

ANROWS

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

Civil Surveillance Reforms

Strategic Policy and Legal Services
Department of Justice and Attorney-General
GPO Box 149
Brisbane QLD 4001

By email: CivilSurveillanceReforms@justice.qld.gov.au

Re: Civil surveillance reforms consultation

Dear Reform Secretary

ANROWS thanks the Department of Justice and Attorney-General for the opportunity to respond to the Civil surveillance reforms consultation.

ANROWS is an independent, non-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 build the evidence base that supports ending violence against women and children in Australia. ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. 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).

ANROWS is pleased to provide a brief submission highlighting the use of surveillance devices to perpetrate technology-facilitated abuse, as well as potential complexities in the application of the "protection of lawful interests" exception for victims and survivors of domestic, family and sexual violence. We would be very pleased to assist the Committee further, as required.

Yours sincerely



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Overall comments

ANROWS commends the Department of Justice and Attorney-General for recognising the intersection between domestic and family violence (DFV) and the use of civil surveillance technologies and related legislation. Technology-facilitated abuse (TFA) is on the national policy agenda and is identified in the *National Plan to End Violence against Women and Children 2022–2032* (the National Plan) as a key form of violence against women that needs to be addressed. Preventing and responding to violence against women requires commitment across sectors and this civil surveillance reform provides a promising opportunity to consider the needs of victims and survivors in legislation. ANROWS is pleased to provide a brief submission to this consultation highlighting additional areas for consideration.

Summary of recommendations

Recommendation 1: Civil surveillance legislative reform must consider the potential for unorthodox surveillance devices to be used to perpetrate technology-facilitated abuse.

Recommendation 2: Civil surveillance legislative reform must consider the potential for common devices to be misused as surveillance devices to perpetrate technology-facilitated abuse.

Recommendation 3: Consider clarifying the “protection of lawful interests” exception to ensure that victims and survivors who use a surveillance device to record coercive controlling behaviour that causes fear for their safety or who record admissions from perpetrators are not penalised.

Technology-facilitated abuse

TFA refers to the wide range of violent and abusive behaviours perpetrated using mobile, online and digital technologies (Department of Social Services, 2022). In the ANROWS report *Technology-facilitated Abuse: National Survey of Australian Adults’ Experiences*, Powell et al. (2022) found that one in two (51%) Australians had experienced TFA in their lifetime, with monitoring and controlling behaviours being the most commonly experienced form of TFA (33.7%; p. 23). TFA can be used as a tactic of DFV and to perpetrate coercive control (Powell et al., 2022). Many respondents who reported experiencing TFA also reported that the perpetrator engaged in other forms of offline abuse (Powell et al., 2022).

Surveillance devices and TFA

- **Consultation question 2:** *Are there any other types of surveillance devices which should be included in the definition of “surveillance device”?*

ANROWS would like to highlight two types of devices that can be used to undertake surveillance as a form of TFA. The potential for misuse of these devices to perpetrate TFA should be considered in civil surveillance legislation.

Children’s toys can be used as surveillance devices

Perpetrators can use children’s toys and devices as surveillance devices to monitor and control victims and survivors. In a recent ANROWS study, Flynn et al. (2022) conducted a national survey with support service workers to understand their experiences in responding to or preventing TFA. As part of this survey, support service workers identified the most common forms of monitoring, controlling or stalking behaviours regularly experienced by TFA victims and survivors (Flynn et al., 2022). The workers reported that the use of children’s toys or devices to monitor or keep track of a victim and survivor happened “a lot of the time” for 17.8 per cent of victims and survivors (Flynn et al., 2022, p. 21). In a report developed by

Dragiewicz et al. (2020) for the eSafety Commissioner, the researchers indicated that perpetrators used children and their devices to gather information about an ex-partner's location and activities and to perpetrate coercive, controlling and abusive behaviours post-separation. The report highlights cases where victims and survivors described their children receiving gifts from the perpetrator with GPS tracking capabilities, including devices with built-in GPS capabilities such as Apple Watches, or ordinary toys that had been altered to add a tracking device (Dragiewicz et al., 2020).

Recommendation 1: Civil surveillance legislative reform must consider the potential for unorthodox surveillance devices to be used to perpetrate technology-facilitated abuse.

Everyday items can be misused as surveillance devices

Perpetrators can also misuse common devices as surveillance devices to perpetrate TFA. In their report for the eSafety Commissioner, Dragiewicz et al. (2020) noted that most of the abuse in the study was perpetrated through the misuse of common devices and applications such as mobile phones and GPS-enabled devices with legitimate dual uses. In ANROWS research, Flynn et al. (2022) also noted that for 17.8 per cent of TFA victims and survivors, internet-connected household devices (e.g. Google Home, Amazon Alexa, fitness trackers, and “find my” smartphone tools) were used “a lot of the time” by perpetrators to monitor, stalk or control (p. 21).

The complexities created by the use of these types of devices to conduct surveillance must be considered in civil surveillance legislation. For example, while victims and survivors may have consented to a Google Home device listening to their voice in order to use the functionalities of the device, they have not consented to the perpetrator's use of the Google Home device to conduct surveillance. Civil surveillance legislation must be able to respond to the complexities of this misuse in order to protect victims and survivors of TFA.

Recommendation 2: Civil surveillance legislative reform must consider the potential for common devices to be misused as surveillance devices to perpetrate technology-facilitated abuse.

Capturing evidence of DFV and protection of lawful interests

- **Consultation question 17:** *Would the term “lawful interests” be sufficiently understood by persons seeking to comply with or enforce the QLRC draft Bill so as to be readily applied as an exception?*

The “protection of lawful interests” exception in the context of coercive control and mistrust of victims and survivors

ANROWS notes the discussion of the “protection of lawful interests” exception in relation to the use of surveillance devices. This exception provides that “it is not an offence for a person to use, install, or maintain a surveillance device where the use of the device is reasonably necessary to protect their own lawful interests” (Department of Justice and Attorney-General, 2023). The term “lawful interests” is not defined in the Bill or other civil surveillance legislation.

The consultation paper provides examples of circumstances in which the lawful interests exception was successful, including where there is “current or continuing abuse and exploitation, [or] contravention of a domestic violence order where the person had a ‘genuine concern for their own safety’” (Department of Justice and Attorney-General, 2023). In contrast, a victim of crime who records a conversation with an alleged perpetrator to obtain an admission would likely not be covered by this exception, depending on

the proximity of the recording to the offender and their ability to take other actions such as contacting police (Department of Justice and Attorney-General, 2023).

Tactics of coercive control

ANROWS wishes to highlight that victims and survivors who record coercive controlling behaviours may not be protected under this exception. Tactics used by perpetrators of coercive control are tailored to the victim and survivor, can be both physical and non-physical, and may appear innocuous to those outside of the relationship (Tarrant et al., 2019). These behaviours may still cause a victim and survivor to fear for their safety.

Despite the harms associated with coercive control, police and community understanding of coercive control is still developing. Police responses to DFV can often focus on responding to a single incident of DFV behaviour and can prioritise evidence of physical violence, ultimately risking missing circumstances of coercive control (ANROWS, 2021; Nancarrow et al., 2020). Findings from the 2021 National Community Attitudes towards Violence against Women Survey (NCAS) also highlighted that Australians still have less recognition of non-physical abuse and coercive control as constituting violence against women when compared with physical forms of violence (Coumarelos et al., 2023).

ANROWS cautions that the lack of understanding of coercive control and its harms among police and legal actors may lead to victims and survivors being inappropriately criminalised for recording coercive controlling behaviours that genuinely make them fear for their safety.

Mistrust of victims and survivors

ANROWS also acknowledges that victims and survivors may feel compelled to use surveillance devices to record admissions of guilt by perpetrators. ANROWS research shows that victims' and survivors' allegations are often met with mistrust by authorities and the community. In the case of sexual violence, findings from the 2021 NCAS highlight a concerning mistrust of victims' and survivors' reports, indicating that:

- 14 per cent of respondents strongly or somewhat agreed that many sexual assault allegations are false.
- 24 per cent of respondents strongly or somewhat agreed that, a lot of times, women who say they were raped actually led the man on and later had regrets.
- 35 per cent of respondents strongly or somewhat agreed that it is common for sexual assault allegations to be used as a way of getting back at men (Coumarelos et al., 2023, p. 139).

Myths and misconceptions about the nature of sexual violence and mistrust of victims and survivors that persist within the community can also undermine police, legal and juror perceptions about the credibility of sexual violence allegations (Coumarelos et al., 2023; Salter et al., 2020). This mistrust is not exclusive to sexual violence. The 2021 NCAS also indicated that 37 per cent of respondents strongly or somewhat agreed that women make up or exaggerate claims of domestic violence to gain an advantage in custody battles (Coumarelos et al., 2023, p. 24). Alongside mistrust from the community, victims and survivors of coercive control can also experience “entrapment”, as the abuse systematically deprives them of their autonomy and agency and makes it challenging to leave the relationship (ANROWS, 2021).

In this context of mistrust and entrapment, victims and survivors may feel as though they have few options to ensure that their reports are treated as credible and may record a conversation with an alleged perpetrator to obtain an admission. It is important that the mistrust that victims and survivors face is acknowledged, and that victims and survivors are not unreasonably penalised under civil surveillance legislation.

Recommendation 3: Consider clarifying the “protection of lawful interests” exception to ensure that victims and survivors who use a surveillance device to record coercive controlling behaviour that causes fear for their safety or who record admissions from perpetrators are not penalised.

Workplace surveillance

- **Consultation question 40:** *Should Queensland legislation specifically regulate the surveillance of employees by employers using surveillance devices (such as optical surveillance devices, tracking devices, listening devices and data surveillance devices)? If so, which types of devices should be regulated and in what circumstances?*

ANROWS also has upcoming research on technology-facilitated abuse in the workplace that could support future continuous improvement in legislative responses. The “Technology-facilitated sexual harassment in the workplace: Perpetration, responses and prevention” project is funded under ANROWS’s 2021–2024 Sexual Harassment Research Program and will explore the behaviours, characteristics and drivers of workplace technology-facilitated sexual harassment (WTFSH; ANROWS, n.d.). One key form of WTFSH that will be considered in this research is relational pursuit, including monitoring (ANROWS, n. d.). A key aim of this research is to produce evidence-based, policy-relevant recommendations to inform practice innovation, prevention and response regarding WTFSH. ANROWS would be pleased to share the findings and recommendations of this research with the Department of Justice and Attorney-General upon their release in 2024 to support ongoing improvement in responses to technology-facilitated abuse in the workplace and more broadly.

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