*04/08/22*

**David Mackie**

**Director-General, Department of Justice and Attorney-General**

**WSJ-Taskforce-Legislation@justice.qld.gov.au**

Dear Mr David Mackie,

Ending Violence Against Women Queensland (EVAWQ) would like to thank you for this opportunity to provide consultation for the *Domestic and Family Violence Protection (Combating Coercive Control) and other Legislation Amendment Bill 2022* (the Bill.) We appreciate the work that the Department of Justice and Attorney-General do for women and girls in Queensland.

The Bill has been drafted as a first step to implement the legislative amendments by the Women's Safety and Justice Taskforce (the taskforce) in the first report *Hear her Voice – Report One – Addressing coercive control and domestic and family violence in Queensland* (the report). Taking Queensland's first legislative steps towards criminalising coercive control. To ensure the effective implementation of this legislation and ultimately legislation criminalising coercive control it is essential this Bill and subsequent Bills are considered in approach and continue to reflect the experiences of victim-survivors and other priority groups in order to adequately respond and protect. There are a few areas of concern that EVAWQ and supporting organisations have identified in the operation and technical application the legislative amendments proposed by the Bill which may hinder its ultimate purpose.

A major concern held with the operation and/ or technical application across most amendment of the Bill and current legislation is without a more substantial increase in court guidance included and training for the justice system with a gendered analysis on the impacts of trauma and domestic, family and sexual violence (DFSV), the cultural nuances and experiences of priority groups any amendments will not effectively address the perpetrator of violence and protect those most vulnerable. The court room and the justice system will continue to be an opportunity for perpetrators to systemically abuse and control victim-survivors. An increase in court guidance and training based on the feedback, data and expert advice provided by the sector will ensure all professionals involved in the application of current legislation and any amendments is done so to achieve the intended purpose of ultimately criminalising coercive control, protecting the most vulnerable and improving community attitudes. Another method to ameliorate this is to expand the opportunities for appropriate expert evidence from professionals with a relevant experience and qualifications in the impacts of trauma, DFV, its gendered nature and cultural nuances.

## Specific changes to the amendments include:

**14 Amendment of s 590AH (Disclosure that must always be made),**

**EVAWQ is concerned of the unintended consequences in the application of this amendment.**

EVAWQ is concerned where a DFV victim (statistically and due to the gendered nature of DFSV more commonly a woman) may have been charged with a DV conviction from acting in self-defence or as a

consequence of coercive control and systems abuse that this could further perpetuate systems abuse for DFSV victims in practice as an unintended consequence.

It is vital that any legislation where disclosure of DFV history is required that court guidance is also provided to ensure the impacts of trauma and DFSV, a gendered analysis, the cultural nuances, and the prevalence of misidentification be considered.

**15 to 22, 24 and 25 Amendments changing 'carnal knowledge' to 'penile intercourse'**

**EVAWQ recommends in relation to child sex offences involving penetration, 'penile intercourse' be amended to *penetrative sexual abuse of a child***

EVAWQ welcomes the amendment of the colloquial phrasing 'carnal knowledge' to more accurate language such as 'penile intercourse.' However, in relation to child sex offences where consent is never an element EVAWQ recommends replacing 'carnal knowledge with a child' with ***penetrative sexual abuse of a child*** which addresses the same issue but provides wider scope. This aligns with terminology used by other states. It will also treat any unlawful penetrative sexual act using any part of a body or object with a child as the same indictable offence as penile intercourse with a child for the purposes of sentencing. Alternatively, Victorian legislation provides a more comprehensive example in Chapter 8B of sexual offences against children[1] that Queensland should model. It is also important to highlight in the terminology that consent is not an element and engaging in penile intercourse with a child is sexual abuse. Therefore, EVAWQ recommends the terminology in reference to child sex offences involving penetration be ***penetrative sexual abuse of a child*** instead of 'penile intercourse with a child.'

**23 Amendment of s 229B (Maintaining a sexual relationship with a child)**

**recommends this be replaced with *repeated sexual abuse of a child***

Whilst this is a small improvement, s 229B should be read as ***repeated sexual abuse of a child*** because it is not the responsibility nor the capacity of the child to reciprocate sexual conduct. This amendment to the heading does not adequately capture the misuse of power between adult and child. The current and proposed amended heading of the s 229B can be interpreted that a child holds some responsibility and reciprocity, and that the conduct is not sexual abuse, as consent is not an element of this offence this is not correct. *The Royal Commission into Institutional Responses to Child Sexual Abuse* recommended a change and removing the reference to 'relationship.'[2] Other states (NSW, VIC, TAS) have amended their persistent child sex abuse offence to 'persistent sexual abuse of a child' [3] and there has also been a call for consistence across states on language.

[1] *Crimes Act 1958* (Vic) chp 8B
[2] The Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report: Recommendations' *Final Report* (Report, 15 December 2017) https://www.childabuseroyalcommission.gov.au/recommendations
[3] *Crimes Act 1958* (Vic) s 49J; *Crimes Act 1900* (NSW) s 66EA; *Criminal Code Act 1924* (Tas) s 125A

**28 to 30 Amendments to the definition of domestic violence, emotional, psychological, and economic abuse**

**EVAWQ expressly supports any changes that reflect DFSV as a behaviour or pattern of behaviours**

The amendments that reflect that DFV is a behaviour and/or pattern of behaviour are supported. Particularly the inclusion of other forms of behaviour that constitute coercive control. It is important that courts and any relevant people applying these laws are provided appropriate guidance and trained in gendered analysis of DFSV and its impacts.

**31 Amendment of s 150 (Protected Witness)**

**EVAWQ recommends inclusion of court guidance and ensuring courts are fit-for-purpose**

While amendments to expand the class of protected witnesses in relation to cross-examination in the *Domestic and Family Violence Protection Act 2012* (Qld) (the DFVP Act) and *Evidence Act 1977* (Qld) are welcome there are some concerns with the application. Firstly, there needs to be improved guidance on understanding impact when the court is considering the likelihood of being disadvantaged as a witness or to suffer severe emotional trauma. Secondly, court must be fit-for-purpose. While provisions are in place to make changes in court proceedings and modes in which a witness provides evidence there also needs to be consideration for wait-rooms, bathroom facilities and other common areas outside of the court room in order to effectively protect a witness from any impact.

**33 to 37 Amendments to cross applications and related matters**

**EVAWQ recommends inclusion of court guidance and provision of best practice models and training for relevant persons in making these decisions**

The wider application of s 4(2)(e) of the DFVP Act such as in cl 33 to cl 37 of the Bill calls for a more considered and appropriate approach to the identification of the person in most need for protection in the relationship. Statistics demonstrate that misidentification of the person in primary need of protection is a significant practice issue.[4] The Bill amendments could unintentionally perpetuate systems abuse for DFSV victims through compelled disclosure of DFV history, cross-applications, and misidentification.[5] Operationally, it is vitally important that there is inclusion of best practice risk assessment models, defined appropriate expert evidence such as professionals with the relevant qualification and experience in DFSV and its impacts and guidance for courts, judges, police, and other relevant persons making these decisions. Policing practice needs to change to reduce misidentification in the first instance and magistrates will need to have appropriate training and understanding of gendered based violence. Without this, these amendments place vulnerable women at greater risk of

[4] Queensland Domestic and Family Violence Death Review and Advisory Board, 2017, p. 82

[5] ANROWS, 'Accurately identifying the "person in need of protection" in domestic and family violence law: Key findings and future directions' (2020) 23 *Research to Policy & Practice* https://www.anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/

being labelled as the respondent and then being unable to obtain a protection order against the true PUV.

**38 Amendment of s 157 (Costs)**

**EVAWQ is concerned that awarding costs may further place vulnerable peoples at risk**

Awarding costs to respondents of protection orders may have an unintended impact on those most vulnerable and over-represented in the criminal justice system. Of particular concern is vulnerable women, misidentified respondents and already over-represented groups experiencing further financial harm and capacity to be financially independent. This amendment may also have the affect of increasing the adversarial nature and make it increasingly difficult for women at risk to receive protection orders. Courts and magistrates making these decisions need to be provided guidance and training in gendered analysis of DFSV and its impacts order to appropriately identify systems-based abuse.

**39 to 49 Domestic violence history and criminal history reports**

**EVAWQ is concerned that this may adversely impact women with criminal history, with a specific concern for Aboriginal and Torres Strait islander women who are over-represented in the criminal justice system**

Amendments ensuring the sharing of convictions and DFV history may be beneficial in many circumstances. However, it is important to consider issues of misidentification and the over-representation of women who are victims of DFSV and Aboriginal and Torres Strait Islander women in the criminal justice system.[6] If the proposed amendments will impact the outcomes and decisions of courts, it is important to ensure they receive guidance and training to appropriately consider a person's criminal history and or DFV history. A PUV may take advantage of these amendments as a method of systems abuse where victims may have been previously misidentified in protection order or have been convicted of minor offences often due to the impacts of DFSV. It may be more prudent to limit attainable records to include criminal history relevant to the offence and DFV History only. Otherwise, those most vulnerable and persons already over-represented may be further discriminated against and not receive the protection required.

[6] Australian Law Reform Commission, 'Drivers of Incarceration for Aboriginal and Torres Strait Islander Women' *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)* (Report, 11 January 2018) https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/11-aboriginal-and-torres-strait-islander-women/drivers-of-incarceration-for-aboriginal-and-torres-strait-islander-women/

**50 to 54 Substituted service**

**EVAWQ has identified that there may be practical technology issues with the application of this amendment.**

With Women identified or misidentified as respondents may be at risk if they are unaware of service of documents. If using principles of receipt under the *Electronic Communications Act 2001* (Qld) to define service documents may easily be sent to wrong or old email addresses no longer in use putting women at risk of PUV who has not been properly notified.

Sincerely,

**Ending Violence Against Women Queensland (EVAWQ)**

**Signatures of Support**

*Women's Health and Equality Queensland*

*DV Connect*

*Sera's Women's Shelter*

*Children by Choice*

*Domestic Violence Action Centre*

*Brisbane Domestic Violence Service*

*Mackay's Women's Service*

*Lutheran Services: Domestic and Family Violence*

*The Salvation Army*

*Combined Women's Refuge Group*