

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

Submission No: 33
Submitted by: Red Rose Foundation
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000
27th 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

Thank you for providing the opportunity to respond to this Inquiry.

Organisational Details

The Red Rose Foundation Australia is a national not for profit organisation with a specific focus on responding to high risk, high harm domestic and family violence. We seek to address systemic, cross-sectoral gaps through training, education and research as well as the provision of long-term support to women who have experienced non-lethal strangulation. Our Board of Directors include sector management and legal professionals, violence prevention consultants and researchers who have vast experience and expertise in domestic, family and sexual violence. Our direct client services are undertaken by a small team of highly qualified counsellors. We are supported by our Patron, Her Excellency the Honourable Dr Jeannette Young AC PSM, Governor of Queensland and our First Nations Advisory Committee, who provide direction and guidance on the issues that matter most to First Nations women experiencing domestic and family violence.

The Red Rose Foundation has partnered with the *Training Institute for Strangulation Prevention USA*, which is their first partnership outside the USA. Through our international partnership we have joined the *International Alliance of Strangulation Educators and Researchers* which includes Dr Jacquelyn Campbell who has led the way with research and education on high risk domestic violence. The Red Rose Foundation has also partnered with Central Queensland University to provide groundbreaking research on the health impact and long term consequences for victims of non-lethal strangulation.

The Red Rose Foundation maintains strategic partnerships with a range of government agencies, non-government organisations and academic institutions including domestic, family and sexual violence counselling and crisis services, refuges, family support, and child protection agencies. We adopt an intersectional, trauma-informed and feminist approach to all aspects of our work, which is informed by the voices of people with a lived experience of high risk, high harm domestic and family violence.

Overall Position

The Red Rose Foundation acknowledges the work of the Women's Safety and Justice Taskforce, professionals across the domestic violence and sexual assault sectors and survivors who have advocated for many years, for this legal reform.

The Red Rose Foundation supports the CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION AMENDMENT BILL 2023 (The Bill) in principle but raises serious concerns regarding aspects of this Bill that are counter-productive to Women's Safety.

We encourage further amendments to the Bill before it is passed into legislation.

Specific Feedback

Division 1 – 4 Relating to Sexual Offences. The Red Rose Foundation supports the submission of the Queensland Sexual Assault Network. This network comprises of services from across Queensland who work with survivors and have expert knowledge of the Criminal Justice System that either supports or re-traumatise victims of sexual violence.

We do however acknowledge that many victims of domestic violence also experience high level of sexual violence which is one of the high-risk indicators to potential homicide. When considering high risk domestic violence, consent to both sex with strangulation needs to be considered as coerced consent when saying 'no' brings elevated risks.

In addition, the Red Rose Foundation has been lobbying for several years to have consent removed from 315a of the Criminal Code (*Choking, suffocation or strangulation in a domestic setting*) Non lethal strangulation is now considered a serious violent offence and it is incongruent to consider people may consent to an act that has a potential lethality outcome.

22A Who is the person most in need of protection in a relevant relationship

Commonly known as Identifying and Responding to Predominant Aggressor, the concept was first introduced into policing in the United States in the 1980's to ensure the correct victim of domestic violence was provided the legal protection needed. In Queensland there has been evidence of cross orders (orders made against each party to proceedings, victims who had orders taken against their partner as retaliatory violence or as acts of power and control.

A Report from QUEENSLAND TREASURY *Cross applications for domestic violence orders in Queensland, 2008–09 to 2017–18* found that while there was a downward trend in the number of cross orders being made, the numbers are still significant with over 4000 cross orders made in 2018. Of concern is the over-representation of Aboriginal and Torres Strait

Islanders who represent 3% of the Queensland population yet comprise 17% of the aggrieved named on cross orders. <https://www.qqso.qld.gov.au/issues/11106/cross-applications-domestic-violence-orders-qld-2008-09-2017-18.pdf>

Emma Buxton-Namisky 2021 writes on the criminalization of First Nations women. Her study which was across jurisdictions, found domestic violence policing regularly contributed to the criminalization of First Nations women. In almost a third of the cases in the study, police had previously identified the victim of violence as a domestic violence perpetrator (N = 21). Across cases, police records typically did not appear to contextualize or understand the victim's use of physical violence against her abusive partner, or the circumstances surrounding non-physical violence or arguments. When women used physical violence, it was not always possible to accurately ascertain the nature of this violence from available police records, but in many episodes, it was clear that the violence for which women were investigated or arrested involved retaliatory or responsive violence.

Budron-Namisky 2021, Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self Determination. British Journal of Criminology

Recommendation:

The Justice Department extends the data collection and analysis of cross orders to determine the adverse outcomes of cross orders on First Nation Women.

Division 5: Criminal Offence of Coercive Control

Ellen Pence first brought the concept of power and control as an underpinning dynamic of domestic violence forward in the 1990's. The power and control in understanding and Evan Stark, brought the concept of coercive control forward in his study of the entrapment of women in their personal life. *Stark 2007: Coercive Control: How Men Entrap Women in Personal Life, Oxford University Press*

The Red Rose Foundation works from a sound understanding of the power and control dynamics of domestic violence that underpins the majority of domestic violence. It is equally important to focus on the behaviour of perpetrators who either lose control over their partner or perceive they are losing control. This includes victims who make the decision to leave the relationship, take legal action including family law or establish new sexual relationships. Often this 'loss' of control is what precipitates the majority of domestic violence homicides. This and other risk factors have been identified in the reports of the Queensland Domestic and Family Violence Death Review Reports.

https://www.courts.qld.gov.au/data/assets/pdf_file/0011/699230/domestic-and-family-violence-death-review-and-advisory-board-annual-report-2020-21.pdf

Currently in Australia there is no single agreed definition of coercive control, making data on prevalence difficult to capture in a consistent and meaningful way (Bendlin & Sheridan 2019; Boxall et al., 2020; Mayshak et al., 2020).

Coercive control can have a range of diverse impacts on victim-survivors that may be short and/or long term in nature. These include health impacts (physical and mental) including post-traumatic stress disorder, social isolation, and reduced help-seeking (Boxall et al., 2020). The sense of loss of self (Moulding, 2021) and feelings of entrapment (Pitman, 2017) are commonly reported in qualitative studies and the impact on a victim-survivor's sense of self-trust and self-belief as a result of coercive and controlling behaviour including gaslighting, are noted as contributing to further abuse. Coercive control is also identified as having a range of significant impacts on children such as negative behavioural outcomes and psychological, and emotional consequences into adulthood (Women's Safety and Justice Taskforce, 2021). *All cited in Institute of Family Studies Coercive Control Literature Review 2023)*

While the overall intent of criminalising coercive control, is for the courts to consider domestic violence as a 'course of conduct' is commendable, consideration needs to be given to:

- Patterns of behaviour that are either religiously or culturally imposed.
- The escalation of control over time.
- The difficulty in obtaining evidence to prosecute an offence of coercive control.
- Training of government and non-government organisations to gain a common understanding of coercive control.

334E Court may restrain coercive control

The Red Rose Foundation considers the introduction of a separate restraining order which can be imposed during Supreme or District Court proceedings to be an unnecessary and confusing duplication. If a Domestic Violence Protection Order is not already in place, then the courts already have the power to make such an order.

334E par 4 and 5 refers to restraining orders being referred back to the Magistrates Court. It is hard to understand how adding an extra layer of work onto the existing work of the Magistrates Court would enhance victim safety. The potential for added confusion and stress to victims could be counter productive to their safety.

Recommendation:

The Red Rose Foundation does not support 334A and advocates for the removal of this section from the Bill.

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

The Red Rose Foundation does not support media accessing domestic violence court transcripts.

The only requirement of media is ...*applicant gives an undertaking to comply with the Domestic and Family Violence Media Guide, as in force at the time the authorisation is given.* This document is a resource guide not a legally binding document.

The CEO of the Red Rose Foundation, Betty Taylor, wrote and published a domestic violence media guide in 2008 titled *Dying to be Heard*. A resource to encourage responsible media reporting. While media reporting overall has greatly improved since then, there are still so many accounts of victims of domestic and family violence being named and shamed in media.

We note the several points to be considered in granting media access to transcripts, but remain concerned the release of such information is not in the victims best interests.

Division 5: Court Based Perpetrator Diversion Programs

Domestic violence remains a serious issue in Queensland.

Protection Orders & Other Offences

During 2021-2022 there were:

58,538 Protection orders made.

39,182 charges lodged for contravention of a Protection Order.

2,262 charges lodged for strangulation offences.

Penalties Imposed

During 2022-2023 there were 21,750 convictions recorded for the contravention of a Protection Order.

Table 11 is a count of defendants convicted of contravention of a DVO. One defendant can be convicted of more than one offence. Table 11 shows the most serious penalty imposed on a defendant at the time they are sentenced for their charge/s.

Table 11. Defendants convicted of contravention DVO offences, listed by penalty imposed									
Penalty	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24 YTD (to 30 Sep 2023)
Imprisonment/Detention	4,173	4,542	4,835	4,852	4,763	6,195	6,409	7,313	2,043
Custody in the Community	56	63	71	52	52	80	59	54	7
Community Service Order	329	403	352	279	250	310	289	280	71
Probation	2,380	2,944	2,735	2,842	2,269	3,887	3,768	4,114	1,055
Monetary Order	3,763	4,049	4,132	3,986	3,330	6,023	5,967	6,913	1,667
Good behaviour/Recognition	693	933	890	899	637	1,080	1,166	1,266	288
Other	479	598	730	790	733	1,054	1,316	1,810	498
Total	11,873	13,532	13,745	13,700	12,034	18,629	18,974	21,750	5,629

With 7,313 sentences of imprisonment imposed. We note with concern the limited use of Community Service Orders as a sentencing option.

<https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>

There are currently a small number of domestic violence perpetrator programs in operation in Queensland. The majority are voluntary attended although Magistrates can refer perpetrators to these programs at the time of making a protection order. There is a requirement from the Justice Department that all programs must be compliant with the Practice Standards..*Practice, Principles & Standards: Domestic and Family Violence Services*

<https://www.publications.qld.gov.au/dataset/16d7913c-96d6-42bd-aed2-f31f24315407/resource/366f94a8-1122-42ff-9c19-d968fd21c173/download/dfv-services-practice-principles-standards-and-guidance.pdf>

There is no question more needs to be done to address domestic violence. However, the diversion program outlined in the Bill is problematic. It has moved from the option of court directing perpetrators to behaviour change programs at the time an order is made to a sentencing option at the time of contravention of a Protection Order.

135D:1: *The defendant is not required to plead guilty to the alleged offence to be eligible for the scheme.*

The Red Rose Foundation finds the above counter to the principle of holding perpetrators accountable for their behaviour.

We know from our long and extensive work with women who have experienced domestic violence that*First time offenders are often long time abusers. (Sullivan, B)*

If a diversion program is to be effective, offenders need to plead guilty at the time of the hearing at which time the Court can consider a diversion program as part of sentencing options. This is what holding some-one accountable should be, not leaving it to offenders to decide if they are 'ready to change or not'.

135H Immunity from prosecution

- (1) *A person is not liable to prosecution for an offence resulting from any admission made by the person for the purposes of preparing a suitability assessment report for the person.*
- (2) *The admission, and any evidence obtained because of the admission, is not admissible against the person in a prosecution for the offence.*
- (3) *Subsections (1) and (2) do not prevent the person from being prosecuted for the offence if evidence of the offence, other than the admission made by the person or evidence obtained because of the existence of the admission.*

(4)A police officer who receives information derived from any admission made by the person for the purposes of preparing the suitability assessment report must not use the information for a proceeding for an offence.

We are struggling to understand how 135H serves any useful purpose.

- It is not best practice in holding offenders accountable for their behaviour.
- It sanctions collusion between offenders and program staff.
- It is counter to the Principles of the Information Sharing Guidelines developed to support the sharing of information across agencies relative to addressing risk and managing safety.
- It compromises police investigations.
- Importantly, it could seriously compromise victim's safety

Recommendation:

The Red Rose Foundation considers Division 5 to be unsafe and unethical and requests its removal from the Bill.

The Red Rose Foundation welcomes all enhanced legislative responses that aim to increase access to safety and justice for victim/survivors and will hold perpetrators accountable for their violence and abuse. In its current form, we believe there are many aspects of this Bill that will fail to achieve this.

Victims of both sexual violence and domestic violence deserve to live in safety and have their human rights upheld and respected.

We sincerely ask our legislators to consider this Bill as an important mechanism to provide justice to victims and survivors and ask if this will be achieved in its current form.

Thank you for your consideration.

Kind Regards
Betty Taylor
CEO
Red Rose Foundation

