

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

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GOLD COAST CENTRE
against sexual violence inc.

Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000
Via email lasc@parliament.qld.gov.au

30th October 2023

Dear Secretary

Inquiry into Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill

The Gold Coast Centre Against Sexual Violence Inc. (GCCASV) welcomes the opportunity to make a submission to the Legal Affairs and Safety Committee in relation to the *Inquiry into Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill*

About GCCASV

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded on the Gold Coast in 1990. The agency is a feminist community based, not for profit, charitable organisation that has been providing free, confidential, specialist sexual violence intervention and prevention programs for more than 30 years.

Our vision is safe communities free from sexual, domestic, and family violence. GCCASV provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey become aware of their own strengths and gain confidence and control of their lives.

The organisation also provides community education and training to the public, schools, and other professionals. Since 2018 GCCASV has also delivered specialist counselling to domestic violence victim/survivors through our Women's Health and Wellbeing Program.

Overall position

For decades, women have identified a lack of faith in the systems, fear of not being believed and fear of secondary victimisation as key reasons for not seeking support and reporting sexual crimes committed against them.

These legislative reforms come after years of lobbying by survivors and advocates, multiple consultations with and submissions from key stakeholders and address recommendations from the Women's Safety and Justice Taskforce, Hear Her Voice Reports One and Two.

GCCASV provides broad support for the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill* aimed at criminalising coercive control and changing the way sexual offences are prosecuted and defended, as a step in the right direction to achieve a just response for victim/survivors.

However, GCCASV wishes to respond to certain aspects of the Bill that we believe need to be amended in order to further clarify and strengthen legislation and provide increased safety to victim/survivors of sexual and domestic violence.

The GCCASV response is based on our experience in bearing witness to women's truth and seeks to amplify the voices of victim/survivors of sexual violence and support their quest for justice.

BEFORE any new legislation is enacted there are a number of resourcing issues that will need to be addressed.

Resourcing – community education

Unless the community understands the definitions and ramifications in any new legislation victim/survivors will be unaware, leaving them unsafe and offenders not able to be held to account. The Women's Safety and Justice Taskforce Hear her voice: Report Two, Recommendation 1 reinforces the need for education and Recommendation 43 (g) attests to the timing required.

Recommendation 1

That Queensland Government develop and implement adequately resourced, comprehensive community education on coercive control and sexual violence including consent BEFORE any new legislation is enacted.

Resourcing – training

Unless key stakeholders including frontline staff, police, health and justice workers are adequately trained in understanding and responding to the new legislation the safety of women and children will NOT be enhanced. This notion is supported by the Women's Safety and Justice Taskforce Hear her voice: Report One, Recommendations 38 – 41

and Hear her voice: Report Two Recommendation 66 reinforce the importance of an expansive training program for a range of stakeholders.

Recommendation 2

That Queensland Government develop and implement adequately resourced, comprehensive training for all key stakeholders on coercive control and sexual violence including consent BEFORE any new legislation is enacted.

Resourcing- funding

Adequate funding of specialist front line sexual violence services is the key to increasing the safety of victim/survivors. As long as services struggle to meet demand and have waiting lists for counselling and support, no amount of co-ordination will make a difference. This is a resourcing issue NOT a co-ordination issue.

It is expected that these changes in legislation will result in an increased demand for frontline service information, support and counselling. Sexual assault services are not meeting current demand and therefore need to be adequately funded and resourced to meet this expected increase in demand.

Recommendation 3

That specialist sexual violence services be adequately funded to provide an ethical, timely, best practice response to victim-survivors of sexual violence who will be impacted by the new legislation in Queensland.

PART 3 AMENDMENT OF CRIMINAL CODE - DIVISION 2 FAILURE TO REPORT

s 229BC (Failure to report belief of child sexual offence committed in relation to child)

GCCASV recognises the intent of this legislation but are cognisant of some of the issues that have already arisen relating to young people who have the competency to make their own choice about reporting to the police.

Recommendation 4

That Section 22BC (4) (ii) be amended to better reflect the young person's choice and capacity to make a decision to report sexual violence to the police, subject to a Gillick competency assessment.

Recommendation 5

That the definition of relevant professional is amended for social workers to include eligibility to be a member of the AASW rather than a requirement to be a member of the association.

PART 3 AMENDMENT OF CRIMINAL CODE - DIVISION 3 AFFIRMATIVE CONSENT, MISTAKE OF FACT AND STEALTHING

s 348 Consent

A person may consent to something when they are not fully aware of the risk and ramifications. GCCASV believes that the legislation needs to cover this scenario and ensure that any consent given is “informed consent”.

Recommendation 6

That the word “informed” be included in the definition of consent in section 348.

s 348AA Circumstances in which there is no consent

More circumstances need to be covered in which a person does not consent to an act. Strangulation is a really obvious one where there is no consent given because the person is physically unable to give consent.

This also applies to a person who may be incapable of withdrawing consent because they are being strangled.

Recommendation 7

That Section 348AA be amended to include strangulation as a circumstance where a person is incapable of consenting or incapable of withdrawing consent.

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

Some changes are needed in 348 (3) to clarify consent as a process and the timing of consent in relation to each act. The term “immediately before” is both unclear and subjective. Consent is an ongoing process which needs to be agreed on at the time of each act.

Recommendation 8

That Section 348 (3) be amended to read “A belief by the person that another person consented to an act is not reasonable if the person did not, at the time of the act, or each subsequent act say or do anything to ascertain whether the other person consented to the act”

S 348C Mental Health Impairment

In the interests of safety and justice, the mental health impairment section should be limited to certain diagnosable conditions. A disturbance that impacts the “emotional wellbeing” of someone is very subjective and not diagnosable.

Recommendation 9

That the phrase “emotional wellbeing” be deleted from s 348C 1 (c).

An anxiety disorder is characterized by feelings of worry, anxiety or fear strong enough to interfere with one’s daily activities. This is commonly diagnosed in the general population, open to interpretation and should not be considered as a valid excuse.

Recommendation 10

That “anxiety disorder” be deleted in Section 348C 2 (a).

s103ZQ When jury directions under subdivisions 3 and 4 must be given

GCCASV believes the jury direction should be given at the beginning rather than at the earliest convenience.

Recommendation 11

That relevant jury directions **MUST** be given by the judge at the beginning of the trial and **MAY** be repeated at any time including the summing up.

s 103ZZ Direction on lack of complaint or delay in making complaint

In this section relating to complainant credibility there should not be any reason to justify a direction and this should be deleted.

Recommendation 12

That in 103ZZ 2 (c) the phrase “unless there is sufficient evidence to justify the direction” should be deleted.

DIVISION 4 EXPERT EVIDENCE IN RELATION TO SEXUAL OFFENCES

s 103ZZF relates to the independent expert sexual violence panel, as recommended by the WSJT, but is yet to be established.

Recommendation 13

That the independent expert sexual violence panel be established in accordance with Rec 80 of the Women’s Safety and Justice Taskforce, Hear Her Voice Report Two.

DIVISION 5: CRIMINAL OFFENCE OF COERCIVE CONTROL

Owing to the time constraints for feedback to Legal Affairs and Safety Committee regarding this legislation. GCCASV will support the submission of the Red Rose Foundation in relation to coercive control component.

GCCASV believes that if the issues raised in this submission are able to be addressed, the amended legislation will enhance timely, ethical, trauma informed, support to victim/survivors of sexual violence through community and system responses.

Thank you again for the opportunity to make a submission to the inquiry. Please do not hesitate to contact the writer if further information is required.

Yours sincerely



Di Macleod

Director

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