

16 July 2021

Hon Margaret McMurdo AC
Taskforce Chair
Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001

By email: Margaret.McMurdo@womenstaskforce.qld.gov.au

Dear Chair

Discussion Paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence

Thank you for the opportunity to provide feedback on how to legislate against coercive control and the creation of a standalone domestic violence offence. Aged and Disability Advocacy Australia (ADA) appreciates being consulted on the potential introduction of this framework.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability law.

Review of Discussion Paper 1

ADA recognises the important work of the Taskforce into the harmful impacts of domestic and family violence. Available data of the prevalence of domestic and family violence demonstrates an urgent need for reform. It is reported that one in 3 Australian women (30.5%) have experienced physical violence,¹ and one in 5 Australian women (18.4%) have experienced sexual violence.²

¹ Australian Bureau of Statistics (ABS) 2017. [Personal Safety Survey, Australia, 2016, ABS cat. no. 4906.0](#). Canberra: ABS.

² Ibid.



The reality of these statistics is amplified for women with a disability, who are even more likely to experience violence. We note the Australian Bureau of Statistics Report³ which found that in 2016, 5.9 % of women with a disability or a long-term health condition had experienced violence in the preceding 12 months, compared with 4.3% of women without a disability or long-term health condition.

Given that methodological limitations in collating this information often exclude people with profound or severe communication disability, this finding is likely to be an under-representation of violence experienced by women with disability.⁴

Data collected by elder abuse helplines across Australia indicated that reported violence towards women exceeded that reported towards men in the 2017-2018 period, with emotional and financial abuse being the most common forms reported.⁵

ADA is a member of the Gold Coast Elder Abuse Response Panel, which regularly receives and reviews examples of older people experiencing elder abuse, including coercive control.

Context – what is ‘coercive control’?

Coercive control is a course of conduct which is aimed at dominating and controlling another. It is usually perpetrated by an intimate partner but can be perpetrated by other family members or persons in their personal network. Studies have identified that it is almost exclusively perpetrated by men against women.⁶

Strategies of coercive control include patterns of behaviour which may use either or both physical and non-physical tactics, and which are intended to result in “*an attack on autonomy, liberty and equality*”.⁷ These attacks may involve physical, sexual, verbal and/or emotional abuse, psychologically controlling acts, depriving a woman of resources and forms of financial abuse, social isolation, stalking, deprivation of liberty, intimidation, abuse using technology, and harassment. Some abuse may involve the use of systems, including the legal system.⁸

How is coercive control currently dealt with in Queensland?

Community attitudes

Community attitudes towards, and broader understanding about coercive control is in need of urgent and significant improvement. A community acceptance that ‘different’ (and lessor)

³ ABS 2018, [Experiences of violence and personal safety of people with disability](#), ABS cat. no. 4431.0.55.003, Canberra: ABS.

⁴ Our Watch, *Quick Facts*. Retrieved from <https://www.ourwatch.org.au/quick-facts/>.

⁵ Ibid, citing Australian Institute of Health and Welfare (AIHW) 2019. [Family, domestic and sexual violence in Australia: continuing the national story](#). Cat. no FDV 3. Canberra: AIHW.

⁶ Australia’s National Research Organisation for Women’s Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS, citing Johnson, M. P. (1995). Patriarchal terrorism and common couple violence: Two forms of violence against women. *Journal of Marriage and Family*, 57(2), 283–294; Nancarrow, H. (2019). *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities*. Melbourne: Palgrave Macmillan; Pence, E., & Dasgupta, S. D. (2006). *Re-examining “battering”: Are all acts of violence against intimate partners the same?* Retrieved from http://www.biscmi.org/wp-content/uploads/2015/05/FINAL_Article_Reexamining_Battering_082006.pdf.

⁷ Stark, E. (2006). Commentary on Johnson’s “conflict and control: Gender symmetry and asymmetry in domestic violence”. *Violence Against Women*, 12(11), 1019–1025. <https://doi.org/10.1177/1077801206293329>.

⁸ Australia’s National Research Organisation for Women’s Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS.

standards of behaviour may be acceptable in relation to people with disability and older people prevails. This is underpinned by entrenched community attitudes including ageism, and discrimination towards people with disability.

Women and girls with disability are more likely to experience coercive medical interventions, including interventions that are intended to control their fertility. These are often undertaken without consent, and are violations of an individual's sexual and reproductive rights.⁹

Older women and women with disability who experience coercive control by a person who they are dependent upon for care, such as a partner, family member or support person, are at a significantly heightened risk.

Without substantial improvement in the community understanding of coercive control, the risk that abusive and violent behaviours will be misread or dismissed as 'genuine care' will remain significant. This misunderstanding will be tolerated, and even supported in some cases, in accordance with existing discriminatory 'norms' relating to standards of care, choice and control, which are experienced by these groups.

These risks are increased for Aboriginal and Torres Strait Islander persons, as well as persons from culturally and linguistically diverse backgrounds who commonly face additional barriers to accessing and receiving support and assistance. These challenges may also be impacted by cultural norms and expectations which influence the community response to coercive control, including the concepts of shame, stereotyping and ingrained religious and cultural beliefs with respect to gendered roles.

Domestic and family violence service systems response

In addition to the lack of community education about coercive control, ADA is concerned that awareness of service systems such as DVConnect and the Elder Abuse Helpline is limited, particularly amongst older people and people with disability.

People with disability are significantly more vulnerable to isolation, either in an institutional setting such as an aged care home or disability accommodation services, as well as persons in community or home settings. As a result, even where an individual is aware of these services, a person experiencing coercive control may be actively or passively restricted from accessing them.

In addressing these issues, ADA supports recommendations for systemic improvement set out in the Parliament of NSW's Joint Select Committee on Coercive Control (the **NSW Committee**) final report. Specifically, ADA supports the following recommendations:

- That housing services are vital to help victims escape abuse and rebuild their lives – these services need to be better resourced;
- Women's domestic and family violence advocacy services also require better resourcing to assist victims;

⁹ Joint Select Committee on Coercive Control, Parliament of New South Wales, Report 1/57, June 2021, 14 [2.12], <<https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf>>.

- That evidence-based behaviour change programs should be made available to all domestic violence offenders, with funding to research the efficacy of these programs;
- Introducing a pilot of triage and referral hubs, where abuse victims can get advice and referrals for services in person, or remotely;
- Better support for police by integrating workers from domestic abuse services work with police to assist victims who report at police stations;
- Improved and additional training for frontline staff in recognising and responding to coercive control, including training on non-physical forms of violence; and
- Changes to the criminal justice system and introduction of a criminal offence of coercive control.

We note the NSW Committee's acknowledgement that certain aspects of the recommendations must be appropriately tailored to meet the needs of persons with disability, and older women. It is important that training for frontline staff, reporting pathways and oversight functions are appropriately customised to ensure that there is no systemic exclusion of persons with disability and older persons who seek assistance and recourse.

Women with disability who have experienced violence face additional barriers to seeking justice, including with being believed.¹⁰ Similarly for older women, ageism often leads to older women who report violence (for example to police, healthcare practitioners or staff in a residential aged care facility) not being believed, and no meaningful support offered. Training and education programs aimed at improving the systemic response to coercive control must acknowledge this and include education about the damaging impacts of this bias.

We note recommendation 9 of the report which relates to a need for awareness campaigns about coercive control for the community, including targeted campaigns developed with the Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, the LGBTQ community, people with disability and rural and remote communities.

ADA considers that a similar awareness campaign and education program about coercive control, and domestic and family violence more broadly, should be rolled out in Queensland. In addition to those groups listed by recommendation 9 of the NSW Committee's report, consultation to develop a Queensland campaign or program should include older women and advocacy groups who represent this cohort.

Legislative response

Domestic and Family Violence Protection Act 2012 (the DFVP Act Qld)

The definition of domestic violence under section 8 of the DFVP Act Qld refers to behaviour that controls or dominates the victim, and causes the victim to fear for their own, or someone else's safety and wellbeing.

Whilst arguably sufficient to describe the range of behaviours associated with coercive control, it is evident that this definition has not been effective in assisting systemic recognition of, and response to, behaviours associated with coercive control.

¹⁰ Submission 45 to the NSW Joint Select Committee on Coercive control in domestic relationships, Our Watch, p 17; Kathryn Mckenzie, Director, Operations, NSW Ageing and Disability Commission, Transcript of evidence, 23 February 2021, p 39.

A Civil Domestic Violence Order issued under the DFVP Act Qld is intended to be an accessible model of protection, and one where if conditions are breached, provides an avenue for police response.

ADA has concerns about the appropriateness and effectiveness of a system which seeks to rely on these orders, particularly in the context of older people and persons with disability. Whilst prosecuting a breach of an order may be appropriate in some circumstances, we understand that prosecution for a breach of the domestic violence order condition is more commonly pursued, rather than prosecution of more serious offences even where the behaviour clearly constitutes a more serious offence.

Considering the prevalence of ageism and discrimination towards people with disability, there are concerns that a discretion which allows for prosecution of a less serious offence may result in unjust outcomes for older people and persons with disability. In some cases, a lack of prosecution will effectively ensure that a perpetrator is able to continue their abuse.

The Taskforce should also consider the range of barriers which face older persons and persons with disability in navigating the civil protection order system.

Types of coercive control behaviours and existing offences in the Criminal Code

The criminal law in Queensland is not currently equipped to address nuanced forms of domestic and family violence, particularly patterns of non-physical abuse. Existing offences may be relied upon for acts that are more readily evidenced, including some physical acts of violence. A range of subtle and repeated non-physical acts of abuse, such as emotional manipulation, fear, gaslighting, exclusion and isolation, are not currently captured under existing criminal law. An example of gaslighting and manipulative behaviour in relation to older people is the constant suggestion that they are forgetful along with deliberately misinforming the older person to such an extent that they cannot trust their own recollection of events, leading to a loss in confidence in their own decision making.

This identifies a significant systemic gap in addressing harmful abuse and assisting persons who experience these behaviours. Police services and the criminal justice system are critical components of broader community response to these issues, often as first responders and in prosecutions, and intersecting with health care and social services. Where abusive behaviour is not captured under the criminal law system, police and the criminal justice system more broadly are arguably limited in their capacity to respond to the behaviour and provide protection.

In the absence of an offence that accurately reflects the pattern of behaviours used, there is significant risk that coercively controlling behaviours will be minimised or dismissed as caring actions that are necessary to protect the older person or person with disability.

Whilst introduction of a discrete criminal offence is an essential component in accessing justice, it is critical that multiple layers of support are established to facilitate an effective systemic and practical response. This must include comprehensive and well-resourced education programs for community, police, institutions, and service providers, with a focus on recognition of coercive control behaviours, screening tools, risk assessments, and early intervention pathways. Specialist and supported policing services, community based social services, support workers, advocacy and legal services must be appropriately trained and

funded to identify this abuse and support victims in navigating available resources and avenues to seek recourse.

The Scottish model sets out an integrated strategy of legal remedies, service delivery, prevention strategies, and community and individual participation. We note this model was co-designed with the women's sector.

ADA supports the implementation of a similar framework in Queensland, and reiterate that development of this must incorporate close consultation with and input from persons with disability and older persons, and within these broader groups, from persons identifying as LGBTQI, Aboriginal and Torres Strait Islander people, and persons from culturally diverse and non-English speaking backgrounds. A generous consultation period with multiple avenues to provide feedback will be necessary to allow these groups to effectively contribute.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Taskforce with its inquiry and would welcome the opportunity to participate in further consultation. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Advisor on 07 3637 6036, or via email at vanessa.krulin@adaaustralia.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Geoff Rowe', with a long horizontal flourish extending to the right.

Geoff Rowe
Chief Executive Officer