



1 November 2022

Committee Secretary
Legal Affairs and Safety Committee
PARLIAMENT HOUSE QLD 4000

Email: lasc@parliament.qld.gov.au

Dear Secretary,

Re: *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (the Bill)*

Caxton Legal Centre Inc (Caxton) welcomes the opportunity to provide a submission on the technical and operational issues of the Bill. We have only addressed certain sections of the Bill specifically relevant to our work and where we have identified issues/gaps. We refer to our previous submissions on the first draft bill dated 5 August 2022.

Background

Caxton Legal Centre is Queensland's oldest community legal centre providing legal advice and social work supports to disadvantaged clients including those experiencing domestic and family violence, and those charged with domestic violence offences.

To prepare this submission, we have drawn from the experience of our lawyers and social workers who provide services to clients through a number of our programs relevant to this Bill:

- Domestic Violence Duty Lawyer – court based legal advice for Respondents in the Domestic Violence Court, Brisbane Magistrates Court.
- Seniors Legal and Support Service – legal and social work supports for older persons who are experiencing or at risk of experiencing elder abuse, including domestic and family violence
- Older Persons Advocacy and Legal Service – a Health Justice Partnership with Metro South Health providing legal and social work supports for older persons who are experiencing or at risk of experiencing elder abuse, including domestic and family violence.
- Family Law Duty Lawyer – court based legal advice provided five days per week at the Brisbane Registry of the Federal Circuit Court of Australia and Family Court of Australia.
- Family and Advocacy Support Service – court based legal advice and social work supports for persons affected by domestic and family violence five days per week at the Brisbane Registry of the Federal Circuit Court of Australia and Family Court of Australia.
- Family Law and Domestic Violence Advice and Casework program – day time and evening advices and casework. Our evening advices are delivered by volunteer lawyers.
- Queensland Coronial Legal Service – state-wide service providing legal advice and representation to families involved in the coronial process including representation in a number of recent inquests and non-inquest matters examining police response to domestic violence.

- Human Rights and Civil Law program – day time and evening advices and casework across a broad range of legal issues including policing with a focus on assisting persons experiencing domestic and family violence.
- 3. Clients who access our services are either court users or people who do not qualify for legal aid and cannot afford private legal services.
- 4. In 2021-2022 Caxton assisted over 5,000 clients with advice and casework, of whom 50% were affected by domestic and family violence.

Amendments to the Domestic and Family Violence Prevention Act 2012

Insertion of new s22A

Who is the person most in need of protection in a relevant relationship (Clause 34)

4. We respectfully submit that it may make more sense to put s 22A(2) before s 22A(1). From an application point of view, both for practitioners and judicial officers, a flipping of these subsections would make it more logical in terms of how the evidence would need to be presented, submissions made and conclusions drawn. It would be clearer that what needs to occur is that the mandatory factors in s22A(2) must be considered and then one would turn one's mind to whether those factors result in a finding, on the balance of probabilities, of who is the person most in need of protection having regard to the alternate considerations in s22A(1). The transition from the mandatory considerations to the weighing up exercise may be assisted by adding certain words in the proposed s22A(1) if it is moved to below the proposed s22A(2) and reads follows:

“A person (the first person), who is in a relevant relationships 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~~ **factors in s22A(1) are** considered in the context of their relationship as a whole –“

5. We note that the list of factors in s22A(2) is extensive and that making them mandatory considerations for a finding of the person most in need of protection, will, on a practical level, add to the amount of evidence that must be put before and considered by the court. This burden, in a busy list of up to 60-80 matters in one day, must be weighed against the benefit of making the list of factors mandatory. The same breadth of consideration of coercive controlling behaviours that lead to a finding of the person most in need of protection can occur without the list of factors being mandatory considerations. Training of police officers and training of judicial officers who do not regularly sit in domestic violence lists is the best way to safeguard the rights of victim/survivors of coercive controlling domestic and family violence.
6. We support the inclusion of specific reference to the phrase *'fear for the safety or wellbeing of the first person, a child of the person, another person or an animal...'* in subsection s22a(1)(a)(ii) in support of the principles of the Act under section 4. In addition, the use of the phrase, *"more likely than not"* is supported as language that accurately reflects the civil standard of proof.
7. We respectfully submit that ss22A1(b) (ii) is problematic. We strongly support, in principle, the addition of subsections that identify situations where the person most in need of protection engages in acts of violence in self-protection or as a result of the cumulative

effect of domestic violence that they experience. However, the option to acts of retaliation is likely to have the unintended consequence of s22A (1)(b)(ii) being misused by the perpetrator against the person most in need of protection. Violent resistance by females may be well understood by feminist theory and domestic violence researchers but it is not as well understood by the community. We are concerned that, without explanation, merely including the reference to 'retaliation' inadvertently creates messaging that violence by way of an act of retaliation puts a perpetrator into the category of victim. In order to avoid this subsection being misused by the perpetrator in this way, we respectfully submit that section 22A(1)(b)(ii) should either:

- a. be deleted and that subsections (1)(b)(i) and (1)(b)(iii), without the inclusion of section 22A(1)(b)(ii), sufficiently protect the person most in need of protection who is acting by way of self-protection and/or behaving in response to the cumulative effect of domestic violence, including in the form of coercive control ; or
 - b. contain an explanatory note so that it is clear what the reference to retaliatory violence is aimed at
8. We support the content of s22A(2)(c). In our experience cross applications often arise in a context where the second person has no fear of the other party at all and is in fact making the application on a 'tit for tat' basis. Our duty lawyers regularly make submissions and provide advice in relation to the relevance of level of fear. The inclusion of this subsection is practically beneficial and reflects current practice more accurately.
9. We are extremely concerned about the wording of ss22A(2)(d)(i) and (ii) submit that it should not be included. It is unclear how 'capacity' is to be measured, or whether capacity refers to personal attributes or to the context of a scenario, or something else. Without any clear definition or test of capacity, this subsection has enormous potential for racial and other types of discriminatory profiling of both perpetrators and aggrieveds. It is difficult to see how this subsection could pass the human rights compatibility test given its obvious potential for profiling based on physical or other personal characteristics rather than based on the actual history of violent or coercive controlling behaviours exhibited during the relationship.
10. Further concerns we hold in relation to subsection s22A(2)(d)(i) and (ii) include:
- a. The facilitation of perpetrator profiling created by subsection s22A (2)(d)(i) and (ii) could have a devastating effect on vulnerable groups such as First Nations people, who are already disproportionately engaged in the domestic violence court system in large part due to the high levels of discrimination that they already experience.
 - b. If the definition or test of capacity refers to situational aspects, not just personal attributes, a person who is most in need of protection who picks up a bread knife (a "weapon") in the kitchen in an act of self-protection could be deemed under s22A(2)(d)(i) to have the capacity to seriously harm the other person. In this way the subsection is fraught with the danger of exacerbating the issue of misidentifying the person most in need of protection.
 - c. It provides the incorrect messaging that perpetrators fit a certain profile or possess certain characteristics. A diabolical perpetrator of coercive control may be a person who does not fit any of the stereotypical expectations of what a perpetrator looks

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like or how a perpetrator behaves. A perpetrator may be of small stature, have no access to weapons and not fit a stereotypical mould of a perpetrator in any way, yet still be a diabolical perpetrator of coercive control. This subsection neglects to reflect this reality.

11. We respectfully submit that the legislation needs to avoid the requirement to engage in a process of characterising the aggressor when the focus is supposed to be on the person most in need of protection (the 'true' victim). However, we support the focus on identifying the vulnerabilities of those who most need protection as contained in subsection s22A(2)(e) and strongly support this as a necessary focus of section 22A.

Section 90A (clause 44)

4. We support the deletion of subsection (4) of section 90A for the reasons outlined in our submission dated 5 August 2022 at paragraphs 15 to 20.

Sections 157A, 157B and 157C (clause 50)

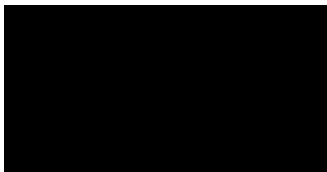
5. We support the addition of ss157A, 157B and 157C, noting that section 157A is intended to be triggered by a failure to effect substituted service only.

Section 160A

6. We support the addition of section 160A for the reasons outlined in our submission dated 5 August 2022 at paragraphs 15 to 20.

This submission was prepared by Colette Bots, Director Family, Domestic Violence, and Elder Law Practice. Please do not hesitate to contact Cybele Koning by telephone on [REDACTED] or by email to [REDACTED] if you have any questions regarding this submission or if we can be of any further assistance to the inquiry.

Yours faithfully



Cybele Koning

CEO

Caxton Legal Centre Inc.