

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

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Legal Affairs and Safety Committee

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***Re- Criminal Law (Coercive Control an Affirmative Consent) and Other  
Legislation Amendment Bill 2023***

**About TASC National Limited**

TASC Legal and Social Justice Service is a not-for-profit organisation that serves over 4000 people per year across more than 400,000 square kilometers of Ipswich and South West Queensland. Now in our 41<sup>st</sup> year, TASC has developed from a small community legal center to a committed provider of high quality legal advice, social justice and advocacy services. TASC is one of the largest regional community legal and advocacy services in Queensland, where the community and staff work together in partnership to continue to enable justice and change lives.

We are focused on social justice and support, and advocate for our clients, who are culturally and linguistically diverse, and come from the most vulnerable and marginalized sectors of our community. They include First Nations people, refugees and those with disabilities, mental illness and financial disadvantage. We do our best to support the community we work with to promote, protect and preserve their legal and human rights.

## Human Rights

Human Rights are at the forefront of our consideration at TASC, and we are committed to upholding a standard of practice that consistently promotes and ensures them. Although not solely affecting women, domestic violence is a mostly gendered crime, and one which is a violation of a women's human rights. This Government has an obligation to Queensland women to "take reasonable and effective measures to prevent, investigate, punish and redress domestic violence".<sup>1</sup>

The United Nations Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), or the Bill of Rights for Women, defines discrimination against women as "Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women".<sup>2</sup> Coercive control by an intimate partner most certainly creates an environment of exclusion and restriction and is a betrayal of a person's human rights.

As a signatory to CEDAW, Australia is committed, in particular to Article two, which sets out the responsibilities of states to "adopt appropriate legislative and other measures" and "ensure that public authorities and institutions shall act in conformity with those obligations to protect the rights of women."<sup>3</sup> In addition, and of particular importance to our clients, is Article 14, which compels the Government to "provide protections for rural women and their special problems".<sup>4</sup>

Women in our catchment face isolation both geographically and emotionally, which is compounded under a partner's coercive control. Freedom to find and utilise support systems and access legal advice is potentially a matter of life and death, and drives our organisation to meet them where they live through our Rural Women's Outreach

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<sup>1</sup> The Human Rights Law Centre, "*Human Rights and Domestic Violence*" (Fact Sheet, 30 September 2013) [Human Rights and Domestic Violence Fact Sheets | Human Rights Law Centre \(hrlc.org.au\)](https://www.hrlc.org.au/human-rights-and-domestic-violence-fact-sheets).

<sup>2</sup> United Nations, "Women Watch", (Overview of the Convention on the Elimination of All Forms of Discrimination against Women) [Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](https://www.un.org/womenwatch/)

<sup>3</sup> United Nations, "Women Watch", (Overview of the Convention on the Elimination of All Forms of Discrimination against Women) [Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](https://www.un.org/womenwatch/); Article 2.

<sup>4</sup> Ibid; Article 14

Legal Service, providing free legal advice and assistance in their local neighborhood centers.

***TASC supports the introduction of The Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, which contributes to meeting the Queensland Government's obligations under the Convention on the Elimination of All Forms of Discrimination against Women.***

### **Daily Domestic Violence**

Domestic and family violence matters form a large part of our work at TASC, statistically reflecting 41% of our client services for the 2022/2023 year. Alarming, that is a 5% increase on services provided in the previous year, informing us, that there are more and more persons and families, experiencing new or ongoing violence on a daily basis.<sup>5</sup> Those experiencing domestic and family violence generally meet our eligibility, as they are usually compounded by other vulnerabilities.

TASC works across a broad range of domestic and family violence areas, including:

- Providing free legal advice to aggrieved on the process of applying for a Domestic Violence Order
- Providing free assistance with completing an application for a Domestic Violence order
- Providing free legal advice to respondents of Domestic Violence Order Applications
- Providing free legal advice around breaching a Domestic Violence Order
- Providing Domestic Violence Duty Lawyers weekly to assist respondents and applicants in Toowoomba Magistrates Court and respondents in Ipswich Magistrates Court
- Providing legal advice via fortnightly legal clinics at the Toowoomba Domestic Violence Action Centre (DVAC) premises.

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<sup>5</sup> TASC National Ltd, "performance at a Glance" (TASC's 2022-2023 Annual Report, October 2023) p10.

- Collaborating within the Toowoomba Region Domestic Violence Integrated Response Group (TRDVIR)
- Producing Community Legal Education material and presentations around domestic violence and coercive control
- Producing a new funding initiative pilot project, aimed at breaking the cycle of domestic violence for those living in the Western Downs.

The new and amended legislation, regulation and mechanisms of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation and Amendment Bill 2023*,<sup>6</sup> will potentially affect the way we work on many levels. It is imperative to our organisation that the government create a framework that works on a practical level, and only when enlivened, will we be truly positioned, to impart informed opinion, and relevant recommendations.

***TASC recommends the Queensland Government provide sufficient education and direction to legal practitioners, to support the implementation of Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023.***

## **Duty Lawyer**

TASC solicitors acting in the capacity of Domestic Violence Duty Lawyers (DVDL) have borne witness to changes in the domestic violence landscape over many years. The most significant change has been around the increase in police Domestic Violence Order applications, compared with private applications. Queensland Magistrates Court's 2023/2024 statistics demonstrate, police applications make up 83.8% of all applications, compared with 15.6% of private applications.<sup>7</sup> Subsequently 93% of police applications resulted in protection orders being made.<sup>8</sup> Statistically, Domestic Violence Order applications lodged by police are more likely to result in a

<sup>6</sup> Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023.

<sup>7</sup> Queensland Courts, "Queensland Courts' domestic and family violence (DFV) statistics" (Table 3. Lodging authority, 2023-24 YTD (to 30 Sep 2023)) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

<sup>8</sup> Queensland Treasury, "Applications for Domestic Violence Orders in Queensland, 2008-09 to 2017-18" (Queensland Government Statistician's Office, 2021) p5.

protection order.<sup>9</sup> However, when a police application or protection notice is made, there is little to no room for negotiating changes to conditions and no opportunity to have the application/protection notice withdrawn, even with the full support of the aggrieved. The Queensland Treasury, Applications for domestic violence orders in Queensland, 2008-09 to 2017-18, crime research report, states, that “Where a DVO application was made by police and the aggrieved seeks to withdraw it, police are able to attend, to ensure this is not due to threats or intimidation by the respondent”.<sup>10</sup>

*“I have previously sought permission from police prosecutions to accept an undertaking in lieu of a protection order for a minor as respondent.*

*I was told that it was their policy not to accept undertakings”*

*Allana - Solicitor*

In practice this does not happen, and where respondents are under the age 18 and lack the self-control and forethought found in maturity, it is a real disadvantage. Although their behavior is not acceptable, a mechanism to recognise genuine mistake such as the acceptance of undertakings in lieu of protection orders and education programs for minors may result in a reduction of court resources.

There is scope for police to withdraw a police application under 9.6.9 of the Queensland Police Operational Procedures Manual, if the officer believes it is no longer necessary or desirable to make the order.<sup>11</sup> However, the approval of a commissioned officer is required.<sup>12</sup>

Contravention of Domestic Violence Orders, Temporary Protection Orders and Police Protection Notices have also increased. In Ipswich Magistrates Court, recorded numbers of breach offences in 2018/2019 were 1,441, in contrast to

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<sup>9</sup> Queensland Treasury, “Applications for Domestic Violence Orders in Queensland, 2008-09 to 2017-18” (Queensland Government Statistician’s Office, 2021) p5.

<sup>10</sup> Ibid p28.

<sup>11</sup> Queensland Police Service Operational Procedures Manual, “Withdrawal of a Domestic Violence Application, (Chapter 9, Domestic Violence, Issue 94 Public Edition, 3 July 2023) Page 34.

<sup>12</sup> Ibid p35

2022/2023 figures, showing an increase of 526 to 1,967 contraventions lodged. Toowoomba Magistrates Court data concerningly demonstrates an almost doubling of contraventions, at 1,206 for 2022/2023, up from 621 in the 2018/2019 period.<sup>13</sup> These figures demonstrate a need for a better solution than the existing penalties.

***TASC recommends Queensland Police Service exercising their discretion under the QPS Operational Procedures Manual to consider withdrawing police domestic violence applications and police protection notices for minor respondents.***

### **Diversion Orders and Education**

TASC is committed to providing community legal education to empower women, inform men and stop the intergenerational cycle of domestic and family violence. The proposed amendments to the Domestic and Family Violence Protection Act 2012 (Qld) to include a court-based perpetrator diversion scheme will assist to educate offenders, many of whom we have identified as having no knowledge or understanding that their behavior constitutes domestic violence.<sup>14</sup> The misunderstanding is that unless an aggrieved suffers from physical injuries, there has been no acts of domestic violence. Additionally, many of the respondent clients our organisation services, are oblivious to the impact of family violence on children.

*I had a culturally and linguistically diverse client who just did not understand that his behavior constituted domestic violence. In his culture it was perfectly normal to treat a spouse in that manner.*

*Kirsten – Solicitor*

<sup>13</sup> Queensland Courts, “Queensland Courts’ domestic and family violence (DFV) statistics” (Table 10. Contravene DVO charges lodged, 2023-24 YTD (to 30 Sep 2023)) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

<sup>14</sup> Domestic and Family Violence Act 2012 (Qld) P4A Diversion orders Scheme

To be most effective, the perpetrator diversion scheme will need for providers to focus on, defining, recognising and understanding, the broad range of behaviors associated with domestic and family violence, with a heavy emphasis on victim impact. Should the results be similar to existing court-based drug diversion programs, it will mean respondents are less likely to re-offend, and have future contact with the Judiciary. Importantly, the aggrieved is in less need of protecting and the cycle of abuse in families where children are witness to violence could be diminished. Additionally, there would be a significant reduction in the many resources consumed by domestic and family violence, such as police, legal, judicial, health and social support services.

***TASC recommends and supports the implementation of the Court-Based Perpetrator Diversion Scheme.***

**TASC is dedicated to continuing its work to reduce the volume, severity and impact of domestic and family violence in the community in which it serves.**