

**INQUIRY INTO CRIMES LEGISLATION AMENDMENT
(COERCIVE CONTROL) BILL 2022**

Organisation: Full Stop Australia

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The Standing Committee on Social Issues consideration of the *Crimes Legislation Amendment (Coercive Control) Bill 2022*.

Thank you for affording Full Stop Australia an opportunity to provide evidence on the *Crimes Legislation Amendment (Coercive Control) Bill 2022*.

1. General comments

Coercive control, from a practice perspective, has devastating and lifelong consequences on victims – emotionally, psychologically, physically, financially, and for some it can have deadly consequences. It involves the following elements:

- a) **Pattern** - Strategic course of oppressive behaviour - can include physical/ sexual violence but also insidious elements of non-physical behaviour.
- b) **Purpose** - Designed to induce fear, intimidation and submission and creates an “atmosphere of fear”.
- c) **Dependence** - Isolates the victim from support, exploits them, deprives them of independence and regulates their everyday behaviour.
- d) **Inequality** - Exploits gender-based privilege - Enabled and reinforced by accepted forms of gender inequality (Stark 2007).

Full Stop Australia supports the criminalisation of coercive control but makes the following suggestions for amendment to improve access to the offence by victim-survivors and provide further safeguards against misidentification.

2. Guiding principles – criminal offence

Full Stop Australia (FSA) recommends the inclusion of an overarching guiding principle to aid the interpretation of the coercive control offence. Guiding principles provide context and can assist the court to interpret the legislation in a way that is most consistent with meeting the objectives of the legislature. For example, in Victoria under Section 37B of the *Crimes Act* guiding principles are included for sexual violence offences. Similarly, to sexual offences, coercive control is also a highly gendered crime and some specific guiding principles could be developed unique to the interpretation of this offence. Guiding principles can be an additional safeguard against misuse and can be a way of trying to guide the court to consider the impact of ‘power and control’ in their decision making.

[CRIMES ACT 1958 - SECT 37B Guiding principles \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/crimes/act1958/sect37b.html)

Also, see Appendix 1

3. Guiding principles – civil protection orders

Similarly, in civil law, the court's interpretation of laws can be aided by guiding principles or objectives. These also can assist the court to interpret the law in a way that is consistent with meeting the legislature's objectives.

It is a drafting strategy to try to make the court examine who in the relationship has the power?

In Queensland, Section 4 of the *Domestic and Family Violence Act 2012* sets out principles 'under which the Act is administered'. These are the same as the Victorian Act.

[Domestic and Family Violence Protection Act 2012 - Queensland Legislation - Queensland Government](#)

Also see Appendix 2.

4. Misidentification, cross applications, and misuse of civil protection orders

The making of a civil protection order against a victim has devastating consequences. Emotionally and psychologically, it can be traumatic, but it also has damaging safety implications. It means 'the system' knows them as a perpetrator. This can mean police are less likely to take the victim's future concerns of violence seriously or as seriously, which can have extreme impacts on their safety.

"As reported in its 2016–17 Annual Report, the QDFVDR&AB (2017) conducted an in-depth analysis of 27 homicide incidents that resulted in 29 deaths between 2011 and 2016. They found that for nearly half (44.4%) of the DFV-related deaths of females the deceased had been listed as a respondent on a protection order by police in a current or former relationship prior to their death. For Aboriginal victims, "nearly all of the victims had a prior history of being recorded as both respondents and aggrieved parties, in both their current and historical relationships" (QDFVDR&AB, 2017, p. 82)"¹

ANROWS conducted research in Queensland on identifying the person in most need of protection and they found serious implications for women who were misidentified.

"The findings of this research echo previous literature that shows that being subject to a DFV protection order can have lifelong impacts. It can impact on housing, contact with or residence of children, employment, immigration, and safety, or result in a criminal record (as a consequence of breaching the protection order) or entrenchment in the legal system. If someone experiencing DFV is identified as a respondent, they may also miss out on risk-screening because they are not seen as a victim. They may be unable to access critical support services (such as shelter, social services or counselling) because they have been labelled a perpetrator. Therefore, women who are misidentified—or criminalised— experience compounding harm. In addition to this, their own victimisation becomes invisible once they are labelled a perpetrator".²

¹ [Nancarrow-PMINOP-RR.3.pdf \(anrowsdev.wpenginepowered.com\)](#) p.25

² [ANROWS-RtPP-Nancarrow-PMINOP.pdf \(anrowsdev.wpenginepowered.com\)](#) page 5

The Queensland Government has sought to tackle the issue of cross applications (and misidentification) adopting changes recommended by the Women's Safety and Justice Taskforce but also going further than those recommendations.

The bill currently before parliament and which amends the Queensland Domestic and Family Violence Act 2012 (civil protection orders) will, once passed, require cross applications to only be made in exceptional circumstances and provides legislative guidance on determining ‘who is the person in most need of protection’.

FSA recommends a similar approach be adopted in NSW, as in Queensland.

[Domestic and Family Violence Protection \(Combating Coercive Control\) and Other Legislation Amendment Bill 2022 \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/legislation/prepare/bills/2022/20220001)

Also see Appendix 3.

5. Recklessness

FSA recommends the inclusion of recklessness to extend safety and protection to as many victims as possible, if intention is unable to be proved beyond reasonable doubt.

Perpetrators of coercive control rarely admit their intentions and will obfuscate, minimise and deny wrongdoing. Some will admit their actions but deny the intent was malicious, instead believing that they have a 'right' to set rules and boundaries over their family and that their behaviour was a reasonable reaction to the victim's mental health or other behaviour that required 'correcting'. It will be a significant barrier to many victims if 'intent' is required to be proven, especially for particularly vulnerable women such as those who have mental health concerns or are from culturally and linguistically diverse backgrounds and highly patriarchal cultures.

There are some risks in including recklessness, as the broadening may increase the possibility of misidentification. Therefore, in the context of the current draft of the Bill, FSA only recommends to its inclusion if:

Section 54D (d) is amended so that when proving “recklessness” (d) (i) and (d) (ii) are required to be proved, rather than in the alternative. This approach would act as an added protection against misidentification.

FSA agrees the current drafting of Section 54 D should be retained if intention can be established.

So, for the purposes of clarity the drafting FSA supports would be:

A The party is reckless to the course of conduct which results in coercion or control of the other person and;

A reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused-

- (i) Fear that violence will be used against the other person or another person and
- (ii) A serious adverse impact on the a capacity of the other person to engage in some or all of the person's ordinary day to day activities.

B. The adult intends the course of conduct to coerce or control the other person and-

A reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused-

- (i) *Fear that violence will be used against the other person or another person **or***
- (ii) *A serious adverse impact on the a capacity of the other person to engage in some or all of the person's ordinary day to day activities.*

6. Other family members

FSA continues to support the inclusion of family members in the coverage of the criminal offence to not only ensure the broadest group of victims have access to justice, safety, and accountability against coercive control, but also because it will make it consistent with *Crimes (Domestic and Personal Violence) Act 2007*. With such wholesale changes being introduced into the criminal and domestic violence legal and response system, it is important that legislation, principles, and definitions are as clear as possible. Understanding will be enhanced by consistency and increased understanding will in turn translate into a greater chance of the legislation meeting its objectives.

7. Other issues - independent monitoring, inclusion of frontline stakeholders, specialisation, co-responder model

FSA supports independent monitoring with the inclusion of frontline stakeholders, and we understand DVNSW will be speaking to this in more detail. We believe systemic responses to coercive control will be improved by specialisation (police, courts, ODPP) throughout the system and the expansion of co-responder pilots between WDVCSs and police.

We thank you again for the opportunity to provide evidence before the Committee. If you have any further questions, please do not hesitate to contact me.

Yours faithfully,

Hayley Foster
Chief Executive Officer
Full Stop Australia

Appendix 1

Guiding principles – sexual offences (Victoria)

It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that—

- (a) there is a high incidence of sexual violence within society; and
- (b) [sexual offences](#) are significantly under-reported; and

[S. 37B\(c\)](#) amended by No. 47/2016 s. 7.

- (c) a significant number of [sexual offences](#) are committed against women, [children](#) and other vulnerable persons including persons with a cognitive impairment or mental illness; and
- (d) sexual offenders are commonly known to their victims; and
- (e) [sexual offences](#) often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

Appendix 2

4 Principles for administering Act (QLD) (Civil protection orders)

- (1) This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
- (a) people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives should be minimised;
 - (b) to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under this Act;
 - (c) perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;
 - (d) if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics;

Examples of people who may be particularly vulnerable to domestic violence—

- women
 - children
 - Aboriginal people and Torres Strait Islanders
 - people from a culturally or linguistically diverse background
 - people with a disability
 - people who are lesbian, gay, bisexual, transgender or intersex
 - elderly people
- (e) in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;
- (f) a civil response under this Act should operate in conjunction with, not instead of, the criminal law.

Appendix 3

22A Who is the person most in need of protection in a relevant relationship (QLD Bill)

- (1) A person (the first person), who is in a relevant relationship with another person (the second person), is the person most in need of protection in the relationship if, when the behaviour of each of the persons is considered in the context of their relationship as a whole—
- (a) the behaviour of the second person towards the first person is, more likely than not—
 - (i) abusive, threatening or coercive; or
 - (ii) controlling or dominating of the first person and causing the first person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); or
 - (b) the first person's behaviour towards the second person is, more likely than not—
 - (i) for the first person's self-protection or the protection of a child of the first person, another person or an animal (including a pet);
 - or (ii) in retaliation to the second person's behaviour towards the first person, a child of the first person, another person or an animal (including a pet);
 - or (iii) attributable to the cumulative effect of the second person's domestic violence towards the first person.
- (2) In deciding which person in a relevant relationship is the person most in need of protection, a court must consider—
- (a) the history of the relevant relationship, and of domestic violence, between the persons; and
 - (b) the nature and severity of the harm caused to each person by the behaviour of the other person; and
 - (c) the level of fear experienced by each person because of the behaviour of the other person; and
 - (d) which person has the capacity—
 - (i) to seriously harm the other person; or
 - (ii) to control or dominate the other person and cause the other person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); and
 - (e) whether the persons have characteristics that may make them particularly vulnerable to domestic violence.

Examples of people who may be particularly vulnerable to domestic violence—

- women
- children
- Aboriginal peoples and Torres Strait Islander peoples
- people from a culturally or linguistically diverse background
- people with disability
- people who are lesbian, gay, bisexual, transgender or intersex
- elderly people