




Speech By
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MEMBER FOR CURRUMBIN

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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**

 **Mrs GERBER** (Currumbin—LNP) (4.24 pm): Four years ago our state and our country were shocked and horrified by the tragic deaths of Hannah Clarke and her three beautiful children. To see these four lives taken by a controlling and manipulative husband and father was deeply disturbing. The images of Hannah and her children smiling and happy before their lives were horrifically cut short will be etched into the memories of so many Queenslanders. I pay tribute to the work of Sue and Lloyd Clarke and all victims of crime who show tremendous courage and strength to harness their grief and trauma and speak up for change in the hope that it will prevent another family from going through the devastation they are suffering through.

The Clarkes are not alone in their fight against domestic violence. Many have come before them and, sadly, many have come after them, because the truth is Queensland has a longstanding issue with domestic and family violence. One only has to look at the statistics of people breaching domestic violence protection orders to see the prevalence of domestic violence in our communities. In 2015 there were 19,299 breaches. Fast forward nine years, in 2023 that has risen by almost 220 per cent—up to 61,622 breaches of domestic violence protection orders, and that is in the last decade alone. That is hundreds and thousands of breaches with hundreds and thousands of victims, because behind these statistics are real people with real stories of constant terror, manipulation and control. These are stories of women and children who have lost their lives to coercive control and others who have barely made it out alive. To put this into context, here is what one victim-survivor said to the committee—

Coercive control harms women in multi faceted ways that are not overtly apparent to the onlooker. I cannot show you a black eye or a broken arm because I don't have one. I cannot show you intimate injuries because these are on the inside of my body. I cannot show you the ways in which this man harangued me for hours in my own bedroom, blockaded me in my own home, and refused to leave my property because I was too intimidated to call the police at the time. I cannot show you how this man raged at me in my own bedroom for hours on end ... But it is real and it happened. I cannot show you the welt on my backside from the time he picked up a rod of dowel in my home and hit me with it 'as a joke', then told me I am 'overly sensitive' and can't take a joke. That welt has gone now, but the memories have not. What I can do is attest to the fact that this man's behaviour towards women follows a pattern, and is pathological in nature. I can attest to the fact that he has treated other women like this and will likely go on to harm other women in exactly the same ways, well into the future. No one will believe those women either, or support them, or hear their evidence ... because of the very fact that his behaviour is coercive, calculated, careful and manipulative.

To this brave woman and to all of the victims who have told their story to the committee, we are listening to you, we believe you and we want to see action on this and we will support you.

The LNP supports making coercive control an offence and we have long since advocated for this legislation to make this kind of manipulation and control an offence. In fact, it is my view that it has taken this government far too long to act. In May 2020 we on this side of the House introduced a bill to establish a new coercive control offence, but the Labor government refused to debate it. This

government had the opportunity back in 2020 to make these changes and failed to act, and now we have this bill before the House. This government has once again failed to follow the recommendation of the taskforce in relation to consultation on this bill. Recommendation 78 of the first *Hear her voice* report sought that a consultation draft on the bill be open for a period of at least three months before it is introduced to parliament. Guess how long the consultation period for this bill was open? Just 14 days.

Not only did this government fail to act when it should have; it rushed consultation on the bill. No doubt we will hear the minister crow about lengthy consultation prior to the bill being released, but that is not the same as consulting on the bill. It should have been open for a consultation period of three months as was recommended by the Women's Safety and Justice Taskforce, but instead this third-term government only gave it 14 days. Whilst supportive of the intention of the bill, many submitters expressed concerns about the rushed nature of that time for them to get their submission in and concerns with the technical drafting of the bill. The Queensland Law Society expressed concern that the offence provision does not require particularisation of specific intent at the time of each act alleged to constitute the course of conduct which is coercive control. The QLS called for the offence to be redrafted having proper regard to the conventions of drafting, the need for certainty and core human rights principles.

Legal Aid Queensland expressed a similar concern in relation to the lack of particularisation necessary to establish the offence. To that end, the taskforce recommended that the offence be modelled off Scotland, which Professor Evan Stark referred to as a new gold standard for criminalising coercive control. The Scottish model maintains some particularisation of intent in the offence provision. In my view, to depart from what has been recommended is risky and I am concerned that this could have unintended consequences.

Significantly, the bill also introduces an affirmative consent model. The fantastic women who operate services to support this model are using every cent of funding they have. They are on their knees asking the government for more. They are sick and tired of review after review and outcomes that do not actually change anything. What these fantastic advocates need is more support and funding that will actually make a difference in the lives of the women they help. Yes, our criminal justice system needs significant reform, but great care needs to be taken to avoid unintended consequences. Some stakeholders have expressed fear that the proposed model introduces uncertainty into a well-established part of the law and could lead to cases being taken to the High Court and potentially less justice found for victims of rape.

Finally, I want to deal with the changes to the Youth Justice Act contained in this bill. The bill amends the sentencing principles for when a court is sentencing an Aboriginal and Torres Strait Islander child for an offence. When sentencing an Aboriginal and Torres Strait Islander youth, the bill proposes to amend the sentencing considerations in the Penalties and Sentences Act and the Youth Justice Act which require sentencing courts to consider the hardship of a sentence on the offender having regard to characteristics such as age, sex, gender identity, disability, parental state or religion. Given there are already provisions in the Youth Justice Act to take into account the personal history of an offender, this proposed clause seems like an overreach and unnecessary to include. Further, when the High Court was considering a similar provision they made the point that such provision might be discriminatory because it might contravene the principle of individualised justice by establishing a sentencing consideration based on race. As the shadow Attorney-General mentioned in his contribution, the LNP will address this in further detail in consideration in detail.

I also want to address the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023, which is the double jeopardy bill being debated in cognate with the coercive control bill. Let's face it, the double jeopardy bill is before this House because of the Labor government's catastrophic failures in the management of Queensland's forensic services lab. This could turn out to be the greatest case of government maladministration in living memory. These laws are before this parliament because murderers and rapists could be walking free as a result of the state government's failure in the DNA lab.

The law as it stands is that a person convicted of a crime can only appeal their conviction once, with the exception of murder trials, where there is fresh and compelling evidence against the person and it is in the interests of justice. This bill proposes there be no limit on the number of subsequent appeals a convicted person can make, pending leave of the Court of Appeal, for an additional 10 new offences. This will apply retrospectively. These are drastic changes that go against the fundamental principle of double jeopardy. This is the extraordinary length this state government has gone to to cover up its failures in the DNA lab—the extraordinary length it is having to go to to overcome the devastating repercussions that we might see in relation to the forensic lab failures. These are significant shifts in the core doctrine of double jeopardy, illustrating the extreme measures the government is forced to go to to mitigate the consequences that stem from its DNA lab failures.

We do not even know how many victims of this government's stuff-up there are. The last update was that there are 103,000 samples and 37,000 cases probably up for retesting. That is 37,000 victims of the government's monumental failure. Because of this we have coronial investigations being delayed and we have bodies of loved ones unable to be identified. That is 37,000 cases possibly up for retesting as a result of this government's catastrophic failure when it comes to the state-run DNA lab. This legislation is an attempt by the state Labor government to cover up its failures and is indicative of a government not fit to govern. The Labor governments talk about women's security, but women are not safe under this government. An LNP government will prioritise fixing Queensland's forensic lab and give these victims back their voice.