

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



Submitted to the Women's Safety and Justice Taskforce, July, 2021

About Queenslanders with Disability Network (QDN)

Queenslanders with Disability Network (QDN) is an organisation of, for, and with people with disability. The organisation's motto is "nothing about us without us". QDN operates a state-wide network of over 2,000 members and supporters who provide information, feedback and views from a consumer perspective to inform systemic disability policy and disability advocacy. This submission is informed by the lived experience of our members, all of whom have disability, which includes an online women's network of 53 members from around the State.

QDN value statement

QDN believes that:

- All people with disability have a right to a place in the community and have contributions to make to the community. This is as empowered, free citizens who are as valued, present, participating and welcomed as members of a dynamic and diverse society.
- The place of people with disability in the community is not just about people with disability having a house in the community. Core to this is that they are welcomed in the community as ordinary citizens where they are genuinely given opportunities to contribute and actively participate. People with disability need to be in communities where their individuality, their talents, and their lived experiences of disability are recognised and acknowledged.
- Culturally and historically, people with disability are not afforded the same value, opportunities or access to community life.
- Any inclusion in community for people with disability is conditional and vulnerable to withdrawal.
- Many people with disability in Queensland are excluded from the most basic experiences of ordinary lives.
- Current exclusionary practices are unacceptable and must be challenged.
- These issues affect not only people with disability but the whole community.
- The responsibility is shared. It lies within government (federal, state and local) and the community at large, to ensure that people with disability have a place and are resourced to belong in community.

Introduction

QDN welcomes the opportunity to make a submission to the "Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1".

More than 4.4 million people in Australia have a disability and there are 900,000 Queenslanders with disability. This equates to almost one in five Australians. It is broadly acknowledged that people with disability face risks, barriers and impacts in relation to many areas of their lives. This relates not only to their health and disability needs, but is also impacted by individual and contextual factors such as age, gender, socio-economic status, family environment, where someone lives, whether they are Aboriginal or Torres Strait Islander and whether they are from culturally and linguistically diverse backgrounds.

QDN welcomes the introduction of this review and the acknowledgement of coercive control and its impacts on women experiencing domestic and family violence (DFV) and gender based violence (GBV).

QDN believes coercive control and the elements of violence that it encompasses (emotional and psychological abuse, creating environments of dependence, asserting excessive control, to name a few), encapsulates the context in which women with disability experience DFV and GBV. Coercive control needs to be considered within the context of power and control. It is importantly recognized as a significant risk factor in assessing risk and predictive behaviours and needs to be highly weighted in assessing individual risk by all frontline workers across police, courts, domestic and family violence services, health and disability. However, QDN believes that more work, research and consideration needs to be undertaken into this and the potential consequences on not only women and children as victims of domestic and family violence but also the systems that are in place to protect them and keep them safe.

QDN acknowledges that for women with disability who experience DFV and GBV there are additional layers of complexity which are related to the fact that many women are predominantly reliant on the perpetrator of that violence for their everyday care and support. QDN also acknowledges that women with disability generally have fewer pathways to safety with first responders across police, courts and domestic violence services lacking physical access, accessible information and the specialist knowledge of how to support a woman with disability experiencing violence. For women with disability, this also intersects with a range of services and supports around her disability needs which may include the National Disability Insurance Scheme (NDIS) or other disability and community supports.

QDN does not support the introduction of the legislation in its current forum. QDN supports the position that there needs to be a range of measures, research, education and awareness put in place around coercive control before it is legislated. This includes addressing the current issues, barriers and challenges experienced by women, particularly women with disability who have experienced DFV or GBV when they access policing and court systems. The “Not Now Not Ever: Putting an End to Domestic and Family Violence” report contained one recommendation specifically focused on women with disability, recommendation 10. This recommendation stated that “the Queensland Government commissions a review to address the impact of domestic and family violence on people with disabilities” has been actioned and a report was developed by People with Disability Australia including consultations with people with disability, government, non-government sector and domestic and family violence services¹. QDN participated in these consultations and has actively contributed to the three projects that have received \$750,000 of total investment. However, QDN sees that these are initial actions to commence systemic work in this area and that this is just the beginning of the journey and a broad range of work and action is required to continue to drive change that will lead to changes for women with disability who experience DFV and GBV.

QDN supports that the current Domestic Violence legislation could be strengthened to include better definitions for coercive control and sees that it is important that this includes controlling behaviours that are experienced by women with disability. QDN also supports greater education and awareness around coercive control before we move to legislate. This would include education focused on risk assessments that clearly identify risk factors and predictive behaviours to identify individual risk, increased risk of

¹ “Delivery of Recommendations | Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland”, (2019) <https://www.publications.qld.gov.au/dataset/not-now-not-ever/resource/6f08928c-dec3-4600-add9-ef808f60e913>

domestic homicide for the frontline workers across the service systems responsible for responding to women and children.

Education and awareness around coercive control also needs to focus on women so they can identify these, and understand them in the context of domestic and family violence. Broader education and awareness is needed for the Queensland community, including children and young people around coercive control.

For women with disability, evidence demonstrates the current additional barriers to safety and justice that they experience across the different systems. It is commonly understood that many women, particularly women experiencing mental health issues or women who have intellectual disability, have not fared well in these systems. There are significant range of current criminally legislated offences that women with disability experience within domestic and family violence relationships that continue to be dealt with under civil legislation. There is often limited support to assist women through these systems and they are often not believed or seen as credible witnesses of the violence that has been perpetrated against them. In a recent online article², Nicole Lee speaks of the vulnerability of marginalized women: *“For me, this is where gender, disability and the stigma that surrounds us collide. It is where disabled voices are dismissed, and complex mental health is used against us. It’s not just what’s expressed within community attitudes, it’s also embedded within the very structures that have harmed us”*.

QDN also believes any policy debate on legislating against coercive control needs to be underpinned by a contextual framework and thorough understanding of how women with disability and other marginalized, vulnerable groups of women experience violence, its causes and consequences. Furthermore there needs to be a deeper understanding of intersectionality and violence and its impacts. For example, what are the additional issues to consider for an Aboriginal woman with disability living in remote Queensland experiencing violence of a coercive nature or women with disability from culturally and linguistically diverse backgrounds and women from LGBTIQ communities?

A brief contextual framework for understanding the impact of violence against women with disability

It is now well known that compared to women without disability, women with disability experience significantly higher levels of all forms of violence, more intensely and frequently. Their experiences of violence last longer³; more severe injuries result; women with disability are far less likely to receive service support to address violence; they are often not believed when reporting sexual assault and other forms of

² See: <https://www.mamamia.com.au/criminalising-coercive-control/>

³ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013). Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper. Hobart: Women with Disabilities Australia. Available online at: http://wwda.org.au/wp-content/uploads/2013/12/STV_Background_Paper_FINAL.pdf

violence; they are often denied the right to legal capacity⁴ and effective access to justice⁵; and they have considerably fewer pathways to safety⁶⁷.

The legal definition of DFV varies across states and territories of Australia and most do not contain definitions which do justice to, nor encompass, the range of domestic/family settings in which women with disability may live. Women with disability often living in 'domestic' relationships that included shared living arrangements where they live with the same four people for four decades without change. This needs to be considered and acknowledged as we move forward. Nor do they contain definitions which capture the range of relationships and various dimensions and experiences of DFV and GBV as experienced by people with disability, (particularly women with disability)⁸.

Research shows because women with disability's experiences of violence may not fit contemporary definitions and understandings, that violence perpetrated against them often goes unidentified, unreported, un-investigated, inadequately investigated, or results in poor outcomes for the person concerned⁹. Traditional definitions of GBV and DFV do not reflect contemporary understandings of what constitutes violence against women with disability nor the complexities and the forms it can take, and the settings in which it can occur. For example violence that occurs in group home settings can be typically reframed as 'challenging behaviour', 'abuse' or 'service incidents', and the response tends to be one of 'adopting behaviour management strategies' or 'staff disciplinary processes' rather than involving outside scrutiny of police or other services and supports typically available to women without disability¹⁰.

While for many years QDN and our members have advocated the systemic benefits to people with disability, the general community, governments and businesses of people with disability being involved in co-design of policies, programs and products from conception to evaluation stages, it is fair to say that traditionally women with disability have largely been excluded from policies, programs, services and measures to progress gender equality. There is very little data on the experience of violence, abuse, neglect and exploitation by specific groups of women and girls with disability, such as those who are Indigenous, those from culturally and linguistically diverse backgrounds, those who are migrants, refugees

⁴ United Nations General Assembly, Human Rights Council (2013) Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E Méndez; 1st February 2013; UN Doc. A/HRC/22/53.

⁵ Frohmader, C. (2014). 'Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1.

⁶ Dowse, et al. (2013) op.cit.; Disabled People's Organisations Australia and the National Women's Alliances, The Status of Women and Girls with Disability in Australia, op. cit., PP. 23-28. Available at: <http://wwda.org.au/wp-content/uploads/2019/12/The-Status-of-Women-and-Girls-with-Disability-Asutralia.pdf>

⁷ Women with Disabilities Australia (WWDA) (2020). 'Submission to the House Standing Committee on Social Policy and Legal Affairs' inquiry into family, domestic and sexual violence'. August 2020. WWDA: Hobart, Tasmania.

⁸ Frohmader, C. (2011). Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://wwda.org.au/issues/viol/viol2011/>

⁹ Frohmader, C. & Swift, K. (2012). Opening minds & opening doors: Reconceptualising 'domestic violence' to be inclusive of women with disabilities in institutions. CDFVRe@der, Vol. 11, No. 2, PP. 7-8.

¹⁰ French, P., et al. (2010). Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment. PWD, NSW.

or asylum seekers, those who are lesbian, bisexual, non-binary, transgender or intersex, or those living in rural and remote communities¹¹

There also needs to be recognition of the more subtle types of violence often experienced by women with disability at the hands of intimate partners or service providers, such as deliberately leaving a woman's assistive technology (such as a power wheelchair) off the charger and therefore restricting her freedom of movement, abusing a woman's assistance animal, rough handling of body parts during intimate personal care, over-medicating a woman with psycho-social disability to keep her "compliant", deliberately belittling a woman with intellectual disability so she feels unsure of herself and becomes more dependent on her abuser¹². There are also service practices such as restrictive practices¹³ and arbitrary service decisions based on workplace health and safety¹⁴ that need to be further examined to fully understand the impact of domestic violence and GBV on women with disability.

Women (and men) with disability face various barriers in the legal/ criminal justice system and are often over-represented in prisons as a result. Women are often not believed when reporting sexual assault and other forms of violence. They are often denied the right to legal capacity¹⁵ and effective access to justice¹⁶. Men's behaviour change programs aren't targeted at men with intellectual disability and there are not enough accessible programs available.

Women with disability also need additional support in navigating health and hospital settings when seeking examinations for violence, sexual assault and rape, which is often a requirement for filing police charges.

QDN's feedback on the proposed legislation

Giving the analysis outlined in the above framework for understanding the impact of DFV and GBV on women with disability, QDN outlines the following feedback and asks that the taskforce further consider these before recommending establishing criminal legislation for coercive control.

¹¹ Disabled People's Organisations Australia and the National Women's Alliances, *The Status of Women and Girls with Disability in Australia*, op. cit., PP. 23-28. Available at: <http://wwda.org.au/wp-content/uploads/2019/12/The-Status-of-Women-and-Girls-with-Disability-Asutralia.pdf>

¹² Adapted from Queenslanders with Disability Network, *Recommendations to protect people with disability experiencing Domestic Violence during COVID-19 phases*, provided to Minister Farmer Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence

¹³ Restrictive practices refer to a range of practices to restrict a person's movement and/ behaviour and can include containment, seclusion, physical restraint, mechanical restraint, chemical restraint and restricting access. These practices are required to be documented and used in conjunction with a behaviour support plan.

¹⁴ Workplace health and safety can often be cited as a reason for not doing a particular action. In some instances this can result in a person not having their personal care needs met or experiencing limitations of their freedom. For example, during a Disability Royal Commission Public Hearing, a witness outlined the situation of her daughter, who was not provided with support to shave her legs because the group home policy deemed it as a risk, although support workers assisted men to shave their faces. See: Disabled People's Organisations Australia and the National Women's Alliances, *The Status of Women and Girls with Disability in Australia*, op. cit., PP. 23-28. Available at: <http://wwda.org.au/wp-content/uploads/2019/12/The-Status-of-Women-and-Girls-with-Disability-Asutralia.pdf>

¹⁵ United Nations General Assembly, Human Rights Council (2013) Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E Méndez; 1st February 2013; UN Doc. A/HRC/22/53.

¹⁶ Women With Disabilities Australia (WWDA) 'WWDA Position Statement 1: The Right to Freedom From All Forms of Violence'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9

QDN is concerned about the implications of coercive control legislation for women with disability, particularly women with intellectual disability as victims and how this may potentially be used further as a form of coercive control against women to charge them as perpetrators and what this will mean for the system. QDN is also concerned about the different paid and unpaid caring relationships that people with disability experience that may include coercive control to respond and 'manage' the person with disability and how this intersects with restrictive practices.

QDN is concerned that given the challenges many women (and men) with disability have faced with policing systems and justice and court systems and lack of accessible, appropriate mainstream service responses, that legislating against coercive control may actually place more people with disability in the corrective system or long-term health system.

QDN believes for the proposed coercive control legislation to be effective it would need to result in a range of changes on the ground for the policing and justice systems to ensure that first-responders to DFV (usually police) had a thorough working knowledge of the impacts of DFV and GBV on women with disability, communicating effectively and other vulnerable cohorts of women. This could necessitate specialist policing units to be established and trained and codesigned by experts with lived experience and working knowledge of the impacts of violence against women with disability and other vulnerable groups.

QDN believes that work in this space needs to align and intersect with work that has been undertaken to address Recommendation 10 from Quentin Bryce's "Not Now, Not Ever: putting an end to domestic and family violence in Queensland taskforce report"¹⁷ and particularly, what more needs to be done to ensure a robust communication strategy delivers real change on the ground that changes services and behaviours day to day and what needs to happen to ensure mainstream service systems from first responders to DFV services improve how they work with women with disability.

QDN strongly asserts that if coercive control legislation is passed much work will need to occur in the lead-up to ensure women with disability understand the behaviours are unlawful, that they have the assistance required in relation to reporting incidences and going to court. Furthermore, it is important to consider how orders will be policed and acted upon and what pressure will sit with women versus the police. This will also require ensuring women with disability have access to specialist services as well as well-resourced disability advocacy services.

QDN is also concerned about admissibility of evidence and what the impacts are of evidence if coercive control is criminal act. Given how the systems deals with women with disability and barriers they currently face in giving evidence, QDN is concerned about how inadmissible their evidence will continue to be which will perpetuate the lack of access to justice that women with disability currently experience. We know that the current experiences of women with disability, including women with disability include how the court generally doesn't accept ability to give evidence, be believed and is often impacted by a unconscious bias about disability. Women also experience challenges based upon their cognitive ability, physical disability, mental health and communication style. It is important that how these will be addressed in the implementation of the any proposed coercive control legislation.

¹⁷ Recommendation 10 was: The Queensland Government commissions a review to address the impact of domestic and family violence on people with disabilities. QDN provided advice in several capacities during this review, including providing advice and feedback directly to Quentin Bryce during consultations on the lived experience of women with disability and being a member of the Expert Advisory Group making recommendations on this review. For more information on the report see: <https://education.qld.gov.au/parents-and-carers/parent-participation/parent-resources/not-now-not-ever>

QDN understands from our colleagues in the DFV space that approximately 25 percent of domestic violence orders are cross orders. QDN is concerned that this could result in women/ the wrong person being criminalised. QDN believes robust processes and a specialised understanding of violence and its impacts particularly on already marginalised groups will need to be in place to ensure this doesn't happen.

QDN supports assertions made by our colleagues in the DFV space that there needs to be a better definition of coercive control in the Domestic Violence Act. From QDN's perspective this needs to include a context of how women with disability experience coercive control (as highlighted above). If legislation was to pass there would need to be amendments made to the current Domestic Violence Act to acknowledge that women could take out a protection order solely on the basis of coercive control. Coercive control needs to be considered in the context in which DFV and GBV occurs and the gendered nature of power and control. QDN is concerned that the current proposal sees coercive control as a list of behaviours without seeing it in the full context of DFV

QDN is also concerned that in the current proposal, three different episodes are required to proceed with a charge. QDN is concerned about what this means for a vulnerable woman with disability who may need support to report incidences and how will the police go about collecting the evidence they need without placing an already vulnerable person under more stress. QDN believes specialised support services will need to be developed that understand the nature and context of DFV and GBV against women with disability to ensure women with disability are protected by this legislation.

QDN is aware that even though offences of violence, sexual assault, rape, strangulation and stalking are all criminal offences, when viewed as a subset of behaviours of DFV they are dealt with by civil legislation. QDN shares the concerns of our colleagues in the DFV space around implementing coercive control as a criminal act when the other offences aren't.

Whilst QDN agrees in principle with the idea of a specialised police force to deal with DFV related matters, QDN believes it is essential that such a police force has specific knowledge of the impacts of DFV and GBV on women with disability and other marginalised group. QDN also notes there are specific differences between Queensland and the Scottish model discussed in the discussion paper. Scotland has no indigenous population and no large geographical spread as Queensland does. The Australian Indigenous culture/situation is unique and complex. Also the large distances and geographical layout of Queensland is very different to Scotland.

In getting feedback on our submission with QDN members, specific concerns were raised about how this legislation would impact on women with disability from rural/ remote locations and who would support these women impacted by Coercive Control?

Conclusion

QDN is pleased to have this opportunity to present a perspective to the Taskforce on how women with disability are impacted by DFV, GBV and coercive control. Our submission highlights the unique contexts in which women with disability experience violence and the key challenges and considerations from a disability perspective in implementing coercive control legislation. QDN welcomes the opportunity to meet with The Taskforce to discuss these and other challenges in ensuring that women with disability are protected by robust legislation and have access to the specialist services they need and have accessible paths to safety from violence.