

Submission – Response to *Preliminary Consultation: Implementing the Hear Her Voice reports* – A disability perspective on coercive control and consent legislation

QDN

QUEENSLANDERS WITH DISABILITY NETWORK
NOTHING ABOUT US WITHOUT US

Submitted to the Women's Safety and Justice Taskforce,
February, 2022

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 community. This is as empowered, free citizens who are as valued, present, participating and welcomed as members of any 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 in relation to the Discussion Paper “Preliminary Consultation: Implementing the Hear Her Voice reports”.

More than 4.4 million people in Australia have a disability and 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.

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 longer¹; 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 violence; they are often denied the right to legal capacity² and effective access to justice³; and they have considerably fewer pathways to safety⁴.

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)⁵.

17.8% of females in Australia have a disability⁶. Women with disability are almost twice as likely as women with disability to have experienced physical or sexual violence by a cohabitating partner over a 12-month period (ABS, 2021)⁷. The chances of emotional abuse by a cohabitating partner are also

¹Dowse, 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

² 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.

³ 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.

⁴ 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.

⁵ 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>

⁶ Australian Bureau of Statistics (ABS) (2016). 4430.0. Survey of Disability, Ageing and Carers 2015, available at [Disability, Ageing and Carers, Australia: Summary of Findings, 2018 | Australian Bureau of Statistics \(abs.gov.au\)](http://www.abs.gov.au/Disability_Ageing_and_Carers_Australia:Summary_of_Findings_2018).

⁷ Australian Bureau of Statistics. (2021). ‘Disability and Violence – in Focus: Crime and Justice Statistics, Australian Bureau of Statistics’. Retrieved May 31, 2021 from <https://www.abs.gov.au/statistics/people/crim-e-and-justice/focus-crime-and-justicestatistics/april-2021>

significant: 6.3% compared with 4.1%⁸. Other forms of violence experienced by women with disability include forced sterilization, seclusion and restrictive practices as well as domestic violence in institutional and service settings including residential care and aged care facilities and services offered through the NDIS, such as group homes.⁹

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, including emotional and psychological abuse, typifies the way women with disability experience DFV and GBV.

It must be highly weighted by frontline workers across police, courts, domestic and family violence services, health and disability in assessing individual risk. For women with disability who experience DFV and GBV there are additional layers and 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. Women with disability generally have fewer pathways to safety. First responders across police, courts and domestic violence services lack physical access, accessibleⁱ information and specialist knowledge 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.

There must be a range of measures, research, education and awareness 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 recommends “the Queensland Government commissions a review to address the impact of domestic and family violence on people with disabilities”. This has been actioned and a report developed by People with Disability Australia including consultations with people with disability, government, non-government sector and domestic and family violence services¹⁰.

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 definition of coercive control could be strengthened to include controlling behaviours experienced by women with disability. QDN also supports greater education and awareness around coercive control consent before we move to legislate, including education focused on

⁸ Australian Bureau of Statistics. (2021). ‘Disability and Violence – in Focus: Crime and Justice Statistics, Australian Bureau of Statistics’. Retrieved May 31, 2021 from <https://www.abs.gov.au/statistics/people/crim-e-and-justice/focus-crime-and-justicestatistics/april-2021>

⁹ Frohmader, C., and Sands, T. (2015). ‘Australian Cross Disability Alliance submission to the Senate inquiry into violence, abuse and neglect against people with disability in institutional and residential settings.’ Sydney, NSW: Australian Cross Disability Alliance. Retrieved June 7, 2021 from <https://dpoa.org.au/acda-submissionsenate-inquiry-violence-abuse-neglectpeople-disability-institutional-residentialsettings/>.

¹⁰ “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>

identification of risk factors and predictive behaviours for 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 behaviours 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 and consent. For women with disability, a lack of education contributes to already alarming statistics around the number of domestic and family violence instances that go unreported to Police.

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 the current proposal sees coercive control as a list of behaviours without seeing it in the full context of DFV. Currently, there are significant parts of the criminal code which are not being used by police to prosecute criminal behaviour occurring in the context of domestic and family violence. For example, strangulation, stalking, sexual violence and (now potentially coercive control) are all separate offences but are also all behaviours that come under the umbrella of domestic and family violence. All of these behaviours need to be considered to properly assess risk. Without adequate education parts of coercive control could be left out of Police statements as it may be considered to fall under other categories of domestic violence categories, for example, people may associate physical abuse separately from coercive control without knowing that it is included under the definition of coercive control.

Policy debate must 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, and 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 or women with disability from culturally and linguistically diverse backgrounds.

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 longer¹¹; 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

¹¹ 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

forms of violence; they are often denied the right to legal capacity¹² and effective access to justice¹³; and they have considerably fewer pathways to safety¹⁴.

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)¹⁵.

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 concerned¹⁶. 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. Violence that occurs in group homes may be reframed as 'challenging behaviour', 'abuse' or 'service incidents'. The response often is '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 disability¹⁷.

Women with disability are often reluctant to disclose experiences of violence. A lack of support for women with disability to come forward about their experiences is visible when looking at the holistic context of the environment and systems in place around women with disability. Women with disability are living in a mostly inaccessible society that reinforces the marginalisation of women with disability in education, in accessing accommodation, in safe and respectful relationships and care arrangements and a society with higher incarceration rate for people with disability¹⁸. Some of the barriers relate to fears

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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/>

¹⁶ 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.

¹⁷ French, P., et al. (2010). Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment. PWD, NSW.

¹⁸ Healey, L. (2013). Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities

of authority figures that can be the result of years of emotional and psychological abuse, especially in the form of degrading and/or gaslighting about their disability¹⁹ .

Items such as phones, communication assistance devices or tablets may be taken away, or put in places inaccessible without support. This particularly is difficult for women who require communication support and for women with intellectual, cognitive, social, learning and verbal and/or physical disabilities. Other barriers to reporting and accessing help and support include²⁰:

- Lack of access to buildings (for all types of disabilities)
- Police not identifying someone has having a disability and lacking the communication skills required to interview people with disability and discomfort around interviewing people with disability, particularly those with communication and support needs,
- Infantilization of women with disability
- Face-to-face services not being offered to people with disability who require this type of support and vice-versa
- Technology specific support not being offered for people with disability who require this type of support
- Lack of disability awareness
- Lack of communication supports available, for example, Auslan interpreters or communicative technology support
- Denial of support person or worker to assist with communication
- Lack of access to disability-specific DFV/SV support
- Lack of access to crisis accommodation
- Inaccessible information
- Lack of integration across services and institutions such as police and courts
- Lack of disability awareness and expertise in existing Integrated Service Response Teams
- Lack of strategies in responding to people with disability experiencing and/or using violence in both individual service and integrated service responses
- Fear of information sharing in rural and remote areas with small communities
- Perpetrators using violence to block access to services²¹
- Lack of general, accessible and affordable transport options to appointments²²
- Fear of statutory removal of children after disclosure of domestic and family violence incidents²³

¹⁹ Healey, L. (2013). Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities

²⁰ People with Disability Australia (2017). Review to address the impacts of domestic and family violence on people with disability. Retrieved from: [PWDA review report \(publications.qld.gov.au\)](https://publications.qld.gov.au/pwda-review-report)

²¹ WWILD (2021). WWILD Sexual Violence Prevention Association Inc. Submission to the Women's Safety and Justice Taskforce. Response to Discussion Paper 1

²² WWILD (2021). WWILD Sexual Violence Prevention Association Inc. Submission to the Women's Safety and Justice Taskforce. Response to Discussion Paper 1

²³ George, A., and B. Harris. 2004. Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria. Deakin University, Melbourne: Centre for Rural and Regional Law and

“Only people with intellectual disability are considered as possible victim of violence, people with disability without intellectual disability has been treated as intellectual disability, adding additional trauma while dealing with police officers...law enforcement officers and legal representatives treat people with disability as stupid or child. They never expected highly educated people with disability can be a victim of DFV.”

QDN member

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.²⁴ 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 capacity²⁵ and access to justice. Men’s behaviour change programs are not always targeted at men with intellectual disability²⁶ 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.

Accessible Education

QDN identifies that that a lot more resourcing needs to go into education. This needs to be targeted to both education for young people, adults and the community at large. It is QDN’s understanding that currently there are opt-in programs delivered to schools surrounding education around consent and respectful relationships.

It is positive that Queensland have the LAMP program offered through True Relationships, which caters to young people with disability. However, QDN sees that consent and respectful relationships in the education system needs to be a compulsory part of education, with programs that are also accessible for and inclusive of students with disability. Having this education from a young age is the best way outside of education in the family home and other social contexts to ensure prevention of violence from the beginning. This is particularly pertinent for children who may be exposed to and/or experiencing violence in their household or other social/institutional contexts. Consent should also be a core teaching in sexual education in schools (in both the context of heterosexual and LGBTQA+ relationships) and

²⁴ 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>

²⁵ 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.

²⁶ 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

delivered in accessible ways. These programs, resources and lessons should be co-designed with people with a diverse range of disabilities to support accessible delivery.

'I think the ultimate goal in education would be that people have the tools they need to not engage as a perpetrator, and to know the warning signs to keep themselves safe as much as they can. Maybe consent education is something that is offered as one support option to victim/survivors, and there's accessible online and print resources available as well?'

QDN member

QDN commends the Taskforce for community education activities and providing a link to the NSW family and relationships website([Make no doubt | NSW Government](#)). However, although on this website there is the option to watch a video about the campaign, there are no obvious sections that provide Easy Read resources.

It is important that any campaign around coercive control and consent includes people with disability and is accessible to a broad range of disabilities. When QDN reference 'accessible' information and/or formats, this includes Easy Read versions, audiovisuals, audio recordings for information/articles/any text documents, Auslan videos, 'Say Less, Show More' formats for all media files, braille for text and written documents as well as more video and visual formats. Campaigning also needs to acknowledge people with disability as well as have representation of people with disability to reinforce that domestic and sexual violence can happen for people with disability and that they are not excluded from the campaign messaging.

On top of a website that has information and videos around the consent laws as well as support services and contacts, we believe there should also be one for coercive control. We also believe that these campaigns around consent and coercive control should extend to emails, social media, free-to-air television, radio and other streaming services wherever possible (for example Spotify/Podcasts), as well as in workplaces, in the community through community events, primary, secondary and tertiary education settings (in age-appropriate ways) as well as accessible information in hardcopy and accessible formats as well as on televisions/radios, local health services, cafes, libraries, bars and other establishments/public structures that have space for information and/or posters.

Systems Resourcing, Training and Awareness

It is crucial to ensure training for those within the legal, policing, justice and service systems surrounding coercive control and consent and how these issues are specifically experienced for people with disability, as well as what support is needed for people with disability and other marginalized groups.

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 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. It is important that there is representation of people with disabilities within these roles within the service, policing and legal system wherever possible.

Co-design with people with disability as well as other marginalized groups is critical to legislative change. QDN agrees in principle with the idea of a specialised police force to deal with DFV related matters, but 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 groups. 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 First Nations culture/situation is unique and complex.

The large distances and geographical layout of Queensland is very different to Scotland. In Scottish legislation, a defence to coercive control exists where the behaviour is interpreted by the courts as being 'in the best interests' of the aggrieved. This may perpetuate ableist beliefs about survivor/victims and could be used by the respondent to justify their use of coercive control against a survivor/victim with disability. We believe that this defence should not be replicated in Australian legislation, as it could have disproportionate effects on survivors/victims with disability .

The experiences of women with disability often go unreported. Often women do not wish to report their experiences to Police, so solutions outside of reporting to support women and children with disability also need to be more readily available.

Member feedback has been that there is a lack of safe crisis accommodation options for DFV survivor/victims in general, despite being more risk at experiencing DFV. For survivors/victims in supported accommodation/group home settings, accessing crisis accommodation is complex as it intersects with the NDIS system and victim/survivors often cannot access refuges in a timely manner, needing support plans altered to change supported accommodation.

Some domestic and family violence refuges don't accept support workers being on site or the site might be too far away from a support person ²⁷. If something like a diversion program is part of the model, it is important that crisis accommodation can be sought for those needing protection. Whilst funding for programs to stop people from using violence need to be funded, this can't be at the expense of, or instead of safe, accessible crisis and longer-term accommodation and housing for women and children experiencing violence.

²⁷ WWILD (2021). WWILD Sexual Violence Prevention Association Inc. Submission to the Women's Safety and Justice Taskforce. Response to Discussion Paper 1

Specific feedback from QDN member relates to this experience,

“I was referred to services, who were unable to find crisis accommodation for my disability needs. The best Police could do to protect me in my own home was to change my locks, however, I knew that he (person using violence) still had the capacity to break into the home regardless of the changed locks. When I asked the NDIS for SDA to re-locate, they said that Domestic Violence wasn't related to the NDIS and I've had to go through the Administrative Appeals Tribunal to have SDA (so that I can move away from the address known to the person) in my plan despite I'm eligible for the SDA I requested.”

QDN Member

Member feedback around their dealings with Police in their experiences of domestic and family violence and sexual violence matters have often been negative.

“After receiving threat of rape, I emailed Vulnerable Person's Unit in distress and asked if I was safe. Instead of providing the answer, they send police officers to my door at 2 am. As I'm bedbound due to my disability, I couldn't get to the door quickly. They started asking questions about the person's name and address so that they would issue DVO and I would be safe. I strongly disagreed as it would put me in serious and immediate danger as the person has serious anger issue. I requested to come back when my support worker is with me during the day. All I wanted to know was if I was safe. Police asked my support worker's detail. I strongly requested not to call now but wait for the time for her support shift. He said he would consult with his supervisor at the car in the front. He made a phone call to the support worker at 3 am asking for name and address of the person against my desperate wish due to serious safety concern. The support worker knew me well and didn't give out any detail because she thought it was the offender trying to trick her to give me trouble.

The police officer got very annoyed and agitated because he couldn't get the person's name and address and left. He didn't answer my question if I was safe. His answer was that only way he could keep me safe was to issue DVO, which I strongly disagreed. He also told me the recent "sexual molestation while I was paralysed" was a serious offence and I had to be very careful about saying it. He did not understand my disability and ignore me tried to explain my difficulty to communicate with him and my wish to have my support worker with me for this type of communication. He kept telling me he knows DV very well, however I couldn't believe his statement from how he treated me. They told me that they were going to source emergency accommodation and come back to help me, but they didn't. I was terrified that he (person using violence) would come back and assault me.”

QDN Member

Support outside of the justice system

With legislative change, there needs to be adequate support outside of the justice system for marginalised groups. Navigating this system can be incredibly difficult for people with disability to navigate, particularly on their own without sufficient support. Support to navigate the system is already limited for people with disability.

For people with disability, navigating the legal system, they will need accessible education/information about legislative changes and how this will affect them. People with disability will also require choice in accessible legal support and representation with disability-informed lawyers through government/not-for-profit legal services, the option of intermediaries state-wide, as well as to be able to have a support person, such as a support worker, for example, enter the courtroom with them.

The burden of proof on survivors/victims has been historically high²⁸, particularly for women with disability who are often not believed or seen as credible witnesses of the violence that has been perpetrated against them. In a recent online article²⁹, 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”.

There also needs to be ways of giving evidence that are accessible, for example, depending on disability, some people may not have the capacity to provide written, video/audio evidence and/or verbal evidence, so services, courts and the policing systems could have other ways of gathering evidence that consider the needs of people with disability in a case-by-case basis. This can be done through ascertaining preferred methods of communication and certain situations may require a support person to attend alongside a person with disability and/or a disability-informed lawyer.

“Legal Aid does not give advice by email, but face to face and phone only. They will not provide services to those who cannot leave home due to disability and cannot use the telephone for communication.”

QDN Member

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

²⁸ Royer(2018) The Proof is in the Pudding: When Domestic Violence Victims are Forced to Substantiate Their Experiences. Retrieved from: [The Proof is in the Pudding: When Domestic Violence Victims Are Forced to Substantiate Their Experiences - Women's Advocates - Women's Advocates \(wadvocates.org\)](https://www.wadvocates.org/)

²⁹ ² See: <https://www.mamamia.com.au/criminalising-coercive-control/>

police. This will also require ensuring women with disability have access to specialist services as well as well-resourced disability advocacy services.

The current gaps in the service system between domestic and family violence services and disability services has been something that members have raised concerns around. Services can often work in silos, and integrated service delivery is required where people can't access disability-specific domestic and family violence/sexual violence support. There is currently only one disability-specific domestic and family violence/sexual violence service in the Southeast Queensland Catchment (WWILD), which further highlights systemic gaps in having adequate services for women and children experiencing domestic and family violence/sexual violence. As mentioned before, women with disability will often require advocacy and support to come forward with experiences, as has been acknowledged more broadly in the consultation paper with reference to allowing disclosures from support people of the aggrieved. There are likely to be many cases where incidents have gone unreported due to lack of understanding of people with disability.

“DV Connect and other FDV services are not disability aware. We cannot have appropriate support/service. Yet we are told to contact them over and over.”

QDN Member

Enabling survivors to speak out about experiences of violence

QDN supports survivors, including survivors of childhood sexual abuse to speak out about their experiences without being charged, as highlighted by the Taskforce's recommendations within the consultation paper, however safeguards must be in place for minors and adults who may not understand the consequences of talking with media as well as the requirement of having a health professional sign off for children, people with an intellectual disability, people currently suffering from a mental health disorder or are in mental health crisis, prior to the act of speaking out.

Protections for adults with disability

Some adults with disability who have care and support needs and reside with and/or rely on the support of a parent/guardian/caregiver may require legal protections under the legislation similar to those that children have, most pertinently, having the ability to be listed as a 'protected person' under a Domestic Violence Order.

Support for people experiencing and using violence

In the consultation paper, there is reference to a diversion program for people who have perpetrated violence, and it's proposed that a person who has breached a domestic violence order for the first time will not be charged, however, often domestic violence breaches go unreported for a multitude of reasons³⁰. A 2021 inquiry also found that in Queensland, only 20% of cases where a Domestic Violence

³⁰ Healey, L. (2013). Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities

Order is breached results in a respondent being charged³¹. QDN is concerned about the level of risk this could pose if there aren't adequate protections in place for survivors/victims of violence.

Whilst QDN understand the diversion program could assist in the over criminalization and/or incarceration of people with disability as well as Aboriginal and Torres Strait Islander peoples, this also must be aided in other culturally appropriate and disability-specific preventative strategies and supports.

Although the consultation paper mentions that a diversion order can only be made "if the court is satisfied that there is an appropriate approved program or approved counselling in which the defendant-perpetrator can commence immediately or within reasonable time" feedback from members highlights that often there are long waitlists for any type of counselling program, particularly Men's Behavioural Change Programs, which often aren't accessible for men with disability.

It would be useful to know what the court deems to be an 'appropriate program' and timeframe, what would happen if they could not find an 'appropriate program' and whether an ouster order would be taken out in certain cases, ordering for the person perpetrating violence to live elsewhere. From feedback and experience of Queensland implementation of integrated responses to DFV, Men's Behaviour Change Programs have been proven in being effective in an integrated service response, by having women and children experiencing violence as well as men perpetrating violence come to the attention of services, so there is more monitoring of behaviour, even if the person involved in the program is not taking steps to address and/or change their behaviour.³²

Men with disability may be excluded from Men's Behaviour Change Programs if facilitators lack understanding of how to make the content and experience of the program accessible to men with cognitive, social, verbal, learning and intellectual disabilities. They may also be turned away if in need of an Auslan interpreter or other linguistic interpreter as services could deem this as being inappropriate based on confidentiality policy, to have someone who is not a program participant bear witness to the experiences of others in the group. There is similarly a gap in one-on-one counselling for men that is disability informed/specific and/or accessible to them. Information and resources for men with disability using violence are often not available in accessible formats.

QDN sees further research needs to be done in the instance of a carer using violence towards a person being cared for or a person being cared for who is using violence against their carer. For example, if a carer is going to be involved in a diversion program for their violence, looking at who is going to be supporting a person with disability in that instance and how this will be arranged and whether an order would be taken out on a carer to reside somewhere else in the meantime is important. People with disability can be dependent on their carer for a number of different important needs, so it's important there is safe and timely support to ensure those needs are being met.

Similarly, for someone using violence against their carer who could be involved in a diversion program, it would be important to look at who is going to be providing support to a person with disability, where

³¹ Gillespie, E. (2022) Fewer than 20% of alleged breaches of Queensland domestic violence orders result in charges, Retrieved from: [Fewer than 20% of alleged breaches of Queensland domestic violence orders result in charges | Queensland | The Guardian](#)

³² Topsfield, J. (2021). Do behaviour change programs stop men being violent? Retrieved from: [Victoria domestic violence: Do men's behaviour programs work? \(theage.com.au\)](#)

they are going to reside and whether an order would be taken out against them to reside somewhere else if they were previously residing with their carer. Whilst having a disability doesn't justify using violence, people with disability need accessible, disability-informed support to cease using violent behaviours, but at the same time can also require support with care needs, which needs to be considered in this context with practical, accessible and safe housing and care solutions if they are completing the diversion program.

In circumstances where women and children are escaping DFV who have disability support needs, the interface with NDIS needs to be considered. From QDN's experience in working in NDIS access over the past eight years, the barriers to timely access to supports under the NDIS is a challenge when there is an immediate need/crisis for women with disability escaping domestic and family violence. Access to NDIS assessments as well as approvals of NDIS assessments and applications are often delayed. Innovative programs for NDIS access such as QDN's Targeted Outreach Program and the ART program, for example, have demonstrated how this approach can assist people navigating these systems.

The ways in which the program would work are important to ascertain to understand whether it would be effective, equitable and safe for people with disability.

Inclusive Definition of Coercive Control

There 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 abuser³³.

Restrictive practices³⁴ and arbitrary service decisions based on workplace health and safety³⁵ need to be further examined to fully understand the impact of domestic violence and GBV on women with disability.

Information about what coercive control is needs to be accessible for people with disability and any campaigns around coercive control also need to be accessible for everyone. This definition will need to

³³ 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*

³⁴ 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.

³⁵ 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>

clear for people with intellectual, cognitive and learning disabilities and avoid overly academic and/or abstract terms to explain the behaviours. WWILD have asserted that,

“Words should be in dark, large, simple font on light background. Terms such as ‘gas lighting’ or ‘manipulation’ are very abstract terms and are difficult for people with intellectual disability to understand.”³⁶

QDN agrees with WWILD’s position. We need “a nation-wide conceptual framework and definition of coercive control, that is fit for purpose across jurisdictions, industries, and sectors.”³⁷ Having this can assist in preventing survivors/victims from being misidentified as using coercive control.

Whilst the Domestic and Family Violence Protection Act (2012), includes references to ‘informal carers’ it doesn’t appear to mention people with disability in relation to the definition of ‘informal carer’. Members have reported a lack of understanding from domestic and family violence services, Police and courts around carer violence. This kind of violence can happen either from the carer to the person being cared for (more predominantly), or at times, vice-versa from the person being cared for to the carer. This type of violence could be recognised in more depth within legislation.

Having a definition that encompasses all understandings of the term ‘carer’ as well as acknowledging the specific types of violence that people (predominantly women and children) with disability can experience (as mentioned above) by intimate partners, carers, in group home settings and by family members will assist Magistrates to deliver legal decisions that consider the dynamics of violence as they happen for people with disability.

It will also assist Police and domestic and family/sexual violence services in working with women and children with disability and ensuring they have can access safety and support when the violence can often fall outside of rigid definitions they use for eligibility, such as ‘intimate partner’ or ‘family’ violence. This will ultimately assist in protecting the safety and wellbeing of people with disability and ensure that their voices are heard.

Defining consent for people with disability –protection, justice and agency

It is critical that people with disability are given the choice to report sexual violence and are supported to access justice where sexual violence has been perpetrated against them. QDN is supportive of an affirmative model of consent, however, more needs to be done around understanding consent and lack thereof for people with disability. There are other places such as institutional settings and healthcare settings (such as through support work, for example) where agency and autonomy is taken away from

³⁶ WWILD (2021). WWILD Sexual Violence Prevention Association Inc. Submission to the Women’s Safety and Justice Taskforce. Response to Discussion Paper 1, pg. 7

³⁷ WWILD (2021). WWILD Sexual Violence Prevention Association Inc. Submission to the Women’s Safety and Justice Taskforce. Response to Discussion Paper 1, pg. 7

people with disability and often things are done to them that they don't consent to, which in general, can support and uphold coercive control of people with disability.

"I think two specific groups who will need support are people with learning disabilities and cognitive disabilities, and also people with any kind of high support needs – physical, social, etc. The reason I say the second group is that when you get daily care, I have spent lots of time in hospital around doctors, etc, there's often a real lack of consent around how people treat you, and I think that easily transfers to coercive control and relationships."

QDN member

Section 216 of the Queensland Criminal Code states it is an offence for a person to engage in sexual activity with a person who has an "impairment of the mind". This provision dismisses the possibility some people who have intellectual impairment can consent to intimate relations. It criminalizes couples where both partners have intellectual impairment.

This provision is an example of laws that are controlling and undermining of people with disability by preempting what they have the capacity to do or not do. It risks perpetuating myths around people with disability not having sexual and romantic agency or desire.

A way that consent law and the legal system could be more inclusive of people with disability would be exploring and ascertaining through research, the different ways that people with disability (including looking at a wide range of learning, verbal, social, intellectual and cognitive disabilities) can consent to sexual activity, instead of assuming that they don't have the capacity.

As mentioned in relation to coercive control cases, people with disability will also require choice in accessible legal support and representation with disability-informed lawyers through government/not-for-profit legal services, the option of intermediaries state-wide, as well as to be able to have a support person, such as a support worker, for example, enter the courtroom with them.

Through inquiry in the court, legal professionals and magistrates need to consider and ascertain the ways in which all individuals, but particularly individuals with verbal, learning, cognitive, social and or cognitive disabilities communicate consent. On the flipside, this type of information gathering is also important in ascertaining situations where a person with verbal, learning, cognitive, social and or cognitive disabilities doesn't consent to sexual activity.

Whilst some people with disability can discuss their preferences, their wishes and decisions in a clear verbal or written way, others may also use sign language, body movement or technology to communicate, for example. Others may not pick up certain social cues, verbal communication or body language and movements for example.

"Body language and facial expressions are mentioned somewhere in the report (Hear her Voice Report, Paper 2) or one of the videos as important ways to gauge consent, and I personally really dislike the ambiguity of that. People have different neurotypes and bodies and cultures. I feel like that really needs to be expanded out for education for neurodivergent people."

QDN Member.

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 and consent 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.
