

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

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the proclamation made under the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (CCAC Act).

In my opinion, the proclamation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The proclamation will fix commencement dates for certain provisions of the 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 serious disease provision will be reviewed, with the commencement of that provision pending the outcome of that review.

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

I have considered each of the rights protected by part 2 of the HR Act.

Not commencing the serious disease provision in the proclamation with the remainder of the provisions that amend the consent and mistake of fact framework will not undermine the purpose of introducing an affirmative model of consent, nor limit any rights. The Human Rights Statement of Compatibility tabled with the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, as it relates to affirmative consent, mistake of fact and stealthing, and the reasons and analysis contained therein, continues to apply.

In my opinion, the proclamation does not engage or limit human rights.

## **Conclusion**

I consider that the proclamation is compatible with the HR Act because it does not limit human rights.

**YVETTE D'ATH MP**  
Attorney-General and Minister for Justice  
Minister for the Prevention of Domestic and Family Violence

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