

**CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION
AMENDMENT BILL 2023**

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Submitted by: Broken to Brilliant
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Domestic Violence Survivors mentoring fellow survivors to recover, heal and rebuild their lives.

This Submission is a collation of feedback from domestic violence and coercive control victim- survivors as coordinated by Broken to Brilliant.

We have reviewed the Bill and there are many positive changes included in this Bill. We send our thanks for this and for the opportunity to provide feedback on the Bill. The following constructive feedback is provided in the table below. Further information or examples can be provided as required.

Summary Key points include:

- The requirement for all definitions (including 334B and 334C) to include current and past relationships to ensure post separation abuse is covered in coercive control and domestic violence. The types of abuse and patterns of behaviour evolve over and during the relationship and post separation, short and long term.
- The need to recognise and include coercive control in parent child and other relationships.
- The need to ensure the definition of coercive control is comprehensive and includes all relevant types of abuse including but not limited to technological abuse, usage of children, and systems abuse.
- The importance of providing sufficient and comprehensive range of examples to support clarity of types of behaviour, and understanding, implementation and communication.
- The importance of ensuring events/behaviour/incidents from prior to the commencement of the legislation can be included in proceedings/ applications/ evidence to be able to demonstrate an often long term history/ pattern of behaviour which typifies coercive control.
- A clear focus on accountability, and not allowing diversionary orders to be used to avoid use of events/behaviour/incidents and being excluded from proceedings as they were admitted to a police officer or in relation to a diversionary order. This could significantly weaken the legislation and any real change.
- Ensuring that DVO or protection notice is not required to make charges/convictions of others engaging in domestic violence or associated domestic violence to aid respondent.

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	Bill reference	Proposed change	Feedback
1	Amendment of Bail Act 1980	No current clause	Request that a section is included that requires the notification of the victim prior to or at the release of the perpetrator on bail to ensure that the victim is informed and can take safety measures.
2	Clause 5 Amendment of s 11 (Conditions of release on bail)	3A) In considering the imposition of special conditions under subsection (2), the court or police officer must consider the likely effect a condition would have on the defendant's ability to carry out the defendant's responsibilities for—	Legislation wording needs to be stronger to require action rather than just <i>consideration</i> at the broad discretion of the officer or the court.
3	Clause 9 Amendment of s 229BC (Failure to report belief of child sexual offence committed in relation to child)	(2) (e)(ii) the adult reasonably believes there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.	This is not clear and is a double negative. Professionals should be required to mandatory report any disclosure for investigation. Greater clarity of which professionals needs to be included extends to including teachers, sporting coaches, after school care workers/child care and anyone who requires a working with children card/ blue card. (Similar to NSW for consistency and to be more prescriptive)
4	Clause 13 Replacement of s 348 (Meaning of consent)	348 Consent	Include reference to without coercion in the definition as well as has been included in 348AA (f)
5	Clause 13 348AA Circumstances in which there is no consent	(2) If a person, against whom an offence under this chapter is alleged to have been committed, suffers grievous bodily harm as a result of, or in connection with, the offence, the grievous bodily harm suffered is evidence of the lack of consent on the part of the person unless the contrary is proved.	We support this clause.

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6	Clause 15 348C Mental health impairment		It is a concern that the perpetrator may flip this around and use this to claim to be the victim in some cases (particularly in same sex relationships).
7	Clause 16 Insertion of new s 590BA		This is supported to be able to provide notice to the victim, to reduce using this as a method of coercive control, and additional trauma. 14 days is appropriate. The legislation needs to require the victim to be informed of this, if appropriate.
8	Chapter 109 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2023		
9	Clause 17 Insertion of new pt 9, ch 109	(1) Despite the <i>Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2023</i> , the former provisions continue to apply to a proceeding for an offence committed wholly or partly before the commencement. (2) The new provisions apply to a proceeding for an offence committed wholly after the commencement.	Given the nature of coercive control and long term pattern of behaviours, the offence needs to allow offences or actions committed at least in part before the commencement of the Act. Where coercive control is still occurring, it is critical that prior actions undertaken before the Act changes can be included in the new application/proceedings to demonstrate the long term pattern ongoing. The long term history needs to be able to be included in the application/proceedings.

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		<p>3) In this section— <i>former provisions</i> means the provisions of chapter 32 as in force from time to time before the commencement. <i>new provisions</i> means the provisions of chapter 32 as in force from the commencement.</p>	
10	<p>Clause 19 Amendment of s 1 (Definitions) (2)</p>	<p>(2) Section 1, definition <i>domestic relationship</i>, note, after ‘that Act.’— <i>insert</i>— An intimate personal relationship includes a former intimate personal relationship.</p> <p>334B and 334C Domestic relationship definitions</p>	<p>We strongly support this definition to include the many forms of post separation abuse and control which frequently continue to occur for many years after separation. There should be no time limit to the time period of post separation. For example, the marriage/relationship ended 10 years ago however the post separation abuse and coercive control is still continuing. This needs to be included as it is very common.</p> <p>Domestic relationship definition. This definition needs to ensure it includes the relationship between a parent and child, as an abusive parent can continue to coercively control the children, both under 18 and over 18 for many years. It can also include other family members.</p> <p>This can include coercive control, emotional or psychological abuse, unauthorised or unreasonable surveillance, harm, loss of health, loss of education (removal from school), isolation from family, friends and social networks, financial abuse, withhold medical treatment or give unnecessary medical treatment.</p>

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			If the child speaks up/discloses to someone, they are in real danger.
11			<p>Definitions of coercive control need to include the usage of children to perpetrate abuse, and systems abuse.</p> <p>The children are often used to coercively control the other parent. Examples can be provided.</p> <p>Systems abuse is also common in post separation abuse including court, and related processes and organisations.</p>
12			<p>Federal laws (family court) generally override state laws which renders the state laws powerless. While a DV court magistrate does have the power to override or discharge a parenting order (under federal law, this is very rare. This needs to be explored more and made a standard process to consider parenting orders in place, and if a parenting order should be overridden. This would protect children quickly.</p> <p>Additionally, from our lived experience it is not safe to report harm to the FCFCOA due to risk of losing custody of the children</p>
13	Clause 20 Chapter 29A Coercive control	334A Definitions for chapter Examples	I support the examples listed. Inclusion of examples is critical in providing clarity and understanding. It is important that examples are comprehensive to support demonstration of the patterns of behaviours
14	Clause 20 Chapter 29A Coercive control	334A Definitions for chapter – economic abuse	<p>Under economic abuse add</p> <p><u>c) utilises or threatens to utilise systems or pursues or drags out legal action (including but not limited to family and other court) for the purpose of harming the second person or child financially or emotionally.</u> (Alternatively, this could be a distinct category of system abuse)</p>

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			<p>Current economic examples are accurate and additional examples should include:</p> <ul style="list-style-type: none"> • Removing funds from a person’s bank account with no authorisation. • Refuses to disclose assets and financial information. • Directs others such as accountants to not provide information that legally should be available to the second person. • Falsifying financial records or statements, including in court proceedings. • Forging signatures. • Coercing a person to sign tax returns or trust documentation. • Falsifying information provided (such as but not limited to child support agency or ATO) • Refusal to provide reasonable financial documentation. • Transferring assets to other entities, including but not limited to companies, trusts, superannuation funds, parents, relatives, other persons, and offshore accounts for the purposes of hiding assets. • Purposefully failing to contribute to economic status, in order to control the other person. • Compulsive gambling. <p>Add to coercing a person to sign any legal document for the establishment or operation of business <u>and /or a trust.</u></p>
15	Clause 20	334A Definitions for chapter emotional or psychological abuse	Emotional or psychological abuse <i>emotional or psychological abuse</i> means

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	Chapter 29A Coercive control		<p>behaviour by a person towards another person that torments, intimidates, harasses, <u>gaslights</u> or degrades the other person. Additional or amended examples should include:</p> <ul style="list-style-type: none"> • Remaining outside a person’s residence or place of work, <u>including forcing entry or obtaining keys.</u> • Preventing a person from making or keeping connections with the person’s family <u>or a parent.</u> • Repeated derogatory taunts including <u>relating to intelligence or ability.</u> • <u>Repeated threats, shouting or screaming at a person.</u> • <u>Not allowing a person to leave the home unaccompanied.</u> • Damaging or threatening to damage the other persons property. • unreasonably removing or keeping a person’s property, or threatening to do so (including photos, personal documentation etc) • Threatening to commit suicide • Gaslight • Harassing in court, including intimidating, remaining in very close proximity of the victim. • Harassment via emails, text, parenting portals and bank transfer descriptions and other means. • Sharing of intimate images. • Leaving or sending threats via notes or children.
16	Clause 20 Chapter 29A Coercive control	334A Definitions for chapter – unauthorised or unreasonable surveillance	Broaden definition to - Surveillance and technological or cyber abuse

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			<p>We support the examples included however they needs to be made broader to incorporate the extent of technological abuse that frequently occurs.</p> <ul style="list-style-type: none"> Any use of technology or electronic media that is used in an adverse way including but not limited to surveillance, tracking, monitoring or control or harassment. <p>Examples to add include:</p> <ul style="list-style-type: none"> accessing a person’s mobile phone unauthorised, including via apps, software and other technology (including iCloud and back-up software). Monitoring a person’s activities by installing or sending a monitoring tool or technology with a child (such as a device or in a toy) Monitoring a person’s activities using cameras <u>or listening devices or smart home devices or trackers or other similar including air tags.</u> Any use of technology or electronic media or social media that is used in an adverse way including but not limited to surveillance, tracking, monitoring or control or harassment. (this will enable coverage with evolving technologies in the future)
17	Clause 20 Chapter 29A Coercive control	334A Definitions for chapter –	Additional form of type of coercive control to be added as a separate sub heading in addition to financial and emotional categories.

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			<p>Using children. Utilising the children to control, harass or harm the person</p> <ul style="list-style-type: none"> • Withholding or damaging children’s possessions such as school uniforms, shoes, etc. • Withholding children to cause distress. • Sending messages through children. • Withholding documents (such as passports or birth certificates) without justification • Further examples can be provided. <p>-</p> <p>Systems Abuse Utilising systems including courts ,to harm the person or impact them and control them financially, emotionally</p> <ul style="list-style-type: none"> • Sending unnecessary documents and correspondence to increase the other parties legal bills or create work or stress for the other party. • Vexatious legal claims. • Sending threats and harassment via lawyers or legal correspondence. • Further examples can be provided.
18		334B what is domestic violence	334B (3) add (o) gaslighting
19	334B What is domestic violence 334C Coercive control	334B What is <i>domestic violence</i> (1) <i>Domestic violence</i> means behaviour by a person (the <i>first person</i>) towards another person (the	As above the definition of a domestic relationship needs to include a <u>former relationship including intimate relationship or parent child relationship</u> (Needs to include post separation abuse.)

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		<p><i>second person</i>) with whom the first person is in a (1) domestic relationship that—</p> <p>334C Coercive control (1) A person who is an adult commits an offence (a <i>coercive control offence</i>) if— (a) the person is in a domestic relationship with another person (the <i>other person</i>); and (b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and (c) the person intends the course of conduct to coerce or control the other person; and</p>	<p>334B (1) <i>Domestic violence</i> means behaviour by a person (the <i>first person</i>) towards another person (the <i>second person</i>) with whom the first person is, <u>or was</u>, in a domestic relationship that—</p> <p>334C Coercive control (1) A person who is an adult commits an offence (a <i>coercive control offence</i>) if— (a) the person is, <u>or was</u>, in a domestic relationship with another person (the <i>other person</i>); and (b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and (c) the person <u>intends uses</u> the course of conduct to coerce or control the other person; and</p>
20	Clause 20 334E Court may restrain coercive control	(8) The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by the shorter period.	(8) The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by the shorter period.

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			Requested that this is deleted, as we cannot think of a circumstance why this would apply and could be misused and may compromise the victim by giving discretion.
21	Clause 23 762 Application of s 334C to acts of domestic violence constituting coercive control	(1) Section 334C applies only to acts of domestic violence constituting the course of conduct under that section that were done after the commencement. (2) This section does not limit the <i>Evidence Act 1977</i> , part 6A, division 1A.	It is required that retrospective behaviours and acts of domestic violence undertaken before the commencement of the legislation are not excluded. Coercive control is a pattern and the full long term history pattern is required to be considered.
22	Clause 23 763 Conviction for domestic violence offence before commencement	(1) This section applies if a person commits an offence against section 334E(10) after the commencement and the penalty in section 334E(11) applies to the person. (2) Section 334E(11) applies regardless of whether the conviction mentioned in that subsection was recorded before or after the commencement. (3) This section applies despite section 11(2) and the <i>Acts Interpretation Act 1954</i> , section 20C(3).	This is not clear.

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23	Clause 28 237 Deciding period for which protection order continues in force	(1) The amendment of section 37 by the amending provision applies only to an application for a protection order that is made after the commencement.	As mentioned before, incidents prior to the legislation change, must be able to be included to show patterns of behaviour.
24	Clause 39 Amendment of s 91 (When court can vary domestic violence order)	Section 91(3)(a) and (b) and (4), after ‘intervention order’— <i>insert—</i> or a diversion order	It should read “and a diversion order” not “or” to ensure safety.
25	Clause 40 Diversion order		There appears to be a lot of detail (and significantly more pages) on diversion orders, far more detail than on coercive control. It would be of more benefit to include more detail on coercive control.
26	Clause 40 135D Evidence relating to requirement to accept responsibility relating to alleged offence	(1) The defendant is not required to plead guilty to the alleged offence to be eligible for the scheme. (2) The defendant’s acceptance of responsibility under section 135C(1)(d) or (2)(c)— (a) is not taken to be a plea to the charge for the offence entered by the defendant; and (b) is not admissible in evidence against the defendant in any criminal proceeding.	It is concerning that an admission to a police officer can not be used for a proceeding for an offence. While confidentiality could be applied and limited to within a diversionary program, information provided to a police officer should not be exempt from use in proceeding for an offence. This and similar clauses of intent need to be removed. This arrangement will likely lead to perpetrators to agree to go to diversionary program solely to avoid an offence, ensure information can’t be used as evidence and avoid conviction. This legislation intent is to hold them to account.

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		(3) A police officer who receives information derived from the defendant’s acceptance of responsibility under section 135C(1)(d) or (2)(c) must not use the information for a proceeding for an offence.	
27	Clause 46 179A Engaging in domestic violence or associated domestic violence to aid respondent	(1) A person who is an adult commits an offence if, without reasonable excuse— (a) the person engages in domestic violence behaviour against another person who is the aggrieved or a named person in a domestic violence order, police protection notice or release conditions; and (b) the domestic violence behaviour is engaged in with the intent of aiding the respondent to the order, notice or conditions; and (c) the person knew, or ought reasonably to have known, the other person was the aggrieved or a named person in the order, notice or conditions.	It needs to be worded in such a way that a person cannot assist another person to perpetrate domestic violence, regardless if there is a DVO in place at the time or not, or if a DVO or protection order put in place. The wording suggests that a DVO needs to be in place or put in place for this to apply. The charge needs to stand where it can be shown that the person assist the perpetrator and out to have reasonably known that that the action was domestic violence.
28	Clause 56 Replacement of s 21 (Improper questions)	(8) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.	This statement needs to be removed as otherwise it is still allowing these questions and answers in the event that the witness answers. The answer needs to be inadmissible. Otherwise it will still encourage the use of such questions, which is the intent of this section.

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29	Clause 59 103ZW, 103ZH, 103ZY, 103ZS and 103ZT		We strongly support this change to protect complainant.
30	Part 11 Amendment of Security Providers Act 1993		This is supported to ensure that CCTV companies/ individuals are penalised for installing surveillance/cameras etc or assisting perpetrators.
31	Working with Children (Risk Management and Screening) Act 2000	334C Coercive control if the offence was committed against a child if the offence exposed a child to domestic violence	