

Justice and Other Legislation Amendment Bill 2023

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DVCONNECT

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SUBMISSION

LEGAL AFFAIRS AND SAFETY COMMITTEE
Justice And Other Legislation Amendment Bill 2023

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DVConnect receives funding from the Queensland Government

DVConnect respectfully acknowledges and celebrates the Traditional Owners/Custodians throughout Australia and pays its respects to Elders, children and young people of past, current and future generations. We are committed to helping anyone experiencing domestic, family and/or sexual violence. This includes the LGBTIQ+ community, people of all ethnicities, religions, ages, abilities and pets.

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About DVConnect

DVConnect provides several national and state responses to people who have experienced violence and offer support and pathways to safety and healing.

Queensland wide DVConnect provides:

Domestic, family and sexual violence response services:

- DVConnect Womensline
- DVConnect Mensline
- Sexual Assault Helpline
- Pets in Crisis
- Bella's Sanctuary

Victims of crime service

- VictimConnect

Nationally DVConnect provides in partnership with Telstra Health:

- National Sexual Assault, Domestic & Family Violence Counselling Service, 1800RESPECT – specialist counselling services

DVConnect's driving ethos is respect and safety, the right of people to live without violence, in the home or in the community. We are a not-for-profit organisation, with primary funding streams from Department of Justice and Attorney General, Office for Women and Violence Prevention (Qld); Department of Justice and Attorney General, Victim Assist Queensland (Qld) and Department of Social Services (Aust).

DVConnect was established in 1980 and is Queensland's state-wide crisis response service for domestic, family and sexual violence. DVConnect helps Queenslanders find pathways to safety 24 hours a day, 7 days per week. Annually, DVConnect takes in excess of 100,000 calls across all lines and provides crisis intervention across a number of key services. Womensline receives one call for help every five minutes (across a 24-hour period). Crisis support is provided in the form of emergency telephone support, emergency crisis accommodation placement and transport for families affected by abusive relationship, counselling for men, women and victims of sexual assault, education and support for men, community education, and care for pets of families experiencing domestic and family violence. DVConnect also operates Bella's Sanctuary a 5-unit medium-term accommodation residence that exists to provide women and children with a safe housing option after leaving a shelter/refuge.

DVConnect provides the specialist counselling response that underpins Australia's national sexual assault, domestic and family violence support service, 1800RESPECT. This service provides information, referral and counselling 24 hours a day, 7 days per week. DVConnect's 1800RESPECT services are delivered in partnership with Telstra Health.



VictimConnect is the state-wide response for victims of crime that fall under the *Victim Of Crime Assistance Act 2019* (Qld). VictimConnect provides a state-wide 24/7 helpline and multi-session counselling and case management support service. Delivering this service expands DVConnect's capability to now include those who experience violent and personal crime across Queensland.

DVConnect operates from an intersectional feminist framework, acknowledging that domestic family and sexual violence (DFSV) is gender-based violence. This gendered analysis is supported by research, evidence and data, and indicates that DFSV is most often perpetrated by men against women, and that perpetrators of this violence are fully responsible for their actions. This framework acknowledges and responds to the intersectional experience of DFSV.

While the experience of those impacted by violent and personal crime is more broad reaching than DFSV, we build upon our intersectional, trauma-informed expertise to offer recovery-based counselling and case management.

The clinical services provided by DVConnect are inclusive and trauma-informed. We are guided by the diverse voices of survivors and recognise our clients as the expert in their own lives. The abilities, strengths, goals and needs of people living with disability are respected, as are individuals from culturally and linguistically diverse backgrounds. DVConnect acknowledge that Aboriginal and Torres Strait Islander people know best what their communities need and want. Importantly, the intersectional approach of DVConnect considers and responds to how overlapping forms of discrimination may impact a client's experience of DFSV and other violent and personal crime.

Through operating multiple state-wide services DVConnect has unique insight into the experience of both violence and relevant services systems across Queensland. This combines with our national program which furthers our appreciation and practice-based evidence about geographic diversity and its impact on how DFSV and ability to access safer and supports.



Opening Statement

DVConnect would like to acknowledge the Queensland Parliament seeking submissions from the community when considering the adjustments proposed within the Justice and Other Legislation Amendment Bill 2023.

The administration of justice has significant interplay with the legal proceedings of violence at home and in the community, therefore it is important that feedback from the community and human services agencies is sought and considered.

DVConnect notes the broadness of this Bill. We acknowledge that some elements of the Bill scope outside of DVConnect's expertise, while others are well within our experience and practice expertise. This submission responds with comment only being made where we feel our input adds value.

Overall, DVConnect sees no significant issues in this Bill, although there are some areas for exploration and caution which are outlined below. For many of the amendments that we have commented on, DVConnect supports and applauds the Queensland Government for their progressive approach.

Of most significance, DVConnect supports the removal of restrictions in the Criminal Law (Sexual Offences) Act 1978 (CLSO Act) which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceeding.

DVConnect acknowledges limited exposure to how it is used and the impacts of preliminary disclosure and understands this is being well utilised in the Supreme Court. Given our limited knowledge, but also being highly cognisant of how systems abuse is used to perpetrate violence and abuse, we do hold concerns about this being extended to lower courts where it will be open to systems abuse including tracking of victim/survivors.

DVConnect supports changes to the obligations on Community Legal Centres (CLCs) for document retention and note the positive impact of reducing the impost on CLCs for storage and security. We also, more importantly, note the increased safety of client information that will occur by the destruction of aged documents. However, the inclusion of safeguards around seeking client instruction and assessing the relevance of retaining that document for longer, pending the nature and content of the document as being important and that guidance for these safeguards is provided.

DVConnect supports the proposed clarity of what is considered as assisting an unlawful termination to protect those that are offering financial, emotional or practical support to a pregnant person to ensure that support is not construed to be considered as explicitly party to an unlawful termination of a pregnancy.

DVConnect does support the recognition of unborn children, who have died, as victims in violent incidents. DVConnect supports this as being applied when both the pregnant person and the unborn child are killed, and in situations where the unborn



child is killed (not the pregnant person). However, DVConnect expresses extreme caution in how this may be considered if a pregnant person's own actions were to result in the death of an unborn child, and that a pregnant person cannot be charged with such an offence, regardless of how the death of an unborn child occurred.

If an unborn child is recognised as being able to be named in an indictment as proposed, DVConnect does support this recognition of foetal personhood being aligned across other relevant legislations.

Adult defendant protections

DVConnect strongly supports this amendment to remove restrictions in the Criminal Law (Sexual Offences) Act 1978 (CLSO Act) which prohibit identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceeding.

As highlighted by Hon. YM D'Ath (Redcliffe—ALP), Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence in her Explanatory Speech¹, this important amendment will remove protections from defendants for relevant sexual violence crimes that are not afforded to defendants of other major crimes.

These protections are in part due to historical mistrust of sexual violence reporting. Not only is it evident that this was implemented into our legal system based on false assumptions, but the ongoing application of such protections perpetuate rape myths and general community mistrust that victims of sexual violence make up complaints to damage reputations of defendants or to preserve their own reputation or regret. The most recent National Community Attitudes Survey² shows that 34% of respondents believe it is common for sexual assault accusations to be used as a way of getting back to men. Removing this protection adds support to the concept that victims must be believed.

This protection has also impeded the judicial process. The inability to name a defendant can mute the justice system's ability to identify other victim/survivors. Identifying defendants can enable other victim/survivors to feel confident to come forward with their experience of sexual violence as they are not alone and that the distress of reporting and the trauma of the justice process is worth it, as it ultimately helps others.

The final advantage is to shift the public facing burden of incidents from victim/survivors to offenders. Even if the victim/survivor is unnamed, this starts to turn the public attention to the role of people that use violence instead of those who experience it.

¹ Queensland Parliament (2023) Record of Proceedings, first session of the Fifty-Seventh Parliament, Thursday 25 May 2023, Hansard Accessed 21 June 2023 2023_05_25_WEEKLY (parliament.qld.gov.au) Pages 1665-1666

² Coumarelos, C., Weeks, N., Bernstein, S., Roberts, N., Honey, N., Minter, K., & Carlisle, E. (2023). Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Summary for Australia (Research report, 03/2023). ANROWS.



As the Women's Safety Justice Taskforce³ does outline, this amendment can only be effective if the identify of any victim/survivor can remain protected unless that person chooses to identify. Further that the considerations of the victim/survivors' views will be considered in choosing whether this defendants name can be suppressed.

Finally, the use of the sexual violence media guide as recommendation 84 in the second Women's safety and Justice Taskforce⁴ report remain critical in this process of ensuring safe and effective reporting about sexual violence matters.

Expansion of the use of preliminary disclosure

As highlighted in the Opening Statement, DVConnect recognises it has limited exposure or expertise in the use of preliminary disclosure or similar legal processes in Queensland and other jurisdictions.

However, DVConnect has extensive expertise and experience in how people who use violence manipulate and use systems to perpetrate violence and abuse. This manipulation can occur through various means, such as using the court system as a tool for continued control, exacerbating the trauma experienced by the victim, and strategically prolonging legal proceedings.

Recent Australian articles shed light on how some male perpetrators navigate the legal system to perpetuate abuse⁵⁶. A study conducted by the Australian National Research Organisation for Women's Safety (ANROWS)⁷ found that abusive partners may use the Family Law Courts to prolong litigation, creating a sense of ongoing insecurity and distress for their victims. This can involve repeatedly filing unfounded claims, making false accusations, or engaging in aggressive litigation tactics that drain the victim's emotional and financial resources. By doing so, perpetrators maintain power and control, further traumatising their partners and impeding their ability to move forward with their lives.

Expanding the use of preliminary disclosure to lower courts broadens both the number of people and the type of cases that can seek to access information about the other party before court proceedings. It also expands the number of judges and magistrates who will be assessing the appropriateness of preliminary disclosure. This culminates in an environment that may be prone to exploitation by perpetrators.

DVConnect does support a more efficient, fair and transparent judicial process, which preliminary disclosure promotes. This is because fair and transparent judicial processes can both improve a victim/survivor's experience of the system it can also

³ Women's Safety and Justice Taskforce (2022) Hear her voice. Women and girls' experiences across the criminal justice system. Report Two. Volume 1. Accessed 21 June 2023 WSJT Discussion Paper 2 ([womenstaskforce.qld.gov.au](https://www.womenstaskforce.qld.gov.au))

⁴ Women's Safety and Justice Taskforce (2022) Hear her voice. Women and girls' experiences across the criminal justice system. Report Two. Volume 1. Accessed 21 June 2023 WSJT Discussion Paper 2 ([womenstaskforce.qld.gov.au](https://www.womenstaskforce.qld.gov.au))

⁵ Nancarrow, H., Thomas, K., Ringland, V., & Modini, T. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law (Research report, 23/2020). Sydney: ANROWS.

⁶ Douglas, H. (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18(1), 84–99. <https://doi.org/10.1177/1748895817728380>

⁷ Carson, R., Kaspiew, R., Qu, L., De Maio, J., Rhoades, H., Stevens, E., Horsfall, B., Press, L., & Dimopoulos, G. (2022). Compliance with and enforcement of family law parenting orders: Final report (Research report, 20/2022). ANROWS



expedite proceedings, which again has positive impacts for victim/survivors. However, a poorly applied preliminary disclosure may expose victim/survivors of domestic and family violence to excessive or irrelevant requests for disclosure by perpetrators manipulating the system.

In this matter DVConnect does defer to our more learned colleagues in the legal profession, particularly those such as Women's Legal Services Queensland, who have greater understanding of such processes and how they may impact on highly vulnerable people.

As a minimum, DVConnect ask that the Government implement education and supports to recognise and address these manipulative tactics within the legal system to ensuring the safety and well-being of victim/survivors. This should involve specialised training for judges, lawyers, and other professionals in the justice and legal systems to identify signs of abuse, implementing protective measures to prevent further harm, and prioritizing the safety of survivors and their children during legal proceedings.

Retention of records for CLCs

DVConnect does support the ability of Community Legal Centres (CLCs) to destroy client records without client consent for two key reasons. Firstly, to reduce the resource burden on this stretched, vital community legal support. Secondly, to reduce the risk of personal information and documents being illegally accessed. While all due care can be taken, recent large-scale events have shown the sophistication of criminals to access and hold to ransom critical, personal information and has brought to light the cost benefit of holding document beyond a helpful lifespan.

DVConnect supports the period of seven years as being the proposed timeframe, as this aligns to the requirement of many current community support and not-for-profit services. However, DVConnect does strongly support the obligation of the CLC to seek client direction on the retention of records, and the obligation to reasonably act in trying to locate a client, and in the absence of being able to locate a client, to assess the nature and content of the documents as to whether it is prudent to destroy or retain these records.

DVConnect would like guidance or direction to be applied to CLCs in fulfilling this obligation where any of the following considerations exist:

- Clients with vulnerabilities
- the assessed likelihood and capacity of that client to have retained relevant records themselves (transience, safety and security of the home, capacity)
- Matters where children are involved who are not yet 18, where further applications regarding their care and wellbeing may intersect with current records being considered for destruction

DVConnect would also like CLCs to be obliged to continue to retain records if, upon contact, the client wishes for the CLC to continue to retain their records for a further agreed period of time upon which the full process needs to be completed again.



DVConnect sees this as critical as many victim/survivors who access CLCs for legal support do so at times of high stress, vulnerability and upheaval. Victim/survivors journeys to recovery are often complex and drawn out, meaning, that despite a CLC being able to support with legal guidance at one point, it is highly possible that a victim/survivor may require similar support at a later date, possibly more than seven years past last contact. The imposed transience and upheaval, combined with the lack of safety at home, can make it impossible for a victim/survivor to retain their own records, at times not having access to the most basic of personal documents such as identification. The onus on CLCs to continue to retain documents beyond seven years may greatly support a victim/survivor when faced again, with a complex and potentially life-threatening situation when ready access to legal documentation may support safety and autonomy.

Assisting an unlawful termination

Ability to access safe and lawful abortion is a fundamental human right of a person who is able to get pregnant. Legislation surrounding the criminalisation of an unqualified person who performs or assists in a termination is in place to protect the medical safety of abortions. DVConnect supports legislative clarity about what is considered as “assisting” for the purposes of criminal responsibility. Considering and accessing abortion can be a distressing and complicated time for a pregnant person. The ability to call upon formal and informal financial, emotional or practical supports to guide and help a person during this period is crucial without risk of these supports being construed to be considered as explicitly party to an unlawful termination of a pregnancy.

Foetal Personhood

DVConnect agrees that the loss of an unborn child due to a criminal act deserves recognition and validation as an extremely personal and distressing event. The inclusion of this being able to be recognised in the criminal code and as an aggravating factor in sentencing, with discretion, is supported by DVConnect.

While DVConnect recognises Hon. YM D’Ath (Redcliffe—ALP), Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, statements in Parliament⁸, the intent of legislative amendments being in line with our below concerns, these concerns are of such serious importance to our work and the people we work with, we wish to expressly note them here. DVConnect expresses caution, and request that those more learned in the application of legislation in the judicial process consider these concerns at length.

The application of these proposed amendments cannot be made against the person who is carrying the unborn child. That is, no activity, criminal or otherwise, of the pregnant person which results in the death of the unborn child they are carrying

⁸ Queensland Parliament (2023) Record of Proceedings, first session of the Fifty-Seventh Parliament, Thursday 25 May 2023, Hansard Accessed 21 June 2023 2023_05_25_WEEKLY (parliament.qld.gov.au) Pages 1684-1685



cannot receive a charge that lists this unborn child, nor can this be considered an aggravating factor in sentencing.

Data shows significant high proportions of women who are incarcerated in Queensland have experienced DFSV, with many experiencing all three across their lifespan⁹. In many cases women have expressed that their use of violence was a direct result of self-defence, retaliatory violence or a trauma-based or coercively controlling response from their experience of DFSV¹⁰.

These women are already enduring a significant penalty as a direct result of systemic failures to support them in their experience of DFSV. If, in the event of carrying out a relevant criminal act where an unborn child they are carrying dies, and then that person experiences additional judicial consequence as a result, this is a further extension of the persecution they have experienced from current inadequate, societal responses to their experience of interpersonal violence.

This is even more relevant as we know the violence and risk of serious harm and death from DFV is increased during pregnancy. This, in turn, creates an environment where a victim/survivor may use violence to protect herself and her unborn child. It is in this circumstance, where this violence may result in the serious harm or death of a perpetrator and possibly her unborn child. For the death of that unborn child to be seen as a relevant and possibly aggravating factor in any judicial process would be unwarranted.

DVConnect also cautions, that this recognition of an unborn person, does not impede on a woman's ability to access safe termination. While current societal and legal temperament would not see such legislation being applied as such, there are concerns that the recognition of an unborn person in this way, may over time, be used to progress an anti-abortion sentiment in the future.

With regard to proposed amendments to the *Victims of Crime Assistance Act 2009*, DVConnect fully supports these proposed inclusions. However, it must be highlighted that this is the second proposed expansion to the *Victims of Crime Assistance Act 2009* in 2023. Given the victim assistance sector is already well beyond capacity, to ensure that these inclusions of criminal acts under the legislation can be adequately supported, funding needs to be considered.

VictimConnect, the state-wide helpline and support service that DVConnect provides, the primary "front door" for the community to the victim assistance support sector, already has a waitlist for its case management and counselling supports.

Consideration of how the victim support sector can be equipped to enable successful implementation of legislative reform must be prioritised for the amendments to fulfil their potential. DVConnect refers this Committee to the recommendations and details captured in the Inquiry into Support provided to Victims of Crime, Report No. 48,

⁹ Women's Safety and Justice Taskforce (2022) Hear her voice. Women and girls' experiences across the criminal justice system. Report Two. Volume 2. Accessed 21 June 2023 [Hear-her-voice-Report-2-Volume-2.pdf \(womenstaskforce.qld.gov.au\)](https://www.womenstaskforce.qld.gov.au)

¹⁰ Women's Safety and Justice Taskforce (2022) Hear her voice. Women and girls' experiences across the criminal justice system. Report Two. Volume 2. Accessed 21 June 2023 [Hear-her-voice-Report-2-Volume-2.pdf \(womenstaskforce.qld.gov.au\)](https://www.womenstaskforce.qld.gov.au)



57th Parliament Legal Affairs and Safety Committee May 2023¹¹ and requests that these two government actions are considered and implemented in a cohesive and responsible fashion.

Conclusion

As noted, this is a complex Bill with wide reaching amendments. DVConnect has only responded to those that are of most relevance to our areas of expertise. As outlined above, DVConnect does support the major elements of this Bill that we have commented on but stress the importance of noting some of our cautions and concerns.

Further, for areas where we have not made explicit comment, this is because we have no formal or relevant experience or expertise. In these areas we explicitly neither support nor express concern, and instead defer to our relevant community partners with greater insight to guide the Parliament.

We welcome any further exploration of our points and look forward to the careful progression of this Bill.

¹¹ Queensland Government. (2023). Report No. 48, 57th Parliament - Inquiry into Support provided to Victims of Crime 2023 Accessed 21 June 2023 Report No. 48, 57th Parliament - Inquiry into Support provided to Victims of Crime 2023