

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

Explanatory notes for SL 2024 No. 146

Made under the

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

General Outline

Short title

Proclamation commencing certain provisions of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*

Authorising law

Section 2 of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (CCAC Act).

Policy objectives and the reasons for them

The objective of the Proclamation is to fix commencement dates for certain provisions of the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (CCAC Act), facilitating the staged commencement of key reforms in the CCAC Act.

The provisions to be commenced by the Proclamation on **23 September 2024** will:

- amend the consent and mistake of fact framework to introduce an affirmative model of consent and expressly reference stealthing as a circumstance of non-consent;
- expand the reasonable excuses for the offence of failure to report a belief of a child sexual offence committed in relation to child;
- introduce new jury directions for sexual offences;
- prohibit certain types of jury directions;
- strengthen the provisions pertaining to improper questions, including by imposing a duty on the court to disallow an improper question;
- modernise and strengthen the approach to evidence about a complainant's sexual reputation and sexual activities and clarify that the court should be closed when a complainant of a sexual offence is giving evidence regardless of the way in which the evidence is given;

- expand the use of preliminary complaint evidence to domestic violence offences;
- require the court to consider making a temporary protection order when adjourning the hearing of an application for a domestic violence protection order; and
- make other technical and related amendments.

The provisions to be commenced by the Proclamation on **3 February 2025** will prescribe locations for and commence the operation of the sexual offence expert evidence panel.

The provisions to be commenced by the Proclamation on **26 May 2025** will:

- introduce a criminal offence of coercive control;
- introduce a new offence of engaging in domestic violence or associated domestic violence to aid a respondent;
- provide that both the coercive control offence and the offence of engaging in domestic violence to aid a respondent are disqualifying offences for security providers;
- require the inclusion of a new standard condition in a domestic violence order (DVO) and Police Protection Notice (PPN) to ensure a perpetrator does not counsel or procure another person to do something that, if done by the respondent, would be domestic violence;
- require a sentencing court to treat domestic and family violence (DFV) offending which is committed in contravention of a court order, committed against a child or which exposes a child to DFV, as aggravated;
- allow media to access transcripts for, and publish information on, applications for DVOs provided that such publishing does not identify, and could not lead to the identification of, victim-survivors or children;
- introduce a court-based perpetrator diversion scheme for adults which will allow a limited cohort of defendants charged with an offence of contravening a DVO or PPN to be referred to participate in an approved diversion program or counselling
- allow complainants for a sexual offence to self-publish or provide others with written consent to publish, provided it does not or would not identify another complainant, with a special safeguard for child complainants;
- allow researchers to access transcripts of sexual offence proceedings at reduced or no cost;
- repeal the *Criminal Law (Sexual Offences) Act 1978*; and
- make other technical and related amendments.

The Proclamation does not commence section 13 to the extent that it inserts section 348AA(1)(m) (the serious disease provision) into Schedule 1 of the *Criminal Code Act 1899* (the Criminal Code).

The serious disease provision provides that there is no consent (for the purposes of Chapter 32 (Rape and sexual assaults) of the Criminal Code) where a person participates in the act because of a false or fraudulent representation about whether the defendant has a serious disease and the defendant transmits the serious disease to the person. The Government has committed to reviewing the serious disease provision, with the commencement of that provision pending the outcome of that review.

Achievement of policy objectives

The policy objective is achieved by fixing the commencement dates of 23 September 2024, 3 February 2025 and 26 May 2025 for certain provisions in the CCAC Act.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the policy objectives of the CCAC Act.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Proclamation will allow for the staged commencement of provisions of the CCAC Act. This includes giving effect to the second major tranche of legislative reform arising from recommendations made by the Women’s Safety and Justice Taskforce (Taskforce), including amending the Criminal Code to establish the offence of coercive control and to introduce an affirmative model of consent in Queensland. The Proclamation will also commence provisions of the CCAC Act to implement reforms not directly arising from the Taskforce reports.

Commencement of these provisions in the CCAC Act is likely to increase demand for courts, police and the legal profession due to the increase in numbers of matters coming before the courts, as well as an increase in the complexity of the matters being heard. This demand will be monitored and any costs impacts will be assessed and included in future budget processes.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

The Taskforce undertook extensive consultation in preparing its reports. This consultation informed the Taskforce’s recommendations, including those that are being implemented through the CCAC Act.

The Department of Justice and Attorney-General undertook targeted consultation with the judiciary, relevant statutory bodies, key legal, domestic, family and sexual violence stakeholders, media stakeholders and approved security industry associations on the amendments in the CCAC Act.

The staged approach to commencement of the CCAC Act has been informed by commentary provided in the Taskforce reports and the need to ensure that necessary implementations activities to support the operation of the amendments can occur prior to commencement. DJAG consulted relevant government departments on the timing of commencement for the provisions in the CCAC Act.

An Impact Analysis Statement has been completed that identifies that the Proclamation is not subject to regulatory impact assessment requirements under the Queensland Government Better Regulation Policy as it is a regulatory proposal that is minor and machinery in nature commencing provisions of the CCAC Act.