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

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Legal Affairs and Safety Committee

Criminal Law (Coercive Control and Affirmative Consent) and other Legislation Amendment Bill 2023

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Introduction

The Queensland Council of Unions (the 'QCU') is the peak union body in Queensland representing twenty-five affiliated unions and almost 400, 000 Queensland union members. The union movement has a proud history of advocacy and campaigning for gender equity, including equal pay, parental leave, and addressing gendered violence in all its many forms. Union members have stood shoulder to shoulder to work with other organisations and government to make our communities, homes, and workplaces safer for everyone, especially women. We are proud that women now make up a greater proportion of trade union membership (54%) than men (46%).[1]

Women and gender diverse people are more likely to experience all forms of gendered violence, including domestic and family violence (DFV) and sexual assaults[2]. The QCU recognises that gender inequality is the primary driver of violence against women[3] and it is important to address gender inequality in all its forms and representations. The QCU recognises the extensive wide community consultation that has been undertaken by the State Government regarding the introduction of this second tranche of legislation.

The QCU welcomes the introduction of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (the Bill) into the Queensland Parliament and the push by the State Government to ensure that the laws that address sexual offences (which are predominately committed against women) reflect modern expectations of gender equality under the law and a person-centred approach that seeks to provide justice but cause no further harm.

The QCU notes that the intent of this legislation seeks to ensure that coercive control is criminalised under the State's criminal law, and in doing so, also addresses the unintended capacity of the system to induce further trauma and harm to the victim-survivor of gendered violence. The QCU commends this intent and further asserts the trauma and "victim blaming" that underpins the current legal process continues to be a real barrier to women and gender diverse people reporting gendered violence and having little faith that the system will provide the support and justice that they seek[4].

The QCU commends the extensive and leading work of the Queensland State Government in addressing DFV. Queensland was the first state to introduce the ground-breaking paid domestic and family violence leave (which is now in the National Employment Standards), and it is through the establishment of the independent Women's Safety and Justice Taskforce (the Taskforce) that the voices of women and their experiences across the criminal justice system can now influence important and progressive legislative change.

The QCU acknowledges that the introduction of this Bill culminates the recommendations of the following consultation, research, and initiatives:

[1] Trade union membership, August 2022 | Australian Bureau of Statistics (abs.gov.au)
[2] DCCSDS Fact Sheet portrait A4 blue (qsan.org.au)
[3] Change the story: A shared framework for the primary prevention of violence against women in Australia – Summary (2nd ed.). (ourwatch.org.au)
[4] Submissions to Women's Safety and Justice Taskforce reveal systemic and community failure - ABC News

1. It implements the Government's response to the second tranche of reforms recommended by the **Women's Safety and Justice Taskforce (the Taskforce**), in Chapter 3.9 of the Taskforce's first report, **Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland (Report One)** (Recommendations 74-79), building on the groundwork established by the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023, including by introducing a new offence to criminalise coercive control;
2. Gives effect to the Government's response to a range of recommendations from the Taskforce's second report, **Hear her voice – Report Two – Women and girls' experiences across the criminal justice system (Report Two),** relating to domestic and family violence (DFV), sexual violence, publication restrictions and women and girls as accused persons and offenders (Recommendations 7, 43-44, 56, 58-59, 76-77, 80-82, 86, 110 and 126), including amendments to create an affirmative model of consent in Queensland;
3. Reform jury directions as per recommendation 65 and 66 – ***Criminal Justice* Report of the Royal Commission into Institutional Response to Child sexual Assault (Royal Commission)** in light of Report Two.
4. Implement the Government's response to two related DFV recommendations from the **Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence Report, A Call for Change** (Recommendations 20 and 50).
5. Amends the **Domestic and Family Violence Protection Act 2012 (DFVP Act**) to allow a court to make an order to extend a police protection notice (PPN) in exceptional circumstances.

Importantly, the Bill seeks to provide interstate consistency and draws on the experiences from NSW and Victorian legislation. Given the national crisis that is DFV and gendered violence, the QCU welcomes a consistent national and state approach to the important safety legislation.

The Bill's explanatory notes clarify the additional intent of this legislation as an educative piece for the Queensland community. The inclusion of coercive control in the Criminal Code is done with the explicit intention of communicating the seriousness of this offence, and that attributing a label or name to this behaviour, and then using this same language throughout legislation, support services and education materials contributes towards social change. The language and terminology used by our community, including the justice system, is important[5].

The QCU acknowledges that with the passing of the Bill the *Criminal Law (Sexual Offences) Act 1978*, No. 28 is repealed.

[5] https://www.languageonthemove.com/language-and-social-justice/

1. Amendment of the Bail Act and related amendments to the Youth Justice (YJ) Act

The QCU supports the drafted amendments to the Bail Act and the Youth Justice (YJ) Act. The amendments to s 48AA (Matters to be considered in making decision about release and bail (through the additional consideration of the likely effect on the child in relation to their family relationships, recognising that they may be the *provider* of primary care in a family), a person with whom they are in an informational care relationship or if the child is pregnant, the child of the pregnancy. The recognition of the impact on the child, their relationships and family dynamics is consistent with the *Queensland Human Rights Act 2019*.

Amendment of s 52A (Other conditions of release on bail) inserts the same requirements as listed and further requires consideration of the responsibilities that the child may hold, including the person with whom the child is in a family relationship and for whom the child is the primary caregiver. The examples provided in the legislation importantly recognise any cultural obligations to a family in addition to transportation of child to appointments, childcare and school and attendance at medical appointments in relation to a pregnancy.

The QCU welcomes the insertion of the definitions of *family relationship* and *informal care relationship* as provided for by the *Domestic and Family Violence Prevention Act 2012* (the DFVP Act) in the Bill and note the benefit of consistency of definitions across legislation. The DFVP Act specifically provides that some community members have a wider concept of what defines a relative and this is supported by the QCU. The examples of people who this may apply to are listed as Aboriginal people, Torres Strait Islanders, members of certain communities with non-English speaking backgrounds and people with particular religious beliefs.

These changes build on the experiences of women as reported to The Taskforce and acknowledge the impact gender has had on women accessing bail, as established in the Hear Her Voice Reports. These reports indicated that women are more likely to be refused bail then men, and this then disproportionally impacts on their capacity to access legal assistance which then has a flow on effect in relation to their family and any care responsibilities.

The QCU supports the requirement of this new legislation that will ensure that watchhouse staff and courts must take into account a holistic view of a person's life, their family situation and any care responsibilities they have that are likely to be impacted by their detention.

2. Amendment of Criminal Code - s 229BC (Failure to report belief of child sexual offence committed in relation to child)

The long-established requirement of mandatory reporting by adults and professionals working with children in relation to any suspected or disclosed harm or abuse was introduced to protect children, especially those who are vulnerable. As The Taskforce observed, this requirement does not always serve the best interests of the child and

may be counterproductive in engaging with and building trust with the child, and consequently have adverse and unintended impacts on the children it seeks to protect and support.

The shift and clarification provided in the proposed legislation is supported by the QCU, and considers the needs of the child, and the role professionals have in providing holistic care to a child. The QCU believes that there is sufficient guidance in the legislation to reflect what professions and in what capacity are no longer criminalised for failing to report an offence, especially when this prevents children from engaging in medical treatment, therapy, counselling and care from counselling, psychological and psychiatric professionals.

We note that this amendment does not lift the important requirement of reporting, but allows them, where they use their professional judgement and knowledge of the child, and crucially when there is no immediate or likely risk of serious harm to the child, to build trust so that they are able to provide the child with the care, counselling and the therapy needed.

The QCU supports the drafted amendment from 'when the child becomes an adult' to the age of 16 years (reflecting the age of consent) and the consistency this provides across legislation.

3. Affirmative consent, mistake of fact and stealthing

Affirmative consent

The QCU supports the clear definition of consent as meaning *free and voluntary agreement* and welcomes the clarity the proposed legislation provides. This implements recommendations 43 and 44 of Report Two.

The shift from consent being an act that is *given*, rather than actively *agreed to* between *two persons* is a significant and essential shift. It includes the acts of both parties and not one. The QCU is pleased that this change seeks to amend the outdated and discriminatory practice that perceives women and girls are the 'sexual gatekeepers'. This shift better reflects contemporary community standards of equality and mutual trust and ensures that the people engaging in any sexual activities are doing so because they choose to, and want to.

The QCU welcomes the clarification in the legislation that consent can be withdrawn at any time, and that absence of verbal or physical resistance is not required to demonstrate *implied* consent. The updating of the definition of consent to affirmative consent aligns Queensland's legislation with all other Australian jurisdictions other than Western Australia.

348AA Circumstances in which there is no consent

The QCU notes the expansion of non-consent circumstances that are listed in the Bill. The Bill provides that where a person does not say anything or do anything to communicate consent, there is no consent. This is a significant and welcomed shift in the law.

Non-consent includes the absence of active and given consent and this is a significant shift that reflects community standards. It is noted in the explanatory notes that the

explicit detail provided for in the legislation will have the additional benefit of providing community education. While this is a commendable observation, it provides little practical value in relation to *prevention* education in relation to consent.

The QCU notes the long-standing call from a range of key stakeholders, including Our Watch[6] , Education Unions[7] and the Repsect@Work Report for the full and funded implementation of age-appropriate consent education (Respectful Relationships) across all year levels. Education and prevention are far preferable to policing and sentencing.

Different types of force and harm are outlined in the Bill, including the ***fear of harm*** to a person, other person, animal or property and that this may include one incident or a pattern and that it applies regardless of when the force, harm or conduct occurs. Examples of harm listed in the Bill include:

- *economic or financial harm*
- *reputational harm*
- *harm to the person's family, cultural or community relationships*
- *harm to the person's employment*
- *domestic violence involving psychological abuse or harm to mental health*
- *sexual harassment*

These examples reflect the variety of experiences of those who have experienced the dangerous, costly and insidious behaviours of coercive control. The QCU supports the expanded coverage of this legislation in defining the harmful abuse that is often invisible and had previously not been covered by state legislation.

The QCU supports and welcomes the clarification that this legislation provides in relation to consent for **sex workers** where payment does not occur or is withdrawn. The experiences of sex-workers provide horrific accounts of stigma and discrimination when an assault takes place, and a lack of understanding of what consent looks like for sex workers. This clarification will provide important assistance to the police and courts in relation to the removal of consent for sex workers. The QCU recognises and acknowledges the lengthy campaign of the sex worker community to achieve these changes. [8]

> *(l) the person is a sex worker and participates in the act because of a false or fraudulent representation that the person will be paid or receive some reward for the act;*

The QCU notes and supports the wording and definition of sex worker contained in the Bill.

> (4) In this section—

[6] The evidence for respectful relationships education - Our Watch
[7] Respectful Relationships Education - SchoolNews - Australia (school-news.com.au)
[8] S14Consent.pdf (respectqld.org.au)

> ***sex worker*** *means a person who provides services to another person that involve the person participating in a sexual activity with the other person for payment or reward*.

The inclusion of **stealthing** (deliberate misrepresentation of the use, or the deliberate removal or tampering with a condom) in these examples is also an important addition to the listed examples of non-consent. It will ensure that the legal framework for non-consent provides avenues to reflect assaults and sexual offences that are often experienced, especially for young women, frequent and to date had little avenue for criminal justice for the victims. The QCU commends the expansion of the circumstances of non-consent in the legislation.

The issue of **mistaken identity** is outlined in the new section 348 AA of the Bill. The Bill provides the following as an indication of non-consent, or that consent could not be present if the following circumstances takes place.

> *(k) the person participates in the act with another person because the person is mistaken—*
>
> *(i) about the identity of the other person;*
>
> *or (ii) that the person is married to the other person;*

The intent of this legislation is to provide a contemporary legal framework that implements the recommendations of The Taskforce and improves safety of women and gender-diverse people. The Explanatory Notes provides the following:

> *It is not intended that this provision would criminalise conduct based on a person's representations about their gender or sexual characteristics. It is intended to address circumstances where a person agrees to participate in sexual activity under a misapprehension as to whom they are engaging in those sexual activities with, or mistakenly believing that the other person is their spouse.*

The QCU raises concerns that the wording of s (k) could be misused and used in a harmful and abusive manner, against those this legislation seeks to protect. The QCU recognises that this section is not intended to criminalise consensual sexual activity involving a trans or gender diverse person, yet the wording of the Bill itself does not provide this protection or clarity and in doing so creates an unintended vulnerability for a marginalised community. Gender diversity is an attribute recognised under *The Queensland Anti-Discrimination Act 1991.*[9]

The QCU is aware that many sex workers use pseudonyms for sex work. This is a long-utilised and widely adapted safety strategy that provides protection for sex workers, their children, and families. The QCU is concerned that as currently worded, this section of the Bill, could be used against a sex worker to criminalise their behaviour, noting again, that this is contrary to the intent of the legislation. The QCU further highlights that any measure that criminalises sex worker safety measures is inconsistent with the

[9] https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1991-085

government's current and ongoing commitment to decriminalise sex work in Queensland[10].

The QCU asserts that sex workers have experienced extreme vilification and systemic and direct discrimination without many of the protections afforded to other marginalised communities. The QCU, along with other stakeholders, have engaged in an ongoing review of the state's anti-discrimination law. The Queensland Human Rights Commission Report, *Building Belonging,* recommends the following to recognise and address the extensive discrimination and barriers for sex workers across the community.

> *24.1 The Act should include 'sex worker' as an attribute and the attribute should be defined to mean 'being a sex worker or engaging in sex work.'*[11]

The QCU believes that the government does not seek to provide any additional barriers to safety for sex workers through the wording of this Bill but hold concerns for the sex worker community and the risk that may potentially arise through the wording in relation to identity.

The QCU is concerned that the wording of s (k) will put sex workers at risk in the following ways:

- Going by a name (identity) other than a legal name will mean that the sex worker may be vulnerable under this legislation (non-consent).
- It creates unnecessary barriers to the use of a common workplace safety strategy.
- It will be inconsistent with the forthcoming legislation reforms to *improve* safety measures for sex workers;
    - the commitment to decriminalise sex work and,
    - the review of the Anti-Discrimination legislation

Recommendation One

> The QCU recommends that the wording of this section of the Bill be amended to ensure clarity, and that it further considers the safety and Human Rights of an already marginalised and vulnerable section of the community (trans, gender diverse people and sex workers). This could be achieved by the inclusion of additional wording to clarify as to what the words in s (k) do *not* mean or where they *may not apply*.

A further section of where the Bill outlines non-consent that raises concerns for the QCU is s (m) in relation to fraudulent representation - **serious disease**.

> *(m) both of the following apply—*

[10] https://statements.qld.gov.au/statements/97621

[11] Building belonging: Final report and recommendations from the Queensland Human Rights Commission Review of the Anti-Discrimination Act (qhrc.qld.gov.au)

(i) the person participates in the act with another person because of a false or fraudulent representation by the other person about whether the other person has a serious disease;

(ii) the other person transmits the serious disease to the person.

While it may not be the intent of this section to further isolate people living with HIV, there are concerns amongst key stakeholders that the current definition of serious diseases is problematic for HIV positive people and that legislation is currently failing to keep up with science and medicine.

The QCU acknowledges the concerns of people living with HIV and key stakeholders in relation to potential stigma and harm this section may have for HIV positive people. We note and support the concerns of the key organisations Queensland Positive People (QPP) and The National Association for People with HIV Australia (NAPWHA) and refer to their expertise and deep knowledge in relation to the unintended impact this legislation may have.

- *It is an ineffective prevention strategy for one person to ask another if they are HIV positive and then to rely on the subsequent statement. Both parties are responsible for preventing HIV prevention and should take appropriate precautions such as using PrEP, Undetectable = Untransmissible (U=U) or using condoms. None of these easily available prevention mechanisms require HIV disclosure. The law should not transfer the responsibility for preventing HIV transmissions onto the HIV positive person alone.*

- *QPP and NAPWHA support the underpinning of sexual assault laws by consent as a voluntary agreement made by people with the freedom and capacity to make that decision. We also support the fundamental right of privacy for people with HIV and that they should not be placed in positions where they are obliged or compelled to disclose their status, especially when they are taking appropriate precautions to prevent transmission. We note that the Public Health Act 2005 (QLD) articulates this right to privacy and, in our opinion, strikes an appropriate balance. We are concerned that any changes to consent as it relates to sexual offences in Queensland, which unnecessarily draws HIV within their scope, will undermine the delicate balance struck by the Queensland Public Health Act.*

- *We argue that the principle of shared responsibility alongside the education and empowerment of people with HIV and their partners are the appropriate mechanisms to continue driving the reduction in HIV transmission. Because of this, HIV prevention has been appropriately managed in our communities, and Queensland is making good progress towards the HIV elimination targets.*

- *We believe that unconsidered changes to the Criminal Code have the potential to shift the regulatory framework in Queensland from a robust and exemplary health-based model that promotes public health toward a criminalised model that stigmatises and discriminates people with HIV.*

This would make the law involving HIV inconsistent with state and national HIV strategies and undermine other commitments to stigma reduction. Further, evidence shows it will drive people away from testing, treatment and care services and will increase rates of new infections in Queensland.

- *QPP and NAPWHA ask the WSJ Taskforce to consider with appropriate restraint any change to the law relating to consent which would undermine people's ability to negotiate safer sex without the fear of criminal repercussions. Laws which mandate disclosure or criminalise misrepresentations have the perverse effect of chilling frank discussions about sexual safety and can make transmissions of HIV more likely, not less. Further, an unacceptably broad approach potentially criminalises an unlimited range of fraudulent statements and could also widen the scope of the criminal law in an uncontrolled and capricious way. Criminalising the misrepresentation of HIV status will stifle conversations surrounding safe sex and HIV status. This will reverse years of progress in efforts to reduce HIV related stigma and will disincentivise people at risk of HIV from testing frequently or from engaging with HIV care*[12]*.*

Recommendation two

That the QCU encourages deep consideration of the research and underpinning science/medical advancements as set out by QPP and NAPWHA in their submission. The QCU confers that that any criminalisation of misrepresentation of HIV status is likely to have contrary outcomes than the intent of other public safety measures.

Criminal offence of coercive control

Importantly the Bill implements recommendation 78 of Report One by amending the Criminal Code to **establish the criminal offence of coercive control** in new Chapter 29A. The QCU is supportive of inclusion in the Criminal Code and recognises the dire need for this legislation in Queensland. The QCU notes the rationale for naming the offence coercive control and that by listing it in the criminal code that the seriousness of the offence is recognised.

The QCU supports that this offence is applies to a person in a *domestic relationship* – and that this is defined through s 1 of the Criminal Code as a relevant relationship under Division 3 – Relevant Relationships in the DFVP Act. The QCU supports the use of this definition given the breadth provided in the DFVP Act, and that it is applied consistency across the legislation.

[12] QPP and NAPWHA submission to the WSJ Taskforce regarding the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023

Other considerations

Workload and resourcing

As outlined in the Explanatory Notes the introduction of the Bill is likely to increase the demand for courts, police, the legal profession and funded domestic, family and sexual violence service providers given the anticipated increase in reporting and matters being brought before the courts.

The QCU is disappointed that the matter of funding and resourcing is deferred and that any cost increases will be 'monitored' then assessed for future budget processes. The concern with this approach is that it does little to *prevent* the impact of the anticipated demand on the workers. Workers in the police service, the courts and the domestic, family and sexual violence services; workers who through the nature of the work itself already are already vulnerable to psycho-social workplace safety hazards (as defined in the Code of Practice)[13]. That the Bill will create additional workload for these workers is recognised, yet no provisions are established to *prevent* the impact of this increase on the workers is deeply problematic.

The QCU supports the intent and introduction of the Bill and that it aims to improve community safety but raises the concern that its introduction, without proper resourcing from the outset, will have a dire impact on an already stretched police service. The 2020 *Working for Queensland Survey* results for the Queensland Police service indicated that 39% of the Police service felt burned out by their work, and 30% reported being overloaded with work.[14] At a time where the retention of existing police officers is challenging for the service due to workload and recruitment issues[15], the introduction of this Bill, which will further increase workload demands, the resourcing issue must not be left to 'kick down the road' for later consideration. It is simply not appropriate to leave the workers at the front line of DFV to bear the burden of the Bill's introduction without the appropriate funding and resources to support its introduction.

Recommendation Three

> The QCU seeks the introduction of immediate resourcing to support the projected workload impact on the police service, court system and domestic, family and sexual assault support services.

Capacity building amongst the judiciary

The Explanatory Notes for the Bill highlight the objective of addressing the deeply held myths about rape in our community, including the legal and court system. This is provided for in Jury directions – sexual offences – clause 59 of the Bill.

As explained in the notes, this is hoped to neutralise the extent to which judges provide jury directions and prohibits them from giving certain directions to the jury. This is supported by the QCU however, the QCU asserts it fails to address the evidence of the

[13] Managing the risk of psychosocial hazards at work Code of Practice 2022 | WorkSafe.qld.gov.au
[14] 2020 Working for Queensland survey results (www.qld.gov.au)
[15] 'Extraordinarily high' demand for police as Queensland officer turnover doubles amid increased workloads - ABC News

ingrained gender bias and prevalence sexual harassment amongst the legal fraternity, including those in the judiciary.

> *Disturbingly, the courts themselves also display extraordinarily high rates of sexual harassment and discrimination on the basis of gender. Women at the bar report experiencing discrimination on the basis of gender and sexual harassment at more than twice the rate of women in the profession generally, with 55% of women barristers indicating that they have been sexually harassed in the workplace.*[16]

The extent of sexual harassment amongst the legal profession is evidenced in the *2020 Respect@Work Report*[17] which highlighted the deep-seated prevalence of sexual harassment and gendered violence experienced by women in the legal profession.

> *The Commission was informed of surveys of the legal profession in Australia which have found high rates of sexual harassment in the profession. A recent global survey by the International Bar Association found that 47% of women working in the law in Australia experienced workplace sexual harassment, compared to 13% of men.*

Further the QCU observes the widely reported instances of sexual harassment and evidence of gender discrimination amongst the judiciary.

> *The evidence is more than just statistical; senior women in the profession are putting their hands up and saying 'me too'. On the SBS program Insight, Jane Needham, former President of the Bar Council of NSW, shared her story of having been sexually harassed by a judge when she was in her first few years at the bar.*[18]

The QCU views that this Bill and its implementation should be supported by capacity building initiatives for the legal profession, including the judiciary. This is an important safeguard to acknowledge and to address the existing workplace culture that has historically failed to provide a safe work environment for women, or a safe environment for victims of gendered crimes such as DFV and sexual assault. It is essential that those seeking justice through Queensland Courts through the introduction of the Bill have faith in the legal profession, and the Judges working in the Courts. Courts must be equipped to ensure the intent and objectives of the Bill are not diminished by poor workplace culture and the prevalence of sexual harassment.

The QCU highlights to the government the introduction of a requirement in Victoria to address the issue of sexual harassment amongst the legal profession and judiciary with the introduction of a 'good character' requirement, in response to a Victorian government review into the issue[19].

The QCU commends the support and guidance provided to the Queensland Police Service where all Officers are required to undertake a mandatory two-week face to face

[16] Sexual harassment in the legal profession - Australian Lawyers Alliance Limited
[17] ahrc_wsh_report_2020 (7).pdf
[18] Sexual harassment in the legal profession - Australian Lawyers Alliance Limited
[19] Silks, judges to face 'good character' test in Victoria (afr.com)

professional learning program to enhance their responses to domestic and family violence. This is the Domestic and Family Violence Extended Training.

Recommendation four

> The QCU seeks the introduction of measures to address capacity building when dealing with matters pertaining to DFV and sexual assault in the courts to address the issue of gender bias and gender-based discrimination within the courts and judiciary. There are a range of approaches that the government could implement to address this demonstrated need, including mandatory professional development, or screening tools like those introduced by the Victorian government to address this deeply problematic issue.

Related and consequential amendments

Amendment to the Penalty and Sentencing Act (PS Act) and the Working With Children Act (WWC Act)

The Bill contains a range of consequential amendments that will introduce new offences that will impact on restrictions and screening for suitability for employment where people are charged with the new offences that the involve children or contravene an order or release conditions under the DFVP Act. They also introduce a series of circumstances that compel a court to consider specific circumstances as aggravating, when sentencing occurs for a domestic violence offence. This is provided for through Schedule 9 of the PS Act that outlines sentencing guidelines that will apply if;

> *• if an adult offender is convicted of a domestic violence offence committed against a child;*
> *• if an offender is convicted of a domestic violence offence and a child was exposed to the domestic violence during the commission of the offence; and*
> *• if an offender is convicted of a domestic violence offence that was also a contravention of an order or release conditions under the DFVP Act, or of an injunction.*

The QCU supports these changes and recognises the significance of Bill and importance of these subsequent amendments given the introduction of a criminal offence with additional penalty where the offences are committed either against children or where they expose a child to domestic violence.

The amendment of Schedule 1 of the **PS Act** to include the offence of coercive control as a serious violent offence (SVO) for the purpose of the SVO scheme is supported by the QCU.

The amendment of Schedule 2 and 4 of the **WWC Act** includes the coercive control offence as a disqualifying offence where the offence was committed either against children or exposed a child to domestic violence and is recognised as a serious offence in *all other circumstances.* This will mean that people charged with a DFV offence impacting a child will become ineligible for a Blue Card and will likely impact the ongoing professional registration requirements where this may be required for employment (e.g.,

nurses, teachers etc). This is supported by the QCU as we value the safety of children, and the consistency to the application of the offence across legislation.

However, it is important that the QCU, as the peak body for Queensland Unions highlights the inevitability of these amendments contributing to an increase of people being charged with these offences, and that this will impact on the capacity to meet suitability requirement to be eligible for certain employment arrangements or continue in their current employment as a consequence of these amendments contained in the Bill. It creates a barrier to continued employment or engaging in certain employment following a conviction of an offence, where previously there was none. This will include the numerous roles that require a Blue Card and professional registration that vets criminal history and suitability to work with children and/or vulnerable people.

While there is no suggestion that this be an impediment to the Bill's implementation, and the QCU has no concern as to the intent that the severity reflects the lasting and harmful impacts of DFV on children. However, it is pertinent that agencies, employers and regulatory bodies anticipate the increased demand that this legislation will create and implement processes to manage this increase. In addition to the increase in volume of cases and consequential workload for these sectors, and their employees, it is important that any investigation or suspension (pending the outcome of investigations) by the employer or regulatory body are not unnecessarily lengthy or delayed, especially in response to the increased demand, which should be anticipated. The QCU recognises that the increased penalty to perpetrators of DFV and sexual offences reflects the seriousness of the crime, especially in relation to children.

Recommendation five

> Employers and regulatory bodies who undertake criminal history checks are likely to experience an increase in demand as a result of these changes and the increase consequences and penalties of people being charged with these serious offences. Given the probability of this increase and in the interests of efficiency, it is important the agencies and regulatory bodies are provided with guidance, education and resources to effectively manage these changes to mitigate any impact for the employer and the employee affected. The QCU highlights this likely impact and seeks a government response to support the implementation of these changes.

A further amendment includes the **Security Providers Act.** The inclusion of the offence of coercive control becomes a disqualifying offence for a security providers licence, consistent with the policy objectives of the Security Providers Act, which include protecting the community by ensuring high standards of integrity and probity in the private security industry. The QCU views this is as a consistent application of the legislation and aligns with other professionals and employment where criminal history and safety must be considered.

Amendment of Penalties and Sentences Act 1992 and related amendment to the Youth Justice act 1992

The Bill inserts a new requirement that requires a court to consider the **background and hardship** that any sentence may have on the offender. It requires the consideration of the offender's characteristics and identity, including their:

- age
- disability
- gender identity
- parental status
- race
- religion
- sex
- Sex characteristics and
- sexuality

This recognises the complexity of these attributes that are all recognised under current state-based discrimination legislation. While this measure is important, the legislation fails to address the compounded nature of intersectional disadvantage, and the provision and its intent would be strengthened by an additional set of words that reflect that the disadvantage may be more profound where there are multiple and overlapping areas of disadvantage. The QCU asserts that this should also be considered by the courts. Intersectional disadvantage is highlighted and defined in the QHRC's Building Belonging Report. [20]

> ***Intersectional discrimination –*** *when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination*

This will provide consistency across Queensland legislation in relation to hardship and disadvantage.

The Bill requires that the following be considered in relation to any sentence imposed:

> *(fb) regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—*
>
> *(i) a person with whom the offender is in a family relationship and for whom the offender is the primary caregiver; and*
>
> *(ii) (ii) a person with whom the offender is in an informal care relationship; and (iii) if the offender is pregnant—the child of the pregnancy; and*

This is consistent with the changes to the Bail Act and the Youth Justice Act and takes an important gendered lens to sentencing and importantly, the impact that sentencing has on people who are provided with care by the convicted person, in addition to the impact on the convicted person. It is widely recognised that in Queensland, the majority of unpaid caring and care responsibilities fall to women and this provision requires the careful consideration of the person's care responsibilities.

The QCU welcomes the addition of the following section in the PS Act;

[20] Building belonging: Final report and recommendations from the Queensland Human Rights Commission Review of the Anti-Discrimination Act (qhrc.qld.gov.au) 105

Section 9(2)(gb)— insert— (iii) the offender's history of being abused or victimised; and

This is an important inclusion and requires the consideration of any abuse or if the convicted person themselves has been a victim of crime, recognising the profound and lasting effect of trauma. This concept is also reflected in the further addition of Section 9(2)

— insert—

(oa) if the offender is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; and

(ii), after 'considerations'— insert—, including the effect of systemic disadvantage and intergenerational trauma on the offender

The QCU welcomes this recognition of the systemic hardships and any impact that intergenerational trauma may have on an Aboriginal or Torres Strait islander person and the cultural considerations, systemic disadvantage and the impact of intergeneration trauma may have had on the offender.

The QCU highlights the disproportionate rate of incarceration of Aboriginal and Torres Strait Islander people in the justice system[21] and that First Nations people are seven times more likely than non-Indigenous people to be charged with a criminal offence and appear in court[22]. The QCU affirms that investment in social policy and prevention should be a primary focus and that culturally appropriate consent education must be in schools and that diversion programs are preferrable to detention. This is of the utmost significance for First Nations people given the alarming nature of deaths in custody for Aboriginal and Torres Strait Islander people.[23]

The QCU highlights that as with the other areas of background disadvantage and hardship, the disadvantage is compounded where there are multiple factors impacting on the individual, and that this intersectional disadvantage should be acknowledged and considered in this legislation and when sentencing occurs.

Recommendation six

The QCU strongly recommends that additional wording be included in the legislation to reflect the widely accepted existence of intersectional disadvantage and that where an offender may have multiple factors that this disadvantage may overlap, and a person may have multiple or many elements that compound their experiences of hardships and create additional disadvantage. The QCU would seek to have these definition and application of intersectionality apply to sections (fa), (fb), (gb) and (oa) of the Bill.

[21] Prisoners in Queensland, 2021 (qgso.qld.gov.au)
[22] Improving police practices and procedures | ALRC
[23] Deaths in custody in Australia 2020-21 | Australian Institute of Criminology (aic.gov.au)

Conclusion

This Bill is the culmination of a wide range of reports, reviews and recommendations that draw on the experiences of people who have been impacted by domestic and family violence and sexual assault. It follows many years of advocacy and activism and the dedication of activists, the legal profession and women's organisations to seek justice, understanding and a more trauma informed approach to court processes. It is important legislation that not only mirrors other states in the establishment of coercive control in the criminal code. It changes and updates the definition of consent and introduces a contemporary and relevant definition of affirmed consent.

The QCU is appreciative of the capacity to provide input and put forward our recommendations of where, from the QCU perspective the Bill could be strengthened and meet is objectives, without unintended consequences and outcomes for vulnerable people.

The QCU looks forward to the Bill's passing and a justice system that is better able to recognise and respond to gendered violence, deliver bail and sentencing outcomes that recognise disadvantage and caring responsibilities and ultimately, seeks to protect women and children from the harm of domestic and family violence (including coercive control) and sexual assault.