Speech By

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MEMBER FOR MAIWAR

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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 BERKMAN (Maiwar—Grn) (6.46 pm): I rise to make my contribution on this cognate debate, but in the time available I will limit my comments to the coercive control and affirmative consent legislation. For years victim-survivors have struggled for the law to recognise even the most basic forms that family, domestic and sexual violence take and the harms they cause. They have struggled for politicians to listen to reason. In many cases victim-survivors have struggled just to stay alive to be here to tell their stories. How do we prevent these harms? When we, as policymakers and legislators, fail to do so, how do we respond? This bill is an imperfect and incomplete answer, but it is timely. There is much in this legislation which is well overdue and which I am proud to have played a small part in fighting for.

In 2021 the Greens were incredibly fortunate to work with RASARA, Rape and Sexual Assault Research and Advocacy, on amendments to the Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020. Those amendments, which both Labor and the LNP voted against at the time, would have introduced an affirmative model of consent into Queensland law. That was nearly three years ago. Tasmania introduced affirmative consent laws in 2004. Victoria, New South Wales and the ACT brought in affirmative consent laws in 2022. The government's decision to abandon affirmative consent in 2021 was completely out of step with contemporary expectations about sexual consent.

While this bill enshrines consent as a voluntary and free agreement between participants of an act, absent from the new legal framework is the understanding that affirmative consent is also necessarily informed consent because, if a participant wilfully and intentionally withholds or is deliberately dishonest with information that is plainly material to the other person's decision to consent, there can be no consent. Nonetheless, these laws are a big step in recognising a more functional, sex-positive and safe definition of consent which better reflects the community's understanding of consensual sex and which better understands how rape is perpetrated. To every person who has fought for these changes, to the many advocates and victim-survivors: thank you and congratulations on seeing this reform through.

This bill also introduces a standalone offence of coercive control. Coercive control is not always visible from the outside. It may not even be fully apparent to its victims until its pattern of abuse and coercion is fully established. At that point it may have become enormously difficult to escape or seek protection or recourse. The individual acts that make up a pattern of control do not necessarily amount to individual offences and they can be difficult to prove, especially when the claimant is subject to the ongoing harms of the relationship. Creating any new offence—expanding the scope of possible

criminalisation—is a big deal. It is a move that requires very careful consideration; however, legislating a new offence to recognise coercive control has the potential to provide potentially life-saving recourse for victims of domestic violence.

The Greens will be supporting a standalone offence of coercive control in order to afford victim-survivors the chance for recognition and recourse they have asked for and which they desperately deserve. In doing so, I would like to highlight the concerns of many organisations that have highlighted the issues associated with increased criminalisation, misidentification of victims and perpetrators, and the fact that without investment in support and services these laws cannot be expected to work.

The Australian Lawyers Alliance is 'opposed to a carceral solution as the most appropriate option to deal with this social issue'. The Queensland Indigenous Family Violence Legal Service writes, 'We have concerns about misidentification of female victim-survivors borne out of our experience providing assistance.' The Greens reaffirm our commitment to a more nuanced policy to prevent family violence. We echo the concerns of the Queensland Sexual Assault Network, the Queensland Mental Health Commission, the Gold Coast Centre Against Sexual Violence, Full Stop Australia, Legal Aid Queensland, the Queensland Human Rights Commission, the Aboriginal and Torres Strait Islander Legal Service, Sisters Inside and many more. These organisations and experts know that these laws are not a silver bullet and that without additional investment in other areas they will not work.

In the UK, a review of similar laws found no evidence that criminalising coercive control reduced rates of domestic violence. Less than 10 per cent of police investigations into alleged coercive control in the UK resulted in a charge, and less than five per cent resulted in a prosecution. We cannot simply handcuff our way out of domestic violence. We need to encourage broader investment in tackling the root causes of crime such as social disconnection, poverty, housing insecurity and addiction. We need investment in supporting victim-survivors to recover from violence, and we demand investment in programs and counselling that potential perpetrators can go to for help before their conduct meets the threshold of police intervention.

We know that putting sole responsibility for responding to domestic violence onto the police does not work. The recent inquiry into police responses to domestic and family violence highlighted how ill-equipped the police are to respond to domestic violence, citing instances of acute misconduct as well as systemic and cultural failures. In one instance an unnamed officer thought it appropriate to access the details of a domestic violence complainant, travel to her place of work, question her and then demand a massage. In another high-profile case of egregious misconduct, Senior Constable Neil Punchard deliberately leaked the details of a domestic violence victim to her abusive ex-partner. CCTV evidence of the victim's abuse was taped over and the victim was told by another officer not to waste their time. In the words of the victim, 'officers minimised domestic violence' and left her with 'no faith that the Queensland police could protect her'.

The problem is far bigger than just these individual officers. A study of coronial files compiled over a decade found that almost a third of Aboriginal and Torres Strait Islander women killed in domestic violence had been previously identified by police as perpetrators. The same study also found that police responses to domestic violence frequently contributed to the deterioration of familial relationships and worsening domestic violence within the family unit, even where police acted in accordance with training and policy. Without alternatives to police intervention we risk overburdening the police with a problem they cannot solve and where police involvement frequently destabilises and exacerbates already unsafe and violent circumstances. We risk Aboriginal and Torres Strait Islander people as well as poor, ethnic and disadvantaged communities being policed in a way that entrenches criminogenic disadvantage, because that is exactly what has been happening in this country for over 200 years.

In November we wrote to the Attorney-General to suggest that she adopt very minor, straightforward amendments to the bill that would require the minister to review what effect the laws have had on the community in three years time, which is similar to the review done in the UK. The amendments would also require particular attention to be paid to how these laws are being policed in First Nations and multicultural communities. In the absence of the member for South Brisbane, and given that the amendments are outside the long title of the bill, I will not be moving these in consideration in detail, but I will table them now so that they are at the very least on the public record. I again ask the Attorney-General to accept these amendments so that we can know if these laws work and if not why not.

Tabled paper: Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, amendments to be moved by Dr Amy MacMahon MP 294.

The bill also contains some welcome nods towards evidence-based approaches to criminal justice. There is a new requirement for courts to consider the impact that failing to grant bail to a defendant would have on that defendant's children if the defendant were, for example, a single mother. This purports to keep the family unit intact during a prosecution. Concessions like this do not mean much in a vacuum without housing and other social supports. Without jobs that pay more than the minimum wage and without properly funded schools, people are going to fall through the cracks and into criminal offending.

The bill sets out rehabilitation programs as an alternative to prosecution for first-time breaches of DVOs. We know that prison makes people more likely to reoffend, not less likely, so the provision for these programs is welcomed, but the provisions are worthless unless the relevant programs are fully and consistently funded. There is also the near total absence of support for families prior to escalating the situation with police. Right now a mother cannot get help for a violent son without risking his arrest. Labor wants another two prisons to lock up children as young as 10 years old. We already have the highest rate of youth incarceration in the country. Surely it is clear that if locking kids up worked then crime rates would be falling. Labor and the LNP's approach to justice is to ask, 'How do we punish every crime? How do we fund enough cops and prisons to do so?' But the question we must ask ourselves is, 'What are the conditions that produce crime in the first place and how do we address them?'