still capture accumulative patterns of smaller behaviours so that you are ending up with some kind of serious harm as the outcome or the consequence of the behaviours.

Mrs GERBER: In relation to that course of conduct in relation to coercive control, specific intent must be proved but it is not in relation to each instance; it is proposing the one course of conduct. If it was 'serious harm', is there a concern that because the mens rea element of each specific, maybe minor, element of the whole offending is proposed to be removed by the bill? I am struggling to articulate what I am talking about. I guess what I am talking about is that, in its current form, section 334C allows for the conviction without each individual course of conduct being particularised as part of the offence and, therefore, the defendant or the prosecution would not have the ability to consider evidence as they ordinarily would right now in relation to each particularisation. Do you think if harm was to be amended to include 'serious harm' that particularisation needs to stay?

Dr Wallis: I think I would have to give that a little bit more thought in terms of an easy way to remedy the problem, rather than just identifying what the issue is. Certainly we have had some discussions about the issue of intention, and I think we speak to it a bit in the written submission, in terms of the question of how you prove intention at the level that you might need to prove it in this context and what that would mean for the particular behaviours or set of behaviours. My feeling—and I am not sure if I am speaking for Joseph in this—would be that if you are really wanting to capture coercive control as a set of behaviours that may be more or less individually problematic—and that might be accumulative—it would become difficult to make each one of those things specifically set out or specifically proven in that way. So, again, you are constructing an offence, I guess, to try and rest on the outcome of those sets of behaviours with some sort of threshold for what those sets of behaviours look like together. I think it is a difficult thing to do and it is reflected in the complexity of the provision.

Mrs GERBER: Thank you.

CHAIR: Just picking up on that, some of the evidence that I have seen is that a lot of the behaviour is subtle and cumulative over time and having it defined as serious may eliminate some people coming forward. I do not know, but I am trying to think of examples such as the potential, for example, to prevent someone from getting a driver's licence—that may be subtle and not have any foreseeable serious consequences—and then restricting the amount of money that someone has to spend on groceries and then, going even further afield, restricting what they wear. That may all be regarded as harmless in certain circumstances but have been identified as coercive control in some situations. I am just worried that if you stick in 'serious' you then eliminate a whole cohort, because my understanding is that the intention is to try to prevent this behaviour so that it does not escalate.

Dr Wallis: I agree. I think that was why we preambled this a little by saying that serious harm might fix the issues to do with affirmative consent, but I think with respect to coercive control it may not be the right way of limiting or of better defining or better articulating what the harm is. We have a concern broadly about the utility of the law as well of course its impact on victim-survivors but also on the accused in this kind of framework and thinking always as a matter of principle about ensuring that the criminal law is used in a way that sets a threshold for behaviours to say, 'At this level, this behaviour

is criminal,' but it is a very difficult thing. Obviously we have had many inquiries and they have all pointed to these difficulties, so I am not sure that seriousness would be the way to limit that harm framework, but some further consideration—or perhaps it is an aspect of the ongoing monitoring and evaluation framework to consider how that is better articulated.

Dr Lelliott: I do not think we are saying that every individual act of coercive control needs to be serious; it is more that the course of conduct overall causes harm as a result. The offence itself says that a person who is an adult commits the offence and subsection (d) states—

the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm.

So it is the cumulative effect of individual things. We are not saying that every single individual piece of conduct needs to be serious. Does that make sense?

CHAIR: Yes, it does. Thank you, Joseph.

Mrs GERBER: Joseph, you very helpfully said that in relation to consent New South Wales uses 'serious harm'. In relation to the coercive control laws, does New South Wales use different language?

Dr Lelliott: I am not sure, sorry. I would need to see the provision. I am not sure, off the top of my head.

Dr El-Higzi: If I can just add something, I am also a member of the Queensland domestic violence council and the Queensland Multicultural Council, so I come here with a lot of understanding of multicultural communities. The examples that you as chair have given are really important to understand using this context. Queensland is becoming more multicultural and people bring different understandings of behaviour and of social norms, so if we generalise then there is the risk of certain groups of people being criminalised and entering into the criminal justice system that will really impact the rest of their lives, so I think caution here is important.

Mrs GERBER: Thank you.

Ms BUSH: Thank you for your submission. I do not have very many questions for you, but I did want to get you to expand—I do not think you have already, unless I have missed it—on section 348AA(1)(m) around the transmission of disease and why that particular clause caught your attention and maybe some of the background to your interest in that.

Dr Lelliott: To expand briefly on that, I have written a bit on the transmission of disease generally and the criminalisation of it. A few general points to make are that there should always be caution around any form of criminal action against the transmission of disease, particularly because it can increase stigma around people who carry certain diseases. There is a lot of research around in particular HIV AIDS and the transmission of that disease in the context of sexual activity. A lot of research suggests that criminalisation only acts to increase stigma and decrease reporting rates. It might even affect whether people even disclose it during sexual activity. The other thing I would say broadly about how this is framed in the bill is that it is not one restricted to STDs; it is any disease, and it is any serious disease. The way that disease is defined or applied in the context of Queensland's criminal law can potentially make that quite broad. Whether or not a disease is serious is not always clear. It is hard to know exactly what diseases might be serious and what diseases might not be.

Ms BUSH: COVID comes to mind for me. Is that a similar way to frame it?

Dr Lelliott: Yes. For example, that poses some difficult issues because it can be serious for some people; it can be not serious for other people. The severity could be modified by medical treatment as well. If we refer to the definition of grievous bodily harm in the code, you have to take medical treatment out of it. You are saying, 'Is it serious regardless of medical treatment?' All of these issues become quite difficult. An example might be that someone consents to sex with someone else on the basis that they do not have a COVID infection. If someone lies about that and then transmits COVID to that person during that activity, that could potentially be covered under this provision. That, I think, makes it quite broad. It is not what I think it is trying to get at. I think it is trying to get at sexually transmitted infections.

Ms BUSH: Are you suggesting that it should be limited to STDs more so?

Dr Lelliott: I would not have a particular position, and other people might be better qualified to make a very specific suggestion, but I am not sure if it needs to be in there at all. I would note that transmission is already criminalised under section 320 and section 317, depending on the mens rea behind the offending conduct.

Mr KRAUSE: My question is in relation to the same provision, which is 348AA(1)(m), in relation to the issue of a false or fraudulent representation about whether some person has a serious disease, the issue we were just talking about. The question I have is around the concept of a false representation

and whether it opens the door potentially for criminalisation of an act to come about because someone has made a representation that is false but actually does not know it is false at the time. Is that a concern you have identified in reviewing the bill or—

Mrs GERBER: If it helps, I can point to it. The proposed subsection is 348AA(1)(m)(i) and the words used are 'false or fraudulent representation'. The proposition could be that it could be false and fraudulent representation.

Mr KRAUSE: Because, for example, I can tell you now that I do not have COVID, but I do not know with certainty that that is the case.

Dr Lelliott: This is somewhat off the top of my head, but I am quite sure it needs to be knowingly false.

Mr KRAUSE: It does not say that, though, does it?

Dr Lelliott: The interpretation of similar provisions in the code follows that line of reasoning.

Mrs GERBER: Common law.

Dr Lelliott: There is already a provision in the—

CHAIR: It is still in the code.

Dr Lelliott: There is a provision in the code around fraudulent and false representations, and that is the way it is approached.

Ms BUSH: Intent as well.

Mr HUNT: Thank you for your submissions. I want you to expand, if you could, on the unintended consequences of giving jurors directions around sexual offending and behaviour of complainants and defendants. What are those unintended consequences that are you concerned about?

Dr Wallis: In this respect, where I am bringing with me the work of Professor McKimmie—this is really his area of expertise so I will try to do it as much justice as I can, but we can always bring things back to him if I do not do it justice—obviously the intent of jury direction, broadly speaking, is to ensure the jury is appropriately informed about the relevant issues they need to turn their minds to in order to determine whether or not somebody is guilty beyond a reasonable doubt. The framework that sits behind most of the amendments around jury directions in this space is really about ensuring juries are bringing with them relevant information and not relying on irrelevant information—particularly in that case around myths and stereotypes as they are forming an opinion, the particular case in issue.

With some colleagues he has been doing a lot of research in the space of jury directions and how it is that they are understood by jurors and whether this broadly educative jury direction works. There are really mixed findings in that space. He was drawing attention particularly to some of the unintended consequences that he, with a colleague I think from the University of Newcastle, recently published some research around—the kind of direction that was being used to try to ameliorate the problem of people thinking that a complainant's lack of affect or lack of distress might actually be something that you could use in some way to say that, 'Well, perhaps the offence did not happen or did not happen as she said it did,' and therefore a direction that helps to educate a jury that actually people's reactions can be quite variable. They could be distressed; they might not be. In that space, the research found that it tended to take away the benefit that a 'distressed' complainant might have had. rather than improve the position for a non-distressed complainant.

I think the take-home message is that jury directions can sometimes not work as intended and there really is a need to continue to consider whether they are working for the reason you think they are in place. Where they do seem to work, I think, from his research—where there is more promising kind of space in that—is where it is connected in some way meaningfully to the facts of the case, to the particular people involved in the particular matter, so that it is not just a general kind of educative thing but something that is anchored in some way to the facts. This is my hopefully good reflection of his research, but certainly he would be interested to speak more to it, I am sure.

CHAIR: We have the added disadvantage here in Queensland, do we not, that direct contact with jurors is a breach of the Jury Act?

Dr Wallis: That is right. Jury research is always very difficult, but there is some really good jury research that comes via proxy form around those considerations that is quite informative and quite useful.

Mrs GERBER: Going back to serious disease, I note that Queensland Positive People, HIV/AIDS Legal Centre and the National Association of People with HIV Australia also do not support that provision applying to the criminal law. You said that there is already the ability of the law to prosecute people in relation to STDs, or is it just HIV that the criminal law recognises?

Dr Lelliott: It covers all disease—general, yes. The definition of grievous bodily harm encompasses serious disease, so the infliction of that harm under section 320 is an offence. There have been prosecutions like R v Zaburoni that went to the High Court, and then section 317 also includes infliction of serious disease. That is where there is an intention, so it has a more serious penalty, attracting life imprisonment. I am not saying that I support necessarily that extension of the criminal law; I am just stating that that is what the case is.

Mrs GERBER: Does the amendment in this bill take it further than that?

Dr Lelliott: It does not take it further in the sense of directly making it a crime to transmit disease, but it does go further in the sense that it specifically says it is a vitiating factor for consent. It means that potentially transmitting a disease can also come within the ambit of these sexual offences in the sense that it removes consent. Does that make sense?

Mrs GERBER: Yes, it does.

Dr Lelliott: The other offences directly target the transmission of disease itself and say that is infliction of harm, therefore it is an offence. They are doing slightly different things.

Mrs GERBER: So you could be charged with both?

CHAIR: Not necessarily.

Dr Lelliott: I would have to think about that—not necessarily. It might conflict with principles around double criminality.

Dr Wallis: I think the difference is that this is essentially a consent framework for rape or sexual assault. If it is relevant in the context of prosecuting those offences, it would become a thing in that space. It exists as its own criminal offence elsewhere, or as part of a grievous bodily harm framework.

Mrs GERBER: I am still trying to get my head around it. As a practical example, say there are two people having sex and if one person was to find out that the other person had, say, hepatitis B they would choose not to have sex with them. Is that what we are talking about when you say—

Dr Wallis: I think that is how it would work for consent.

Dr Lelliott: Yes, and that would depend on hepatitis B being a serious disease as well. Part of what I am saying is that it is hard to say what actually is a serious disease.

Ms BUSH: I am still very interested in this area, but I am going to circle back because, I think, Rebecca, you mentioned that Dr El-Higzi might be able to expand on some of the education recommendations and the importance of getting that tailored and targeted.

Dr El-Higzi: As I started saying, the social norms of a number of communities that end up making Queensland their home are different. Some of them are very gendered because they come from places where the cultural norms are quite gendered, so to start talking about consent—in some cultures a woman's silence is considered consent. We need a lot of targeted community education in different languages and at different levels so that communities understand what consent is—in particular, for young men to start understanding what consent is and for young women to also understand what consent is, because they are going to have relationships later on in life.

There are also other areas beyond consent in terms of coercive control. Many communities live in extended family situations, and the coercive control might not come from the intimate partner but might be a consequence of relationships with in-laws, conflict with in-laws. The law does not necessarily address that. It is having an understanding of these complexities when dealing with multicultural communities and also the backlash that a woman might be faced with if she takes her case to police or to the justice system against her mother-in-law or father-in-law which would mean that women will not come forward. That will create culture that is very gendered, which is contrary to what the bill is trying to achieve.

Dr Wallis: I think in that space we also mentioned the need for that community education to not just be about the new offences with the law itself but also the criminal justice process which really sits in and around that.

CHAIR: Thank you. I would like to thank you for your written submission and for your contribution today. It has been very helpful to the committee.

Proceedings suspended from 12.00 pm to 1.02 pm.

BONENFANT, Ms Alana, Queensland Youth Policy Collective

CHAIR: Good afternoon and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Bonenfant: My name is Alana Bonenfant. I hold a Bachelor of Laws, Bachelor of Arts and Master of Laws (Research) from Bond University. I currently live on the Gold Coast completing my practical legal training. I am a member of the Queensland Youth Policy Collective, which is an independent and unaligned organisation of students and young professionals who seek to add a youth perspective to public policy and debate in Queensland.

Today we seek to emphasise two core points from our written submissions to the committee: first, that the addition of the word 'agreement' into section 348 of the Criminal Code is not going to fundamentally change the operation of consent law in Queensland; and, second, that in section 348AA(1)(m) of the proposed amendment to the Criminal Code the use of the words 'false or fraudulent representation' as to one's STI status is confusing and may have unintended consequences in operation.

Turning to the first of these, we welcome the addition of the word 'agreement' and the meaning of consent. We believe that it is important to communicate to the general public what consent is and, importantly, what it is not. We believe that the addition of the word 'agreement' is going to bring Queensland legislation in line with Tasmania, the ACT, New South Wales and Victoria. It is important that people in the general public understand that mere acquiescence or submission to an act, especially in the context of a sexual relationship, is not consent. The addition of agreement clarifies that.

Turning to the second point that we seek to emphasise today, the wording of 'false or fraudulent representation' is going to be confusing for the general public. That is because the use of the word 'or' implies that there can be two misrepresentations—one that is false or one that is fraudulent. It is unclear in the way that the drafting has been done as to whether or not parliament intends for that to be read as two misrepresentations or as one comprehensive misrepresentation as to whether or not one has a serious disease.

Another issue we see with this section is that the current definition of serious disease will encompass most STIs because, left untreated, STIs can have the ability to endanger or threaten the life of an individual. Where a person is asymptomatic and may have contracted an STI and they tell a sexual partner that they may not have one and the person engages in a sexual activity consensually on that assumption, that person, under the operation of the section as it is currently drafted, will have committed the offence of rape and face life imprisonment. We believe that the current drafting is going to lead to the unintended consequence of this happening, and that is perhaps an unjust reaction.

We acknowledge that the mistake-of-fact defence does in fact operate in Queensland and where someone makes an unknowingly false statement they can rely on that as a defence, but that is going to be unnecessarily complex for the average person. That is because the explanatory memorandum to this bill explicitly states that where a person makes no representation as to their STI status at all they have not committed an offence. We think that in operation this is going to lead to less discussion as to one's STI status and fewer frank and open conversations which can in turn lead to agreement and consent and allow this affirmative consent model to operate correctly. For example, we think the operation of this subsection as drafted is going to unnecessarily criminalise the actions of a person who may be participating in what is traditionally referred to as a higher risk sexual activity—for example, a sex worker or a member of the LGBTIQA+ community.

A person could travel to New York, for example, participate in unprotected sex and contract an STI and in the interim period return to Queensland, participate in unprotected sex again, reassure their partner that they do not have an STI but unknowingly pass that to a third person. We think that person should not face an offence of having committed a rape where they are not aware of their STI status. It is going to perhaps complicate things in operation. That is why we propose that 'false' be removed from the section, because the legal test of 'fraudulent' is that the representation in and of itself must be false and that it must be made with the intention to induce a person into an act which you receive a benefit from—in these circumstances, to induce a person to have sex with you knowing that you have an STI. We believe that by removing 'false' we are going to protect persons who may not be aware of their STI status while maintaining the criminality of a fraudulent representation. I thank the committee and welcome questions.

Mrs GERBER: Thank you, Alana, for this written submission. It is really comprehensive. You have done a fantastic job, along with your alliance, of putting together a very informative piece for us. We heard from some professors and doctors at QUT in relation to the point you are making about 'false' and 'fraudulent'. They said that 'false' as defined in the Criminal Code must contain an element

of knowledge. Therefore, the argument in relation to paragraph 10 on page 5 of your submission, that you need to use ordinary principles of statutory interpretation, perhaps is not necessary. I was wondering if you had turned your mind to that. I have not fact-checked what the oral submitters said in the previous session, but I am assuming it is correct. Essentially, what they said is that 'false' is already defined in common law and in the Criminal Code and it must contain an element of knowledge. Therefore, it cannot be false if you did not know. Do you understand?

Ms Bonenfant: Yes, absolutely. I take that point; however, we think the threshold of something merely being false and you knowing or not knowing that it is false is too low a threshold in operation. 'Fraudulent' sets it at a higher threshold. Where someone may have made a statement that is false, whether they know or not, there has to be a level of intent that they are trying to mislead. There are many reasons someone may lie about their STI status. They could be stating, 'I don't have an STI,' without the intention of having sex with that person, whereas a fraudulent statement goes so far as to say that with the intent of having sex with that person they are making that misleading statement.

Ms BUSH: I am not quite sure where to go with the questions. As the member for Currumbin says, the previous submitter picked up on section 348AA(1)(m) which was an interesting submission to hear. He unpacked for us that in the Criminal Code there has to be an element of intent. For example, there must be intent to transmit a disease in order to be criminally responsible for GBH. What you are saying is that consent obviously attaches to sex crimes—to rape and sexual assaults. It potentially has the impact of leading to a charge.

Ms Bonenfant: Yes. We think that is perhaps too severe in the circumstances, especially where someone, for example, might be unaware of their HIV status. For a lot of people, before they become asymptomatic it is going to be virtually undetectable in their system. That means that those people could then in turn seek medication, seek treatment, and then it becomes undetectable in their system again. Where they do not have those frank discussions, there is going to be a level of confusion and we think a lack of clarity. Ultimately, there is not going to be a result of actual convictions coming through. It is just going to become a bit of a moot point in that section.

Ms BUSH: I hear that. I am just thinking it through in terms of your proposal. Would 'fraudulent' be enough to pick up scenarios where perhaps somebody does not believe they have an STI but perhaps is misleading about their sexual history that is a risky history and lies about that to a partner who then engages in unprotected sex with that person?

Ms Bonenfant: Exactly. 'Fraudulent' would pick up that representation, because they are lying with the intention of furthering that sexual relationship and expecting the person they are engaging in that relationship with to act on that misrepresentation—or merely false, they can make that statement without the intention of inducement.

Ms BUSH: It certainly gives us a lot to think about. That is all I have for now, apart from undertaking to think about that.

Mr HUNT: Could you tell us your concerns around the proposed amendments around consent and sex workers and the difficulties you might have with that?

Ms Bonenfant: Ultimately, there may be sometimes a misconception that by being a sex worker you are inherently consenting to any action in which a person may pay. That is not the case. There still needs to be free and voluntary agreement to such action. What is important about the amendment in this bill as proposed is that it needs to operate alongside the existing legislation which allows for prostitution and sex work to take place in Queensland and it needs to do so seamlessly. As it operates right now, we think there is going to be a bit of tension. It is important that where someone is engaging with a sex worker they are still getting that free and voluntary agreement and it is still clear at any time in that sexual encounter that consent can be withdrawn.

Mrs GERBER: I just want to go back to your 'false' and 'fraudulent' submission. I want to get it clear in my mind. In terms of recommending that it just be fraudulent, you are more aligning the provision with what is currently in New South Wales; is that correct? New South Wales currently says that if the person participates in sexual activity because of a fraudulent inducement—

Ms Bonenfant: Yes.

Mrs GERBER: You are suggesting that it be more aligned?

Ms Bonenfant: Yes. We are not saying it has to be word for word, but we think that affirmative consent model operates similarly to what the bill is intending to do.

Ms BUSH: Just going back through your submission, you are talking about section 227B and going into some detail around the use of deepfakes. Did you want to talk a little bit to that?

Ms Bonenfant: Yes, absolutely. We think obviously the prevalence of things like ChatGPT has turned the public's mind more to AI and its capabilities and there is a real risk that, unless the word 'image'—and that includes an AI generated image—is clarified in the section, someone could get away with saying the image is not real, despite the fact that it looks so real or appears real to the point that it is depicting a person engaging in a sexual activity which they either have not consented to or did not actually participate in. I can obviously take it on notice to provide more information about deepfakes, if you like, as I did not perform that particular research, but it is an interesting area and it would put Queensland at the forefront—at least in Australia—in terms of criminalising such actions.

Ms BUSH: I think that is a really interesting emerging area, so anything you could provide would be helpful.

CHAIR: I am always conscious of the amount of work that is sometimes involved in doing things, so I always put the caveat on it that if it becomes too onerous or it is not feasible just contact the secretariat and let them know.

Ms Bonenfant: Absolutely. I will take it back to the collective and speak with our working group on this bill.

Mrs GERBER: You will not have had a chance to look at it yet, but the department has provided a response which has been published. In response to your submission in relation to deepfakes and digital photos, the department has said that these issues are outside the scope of the bill, unfortunately.

Ms BUSH: It is outside the scope, but I am certainly interested.

CHAIR: It does not matter that it may be outside the scope of the bill.

Ms Bonenfant: We absolutely take that point. We believe that where there is a criminalisation of the sharing of an intimate image already in the Criminal Code, this bill has to work alongside that and in conjunction with it.

CHAIR: We can deal with the aspect that the department says it is outside the scope of the bill. Going back to the change of the operation of the law of consent, can you expand on two things—and I will do them one at a time. With regard to changing the social function of the law, can you help the committee understand where you are going to with that?

Ms Bonenfant: Absolutely. I think especially in the last five to 10 years there has been an absolute development in the social understanding of what consent is and is not and there has been more of a push in pop culture, for instance, for affirmative consent. For example, in the most recent season of the Netflix show *Sex Education*, there is a discussion of what is free and voluntary consent versus mere acquiescence to a sexual activity because you might already be in a relationship with a person. Where we see that that falls into the scope of this bill is that, in relation to free and voluntary agreement, the addition of the word 'agreement' is not actually changing the way the common law is already operating; it is simply codifying that common law recognises that agreement is necessary and it has to be ongoing and that a person can withdraw that agreement at any time.

CHAIR: You refer to a fictional show, which I have to agree with you did take it fairly front-on about how it should work in real life. Commenting on that, it was probably comforting to see that being put in that fashion or that manner.

Ms Bonenfant: Absolutely. It also speaks to the fact that free and voluntary consent does not only have to be part of a sexual relationship and it does need to be an ongoing part of the entirety of relationships which in turn is going to assist with the actions of coercive control and in ending them as a systemic issue in society.

CHAIR: The other part of my question was that you believe it is important to communicate to society at large what the law is. How do you think that can be facilitated? Obviously there is the old-fashioned way of ads, but do you feel there is another way for us to communicate at large to the rest of the world?

Ms Bonenfant: I think the issue with that is that we are communicating about an issue that affects a large variety of people across many different interest groups so there has to be a very deliberate way of communicating such information. There are obviously traditional education programs, but I think what is also important is that when these changes are made people in parliament need to be conscious that, statistically, most women at least in society have had an experience with assault or with some sort of unwanted sexual advance and there has to be a level of awareness within the education program of understanding what consent is so that people can learn and not perhaps trigger or cause people who have experiences with the same to have a negative experience in having society learn. I think that is an important balance that parliament perhaps needs to turn its mind to. I think

especially in terms of how we might educate youth, it is important that parliament turns its mind also to things like TikTok, things like how we are going to get this across in schools where we might not be able to use social media. It has to be digestible and age appropriate, but that does not mean we are limited only to one age group.

Ms BUSH: When you were talking, it made me reflect on what Angela from QSAN was talking about in relation to the reportable notification scheme, where if a practitioner detects that a young person has been sexually assaulted they have to report. She was suggesting perhaps linking it to Gillick competence for 14- or 15-year-olds who may not want to report yet they are kind of forced into doing that through a reportable scheme. From your perspective working as a young person advocate, I am interested in your views on how often that comes up.

Ms Bonenfant: I think that is perhaps more systemic an issue than has been properly addressed. I think the main issue with the way the bill is currently drafted is that it is actually inconsistent with the way that many teachers or people who are working with young people are being trained in mandatory reporting obligations. Where you might work with a student and you have suspicions, you are required to raise those to the school. To not require someone to raise a suspicion kind of goes against that, and that is a tension that we do not think is appropriate. Where there is a suspicion, we do not think a student or a young person should be forced into a disclosure, but there perhaps needs to be a better system in how we can watch and perhaps better engage with this person so that they can trust us to disclose. That does not necessarily mean that we are going to force them to engage in the legal process of disclosure, but how can we better support that person? How can we provide them with resources and how can we better educate them on what their rights are and what they are able to access?

CHAIR: Expanding on that last concept that you were talking about, the mandatory reporting: I know that Jonty covered off on it, but how do you deal with all suspicions?

Ms Bonenfant: Where is the threshold, perhaps?

CHAIR: Yes.

Ms Bonenfant: I think what is important to know is that in mandatory reporting structures there is a threshold for what a suspicion is and there are already systems in place, dependent on the organisation, for how that is to be taken up the flagpole. Where there is a suspicion that is reported, that goes up to a more senior person. It is investigated and it goes from there. We think that perhaps needs to be implemented in a similar way, and that is something that parliament can turn its mind to. It is not something that is going to be immediate or perhaps like A-plus in its function right away, but it is something that is perhaps a moving beast. It has to operate correctly within the legislation but in a way that is actually serving the people it is seeking to serve, and that is the youth of Queensland.

Ms BUSH: It is an interesting construct, because we are talking about in the construct of consent, and in many ways a mandatory reporting scheme removes consent from a young person who otherwise might have Gillick competence. But if their decision is to not report for whatever reason at that time, it is almost removal of consent in many ways.

Ms Bonenfant: Right. We take that point—not so much to remove their consent to disclose but just to provide them with appropriate support and resources so that they can choose to disclose if they want to. Regardless, they are provided with resources to assist them in addressing what may or may not have happened.

CHAIR: In relation to the question on notice, are you able to provide that to the secretariat by 10 November?

Ms Bonenfant: I will return to the committee and let you know by the 10th.

CHAIR: Communicate with the secretariat any issues or your ability to do it. That would be appreciated. They are pretty understanding of the limitations of complicated research.

Ms Bonenfant: Thank you so much for your time.

CASTLEY, Ms Christine, Chief Executive Officer, Multicultural Australia

IYER, Ms Kalpalata, Manager, Research and Advocacy, Multicultural Australia

CHAIR: Good afternoon and thank you for being here. I invite you to make an opening statement of up to five minutes, after which the committee members will have some questions for you.

Ms Castley: Multicultural Australia is a multicultural, for-purpose organisation and settlement provider with a strong and connected physical presence across metropolitan and regional Queensland. Our clients and our community are at the heart of everything we do and we are passionate about providing care and services in person centred and compassionate ways. We also think we have played an important part in influencing the multicultural landscape across Australia.

Our journey over the past 25 years has been driven by our unwavering commitment to creating welcome, promoting inclusion and fostering belonging for all. We achieve this through client service delivery, community development advocacy, building cultural capability, community events and working with people, community, business and government. Each year we support clients through a range of programs including refugee and humanitarian support, employment and youth programs, and we regularly deal with issues related to domestic and familial violence in supporting our clients.

We have been actively engaged in this important conversation around domestic, family and sexual violence legislation reform and coercive control. We have actively and consistently engaged with the process from early engagement with the Women's Safety and Justice Taskforce including, as an example, organising community and service provider engagement in Toowoomba for women who are victims of domestic and family violence for the taskforce members and also in providing multiple submissions to the taskforce. We have engaged regularly with our communities and with our clients in terms of consulting on the first tranche of legislative amendments on strengthening Queensland's response to domestic violence and also the more recent engagement in the consultation around the development of a Queensland domestic and family violence perpetrator strategy. Our engagement on these matters is through deep engagement with members of Queensland's diverse multicultural communities.

Domestic and family violence is a complex issue that becomes even more complex in the context of people who come from diverse cultural and language backgrounds and who are also going through the experience of settling into a new country. Our key focus in appearing before the committee and engaging with the consultation is to highlight: first, the need to safeguard against unintended consequences from the legislation if it does not meet the specific needs of diverse multicultural population groups in Queensland; and, secondly, to suggest that we need to take action to support community readiness around the legislative changes, for example through a partnership approach in the design of community education campaigns.

We of course note what the committee would be aware of, which is that there is a significant diversity of experiences of domestic, family and sexual violence within our communities, and this is even more so in the case of multicultural communities. Within multicultural communities, in all of our submissions and engagements on this issue we have sought to highlight the complex forms of abuse and control perpetrated as well as rationalisations by perpetrators and acceptance by survivors. Migrant and refugee women's experiences of violence, control and abuse are shaped by the intersection of their identities and the domestic and family violence system. We have also noted the importance placed by many multicultural communities on the engagement of the broader family or cultural community in instances of dispute, conflict or even abuse between partners.

We would like to ask the committee to consider the importance of safeguards against any potential negative consequences of the legislation for both survivors and perpetrators within multicultural communities. This comes from very different and varied understandings of domestic and family violence, particularly so when it involves coercive control. We would submit that within many of the communities that we work with there is a limited understanding and appreciation of issues surrounding physical domestic violence and it becomes even more complex when dealing with the more, if you like, abstract notions of coercive control.

We also would like to make it absolutely clear from the outset that our position is that culture or faith is never an excuse for committing violence and for breaking the law. The unfortunate reality is that domestic and family violence, including coercive control behaviours, are sometimes rationalised by perpetrators, their families and communities as reflecting their culture's established gender roles. What we have seen is that this can sometimes create confusion amongst service responders in terms of how they might actually administer the law itself and respond to events within communities.

A standalone offence of coercive control will have significant benefits by providing an objective basis for education and behavioural change across communities about what is right and wrong behaviour in a relationship. I would emphasise that we see the legislation as being a platform for that education and information piece, which is an important precursor to the legislation actually being successfully implemented.

In terms of the specific clauses in the bill, in relation to the creation of the criminal offence of engaging in domestic violence to aid respondents and the additional standard condition on protection orders and PPNs, we are highly supportive of the intent behind the creation of this offence and the imposition of this additional standard, but we continue to have concerns that this will have the significant potential to affect multicultural communities if it is not accompanied by adequate system-wide and cultural change, particularly within our police and justice systems. This will render some groups particularly vulnerable to the proposed legislative changes—for example, in leading to perhaps unintended charges or in the right evidence not being able to be collected. Multicultural Australia would also recommend that, in addition to progressing work on the necessary systemic and cultural change reforms, the committee recommend that the Queensland government invest in research and data collection on the prevalence, reporting rates and experiences in relation to the use of the clauses on non-domestic and family violence and sexual and gender-based violence against women from diverse backgrounds.

We also support the intent behind the proposed court-based perpetrator diversion scheme because we think this will create an important pathway for diversion for domestic and family violence offenders before the criminal justice system is fully engaged. On this point we would note that there are very limited options currently available to diverse multicultural communities that address offending of this nature, including early intervention programs. We would request, again, that the committee consider making recommendations around the important need for appropriate safeguards around the right level of investment in identifying and resourcing culturally safe and appropriate support services to respond to offending behaviours across culturally diverse communities. We ask the committee to consider the impacts of implementing a rigorous monitoring of the offence of coercive control to ensure early identification of any possible negative impacts of the way in which the legislation operates.

Our key recommendation is investment in education across community, cultural capability for domestic and family violence services and supporting community readiness around these very significant legislative changes. We do note that the government has announced broad community education campaigns and tailored community key responses for diverse cohorts. We ask that very careful consideration be given to how this messaging can be tailored in the right way for the migrant and refugee communities that have made their lives here in Queensland.

Thank you for the opportunity to provide this opening statement. We are happy to take questions.

Mrs GERBER: Thank you for being here today and for your very comprehensive written and oral submissions. I want to give you an opportunity to further explain to the committee in relation to the introduction of the new offence of engaging in domestic violence or associated domestic violence to aid a respondent. In the oral testimony that you just gave, you expressed some concern that it might have the potential to adversely affect multicultural communities. Can you give the committee a practical example of what you mean by that so that we can better understand the impact of that section on multicultural communities and then understand what we might need to do to remedy it?

Ms Castley: I come back to my earlier point about how, with the work that we do, we find we have to explain physical domestic and family violence. This is behaviour that is not necessarily always against the law in countries from which people might come so there is that basis, which is an opportunity for us to simply say, even before you bring about the cultural change, 'In Australia, you will break the law if you engage in this behaviour so do not do it.' That then gives us a platform to say why it is morally and ethically wrong to engage in that behaviour. That is behind our point about how the introduction of these offences will provide an important platform for education as well as enforcement.

When it comes to coercive control, think about the types of behaviour that often form the basis for coercive control, for example, a partner or husband—usually it would be a male—dictating how a woman should dress. Then think about people who live in communities that have a very strong traditional faith background where there are actual traditions that relate to dress. There are also issues around control of finances. It becomes very difficult to explain why that is against the law and why that is the wrong behaviour. Making that behaviour explicitly against the law, through now introducing the dimension of coercive control on top of historical efforts, will actually make it easier to then frame education and awareness campaigns and bring about behavioural change as well in the design of programs. That is why we emphasise so much that this legislation will only succeed if it is accompanied by that investment in education and awareness raising for people in community.

The other piece, however, is around recognising cultural diversity by responders. When we make that statement that culture and faith should never be an excuse for violence or for breaking the law, it is very difficult for responders on the ground when you are trying to collect evidence and trying to get someone to be willing to bring a charge or provide the information to lay a charge when they do not even have that prior understanding that a particular behaviour is actually a wrong thing. We often hear from people: 'This is the behaviour that my father did, and my grandfather and my grandfather's father, so why is this suddenly wrong?' The starting point for us is to have very clear legislation, and that is why we think that education piece is so important. That is to give you a sense of how this unfolds in real life in terms of trying to have the conversations and trying to respond to these behaviours.

Mrs GERBER: I am still not very clear on the submission that you have made that the offence provision has the potential to adversely affect multicultural communities. I understand what you are saying in relation to it providing a great platform for you to be able to provide that education and that the law has to go hand in hand with an education campaign; however, your oral submission and your written submission say that this section around engaging in domestic violence or associated domestic violence to aid a respondent—the offence provision—could adversely impact multicultural communities. I need you to expand on that.

Ms Castley: I come back to my example of the control around methods of dressing which are particular to particular cultural communities. In the broader community, a husband laying down rules around what a wife should wear would generally be unheard of and not even an issue. However, when you work within a particular community, if you have a couple who live within a broader family group that is all about enforcing a particular way of living, dress is a good example of the coercive control piece. You could have allegations of coercive control where the family—the husband, potentially the mother-in-law and the broader family—will just say, 'That's not coercive control; that is just the way we live our lives.' It creates a complication. There is not a straight bat: 'No, you cannot, under any circumstances, tell her what to wear.' It is a broader piece in terms of the way people live their lives, whether we think it is right or wrong.

Convincing a woman, for example, that it is not correct for your husband to tell you what to wear may actually be difficult. It would form part of a broader pattern of behaviour. These are usually the obvious signals that people in the broader Australian community might point to as examples of coercive control, but it is very difficult to explain these issues. Therefore, we need to think about how we have these conversations in ways that are culturally sensitive, that recognise the faith dimensions for these people. The conversations are not as straightforward as they would be for other communities where those cultural norms and traditional norms do not apply.

It just simply complicates the actual enforcement of the legislation in terms of responders such as police being able to collect evidence and to collect the stories of the victim to establish that there is a pattern of coercive control and domestic and family violence, because they do not articulate these issues and they would not accept potentially some of these issues as being the evidence to demonstrate or form a broader picture of what is coercive control. Physical domestic and family violence is definitely easier to prove in that you can see physical injuries and you can see manifestation of actual physical behaviour that causes harm. Coercive control relates more to matters of the mind, and that is where you get into a very subjective space.

For offenders to then understand what this legislation might mean in terms of them committing an offence, they might say, 'Well, I don't see how that is the case because this is part of the broader community or social norms that we have here,' and it goes to the heart of being able to create prevention programs that are culturally right, that will reach people and that people will understand. If we do not do this correctly and we do not design things to create that intervention and understand how these things might apply, we will definitely see an increase of these particularly vulnerable cohorts being charged or increased incidences when they could have been avoided with the right communication and the right awareness raising done about the right thing. That will not be a straightforward communication of, 'Just don't do that. It's wrong.' It has to be a conversation around how the system works and why they should change their behaviour. There need to be culturally right programs that sit under the legislation that recognise that the legislation will have a different impact for particular people in specific communities. I am not sure if that makes sense.

Mrs GERBER: Yes, it does. Thank you.

Ms BUSH: When you were talking, it reminded me of an earlier submitter who was talking about a different cohort but said that the need to balance the right to protect with the right to self-determination for people is a real challenge. I think what I am hearing you say hypothetically is: from a western perspective, we might have views around the husband telling a wife how to spend money, but for a

particular cultural group that might be okay and they might have been consenting to that or they might be comfortable with that particular act. I guess what I am hearing you say is that the education piece in community is so critical, but the education for the investigators and prosecutors is really vital.

Ms Castley: Yes. In those instances I think you could potentially have a situation where a couple may be in a relationship that is okay, but if they are speaking to a case manager or a service provider they might say, 'Hang on. You're saying he has to control all the finances? The family dictates what you must wear? This looks to me like coercive control.' I think in the end you would get to a point where the evidence would not stack up to a charge, but there could be a complaint made to police and potentially an investigation which would cause stress and harm to that family by well-meaning people bringing into play the legislation. You could say out of an abundance of caution that is not a bad thing, but by the same token you need to think about the impacts on individuals of this legislation. Obviously being investigated causes a lot of stress on families who, in many instances, are already suffering the impacts of trauma in terms of going through the struggles of settlement and who are vulnerable on many fronts.

Ms BUSH: Yes, and you obviously have a lot of communities as well on the other side where individuals may want to seek assistance but have a mistrust of authorities—

Ms Castley: Absolutely.

Ms BUSH:—and so we need those alternative reporting schemes in place to help proceed.

Ms Castley: Yes, that is exactly right. This is also an opportunity in that this legislation really highlights that there is a need to understand cultural differences, traditional beliefs and all of those dimensions with the complexity which is the reality of the Australian population today. It highlights this piece. The issues we are raising are not unique to this particular clause or this particular amendment, but it does really highlight it when you think about the distinction between coercive control and what is traditionally understood historically as domestic and family violence. It resurfaces those issues.

Ms BUSH: That was something that came out in the Women's Safety and Justice Taskforce as well—a whole tranche of recommendations around making sure that we are providing education pieces for both communities and investigators that are targeted to particular victim-survivor cohorts, including people from a CALD or refugee background. How is that tracking? In terms of the comprehensiveness of that across the state with not just you as a specific service but the broader general DV services, how is that rolling out?

Ms Castley: I do not know if there is anything specifically responding to those issues, and even as I listen to you speak I am thinking of Toowoomba, which is a significant settlement community that we have placed there but it is a smaller community. I think it is important for us to understand that Queensland, as we all know, has those unique dimensions of the rural, regional and remote communities and diverse populations and people who are new arrivals or still working through that process of culture and language being quite spread, even sometimes in small numbers. In terms of the service response piece, that is particularly the issue in those smaller communities. You do not have that capacity; you have limited services that are available, let alone talking about specialised services with the capability to respond to people with particularly unique needs. In Toowoomba where we see domestic and family violence incidences it is easy enough, for example, for a partner who is subject to a domestic violence order to stand across on the other side of the street. That is a breach of the DVO or they know what the exact distance is. That is where coercive control behaviours become much more possible and also much more complex.

Ms BUSH: Finally, you also raise in your submission the perverse outcome of the chief executive having to prescribe where those diversionary programs are and if we do not have that social capital in a particular community those communities might miss out.

Ms Castley: They will—that is right—because they simply will not have the critical mass to justify that investment. The question then becomes: how can you get a bit smarter about ensuring that whoever is responding in those communities has access to the cultural capability to be able to provide the support in the right way or the advice—that is, outreach services but building the capability of the broader sector?

I should have emphasised that we are not a domestic violence specialist service, but simply by the nature of the prevalence of domestic and family violence throughout the whole community we do deal with these issues. We do referrals to specialist services, but certainly it is about that connection with specialists having that cultural lens and that traditional lens and how you navigate that, usually when you are dealing with a highly intense and almost immediate type response. We also engage in conversations with the Queensland Police Service around building that capability and we are very keen

to talk to the judiciary, because that is another really important part of all of this. All of these are the parts that come to bear on how the legislation works and how it is rolled out, which is going to be so important. I recognise that that is a matter for government, but what we are asking is that the committee highlight these issues for government to think about if this legislation is going to be successful, because on its own it will not work and it could lead to perverse outcomes.

Ms Iyer: Particularly to the perverse outcomes, I think it is things we hear from community. We have invested heavily over many years working very closely with communities, and some of the examples that we have demonstrated over time through the taskforce and through the legislative response are from communities. There are a couple of examples that Christine mentioned in Toowoomba, for example—that is, there is a protection order but someone standing across the road. We heard examples where somebody had a protection order and then upon release the wife had to go and pick him up because there is just no other support. There is not that clarity of understanding, so it is that engagement—and then to extend it to coercive control and that level.

There have also been instances of perpetrators, for example, asking a family member or a family friend or a cultural community member to have that conversation with the survivor or the wife or the partner. Those could also come under this because this is after a protection order and there is some conversation. Is that controlling behaviour? We are just concerned about that in terms of that community engagement or family engagement. There is a blurring of lines. It is not an individual, one-to-one relationship. There is actually cultural community surrounding certain relationships and they are all invested in those, so controlling behaviours perhaps extend beyond those immediate relationships.

Ms BUSH: I am sure, Kalpalata, you would agree that ensuring that communication is done is a little bit more than publishing fact sheets in different languages; it is really targeted, context-specific information.

Ms Castley: Absolutely. I come back to the example of Toowoomba, where we have settled 5,000 people of Yazidi background. Their language is Kurdish Kurmanji, which is an oral-only language. You cannot produce written documents, so you need to think about ways that information and awareness and education can be done orally around those pieces. The other piece that I repeatedly hammer on about is that translator and interpreter services generally are significantly underinvested in and the effectiveness of any legislation is always going to be potentially compromised simply by a failure of the ability to collate evidence to get the story and to understand what has happened. You do hear of instances where victims of domestic and family violence just simply pull out because they are exhausted by repeated adjournments because the translators or interpreters were not available on that particular day. There are also significant issues around, with the small numbers, conflicts of interest where sometimes they try to use one interpreter for both parties, which simply does not work. Again, we need investment in the, if you like, social infrastructure or the system infrastructure that needs to sit around the successful implementation of this legislation.

CHAIR: I know that it is outside the long title of the bill but dealing with the interpreter issue, has Multicultural Australia done any work in that space which will highlight the shortcomings of the current system?

Ms Castley: Within the bounds of our limited resources we have a group of cultural and support workers, so people who are not quite accredited interpreters, usually because they have not gone through that whole process. They will often have language and knowledge of culture and traditions, and that cultural and traditional knowledge is just as important, we find often, as language. Certainly we advocate wherever we can about the need for investment in professional interpreters. We have been trying to advocate for that, and this is an issue that is driven by decisions at the Australian government level in terms of making that available. In terms of responding to needing community and the languages that are spoken in community, on that front we can cite that I think for the most recent Census what came back was that nearly 40 per cent of Australians speak a language other than English at home. That is a huge demand and we are not talking about a minority service need, so there is a broader system piece around that that needs really good thinking about.

CHAIR: As there are no further questions, I thank you for your evidence today and for your written submission.

Ms Castley: Thank you to the committee for your time and for your consideration.

NORMAN, Mr Rob, Queensland Director, Australian Christian Lobby

CHAIR: Good afternoon and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Norman: Thank you for allowing me to present to this inquiry. The Australian Christian Lobby currently has around 250,000 supporters Australia-wide, almost 45,000 of whom are Queenslanders. We are one of the largest and most active grassroots political movements in Australia and our stated mission is to bring truth to the public square. In the introduction to our submission I mentioned that attitudes to sex and sexuality are constantly changing. Whereas marriage was once the basis for permanent, long-term relationships, our current culture is becoming increasingly sexualised. Changing attitudes towards sex and sexuality have created new classes of victims for sexual abuse that have previously not been considered. Our submission is aimed at increasing protections for these victims of abuse.

I would like to first speak to possible amendments that are specific to prostitution and the sex industry. Earlier this year the government revealed its plans to fully decriminalise prostitution. We know from overseas jurisdictions that full decriminalisation of prostitution will result in a larger sex industry and greater proliferation of organised crime, including increased people trafficking and the abuse and coercion of prostituted persons, mainly who are women. For example Germany, which has a fully legalised sex industry, is a known European hub for the trafficking of women, children and men who are subjected to forced prostitution and forced labour. ACL supports the Nordic equality or human rights model of prostitution reform, which is proven to reduce the size of the sex industry by limiting demand.

This bill in its current form does not offer substantial protections for prostituted persons. When considering protections for prostituted persons, the committee should have in mind that sex paid for should not be considered as implied consent but may be considered as coercion by inducement. In our dealings with survivors of prostitution we have heard many testimonies of women who are abused, raped and had all manner of indecent acts performed on them against their will simply because a man who has paid for sex thinks he has unlimited rights over the prostituted person's body. These survivors suffer often intolerable levels of PTSD, anxiety and depression.

We propose that the bill be substantially amended to cater for the intricacies of affirmation consent that are inherent in prostitution. This bill should provide specific protections for prostituted persons to help mitigate PTSD, depression and the long-term psychological effects of sex work. Wide consultation with survivors of prostitution is needed to develop sex industry-specific protections. The bill should be bolstered to protect persons who are under the influence of alcohol or drugs. This should include but not be limited to prostituted persons, who again are mainly women. People who are under the influence of drugs or alcohol are not capable of driving or making important decisions, including providing affirmative consent for sex or receiving payment for sex. The bill should acknowledge the high incidence of foreign prostituted persons who have limited or no English. Non-English-speaking persons are not capable of providing affirmative consent and are highly susceptible to exploitation by pimps and third-party sellers of sex.

We have other recommendations. The bill fails to address the push factors related to sexual abuse and violence such as online pornography, which is known to feed into adolescent sexual abuse. We propose that this committee introduce amendments that limit online porn and sexually explicit signage and billboard advertising in Queensland. The bill should also include an amendment to criminalise the coercion of a woman to undertake an abortion after an unplanned pregnancy. As a pastor, I have heard countless testimonies from traumatised young women who have been pressured to have an abortion by a boyfriend who refuses to accept responsibility and threatens to end the relationship unless the girl agrees to an abortion. This is coercive control as well. Thank you, Chair, and committee members for hearing our submission and our supporting statements. I am happy to take questions.

Mrs GERBER: Thank you very much, Rob, for appearing and for your written and oral submissions. I want to go to the first part of your submission around better protections for sex workers. You may not have had a chance to read it because we have published it this morning, but DJAG provided its response to various submitters, and one was a response to your submission. I will read out the paragraph and then I will get you to comment on it. In relation to the recommendation you have made in relation to better protections for sex workers, it states—

> DJAG notes the affirmative consent provisions will apply equally to sex workers. Under the proposed model, consent is not 'implied' by payment, nor is payment considered a 'coercion by inducement'. Parties to any sexual activity involving a sex worker will have to freely and voluntarily agree to participate in the act / each act. While payment may be a necessary element of the agreement, it is not the sole component.

Based on your recommendations that there need to be further protections and DJAG's response, what would you propose the provisions further include?

Mr Norman: We believe that prostitution is a peculiar and unusual form of this particular bill. It invokes a different shift on it, I guess, in that respect. We think there needs to be a special part of the bill that addresses some of the peculiarities. When we talk to prostituted persons—and we have done a lot of this; we have many survivors of prostitution who have incredibly high levels of PTSD, depression and suicidal tendencies. Mostly, those things come about because of the level of abuse that they sustain in receiving money for sex. It is really difficult to have contractual arrangements, obviously, when that kind of deal is entered into. Often, the stories that we hear are incredibly harrowing. Most people out there in user land do not understand the level of abuse that they sustain. We believe also that prostitution is actually abuse by definition, that it is almost impossible not to see that happen. Whatever level of contract, if you like, is entered into, it needs to be up-front and part of the arrangement.

Mrs GERBER: Essentially, you think, because of the specifics and the nature of the industry, it needs a specific carve-out, that it should be legislated on its own and that the protections need to be targeted and different?

Mr Norman: I think they need to be specific because of the unusual level of abuse that takes place. Some of the stories I will not mention here because they are XX-rated but, at the end of the day, people—mostly women—offering services for sex will be abused in unspeakable ways. We have heard definitions quite openly from women like that—often completely traumatised, bleeding from all parts of their body. There are specific needs that they need protection for.

Mr HUNT: Thank you for your time today. Could you expand on what you said regarding accessing online pornography? What would you like to limit and how would you limit it? Could you expand on where those limitations are specifically required? What group are you specifically trying to protect with those limitations?

Mr Norman: It is pretty easy for young people to jump online, type in a few keywords and have access to pornography. I do not recommend that you try it but, at the end of the day, what you are going to see is a proliferation of images. I guess what we are asking for is a method of age verification before young people can enter sites like that. This is not unusual. These kinds of controls exist already for gambling, for instance. To implement it for online pornography would simply be an extension of that, particularly for Queensland-based websites. Obviously we do not have control outside of Queensland. Similar levels of control to the gambling industry are what we are looking for. The link between youth sexual violence and pornography is well established. Again, it is very easy to do look-ups on that. The Australian government has done such studies.

Mr HUNT: Do you have a view on the efficacy of the 18-plus filters you have suggested?

Mr Norman: Filters often do not work; we know that. Things such as Net Nanny and those kinds of things often do not work, but what does work is an age verification piece of software. Again, if you are putting a bet on the horses, those kinds of things are mandatory. We are saying that if you are accessing online porn it is not that hard to provide the same level of authentication. Obviously there are always ways around that, but I think it is important that we are addressing that problem.

CHAIR: In relation to the development of education material and training, do you have any suggestions to the committee on how we could develop educational material to cover the various organisations that will be responsible for interpreting this legislation, including law enforcement and the broader public?

Mr Norman: We have not specifically addressed that area of education. Our submission is aimed more at some of the unthought-of victims of coercion. Some of the things that apply in particular to the full decriminalisation of prostitution are that it is conceivable that there could be careers nights for young people basically to enter into that industry as it will be treated as a normal job. That would be one level, I guess, where you could implement education. I am just thinking off the top of my head because, quite honestly, I have not prepared for that question. Once we go down this road of treating prostitution like a normal job, it does open up Pandora's box.

I believe that extra legislation is needed to protect vulnerable women. The issue of foreign workers and non-English-speaking people is a massive problem. The moment you get someone interpreting on behalf of that person, there is another level of coercion; we do know what they are actually hearing. They are agreeing to something when they do not know what is actually going to happen. Again, those stories are too familiar, unfortunately. We know from the overseas example that the sex industry will grow when it is decriminalised.

Mr KRAUSE: I gather from your submission that your view is that the issues of coercive control and domestic violence are quite interlinked—if not already, they will be—with prostitution?

Mr Norman: Yes.

Mr KRAUSE: You have said a few things about it, but is there anything else you would like to add in relation to how those two issues are interlinked and cross over?

Mr Norman: I think we are covering a lot of that. In terms of where prostitution becomes a normal part of society, if you look at Germany, for example, the figures are staggering. One in 175 people in Germany is involved in the sex industry. It has now become a hub. It is a hub for trafficking and for foreign workers coming from outside the country; it is a destination for sex holidays. The stories we hear of women involved in prostitution in Germany are horrendous. We might think, 'That is Germany. It is on the other side of the planet.' However, after 10 years of prostitution in New Zealand we are seeing similar things happening there as well. I have anecdotal evidence from women who have gone to police and basically tried to lodge a complaint of abuse and the police have said, 'Go away. It's a legalised and regulated industry. We don't really want to hear from you. It's not our problem.'

I think we have an opportunity with this particular bill to put in some fairly solid protections for prostituted persons, understanding that this is unusual and hopefully not the kind of abuse we are going to see in the broader community. The book I have given you is obviously not compulsory reading; it is beyond everyone's job description. That is the account of a woman who entered into prostitution and has become a long-term survivor. It explains some of the horrendous things that happened to her. I know that lady quite well and she is still suffering as a survivor. I would recommend, if it is possible, that the committee even speak broadly to survivors of prostitution and hear for yourself the stories. Once you hear them, it will help to understand the kinds of amendments that are required.

Ms BUSH: This is maybe not so much a question but a comment. Thank you so much for coming in and for your submission. I do not agree with a lot of what you have written and said, just to be clear with you. I do feel that for the record I need to pick up on your recommendation 4, that the bill should not facilitate 'buyer's regret' claims. I think it has been fairly well documented and established that that is a rape myth and it simply does not occur. I am disappointed to see it contained in a submission from someone of your standing in the community. I just feel I need to say that.

Mr Norman: Thank you. We live in a democracy; everybody is entitled to a different opinion. Again, generally this is a unique issue to males. It is not something we put in frivolously. It does happen and it is just something to keep in your mind. I appreciate the fact that legislation is formed on the best faith basis.

Mrs GERBER: You talked about the Nordic model. I have just read the title of this. Is the author—it says Nordic Model Australia Coalition.

Mr Norman: She is definitely an advocate, yes. Having seen the statistic change that it allows, basically, yes.

Mrs GERBER: For the committee's benefit, can you tell us what you mean by the Nordic model and can you tell us whether this bill fits within the Nordic model or how it might fit within it?

CHAIR: It is outside the long title of the bill, isn't it?

Mrs GERBER: Are you trying to guillotine me?

CHAIR: I am allowing the question, but it is outside the long title of the bill, isn't it?

Mrs GERBER: Sure, it might be—coercive control, I guess?

CHAIR: All right. I am allowing the question.

Mrs GERBER: To allow other submitters to answer outside the long title of the bill, I believe it is probably appropriate to allow—

CHAIR: I am not stopping the question. I just wanted to note that it is my belief it is outside the long title of the bill. That is all.

Mr Norman: I am happy to answer that question.

CHAIR: I am allowing you to.

Mr Norman: Great. Given the fact that we see 57 pages of amendments introduced to other bills that actually change the nature of the bill, I do not think it is outside the nature of the bill, quite frankly. The Nordic model is designed to shut down supply. In essence, it legislates or criminalises the buying of sex and the third-party selling, or pimping, of prostituted persons. It also provides government sponsored means for helping prostituted persons exit the sex industry. Finally, it does decriminalise

the selling of sex. That allows for women—again, mostly women—to approach police and other law enforcement agencies to ask for help without fear of prosecution. The bill does work. It has been picked up broadly across Europe. It is on the table in London, England and it is currently tabled in the South Australian upper house. It would be a very simple amendment to this bill. It would create somewhat of an omnibus bill but, hey, that is what we do. It would be a very good amendment.

CHAIR: There being no further questions, I bring this part of the hearing to a conclusion. Thank you for your attendance. Thank you for your written submission.

Mr Norman: Thank you.

CHAIR: We are ahead of time. I am conscious that if there are people watching the broadcast they would be expecting us to start again at 2.30 pm. We will take a break for five minutes. I apologise but I do not want to upset the timetable in case someone is eagerly awaiting us out there in video land.

Proceedings suspended from 2.23 pm to 2.30 pm.

COUNTER, Mr Mark, President, Queensland Positive People

STRATIGOS, Ms Alex, Principal Solicitor, HIV/AIDS Legal Centre

WARNER, Ms Melissa, Chief Executive Officer, Queensland Positive People

CHAIR: Good afternoon and thank you for being here. I invite you to make an opening statement, after which the committee will have some the questions for you.

Mr Counter: Good afternoon and thank you for your invitation to address the committee today. My name is Mark Counter. I am the president of Queensland Positive People. This is Melissa Warner, who is our chief executive officer, and Alex Stratigos from the HIV/AIDS Legal Centre. Allow me to begin by acknowledging the traditional owners of the lands that we are gathered on today and their elders past, present and emerging.

Our purpose here today is simple. We have come to ask you to remove clause 348AA(1)(m) from the coercive control and affirmative consent bill—the consent definition that relates to a person contracting HIV from someone who has fraudulently misrepresented their status. While each of us and the partner organisations that we represent fully support the intent of this bill and even this clause, it is our unanimous view that its inclusion ultimately will do the state much more harm than good. It will potentially lengthen the HIV epidemic in Queensland and will ultimately lead to more HIV notifications than it prevents. Let me try to explain that.

Of the 6,000 or so people living with HIV in Queensland, approximately 90 per cent of us know our status. That leaves around an estimated 600 or so who do not. It is these people that we are here to talk about. Why? Earlier this year our health minister removed the co-payment for HIV medications for all Queenslanders, making them effectively free for everyone. For the first time since the beginning of the HIV epidemic—and I have been part of it for 38 years—the possibility of achieving the government's and our goal of ending HIV notifications in Queensland has moved that much closer.

These medications, required in just one pill a day, mean that every single person who knows they are living with HIV in Queensland can achieve an undetectable viral load. It is the internationally accepted position now that that makes them uninfectious and unable to transmit HIV to their partners. However, as I alluded to a moment ago, this only benefits those who have tested. Not only are there 600 not benefiting from these life-saving medications; they are carrying around dangerously high viral loads and, if they engage in unsafe sex or share injecting equipment, they are likely to infect their partners. So why don't they test? Until recently it might have been that they were Medicare ineligible or they could not afford the medications, but the federal and state health ministers have now removed that problem.

Today we are proposing that the single greatest barrier now is in fact Queensland law. Under the law, ignorance is a defence, so you cannot be charged with an HIV related crime if you do not know your status. How do we know this? Because these people come to us regularly as part of our service and they tell us. People who have never had so much as a parking ticket tell us that they are scared that if they were to test positive and their status was to become known a single malicious tip-off to police might have them turning up on their doorstep to question them about a crime that threatens life imprisonment. Not testing simply removes that risk. These people prefer to stay under the radar and trust that these new medications will come to their rescue if and when they need it. In a perverse way, the original HIV clauses that landed in the Criminal Code at around the same time as the Grim Reaper was spreading fear that were aimed at protecting Queenslanders we now argue have become one of their greatest threats.

These references also act to fuel stigma and discrimination. Why? It is generally accepted that the laws of the day hold up a mirror to society's values and vice versa. Whilst these criminal laws remain in place or, worse, are now being added to, in the eyes of the public they continue to vilify people with HIV and single us out as potential criminals guilty until proven innocent. For the 4,500 of us who have tested who are just trying to get on with our undetectable lives, we not only fear a visit from the police but we fear a breach of our confidentiality. Not only national research but also Queensland research as late as last year confirmed that one in every two people still hold negative views around people living with HIV. With just a malicious or even an innocent slip of the tongue, people with HIV can find themselves subjected to localised stigma and discrimination, with their lives being destroyed and social networks shattered.

It is not surprising that our QPP data regularly finds social isolation and loneliness as huge factors in Queensland. However, to be clear, we are not proposing there be no laws governing HIV transmission. On the contrary, we advocate that, instead of the Criminal Code, the best place to

manage all HIV related matters is through the Public Health Act—inside a department that most of us trust, that has a balanced view of our best interests and that has the information at its fingertips to assess risk, viral load history, mental health, alcohol and drug factors et cetera.

We believe that, far from adding a new criminal law to worsen the situation, it is time for Queensland to have its legislation match the science and treat HIV transmission as a health issue, not a criminal one. The Public Health Act has its own strong sentencing regime if it finds malicious intent and also the power, with our blessing, to refer the very worst cases back to the DPP for criminal prosecution under existing legislation. We do not need another oppressive law.

Mrs GERBER: I want to explore a bit further that proposition. You are not the only submitter today to express some concern around the clause about serious disease but you are the only submitter saying that the clause should not be in the bill at all, so I want to dive a bit deeper into that. The reason you are saying it should not be in there is twofold. One is that it will force people who are living with HIV who do not have a viral load that can be essentially transmitted to engage in an informative consent model; is that right?

Mr Counter: No, not exactly. What I am suggesting is that for people who are at risk—and we believe there are around 600 of them—adding these laws forces them further underground and they do not want to test. By not testing, the laws do not apply to them. The work that we do at QPP is aimed at trying to find the 600. These existing laws, plus section 317 and a few others that are still in the Criminal Code, make that extremely difficult because people do not want to come forward. We believe that the Public Health Act has 'recklessly endangering' in it, which we believe picks up on these issues anyway. If someone puts someone at risk in a recklessly endangering way, the Public Health Act is more than capable of dealing with that. What we are trying to achieve is a legal setting that encourages people to come forward, not discourages them.

Mrs GERBER: Just to pick up on that, the Public Health Act is a separate issue to informed consent. This is around engaging in a sexual act and not being informed as to what risks, perceived or otherwise, you may be encountering in relation to that sexual act, whereas the Public Health Act is around endangering and there being an element of disease associated with endangering your body, yes?

Mr Counter: Yes.

Mrs GERBER: They are two separate things. We heard from a submitter before that COVID might potentially be something that is encapsulated within 'serious disease', as opposed to it only relating to HIV. How do you propose to capture that in the informative consent model if we take this clause out?

Ms Stratigos: We have been thinking about this for a long time, but the reality is that HIV is the only condition that would probably fall into that definition of 'serious disease' as it is under the code. I do not know that the courts, if it were tested, would necessarily find that COVID would fall into that definition of 'serious disease'—a disease that, if left untreated, would be likely to result in serious disfigurement or long-term health implications. For some subsets of the community, yes, COVID could potentially result in death but not for the whole population, if that makes sense. I think it would be very challenging. I am not entirely sure that the police or the DPP would necessarily back that charge.

I think this provision—the same as the provision relating to serious disease under section 317 of the code—realistically only relates to HIV. This is an HIV-specific offence. Under international laws in terms of best practice and in terms of having a robust public health response to ensuring we appropriately combat the HIV epidemic, you need to remove HIV from the criminal law conversation. It needs to be dealt with under the public health response.

I understand what you are saying in terms of people being able to have that autonomy of deciding who they have sex with and having that informed consent, as you are saying, but that is not necessarily going to lead to good public health outcomes. We have pointed it out in the submission. If you are going into a sexual relationship discussion with somebody, you are in the bedroom, you turn around and say, 'Hey, do you have HIV?' and the sexual partner says, 'No. I don't have HIV,' so you engage in unsafe sex. You have not then considered the possibility that that person is positive but is not aware of their HIV status. That is what is dangerous about this. The danger in having this provision means that you think, 'I will just ask someone if they have HIV. If they say no, that's cool. We can just have sex and it'll be fine.' There needs to be some level of mutual responsibility. You need to take some level of responsibility for your own sexual health beyond just asking a sexual partner if they are positive or not.

Mrs GERBER: I think the onus is on the person with the serious disease to disclose it, not the other way around. The onus is not on that person to ask the question.

Mr Counter: Can I just say how difficult that is, after 38 years of being the person who has to take all responsibility! What is wrong with someone else—

Mrs GERBER: There is nothing wrong with that.

Mr Counter:—having to take responsibility for their own actions and ask and not assume? That is like someone saying, 'Sorry but the person I'm having sex with isn't married,' and they think that is fine. People lie in those situations. If someone does tell someone they are HIV-positive, that can suddenly turn up in the media and on the internet. Their lives can be destroyed. By simply disclosing their status in any situation, their lives can be completely destroyed.

Mrs GERBER: I completely understand that.

Mr Counter: You put all the onus back on us and put no onus on the other person for taking some responsibility for their own decisions. It is just not fair.

Mrs GERBER: I understand what you are saying. I was merely pointing out that that is the way the bill is drafted.

Mr Counter: Yes, and I am suggesting that it is drafted badly and it is going to do more harm than good.

Ms Warner: I think the reality also is that the vast majority of HIV transmissions occur with somebody who does not know their HIV status. I think that is really important.

Mrs GERBER: Just to round out what I was saying—and perhaps using COVID was an extreme example, so let's replace that with hepatitis B. We are talking about serious disease and hepatitis B. I think that is potentially something that the coercive control legislation would cover. That is potentially a scenario that I could see happening in our society, as opposed to it only relating to HIV. How do you propose the legislation cover the possibility of someone transmitting hepatitis B if we remove this clause completely?

Ms Stratigos: Once again, you can be vaccinated for hepatitis B. By having provisions like this that are trying to be a health response in a criminal setting, there is not really any place for it. The place for protecting yourself from contracting hepatitis B is at your GP to get a vaccination. That is how you prevent yourself from contracting hepatitis B. It is the same with HIV. You use condoms or you go on PrEP, depending on the scenario.

With this provision, I would say, realistically you are looking at the scenario of people not necessarily in long-term relationships, for example. Potentially they would be, but you are talking about a disclosure sort of scenario. As Mark has pointed out, the majority of people living with HIV in Queensland have an undetectable viral load anyway. This is going to be capturing, in the context of HIV but also in a range of other health settings, a very small number of people, and it is stigmatising to that community.

I have an example of where it could be potentially quite detrimental. The way the legislation is drafted means there has to be an actual transmission take place. Say, for instance, there is a person living with HIV; they do not have an undetectable viral load, they have engaged in sex using a condom and during the sex the condom has broken. If they at that point disclose their HIV status to a sexual partner, they are potentially exposing themselves to facing prosecution under this section. However, in a public health setting, if they were to at that point disclose their HIV status to the sexual partner, it could encourage the sexual partner to go access PrEP within that 72-hour window to potentially prevent them from contracting HIV. Even, for instance, if they were too scared at that time to disclose so they left it beyond the 72-hour window period, they could, from a public health perspective, if this type of provision does not exist, potentially disclose to the sexual partner that maybe they should go and get tested for HIV. The sexual partner goes and gets tested. Worst case scenario they have contracted HIV, but at least they have then gone and got tested and they have gone on treatment early. However, with this provision, they would not be able to disclose that fact because they would be opening themselves up to a criminal offence.

With that scenario I have just discussed, they would potentially not face charges under 317 for intentional transmission: they had used a condom, but the condom broke so they are not going to face prosecution under 317. Even in terms of recklessness under 320, they potentially would not face charges there. But they are almost further compromising their sexual partner's health by being too scared to come forward and suggest to them that maybe they should get tested. From a public health perspective, it has a flow-on effect for that person's next sexual partner et cetera.

Mrs GERBER: With regard to my line of questioning, please do not assume that that is because I am in favour or not in favour of something. It is my job to test the parameters of the bill and by asking those difficult questions I am able to get examples like that which can really help the committee in informing recommendations.

Mr Counter: I apologise for my outburst.

Mrs GERBER: I understand.

Mr Counter: It is just that after 30 years of working in this sector and people with HIV being the guilty party in every setting, to find another law that is going to further criminalise us, at this late point—I mean, we are tidying up the HIV epidemic. We are close to finishing it, and here we are. I will have to tell my members on Thursday night at the AGM that the state government is lining up to shoot us yet again with another law. I would love to be telling them that it is on our side and is trying to help us and whatever, as Shannon Fentiman did at the IAS conference by announcing that they were removing co-payments for HIV medications. Instead, I am going to be telling them that we have been here trying to prevent another criminal—I am sorry—

Mr KRAUSE: Sanction.

Mr Counter: Thank you—sanction being added. For me, I find this completely—I cannot understand why the government would be thinking of it. What QPP needs most the government to do is to move not just this one but 317 et cetera. Put it all into the Public Health Act. Let's go out and find these 600 people and get them into testing because there are no negative consequences, and HIV will be finished in this state in six years. If you put this legislation in and we have to go and tell all these people that the government is making it even more difficult for them, we will still be talking about HIV in 2040. That is my prediction.

I have been doing this for 30 years and that is exactly how I understand what we are doing today. You will make it far worse. There might be one or two. I promise you, I totally understand what you are trying to do. No-one should get HIV. We have spent 30 years trying to prevent it. No-one should get HIV, but in all of the settings where people do not feel they can be open and honest that is where they will contract it. You might save one or two by this law, but you will create untold numbers, and all the people that Alex just mentioned who cannot tell will go on and infect others. Sadly, what is happening now in Queensland and pretty much around Australia is that the people who are most impacted are heterosexual women and men, because they do not think they are at risk, and it is people from non-English-speaking backgrounds who do not understand the language and we cannot get to them. We have all the low-hanging fruit already. We have all the gay men; they are already in treatment. That is the 90 per cent. The 10 per cent in Australia who are new notifications, who are the hardest to get to, the ones we need to do the most work with, are the ones this bill will affect the most.

CHAIR: Mark, on my understanding—I do not know who all of the stakeholders were. As part of the preparation of the bill, were you part of the stakeholder group?

Mr Counter: Do you have the report?

Ms Warner: No, we were not part of the original stakeholder group. We were not invited to that. However, we have submitted two written submissions and we have joined you here today.

CHAIR: Going back to the stakeholder group, even though you were not invited, you did make submissions to them?

Ms Warner: Two submissions to this process, yes.

Mrs GERBER: This committee?

Ms Warner: Yes, to this committee.

CHAIR: No, slow down. When the department was preparing the legislation, they would have gone out to stakeholder groups. I do not have the exhaustive list or the limited list that they went to. Did the department come to you as part of the preparation of the bill as a stakeholder?

Ms Warner: Not originally, no—not right at the beginning. However, we have been working closely with the office of the Attorney-General. We had the Queensland round table for the decriminalisation of HIV. We had representatives from the Queensland Police Service, the Director of Public Prosecutions, Health and the community sector, so we have been working hard with them around that broader decriminalisation agenda.

CHAIR: But when they were preparing the consultation draft, you were not involved?

Ms Warner: We were not involved at that stage, no. Then we found out what was happening and then did two submissions.

CHAIR: You did two submissions to the consultation draft. You did two submissions to them?

Ms Warner: Through this process. I think it was to you as the committee we did two submissions.

CHAIR: So you did not do it to the consultation group?

Ms Warner: No.

CHAIR: But you had a document that you were showing—

Ms Warner: That is something separate that is going on with the Commonwealth government around our national HIV strategies. We are looking at HIV and the law across Australia, where they did a national audit of all of the jurisdictional laws that are in place that are actually barriers to us achieving the end to new HIV transmissions:

CHAIR: Do you have that document in electronic form or only in hard copy?

Ms Warner: We do, indeed. Yes, I am happy to share it.

CHAIR: Do you mind sending it to the secretariat?

Ms Warner: It will be our pleasure.

CHAIR: Did you bring more than one copy with you?

Mr Counter: We can certainly get you more. This is hot off the press. This committee was—

CHAIR: If you were to give it to me, it would not cause any issues?

Mr Counter: You are very welcome.

CHAIR: We can do that later.

Mr Counter: This is something that the federal health minister and all of the states have been working through and working out—how do we actually end HIV by 2030?—and they have already listed all of the laws in Queensland that they think are now a problem, and the reason we are here today is that we think this one will be another one we have to add to the list.

CHAIR: Yes, to add to it. Has that been communicated to the Attorney-General's office?

Ms Warner: Yes, it has.

CHAIR: I do not want to make light of the fact that you have come here and that you have made a submission, because it is all part of the process, but I was just trying to understand how involved you had been from the beginning. That is not a criticism, because not everybody gets the opportunity, so thank you.

Mr KRAUSE: Melissa, in response to the chair's line of questioning then, you said that the problems had been communicated to the Attorney-General's office. Was that before or after the introduction of the bill?

Ms Warner: We have been talking with the office of the Attorney-General quite closely for about two to three years now, but it was at the beginning of this year, 2023, when we started making plans for the Queensland round table on the decriminalisation of HIV.

Mr KRAUSE: So they knew about the issues that could come up before the bill was introduced?

Ms Warner: They have known about these issues for a good couple of years, yes. We are quite surprised because there was broad commitment to decriminalise HIV and, really, to insist that it is dealt with through the public health framework in the first instance, because that public health framework also has the opportunity to escalate to detention and refer back to the police and the Director of Public Prosecutions, so you have that as an option but it is a last resort. There has been commitment to the public health framework. It is based on best practice internationally.

Also, our work has progressed where we have been working with the Queensland Police Service. We have had the opportunity to review their standard operational procedures—make sure that everything is up to date and evidence based, that everything in there reflects the science—and we have also been working with the Director of Public Prosecutions to update their prosecutorial guidelines. We were quite shocked when this landed, that it was going against a lot of work that had been going on with the Queensland government and indeed the Commonwealth government.

Mrs GERBER: Just to be clear, following on from what the chair said—DJAG chooses select bodies to release a consultation draft of proposed legislation for consideration—your organisation was not consulted on the draft and you did not get the opportunity to put feedback in on a consultation draft of this bill; is that correct?

Ms Warner: That is correct.

Mr Counter: The first we saw of it was about a few weeks ago, when it was actually tabled. I think the biggest surprise for us was that the health minister, who spoke at the closing ceremony of the International AIDS Society Conference here in Queensland to an international audience, committed to working with stakeholders to remove the criminalisation of HIV et cetera. I wrote to her last week. Do you have the words, Melissa?

Ms Warner: She committed to 'work with stakeholders to right the wrong of the stigmatising impact of some of Queensland's laws on people living with HIV and to ensure that no-one is criminalised for living with the virus'.

Mr Counter: So this, on the back of that, to the world, has stunned me completely. I suppose that is why I am so emotional about this. We had a sense that we had a government that was actually going to start working with us and that this was possible. Suddenly this arrives and it feels like we have been betrayed—massively betrayed.

CHAIR: Thank you. That brings to conclusion this part of the hearing. Thank you very much for your hard work and your advocacy on this very important issue. Thank you for your written submissions. I will approach you, Mark, to grab your copy.

Mr Counter: It is the only one we have in Queensland, but you are very welcome to take it. We will get more. They do exist.

CHAIR: Are you sure?

Ms Warner: Absolutely. We will also send it electronically.

Mr Counter: It is good reading for on the way home on the train or in the car or whatever.

CHAIR: Thank you.

BLISS, Ms Mandy, State Co-ordinator, Respect Inc.

FAWKES, Ms Janelle, Campaign Leader, DecrimQLD

JEFFREYS, Ms Elena, Policy and Advocacy Manager, Scarlet Alliance, Australian Sex Workers' Association

PONY, Mx Mish, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers' Association (via videoconference)

CHAIR: Good afternoon, everyone. Thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Bliss: I am Mandy Bliss. I am a sex worker. All four of us speaking in this session today are sex workers. I am also the coordinator of Respect Inc., a Queensland sex worker organisation. Thank you to the committee for inviting us to attend today. This opening statement is on behalf of Respect Inc., DecrimQLD and Scarlet Alliance. I acknowledge that we are meeting today on the land of the Yagara and Turrbal peoples.

Sex workers are consent experts. We are important stakeholders in these debates. Despite being poorly served by the criminal justice system, sex workers have courageously fought to have breaches of consent believed and heard and to have complaints treated seriously by police, the courts, health services and the community. This bravery has led to the areas of reform that we are now discussing today. To put this another way, sex workers coming forward with complaints have personally contributed to changing the way the law understands consent and coercion, often at enormous personal cost. I would like to extend thanks and recognition especially to those sex workers that have informed our positions and submissions through retelling their stories and their experiences.

This bill adds to the circumstances in which there is no consent, a provision for when a sex worker participates in an act because of a false or fraudulent representation that the person will be paid. The QLRC report noted that sex worker organisations, sex workers and others submitted that the current criminal laws in Queensland are not adequate to deal with this issue. That submission said that this is rape or sexual assault, not fraud, and many submissions proposed a specific change to the Criminal Code to include false or fraudulent misrepresentation that the person will be paid as a circumstance in which consent to a sexual act is vitiated.

The *Hear her voice* report notes that sex workers described to them that usual practice included specifically agreeing to the acts and payment in detail with the client, often via text message, before any acts taking place. They argued that acts committed beyond an agreed scope should be considered to have occurred without consent and that sex workers should not be precluded from making a complaint about sexual violence in these circumstances. They said that the majority of sex workers and advocates consulted by the taskforce were firmly of the view that non-payment constitutes rape or sexual assault. In a sex work booking, payment for services is the contingency on which consent is established. Sex workers agree to the sex act based on the prices we negotiate. For example, we list our prices in our written advertising. We have email, verbal or SMS discussion about prices during the process of confirming the booking and we request proof of payment prior to commencing the service.

We support the inclusion of section 348AA(1)(l). The ACT, Victoria and New South Wales have introduced provisions which recognise consent is vitiated for a sex worker when payment is not made and there have been a number of successful cases prosecuted. The Hon. Justice Hilary Penfold PSM, QC, in the Supreme Court of the Australian Capital Territory presiding over one of those cases noted that certainly no-one should doubt that fraudulently achieving sexual intercourse by false or fraudulent representation that the person will be paid constitutes rape rather than a dishonesty offence although, of course, dishonesty is a major element of this fact situation.

We also support 348AA(1)(n), which is the stealthing provision. While this is an issue that impacts many people, not just sex workers, sex workers report this offence as being of great concern. If during sex agreed to on the basis of the use of a condom the condom is removed or tampered with secretly or covertly, the established terms of consent are negated and an assault has occurred. I will now give the committee some examples of how sex workers establish consent based on condom use. We may explicitly state it in writing or in our advertising or in our pre-booking communications. We may verbalise the condition at the start of the session. We may put the condom on the client at the beginning of a booking or we may provide the condom to the client for them to put on themselves. In these and

other scenarios, sex workers are establishing that using a condom is a condition of agreeing to sex. If the condom is removed or tampered with after establishing that it is a condition of sex, consent is voided. We support this clause. We have also outlined in our submission other sections that we support and others that we do not and we would be happy to respond to questions about either.

Mrs GERBER: Thanks for coming today. Thank you for your written submission and also your oral submission just then. I wanted to go a bit further into some of the recommendations you made around amendments to the bill. In your submission you have recommended rewording or removing section 348AA(1)(k)(i) as it relates to the identity of a person. You may not have had a chance to read DJAG's response to your submission because we have only just received it and published it, but if it helps would it be alright if I read out what DJAG says and then can I ask you to comment? In relation to your recommendation DJAG has said—

> It is not intended that this provision would criminalise conduct based on a person's representations about their gender or sexual characteristics. 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.

DJAG has essentially said that this section only deals with people who are engaging in sexual relations under the mistaken belief induced by the other person that they are their spouse. In your experience, is that the case or will it, in fact, encapsulate other situations?

Ms Fawkes: In our submission we recognise that that was the intent, but we state that we believe it is too broad a term—identity—to cover that situation if the intent is about the person not being the person's spouse. The reason we do that is that sex workers usually do not provide either clients or other people with their legal identity. That is a safety and privacy mechanism which has happened historically and is a very important component of sex workers avoiding violence or many kinds of repercussions and discrimination from their legal identity being known. We recognised in our submission that that was the intent, but we still state that there is a potential that the identity clause would be used against sex workers and we recommend the rewording.

Mrs GERBER: Can you expand to the committee on how that clause might be used against sex workers so that we have it clear in our minds how it might adversely affect sex workers—a practical example, for instance?

Ms Fawkes: In the situation where a sex worker identifies themselves in a certain way—their name, their age, their racial background or a whole range of factors of their identity—and has a sexual service with the person and then that person finds out their true or legal identity and would decide to take a case on that basis.

Ms Jeffreys: I could give an example. Due to the size of a particular ethnic minority group in Queensland, a person who is from Sri Lankan background might more broadly describe themselves as Indonesian, for example, and that is a safety mechanism by that individual to choose a different ethnic description of themselves in their advertising because they prefer not to walk that fine line revealing the small—

Ms Fawkes: That could be identified by other community members.

Mrs GERBER: In terms of amending that clause, is it your recommendation that it not be there at all? How do you think it would be remedied in the bill?

Ms Fawkes: We did not put forward specific wording, but if the intention is around 'spouse' then we think the wording should be clear, as in it should be 'spouse' or some set of words that is specific, not 'identity'.

Mx Pony: For me, the intent described is around whether or not someone has a pre-existing relationship with the person they are engaging in sex with. I think the fact that identity is such a broad concept and that is not clarified in the legislation is what needs to be dealt with.

Mrs GERBER: Thank you for your answers. I will move on to another aspect of your submission. It follows on from our previous submitters. Based on my reading of your submission and your oral testimony today, you are in support of removing the section of the bill that talks about serious disease. Is that correct, or have I got that wrong?

Ms Fawkes: That is correct. I do want to point out that our submission and at least four other submissions that we can see have also recommended its removal.

Mrs GERBER: That have concern around that section?

Ms Fawkes: That have recommended its specific removal, yes.

Mrs GERBER: I note that you were present during the evidence that was presented by the previous submitter specifically. Is there anything you wish to add? Are their arguments in line with what you would say, or is there anything further or anything different you would like the committee to hear in relation to that point?

Mx Pony: We endorse the submission by QPP, Queensland Positive People, and NAPWHA, the National Association of People with HIV Australia, on this provision and we do concur with their arguments. We do not think the Criminal Code is the appropriate place to deal with HIV disclosure. In fact, it is well recognised nationally and internationally that criminalising HIV non-disclosure or transmission is counter to public health aims and hampers Australia's commitment to ending HIV transmission by 2030.

Mrs GERBER: The previous submitters were not consulted on the consultation draft. I wanted to see whether or not your organisations were consulted or whether the first time you saw this was when the bill was tabled in the House.

Ms Fawkes: We were consulted.

Ms Jeffreys: We were consulted.

Mrs GERBER: In a consultation draft?

Ms Fawkes: Yes.

Mrs GERBER: Do you think the department was aware of the consequences of having this clause in the bill?

Ms Fawkes: We made a submission on that.

Ms Jeffreys: Both of our organisations made a written submission and an oral contribution at the meetings about it as well.

Mrs GERBER: On the consultation draft?

Ms Fawkes: Yes.

Mr HUNT: Thank you very much for your submission. You talk about support for providing jury direction so that people do not make assumptions around consent and sexual activity because someone is a sex worker. Could you please tease that out?

Ms Fawkes: Our comments were related to proposed new section 103ZW and that in the draft, under 'Direction on behaviour and appearance of complainant', it states—

The judge may direct the jury that it should not be assumed that a person consented to a sexual activity because the person—

…

(e) worked as a sex worker.

It is a very important inclusion for us because in many cases, both at a community level and at a judicial level, in our engagement with the police this is still an area of confusion. This clarification is needed in this case for the jury in order to address that, if you like, longstanding myth which has resulted in very poor outcomes for sex workers in many situations.

CHAIR: Expanding on that—and this may be a question that you have included—in terms of the benefits of the questioning of reputation, is it fair to say that is in line with Jason's previous question, which was about proposed new section 103? They dovetail—and you do not need to agree with me, but I felt on reading it that they are relevant to each other. One is more specific in relation to occupation and the other one is more general and covers anyone giving evidence in this arena.

Ms Fawkes: That is right, and relates to the prohibition on questions and evidence. In relation to proposed new section 103ZG, where you are talking about sexual reputation, we have definitely supported that. We have said in our submission that we support that with the understanding that that would include sex workers. Our reading of it is that it would include them because sexual reputation is something that is often used against sex workers who are progressing sexual assault cases.

Ms Jeffreys: I just want to add that this has emerged from sex worker participation in all of the consultations that led to the *Hear her voice* reports. There have been too many situations where police have felt and have said openly, 'We recognise that you have brought forward an assault complaint, but we don't think that sex workers are generally believed in the criminal justice system. A jury would not believe you, so we're telling you that we're not going to pursue it for your own good because we have seen too many of these cases fail.' We feel that these changes are super important.

Ms Fawkes: We notice there were some questions asked of previous submitters about the section on fraudulent payment of sex workers. If you have any questions of us we are happy to answer those.

CHAIR: Do you want to expand on that, because I know that is contentious area?

Ms Fawkes: Not for us, but I take what you say. There are a couple of points we want to make about it. One is that we notice that a number of other submitters—only two to be honest. Several other submitters support our position that this proposed new section 348AA(1)(l) should remain as it is worded very well, but there are two that do not. We note that they do that because they are relying on the QLRC report. We wanted to point out to the committee that we think this is an incorrect interpretation of the QLRC's point. At the time of writing that report the QLRC said that it did not recommend a similar change; however, it said it would not recommend the changes outside of the context of a wider review of consent laws. However, that is what we are here doing now. This is a wider set of changes to the consent laws.

CHAIR: If the bill is passed, it will change the way the law deals with the question of consent.

Ms Fawkes: Absolutely, so it is a major change. We think if the QLRC were making its comment at this point—and I do not want to speak on its behalf—it would have a different position. It points out that the Women's Safety and Justice Taskforce second report and its recommendations for this affirmative model of consent, including expanding the vitiating circumstances—the QLRC says that fraudulent promises to pay a sex worker could be more readily recognised as rape or sexual assault under this model. That leads us to believe that its non-recommendation for it at that stage was because we were not talking about an affirmative consent model at that time. However, its comments obviously state that an affirmative consent model would be supportive of fraudulent promises to pay a sex worker being recognised as rape or sexual assault.

CHAIR: Am I correct that legislation in relation to this in other states makes it an offence of rape?

Ms Fawkes: Yes, in ACT, New South Wales, Victoria and Tasmania.

Ms Jeffreys: It would bring Queensland into line with the other jurisdictions that have already considered an affirmative consent model and, as observed by the QLRC, it is the appropriate way to address sex worker specific concerns within the broader affirmative consent model.

CHAIR: It makes sense when you think about the change to how consent will be considered by the court.

Ms Jeffreys: Considered in the law.

Ms Fawkes: Absolutely, yes. Can we make two final points?

CHAIR: Yes, please.

Ms Fawkes: In relation to the sex work specific offences, we think this is an opportunity for Queensland in light of the fact that the government has announced that decriminalisation will be considered and brought before the parliament, and a previous submitter had indicated that there was a tension between this clause and the current criminalisation of sex work that will be removed when the decriminalisation legislation is hopefully progressed very soon.

CHAIR: What clause is that?

Ms Fawkes: This goes back to the one we have been discussing on fraudulent representation about payment.

Ms Jeffreys: It is proposed new section 348AA(1)(l). Can we also add that for that submitter there were some alleged facts—

Ms Fawkes: It was a different submitter.

Ms Jeffreys: It was a different submitter, okay. The ACL put forward some supposed facts. From my own understanding of the research and the evidence internationally, those alleged facts do not stand up. It is hard to know where they came from, but they would not stand up.

Ms Fawkes: They were specifically in relation to decriminalisation increasing the size of the sex industry—

Ms Jeffreys: In those other jurisdictions—Germany and New Zealand—our understanding is—

Ms Fawkes: Germany has not decriminalised. We did want to make a final statement in relation to the serious disease clause and just reinforce what the QPP, NAPWHA and HALC have said. We really want to point out that, in terms of this issue for all of our organisations that are part of the HIV sector and BBV sector of attempting to prevent STIs and BBVs for decades, this would be a gross step backwards. We believe that it might have just been something on which, as you note, there has not been enough engagement with the key stakeholders, but we do seriously call for its removal.

CHAIR: If there are no further questions, I will close this part of the hearing. Good afternoon and thank you for your valuable input and also your submissions. They are always worthy. That brings to a conclusion this part of the hearing. Thank you for your participation once again. Have a great evening. Thank you to everyone who has participated today and all those who have organised this hearing. Thank you to our wonderful Hansard reporters and our wonderful secretariat staff. A transcript of these proceedings will be available on the committee's webpage in due course. I declare the public hearing closed.

The committee adjourned at 3.31 pm.