

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

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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000



25 October 2023

lasc@parliament.qld.gov.au

Dear Committee Secretary,

RE: INQUIRY INTO CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL 2023

Rape and Sexual Assault Research and Advocacy (RASARA) thank you for the opportunity to respond to the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 ('the Bill').

RASARA is an independent, not-for-profit charitable organisation established to build and hold the evidence base for survivor-centric rape justice reform. We advocate for best practice in legal responses to rape and sexual assault. More information about RASARA is available at <http://rasara.org>.

While the Bill does take some positive strides in modernising consent and rape law in Queensland, it does not legislate affirmative consent in Queensland law. Outlined below are recommendations to bring the Bill in line with the evidence-base of affirmative sexual consent.

AMENDMENT OF CRIMINAL CODE: CONSENT AND MISTAKE OF FACT

s 348 (Meaning of consent)

Recommendations:

Insert 'informed' into the definition of consent at s348(1).

Remove s348(2), 'A person may withdraw consent to an act at any time.' This provision undermines affirmative consent.

Remove s348(3), 'A person who does not offer physical or verbal resistance to an act is not, by reason only of that fact, to be taken to consent to the act' and replace with 'A person does not consent to an act if the person does not say or do anything to communicate consent to the act.'

s 348A (Mistake of fact in relation to consent)

Recommendations:

Remove 'immediately before or at the time of the act' from s348A(3), and add 'and to the act continuing', so the provision reads: 'A belief by the person that another person consented to

an act is not reasonable if the person did not say or do anything to ascertain whether the other person consented to the act, and to the act continuing.'

Insert under s348A 'A belief in consent is not honest nor reasonable if the person knew or believed that a circumstance outlined in s348AA exists in relation to the complainant.'

Remove s348A(4)-(6), s348B and s348C, to remove reference to cognitive and mental health impairments.

AMENDMENT OF EVIDENCE ACT 1977: JURY DIRECTIONS

Recommendations:

Relevant jury directions should be required to be given at the beginning of a trial, and at any other time as requested by a party.

Remove 'of itself' from s103ZU(b), that currently reads: 'the absence of injury or violence, or threats of injury or violence, does not, of itself, mean that a person is not telling the truth about a sexual offence' and from 103ZV, that currently reads: 'the presence or absence of emotion or distress does not, of itself, mean that a person is not telling the truth about a sexual offence.'

Remove 'The judge may direct the jury that it should not be assumed that a person consented to a sexual activity because the person' from 103ZW and replace with 'The judge may direct the jury that the following matters are irrelevant to consent.'

Relocate s103ZX direction of mistake of fact in relation to consent, to the Criminal Code (as noted above).

OTHER RECOMMENDATIONS

In addition to the above, we recommend:

Including a provision establishing a panel of sexual violence experts, as recommended by the Women's Safety and Justice Taskforce.

Simplify the provisions laid out under 'Publishing identifying matter in relation to complainants', to ensure that it is accessible to the community, particularly victim-survivors.

Clarify s103ZZU does not offer defendants an opportunity to prevent victim-survivors from waiving their anonymity.

Thank you for the opportunity to provide this response to the Bill. We welcome the opportunity to discuss our recommendations further.

Regards,

Dr Rachael Burgin (CEO, RASARA)

On behalf of the Board of RASARA

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