LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr CG Whiting MP—Acting Chair
Mrs LJ Gerber MP
Mr SSJ Andrew MP (videoconference)
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

Wednesday, 8 November 2023

Brisbane

WEDNESDAY, 8 NOVEMBER 2023

The committee met at 9.30 am.

ACTING CHAIR: Good morning. I declare open this 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 Chris Whiting. I am the member for Bancroft and the acting 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 today are: Laura Gerber, the member for Currumbin and deputy chair; Stephen Andrew, the member for Mirani, via videoconference; Jonty Bush, the member for Cooper; Jason Hunt, the member for Caloundra, via videoconference; and Jon Krause, the 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 also appear on the parliament's website or social media pages. I ask everyone to turn their devices and computers to silent mode or off.

BRUNELLO, Mr Dominic, Chair, Criminal Law Committee, Queensland Law Society

FOGERTY, Ms Rebecca, Vice-President, Queensland Law Society

O'HAGAN, Ms Emily, Member, Domestic and Family Violence Committee, Queensland Law Society

ACTING 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 Fogerty: Thank you for inviting the Law Society to appear today. I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place.

This bill makes significant changes to the criminal law. We have provided a written submission highlighting our primary concerns. We emphasise now the following matters. The drafting of the coercive control offence needs further consultation. It is not going to achieve the intended aims in the way it is currently drafted. The Women's Safety and Justice Taskforce recommended a minimum three-month consultation period.

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

I am joined today by Dom Brunello, the chair of the Criminal Law Committee, and Emily O'Hagan, a member of our Domestic and Family Violence Committee. The committees speak with one voice today.

ACTING CHAIR: You address the standalone offence of coercive control under new section 334C. You have made some fairly strong statements about evidentiary challenges and more interrogation of the facts. Is there any part of that that you want to go a bit further into, to explain why you have made those statements?

Ms Fogerty: It is outlined very clearly in our submission, and I draw your attention to pages 3 to 5, which do contain a strong criticism of the coercive control offence. We think it does not get the balance right and it is not going to achieve the intended aims.

There is a fundamental principle of criminal law that conduct is criminal if it is intentional. A person has to intend to coerce or control for it to be covered by the criminal law. The offence does not do that. It means that a whole range of behaviours that are not traditionally the domain of the criminal law could be captured. That would produce injustice.

Mr Brunello: If I could be slightly more particular under the ambit of what Ms Fogerty said, the proposed offence provision removes three classic evidentiary precepts. The first is the provision of particulars, the second is jury unanimity and there is a third and it relates to a crime of specific intent which involves a course of conduct. The concern is that this combination of removal of evidentiary prerequisites in respect of a crime, an essential element of which is a course of conduct and involving specific intent, will make it legally unworkable.

At the moment, for a conviction to be returned a jury must accept that the prosecution has produced evidence which proves beyond reasonable doubt that there has been a course of conduct, but the machinery subsections of the provision, subsection (5), remove the prosecution's obligation to particularise the constituent acts which constitute the course of conduct and remove the requirement that the jury be unanimous about those constituent acts. It is to be expected that complainants will be called and give evidence of a multiplicity of acts over a period and the jury will be allowed to rove across them and individually, not unanimously, decide what each of them accepts and does not accept without any particularisation given to the defendant so that he or she understands the ambit of the course of conduct.

In our submission, that will mean the intention that needs to be proved and must coincide with the charged conduct is not referable to an agreed unanimous course. What is the course of conduct? It has not been particularised. The jury do not have to be unanimous about it, but an intent has to attach and coincide with it. What is it, though? Because it is not required to be established in the normal classical way, how will judges direct the jury when they must find the course of conduct to exist?

Ms O'Hagan: If I may build on the submissions, this exclusion of the fundamental right to provide particulars has been modelled off the existing criminal offence, under our Queensland Criminal Code, of maintaining a sexual relationship with a child. The fundamental reason, for the maintaining offence, that there is not a requirement to provide particulars is that we are obviously most commonly dealing with child complainants who cannot be expected to recall the specific date or place of an incident. That is not applicable here when we are dealing with the coercive control offence.

The other really distinguishing feature is: for the maintaining offence, we are dealing with behaviour that is obviously overtly criminal, but when we are looking at the offence of coercive control we are looking at behaviour that may, out of context, not be overtly criminal. An example could be a couple who holds a joint bank account. If the prosecution is not required to provide particulars about whether or not that fact is a matter that is said to be part of the course of conduct that is criminal then you will have a trial where a 10-year relationship is being litigated; a complainant is being opened up to be cross-examined about the entire relationship without any idea before they walk into court about what the matters in issue will be; a defendant is then not told before their trial what conduct is said to be criminal that they have engaged in; a jury has no assistance then to know about what acts they are considering. Without this requirement that they have a uniform decision about the acts to return a verdict, if a judge who is dealing with a jury that has returned a guilty verdict then has to sentence a defendant then the judge has a completely impossible position of trying to discern what the factual basis is that they should sentence this person on.

It is the combination of the exclusion of this fundamental right to provide particulars, the issue of there not being a requirement of specific intent and that the jury not have to return unanimous verdicts. The combination of those three issues is unprecedented and it becomes such a concern that we cannot envision a way in which the offence will be workable to produce a just outcome. Any conviction would be so open to appeal and then you have complainants and defendants who are just being sent back to go through the process again.

Mr Brunello: Can I add one more thing? The pulling of the provisions that remove the prosecution's obligation to provide particulars and jury unanimity from the maintaining offence—maintaining a sexual relationship with a child under section 229B—is also inapt because that is not an offence involving an element of specific intent. This is where the combined synergistic effect of the removal of the evidentiary rules in the context of a crime with an element of specific intent will not work legally. The intent has to be found by the jury to attend the charged act or omission, which in this case is a course of conduct.

Ms O'Hagan: Many lawmakers are struggling with trying to ensure the offence provision for coercive control is drafted to achieve balance in many jurisdictions. There is a bill before the South Australian parliament currently that is grappling with the same issues. The offence provision in that bill that deals with particulars still maintains the requirement for the prosecution to provide particulars at least over the time period that the course of conduct is said to occur and the acts that are said to constitute that course of conduct, with then a safeguard that the prosecution is not required to provide particulars to that same level of specificity that it would if every single act was charged as a separate offence. This exclusion of the right to provide particulars, if it is coming from a place of not wanting to have trials within trials where every single act of domestic violence is being litigated as a separate trial, is an example of there trying to be some balance achieved where at least the parties are walking in knowing the time period over which the course of conduct is said to occur so that you are not litigating an entire relationship and the acts within that time period.

Mrs GERBER: That was very comprehensive, Emily. I really appreciate your coming today in person and providing that explanation. Before I ask a couple of questions, I just wanted to clarify whether the Queensland Law Society was involved in the consultation draft process. Was the first time you saw this bill when it was tabled in parliament?

Ms Fogerty: We received the draft.

Mrs GERBER: Was this feedback provided?

Ms Fogerty: We have consistently outlined concerns.

Mrs GERBER: The reason I ask is that previous submitters were not consulted in the draft process and have issues with it.

Ms Fogerty: We have always maintained the need for particularisation, specific intent and other evidentiary safeguards.

Ms O'Hagan: Those issues have been previously raised, but we do get back to the point where what has not been provided is the minimum of that three-month consultation period that was envisioned in the recommendations of the taskforce.

Mrs GERBER: We heard on Monday from some doctors from UQ—Dr Rebecca Wallis, Dr Joseph Lelliott and Dr Faiza El-Higzi—and they, too, shared concerns with the lack of particularisation. They also had concerns in relation to the notion of harm in both the consent provision and the coercive control provision. They suggested that it should be 'serious harm' as opposed to 'harm' because of the nature of those sections. I am after the Law Society's view on that. They had more issue with articulating it in relation to the coercive control sections but particularly in relation to clause 348 regarding consent. They recommended that it be looked at as 'serious harm' as opposed to just 'harm'. I am interested in the Law Society's perspective.

Ms Fogerty: We agree for both affirmative consent and the coercive control offence. In the context of affirmative consent, just the idea of harm is completely inappropriately broad. As a legal proposition, a person may freely consent to do many things whilst not liking that they have to do it. The notion of whether consent was freely given does not mean that there has to be a complete absence of conflicting thoughts and consequences. Just having the concept of harm opens up a lot of uncertainty in relation to that fairly, I would have thought, trite observation about human behaviour.

Ms O'Hagan: On the issue of serious harm, there was a previous concern raised in submissions we have provided that if the threshold were to be serious harm there would at least be some assistance and direction provided to juries around a definition of 'serious harm'. There was a concern that complainants, for example, who have been able to overcome the impact of the domestic violence that they have been subjected to—from the date of charge perhaps to when they are then giving evidence in the trial—are placed in a position where they have a burden of proving that the harm they suffered as a result of the coercive control was serious enough. Having some direction and assistance to juries around the definition of 'serious harm' would be a critical feature as well.

Mr Brunello: This is at a fundamental level about what should attract conviction for an indictable offence with a maximum penalty of 14 years.

Ms BUSH: Thank you for attending this morning and for your feedback. It certainly gives us a lot to think about. Obviously Queensland is not the first jurisdiction to introduce legislation similar to this. What are your observations on how those states have managed that and some of the concerns you have raised around potential net widening, overreach or human rights issues?

Mr Brunello: As far as I know, New South Wales has enacted a not dissimilar offence to that proposed here, but it has not yet been proclaimed. It is not in force—at least the last time I looked, which was not too long ago. Therefore, it has not been pushed through the system and there has been no judicial consideration of the workability of the provisions. Scotland is the jurisdiction with the base

offence that the commissioner recommended be adopted in Queensland, but the proposed offence in the bill goes well beyond—in the sense of subsection (5) that changes the laws of evidence—what that recommendation was in and of itself.

Ms Fogerty: Given that the taskforce recommended that the offence be more closely modelled on the Scotland example, we have not be able to ascertain the basis for that deviation. On the New South Wales provision, which is obviously untested, there was significant concern raised by stakeholders in providing feedback that echoes some of the comments we have made today.

Ms BUSH: You also raised some issues around the perpetrator diversion scheme. Did you want to speak to that?

Ms O'Hagan: At the outset, the society and the profession as a whole are absolutely supportive of the inclusion of the perpetrator scheme and, for lack of a better word, are very grateful for its inclusion. We know the impact that those early diversion schemes can have—not just on reducing the incidents of domestic violence, which is the primary goal, but also on reducing the workload of a very busy Magistrates Court jurisdiction. We can identify that there are really two key, critical features in the diversion scheme doing what everyone wants it to do. Those two critical features are: that the programs that are available to diversion programs have enough availability to service people who need them; and that the time frame around someone participating in the program is very quick.

At present, the way the provisions are modelled, it is quite a lengthy process. If you look at it, it involves a number of adjournments and further court appearances and an ultimate kind of general time frame given of 12 months. If we can compare that to the current diversion scheme that exists in our Magistrates Court for example for drug diversion, when a charged person who is eligible for a drug diversion scheme appears before the court—we are not suggesting that they are comparable types of offences but in terms of the mechanism of the diversion scheme—at their first appearance, the suitability assessment takes place on that day at court, when they are required to be present, and the time for them to attend a drug diversion session is booked on that day. They walk out of court from that appearance with a date that they have to attend the drug diversion scheme.

As this provision is currently modelled, the matter is adjourned for a number of weeks and there is quite a lengthy time frame before that diversion scheme appointment is confirmed. We would really focus on there being a drafting and then a mechanism and proper resourcing within the Magistrates Court so that someone who is eligible is appearing in a domestic violence call-over on a specific date in our Magistrates Court and there is a person present who can conduct the suitability assessments and book a time frame for them to complete the program. With our existing domestic violence diversion or education programs, some of them might run for a number of months but only have two intakes a year. That lengthy period of time is a very big issue in this achieving what it needs to achieve.

This is a separate but linked topic. There is no clarity around whether or not someone who is in custody for unrelated offending would be able to participate in this diversion scheme. It is read that someone who is in custody for a domestic violence offence cannot participate in the scheme—there are sound policy reasons for that—but if someone is in custody for unrelated offending and otherwise eligible to do that scheme, it is not clear on the current drafting if they would be able to. Importantly, too, we have in Queensland currently no domestic violence perpetrator programs available for anyone who is in custody. Given the importance and the prevalence of this offending, this is such a critical issue to be addressed.

Mr ANDREW: You said that no bill has been assented to in a parliament in Australia. Could you speak on the current legal framework that we have in place? Does that address what we are trying to do here? Are there already laws in place that address the crimes contained in this bill?

Ms Fogerty: It is going to be hard to answer that in a succinct way, because the genesis, obviously, of the coercive control offence has been real concerns, as highlighted in the Women's Safety and Justice Taskforce, that the law was not able to address coercive control. Whilst the society's position has previously been that a coercive control offence was not necessary, I think it is fair to say that times have changed. There has been significant social change and there is a lot of community expectation in relation to legislating for coercive control, but our concerns about whether or not the balance is right have been consistently made.

Mr ANDREW: Have you looked the Scottish coercive control bill? Have any precedents been set? You explained earlier that it is very difficult for the judges to rule on. Have you seen any of that at all? Have we done enough consultation? You said that there are so many holes in terms of legal ramifications backwards and forwards. What do you consider we should do to make this right before parliament assents to the law in Queensland?

Ms Fogerty: The Scottish offence is in many respects a different beast to the bill proposed here. What we say the offence of coercive control needs to be better is: one, intent for each act; two, proper particularisation of the offence so that an accused person knows what they are expected to answer to; and, three, that the jury verdict be unanimous. We say that there is further negative impact brought on by the fact that there are other amendments in other pieces of legislation, such as the Evidence Act in relation to jury directions, the whole combination of which we are concerned will produce some delays, will produce uncertainty, will create more appeals, will create renewed focus on the evidence of a complainant and will potentially produce a miscarriage of justice where an innocent person is convicted.

Mr Brunello: There are two other particular areas that we express concern about. Rebecca has addressed jury directions. Jury trials involve an infinite variety of facts and circumstances and are inherently fluid. The obligation of a trial judge is to direct the jury on that much of the law and the facts that are required by the individual circumstances of the particular case. Making directions mandatory so that they have to be given regardless of the individual circumstances of the case will lead to the jury being inaptly directed.

Ms O'Hagan: I would like to cover off on two final issues that are raised by that very important question in terms of how this legislation has been enacted and what it has looked like in other jurisdictions, such as Scotland. I reiterate the issue that there has not been another jurisdiction that has enacted the legislation with the combination of the three issues that we have identified that lead to our very strongly held concern about how this will work in practice.

Going back to the initial question, which was, 'Is there any issue with any other conduct that has been criminalised by this bill that is otherwise covered for in our current Queensland Criminal Code?,' there is a separate issue that is raised in our submission—it has been raised in the submission from Legal Aid Queensland as well—in relation to the creation of number of new categories of rape. One of those categories is the non-payment of a sex worker that is now included as the offence of rape. I would just highlight on that issue that the Law Reform Commission did extensive research into this and actively did not advocate for this to be included as a subcategory of rape and instead really focused on the importance of the decriminalisation of that industry to support the people working in it as opposed to criminalising rape as a monetary issue. That is another concern with the bill as currently drafted.

Ms Fogerty: That relates to your point about whether the law already covers for these things. The non-payment of money is fraud. It is covered by the offence of fraud.

Mrs GERBER: I am interested in the Law Society's perspective in relation to one other issue that was raised by previous witnesses.

ACTING CHAIR: The member for Scenic Rim had a quick question. Member for Caloundra, we will start the next session with you if we do not get to you this time.

Mr KRAUSE: I am gathering from the society's submission that in a general sense you have no issue with the concept of coercive control being legislated.

Ms Fogerty: Correct.

Mr KRAUSE: In your view, does this bill tip the balance too far in the direction of seeking to act on coercive control rather than maintaining the fundamental safeguards to a fair trial which we have under the rule of law?

Ms Fogerty: Yes.

Mrs GERBER: I just want the Law Society's perspective. We heard from submitters on Monday in relation to clause 348AA(1)(m)(i) around the transmission of serious disease. We heard from Queensland Positive People about how they believed this would criminalise and force underground people who are HIV-positive and result in the opposite effect of what the legislation is intending to achieve. We heard very impassioned submissions from that group of people. I am interested in the Law Society's perspective on that.

Ms Fogerty: We share those concerns. We adopt the Legal Aid submission, which was that the enactment of section 348AA(1)(m) is unnecessary because an intentional transmission of a serious disease is already covered under the offence of grievous bodily harm.

ACTING CHAIR: Member for Caloundra, do you have something quick?

Mr HUNT: I do not know how quick it is, but we will give it a crack. I want to ask about the concerns about the expansion of preliminary complaint evidence. Are you able to talk me through that, please?

Mr Brunello: As we understand it, the proposal is to expand the circumstances in which out-of-court statements from a complainant are admissible to domestic violence offences. The admissibility of hearsay evidence needs to be carefully considered because at the moment this sort of

evidence is admissible only in a limited number of sexual offence trials. To make it more generally admissible in any offence of domestic violence will create longer trials and will result in some exposure of the complainants, frankly, to more scrutiny about things they have said that they were not necessarily intending to be their evidence.

Preliminary complaint evidence is evidence of what a complainant said to a person or persons about the offence before they went to police. It is admissible to bolster their credit, to show that there was not significant delay in their complaint—in fact, they talked to someone before they went to police—but in many cases they say inconsistent things. In fact, it is very helpful for a defendant. Some care needs to be taken in approaching the widening of the criteria for the admissibility of that evidence. I understand that it will not necessarily assist a complainant.

Ms Fogerty: We have time-held rules of evidence for a reason, such as the rule against hearsay, because they ensure procedural fairness. We have concerns that many of the provisions here such as preliminary complaint evidence, which is traditionally in relation to children's evidence or maintaining a sexual relationship with a child—modelling reforms that were to assist children to then apply them to adults we say is inappropriate.

ACTING CHAIR: Thank you for your evidence today. Thank you, Dominic, Rebecca and Emily.

Ms Fogerty: Thank you, as always, for having us. We are very grateful to be able to provide feedback on the bill.

CORKHILL, Ms Heather, Principal Policy Officer, Queensland Human Rights Commission

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

ACTING CHAIR: We now welcome representatives from the Queensland Human Rights Commission. Thank you, Neroli and Heather, for being here today. I invite you to make an opening statement of up to five minutes, after which we will have some questions for you.

Ms Holmes: Before starting, I acknowledge the traditional owners of the land on which we meet today and pay respects to elders past, present and emerging. Thank you, committee, for the opportunity to speak to our submission on this bill, which is the result of significant reform initiatives stemming from the Women's Safety and Justice Taskforce and the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence. As the bill is voluminous, amending 10 pieces of legislation and subordinate legislation, we have focused our attention on key aspects of the bill highlighting the areas where it enhances human rights protection in Queensland and pointing to some concerns that may present human rights compatibility issues.

Most aspects of this bill focus on the rights of victims of crime. We strongly endorse a 'triangulation of interests' approach which considers the rights of the accused, the interests of the community and the protection of victim-survivors. However, we believe that the existing right to a fair hearing in the Human Rights Act needs amendment to clearly encompass all individuals and not be limited to a person charged with a criminal offence. I think we are little concerned that there might be a misunderstanding that the Human Rights Act already has that triangulation in it clearly.

I now turn to our main concerns about the bill which involve section 348AA, which clarifies the situations in which a person does not consent to a sexual act—many of which are sensible and necessary amendments. However, parliament should be cautious in redefining serious crimes like rape and sexual assault. As expressed by many stakeholders, this risks creating different categories of rape or may dilute its meaning. We have just listened to the Law Society talk about one of those issues—the recommendation from the Law Reform Commission about the non-payment of sex workers. We have similar concerns to the Law Society about why that Law Reform Commission process has not been followed. We would like to know a bit more about that.

We also have concerns about the extension of circumstances where consent is invalidated by false or fraudulent representations about serious disease—and you have just discussed that. This provision goes further than grievous bodily harm in the Criminal Code which requires an element of intent to transmit serious disease. Our concerns raised in the submission were about potential for further stigmatisation of people living with HIV and the lack of clarity and precision in defining serious illness.

Having reflected on the thorough and thoughtful submissions by stakeholders on behalf of those living with HIV and others, we now consider that this provision should be removed entirely because it discourages dialogue and sexual health testing. If a person is not asked about their sexual health then they have not committed a crime and it criminalises only those who know they have the disease, therefore penalising people who are responsible to engage in sexual health testing. That is not looking after the public health issues that we are really trying to address in Queensland.

The bill's provisions concerning bail, sentencing laws, affirmative consent and the trial process aim to strike a balance between the rights of the accused and the rights of victims. We believe that many of these amendments are reasonable and necessary to address complex societal issues and encourage victims of domestic and sexual violence to come forward and to approve legal protections. However, we caution that many entrenched social issues such as intimate partner violence cannot be addressed by legislation alone. The government must work also with stakeholders on non-legislative measures to address these complex social issues. Putting legislation in place should not be seen as a problem now solved. It cannot be a substitute for ongoing vital services and community education.

Finally, as the bill contains major changes to criminal laws including in relation to coercive control which do not yet have a strong evidence base for their effectiveness as a response to violence, we therefore urge that if the bill is passed the government engage in an independent statutory review after five years, and this must be supported by ongoing data collection involving law enforcement agencies from the outset. Mandatory review and data collection should be included in this legislation so that they are not forgotten or affected by changing political priorities. That is our opening statement. Thank you, Chair.

ACTING CHAIR: Thank you, Neroli. As promised, I said that I would go to the member for Caloundra first.

Mr HUNT: At the risk of asking you to repeat yourself, because you have mentioned it in your opening statement, I would like to circle back to it because, as you pointed out, other submitters have touched on it—about the definition of 'serious disease' and your concerns around that. I think that is important. I would like you to run through that again, please. Feel free to add any more detail that you think is necessary.

Ms Holmes: I might ask Heather Corkhill to address that.

Ms Corkhill: Our concerns that we raised in our submission were, firstly, because of the imprecise definition of 'serious disease' and how that can wax and wane over time. For example, with COVID-19—as we have mentioned, it does not have to be necessarily a sexually transmitted disease to fit the definition of 'serious disease'—at some times in the pandemic it could be in the category of serious disease but at other times not. In terms of a public health aspect, if people really do not know what they have to disclose or not, that is really problematic.

Beyond that, we then took the points of those advocating on behalf of those living with HIV—QPP, NAPWHA and others—and we have shifted our position further towards seeking the removal of that provision. There is no evidence to establish that criminalisation of people with infectious diseases is good public policy. It is likely to increase stigma and reduce testing and means that people may be better off just not disclosing their illness or not testing. I do not think, therefore, this provision is justified to remain in the bill.

Mrs GERBER: I wanted to give you an opportunity to expand a bit in relation to your submission around what the QLRC noted around the non-payment of a sex worker creating a new category of rape, relating to the recovery of money, which potentially could be at odds with community understanding. Those are some of the submissions that were made to the Queensland Law Reform Commission. The other one was that it is a real risk, given the different categories of circumstances now outlined in the new offence provision. Could you expand on the Human Rights Commission's view on that? Do you think that is unnecessary, or are you saying it just needs further consideration?

Ms Corkhill: We did also have the benefit of listening yesterday to advocates from the sex work industry which was really helpful. We have a bit more of an understanding of where they are coming from and how payment occurs between clients and workers. That was all illuminating to us.

We are less concerned about the substance and more about the process. What we have now in Queensland is a lot of legislation coming through in a short time frame which is feeling a bit piecemeal for us. We would like to have seen the entirety of the decriminalisation framework in order to really establish the necessity of this offence. It is already covered in section 218 of the existing Criminal Code, which could also be bolstered. That is not a light offence; it is 14 years already for procuring a sexual act. If that was simply amended to make it really clear that includes non-payment of a sex worker, that is another way to go about it.

We are not necessarily against this reform, but we are just wondering if necessarily it has all been thought through in terms of all of the different alternatives. That decriminalisation bill is not before parliament now, so you do not have the benefit of working out what is the best legislative response to this issue, which we do consider is a human rights issue. Certainly, people have consented on a contingency that they will be paid. It is not acceptable behaviour and we are not endorsing it; it is just about the process from our perspective. Neroli, do you have anything to add?

Ms Holmes: No. I would just affirm that trying to understand the whole legislative package and the policy agenda is difficult when there are different pieces of legislation addressing different issues at once and you do not have the full context of where the whole law reform process is going.

Ms BUSH: You have mentioned it in passing but it is interesting to come back to. I might have missed that whole triangulation of interests, but I think that is the first time I have explicitly seen that the consideration of a person's rights in a trial proceeding has to be balanced against the rights of victims and the rights of the community. I think what you are recommending is that that needs to be considered in terms of the Human Rights Act review. Is that what you are recommending—not so much in this act but thinking about considering that in light of the review of the Human Rights Act?

Ms Holmes: I guess so. We saw it in the explanatory notes for the bill. It seems to be an assumption that the Human Rights Act already clearly and explicitly covers that issue. The Human Rights Act does cover the rights of victims but not in a very explicit way. We do have a thought about how the Human Rights Act could be amended to make sure it is much clearer that victims are part of

the criminal trial process, and that is reflecting the provision that is in the ACT already. It would be a very simple amendment to make sure that that triangulation is reflected easily within the human rights framework and that victims' rights are clearly seen in the Human Rights Act.

Ms BUSH: That is great, because a big piece of feedback we get from victims is that they are not really considered a relevant party to that. The bill also recommends some changes to the way that evidence is incorporated. It is certainly a lot more victim-centric in terms of some of the recommendations. Do you want to elaborate on that and why you feel that is appropriate or not and does not impact adversely on the human rights of defendants?

Ms Corkhill: Basically, these reforms follow concerns—for example, in relation to improper questions—that there is an unfair balance at the moment in the trial process whereby a person can be intimidated or badgered during cross-examination or completely irrelevant information can come up about their sexual history or reputation. We strongly support these changes to get that balance right. It is not just about the rights of the accused person to a fair trial; that is not necessarily the only right that needs to be considered. We are also balancing that with the rights of a victim to be protected from violence. It is well articulated in the explanatory notes and the statement of compatibility to the bill that the Queensland government actually has a positive obligation to protect citizens from the worst forms of treatment by other citizens, so we believe it is necessary.

I think just looking at the statistics that are out there around the amount of reporting that actually happens on sexual crimes and then the amount of times that people are charged and convicted, all of that together justifies some of the changes. That also goes across affirmative consent. We do see that these are quite critical changes to ensure that balance is right.

Ms BUSH: I want to go to the time frame that you have recommended around an independent review being five years. That is in line with the taskforce recommendation and is to ensure we have enough data to do that type of analysis. Is that the justification for that time frame?

Ms Holmes: Yes. It is because it is such a new offence and we do not have the precedents, other than Scotland. If this law is passed in a different form from the Scottish law, it is obviously even more reason to do it. It is about having a close look to see if the law is working properly or not. They were the concerns that the Law Society have just articulated.

We are also concerned about the unintended impacts, particularly on Aboriginal and Torres Strait Islander people. I think you may have heard from some witnesses about that. That has been a long-term concern of ours. Anytime you criminalise a new offence it disproportionately impacts on Aboriginal and Torres Strait Islander people, and in this instance we are concerned about the particular impact on women. It is critical that we watch for that in that first five years. It would be a great tragedy if these laws just ended up criminalising a whole lot more Aboriginal women in particular. That would totally reduce our goals of closing the gap and would not properly address the underlying issues in the community that may be the reason domestic violence or violence is occurring. That would be a totally inappropriate outcome for this legislation. We want all of the people involved with it—the judicial system, the police and DJAG—to keep a very close watch on the datasets to see what is happening. If this is having an unintended impact, that would need to be remedied and not forgotten about because it is such a brand new area of law.

Ms BUSH: That is what worried me, whether five years was too long. I think what I am seeing in your submission is that it may take that time to get the volume of cases to do a robust evaluation.

Ms Corkhill: It is probably a minimum. What I read in another submission from the Bond academics was that there have only been 198 prosecutions since 2004 in Tasmania. Even then, we might be quite low on data. We did get a response to the submission from the department that was published that indicated that they would legislate as suggested, but we are just questioning why that is not happening now. We thought this was the final tranche of legislation in response to the Women's Safety and Justice Taskforce. If we have missed something I am not sure, but we are just wondering why we would legislate for that legislative review separate from this bill. That did not add up for us. Also, it does not actually address our issue around mandatory data collection and that needing to be part of this bill.

Mr KRAUSE: I have a question in relation to the submission about fair hearings for accused persons, victims and the community, starting from paragraph 15. You refer to the right to a fair hearing under the Human Rights Act and in the next paragraph note that Australian courts have acknowledged that the right to a fair trial is a bit broader than just the rights of the accused, and there is a reference there to the *Hear her voice* report 1. I have had a look at that report, and that part of the report seems to be referring more to the truncation of cross-examination rights and how an alleged perpetrator can question complainants.

We have just heard quite strong submissions from the Law Society about how this bill also affects the right to a fair trial because of the lack of need for particularisation of an offence, where intent needs to be proven, so someone could be convicted without knowing the particulars of those offences. I note there is reference in here to protecting victims of coercive control and also concerns about the impact it might have on Aboriginal and Torres Strait Islanders. I wondered if you missed the impact it might have on a person's right to a fair trial or if you just decided not to put it in your submission.

Ms Holmes: A person's right to a fair trial is extremely important; that is a basic human right. Listening to the Law Society's submissions before about those issues—we are not criminal lawyers in the Human Right Commission. We are probably not as practised at the criminal law as they would be. I think the Law Society is saying that legislating against coercive control is a good concept. They have had the opportunity to look very precisely at the drafting of the bill in a way that is informed by practical application of the law in the courts, in a way that we would not have exposure to. Having heard what the Law Society have said this morning in relation to the fair trial issues, I think they are issues that we would largely adopt.

Mr KRAUSE: Thank you.

Mr ANDREW: You spoke earlier about the human rights being captured and a situation with the Aboriginal and Torres Strait Islander tribal people. Do you think this bill is fit for purpose for our country and the multicultural people who live here? Do you think human rights issues and unintended consequences could arise out of the fact that we have so many people from different nations here?

Ms Holmes: That is obviously an issue that needs to be considered—different cultural practices, different ways of operating in domestic environments. That is obviously a real issue. There are very basic human rights that underpin all of our cultures and they are reflected in the Human Rights Act. It is trying to get that balance right about how far the law goes into family relationships and how far the law goes into cultural practices.

I guess our bottom line is that the very basic human rights that are articulated in the Human Rights Act are where we are coming from. We have this new and untested law, and that is why, again, we are keen to see how it operates, because we need to get the balance right. When it is such a brand new area of law, it is very hard to know at the first instance, when you are trying something new, if you are getting the balance right. Yes, we have concerns that it may not be achieving the balance, and that is why we would like the five-year review to occur. Also, reflecting on the Law Society's submissions in relation to the fair trial in relation to coercive control and the course of conduct, they are very important issues to ensure fair hearings and justice for people who have been charged under the law.

Mr ANDREW: Getting the balance right in a timely measure with an untested law that we are proposing at the moment could actually be stretching out cases—in terms of human rights issues, mental health issues. What do you think of that? These things are obviously going to take time to come to precedence and we are going to try to test all these areas and there will be a lot of people tied up in this. What are your thoughts on that? Are there enough precautions in the bill to represent that side of the way this could pan out?

Ms Corkhill: I think, from the outset, we have not had a strong position from the commission's perspective as to whether criminalising coercive control is good policy or not. We do have concerns, I suppose, about many issues that the Law Society has raised. There are going to be evidentiary issues. What has not been discussed today, but has perhaps by others, is the challenge in establishing the intent to have coerced someone through a course of conduct. There are a lot of really difficult issues. This is an insidious social issue that we are trying to put a legislative lens over and trying to get that balance right, and I think that is an incredibly difficult task that the government has had. I accept the point that certainly the trial process itself can cause harm and can cause mental health harm to all those engaged in it. These are all considerations as to whether a criminal response is the best response and is the only response that is appropriate to something that is difficult to address as intimate partner violence.

Mr ANDREW: Legislation against human nature is a very difficult thing, I agree. Thank you.

Ms Corkhill: Yes.

Mrs GERBER: The Queensland Law Society was also concerned, in a broad perspective, that recommendation 78 of the first *Hear her voice* report, that the consultation be for at least three months prior to the introduction, has not been followed. Aside from also seeking a five-year review embedded in the bill, do you think the three-month consultation under recommendation 78 should have happened as well?

Ms Holmes: It is always desirable for people who have oversight of legislation and are trying to critique it to have as long as possible to understand it, but we also understand that sometimes that does not happen with very short terms of parliament and trying to get a legislative agenda through. We would prefer always to have longer to comment and look at bills, but we also understand that sometimes that does not occur.

ACTING CHAIR: Thank you very much for appearing before us today. We do not have any questions on notice. Thank you very much.

BICKNELL, Ms Lauren, Research and Policy Officer, Queensland Council of Social Service (via videoconference)

McVEIGH, Ms Aimee, Chief Executive Officer, Queensland Council of Social Service (via videoconference)

ACTING CHAIR: Thank you very much for appearing before 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 McVeigh: Good morning. My name is Aimee McVeigh. I am the CEO of the Queensland Council of Social Service, QCOSS, and I am accompanied today by Ms Lauren Bicknell, who is the research and policy officer at QCOSS. We are here on the land of the Turrbal and Yagara people. I pay my respects to elders past, present and emerging as well as to First Nations people who might be joining us today. I would like to thank the committee for inviting us to speak to you this morning.

QCOSS is the peak body for community organisations in Queensland. We have approximately 500 members—community organisations and individuals—working in the Queensland community services sector right across our state. Of relevance to the hearing, our members include numerous domestic and family violence and sexual assault service providers as well as Aboriginal and Torres Strait Islander community controlled organisations, organisations representing multicultural groups and disability services, community legal centres as well as advocacy organisations. Many of our members have worked over decades to achieve reforms included in this bill. It is important to acknowledge this tireless advocacy as well as the work of the Women's Safety and Justice Taskforce and the Queensland government when discussing this bill today. It is worth pausing to reflect on the significant cultural change that is already occurring in Queensland as the community's awareness of coercive control has been raised. While there is more to do to ensure the concept of consent is fully understood, the move to legislate an affirmative model of consent in Queensland's law is a significant positive step forward.

I refer you to our submission, but my comments today are focused on the need to carefully implement the bill. Our members' response to establishing coercive control as a criminal offence is nuanced. There is no doubt related to the significant harm caused by coercive and controlling behaviour that incorporates numerous types of abuse as well as isolating behaviours. There is also no doubt that this type of behaviour should be addressed and all efforts made to eliminate all forms of domestic violence and abuse.

Discomfort arises because of the potential for the unintended consequence of increased criminalisation of victim-survivors including First Nations women, who are already over-policed and grossly over-represented in our criminal justice system. QCOSS has previously advocated for the Queensland government's strategy to address the over-representation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system and meet Queensland's Closing the Gap justice targets to be operational before legislation to criminalise coercive control is introduced. It is noted that the strategy is intended to be in place prior to commencement of the coercive control amendments. We encourage the Queensland government to ensure this is the case rather than intend it to be the case.

We welcome the announcement of broad community education campaigns to ensure the community is ready for changes to the law, and emphasise the need to consult with First Nations, migrant and refugee communities and people with a disability in both the development and the implementation of these campaigns. We are also keen to support the development of capacity-building resources for the community services sector to ensure that people working with disadvantaged people across Queensland understand the changes to the law.

We emphasise the need to design and implement a framework that monitors the operation of the new law, including identifying the number of First Nations women who are convicted of the offence as a proportion of all women and all people convicted. As outlined by the Women's Safety and Justice Taskforce, a five-year statutory review of the bill is essential and should be included.

As mentioned, QCOSS is pleased to see the introduction of an affirmative model of consent included in the bill. In 2020 we provided a detailed submission to this committee lamenting changes to rape laws, asking for an affirmative model of consent to be introduced in Queensland. We are pleased that we have already been consulted by the Department of Justice and Attorney-General on a communications campaign, in line with changes to the affirmative consent law being introduced to

parliament. Ongoing consultation with a broad and diverse stakeholder group is essential to ensure the community understands what constitutes affirmative consent. Thank you again for the opportunity to speak to you today. Lauren and I are happy to answer any questions you may have.

ACTING CHAIR: Reading through your submission, there is one line that jumped out at me, at the bottom of page 2. That is talking about the introduction of coercive control as a standalone offence. You wrote that it could lead to the misidentification and criminalisation of victim-survivor women. Can you explain a bit more what you mean by that?

Ms McVeigh: Our members hold a concern particularly in relation to the over-policing of First Nations women in Queensland and that at times when dealing with domestic violence in First Nations communities and in the broader community women who are victim-survivors are also treated as perpetrators of domestic and family violence. The further criminalisation of domestic and family violence therefore does hold the risk that we would see more over-policing and criminalisation of First Nations women and continue to see an over-representation of First Nations women in our criminal justice system. That is why we are saying that the strategy that is currently being developed to address the over-representation of First Nations women in the criminal justice system, and also to ensure Queensland meets the Closing the Gap justice targets, is in place prior to the commencement of this law.

ACTING CHAIR: Thank you for clarifying that. Certainly that misidentification and criminalisation extends to—I know from talking to many people in my area—outer urban and less affluent areas. That is an issue as well; is it not?

Ms McVeigh: Yes, it is, thank you.

Mr KRAUSE: Thank you for the submission from QCOSS. My question is about the amendments to the failure-to-report offence. I note that you have made a lot of statements in there not only about appreciating the impacts of the changes but also raising some concerns about the difficulty in the changes made. Do you have a view on whether the changes risk undermining the entire principle of mandatory reporting when it comes to especially child sex offences and, although it does not seem to be specifically borne out in your submission, do you have any concerns that changes to the legislation might undermine that system as a whole?

Ms McVeigh: In our submission we make it clear that we understand and support the intent of these provisions, but there have been reports from our members that it has had an effect on young people coming forward or feeling comfortable to disclose sexual assault when they do not want it to be reported to the police. The other part of it is that our service providers obviously advocated for an expansion to the types of people who could have an exemption to that provision. I note QSAN's submission, which does say that it would be worthwhile to have an independent review of the operation of those provisions to make sure you can maintain the integrity of the intended purpose while also ensuring that the participation of children and the ability of children to disclose sexual abuse or assault is also protected.

Ms BUSH: I also had a question about failure to report, but you have touched on that so I will move on. With regard to section 216 of the Criminal Code and the criminalisation at times of sexual interactions with people with an impairment—I know that we have ADA and the Public Advocate attending a bit later—could you expand on your suggestions and observations there?

Ms McVeigh: You are right: there are others who have really led the charge in relation to this. In addition to those that you mentioned, I would also point to Queensland Advocacy for Inclusion.

Ms BUSH: Thank you, yes.

Ms McVeigh: We have previously raised the need to review section 216 of the Criminal Code and associated provisions to ensure that people with disability are able to pursue a safe, satisfying sexual life and to decide matters according to their choice of partner and their bodily integrity. As it stands, the drafting is very broad and it actually would capture people, in our view, who do have capacity to consent. The bill obviously does not address that concern but, given the nature of the matters considered in the bill, we think it is worth considering looking at an amendment to that section.

Mr HUNT: Thank you for your submission. In that submission you talk about a peak industry body of specialist organisations. Could you unpack that a little bit more? What would that look like and where would that sit?

Ms McVeigh: That is a reference to a recommendation made by the Women's Safety and Justice Taskforce for the establishment of a domestic and family violence peak for domestic and family violence services. As you may be aware, there are numerous peaks that operate currently in

Queensland. QCOSS is an example. We broadly represent the community services sector but there are other peaks that are specialist peaks. For example, there are peaks that represent the housing sector, the youth sector and the disability sector, and there is currently no funded peak to represent domestic and family violence services. It was a really important recommendation out of the taskforce and one the government has certainly indicated it will move forward with. We understand that a procurement process will open soon.

The importance of a peak is to ensure that services—and in this case it is domestic and family violence services—have a representative body that is focused on building their capability and capacity; building the integration of services and networks; ensuring they are receiving good, correct information; and being that conduit between government and the sector so that government can also draw on the peak body when it wants to consult the domestic and family violence sector and rely on that peak to convene the domestic and family violence sector and provide input into policy.

The member will understand that many domestic and family violence services are currently reporting unprecedented levels of demand and at the same time there is this significant reform agenda being pursued—a very important reform agenda. Those members are really pressured in terms of delivering services into their community and at the same time are wanting to provide their insights and information into policy and law reform. A peak body is an excellent vehicle to ensure that those service providers have a voice and are able to communicate into government policy and new laws and provide advice around where investment is needed.

Mr HUNT: The central thrust is that the service delivery agencies would be able to concentrate largely on service delivery and your peak body would be your liaison and consultation mechanism? Have I understood that correctly?

Ms McVeigh: Yes. I would say that a peak body is a membership body. That means that domestic and family violence services would become a member of a convening body which then provides support to services as well as enables them to have a conduit into the development of government policies, laws and advice around investment decisions.

Ms BUSH: I refer to the elements in the bill around a diversionary program and the suitability of people for that—the requirements they need to go through in order to access the diversionary scheme—and then the comprehensiveness of perpetrator programs across the state. Do you have any observations from members about that?

Ms McVeigh: Unfortunately, the consultation time frames associated with this bill have meant that we have not been able to broadly consult with our members on all aspects of the bill or the consequences of the bill. I would say broadly that we do know from our sector that there is a need to invest in all parts of services that respond to domestic and family violence. That does include perpetrator and men's behavioural change programs.

ACTING CHAIR: There being no further questions, we thank you for appearing today. We do not have any questions on notice. Thank you for your evidence today.

Proceedings suspended from 10.50 am to 1.30 pm.

ACTING CHAIR: Good afternoon. The committee will now resume its public hearing for its inquiry into the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023. My name is Chris Whiting. I am the member for Bancroft and acting chair of the committee. I want 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; Stephen Andrew, member for Mirani, via videoconference; 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 also appear on the parliament's website or social media pages.

KRULIN, Ms Vanessa, Solicitor and Senior Policy and Research Officer, Aged and Disability Advocacy Australia

ROWE, Mr Geoff, Chief Executive Officer, Aged and Disability Advocacy Australia

ACTING CHAIR: I now welcome our representatives from ADA Australia. Good afternoon. Thank you, Geoff and Vanessa, 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 Rowe: Thanks for giving us the opportunity to be witnesses here today and to speak with the committee. Before starting, I also want to acknowledge the traditional owners of the land on which we meet and pay respects to their elders past, present and emerging, noting that we are on Yagara and Turrbal land.

I will take the submission as read, but we will give you just a little bit about ADA before making some opening remarks. ADA Australia, despite the word 'Australia', is based in Queensland and the focus of our work is in Queensland. Last financial year we supported about 8,000 people across Queensland with information, education, advocacy and legal services. We have more than 100 staff located across the state. We also host the Aboriginal and Torres Strait Islander Disability Network of Queensland and about 10 per cent of our staff are First Nations staff.

As per our name, we really focus on working with older people, particularly older people who have accessed the aged-care system or who are seeking to access that system and who have difficulties with that system. We also support people with a disability. In the First Nations sense, we operate a statewide First Nations disability advocacy service and, with state and Commonwealth funding, deliver services in targeted geographic areas around Queensland. We also now operate three community legal services across Queensland, predominantly in South-East Queensland and in what is called Outback Queensland, and also a mental health service in Townsville.

We are not a domestic and family violence service as such, although certainly the work we do takes us into the realm of elder abuse. Working with people with disabilities, it is whatever issues they come with, so we certainly have that exposure to domestic and family violence. Sometimes when we look at elder abuse we get frustrated, and we often describe the current response to elder abuse, not only in Queensland but across Australia, as being where the response to domestic and family violence was 20 years ago, so we are a long way behind the eight ball. Whether it is ageism that contributes to that I am not quite sure, but often older people—older Australians, older Queenslanders—do not seem to have rights or have the same rights as the rest of the country. Similarly for people with a disability, it is often hard for them to grab hold of their rights and claim their rights.

As we outlined in our submission, we broadly support the drafting of the bill as proposed, including 334C in relation to the standalone offence of coercive control. ADA Australia, as you may be aware, contributed a significant number of submissions to the women's taskforce and we are broadly supportive of the taskforce's proposed approach and recommendations. I guess why we submitted our

evidence to the committee was to make sure that the needs of some of the state's most vulnerable people are understood and that their voices are heard. They are often a group that cannot go out and raise those issues or have their voice heard by themselves.

I am going to ask Vanessa in a moment to flesh out a recent example of some work we have done so that you understand some of the issues behind what we are saying. We are really keen to see an investment in education programs, not only for the Police Service but across those key agencies such as QCAT and the Public Guardian. While we can make assumptions that they understand older people, they understand people with a disability and they understand people whose capacity is being questioned, we certainly know in practice that a lot of times people come to us when clearly those agencies have not understood the needs of those people or even the behaviours of those people and this has led to a poor outcome. Rather than me babbling on, I will get Vanessa to talk about that recent case. We picked it up partly in here, but I think trying to elaborate a little bit more will help paint a picture about some of the things we are concerned about.

Ms Krulin: I think we are repeating the strong recommendations of many other contributors with what we talk about. We do support the bill. We support the introduction of the standalone offence, but the success or failure of the scheme will rest maybe not solely but in large part on the education and comprehensive training that is given to key agencies, and we absolutely recognise that the police are a huge part of that and possibly that first port of call. We in our work have experience—and I can give a recent example—of the level of upskilling, training and education on domestic and family violence and this new offence within the guardianship agencies in particular. That was something that we had noticed maybe was not focused on, perhaps understandably, throughout this process that has taken us to here. That is particularly important when we think about some of the clients we work with and where the Office of the Public Guardian is engaged. When that office is engaged or when a private guardian is engaged, they are empowered sometimes to make contact decisions for a person and so they will be impacted by this legislation.

In a recent example I had, that is already evident. That is, the concept of coercive control I think has now started to be identified or known but the understanding of that is very low, and I will give a recent example. I have a client who has a very complex disability—lifelong disability level 3 ASD schizophrenia and other psychosocial disabilities. We were called in in relation to a guardianship matter because there had been an interim application put before QCAT for the urgent appointment of the Public Guardian. We were called in at the point that that had already been done and then we go into the full hearing process. A service provider had made an application in which the service provider made an allegation of coercive control against this person's mother. That allegation was not scrutinised and formed the basis of the Public Guardian then being appointed for all decisions, including contact initially. This immediately pressurised the situation with this person and his mother, who is his only support person. So there is our first hurdle—that is, we have a misunderstanding and an allegation of a soon-to-be criminal offence which immediately must raise alarm bells, and those alarm bells were rung and there is an impact for that.

We also had the conversation with the Public Guardian at that time that this is a really serious allegation and to what level could they scrutinise this before they made a decision, so that is another part of the problem. Subsequent to that, in the context of a person with a really complex lifelong disability where their family dynamic is not well understood, that further pressurises the issues and the impact with other support services as well. While we were involved there was then an incident where this person and the parent were having a verbal fight in their front yard. The police were called, not by them. The police came along and, whether or not they recognised—and we spoke to this in our submission—the disability, the decision was made by police to treat it as a domestic violence situation and issue a police protection notice.

That now puts that person with disability—and keep in mind that at first we had concerns about the mother; now there are concerns about the person with disability from another agency—into a Magistrates Court setting. Guardianship is involved. Guardianship says, 'Can this person give instructions in a Magistrates Court setting? Is there capacity for that? We're not sure, so we'll appoint the Public Guardian for that.' Then the Public Guardian is also taking allegations of coercive control which are unproven to inform the instructions in a Magistrates Court about the domestic violence order. Just in that one little setting we have two different agencies interpreting the coercive control understanding impacts for a person and a family with disability in two different ways with two different perpetrators, but the effect was that then QCAT became involved, saw that a Magistrates Court was involved, saw that the Public Guardian was saying that that was justification for separating the two people and now we have a situation where a person with complex lifelong disability is separated from his only support person because those full contexts of their relationship have not been considered.

The point that we make is that the education is key. We agree that these changes need to be made. We support the incredible work that has been done by the women's taskforce and the contributors to that. We have read the other submissions, including from those who have presented today, but the success—and this has been evident in the Scottish model as well—of that up-front education and investment with key agencies, including in particular the Public Guardian and those contact decision-makers, is really key.

Ms BUSH: Thank you for coming today. I want to go back to that case, if I can. Obviously that case occurred before the introduction of this piece of legislation. I know the system reasonably well. I can see how that would have played out. Will this piece of legislation make it better? Will it make it worse? Will it do nothing? You made a point around education and capacity building in the sector. I want to be sure there is nothing in this legislation that is going to confuse that process even further.

Ms Krulin: Operationally, I think there is inherent risk that it will confuse the process further, but that is not to say that it is not still a necessary process or a necessary introduction. It is more about the education.

Ms BUSH: It is just a risk.

Ms Krulin: The risk can be mitigated with the right investment in education and capacity building in the key agency sector. I would also suggest Queensland Health was another part of that, and anyone who has a role in the guardianship process where contact decisions can be made.

Ms BUSH: Does that link into your recommendation that if matters, I think it is under 334E, are re-referred back to the Magistrates Court for a protective order there should be a consultation piece basically with the defendant to just check the context of that referral?

Ms Krulin: And with the potential victim—absolutely. In that case we suggested that it is still within the power of the court to continue anyway, but there should be a mandatory stop-and-check mechanism to check in with the possible aggrieved because in this case the aggrieved did not consider herself to be the aggrieved.

Mr Rowe: If I can add to that, one of the things we see frequently is that often the agencies that interact with people with impaired capacity think they have no capacity. Capacity is not the same as pregnancy. With pregnancy, you are pregnant or you are not; with capacity, you can have ability to make a range of decisions and express a preference. We have been amongst a broader push to move from that substitute decision-making to supported decision-making to help the people to say what it is that they want and what the experience or the outcome is that they want. That is in both players. We also clearly deal with a number of people with a disability who are in a relationship where both would be deemed as having an impairment.

Ms BUSH: On that point, impairment can be fluctuating as well. A previous submitter, I think it was QCOSS, talked about section 216 of the Criminal Code which is around the sexual abuse of people with an impairment and what would be abuse and what might be consent. They were essentially recommending we should review 216 of the Criminal Code around sexual contact with a person with an impairment. Do you have any comments you would like to add to that?

Ms Krulin: I think I can add a little bit, but I do not think it would be a complete answer without having looked at the section today. I know that the Public Advocate has issued a paper around sexual contact with people with impaired capacity, so that would be a starting point. If you are referring to the consent provisions in the bill—is that what you are thinking about, whether it is a defence for mistake of fact and that sort of thing?

Ms BUSH: Not so much. The fact that QCOSS raised it—it is outside of the scope a little bit—made me curious. The paternalistic nature that we sometimes take towards people with an ID has been a conversation in the sector for a really long time.

Mr Rowe: The recent aged-care royal commission highlighted the number of sexual assaults that occurred within the aged-care system. I do not know that I really want to be quoted in *Hansard,* but from memory it was something like 300 a week across the country. They were really big numbers. Dr Catherine Barrett, who is based in Victoria, has been doing a lot of work with the Older Persons Advocacy Network around that. I am happy to try to pull some information out on that and share it with the committee in terms of that response. The Commonwealth government has looked at its serious incident response, or SIRS as they call it, which is looking at how it better manages sexual assault, particularly within that aged-care environment. Aged care also includes home care.

Ms BUSH: Certainly, if it is not too onerous.

Mrs GERBER: Thank you for coming today and for your oral and written submissions. At the hearing on Monday we heard from representatives from Caxton Legal Centre who were talking about elder abuse and highlighting that there is the potential for these sections to encapsulate some of what they see as elder abuse coming through the Caxton Legal Centre. I have heard you reiterate that today. I wanted to get you to expand on that specifically in the context of elder abuse. One of the things I put to Caxton Legal Centre was that, whilst there are elements of this that may be applicable to help with the scourge of elder abuse in our community, perhaps elder abuse needs to be legislated in its own right because it has its own specific needs. One of the situations they raised was around how family members often do not want to see their mother prosecuted or their child prosecuted. Criminalising it in this context may in fact do the opposite and be a barrier to preventing elder abuse. I am interested in your perspective on how we address elder abuse and whether or not this really is the only avenue or the right avenue.

Mr Rowe: That is a question that has been grappled with across the world. In 2009 I received a Churchill Fellowship, which allowed me to look at the prevention of and response to elder abuse in aged care and the community. Different parts of the world are dealing with elder abuse in different ways. Certainly some of the people I spoke to were very clear that it needed to be seen as a crime and responded to in that way. I think our response to elder abuse is evolving. That may be is the best way of putting it.

If we go back 10 years, if someone was experiencing elder abuse and went to the local police station they would be told it is a family matter, that they need to deal with it in the family. Thirty years back, with domestic violence that was a similar response. I think now we are able to use some legislation to prosecute.

Yes, it is complex because it is generally a family member, and often it is a son or a daughter who is the perpetrator and so it is very easy for the older person to blame themselves, but we also see within the elder abuse environment—they are not even veiled threats—threats that 'If you report me,' or 'If you don't do what I want you to do then I will stop you having access to your grandchildren. You will not get visitors.' It is absolutely, in my view, coercive control, but it is very subtle and it is within that family environment. It is within an environment where the older person is reluctant to really progress it. When I was in New York they had just done some research that found that only one in 25 cases of elder abuse were actually reported, so it is very under-reported. I think the Australian Institute of Family Studies did research on incidents—maybe it was 2019—and at that time they found that, for people over the age of 65, eight per cent of the population can expect to experience some form of elder abuse in the next 12 months. If that is with under-reporting, there is a lot happening out there.

Mrs GERBER: What needs to be done?

Ms Krulin: I think this legislation could apply to some of those cases. We would be, of course, interested in seeing how that works and how that rolls out. On whether or not there is a need for a standalone offence of elder abuse, that is something that we and I know the Queensland Law Society have been advocating for many years to be considered by the Queensland Law Reform Commission as a separate issue. We would certainly support that also.

Mr Rowe: We would love to see it picked up, yes.

Mr ANDREW: I am just wondering about carers in relation to elder abuse. Would this situation turn carers or family members off being carers and not actually taking up the job of caring because of the situation that we have outlined? I am a bit concerned about that.

Ms Krulin: If I am understanding your question correctly, you are concerned that people will be worried about being accused of this offence in a caring situation?

Mr ANDREW: Especially with mental illness or people who are not cognisant of what is going on around them, the way things could pan out, the way people could see it, and then all of a sudden people are taking a step away from doing it because they are getting wrapped up in this whole situation.

Mr Rowe: I cannot say it is something that we have necessarily seen. I understand what you are saying, but I think there is a risk, and always has been a risk, for anyone in that caring industry that there would be some sort of allegation made against you. I think it is really important that the legislation is robust and that the people who are doing the investigation understand the context and the environment in which it is occurring. Most of the elder abuse coercive control is coming from family members rather than carers. There are some carers, clearly, who cross that line, but I would not see it as a reason not to do it. I think doing it will be of much greater community benefit than not doing it and not including it.

Ms Krulin: I am much more concerned about the potential victims being believed—the persons with disability or older persons getting the voice in and having that position heard. That is my stronger concern. I think that is supported by the evidence that went to the taskforce.

ACTING CHAIR: Thank you for your evidence today. We have one question on notice.

Ms BUSH: It was in relation to the aged-care royal commission sexual assaults and some of the work going on broadly there.

Mr Rowe: The work of Catherine Barrett in that space.

Ms BUSH: Whatever you think is relevant and accessible and helpful.

ACTING CHAIR: If we could have that response by the close of business on Tuesday, 14 November, that would be appreciated.

BEVAN, Ms Karen, Chief Executive Officer, Full Stop Australia (via videoconference)

DALE, Ms Emily, Head of Advocacy, Full Stop Australia (via videoconference)

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

Mr Bevan: Thank you. I would like to acknowledge that I am coming to you today from Gadigal Wangal land and my colleague comes to you from Cammeraygal land. We acknowledge elders past and present and the unbroken chain of Aboriginal culture and stewardship of country.

I would like to thank the committee for inviting Full Stop Australia to be heard on this important piece of legislation. Full Stop Australia is a nationally focused not-for-profit organisation which has been working in the field of sexual, domestic and family violence since 1971. We offer trauma specialist counselling to victim-survivors of sexual, domestic and family violence to address the immediate impacts of gender-based violence and support victim-survivors in their recovery. Our work includes supporting survivors of institutional child sexual abuse to access the National Redress Scheme and to access ongoing counselling and support. We also address gender-based violence at a systemic level through nationally focused advocacy aimed at improving the laws and systems that respond to gender-based violence. This advocacy is guided by the lived experience of over 350 survivor advocates in our National Survivor Advocate Program, which gives survivors of sexual, domestic and family violence a platform to share their experiences in order to drive positive change. We are very committed to centring the voices of victim-survivors in our work and advocating for laws and systems that centre those voices as well.

I would like to begin by saying that Full Stop Australia commends the introduction of this important piece of legislation. Tragically, sexual and domestic violence are at a crisis point in this country. On average, more than one woman a week is murdered by a current or former intimate partner—a disturbing statistic that is not shifting fast enough, as the recent spike in femicide so heartbreakingly demonstrates. One in four Australian women has experienced some form of violence or abuse by an intimate partner and one in five Australian women has experienced sexual violence. Meanwhile, according to the latest ABS data, 92 per cent of victim-survivors do not report sexual violence to police. Improving the laws and systems that respond to gender-based violence is one important way of addressing these tragic statistics.

To this end, we strongly support the objectives of the bill which are to improve the experiences of victim-survivors in the criminal justice system and increase safety and access to justice. Victim-centric laws that explicitly recognise and address the prevalence of gender-based violence are an important basis for a fairer justice system and a safer society. We particularly strongly support the bill's introduction of an affirmative standard of consent, the introduction of a standalone coercive control offence, and evidence and jury direction reforms aimed at addressing inaccurate rape myths that abound in sexual violence proceedings.

However, we would like to note that, in relation to the coercive control offence, the importance of ensuring that the risk of misidentification of perpetrators is addressed in the legislation is key. We know that the risk of misidentification is heightened for certain vulnerable groups such as Aboriginal women, culturally and linguistically diverse women and some other women with disabilities, for example. It is important that that is appropriately considered and addressed. There has been significant work done overseas and certainly in the New South Wales jurisdiction that shows that, in order to make sure that misidentification is addressed, there is also a requirement for sustained and resourced cultural and systems reform to support the enactment of such legislation to address this kind of risk. We also support a program of intensive evaluation of the offence and a review of the legislation in five years, as recommended by our colleagues at the Women's Safety and Justice Taskforce.

Our submission notes a few areas where we think drafting of the legislation could be addressed so that a true affirmative consent standard is not undermined. This will be critical, as the reforms in the bill are required in court proceedings. As a 2021 study by professors Julia Quilter and Luke McNamara found, even in jurisdictions that have introduced affirmative consent laws, cross-examination still often runs contrary to legislation, still leaning heavily on what we know is extremely problematic victim blaming and rape myths or weaponising victim-survivors' experience of trauma against them.

Finally, we wish to note that the reforms in the bill are a good starting point for important change but they are only the beginning. To drive large-scale systematic and systemic change, legislative reform must be combined with cultural shifts in the justice system, in the way that policing is enacted and in society at large. This includes trauma informed and sexual violence informed training for all justice

system professionals. It includes extensive survivor-led training for police, the sector and the wider community before the coercive control offence commences to ensure it can be effectively employed to increase the safety of victim-survivors. Without that kind of related work, there are some limitations to the efficacy of legislative change. Thank you very much for the opportunity to be heard.

Mrs GERBER: Karen and Emily, I want to go to your submission on page 3 and talk briefly about the perpetrator deviation programs that are part of bail considerations. We heard from the Queensland Law Society in relation to a recommendation that that be made available at the time as opposed to adjourning the proceedings and then holding things up, with the potential that perhaps a program is not available. I am interested in whether or not Full Stop has any involvement in that space and whether you can provide us with any further information around that.

Ms Dale: Can I clarify: this is in relation to the changes to bail considerations?

Mrs GERBER: Yes.

Ms Dale: Is it the timing of when those are considered?

Mrs GERBER: What we heard from the Queensland Law Society in relation to the operations of the Magistrates Court is that, in normal domestic violence order situations, if there is a program that a perpetrator needs to do then that be scheduled and made at the time of the court date so that there is certainty and a continuation of the case. As this legislation is currently drafted, if an accused needs to do a diversionary program then that is not required to be done at that time in court so the proceedings are adjourned, they go and try to find an available course and there may not be one available. The Law Society expressed concern in relation to not just the load on the criminal justice system but also the efficacy—whether or not it would be effective—if it is not in the legislation. I am interested in whether or not you have any experience with that and could comment.

Ms Dale: We do not have specific experience in relation to how that would play out in legal proceedings. Full Stop does not support victim-survivors in court proceedings. Our advocacy is more focused on the way that the justice system works systemically. I can comment generally in relation to principles of justice.

Firstly, if it is something that is likely to cause delay then I think it is important to address that. We are conscious that there is already a huge backlog of sexual violence matters before the courts. If that recommendation of the Law Society would contribute to addressing delay and having people funnelled into diversionary programs earlier so that legal proceedings can continue without delays then we would be supportive of that.

Mr HUNT: Full Stop has some concerns about an expert panel for mental health and cognitive impairment exceptions. Could you talk me through that, please?

Ms Dale: I suppose, just taking it back one step, our concerns are more generally around the application of mental health and cognitive impairment exemptions at all. I suppose the flow-on impact of that is that we do not think the exemption should apply at all and, therefore, a panel would not be needed in order to address them. Would you like me to talk you through why we do not think the exemption should apply?

Mr HUNT: If you could, yes.

Ms Dale: I would like to make a few points as a basis for why we do not think those exemptions should apply. First of all, I would like to acknowledge, as Karen did in her opening statement, the prevalence of sexual violence in the community. As Karen noted, one in five Australian women has experienced sexual violence in her lifetime. I would also like to note the seriousness of the offence of rape. It protects the fundamental right of bodily and sexual autonomy, and I think when we are developing this legislation we should be really careful about any exemptions that undermine that right.

Thirdly, our position is that, for me, the taking of positive steps to ascertain consent is actually a really low bar. It represents a basic foundation of respectful interaction, in a sexual context or otherwise. There are hundreds of exchanges that we engage in daily for which we seek consent. That is just part of existing in public spaces and being a member of society. Therefore, we think it is important to be really cautious about creating an exemption on the obligation to do that for something as significant and consequential as engaging in sexual activity, particularly when the consequences of not doing so can be so grave. In that context, we think that, on those exemptions for people with mental health issues or cognitive impairments, which basically provide that they do not need to take positive steps to ascertain whether or not someone has consented, creating an across-the-board carve-out for those things is not appropriate and does not provide enough gravity to the really important right of sexual and bodily autonomy.

As we said in the submission as well, we think mental health impairment and cognitive impairment can be dealt with otherwise than by creating this carve-out. Already under Queensland law, cognitive impairment and mental health issues can be taken into account in sentencing. I think that is actually a more appropriate way to address these things than to provide an across-the-board situation where somebody who alleges that they have a mental health impairment or a cognitive impairment does not need to take steps to ascertain whether or not a sexual partner has consented.

Ms BUSH: My understanding of your submission is that mental health disorders should not be there as a defence. If a person suffers depression then that is not a reasonable excuse to commit a rape. If someone has an intellectual disability, if they are successfully prosecuted then the judge could consider that in terms of their sentencing. Is that the substance of what you are saying there?

Ms Dale: Yes, that is the substance of what I am saying. I believe that in the submission we also noted the fact that in Queensland there is the Mental Health Court. It is possible for a criminal case to be referred to the Mental Health Court if it is believed that a person was of unsound mind and to determine whether or not they are fit for trial. Perhaps if they had a mental illness that was of such severity that they were not of sound mind and did not have the capacity to understand what they were doing, that would be another way the law already addresses that level of impairment.

We do not think it is appropriate for the mistake-of-fact defence to be limited with this sort of blanket exemption for mental health and cognitive impairments. We think that, particularly in relation to mental health impairments, there is quite significant risk because it relies on somebody's self-reporting of what their symptoms are. There is quite significant risk of possible abuse. In relation to cognitive impairment, as you said, there are existing mechanisms in the Queensland law for that to be dealt with.

Ms BUSH: Finally, can you make a general comment, noting that we do not have a lot of time: some submitters have either said or implied that they have concerns with the bill, particularly around consent and mistake of fact—that it is tilted too far towards the victims and that we might suddenly see all of these people found guilty unnecessarily. I think the term 'buyer's regret' was used. Can you very briefly touch on some of the difficulties in getting a successful rape prosecution, including how many rape cases are successfully prosecuted?

Ms Dale: Like I said earlier, I think the requirement to take positive steps to ascertain consent is a really low bar. People are not being asked to enter into a written contract. It is simply checking in with a sexual partner about whether or not they want to engage in sexual activity. I think that is absolutely appropriate for something as consequential as engaging in sex. Sexual violence matters have lower conviction rates than any other type of offence. Sexual and domestic violence are two of the only offences that are currently trending upwards in Australia. Taking that as the starting point, it kind of frames what we are trying to address here.

While I can understand that there are other principles that govern the conduct of criminal proceedings—the right to a fair trial, the presumption of innocence et cetera—I do not believe that these reforms undermine those. I think we need to address the reality that conviction rates for sexual violence are much lower than for other types of offences. I believe that figures vary but, by some counts, conviction rates are at one per cent of all experiences of sexual violence. Currently, they are really incredibly low. That is one of the things this bill tries to address.

Ms Bevan: In jurisdictions where the use of affirmative consent has been introduced, we have not seen any of those things that have been suggested. In fact, it becomes then a clearer standard for discussion in courts. We are not seeing that impact, that the sky is falling in. What we do see, though, is a clearer understanding of the standard that needs to be met. That benefits both victims and those who are alleged to have committed a crime.

Affirmative consent provides clarity for everyone around what is expected in the normal conduct of sexual relations between people. Given our history, right across this country, in the prosecution of matters relating to sexual assault, we know that not just in Queensland but in every jurisdiction in this country there have been very poor rates of prosecution to start with and, secondly, of conviction. We know that most matters will never proceed to prosecution and, in fact, as a community we should be seeking to increase the number of matters that get fully investigated and taken through this process where that is appropriate. I think there is not really a good evidence base to suggest that any of those things are true.

Mr ANDREW: In your submission you had some criticisms of the composition of the sexual offence expert panel. What sorts of requirements should panel members have? You talk about having more culturally diverse members. Where are you coming from in that regard?

Ms Dale: As I said earlier, we do not think the cognitive and mental health impairment exemption should apply at all, so I think that would remove the need for a panel. If those exemptions were introduced in the bill and then the panel were established, we think it is really important that there is a process set out in legislation for handling complaints about panel members—for example, time periods in which investigations need to take place, requirements for escalation and how the outcomes of such complaint-handling processes should be notified to complainants.

Also, I think the bill should specify that decisions of the panel need to be reviewable and should set out a process for review. That is just a good governance point. We raise it because, from our experience and knowledge of family law proceedings, there is quite well-established evidence of independent experts in family law proceedings providing reports and those not being tested and, as a result, children being put in dangerous situations. We are trying to, I suppose, advocate for a clearer and better governance process in relation to this panel established by the bill if it is created.

CHAIR: Emily and Karen, thank you very much for your evidence today. We do not have any questions on notice. Thank you for appearing before us.

MOORE, Mr Luke, Policy and Projects Officers, Queensland Police Union of Employees

PRIOR, Mr Shane, Vice-President, Queensland Police Union of Employees

CHAIR: Good afternoon and thank you for being here today. I invite you to make brief opening statements of no more than five minutes, and then we will have some questions for you.

Mr Prior: The Queensland Police Union welcomes the opportunity to comment on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill. I speak on behalf of 12½ thousand police and support staff across Queensland. There are a number of elements of this bill I will provide comment on and I will address some of the matters that the union thinks are particularly important. The QPU supports the legislation before the committee; however, it is important to note that we have significant concerns about the resourcing required for police to effectively use these new powers and protect victims. In the explanatory memorandum of the bill it is acknowledged that this legislation will increase the workload for police, the courts and the legal profession. The union is concerned that, without appropriately quantifying the additional costs and human resource requirements, this will just add to the already heavy workload of police. In similar jurisdictions we have seen a key barrier to prosecution being the appropriate gathering of evidence to a sufficient degree to lead to prosecution.

The need for victims to be supported from this law reform is paramount. The QPU recognises the need for experienced detectives to investigate these matters. The QPU calculates that, at a minimum, a thorough investigation into a coercive control matter would require at least two officers working approximately three days per officer. Police expertise will be required in most of these cases to ensure a comprehensive investigation. We expect that forensic experts will be required to investigate, generating an additional two days of work for the investigation. All police who work on the investigation will be required to attend court and give evidence. We expect that these trials will result in an additional three days of work for the police involved. All up, we expect it will take 11 police officer days to conduct a single investigation. We anticipate an average of 10,000 cases per year, generating an additional 880,000 police hours. In our view, these laws will require an additional 500 trained and experienced police officers.

The nature of these offences requires skilled personnel. With 14 years imprisonment as the penalty, our view is that the investigation skills of trained detectives is the only appropriate option. Getting these investigations right is the key element to successful prosecution. The government must ensure the police do not commence investigations hampered by a lack of resourcing. It is essential police are properly funded and resourced for this. Otherwise, we are being set up to fail. Failure here means that we, the police and the government would be letting down some of the most vulnerable members of our society.

We support the proposed amendments to the Bail Act and Youth Justice Act, noting, however, the presumption for the refusal of bail in circumstances where a person is charged with a relevant domestic violence type offence will remain and will not be overridden by the amendment.

The amendments propose the extension of 'reasonable excuse' to certain relevant professionals. The QPU supports these amendments. The proposed amendment justifiably requires professionals to exercise their judgement and ensure that nondisclosure only occurs in circumstances whereby there is no risk or continued risk to a child or children. Victim-survivors need the support of professionals to reach a place where they can take action against perpetrators, and the prospects of successful prosecution are enhanced by appropriate support and clear decision-making from victim-survivors.

The QPU is broadly supportive of the affirmative consent model proposed in this legislation. We do, however, have concerns with proposed subsections (l) and (m) of section 348AA(1). I will address these concerns sequentially. With respect to subsection (l), the QPU shared the concerns of other submitters around the application of this section in the context of a decriminalised sex work industry in Queensland. Legislation to decriminalise sex work has been tabled before the parliament and is in the committee process. The QPU supports sex work being a decriminalised industry in Queensland and addresses this proposed amendment on that basis. Like others, we are concerned that the inclusion of non-payment of a sex worker for a sexual act as a circumstance of non-consent will have unintended impacts on the rights of individuals in the criminal system and an impact on sexual offences more broadly. A failure to pay or provide an agreed reward should be an offence of dishonesty or fraud and treated accordingly. In a decriminalised framework, the wage theft of sex workers should be treated appropriately through civil means and does not require a non-consent amendment in the Criminal Code.

There are risks associated with this proposal. If, for example, the customer is unable to make payment due to circumstances outside of their control, the usual legal remedy is not a criminal action in the first instance. As a union, we believe that all workers should be treated equally. A plumber who is not paid for their work has a civil remedy and, depending on the nature of the non-payment, perhaps recourse to a criminal offence of fraud. We believe that sex workers should be given these same rights.

With respect to proposed subsection (m), the QPU notes the following concerns. The requirement of transmission to establish the lack of affirmative consent should not be decided by whether or not a person is infected with a disease. The QPU has read the consideration of others on this matter and supports the committee more closely looking at this proposed subsection. The lack of informed consent should not arise from whether a person contracts a disease. Rather, informed consent should require a person who is an actual risk of transmitting a serious infection to disclose the disease and obtain positive consent prior to engaging in a sexual act. In our view, people living with chronic disease, taking medication and managing their illness should not be caught up in this proposed amendment if, because they are medically managing that disease, they pose no risk to others.

Finally, the QPU does have some concern with how the affirmative consent provisions will translate into actual practice. The QPU believes that the statutory defence of mistake of fact will more frequently be relied upon in sex offence cases due to the exemptions to affirmative consent. Under these laws, a third party may coerce an individual to engage in an act with another without the other person being aware of the coercion. For example, peer group pressure amongst a group of teenagers may cause one of the group to engage in sex acts due to that pressure. In such circumstances, the other party to the sex act would have no knowledge of the coercion or that there is, by definition, no affirmative consent. The fact that the sex act took place is not evidence of the affirmative consent. This could have some severe and unintended consequences, and the QPU believes the committee should fully consider these issues further.

The QPU generally supports the proposed amendments regarding mass media reporting on domestic and family violence applications. There is a clear need for caution here, and the committee must consider the scope of authorised reporting in smaller and remote communities. The risk of exposure for victims and their children in certain locations must be balanced against the community's right to know.

For over a decade the QPU has been a supporter of perpetrator diversionary programs. We see these schemes as a chance to break the cycle of violence for a perpetrator and hopefully lead to appropriate rehabilitation. All too often, victim-survivors escape the circumstances of their perpetrator only for police to continue to encounter the same perpetrator again in a new relationship with a new victim.

The QPU notes the concerns of the Queensland Police Service around the application of this program on the provision of evidence for a criminal matter. Court proceedings are generally lengthy, and a diversionary program has the risk of lengthening the life of the matter considerably. The government must consider the risk that, should a diversion fail, a significant period of time may have lapsed before the matter returns to court. There is a risk in that circumstance that evidence quality may have been impacted, witnesses may have lapsed and witnesses may no longer be able to give evidence.

Consideration must be given by the committee to how we can ensure evidence is captured and preserved for a future trial should a diversionary program not be successful. In our view, the best approach would be for an initial conviction to occur, with the scheme operating to expunge that conviction in all respects where the perpetrator successfully completes the diversion. This proposal would allow offenders convicted in courts without the diversionary scheme the ability to enter the scheme in other locations and of their own volition. Offenders would therefore be more likely to participate in the scheme if it would remove the conviction from their criminal history. The conviction would operate as an incentive for participation and expungement.

While we support the intentions behind the legislation, we urge the committee to address the concerns raised in our testimony. Increased funding and police resources are essential to implement these reforms effectively. A multidisciplinary approach involving various agencies and NGOs is necessary to create a robust system to protect Queensland's citizens effectively. We further emphasise the need for comprehensive training for all stakeholders involved in the implementation of this legislation as it is essential to ensure its success. This training must include judicial officers. Police currently receive extensive training to support victim-survivors. Our law officers should have similar resources available to them.

The QPU is dedicated to assisting in the provision of legislation and advancements to effectively manage and reduce instances of domestic and family violence. This issue requires a comprehensive, multidisciplinary approach to manage it. I am now happy to take questions.

Mrs GERBER: Thank you very much for coming today and for your very comprehensive oral submission as well for your written one. I have a couple of questions which centre on the diversionary programs. Before I get to them, I wanted to ask—and I have asked other submitters, too: was the QPU consulted on the bill in the consultation draft process?

Mr Moore: I am not aware that we were, no.

Mrs GERBER: The reason I raise that is that the QLS has taken some issue with the short period of time that the consultation draft was available. The *Hear her voice* report recommended that there be three months of consultation and it was much shorter than that. There are other submitters who have taken issue with not being involved in the process earlier, so thank you for that.

I wanted to get your view on the Queensland Law Society's submission in relation to perpetrator diversionary programs. It aligns with what you have just said in relation to your concern about dragging out court proceedings and that being an issue. Once suitability is determined, the court can then make an order for the diversionary program to be completed within a period of not more than one year. The QLS's submission was that they think the availability of the program could be a problem and it should operate in the same way as other diversionary programs in that they schedule it in at the time the magistrate gives the order. It is scheduled in as opposed to adjourning proceedings to work it all out. What is the QPU's view on that?

Mr Prior: As was mentioned in our original submission, that length of time would have a detrimental effect on the court process and obviously lengthen it considerably. That is why our suggestion is that a conviction occur at the beginning and then an incentive program is implemented in order for that offender to go and take part in that diversionary program. As I said earlier, we are very committed to diversionary programs because we believe that they break the cycle of violence.

Mr Moore: Further to that, we want diversionary programs to be a measure of success. If we can get people out of their situation and into a program and incentivise them to do that, we know that is a good thing for reducing the impact upon victim-survivors and breaking the cycle of violence. We are concerned, as Mr Prior alluded to, about the prospect that a process can go all the way through and we can reach almost a gap or break in the proceedings and then there is a risk for police. Police move around the state. I know that they make themselves available to the court as much as possible, but there are risks that, should a diversionary program fail and the case is resumed, we might not have the same resources available that are there if a decision is just made and the opportunity is taken to say, 'Plead guilty, accept fault and, as part of expunging this, you take on a diversionary program.' In our understanding of that part of the process that the government has put forward, this is going to be done in certain trial sites. We fundamentally believe that people would travel from across the state to expunge their convictions to get into some of these trial locations. We think there is a benefit there.

Ms BUSH: Shane, I thought you were going to come in here and say that we are going to save you lots of time in QPS with this bill, but you have not gone that way. Society now understands coercive control and the construct of that and affirmative consent, but the legislation has not kept up with that, which is what we are doing here. I deal with a lot of victim-survivors who spend an inordinate amount with police arguing that they want this charge to be filed. There is no charge, really, that captures coercive control currently. They make a complaint. The complaint goes up the line and to ministerial. There is so much time spent on that. Have you had feedback from members that this clarification in the act might help in stations on the ground in trying to speed things up?

Mr Moore: I do take the point that you are making. When we look at commensurate jurisdictions—and I am thinking principally of the legislation in the United Kingdom—it is clear to us that there is a barrier when you come out at the end of the coercive control process to getting a successful conviction, and that is the length of time and the evidentiary requirement that is placed upon getting a successful conviction. What we are talking about is more that point. We want police to be able to use these tools to get convictions, to get people who are using coercive control and to get them in that action. We believe that part of that process is going to result in extra police. Let's be clear: we do not want to see first-years, fresh out of the academy, doing these investigations. We have to have skilled detectives with more than two years under their belt doing these investigations. I think that is the cut and thrust of where we are coming from.

Ms BUSH: That gives me a lot of hope. I like hearing that you want to have these matters dealt with by someone who does have that experience. It was a bit tongue in cheek. I wondered whether your members were supportive. It sounds like they are principally supportive of the government going in this direction of putting a legislative framework around coercive control particularly.

Mr Moore: Yes, I would say that we are. It is well known that we would like to see an offence of domestic violence and this could be an element of that. We recognise that this is a very serious matter and, because it takes up so much time for our members, we want the best tools necessary to be able to divert people and to protect victim-survivors and ensure that children, victim-survivors and perpetrators themselves are getting access to the things they need so that perpetrators can be reformed citizens and so that children and victim-survivors are safe.

Mr ANDREW: What about the allegations made by couples that are just tit for tat? You said that there would be a lot of extra hours involved because of how loosely worded and how broad the terms are in the bill. What are your thoughts around that and how that would impact detectives?

Mr Moore: I understand the point you are making. I will not lie: there are instances where we see that people will make cross-claims against each other. That is, again, the point about why we want skilled detectives making these decisions—people who have been appropriately trained. Our members are required to do a huge amount of training now to be able to go to the level of victim-survivors, to speak with perpetrators and to be able to figure out who is actually the aggrieved in a matter. I think coercive control goes a way towards that. I absolutely get the point you are making. I hope that we could capture that through having the most skilled police working on the job—people who are appropriately trained.

Mr ANDREW: A lot of time is taken up in the regions with domestic violence. It is one of the major reasons police are called out. In accordance with the policy priorities as laid down by the department, how will the bill's additional crimes affect police service delivery in the regions? Will this make it better for people in the regions to be able to sort this out? It seems cumbersome in certain ways the way it is.

Mr Moore: Would that I had a crystal ball. I think the idea behind the legislation is based on the idea that the police will use these tools to assist victim-survivors and families. We are saying very clearly that we need the appropriate resourcing for this. We know that that resourcing needs to go into our communities. Let's be really clear here: in most regional communities police are the only 24-hour service. When everyone else flies home—if they are fly-in, fly-out for other agencies; that is part of our call for a multidisciplinary approach—police need to be able to go in, de-escalate situations and conduct their investigations. Then we need to see other agencies and NGOs stepping in to fill the gap—showing up, talking to victim-survivors, assisting them to access resources. If we can suggest that to the government—that it is always good to see legislation but we need to see money behind those things as well.

Mr ANDREW: So you do not see any barriers in enforcing these laws at all? Some of my areas do not have 24-hour policing, by the way. I understand what you are saying, though.

Mr Moore: Thanks. I take the point.

ACTING CHAIR: With regard to the inclusion of non-payment for a sex worker as a circumstance of non-consent, the Queensland Law Society said that you could prosecute a case of fraud. You have said that it could be a civil matter or an offence of dishonesty. The Queensland Council of Unions has said—

> The experiences of sex-workers provide horrific accounts of stigma and discrimination when an assault takes place, and a lack of understanding of what consent looks like for sex workers. This clarification will provide important assistance to the police and courts ...

To say that you could characterise this non-payment as perhaps fraud or dishonesty, does that perhaps undermine how we characterise non-consent for sex workers? Is that a risk we take with that approach?

Mr Moore: I do not know whether that is necessarily the case. Our perspective here is—and we have said it in our submission—that this is predicated on the assumption that right now before the parliament there is legislation to decriminalise sex work in Queensland. In that scenario, in a post-decriminalised sex work scenario, as a union we fundamentally believe that industrially sex workers should be entitled to all of the powers that would be involved for other workers when wage theft occurs. In that environment we foresee that sex workers who are not paid or who are induced into a sex act and do not receive payment or gift in kind would pursue that in the same way as a plumber would who showed up at your house and you did not pay them for working on your sink. They would have civil remedies which might then descend into criminal remedies.

I appreciate that the Queensland Council of Unions has a different perspective, but we are the law enforcement union. Our members deal with this day in and day out. We are going to have a different perspective on people who represent the interests of other union members. That is just the nature of the movement.

Mr KRAUSE: I have certainly had a lot of feedback from police in the areas I represent about the additional time and resources they are already having to devote to dealing with domestic and family violence matters, just in the last year or two. Do you think the reforms that are in this bill will add to that burden? We are already in a situation where police are dealing with these matters in a labour-intensive way. Do you think this will add to that?

Mr Prior: I think it is very fair to say that domestic and family violence takes up a lot of time on our front line and that this increase in legislation will only take up more time. That is why it is very important for us, as an employee advocate, to come here today to talk to you about the importance of resourcing it appropriately. It is all well and good to introduce this legislation, but you need the officers there who are going to be dedicated to investigating these crimes. To answer your question: absolutely, domestic and family violence is a significant impost already on our front line.

Mr Moore: I think the reality is, and you would hear this from police in your local area: our members want to help people. If these laws give us the power to break the cycle, to keep people safe from domestic and family violence, we will use those tools. We are here today telling you: yes, if you give people more tools, you have to resource those tools so that they can use them appropriately. Otherwise, as you have probably correctly surmised, we will be in a scenario where there are just more boxes to check and it does not necessarily do anything other than add to the work that police do. We are optimistic that this will give us another tool that can help people.

ACTING CHAIR: We thank you for your evidence today. We do not have any questions on notice.

CHESTERMAN, Dr John, Public Advocate, The Public Advocate

MATSUYAMA, Mr Yuu, Senior Legal Officer, The Public Advocate

ACTING CHAIR: I invite you to make a brief opening statement of up to five minutes, after which committee members will have some questions for you.

Dr Chesterman: Thank you for the opportunity to be here. I acknowledge we are on the traditional lands of the Turrbal and Yagara people and I pay my respects to elders past, present and emerging.

As members of the committee know, as the Public Advocate for Queensland I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability. There are several conditions that may affect a person's decision-making ability. These include intellectual disability, acquired brain injury, mental illness, neurological disorders such as dementia, or alcohol or drug misuse.

I might say at the outset that I am very supportive of this current reform initiative to legislate in relation to coercive control. My contribution to today's discussion is on one relatively narrow issue concerning one of the proposed exceptions to the new requirement for there to be a positive indication of consent in relation to sexual activity. As I mentioned in my submission of 25 October, and as you know, the bill introduces into the Criminal Code an affirmative consent model in relation to sexual offending and changes to the mistake-of-fact provision regarding consent, as recommended by the Women's Safety and Justice Taskforce. In relation to mistake of fact, the bill provides that—

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

It also includes a safeguard provision so that if a person has a cognitive or mental health impairment and this was found to be the substantial cause of the person not saying or doing anything to ascertain whether the other person consented then the requirement to say or do something to ascertain consent will not apply. My concern about this exists at a broad level in relation to its potential consequences and also at the more technical level. At the broad level, this proposal will ensure separate consent requirements will exist for people with cognitive disability who meet the particular criteria.

My worry is that this proposal that makes exceptions for alleged perpetrators with cognitive disability will lead to different expectations that have the potential particularly to affect women with cognitive disability as victims of violence in disability or mental health settings or indeed elsewhere in the community. At this broad level, I think we need to have the same requirements here for all people, where particular cognitive vulnerabilities concerning alleged perpetrators are taken into account in relation to fitness to plead, verdicts of not guilty by reason of mental impairment and in sentencing options. I think creating the proposed exception to the requirement to obtain a positive indication of consent is problematic. It is important that our expectations on matters as foundational as consent to sexual activity apply across the board. This impacts on the rights of victims. It also affects our educational undertakings.

I might add, in parenthesis, that this is the reason I continue to advocate for review of the ongoing need for section 216 of the Criminal Code which, surprisingly, continues to prohibit even consensual sexual activity involving a person with 'an impairment of the mind' (a defence exists where the circumstances are not exploitative.). This was the subject of a report from my office in 2022.

Let me turn to the more technical legal concerns and queries I have about the proposal. I am unclear how the proposed provision will operate alongside other existing elements of the Queensland criminal justice system, in particular the provisions of the Mental Health Act, under which, as committee members know, people with mental illness and/or cognitive impairment can be found not to be legally responsible for their actions or can be found unfit to be tried. The Mental Health Court is generally responsible for determining whether a person was 'of unsound mind' at the time of committing an offence, with experts advising the court in relation to a person's condition.

Considering the existence of Queensland's Mental Health Act and the jurisdiction of the Mental Health Court, the safeguard provision included in the proposed bill would presumably apply only to an extremely limited number of people. This would include specifically a person with a mental illness or cognitive impairment that affects their ability to comply with the affirmative consent requirement but that is not sufficient for them to be considered of unsound mind at the relevant time.

Looking at the taskforce report, it does not appear that the taskforce consulted broadly regarding this safeguard provision in terms of how it will apply in the Queensland legal context as well as its impact on people with cognitive disability. In considering alternatives, I mentioned in my submission that other options that could potentially be explored include specifically taking into consideration a person's mental illness or cognitive impairment at the time of sentencing rather than during a trial.

Another technical note I make here is that the proposed use of an expert panel in relation to this exception appears to have only been briefly considered in the taskforce report and the safeguard provision itself is based on New South Wales law. If the proposed exception is to be retained in the legislation, there perhaps needs to be further exploration of how this is working in New South Wales. I reiterate that my overriding concern here is the situation of women with cognitive disability. Thanks for the opportunity to comment on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill. I welcome questions and comments from committee members.

Ms BUSH: Thanks for coming in today. These particular sections—348A(4)(a)(i) and 348A(4)(a)(ii)—have come up now a couple of times. I wonder if it is worth stepping out for the committee how it currently works in Queensland with the Mental Health Act. This carve-out would essentially create a defence for a person if they have a mental or cognitive disorder, but the point that has been put is that that is what the Mental Health Court is there to do. Can you unpack that a bit?

Mr Matsuyama: Effectively, the Mental Health Act can find a person not responsible for their actions if they are found to be of unsound mind. As it currently is in the Criminal Code, 'unsound mind' uses the same definition as 'insanity'. It states that—

... the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission.

When you read that alongside the bill, it says that if a substantial cause of not ascertaining positive consent was due to cognitive or mental health impairment. It seems to be a very narrow situation where they do not quite lack the capacity completely about the entire act but they seem to effectively lack capacity to seek affirmative consent. It is somewhat confusing in the Queensland law context as to how often that could apply. It is such a potentially narrow application that the question really is how often it could apply and whether it is actually quite confusing when it comes to potentially law enforcement and prosecution as well.

Dr Chesterman: I will add to and echo those comments. In relation to education, it becomes very difficult to communicate with people what the expectations are if such an exception applies. The existing and well-documented exceptions in the Mental Health Act are around unsound mind and permanent unfitness to stand trial. As my colleague was saying, there is a very small cohort of people we think would not be captured by the latter but would be captured by the proposed amendment, and the cost outweighs the benefits, in our view.

Ms BUSH: Essentially, if a person fails to seek affirmative consent and that person has a clinical diagnosis of depression or whatever and it is alleged that that diagnosis is the reason they were not able to get consent, the defence could still refer that to be heard through the Mental Health Court or it could be considered in terms of sentencing. I guess what I am getting at is that some people have asked why this carve-out is in this particular piece of legislation when it already can be dealt with in the Criminal Code.

Dr Chesterman: That is correct. That is my view. The unintended consequences are around particularly education. It is not just about the clarity of education; we actually want to take positive steps to educate people with cognitive disability about what is required in relation to consent and, assuming the legislation is enacted, in relation to affirmative actions. We want to make sure they are incorporated in education activities. We do not want to create an exception there that would make that quite difficult.

Ms BUSH: Correct. On that, you have raised section 216 of the Criminal Code and a few others have raised it. I know that you have written a lot on this so I do not expect you to provide that today. Can you explain to the committee why you think a review of that is required?

Dr Chesterman: Prima facie, section 216 of the code prohibits consensual sexual activity involving a person with 'an impairment of the mind'. There is an exception there where the situation is not exploitative. I am not for a minute suggesting that this is being heavily policed, but the problem is: anecdotally, for instance, it inhibits service providers from educating people with cognitive disability about appropriate sexual activity because we have this prima facie offence which exists. Again, it is not like service providers are being threatened with legal action, but it has a chilling effect on service providers wanting to be proactive in their education about what appropriate sexual behaviour involves.

Mr Matsuyama: If I can add to that, when we did research for the report regarding section 216, the safeguard provision effectively seems more restrictive for people with a cognitive disability than in any other jurisdiction in Australia. That is also a concern that we had generally. Queensland has not reviewed that provision since, I believe, 1989 and views about disability and cognitive ability have certainly changed since then.

Mrs GERBER: I was hoping you might give us a bit more detail about the specific issue you have been talking about. You have said orally and in your written submission that there is a possibility this provision may affect victims with a disability disproportionately. Can you give the committee more detail around that and maybe even a practical example of how this carve-out will disproportionately affect women with a disability or a cognitive impairment? How is it going to disproportionately affect them?

Dr Chesterman: If there were a separate requirement in relation to a positive indication of consent that applied to alleged perpetrators, who are the victims in those situations? They are likely to involve some women with cognitive disability. I am just imagining in disability settings that sexual activity could involve two people with cognitive disability. My concern is that invariably it would be women with cognitive disability who would be more likely to be at risk if this exception were to be enacted.

Mrs GERBER: Of not getting a successful prosecution?

Dr Chesterman: Yes.

Mrs GERBER: Of them not being able to have the offence against them prosecuted or an outcome achieved that is within the keeping of the intentions of the bill?

Dr Chesterman: Yes, and indeed we think even in terms of education. If there is education that says there is a separate requirement if you have a significant cognitive disability then that could be—we are talking about a small cohort of people who would be captured by this provision but not by the Mental Health Act provisions that we were discussing before. It could also have an unintended consequence of saying, 'In this facility, the laws around positive requirement for consent do not apply in the same way as they do in the general community.' That is of concern.

Mrs GERBER: The other thing you raised was that this safeguard provision is based on New South Wales law. Can you give the committee any further details around how it is operated in New South Wales? Has it been used? Are there any case examples?

Dr Chesterman: No, we just know that it is based on New South Wales law. We have not investigated the extent to how it operates there. In fact, one of our suggestions would be that if we are to go down this path it be looked at in some detail.

Mr Matsuyama: I will step back a moment in terms of another example of potentially a victim with a certain impairment being particularly affected. Another example might be inpatient mental health wards where, it is my understanding, it is all mixed-gender wards; there are no single-gender wards available. That would certainly be a scenario where there are very much vulnerabilities where this defence could potentially apply as well, which would disproportionately affect victims with impairments.

Mrs GERBER: I understand.

Mr ANDREW: In view of the shocking findings of the royal commission into abuse and care in facilities, do you think these coercive control laws should be expanded to maybe protect and include those involved in institutional care settings? Can you provide a few reasons this is or is not a good idea, please?

Dr Chesterman: I am hearing impaired so I did not catch everything that was said.

Mr ANDREW: With regard to institutional care settings, is it a good idea to put this into those settings? Could you tell me whether it would be good or it would not be good? Given the royal commission's findings with regard to abuse in those care facilities, should we expand this law to care facilities?

Dr Chesterman: I would have to take that one on notice as to extending it more than is proposed. I am wondering what that would involve. I would have to think about that. May I take that on notice?

Mr ANDREW: Thank you very much.

ACTING CHAIR: There being no further questions, thank you very much, Yuu and John, for your time here today. We do have one question on notice, which was about the extension of this into institutionalised care settings and what it may look like from your point of view. We request the answer to that by Tuesday, 14 November. We will be in contact with you to flesh that out.

Dr Chesterman: Thank you.

ACTING CHAIR: Thank you very much for your attendance today.

KING, Ms Jacqueline, General Secretary, Queensland Council of Unions

SPALDING, Ms Penny, Women's Officer, Queensland Council of Unions

ACTING CHAIR: Welcome. I invite you to make a brief opening statement of no more than five minutes, after which committee members will have some questions for you.

Ms King: Thank you to the chair and committee members for the opportunity to be here today. My name is Jacqueline King. I am the general secretary of the Queensland Council of Unions. The Queensland Council of Unions is the peak body for unions here in Queensland. We represent 25 affiliated unions, some 400,000 union members across the state. Our key objectives are to represent the industrial, social and political interests of Queensland workers and their families.

By way of background, in 2020 the QCU executive, which is made up of 45 senior union leaders across Queensland, resolved to call for and support the introduction of the new criminal offence of coercive control, along with a range of other initiatives to address and prevent sexual harassment and gender-based violence at work. This bill is significant for many Queenslanders, many women in particular. Today over half of all union members are women, and we know that women also comprise the largest group within our community who experience gender-based violence. In a workplace context, that is often seen as sexual harassment, sex-based harassment or sometimes sexual assault. In our communities and in our homes, it is obviously family and domestic violence and also coercive control.

I want to highlight some of the things that Penny Spalding, who is here with me as our women's officer, wrote in our submission. Many of the perpetrators as well as the victims of both family and domestic violence and also coercive control come from particular cohorts within our community. Often they are the most disadvantaged. We note that, similar to family and domestic violence, many perpetrators may also be at a greater risk of incarceration due to their intersectional disadvantages. In particular, we have consulted and Ms Spalding has undertaken consultations through our standing women's committee, our pride committee and also our First Nations working committee. One of the concerns that has been expressed by our First Nations committee is the high incarceration rates already of Aboriginal and Torres Strait Islanders, and in particular Aboriginal and Torres Strait Islander men, and thinking about what needs to actually happen in terms of the implementation side of any legislative changes that occur.

We think that signifies that there is a need for significant long-term education around consent, coercive control, FDV—the whole areas in this space—as well as significant additional resourcing to support that, whether that is for Queensland police or it is for the community sector, which is obviously intimately involved in a range of these matters and providing support for both victims and perpetrators.

I think the Queensland Police Union has been here, but the rise in cases just in FDV in recent years has obviously placed increasing demands and strain on not only the Queensland Police Service but also the community sector, which struggles to deal with these issues on a daily basis. The Queensland Audit Office report for 2021-22 says that there were over 139,000 reported FDV occurrences in that year. That was an increase of nearly 48 per cent in cases from the previous six years, so these issues are likely to grow. Issues around consent are also likely to take up more time in terms of not only Queensland police but also sexual assault services and the like, so right across the spectrum. We think then there is a need for government, when you are introducing legislation, to seriously think about the extra resourcing and the funding required for the police and the community sector in this space.

The other side of things is education—government funded education—and a need for a long-term commitment from all sides of politics in this space. If we are going to change gender-based violence and start to prevent this in our community, it is going to start with schools. We already have Respectful Relationships in place, and Ms Spalding can talk to that in a minute, but we need to target specific communities in ways that are meaningful for them around all of these range of issues. In our view, education is pretty much the only way we are going to achieve change, and it will be generational change. That does require, as I say, not just one budget line item; it is long-term, serious commitments of all types of government in this space.

The last thing I want to mention is that we support the provisions in the bill which recognise sex workers' rights to consent to sexual activity on an equal basis, in particular recognising that consent has not occurred in a case where a sex worker participates in sexual activity based on a false representation that they would otherwise have been paid or received some form of reward. The QCU has worked very closely with Respect Queensland, the main organisation that represents sex workers. We have been working with them in terms of decriminalisation, which is in another bill to come to this parliament. We look forward to the introduction of that bill. The QCU executive has also endorsed our

position to support that decriminalisation. The consent issue here is very important for them. It recognises that sex workers have equal rights as other workers. They obviously deserve respect and, in our mind, access to the same justice system as other workers who are either sexually assaulted or raped while at work.

I will leave my comments there and see if Ms Spalding would like to make a comment on the education side of things. She has a particular background as a teacher but also as a former assistant secretary with the Queensland Teachers' Union and work in this space.

Ms Spalding: Good afternoon, committee. Prior to my current role, I was the assistant secretary for women's issues at the Queensland Teachers' Union and had a very long and interested involvement around the Respectful Relationships education program and sat on the advisory committee for that program. I note that from the outset, when looking at domestic and family violence, the *Not now, not ever* report included Respectful Relationships in their recommendations. Our national review into sexual harassment in Australian workplaces, the *Respect@work* report, also made the implementation of Respectful Relationships a key recommendation. The national body, Our Watch, which is a primary national body that looks at gender-based violence, has done multiple reviews into the implementation of Respectful Relationships, and I note again that the taskforce also looks to this important measure to have young people learn about consent and healthy ways to deal with conflict and interpersonal relationships in an age-appropriate manner.

Unfortunately, despite a tick-and-flick approach, we are not seeing the full implementation of this across every state school. There has been minimal funding provided. I note that the federal government has most recently, a couple of months ago, made announcements for federal funding to implement this, but it seems to me that we are looking at not preventing. If we are looking at true intergenerational behaviour change that looks to address the issue that kills women at an alarming rate, we must look to prevent, not deal with the judiciary and the punishment after the effect. This is a huge cost to our community. It is a national problem. It is a problem throughout our state. We need to work on fully funding a preventive model that actually seeks to stop it where it starts.

Much research shows that gender-based violence stems from gender inequality. We need to look at age-appropriate measures of a nation and a state that has very segregated workforces and very segregated views of what specific gender roles are, and this is at the heart of this violence against women. I commend any initiative that the government can take to adopt, fully fund and properly implement a Respectful Relationships program which engages consent education in an age-appropriate manner.

ACTING CHAIR: My question is with regard to the same issue I talked to the Queensland Police Union about—that is, the issue of non-consent being for non-payment for sex workers. Your view on this is different to the other stakeholders we have seen, and I recognise that your group does work closely with sex workers and has expressed that it is important for them. The Queensland Law Society said that it was perhaps more akin to fraud. The QPU said that it may be an issue of dishonesty or something to be pursued in a civil setting. Can you describe why this particular issue is coercive control? Can you flesh that out a bit more? It is an issue of differentiation between stakeholders.

Ms King: The Queensland Law Reform Commission recommended in this space for decriminalisation that non-consent should be the equivalent of wage theft. If you think about a woman or a person for that matter—because it is not just women who are sex workers—even though it is a form of work for them, they are still placing themselves in very vulnerable positions when it comes to the issue of consent. Sexual activity is a commercial service, but if we treat it as something different and just say that it is fraud or wage theft, I think we are dehumanising that person. Consent is a very personal issue, and the fact that someone has agreed to exchange sexual services for a payment is not just a monetary transaction; it is a matter of trust in that space as well. When it comes to rape, a lot of sex workers are already treated quite unfairly in the system in that people do not believe them. From what we are told they are treated like they are something less than anyone else in our community. We think it is an equality issue.

Sex workers are workers; they want to be respected and treated the same as other workers. That is the principle by which the Queensland Council of Unions and our affiliates have agreed to support them. They deserve equal work health and safety rights and equal industrial rights. We think the QLRC was wrong on this particular point. We think it is a matter of actual consent. It is not wage theft. It is ludicrous in my mind to think that a sex worker, where a client has not paid, is then required to file an application in the federal circuit court or the Magistrates Court for that matter to claim payment on the basis that the client refused to pay at some point in time. I think it is a very personal thing for people. It is about being treated as a person and it is about being treated as a person who has equal human rights.

Ms Spalding: To add to that, I note that the QLRC indicated they were not providing a statement in relation to that because to do so would have to be under a review of Queensland's consent laws and at the time they wrote that review this process had not yet started. It is my understanding that they also said at the time, 'Consent is not being considered more widely so we're not going to make a recommendation on that.' I also point to other jurisdictions that have already implemented the issue of non-consent for non-payment of sex work and that is New South Wales, Tasmania, the ACT and Victoria.

Mrs GERBER: Were you consulted on the consultation draft of the bill?

Ms Spalding: No.

Ms BUSH: A lot of the statements you have made today and in your written submission have been covered by previous submitters around funding, capacity building, education and HIV status. We are not questioning you a lot on those because we feel that we have quite comprehensively talked about that today. A lot of your sentiments are in line with those comments. However, on the failure to report and the mandatory reporting, I think you recommended lowering the age of consent to 16. Do you want to expand on that?

Ms Spalding: That was around the failure to report around working with children et cetera. Yes, I think there was a view that professional people working with those children have their own professional guidelines, registration bodies et cetera where they have the best interests of the child at heart. Someone who is able to consent legally to participate in sexual activities at the age of 16 is able to make that determination. If the law determines they are old enough and mature enough to decide to engage in sexual activities and it is not against the law then they have that freedom to disclose whether or not sexual activities have taken place. I defer to other experts in this area who have long called for the fact that mandatory reporting does harm to that child and that they need to be able to build that professional trust to go through the counselling, trauma informed practice, and be able to give them the suitable care they require. It is that careful balance and always putting the safety and the best interests of the child first.

Ms BUSH: Some submitters have said that they would not mind seeing that whole piece around the mandatory reporting scheme reviewed. The other question I have was in relation to mistaken identity and the proposed subsection (k), which states—

> The person participates in the act ... because the person is mistaken—
>
> (i) about the identity of the other person ...

Do you want to expand? I think I understand what you are saying in your submission.

Ms Spalding: There were two elements there. There was the one around the mistaken identity where there could be the inference because someone might be gender diverse or a trans person or non-gender-conforming person; there could be a defence around that. The explanatory notes to the bill made it very clear that that was not the intent. However, I think that section could have some additional notes to further clarify that because, as we know, trans, gender-diverse, non-gender-conforming people are already very marginalised and have a degree of stigma in our community. Where there is anything that further stigmatises them and could potentially allow an abusive partner or abusive situation to manipulate them, I think we should add that extra protection of the law as it was intended. The explanatory notes said that was not the intention of the bill.

The other aspect of the mistaken identity that we wrote to in our submission was the use of pseudonyms, or working names, by sex workers. That could also potentially be used as a way to manipulate or could result in the bill having unintended consequences. It is a very common safety practice for sex workers to not go by their legal name with clients to protect themselves and their families. It is a very widespread practice for them to use sex worker names, or pseudonyms. We would also seek protection in that part of the legislation that protected that work health and safety measure they put in place to keep them and their families safe.

Ms BUSH: Understood. Thank you.

Mr ANDREW: I know this is aimed more at a domestic setting, but would you be interested in seeing this bill introduced to the workplace, say for workplace relationships?

Ms King: The issues around workplace relationships are a little bit more complicated. It is an employer-employee relationship. If there are obviously issues around sexual harassment, sex-based harassment, federal and state legislation already applies in that space. If we are talking about coercive control and the like, if those are matters where there are personal relationships in the workplace, I think the laws would apply regardless of whether they were two co-workers in a relationship or otherwise in a community sort of setting. I do not think there is a need at this point to call it out specifically for workplaces.

ACTING CHAIR: One of the things you talked about in your submission was a contemporary legal framework. We know that sexual offences and family and domestic violence offences have a low rate of successful prosecution and justice can be hard to get. We have heard from the Queensland Law Society that the legal system says they must reach a threshold of evidence test set by those long-established laws of evidence. How can people who have suffered from family and domestic violence or sexual offences or coercive control reach justice if we constantly have to pay heed to those long-established legal precedents and framework? I guess it is a broader philosophical question. What we are doing is modernising the legal framework, but we cannot do that if we say that we have to be bound by those centuries-long precedents. Is that something that would reflect what you would be thinking?

Ms King: I think there are different ways you can collect evidence that could be explored in this space where we are dealing with very personal familial relationships. At the end of the day, a justice system has to balance, in this case, the rights of a victim and the rights of the alleged perpetrator. You cannot have a system that is automatically going to have some sort of level of presumption in it because in that case you will have people who will just be assumed to have undertaken a crime where they may not have. I think it is the thin edge of the wedge. I think the collection of the evidence and how it is actually collected, what is admissible and what is not could be explored further. However, the threshold test, in that you still have to establish a case, still should stand. At the end of the day, it is a careful balancing that a judge or a magistrate is going to have to take account of.

Perhaps there are more education and more exploratory issues for the judiciary in this space but also for the police and for prosecutors. There is the issue of police cameras as evidence; they are using them more and more. In these types of cases, that can be a bit torturous in itself because it is not also going to see a pattern of evidence because they are only going to see a visible attendance at a scene of a particular incident as opposed to a history. I point to some of the overseas issues around coercive control, in particular the Scottish sort of experience where they manage to place a lot more of the social workers into police stations to work side by side with police. We would support more resourcing of more specialised officers. They would not necessarily be police officers but people who can see what the red flags are and can go in and work with the family.

For me, the other side of things in terms of the legal system is: it is not just about who is actually going to be charged with a crime; it is about education and it is also about intervention. If we use social workers at that initial stage, they may be able to go in there and see what the red flags are, see what is actually happening in a home environment and have some form of intervention as opposed to it always having to result in a prosecution. The number of prosecutions is not necessarily a good indicator of what is actually happening in the system. I think the interventions and the prevention from our perspective—that is how we deal with health and safety—are the best ways to do that, and a big part of that is education.

That can also happen, for example, when a regulator goes in with an inspectorate in health and safety. They are also going in and having a look at things and they may not choose, as a regulator, to prosecute in the first instance. It is how you balance the interests of the people we are dealing with. We are dealing with human beings here and these are very difficult circumstances, particularly coercive control, to deal with. With all due respect to police officers, they are not trained to be dealing with rape cases all of the time. They are not counsellors; they are not experts in the space. They are obviously provided with some level of training in the matters but it is probably not enough.

I would err on the side of caution, going back to focus on intervention and education of the judiciary as opposed to changing the rules of evidence. Be a bit flexible with the type of evidence that can be given but still keep thresholds to make sure we are not disadvantaging people. We raised the issue of intersectional disadvantage. In thinking of, for example, First Nations men, they may be at greater risk of incarceration as a result of some of these laws. We should balance that with making sure we are educating early in communities and working with those communities around the things they need to do as opposed to always focusing on the court system.

Ms Spalding: I would also just add to that the training of the people working in the system for a trauma informed approach, so that people are not repeating their stories over and over, and cultural awareness training in managing around what might present initially as someone being the perpetrator who may be the victim, and I know that other submissions have covered that. I think it is around the training and understanding around trauma, especially where sexual offences or domestic violence and coercive control have taken place, and what we can do better as we learn about trauma informed practices and the system not doing more harm to a victim.

Ms BUSH: When you were speaking it reminded me of some of the Caxton Legal Centre's comments to us the day before yesterday around the co-responder model they have, going out with QPS. I know it is summed up in your submission, but did you have any views or experiences with those types of models and how effective they can be in making sure none of that overcharging occurs or that education piece can happen with police?

Ms King: Probably more so not direct experience. As I say, the Scottish model certainly looked at some of that a few years back—and thinking that we have to be creative about how we are dealing with people and put the right skill sets into the job. I think the Police Union has a view and I would support that view. Police officers currently spend, I think, at least 60 per cent of their time on family and domestic violence matters. That could be better allocated to other matters if there were more specialised people who could come in and support those families or people who are subject to those issues. It is a resourcing issue but it is also about getting the right mix, so anything that can explore that—if that means pilot programs, whatever that looks like. I think there have been some attempts at that, but further rollout of anything like that would be very useful.

Ms Spalding: I think the nature of this sort of work is so diverse and so varied that the more tools we can have to address the problem, the more things we trial and have pilot programs, the more we can choose from for that situation. They are all unique.

Ms King: I think there are some examples in Western Australia in the Aboriginal communities where elders have been involved in cases. That then is rounding out into the broader education piece, so engagement with them by police as well and having some specific liaison officers who can work with the communities. I think that would be very useful, particularly where we know that there are high-risk areas already in terms of reported cases. We can expect to see probably more, and it may not just be in those communities. Where we know there are higher risk spaces, we can then focus on that with additional resourcing.

ACTING CHAIR: Fantastic. As there are no further questions, that brings us to the end of this session. Thank you, Jacqueline and Penny, for coming along and appearing before us today and thank you for your submission.

Ms King: Thank you for your time.

KIYINGI, Mr Kulumba, Senior Policy Officer, Queensland Indigenous Family Violence Legal Service (via teleconference)

ACTING CHAIR: Good afternoon. Thank you for joining our committee hearing. I invite you to make a brief opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Kiyingi: Thank you, committee. I want to first acknowledge the traditional custodians of the lands I am speaking to you from, the Wulgurukaba peoples and the Bindal people, the present day Townsville area and surrounds. I also acknowledge the Turrbal and Yagara peoples, traditional custodians of the lands where the committee sits. I pay my respects to elders past, present and emerging and extend my respects to First Nations peoples with us today. The Queensland Indigenous Family Violence Legal Service is appreciative of the opportunity to participate in the public hearings regarding the bill.

ACTING CHAIR: Sorry to interrupt, Kulumba, but we have a problem with our audio at the moment. Just bear with us, Kulumba, and I will give you the okay when we have that sorted.

Mr Kiyingi: Okay. Thank you.

ACTING CHAIR: Okay, that is good. If you could just take your time so we can hear all of your words so we can properly hear what you are saying, that would be great, so no need to rush. Kulumba, back to you.

Mr Kiyingi: Thank you. The Queensland Indigenous Family Violence Legal Service is appreciative of the opportunity to participate in the public hearings regarding this bill. As an Aboriginal and Torres Strait Islander community controlled organisation, our feedback comes from the standpoint of a family violence prevention legal service that provides a holistic model of care attending to our clients' legal and non-legal needs. We welcome the measures taken to implement the recommendations made by the Women's Safety and Justice Taskforce in the *Hear her voice* reports alongside the recommendations made by Her Honour Judge Richards arising from the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence. On that point regarding the taskforce, I would like to acknowledge our principal legal officer, Thelma Schwartz, who was one of the taskforce members involved in the extensive consultations and subsequent finalisation of the *Hear her voice* reports. Unfortunately, Thelma is unable to be with us today, but for the committee's benefit I would like to point to her input in preparation of the *Hear her voice* reports.

With roughly 85 per cent of our clients identifying as female, our submissions have been shaped by the daily observations of our clients and the difficulties they face in their lives as victim-survivors, mothers, carers and concerned family members. One important aspect I would like to impress on the committee on behalf of QIFVLS is that the successful implementation of the recommendations and reforms arising from the *Hear her voice* reports must be complemented with the Women's Safety and Justice Taskforce's advice to the government that it actions the four-phase plan for implementation to successfully introduce the new criminal law offence of coercive control. This was the basis on which our organisation supported the taskforce's recommendation to criminalise coercive control.

We do fear that failure to implement the four-phase plan will risk unintended consequences, particularly to Aboriginal and Torres Strait Islander peoples, and will have a flow-on effect in terms of overcriminalisation. On the point of overcriminalisation, our submission points to our experience that family violence is often an intersection point linking an Aboriginal and Torres Strait Islander person's connection to the child protection system, youth justice, adult crime, housing and homelessness, family law and health. We have long advocated that a coordinated effort from government, community controlled organisations, communities, other Aboriginal and Torres Strait Islander groups, elders and non-government agencies is required in order to achieve the socio-economic targets detailed in the National Agreement on Closing the Gap.

It goes without saying that the bill, while critically important, also needs the supporting structure of a tailored education and awareness campaign. By this I mean an education and awareness campaign that considers and embraces the great uniqueness and diversity among the many different First Nations communities on the mainland and in the islands, including the islands of the Torres Strait.

Our submission has touched on certain aspects of the bill. We are mindful of the need to balance the rights and the effects of the legislation on defendants, but at the same time we as an organisation—and in this I echo the words of my principal legal officer, Thelma Schwartz—note that historically Aboriginal and Torres Strait Islander women have not had the same specific voice or full-throated advocacy, and in that respect we are unapologetic about placing the rights of our clients, predominantly

women and girls, at the forefront. We have long held concern that domestic and family violence is often only seen in the prism of whether or not there was physical violence suffered by the aggrieved. With the new reforms and the proposed amendments, we feel that legislating for coercive control will elevate the seriousness of non-physical forms of domestic and family violence and ongoing patterns of behaviour. This highlights the importance of getting it right when it comes to education and awareness.

We briefly touched on a five-year statutory review in our submission, but perhaps I could take the opportunity to echo our support for a statutory review of the legislation after five years and/or, alternatively, specific provisions reviewed after a shorter period—say, two years. Thank you.

ACTING CHAIR: You talked in your submission about amendments to the Criminal Code, specifically section 229BC, the failure-to-report offence. You have said that the review of the bill may consider extending the definition of a relevant professional to include, in regional and remote communities, Aboriginal and Torres Strait Islander health practitioners or support workers where they may not have formal tertiary qualifications. Can you describe why that is important in regional and remote communities?

Mr Kiyingi: I think sometimes various communities have a lack of services—immediate services. We have noted for some of our teams—we have teams of lawyer and case manager officers who go out into various communities—that sometimes the difficulty with geographical location can be a barrier to services. In addition, it is sometimes the case that the historical mistrust of government means that it is easier for people to communicate to an Aboriginal and Torres Strait Islander health practitioner or support worker. In that instance, that led to us really seeking to have that point raised in our submission, that perhaps a relevant professional could include an Aboriginal and Torres Strait Islander health practitioner, providing that option for victim-survivors if they wanted to disclose any concerns.

Mrs GERBER: I wanted to ask you about the court-based perpetrator diversionary schemes. I can see, based on your written submission, that you support the amendments for it, but I wanted to go into a bit more detail and specifically get your view on the eligibility criteria for the scheme. A couple of other submitters have raised a concern that it is not clear as to whether or not a perpetrator that is currently incarcerated, not for the offences proposed in this bill, could be eligible for the diversionary scheme. I was after your view on that.

Mr Kiyingi: I apologise. That was not quite clear.

Mrs GERBER: Do you want me to repeat it? Would you like me to repeat my question?

Mr Kiyingi: Our view on eligibility in terms of incarceration?

Mrs GERBER: In relation to the court-based perpetrator diversionary scheme, in broadening the scheme's eligibility to cover up to two contraventions, other submitters have raised a concern that it is not clear as to whether or not a perpetrator who is currently in custody could access the scheme outside the terms of this bill?

Mr Kiyingi: I think I will have to take that on notice. I deeply apologise.

Mrs GERBER: Essentially, the question is that some of the eligibility criteria could be too restrictive. It is unclear whether accused persons who are in custody for another offence are eligible for the scheme or whether the types of programs contemplated by the scheme would be suitable for offenders in custody. I was after your view on that as it relates to Aboriginal and Torres Strait Islander people and the high incarceration rate that we unfortunately are seeing in relation to Aboriginal and Torres Strait Islander people.

Mr Kiyingi: I apologise. We do support.

ACTING CHAIR: You are breaking up. We might send that question to you so you can reply via email.

Mr Kiyingi: Thank you, Chair.

Ms BUSH: In relation to proposed section 103ZZN, which is around publishing identifying matter in relation to complainants, it says the subsection does not apply if the complainant is deceased. I think what you are substantially saying in your submission is that in Aboriginal and Torres Strait Islander culture it still can be offensive to publish the details of a person who is deceased and that subsection might still be a problem for some First Nations communities. Is that what you are saying, or have I got that wrong?

Mr Kiyingi: Yes, that is correct. In terms of cultural protocol in Aboriginal and Torres Strait Islander communities it may be problematic in the sense of naming of a deceased person. We did note that the bill does include complainant privacy orders. Nevertheless, we do seek to highlight for the purposes of the committee that is just a consideration in terms of the bill whether it gets enhanced or clarified. It is most notably in terms of protocol where a person is deceased and a new name is given. We noted that that may be problematic.

Ms BUSH: What would be your preferred way to proceed for a media or other publishing entity that might want to publish identifying details of a complainant who has since passed away? What would be best practice for the publisher?

Mr Kiyingi: I think we would be relying on the advice of the community controlled organisation. Whether say for instance it was the community and they, the media, were able to liaise with the community. The first point of liaison would be community controlled organisations.

Ms BUSH: The preference would be that the publishing entity would consult with the local community controlled organisation prior to publishing?

Mr Kiyingi: Yes.

Mr ANDREW: How much consultation did you get on the bill?

Mr Kiyingi: How much consultation did we have?

Mr ANDREW: Did you get involved in the consultation process?

Mr Kiyingi: Involved in the sense that my principal legal officer, Thelma Schwartz, was one of the taskforce members, and we were involved with the initial—there were consultations which took place earlier in the year in relation to the bill. Also, we had some consultation with DJAG—memory escapes me, but it was roughly around the middle of the year—in relation to the provisions.

ACTING CHAIR: There being no further questions, I thank you for your evidence today. We will send you that question regarding the eligibility criteria of the perpetrator scheme. If we could have an answer back by Tuesday, 14 November that would be great.

BLAGAICH, Mr Allan, Executive Director, Queensland Catholic Education Commission

MacDERMOTT, Mr Patrick, Senior Policy Officer, Governance & Strategy, Queensland Catholic Education Commission

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

Mr Blagaich: I thank the committee for the opportunity to address it on an issue of particular importance to Catholic schools. Queensland Catholic Education Commission represents Catholic education across the state, with 312 Catholic schools educating more than 160,000 students. Today I would like to speak briefly on the issue of position-of-authority offences. I recognise that this matter is currently not included in the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, which is before the committee, yet QCEC is of the firm opinion that it is a matter that should be taken into account in the overall objectives of the bill in addressing sexual violence and abuse.

The Royal Commission into Institutional Responses to Child Sexual Abuse identified that much abuse of children and young people involves persons in a position of authority taking advantage of their position to harm children and young people. The royal commission stated in its *Criminal justice report*—

> Institutional child sexual abuse often involves perpetrators who are in a position of authority in relation to their victim or victims.
>
> ...
>
> … abuse by persons in positions of authority over their victims is a particularly common scenario in institutional child sexual abuse.

Given the key importance and gravity of abuse by a person in authority, QCEC believes that this issue needs to be directly and rigorously addressed in Queensland legislation.

As you are aware, currently under the Queensland Criminal Code the exercise of authority can be a factor that vitiates consent to sexual activity. This type of approach of relying upon consent in cases of position-of-authority abuse was criticised by the royal commission. According to the royal commission, consent should be irrelevant in respect of sexual activity involving a relationship of authority. It is preferable for the presence or absence of consent to have no role in determining whether an offence has been committed.

Other Australian jurisdictions criminalise sexual contact between a child of 16 and 17 and the person in a position of authority. Typically, a person in a position of authority is defined to include teachers, foster-parents, legal guardians, ministers of religion, employers, youth workers, sports coaches, counsellors, health professionals and police. New South Wales and the ACT criminalise the sexual conduct if there is a relationship of 'special care', which arises if the offender is a step-parent, a guardian or a foster-parent, a schoolteacher, a custodial officer or a health professional. It will also arise if there is a personal relationship in connection with the provision of religious, sporting, musical or other instruction. Western Australia uses the concept of a relationship involving 'care supervision or authority'. A relationship involving care supervision or authority, however, is not defined. These types of approaches would be suitable for adoption in Queensland to protect children 16 or 17 from abuse by a person in a position of authority.

As with most providers of services to children, unfortunately cases occur from time to time where a staff member inappropriately has sexual contact with a student who is over the age of consent. It is our general experience that in those cases successful prosecutions are not made because of the fact that the child involved is over the age of consent. While the adult concerned may lose employment due to a breach of the code of conduct, no conviction is made. Therefore, monitoring systems such as blue cards are not activated. The adult may then be employed by another education system or a child related sector. This is not an effective way to manage such inappropriate behaviour but rather increases the risk of potential offenders moving unimpeded and unidentified between different providers of service to children and young people.

In relation to this issue, there are clear and strong community expectations that such behaviour by school staff is totally unacceptable. Parents have a reasonable expectation that when their children attend school they are in a safe, supportive environment where learning is their focus rather than having complex relationship issues often forced on them. The broader community, beyond just parents, also has a clear understanding that the kinds of relationships in question are not what we send our children to school for.

There is a particular seriousness to abuse by a person in a position of authority. It is a betrayal of trust and does not meet basic community expectations. Therefore, an explicit position-of-authority offence should be introduced in Queensland. This offence should not be clouded by the issue of consent. The offence will also perform a normative and education function—that is, a sexual relationship between an adult in a position of authority and a child over 16 is criminal and not acceptable. This is in line with community expectations and we believe the royal commission recommendations to keep children and young people safe.

ACTING CHAIR: Allan, you make one point but you make it very strongly and very well. What you have said in your submission is very valid: if the behaviour does not constitute a criminal offence then you cannot pursue a criminal offence, no complaint is made, no charges are laid, no case is prosecuted and, as you said, there is no trail in the legal system. From what we know—we deal with this every day—it is not picked up in the blue card system. Certainly the point is well made. We cannot say, 'What if this happens?' We know there are cases of this happening within Queensland; am I right?

Mr Blagaich: We have been informed that there are cases where this has occurred. I think our concern particularly is that we cannot monitor from school to school or from groups of schools to groups of schools if there is no criminal record. The blue card will not pick this up. As I said, I think the point here is that it is just an expectation as a parent and as a member of the community that you send your kids to school and you do not expect this to occur. Positions of authority remain positions of authority. Schoolteachers, coaches, the music teacher, the calisthenics teacher: they hold a position of authority and kids can be easily swayed by that, but we do not know.

Mrs GERBER: You referred to New South Wales. I am specifically talking about your recommendation that there be a separate charge in relation to positions of authority that relate to children 16 to 17 years old in respect of consent. You referred to New South Wales and the ACT. In those jurisdictions, is the individual charge contained within their consent laws or is it a separate, standalone offence?

Mr MacDermott: My understanding is that it is a separate offence. It is not dealt with under the consent section as it is in Queensland.

Mrs GERBER: I will go and look at the section. Is that an ideal? Have there been any issues with the one in New South Wales? Are you able to tell me whether or not there have been any successful prosecutions under that section?

Mr MacDermott: It has been copied in some other jurisdictions, like the Northern Territory—the New South Wales one. The ACT is similar. I suppose we are just promoting the idea that if there are these offences across the nation, which there virtually is now apart from a couple of jurisdictions, then that would be good—the consistency.

Mr Blagaich: If I could follow on from Patrick's point, we do have movement of teachers across the country. It is a thing. I think it was always one of the intentions from the Australian Institute for Teaching and School Leadership, the recognition of qualifications—

Mrs GERBER: A national curriculum.

Mr Blagaich: All of the rest. It allows that fluidity across the country. Again, it would be nice if we could get that sense of consistency or harmonisation, particularly in this space, so that we are aware, because it just assists us to ensure we have the very best people in front of our kids.

Ms BUSH: I am trying to wrap my head around this a little. I can see what you are saying, that for a maintaining a relationship charge to go ahead it has to be under the age of consent so from that 16- to 17-year-old age group you cannot look at a maintaining charge. I guess you would have to look at a rape charge or something that would need to be proceeded against, which would need a complainant who is willing to press charges for it to reach into the criminal threshold. I think what I am hearing you say is that you have 16- and 17-year-olds who are consenting and your argument is that they are perhaps not capable of consenting to a relationship of that nature and that that power imbalance might be applying undue pressures that are not being captured in the Criminal Code. I will have to look at it a little more deeply and look at the royal commission recommendations, but it is an interesting position.

Mr KRAUSE: Thanks for your submission. I want to take the point about it being hard to track things across the country or maybe even within Queensland. Certainly I have read media reports about disciplinary action taken against teachers in these situations. Are you saying that in some circumstances disciplinary action is not taken so there is no public record of things?

Mr Blagaich: It is that movement. Whilst disciplinary action happens and teacher registration boards may take an effect, the follow-through is not necessarily guaranteed. We believe that if this is dealt with through criminal proceedings that works and that applies for teachers, but it does not apply for somebody like a piano teacher or a sports coach who is not employed as a teacher under the teachers registration act. As we have seen over numerous years, in those positions where kids are with these people for many hours a week, things can emerge.

Mrs GERBER: Early morning, late afternoon.

Mr Blagaich: Early mornings, afternoons, regularly. Our position is that we need to track it all because it is important.

Mr KRAUSE: As a follow-up to your submission, which I think I generally agree with, obviously a teacher-student relationship is probably quite well defined. There is a place of employment, a place of schooling. With other relationships of trust such as coaching or in other non-school environments, it might be harder to tell when it starts and when it finishes and, therefore, when the position of trust started and when it ends. Then you are dealing with an age of consent, which is 16. Do you have any comment about how the greyness that may exist in some of those scenarios could be dealt with in terms of your proposal?

Mr Blagaich: I wish it were that easy.

Mr KRAUSE: I am highlighting something that sprung to mind as an issue.

Mr MacDermott: In the royal commission report they look at cases that have been heard on the issue of, say, the teacher contacting a student outside of school and trying to determine when exactly they were in a position of authority. The royal commission tended to come down on the side that they are still in a position of authority in relation to that student even though it was the weekend and they were somewhere else.

Mr KRAUSE: And even after the schooling finishes.

Mr Blagaich: As a former principal, we are pretty clean and clear about what the duty of care is so we know who has to hold duty of care. When you bring in other people to fulfil, enrich and expand an education—coaches, additional classes, tutors et cetera—on that duty of care and exertion of authority, somebody still has authority over that young person in that space, even though the duty of care may not be necessarily sitting there. A teacher could be present and holding the role of duty of care, but that other person is exerting authority. I think that is the challenge here.

Mr KRAUSE: Thank you for your submission. It is an important issue.

Mr HUNT: I had a question but the member for Scenic Rim captured it. Allan and Patrick, as I understand it, what you are driving at is any relationship where there is a power differential; is that right?

Mr Blagaich: Correct.

Mr HUNT: And that is where you think there must be some tightening up? As Mr Krause said, the teacher-student relationship is very clear. With coaching or whatever it is not so clear. It is really anything where there is a power differential and that power can be used to exercise undue influence.

Mr Blagaich: Exactly that. I think the questions surrounding maturity, level of maturity et cetera immediately become clouded when somebody has authority. Kids see it that way: they will take instructions from a coach or from a trainer or from a dance teacher explicitly because that is actually what we train them to do. We want them to behave appropriately and take instruction. When it suddenly starts to move into a realm beyond the learning of a skill or a technique et cetera and it starts moving into something else, I think it is a difficulty then to define that for a young person. It is important that it is not just teachers; it is the broader spectrum of everyone who is brought into that learning environment.

Mr HUNT: Thank you, and I did not mean to labour the point.

ACTING CHAIR: There being no further questions, I thank you very much, Patrick and Allan, for your evidence today. That concludes the hearing. Thank you to everyone who participated today, including our secretariat and Hansard reporters. A transcript of the proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 4.14 pm.