



Queensland

# **Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

## **Act No. 5 of 2024**

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**An Act to amend the Bail Act 1980, the Criminal Code, the Domestic and Family Violence Protection Act 2012, the Domestic and Family Violence Protection Regulation 2023, the Evidence Act 1977, the Evidence Regulation 2017, the Justices Act 1886, the Penalties and Sentences Act 1992, the Recording of Evidence Regulation 2018, the Security Providers Act 1993, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes, and to repeal the Criminal Law (Sexual Offences) Act 1978**

**[Assented to 18 March 2024]**





Queensland

# Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*.

### **2 Commencement**

- (1) The following provisions commence on a day to be fixed by proclamation—
  - (a) part 3;
  - (b) part 4, divisions 3 to 7;
  - (c) parts 5 to 8;
  - (d) part 9, divisions 3 and 4;
  - (e) parts 10, 11, 13 and 14;
  - (f) schedule 1.
- (2) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

## **Part 2 Amendment of Bail Act 1980**

### **3 Act amended**

This part amends the *Bail Act 1980*.

#### 4 Amendment of s 6 (Definitions)

Section 6—

*insert—*

***family relationship*** has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 19.

***informal care relationship*** has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 20.

#### 5 Amendment of s 11 (Conditions of release on bail)

Section 11—

*insert—*

(3A) In considering the imposition of special conditions under subsection (2), the court or police officer must consider the likely effect a condition would have on the defendant's ability to carry out the defendant's responsibilities for—

- (a) a person with whom the defendant is in a family relationship and for whom the defendant is the primary caregiver; or
- (b) a person with whom the defendant is in an informal care relationship; or
- (c) if the defendant is pregnant—the child of the pregnancy.

*Examples of responsibilities—*

- transporting a child to an appointment, childcare or school
- attending a medical appointment in relation to a pregnancy
- cultural obligations to a family member

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## 6 Amendment of s 16 (Refusal of bail generally)

Section 16(2)—

*insert—*

- (i) the likely effect that refusal of bail would have on—
  - (i) a person with whom the defendant is in a family relationship and for whom the defendant is the primary caregiver; or
  - (ii) a person with whom the defendant is in an informal care relationship; or
  - (iii) if the defendant is pregnant—the child of the pregnancy.

## 7 Insertion of new s 51

After section 50—

*insert—*

### **51 Transitional provision for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

- (1) Sections 6, 11 and 16, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, apply in relation to the release of a person on bail on or after the commencement.
- (2) For subsection (1), it is irrelevant whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the commencement.

## **Part 3                      Amendment of Criminal Code**

### **Division 1                Preliminary**

#### **8                      Code amended**

This part amends the Criminal Code.

### **Division 2                Failure to report offence**

#### **9                      Amendment of s 229BC (Failure to report belief of child sexual offence committed in relation to child)**

(1) Section 229BC(4)(c), ‘becomes an adult’—

*omit, insert—*

turns 16 years

(2) Section 229BC(4)—

*insert—*

(e) both of the following apply—

(i) the adult gains the information—

(A) as a relevant professional while acting in the adult’s professional capacity; and

(B) in the course of a confidential professional relationship with the child in which there is an express or implied obligation of confidentiality between the adult and the child;

(ii) the adult reasonably believes there is no real risk of serious harm to the child or any other child in not disclosing the information to a police officer.

(3) Section 229BC(6)—

*insert—*

***counsel***, a person, means—

- (a) to listen to and give verbal or other support, help or encouragement to the person, whether one-on-one or in a group; or
- (b) to advise, give therapy to or treat the person, whether one-on-one or in a group.

***counsellor*** means a person who—

- (a) has undertaken training or study, or has experience, that is relevant to the process of counselling other persons; and
- (b) in the course of the person's paid or voluntary employment, other than as a religious representative, counsels another person.

***relevant professional*** means—

- (a) a medical practitioner; or
- (b) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student; or
- (c) a person registered under the Health Practitioner Regulation National Law to practise in the registered nurses division of the nursing profession, other than as a student; or
- (d) a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student; or
- (e) a person who is a member of the Australian Association of Social Workers Ltd ACN 008 576 010; or

- (f) a counsellor; or
- (g) a person who is of a class of persons prescribed by regulation.

***religious representative*** means a person who—

- (a) is a member of—
  - (i) an organised religion; or
  - (ii) a religious group, even if the group is not part of, or does not consider itself to be part of, an organised religion; and
- (b) holds a position in the religion or group that allows the person to hold themselves out as a representative of the religion or group.

## Division 3

## Affirmative consent, mistake of fact and stealthing

### 10 Amendment of s 223 (Distributing intimate images)

Section 223(5), definition *consent*—

*omit, insert*—

***consent*** means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

### 10A Amendment of s 227A (Observations or recordings in breach of privacy)

Section 227A(3), definition *consent*—

*omit, insert*—

***consent*** means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

**11 Amendment of s 227B (Distributing prohibited visual recordings)**

Section 227B(2), definition *consent*—

*omit, insert*—

*consent* means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

**12 Amendment of s 229A (Threats to distribute intimate image or prohibited visual recording)**

Section 229A(5), definition *consent*—

*omit, insert*—

*consent* means free and voluntary agreement by a person with the cognitive capacity to make the agreement.

**13 Replacement of s 348 (Meaning of *consent*)**

Section 348—

*omit, insert*—

**348 Consent**

- (1) In this chapter, *consent* means free and voluntary agreement.
- (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.
- (4) A person does not consent to an act just because they consented to—
  - (a) a different act with the same person; or
  - (b) the same act with the same person at a different time or place; or

- (c) the same act with a different person; or
- (d) a different act with a different person.

### **348AA Circumstances in which there is no consent**

- (1) Circumstances in which a person does not consent to an act include the following—
  - (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;
  - (d) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the act;

*Note—*

This circumstance may apply where a person gave consent when not so affected by alcohol or another drug as to be incapable of consenting.

- (e) the person is unconscious or asleep;
- (f) the person participates in the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal or property, regardless of—
  - (i) when the force, harm or conduct giving rise to the fear occurs; or
  - (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;

*Examples of harm—*

- economic or financial harm
- reputational harm

- harm to the person’s family, cultural or community relationships
  - harm to the person’s employment
  - domestic violence involving psychological abuse or harm to mental health
  - sexual harassment
- (g) the person participates in the act because of coercion, blackmail or intimidation, regardless of—
- (i) when the coercion, blackmail or intimidation occurs; or
  - (ii) whether it occurs as a single incident or as part of an ongoing pattern;
- (h) the person participates in the act because the person or another person is unlawfully confined, detained or otherwise deprived of their personal liberty;
- (i) the person participates in the act because the person is overborne by the abuse of a relationship of authority, trust or dependence;
- (j) the person participates in the act because of a false or fraudulent representation about the nature or purpose of the act, including about whether the act is for health, hygienic or cosmetic purposes;
- (k) the person participates in the act with another person because the person is mistaken—
- (i) about the identity of the other person; or
  - (ii) that the person is married to the other person;
- (l) the person is a sex worker and participates in the act because of a false or fraudulent

representation that the person will be paid or receive some reward for the act;

(m) both of the following apply—

(i) the person participates in the act with another person because of a false or fraudulent representation by the other person about whether the other person has a serious disease;

(ii) the other person transmits the serious disease to the person;

(n) the person participates in the act with another person on the basis that a condom is used for the act and the other person does any of the following things before or during the act—

(i) does not use a condom;

(ii) tampers with the condom;

(iii) removes the condom;

(iv) becomes aware that the condom is no longer effective but continues with the act.

(2) If a person, against whom an offence under this chapter is alleged to have been committed, suffers grievous bodily harm as a result of, or in connection with, the offence, the grievous bodily harm suffered is evidence of the lack of consent on the part of the person unless the contrary is proved.

(3) This section does not limit the grounds on which it may be established that a person does not consent to an act.

(4) In this section—

*sex worker* means a person who provides services to another person that involve the person

participating in a sexual activity with the other person for payment or reward.

**14 Amendment of s 348A (Mistake of fact in relation to consent)**

(1) Section 348A(1), ‘gave consent’—

*omit, insert—*

consented

(2) Section 348A(2) and (3)—

*omit, insert—*

(2) In deciding whether a belief of the person was honest and reasonable, regard may not be had to the voluntary intoxication of the person caused by alcohol, a drug or another substance.

(3) A belief by the person that another person consented to an act is not reasonable if the person did not, immediately before or at the time of the act, say or do anything to ascertain whether the other person consented to the act.

(4) Subsection (3) does not apply if the person proves that—

(a) the person had at the time of the act—

(i) a cognitive impairment within the meaning of section 348B; or

(ii) a mental health impairment within the meaning of section 348C; and

(b) the impairment was a substantial cause of the person not saying or doing anything.

(5) The person bears the burden of proving the matters mentioned in subsection (4).

(6) Evidence adduced by the person of the matters mentioned in subsection (4) must include evidence given by a person qualified to give

expert evidence on the matters.

## 15 Insertion of new ss 348B and 348C

After section 348A—

*insert—*

### **348B Cognitive impairment**

- (1) For the purposes of section 348A(4)(a)(i), a person has a cognitive impairment if—
  - (a) the person has an ongoing impairment in adaptive functioning; and
  - (b) the person has an ongoing impairment in comprehension, reason, judgment, learning or memory so as to affect functioning in daily life to a material extent; and
  - (c) the impairments result from damage to or dysfunction, developmental delay or deterioration of the person’s brain or mind that may arise from a condition set out in subsection (2) or for other reasons.
- (2) A cognitive impairment may arise from any of the following conditions but may also arise for other reasons—
  - (a) intellectual disability;
  - (b) borderline intellectual functioning;
  - (c) dementia;
  - (d) an acquired brain injury;
  - (e) drug or alcohol related brain damage, including fetal alcohol spectrum disorder;
  - (f) autism spectrum disorder.

### **348C Mental health impairment**

- (1) For the purposes of section 348A(4)(a)(ii), a person has a mental health impairment if—
  - (a) the person has a temporary or ongoing disturbance of thought, mood, volition, perception or memory; and
  - (b) the disturbance would be regarded as significant for clinical diagnostic purposes; and
  - (c) the disturbance impairs the emotional wellbeing, judgment or behaviour of the person so as to affect functioning in daily life to a material extent.
- (2) A mental health impairment may arise from any of the following disorders but may also arise for other reasons—
  - (a) an anxiety disorder;
  - (b) an affective disorder;
  - (c) a psychotic disorder;
  - (d) a substance induced mental disorder.
- (3) A person does not have a mental health impairment for the purposes of section 348A(4)(a)(ii) if the person’s impairment is caused solely by the temporary effect of ingesting a substance.

## **16 Insertion of new s 590BA**

After section 590B—

*insert—*

### **590BA Advance notice of intention to rely on expert evidence under s 348A**

- (1) If an accused person intends to adduce expert evidence under section 348A(6) in the person’s

trial, the accused person must, within the prescribed period, give notice of that intention.

- (2) If the accused person does not give notice as required by subsection (1), the accused person may not, without the leave of the court, adduce the expert evidence.
- (3) A notice under this section—
  - (a) must be in writing; and
  - (b) must be given to the director of public prosecutions; and
  - (c) is taken to be given if it is delivered to or left at the Office of the Director of Public Prosecutions or sent by certified mail addressed to the director of public prosecutions at the director's office.
- (4) In this section—

*prescribed period* means the period of 14 days after the date of the committal for trial of the accused person.

## 17 Insertion of new pt 9, ch 109

Part 9—

*insert*—

# Chapter 109 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

## 761 Application of ch 32 to proceedings

- (1) Despite the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, the former provisions continue to apply to a proceeding for an offence committed wholly or partly before the commencement.
- (2) The new provisions apply to a proceeding for an offence committed wholly after the commencement.
- (3) In this section—  
*former provisions* means the provisions of chapter 32 as in force from time to time before the commencement.  
*new provisions* means the provisions of chapter 32 as in force from the commencement.

## Division 4                      Jury directions—corroboration

### 18        Amendment of s 632 (Corroboration)

Section 632(2) and (3)—

*omit, insert—*

- (2) On the trial of a person for an offence, a judge must not direct, warn or suggest to the jury—
  - (a) that the law regards any class of persons as unreliable witnesses; or
  - (b) in relation to the uncorroborated evidence of a witness—
    - (i) that it would be dangerous or unsafe to convict the defendant on the evidence; or
    - (ii) that the evidence should be scrutinised with great care.

*Note—*

See also the *Evidence Act 1977*, sections 94A, 103ZZB, 132BAA and 132BA.

- (3) Subsection (1) or (2) does not prevent a judge from making a comment on the evidence given in the trial that it is appropriate to make in the interests of justice.

## Division 5                      Criminal offence of coercive control

### 19        Amendment of s 1 (Definitions)

(1) Section 1—

*insert—*

*coercive control*, for chapter 29A, see section 334A.

*domestic violence*, for chapter 29A, see section 334B.

*economic abuse*, for chapter 29A, see section 334A.

*emotional or psychological abuse*, for chapter 29A, see section 334A.

*harm*, to a person, for chapter 29A, see section 334A.

*unauthorised or unreasonable surveillance*, of a person, for chapter 29A, see section 334A.

- (2) Section 1, definition *domestic relationship*, note, after ‘that Act.’—

*insert—*

An intimate personal relationship includes a former intimate personal relationship.

## 20 Insertion of new pt 5, ch 29A

After part 5, chapter 29—

*insert—*

# Chapter 29A Coercive control

## 334A Definitions for chapter

In this chapter—

*coercive control* means the offence mentioned in section 334C.

*domestic violence* see section 334B.

*economic abuse* means behaviour by a person (the *first person*) that is coercive, deceptive or unreasonably controls another person (the *second person*)—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
- (b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child.

*Examples—*

- coercing a person to relinquish control over assets and income
- unreasonably removing or keeping a person's property, or threatening to do so
- unreasonably disposing of property owned by a person, or owned jointly with a person, without lawful excuse
- preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses without lawful excuse
- preventing a person from seeking or keeping employment
- coercing a person to claim social security payments
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person
- coercing a person to sign a contract for the purchase of goods or services
- coercing a person to sign a contract for the provision of finance, a loan or credit
- coercing a person to sign a contract of guarantee
- coercing a person to sign any legal document for the establishment or operation of a business

***emotional or psychological abuse*** means behaviour by a person towards another person that torments, intimidates, harasses or degrades the other person.

*Examples—*

- following a person when the person is out in public, including by vehicle or on foot
- remaining outside a person’s residence or place of work
- repeatedly contacting a person by telephone, SMS message, email or social networking site
- repeated derogatory taunts, including racial taunts
- threatening to disclose a person’s sexual orientation to another person
- threatening to withhold a person’s medication
- preventing a person from making or keeping connections with the person’s family, friends, kin or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person’s cultural identity
- threatening to withdraw support for a visa for a person or a member of the person’s family
- threatening to have a person or a member of the person’s family deported
- coercing or threatening a person to gain further or larger dowry gifts
- interfering with a person’s ability to access or communicate with the person’s friends or family or with support services by restricting access to any means of communication or otherwise

***harm***, to a person, means any detrimental effect on the person’s physical, emotional, financial, psychological or mental wellbeing, whether temporary or permanent.

***unauthorised or unreasonable surveillance***, of a person, means the monitoring or tracking of the person’s movements, activities or interpersonal associations, including, for example, by using technology, that is unauthorised or otherwise unreasonable.

*Examples of surveillance by using technology—*

- reading a person’s SMS messages

- monitoring a person’s email account or internet browser history
- monitoring a person’s account with a social networking internet site
- using a GPS device to track a person’s movements
- checking the recorded history in a person’s GPS device
- monitoring a person’s activities using cameras or smart home devices

### **334B What is *domestic violence***

- (1) ***Domestic violence*** means behaviour by a person (the ***first person***) towards another person (the ***second person***) with whom the first person is in a domestic relationship that—
  - (a) is physically or sexually abusive; or
  - (b) is emotionally or psychologically abusive; or
  - (c) is economically abusive; or
  - (d) is threatening; or
  - (e) is coercive; or
  - (f) in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.
- (2) Behaviour mentioned in subsection (1)—
  - (a) may occur over a period of time; and
  - (b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and
  - (c) is to be considered in the context of the relationship between the first person and the second person as a whole.

- (3) Without limiting subsection (1) or (2), domestic violence includes the following behaviour—
- (a) causing personal injury to a person or threatening to do so;
  - (b) coercing a person to engage in sexual activity or attempting to do so;
  - (c) damaging a person’s property or threatening to do so;
  - (d) depriving a person of the person’s liberty or threatening to do so;
  - (e) threatening a person with the death or injury of the person, a child of the person, or someone else;
  - (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
  - (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
  - (h) unauthorised or unreasonable surveillance of a person;
  - (i) unlawfully stalking, intimidating, harassing or abusing a person;
  - (j) making a person dependent on, or subordinate to, another person;
  - (k) isolating a person from friends, relatives or other sources of support;
  - (l) controlling, regulating or monitoring a person’s day-to-day activities;
  - (m) depriving a person of, or restricting a person’s, freedom of action;

(n) frightening, humiliating, degrading or punishing a person.

(4) In this section—

*coerce*, a person, means compel or force a person to do, or refrain from doing, something.

*unlawful stalking, intimidation, harassment or abuse* see sections 359B and 359D.

### **334C Coercive control**

(1) A person who is an adult commits an offence (a *coercive control offence*) if—

(a) the person is in a domestic relationship with another person (the *other person*); and

(b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and

(c) the person intends the course of conduct to coerce or control the other person; and

(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm.

Maximum penalty—14 years imprisonment.

(2) An offence against subsection (1) is a crime.

(3) For subsection (1)(c), the prosecution is not required to prove that the person intended each act of domestic violence that constitutes the course of conduct, when considered in isolation, to coerce or control the other person.

(4) For subsection (1)(d), without limiting the circumstances for the purpose of the subsection, those circumstances include the behaviour of the person and the other person in the context of their relationship as a whole.

- (5) In relation to the domestic violence that constitutes the course of conduct—
- (a) the prosecution is not required to allege the particulars of any act of domestic violence constituting an offence that would be necessary if the act were charged as a separate offence; and
  - (b) the jury is not required to be satisfied of the particulars of any act of domestic violence constituting an offence that it would have to be satisfied of if the act were charged as a separate offence; and
  - (c) all the members of the jury are not required to be satisfied about the same acts of domestic violence.
- (6) A person may be charged with—
- (a) the coercive control offence; and
  - (b) 1 or more other offences of domestic violence alleged to have been committed by the person against the other person during the course of conduct for the coercive control offence.
- (7) The offences mentioned in subsection (6)(a) and (b) may be charged in the 1 indictment.
- (8) The person charged as mentioned in subsection (6) may be convicted of and punished for any or all of the offences charged.
- (9) However, if the person is—
- (a) charged as mentioned in subsection (6); and
  - (b) sentenced to imprisonment for the coercive control offence and for the other offence or offences;
- the court imposing imprisonment may not order that the sentence for the coercive control offence

be served cumulatively with the sentence or sentences for the other offence or offences.

*Note—*

See the *Penalties and Sentences Act 1992*, section 155 (Imprisonment to be served concurrently unless otherwise ordered).

- (10) It is a defence for the person to prove that the course of conduct for the coercive control offence was reasonable in the context of the relationship between the person and the other person as a whole.
- (11) It is not a defence to a charge for a coercive control offence that the person believed that any single act of domestic violence that formed part of the course of conduct for the coercive control offence, or each of the acts of domestic violence that constituted the course of conduct when considered in isolation, was reasonable in the context of the relationship between the person and the other person as a whole.

### **334D What is immaterial for coercive control**

- (1) For section 334C(1)(b) and (c), it is immaterial whether the domestic violence that constituted the course of conduct against the other person was carried out in relation to another person or the property of another person.
- (2) For section 334C(1)(d)—
  - (a) it is immaterial whether the course of conduct actually caused harm to the other person; and
  - (b) if an act of domestic violence that formed part of the course of conduct was unauthorised or unreasonable surveillance or economic abuse of the other person, it is

immaterial whether the other person was aware of the act.

- (3) Despite particular matters being immaterial for section 334C(1) as mentioned in subsection (1) or (2), nothing in this section prevents evidence being adduced about the matters.
- (4) In this section—  
*other person* see section 334C(1)(a).

### **334E Court may restrain coercive control**

- (1) This section applies on the hearing before a court of a charge against a person of coercive control.
- (2) Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person.
- (3) The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge's or magistrate's own initiative.
- (4) Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.
- (5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3).
- (6) The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any

property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit.

- (7) A restraining order takes effect on the day it is made and continues in force until—
  - (a) the day stated by the court in the restraining order; or
  - (b) if no day is stated, the day that is 5 years after the day the restraining order is made.
- (8) The court may order that a restraining order continues in force for a period of less than 5 years only if the court is satisfied that the safety of a person in relation to whom the restraining order is made is not compromised by the shorter period.
- (9) A restraining order may be varied or revoked at any time by the court, and, if the order provides, by another court.
- (10) A person who knowingly contravenes a restraining order commits an offence.  
Maximum penalty—120 penalty units or 3 years imprisonment.
- (11) However, if the person has been convicted of a domestic violence offence in the 5 years before the contravention, the person is guilty of a misdemeanour and is liable to a fine of 240 penalty units or imprisonment for 5 years.
- (12) A restraining order may be made against a person whether or not another order is made against the person in the proceeding for the charge.
- (13) A restraining order proceeding is not a criminal proceeding.
- (14) A question of fact for a decision under subsection (2) and in a restraining order proceeding must be decided on the balance of probabilities.

(15) In this section—

*charge* means the charge of coercive control mentioned in subsection (1).

*domestic violence offence* includes an offence against the *Domestic and Family Violence Protection Act 2012*, part 7.

*Note—*

See also the definition of *domestic violence offence* in section 1.

*restraining order*, against a person, means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.

*restraining order proceeding* means a proceeding started under subsection (2).

### **334F Alternative offence to crime of coercive control**

Upon an indictment charging a person with the crime of coercive control, the person may alternatively be convicted of the crime of unlawful stalking, intimidation, harassment or abuse if that offence is established by the evidence.

## **21 Amendment of s 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election)**

Section 552A(1)(a), after fourth dot point—

*insert—*

- section 334C, if the defendant has pleaded guilty

**22 Amendment of s 552B (Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial)**

Section 552B(1)—

*insert—*

- (ga) an offence against section 334E if the defendant is liable to the penalty mentioned in section 334E(11);

**23 Insertion of new ss 762 and 763**

Part 9, chapter 109, as inserted by this Act—

*insert—*

**762 Application of s 334C to acts of domestic violence constituting coercive control**

- (1) Section 334C applies only to acts of domestic violence constituting the course of conduct under that section that were done after the commencement.
- (2) This section does not limit the *Evidence Act 1977*, part 6A, division 1A.

**763 Conviction for domestic violence offence before commencement**

- (1) This section applies if a person commits an offence against section 334E(10) after the commencement and the penalty in section 334E(11) applies to the person.
- (2) Section 334E(11) applies regardless of whether the conviction mentioned in that subsection was recorded before or after the commencement.
- (3) This section applies despite section 11(2) and the *Acts Interpretation Act 1954*, section 20C(3).

## Division 6                      **New aggravating factors and domestic violence averments**

### 24            **Amendment of s 564 (Form of indictment)**

Section 564(3A)—

*omit, insert—*

- (3A) An indictment for an offence may also state the offence is—
- (a) a domestic violence offence; or
  - (b) a domestic violence offence committed against a child; or
  - (c) a domestic violence offence that exposed a child to domestic violence.

*Note—*

See the *Penalties and Sentences Act 1992*, section 12A for when a conviction for the offence must also be recorded as a conviction for, or entered in the offender's criminal history as, a relevant domestic violence offence.

### 25            **Amendment of s 572 (Amendment of indictments)**

Section 572(1A)—

*omit, insert—*

- (1A) Subsection (1B) applies if the court considers the offence charged in the indictment is also 1 of the following offences (each a ***relevant domestic violence offence***)—
- (a) a domestic violence offence;
  - (b) a domestic violence offence committed against a child;
  - (c) a domestic violence offence that exposed a child to domestic violence.

- (1B) Without limiting subsection (1), the court may order that the indictment be amended to also state the offence is a relevant domestic violence offence.

## **Part 4                      Amendment of Domestic and Family Violence Protection Act 2012**

### **Division 1                      Preliminary**

#### **26           Act amended**

This part amends the *Domestic and Family Violence Protection Act 2012*.

*Note—*

See also the amendment in schedule 1.

### **Division 2                      Court to consider appropriate period for protection order**

#### **27           Amendment of s 37 (When court may make protection order)**

- (1) Section 37—

*insert—*

- (4A) If the court decides to make a protection order against the respondent, the court must consider the appropriate period for which the order is to continue in force.

*Note—*

See section 97 for matters to be considered when deciding the period for which a protection order is to continue in force.

- (2) Section 37(4A) and (5)—  
*renumber* as section 37(5) and (6).

**28 Insertion of new pt 10, div 6**

Part 10—

*insert*—

**Division 6 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

**237 Deciding period for which protection order continues in force**

- (1) The amendment of section 37 by the amending provision applies only to an application for a protection order that is made after the commencement.
- (2) In this section—  
*amending provision* means the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, section 27.

**Division 3 Requirement for court to consider making a temporary protection order**

**29 Insertion of new s 47B**

After section 47A—

*insert—*

**47B When court must consider making temporary protection order on adjournment**

- (1) This section applies to a proceeding for an application for a protection order.

*Note—*

Under section 112, a police protection notice is taken to be an application for a protection order.

- (2) If the court adjourns the hearing of the application at the first mention for the proceeding, the court must consider whether to make a temporary protection order.

**30 Amendment of s 113 (Duration)**

- (1) Section 113(3)(c)—

*omit, insert—*

- (c) if the court adjourns the application for a protection order and does not make a domestic violence order or an order to extend the police protection notice under subsection (4)—the proceeding is adjourned; or

*Note—*

See section 47B for when the court must consider whether to make a temporary protection order.

- (2) Section 113—

*insert—*

- (3A) For subsection (3)(c), in exceptional circumstances a court may adjourn the application for a protection order and make an order to extend the police protection notice—
- (a) for not more than 5 business days; or

- 
- (b) if the court is not sitting in the next 5 business days—until the next anticipated sitting date for the court.
- (3B) An order to extend the police protection notice under subsection (4) may be made without appearances by the parties to the application for the protection order.
- (3C) A police protection notice may be extended only once under subsection (4).
- (3D) The court must take reasonable steps to notify the police commissioner and the parties to the application for the protection order of any extension to the police protection notice.
- (3E) A failure to comply with subsection (7) does not invalidate or otherwise affect the extension of the police protection notice.
- (3F) If the court makes an order to extend the police protection notice, section 47B applies at the first mention for the proceeding that occurs after the making of the order.
- (3) Section 113—  
*insert—*
- (5) In this section—  
***exceptional circumstances*** means unforeseen circumstances that cause the operation of the court to be significantly reduced.  
*Examples—*  
natural disaster, severe weather event, major public health event
- (4) Section 113(3A) to (5)—  
*renumber* as section 113(4) to (11).

### **31 Insertion of new ss 238–239**

After section 237, as inserted by this Act—

*insert—*

#### **238 Application of s 47B to particular proceedings**

- (1) This section applies to a proceeding for an application for a protection order.
- (2) Section 47B applies to the proceeding only if the application is filed after the commencement.
- (3) However, if the application is a police protection notice taken to be an application for a protection order under section 112, section 47B applies to the proceeding only if the police protection notice is issued after the commencement.

#### **239 Application of s 113 to particular proceedings**

Section 113, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies to a police protection notice, whether the notice is issued before or after the commencement.

## **Division 4 Media may apply for transcript of domestic and family violence proceedings**

### **32 Insertion of new ss 157D and 157E**

Before section 158—

*insert—*

#### **157D Definitions for division**

In this division—

*accredited media entity* means an entity listed as an accredited media entity in the Supreme Court's

media accreditation policy.

*identifying matter*, in relation to a person, means—

- (a) the name, address, place of employment or another particular of the person or another person that is likely to lead to the identification of the person; or
- (b) a photograph, picture, videotape, digital image or other visual representation or physical description of the person or another person that is likely to lead to the identification of the person; or
- (c) the location of the court in which the proceeding was conducted that is likely to lead to the identification of the person; or
- (d) the name of the presiding magistrate, the prosecutor, the defence lawyer, a support person or a witness in the proceeding that is likely to lead to the identification of the person; or
- (e) a material fact in the proceeding that is likely to lead to the identification of the person.

*proceeding under this Act* includes a proceeding for an offence against a provision of part 7.

*Supreme Court's media accreditation policy* means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.

### **157E What information identifies or is likely to identify a person**

For this division, information identifies or is likely to lead to the identification of a person if the information includes identifying matter about the

person.

**33 Amendment of s 159 (Prohibition on publication of certain information for proceeding)**

(1) Section 159(1)(a), after ‘information’—

*insert—*

, including a photograph, picture, videotape and any other visual representation,

(2) Section 159(1)(b)—

*omit, insert—*

(b) information that identifies, or is likely to lead to the identification of—

(i) a person as a party to a proceeding under this Act; or

(ii) a person as a witness in a proceeding under this Act (other than a police officer); or

(iii) a child.

(3) Section 159(2)—

*insert—*

(ea) to the publication of information by an accredited media entity, if the information does not identify, and is not likely to lead to the identification of, a person mentioned in subsection (1)(b); or

(4) Section 159(2)(ea) to (g)—

*renumber* as section 159(2)(f) to (h).

(5) Section 159(3), definition *information*—

*omit.*



(b) the judicial officer is satisfied it is in the public interest to give the authorisation.

(4) In this section—

*Domestic and Family Violence Media Guide* means the document by that title made by the chief executive and published on the department's website from time to time.

### **36 Insertion of new ss 240 and 241**

Part 10, division 6, as inserted by this Act—

*insert—*

#### **240 Section 159(2)(f) applies to proceedings started after commencement**

Section 159(2)(f) applies to information that relates to a proceeding under this Act only if the proceeding started after the commencement.

#### **241 Section 161A applies to proceedings started after commencement**

A judicial officer may give an authorisation under section 161A in relation to a copy of a transcript of a proceeding for an application for a domestic violence order only if the proceeding started after the commencement.

### **37 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

*accredited media entity*, for part 5, division 4, see section 157D.

*identifying matter*, in relation to a person, for part 5, division 4, see section 157D.

*proceeding under this Act*, for part 5, division 4,  
see section 157D.

*Supreme Court’s media accreditation policy*, for  
part 5, division 4, see section 157D.

## **Division 5                      Court-based perpetrator diversion scheme**

### **38            Amendment of s 37 (When court may make protection order)**

Section 37(2)(a)(ii) and (b) and (3), after ‘intervention  
order’—

*insert—*

or a diversion order

### **39            Amendment of s 91 (When court can vary domestic violence order)**

Section 91(3)(a) and (b) and (4), after ‘intervention order’—

*insert—*

or a diversion order

### **40            Insertion of new pt 4A**

After part 4—

*insert—*

## **Part 4A                      Diversion orders scheme**

### **Division 1                  Preliminary**

### 135A Definitions for part

- (1) In this part—

*alleged offence* see section 135C(1)(a) and (3).

*approved diversion program* means a program approved by the chief executive under section 135T(2).

*counselling* means counselling, by an approved provider, of a kind that may be beneficial in helping a defendant to overcome harmful behaviour related to domestic violence.

*diversion order* see section 135B(1).

*eligibility criteria* means the criteria for participation in the scheme set out in section 135C.

*notice of completion* see section 135S(1).

*scheme* means the diversion orders scheme under section 135B.

*suitability assessment report* means a report that complies with section 135G(1).

- (2) In this part, a reference to domestic violence includes a reference to associated domestic violence.

### 135B Diversion orders scheme

- (1) This part provides for a scheme for the making of an order (a *diversion order*) in relation to a defendant who is an adult appearing before a Magistrates Court charged with an offence of contravening a domestic violence order or police protection notice.
- (2) Under the scheme, the purpose of making a diversion order is to—

- (a) intervene at an early stage in the proceeding for the offence to direct the defendant to attend an approved diversion program, or counselling with an approved provider, to address the defendant's behaviour and to promote ongoing behavioural change in the defendant; and
  - (b) hold the defendant accountable for the acts of domestic violence for which the defendant has accepted responsibility; and
  - (c) facilitate the rehabilitation of the defendant to eliminate domestic violence from the defendant's behaviour and the community generally; and
  - (d) reduce the risk of harm to, and increase the safety of, victims of domestic violence.
- (3) The scheme applies only if there is an approved provider who can provide an approved diversion program or counselling for the defendant under the scheme.

## Division 2      Eligibility

### 135C Eligibility criteria for participation in scheme

- (1) A defendant who is an adult is eligible for participation in the scheme if the court is satisfied that—
- (a) the defendant has been charged with an offence of contravening a domestic violence order or police protection notice (the *alleged offence*); and
  - (b) the alleged offence is the only offence of contravening the domestic violence order or police protection notice that the defendant has been charged with; and

- (c) the facts constituting the alleged offence are not otherwise charged as an indictable offence; and
  - (d) the defendant has accepted responsibility for the alleged facts constituting the alleged offence detailed in the prosecution's written summary; and
  - (e) the defendant has been granted bail in relation to the alleged offence; and
  - (f) another domestic violence order or police protection notice has not previously been made or issued against the defendant; and
  - (g) the defendant has not previously been convicted of any of the following offences committed when the defendant was an adult—
    - (i) an offence of contravening a domestic violence order, police protection notice or release conditions; or
    - (ii) any other offence involving domestic violence; and
  - (h) the defendant has not previously been referred to participate in an approved diversion program or counselling with an approved provider under the scheme; and
  - (i) the defendant indicates a willingness to participate in an approved diversion program or counselling with an approved provider under the scheme, including a willingness to be assessed for suitability to participate in the scheme under section 135F.
- (2) However, despite subsection (1)(b), the court may decide that the defendant meets the eligibility criteria if—

- (a) the defendant has been charged with the alleged offence and 1 or more other offences of contravening the domestic violence order or police protection notice; and
- (b) the charges are for offences of the same character, or offences committed in the prosecution of a single purpose, and there is a strong factual and temporal connection between or among the offences; and

*Example—*

The defendant is charged with 2 offences of contravening a domestic violence order. Each contravention is the sending of an SMS message and the messages were sent separately on the same day.

- (c) the defendant has accepted responsibility for the alleged facts constituting the other offence or offences detailed in the prosecution's written summary; and
  - (d) the defendant is appearing before the court in relation to all the charges mentioned in subsection (2)(a); and
  - (e) the defendant has been granted bail in relation to the other offence or offences.
- (3) If subsection (2)(a) to (e) applies, a reference to the alleged offence in another provision of this part includes a reference to the other offence or offences.
- (4) Despite subsection (1), the court may decide that the defendant is not eligible for the scheme, having regard to—
- (a) the seriousness of the conduct constituting the alleged offence or other offence or offences; and
  - (b) the defendant's criminal history and domestic violence history.

- (5) If the defendant does not have a criminal history or domestic violence history, the police commissioner must ensure the court is informed of the fact.

### **135D Evidence relating to requirement to accept responsibility relating to alleged offence**

- (1) The defendant is not required to plead guilty to the alleged offence to be eligible for the scheme.
- (2) The defendant's acceptance of responsibility under section 135C(1)(d) or (2)(c)—
  - (a) is not taken to be a plea to the charge for the offence entered by the defendant; and
  - (b) is not admissible in evidence against the defendant in any criminal proceeding.
- (3) A police officer who receives information derived from the defendant's acceptance of responsibility under section 135C(1)(d) or (2)(c) must not use the information for a proceeding for an offence.
- (4) Subsection (3) applies despite section 169L(3).

## **Division 3      Suitability assessment reports**

### **135E Adjournment for obtaining suitability assessment report**

- (1) This section applies if the court is satisfied the defendant meets the eligibility criteria and is considering making a diversion order in relation to the defendant.
- (2) The court must order the defendant to—
  - (a) report to a stated approved provider at a stated place, and within a stated period, to

- allow the approved provider to assess the defendant's suitability to participate in an approved diversion program or counselling; and
- (b) comply with every reasonable direction given to the defendant by an approved provider.
- (3) The stated period for subsection (2)(a) must be 14 days after the order is made, or a longer period allowed by the court.
- (4) If the court makes an order under subsection (2)—
- (a) the prosecution must give the court—
    - (i) a written summary of the alleged facts constituting the alleged offence; and
    - (ii) a copy of the defendant's criminal history; and
  - (b) the clerk of the court must give the stated approved provider mentioned in subsection (2) a copy of—
    - (a) the order; and
    - (b) the summary of the alleged facts constituting the alleged offence; and
    - (c) the defendant's criminal history.
- (5) If the defendant fails to report to the approved provider as required under an order made under subsection (2)(a), the approved provider must advise the registrar of the court within 2 business days after the failure to report.

### **135F Assessment of suitability of defendant**

The approved provider must assess the defendant's suitability to participate in an approved diversion program or counselling with an approved provider taking into consideration

the following—

- (a) the defendant’s character and personal history;
- (b) the defendant’s language skills;
- (c) the defendant’s cultural background, including whether the defendant identifies as an Aboriginal or Torres Strait Islander person;
- (d) any disabilities, psychiatric or psychological conditions of the defendant;
- (e) any alcohol or drug problems of the defendant;
- (f) the effect of the matters mentioned in paragraph (a) to (e) on the defendant’s ability to participate in an approved diversion program or counselling;
- (g) whether there is an approved diversion program or counselling that is available and suitable, including culturally appropriate, for the defendant;
- (h) whether and, if so, how the defendant’s participation in the scheme could affect the safety, protection or wellbeing of the aggrieved or a named person in the domestic violence order or police protection notice or of someone else;
- (i) any other relevant matters.

### **135G Suitability assessment report**

- (1) The approved provider must prepare a suitability assessment report about the defendant that states—
  - (a) whether the defendant is suitable for participation in the scheme, having regard to

- the matters mentioned in section 135F(a) to (i); and
- (b) if the defendant is suitable for participation in the scheme—
- (i) the day on which it is anticipated that the defendant will start attending the approved diversion program or counselling; and
  - (ii) the name of the approved provider who will provide the approved diversion program or counselling; and
  - (iii) the estimated period within which the defendant is likely to complete the approved diversion program or counselling.
- (2) The approved provider must give the suitability assessment report to the court within 14 days after completing the assessment, or a longer period allowed by the court.
- (3) The court must give a copy of the suitability assessment report to—
- (a) the prosecutor; and
  - (b) the defendant.

### **135H Immunity from prosecution**

- (1) A person is not liable to prosecution for an offence resulting from any admission made by the person for the purposes of preparing a suitability assessment report for the person.
- (2) The admission, and any evidence obtained because of the admission, is not admissible against the person in a prosecution for the offence.
- (3) Subsections (1) and (2) do not prevent the person from being prosecuted for the offence if evidence

of the offence, other than the admission made by the person or evidence obtained because of the admission, exists.

- (4) A police officer who receives information derived from any admission made by the person for the purposes of preparing the suitability assessment report must not use the information for a proceeding for an offence.
- (5) Subsection (4) applies despite section 169L(3).

## **Division 4      Making diversion orders**

### **135I When court may make diversion order**

- (1) A court may make a diversion order in relation to a defendant if—
  - (a) the court is satisfied the defendant still meets the eligibility criteria; and
  - (b) the defendant consents to the making of the order; and
  - (c) the court is satisfied that, immediately or within a reasonable period, the defendant will be able to start attending an approved diversion program, or have counselling with an approved provider, that is accessible and otherwise suitable for the defendant; and
  - (d) the court is satisfied that, if the order were made, the defendant would not pose an unacceptable risk to the safety, protection or wellbeing of—
    - (i) the aggrieved or a named person in the domestic violence order or police protection notice; or
    - (ii) a person who is in a relevant relationship with the defendant; or

- (iii) a person employed or engaged by an approved provider; and
- (e) it is appropriate and desirable to make the order, having regard to the purpose of making a diversion order under the scheme.

*Note—*

See section 135B(2).

- (2) In deciding for subsection (1)(e) whether it is appropriate or desirable to make a diversion order in relation to a defendant, the court must consider—
  - (a) the principles mentioned in section 4; and
  - (b) the suitability assessment report about the defendant; and
  - (c) any other relevant matter, including any expressed wishes of the person named as the aggrieved in the domestic violence order or police protection notice.
- (3) If the complainant is not the person named as the aggrieved in the domestic violence order or police protection notice, a reference to the aggrieved in subsection (2)(c) includes a reference to the complainant.
- (4) The court may make a diversion order requiring the defendant to attend counselling with an approved provider only if there is no appropriate approved diversion program that the defendant can attend.
- (5) The diversion order must state the period, of not more than 1 year, within which the defendant is required to complete the approved diversion program or counselling.

### **135J Adjournment of proceeding on making of diversion order**

If the court makes a diversion order, the court may adjourn the proceeding for the alleged offence for a period of not more than 1 year to allow the defendant to attend and complete the approved diversion program or counselling under the order.

### **135K Diversion order to be explained**

- (1) Before making a diversion order, to assist the defendant in making a decision about whether to consent to the making of the order, the court must explain, or cause to be explained, to the defendant—
- (a) the purpose and effect of the order; and
  - (b) the consequences of contravening the order; and

*Note—*

Under sections 37(2)(a)(ii) and 91(3)(a), a failure to comply with a diversion order is relevant to the making of a protection order and the variation of a domestic violence order.

- (c) the potential effect on the defendant's right to privacy if the defendant participates in the scheme; and

*Examples of effects on the defendant's right to privacy—*

- potential sharing of information that may otherwise be private
  - provision to an approved provider of the summary of the alleged facts constituting the alleged offence and the defendant's criminal history for the purpose of preparing a suitability assessment report
- (d) that the order may be amended or revoked on the application of the defendant or a prosecutor or on the court's own initiative.

- (2) The explanation must be made in language or in a way likely to be readily understood by the defendant.
- (3) A failure to comply with subsection (1) or (2) does not invalidate or otherwise affect the diversion order.

## **Division 5      Variation and revocation of diversion orders**

### **135L Power of court to vary or revoke diversion order**

- (1) The court may, either on its own initiative or on an application by the prosecution or defendant (each the *applicant*), vary or revoke the diversion order.
- (2) Before the court or applicant acts under subsection (1), the court or applicant must advise the approved provider for the approved diversion program or counselling in which the defendant is participating of—
  - (a) the court’s intention to vary or revoke the diversion order; or
  - (b) the applicant’s intention to apply to the court under this section.
- (3) The court may—
  - (a) continue the diversion order; or
  - (b) vary the diversion order; or
  - (c) revoke the diversion order.
- (4) Despite section 135J, the court may vary the diversion order to extend the period within which the defendant is required to complete the approved diversion program or counselling.
- (5) If the court revokes the diversion order, the

defendant must enter a plea to the charge of the alleged offence.

### **135M Matters court must consider**

- (1) When deciding whether to continue, vary or revoke the diversion order, the court must consider—
  - (a) the defendant’s continued eligibility for the approved diversion program or counselling in which the defendant is participating, including but not limited to the following—
    - (i) whether the defendant has been charged with, or convicted of, another contravention of the domestic violence order or police protection notice;
    - (ii) whether the defendant has been charged with, or convicted of, another domestic violence offence;
    - (iii) whether another domestic violence order or police protection notice has been made or issued against the defendant;
    - (iv) the defendant’s willingness to continue to participate in the approved diversion program or counselling; and
  - (b) any information about the defendant the approved provider for the program or counselling in which the defendant is participating gives the court; and
  - (c) any material change to the defendant’s circumstances since the diversion order was made; and
  - (d) any risk to the safety, protection or wellbeing of the aggrieved or a named person in the domestic violence order or

police protection notice or of someone else, including any statements provided by the aggrieved or other person; and

- (e) any other relevant matter, including any expressed wishes of the person named as the aggrieved in the domestic violence order or police protection notice.
- (2) If the complainant is not the person named as the aggrieved in the domestic violence order or police protection notice, a reference to the aggrieved in subsection (1)(e) includes a reference to the complainant.

## **Division 6      Effect of diversion orders**

### **135N Ending of diversion order**

- (1) This section applies if a notice of completion in relation to the defendant is given to the registrar of the court.
- (2) On the day the notice of completion is received by the court—
  - (a) the diversion order ends; and
  - (b) the defendant is not required to enter a plea to the charge of the alleged offence; and
  - (c) the charge is taken to be dismissed by the court; and
  - (d) the defendant is taken to be discharged by the court without any finding of guilt; and
  - (e) the proceeding for the alleged offence ends.
- (3) The defendant is not liable to be further prosecuted for the alleged offence.

### **135O When court may have regard to partial compliance under diversion order**

If at any stage the defendant is convicted of the alleged offence, the court may, when sentencing the defendant, have regard to any participation by the defendant in an approved diversion program or counselling with an approved provider under the diversion order.

### **135P Operation of part and power of court**

To remove any doubt, it is declared that—

- (a) the making of a diversion order, or an order for the defendant to report to an approved provider under section 135E(2)(a), does not affect the operation of any other order made under this Act in relation to the defendant; and
- (b) nothing in this part affects the power of the court to make or vary any other order the court may make.

## **Division 7                      Obligations of approved providers**

### **135Q General obligation**

- (1) This section applies to an approved provider who is—
  - (a) assessing the defendant's suitability to participate in the scheme under section 135F; or
  - (b) providing an approved diversion program or counselling for the defendant.
- (2) The approved provider has an ongoing obligation

while carrying out the assessment or providing the program or counselling to—

- (a) assess whether the defendant’s behaviour may pose a risk to the safety, protection or wellbeing of the aggrieved or a named person in the domestic violence order or police protection notice; and
- (b) assist with providing services to the aggrieved or a named person in the domestic violence order or police protection notice.

### **135R Contravention of diversion order**

- (1) If an approved provider becomes aware that a defendant has contravened a diversion order, the approved provider must give the court and the police commissioner a notice in the approved form stating—
  - (a) that the defendant has contravened the diversion order; and
  - (b) the nature of the contravention; and
  - (c) the date of the contravention.
- (2) The approved provider must give the notice within 7 days after the approved provider becomes aware of the contravention.

### **135S Notice of completion**

- (1) If an approved provider is satisfied the defendant has completed an approved diversion program or counselling with the approved provider, the approved provider must give the defendant, the registrar of the court and the police commissioner a notice in the approved form (a *notice of completion*) stating—

- (a) that the defendant has completed the program or counselling; and
  - (b) the date on which the defendant completed the program or counselling.
- (2) The approved provider must give the notice of completion within 14 days after the defendant completes the program or counselling.

## **Division 8      Approvals**

### **135T Approval of providers and diversion programs**

- (1) The chief executive may approve an entity as an approved provider if the chief executive is satisfied that the entity has appropriate experience and qualifications to provide an approved diversion program or counselling under the scheme.
- (2) The chief executive may approve a program as an approved diversion program if the chief executive is satisfied that—
  - (a) the program aims to—
    - (i) increase participants’ accountability for domestic violence; and
    - (ii) help participants to change their behaviour; and
    - (iii) increase the safety, protection and wellbeing of persons against whom domestic violence has been committed; and
  - (b) the program satisfies any other criteria prescribed by regulation.
- (3) An approval mentioned in subsection (1) or (2)

must be in writing.

- (4) The chief executive must—
  - (a) prepare, and keep up to date, a list of approved providers and approved diversion programs; and
  - (b) give a copy of the list to—
    - (i) the Chief Magistrate; and
    - (ii) the police commissioner.

#### **41 Amendment of s 184 (Service of order on respondent)**

- (1) Section 184, heading, after ‘respondent’—

*insert—*

**or defendant**

- (2) Section 184(1)—

*insert—*

(d) makes a diversion order.

- (3) Section 184(2) and (3), after ‘respondent’—

*insert—*

or defendant

- (4) Section 184(4)—

*omit, insert—*

- (4) Subsections (2) and (3) do not apply if the respondent or defendant is present in court when the order is made or varied and the clerk of the court—
  - (a) gives a copy of the order, or varied order, to the respondent or defendant, or the respondent’s or defendant’s appointee, at the court; or



complainant, after making all reasonable enquiries.

- (4) Failure to comply with this section does not invalidate or otherwise affect the diversion order.

#### **44 Amendment of s 189 (Evidentiary provision)**

Section 189(2)—

*insert—*

- (e) a diversion order.

#### **45 Amendment of schedule (Dictionary)**

- (1) Schedule, definition *counselling*—

*omit.*

- (2) Schedule—

*insert—*

*alleged offence*, for part 4A, see section 135C(1)(a) and (3).

*approved diversion program*, for part 4A, see section 135A.

*counselling*—

- (a) for part 3, division 6, see section 68; or

- (b) for part 4A, see section 135A.

*diversion order*, for part 4A, see section 135B(1).

*eligibility criteria*, for part 4A, see section 135A.

*notice of completion*, for part 4A, see section 135S(1).

*scheme*, for part 4A, see section 135A.

*suitability assessment report*, for part 4A, see section 135A.

- (3) Schedule, definition *approved provider*, after ‘section 75(1)’—

*insert—*

or 135T(1)

## **Division 6                      Criminal offence of engaging in domestic violence or associated domestic violence to aid respondent**

### **46                      Insertion of new s 179A**

After section 179—

*insert—*

#### **179A Engaging in domestic violence or associated domestic violence to aid respondent**

- (1) A person who is an adult commits an offence if, without reasonable excuse—
- (a) the person engages in domestic violence behaviour against another person who is the aggrieved or a named person in a domestic violence order, police protection notice or release conditions; and
  - (b) the domestic violence behaviour is engaged in with the intent of aiding the respondent to the order, notice or conditions; and
  - (c) the person knew, or ought reasonably to have known, the other person was the aggrieved or a named person in the order, notice or conditions.

Maximum penalty—120 penalty units or 3 years imprisonment.

- (2) However, if the person derives a benefit from engaging in the domestic violence behaviour, the

person is guilty of a crime and is liable to a fine of 240 penalty units or imprisonment for 5 years.

*Example of a person who may derive a benefit from engaging in domestic violence behaviour—*

a private investigator under the *Security Providers Act 1993*

- (3) For subsection (1)(a), it is immaterial whether the respondent to the domestic violence order, police protection notice or release conditions knew that the person had engaged in domestic violence behaviour against the aggrieved or a named person in the order, notice or conditions.
- (4) An evidential burden is placed on the defendant in relation to showing a reasonable excuse for subsection (1).
- (5) In this section—

*benefit* see the Criminal Code, section 1.

*domestic violence behaviour* means behaviour that, if engaged in by the respondent to a domestic violence order, police protection notice or release conditions would be domestic violence against the aggrieved or associated domestic violence against a named person in the order, notice or conditions.

#### 47 **Amendment of s 180 (Aggrieved or named person not guilty of offence)**

Section 180, from ‘conditions,’—

*omit, insert—*

conditions—

- (a) does not aid, abet, counsel or procure the commission of an offence against section 177, 178 or 179, and is not punishable as a principal offender, because the person encourages, permits or authorises conduct

by the respondent that contravenes the domestic violence order, police protection notice or release conditions; and

- (b) does not aid, abet, counsel or procure the commission of an offence against section 179A, and is not punishable as a principal offender, because the person encourages, permits or authorises conduct that constitutes the offence.

## **Division 7                      Additional standard condition on protection orders and police protection notices**

### **48            Amendment of s 56 (Domestic violence order must include standard conditions)**

- (1) Section 56(1)—

*insert—*

- (aa) must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be domestic violence against the aggrieved; and

- (2) Section 56(1)(b)—

*insert—*

- (iii) must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be associated domestic violence against the named person; and

- (3) Section 56(1)(c)—

*insert—*

- (iv) must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be associated domestic violence against the child; and
- (v) must not organise, encourage, ask, tell, force or engage another person to do something that exposes the child to domestic violence.

(4) Section 56(1)(aa) to (c)—  
*renumber* as section 56(1)(b) to (d).

#### **49 Amendment of s 60 (Contact by lawyer not prohibited)**

(1) Section 60—

*insert—*

(1A) To remove any doubt, it is declared that a condition mentioned in section 56(1)(b), (c)(iii) or (d)(iv) or (v) does not prohibit a respondent from asking—

- (a) a lawyer to contact the aggrieved or a named person; or
- (b) another person, including a lawyer, to contact or locate the aggrieved or a named person for a purpose authorised under an Act.

(2) Section 60(1A) and (2)—  
*renumber* as section 60(2) and (3).

#### **50 Amendment of s 106 (Standard conditions)**

(1) Section 106—

*insert—*

- (aa) must not organise, encourage, ask, tell, force or engage another person to do something

that, if done by the respondent, would be domestic violence against the aggrieved; and

(2) Section 106(b)—

*insert—*

(iii) must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be associated domestic violence against the named person; and

(3) Section 106(c)—

*insert—*

(iv) must not organise, encourage, ask, tell, force or engage another person to do something that, if done by the respondent, would be associated domestic violence against the child; and

(v) must not organise, encourage, ask, tell, force or engage another person to do something that exposes the child to domestic violence.

(4) Section 106(aa) to (c)—

*renumber* as section 106(b) to (d).

## 51 Insertion of new s 242

After section 241, as inserted by this Act—

*insert—*

### **242 Amendments of standard conditions for domestic violence orders and police protection notices**

(1) Section 56, as amended by the amending Act, applies to domestic violence orders made or varied after the commencement.

(2) Section 106, as amended by the amending Act,

applies to police protection notices issued after the commencement.

(3) In this section—

**amending Act** means the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*.

## Part 5 **Amendment of Domestic and Family Violence Protection Regulation 2023**

### 52 **Regulation amended**

This part amends the *Domestic and Family Violence Protection Regulation 2023*.

### 53 **Amendment of s 2 (Publication of certain information—Act, s 159)**

(1) Section 2(1), ‘section 159(2)(g)’—

*omit, insert—*

section 159(2)(h)

(2) Section 2(3)(b), after ‘under’—

*insert—*

the Act or

(3) Section 2—

*insert—*

(5) However, the publication is not permitted if the publication is of information that identifies, or is likely to lead to the identification of, a child.

## **54 Insertion of new s 7**

After section 6—

*insert—*

### **7 Transitional provision for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

The reference in section 2(3)(b) to a conviction of an offence under the Act, is a reference to a conviction of an offence under the Act if the charge for the offence was laid after the commencement.

# **Part 6 Amendment of Evidence Act 1977**

## **Division 1 Preliminary**

### **55 Act amended**

This part amends the *Evidence Act 1977*.

## **Division 2 Improper questions**

### **56 Replacement of s 21 (Improper questions)**

Section 21—

*omit, insert—*

#### **21 Improper questions**

- (1) The court must disallow a question put to a witness in cross-examination or inform a witness a question need not be answered, if the court considers the question is an improper question.

- (2) For subsection (1), an improper question includes a question that—
- (a) is misleading or confusing; or
  - (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
  - (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
  - (d) has no basis other than a stereotype (for example, a stereotype based on the witness’s age, race, culture, gender, sex, sex characteristics, sexuality or mental, intellectual or physical disability).
- (3) In deciding whether a question is an improper question, the court must take into account—
- (a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, race, culture, gender identity, sex, sex characteristics, sexuality, education, language background and skills and level of maturity and understanding; and
  - (b) any mental, intellectual or physical disability to which the witness is, or appears to be, subject and of which the court is, or is made, aware; and
  - (c) the context in which the question is put, including—
    - (i) the nature of the proceeding; and
    - (ii) in a criminal proceeding—the nature of the offence to which the proceeding relates; and
    - (iii) the relationship (if any) between the witness and any other party to the proceeding.

- (4) Subsection (3) does not limit the matters the court may take into account in deciding whether a question is an improper question.
- (5) A question is not an improper question merely because—
  - (a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness; or
  - (b) the question requires the witness to discuss a subject that the witness could consider to be private or distasteful.
- (6) A party may object to a question put to a witness on the ground that it is an improper question.
- (7) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.
- (8) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

## 57 Insertion of new pt 9, div 14A

Part 9—

*insert—*

### **Division 14A Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

### **160A Application of s 21 to proceedings**

- (1) Section 21 applies to a criminal proceeding regardless of when—
  - (a) the offence the subject of the proceeding was committed; or
  - (b) the defendant in the proceeding was charged; or
  - (c) the proceeding was started.
- (2) Section 21 applies to a civil proceeding regardless of when the proceeding was started.

## **Division 3**

### **Exclusion of public and evidence about complainant's sexual reputation and sexual activities; Jury directions for sexual offences; Sexual offence expert evidence panel**

#### **58 Insertion of new s 103SA**

Before section 103T—

*insert—*

#### **103SA Judge may request indication from parties**

- (1) Before a criminal proceeding that is a trial by jury commences, the judge may request that the prosecution and defence (or, if the defendant is unrepresented, the defendant) each inform the judge of whether it is likely that evidence will be adduced in the trial that may require the giving of a direction about all or some of the matters mentioned in subdivision 2.
- (2) If the judge is informed under subsection (1) that it is likely that evidence will be adduced that may require the giving of a particular direction, the

judge is not required to form a view, at that time, about whether to give that direction.

- (3) Nothing in this section prevents the prosecution, defence or the defendant from later requesting, or making submissions in relation to, the giving of a direction about which the judge was not informed under subsection (1).

## **59 Insertion of new pt 6B**

After part 6A—

*insert—*

### **Part 6B Evidence related to sexual offences**

#### **Division 1 Exclusion of public**

##### **103ZE Court to exclude public while complainant gives evidence**

- (1) This section applies in relation to a criminal proceeding that relates, wholly or partly, to a charge for a sexual offence.
- (2) While a complainant gives evidence in the proceeding, the court must exclude from the courtroom all persons other than the following—
- (a) the counsel and solicitor of the complainant;
  - (b) the defendant and the defendant's counsel and solicitor;
  - (c) a Crown law officer or a person authorised by a Crown law officer;
  - (d) the prosecutor;

- 
- (e) an intermediary under part 2, division 4C for the complainant;
- (f) any person whose presence is, in the opinion of the court, necessary or desirable for the proper conduct of the proceeding;
- (g) any person whose presence will provide emotional support to the complainant;
- (h) if the complainant is under or apparently under the age of 17 years—the parent or guardian of the complainant unless, in the court’s opinion, the presence of that person would not be in the complainant’s interests;
- (i) any person who makes application to the court to be present and whose presence, in the court’s opinion—
- (i) would serve a proper interest of the applicant; and
  - (ii) would not be prejudicial to the interests of the complainant.
- (3) Subsection (2) applies regardless of the way in which the complainant gives evidence.

*Examples of ways in which the complainant may give evidence—*

- the complainant gives evidence outside the courtroom and the evidence is transmitted to the courtroom by audio visual link or other means
  - the complainant’s evidence is pre-recorded and later presented in the courtroom
  - an audio visual or audio recording of the complainant, such as body worn camera footage of the complainant speaking to a police officer or another person, is presented in the courtroom
- (4) Subsection (2) does not limit the power of the court to exclude from the courtroom any person, including a defendant.
- (5) If the criminal proceeding is a trial by jury, the

judge must instruct the jury that—

- (a) they should not draw any inference as to the defendant's guilt from the exclusion of the public; and
- (b) the probative value of the evidence is not increased or decreased because of the exclusion of the public; and
- (c) the evidence is not to be given any greater or lesser weight because of the exclusion of the public.

## **Division 2      Prohibitions and restrictions in relation to particular questions and evidence**

### **103ZF Application of division**

This division applies in relation to a criminal proceeding that relates, wholly or partly, to a charge for a sexual offence.

### **103ZG Prohibition on questions and evidence concerning sexual reputation of complainant**

The court must not allow any questions as to, or admit any evidence of, the sexual reputation of the complainant.

### **103ZH Restriction on questions and evidence concerning complainant's sexual activities**

The complainant must not be cross-examined, and the court must not admit any evidence, as to the sexual activities, whether consensual or non-consensual, of the complainant (other than

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those to which the charge relates), without the leave of the court.

### **103ZI Application for leave**

An application for leave under section 103ZH—

- (a) in the case of a summary trial, must be filed with the Magistrates Court at the place at which the trial will be held and served on each other party to the trial at least 7 days before the trial; and
- (b) in the case of a committal proceeding, must be filed with the Magistrates Court at the place at which the proceeding will be held, and served on each other party to the proceeding at least 7 days before the proceeding; and
- (c) in the case of a trial, must be filed with the Supreme Court or District Court, as the case requires, and served on each other party to the trial—
  - (i) at least 14 days before the day on which the trial is listed to commence; or
  - (ii) if a special hearing is to be held—at least 14 days before the hearing.

### **103ZJ Application for leave out of time**

If it is in the interests of justice to do so, the court may hear and decide an application for leave under section 103ZH after the expiry of the relevant time limit stated in section 103ZI.

### **103ZK Contents of application for leave**

- (1) An application for leave under section 103ZH

must be in writing and set out the matters required by subsection (2) or (3), as the case requires.

- (2) An application for leave to cross-examine the complainant as to the sexual activities of the complainant must set out—
  - (a) the initial questions sought to be asked of the complainant; and
  - (b) the scope of the questioning sought to flow from the initial questioning; and
  - (c) how the evidence sought to be elicited from the questioning has substantial probative value or why it is proper matter for cross-examination as to credit.
- (3) An application for leave to admit evidence as to the sexual activities of the complainant must—
  - (a) identify the evidence that is sought to be admitted; and
  - (b) set out how the evidence has substantial probative value.
- (4) If it is in the interests of justice to do so, the court may waive the requirement under subsection (1) that an application for leave be made in writing.

### **103ZL Hearing of application for leave**

An application for leave under section 103ZH must be heard in the absence of the jury (if any) and may be heard in the absence of the complainant.

### **103ZM Determination of application for leave during summary trial, committal proceeding or trial**

In the course of a summary trial, committal proceeding or trial, the court must not grant leave

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under section 103ZH unless it is satisfied that the evidence has substantial probative value or is a proper matter for cross-examination as to credit and that it is in the interests of justice to allow the cross-examination or to admit the evidence, having regard to—

- (a) whether the probative value of the evidence outweighs the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of the age of the complainant and the number and nature of the questions that the complainant is likely to be asked; and
- (b) the risk that the evidence may arouse in the jury discriminatory belief or bias, prejudice, sympathy or hostility; and
- (c) the need to respect the complainant's personal dignity and privacy; and
- (d) the right of the defendant to fully answer and defend the charge; and
- (e) any other relevant matter.

### **103ZN Limitation on evidence of complainant's sexual activities**

Evidence of the complainant's sexual activities is not to be regarded—

- (a) as having substantial probative value by virtue of any inferences it may raise as to general disposition; or
- (b) as being a proper matter for cross-examination as to credit unless, because of special circumstances, it would be likely to materially impair confidence in

the reliability of the evidence of the complainant.

## **Division 3      Jury directions related to sexual offences**

### **Subdivision 1   Preliminary**

#### **103ZO Application of division**

- (1) This division applies in relation to a criminal proceeding—
  - (a) that is a trial by jury or by a judge sitting alone; and
  - (b) that relates, wholly or partly, to a charge of a sexual offence.
- (2) For a trial by a judge sitting alone, the court's reasoning with respect to any matter mentioned in subdivision 3 or 4 must, to the extent the court thinks fit, be consistent with how a jury would be directed about the matter under subdivision 3 or 4 in the particular case.

### **Subdivision 2   General matters**

#### **103ZP Judge may request indication from parties**

- (1) Before the criminal proceeding commences, the judge may request that the prosecution and defence counsel (or, if the defendant is unrepresented, the defendant) each inform the judge of whether it is likely that evidence will be adduced in the trial that would require the giving of a direction under subdivision 3 or 4.

- (2) If the judge is informed under subsection (1) that it is likely that evidence will be adduced that would require the giving of a particular direction, the judge is not required to form a view, at that time, about whether to give that direction.
- (3) Nothing in this section prevents the prosecution, defence counsel or the defendant from later requesting, or making submissions in relation to, the giving of a direction about which the judge was not informed under subsection (1).

### **103ZQ When directions under subdivisions 3 and 4 must be given**

- (1) The judge must give any 1 or more of the directions set out in subdivision 3 in the criminal proceeding—
  - (a) if there is a good reason to give the direction; or
  - (b) if requested to give the direction by a party to the proceeding, unless there is a good reason not to give the direction.
- (2) If the judge is to give a direction under subdivision 3 or 4, the direction must be given at the earliest time in the criminal proceeding that the judge determines is appropriate.
- (3) However, subsection (2) does not prevent the judge from giving a direction under subdivision 3 or 4 at any time during the criminal proceeding, including—
  - (a) before any evidence is adduced in the proceeding; and
  - (b) in the judge’s summing up to the jury.
- (4) The judge may repeat a direction under subdivision 3 or 4 at any time in the criminal proceeding.

- (5) The judge is not required to use a particular form of words in giving a direction under subdivision 3 or 4.

### **103ZR No limit of court's duty to direct jury**

This division does not limit the matters the court may direct the jury about, including in relation to evidence given by an expert witness.

### **Subdivision 3 Directions to jury—consent and mistake of fact**

#### **103ZS Direction about circumstances in which non-consensual sexual activity occurs**

The judge may direct the jury that non-consensual sexual activity can occur—

- (a) in many different circumstances; and
- (b) between different kinds of people including—
  - (i) people who know one another; and
  - (ii) people who are married to one another; and
  - (iii) people who are in an established relationship with one another; and
  - (iv) people of the same or different sexual orientations; and
  - (v) people of any gender identity, whether or not their gender identity corresponds with the sex assigned to them at birth.

### **103ZT Direction about responses to non-consensual sexual activity**

The judge may direct the jury that—

- (a) there is no typical, normal or proper response to non-consensual sexual activity; and
- (b) people may respond to non-consensual sexual activity in different ways, including by freezing and not saying or doing anything; and

*Note—*

Under the Criminal Code, section 348AA(1)(a), for the purposes of chapter 32 of the Code, a person does not consent to an act if the person does not say or do anything to communicate consent.

- (c) the jury must avoid making assessments based on preconceived ideas about how people respond to non-consensual sexual activity.

### **103ZU Direction on lack of physical injury, violence or threats**

The judge may direct the jury that—

- (a) people who do not consent to a sexual activity may not be physically injured or subjected to violence, or threatened with physical injury or violence; and
- (b) the absence of injury or violence, or threats of injury or violence, does not, of itself, mean that a person is not telling the truth about a sexual offence.

### **103ZV Direction on responses to giving evidence**

The judge may direct the jury that—

- (a) trauma may affect people differently, which means that some people may show obvious signs of emotion or distress when giving evidence in court about a sexual offence, but others may not; and
- (b) the presence or absence of emotion or distress does not, of itself, mean that a person is not telling the truth about a sexual offence.

### **103ZW Direction on behaviour and appearance of complainant**

The judge may direct the jury that it should not be assumed that a person consented to a sexual activity because the person—

- (a) wore particular clothing or had a particular appearance; or
- (b) consumed alcohol or another drug; or
- (c) was present in a particular location; or

*Examples—*

- 1 The person attended a nightclub.
- 2 The person went to the defendant's home.
- (d) acted in a flirtatious or sexual manner; or
- (e) worked as a sex worker.

### **103ZX Direction on mistake of fact in relation to consent**

The judge may direct the jury that if the jury concludes that the defendant knew or believed that a circumstance mentioned in the Criminal Code, section 348AA(1) existed in relation to a person, that knowledge or belief is enough to show that the defendant did not reasonably believe that the person was consenting to the act.

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## Subdivision 4 Directions to jury—other

### 103ZY Direction on differences in complainant's account

- (1) This section applies if evidence is given, or likely to be given, or a question is asked, or likely to be asked, of a witness that tends to suggest a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.
- (2) The judge must direct the jury—
  - (a) that experience shows—
    - (i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time; and
    - (ii) trauma may affect people differently, including affecting how they recall events; and
    - (iii) it is common for there to be differences in accounts of a sexual offence; and
    - (iv) both truthful and untruthful accounts of a sexual offence may contain differences; and
  - (b) that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.
- (3) In this section—

***difference***, in an account, includes—

  - (a) a gap in the account; and
  - (b) an inconsistency in the account; and

- (c) a difference between the account and another account.

### **103ZZ Direction on lack of complaint or delay in making complaint**

- (1) This section applies if evidence is given, or likely to be given, or a question is asked, or is likely to be asked, of a witness that tends to suggest—
  - (a) an absence of complaint in relation to the commission of the sexual offence the subject of the criminal proceeding by the complainant; or
  - (b) delay by the complainant in making a complaint in relation to the commission of the sexual offence.
- (2) The judge—
  - (a) must direct the jury that absence of complaint or delay in complaining does not, of itself, indicate that the allegation that the sexual offence was committed is false; and
  - (b) must direct the jury that there may be good reasons why a person who does not consent to a sexual activity may hesitate in making, or may refrain from making, a complaint about a sexual offence; and

#### *Examples of good reasons—*

- 1 The person was overcome by the abuse of a relationship of authority, trust or dependence.
  - 2 The person has employed strategies to cope with the sexual offence such as suppression or disassociation from the offence.
  - 3 The person has a fear of ostracism from their community.
- (c) must not direct the jury that absence of complaint or delay in complaining is relevant to the complainant's credibility

unless there is sufficient evidence to justify the direction.

- (3) If the criminal proceeding also relates to a domestic violence offence alleged to have been committed by the defendant against the same complainant, the judge may—
  - (a) also give a warning under section 103ZD; or
  - (b) give a single warning to address both types of offences.
- (4) In this section—

*domestic violence offence* see section 103B.

### **103ZZA Direction on evidence of post-offence relationship**

- (1) This section applies if evidence is given, or is likely to be given, or a question is asked, or is likely to be asked, of a witness that tends to suggest that, after the sexual offence the subject of the criminal proceeding is alleged to have been committed, the complainant—
  - (a) continued a relationship with the defendant; or
  - (b) otherwise continued to communicate with the defendant.
- (2) The judge must direct the jury that experience shows that—
  - (a) people may react differently to non-consensual sexual activity and there is no typical, normal or proper response to non-consensual sexual activity; and
  - (b) some people who are subjected to non-consensual sexual activity will never again contact the person who subjected them to the activity, while others—

- (i) may continue a relationship with that person; or
  - (ii) may otherwise continue to communicate with that person; and
- (c) there may be good reasons why a person who is subjected to non-consensual sexual activity—
- (i) may continue a relationship with the person who subjected them to the activity; or
  - (ii) may otherwise continue to communicate with that person.

*Examples of good reasons—*

- 1 The person was overborne by the abuse of a relationship of authority, trust or dependence.
- 2 The person fears family dissolution.
- 3 The person has a fear of ostracism from their community.

## **Subdivision 5 Prohibited directions**

### **103ZZB Prohibited directions etc. in relation to credibility of complainant's evidence**

The judge in the criminal proceeding—

- (a) must not direct, warn or suggest to the jury that complainants who do not make a complaint or who delay in making a complaint are, as a class, less credible than other complainants; and
- (b) must not direct, warn or suggest to the jury in relation to the evidence of complainants who do not make a complaint or who delay in making a complaint—

- (i) that it would be dangerous or unsafe to convict the defendant on the evidence;  
or
- (ii) that the evidence should be scrutinised with great care.

## **Division 4      Expert evidence in relation to sexual offences**

### **Subdivision 1   Preliminary**

#### **103ZZC Definitions for division**

In this division—

*relevant evidence*, about a defendant, see section 103ZZE.

*relevant proceeding* see section 103ZZD.

*sexual offence expert evidence panel* see section 103ZZH(5).

#### **103ZZD Meaning of *relevant proceeding***

- (1) A *relevant proceeding* is a criminal proceeding—
  - (a) for an offence against a provision of the Criminal Code, chapter 32; and
  - (b) in which the matters mentioned in the Criminal Code, section 348A(4) are likely to be relevant; and
  - (c) held before a court at a place prescribed by regulation.
- (2) For subsection (1)(a), it does not matter whether the criminal proceeding also relates to other offences.

### **103ZZE Meaning of *relevant evidence***

*Relevant evidence*, about a defendant, is evidence about—

- (a) a cognitive impairment of the defendant within the meaning of the Criminal Code, section 348B; or
- (b) a mental health impairment of the defendant within the meaning of the Criminal Code, section 348C; or
- (c) the effect of an impairment mentioned in paragraph (a) or (b) on the defendant's ability to communicate, including whether the impairment was a substantial cause of the person not saying or doing anything as mentioned in the Criminal Code, section 348A(4)(b).

## **Subdivision 2 Engagement**

### **103ZZF Engagement of person included on sexual offence expert evidence panel**

- (1) A party to a relevant proceeding may engage a person who is included on the sexual offence expert evidence panel to give relevant evidence about the defendant in the proceeding.
- (2) Subsection (1) does not prevent a party to a relevant proceeding engaging an expert other than a person who is included on the sexual offence expert evidence panel to give relevant evidence about the defendant in the proceeding.
- (3) A person may be engaged under subsection (1) or (2) only if the person is not an excluded person.
- (4) For subsection (3), a person is an *excluded person* if the person—

- (a) is a relative, friend or acquaintance of the defendant; or
- (b) is a party to the relevant proceeding; or
- (c) is a potential witness in the relevant proceeding.

### **103ZZG Particular information to be given to person engaged**

- (1) This section applies if a person is engaged by a party to a relevant proceeding to give relevant evidence about the defendant in the proceeding, whether or not the person is included on the sexual offence expert evidence panel.
- (2) The person may ask the prosecutor for the relevant proceeding to give the person copies of—
  - (a) the following documents relating to the offence the subject of the proceeding—
    - (i) an indictment or bench charge sheets;
    - (ii) summaries or particulars of allegations;
    - (iii) witness statements, including Evidence Act section 93A device statements;
    - (iv) exhibits or photographs of exhibits;
    - (v) transcripts of proceedings;
    - (vi) a record of interview or transcript of a record of interview; and
  - (b) the defendant’s criminal history; and
  - (c) the defendant’s educational and work records.
- (3) Subsection (2) does not apply to information, contained in a document—
  - (a) that is sensitive evidence under the Criminal Code, section 590AF; or

- (b) that the prosecution would be prevented under another Act or law from giving to the defendant or a lawyer acting for the defendant during a proceeding for the offence; or
  - (c) consisting of contact details for witnesses to the alleged commission of the offence.
- (4) In this section—
- Evidence Act section 93A device statement* see the Criminal Code, section 590AFA.

### **Subdivision 3 Sexual offence expert evidence panel**

#### **103ZZH Chief executive to establish sexual offence expert evidence panel**

- (1) The chief executive must establish and maintain a panel of persons the chief executive is satisfied are suitable to give relevant evidence about a defendant in a relevant proceeding.
- (2) A person is not suitable to give relevant evidence about a defendant in a relevant proceeding unless the person can demonstrate specialised knowledge, gained by training, study or experience, in—
  - (a) psychiatry; or
  - (b) neuro-cognitive psychology; or
  - (c) a field of knowledge relevant to assessing—
    - (i) cognitive impairment of a person within the meaning of the Criminal Code, section 348B or mental health impairment of a person within the meaning of the Criminal Code, section 348C; and

- (ii) the effect of such an impairment on the person's ability to communicate.
- (3) Also, a person is not suitable to give relevant evidence about a defendant in a relevant proceeding if—
  - (a) the person has been the subject of professional discipline; or
  - (b) the person has been denied, or removed from, professional registration; or
  - (c) the person has a criminal history that indicates a lack of suitability to give relevant evidence about a defendant in a relevant proceeding.
- (4) Subsections (2) and (3) do not limit the matters to which the chief executive may have regard in considering the suitability of a person to give relevant evidence about a defendant in a relevant proceeding.
- (5) The panel established under this section is the *sexual offence expert evidence panel*.

### **103ZZI Removal of person from sexual offence expert evidence panel**

- (1) This section applies if the chief executive decides a person included on the sexual offence expert evidence panel is no longer suitable to give relevant evidence about a defendant in a relevant proceeding.
- (2) The chief executive must—
  - (a) remove the person from the sexual offence expert evidence panel; and
  - (b) give the person a written notice stating the reasons for the decision.

### **103ZZJ Criminal history report**

- (1) This section applies for deciding under section 103ZZH or 103ZZI whether a person is suitable to give relevant evidence about a defendant in a relevant proceeding.
- (2) The chief executive may ask the police commissioner for—
  - (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) However, the chief executive may make the request only if the person has given the chief executive written consent for the request.
- (4) The police commissioner must comply with the request.
- (5) However, the duty to comply applies only in relation to information in the commissioner's possession or to which the commissioner has access.
- (6) In this section—

*criminal history*, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

### **103ZZK Confidentiality of criminal history information**

- (1) This section applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the department.
- (2) The person must not, directly or indirectly,

disclose the criminal history information to another person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may disclose the criminal history information to another person—
- (a) to the extent necessary to perform the person’s functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
  - (f) if the information is, or has been, lawfully accessible to the public.
- (4) The chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (5) In this section—

*criminal history information* means a report, or information contained in a report, given to the chief executive under section 103ZZJ.

## 60 Insertion of new s 161

Part 9, division 14A, as inserted by this Act—  
*insert—*

### **161 Application of part 6B, divs 1–3 to criminal proceedings**

Part 6B, divisions 1 to 3 applies to a criminal proceeding regardless of when—

- (a) the offence the subject of the proceeding was committed; or
- (b) the defendant in the proceeding was charged; or
- (c) the proceeding was started.

### **61 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3—

*insert—*

***relevant evidence***, about a defendant, for part 6B, division 4, see section 103ZZE.

***sexual offence*** means an offence of a sexual nature, including, for example—

- (a) an offence against a provision of the Criminal Code, chapter 22; and
- (b) an offence against a provision of the Criminal Code, chapter 32.

***sexual offence expert evidence panel***, for part 6B, division 4, see section 103ZZH(5).

- (2) Schedule 3, definition *relevant proceeding*—

*insert—*

- (d) for part 6B, division 4—see section 103ZZD.

## **Division 4                      Expansion of preliminary complaint evidence**

### **62            Insertion of new s 94A**

After section 94—

*insert—*

#### **94A Admissibility of preliminary complaint in sexual offences and domestic violence offences**

- (1) This section applies in relation to a committal proceeding, or a trial, in relation to a sexual offence or domestic violence offence.
- (2) Evidence of how and when any preliminary complaint was made by the complainant about the commission of the alleged offence by the defendant is admissible in evidence regardless of when the preliminary complaint was made.
- (3) Nothing in subsection (2) derogates from the power of the court in a criminal proceeding to exclude the evidence if the court is satisfied it would be unfair to the defendant to admit the evidence.
- (4) If a defendant is tried by a jury, the judge must not warn or suggest in any way to the jury that the law regards the complainant's evidence to be more reliable or less reliable only because of the length of time before the complainant made a preliminary complaint or other complaint.
- (5) Subject to subsection (4), the judge may make any comment to a jury on the complainant's evidence that it is appropriate to make in the interests of justice.

*Note—*

See also sections 103ZD, 103ZZ, 103ZZB and 132BA and the Criminal Code, section 632.

(6) In this section—

*complaint* includes a disclosure.

*preliminary complaint* means any complaint other than—

- (a) the complainant's first formal witness statement to a police officer given in, or in anticipation of, a criminal proceeding in relation to the alleged offence; or
- (b) a complaint made after the complaint mentioned in paragraph (a).

*Example—*

Soon after the alleged commission of a sexual offence, the complainant discloses the alleged commission of the offence to a parent (*complaint 1*). Many years later, the complainant makes a complaint to a secondary school teacher and a school guidance officer (*complaints 2 and 3*). The complainant visits the local police station and makes a complaint to the police officer at the front desk (*complaint 4*). The complainant subsequently attends an appointment with a police officer and gives a formal witness statement to the police officer in anticipation of a criminal proceeding in relation to the alleged offence (*complaint 5*). After a criminal proceeding is begun, the complainant gives a further formal witness statement (*complaint 6*).

Each of complaints 1 to 4 is a preliminary complaint. Complaints 5 and 6 are not preliminary complaints.

## 63 Insertion of new s 103ZD

After section 103ZC—

*insert—*

### **103ZD Direction about lack of complaint or delay in making complaint**

- (1) This section applies if, in a criminal proceeding for a domestic violence offence, evidence is given, or is likely to be given, or a question is asked, or is likely to be asked, of a witness that

tends to suggest—

- (a) an absence of complaint in relation to the commission of the domestic violence offence by the person against whom the offence is alleged to have been committed (the *complainant*); or
  - (b) delay by the complainant in making a complaint in relation to the commission of the domestic violence offence.
- (2) The judge—
- (a) must direct the jury that the absence of complaint or delay in complaining does not, of itself, indicate that the allegation that the domestic violence offence was committed is false; and
  - (b) must direct the jury that there may be good reasons why a complainant of domestic violence may hesitate in making, or may refrain from making, a complaint about a domestic violence offence; and
- Examples of good reasons—*
- 1 The person was overborne by the abuse of a relationship of authority, trust or dependence.
  - 2 The person has employed strategies to cope with the domestic violence offence such as suppression or disassociation from the offence.
  - 3 The person has a fear of ostracism from their community.
- (c) must not direct the jury that the absence of complaint or delay in complaining is relevant to the complainant’s credibility unless there is sufficient evidence to justify the direction.
- (3) The judge may also repeat the direction at any time during the criminal proceeding.

- (4) If the criminal proceeding also relates to a sexual offence alleged to have been committed by the defendant against the same complainant, the judge may—
- (a) also give a warning under section 103ZZ; or
  - (b) give a single warning to address both types of offences.

## 64 Insertion of new s 162

Part 9, division 14A, as inserted by this Act—

*insert—*

### **162 Application of s 94A to sexual offences and domestic violence offences charged before commencement**

Section 94A applies in relation to a proceeding for a sexual offence or domestic violence offence charged against the defendant after the commencement, whether the offence was committed before or after the commencement.

## Division 5 Prohibited directions

### 65 Insertion of new ss 132B and 132BAA

After section 132A—

*insert—*

#### **132B Prohibited direction in relation to doubts regarding truthfulness or reliability of complainant's evidence**

- (1) In a criminal proceeding in which more than 1 offence is charged, the judge must not direct the jury that if the jury doubts the truthfulness or reliability of the complainant's evidence in relation to a charge, that doubt must be taken into

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account in assessing the truthfulness or reliability of the complainant's evidence generally or in relation to other charges.

- (2) Any rule of common law under which a judge is required or permitted to give the jury a direction mentioned in subsection (1) is abolished.
- (3) This section does not prevent a judge from making a comment on the evidence given in the proceeding that it is appropriate to make in the interests of justice.

### **132BAA Prohibited directions etc. in relation to reliability of children's evidence**

In a criminal proceeding the judge must not—

- (a) direct, warn or suggest to the jury that children as a class are unreliable witnesses; or
- (b) direct, warn or suggest to the jury in relation to the uncorroborated evidence of a child—
  - (i) that it would be dangerous or unsafe to convict the defendant on the evidence; or
  - (ii) that the evidence should be scrutinised with great care; or
- (c) direct, warn or comment to the jury about the reliability of a child's evidence solely on account of the child's age.

## **66 Insertion of new s 163**

Part 9, division 14A, as inserted by this Act—

*insert—*

### **163 Application of ss 132B and 132BAA to criminal proceedings**

Sections 132B and 132BAA apply to a criminal proceeding regardless of when—

- (a) the offence the subject of the proceeding was committed; or
- (b) the defendant in the proceeding was charged; or
- (c) the proceeding was started.

## **Division 6                      Limits on publishing information in relation to sexual offences**

### **67            Amendment of long title**

Long title, after ‘evidence’—

*insert—*

**and to protect persons concerned in the commission of sexual offences from identification**

### **68            Amendment of s 21A (Evidence of special witnesses)**

Section 21A(1), definition *sexual offence*—

*omit.*

### **69            Insertion of new pt 6C**

After part 6B, as inserted by this Act—

*insert—*

## **Part 6C                      Limits on publishing information in relation to sexual offences**

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## Division 1 Preliminary

### 103ZZL Definitions for part

In this part—

**accredited media entity** means an entity listed as an accredited media entity in the Supreme Court’s media accreditation policy.

**complainant** means a person in relation to whom a sexual offence has been, or is alleged to have been, committed.

**identifying matter**, in relation to a complainant, means—

- (a) the name, address, place of employment or another particular of the complainant or another person that is likely to lead to the identification of the complainant as a victim of a sexual offence or an alleged sexual offence; or
- (b) a photograph, picture, videotape, digital image or other visual representation of the complainant or another person that is likely to lead to the identification of the complainant as a victim of a sexual offence or an alleged sexual offence.

**publish** means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication; and
- (b) broadcast by radio, television or the internet; and
- (c) broadcast on a social media platform or an online social network; and
- (d) public exhibition.

*Supreme Court's media accreditation policy* means the media accreditation policy in effect and made under or appended to a practice direction of the Supreme Court.

## **Division 2      Publishing identifying matter in relation to complainants**

### **103ZZM Definitions for division**

In this division—

*capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

*consent* means informed consent by a person with the capacity to give the consent.

### **103ZZN Offence to publish identifying matter in relation to complainant**

- (1) A person must not publish identifying matter in relation to a complainant.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or  
(b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 103ZZZR, to have also committed the offence.

- (2) If the complainant is a complainant against whom a sexual offence is alleged to have been committed, subsection (1) applies only if a person has been charged with the sexual offence.

- (3) Subsection (1) does not apply if the complainant is deceased.

**103ZZO Section 103ZZN does not apply if complainant publishes identifying matter about themself**

Section 103ZZN does not apply to a complainant who publishes identifying matter—

- (a) that is in relation to themself; and
- (b) that does not identify, and is not likely to lead to the identification of—
  - (i) another person against whom a sexual offence is alleged to have been committed (other than the person charged with or convicted of the sexual offence against the complainant); or
  - (ii) a child (other than the complainant if the complainant is a child) who is a complainant, defendant or witness in a criminal proceeding about the sexual offence alleged to have been committed against the complainant.

*Note—*

Other laws may limit publication of information about a complainant, including, for example, defamation law, the *Mental Health Act 2016*, chapter 17, part 4 and the *Youth Justice Act 1992*, section 301.

**103ZZP Defence to prosecution for offence against s 103ZZN—adult gives consent to defendant**

It is a defence to a prosecution for an offence against section 103ZZN for the defendant to prove that—

- (a) the publication was about a complainant who—

- (i) had consented in writing to the defendant for the defendant to publish the information; and
- (ii) was an adult at the time the consent was given; and
- (b) the publication was in accordance with the limits, if any, set by the complainant; and
- (c) the publication does not identify, and is not likely to lead to the identification of—
  - (i) another person against whom a sexual offence is alleged to have been committed (other than the person charged with or convicted of the sexual offence against the complainant); or
  - (ii) a child who is a complainant, defendant or witness in a criminal proceeding about the sexual offence alleged to have been committed against the complainant.

**103ZZQ Defence to prosecution for offence to s 103ZZN—adult gives consent to court**

- (1) It is a defence to a prosecution for an offence against section 103ZZN for the defendant to prove that—
  - (a) the publication was about a complainant who—
    - (i) had consented in writing to a relevant court for the defendant to publish the information; and
    - (ii) was an adult at the time the consent was given; and
  - (b) the relevant court notified the defendant of the consent before the publication.

(2) In this section—

*relevant court* means a court, tribunal, commission, inquiry or other judicial or non-judicial body established by legislation to hear the information the subject of the publication.

### **103ZZR Defence to prosecution for offence to s 103ZZN—adult gives consent to police**

It is a defence to a prosecution for an offence against section 103ZZN for the defendant to prove that—

- (a) the publication was about a complainant who—
  - (i) had consented in writing to the police commissioner or an employee of the police service for the defendant to publish the information; and
  - (ii) was an adult at the time the consent was given; and
- (b) the police commissioner or an employee of the police service notified the defendant of the consent before the publication.

### **103ZZS Defence to prosecution for offence against s 103ZZN—child gives consent to defendant**

- (1) It is a defence to a prosecution for an offence against section 103ZZN for the defendant to prove that—
  - (a) the publication was about a complainant who—
    - (i) had consented in writing to the defendant for the defendant to publish the information; and

- (ii) was a child at the time the consent was given; and
  - (b) the consent was accompanied by a supporting statement that complies with subsection (2) made by a relevant person; and
  - (c) the publication was in accordance with the limits, if any, set by the complainant; and
  - (d) the publication does not identify, and is not likely to lead to the identification of—
    - (i) another person against whom a sexual offence is alleged to have been committed (other than the person charged with or convicted of the sexual offence against the complainant); or
    - (ii) another child who is a complainant, defendant or witness in a criminal proceeding about the sexual offence alleged to have been committed against the complainant.
- (2) For the purposes of subsection (1)(b), a supporting statement must state that the relevant person is of the opinion that—
- (a) the complainant understands—
    - (i) what it means to be identified as a victim of a sexual offence; and
    - (ii) the consequences of losing anonymity; and
  - (b) the complainant had capacity to give the consent.
- (3) In this section—
- relevant person*** means—
- (a) a medical practitioner; or

- (b) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student; or
- (c) a person who is of a class of persons prescribed by regulation.

**103ZZT Section 103ZZN does not apply if ordered by Supreme Court upon application by defendant**

- (1) A defendant charged with a sexual offence in a criminal proceeding may apply to the Supreme Court for an order that section 103ZZN does not apply in relation to a complainant.
- (2) The Supreme Court may make an order under subsection (1) if the court is satisfied that—
  - (a) the order is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses in the criminal proceeding; or
  - (b) the conduct of the defendant’s defence in the proceeding is likely to be substantially prejudiced if the order is not made.
- (3) The complainant has standing to be heard in relation to the making of the order.
- (4) In deciding whether to make the order, the Supreme Court must have regard to—
  - (a) any views and wishes of the complainant, whether or not the complainant appears before the court under subsection (3); and
  - (b) any views and wishes of any other complainants in the criminal proceeding.

**103ZZU Section 103ZZN does not apply if ordered by Supreme Court upon application by offender**

- (1) This section applies to a person (the *offender*) who—
  - (a) has been convicted of a sexual offence; and
  - (b) has given the Court of Appeal a notice of appeal against the conviction or a notice of application for leave to appeal against the conviction.
- (2) The offender may apply to the Supreme Court for an order that section 103ZZN does not apply in relation to a complainant.
- (3) The Supreme Court may make an order under subsection (2) if the court is satisfied that—
  - (a) the order is required for the purpose of obtaining evidence in support of the appeal; and
  - (b) the offender is likely to suffer substantial injustice if the order is not made.
- (4) The complainant has standing to be heard in relation to the making of the order.
- (5) In deciding whether to make the order, the Supreme Court must have regard to—
  - (a) any views and wishes of the complainant, whether or not the complainant appears before the court under subsection (4); and
  - (b) any views and wishes of any other complainants in the criminal proceeding in which the offender was convicted.

## **Division 3      Publishing identifying matter in relation to defendants**

### **103ZZV Definitions for division**

In this division—

*eligible person*, in relation to a charge of a prescribed sexual offence, means the complainant, the defendant or the prosecution.

*identifying matter*, in relation to a defendant, means—

- (a) the name, address, place of employment or another particular of the defendant or another person that is likely to lead to the identification of the defendant as a person charged with a prescribed sexual offence; or
- (b) a photograph, picture, videotape, digital image or other visual representation of the defendant or another person that is likely to lead to the identification of the defendant as a person charged with a prescribed sexual offence.

*interim order* see section 103ZZZA(1).

*non-publication order* see section 103ZZW(2).

*prescribed sexual offence* means any of the following offences—

- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) an offence against the Criminal Code, section 352.

*sentenced* means sentenced by a Magistrates

Court.

**103ZZW Application for non-publication order, and notice of application**

- (1) This section applies if a defendant is charged with a prescribed sexual offence.
- (2) An eligible person may apply to a Magistrates Court for an order (a *non-publication order*) prohibiting the publication, before the defendant is committed for trial or sentence or sentenced on the charge, of identifying matter relating to the defendant.
- (3) The applicant must give 3 business days' notice of their intention to make the application to—
  - (a) the court; and
  - (b) each other eligible person.
- (4) However, the court may hear an application for a non-publication order despite the failure of the applicant to give notice under subsection (3) if the court is satisfied—
  - (a) there is a good reason for notice not having been given under subsection (3); or
  - (b) it is in the interests of justice that the court hear the application without notice having been given under subsection (3).
- (5) Also, if the applicant is the defendant, notice to the complainant—
  - (a) must not be given personally by the defendant; and
  - (b) must be given by the prosecution giving a copy of the notice to the complainant or another person nominated to receive correspondence on the complainant's behalf in relation to the matter.

- (6) Notice under subsection (5) may be given by electronic communication.

### **103ZZX Notifications to accredited media entities**

- (1) On receiving a notice under section 103ZZW(3), the court must take reasonable steps to ensure that each accredited media entity is notified of the application.
- (2) The notification may be by electronic communication or any other way the court considers appropriate.

### **103ZZY Grounds for non-publication order**

The court may make a non-publication order if satisfied of 1 or more of the following grounds—

- (a) the order is necessary to prevent prejudice to the proper administration of justice;
- (b) the order is necessary to prevent undue hardship or distress to a complainant or witness in relation to the charge;
- (c) the order is necessary to protect the safety of any person.

### **103ZZZ Procedure for making non-publication order**

- (1) Each of the following persons may appear and be heard by the court on an application for a non-publication order—
- (a) the applicant;
- (b) an eligible person in relation to the charge to which the application relates;
- (c) an accredited media entity;

- (d) any other person whom the court considers has sufficient interest in the question of whether the order should be made.
- (2) The court may order that the application be heard in closed court.
- (3) In hearing the application the court—
  - (a) may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances; and
  - (b) must consider the following—
    - (i) the primacy of the principle of open justice;
    - (ii) the public interest;
    - (iii) any submissions made or views expressed by or on behalf of the complainant about the application;
    - (iv) any special vulnerabilities of the complainant or the defendant;
    - (v) any cultural considerations relating to the complainant or the defendant;
    - (vi) the potential effect of publication in a rural or remote community;
    - (vii) the potential to prejudice any future court proceedings;
    - (viii) the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history);
    - (ix) any other matter the court considers relevant.
- (4) If the court grants the application, the court must state in the order—

- (a) the grounds on which the order is made; and
- (b) any identifying matter that is not covered by the order; and
- (c) the extent to which publication of identifying matter is prohibited; and
- (d) that the order ceases to have effect when the defendant is committed for trial or sentence or sentenced on the charge or when the charge is withdrawn, whichever happens first.

### **103ZZZA Interim orders**

- (1) If an application is made to the court for a non-publication order, the court may, without determining the merits of the application, make an order (an *interim order*) prohibiting the publication of identifying matter relating to the defendant.
- (2) An interim order has effect until—
  - (a) it is revoked by the court; or
  - (b) the court finally decides the application.
- (3) If the court makes an interim order, the court must hear and decide the application as a matter of urgency and, where practicable, within 72 hours after making the interim order.

### **103ZZZB Review of non-publication order**

- (1) The court may review a non-publication order made by the court—
  - (a) on the court's own motion; or
  - (b) on the application of a person mentioned in section 103ZZZ(1)(a) to (d).
- (2) Each of the persons mentioned in section

103ZZZ(1)(a) to (d) is entitled to appear and be heard by the court on the review.

- (3) On a review the court may confirm, vary or revoke the order.

### **103ZZZC Contravention of interim order or non-publication order**

A person must not contravene an interim order or a non-publication order.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 103ZZZR, to have also committed the offence.

## **Division 4 Complainant privacy orders**

### **103ZZZD Definitions for division**

In this division—

*complainant privacy order* see section 103ZZZG(1).

*interim complainant privacy order* see section 103ZZZL.

*vexatious*, in relation to an application or a proceeding under this division, includes—

- (a) an abuse of the process of a court; and

- (b) made or commenced to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) made, commenced or pursued without reasonable grounds; and
- (d) pursued or conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

### **103ZZZE Applying for complainant privacy order**

- (1) A person with sufficient interest may apply to a court for a complainant privacy order in relation to a deceased complainant.
- (2) The application must set out the reasons the applicant believes—
  - (a) it is necessary to prohibit or restrict the publication of identifying matter in relation to the complainant; and
  - (b) why the publication would cause undue distress to the applicant.
- (3) The applicant must disclose all material facts in relation to the application.
- (4) If the complainant is a complainant against whom a sexual offence is alleged to have been committed, an application for a complainant privacy order can only be made if a person has been charged with the sexual offence.
- (5) To remove any doubt, it is declared that an application for a complainant privacy order can not be made by or on behalf of the offender or defendant.

### **103ZZZF Notifications to accredited media entities**

- (1) On receiving an application for a complainant

privacy order, the court must take reasonable steps to ensure that each accredited media entity is notified of the application for the order.

- (2) The notification may be made by electronic communication or any other way the court considers appropriate.
- (3) An entity that receives the notification may appear and be heard at the hearing of the application.
- (4) Nothing in this section limits any other requirement for an applicant to serve an application on any other party to the proceeding on the application.

### **103ZZZG Court may make complainant privacy order**

- (1) On an application under section 103ZZZE, the court may make an order prohibiting or restricting the publication of identifying matter (a *complainant privacy order*) if satisfied that it is necessary to avoid causing undue distress to the applicant.
- (2) In deciding whether to make a complainant privacy order, the court—
  - (a) must have regard to public interests in accordance with subsection (3); and
  - (b) may have regard to the nature and circumstances of the offending or alleged offending as part of the consideration of any undue distress to the applicant; and
  - (c) must take into account any views of the complainant about being publicly identified after their death as a victim of a sexual offence or an alleged sexual offence that were expressed during the complainant's

lifetime, if known, following reasonable enquiries; and

- (d) must take into account any risk that—
  - (i) the application, proceeding for the application or the complainant privacy order may be used to perpetrate domestic violence; or
  - (ii) the application or proceeding for the application is vexatious; and
- (e) must be satisfied that the applicant is a person with sufficient interest and, for that purpose, may have regard to the following in relation to the applicant and the complainant—
  - (i) the nature and closeness of the relationship between them, including their social and emotional ties;
  - (ii) the duration of the relationship between them and the frequency of contact;
  - (iii) whether they lived together or related together in a home environment;
  - (iv) any financial dependence or interdependence between them;
  - (v) any other form of dependence or interdependence between them;
  - (vi) the provision of any paid or unpaid responsibility or care by or between them;
  - (vii) the provision of sustenance or support by or between them;
  - (viii) any history of domestic violence or other offending or alleged offending by the applicant against the complainant

that would make the applicant not an appropriate person to be granted an order;

- (ix) whether they were in a relationship that had cultural recognition as being like family in the applicant's or the complainant's community;
  - (x) any other factors the court considers relevant; and
  - (f) may have regard to any cultural considerations relevant to the applicant or complainant; and
  - (g) must not take into account the views of the offender or defendant.
- (3) Despite subsection (1), a court may only make a complainant privacy order if satisfied that the particular circumstances make it necessary to displace public interests in, as relevant, the principles of open justice and freedom of expression, including free communication and disclosure of information.

### **103ZZZH Duration of complainant privacy orders**

- (1) The period for which a complainant privacy order, other than an interim complainant privacy order, operates must be—
  - (a) decided by the court; and
  - (b) stated in the order.
- (2) The period for which a complainant privacy order operates—
  - (a) may be for a fixed or ascertainable period; and
  - (b) subject to sections 103ZZZI, 103ZZZJ and 103ZZZP, must not exceed 5 years.

- (3) Despite subsection (1), a complainant privacy order is automatically revoked on whichever is the latest of—
  - (a) the death of the person who applied for the order; or
  - (b) if more than 1 person applied for the same order, the death of the last of those persons.

### **103ZZZI Application for extension of complainant privacy orders**

- (1) A person in relation to whom a complainant privacy order has been made may apply to the court that made the order for an extension of the duration of the order.
- (2) The applicant must disclose all material facts in relation to the application.
- (3) An application under subsection (1) must be made before the expiry of the complainant privacy order.
- (4) If an application under subsection (1) is made, the complainant privacy order that is the subject of the application continues in operation until the application is determined, despite the period of the complainant privacy order fixed in accordance with section 103ZZZH.

### **103ZZZJ Court may extend complainant privacy order**

- (1) On an application under section 103ZZZI(1), the court must take reasonable steps to ensure that each accredited media entity is notified of the application for extension of the duration of the order.
- (2) The notification may be by electronic communication or any other way the court

considers appropriate.

- (3) A person mentioned in subsection (1) is entitled to appear and be heard by the court on the application.
- (4) Also, the following persons are entitled to appear and be heard by the court on the application—
  - (a) a person other than the applicant who has a sufficient interest in whether the order should be extended;
  - (b) a party to a current proceeding before a court relating to the sexual offence or alleged sexual offence to which the order relates, other than the offender or defendant.
- (5) On an application under section 103ZZZI(1), the court may extend the duration of a complainant privacy order if satisfied that it is necessary to avoid causing undue distress to the applicant.
- (6) In deciding whether to extend the duration of the complainant privacy order, the court—
  - (a) must have regard to the public interests in accordance with subsection (7); and
  - (b) may have regard to the nature and circumstances of the offending or alleged offending as part of the consideration of any undue distress to the applicant; and
  - (c) must take into account any views of the complainant about being publicly identified after their death as a victim of a sexual offence or an alleged sexual offence that were expressed during the complainant's lifetime, if known, following reasonable enquiries; and
  - (d) must take into account any risk that—
    - (i) the application, proceeding on the application or the extended

- complainant privacy order may be used to perpetrate domestic violence; or
- (ii) the application or proceeding on the application is vexatious; and
- (e) must not take into account the views of the offender or defendant.
- (7) A court is only to extend the duration of a complainant privacy order if satisfied that the particular circumstances make it necessary to displace public interests in, as relevant, the principles of open justice and freedom of expression, including free communication and disclosure of information.
- (8) A person may apply for an extension of the duration of a complainant privacy order more than once and a court may extend the duration of a complainant privacy order more than once.
- (9) The period of an extension of a complainant privacy order must not exceed 5 years in relation to each extension.

### **103ZZZK Scope and effect of complainant privacy order**

- (1) A complainant privacy order must state—
- (a) to whom the order applies, including whether the order applies to—
    - (i) specific persons or bodies as stated in the order; or
    - (ii) the general public at large; and
  - (b) the identifying matter to which the order applies with sufficient detail to ensure that it is readily apparent from the terms of the order what matter is subject to the order.
- (2) A complainant privacy order must not prevent the

publication of details of a sexual offence or an alleged sexual offence or the identification of an offender or a defendant if that publication is not likely to lead to the identification of the complainant as a victim of the offence or alleged offence.

### **103ZZZL Interim complainant privacy orders**

- (1) If an application is made to a court for a complainant privacy order, the court may make an order (an *interim complainant privacy order*) in relation to the application.
- (2) An interim complainant privacy order may be made without deciding the merits of the application under section 103ZZZG.
- (3) An interim complainant privacy order has effect until—
  - (a) the substantive application is decided; or
  - (b) the order is revoked by a court.
- (4) If a court makes an interim complainant privacy order, the court must decide the substantive application for the complainant privacy order as a matter of urgency.

### **103ZZZM Evidence court may receive and take into account**

In hearing an application under this division a court may receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances.

### **103ZZZN Where complainant privacy order or interim complainant privacy order applies**

- (1) A complainant privacy order or an interim

complainant privacy order applies only to the prohibition or restriction on the publication of identifying matter relating to a complainant in a place where the order applies, as stated in the order.

- (2) Subject to subsection (3), a complainant privacy order or an interim complainant privacy order is not limited to applying in Queensland and may be made to apply anywhere in Australia.
- (3) A complainant privacy order or an interim complainant privacy order must not be made to apply outside Queensland unless the court is satisfied that having the order apply outside Queensland is necessary for achieving the purpose for which the order is made.

### **103ZZZO Disclosure of particular information not prevented**

A complainant privacy order or an interim complainant privacy order does not apply to or prevent a disclosure of information to a person or body prescribed by regulation for the purposes of enabling the person or body to perform a statutory function prescribed by regulation for the person or body.

### **103ZZZP Review of complainant privacy order or interim complainant privacy orders**

- (1) A court that made a complainant privacy order or an interim complainant privacy order may review the order for the purpose of confirming, varying or revoking the order—
  - (a) on the court's own motion; or
  - (b) on the application of—
    - (i) the person who applied for the order; or

- (ii) any other person who has a sufficient interest in whether the order should be confirmed, varied or revoked; or
  - (iii) a party to any current proceeding before a court relating to the sexual offence or alleged sexual offence to which the order relates, other than the offender or defendant; or
  - (iv) an accredited media entity.
- (2) The applicant must disclose all material facts in relation to the application.
- (3) To remove any doubt, it is declared that an application for review can not be made by or on behalf of the offender or defendant.
- (4) On deciding to review an order on the court's own motion or on receiving an application under subsection (1)(b), the court must take reasonable steps to ensure that each accredited media entity is notified of the own motion review or the application for review.
- (5) The notification may be made by electronic communication or any other way the court considers appropriate.
- (6) Each of the persons mentioned in subsection (1)(b) or (4) is entitled to appear and be heard by the court on the review, whether or not the person is the applicant for the review.
- (7) Subject to subsection (10), on a review, the court may confirm, vary or revoke the complainant privacy order or interim complainant privacy order, as appropriate.
- (8) In deciding whether to confirm, vary or revoke the complainant privacy order or interim complainant privacy order, the court—

- (a) must have regard to public interests in accordance with subsection (9); and
- (b) may have regard to the nature and circumstances of the offending or alleged offending as part of the consideration of any undue distress to the applicant; and
- (c) must take into account any views of the complainant about being publicly identified after their death as a victim of a sexual offence or an alleged sexual offence that were expressed during the complainant's lifetime, if known, following reasonable enquiries; and
- (d) must taken into account any risk that—
  - (i) the application, proceeding on the application or a confirmed, varied or revoked order or interim order may be used to perpetrate domestic violence; or
  - (ii) the application or the proceeding on the application is vexatious; and
- (e) must be satisfied that the applicant is a person with a sufficient interest and, for that purpose, may have regard to the following in relation to the applicant and the complainant—
  - (i) the matters mentioned in section 103ZZZG(2)(e)(i) to (vii) and (ix);
  - (ii) any history of domestic violence or other offending or alleged offending by the applicant against the complainant that would make the applicant not an appropriate person to be granted the confirmation, variation or revocation of the order;

- (iii) any other factors the court considers relevant; and
- (f) must not take into account the views of the offender or defendant.
- (9) A court is only to confirm or vary a complainant privacy order or an interim complainant privacy order if satisfied that the particular circumstances make it necessary to displace public interests in, as relevant, the principles of open justice and freedom of expression, including free communication and disclosure of information.
- (10) Unless the court considers it is not appropriate to do so, the court must revoke a complainant privacy order or an interim complainant privacy order if the application for revocation of the order is made by the person who applied for the order.

**103ZZZQ Offence to contravene complainant privacy order or interim complainant privacy order**

- (1) A person must not engage in conduct that constitutes a contravention of a complainant privacy order or an interim complainant privacy order that is in force if that person knows, or ought reasonably to know, that the order is in force.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1,000 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 103ZZZR, to have also committed the offence.

- (2) For the purposes of subsection (1), in the absence of evidence to the contrary, a person is taken to

know that a complainant privacy order or an interim complainant privacy order is in force if a court has electronically transmitted notice of the order to the person.

## **Division 5      Other provisions**

### **103ZZZR Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against section 103ZZN(1), 103ZZZC or 103ZZZQ(1), each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation’s conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation’s conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
  - (a) the liability of the corporation for the offence against section 103ZZN(1), 103ZZZC or 103ZZZQ(1);
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against section 103ZZN(1), 103ZZZC or 103ZZZQ(1).
- (4) In this section—

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

### **103ZZZS Part provides additional protection**

This part is in addition to and does not prejudice any other provision or rule of law directed towards the protection of witnesses or other persons in a criminal proceeding from identification.

### **103ZZZT Part does not affect other laws**

This part does not prevent a person from giving information that is permitted or required to be given under another law.

### **103ZZZU Other laws prohibiting or restricting publication not limited or otherwise affected**

- (1) Nothing in this part limits or otherwise affects any other law that prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication of identifying matter in relation to a complainant or identifying matter in relation to a defendant.
- (2) In this section—  
*identifying matter*, in relation to a defendant, see section 103ZZV.

## **70 Insertion of new ss 164–169**

Part 9, division 14A, as inserted by this Act—

*insert—*

### **164 Application of pt 6C, divs 1, 2, 4 and 5 in relation to complainants**

Part 6C, divisions 1, 2, 4 and 5 applies in relation to a complainant whether the sexual offence committed, or alleged to have been committed, against the complainant occurred before or after the commencement.

### **165 Application of pt 6C, divs 1, 3 and 5 in relation to defendants**

Part 6C, divisions 1, 3 and 5 applies in relation to a defendant charged with an offence whether the defendant was charged before or after the commencement.

### **166 Reference to sexual assault**

The reference in section 103ZZV, definition *prescribed sexual offence*, paragraph (d) to a sexual assault against the Criminal Code, section 352 is, in relation to an offence that was committed before the commencement of the *Criminal Law Amendment Act 2000*, section 39, a reference to an offence against the Criminal Code, section 337 as in force at any time before the commencement of the *Criminal Law Amendment Act 2000*, section 39.

### **167 Applications for non-publication orders made before commencement**

- (1) This section applies to an application for a non-publication order made but not decided under the repealed *Criminal Law (Sexual Offences) Act 1978*, former section 7(2) before the commencement.
- (2) The application is taken to be an application under section 103ZZW.

- (3) A notification given under the repealed *Criminal Law (Sexual Offences) Act 1978*, former section 7A in relation to the application is taken to be a notification given in relation to the application under section 103ZZX.

### **168 Continued operation of non-publication orders and interim orders**

On the commencement—

- (a) a non-publication order made under the repealed *Criminal Law (Sexual Offences) Act 1978*, former section 7 and still in force is taken to be a non-publication order made under section 103ZZW; and
- (b) an interim order made under the repealed *Criminal Law (Sexual Offences) Act 1978*, former section 7D and still in force is taken to be an interim order made under section 103ZZZA.

### **169 Application of repealed Criminal Law (Sexual Offences) Act 1978**

- (1) Subsection (2) applies in relation to an offence against the repealed *Criminal Law (Sexual Offences) Act 1978*, former section 6 or former section 7F committed by a person before the commencement.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, section 103 had not commenced.
- (3) Subsection (2) applies despite the Criminal Code,

section 11.

## 71 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition *complainant*—  
*omit.*

(2) Schedule 3—  
*insert—*

*accredited media entity*, for part 6C, see section 103ZZL.

*capacity*, for part 6C, division 2, see section 103ZZM.

*complainant*—

(a) for part 6A, see section 103A; or

(b) for part 6C, see section 103ZZL.

*complainant privacy order*, for part 6C, division 4, see section 103ZZZG.

*consent*, for part 6C, division 2, see section 103ZZM.

*eligible person*, in relation to a charge of a prescribed sexual offence, for part 6C, division 3, see section 103ZZV.

*identifying matter*—

(a) in relation to a complainant, for part 6C, see section 103ZZL; or

(b) in relation to a defendant, for part 6C, division 3, see section 103ZZV.

*interim complainant privacy order*, for part 6C, division 4, see section 103ZZZD.

*interim order*, for part 6C, division 3, see section 103ZZZA(1).

*non-publication order*, for part 6C, division 3,

see section 103ZZW(2).

*prescribed sexual offence*, for part 6C, division 3, see section 103ZZV.

*publish*, for part 6C, see section 103ZZL.

*sentenced*, for part 6C, division 3, see section 103ZZV.

*Supreme Court's media accreditation policy*, for part 6C, see section 103ZZL.

*vexatious*, for part 6C, division 4, see section 103ZZD.

## Division 7                      Release of transcript for research purposes

### 72                      Insertion of new s 134AA

After section 134A—

*insert—*

#### **134AA Access to transcripts of sexual offence proceedings for research**

- (1) For the purpose of allowing a person to carry out research, the chief executive may authorise the person to have access to a transcript of a criminal proceeding that relates wholly or partly to a charge of a sexual offence if—
  - (a) the chief executive is satisfied—
    - (i) the research has been approved by—
      - (A) if the research relates to Aboriginal or Torres Strait Islander peoples—the Australian Institute of Aboriginal and Torres Strait Islander Studies; or

- (B) otherwise—a human research ethics committee; and
  - (ii) the transcript is reasonably necessary for the research; and
  - (b) the transcript will not be published in a way that could reasonably be expected to result in the identification of any of the persons to whom the transcript relates; and
  - (c) the person gives a written undertaking to preserve the confidentiality of the transcript and the anonymity of the persons to whom the transcript relates.
- (2) The chief executive may contact, or authorise the person to contact, the defendant or complainant in the criminal proceeding to ask if they would like to participate in the research being carried out by the person.
  - (3) The chief executive may authorise the person to use or disclose the transcript, or give access to the transcript, to someone else.
  - (4) The chief executive may impose any other conditions on the authorisation the chief executive considers appropriate.
  - (5) The person must comply with any condition imposed by the chief executive unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### **73 Insertion of new s 170**

Part 9, division 14A, as inserted by this Act—  
*insert—*

### **170 Section 134AA applies to proceedings started after commencement**

Section 134AA applies to a transcript of a criminal proceeding only if the proceeding started after the commencement.

## **Division 8 Criminal offence of coercive control**

### **74 Amendment of s 21AC (Definitions for div 4A)**

Section 21AC, definition *offence involving violence*, after second dot point—

*insert—*

- a provision of chapter 29A

## **Division 9 Other amendments**

### **75 Amendment of s 39PB (Expert witnesses to give evidence by audio visual link or audio link)**

(1) Section 39PB, ‘or audio link’—

*omit.*

(2) Section 39PB(4)(b), ‘audio link or’—

*omit.*

(3) Section 39PB(4)(c), ‘audio or’—

*omit.*

### **76 Amendment of s 39PC (Direction to jury if expert witness gives evidence by audio visual link or audio link)**

Section 39PC(1)(b), ‘or audio link under section 39PB’—

*omit, insert—*

under section 39PB or by audio link

## **Part 7**                      **Amendment of Evidence Regulation 2017**

### **77**      **Regulation amended**

This part amends the *Evidence Regulation 2017*.

### **78**      **Insertion of new s 4B**

After section 4A—

*insert—*

#### **4B Prescribed places for relevant proceedings—Act, s 103ZZD**

- (1) This section prescribes the places for section 103ZZD(1)(c) of the Act.
- (2) For the Supreme Court and the District Court the places are—
  - (a) Brisbane; and
  - (b) Townsville.

## **Part 8**                      **Amendment of Justices Act 1886**

### **79**      **Act amended**

This part amends the *Justices Act 1886*.

### **80**      **Amendment of s 47 (What is sufficient description of offence)**

Section 47(9), ‘also a domestic violence offence.’—

*omit, insert—*

also—

- (a) a domestic violence offence; or
- (b) a domestic violence offence committed against a child; or
- (c) a domestic violence offence that exposed a child to domestic violence.

## 81 Amendment of s 48 (Amendment of complaint)

Section 48(2)—

*omit, insert—*

- (2) Subsection (3) applies if the justices consider the offence charged in the complaint is also 1 of the following offences (each a ***relevant domestic violence offence***) but the complaint does not include a statement to that effect—
  - (a) a domestic violence offence;
  - (b) a domestic violence offence committed against a child;
  - (c) a domestic violence offence that exposed a child to domestic violence.
- (3) Without limiting subsection (1), the court may order that the complaint be amended to state the offence is also a relevant domestic violence offence.

# Part 9 Amendment of Penalties and Sentences Act 1992

## Division 1 Preliminary

### 82 Act amended

This part amends the *Penalties and Sentences Act 1992*.

## Division 2 Sentencing considerations

### 83 Amendment of s 9 (Sentencing guidelines)

(1) Section 9(2)—

*insert—*

- (fa) the hardship that any sentence imposed would have on the offender, having regard to the offender's characteristics, including age, disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality; and
- (fb) regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—
  - (i) a person with whom the offender is in a family relationship and for whom the offender is the primary caregiver; and
  - (ii) a person with whom the offender is in an informal care relationship; and
  - (iii) if the offender is pregnant—the child of the pregnancy; and

(2) Section 9(2)(gb)—

*insert—*

- (iii) the offender's history of being abused or victimised; and

(3) Section 9(2)—

*insert—*

- (oa) if the offender is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; and

- (4) Section 9(2)(p)(ii), after ‘considerations’—

*insert—*

, including the effect of systemic disadvantage and intergenerational trauma on the offender

- (5) Section 9(12)—

*insert—*

***family relationship*** has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 19.

***informal care relationship*** has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 20.

## 84 Insertion of new pt 14, div 23

Part 14—

*insert—*

### **Division 23 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

#### **259 Sentencing guidelines**

Section 9, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies to the sentencing of an offender after the commencement whether the conviction happened before or after the commencement.

## Division 3                      **New aggravating factors and domestic violence averments**

### 85            **Amendment of s 4 (Definitions)**

Section 4—

*insert—*

*exposed*, for a child in relation to domestic violence, see the *Domestic and Family Violence Protection Act 2012*, section 10.

### 86            **Amendment of s 9 (Sentencing guidelines)**

Section 9—

*insert—*

- (10C) In determining the appropriate sentence for an offender convicted of a domestic violence offence that was committed against a child when the offender was an adult, the court must treat the fact that it is an offence against a child as an aggravating factor.
- (10D) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that either of the following circumstances apply as an aggravating factor—
  - (a) during the commission of the offence a child was exposed to domestic violence;
  - (b) the offence committed was also—
    - (i) a contravention of any of the following under the *Domestic and Family Violence Protection Act 2012*—
      - (A) a domestic violence order;
      - (B) a police protection notice;

- (C) release conditions;
- (D) an interstate order;
- (E) a New Zealand order; or
- (ii) a contravention of another order of a court or of an injunction.

**87 Amendment of s 12A (Convictions for offences relating to domestic violence)**

(1) Section 12A(1)(a)—

*omit, insert—*

(a) a complaint or an indictment for a charge for an offence states the offence is also 1 of the following offences (each a ***relevant domestic violence offence***)—

- (i) a domestic violence offence;
- (ii) a domestic violence offence committed against a child;
- (iii) a domestic violence offence that exposed a child to domestic violence; and

(2) Section 12A(2), (3), (4), (5), (8), (10) and (11), before ‘domestic violence offence’—

*insert—*

relevant

(3) Section 12A(2)—

*insert—*

*Example—*

An indictment for a charge for an offence states the offence is also a domestic violence offence committed against a child. The offender is convicted of the offence. If a conviction is recorded in relation to the offence, it must also be recorded as a conviction for ‘a domestic violence offence committed against a child’.

(4) Section 12A(9)—

*omit, insert—*

- (9) Each of the following persons is not compellable as a witness in proceedings before the court to decide the application—
- (a) a person against whom the relevant domestic violence offence was committed;
  - (b) for a relevant domestic violence offence that exposed a child to domestic violence—the child.

**88 Insertion of new s 260**

Part 14, division 23, as inserted by this Act—

*insert—*

**260 Convictions for offences relating to domestic violence**

Section 12A, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies only in relation to convictions for relevant domestic violence offences committed from the commencement.

**Division 4 Criminal offence of coercive control**

**89 Amendment of sch 1 (Serious violent offences)**

Schedule 1, entry for Criminal Code—

*insert—*

32A section 334C (Coercive control)



## **Part 11**                      **Amendment of Security Providers Act 1993**

### **92**      **Act amended**

This part amends the *Security Providers Act 1993*.

### **93**      **Amendment of sch 1 (Disqualifying offence provisions under the Criminal Code)**

(1) Schedule 1, part 1—

*insert—*

8A chapter 29A (Coercive control)

(2) Schedule 1, part 1, items 8A to 23—

*renumber* as schedule 1, part 1, items 9 to 24.

### **94**      **Amendment of sch 2 (Dictionary)**

Schedule 2, definition *disqualifying offence*, paragraph (a)—

*insert—*

(vii) against the *Domestic and Family Violence  
Protection Act 2012*, section 179A; and

## **Part 12**                      **Amendment of Youth Justice Act 1992**

### **Division 1**                      **Preliminary**

### **95**      **Act amended**

This part amends the *Youth Justice Act 1992*.

## **Division 2                      Bail considerations**

### **96            Amendment of s 48AA (Matters to be considered in making particular decisions about release and bail)**

Section 48AA(4)(b)—

*insert—*

- (x) the likely effect that refusal to release the child would have on—
  - (A) a person with whom the child is in a family relationship and for whom the child is the primary caregiver; or
  - (B) a person with whom the child is in an informal care relationship; or
  - (C) if the child is pregnant—the child of the pregnancy.

### **97            Amendment of s 52A (Other conditions of release on bail)**

Section 52A(2)—

*insert—*

- (d) the condition does not unduly restrict the child's ability to carry out the child's responsibilities for—
  - (i) a person with whom the child is in a family relationship and for whom the child is the primary caregiver; or
  - (ii) a person with whom the child is in an informal care relationship; or
  - (iii) if the child is pregnant—the child of the pregnancy.

*Examples of responsibilities—*

- transporting a child of the child to an appointment, childcare or school
- attending a medical appointment in relation to a pregnancy
- cultural obligations to a family member

**98 Insertion of new pt 11, div 23**

Part 11—

*insert—*

**Division 23 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024**

**419 Application of ss 48AA and 52A to release of a child**

- (1) Sections 48AA and 52A, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, apply in relation to the release of a child on or after the commencement.
- (2) For subsection (1), it is irrelevant whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the commencement.

**99 Amendment of sch 4 (Dictionary)**

Schedule 4—

*insert—*

*family relationship* has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 19.

*informal care relationship* has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 20.

## Division 3                      Sentencing considerations

### 100      Amendment of s 150 (Sentencing principles)

(1) Section 150(1)—

*insert—*

- (ea) the hardship that any sentence imposed would have on the child, having regard to the child's characteristics, including disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality; and
- (eb) regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—
  - (i) a person with whom the child is in a family relationship and for whom the child is the primary caregiver; and
  - (ii) a person with whom the child is in an informal care relationship; and
  - (iii) if the child is pregnant—the child of the pregnancy; and

(2) Section 150(1)(ga)—

*insert—*

- (iii) the child's history of being abused or victimised; and

(3) Section 150(1)—

*insert—*

(ha) if the child is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; and

(4) Section 150(1)(i)(ii), after ‘considerations’—

*insert—*

, including the effect of systemic disadvantage and intergenerational trauma on the child

## 101 Insertion of new s 420

Part 11, division 23, as inserted by this Act—

*insert—*

### 420 Sentencing principles

Section 150, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies to the sentencing of a child after the commencement whether the conviction happened before or after the commencement.

## Part 13 Other amendments

### 102 Legislation amended

Schedule 1 amends the legislation it mentions.

## **Part 14**                      **Repeal**

### **103 Act repealed**

The Criminal Law (Sexual Offences) Act 1978, No. 28 is repealed.

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## Schedule 1      Other amendments

section

### Division 1      Intervention orders

## Domestic and Family Violence Protection Act 2012

### 1      Section 72(2)(a) to (d)—

*omit, insert—*

- (a) the respondent's character and personal history;
- (b) the respondent's language skills;
- (c) the respondent's cultural background, including whether the respondent identifies as an Aboriginal or Torres Strait Islander person;
- (d) any disabilities, psychiatric or psychological conditions of the respondent;
- (e) any alcohol or drug problems of the respondent;
- (f) the effect of the matters mentioned in paragraph (a) to (e) on the respondent's ability to participate in an approved intervention program or counselling;
- (g) whether there is an approved intervention program or counselling that is available and suitable, including culturally appropriate, for the respondent;
- (h) whether and, if so, how the respondent's participation in the approved intervention program or counselling could affect the safety, protection or wellbeing of the aggrieved or a named person in the domestic violence order or of someone else;
- (i) any other relevant matters.

**2 Section 75(4)(b)—**

*omit, insert—*

- (b) give a copy of the list to—
  - (i) the Chief Magistrate; and
  - (ii) the police commissioner.

**Division 2 Criminal offence of engaging in domestic violence or associated domestic violence to aid respondent**

**Police Powers and Responsibilities Act 2000**

**1 Section 365(1)(j), ‘or 179’—**

*omit, insert—*

, 179 or 179A

**Division 3 Criminal offence of coercive control**

**Working with Children (Risk Management and Screening) Act 2000**

**1 Schedule 2, entry for Criminal Code—**

*insert—*

334C Coercive control

**2 Schedule 4, entry for Criminal Code—**

*insert—*

- 334C Coercive control if the offence was committed against a  
child  
if the offence exposed a child to domestic  
violence

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