

**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

By email: LASC@parliament.qld.gov.au

Dear Committee Secretary

Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 ('the Bill')

Thank you for the opportunity to provide feedback in relation to the above.

About QCOSS

The Queensland Council of Social Service (QCOSS) is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity, and wellbeing for every person, in every community.

QCOSS' position

QCOSS welcomes the continued commitment from the Queensland Government to implement the recommendations of the Women's Safety and Justice Taskforce (the 'Taskforce'). QCOSS appreciates the consultation that has underpinned the development of this Bill. However, we note the timeframe to provide a submission on the Bill has been challenging given the complexity of the proposed reforms.

This submission particularly emphasises a need for a thoughtful approach to implementation. Successful implementation will be dependent on substantial investment, community education and capacity building activities targeted to the community and key industries. Investment in vital service providers must also complement implementation.

This submission is informed by substantial prior engagement with QCOSS member organisations. QCOSS is not in a position to respond to some of the technical legislative detail reflected in the Bill and has not commented on all aspects of the Bill.

Amendments to failure to report offence

QCOSS welcomes a review of Section 229BC of the Criminal Code ('Section 229BC'). Section 229BC provides that failure to report a reasonable belief that a child sexual offence is being or has been committed is an offence. We appreciate the important intention of this provision, but we are aware the operation of this offence has resulted in unintended negative consequences for young people and for community sector professionals and volunteers.

We note feedback from community sector professionals that the offence has resulted in situations where young people do not feel able or safe to disclose their experiences or seek support from



trusted adults, and where their own decision-making autonomy on whether to make a report is not supported. Community sector professionals have also highlighted the difficulty faced by a broad range of service providers in understanding the provision. There has been some uncertainty about the impact of the offence upon privileged communications, including sexual assault counsellor privilege.

We appreciate that the proposed amendment seeks to address these concerns by outlining that medical practitioners, psychologists, nurses, midwives, social workers and counsellors are able to choose not to make a report where they gain the information in the course of a confidential professional relationship with the child and the adult reasonably believes there is no real risk of serious harm to the child or any other child in not reporting the information.

We also appreciate that the proposed amendment includes a mechanism to prescribe further classes of persons who can choose not to make a report under specific circumstances where they have a confidential professional relationship with a child. We encourage ongoing communication with representatives across relevant industries to ensure that the scope of this offence can operate effectively. There may be additional professional contexts where the operation of this offence requires clarification. For example, in circumstances where other staff members within an organisation become aware of relevant information in addition to staff members who have a confidential professional relationship with the child.

We appreciate that the proposed amendment seeks to address the needs of young people to participate in major decisions impacting their own life in these circumstances. We note that it will not be mandatory to make a report when a child has turned 16 and does not want their information disclosed to a police officer, whereas the current provision requires a child to become an adult for this mechanism to be engaged. We encourage further and ongoing review and guidance in this respect to explore options to incorporate increased decision making participation for children and young people where appropriate.

Our members have indicated a need for further guidance and training in relation to responsibilities under Sections 229BB and 229BC of the Criminal Code. We note current guidance published by the Queensland Government online which provides information on failing to report or protect children from sexual crimes.¹ This guidance should be expanded and should include advice on a broader range of scenarios for professionals and for members of the community. This guidance should be complemented by further training and education opportunities.

Criminal offence of coercive control

QCOSS members have mixed and complex views in relation to the introduction of coercive control as a standalone offence.

Our members have raised that the risks of the introduction of this offence include the misidentification and criminalisation of victim-survivor women, particularly First Nations women; potential negative impacts on First Nations communities generally; potential negative impacts on culturally and linguistically diverse communities; and the weaponisation of the offence by perpetrators. Many of these risks were also noted in the Statement of Compatibility with human

¹ Queensland Government. *Failing to report or protect children from sexual crimes*. Retrieved October 25, 2023. <https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children>

rights for this Bill.² QCOSS members have also previously indicated concerns about the capacity of police and law enforcement agencies to apply the offence compatibly with human rights.

Implementation of the new offence of coercive control must be managed carefully. There will be a particular need for culturally appropriate community education, and capacity building activities for relevant professionals, including police, lawyers, judges and community sector workers. QCOSS appreciates public commitments including that "community readiness... will be supported through broad community education campaigns and tailored communication responses for diverse cohorts," and confirming the "...development of a domestic and family violence training and change management framework which will inform training across relevant agencies,"³ along with other significant complementary initiatives such as the forthcoming draft strategy to reduce overrepresentation of First Nations Peoples in the justice system.⁴ These activities must be comprehensive, appropriately targeted and well-resourced. Capacity building and awareness raising activities for both the community and all relevant industries should be developed in partnership with key organisations operating on the ground.

Once enacted, monitoring the operation of the new offence must be prioritised to enable early identification of any potential negative impacts.

Affirmative consent

QCOSS is pleased to see a commitment from the government to introduce a model of affirmative consent. We are not in a position to comment on the technical aspects of the model as proposed in the Bill. We do, however, encourage the Committee's engagement with service providers who have specific expertise in this area.

In addition to the amendments proposed in the Bill, QCOSS members have continued to raise a need to review Section 216 of the Criminal Code, and other associated provisions. These laws discriminate against people with disability, limiting the ability of people to pursue a safe, satisfying sexual life and to decide matters regarding their choice of partner and their bodily integrity. QCOSS also recommends the incorporation of guiding principles into the Criminal Code to further recognise and support the policy intentions behind this Bill. We highlight the guiding principles in Section 37B of the *Crimes Act 1958* (Vic) as a leading example.

We again emphasise the need for careful implementation of these legislative changes, which will require a long lead time, well-resourced awareness raising and capacity building activities for the community, and appropriately resourced review and monitoring activities once commenced.

Expanded sentencing and bail considerations

QCOSS welcomes the expansion of sentencing and bail considerations proposed by the Bill, which includes expanded considerations relevant to children under the *Youth Justice Act 1992* (Qld). These legislative changes will require a more wholistic engagement with the circumstances of people coming into contact with the justice system, and the impact that sentencing and bail

² State of Queensland, Yvette D'Ath MP, Attorney-General and Minister for Justice, Minister for the Prevention of Domestic and Family Violence. *Statement of Compatibility, Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023*, pp 21-26. <https://documents.parliament.qld.gov.au/tp/2023/5723T1617-64ED.pdf>

³ Attorney-General and Minister for Justice and Minister for the Prevention of domestic and Family Violence. (11 October 2023). *Media Release – Landmark legislation introduced to criminalise Coercive Control*. <https://statements.qld.gov.au/statements/98894>

⁴ State of Queensland (Department of Justice and Attorney General). *Strategy to reduce overrepresentation of First Nations peoples in the justice system consultation*. (Retrieved 26 October 2023). <https://www.justice.qld.gov.au/community-engagement/community-consultation/past/community-wog-strategy-consultation>

decisions can have on their lives, as well as the lives of those they care for. The expanded bail and sentencing considerations proposed by this Bill represent an important step forward in approaching justice differently.

Further policy development, law reform and investment is needed

QCOSS welcomes the sincere commitment to positive change reflected in this Bill and we urge the Government to maintain momentum towards comprehensive implementation of Taskforce recommendations. In particular, we emphasise the urgent need to establish an integrated peak industry body for all specialist domestic and family violence (DFV) services, implementing recommendation 17 from *Hear Her Voice Report One*. We also highlight recommendations from *Hear Her Voice Report Two*, which outline that sexual violence services also need a peak body. We welcome commitments from Government to establish a peak body for DFV services in the current financial year.⁵

We also note the *Second Biannual Progress Report* from the Office of the Independent Implementation Supervisor calling for a master plan to be made accessible for all key stakeholders outlining forthcoming plans, outcomes, targets and activities in relation to Taskforce recommendations.⁶ We encourage the Queensland Government to continue to support and engage with the findings and recommendations of the Independent Implementation Supervisor.

Alongside the key legislative reforms in this Bill, QCOSS outlines the need for a substantial increase in investment for Domestic, Family and Sexual Violence (DFSV) services, and the social service sector more broadly. QCOSS welcomed the boost in funding for DFSV service provision in the 2023/24 State Budget. However, we have received feedback from our members that this increase was not sufficient.

QCOSS is pleased to see the explanatory notes outline that increased demand among DFSV service providers stemming from implementation of key reforms under this Bill will be monitored and assessed for inclusion in future budget processes.⁷ Community organisations in Queensland have stressed, however, that current levels of funding are already not proportionate nor keeping pace with community need, leading to an unsustainable operating environment. A significant uplift in funding is needed to facilitate trauma-informed, culturally safe, community-led service provision in light of current levels of demand and likely future increases in demand, including increased demand resulting from the implementation of major changes reflected in this Bill.

We also highlight the need to commit greater investment in addressing the housing crisis in Queensland. Access to safe and affordable housing is a foundation of women's safety.

Conclusion

QCOSS appreciates the Queensland Government's genuine engagement with Taskforce recommendations. We outline a need for thoughtful and well-resourced implementation. This must also be complemented by increased investment in vital services, and a strategic approach with respect to other major complementary areas of policy and law reform.

⁵ The State of Queensland (Queensland Treasury). (2023). *Women's Budget Statement, Queensland Budget 2023-24*, p 15. https://budget.qld.gov.au/files/Budget_2023-24_Queensland_Womens_Budget_Statement.pdf

⁶ The State of Queensland (Department of Justice and Attorney-General). (May 2023). *The Office of the Independent Implementation Supervisor Women's Safety and Justice Taskforce Reforms, Biannual Progress Report 2*. <https://www.publications.qld.gov.au/dataset/oiiswsjtireforms/resource/f208dc13-fb2d-403d-804c-ac2005ca182e>

⁷ *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 Explanatory Notes*, p 27. <https://documents.parliament.qld.gov.au/tp/2023/5723T1616-37B2.pdf>

Thank you again for the opportunity to provide our submission. If you have any questions, please contact Aimee McVeigh, Chief Executive Officer at [REDACTED].

Yours sincerely



Aimee McVeigh
Chief Executive Officer