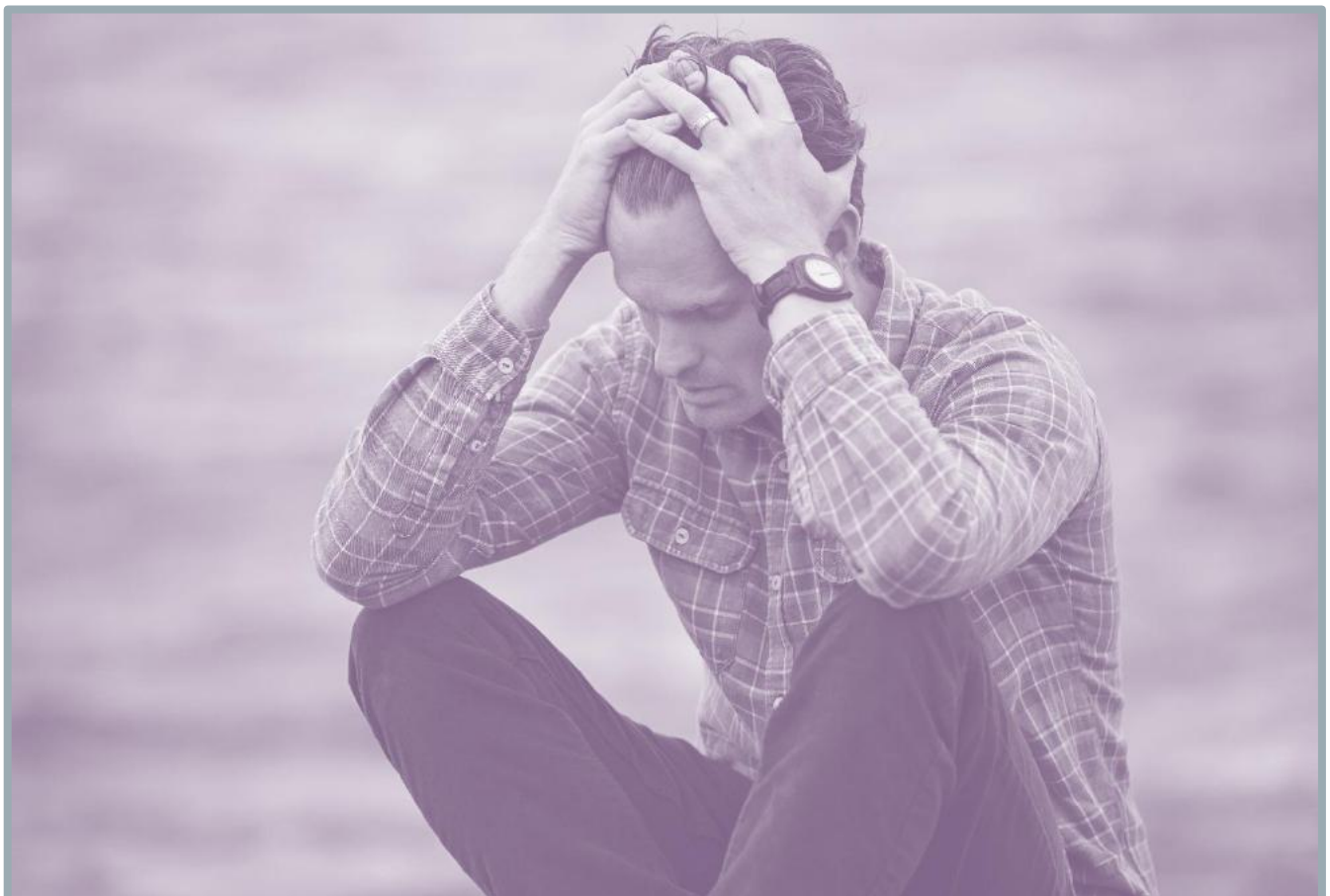


Submission to the Queensland Legal Affairs and Safety Commission

*Domestic and Family Violence Protection
(Combating Coercive Control) Bill 2022*



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Acknowledgment of Country

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



Table of Contents

Summary of recommendations 1

Introduction 2

Domestic and Family Violence Protection (Combating Coercive Control) Bill 2022 3

Conclusion..... 7

Summary of recommendations

No to Violence recommends that the Queensland government:

1. Ensure that the development of police and judicial officer training and risk assessments regarding misidentification of the predominant aggressor is undertaken and reviewed in parallel to the introduction of this Bill, and before the introduction of a standalone offence of coercive control.
2. Ensure that the current stalking offence is reviewed by the Queensland Government Statisticians Office and included in analyses undertaken by the Domestic and Family Violence Death Review and Advisory Board.
3. The term 'repeated child sexual abuse' be the applied terminology to better reflect the community and court perceptions about the abuse of children.
4. Engage in ongoing community consultation prior to the introduction of a standalone coercive control offence.
5. Establish an implementation taskforce prior to the introduction of the proposed coercive control offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation and to mitigate any unintended consequences that arise.
6. Engage in ongoing reform of police practices, procedures, and culture.

Introduction

No to Violence is pleased to provide feedback on the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022*. This Bill aims to introduce a range of legislative reforms, to address several recommendations made by the Queensland's Women's Safety and Justice Taskforce prior to the introduction of a standalone coercive control offence. We believe the proposed amendments are an important step towards recognising the full experience of intimate partner violence, improving responses and services to uphold the safety of women and children, and ensuring that perpetrators are held accountable for their use of violence.

Although the criminalisation of coercive control is necessary to imbed better recognition of patterns of domestic and family violence, and to engender an improved response, effectively preventing and responding to coercive control is unlikely to be achieved through legislation alone. However, preventing and responding to the patterns of behaviour that characterise domestic violence will require significant systemic reform. In jurisdictions where coercive control has been criminalised, the effectiveness of coercive control legislation is arguably related to the quality of its implementation.¹

As the peak body for organisations and individuals working with men who use domestic and family violence, No to Violence is well placed to support the implementation of legal and services reform necessary to support the introduction of a coercive control offence. No to Violence supports and advocates the Queensland men's family violence sector and work undertaken in perpetrator interventions more broadly. Nationally, we operate the Men's Referral Service – a helpline and referral service for men concerned about their own behaviour. This work includes but is not limited to; referral to Men's Behaviour Change Programs (MBCPs) case management and individual counselling. In our function as a peak body, we also engage in policy development and advocacy, research and evaluation, workforce development, training, and capability building. Coercive control is central to much of this work, and we have previously contributed to reform in this area in NSW, SA and WA.

No to Violence ultimately supports the introduction of coercive control legislation in Queensland. Its inclusion in statute has the potential to form improved responses to family and domestic violence, by better defining the extent of its totality, reflecting the lived experience of victim-survivors, and providing improved recognition of the behaviour, tools and tactics applied by men who use violence. However, the efficacy of a new offence will only be realised if there is adequate capacity and capability building across all sectors that provide a response to domestic and family violence, including criminal justice, the police, specialist services and all other frontline responders. Critically, the specialist family violence sector must be adequately resourced to provide connected services for victim-survivors and perpetrators.

The incremental approach taken by the Queensland government to enable the introduction of a standalone offence by the end of 2023 has significant merit, predominantly because this delay can be utilised to implement necessary systemic reforms that will increase the effectiveness and application of this offence.

¹ For example, see: Barlow, Charlotte, Kelly Johnson, Sandra Walklate, and Les Humphreys. 'Putting Coercive Control into Practice: Problems and Possibilities'. *The British Journal of Criminology* 60, no. 1 (1 January 2020): 160–79. <https://doi.org/10.1093/bjc/azz041>.

Coercive control is a key feature of the experience of domestic and family violence. Men who choose to use violence in their intimate partner and family settings engage in a pattern of deliberate behaviour that creates fear in others. When subjected to coercive control, victim-survivors are intimidated, humiliated, and lose their sense of autonomy and independence. For some, their isolation from family, friends and community means they are unable to seek the help and support they need at the time they need it, and in a way that suits their unique circumstances. Critically, coercive control can – and often does – have fatal consequences for victim-survivors. For example, the 2017-2019 NSW domestic violence death review team analysis found that coercive control was present in 99% of domestic homicide cases it reviewed.²

No to Violence cautions that without reform to the support and service infrastructure that sits alongside of the criminal justice system, criminalisation will not, in itself, be sufficient to address the prevalence and consequences of domestic and family violence in our community. In the following section, we will outline our key positions and feedback regarding the Bill's provisions.

Domestic and Family Violence Protection (Combating Coercive Control) Bill 2022

No to Violence supports the incremental approach detailed by the Attorney General in her tabling of the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022* which seeks to lay the groundwork to criminalise coercive control through this process first and committing to the introduction of a standalone offence by the end of 2023.

Broadly, No to Violence supports the introduction of legislative amendments that recognise:

- Domestic violence is not characterised by single incidents and that service and police responses need to be reconfigured to address the true nature of domestic violence as patterns of behaviour.
- Patterns of behaviour that characterises domestic and family violence, and how said patterns of behaviour occur over a period of time to cause fear, and to coerce and control another person.
- The critical need to strengthen responses to victim-survivors and enable earlier forms of perpetrator intervention.
- The importance of ensuring that courts processes uphold the safety of vulnerable witnesses.
- Police responses appropriately recognise the person in need of protection and reduce the likelihood of misidentification of the predominant aggressor.

The following sections will address specific provisions within the Bill.

Misidentification of the predominant aggressor

No to Violence urges caution in the Bill's requirement that police provide a copy of the respondent's criminal and domestic violence history to the court, due to the impact this may have on vulnerable defendants. The requirement to do so should be used to prove an intent to cause fear or harm, and to coerce and control another person. If such a practice is to occur, care must be taken to ensure a

² NSW Domestic Violence Death Review Team (2020). 'Report 2017-2019.' P. 154.
<https://www.coroners.nsw.gov.au/coroners-court/resources/domestic-violence-death-review.html>;

defendant's criminal history is only used demonstrate patterns of behaviour and to help engender informed judgement of their further risk to offend.

In the instance where police allege a victim-survivor is a predominant aggressor, the courts should take swift and appropriate action to rectify the misidentification and take urgent steps to protect the victim-survivor. For marginalised groups, including Aboriginal and Torres Strait Islander peoples, people from migrant and refugee backgrounds, and the LGBTIQ+ community, the Bill should not result in increased criminalisation and decreased access to justice. Alternatives to criminal justice, such as restorative justice and community courts, should be explored as part of this preparatory process.

Furthermore, acts by victim-survivors to defend themselves, their child, pet, or other persons known to them, should be judged in within the context of ongoing coercive control. Victim-survivors may themselves use force to resist the perpetrator and may be coerced and controlled in to committing an unlawful act; these actions should ultimately be judged within the context they occur. The development of police and judicial officer training and risk assessments regarding misidentification of the predominant aggressor should be undertaken and reviewed in parallel to the introduction of this Bill, and before the introduction of a standalone offence of coercive control.

Recommendations

1. Ensure that the development of police and judicial officer training and risk assessments regarding misidentification of the predominant aggressor is undertaken and reviewed in parallel to the introduction of this Bill, and before the introduction of a standalone offence of coercive control

Stalking

No to Violence supports the broadening of the offence of stalking to include behaviour that intimidates, harasses or is abusive and in ways that describe how this might occur. This includes behaviour that directly or indirectly harasses a person, or monitors or tracks a person's activities, communications, or movements, whether by physically following the person, using technology or in any another way. We further support changes that recognise that stalking can occur within a relationship and can continue well after the relationship has ended.

The Bill's reference to modernising the language used to describe stalking, including the various ways technology can be used and manipulated by perpetrators to facilitate their behaviour, is a welcome advance. The decision to include the perpetrator's intent also provides improved recognition of the severity of harm experienced by victim-survivors.

The inclusion of an aggravated form of the offence of stalking, and its inclusion as a provision for the making of a restraining order are welcomed. However, the underutilisation of the stalking offence by police should be reviewed – as should the regularity of instances in which police proceed in charging a perpetrator the contravention of an order.

A review of the use of the stalking offence should be undertaken by the Queensland Government Statisticians Office and included in analyses undertaken by the Domestic and Family Violence Death Review and Advisory Board.³

³ Queensland Government and Queensland Treasury (2022). *Crimes Statistics and Research*. <https://www.qgso.qld.gov.au/about-qgso/our-services/crime-statistics-research>

Recommendations:

2. Ensure that the current stalking offence is reviewed by the Queensland Government Statisticians Office and included in analyses undertaken by the Domestic and Family Violence Death Review and Advisory Board

Court processes – protection of vulnerable witnesses

No to Violence supports the introduction of processes that support vulnerable witnesses in providing evidence. We applaud the removal of the right of an unrepresented accused to cross examine a witness, and changes that ensure a lawyer must be required to undertake this task. The introduction of similar provisions into NSW local courts during 2021 might be instructive. The ability of a vulnerable witness to give evidence without being within the presence of the accused, including by remote means, if necessary, is also welcome. This upholds the safety of vulnerable witnesses and ensures that they can provide their best evidence without fear and without being subject to the intimidatory tactics that are often employed by perpetrators in a court setting.

No to Violence welcomes amendments to the Evidence Act that ensures juries can be given directions by judges that address a number of misconceptions and stereotypes about domestic violence. We recommend that this provision be simultaneously extended to misconceptions about sexual violence, alongside updating sexual offence terminology (which are important as they are in urgent need of modernisation). Myths about the nature, nuance and effect of domestic, family and sexual violence continue to persist within the wider community. This is a unique opportunity to contest such myths through legislation, and to reinforce this message with concurrent public awareness raising campaigns.

The updating of the language used to describe sexualised violence is overdue and should be more descriptive and broader than the replacement of the term ‘carnal knowledge’ with ‘penile intercourse’, noting that other body parts and other instruments can be used in a sexualised violent act. Consistency across the Code would better recognise the experiences of victim-survivors and serve their interests.

Equally, removal of the term ‘maintain a sexual relationship with a child’ provides important recognition that a child cannot consent to sexual intercourse. ‘Repeated sexual conduct with a child’ should be strengthened to further remove any degree of perceived mutuality and further clarify that sexual conduct with a person under the age of 16 is unlawful. No to Violence recommends the term ‘repeated child sexual abuse’ be the applied terminology to better reflect the community and court perceptions about the abuse of children.

Recommendations:

3. The term ‘repeated child sexual abuse’ be the applied terminology to better reflect the community and court perceptions about the abuse of children

Implementation

No to Violence recommends ongoing community consultation takes place prior to the introduction of a standalone coercive control offence.

We further recommend that an implementation taskforce be established prior to the introduction of the proposed coercive control offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared

for the introduction of coercive control legislation and to mitigate any unintended consequences that arise.

No to Violence welcomes the opportunity to be involved in such a taskforce, noting that we are a member of the National Plan Advisory Group and the NSW Ministerial Council on Domestic, Family and Sexual Violence, in addition to the Family Violence Implementation Monitor in Victoria. . We set service, educational and workforce development and men’s behaviour change program standards and we deliver training to specialist workforces. We also operate the Men’s Referral Service nationally and support police referrals in several states. We highly regard Queensland’s DV Connect service.

No to Violence urges that the introduction of coercive control legislation must thoroughly consider clear, actionable strategies to mitigate unintended consequences for marginalised communities.

Alongside our colleagues in the wider domestic and family violence sector, we are concerned about the potential for the criminalisation of coercive control to further contribute to the under-policing of some communities and the over-policing and overcriminalisation of others living in Queensland. For instance, research demonstrates that family and domestic violence law serves as a vehicle for ongoing engagement in the criminal justice systems for Aboriginal and Torres Strait Islander peoples, resulting in their higher rates of incarceration.⁴ We await the findings of the independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence and may comment on the finding and recommendations at a future time.

No to Violence understands the barriers and difficulties of changing police culture and practice, noting these in our submissions to the Inquiry into Queensland police culture and the NSW Auditor General’s inquiry into Police responses to domestic and family violence. No to Violence has provided expert advice on inclusions for the recently updated Victorian Code of Practice for the Investigation of Family Violence. While acknowledging the complexities of operational policing, we recommend the ongoing reform of police practices, procedures, and culture. We should strive to build within systemic responses a greater commitment to the development of collaborative projects (such as justice reform initiatives) to address the policing response to domestic and family violence for vulnerable communities. However, this should occur alongside ensuring the ongoing support and safety of victim survivors and the accountability of perpetrators.

Recommendations

4. Engage in ongoing community consultation prior to the introduction of a standalone coercive control offence.
5. Establish an implementation taskforce prior to the introduction of the proposed coercive control offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation and to mitigate any unintended consequences that arise.
6. Engage in ongoing reform of police practices, procedures, and culture.

⁴ Douglas, Heather, and Robin Fitzgerald. ‘The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People’. *International Journal for Crime, Justice and Social Democracy* 7, no. 3 (2018): 41–57. <https://doi.org/10.5204/ijcjsd.v7i3.499>.

Conclusion

No to Violence welcomes the opportunity to comment on the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022*, noting the tight timeframe within which the sector has had to offer the committee our views.

No to Violence supports the introduction of these scaffolding amendments to certain areas of domestic and family violence law, courts administration and related acts to prepare for the introduction of a standalone offence of coercive control, although this must be attended by other system reforms and investment in the support and service infrastructure.