

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

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27 October 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House QLD 4000

Email: LASC@parliament.qld.gov.au

Dear Ms Fentiman,

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

Caxton Legal Centre Inc (Caxton) welcomes the opportunity to provide a submission on the Bill. We have only addressed certain sections of the Bill specifically relevant to our work and where we have identified issues/gaps. We refer to our previous submissions on the Consultation Draft of the Bill dated 4 August 2023.

Background

Caxton Legal Centre is Queensland's oldest community legal centre providing legal advice and social work supports to disadvantaged clients including those experiencing domestic and family violence, and those charged with domestic violence offences.

To prepare this submission, we have drawn from the experience of our lawyers and social workers who provide services to clients through a number of our programs relevant to this Bill:

- Domestic Violence Duty Lawyer – court based legal advice for Respondents in the Domestic Violence Court, Brisbane Magistrates Court.
- Seniors Legal and Support Service – legal and social work supports for older persons who are experiencing or at risk of experiencing elder abuse, including domestic and family violence, incorporating Health Justice Partnerships across Metro North, Metro South, the Logan/Beaudesert region and Moreton Bay North region
- Family Law Duty Lawyer – court based legal advice provided five days per week at the Brisbane Registry of the Federal Circuit and Family Court of Australia.
- Family and Advocacy Support Service – court based legal advice and social work supports for persons affected by domestic and family violence five days per week at the Brisbane Registry of the Federal Circuit and Family Court of Australia.
- Family Law and Domestic Violence Advice and Casework program – day time and evening advices and casework. Our evening advices are delivered by volunteer lawyers.
- Queensland Coronial Legal Service – state-wide service providing legal advice and representation to families involved in the coronial process including representation in a inquests and non-inquest matters examining police response to domestic violence.
- Human Rights and Civil Law program – day time and evening advices and casework across a broad range of legal issues including policing with a focus on assisting persons experiencing domestic and family violence.

- Clients who access our services are either court users or people who do not qualify for legal aid and cannot afford private legal services.
- In 2021 – 2022 Caxton assisted over 5000 clients with advice and casework, of whom 50% were affected by domestic and family violence.

Amendment of Criminal Code – Chapter 29A Coercive Control

Section 334B – Definitions for chapter

1. In our experience assisting various client cohorts, in particular in assisting older persons experiencing domestic and family violence, we have observed that most of our clients have a low understanding of coercive control and of non-physical forms of violence in general. In that regard and in our view, the dot point examples of *economic abuse* and *emotional or psychological abuse* contained under the proposed section 334B create clarity around what kinds of domestic violence, including elder abuse, are relevant to the new proposed offence of coercive control.
2. Each of the examples of abuse contained under section 334B are forms of elder abuse commonly experienced by the older persons we assist at Caxton. We find that many of our clients do not identify the abuse they are experiencing, which they experience most predominantly by their adult children or other family members, as abuse.
3. Notwithstanding the potential for resistance by some older persons in supporting the police if they charge a coercively controlling family member under this section (due to an oftentimes strong reluctance for their adult child to face legal consequences) the inclusion of these definitions under Chapter 29A create strong messaging around a zero tolerance of coercive control and directly apply to persons experiencing elder abuse.

Amendment of Domestic and Family Violence Protection Act 2012

Part 4A Diversion Orders Scheme

4. We respectfully submit that a potential practical barrier to a defendant, “accepting responsibility for the alleged facts constituting the alleged offence detailed in the prosecution’s written summary”, under section 135C(1)(d) could arise where a defendant accepts responsibility for some, but not all facts.
5. In our experience assisting Respondent parties in the Specialist Domestic Violence Courts, it is rare for a Respondent party, even one who otherwise accepts responsibility and accountability (and opts to consent without admissions to a protection order and an intervention order being made) to be in complete agreement with the Prosecution’s version of events.
6. We respectfully submit that requiring a Respondent to accept responsibility for a set of alleged facts is not an approach that is based on recognised indicators of suitability for a diversionary scheme. It is our respectful submission that a more suitable screening mechanism needs to be one that is based on evidence-led research on how users of violence are motivated to engage in diversionary schemes. A requirement to accept responsibility of all alleged facts is not an appropriate way to triage people who may be suitable candidates for the scheme and is not an accurate indicator of motivation to change.

7. Amendments of this section to that effect would assist legal representatives who will be responsible for advising defendants on diversion orders to ensure that otherwise eligible parties do not opt out of the opportunity to participate in the scheme due to a reluctance to accept responsibility for some facts but not all facts, in circumstances where they are otherwise willing to take responsibility and motivated to change their behaviours.

Division 7 Additional standard condition on protection orders and police protection notices

8. We support the inclusion and clear wording of the proposed additional standard condition.
9. In assisting Respondent parties as duty lawyers our practitioners regularly assist clients whose new partners engage in violent behaviours against the Aggrieved party who is the ex-partner of the Respondent. In conjunction with the proposed facilitation offence under section 179A we would anticipate that the additional standard condition at section 56 will help to remove the misplaced perception that there is opportunity for a non-party to a protection order to engage in violent behaviours against the Aggrieved in support of the Respondent party (which currently is sometimes perceived as a “loop hole”) without consequence.

Division 4 Media may apply for transcript of domestic and family violence proceedings

10. We respectfully submit that upon application by the media for de-identified transcripts all parties should, if not be given the opportunity to make submissions on the application, as a minimum requirement be notified of the application and notified that a copy of the transcript will be provided to the media. This notification could be provided to parties together with a standard explanation of how the material will be de-identified as specified under the Act, as well as contact details for support options for the parties.

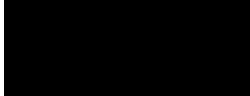
Amendment of section 37 (When court may make protection order)

11. We support the amendment to section 37 requiring the court to consider the appropriate period for which the order is to continue in force.
12. Through our Respondent duty lawyer service, we have assisted many female Respondents who have been named as the Respondent in a police application. A majority of these female Respondents have committed a single act of violence during a one-off incident or altercation, sometimes acting in self-defence. We often assess and find that most of these clients would have a strong case to lodge a cross application as the person most in need of protection, however, choose not to take this option out of a strong reluctance to have to return to court for various reasons. In the alternative and upon our assessment, many of these clients would have a strong case to contest the matter and argue that an order is not necessary or desirable notwithstanding that there has been an act of violence committed by them. Unfortunately, many of these female clients opt to consent without admissions rather than endure a lengthy, stressful court process, especially in circumstances where they have caregiver responsibilities for young children. In our experience, the police are rarely willing to withdraw their application on the basis that there has been an act of violence.
13. Accordingly, we respectfully submit that for female Respondent/true Aggrieved parties who choose to consent without admissions in a bid to expedite and finalise their matter (and we note that this commonly occurs in a context where the parties are in an intimate partner

relationship and have not separated but continue to live together) the sole recourse available to the female Respondent/true Aggrieved is a protection order of a shorter duration. For these reasons we support the amendment to section 37.

This submission was prepared by Colette Bots, Director, Family, Domestic Violence and Elder Law Practice. Please do not hesitate to contact Cybele Koning, CEO, by telephone on [REDACTED] or by email to [REDACTED] you have any questions regarding this submission or if we can be of any further assistance.

Yours faithfully

A black rectangular redaction box covering the signature of Colette Bots.

Colette Bots
Caxton Legal Centre