




Speech By
Jason Hunt

MEMBER FOR CALOUNDRA

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**CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND
OTHER LEGISLATION AMENDMENT BILL; CRIMINAL CODE AND OTHER
LEGISLATION (DOUBLE JEOPARDY EXCEPTION AND SUBSEQUENT
APPEALS) AMENDMENT BILL**

 **Mr HUNT** (Caloundra—ALP) (3.59 pm): I rise to make this contribution to the cognate debate on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill and the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023. As always, I thank my fellow committee members: the chair, Peter Russo, the member for Toohey; Ms Jonty Bush, the tireless member for Cooper; Mr Steve Andrew, the member for Mirani; the very welcome and recently joined Mark Boothman, the member for Theodore; and Mr Jon Krause, the member for the Scenic Rim. As always, the secretariat supporting the committee have been absolutely outstanding and I thank them for their tireless work on our behalf.

With respect to this very important issue of coercive control, the committee has combined the work of several inquiries and added its own work to the subject. The other inquiries included the *Hear her voice* reports and the Women's Safety and Justice Taskforce, the Commission of Inquiry into Queensland Police Service and the Royal Commission into Institutional Responses to Child Sexual Abuse.

On that basis, the committee has made a number of recommendations, which include that: the bill be passed; the Queensland government, in collaboration with the Department of Justice and Attorney-General, the Department of Education, the Queensland Police Service, Queensland Health, peak bodies from the domestic and family violence and sexual violence support sector and First Nations and multicultural organisations, develop and implement an education campaign that includes material that is age appropriate, culturally sensitive and suitable for persons with impaired capacity to support the proposed reforms—this campaign should increase awareness about the abusive nature and legal implications of technology facilitated abuse and develop resources for online safety and digital literacy; and the Queensland government will review the operation of the Criminal Code Act 1899 provisions relating to consent and the transmission of serious diseases to ensure they capture an appropriate range of diseases and consider amending the bill to remove the provisions relating to the transmission of serious disease pending the outcome of that review.

The committee also recommends that the Queensland government conduct a review of the perpetrator diversion scheme within 24 months of the scheme's implementation. The review should involve consultation and input with the Aboriginal and Torres Strait Islander community, peak bodies within the domestic and family violence and sexual violence support sector and the Queensland Police Service and courts. To take one example of what the bill proposes, in practice it will amend the existing consent framework in the Criminal Code to provide an affirmative model of consent implementing

recommendations 43 and 44 of *Hear her voice* report 2. According to the explanatory notes, the bill amends section 348 of the Criminal Code to define 'free and voluntary agreement' rather than 'given'. It also provides a new subsection to help in the understanding of affirmative consent stating—

- (2) A person may withdraw consent to an act at any time.
- (3) A person who does not offer physical or verbal resistance to an act is not, by reason only of that fact, to be taken to consent to the act.

Alarmingly, when I was explaining this change to some male members of my community, some small number expressed confusion that consent could be withdrawn at any time, and some went on to ask why. I pointed out that this is because human males are not farm animals and a higher standard of behaviour is to be expected of us than say, for example, a draft horse. Interestingly, when I explained some of the changes to many of the women in our local community groups, all of them understood and enthusiastically agreed with the need and the positive benefits of these changes. To be very clear about this issue of 'agreed' rather than 'given' consent, the bill provides examples of where there is no consent, including when—

- (a) the person does not say or do anything to communicate consent;
- (b) the person does not have the cognitive capacity to consent to the act;
- (c) the person is so affected by alcohol or another drug as to be incapable of consenting to the act;
- ...
- (e) the person is unconscious or asleep;
- (f) the person participates in the act because of force, a fear of force, harm ... that person or someone else or to an animal or property, regardless of—

whether that harm occurs—

- (g) the person participates in the act because of coercion, blackmail or intimidation ...
- ...
- (h) the person participates in the act because the person or another person is unlawfully confined, detained ...
- ...
- (j) the person participates in the act because of a false or fraudulent representation about the nature or purpose of the act ...

It is vital that the community and, in this instance the LNP in particular, understand the basic tenants of consent. Clandestine photographs of women in the workplace, for example, are not okay.

The bill proposes to amend the Criminal Code by establishing the criminal offence of coercive control. The offence applies when a person commits domestic violence against a person they are in a relationship with on one or more occasion, with the intention of coercing or controlling that person and the conduct would be reasonably likely to cause that person harm. The bill uses definitions of domestic violence, economic abuse, emotional or psychological abuse and related terms that are broadly consistent with that contained in the Domestic and Family Violence Prevention Act. The bill, where appropriate, modifies those definitions to ensure they reflect the breadth of coercive control behaviour. The bill provides that it is immaterial whether the domestic violence was directed at another person or the property of another person—this is intended to capture behaviour which seeks to coerce or control a victim by impacting or threatening a child, a family member or another person or their property—and the conduct actually caused harm to the other person or whether the person was aware of the unauthorised or unreasonable surveillance or economic abuse at the time of the course of the conduct.

It is very clear that the great majority of submitters were supportive of including the new offence of coercive control into the Criminal Code. That said, there was some dissenting opinion. The Australian Lawyers Alliance was concerned that the criminalisation of coercive control is an ineffective way of educating communities on an issue that is entrenched in social and cultural attitudes. Perhaps the most interesting was the concern raised by the submission of Dr Goldsworthy and Dr Raj of the Queensland Council for Civil Liberties. They note—

It is somewhat at odds with general principles of crime and punishment to create an offence which carries a maximum penalty of 14 years' imprisonment where, conceivably, no injury, harm, or, indeed, awareness by the victim of any acts by the accused, have occurred.

I believe that both of these concerns are missing the central threat that is posed by the phenomena of coercive control. It is abuse, it is extremely dangerous and it is all too frequently a precursor to violence and in some cases death.

Further clarity was provided by the department. DJAG referred to the taskforce consideration 'that the focus of the offence should be on the behaviour of the perpetrator, as opposed to the impact of the victim'. DJAG also referred to the taskforce recommendation that 'there should be no requirement to prove that the victim was actually caused harm' and suggested that the legislation should make it clear that the prosecution only needs to prove that the course of the conduct would be of a nature that was likely to cause the victim to suffer harm reasonably arising in all circumstances.

Moving now briefly to the double jeopardy exception and its subsequent appeals bill. The committee has made only one recommendation—that is, simply, that the bill be passed. The objectives of the bill are to enhance criminal justice system responses to possible wrongful convictions and unjust acquittals by establishing a statutory framework to allow a person who is convicted on indictment of a summary offence under section 651 of the Criminal Code to make, with the leave of the Court of Appeal, a subsequent appeal against the conviction and expanding the fresh and compelling evidence of double jeopardy exception to 10 prescribed offences in addition to murder. The bill provides that a person may make a subsequent appeal against the conviction on the grounds that there is fresh and compelling evidence, or new and compelling evidence.

To touch briefly on one submission, the Queensland Law Society stated its support for 'another legislative pathway for a defendant who has already unsuccessfully appealed to the Court of Appeal but then come into possession of further evidence'. However, the Queensland Law Society also indicated that there is a risk of enlarging appeal rights which may lead to 'endless attempts by often self-represented prisoners to claim that they have found new and compelling evidence'. DJAG noted regarding the risk of large numbers of self-representing litigants that the bill adequately addresses these concerns by having appeals only occur with the leave of the Court of Appeal.

Both of these bills unquestionably strengthen our legal framework and make Queensland safer. As such, I commend them to the House.