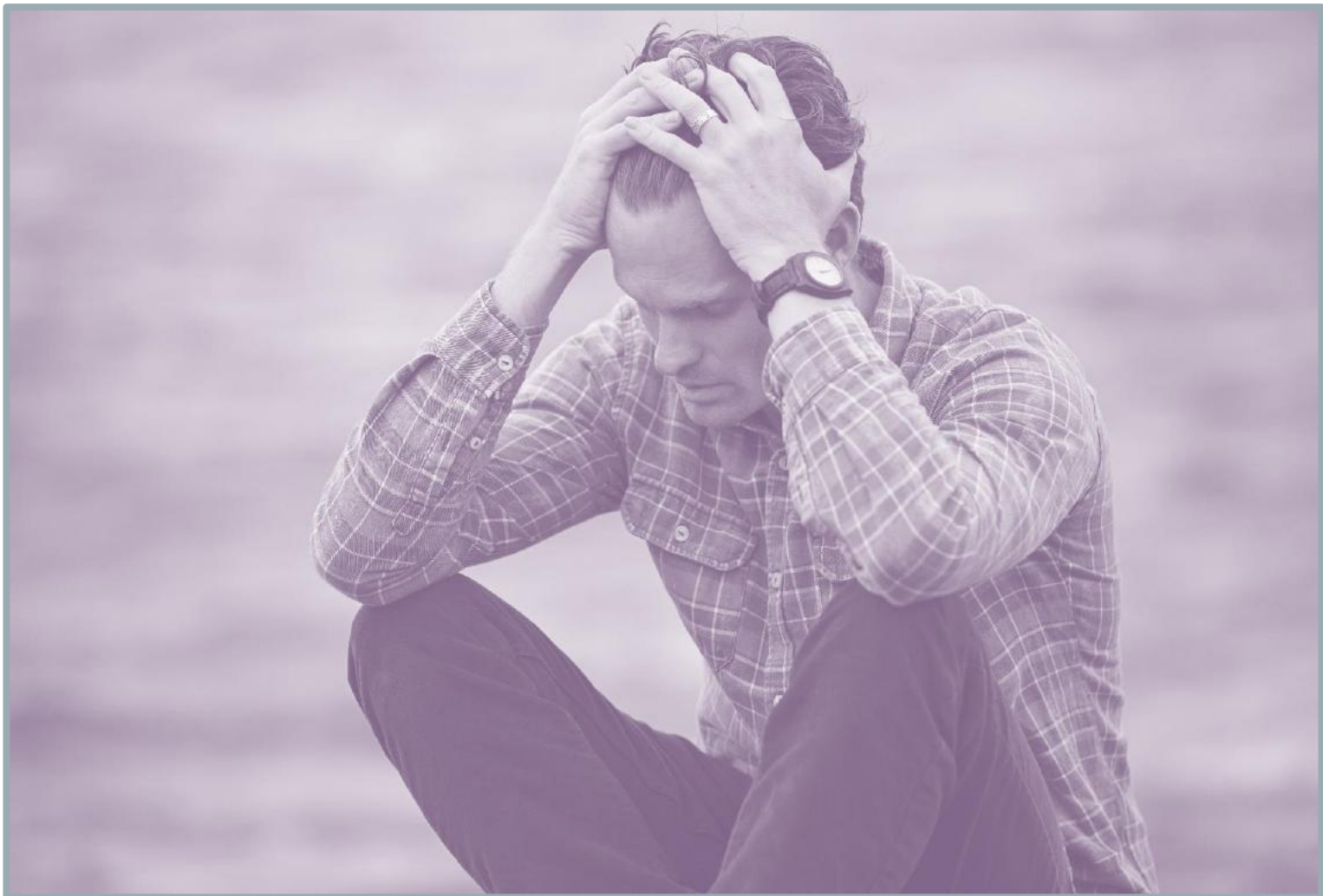


# No to Violence feedback

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*Queensland Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023*



## Acknowledgment of Country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present, and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land.



Contact NTV:

Please forward inquiries about this paper to No to Violence:

Email: [policyandresearch@ntv.org.au](mailto:policyandresearch@ntv.org.au)

Phone: 03 9487 4500

Men's Referral Service – for men concerned about their behaviour

1300 766 491

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# About No to Violence

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No to Violence (NTV) is Australia's largest national peak body representing organisations and individuals working with men to end family violence. We are guided by the values of accountability, gender equity, leadership, and change.

NTV provides support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. The work undertaken by specialist men's family violence services is diverse and includes but is not limited to Men's Behaviour Change Programs (MBCP), case management, individual counselling, policy development and advocacy, research and evaluation, training, workforce development and capability building.

NTV also provides a range of training for the specialist men's family violence workforce including a Graduate Certificate in partnership with Swinburne University, as well as professional development for workforces who come into contact, directly and indirectly, with men using family violence. NTV is a leading national voice and plays a central role in the development of evidence, policy, and advocacy to support the work of specialist men's family violence nationally.

## About Our Members

NTV represents over 160 members Australia-wide. Our membership structure is inclusive of individuals and organisations ranging from specialist services to individuals and others who have an interest in preventing and responding to men's family violence.

# Feedback

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## Introduction

NTV welcomes the opportunity to provide feedback on the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023. We support the introduction of coercive control and affirmative consent legislation and believe the Bill's amendments are an important step towards recognising the full experiences of family, domestic, and sexual violence. The Bill has the potential to be a catalyst to improve responses and services to keep women and children safe, and ensure perpetrators are held accountable for their use of violence.

## Implementation

While the criminalisation of coercive control and the shift to an affirmative consent model are needed for the law to better recognise family, domestic, and sexual violence, implementing the legislation by itself is unlikely to be effective. Research indicates that the effectiveness of introducing coercive control legislation is largely related to the quality of its implementation.<sup>1</sup> In the lead up to the ongoing

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<sup>1</sup> Barlow et al., 2020

Federal inquiry into current and proposed sexual consent laws, the Deputy Chair, Senator Nita Green outlined that the effectiveness of affirmative consent laws “depend on implementation and education.”<sup>2</sup>

Significant systemic reform, including a considered and exhaustive implementation strategy, is required to support the Bill’s proposed legislative changes. This reform should centre on increasing the capability and capacity of the sectors that respond to family, domestic, and sexual violence, including the police, criminal justice, and specialist family violence services (including perpetrator intervention services).

Police and judicial officers need to receive extensive training to understand, identify, and respond to coercive control, especially considering the Commission of Inquiry’s identification of gaps in police responses to family, domestic, and sexual violence.<sup>3</sup> Police and judicial officer training must cover the misidentification of the predominant aggressor, as perpetrators will exploit weaknesses in law enforcement and criminal justice responses in systems abuse that further harms victim-survivors. We reiterate our previous recommendation that an implementation taskforce should be established to oversee the introduction of coercive control offence.<sup>4</sup> Such a taskforce would be responsible for ensuring police, criminal justice, specialist family and sexual violence services (including perpetrator intervention services), universal services, and the broader community are prepared for the introduction of the legislation and can mitigate any unintended consequences that arise.

As the peak body for organisations and individuals working with men who use domestic and family violence, NTV is well-positioned to support the systemic reform needed to effectively implement coercive control legislation. We would welcome the opportunity to use our knowledge of the behaviours, tools and tactics applied by men who use violence to help develop and deliver police and judicial officer training. This expertise would also greatly benefit the implementation taskforce.

Specialised training for police and judicial officers on affirmative consent is required to shift the systemic structures that hold misconceptions about sexual violence in place. Training should emphasise the rationale behind the legislative change, highlighting that existing responses fail to deliver justice to sexual assault victim-survivors, with as many as 87% of women not reporting to police and even fewer going to court.<sup>5</sup> Training should ensure police and judicial officers have a strong understanding and capability to respond to stealthing, non-fatal strangulation, and the intersections of sexual violence and intimate partner violence.

The affirmative consent legislation needs to be accompanied by well-resourced, victim-centred public awareness and education campaigns that are rolled out in schools, universities, workplaces, and other institutions. People with lived experience of sexual violence should play a central role in developing the messaging of such campaigns.

Recognising that marginalised communities are disproportionately disadvantaged by the justice system, there needs to be ongoing consultation and specialised education about the coercive control and affirmative consent legislative changes for First Nations communities, culturally and linguistically diverse communities, and people with disabilities. Consultation should seek to understand how the reforms may specifically impact these communities, so that services can be tailored to mitigate the risk of disproportionate impacts such as overcriminalisation.

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<sup>2</sup> Giannini, 2020

<sup>3</sup> Commission of Inquiry into Queensland Police Service responses to domestic and family violence, 2022

<sup>4</sup> No to Violence, 2022

<sup>5</sup> Carter and McNamara, 2022

NTV does not support the court-based perpetrator diversion scheme as it is currently proposed. While we support pathways in addition to the criminal justice system for victim-survivors seeking justice and men being held accountable for their violent behaviour, we have significant concerns about the existing service infrastructure's capability to support the scheme. There is a lack of clarity around the approval, monitoring and exclusion processes for providers, and there is potential for collusion as couples counselling programs are not excluded.

The diversion scheme needs to be supported by increased funding for men's behaviour change programs to improve timely connection with a program, as well as specification of who is responsible for managing risk whilst men are waiting to complete a program. There is also risk that marginalised men, including First Nations, culturally and linguistically diverse, and neurodiverse men, are further disadvantaged because mainstream services may be inaccessible or unsuitable. The proposed scheme fails to consult victim-survivor perspectives, which should be central when considering the suitability of a diversion scheme.

### **Implementation recommendations:**

1. Ensure police and judicial officers receive training to understand, identify, and respond to coercive control, including on the risk of victim-survivors being misidentified as the predominant aggressor.
2. Establish an implementation taskforce to oversee the introduction of the coercive control offence that ensures police, criminal justice, specialist family and sexual violence services (including perpetrator intervention services), universal services, and the broader community are prepared and can mitigate any unintended consequences that arise.
3. Ensure police and judicial officers receive training on affirmative consent, including on stealthing, non-fatal strangulation, and the intersections of sexual violence and intimate partner violence.
4. Develop and deliver well-resourced, victim-centred affirmative consent public awareness and education campaigns for schools, universities, workplaces, and other institutions.
5. Ensure marginalised communities, including First Nations, culturally and linguistically diverse, and neurodiverse, are engaged in ongoing consultation and specialised education about the coercive control and affirmative consent legislative changes.
6. Remove the intent element of the coercive control legislation.
7. Consideration for the establishment of the court-based perpetrator diversion scheme will be contingent on the following:
  - (i) Require all approved providers of the perpetrator diversion scheme be accountable to the Queensland Perpetrator Intervention Services Requirements; clarify approval, monitoring and exclusion processes; and explicitly exclude couples counselling from approved programs.
  - (ii) Increase funding for men's behaviour change programs to support the perpetrator diversion scheme and specify who is responsible for managing risk whilst men are waiting to complete a program. Funding commitments should focus on increasing the accessibility and suitability of services for First Nations, culturally and linguistically diverse, and neurodiverse men.
  - (iii) Require eligibility determination for the perpetrator diversion scheme to include consultation with victim-survivors, legal services working with victim-survivors, and victim-survivors services as an addition rather than as an alternative sentence for serious offences or serious DVO breaches; with a robust risk assessment framework

in place and special consideration for eligibility provided to First Nations and culturally and linguistically diverse communities.

## Commencement

NTV supports the staged approach to commencing the amendments as considerable systemic reform is required to enable effective implementation of the legislation. We also support the proposed commencement dates; however, this is contingent on the actioning of our implementation recommendations. We stress the importance of promptly actioning these recommendations in recognition of the lag that can exist between funding commitments, training development and delivery, and operational development.

The next section provides feedback on specific sections of the draft Bill that were raised as issues in the Information Sheet.

## Specific feedback

Amendment	Section	Comments and/or changes requested	Rationale for amendment
Coercive control	Serious harm	Amend the Bill to provide a definition of 'serious' as it relates to serious harm and its impact on the victim-survivor.	The openness to interpretation around the definition and scope of serious harm has the potential to be weaponised by perpetrators in defence cases.
Coercive control	Penalty	Restorative justice and community court alternatives should be explored in addition to criminal justice responses to coercive control offences.	While carceral sentences provide an important avenue for reducing the immediate risk that perpetrators pose to victim-survivors, they should not be viewed as a panacea for coercive control. A binary system that relies solely on carceral sentences has limited potential to hold perpetrators accountable, as men that are not convicted of offences are less likely to be supported to engage in rehabilitation.
Coercive control	Intent	Do not support the inclusion of the intent element.	The intent element disadvantages victim-survivors by placing the burden on them to prove a perpetrator's intention. As it can be difficult to prove intent through evidence, this amendment will be weaponised by perpetrators and reinforce power imbalances in defence cases.
Coercive control	Application to children	Amend the Bill so that the coercive control offence only applies to adults.	The limits of children's agency mean they are at risk of being disproportionately impacted by unintentional consequences, including the misidentification of the predominant aggressor. Many children who use coercive control are victim-survivors of coercive control in their own right, and nuanced trauma-informed responses that do not rely on criminal charges are needed to support these children. The Queensland Police System's issues with racial discrimination also mean that First Nations and other racially marginalised children are disproportionately likely to be charged with coercive control offences.
Affirmative consent and mistake of fact		Expand Section 348AA to stipulate that intimate partner violence (IPV) and domestic and family violence be considered as circumstances of non-consent. The amendment should also specify that the intimidating or coercive behaviour in the	Affirmative consent legislation should recognise that intimate partner sexual violence is commonly used by perpetrators of domestic and family violence. In such cases, the relationship has come to be characterised by control of one party over another, and perpetrators'



		context of non-consent does not need to happen at the same time of the sexual offence.	attempts to seek and receive consent cannot be separated from the abusive nature of the relationship.
Affirmative consent and mistake of fact	Time	Amend the Bill to remove reference to 'within a reasonable time before or at the time of the act' - Section 348A(3).	References to time imply that consent is a discrete act, which undermines the intention of affirmative consent to recognise that sexual consent involves ongoing and mutual communication. 'Reasonable' is also ambiguous and this weakness in the legislation could be exploited to defend perpetrators of sexual violence.
Affirmative consent and mistake of fact	Definition of consent	Amend the Bill to remove reference to 'implied consent' - Section 348(2).	The use of implied consent undermines the concept of affirmative consent and has the potential to be exploited by perpetrators of sexual violence in defence cases.
Affirmative consent and mistake of fact	Fraudulent inducement	Support the explicit provision that fraudulent inducement extends to non-payment of a sex worker.	The consent of a sex worker to a sexual act is directly related to their occupation, of which payment is a critical element. As such, fraudulent inducement of payment prevents a sex worker from being able to provide full and informed consent to a sexual act.
Affirmative consent and mistake of fact	Fraudulent inducement	Support the explicit provision that fraudulent inducement extends to representations made about HIV status and/or other serious sexually transmitted infections/diseases.	Considering the gravity of potential negative health outcomes of sexually transmitted diseases, it is reasonable to expect that knowledge of their status would influence a person's decision to consent to a sexual act.
Stealthing		This amendment should be accompanied by well-resourced public awareness and education campaigns that are delivered in schools, universities, and other institutions.	Comprehensive and nuanced explanation of what stealthing is and appropriate responses is needed because there is limited public understanding of the concept and the offence.
Stealthing		This amendment should be accompanied by specialised training for police and criminal justice personnel on what stealthing is and appropriate trauma-informed responses.	Common rape and sexual assault myths will be magnified when responding to and attempting to prosecute stealthing, as this form of abuse generally occurs in private settings with little to no physical violence or tangible evidence beyond victim-survivor testimony.
Non-fatal strangulation		Amend Section 315A to require affirmative and enthusiastic consent to non-fatal strangulation (moving beyond the previous approach to consent: 'the victim does not consent'). The legislation should specify that consent to a sexual act is	Affirmative consent legislation provides an opportunity to shift the responsibility for obtaining consent to non-fatal strangulation to the accused individual. This will help remove ambiguity about whether non-fatal strangulation (in the context of a sexual act) is consensual. This also provides opportunity to educate the public about the safety of non-fatal

		voided if non-fatal strangulation is used without ongoing and enthusiastic consent.	strangulation and address common misconceptions that are reinforced through pornography.
Court-based perpetrator diversion scheme		Do not support the scheme as it is currently proposed.	Consideration for the establishment of the court-based perpetrator diversion scheme will be contingent on the following – see comments below.
Court-based perpetrator diversion scheme	Approved providers	Require all approved providers of the perpetrator diversion scheme be accountable to the Queensland Perpetrator Intervention Services Requirements.	There is a lack of clarity around the approval, monitoring and exclusion processes for providers, with some on the approved provider list not currently being held accountable to the Queensland Perpetrator Intervention Services Requirements.
Court-based perpetrator diversion scheme	Couples counselling	Explicitly exclude couples counselling from approved programs.	Couples counselling can enable collusion and there is no evidence to support it as an effective intervention for intimate partner violence.
Court-based perpetrator diversion scheme	Program funding	<p>The diversion scheme needs to be supported by increased funding for the perpetrator intervention service sector.</p> <p>Increased funding and support are particularly needed for services that work with First Nations, culturally and linguistically diverse, neurodiverse, and young men.</p>	<p>As noted in the draft Bill, the diversion scheme will be reliant on the availability of suitable and approved men’s behaviour change programs. However, men’s behaviour change programs often have long waitlists and difficulty recruiting and retaining staff. Significant and timely funding is needed to ensure these programs can increase their capacity and capability to effectively implement the diversion scheme, recognising the lag that exists between funding and operational development.</p> <p>The majority of men’s behaviour change programs deliver mainstream services which are often unsuitable for First Nations, culturally and linguistically diverse, neurodiverse, and young men. This further disadvantages marginalised men as it reduces the likelihood that they can access the diversion scheme. Currently there are no men’s behaviour change programs that deliver services to men younger than 18.</p>

Court-based perpetrator diversion scheme	Managing risk	The diversion scheme needs to specify who is responsible for managing risk while men are waiting to complete a program, and provide resources to support this supervision.	Failing to allocate and resource this responsibility risks the system losing sight of men who have used violence, which endangers the safety of women and children, and risks disengagement with behaviour change.
Court-based perpetrator diversion scheme	Eligibility and suitability	Recommend the requirement of consultation with victim-survivors, legal services working with victim-survivors, and victim-survivors services to determine eligibility. Eligibility should feature a robust risk assessment framework to ensure victim-survivor safety is paramount.  The scheme to be considered as an addition rather than as an alternative sentence for a serious offence or serious breach of the DVO.	Victim-survivor perspectives must be central to any decisions that are made about perpetrator diversion eligibility, as ensuring reparation is made the victim is one of the main purposes of diversion schemes. Support for the broader discretion is based on the belief that perpetrator diversion schemes can hold men who have contravened more than one DVO accountable, as these men are unlikely to have engaged in behaviour change or rehabilitation if they have not appeared before court for a family violence offence.
Court-based perpetrator diversion scheme	Eligibility and suitability	Amend the Bill to require special consideration to be given to the eligibility of marginalised communities, including First Nations and culturally and linguistically diverse communities.	Introduction of the diversion scheme provides an opportunity to reduce the overrepresentation of First Nations peoples in prisons and prioritise early intervention and diversion from the criminal justice system, which also disproportionately discriminates against culturally and linguistically diverse communities. <sup>6</sup>
Court-based perpetrator diversion scheme	Guilty plea	Support not requiring defendants to plead guilty to be eligible for diversion scheme.	The allure of a diversion scheme may incentivise falsely accused defendants to plead guilty, which increases the potential that a misidentified predominant aggressor receives a criminal conviction.
De-identified transcripts of proceedings for media		An aggrieved should always be given an opportunity to make submissions or a right to be heard, with Our Watch's National Reporting Guidelines used as a framework for ensuring safe reporting. <sup>7</sup>	Our Watch's Guidelines outline best practice for media reporting on domestic, family, and sexual violence cases. Following these guidelines, and ensuring an aggrieved can have their voice heard, reduces the risk that victim-survivors will be further harmed by media reporting.

<sup>6</sup> Lorana, 2011

<sup>7</sup> Our Watch, 2023

Jury directions for sexual violence		This amendment must be supported by specialised training on sexual violence for judicial officers.	The effectiveness of neutralising common misconceptions about sexual violence among juries will be heavily influenced by the language and tone of jury directions, as well as how well the concepts are understood. Specialised training is required to mitigate the risk that ungenune directions are provided that enable collusion, as judicial officers are not immune to holding common misconceptions about sexual violence.
Jury directions for sexual violence		Support that jury directions addressing misconceptions about sexual assault are provided at the earliest opportunity in the trial (and repeated at any time in the trial where the trial judge deems appropriate).	Research has indicated that directions given earlier in a trial could have more impact than those given at the end of the trial, and repeating jury directions may assist jurors to understand the directions. <sup>8</sup>
Jury directions for sexual violence		Add a subdivision addressing the relevant aspects of the National Principles to Address Coercive Control in Family and Domestic Violence in a direction on coercive control during sexual assault trials where there are circumstances of domestic violence or intimate partner violence.	This direction should help jurors better understand the impacts of coercive control and how it can relate to sexual violence.

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<sup>8</sup> Women’s Legal Service NSW, 2019

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