

knowmore
free legal help for survivors

Domestic and Family
Violence Protection
(Combating Coercive
Control) and Other
Legislation Amendment
Bill 2022

Submission to the Legal
Affairs and Safety
Committee

1 November 2022

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability. From 1 January 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings. From 1 March 2022, we have also been funded to provide legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 September 2022, knowmore has received 74,499 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 12,767 clients. More than a third (35%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Just under a fifth (19%) of clients are

classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Queensland

knowmore has a significant client base in Queensland — 30 per cent of our current clients reside in the state. We therefore have a strong interest in legislative amendments in Queensland that impact victims and survivors of child sexual abuse.

knowmore's submission

This section outlines knowmore's overall position on amendments in the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (the Bill) to modernise and update sexual offence terminology in the Criminal Code, consistent with our role as a community legal centre supporting victims and survivors of child sexual abuse. It also details our comments on some areas of concern.

Overall position on amendments to modernise and update sexual offence terminology in the Criminal Code

knowmore strongly supports the Bill's objective to *"modernise and update sexual offence terminology in the Criminal Code in response to advocacy that the language appropriately reflects criminal conduct"*. As we stated in our submission to the Women's Safety and Justice Taskforce (the Taskforce),¹ the language currently used in the Criminal Code does not reflect a contemporary understanding of the nature and impact of sexual violence, especially sexual violence against children, and needs to be updated. We particularly support removing the outdated and euphemistic term 'carnal knowledge', and references to 'maintaining a sexual relationship with a child'.

However, while we strongly support the Bill's intent, the amendments in Clauses 8–17 and 25 of the Bill raise some concerns for us. Specifically:

- We are concerned that progressing these amendments before the Queensland Government has responded to the Taskforce's second report² sets the stage for a piecemeal response to that report.
- We have some concerns about the specific form of these amendments, particularly in terms of their lack of consistency with legislative provisions in other jurisdictions.

More detailed comments on these issues are provided below.

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- 1 knowmore, *Women's and Girls' Experiences Across the Criminal Justice System as Victims and Survivors of Child Sexual Abuse: Submission to the Women's Safety and Justice Taskforce*, 6 April 2022, pp. 14–15, <knowmore.org.au/wp-content/uploads/2022/06/submission-womens-and-girls-experiences-across-the-criminal-justice-system-as-victims-and-survivors-of-child-sexual-abuse-qld.pdf>.
 - 2 Women's Safety and Justice Taskforce, *Hear Her Voice: Report Two — Women and Girls' Experiences Across the Criminal Justice System*, 1 July 2022, available at <www.womenstaskforce.qld.gov.au/publications>.

knowmore submission to the Legal Affairs and Safety Committee
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Concerns about a piecemeal response to the second report of the Women’s Safety and Justice Taskforce

We have some concerns about progressing the amendments in the Bill before the Queensland Government has properly considered and formally responded to the recommendations of the Taskforce’s second report on women and girls’ experiences across the criminal justice system. We are particularly concerned that the amendments in the Bill represent only a partial response to relevant recommendations from the Taskforce’s report and do not fully consider issues the Taskforce identified.³ We note that:

- Recommendation 61 calls for a broad review of the naming of sexual offences in the Criminal Code, particularly including, but not limited to, the offences in the Bill.⁴ The Taskforce clearly contemplated the need to change the names of sexual offences beyond those dealt with in the Bill.
- Recommendation 42 calls for the Attorney-General to review and amend as necessary Chapters 22 and 32 of the Criminal Code to ensure that it responds appropriately to sexual offences against children, in a way that is trauma-informed and consistent with community standards.⁵ This reflects concerns identified by the Taskforce about the ‘hierarchy of offending’ that exists between the offence of rape under section 349 of the Criminal Code, and the carnal knowledge and indecent treatment offences under sections 215 and 210, respectively.

In our view, progressing the amendments in Clauses 8–17 and 25 of the Bill without also giving due consideration to the more substantial reforms recommended by the Taskforce sets the stage for a piecemeal and disjointed response to the Taskforce’s second report. Not only does this raise concerns about the efficiency of the reform process, but we are also concerned about the impact of such a response on survivors. We believe many survivors

3 On this point, we note that the amendments in Clauses 8–17 and 25 of the Bill are substantially identical to provisions included in a draft version of the Bill circulated to stakeholders in August 2022. Given that the Taskforce’s report was handed down on 1 July 2022, our concerns about a failure to fully consider issues identified by the Taskforce reflect the short time between the report being handed down and the current provisions being drafted.

4 Women’s Safety and Justice Taskforce, *Hear Her Voice: Report Two*, Volume 1, p. 272.

5 The full text of Recommendation 42 reads: “*The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence review and amend if and where necessary Chapter 22 (Offences against Morality) and Chapter 32 (Rape and sexual assaults) to ensure that the Criminal Code: – treats the capacity of children aged 12 to 15 years old to consent to sexual activity in a way that is trauma-informed and consistent with community standards; – addresses sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority over those children; – provides internal logic across the two chapters so that the applicable maximum penalties reflect a justifiable scale of moral culpability.*” See Women’s Safety and Justice Taskforce, *Hear Her Voice: Report Two*, Volume 1, p. 216.

would be disappointed to see relevant reforms progressed in a manner that they may perceive as rushed, fragmented or ill-conceived.

Concerns about the specific form of the amendments in Clauses 8–17 and 25 of the Bill

As a national service for victims and survivors of child sexual abuse, knowmore advocates for national consistency in legislative provisions that impact victims and survivors. We consider that national consistency in child sexual offence provisions is vital to ensuring all victims and survivors can access effective criminal justice responses to their abuse regardless of where it happened. It also helps to promote confidence in the criminal justice system, particularly among victims and survivors. As the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) concluded:

We do not consider it acceptable that the prospects of a complainant obtaining criminal justice can depend so significantly on the jurisdiction in which the child sexual abuse offences are prosecuted. Victims — and the community — are entitled to expect a consistency in the approach of each state and territory of Australia.⁶

We note the following statements in the Explanatory Notes regarding the Bill's consistency with legislation in other jurisdictions:

The introduction of terminology changes in the Queensland Criminal Code will enhance alignment with other jurisdictions.

The amendment to change the name of the maintaining a sexual relationship with a child offence will create greater consistency with other states and territories (namely New South Wales, Victoria, Western Australia and Tasmania) that have adopted an offence title in relation to repeated sexual conduct with a child that does not reference 'maintaining' or 'relationship'.

The amendment to change the phrase 'carnal knowledge' to 'penile intercourse' brings Queensland into closer alignment with all other States and territories as none of them utilise the term 'carnal knowledge'.⁷

We cannot agree with these assertions. We would argue that in this case, consistency with legislation in other jurisdictions requires some positive similarities in comparable offence titles, not simply the shared absence of a particular term. The last statement in particular is unhelpful — referring to penile intercourse instead of carnal knowledge can hardly be said to bring Queensland into closer alignment with all other states and territories “as none of

6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Parts III–VI*, 2017, p. 634, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final-report-criminal-justice-report-parts-iii-to-vi.pdf>.

7 Explanatory Notes to the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, p. 21, <documents.parliament.qld.gov.au/tp/2022/5722T1672-65D1.pdf>.

them utilise the term ‘carnal knowledge’” when none of them uses the term penile intercourse either. Table 1 below shows how in relation to the title of both this offence and the offence in section 229B, Queensland cannot reasonably be said to be consistent with any other state or territory.

Table 1: Comparable offences in other jurisdictions — ‘Engaging in penile intercourse with child under 16’ (section 215 of the Criminal Code) and ‘Repeated sexual conduct with a child’ (section 229B of the Criminal Code)

Jurisdiction	Engaging in penile intercourse with child under 16 (section 215 of the Criminal Code)	Repeated sexual conduct with a child (section 229B of the Criminal Code)
Tas	Penetrative sexual abuse of child or young person ⁸	Persistent sexual abuse of child or young person ⁹
Vic	Sexual penetration of a child under the age of 12 and Sexual penetration of a child under the age of 16 ¹⁰	Persistent sexual abuse of a child under the age of 16 ¹¹
ACT	Sexual intercourse with young person ¹²	Persistent sexual abuse of child or young person under special care ¹³
NSW	Sexual intercourse—child under 10 and Sexual intercourse—child between 10 and 16 ¹⁴	Persistent sexual abuse of a child ¹⁵
NT	Sexual intercourse or gross indecency involving child under 16 years ¹⁶	Sexual relationship with child ¹⁷

8 Section 124, *Criminal Code Act 1924* (Tas).

9 Section 125A, *Criminal Code Act 1924* (Tas).

10 Sections 49A and 49B, *Crimes Act 1958* (Vic).

11 Section 49J, *Crimes Act 1958* (Vic).

12 Section 55, *Crimes Act 1900* (ACT).

13 Section 56, *Crimes Act 1900* (ACT).

14 Sections 66A and 66C, *Crimes Act 1900* (NSW).

15 Section 66EA, *Crimes Act 1900* (NSW).

16 Section 127, *Criminal Code Act 1983* (NT).

17 Section 131A, *Criminal Code Act 1983* (NT). We note that the NT Government has stated that it is “reviewing the sexual offences in the Criminal Code to modernise relevant parts of the Criminal Code, both in language and in offences that relate to persistent child sexual abuse, grooming offences and circumstances where abuse occurs in the context of a relationship of authority. These changes will strengthen legal responses in the Northern Territory to child sexual abuse.” See NT Government, *Royal Commission into Institutional Responses to Child Sexual Abuse: First Progress Report*, 2018, p. 16, <rmo.nt.gov.au/data/assets/pdf_file/0008/675314/RCIRCSA-First-Annual-Progress-Report.pdf>.

Jurisdiction	Engaging in penile intercourse with child under 16 (section 215 of the Criminal Code)	Repeated sexual conduct with a child (section 229B of the Criminal Code)
SA	Unlawful sexual intercourse ¹⁸	Unlawful sexual relationship with child ¹⁹
WA	Child under 13, sexual offences against and Child of or over 13 and under 16, sexual offences against ²⁰	Child under 16, persistent sexual conduct with ²¹

Given the importance of language, the lack of consistency highlighted above risks Queensland's child sexual offences being seen as less appropriate and less in keeping with community expectations than those in other states and territories.

Relevantly, we note that the Australian Institute of Criminology (AIC), in partnership with the Commonwealth Attorney-General's Department, is currently undertaking a review and comparative analysis of child sexual abuse legislation across Australia.²² This work is being conducted under the Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027,²³ which was endorsed by all states and territories at the Meeting of Attorneys-General (now the Standing Council of Attorneys-General) on 12 August 2022.²⁴ The review aims to:

*identify any impact of any substantive inconsistencies between legal frameworks, determine whether there are any gaps in the conduct criminalised in each jurisdiction, as well as explore best practice approaches.*²⁵

This is consistent with Priority 1.1 of the Work Plan, which states that:

jurisdictions will review relevant criminal offences and legal definitions... to enable the Australian Government, states and territories to ensure criminal

18 Section 49, *Criminal Law Consolidation Act 1935* (SA).

19 Section 50, *Criminal Law Consolidation Act 1935* (SA).

20 Sections 320 and 321, *Criminal Code Act Compilation Act 1913* (WA).

21 Section 321A, *Criminal Code Act Compilation Act 1913* (WA).

22 Attorney-General's Department, 'Sexual violence', <www.ag.gov.au/crime/sexualviolence>, viewed 1 November 2022.

23 Attorney-General's Department, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027*, endorsed 12 August 2022, <www.ag.gov.au/system/files/2022-08/MAG-work-plan-strengthen-criminal-justice-responses-to-sexual-assault-2022-2027.pdf>.

24 Meeting of Attorneys-General, *Communiqué*, 12 August 2022, <www.ag.gov.au/sites/default/files/2022-08/meeting-attorneys-general-communique-august-2022.pdf>.

25 Attorney-General's Department, 'Sexual violence'.

*offences and legal definitions are appropriate and reflect community expectations.*²⁶

We strongly support this work. It does, however, reinforce our above concerns about progressing with the amendments in the Bill if the AIC's review ultimately indicates that more substantial reforms to Queensland's child sexual offences are warranted.

Repeated sexual conduct with a child

In relation to repeated sexual conduct with a child, we consider that the lack of consistency with other jurisdictions shows that there is room for Queensland to commit to stronger changes. While we strongly support removing the word 'relationship' from the name of the offence and acknowledge that this addresses a major concern raised by survivors and their supporters over many years, we consider that the proposed amendments do not go far enough in addressing the relevant concerns that we and other stakeholders have raised.

We particularly note previous calls from The Grace Tame Foundation,²⁷ supported by Professor Ben Mathews and Elizabeth Dallaston from the Queensland University of Technology (QUT) School of Law,²⁸ for persistent child sexual abuse offences across Australia to be worded as such. We support this position. In our view, repeated sexual conduct with a child still sanitises the nature of the offending (by referring to 'sexual conduct' rather than 'sexual abuse') and still feeds into victim-blaming attitudes (by retaining 'with', which continues to imply sexual acts being engaged in by a child and an adult together, as opposed to sexual abuse being perpetrated by an adult against a child). Persistent sexual abuse of a child, on the other hand, more appropriately reflects the gravity and nature of the offending and is consistent with the names of equivalent offences in most other states and territories.²⁹

We note the Attorney-General's comments that, in arriving at the new offence title of repeated sexual conduct with a child:

26 Attorney-General's Department, *The Meeting of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027*, p. 8.

27 See, for example, The Grace Tame Foundation, 'The Harmony Campaign', <www.thegracetamefoundation.org.au/the-harmony-campaign>.

28 E Dallaston and B Mathews, 'Unlawful sexual relationships': A comparative analysis of criminal laws against persistent child sexual abuse in Queensland and South Australia', *Adelaide Law Review*, 2021, vol. 42, no. 1, <classic.austlii.edu.au/au/journals/AdelLawRw/2021/1.html>; E Dallaston and B Mathews, 'Reforming Australian criminal laws against persistent child sexual abuse', *Sydney Law Review*, 2022, vol. 44, no. 1, pp. 77–109, <eprints.qut.edu.au/232485/8/77_SLRv44n1Mar2022DallastonMathewsFINAL.pdf>.

29 We note that Western Australia also currently uses the language of 'sexual conduct with a child'. We further note, however, that the Western Australian offence is formulated substantially differently to the Queensland offence — the actus reus of the Western Australian offence is unlawful sexual acts (versus an unlawful sexual relationship) and the Western Australian offence requires unlawful sexual acts on three or more occasions (versus more than one unlawful sexual act). In these circumstances, we do not consider there is any compelling reason for Queensland to adopt the same terminology as Western Australia.

Care has been taken not to introduce new concepts in the title which could risk narrowing the broad scope of the offence by subtly raising the threshold of what is required to establish the offence. It is absolutely essential that this pivotal offence provision continues to operate in a way that does not jeopardise convictions and justice for victim-survivors.³⁰

We agree it is absolutely essential for the offence to operate effectively. However, we do not see how the “new concepts” in ‘persistent sexual abuse’ pose any greater risk of narrowing the scope of the offence than the concepts in ‘repeated sexual conduct’, given the inclusion of new subsection (9A) and the note stating that the amendments are not intended to change the nature or scope of the offence or what is required to establish it [see Clause 16(2) of the Bill]. We would think that these provisions should have the same effect of maintaining the current scope of the offence regardless of the concepts included in the heading.

We also note recent analyses of persistent child sexual abuse offences by Elizabeth Dallaston and Professor Ben Mathews that suggest the “broad scope” of the offence is not as broad as may be assumed. In particular, Dallaston and Mathews have:

- Noted that the operation of the Queensland offence, by requiring proof that sexual contact occurs with continuity and habituality, “*limit[s] the circumstances in which the offence can be proved, and [has] given rise to successful appeals even when there is evidence or an admission of repeated unlawful sexual acts against a child.*”³¹
- Concluded that the South Australian offence “*is more consistent with the nature and purpose of the provisions*”,³² “*is... more consistent with a proper understanding of the nature of consent, relationships, and child sexual abuse*”³³ and has “*a much wider scope compared to the Queensland offence*”.³⁴

Given their findings, Dallaston and Mathews have argued that “*the Royal Commission’s conclusion that [the Queensland offence] is the better formulation of the offence can no longer be supported*”,³⁵ and have called for comprehensive legislative reform across Australia so that the substantive provisions of relevant offences (as well as the names of the offences) refer to the concept of persistent sexual abuse.³⁶ In the interests of ensuring that Queensland’s offence provisions are as effective as possible in responding to repeated acts

30 Queensland Legislative Assembly (Hon. SM Fentiman), *Record of Proceedings (Hansard): First Session of the Fifty-Seventh Parliament*, Introduction of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, 14 October 2022, p. 2806, documents.parliament.qld.gov.au/events/han/2022/2022_10_14_WEEKLY.pdf

31 Dallaston and Mathews 2021, p. 33.

32 Dallaston and Mathews 2021, p. 32.

33 Dallaston and Mathews 2021, p. 33.

34 Dallaston and Mathews 2022, p. 94.

35 Dallaston and Mathews 2022, p. 108.

36 Dallaston and Mathews 2021 and 2022.

of sexual abuse committed against a child, we recommend further consideration be given to Dallaston and Mathew's analysis and recommended reforms.

Conclusion

knowmore strongly supports modernising and updating the language used in the Criminal Code to ensure that it meets survivor and community expectations and reflects a contemporary understanding of the nature and impact of sexual violence against children. We particularly welcome moves to remove the outdated and euphemistic term ‘carnal knowledge’, and references to ‘maintaining a sexual relationship with a child’.

We acknowledge that the relevant amendments in the Bill respond to advocacy by stakeholders including victim-survivors, and we thank the Queensland Government for listening and responding to their concerns. In the interests of ensuring that the most pressing concerns of victims and survivors are addressed now, we would support Clauses 8–17 and 25 of the Bill being passed, as interim measures.

Ultimately though, we would urge the Queensland Government to progress more substantial reforms in relation to the full range of child sexual offences in the Criminal Code as part of its response to the second report of the Women’s Safety and Justice Taskforce and ongoing actions under the Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027. Such reforms are needed to ensure there is genuine consistency between Queensland’s offences and those in other jurisdictions, and that Queensland’s offences are as effective as possible in responding to child sexual abuse.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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