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

Submission No:	42
Submitted by:	ADA Law
Publication:	making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

3 November 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Committee

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

Thank you for the opportunity to provide feedback on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (the **Bill**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on these important proposed reforms.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with more than 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (**ATSIDNQ**), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

Review of the Bill

Amendments to the Criminal Code

ADA supports the drafting as proposed in the Bill amending the Criminal Code to insert Chapter 29A, including a new section 334C in relation to a standalone offence of coercive control.

We support the expanded drafting and examples provided under proposed section 334A, however, we suggest that the example provided in relation to *emotional or psychological abuse* should be amended as follows:

121 Copperfield Street Geebung Qld 4034 **www.adaaustralia.com.au**
FREECALL: 1800 818 338 **p:** (07) **3637 6000**
f: (07) 3637 6001 **e:** info@adaaustralia.com.au
ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.
Aged and Disability Advocacy Australia trading as ADA Australia | ACN: 610 892 398 | ABN: 19 488 136 200

> *"**any direct, indirect or implied threat to** prevent a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity."*

Persons with disability and older persons who experience abuse through domestic relationships will often receive threats from the perpetrator to the effect that they will no longer be able to see their family if they report the abuse. This is commonplace in circumstances when the relationship includes a care component.

ADA clients often relay experiencing intimidation and threats that should they make a complaint, such as to police or through an application to the Queensland Civil and Administrative Tribunal seeking a removal of the perpetrator as guardian or administrator, that systems will intervene with the effect that they will be prevented from having contact with family or loved ones.

ADA broadly supports the proposed section 334E, permitting the Court powers to restrain coercive control through an order. We note section 334E(2), which permits a presiding judge or magistrate to constitute the court to consider making a restraining order against a person (whether or not the person has been found guilty or not guilty), and section 334E(3) which relates to an application for an order being made *'by the Crown or an interested person or on the judge's or magistrate's own initiative*.'

Proposed section 334E(4) empowers the Supreme or District Court to order the proceeding for consideration of such an order to be transferred to the Magistrates Court.

ADA largely supports the drafting and intention of proposed section 334E. However, we strongly suggest that the section is amended to require the Court to consult with and consider the views of the aggrieved with respect to the Court's intention to consider making an order, or to the transfer of the matter to the Magistrates Court. *This is particularly important* for persons with disability and Aboriginal and Torres Strait Islander persons, irrespective of whether they are the aggrieved or the defendant.

For example, ADA has supported persons with psychosocial disability who have been exposed to the criminal justice system as a defendant following an interaction with police (who were unable to identify or did not recognise the person's disability, and mistakenly attributed a behaviour or interaction as having a criminal basis instead of being related to the person's complex disability). In some of these cases, a police protection notice has been issued despite the aggrieved person or persons (usually family members) not having called the police and not seeking an intervention, such as an order. Similar reports are received from families of Aboriginal and Torres Strait Islander defendants.

In these situations, the making of an order without having regard to or consulting with affected persons may have significant and detrimental impacts for the person with disability and their family. These impacts can include the imposition of additional restraints upon a person with disability and their family, such as the appointment of the public guardian and the issuing of decisions to limit contact with family members. Such decisions may be destabilising for a family unit that is already managing the complexities of a family member with psychosocial disabilities, and may constitute an unreasonable limitation on a person's rights as provided by the *Human Rights Act 2019*.

We suggest that inclusion of an obligation to consult with and consider the views of the aggrieved prior to progressing an order under this section would be appropriate, and note that in making this change the Court would retain the power to make an order or transfer the matter having heard these views.

Amendments to the Domestic and Family Violence Protection Act 2012

ADA supports the introduction of a diversion scheme and considers the drafting in the Bill regarding proposed Part 4A to be broadly appropriate.

We note the importance that a suitability assessment and report have appropriate regard and consideration to the factors set out under proposed section 135F.

It is critical that appropriately qualified and resourced assessors are available to carry out the assessments, in particular, persons who are comprehensively qualified to consider the characteristics of a defendant as described in section 135F.

The absence of appropriately qualified assessors is likely to result in a prejudicial outcome for some defendants who may have otherwise been found to be eligible to participate in the scheme. To this end, ADA broadly supports the inclusion of proposed section 135T, though we suggest that guidance material should be developed to support the chief executive in determining which providers may be approved, as well as any conditions on that approval (for example, that a provider is required to ensure that a suitability assessment for a person exhibiting a characteristic or otherwise impacted by the criteria set out in section 135F(b) to (e) must *only* be carried out by an assessor who is appropriately qualified to make an assessment of a person with one or more of those characteristics.)

ADA has strong concerns about the drafting of section 135F(g). 'Availability' of an approved diversion scheme for a person with a characteristic identified in the section is a factor outside of the defendant's control. The premise of rejecting a person's eligibility on the basis that a program is 'unavailable' at the time may be discriminatory for persons identified as having one or more of the inherent characteristics identified in section 135F(b) to (e). We suggest that s135F(g) be removed as a factor in determining the defendant's eligibility to participate in a diversionary scheme, or at least, that the reference to *'available*' is removed.

Amendments to the Evidence Act

ADA considers that the proposed amendments to the Evidence Act as set out in the draft Bill are appropriate and necessary, and are intended to allow complainants to be treated with dignity in the course of a proceeding.

With respect to the establishment of the sexual offence expert evidence panel, ADA notes that pursuant to proposed section 103ZZH(2), persons approved as a panel member to give evidence in a relevant proceeding must be able to demonstrate 'specialised knowledge' in either psychiatry, neuro-cognitive psychology, or a field that is relevant to assessing cognitive or mental health impairment and the effect of such an impairment on the person's ability to communicate.

The drafting of the section does not require a panel member to demonstrate 'specialised knowledge' about an inherent cultural characteristic of a defendant (for example, a defendant who is Aboriginal or Torres Strait Islander or from a culturally or linguistically diverse background).

Section 103ZZH states that the chief executive must *'establish and maintain a panel of persons the chief executive is satisfied are suitable to give relevant evidence about a defendant in a relevant proceeding.'* ADA supports the inclusion of subsection (4), which provides that subsections (2) and (3) do not limit the matters that the chief executive may have regard to in considering if a person is suitable to give *'relevant evidence about a defendant in a relevant proceeding*.'

We suggest a minor amendment to subsection (4), to replace *'may'* with *'must'*. In particular, we note the implications for First Nations and culturally diverse defendants with disability if evidence were to be provided by a panel member who did not have sufficient knowledge and experience in relation to the cultural background of an individual defendant in a proceeding.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [redacted] or via [redacted].

Yours faithfully

[redacted]

Geoff Rowe

Chief Executive Officer