ANROWS

AUSTRALIA'S NATIONAL RESEARCH ORGANISATION FOR WOMEN'S SAFETY
*to Reduce Violence against Women & their Children*

**Department of Justice and Attorney-General**
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*By email:* WSJ-Taskforce-Legislation@justice.qld.gov.au

**Re: Feedback on the consultation draft of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022**

Dear Director-General Mackie

ANROWS thanks the Department of Justice and Attorney-General for the opportunity to provide feedback on the consultation draft of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (the draft Bill).

ANROWS is an independent, not-for-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to provide an accessible evidence base for developments in policy and practice design for prevention and response to violence against women, nationally. Every aspect of our work is motivated by the right of women and children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Primary funding for ANROWS is jointly provided by the Commonwealth and all state and territory governments of Australia. ANROWS is also, from time to time, directly commissioned to undertake work for an individual jurisdiction, and successfully tenders for research and evaluation work. ANROWS is registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profit Commission (ACNC).

The information provided below is focused on providing feedback on potential operational issues relating to the draft Bill, as requested. It draws on evidence from rigorous peer-reviewed research, including relevant ANROWS research. We would be very pleased to assist further, as required.

Yours sincerely

[redacted]

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5 August 2022

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## Overall feedback

ANROWS commends the effort to strengthen existing legislation in Queensland, as recommended in our response to the Women's Safety and Justice Taskforce's (the Taskforce) first discussion paper (ANROWS, 2021a). The consultation draft of the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (the draft Bill) includes many provisions that, when applied appropriately, could increase protection for, and improve the experiences of, victims and survivors in contact with the legal system. The changes work toward solidifying an understanding of domestic and family violence (DFV) and codifying a more nuanced understanding of behaviours of both perpetrators and victims and survivors.

ANROWS notes the request for feedback only on operational and technical issues. This submission focuses on operational issues. These are that:

- Guidance and training for judicial officers is necessary to ensure legislation is implemented as intended.
- Victims' and survivors' engagements with the legal system may be improved, but systemic issues remain.
- Police play a key role and will require training and support.
- A focus on legislative change may entrench a shift away from developing, supporting and resourcing other approaches.
- Specific lessons can be learned from other jurisdictions.

Overall, ANROWS echoes the Taskforce's argument that for legislation – currently existing or altered as proposed – to be effective, system-wide reform is necessary (Women's Safety and Justice Taskforce, 2021). The Taskforce concluded that the approach taken in Scotland, where a standalone offence criminalising a course of abusive behaviour has been implemented, showed the necessity of systemic reform. According to the Scottish model, law ("protection") is just one part of a broader systemic approach that also includes provision of services, prevention of violence against women, and participation of women with lived experience in policy and legislative reform (Nancarrow, 2021).

## Guidance and training for judicial officers is necessary to ensure legislation is implemented as intended

As the Taskforce heard, existing legal provisions available for the prosecution of DFV are not always utilised as intended. Some of the proposed amendments address this by providing useful clarity to assist courts in applying legislation appropriately. Some of the proposed amendments, for example, compelling disclosure of a history of perpetration of DFV or expanding powers to award costs, provide welcome tools to the court to assist in determining cases or applying penalties. As with currently existing legislation, though, it is imperative that these tools are not used against victims and survivors of DFV.

While expanding the power to award costs is a direct and welcome response to systems abuse, research has shown that existing provisions for this are not always utilised (or can be used as a threat against victim and survivor litigants; Wangmann et al., 2020), expanding related powers will not necessarily result in greater use of this tool. Guidance and training will be necessary both to encourage the use of this provision, and to ensure that a solid understanding of DFV underpins all decisions to award costs (so that

it is not used against victims and survivors). Further, as indicated above in stressing the need for a holistic response, in awarding costs, protections must be in place to ensure that a perpetrator does not retaliate against a victim and survivor, whom they may blame for the outcome.

## Guidance

While ANROWS recognises the importance of judicial discretion, clear information needs to be readily available to court actors to help assess patterns of coercive control, or to assist decisions on which party is the person most in need of protection. Both the Queensland *Benchbook* (Office of the Chief Magistrate Brisbane, 2021) and the *National Domestic and Family Violence Benchbook* (Australasian Institute of Judicial Administration, 2022) are useful avenues for this. ANROWS assists with Benchbook entries to ensure they stay up to date with emerging research and would be pleased to provide relevant evidence to refresh the necessary sections.

## Training

As recommended in ANROWS's submission to the Taskforce's first discussion paper, judicial training on coercive control and a move away from a "hierarchy" of violence (see for example ANROWS, 2021b; Nancarrow et al., 2020) will be fundamental to implementing the proposed changes effectively. This will take time and resources.

Such training will assist in assessing evidence in front of the court. A nuanced understanding of DFV will mean, for example, that a judicial officer presented with criminal and DFV history, as required under the amendments, will be able to assess those in the context of the relationship as a whole. This could mean that if a decision-maker has an understanding of coercive control, criminal offences arising from retaliatory violence would be seen as such (see Nancarrow et al, 2020; ANROWS, 2020; ANROWS, 2021b). Or it could mean that the criminal/DFV history of a perpetrator given to the court will not be assumed to exhaustively tell the story of abuse, but merely capture that which has been officially recorded. As has well been documented, DFV is under-reported, particularly within groups who historically have faced barriers or experienced injustice at the hands of the police or legal system (see for example Langton et al., 2020; Salter et al., 2020; Ussher et al., 2020; see also Boxall et al., 2022 on homicide offenders whose DFV offending remained invisible to police). Training will also be necessary, for example, in understanding technology-facilitated abuse if the proposed changes around unlawful stalking are to be effective. Recent ANROWS research has pointed to the way in which the legal system struggles with both understanding, and taking seriously, technology-facilitated abuse (Flynn et al., 2021, 2022).

Additionally, as Associate Professor Wangmann pointed out in her submission to the Taskforce, the issue is not necessarily one of understanding, but of translating that understanding into practice (Wangmann, 2021). She points to ANROWS's *National Community Attitudes towards Violence against Women Survey* (NCAS) to demonstrate that general community understanding of non-physical violence is actually quite high, with around 80 to 90 per cent of people understanding that certain non-physical tactics are violence (Webster et al., 2018). However, this understanding is not being applied in court settings. This means, firstly, that community standards are outpacing the courts' responses. Secondly, it means that training needs to address the knowledge/practice gap: "This is far more than content delivery, but rather content that is responsive and adaptive to the workplace setting." (Wangmann, 2021) Much ANROWS research has pointed to this issue of being supported to implement knowledge in work practices, and the extensive resourcing required to support workers in applying learnings (see for example Nancarrow et al., 2020).

## Victims' and survivors' engagements with the legal system may be improved, but systemic issues remain

### The legal system is still disjointed

The proposed changes go some way to reducing the burden on women experiencing DFV as they engage with the legal system. However, a woman experiencing DFV may still have to navigate different parts of a very complex legal system. She may be, for example, in contact with criminal law, family law, the child protection system, immigration law, or social security law, both at a state or territory and federal level (Nancarrow, 2021). Each of these systems have different approaches, thresholds and enforcement arrangements that are diverse and disconnected (Nancarrow, 2021). As Nancarrow (2021) has argued, these inconsistencies result in gaps and risks to the safety of women and their children. Without further reform, or robust case management support, these risks remain (on the benefits of case management, see Wangmann et al., 2020; see also Salter et al., 2020).

### Embedded systemic barriers remain

Every change must be made with eye to how it will impact women who experience multiple and intersecting forms of structural disadvantage, and the barriers they already face in accessing the existing legal system (ANROWS, 2021b; Meyer & Reeves, 2021). ANROWS stresses again that research shows that mainstream legal approaches can be a direct cause of harm for Aboriginal and Torres Strait Islander peoples and communities (Blagg et al., 2020; Langton et al., 2020; Nancarrow et al., 2020).

## Police play a key role and will require training and support

### Police training and support for capacity building

As stated in ANROWS's initial response to the Taskforce, to improve the response to coercive control, significant reform to the way police respond to, and are supported in dealing with, DFV matters is required (see ANROWS, 2021b; Nancarrow et al., 2020; Salter et al., 2020). While the draft Bill is focused on legal reform, without significant reform to police response, legislative reform will have limited impact. For example, the draft Bill addresses some of the uncertainty around cross-applications and makes it clear that magistrates must decide on who the person most in need of protection is (see the implications for policy and practice in Nancarrow et al., 2020). This strengthens the response to women who get caught up in the justice system through inappropriate orders. However, it won't necessarily stop inappropriate applications, which still have implications for victims and survivors.

As key actors in the legal process, police will need extensive training on both the new legislative changes, and DFV more generally. ANROWS understands that the Queensland Police Service (QPS) is currently delivering training to members about DFV and has plans to deliver extended specialist training to specific members later in 2022. Including a specific focus on legislative reform within QPS DFV training packages will help police to understand the courts' jurisdiction and capabilities, ensuring they follow appropriate courses of action to allow the court to exercise its powers as intended. This will include ensuring appropriate and sufficient evidence is gathered to assist the court in making informed decisions. Any move to a pattern-based (rather than incident-based) style of police investigation to support evidence-gathering will require significant investment as it is time intensive (ANROWS, 2021b).

Any training will need to be accompanied by real support to enact good practice. The Taskforce found that a key issue is not necessarily the current police processes themselves, but rather that police are not doing, or are not being supported to do, what is currently required of them (Women's Safety and Justice Taskforce, 2021). As Dr Wangmann pointed to in her submission to the Taskforce, this has also been a finding in previous death reviews (Wangmann, 2021; see for example in Queensland the Domestic and Family Violence Death Review and Advisory Board, 2021; see also Australian Domestic and Family Violence Death Review Network & ANROWS, 2022). Without resourcing and reform in relation to policing practice, the legislative changes will not have the desired effect.

## A focus on legislative change may entrench a shift away from developing, supporting and resourcing other approaches

### Holistic approaches for women who use violence in response to violence perpetrated against them

As explained in ANROWS's submission to the Taskforce's first discussion paper, research shows that there has been an inappropriate and increasing application of domestic violence law against women who use violence in response to violence perpetrated against them (ANROWS, 2021a; see also Bevis et al., 2020; Day et al., 2018; Nancarrow et al., 2020). The proposed changes, particularly around cross-orders, will assist in mitigating this escalating issue. However, without broader support and intervention options, this risk still exists. Bevis et al. (2020), for example, found that Aboriginal women imprisoned in Alice Springs were financially stressed, lacking stable and safe accommodation, living with addictions to alcohol or using other drugs, frequently negotiating family violence, and had high physical and mental health needs. This research points to both the way in which these broader issues can contribute to the likelihood of incarceration, but also the inadequacy of the legal system in addressing those underlying issues.

### Meaningful interventions for perpetrators

A focus on legislative change should not come at the expense of investment in meaningful interventions for perpetrators. As the Taskforce report highlighted, many victims and survivors stressed the need for more, and earlier, intervention programs (Women's Safety and Justice Taskforce, 2021). This is reflective of ANROWS research. Between 2018 and 2020 ANROWS commissioned and published 20 research reports focusing on perpetrators of domestic, family and sexual violence. Several recommendations arising from this body of work related to resourcing earlier, and more holistic, interventions for perpetrators (see ANROWS, 2021c for a synthesis of findings and recommendations). A suite of reports pointed to the lack of available programs, particularly for LGBTQ people (Gray et al., 2020), men from refugee backgrounds (Fisher et al., 2020), and Aboriginal and Torres Strait Islander men (Blagg et al., 2020; Langton et al., 2020).

Even within the courts, there remains work to be done on building capacity to refer to perpetrator programs. In the report *The Views of Australian Judicial Officers on Domestic and Family Violence Perpetrator Interventions* (Fitz-Gibbon et al., 2020), judicial officers expressed a lack of knowledge about perpetrator program referral options, in relation to both the availability and nature of the programs. More broadly, training and resourcing is needed around aligning court decisions with broader safety goals. ANROWS research highlights that accountability for violence within the legal system does not necessarily promote personal responsibility by the perpetrator (ANROWS, 2021c), and therefore won't necessarily

lead to a reduction in violent behaviour. Additionally, decisions made by the court to hold perpetrators to account may do so in ways that do not acknowledge the impact of violence on the victim, promote her safety or align with her wishes (Chung et al., 2020).

### Community-led solutions for Aboriginal and Torres Strait Islander peoples

ANROWS highlights Professor Heather Douglas's point that directing resources into the legal process– including training and implementation costs – may pull resources from the services sector and alternative safety responses (Douglas, 2021). In addition to the points above, a diversion away from community-led solutions for Aboriginal and Torres Strait Islander peoples would have profound negative consequences. ANROWS research has pointed to the necessity of community-led solutions, Elder engagement in justice mechanisms, and on-country healing (Blagg et al., 2020). Aboriginal participants in *Understanding the role of law and culture in Aboriginal and/or Torres Strait Islander communities in responding to and preventing family violence* (Blagg et al., 2020) suggested that current approaches to DFV that work on an individual level (such as addressing DFV through the legal system) seem designed to "break up" Aboriginal families, rather than strengthen them, and expressed a need for men and women to work together on solutions. The Koori Court has also been highlighted as a potential promising alternative to the mainstream legal system (Langton et al., 2020).

## Specific lessons can be learned from other jurisdictions

ANROWS research demonstrates that the proposed changes to the *Evidence Act 1977* (NSW) will give legal actors a much better chance at realistically assessing the nature of an abusive relationship, and thus deciding the most appropriate course of legal action (see for example Tarrant et al., 2019). As the changes are modelled on Western Australian provisions (ss 37–39) in the *Evidence Act 1906* (WA) and the Victorian *Crimes Act 1958* (ss 322J, 322K, 322M), it will be instructive to look to these jurisdictions for operational advice.

In regard to the proposal to expand the cross-examination of protected witnesses under the *Evidence Act 1977* (NSW), the research report *"No straight lines": Self-represented litigants in family law proceedings involving allegations about family violence* (Wangmann et al., 2020) provides useful guidance. As this research was being undertaken, a similar cross-examination scheme was being rolled out in New South Wales. Although the legislative framework is different in the two states, the research pointed to some preliminary emerging themes that may provide insight into potential operational issues, such as:

- funding: there had been a substantial underestimation of how many cases would qualify, which was resulting in delays and would impact the scheme's ongoing viability
- potential misuse by perpetrators as a way of accessing free legal representation
- lack of clarity around parameters of the representation
- responsibility for raising the relevance of the scheme, which was sometimes falling to self-represented litigants.

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