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1st November 2022

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

LASC@parliament.qld.gov.au

Dear Sir/Madam,

RE: DOMESTIC AND FAMILY VIOLENCE (COMBATTING COERCIVE CONTROL) AND OTHER LEGISLATION AMENDMENT BILL 2022

We refer to your correspondence dated 18th October 2022 and thank you for providing an opportunity for QSAN to respond to the proposed legislation.

Generally, we agree with the proposed amendments relating to-:

- Amendments to the clarify the standing provisions in the sexual violence counselling privilege,
- Updating the stalking laws and including unlawful harassment, intimidation, and abuse.
- Changes to the *Domestic and Family Violence Protection Act 2012* to consider a pattern of abuse, only making cross orders in exceptional circumstances, provisions to assist the court to accurately identify and respond to the person in most need of protection, especially where there are cross applications;
- Evidence Act allowing for the admission of expert domestic and family violence (DFV) evidence in criminal matters.
- The ability to seek a criminal history and/or DFV history in DFV protection order proceedings.
- Protected witness provisions being extended to DFV.

Where appropriate, we do make some suggested amendments for improvement.

QSAN has significant concerns with amendments to the renaming of the child sexual offence provisions that we detail below.

Who are we?

The Queensland Sexual Assault Network (QSAN) is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslander's who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a "trauma-informed framework".

We are committed to engaging with government and other bodies to raise systemic issues of concern and to ensure the voices and experiences of our clients are considered in the formulation of policy and legislation that impacts on sexual violence victims in Queensland.
A large percentage of our work involves responding to intimate partner sexual violence and sexual violence as an aspect of DFV within family relationships, and we therefore well placed to provide a response on these issues.

Amendments to the Criminal Code – renaming sexual offences

QSAN agrees with the need to modernise and update sexual offence terminology but unfortunately, we do not agree with the amendments in the bill.

We note the Women's Safety and Justice Taskforce recommended the modernising of the language concerning the offences of maintaining and carnal knowledge (Recommendation 61, Report 2) but we note there was no consultation on the specific wording of these amendments.

The proposed amendment "*repeated sexual conduct with a child"*, though an improvement on the current offence (*maintaining a sexual relationship with a child*) does not fully reflect the seriousness of the offence against children over a period, sometimes years. We prefer the offence to be named, *persistent sexual abuse of a child,* which is:

- more reflective of the seriousness of the crime;
- additionally, and importantly is consistent with the wording of other states and territories such as NSW, ACT, Victoria, and Tasmania;
- is consistent with the advocacy of Grace Tame .

ACT looks to pass law inspired by Grace Tame's call for changes to definition of child sexual abuse - ABC News

We note an important part of Grace Tame's advocacy has been for a consistent approach be adopted across states and territories.

A failure to name an offence in a manner that appropriately reflects the seriousness of the offence can, unfortunately assist in protecting perpetrators.

We also hold significant concerns about renaming the carnal knowledge offence, *penile intercourse with a person*. Though these words are reflective of the offence, we are concerned about the impact of these very "graphic words" on the victim. The victim would be being continually subjected to these in any police and court proceedings, interactions and beyond.

We are aware that language is extremely important when communicating about issues as sensitive as child sexual abuse. There is concern about the potential impact on those who are charged with these crimes (which may be negative for victims). QSAN strongly recommends that evidence is sought from experts who work with child sexual offenders about any adverse consequences before deciding about these changes.

For all these reasons we prefer the term *penetrative sexual abuse*, which is a Tasmanian term. Penetrative sexual abuse also encompasses a wider range of abuse than just penile intercourse which, again, is more reflective of a victim's experience of rape.

In general, the child abuse provisions currently in the Queensland Criminal Code are quite limited, as compared to other jurisdictions, such as Victoria. We consider a full review of these offences should be undertaken to ensure they are reflective of modern understandings of the offence and the variety of circumstances that they can take place. We note the Taskforce has made a recommendation in Report 2, recommendation 42 that reflect this. At the time of writing, the Government has not responded to the Women's Safety and Justice Taskforce, Report 2.

Recommendation 1

That Queensland adopt the offence 'persistent sexual abuse of a child' rather than the suggested 'repeated sexual conduct with a child', which is inconsistent with other states and territories, the wording preferred in the national advocacy by Grace Tame.

Recommendation 2

That Queensland adopt the terminology penetrative sexual abuse of a child instead of the suggested penile intercourse with a person when renaming the carnal knowledge offence.

Recommendation 3

That to assist the committee in its decision-making on renaming the offence "penile intercourse", specific evidence should be sought from experts who work with child sex offenders to determine if there are any adverse impacts for victims in renaming the offence in this way.

Recommendation 4

That the child sexual abuse offences in Queensland be reviewed to ensure they are reflective of modern understandings of child sexual abuse and the different contexts it occurs.

Similarly to the approach in Victoria, we also would recommend that Queensland's sexual offences are interpreted in the context of guiding principles.

In Victoria the guiding principles can be obtained here:

http://classic.austlii.edu.au/au/legis/vic/consol_act/ca195882/s37b.html

Recommendation 5

That Queensland develop guiding principles to aid the interpretation of all sexual offences in Queensland and to avoid the reliance on rape and child sexual abuse myths in decision making.

Amendments to the Domestic and Family Violence Protection Act 2012

We support the amendments to consider a pattern of behaviour, cross orders only being made in exceptional circumstances and the legislative guidance in determining the person in most need of protection. We acknowledge that the drafting has improved from previous drafts and has adopted suggestions from the SV and DFV sector.

Stalking

We agree with the proposed amendments to modernise and broaden the stalking offence to update the offence, particularly around technological abuse but also to extend the offence to intimidation, harassment, and abuse.

We believe the safety of victims would be enhanced if non-DFV victims were able to apply for a civil protection order (stalking intervention order) similarly to other States to ensure a range of protective options are available to all victims of the offence. (eg. dating, fixated/ obsessive).

Please see the case involving the murder of Celeste Manno in Melbourne, who was alleged to have been murdered by an obsessed co-worker that she had never dated and had never been in a relationship. Though this ended in tragedy, Ms Manno did have the ability to take out a civil protection order in Victoria where she resided.

Celeste Manno death leads to urgent review of stalking laws | 7NEWS

At the moment, in Queensland, the option of a civil protection order is only available to DFV victims who satisfy the relationship criteria of the Domestic and Family Violence Protection Act 2012. So, relationships outside this definition, including many dating relationships in Queensland, which may not satisfy this criteria are unable to obtain a protection order for stalking behaviour. Stalking victims who are not in DFV relationships (and can satisfy the relationship definition under the Act) are only able to apply for a protection order (or the like) after a person is charged with stalking.

It should be noted, it is very difficult to get a person charged with stalking because of the need to satisfy the criminal standard of proof.

Recommendation 6

That the stalking amendments make provision for non-DFV related stalking victims can apply for a civil protection order or a stalking intervention order.

We note the unlawful stalking offence currently requires the following elements to be satisfied:

Section 359 B "Unlawful stalking" *is conduct—*

(a) intentionally directed at a person (the ***"stalked person")****; and*

(b) engaged in on any 1 occasion if the conduct is ***protracted*** *or on more than 1 occasion.*

Given the extension of the provision to intimidation, abuse and harassment (but even in the case of stalking), consideration should be given to the issue of proving a one off event as 'protracted'.

This is especially the case as technology and the damage that can be done to victims, can be inflicted in a short period of time. For example, the uploading of an abusive or intimidatory image to a site might have widespread impact because of the ease in which information can now be shared in a very short period.

The Cambridge English Dictionary defines "protracted" *as lasting for a long time or longer than expected*.

Arguably a one-off abusive post that is shared multiple times *may not* satisfy the definition of protracted as it hasn't lasted for a long time. What if the abusive site or image was up for 24 hour or 48 hours with multiple site visits? Would this meet the definition of a long time as required by the definition of protracted? Arguably not.

Recommendation 7

That section 359B (b) be amended to include an additional term covering circumstances where a one off abusive, harassing or intimidatory act which may be short term in nature but highly damaging to the victim, is also covered by the stalking laws.

Evidence Act

We support the amendments to the Evidence Act to provide that a counselled person and a counsellor have standing to appear throughout sexual assault counselling privilege proceedings and for the admissibility of evidence of domestic violence experts in criminal proceedings.
In relation to the amendment 103Z (1) -General Directions about Domestic Violence we would suggest the wording be as consistent as possible with the DFV Protection Act definition and therefore include emotional abuse, verbal abuse, and intimidation and threats and the use of the term "economic abuse" rather than financial abuse

Recommendation 8

That Section 103Z (1) be amended to be as consistent as possible with the DFV Act and include reference to emotional abuse, verbal abuse, threats, and intimidation and use the term economic rather than financial abuse.

DFV jury directions and (Section 103CB) DFV evidence being able to be introduced and raised by defendant, the victim or another person connected with the proceedings

QSAN supports in principle jury directions relating to DFV (including sexual violence), however the system needs to ensure these are not misused by perpetrators. This may be possible as under the directions, DFV can be established by one incident (which may be a homicide). It would exacerbate injustice and grief for a family for the perpetrator to argue that they were the victim and for jury directions to be given in such circumstances. We understand that the directions were modelled on Western Australian directions and trust there was enough testing of them to ensure this does not occur. However, we note they were only introduced in WA relatively recently.
In principle we also support the introduction and use of general DFV evidence in criminal proceedings. However, the changes to the Evidence Act should be supported by training and expert guidance, to ensure these provisions do not allow for the promotion of harmful myths and stereotypes to be used in cases, especially to inappropriately mitigate and/or excuse perpetrator behaviour.

To support decision making, the appropriate use of evidence and the exercise of discretion we would recommend that the entire system (Queensland judicial officers, defence, ODPP and police) be provided accredited, expert training on DFV and sexual violence and coercive control dynamics, including the importance of a gendered analysis, trauma informed approaches and cultural understanding and impacts on Aboriginal and Torres Strait Islander people, CALD, disability and LGBTIQ people.

To ensure the system is ready, the start date relating to the broad introduction of DFV evidence in criminal proceedings be delayed allowing sufficient time for system's wide training to occur.
We would further recommend that the substantive changes are subject to an independent review in 3 years to ensure they are operating in practice and as intended.

Recommendation 9

That key players in the Queensland criminal justice system (the judiciary, ODPP, defence and police) are provided accredited, independent training on DFV and sexual violence and coercive control dynamics from a victim's perspective, including the importance of a gendered analysis, trauma informed approaches and cultural understanding and impacts on Aboriginal and Torres Strait Islander people, CALD, disability and LGBTIQ people to prepare the system for the introduction of DFV changes to the Evidence Act.

Recommendation 10

That the start date for changes to the Evidence Act that allow for the broad introduction of DFV evidence by defence, the victim or other interested parties in criminal proceedings be delayed until the training as outlined above has occurred to ensure the use of the provisions do not promote harmful myths and stereotypes and/or to inappropriately mitigate and/or excuse perpetrator behaviour.

Recommendation 11

That there is community wide training and awareness raising on understanding coercive control and targeted training and awareness raising that is developed with and by Aboriginal and Torres Strait Islander, CALD, disability and LGBTIQ communities.

Recommendation 12

That the substantive legal changes are subject to an independent review in 3 years after commencement to ensure they are operating as intended and increasing the safety and justice of victims of DFV (including sexual violence).

Expert Evidence

We support these changes and their immediate introduction.

Sexual violence and DFV practice experience should be broad enough to include practice expertise and expertise recognised by the SV and/or DFV sector.

Recommendation 13

That SV and DFV expertise be broad enough to include practice knowledge and/or acceptance in the SV and/or DFV community as experts.

If you require anything further, please do not hesitate to contact the Secretariat.

Kind Regards,

Angela Lynch,
Secretariat