Women's Safety and Justice Taskforce

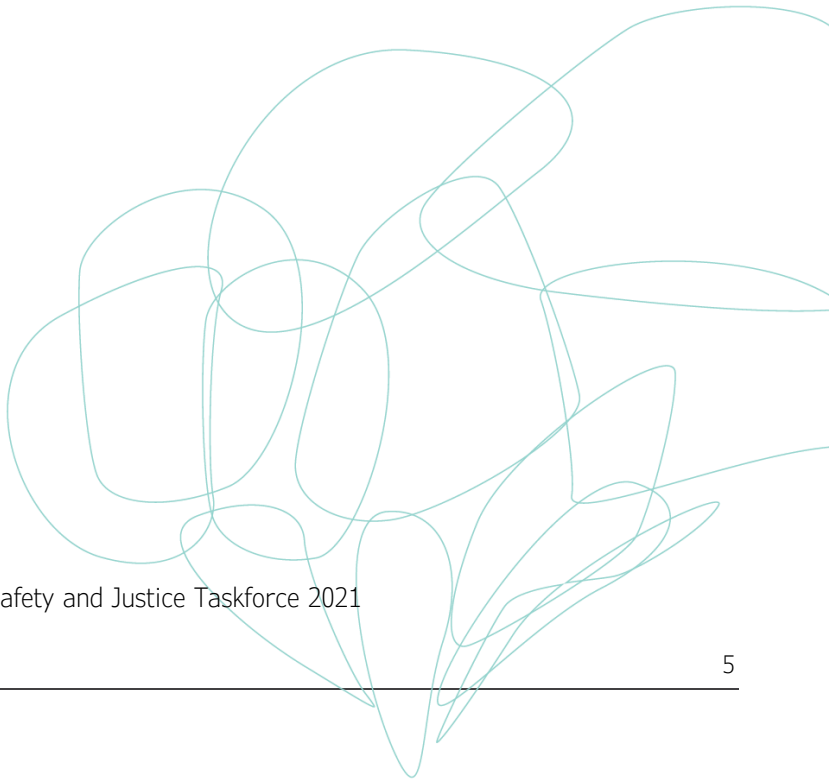
Options for legislating against coercive control and the creation of a standalone domestic violence offence

Discussion Paper 1

A wide-ranging review of the experience of women across the criminal justice system

The **Women's** Safety and Justice Taskforce acknowledges and pays respect to Aboriginal peoples and Torres Strait Islander peoples as the Traditional Custodians of Country throughout Queensland. This respect is extended to Elders past, present and emerging.

Contents



Foreword

The Women's Safety and Justice Taskforce has prepared this discussion paper to stimulate discussion and gain feedback from the community about the first part of our terms of reference—how best to legislate against coercive control and whether there is a need for a new offence of 'commit domestic violence'.

Unfortunately, our society has become all too familiar with the insidious nature of domestic violence. Experts and, following media coverage of recent tragic and shocking deaths of women and children, the broader community, now understand that domestic violence is not limited to physical and sexual abuse.

Abusive behaviour in domestic relationships may take many forms including a pattern of behaviour called coercive control.

Individual acts of coercive control may at first appear harmless but, together and over time, they result in the victim's loss of capacity to make independent choices. Victims and their children become trapped in a cycle of dependence and abuse which they cannot break. The harm to victims, their children and their wider circle of friends and relatives is immense and life-long. The economic cost to our community is also huge.

At every level of our society, it makes sense to do all we can to end family and domestic violence, including coercive control.

We want to hear from victims and survivors of domestic violence—particularly those who have suffered coercive control and acknowledge the courage it takes to share these difficult experiences.

We also want to hear from the families and friends of victims, and from those who work to support victim safety and hold perpetrators to account. This includes service providers, advocacy groups, legal stakeholders/practitioners, prosecution agencies, employer groups, employee unions, as well as the broader community.

Our terms of reference focus this discussion paper on improving the safety of women and girls who statistics overwhelmingly establish are the predominant victims of coercive control and domestic violence. We are acutely aware, however, that there are victims who are men and perpetrators who are women. We also know that same sex couples and people identifying as LGBTIQ+ are impacted by these issues and may under report. We warmly encourage submissions from everyone as we consider these critically important issues and their impact on our society.

We acknowledge there are strong and diverse views about criminalising domestic violence and coercive control. We welcome feedback on all viewpoints. Our Taskforce members were chosen because of their disparate subject matter expertise—each is committed to assessing the information we receive with an open and curious mind in the best interests of the Queensland community.

This discussion paper consists of three main parts, with discussion questions regularly raised throughout. Submissions need not, however, be limited to answering these questions.

Part 1 explores how Queensland currently addresses coercive control— through legislation, mainstream and specialised domestic violence service providers, and our police response. We need to understand: what we are doing well so that we can build on this work; what we need to improve; and how we can better use what we already have, as well as positive innovations.

Part 2 explores how other jurisdictions currently address coercive control. Queensland is unique, within Australia and internationally, given its vastness, decentralised population and significant remote First Nations communities. Any legislative response to the damaging issue of coercive control must be fit for purpose for the whole of Queensland— from Cape York to Coolangatta and west to Birdsville and Biloela. It is nevertheless useful to look at how other jurisdictions, especially those with similar legal traditions, are addressing coercive control to learn from their successes or shortcomings.

Part 3 weighs up the potential risks and benefits of legislating against coercive control. We present 13 potential options for reform, including whether to introduce an offence of 'commit domestic violence'. But these are not the only options we are prepared to consider.

We welcome all suggestions. We also stress the 13 options we raise are not necessarily mutually exclusive. We are not limited in the number of recommendations we can make. All options will have risks and benefits and we invite suggestions about those we may have misidentified or not identified at all.

We encourage submissions as to how to best mitigate risks to maximise the safety of Queensland women and children whilst avoiding unintended consequences such as exacerbating the overrepresentation of our First Nations people in our criminal justice system.

We must also ensure any recommendations do not compromise a person's right to a fair trial and appropriately balance any competing human rights.

I sincerely thank those who have already taken time to provide us with the 270 helpful submissions we have received so far.

Some of your experiences are reflected in this discussion paper. The Taskforce members and I look forward to reading many more submissions in response to this discussion paper as we complete our work. I invite you to keep informed about our community consultation and engagement activities by registering your interest on our website at: Consultation | Women's Safety and Justice Taskforce (womenstaskforce.qld.gov.au)

The Honourable Margaret McMurdo AC

Chair – Women's Safety and Justice Taskforce

Introduction

What is the Women's Safety and Justice Taskforce?

The Women's Safety and Justice Taskforce was established by the Queensland Government in March 2021 as an independent, consultative Taskforce to examine coercive control, review the need for a specific offence of 'commit domestic violence', and examine the experience of women across the criminal justice system in Queensland.

What have we been asked to do?

We have been tasked with examining, and providing a report on our findings and recommendations in relation to:

1. how best to legislate against coercive control as a form of domestic and family violence and the need for a new offence of 'commit domestic violence
2. other areas of women's experience in the criminal justice system

In preparing these recommendations we can consider how best to operationalise any recommended legislative reform, including training for first responders and public education and awareness.

We are undertaking broad and wide-ranging consultation with the community, including victims and survivors of domestic, family and sexual violence, women and girls who have first-hand experience of the criminal justice system and key stakeholders.

We have been asked to provide a report to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by October 2021 in relation to coercive control and the need for a standalone offence, and by March 2022 in relation to other areas of women's experience of the criminal justice system.

Queensland Domestic and Family Violence Prevention Strategy 2016-2026

The Queensland Government's Domestic and Family Violence Prevention Strategy 2016-2026 (the Strategy) notes the causes and contributors of domestic and family violence are extremely complex and are founded in cultural attitudes and behaviours, gender inequality, discrimination and personal behaviours and attitudes.

Released in 2016, it indicates at that time:

1 in 6 Australian women has experienced physical abuse at the hands of a current or former partner

1 in 4 Australian women has experienced emotional abuse at the hands of a current or former partner

One in 19 Australian men has experienced physical abuse at the hands of current or former partner. One in seven men has experienced emotional abuse at the hands of a current or former partner.

Some women are particularly vulnerable. Aboriginal and Torres Strait Islander women experience domestic and family violence more often than other Queensland women and are more likely to be seriously injured. They are also likely to experience violence within a wider range of extended family relationships. The ongoing impacts of colonisation including the history of dispossession, cultural fragmentation and marginalisation experienced by First Nations people is a contributing factor to violence in Aboriginal and Torres Strait Islander communities.

People from culturally and linguistically diverse communities are also particularly vulnerable and face additional barriers accessing services and support. They may experience abuse associated with their visa status and the impact of the abuse they experience may be exacerbated by their social isolation if they do not have connections outside of their cultural community.

People with disability are also highly vulnerable and experience domestic and family violence at higher rates than people without disability. They may experience abuse related to their disability, for example because they rely on the perpetrator for care.

People who identify as lesbian, gay, bisexual, transgender or intersex (LGBTIQA+) may also experience violence and abuse in their relationships and also face barriers to accessing appropriate services and support given fears of being discriminated against or of not having the types of abuse experienced understood by mainstream services.

The Strategy centres on prevention, early intervention, crisis response and recovery and aims that by 2026 all Queenslanders live safely in their own homes and children grow and develop in safe and secure environments. It includes additional outcomes that:

- Queenslanders take a zero tolerance approach to domestic and family violence
- respectful relationships and non-violent behaviour are embedded in our community
- Queensland community, business, religious, sporting and all government leaders take action and work together
- Queensland workplaces and workforce challenges attitudes contributing to violence and effectively support workers
- victims and their families are safe and supported
- perpetrators stop using violence and are held to account
- the justice system deals effectively with domestic and family violence

Our work will contribute to achieving the outcomes of the Strategy.

The impact of COVID-19 on domestic and family violence in Queensland

The full impact of the COVID-19 pandemic and subsequent economic conditions on the prevalence and severity of domestic and family violence in Queensland is not yet clear. Contrary to international research, some recent Australian evidence from New South Wales and Queensland suggests that domestic violence reported to the police did not increase in March or April 2020, nor did the number of protection order breaches.[i]

Although some Australian domestic violence and men's behaviour change services have reported an increase in calls for support since February 2020, other service providers have reported a decrease or no change in their client numbers.[ii]

Some domestic and family violence service providers report an increased demand for services, and an increased complexity of client need. Domestic and family violence workers also report an increased use of controlling behaviours such as isolation and monitoring as victims were forced to co-habit with an abuser during lockdowns.

This was coupled with an increased sense of vulnerability by victims, and an inability to seek outside help. One report concludes that perpetrators weaponised lockdown conditions to enhance their coercive and controlling behaviours.[iii] As economic and social consequences of the pandemic continue to emerge, the consequences for the safety of victims of domestic and family violence and their families are likely to continue to be realised.

What is the purpose of this discussion paper?

This discussion paper focuses on our examination of how best to legislate against coercive control as a form of domestic and family violence and the need for a new offence of 'commit domestic violence'.

We will soon release a separate discussion paper seeking views about the key themes we need to consider about the broader experience of women and girls across the criminal justice system.

This discussion paper outlines the growing evidence relating to coercive control, Queensland's current response and identifies potential gaps and issues. Our aim is to generate discussion and feedback that will assist us when we consider any recommendations for changes to the law. This includes how any changes to the law should be implemented, such as training for first responders, lawyers, courts and service providers and raising community awareness.

This paper also considers creating a stand-alone offence of 'commit domestic violence'. We consider this as one of 13 potential options for reform (noting that the definition of domestic violence in Queensland under the *Domestic and Family Violence Protection Act 2012* incorporates coercive control—see further discussion in Part 1 below).

How to make a submission

We want to hear your views. If you or someone close to you has lived experience of domestic and family violence, we would like to know what helped you, what made things more difficult for you and what you think needs to be changed.

If you work supporting people who experience domestic and family violence—including supporting them to navigate the criminal justice system—or if you are an expert or researcher, we would like you to tell us what you think works well for your clients and why, what you see as barriers or issues and what you think needs to change.

This discussion paper poses a series of questions throughout. These are designed to provoke thought and consideration of specific issues. You may wish to respond to all of these questions, or only those that are of interest to you. You may wish to also raise additional relevant matters.

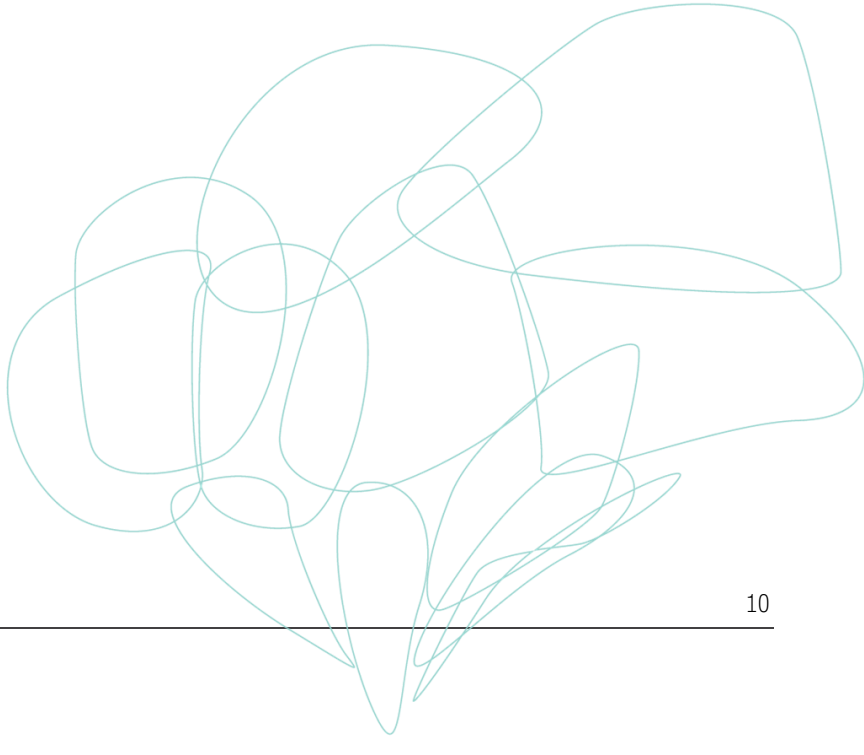
Submissions in response to this discussion paper can be made until Friday, 9 July 2021.

Individuals and organisations can make a submission (confidentially if desired) though our website – www.womenstaskforce.qld.gov.au or by mail at:

Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001

If you are mailing a submission, please ensure you complete and enclose a survey questionnaire with your submission so we know how you would like us to treat your information.

The survey questionnaire is available on the website at: Make a submission | Women's Safety and Justice Taskforce (womenstaskforce.qld.gov.au)



Context

Please note this section describes coercive and controlling behaviours and may be distressing to some readers.

The evolving understanding of domestic and family violence

The understanding of domestic and family violence is continually evolving. The first attempts to intervene in what had been previously considered by many as 'private matter' focused on physical violence and injury. But we are increasingly learning about and acknowledging the extensive nature of abusive behaviours, and the extent of the harm these behaviours can cause.

It is important that our laws, systems and processes are responsive to this new information. It is also important that the there is a full and accurate understanding of domestic violence in the community so we can all play a part in best preventing and responding to it.

In this discussion paper, we may refer to 'domestic violence' and 'coercive control' interchangeably. We note the argument that the continued use of the word 'violence' contributes to the perception that abuse of this kind is limited to physical violence rather than involving a range of abusive behaviours.

What is 'coercive control'?

The taskforce has already received submissions from women who describe domestic abuse that includes both physical and non-physical violence occuring within a context of a coercive and controlling behaviour.

'He tried to drown my Labrador……He shot my mother's cat while she was a work because it made a mess in my parents home…..I was threatened every day that he would see me penniless, jobless, no family, no home and no money every day….. I couldn't even have a shower or bath in peace by myself, he insisted on sex in the shower every night even though I said no'.

There is no single recognised definition of coercive control. It is generally understood to describe a pattern of behaviour designed to control another person who is, or has been in a domestic relationship with the person using the behaviour.

It is most often perpetrated against women and children and, while each individual case will be different, it can include:

- the gradual isolation of a women from her friends, family and other supports
- degrading put downs
- humiliation and threats
- 'gaslighting'[iv]
- monitoring her movements—including through electronic devices
- use of technology and/or social media to control and manipulate
- financial control
- removing reproductive control[v]
- micro-managing every aspect of her life—what she wears, when and what she can cook, eat, sleep, leave the house…

Abusers may exploit the particular vulnerabilities of victims. Women from culturally and linguistically diverse backgrounds may be prevented from attending English language classes or threatened with deportation (without her children).[vi] Women with disability may have their medication withheld or basic care requirements withdrawn.[vii] Women who identify as LGBTIQA+ may be threatened with their sexuality or gender identity being 'outed' without their consent.[viii]

Abusers may also use physical or sexual violence, or threats of this violence, in combination with other types of abuse, as a means of asserting control. No member of a family experiencing coercive control escapes the effects of abuse, with perpetrators often using threats, assaults, neglect, and torture of children and even the family pet as part of their strategy of coercive control.[ix]

Viewed in isolation, an individual behaviour may appear harmless or trivial, but together and over time, these behaviours can result in a woman losing the capacity to act according to her own free will, leaving her trapped in a cycle of abuse.

Research from Finland and the United Kingdom indicates coercive control has a devastating impact on women and their children both during a relationship and after separation—with child contact providing perpetrator

fathers with opportunities to continue their abuse of children and ex-partners.[x]

Coercive controlling behaviours have been associated with intimate partner homicide.[xi] A review of deaths in NSW found coercive and controlling behaviours were evident in 111 of 112 cases.[xii] Queensland's Domestic and Family Violence Death Review Advisory Board 2019-20 Annual Report also noted the prevalence of coercive control in the cases it reviewed.[xiii]

It is essential to understand coercive control when formulating appropriate legal and other responses to domestic violence. Rather than focusing on specific isolated incidents of physical violence (which the legal system often places at the top of a hierarchy of offending behaviours) it contextualises abuse within a relationship over time.

It includes all abusive acts, physical and non-physical, as part of an ongoing systematic group of behaviours aimed at disempowering the victim.[xiv] For example, an act of physical violence in an intimate relationship, seemingly minor in itself, may not be responded to effectively by legal and other systems if it is merely seen as an isolated, one-off act of physical harm.

A more effective response is likely to be evoked if that minor physical act is recognised as one of a series of physical and non-physical acts or words used by the perpetrator to subordinate the victim physically, emotionally and psychologically.[xv]

Recently published research that investigated different patterns of coercive control experienced by Australian women in abusive intimate relationships identified the following behavioural themes in those relationships:

- **Jealousy or suspicion of friends and family**. This was the most common reported form of controlling behaviour. One in two women reported their partner had accused them of having an affair.

- **Monitoring of movement.** Two in three women reported their movements were monitored and two in five women identified stalking behaviours either online or in person

- **Financial abuse.** One in two women reported their partners using the woman's own or shared money without their consent, and two in five women reported their property being damaged destroyed or stolen.

- **Social isolation.** One in two women reported partners interfered in family relationships. Two in five women reported communication or movement restrictions.

- **Emotionally abusive and threatening behaviours.** Two in three women reported behaviours used by their partner which belittled, humiliated or intimidated them.

- **Co-occurrence of coercive control and physical and sexual violence.** Most women who had experienced coercive control in the three months prior to the survey also experienced physical and or sexual abuse.

- **Help seeking behaviour.** Most women who experienced coercive control were seeking help from police, government or non-government services, and formal or informal services. Help seeking increased considerably where there was a co-occurrence of physical and/or sexual violence.[xvi]

It is important to note the courage, ingenuity and resilience that women often demonstrate in attempting to preserve their safety and sanity, in the face of tactics designed to degrade and subordinate them. Many women find ways to resist, or minimise the impact of abuse on themselves and their children. For some, this can result in self-medication, including through substance abuse, or the use of retaliatory violence, which can impact on the response they receive when seeking help (see discussion in Part 3 below).

Why focus on female victims and male perpetrators?

Anybody can be a victim of domestic and family violence and both men and women can be perpetrators. However, the vast majority of victims are female, and the vast majority of perpetrators are male. This is particularly so in relation to coercive control.

Domestic and family violence occur in the context of unequal power and autonomy, where one partner (most often the woman) experiences fear and control from the other partner. This is distinct from differences in opinion or needs. In domestic and family violence people consistently fear reprisals or violence when they have relationship difficulties or express their needs and differences of opinion.

To acknowledge the gendered nature of these types of abuse—and in accordance with our terms of reference—we often refer in this discussion paper to people who fear and experience domestic and family violence or coercive control as women, and perpetrators as men.

We do, however, acknowledge the real need to consider any unintended consequences of proposed reforms in relation to victims who are men, perpetrators who are women, same sex couples and people who identify as LGBTIQ+. We welcome submissions from all Queenslanders.

Previous changes to the law in Queensland to better address domestic and family violence

The Queensland Government's approach to domestic and family violence has progressively recognised abusive behaviours within domestic relationships beyond physical violence over the past two decades. A detailed timeline of key Queensland domestic and family violence law reforms is at Appendix 1.

Discussion Questions

1. What other types of coercive controlling behaviours or risk factors used by perpetrators in domestic relationships might help identify coercive control?

2. What aspects of women's attempts to survive and resist abuse should be taken into account when examining coercive control?

Part 1 – How is coercive control currently dealt with in Queensland

In part 1, we look at how Queensland currently responds to coercive control, including the role of mainstream services, the domestic and family violence system, existing civil and criminal legislation, and the current police response.

You may wish to read all of Part 1, or just the sections that are relevant to your experience.

We would like your feedback on what parts of Queensland's current responses to coercive control are working well and what could be improved.

Community attitudes

Whether a person identifies that they are experiencing abuse that amounts to coercive control, and whether they are likely to seek help, is impacted by the broader community's understanding of, and tolerance for abuse of this kind.

The Queensland Social Survey's *Domestic and Family Violence Survey Report* produced each year by the Queensland Government Statistician's Office provides one measure of Queensland's community perceptions and attitudes towards domestic and family violence.

The October 2020 report surveyed 3,336 Queenslanders between 29 June and 25 July 2020.[xvii] That survey indicated that well over 90% of those surveyed thought non-violent behaviours associated with coercive control such as controlling access to money or harassment were 'very or quite serious'.

Notably, while 9 in 10 of the respondents to the survey thought they would do something about *physica*l domestic and family violence involving their neighbour, only 7 in 10 would do something about *non-physical* domestic and family violence committed by a neighbour.[xviii]

The role of bystanders in recognising and responding to domestic and family violence offers immense potential for creating community change.

Bystanders include work colleagues, employers, friends, family, neighbours, club or sporting colleagues and fellow religious worshippers. These people might notice or witness behaviour or signs of domestic and family violence, and can play an important role in talking and linking people to assistance.

While community attitudes appear to be changing for the better, with increasing proportions of the public recognising non-physical forms of abuse as domestic and family violence[xix], many victims continue to report a reluctance to seek help for non-physical violence.

Research indicates many women from culturally and linguistically diverse backgrounds do not recognise non-physical forms of domestic violence as abuse—particularly financial abuse and reproductive coercion.[xx]

The Special Taskforce on Domestic and Family Violence in Queensland in its report *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland (*the *Not Now, Not Ever* report*)* acknowledged the influential role the media has in shaping community perceptions. Its recommendation to create a media guide was implemented in 2018.

Commendably, the issue of coercive control has received significant media attention in the past twelve months, particularly in the wake of a number of tragic murders.

Some commentators and researchers have called for a change in terminology to improve community awareness and understanding of the non-physical forms of domestic and family violence, for instance preferring the term 'domestic abuse'.[xxi]

'I wished for years that someone would intervene – a neighbour who could not have failed to hear him screaming abuse, a work colleague (ditto), a friend who observed his casual verbal abuse – but no one did. That's the thing people do not want to get involved or they don't know how to. I will never stand by and see another person treated the same way I was. I will always find a way to intervene in a manner that does not compromise someone's safety. It starts with disrespect and control, it continues and thrives with people thinking it's not their business and ends with so many of us permanently emotionally damaged, physically injured or dead'

Discussion Questions

3. What should be done to improve understanding in the community about what 'coercive control' is and the acute danger it presents to women and to improve how people seek help or intervene?

4. Are there opportunities for the media to continue to improve its reporting of domestic and family violence and for popular entertainment to tell more topical stories to increase understanding of coercive control?

5. Would a change in terminology support an increase in community awareness of coercive control?

Mainstream services

We know that many people experiencing abuse do not seek specialist domestic and family violence support in the first instance.

Many don't realise that their experiences are coercive control. Some also feel ashamed, embarrassed or scared to seek help. Often the first signs are seen or disclosure is made to a friend, family member, work colleague or trusted professionals, such as doctors, teachers, lawyers or accountants.

Sometimes disclosures are made to people providing completely unrelated services, such as hairdressers or tattoo artists. Sometimes real estate agents see evidence of domestic and family violence.

Professionals working in a wide variety of services play an important role in recognising abuse, and supporting victims to be safe and get the specialist support they need.

Discussion Questions

6. If you are a member of a mainstream service or represent a mainstream service provider:

    a) What training relevant to coercive control and domestic and family violence is currently available in your industry?
    b) How are you currently supporting victims of coercive control and domestic and family violence?
    c) What is working well?
    d) What could be done better?

7. If you are a victim of coercive control (or have supported a victim) and you received assistance from a mainstream service:

    a) What worked well?
    b) What could have been done better?

Domestic and family violence service systems response

Many victims experiencing abuse do not go to the police for a range of reasons.

They may not want the perpetrator to get into trouble. They may not trust police or consider it safe to approach them. They may have been turned away previously, or may assess it as too dangerous given potential repercussions from the perpetrator. They may fear losing their children.

These women may instead seek advice and assistance from specialist services—either on their own initiative or after a referral.

Specialist domestic and family violence services provide a range of services for victims and perpetrators of domestic and family violence. These services include:

- crisis telephone counselling for victims
- counselling and advice for victims, including safety planning, safety management and support to escape
- crisis accommodation
- safety upgrades, including home security
- specialist legal information and advice, representation and court based support
- recovery services
-

While specialist services play a critical role in helping women escape dangerous situations, many women do not want to leave, for a variety of reasons, including legitimate concerns that leaving could be more dangerous than staying.

Specialist services also support women who choose to stay to manage their safety and provide ongoing support and counselling.

Specialist domestic and family violence services also include services for perpetrators, including:

- crisis counselling for perpetrators
- perpetrator intervention programs

Fully integrated (civil and criminal) specialist domestic and family violence courts currently operate at Southport, Beenleigh, Townsville, Mount Isa, and Palm Island. These specialist courts offer:

- one or more dedicated magistrates with expertise in domestic and family violence issues
- a Department of Justice and Attorney-General court coordinator to oversee court operations, including stakeholder engagement
- a specialist domestic and family court registry where specialist court staff offer support and information
- dedicated specialist prosecutors
- duty lawyers to provide advice and representation for both parties
- court support workers for the aggrieved
- support/liaison workers for the respondents
- access to domestic and family violence perpetrator programs
- specialist domestic and family violence registry training.

However, the availability and accessibility of all types of specialist services vary regionally. The Taskforce has already heard that access to effective, evidence based behaviour change programs for men, for instance, continues to be an issue despite considerable increases in service provider funding over the past five years, particularly in remote and regional areas.

The Taskforce has also heard that there are not always services available to provide culturally safe support to Aboriginal and Torres Strait Islander people, and to other groups that may benefit from a tailored response, for instance people from culturally and linguistically diverse backgrounds, people with disability, or people who identify as LGBTIQA+.

Professionals working within specialist services have high levels of expertise understanding the complex dynamics of domestic and family violence. Their roles are vital. They support individual clients as well as build expertise and competency across the broader service system—for instance, by participating in integrated service responses.

Many specialist domestic and family violence service providers have long advocated for service systems to better recognise and respond to all forms of abuse, including coercive control.

Discussion Questions

8. What is currently being done that works well?

9. What could be done to improve the capacity and capability of the service system to respond to coercive control (this includes services to victims and perpetrators)?

10. What could be done to better ensure that women in regional and remote areas of Queensland have access to services with the capacity and capability to respond to coercive control?

11. What could be done to better ensure perpetrators in regional and remote areas of Queensland have access to services with the capacity and capability to respond to coercive control?

12. What could be done to better ensure that perpetrators, have access to services and culturally appropriate programs with the capability to respond to coercive control whilst they are on remand or after sentencing in a correctional facility?

13. What are the gaps in the service system that could be addressed to achieve better outcomes for victims and perpetrators of coercive control?

14. What service system changes would be required to support the options to legislate against coercive control? (see Part 3)

Integrated service response

The *Not Now, Not Ever* report in choosing not to recommend the introduction of specific domestic violence offence noted that difficulties related to evidence gathering, witness cooperation, police practice and court processes needed to be addressed for that type of offence to be effective. Following a recommendation from the *Not Now, Not Ever* report, the Queensland Government developed and trialled an integrated service response model, with a strong focus on high risk cases.

This model supports government and non-government service providers to work together when providing interventions and support for victims and perpetrators. The model includes a common framework implemented at each of three trial sites in Logan/Beenleigh, Mt Isa/Gulf and Cherbourg, using a co-design process that recognises the local context, existing local networks and services, as well as the needs of the local community.

In some areas, High Risk Teams operate as part of an integrated service response model. High Risk Teams currently operate in eight locations across Queensland (Logan/Beenleigh, Mount Isa/Gulf, Cherbourg, Brisbane, Ipswich, Cairns, Mackay and Caboolture). Each team is co-ordinated and primarily led by a specialist non-government domestic and family violence service, and includes officers from government agencies such as Queensland Police Service (QPS), Department of Health, Queensland Courts, Queensland Corrective Services, Department of Housing and Public Works.

All officers in a High Risk Team have a role in keeping victims safe and holding perpetrators to account. Officers work together with the aim of providing an integrated, culturally appropriate safety response to victims and their children at high risk of serious harm or lethality.

The model utilises a Common Risk and Safety Framework (CRASF)[xxii] which is a common tiered approach to risk assessment and management and safety action planning developed for the Queensland Government by Australia's National Research Organisation for Women's Safety (ANROWS) for use across the government and non-government sectors. The Framework is intended to provide guidance and a sound platform for the development of integrated responses to DFV across Queensland, while being flexible enough to support local initiatives, place-based strategies and innovation in response to DFV.[xxiii] The CRASF has been used in integrated service response trial and high risk team locations in Cairns, Cherbourg, Ipswich, Logan/Beenleigh, Mackay, Caboolture and Mt Isa/Gulf.

Following a three-year trial and evaluation, the CRASF is currently under review.

In July 2019, the Griffith Criminology Institute, Griffith University, analysed integrated responses and high risk team practices and outcomes in the trial locations of Logan/Beenleigh, Mount Isa/Gulf and Cherbourg.

The evaluation identified the need for more consistency in the approach to assessing risk, better information sharing (allowing for more informed decision making by agencies), more culturally appropriate processes and services, enhanced accountability around service delivery across agencies, and there being more 'eyes' on perpetrators[xxiv].

Co-response models

With their level of expertise, there may be benefits to developing co-responder models, where specialist service providers accompany first responders to assist with risk assessment and decision making.

Co-responder models—where a specialist domestic and family violence worker accompanies police first responders to assist with domestic and family violence responses and decision making—currently operate in North/South Brisbane Police Districts (Brisbane Domestic Violence Service) and Moreton Police District (PRADO).

Discussion Questions

15. What in the current integrated service response works well to enable effective responses to coercive control?

16. What are the opportunities to improve integrated responses to victims and/or perpetrators of coercive control to achieve better outcomes?

17. Have you had any experience with the existing integrated service responses or co-responder models operating in the Brisbane, Cairns, Cherbourg, Ipswich, Logan/Beenleigh, Mackay, Moreton and Mt Isa regions? If so:
    a) What worked well?
    b) What could be done better?
    c) What outcomes have been achieved?

18. How could the integrated service response work to support the options for legislative reform proposed in Part 3 of this paper?

Legislative response

Domestic and Family Violence Protection Act 2012

Queensland's *Domestic and Family Violence Protection Act 2012* (DFVP Act) allows courts to make civil protection orders and empowers police officers to issue protection notices which prohibit respondents to these orders committing further acts of domestic violence. The breach of a domestic violence order is a criminal offence. The preamble to the DFVP Act also makes it clear that behaviour that constitutes domestic violence can also constitute a criminal offence.

Similar legislative schemes exists across all Australian jurisdictions and Part 6 of the DFVP Act recognises similar orders made in Australia and New Zealand as part of the National Domestic Violence Order Scheme. It has been argued the important role these civil orders could play in Australia and New Zealand in protecting women from coercive control has been overlooked in the push for coercive control to be addressed by the criminal law.[xxv]

The preamble to the DFVP Act notes that domestic violence '*usually involves an ongoing pattern of abuse over a period of time*'.

Domestic violence is defined broadly in section 8 of the DFVP Act to mean '*behaviour perpetrated by one person against another, where two people are in a relevant relationship, which is: physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening;* ***coercive***[xxvi] *or 'in any way* ***controls or dominates*** *the second person and causes the second person fear for the second person's safety or wellbeing or that of someone else'*. Sections 11 and 12 of the DFVP Act supplement section 8 by further defining the meanings of *emotional or psychological abuse* and *economic abuse* respectively, in these sections the Act provides many examples of behaviours associated with coercive control.

Police issued protection notices

A police officer may issue a police protection notice (PPN) in circumstances where they reasonably believe:

- a person has committed domestic violence;[xxvii]
- there are no relevant pre-existing domestic violence orders in place against the person;[xxviii]
- a PPN is necessary or desirable to protect the aggrieved from domestic violence;[xxix] and
- the person should *not* be taken into custody[xxx] (which a police officer should do if they reasonably suspect there is a danger to another person or property[xxxi]).

All PPNs include standard conditions requiring the respondent to be of good behaviour, and not commit domestic violence towards the aggrieved person or other persons named in the PPN.[xxxii] If a named person is a child, the respondent to the notice must not expose the child to domestic violence.[xxxiii]

A police officer may add other conditions to a PPN such as a cool down condition, a no-contact condition or an ouster condition.[xxxiv]

A PPN takes effect from the time it is served by a police officer on the respondent or when a police officer advises the respondent of its conditions.[xxxv] The police officer must file the notice in the local Magistrates Court and this serves as an application to the court for a court issued domestic violence order.[xxxvi]

The PPN effectively remains in force until the court deals with the application for a domestic violence order in some way. For example, the court may or may not issue a temporary protection order during the course of the application for a domestic violence order, it may issue a domestic violence order at the conclusion of the proceedings, or it may dismiss the application altogether.[xxxvii]

If a person contravenes the conditions of a PPN made against them while it is in force they commit a simple offence[xxxviii] punishable by a maximum penalty of three years imprisonment.[xxxix] To convict a person of this offence the court will have to satisfy itself that the contravention has been proven to the criminal standard of proof, that is, beyond a reasonable doubt.

Court issued domestic violence orders

A court can make a domestic violence order under the DFVP Act:

- on the application of an aggrieved person (or their representative);
- on the application of a police officer;
- when sentencing a person for a domestic violence offence; or
- if the court is sitting as the Childrens Court hearing a child protection proceeding,[xl] it can make a temporary protection order.

Temporary protection orders can be made by the court:

- when there is an adjournment in any of the proceedings listed above where a protection order can be made;
- when an applicant seeks temporary protection before serving an application for a protection order or a variation to a protection order; or
- a police officer has sought an urgent temporary protection order.[xli]

A court considering an application can make a domestic violence order if they are satisfied that:

- a relevant relationship exists between the parties;
- the respondent has committed domestic violence against the aggrieved; and
- it is necessary or desirable to protect the aggrieved from domestic violence.[xlii]

Courts hearing these applications are not bound by the rules of evidence.[xliii] The court can inform itself of relevant matters in any way it considers appropriate[xliv] and need only be satisfied of a matter to the civil standard of proof, that is, on the balance of probabilities.[xlv]

The standard conditions of a court issued domestic violence order are largely identical to those for a PPN listed above.[xlvi] However the court has a much wider discretion to add additional conditions to an order so it is tailored to the individual circumstances of the aggrieved and respondent.[xlvii]

The paramount principle for a court imposing any additional conditions to place in a domestic violence order is the wellbeing of people who fear or experience domestic violence, including children.[xlviii]

Under the DFVP Act a magistrate can amend a family law order if conditions in the family law order are in conflict with a domestic violence order or would make a person named in the domestic violence application (including children) unsafe.[xlix]

A person who breaches a condition of a domestic violence order commits a simple offence punishable by a maximum penalty of three years imprisonment.[l]

If the defendant has been convicted of another domestic violence offence within the five years preceding the breach, the maximum penalty rises to 5 years imprisonment and the offence becomes an indictable offence.[li]

This may mean it has to proceed 'on indictment'[lii] in the District Court, for example, if the court considers the defendant may need to be sentenced to a term of imprisonment exceeding 3 years.[liii]

Discussion Questions

19. What is working in the civil protection order system under the DFVP Act to protect women and children from coercive control?

20. What parts of the civil protection order system under the DFVP Act could be improved to better protect women and children from coercive control?

21. What are the advantages and/or risks of using the civil protection order system under the DFVP Act instead of using a direct criminal law responses?

22. What could be done to help the civil protection system under the DFVP Act be more effective in protecting women and children from perpetrators who coercively control them?

Bail

Consistent with the presumption of innocence, section 9 of the *Bail Act 1980* (Qld) (the Bail Act) provides that there is a presumption in favour of granting bail to a person who has been charged but not yet convicted of an offence.

However, section 16 of the Bail Act provides that a court or police officer must refuse to grant bail to a perpetrator if they are satisfied that there is an *unacceptable risk* that the perpetrator would:

- fail to appear or surrender into custody if and when required;
- commit an offence;
- endanger another person's safety or welfare; or
- interfere with witnesses or the course of justice.

If the perpetrator is charged with a domestic violence offence or an offence against the DFVP Act then the court or police officer *must* have regard to the risk of the perpetrator committing further domestic violence (as defined by the DFVP Act) when deciding whether there is an unacceptable risk in granting bail.[liv]

Further section 16(3) of the Bail Act provides that a perpetrator charged with a 'relevant offence[lv]' is placed in a 'show cause' position.

The Bail Act provides a list of 'relevant offences' that are all related to domestic violence or are offences that apply to behaviours associated with coercive control, for example, section 315A (Choking suffocation or strangulation in a domestic setting) of the Criminal Code and section 359E (Unlawful stalking) of the Criminal Code.[lvi]

This means that a perpetrator who is charged with these type of offences has their entitlement to bail reversed and has the onus to convince the court why his detention in custody is not justified.

The implications of the operation of the Bail Act on women and girls as both victims of crime and as offenders in the criminal justice system will be explored in a wider context as part of the Taskforce's work on the second part of its terms of reference.

Discussion Questions

23. What coercive control behaviours would constitute an unacceptable risk of reoffending while on bail?

24. What would be the benefits and risks in only allowing courts to make decisions on bail with respect to a person charged with a domestic violence offence?

25. What could be done to improve the capability of police, lawyers and judicial officers to better understand coercive control behaviours so that these factors are given appropriate weight in the assessment of unacceptable risk under section 16 of the Bail Act?

26. Should further training be offered to police, lawyers and judicial officers involved in bail applications about coercive control and if so, should it be mandatory where possible?

27. How could the Bail Act be amended to improve a court's ability to take into account coercive control when assessing unacceptable risk under section 16?

28. What could be done better, for example mandatory perpetrator programs, to protect the safety of women whose coercively controlling partners are given a grant of bail?

The Queensland Criminal Code

Queensland's Criminal Code contains a range of assault and threat related offences that may apply to unlawful physical conduct in coercive and controlling relationships. These offences carry maximum penalties of imprisonment ranging from three to 14 years depending on the nature of the assault and physical injuries sustained by the victim.

There are also other existing offences in the Criminal Code that may, depending on the particular circumstances, capture some of the conduct being used by a perpetrator to inflict coercive control.

Some relevant examples are:

- section 218 (Procuring sexual acts by coercion)
- section 223 (Distributing intimate images)
- section 229A (Threats to distribute intimate image or prohibited visual recording)
- section 308 (Threats to murder)
- section 315A (Choking, suffocating or strangulation in a domestic setting)
- section 317 (Acts intended to cause grievous bodily harm and other malicious acts)
- section 319 (Endangering the safety of a person in a vehicle with intent)
- section 349 (Rape)
- section 352 (Sexual assault)
- section 355 (Deprivation of liberty)
- section 359 (Threats)
- section 414 (Demanding property with menaces).

Offences of particular relevance to coercive control are:

- section 359E (Unlawful stalking)
- section 320A (Torture)

Excuses and defences of particular relevance to a victim defendant are:

- the excuse of insanity (section 27)
- the excuse of duress (section 31)
- the defence of self-defence (section 271)
- the partial defences of killing for preservation in a domestic relationship and provocation (section 304B) provocation (section 304) .

Offences in the Criminal Code with particular relevance to coercive control

Unlawful stalking

Chapter 33A of the Criminal Code provides that it is an offence to unlawfully stalk another person, punishable by a maximum penalty of five years imprisonment, increasing to seven years in certain circumstances.

Chapter 33A provides that *unlawful stalking conduct* consists of one or more of the following acts or acts of a similar type:

- contacting a person in any way, including by email or via the use of any technology;
- leaving offensive material where it will be found by, given to or brought to the attention of the person;
- giving offensive material to a person directly or indirectly;
- an intimidating, harassing or threatening act against a person, whether or not the act involves violence or a threat of violence;
- following, loitering near, watching or approaching a person;
- loitering near, watching, approaching or entering a place where a person lives, works or visits;
- an act of violence or a threat of violence against property of anyone.

To convict a person of this offence, the prosecution must prove beyond a reasonable doubt that the defendant engaged in unlawful stalking conduct that:

- was intentionally directed at the stalked person; *and*
- occurred on at least two occasions, or one occasion if the conduct is protracted; *and*
- *would cause* the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of the stalked person or another person (it is *irrelevant* whether the apprehension or fear is *actually* caused to the stalked person); *or*
- *causes* detriment, reasonably arising in all the circumstances, to the stalked person or another person (it is *irrelevant* whether the defendant *intended* to cause the detriment or fear of the threatened detriment).[lvii]

Detriment is defined broadly to include:

- fear of violence to property, the stalked person or another person;
- serious mental, psychological or emotional harm;

- prevention or hindrance from doing any lawful act; or
- compulsion to do an act a person is lawfully entitled to abstain from doing[lviii].

A court dealing with a charge of stalking can impose a restraining order against the charged person, even if the person is acquitted of the offence or the prosecution of the offence is discontinued.[lix] A breach of that restraining order is a separate offence punishable by a maximum penalty of 40 penalty units or 1 year imprisonment.[lx]

The link between unlawful stalking and domestic violence is expressly acknowledged in the definition of domestic violence at section 8(2) the DFVP Act and this offence has been used in Queensland to successfully prosecute acts of coercive and controlling behaviour.[lxi]

Research on community perceptions of stalking indicates many people mistakenly believe 'stalking' to be behaviour that only occurs after a domestic relationship has ended[lxii].

It has been suggested these unconscious mistaken beliefs may be held by police and prosecutors and this results in coercive and controlling behaviours being under-prosecuted by this offence.[lxiii]

Torture

Section 320A of the Criminal Code provides that a person who tortures another person commits a crime punishable by a maximum penalty of 14 years imprisonment.

To convict a person of this offence, the prosecution must prove an act of 'torture' as defined in the offence beyond reasonable doubt.

'Torture' means '*the intentional infliction of severe pain or suffering on a person by an act or series of acts done on more than one occasion*'. 'Pain and suffering' is defined to include '*physical, mental, psychological or emotional pain or suffering whether temporary or permanent*'.

The potential application of this offence to domestic violence was first identified by the Queensland Taskforce on Women in the Criminal Code in 2000. Professor Heather Douglas (formerly of the University of Queensland and now the University of Melbourne) has more recently identified its usefulness in the coercive control context.

Professor Douglas argues the offence can capture the 'ongoing nature of abuse and the emotional impact of the degradation experienced by the victim'.[lxiv]

In her research, Professor Douglas has identified several Queensland cases where this offence was prosecuted successfully and in those cases the behaviour of the offender aligns with coercively controlling behaviours.[lxv]

However, Professor Douglas also notes that some of the more subtle, but still devastating, patterns of emotional and financial abuse that can form part of coercive and controlling behaviour, without accompanying physical abuse, may present difficulties for the prosecution to prove beyond reasonable doubt that there was an '*intentional infliction of pain or suffering*'.[lxvi]

Defences and excuses in the Criminal Code

Coercive control involves a perpetrator using credible threats, which may or may not involve physical violence, to maintain control over another person.

This leads to victims of coercive control feeling trapped, helpless and terrorised.[lxvii]

In the Statutory Guidance Framework published by the Home Office to support the offence of coercive control in England & Wales, '*forcing the victim to take part in criminal activity such as shoplifting, or the neglect or abuse of children*' is identified as a behaviour associated with coercive control. This is used by perpetrators '*to encourage self-blame and prevent disclosure to authorities*'.[lxviii]

In these circumstances it is appropriate to consider whether coercive control impacts on the moral and legal culpability of a victim of coercive control who commits a criminal offence—including assaulting or killing their perpetrator partner—and what defences and excuses are available to them.[lxix]

Excuses under Chapter 5 of the Criminal Code – Insanity (section 27) and Duress (section 31(1)(d))

The common law concept of *mens rea* does not form part of the criminal law of Queensland, therefore, the mental state of an accused person does not need to be proved by the prosecution unless it is expressed as an element of the offence.

This general proposition is subject to the provisions of Chapter 5, which provides for circumstances where an accused person is not criminally responsible for their acts and omissions.

Although the provisions of Chapter 5 are often referred to as 'defences' they are exculpatory provisions, which means—with the exception of Insanity—once they are

raised on the evidence the prosecution bears the onus of excluding their operation beyond reasonable doubt.

Insanity

Section 27 of the Criminal Code provides that a person is not criminally responsible for acts or omissions if their mental state at the time of the offence deprived them of one of three capacities: 1) the capacity to understand what they were doing; 2) the capacity to control their actions; or 3) the capacity to appreciate that their act or omission was wrong.

It should be noted that an alternative procedure to establish unsoundness of mind and fitness for trial is available under the *Mental Health Act 2016* (Qld).[lxx]

It is not impossible that a woman who committed a crime while suffering a mental illness caused by the trauma of being coercively controlled could use this excuse.

However, to raise the excuse successfully the victim defendant would have to show she was suffering from a mental illness that caused her to be deprived of one of the relevant capacities.

This does not necessarily fit with what we know about victims of coercive control and domestic violence, whose acts and omissions are prompted by a fear of their abuser that is rational and based on credible threats.[lxxi]

Even before the availability of the partial defence of Killing for preservation in an abusive domestic relationship at section 304B (see below) or even before concepts of 'battered women's syndrome' were used in Australian courts, research suggests women who were victims of domestic and family violence were not able to use this type of excuse particularly effectively.[lxxii]

Duress

Section 31(1)(d) excuses a person from criminal liability if their act or omission was done under a form of duress. This excuse applies if a person:

- does an act or makes an omission to save themselves, or other people or property from the threat of serious harm or detriment; and
- believes subjectively that there was no other way to avoid the threat other than by doing the act or making the omission – it is not sufficient that it was an alternative it must be the *only* way the threat could have been avoided;[lxxiii] and
- doing the act or making the omission was reasonably proportionate in the circumstances

This excuse can be difficult for victims of coercive control because they must show there was no other way they could have escaped or avoided the threat or detriment.

The most plausible alternative way to avoid the threat often suggested by the prosecution would be that the victim defendant could have sought help from authorities such as police.

In this respect, a victim defendant's argument that they had no other way of avoiding the threat or detriment can be undermined by evidence of their own prior help-seeking behaviour.

Further, there are strict rules for the admission and use of expert evidence about the impact that the coercive control had on the victim defendant's ability to access alternative means of escape or avoidance[lxxiv] [see further discussion below].

Self defence

Section 271 of the Criminal Code provides justification and excuse for self-defence against an unprovoked assault. Subsection (1) provides a defence for the use of force that is *objectively* necessary for a person to defend themselves from an unprovoked attack.

Subsection (2) provides a defence for more extreme force (extending to the infliction of death or grievous bodily harm) if the person *subjectively* believes on reasonable (objective) grounds they could not otherwise save themselves from death or grievous bodily harm.[lxxv]

Although case law in Queensland has established that the assault being responded to need not present as an imminent or immediate threat[lxxvi], because this defence requires a precipitating assault or an apparent ability on behalf of the other person to carry out a threat of an assault, it has been identified by some as unsuitable for use by victims of domestic violence.[lxxvii]

Killing for preservation in an abusive domestic relationship

The partial defence of killing for preservation in an abusive relationship at section 304B of the Criminal Code was introduced in Queensland in 2010. Unlike self-

defence, assault is not a precondition to raising this defence. The partial defence of killing for preservation in an abusive domestic relationship has three elements which must be proved by the defendant on the balance of probabilities:

- serious acts of domestic violence were committed in the course of an abusive domestic relationship;
- the defendant reasonably believed that it was necessary to do the act or make the omission that caused the other person's death in order to avoid death or grievous bodily harm; and
- the defendant had reasonable grounds for their belief above, having regard to the abusive domestic relationship and all the circumstances of the case.

When considering coercive control, 'abusive domestic relationship' is defined in section 304B broadly to include relationships with a history of acts of serious domestic violence, including those that may appear minor or trivial when considered in isolation.

Section 304B has been criticised because it provides only a *partial* defence (which would result in a finding of manslaughter for a defendant rather than murder) with it being pointed out that the latter two requirements above are very similar to those contained in section 271(2) (self-defence) which provides a complete defence.[lxxviii]

It should also be noted there is not an equivalent of section 271(1) of the Criminal Code (which provides a complete defence to non-lethal assaults) for victims of abusive domestic relationships where there has not been an initiating assault.

Provocation

Section 268 of the Criminal Code creates an objective test for when a 'wrongful act or insult' will cause an ordinary person to lose self-control and assault another person.

Section 269 provides the circumstances in which provocation will provide a defence to a charge for an offence where 'assault' as it is defined in the Criminal Code, is an essential element of that offence. Section 269 requires that:

- provocation causes the person to lose self-control and act on that loss of self-control before there is time for the 'passion to cool';
- the person must not use force that is disproportionate to the provocation and that force must not be intended to cause death or grievous bodily harm and not be likely to cause death or grievous bodily harm.

Section 304 of the Criminal Code, like section 304B, provides a partial defence which will reduce murder to manslaughter. It contains similar elements to the provocation defence to assault based offences. To establish the defence it must be able to be shown that the defendant did the act that caused the other person's death:

- in the heat of passion;
- caused by sudden provocation (using the objective person test noted above);
- before there was time for the passion to cool.

The Queensland Law Reform Commission (QLRC) in its 2008 review of this partial defence identified that a 'battered woman who kills in a mix of emotions' would find it difficult (but not impossible) to raise this partial defence because of the requirements of 'sudden provocation'.[lxxix] The QLRC's ultimate recommendation was the creation of a new partial defence, a recommendation accepted and implemented by the creation of section 304B of the Criminal Code (see above).

Discussion Questions

29. What types of coercive control behaviours aren't currently criminalised by existing offences in the Criminal Code?

30. In what ways do the existing offences in the Criminal Code at sections 359E (Unlawful stalking) and 320A (Torture) not adequately capture coercive control?

31. How could police and prosecutors in Queensland utilise the current offences in the Criminal Code more effectively to prosecute coercive control?

32. How could defence lawyers and courts better apply the existing defences and excuses in the Criminal Code in circumstances where a person's criminal offending is attributable to being a victim of coercive control?

33. How could the Criminal Code be amended to better capture coercive control? (other than by introducing a specific offence)

Admissibility of evidence about coercive control

The laws of evidence govern how courts can consider information about the facts that are in issue between parties to legal proceedings. As noted above, in civil proceedings for protection orders under the DFVP Act, courts are not bound by the rules of evidence, however in criminal proceedings for a breach of a domestic violence order or for any other criminal offence (in the Criminal Code or otherwise) the rules of evidence will apply.

The general rule is that to be admissible, which means a court can take the information into consideration, evidence must be directly or indirectly relevant to a fact in issue. However, this rule is subject to many other rules of exclusion from admissibility that have been developed over time to try and ensure that a fair trial occurs.

There are two different types of evidence regimes that operate in Australia:

- the *uniform evidence regime* used in New South Wales, Tasmania, Victoria, the Australian Capital Territory and the Norther Territory; and
- the *common law state regimes* of Queensland, South Australia and Western Australia.

In Queensland, the common law governs the laws or rules of evidence except where it is modified expressly by legislation. The primary source for those legislative modifications in Queensland is the *Evidence Act 1977* (Qld) (the Evidence Act).

Similar Fact and Propensity Evidence

Evidence that demonstrates that a person has acted in a similar way before or that they have a *propensity* to act in a certain way is clearly relevant to the patterned type of abuse recognised as forming part of coercive control. This is because it is usually a pattern of behaviour that is used over time. It is also recognised that people who use this type of controlling behaviour, may do so in successive relationships.

This type of evidence, is referred to as 'similar fact and propensity' evidence in Queensland and as 'tendency and coincidence' evidence in uniform evidence jurisdictions.

The rules about when this type of evidence can be admitted have been developed because of concerns that it can be very prejudicial to an accused person and might lead to a jury wrongly convicting someone on the basis of their past behaviour rather than their actions relating to the offence for which they are actually standing trial.

Queensland is the only Australian jurisdiction where the common law continues to apply in this area subject to only minor modification.

In Queensland, this type of evidence can only be admitted where there is no rational view of the evidence that is consistent with the innocence of the accused person.[lxxx] Compared to other Australian jurisdictions this is a very high threshold for admission of this type of evidence.

The criminal justice report of the Royal Commission Into Institutional Responses to Child Sexual Abuse made significant recommendations for law reform to allow greater admissibility of evidence of similar fact and propensity evidence[lxxxi].

In 2019, the Queensland Government released a draft consultation Bill which proposed to implement those recommendations but ultimately those amendments were not included in the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 when it was introduced in Parliament on 27 November 2019. In the introductory speech for that Bill the former Attorney-General and Minister for Justice, the Honourable Yvette D'ath MP stated:

'Consultation undertaken on the draft bill also elicited strong objections about the proposed reforms aimed at facilitating greater admissibility of evidence of earlier wrongful conduct in criminal trials. In shaping recommendations 44 to 51 of the Criminal justice report in relation to the admissibility of evidence, the royal commission observed that, of all Australian jurisdictions, the common law which applies broadly in Queensland is the most restrictive approach.

'The Palaszczuk government acknowledges the need for reform in this area. The draft bill proposed amendments to increase the admissibility of propensity and relationship evidence and to change the standard of proof required for this evidence in criminal trials. Propensity and relationship evidence is generally evidence of earlier wrongful conduct by an accused person.

'This can include evidence of prior convictions, uncharged conduct or past conduct that is not necessarily criminal.

'Consultation on these provisions revealed vastly divergent views and yielded significant concerns that the amendments were complex and difficult to apply and could potentially result in more pre-trial applications, longer trials and more appeals. This would have a

detrimental impact on the entire criminal justice system, including victims.

'The Palaszczuk government has listened to the feedback from stakeholders and recognises the need for ongoing work with those who apply and interpret the law to ensure the reforms operate effectively as intended.

' I also note the work underway by uniform evidence law jurisdictions on these royal commission recommendations at the national level through the Council of Attorneys-General.

'In light of the significant and complex nature of these reforms and the need for ongoing consultation with key stakeholders on options for implementing the intent of the royal commission's recommendations in a Queensland context, the provisions relating to recommendations 44 to 51 of the Criminal justice report are not included in the bill being introduced today.[lxxxii]*'*

This is an issue that will also be relevant to the Taskforce's second stage of work on the experience of women and girls in the criminal justice system.

Relationship evidence

Section 132B of the Evidence Act applies to criminal proceedings against a person for an offence in Chapters 28 (Homicide-Suicide-Concealment of Birth), 28A (Unlawful Striking Causing Death) 29 (Offences Endangering Life or Death) and 30 (Assaults) of the Criminal Code. It expressly provides that relevant history of the domestic relationship between the defendant and the person whom the offence was committed against is admissible as evidence in these proceedings. 'Domestic relationship' takes its definition from section 13 of the DFVP Act.

Section 132B doesn't limit the admissibility of relationship evidence in proceedings for offences other than those in Chapters 28, 28A or 30. This is because it doesn't change the position at common law that evidence about the relationship between an alleged offender and a complainant does not offend the rules against character or propensity evidence.[lxxxiii]

This type of evidence might be relevant in relation to coercive control because it occurs within a relationship between the defendant and the person against whom the offence was committed and the context and nuances of the particular relationship are relevant to the nature of the conduct and the impact.

Expert evidence

Evidence from experts in domestic and family violence about the effect coercive control could have on the actions or inaction of a person (for example, choosing not to leave a relationship) or on the impact coercive control might have generally on another person, could theoretically be admitted if it was directly or indirectly relevant to a 'fact in issue'.

This is an exception to the general rule at common law that evidence of opinion or belief is inadmissible (cannot be considered by the court). However, in order to be admissible, the evidence of an expert's opinion must satisfy several different rules which may make admissibility difficult. With respect to matters involving domestic and family violence or a coercive control offence, most relevantly these further rules include:

- the expert evidence must be based upon matters that the expert has observed directly or assumed facts that are independently proved.[lxxxiv] This is sometimes referred to as the 'basis rule'. It is problematic in the context of patterns of behaviour in a private relationship which an expert will likely not have witnessed directly and can't always be independently proved;

- the expert evidence cannot have the effect of taking away the functions of the judge or jury to decide 'the ultimate issue' before the court.[lxxxv] Notably, this common law rule has been abolished in Australia's uniform evidence jurisdictions[lxxxvi] with the Australian Law Reform Commission describing this rule as 'uncertain, arbitrary in its implementation and conceptually problematic'.[lxxxvii]

Recently, Western Australia has introduced reforms to its evidence laws to ensure that expert evidence relevant to issues like coercive control is more readily admissible (see below).

Allowing for the admission of police body worn camera evidence

The *Not Now Not Ever* report recommended that consideration be given to allowing for the admissibility of body worn camera video recordings made at the time of the initial police intervention in a criminal offence so as to limit the need for a victim to give evidence in court.[lxxxviii]

In the context of coercive control, body worn footage could be used in a criminal trial:

- When the victim is too traumatised to give evidence;
- When a victim is in fear for their safety if they give evidence; and
- When a victim has changed their version of events.[lxxxix]

Currently, video evidence from a police body worn camera would be admissible from the scene of the incident only if it provided direct evidence of the criminal offence, for example recording an assault itself. A post incident statement about the offence would not be admissible as evidence in chief.

It is important to distinguish the admissibility of this evidence in a criminal trial as opposed to proceedings for civil protection orders under the DFVP Act. As noted above, a court considering an application for a civil protection order under the DFVP Act is not bound by rules of evidence.[xc]

This recommendation from the *Not Now Not Ever* report has not yet been implemented. The Taskforce will consider this issue further as part of the second stage of its terms of reference.

Discussion Questions

34. How is evidence of coercive control being used in criminal proceedings currently?

35. What, if any, are the non-legislative barriers to the use of this evidence?

36. How could prosecutors, defence lawyers and courts more effectively introduce evidence of coercive control under the current law?

37. What amendments or changes to the law would assist to facilitate greater admission of evidence of coercive control without unfairly prejudicing an accused person's right to a fair trial?

Sentencing

Section 12A of the *Penalties and Sentences Act 1992* (the PS Act) requires a sentencing court to order an offence be recorded as a domestic violence offence if the court is satisfied it comes within the meaning of section 1 of the Criminal Code.

This in turn takes the meaning of domestic violence from the DFVP Act (which as noted above, incorporates elements relating to coercive and controlling behaviour). Section 9 (10A) of the PS Act requires the court to treat the fact that an offence is a domestic violence offence as an aggravating factor in sentencing unless there are exceptional circumstances.

The formal recording of an offence as a domestic violence offence is important in the context of coercive control.

It allows courts, police and corrective services to more easily identify perpetrators with a history of offending in domestic relationships.

This can assist in the identification of patterns of behaviour in an offender over time, including against different victims.

Currently, there are no specific provisions in the PS Act that allow the court to consider whether a person's experience of coercive control should be used as a mitigating factor in determining an appropriate sentence.

The Taskforce notes that the Queensland Government is still considering its response to the Queensland Sentencing Advisory Council's (QSAC) final report dated July 2019 on Community-based sentencing orders, imprisonment and parole options.

QSAC recommended the creation of a new sentencing option for Queensland, a 'Community Corrections Order' (CCO)[xci]

This type of order would be similar to the sentencing penalty most frequently ordered in Scotland upon conviction of its recently introduced domestic abuse offence that criminalised coercive control (see below).

The CCO recommended by QSAC would allow for treatment, supervision, rehabilitation and community service to form part of a perpetrator's sentence.

Discussion Questions

38. How are sentencing courts currently taking coercive control into account as both an aggravating or a mitigating factor?

39. What could prosecutors, defence lawyers and courts do better under the current law to ensure that coercive control is appropriately taken into account when sentencing?

40. What amendments could be made to the PS Act (other than those proposed in Part 3) that would help to ensure coercive control was appropriately considered during sentencing?

41. How could sentences given to perpetrators of coercive control be structured to better protect the safety of women and children?

Police powers

Recent research published by the Queensland Government Statistician's Office into domestic and family violence calls for service to police found that there were a significant increase in these calls and the amount of time police spent responding to domestic and family matters between 2012-13 and 2017-18 particularly coinciding with the release of the *Not Now, Not Ever* report.[xcii]

During that time period there was a 61% increase in distinct domestic and family violence calls for service to police (17,007 calls in 2012-13 compared to 27,408 calls in 2017-18).[xciii]

Powers under the Police Powers and Responsibilities Act 2002

Police are granted significant powers under the PPRA to stop, search and detain a person, including arresting a person without a warrant, and searching and seizing items (including weapons) suspected to be or related to an act of domestic violence or associated domestic violence. Police may also enter and remain at a place until satisfied that no imminent risk of injury, or damage to property exists.[xciv]

Discussion Question

42. What could police officers do differently when exercising their powers to better protect women and children from coercively controlling partners or former partners?

Powers under the Domestic and Family Violence Protection Act 2012

Part 4 of the DFVP Act provides police officers with functions and powers when they have a reasonable suspicion of domestic violence. As noted above, this includes the power to issue a PPN or apply to the court for temporary or final protection order or a variation of those orders.

Police officers can also take a respondent into custody if necessary to protect the aggrieved or named persons, and/or when criminal offences have been committed.[xcv] Regardless of the police officer's decision to apply for a protection order, under the Act, a police officer must make a written record of their decisions.[xcvi]

A PPN does not become enforceable until a police officer personally serves the respondent with the order. This is to ensure the respondent is aware that an order exists and understands that a breach of the conditions listed on it is a criminal offence.

The DFVP Act requires police to serve most police and court documents able to be made under the Act (a summary and extract from the DFVP Act are at Appendix 2). When serving an order police have several options, including serving the order in person, over the telephone, via SMS message or through the use of social networking or other electronic means.

Although multiple electronic options are available to police, the order cannot be deemed served until police receive a response from the respondent indicating they have received this advice. The average time for police to serve an order is 90 minutes. This increases when a respondent is not easily located in rural or remote locations, or does not confirm receipt of a message.

If police believe a person is in need of urgent court ordered protection, a police officer can apply by telephone, fax, radio, email or similar to a magistrate for a temporary protection order.

Like a PPN, a temporary protection order must be personally served and is not enforceable until this is done. Because of the requirement for police to personally serve these orders, service can take anything from a few minutes to days or weeks.

Police believe the time currently expended by police officers attempting service of domestic violence documents could be better utilised in directing police and courts to high risk cases where additional oversight is warranted and in a way that is victim centred.

Discussion Questions

43. What are the benefits of personal service of PPNs?

44. What would be the risks of enforcing a PPN immediately, even though the perpetrator is not yet aware it exists?

45. What avenues other than personal service would be suitable to ensure perpetrators are aware that an order exists so police can commence enforcing a domestic violence order immediately to help keep the victim safe?

Policies and procedures that guide the response of Queensland police

The QPS Operational Procedures Manual (the OPM) is issued under the provisions of section 4.9 of the *Police Service Administration Act 1990* (Qld) with the aim of providing its members with guidance and instruction for operational policing.[xcviixcviii]

Police officers are expected to comply with the OPM so that their 'duties are discharged lawfully, ethically and efficiently'.

Officers are subject to possible disciplinary action for non-compliance, however, the QPS acknowledges that police may be required to make decisions quickly and in diverse circumstances.

Chapter 9 of the OPM provides a comprehensive overview of the policy and procedures police are required to follow when managing domestic violence incidents and assisting members of the community affected by domestic violence.

This also includes the steps police must consider when domestic violence is reported. Relevantly, chapter 9 provides that:

- when a person reports to police that domestic violence has occurred, police officers must prioritise the receipt of the initial report, commence an investigation and take appropriate action; and

- police should determine whether existing orders are in place, take written statements from the aggrieved, complete a protective assessment using the protective assessment framework (PAF) and where practicable, review the relevant domestic violence history and previous protective assessments. Relevantly, for the examination of coercive control, this information should be used to facilitate the examination of risk over time.

Protective assessment framework and risk assessment

The QPS Domestic Violence Protective Assessment Framework (DV-PAF) is an evidence based framework to assist police in determining what action is appropriate at a single point in time. The DV-PAF is comprised of 24 evidence based risk items including:

- Stalking;
- Controlling behaviour;
- Sexual violence;
- Strangulation/suffocation;
- Suicidality; and
- Violent threats (including threats to kill).

The DV-PAF differs from risk assessment tools used in other policing jurisdictions in that it is not designed to predict future risk.

Rather, the DV-PAF is designed to support officers' decision making by providing them with key risk factors known to increase the likelihood of further harm.

The DV-PAF also includes a section for officers to determine the level of risk, ranging from an unknown level to extreme, with suggested actions to take based on the level of risk determined at the time.

The DV-PAF also considers the victim's own perceived level of fear. The DV-PAF is publicly available as part of the OPM, Chapter 9, Appendix 9.1.[xcix]

The OPM instructs police officers to conduct a DV-PAF assessment each time they respond to a domestic violence incident or report.

A significant limitation to the completion of the DV-PAF report is that a police officer can only complete the assessment once they have returned to the station.

This is because the DV-PAF is housed within the Queensland Police Records and Information Management Exchange (QPRIME) system that can only be accessed from the station.

Officers are instructed to record the details from the DV-PAF in their police notebook whilst in attendance at an incident and this risk assessment supports their decision making whilst present at the scene.

Given the volume of calls for service that police receive, and the increasing rates of domestic violence calls for service, police may not always have the opportunity to return to the station after attending a domestic violence incident, instead moving on to attend the next call for service.

Queensland police will be trialling a new functionality on 100-200 of their 7200 Q-lite devices from 3 August 2021 which will enable completion of the DV-PAF report at the scene.

If the data collected is of good quality and there is solid uptake by police officers of the functionality during the trial period, it will be rolled out to Q-lite devices state-wide.

The Queensland model of protective assessment differs from jurisdictions such as New Zealand. The New Zealand 5F Family Harm Investigation[c] model, for example, includes a predictive risk assessment (the Static Assessment of Family Violence Recidivism (SAFVR) and a dynamic questions risk measure.

The dynamic question risk measure consists of 10 questions for all family harm episodes and additional questions for intimate partner related incidents or where children reside with the primary parties involved in the incident.

The benefit of this model is that the information is provided at the scene and combined with the predictive SAFVR tool to enable officers to make informed decisions on the appropriate action required.

Discussion Questions

46. What could be done to ensure that police officers more effectively and consistently comply with the guidance for investigation of domestic violence in the OPM?

47. How could Chapter 9 of the OPM be improved to ensure it is effective in guiding police to identify and respond appropriately to coercive control?

48. How could the DV-PAF be improved to ensure it is sufficiently sensitive to identify coercive control risk factors?

49. How could police officers use the DV-PAF or other tools more effectively?

What training does the Queensland Police Service provide to officers to help them respond to domestic violence effectively?

Since 2008, the QPS have introduced a raft of training for both police officers and staff members.

This includes service wide face to face Vulnerable Persons Training delivered in 2017 to more than 11,000 police officers throughout Queensland.

The Vulnerable Persons Training package, delivered over two days, provided members with training on effective communication techniques, mental health awareness, suicide prevention and updates on changes to the *Mental Health Act 2005*.

The second day of training covered topics such as domestic violence dynamics, challenges of responding to, and investigating domestic violence and changes to the *Domestic and Family Violence Protection Act 2012*.

Additional training courses and products provided to Queensland Police members include:

- Domestic and Family Violence Specialist Course - for specialist domestic violence police, detectives, child protection and high risk teams and extended to external agencies including Queensland Ambulance and Queensland Corrective Services;
- post graduate studies in domestic and family violence prevention - delivered through the Queensland University of Technology;
- online training such as the mandatory Recognise, Respond, Refer module;
- annual domestic and family violence refresher training;
- specialist training for the investigation of sexual assault, corroborating and understanding relationship evidence;
- LGBTIQ+ and domestic and family violence training; and
- recruit and first year constable domestic and family violence training.

Since 2019, the QPS has worked with external providers to develop a cultural change program designed to enhance police understanding and awareness of domestic violence, change the way domestic violence is viewed and highlighting the role and influence of police when responding to domestic violence.

The QPS partnered with Australia's National Research Organisation for Women's Safety (ANROWS) in 2020 to develop training materials and deliver relevant domestic violence training to all members. The QPS also received a funding allocation in early 2021 to develop and facilitate training to improve recognition of, response to, and investigation of coercive controlling behaviours by frontline officers.

Discussion Question

50. What improvements could be made to police training to ensure better protections for women and girls who are victims of coercive control?

How does the Queensland Police Service manage police officers who commit or are alleged to have committed domestic violence?

Recent media reports have questioned the way in which the QPS deals with police officers alleged to have committed domestic violence, citing an inability of the police to guarantee that victims of domestic violence 'would not encounter abusers in uniform'[ci] when seeking help. The view that the '*police are the public and the public are the police*'[cii] is a relevant point to make in so far as police officers are drawn from the broader Australian community which is struggling to overcome a culture of violence towards women.

Risk management during recruitment

Under the *Police Service Administration Act 1990* (Qld), police officers, recruits and applicants are required to provide information in relation to criminal history, cautions and/or warnings including in relation to domestic violence. The recruiting application form seeks extensive information such as domestic violence, traffic, civil and criminal history. The document provides a clear warning and is also signed by the applicant so policing systems can be checked to verify information supplied by the applicant.

Recruitment decision making includes checking Crimtrac and the internal QPS Ethical Standards Command vetting if the applicant is a previous serving officer and other relevant integrity checks. Recruitment processing will also include:

- checking a successful applicant's recent criminal and civil and traffic history just prior to them commencing training to ensure they do not have further history prior to their commencement; and
- engaging a psychologist/psychiatrist to undertake a face to face interview if criminal or civil history (including DFV history irrespective if current or historical) is disclosed to ascertain if the applicant is suitable.

Oversight is provided from the Recruit Advisory Board (RAB) represented by the Inspector Recruiting, Inspector Recruit Training and the Superintendent (People capability command) and a civilian member.

The RAB meet fortnightly or monthly and make a determination based on the information provided from the Recruitment team, Intel, QPRIME data and history about the suitability of those applicants with criminal, traffic and DFV history.

If an applicant is deemed unsuitable by recruiting following a RAB assessment they will not be accepted.

When a police officer is alleged to have committed domestic violence

The conduct of police officers who commit or are alleged to have committed domestic violence is recorded internally within the QPS by a form called a QP466 (official complaint) in accordance with the reporting requirements contained within section 6A.1 of the *Police Service Administration Act 1990* and the *QPS Complaint Resolution Guidelines*.

Chapter 9 of the OPM outlines the policy and procedures that must be followed when proceedings are initiated against members of the Service (inclusive of police officers, recruits or staff members) in relation to domestic violence.

It specifically states that an officer investigating domestic violence involving another member of the Service is to fully investigate allegations and if appropriate, take action under the DFVP Act.

Where evidence is available to support criminal charges, the investigating officer is to proceed in accordance with Human Resource Policies and notify the member's officer in charge (OIC) or when a private application is made for a domestic violence order naming a member of the service as the respondent, the officer prosecuting the private application is to immediately notify the member's OIC and commence relevant procedures.

A member of the QPS named on an application made under the DFVP Act for a domestic violence order as the respondent must also notify their OIC, surrender any Service firearm or accoutrements (unless a request to the Deputy Commissioner allows the member to retain possession of weapons[ciii]) to the OIC or station along with any other weapon or weapons or explosives licence.

Whilst awaiting the finalisation of criminal, civil and/or disciplinary proceedings officers will be subject to:

- a requirement for close supervision while retaining police powers under a Professional Development Strategy Document (PDSD) ; or
- stand down (removal of police powers, officer remains within a workplace); or
- suspension (with or without salary, officer is removed from workplace).

Discussion Questions

51. Should people with a conviction for a domestic violence offence be automatically excluded from working as a police officer in Queensland? Why/Why not?

52. Should people with a history of being named as a respondent to civil domestic violence orders be excluded from working as a police officer in Queensland? Why/Why not?

53. What could QPS do differently to better identify people who do not meet service and community standards of behaviour?

54. Do you have experience or knowledge of circumstances where a serving police officer was an alleged perpetrator of domestic violence, a respondent to an order made under the DFVP Act or was charged with committing a domestic violence offence? If so:

    a) Was a complaint made to QPS?
    b) Was the matter handled in accordance with the OPMs as noted above?
    c) What was done well?
    d) What could QPS have done better?

Part 2 – How do other jurisdictions address coercive control?

In this part of the discussion paper we look at how other jurisdictions respond to coercive control.

Discussion Questions

2.1 With respect to each jurisdiction's model (legislative and policing) summarised below:

a. What do you think are the benefits and risks of the model?
b. Do you think any elements of the model would work well in Queensland? If so why? If not, why not?

2.2 Are there any models being used by other jurisdictions that aren't summarised below and you think the Taskforce should consider? If so:

c. What is the jurisdiction?
d. What is the model?
Why do think the Taskforce should consider them?

Legislation

Tasmania

In 2004[civ] Tasmania enacted two new offences criminalising economic abuse[cv] and emotional abuse[cvi] in the context of family violence. Tasmania like Queensland is a Criminal Code jurisdiction and it is therefore interesting to note that this offence is contained in Tasmania's equivalent of the DFVP Act and not its Criminal Code. The two offences are summarised below and a full extract is at Appendix 3.

The economic abuse offence requires proof beyond reasonable doubt that:

- the perpetrator intended to cause their spouse or partner mental harm, apprehension or fear by engaging in a course of conduct that includes *one* or more of the following actions:
    - coercing control or relinquishment of assets or income;
    - disposing of jointly owned property;
    - preventing participation in decisions about household expenditure or joint property;
    - preventing access to joint finances;
    - withholding or threatening to withhold necessary financial support to the spouse or partner or an affected child.

The emotional abuse offence requires proof beyond reasonable doubt the perpetrator:

- engaged in a course of conduct; and
- knew or ought to have known that the effect of that conduct is likely to unreasonably control, intimidate or cause mental harm, apprehension of fear to the preparator's spouse or partner.

The emotional abuse offence is far less prescriptive than the economic abuse offence about what the 'course of conduct' must entail, defining it non-exhaustively as including a limitation on the freedom of movement by threats or intimidation.

Both offences are summary offences punishable by a maximum penalty of 40 penalty units or two years imprisonment. A prosecution must be commenced within 12 months after the day that the last act that constitutes part of the alleged course of conduct occurred.

Neither offence requires the prosecution to prove any actual detriment suffered by the partner or spouse.

Although both offences require proof of subjective intention or knowledge on the part of the perpetrator it is notable that the emotional abuse offence provides an alternative option for the prosecution of proving that the perpetrator was reckless or *ought* to have known the impact of their behaviour.

It has been widely noted that the Tasmanian offences have not been prosecuted often (by the end of 2017 – 12 years post commencement - only 73 charges had been finalised with 40 convictions, 2 dismissals and the rest withdrawn for various reasons[cvii]). Some explanations offered for the low number of prosecutions are:

- resistance from the legal profession
- difficulties obtaining evidence (specifically relating to the time limitation for prosecution but also generally because this abuse is often undocumented and it occurs within a private setting with no independent witnesses, creating a barrier to corroboration)
- a lack of community awareness
- deficiencies in the training and resources that were provided to police.[cviii]

The latter two issues are of particular interest when seen in contrast with the implementation of the offence in Scotland.

England and Wales

In 2015 England and Wales introduced a new offence of 'Controlling or coercive behaviour in an intimate or family relationship'. A summary of the offence is set out below but an extract of the offence in full appears at Appendix 4.

The offence applies to a perpetrator who:

- is in an intimate relationship with another person; *or*
- lives with the other person either as a member of their family or a former intimate partner.

The offence requires proof beyond reasonable doubt that:

- the perpetrator repeatedly or continuously engaged in behaviour that is controlling or coercive;
- the perpetrator was personally connected to the victim at the time of the offending;
- the controlling or coercive behaviour had a serious effect on the victim; and
- the perpetrator knew or ought to have known that the controlling or coercive behaviour had a serious effect on the victim.

The offence provides that the perpetrator's conduct will have a serious effect on the victim if either it causes the victim to fear on at least two occasions that violence will be used against them, *or* it causes the victim serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities.

This offence is recognised as the first formal attempt to legislate coercive control as it was conceived by Evan Stark.[cix] The offence as originally introduced diverted from Stark's construct of coercive control in two notable ways.

First, it focused solely on psychological and non-violent abuse. The decision to frame the offence in this way appears to be based on a view that the criminal law already has the ability to punish acts of violence, and that the offence should be directed to 'the gap'—the gap being the psychological non-violent abuse.[cx]

This has led to observations that acts of violence against women in coercively controlling relationships in England and Wales are being under charged, or when they are being charged perpetrators are only being held accountable for the act of physical harm itself rather than being held fully accountable for the more

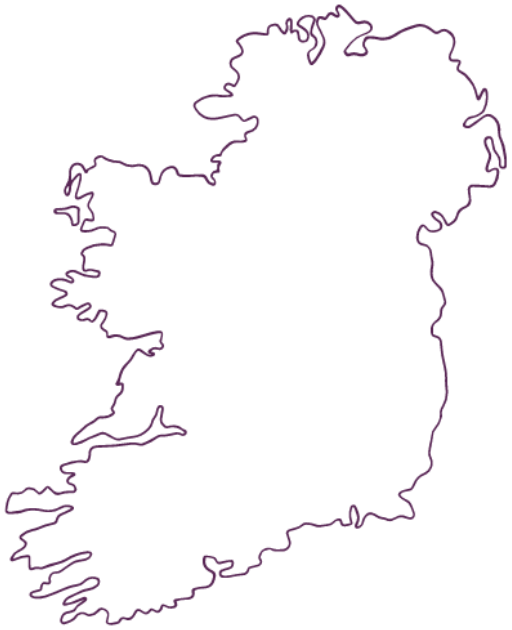
significant harm caused by physical violence's role in the coercive control.[cxi]

Secondly, at the time of introduction the English model effectively required the relationship to be current and ongoing in some way (even if it is just with respect to the parties living together) when the abuse took place.

This was criticised, first because it fails to take into account that the coercive control continues even after the relationship ends, and the point at which a relationship ends is often the most dangerous period of time for women in abusive relationships.[cxii]

The government in England and Wales subsequently removed this requirement from the offence as part of amendments contained in the *Domestic Abuse Act 2021 (E&W).*

Ireland



The Irish coercive control offence commenced on 1 January 2019. A summary of the offence is set out below and the offence in full is set out at Appendix 5.

A person commits the offence if they *knowingly and persistently engage* in behaviour that:

- is controlling or coercive;
- has a serious effect on a relevant person; *and*
- a reasonable person would consider it likely to have a serious effect on a relevant person.[cxiii]

A person's behaviour will cause a 'serious effect' if it causes the relevant person: to fear violence being used against them; or serious alarm or distress that adversely impacts on day-to-day activities.[cxiv]

A 'relevant person' for the purposes of the Irish offence is a current or former spouse or civil partner.[cxv]

The maximum penalty for the offence is 12 months imprisonment on summary conviction and five years' imprisonment for conviction on indictment.

Although there is no substantive data on the Irish offence, it was recently reported that at least 50 coercive control cases are under investigation by the Garda or with the Irish Director of Public Prosecutions for consideration.[cxvi]

In January 2021 the first conviction for the offence resulted in a man being sentenced to 10 years in prison.

The facts of the case involved a 20 month intimate relationship during which the offender repeatedly and viciously physically assaulted his partner and threatened to send explicit images of her to her family if she did not withdraw criminal charges.

The CEO of Safe Ireland is reported as noting that the significant prison sentence sent a powerful message to all abusers *'It tells them very clearly that they can no longer control, stalk, assault, isolate or degrade a woman with impunity. What was once secret and privatised is now public'.*[cxvii]

Scotland

In 2018, Scotland introduced a specific offence criminalising domestic abuse comprehensively addressing coercive control as criminal behaviour.[cxviii] Professor Evan Stark has referred to the Scottish legislation as the 'gold standard' for criminalising coercive control.[cxix] The offence is summarised below but an extract of the offence in full is at Appendix 6.

The Scottish offence criminalises a course of abusive behaviour by a perpetrator against their current or former partner if two conditions are met:

1. a reasonable person would consider that the course of conduct was likely to cause the partner or former partner to suffer physical or psychological harm (the objective limb); and

2. the perpetrator either intends that the behaviour will cause the partner or former partner psychological harm or is reckless as to whether the course of behaviour causes the partner or former partner to suffer physical or psychological harm (the subjective limb).[cxx]

The Scottish legislation then goes on to non-exhaustively define abusive behaviour in some detail. That non-exhaustive definition includes violent, threatening and abusive behaviour inclusive of sexual violence and/or behaviour directed at the partner/ex-partner or their child that has as its purpose or is reasonably likely to have the effect of:

- making the partner/ex-partner dependent on or subordinate to the perpetrator;
- isolating the partner/ex-partner from friends, relatives or other sources of support;
- controlling, regulating or monitoring the partner/ex-partner's day to day activities;
- depriving or restricting the partner/ex-partner freedom of action;
- frightening, humiliating, degrading or punishing the partner or ex-partner[cxxi].

The maximum penalty for this offence is 12 months imprisonment on summary conviction or 14 years on indictment.[cxxii] The offence is treated as aggravated if the behaviour is directed at a child or they make use of a child as part of the course of abusive behaviour.[cxxiii]

If the facts of the offence cannot be proved the perpetrator can alternatively be convicted of the offences of threatening and abusive behaviour or stalking if the elements of those offences have been proved.[cxxiv]

There is a reverse onus defence available if it can be shown that the course of behaviour was in fact reasonable in the particular circumstances.[cxxv]

The Scottish legislation was developed in close consultation with non-government stakeholders and accompanied by significantly increased investment in police training (see below), a community awareness program and training for other professionals involved in the system including prosecutors, lawyers and judges.[cxxvi]

246 people were prosecuted for the new offence in the first year of its operation with 206 being convicted of the offence (an 84% conviction rate).[cxxvii] Of the 206 people convicted, 202 were men and four were women.[cxxviii] The most common penalty on conviction received by 106 people was a 'Community Payback Order', these are flexible community based orders available in Scotland where the court can include conditions such as community service, community supervision, payment of compensation, participation in programs or treatment and conditions as to residence and conduct generally.[cxxix] The next most common penalty was imprisonment with 35 people receiving an average sentence of one year imprisonment.[cxxx]

Police

Policing domestic violence is highly complex. The quality and level of response is influenced by policy and practice, legislation, cultural attitudes, beliefs of the individual officer or policing organisation, perceptions of domestic violence as a private matter and traditional views of what a 'typical victim' is and how they act.[cxxxi] Since the 1980s, police organisations throughout the world have implemented a raft of training and practices designed to enhance the policing response to domestic violence and to address these influencing factors.

Canada

In 2007, Canada implemented a two day specialist training program for police intervening in domestic violence, with an 85% completion rate. Using a 'train the trainer' format, it aimed to position police as 'change agents' in responding to domestic violence. The training covered a range of topics designed to develop the understanding and knowledge of police and included:

- definition and dynamics of domestic violence;
- rationale for use of risk assessment tools and common lethality indicators;
- victim safety and supporting victim decision making;
- investigations and dual charge options; and
- the impacts of attending domestic violence on police officers.

Providing police with a broader understanding of domestic violence, including from the victim's perspective, as well as highlighting the impact of cumulative trauma was found to be important in changing the way domestic violence incidents were viewed and responded to by attending officers[cxxxii].

Scotland

In 2018, Safe Lives were contracted to supply any and all training of frontline services, including police in preparation for the implementation of the new *Domestic Abuse (Scotland) Act 2018*. Police Scotland were provided with roughly $AUS1.48 million to develop and implement training to over 14,000 police officers and support staff.[cxxxiii] This training included training police and staff members on:

- how to identify coercive and controlling behaviours;
- understanding and awareness of the dynamics of domestic violence; and
- perpetrator tactics used to manipulate victims and first responders.

What differentiates the training provided by Safe Lives is that it involved a range of pre-training components and was delivered as an interactive, online learning package.

It included additional training for the police leadership and attitudinal change champions to ensure the service could appropriately respond to domestic violence and coercive control over the long term.[cxxxiv]

England and Wales

A recent report by the University of Portsmouth[cxxxv] highlighted the importance of police training in the complex nature of domestic violence and coercive controlling behaviours to improve victim outcomes.

The training, *Domestic Abuse Matters* was delivered to 14 police forces in England and Wales in response to the criminalisation of coercive control in 2015.

Coercive control, defined as *an act or pattern of acts or assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim* and that aims to *make a person subordinate to or dependent upon another through isolation, exploitation or deprivation* is an extremely complex offence.

To ensure police were adequately equipped to deal with this new offence, an evaluation of Domestic Abuse Matters was conducted in 2020.

This evaluation found that targeted, in-person training, when supported through peer support networks and ongoing professional development can assist officers to better understand, recognise and respond to signs of coercive control.

Examining arrest data from 33 police forces in England and Wales, the study found attendance at the coercive control training was associated with a 41% increase in arrests for coercive control, with this effect remaining for up to eight months after training was completed.[cxxxvi]

Victoria

Victoria implemented an integrated service response model in 2003 referred to as the Interdisciplinary Triage Team.[cxxxvii]

This team also brings together government and non-government sectors to address and respond to domestic violence.

Benefits of this model include a greater awareness on the role each agency plays in supporting victims and holding perpetrators accountable.

It is providing collaborative and holistic responses to people experiencing domestic violence and opportunities for cultural change and shared understanding of what constitutes domestic violence.

New South Wales

Domestic violence high risk offender teams have operated throughout New South Wales since 2016, after a $22m investment by the New South Wales Government.[cxxxviii]

These teams proactively target high risk offenders and provide support to victims of domestic violence. These teams include specialist police officers who proactively investigate and act when domestic violence is identified.

Europe

Multi-agency risk and assessment conferences (MARAC)—comprised of government and non-government agencies including police, probation and parole, health and service providers—aim to ensure the safety of victims and agency members, to address the intersectional nature of domestic violence and child protection, and to hold perpetrators accountable for their behaviour.[cxxxix]

In a similar process to Queensland's high risk teams, the MARAC focuses on cases deemed to be at high risk of serious harm or lethality.

A key strength of this model lies in the information sharing provisions enabling agencies and service providers to view the case more holistically and develop appropriate strategies to reduce harm.[cxl]

Having support services specialising in domestic violence involved in these models also increases awareness of the different forms domestic violence can take, the impact of non-physical violence on victims and their children, and greater understanding of the methods victims use to keep safe.

Some limitations to this kind of model include victim willingness to consent to referral to the MARAC, identification of repeat offending across police regions, data quality and vicarious trauma for agency members.[cxli]

USA and South America

In a similar fashion to the integrated service response models found in Australia and elsewhere, are the family justice centre models implemented progressively throughout the United States.

Family justice centres bring government and non-government agencies together under the one roof to support victims of domestic and sexual violence, stalking, child abuse, elder abuse and human trafficking.

This model highlights the benefits of bringing together relevant stakeholders to support a victim through the process of disclosing abuse, navigating complex criminal justice and support service systems and on the importance of supporting and empowering victims to make informed decisions.[cxlii]

The intent of the family justice centres is similar to the police service for women and children in Argentina.[cxliii] Police stations for women were implemented across Argentina in response to changes in legislation and policies aimed at eradicating violence against women.

These police stations differ to mainstream stations as they bring together lawyers, social workers and psychologists and act as the 'gateway for integrated services' to support victims of gendered violence.[cxliv]

Part 3 – Legislating against Coercive Control

In this part of the discussion paper, we look at the risks and benefits of legislating against coercive control.

There are particular risks we need to consider if we further criminalise coercive control behaviours. These include, but are not limited to, inappropriate net widening, misidentification of the person most in need of protection, and negative implications for the overrepresentation of Aboriginal peoples and Torres Strait Islander people in Queensland's criminal justice system.

We have suggested 13 proposals for possible legislative reforms.

These proposals are not necessarily mutually exclusive. We may consider different proposals based on the responses to this discussion paper and other consultations.

For each proposal, we discuss potential risks and benefits and seek your feedback on these issues.

We are looking for further feedback on the risks and benefits of legislating against coercive control and what Queensland can do to maximise the benefits and mitigate the risks.

Where possible, we are looking for feedback about how the competing rights that are engaged under Queensland's Human Rights Act 2019 (Qld) could or should be balanced in any recommendations the Taskforce may make.

What is meant by 'legislating against coercive control'?

Our terms of reference require us to provide findings and recommendations on 'how best to legislate against coercive control as a form of domestic violence'.

Legislate is a verb which applies to making laws, those laws could be civil, criminal or procedural in nature.

Legislate does not necessarily mean criminalise. We acknowledge that there are diverse views about the risks and benefits of criminalising coercive control.

How *best* to legislate against coercive control could even mean introducing no new legislation at all. The best way to legislate against coercive control could be by better implementing Queensland's existing legislative provisions.

All options carry potential risks and benefits. Some risks may be able to be mitigated and some benefits may not be worth the cost of the proposal.

It is important that any changes better protect women and children and keep them safe and help perpetrators stop the violence and abuse and be held accountable. It is also important that changes respond to the particular nature and dynamics of coercive control and domestic violence and include protections and safeguards to avoid unintended consequences, particularly for vulnerable people.

What are the possible benefits of legislating against coercive control in Queensland?

Improving the legal system's response to all forms of domestic and family violence

The criminal justice system's incident based response to domestic and family violence is not providing the level of protection for victims of domestic violence the community expects.

Currently, while a victim is able to get a protection order based on non-physical abuse, only some types of coercive and controlling behaviour can be prosecuted as a criminal offence.

To many victims, it can be confusing that while an assault may be prosecuted in the court, years of degrading and humiliating verbal abuse and controlling behaviours cannot.

To address coercive control appropriately police would need to move way from incident-based policing towards a model of investigative policing that allows careful consideration of patterns of behaviour[cxlv] to best assist police to take the necessary actions to protect a victim from harm.

Further, the law and broader criminal justice system needs to move way from an incident based understanding of domestic violence which research indicates can include courts, prosecutors and lawyers misconceiving domestic violence by contextualising it as a 'bad relationship with incidents of violence'.[cxlvi]

Specialist domestic and family violence services have long advocated for better recognition of the impact and dangers associated with non-physical violence and the need to move away from a focus on incidents.

These services often act as an intermediary between the victim and the criminal justice system, and experience firsthand the confusion and frustration of victims who struggle to translate their experience of abuse into terms that can be addressed by the justice system.

Whilst legislation that provides a legal framework for addressing coercive control will not raise awareness or produce a change of culture within the justice system and community on its own, it could assist in driving change that needs to happen across the criminal justice system and broader service systems to improve responses.

Benefits to public health and safety of women and girls

Currently, Queensland police can take no criminal action against a perpetrator of coercive control if and until they begin to stalk, physically injure or damage their partner or former partner's property.

Until that time a victim of coercive control's safety depends on her coercive controlling partner's compliance with a civil protection order and the police effectively enforcing the conditions of that protection order.

The consequences of her partner choosing not to comply with or the police not enforcing the conditions of the civil protection order can far too often be fatal for a woman and her children.

While the public health benefits in legislating against behaviours which cause direct physical harm are obvious, there is research that demonstrates that people who are solely exposed to psychological abuse are as likely to report adverse health consequences as those exposed to physical abuse.[cxlvii]

Educative function

A survivor of coercive control interviewed by the Australian Broadcasting Corporation, in explaining why she didn't feel confident enough to report the abuse said[cxlviii]

> There were no laws of coercive control, and I couldn't explain it to the people around me, so how could I explain it to the police?

Legislating coercive control may serve an educational function in so far as it would help victim-survivors, their families, the broader service system and the wider community make greater sense of the harm they have experienced.

The introduction of legislation addressing coercive control may improve the awareness of families, friends and co-workers and generalist services for both preparators of coercive control and women experiencing coercive control and the broader community, and potentially facilitate increased early informal intervention.

Filling a 'gap' in our current legal response to coercive and controlling behaviours

As noted above, Queensland's laws currently include many discrete 'incident based' offences that punish behaviour associated with coercive control and a civil system designed to prevent further harm.

However, there is currently no one offence that considers coercive control behaviour as a course of conduct which can incorporate physical abuse, emotional abuse, economic abuse and isolating behaviours.[cxlix] This prevents a perpetrator being held accountable for the collective harm caused by the combination of unlawful and otherwise lawful behaviour intended to coercively control a victim.

In a recent submission to the New South Wales Parliament's Joint Select Committee on Coercive Control the New South Wales Law Society stated that in its view there was a 'gap' in the criminal laws of that state that should be filled by a specific offence rather than the expansion of domestic violence legislation. The NSW Law Society felt that the current criminal laws relied too heavily on particular acts or instances of conduct rather than a course of conduct.

Discussion Questions

55. Are there any other benefits in legislating against coercive control?
56. How will legislating against coercive control improve the safety of women and children?
57. How will legislating against coercive control encourage greater reporting of domestic and family violence including non-physical abuse?
58. How will legislating against coercive control improve systemic responses to domestic and family violence?
59. How will legislating against coercive control improve community awareness of domestic violence?
60. How will legislating against coercive control help stop perpetrators from using coercive control?

What are the risks in legislating against coercive control?

Legislation that would criminalise coercive control behaviours

Net widening and overcriminalisation

A key challenge in appropriately designing legislation to address coercive control is the difficulty in accurately articulating the distinction between dysfunctional, yet tolerable, intimate relationship behaviours and abusive coercively controlling relationship behaviours which cause serious harm that warrants legislative prohibition.[cl]

A failure to clearly and appropriately address this distinction in legislation risks inappropriate net widening and overcriminalisation.

If those risks materialise it could have negative impacts on the limited resources of the criminal justice system and community diversity more generally.

There are concerns that the push to criminalise coercive control is part of a worrying trend of 'carceral feminism' that pursues increasing levels of criminalisation against perpetrators. This disproportionately impacts upon already racially and economically marginalised people at the expense of protecting the needs of the victims and their families, such as by investing in better social services and infrastructure, and supporting community-led solutions.

In a recent article, Evan Stark acknowledged the force of these arguments and countered that this criticism overlooks the patriarchal nature of the criminal law's current response to this behaviour which relies on the male definition of abuse (that is, physical abuse) that obscures the true nature of the abuse women in these relationships suffer.[cli]

In the same article, Stark is critical of those who suggest therapeutic or restorative justice alternatives as a suitable response to coercive control, stating that minimising, ignoring or tolerating significant harm to women and children is 'morally and politically unacceptable'.[clii]

Misidentification of the person most in need of protection

Identifying the person most in need of protection, according to recent research, is a significant existing problem for law enforcement and legal systems in Queensland.[cliii]

The introduction of any new legislation to criminalise coercive control may further exacerbate this issue.

It has been pointed out that, for some women, further involvement of law enforcement in their relationships heightens the risk of 'dual arrest'.

This occurs when the police officer arrests both the 'perpetrator' and the 'victim' in the absence of readily available evidence that will allow a police officer to be able to tell the difference.[cliv]

There is also the risk for potential misidentification through the deliberate behaviours of the perpetrator. Examples include making false reports, manufacturing evidence, or using their control over the victim to force them to engage in behaviours that making them seem more likely to be the perpetrator.

These are complex issues requiring a nuanced understanding of coercive control to ensure that systems designed to protect victims are not used against them.

If victims of domestic violence are further victimised by criminalisation, many of the benefits of criminalisation noted above may be erased.

Increasing overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system

The Australian Law Reform Commission's 2017 report on incarceration of Aboriginal and Torres Strait Islander peoples identified a link between family violence and the over representation of Aboriginal and Torres Strait Islander men, women and young people in the criminal justice system.[clv]

There is a concern in most Australian jurisdictions including Queensland that Aboriginal peoples and Torres Strait Islander people are already over represented for offences relating to breaches of domestic violence orders.[clvi] They are more likely to be convicted of these offences due to a prior history of offending and over policing of First Nation peoples.[clvii]

There is also evidence Aboriginal and Torres Strait Islander women are particularly vulnerable to the inappropriate application of civil orders and criminal sanctions due to ongoing societal and systemic racism, including in conceptualisations of the use of violence and stereotypes of the "ideal victim".[clviii]

There is a legitimate concern a response to coercive control involving the creation of new criminal offences or harsher sentences would exacerbate the already unacceptable level of over representation of Aboriginal peoples and Torres Strait Islander people in Queensland's criminal justice system.

There are also significant concerns criminalisation of coercive control may result in family violence being further under reported due to fears about consequences for the offender, the victim's children, exclusion from community, and lack of access to culturally appropriate services and responses for both victims and perpetrators.[clix]

Associated with the risk of over representation of Aboriginal and Torres Strait Islander people being charged with a new offence is the concern this may further increase the incarceration rates of Indigenous people, both upon sentences and on remand.

Discussion questions

61. What other risks are there in implementing legislation to criminalise coercive control?

62. Could the risks identified above be mitigated successfully by proper implementation or other means? If so, how?

Challenges for police and prosecution if coercive control was criminalised

There are both potential benefits and practical challenges to implementing a criminal offence of coercive control and/or domestic violence, including significant practical and operational risks[clx].

For police, a specific criminal offence of coercive control and/or domestic violence may require significant changes in approach to both the investigation and prosecution of this offence[clxi].

Identifying and gathering the requisite level of evidence to support an effective investigation and prosecution for a 'course of conduct' as opposed to a single incident, beyond reasonable doubt, may require specialist expertise not readily available to first response officers.

It may also require a change in the methodology used by police when responding to calls for service, including the need to view the offence, not from the pattern of behaviour described, but from the consequences of that behaviour[clxii].

Training of police, prosecutors, lawyers and courts

When officers arrive at a scene to a reported domestic violence incident, perceptions of severity, use of weapons, presence of witnesses or visible injuries increase the likelihood of arrest.[clxiii]

Some research suggests officers prefer to attend incidents involving visible injuries because these are less ambiguous and easier to identify who is in need of protection.[clxiv]

This suggests that comprehensive training may be required to assist police to better recognise and respond to non-physical forms of violence, including coercive control.

A recent media article supports the need to better equip police officers by better contextualising domestic violence incidents to reduce misidentification of the victim, citing reports that almost 50% of the women murdered by an intimate partner in Queensland in 2017 had previously been recorded as a perpetrator.[clxv]

The gendered nature of domestic and family violence as opposed to non-gendered nature of many other crimes, may impact the way in which police respond. It has been suggested that to effectively operationalise an offence of coercive control will require substantial training of police and other frontline services prior to implementation.[clxvi]

However, as with any training, refresher education must be conducted regularly to ensure the lessons are reinforced over time[clxvii] and new information is passed on. From the limited evidence available in jurisdictions with a specific offence of coercive control, training of frontline officers and relevant staff, delivered in partnership with domestic and family violence specialists has been essential to effectively enforcing this type of offence[clxviii].

In the lead up to coercive control legislation coming into effect in Scotland in 2019, Police Scotland undertook extensive training between December 2018 and March 2020, through the Domestic Abuse Matters Scotland Change Programme, developed and delivered by Safe Lives.[clxix]

The success of this training is based on the multi-pronged approach to raising awareness of all behaviours that may constitute domestic violence and by developing and supporting change champions to provide peer support and challenge inappropriate language and behaviours.[clxx]

Another fundamental difference between Scotland and Australia is the broader focus on training for domestic violence.

According to one researcher, Scotland has had over 20 years of domestic violence training across the community with a funded body promoting community

education. By contrast, in Australia, education has been largely unfunded and slow to develop.[clxxi]

Funding of more than $AUS1.48 million was provided to Police Scotland to support development and delivery of this training to 14,000 officers.[clxxii]

Within the Queensland context, a key limitation to developing and delivering similar training across the state is the high level of funding required and geographical distances across which it must be delivered, and the state's diverse cultures, including its remote First Nations communities.

Existing training and practices within the QPS, including the development and delivery of the service-wide cultural change program, could be enhanced through further funding and collaboration with domestic violence specialists, and the leadership of First Nations communities.

As well as extensive training and cultural change programmes, consistency in definitions and understanding what constitutes coercive control across the service system (including police, courts and specialist services) and in the community is vital to an effective response.

A key challenge for policing agencies across Australia will be ensuring a nationally consistent terminology to ensure incidents requiring cross border investigation or support are based on a single definition and understanding of the issue.

Reluctance of victims to make a report to the police.

Data from the national personal safety survey conducted through the Australian Bureau of Statistics indicates that women are reluctant to report experiences of domestic violence to police.

80% of all women experiencing domestic violence at the hands of a current partner never report the violence to police and only 42% of women experiencing violence by a former partner report incidents to police.[clxxiii]

Research provides a range of explanations for why reporting domestic violence to police remains low.

These include mistrust or fear of authority (such as government agencies and police), level of violence experienced, a woman's perceived loyalty to the perpetrator, feelings of confusion, embarrassment or shame, wanting to deal with the problem privately or because they do not recognise the behaviour as abusive.[clxxivclxxv]

Additional factors influencing a reluctance to report relate to whether the woman feels police will believe them and concerns regarding secondary trauma from having to re-tell their story[clxxvi] and fear of losing custody of their children.

Whilst victims may report domestic violence to police, not all victims want to see the perpetrator arrested or charged, with some victims preferring instead to see the perpetrator provided with support to change their behaviour.

A range of other factors may also reduce the likelihood that a victim will want the perpetrator charged.

These may include a desire to continue with the relationship, dependence on the perpetrator for finances or housing or to ensure the perpetrator continues to be involved in the lives of children within the relationship.[clxxvii]

Research has identified interventions that appear to positively influence rates of reporting including codes of practice for domestic and family violence, legislation that promote prosecution of breaches, specialist policing teams and integrated responses.[clxxviii] Mandatory reporting by health staff has also been noted as effective in identifying domestic violence.[clxxix]

Discussion questions

63. Are there any other challenges for police and prosecutors?

64. What could be done to mitigate the challenges for police and prosecutors identified above?

65. Would requiring mainstream services (for example health and education service providers) to report domestic violence and coercive control behaviours improve the safety of women and girls?

Challenges for specialist service providers if coercive control was criminalised

Specialist domestic and family violence service providers have reported difficulty in meeting rising demand for services, despite recent additional funding.[clxxx]

If efforts to increase awareness of the nature and risk of coercive control are successful in raising awareness in the community and among generalist services, this is likely to further increase demand on specialist services.

Funding to meet this increased demand would be required to increase the capacity of services, noting that there may be timing implications if there are not sufficiently trained people immediately available to augment the existing workforce.

The likely increase in demand due to net-widening would apply to both services supporting victims as well as those providing intervention programs for perpetrators. As noted above, there is already considerable unmet demand for perpetrator intervention programs throughout the state.

Training for specialist service providers would also be required to support implementation of any legislation to criminalise coercive control, to enable them to effectively advocate for the needs of victims and ensure efforts to change the behaviour of perpetrators is consistent with any legislative changes.

There may also be a need to consider whether any changes to integrated response models are required to reflect any changes in legislation or police powers should coercive control be criminalised.

Discussion Questions

66. Are there any other challenges for specialist service providers?
67. What could be done to mitigate the challenges for specialist service providers?
68. Are there other ways that specialist service providers could support implementation of legislation against coercive control?

Legislation that would narrow the breadth of the civil law response in the DFVP Act

As discussed above, the current definition of domestic violence contained in the DFVP Act includes coercive control, but also captures one-off incidences that are not part of a pattern of coercive and controlling behaviours.

This enables protection orders to be made against a woman who has, for instance, retaliated violently against their abuser.

This has been criticised by some as going beyond the original intention of the legislation and contributed to misidentification of perpetrators, with particular consequences for the overrepresentation of Aboriginal and Torres Strait Islander people.[clxxxi]

If the definition of domestic violence were to be altered with the aim of bringing all behaviours within the context of coercive control, this would inevitably narrow the application of the current civil protection scheme.

While this may address the above concerns, there is a risk that a narrower definition of domestic violence could have unintended consequences and result in women who need protection not receiving it. A further complicating factor is that a victim herself, by virtue of conditioning within the relationship or a community, may not be in a position to recognise or describe, an assault as being part of a pattern of unlawful abuse from which she (and possibly her children) need protection.

Discussion Questions

69. Would it be desirable to narrow the definition of domestic violence to include only the abuse that is perpetrated in the context of coercive control?

70. Are there sufficient alternative mechanisms for seeking redress from abuse that is not within the context of coercive control?

How would success of options to legislate against coercive control be measured?

There are a number of challenges in determining the success of efforts to improve the safety of women and help men to change their behaviour and hold perpetrators to account. Not least of these is the impact of the considerable under-reporting of domestic and family violence.

It is very difficult to determine, for instance, whether increased reports to police are due to improved rates of reporting, or an increase in prevalence.

Certainly, it would be desirable to put in place robust methods for monitoring and evaluating any reforms made, to determine if is achieving the intended outcomes and to provide a mechanism for assessing impact more broadly, including on police and the broader service system.

Discussion Questions

71. What should be key indicators of success when measuring the impact of legislation against coercive control?

72. What other factors should be considered in relation to assessing impact?

Compatibility with the Human Rights Act 2019 (Qld) must be considered for all options to legislate against coercive control in Queensland

The Taskforce's terms of reference require us to have regard to 'the need to protect and promote human rights, including those protected under the *Human Rights Act 2019*'.

The *Human Rights Act 2019* (HR Act) protects 23 fundamental human rights that are recognised in international law.

All new legislation that is introduced in Queensland must be accompanied by a statement or certificate addressing the legislation's compatibility with the rights protected under the HR Act.[clxxxii]

Legislation does not need to be compatible with the human rights in the HR Act to be passed by the Queensland Parliament but if it is not compatible the member of Parliament introducing the legislation needs to provide an explanation about the nature and extent of that incompatibility.

It is important to note that these parliamentary statements and certificates are not binding on any court or tribunal. Regardless of the opinions they contain, legislation in Queensland is required to be interpreted in a way that is most compatible with human rights (including by police and courts applying the law).[clxxxiii]

Therefore, the Taskforce needs to be mindful of future interpretations of compatibility with human rights when framing its recommendations for legislative reform.

A law in Queensland will be compatible with human rights if:

- it does not limit a human right; or
- it limits a human right *only* to the extent that it is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.[clxxxiv]

The HR Act provides a non-exhaustive list of the factors that may be relevant in determining whether a limitation on a human right is reasonably and demonstrably justified. That part of the Act is set out Appendix 7.[clxxxv]

It must be acknowledged that all the options to legislate against coercive control set out below, except options 1 and 2, could be said to limit human rights that are protected under the HR Act in some way.

However, taking action to legislate against coercive control arguably promotes rights under the HR Act.

When coercive control has been criminalised in other jurisdictions (see above) the criminalised behaviour is explained or defined within a human rights framework, for example, the prevention of freedom of movement, or freedom from fear of torture.[clxxxvi]

Notably, section 16 of the *Human Rights Act 2019* (Qld) provides that: *'Every person has the right to life and has the right not to be deprived of life'*. This right imposes a positive duty on the state to protect people from real and immediate risks to life and including through the criminal law.[clxxxvii]

Options for legislating against coercive control in Queensland

The Taskforce has identified 13 options as a useful starting point to discuss how to legislate against coercive control.

The Taskforce is absolutely not ruling out options for legislating against coercive control in a way not listed below. Further, the options listed below are not necessarily mutually exclusive. The Taskforce is not limited in the number of recommendations it can make for legislating against coercive control.

Each option is numbered to assist a person who may only wish to make a submission to the Taskforce about one or some of the options presented below. The numbering system does not represent any preference of the Taskforce for a particular option. The options are presented in order of their prospective scale, impact and potential resource implications.

For the each of the options listed below, we are seeking submissions responding to the following questions:

A. What are the benefits of the proposal?
B. What are the risks/possible unintended consequences of the proposal?
C. Would the proposal have a disproportionate adverse impact on any particular cohort of people in the community? If so, why? And how could the proposal be adjusted to mitigate adverse impacts?
D. Do you have any suggestions to improve the proposal?
E. What resources and supports would need to be put in place to support the implementation of the proposal?
F. What are the relevant human rights considerations for this proposal?
G. Is the proposal compatible with human rights? If not, why?
H. Do you support/not support the proposal? If so, why?

Option 1 – Utilising the existing legislation available in Queensland more effectively

As set out in Part 1 of this discussion paper, Queensland laws currently include a range of criminal offences that could be applied to many of the most serious behaviours associated with coercive control.

The definition of domestic violence in the DFVP Act already includes coercive and controlling behaviour.

Civil protective orders can be obtained on the basis of coercive and controlling behaviour. Coercive and controlling behaviour can be punished as a breach of civil protection orders.

If the civil protection orders were more effectively enforced, the breaches of the orders were treated with the appropriate level of seriousness and victims and perpetrators were provided with more support before, during and after this process, better outcomes may be able to be achieved without the introduction of any new legislation.

One easily identifiable risk with this option is that some of the benefits of the law fully addressing significant non-physical harm to victims of coercive control might be lost and police will not have any power to act immediately on serious non-physical harms beyond the powers they currently have under the civil protection scheme in the DFVP Act.

To realise better outcomes for victim-survivors and perpetrators, this option would need to be accompanied by many of the systemic reforms required to support implementation of legislative change and would have similar cost implications for government.

Some advocates suggest that choosing *not* to criminalise coercive control 'sends a message' that controlling behaviour is acceptable or 'not as important' as physical harm.[clxxxviii]

As this option would not alter existing rights and obligations, it does not limit the human rights protected under the HR Act. However, this option could potentially be criticised as failing to promote human rights such as the right to life under section 16 of the HR Act.

Option 2 – Creating an explicit mitigating factor in the Penalties and Sentences Act 1992 (Qld) that will require a sentencing court to have regard to whether an offender's criminal behaviour could in some way be attributed to the offender being a victim of coercive control

The sentencing guidelines in the PS Act currently only provide specific guidance for circumstances in which a person being sentenced is a *perpetrator* of domestic violence for this to be considered as an aggravating factor.

In light of our evolving understanding of domestic violence and what we now know about the impact of coercive control on a victim's options to keep themselves and their dependants safe, it is appropriate to consider whether section 9 of the PS Act should be amended to

specifically require a sentencing court to consider if a person's offending was attributable in some way to the offender being a *victim* of coercive control.

This proposal would prompt a sentencing court to actively consider the impact of coercive control and domestic violence as a potential mitigating factor when determining the appropriate penalty. There is always a risk that a perpetrator of domestic violence could try and claim that they were in fact the victim of coercive control.

They could attempt to use this provision to minimise their offending behaviour but arguably this risk could be mitigated by appropriate training of police, prosecutors and judicial officers.

The human right under the HR Act that is potentially engaged and promoted by this proposal is the protection of families.[clxxxix]

Option 3 – Amending the definition of domestic violence under the Domestic and Family Violence Protection Act 2012

There are two ways the definition of domestic violence under the DFVP Act could be amended:

- the definition could be *narrowed* so that the presence of coercive control has to be evident in the behaviour of a perpetrator before an act or omission could be said to constitute domestic violence; or
- the definition could *broadened* so that section 8 specified more of the behaviours that are associated with coercive control as constituting domestic violence, for example, removing reproductive control.

The construction of section 8 of the DFVP Act's definition of domestic violence has been criticised as facilitating misidentification of domestic and family violence in Queensland by not properly reflecting coercive control as being the key component to domestic violence abuse.[cxc]

It is suggested by merely listing controlling and coercive behaviours as part of a 'list of tactics' rather than acknowledging such behaviours as the overarching context for the abuse itself. Physically abusive behaviours such as an act of violence during a family fight can be identified as domestic violence, whereas the legislation is intended (based on the wording of its preamble) to address patterned abusive behaviour.[cxci]

Concerns have been raised about broadening the scope of civil domestic violence order schemes to better incorporate aspects of coercive control.

The New South Wales Law Society in its submission to the NSW Parliament's Joint Select Committee on Coercive Control was of the view that this had greater inappropriate 'net widening' risk than a standalone criminal offence because of the breadth of grounds on which a civil domestic violence order can be obtained and noting the rate at which those orders are breached.

The benefits and risks of a narrower definition of domestic violence that would exclude apparently isolated acts of violence between people in domestic relationships are discussed above.

The human rights under the HR Act that are potentially engaged and limited by this proposal are: Privacy and reputation;[cxcii] Right to liberty and security of person;[cxciii] Protection of families and children;[cxciv] and fair hearing rights.[cxcv]

The human rights under the HR Act that are potentially engaged and promoted by this proposal are: Right to life;[cxcvi] Protection from Torture and cruel, inhuman or degrading treatment;[cxcvii] and Protection of families and children.[cxcviii]

Option 4 – Creating a new offence of 'cruelty' in the Criminal Code

Professor Heather Douglas has suggested that a new offence of 'Cruelty' could be introduced into the Criminal Code.[cxcix] Professor Douglas' proposed draft of that offence is at Appendix 8.

The proposed offence largely replicates the existing offence of Torture at section 320A of the Criminal Code but it *removes* the requirements for the prosecution to prove beyond reasonable doubt:

- that the pain and suffering inflicted be '*severe*' and
- that the defendant inflicted the pain and suffering on the other person *'intentionally.*[cc]

The maximum penalty for this proposed new offence suggested by Professor Douglas is 5 years imprisonment rising to 7 years imprisonment if the offence is committed against a person in a 'relevant relationship' as defined in the DFVP Act.[cci]

Professor Douglas argues the advantages of this proposed offence are it could be used to prosecute coercive and controlling behaviour in domestic violence and other contexts as it draws upon existing concepts in

the Criminal Code and uses simple language well understood by law enforcement, legal practitioners and the community generally.[ccii]

The human rights under the HR Act potentially engaged and limited by this proposal are: Right to liberty and security of person.[cciii]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life;[cciv] Protection from Torture and cruel, inhuman or degrading treatment;[ccv] and Protection of families and children.[ccvi]

Option 5 – Amending and renaming the existing offence of unlawful stalking in the Criminal Code

Although the offence of stalking in Chapter 33A of the Criminal Code defines 'unlawful stalking' at section 359B broadly and it has been applied to relationships that might be characterised as coercively controlling (see above) it is arguably missing some elements making it more applicable to cases of coercive control.

In considering whether the Tasmanian offences of economic and emotional abuse filled a 'gap' in the laws of that jurisdiction, some note that, like Queensland's stalking offence, there is no reference to 'unreasonably controlling' a victim or specific references to economic abuse of a victim.[ccvii]

The naming of the offence and conduct within it as 'unlawful stalking' may also be problematic because of community and perhaps even police and the legal sector's perception about what 'stalking' is.

Unlike other offences in the Criminal Code, the name of the offence is not referenced within the elements of the offence itself. For example, compare common assault, grievous bodily harm or non-consensual distribution of intimate images.

It has been noted that media focus on instances of stalking involving high profile public people in need of protection from obsessed or delusional strangers has placed 'stalking' outside the paradigm of domestic and family violence.[ccviii]

Amendments to the existing offence could include:

- broadening the definition of the unlawful conduct in section 359B to specifically include behaviours that control another person's economic freedom and behaviours that effectively control the free movement of another person, or behaviours associated with unauthorised surveillance;
- renaming the offence. For example, it could be renamed 'Unlawful intimidation, harassment and abuse';
- adding a circumstance of aggravation to section 359E if the unlawful conduct was committed against a person who had a relevant relationship (within the meaning of section 13 of the DFVP Act) with the defendant;
- the penalty for a breach of the restraining order under section 359F(9) could be increased to be consistent with the penalties for a breach of a domestic violence order under the DFVP Act; and
- providing that a jury does not need to agree on the same two unlawful acts as long as they can agree there were two unlawful acts that taken together, would cause apprehension, fear, or detriment to the stalked person or another person (similar to the existing approach for offence of Maintaining a sexual relationship with a child at section 229B of the Criminal Code).

The advantages of building on this existing offence is that it is familiar to police, prosecutors and courts. It would also enable the flexible use of the existing restraining order attached to this offence as a way of providing enduring protection for a victim even if the prosecution is withdrawn or discontinued.

The disadvantage of this option is that because of existing community perceptions about 'stalking' it may 'add another layer of confusion' in the community about what coercive control is and how it should be addressed.[ccix]

The human rights under the HR Act that are potentially engaged and limited by this proposal are: Right to liberty and security of person;[ccx] and rights in criminal proceedings.[ccxi]

The human rights under the HR Act that are potentially engaged and promoted by this proposal are: Right to life;[ccxii] Protection from Torture and cruel, inhuman or degrading treatment;[ccxiii] and Protection of families and children.[ccxiv]

Option 6 – Creating a new standalone 'coercive control' offence

As noted above several jurisdictions have now opted to introduce standalone offences criminalising coercive control.

International experience indicates that in order to implement this option successfully significant resources

would need to be allocated to community awareness programs and the training of police.

The human rights under the HR Act that are potentially engaged and limited by this proposal are: Right to liberty and security of person;[ccxv] and rights in criminal proceedings.[ccxvi]

The human rights under the HR Act that are potentially engaged and promoted by this proposal are: Right to life;[ccxvii] Protection from Torture and cruel, inhuman or degrading treatment;[ccxviii] and Protection of families and children.[ccxix]

The offences in other jurisdictions provide a useful guide to other issues we would need to consider if we introduced a standalone offence in Queensland.

In addition to the general discussion questions for all options above, the Taskforce seeks feedback on some specific questions set out below.

What legislation should contain this offence?

If such an offence were introduced in Queensland it could be introduced as an offence:

- in the Criminal Code;
- in the DFVP Act; or
- a standalone piece of legislation like in Scotland.

Generally, but not always, the most serious indictable criminal offences in Queensland are contained in the Criminal Code. An advantage of placing such an offence in the Criminal Code is that it would send a clear signal about the seriousness of this conduct to the broader community.

Alternatively, placing the offence in the DFVP Act would place the offence firmly in the paradigm of domestic and family violence which may guard against the offence being used outside its intended scope.

Placing the offence within standalone legislation would be unusual in Queensland and it might risk the offence being less visible and thus used less often by police and prosecutors.

What special features should the course of conduct offence contain?

Although the offences in other jurisdictions discussed above use different terminology (for example, repeated behaviour, a continuous course of behaviour or persistent behaviour) each jurisdiction is effectively prohibiting or criminalising a course of conduct consisting of more than one particular act of physical violence or psychological abuse.

'Course of conduct' offences already exist in Queensland. Two of the best known examples are unlawful stalking in Chapter 33A of the Criminal Code (see above) and Maintaining a sexual relationship with a child (section 229B of the Criminal Code). Arguably, an offence that targets coercive control would be a course of conduct offence to effectively capture the *pattern* of behaviour with which it is associated. This type of offence is likely to be much more complex to prosecute and prove than the 'commit domestic violence' offence discussed below.

Course of conduct offences normally provide for a minimum number of acts that must be proved, for example section 229B of the Criminal Code requires proof of one or more unlawful sexual acts proved. That is a similar approach to that taken in Scotland but would differ from the approach taken in Ireland.

If a course of conduct offence is introduced in Queensland it may be appropriate to consider some effective features in Queensland's existing course of conduct offence of maintaining a sexual relationship with a child at section 229B such as:

- the prosecution not needing to allege particulars of each act;
- jury members not needing to all be satisfied that the same acts occurred; and
- an indictment for the offence including other offences committed as part of the conduct that forms the coercive control offence.

Is a definition of coercive and controlling behaviours required?

Some jurisdictions such as England and Wales and Ireland choose to not define what is meant by controlling or coercive behaviour.

Those jurisdictions simply provide that coercive and controlling behaviour be continuous, repeated or persistent and that the behaviour must cause or be likely to cause a certain adverse impact on the victim.

This contrasts sharply with the approach taken in Scotland and Tasmania where there are broad and non-exhaustive definitions of the behaviour *in addition* to providing that the behaviour must cause or be likely to cause an adverse impact on the victim.

The Scottish and Tasmanian approach is similar to the approach in Queensland's existing unlawful stalking offence (see above).

Should there be a time limit on when prosecutions can be brought?

A unique aspect of the approach in Tasmania is the requirement that a prosecution be commenced within 12 months of the last act in the course of conduct.

This approach may have the advantage of preventing over prosecution of the offence, however, the approach has been criticised as overcomplicating the offence and artificially obscuring the experience of a victim.[ccxx]

What kind of relationships should be captured?

This is an important threshold question that will determine the scope and impact of the offence.

A powerful argument for the introduction of a standalone 'coercive control' offence is it would recognise that '*intimate and familial relationships provide a particular gendered context*'[ccxxi] in which distinctive coercive and controlling behaviours takes place, which perhaps cannot be addressed by Queensland's existing broad based offences such as stalking or Torture.

The jurisdictions that have adopted standalone offences have taken various approaches to this issue.

The Tasmanian model and the Scottish model are both restricted to current or former intimate partners. However, the offences in both of those jurisdictions are sensitive to the way in which children can be used as part of the campaign of abuse against a partner and include that in the definition of prohibited abusive or coercive behaviour.

The English model is broader as it extends to any family members who live in the same residence.

Throughout Queensland law, relevant relationships for the purpose of considering domestic violence are generally defined with reference to the definition at section 13 of the DFVP Act.

That definition encompasses intimate personal relationships, family relationships and informal care relationships.

This is intended to focus on the particular nature and characteristics of domestic violence and provide a mechanism for protection in the absence of systemic responses that are available in relation to abuse in other types of formal care arrangements.

Should proof of harm to the victim or intention to harm the victim be necessary?

In England and Wales and Ireland the prosecution must prove that some harm has been experienced by the victim.

Scotland and Tasmania only require that the *purpose* of the behaviour was to be harmful. The approach in Scotland and Tasmania has been identified as being preferable because it focuses prosecution of this offence on the behaviour and state of mind of the perpetrator rather on the victim's response to that behaviour.[ccxxii] This approach may relieve some burden from the victim as a witness.

No jurisdiction that has introduced a form of coercive control offence requires subjective proof of intent of harm, rather the prosecution can either prove that the perpetrator intended the harm or should have reasonably known that their behaviour would be harmful. This is an acknowledgement on behalf of the drafters of these offences that subjective proof of intent to cause harm could be difficult to prove.[ccxxiii]

What would be an appropriate penalty?

The maximum penalties for these type of offences in other jurisdictions cover a wide range from 1 year imprisonment through to 14 years imprisonment.

In terms of consistency throughout the Queensland statute book the maximum penalties of 14 years imprisonment for Torture and five years' imprisonment for unlawful stalking or for a subsequent breach of a domestic violence order within five years should be noted.

The breadth of criminal conduct that could fall within this type of offence could be as significant as that currently prosecuted as Torture or relatively minor breaches of domestic violence orders.

Similar to the offence of Choking, suffocation or strangulation in a domestic setting at section 315A of the Criminal Code (which carries a maximum penalty of 7 years imprisonment) the fact that the conduct is an indicator of lethality should be considered and taken into account.

Concerns have been raised that where the penalty for coercive control is too low, the offence may be used to '*downgrade behaviours attracting a higher penalty – for example attempted murder*'[ccxxiv].

Consideration would also need be given as to whether this is an offence that should be allowed to be disposed

of summarily in the Magistrates Court. Serious indictable offences like offences relating to child exploitation material can only proceed on indictment in the higher courts and Magistrates Courts cannot impose terms of imprisonment greater than three years.

However, many less serious examples of offences can be dealt with summarily and more quickly in the Magistrates Court, providing the offender can be adequately punished by a sentence of no more than three years imprisonment.[ccxxv]

Should a specific defence be provided?

With the exception of Ireland, all jurisdictions that have introduced this type of offence have provided for specific defences.

In Scotland and Tasmania, this defence is based on the otherwise abusive behaviour being 'reasonable' in the circumstances, and for England and Wales the defence is based on whether the behaviour was 'in the best interests' of the other person. A theoretical example of the application of these would be a partner controlling the day to day finances of the family because the illness or incapacitation of the other person made them unable to participate in those type of tasks.

In the absence of a specific defence, in Queensland, a person defending a charge to this offence would be limited to the excuses contained in Chapter 5 of the Criminal Code.

Alternative verdicts?

Chapter 61 of the Queensland's Criminal Code provides for circumstances in which a person who is indicted on one offence can be convicted of another offence if the elements of that offence are established on the evidence.

The best known example of this is manslaughter as an alternative verdict to murder.

The Scottish coercive control offence allows for a person indicted on the offence of coercive control to be convicted for the offence of stalking if the elements of that offence are established on evidence.

If a standalone offence of coercive control were to be introduced in Queensland, a similar approach could be taken with the existing offences of unlawful stalking or Torture in appropriate cases.

Restraining Orders?

As noted above, when a charge for the existing offence of unlawful stalking is brought a court has the discretion to impose a restraining order against the charged person even if the person is acquitted of the offence or the prosecution offence is discontinued.

Noting the significant overlap between the behaviours addressed in the unlawful stalking and coercive control, it may be prudent to allow a court to similarly make a restraining order in appropriate cases.

Option 7 – Creating a new offence of 'commit domestic violence' in the Domestic and Family Violence Protection Act 2012

In 2000, the Taskforce on Women and the Criminal Code (Qld) recommended the Queensland Government investigate the creation of a 'specific offence of domestic or family violence', to 'specifically name the behaviour and encourage the prosecution of it'.[ccxxvi] The Taskforce recommended an investigation should 'canvass the creation of a course-of-conduct offence', in similar terms to the offence of Torture in s 320A of the Criminal Code.[ccxxvii]

In 2010, the Australian Law Reform Commission and NSW Law Reform Commission considered the proposal in the report *Family Violence - A National Legal Response.* The Commission ultimately concluded that, while an 'umbrella offence may potentially recognise and facilitate understanding of the dynamics of family violence in the criminal justice system' there were a number of difficulties conceptualising the exact parameters of an offence, among other issues.[ccxxviii]

It was noted at that time, course of conduct offences had had limited use, and the Commissions were of the view more research was required before they should be replicated.

The Commissions supported the view 'a preferable approach would be for state and territory governments to examine the operation of—and consider making improvements to—existing responses before contemplating an umbrella offence.'[ccxxix]

In 2014, the Queensland Legal Affairs and Community Safety Committee – *Inquiry on Strategies to Prevent and Reduce Criminal Activity* recommended that the Special Taskforce on Domestic and Family Violence in Queensland consider possible legal amendments to strengthen the operation and application of the DFVP Act, including stand-alone domestic and family violence offences.[ccxxx]

The Special Taskforce on Domestic and Family Violence in Queensland considered the desirability of the creation of a stand-alone 'umbrella' offence of domestic violence, noting the benefit of this approach would be to allow police to apply protective bail conditions following the arrest of a perpetrator.[ccxxxi]

Although the *Not Now Not Ever* report noted there had been calls throughout Queensland for such an offence, it did not ultimately recommend the introduction of such an offence.

The Special Taskforce found the difficulties with prosecuting existing offences involving domestic and family violence related more to challenges with evidence gathering, witness cooperation, police practices and court processes which may undermine the effective use of existing Criminal Code provisions.

The Special Taskforce found enacting a new offence specifically for domestic and family violence facing the same evidentiary and process issues may not achieve the goal of protecting victims or increasing accountability of perpetrators.

The Special Taskforce also heard from many victims who did not want their partners to be subjected to criminal proceedings or who feared the impacts to the family of monetary penalties. Service providers were concerned a dedicated offence would place victims who use violence in retaliation or self-defence at great risk of prosecution.

While ultimately the *Not Now Not Ever* report did not recommend the creation of such an offence, its findings provide a useful starting point. Significant changes have been implemented over the past five years and, as such, reconsideration of this matter is considered warranted.

This type of offence could simply provide that a person who engages in domestic violence against another person within the meaning of section 8 of the DFVP Act commits an offence.

By using section 8 of the DFVP Act, coercive and controlling behaviours would be covered by the offence. The maximum penalty for this offence would arguably have to be lower than that for a breach of a domestic violence order (3 years imprisonment) because it would criminalise the same conduct but in these circumstances that conduct would not be in breach of an order from a court or police officer.

The advantage of this type of offence as opposed to a course of conduct offence criminalising coercive control is it may be easier to prosecute and it could be used as a flag to seek protective bail conditions following arrest.

This disadvantage of this type of offence is that section 8 of the DFVP Act is very broad and covers very serious criminal behaviour, such as sexual assault and deprivation of liberty that if proven beyond reasonable doubt quite properly attract significant maximum penalties.

The introduction of this type of offence could see it preferred as a charge to the more serious criminal offences for which perpetrators should properly be held accountable.

Further, the fact that it is contained in legislation dealing with civil as well as criminal laws rather than in the Criminal Code could lead some to consider it is a less serious form of offending.

The human rights under the HR Act potentially engaged and limited by this proposal are: Right to liberty and security of person.[ccxxxii]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life;[ccxxxiii] Protection from Torture and cruel, inhuman or degrading treatment;[ccxxxiv] and Protection of families and children.[ccxxxv]

Option 8 – Creating a 'floating' circumstance of aggravation in the Penalties and Sentences Act 1992 for domestic and family violence

This could be done in one of two ways:

- Creating a specific circumstance of aggravation for circumstances in which existing offences are committed against family members (the South Australian model); or

- Creating a specific circumstance of aggravation when the commission of an existing offence would also amount to an act of domestic violence within the meaning of section 8 of the DFVP Act.

In South Australia when an assault is committed against a family member, section 5AA(1)(g) of the *Criminal Law Consolidation Act 1935* (SA) dictates that it is an aggravated offence that attracts a more severe penalty.

So, for example, the maximum penalty for assault causing harm in South Australia, is three years imprisonment[ccxxxvi] but if the offence is aggravated (and that circumstance of aggravation must be proved beyond reasonable doubt) the maximum penalty rises to four years imprisonment.[ccxxxvii]

From the perspective of addressing coercive control utilising the definition at section 8 of the DFVP Act is arguably useful because the definition of domestic violence already includes coercive and controlling behaviours.

This type of provision is sometimes referred to as a 'floating' circumstance of aggravation because unlike most circumstances of aggravation it is not tailored or attached to any particular criminal offence.

Circumstances of aggravation couched in general terms applicable to multiple offences are rare but not without precedent in Queensland. For example section 161Q of the PS Act creates a circumstance of aggravation for organised criminal offending applicable to prescribed offences.

Notably, introducing this type of circumstance of aggravation was a recommendation of the *Not Now Not Ever* report which was ultimately not implemented.

If this type of floating circumstance of aggravation was introduced in Queensland, the PS Act would be a logical piece of legislation for it.

The floating circumstances of aggravation could for example:

- provide for a 30% uplift in the maximum penalty for an offence (e.g. if the maximum penalty for an offence was 3 years the application of the circumstance of aggravation would result in a maximum penalty of 4 years imprisonment); and

- mandate consideration of a post-sentence civil supervision order (see discussion of Criminal Behaviour Orders at Option 12 below) for the convicted perpetrator.

The human rights under the HR Act potentially engaged and limited by this proposal are: Right to liberty and security of person;[ccxxxviii] right to freedom of association;[ccxxxix] right to privacy and reputation;[ccxl] protection of families and children;[ccxli] cultural rights;[ccxlii] cultural rights – Aboriginal and Torres Strait Islander peoples;[ccxliii] Protection from Torture and cruel, inhuman or degrading treatment;[ccxliv] and rights in criminal proceedings.[ccxlv]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life;[ccxlvi] and Protection of families and children.[ccxlvii]

Option 9 – Creating a specific defence of coercive control in the Criminal Code

To properly address coercive control it has been suggested there should be a specific defence of coercive control.[ccxlviii]

This defence would assist victims of coercive control who have little or no choice but to use violence or other criminal behaviours in self defence against their abuser.

When the QLRC examined provocation in 2008 it did not have the benefit of the current research and knowledge that has now been acquired about domestic violence and, specifically, coercive control.

It is appropriate to reconsider in the light of this research and shifting community expectations, whether the current defences and excuses in the Criminal Code adequately reflect the diminished moral culpability of the coerced offender.

A specific coercive control defence would be modelled on self-defence in the Criminal Code. It would be restricted to circumstances in which there was a use of force against a person who was in an *intimate personal relationship* within the definition at section 14 of the DFVP Act where the defendant could show that they were the victim of unlawful coercive control.

Limiting the use of the defence to intimate personal relationships rather than all relevant relationships under the DFVP Act would recognise the specific impacts we know coercive control has in intimate partner relationships.

The defence could provide:

- a complete defence for the use of force that is *objectively* necessary for a victim to defend themselves from a perpetrator who was unlawfully coercively controlling that person; and

- a complete defence for more extreme force (extending to the infliction of death of grievous bodily harm) if the victim of unlawful coercive control *subjectively* believes on reasonable grounds that they could not otherwise save themselves from death or grievous bodily harm.

If this type of defence were introduced, amendments to the *Evidence Act 1977* (Qld) as proposed below in option 10 may be necessary to ensure the defence achieved its intended purpose.

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life[ccxlix] ; Protection from Torture and cruel, inhuman or degrading treatment;[ccl] and Protection of families and children.[ccli] The creation of this defence could arguably limit the Right to life[cclii] under the HR Act.

Option 10 – Amending the Evidence Act 1977 (Qld) to introduce jury directions and facilitate admissibility of evidence of coercive control in similar terms to the amendments contained in the Family Violence Legislation Reform Act 2020 (WA)

Western Australia recently introduced amendments to its *Evidence Act 1906* (WA) informed partly by a 'social entrapment' framework drawing upon theories of coercive control developed by research published by ANROWS in 2019[ccliii].

The social entrapment framework recognises, 'that the victim's/survivor's ability to resist abuse is constrained by the abuser's behaviour, her available safety options and broader structural inequities in her life,'[ccliv]. This enables a more complete assessment of the range of factors that impact the actions of the victim-survivor. Those Western Australian amendments are excised at Appendix 9.

New sections 37-39G of the *Evidence Act 1906* (WA) were introduced via the *Family Violence Legislation Reform Act 2020* (WA) and commenced on 9 July 2020.

They intend to make it easier for evidence, including expert evidence, of family violence to be introduced in criminal proceedings. They also provide for jury directions to address stereotypes and misconceptions about family violence.

The new provisions state evidence about family violence may be relevant when determining—in circumstances where an accused has claimed they acted in self-defence—whether the person believed their actions to be necessary, whether the conduct was reasonable, and whether there were reasonable grounds for those beliefs.

They further provide this evidence can be given by those with expertise in the area—for example, researchers or family violence sector workers.

The new provisions also provide for specific directions to be made to juries about family violence, including:

- family violence is not limited to physical abuse;
- it may include a complex range of behaviours to keep a person subordinate, isolated, controlled, monitored, deprived of freedom, frightened, humiliated and powerless to resist violence;
- it is not uncommon to stay with an abusive partner;
- it is not uncommon to fail to disclose the abuse, including to police; and doing so may lead to an increased risk of violence.

Introducing similar amendments in Queensland's *Evidence Act 1977* (Qld) would complement many other options proposed in this part of the discussion paper, particularly proposals for new offences and defences. It might also help overcome some of the difficulties for victim defendants using existing defences and excuses under the Criminal Code highlighted in Part 1 of this discussion paper.

The human rights under the HR Act potentially engaged and limited by this proposal are: Right to liberty and security of person[cclv] and rights in criminal proceedings[cclvi] and fair hearing rights.[cclvii]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life;[cclviii] Protection from Torture and cruel, inhuman or degrading treatment;[cclix] and Protection of families and children.[cclx]

Option 11 – Creating a legislative vehicle to establish a register of serious domestic violence offenders

During the consideration of the *Domestic Abuse Act 2021 (E&W)* there was extensive debate in the Parliament of England and Wales and the media extensively debated about the introduction of an automatic register of dangerous domestic abusers and stalkers, with a specific amendment proposing such a register being tabled in the House of Lords by Labour peer Lady Royall.[cclxi]

The proposal was for a register of men who are convicted of offences such as harassment, stalking and coercive control.

It would have ensured serial stalkers and domestic violence perpetrators are placed on England and Wales' existing violent and sexual offenders register (Visor) and monitored in the same way as serious sex offenders.

The register could then be accessed by police and social services as a source of information to assist both preventative and reactive interventions.

Campaigners in the UK said the register would help address institutional failures enabling serial abusers to subject multiple women to domestic violence and stalking.[cclxii]

Ultimately, these proposed amendments in England and Wales did not proceed but key stakeholders continue to advocate for the creation of the register.

A recent report of the Coroners Court of Queensland provides an example of a woman in Queensland who was murdered by a serial domestic violence abuser, who used coercive control and physical violence against his many victims.

Fabiana Yuri Nakamura Palhares was 34 years old when she was murdered by the father of her unborn child, Brock Wall. Before Mr Wall killed Ms Palhares in 2015, he had been convicted of assaulting a former partner in 2001, a further 6 different partners had taken out domestic violence protection orders against him and he had also threatened to kill members of his own family. Mr Wall and Ms Palhares had at least seven contacts with the QPS between 29 December 2014 and Ms Palhares' death on 2 February 2015.

Queensland's only register of offenders is the child sex offender register established by the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (the CPOROPO Act).

That register is managed by the QPS and is part of a national reporting scheme that helps keep police informed of the whereabouts of those offenders and other personal details while they are at liberty in the community.

No part of the register is public and its purpose is to reduce the likelihood of reoffending and support the investigation and prosecution of future offences[cclxiii]. A serious domestic violence offender register could operate in a similar way or could provide for lawful disclosure by police about a registered offender in certain circumstances.

This proposal has a connection to previous proposals for a domestic violence disclosure scheme (sometimes referred to as 'Clare's law' after Clare Wood whose murder by her partner prompted the introduction of a legislative scheme in the UK).

Under a domestic violence disclosure scheme a person who is concerned they are at risk of domestic violence can get access from the police their partner's criminal history.

In 2017, the QLRC recommended against the introduction of that type of scheme in Queensland because the costs of funding it consistently across the state could not be justified, other investments in prevention would yield better results and there was a lack of good evidence about the effectiveness of such schemes.[cclxiv]

The introduction of a register of serious domestic violence offenders could be designed to work in a similar way to the scheme in the CPOROPO Act.

It could provide for registration if an offender has been convicted of three or more domestic violence offences or one serious indictable offence (these offences could be prescribed and could include offences such as rape, grievous bodily harm, arson and attempted murder) which was also a domestic violence offence.

If the scheme was to allow for lawful disclosures outside of police and government departments it could additionally provide that:

- a person in an intimate personal relationship (as defined in section 14 of the DFVP Act) could seek the other person's consent to seek advice from the police as to whether their partner was a registered offender and if that consent was provided, the police could make a lawful disclosure about a person being registered; and/or

- if a registered offender (the first person) engaged in behaviour that caused a police officer to reasonably believe that a person who was in an intimate personal relationship with a registered offender (the second person), or their children, were in danger of serious harm, the officer could make a lawful disclosure to the second person, the court or specified service providers that the first person was a registered offender.

Such a scheme could provide for significant criminal penalties for unlawful disclosure of information on the register to guard against vigilantism and to limit adverse impacts on a registered offender's ability to rehabilitate and reintegrate into the community.

The management and enforcement of this type of register would require significant further investment in resources by the Queensland Government.

The human rights under the HR Act that are potentially engaged and limited by this proposal are: Right to liberty and security of person;[cclxv] right to freedom of movement;[cclxvi] and right to privacy.[cclxvii]

The human rights under the HR Act that are potentially engaged and promoted by this proposal are: Right to life;[cclxviii] Protection from Torture and cruel, inhuman or degrading treatment;[cclxix] and Protection of families and children.[cclxx]

Option 12 – Amending the Dangerous Prisoners (Sexual Offenders) Act 2003 or creating a post-conviction civil supervision and monitoring scheme in the Penalties and Sentences Act 1992 for serious domestic violence offenders

The Queensland Domestic and Family Violence Death Review and Advisory Board (the DRAB) has recommended the Queensland Government give consideration to the introduction of post-conviction civil supervision and monitoring schemes for serious domestic violence offenders noting that similar schemes are in place in comparable jurisdictions.

Queensland has such a scheme for people convicted of serious sexual offences in the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSO Act).[cclxxi]

This could be achieved in one of two ways:

a) extending the DPSO Act so that it applies to high risk violent offenders (the DRAB notes NSW did this in 2013); or

b) creating a post-conviction civil control order scheme (England and Wales have scheme of orders like this called Criminal Behaviour Orders).[cclxxii]

The DPSO Act allows the Supreme Court to make continuing detention orders and supervision orders in relation to prisoners who are detained in custody for a serious sexual offence.

Queensland currently provides for a post-conviction civil control order scheme similar to the English Criminal Behaviour Orders (CBO) in Part 9D of the PS Act for offenders and/or offending involving organised crime.

An English sentencing court can make a CBO if:

- the court is satisfied 'beyond reasonable doubt' that the offender has engaged in behaviour that was likely to cause harassment alarm or distress to another person; and

- the court considers that making the order will prevent the offender from further engaging in the behaviour causing harassment, alarm or distress (no standard of proof stated).[cclxxiii]

If a CBO is made against a child it must be for a duration of no less than 1 year but no more than 3 years.[cclxxiv] For adults a CBO must be for no less than two years but can be of indefinite duration.[cclxxv]

A CBO can contain any prohibition or requirement a court thinks necessary to prevent the offender engaging in behaviour that is likely to cause harassment, alarm or distress to another person.[cclxxvi]

A breach of a CBO is an offence that carries a maximum penalty of 5 years imprisonment for convictions on indictment or 6 months imprisonment for summary conviction.[cclxxvii]

Post-conviction supervision schemes may provide benefits by requiring people convicted of domestic violence offences to engage with effective perpetrator programs of sufficient length, depth and quality to effect deep behavioural change and improving the safety of women and children.

Orders made under these schemes impose individually tailored conditions such as contact with corrections and case management, as well as participation in treatment/intervention programs. They would also provide appropriate sanctions for non-compliance including return to custody.

Post-conviction supervision schemes may also help to protect women and children from serial domestic abusers like Brock Wall (see discussion above).

The implementation of this option would require a very significant additional investment of resources. The Queensland Government would need to support the ongoing supervision of offenders in the community and enforce compliance with the post-conviction orders.

The human rights under the HR Act potentially engaged and limited by this proposal are: right to liberty and security of person;[cclxxviii] right to freedom of association;[cclxxix] right to privacy and reputation[cclxxx]; protection of families and children;[cclxxxi] cultural rights[cclxxxii]; cultural rights – Aboriginal and Torres Strait Islander peoples;[cclxxxiii] and rights in criminal proceedings.[cclxxxiv]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life[cclxxxv] ; Protection from Torture and cruel, inhuman or degrading treatment[cclxxxvi]; and Protection of families and children.[cclxxxvii]

Option 13 – Amending the Penalties and Sentences Act 1992 to create 'Serial family violence offender declarations' upon conviction based on the Western Australian model

The *Family Violence Legislation Reform Act 2020* (WA) introduced 'Serial family violence offender' declarations into Western Australia's sentencing regime. The new sections of the *Sentencing Act 1995* (WA) are set out in Appendix 10.

Targeting perpetrators who are repeatedly convicted of domestic violence offences—whether against the same partner or different partners—is another way criminal justice system could respond to the patterned offending of coercive control.

In Western Australia courts convicting a perpetrator of a prescribed family violence offence have a discretion to declare the perpetrator a 'serial family violence offender' if they have committed at least three prescribed offences, or at least two prescribed indictable-only offences[cclxxxviii].

The offences must have been committed within a 10-year time period, unless the court considers that exceptional circumstances exist.

The declaration is made prior to sentencing the offender. The declarations are for an indefinite duration but after 10 years the declared offender can make an application to have a declaration removed.

A court's decision to make a declaration is informed by:

- the risk of the offender committing another family violence offence;
- the offender's criminal record;
- the nature of the offences for which the offender has been convicted; and
- any other matter the court considers relevant.

When assessing an offender's risk of re-offending, the court, at its discretion, is empowered to take into account an assessment of the offender by an approved expert.

The consequences of being declared a serial family violence offender in Western Australia are:

- if the court determines that the appropriate sentence for an offence committed by a declared offender is a non-custodial sentence the court must consider the application of an electronic monitoring requirement;

- if a declared offender is imprisoned for a family violence offence, the Prisoners Review Board is required to consider an order for electronic monitoring as part of any parole order, re-entry release order or post-sentence supervision order made in respect of a family violence offence[cclxxxix];

- disqualification from holding a licence for firearms and explosives; and

- upon arrest for a future family violence offence, a declared offender will be subject to a presumption against bail and, if bail is granted, consideration must be given to imposing a home detention condition with electronic monitoring.

If a similar declaration scheme were adopted in Queensland it could enhance women and children's safety when a convicted perpetrator is released into the community.

There would be considerable resource impacts for the Queensland Government, such as the need to increase the availability of electronic monitoring devices and additional staff and resources to monitor the devices and enforce potential breach activity, including in the courts.

The human rights under the HR Act potentially engaged and limited by this proposal are: right to liberty and security of person;[ccxc] right to freedom of association;[ccxci] right to privacy and reputation;[ccxcii] protection of families and children;[ccxciii] cultural rights;[ccxciv] cultural rights – Aboriginal and Torres Strait Islander peoples;[ccxcv] and rights in criminal proceeding.[ccxcvi]

The human rights under the HR Act potentially engaged and promoted by this proposal are: Right to life;[ccxcvii] Protection from Torture and cruel, inhuman or degrading treatment;[ccxcviii] and Protection of families and children.[ccxcix]

Next steps

Coercive control and how the law, police, the legal system and the broader community should respond is a complex issue about which there are passionate and diverse views. The Taskforce wants to hear all those views.

You are encouraged to make a submission to the Taskforce. You may choose to respond to the discussion questions posed and issues raised in this paper. Or you may want to tell us about issues we've not identified or provide your proposals for reform of legislation or the responses of systems and institutions, including police and domestic and family violence services. The Taskforce will carefully consider all submissions.

Submissions in response to this discussion paper can be made until Friday, 9 July 2021.

Taskforce members will soon be undertaking targeted consultation around Queensland and undertaking broad and wide ranging consultation on the issues raised in this discussion paper and listening to feedback and ideas.

To find out more details on the Taskforce consultation and engagement activities, please go to our website:

Consultation | Women's Safety and Justice Taskforce (womenstaskforce.qld.gov.au)

Appendix 1

Timeline of key Queensland DFV law reforms

1989	*Domestic and Family Violence Protection Act 1989* commenced Who could make orders: Magistrates Court When order can be made: when court is satisfied that: • an act of domestic violence has occurred • a domestic relationship exists • the person who committed domestic violence is likely to commit domestic violence again or if the act was a threat, the person is likely to carry out the threat Domestic relationship: spousal relationship, intimate personal relational, family relationship, informal care relationship (following amendments made in 2002) Domestic violence: includes wilful injury, wilful damage to the other person's property, intimidation or harassment, threatening behaviour, threatening to commit such acts, procuring someone else to commit such acts. Who could apply: an aggrieved, a person authorised by an aggrieved to appear, a police officer investigating the matter, a person acting under another Act for the aggrieved such as the guardianship laws at the time (following amendments in 2002). Conditions: • General conditions that the respondent be of good behaviour and not commit or procure someone else to commit domestic violence • Other conditions the court considers necessary such as: o prohibiting behaviour that would constitute domestic violence, o remaining at, entering or approaching the enter premises, o approaching, contacting or attempting to do so, the aggrieved or a named person, o locating or attempting to locate the aggrieved or a named person, and o stated conduct towards a child of the aggrieved Children and named persons: can include the child, relative or associate of the aggrieved if the court is satisfied the respondent is likely to commit associated domestic violence towards the person Duration: the period ordered by the court, cannot be longer than 2 years. Enforcement: contravention of a condition of an order that had been served on a respondent is an offence, maximum penalty • 1 year imprisonment or $4000 • If convicted on at least 2 occasions for breaching a domestic violence order within a period of up to 3 years before the present offence, 2 years imprisonment
2010	*Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010* • Introduced partial defence to murder of killing in an abusive domestic relationship • Intended to address limitations of defences of provocation and self-defence when a victim of domestic violence kills the abusive person

2012	*Domestic and Family Violence Protection Act 2012 commenced* Domestic violence: more contemporary definition to better reflect behaviours used to exert power and control, to include behaviour that is physically or sexually abusive, emotionally, psychologically or economically abusive, threatening or coercive, or behaviour that in any other way controls or dominates another person When an order can be made: when court is satisfied that: • an act of domestic violence has occurred • a domestic relationship exists • an order is necessary or desirable to protect an aggrieved from domestic violence Children: child can be named on an order if it is necessary and desirable to protect the child from being exposed to domestic violence and provides that exposing a child to domestic violence means the child seeing, hearing, or otherwise experiencing the effects of domestic violence committed by the respondent. Police powers: introduced changes to increase capacity of police to provide quick and effective responses to domestic violence including: • an obligation of police to investigate domestic violence • a power to issue a police protection notice with standard conditions and the option for a cool down condition that is an application to the court for a domestic violence order • powers of detention where there is a danger of injury to a person or damage to a person's property • powers to require a respondent to remain at a place for the purpose of service Conditions: additional conditions that can be imposed on a respondent including: • an order for a respondent to attend an approved intervention program or counselling • ouster conditions • conditions relating to the protection of an unborn child Family law orders: broad discretion to consider family law orders and use powers under the *Family Law Act 1975* that enable state courts to modify or suspend the order in light of the conditions imposed on a domestic violence order. Duration of orders: protection orders can be made for up to 2 years unless the court is satisfied there are 'special reasons' for making a longer duration Enforcement: increase in the maximum penalty for the offence of contravening a domestic violence order to 3 years imprisonment and 2 years imprisonment for the breach of a police protection notice
2016	*Criminal Law (Domestic Violence) Amendment Act 2015* • Increased maximum penalty for the breach of a domestic violence order from 2 to 3 years for a first offence and to 5 years imprisonment if the respondent has previously been convicted of breaching an order or another domestic violence offence • Enabled charges for criminal offences to indicate that they occurred in a domestic violence context and providing that convictions for domestic violence offences be noted on a person's criminal history • Amended the *Evidence Act 1977* to ensure the availability of protections for special witnesses apply to all victims of domestic violence

2016	*Criminal Law (Domestic Violence) Amendment Act 2016* • Amended the *Penalties and Sentences Act 1992* to make provision for domestic and family violence to be an aggravating factor on sentence • Amended the Criminal Code to create an offence of choking, suffocation and strangulation in a domestic setting
2016/2017	*Domestic and Family Violence Protection and Other Legislation Amendment Act 2016* When an order can be made: clarifies that a court can issue a domestic violence order if satisfied a victim has been threatened or fears that the respondent will commit domestic violence against them. Police powers: simplified and expanded range of police responses available including: • requiring police to consider what action should be taken following an investigation • expanded protection under a police protection notice by enabling them to name children, relatives and associates and include additional conditions that exclude a respondent from the home, prevent them from contacting the aggrieved or named children • suspending a weapons licence when a police protection notice is issued • removing requirement for police to be in same location as respondent to issue a police protection notice • expanding power to direct a person to move to and remain at a place for the purpose of service • preventing police from issuing cross police protection notices or issuing a notice when one has already been issued or a domestic violence order made • enabling police to share limited information with specialist domestic and family violence services providers if there is a threat to a victim's life, health or safety or if a person has committed domestic violence Conditions: changes to enable tailored protection for victims including: • requiring courts to consider whether additional more specific conditions should be included in the order • requiring courts to consider what other conditions are necessary or desirable to protect the aggrieved person from domestic violence Family law orders: requires Court to always consider any family law order that it is aware of and to always consider whether to exercise its powers to resolve an inconsistency between the order and the domestic violence order Duration of orders: Clarified that the paramount principle in determining appropriate duration is the safety, protection and wellbeing of the victims. If the court does not specify the duration, the order remains in place for 5 years. A court can only make an order for less than 5 years if there are reasons for doing so. Enforcement: increased maximum penalty for breaching a police protection notice to 3 years imprisonment Information sharing: introduced a framework to enable certain government and non-government service providers to share information about the victim and the perpetrator in certain circumstances for the purpose of assessing risk and managing cases where there is a serious threat to a person's life, health or safety because of domestic violence

	National recognition of orders: enabled the automatic recognition of domestic violence orders made anywhere in Australia and New Zealand by implementing the National Domestic Violence Order Scheme
2017	*Bail (Domestic Violence) and Another Act Amendment Act 2017* • Amended the *Bail Act 1*980 to: o enable a court to include as a condition of bail that an accused person wear a tracking device and any condition considered necessary to facilitate the operation of the device o require, when assessing whether there is an unacceptable risk if a defendant who is charged with a domestic violence offence or an offence against the *Domestic and Family Violence Prevention Act 2012* is released on bail, a court or police officer to consider the risk of further domestic violence or associated domestic violence being committed by the defendant o require a court or police officer to refuse bail unless a defendant shows cause why detention in custody is not justified if they have been charged with a domestic violence offence or an offence against the *Domestic and Family Violence Protection Act 2012* (if it involved the use, threatened or attempted use of unlawful violence to a person or property, or the defendant was convicted, within 5 years before the commission of the offence was convicted of another offence involving the use, threatened or attempted use of unlawful violence, or the defendant, within 2 years before the commission of the offence, was convicted of another offence against the *Domestic and Family Violence Protection Act 2012*). • Amended the *Corrective Services Act 2006* to enable a person who is an aggrieved person in a domestic violence order to register as an eligible person in relation to a prisoner to receive information about the prisoner's eligibility dates for discharge or release, date of discharge or release, the death or release of the prisoner or any circumstances relating to the prisoner that could reasonably be expected to endanger the person's life or physical safety.

Appendix 2

Provisions of the Domestic and Family Violence Protection Act 2012 (Qld) relevant to requirements on police to personally serve documents

Pursuant to the *Domestic and Family Violence Protection Act 2012* (DFVP Act) police are required to personally serve the following documents on a respondent:

- Temporary Protection Order (TPO) made at applicant's request prior to the service of an application for a Protection Order (PO) – s36 of the DFVP Act;
- application to vary a Domestic Violence Order (DVO) made by a person other than the respondent (s 88(1) of the DFVPA);
- Police Protection Notice (PPN) (ss 109 and 124(1)(d)) of the DFVP Act)
- release conditions (s 124(1)(d) of the DFVP Act);
- copy of the urgent TPO made by a magistrate (with a copy of the PO application – s133 of the DFVPA);and
- a DVO or varied DVO (meaning TPO and PO) – s184(2) of the DFVP Act.

Section 184 of the DFVP Act provides for service of a DVO or varied DVO and that a police officer must personally serve the order on the respondent. Under this section, personal service by police is not required if:

- the respondent is present in court when the order or varied order is made and the Clerk of the Court has given a copy of the DVO or varied DVO to the respondent or the respondent's appointee at the court or sends a copy of the order or varied order, to the respondent's last known address.
- the police officer has told the respondent (as mentioned in 177(1)(c)) about the existence of the DVO made or varied by the court and the order or varied order has been served on the respondent other than personally
- the order is a TPO that names the aggrieved and named persons as a PPN that is, or release conditions that are in force against the respondent, and imposes the same conditions as the notice or conditions. A TPO that this applies to is taken to have been served on the respondent when it was made.

88 Service of application

(1) If the applicant for the variation of the domestic violence order is a person other than the respondent, a police officer must personally serve the copy of the application prepared under section 87(1) or (2)(a) on the respondent.

(2) The copy of the application must state that, if the respondent does not appear in court—

(a) the court may hear and decide the application in the respondent's absence; or

(b) the court may issue a warrant for the respondent to be taken into custody by a police officer if the court believes that it is necessary for the respondent to be heard.

(3) If the applicant for the variation is the respondent, a police officer must personally serve the copy of the application prepared under section 87(1) or (2)(a) on—

(a) the aggrieved; and (b) any named person who is affected by the application for the variation.

(4) To remove any doubt, it is declared that, if an application for a variation of a domestic violence order is made by a police officer, the application may be served on the respondent before the application is filed in the court.

Note— Section 153 provides that a police officer may file a document in a proceeding under this Act by electronic or computer-based means.

133 Service

(1) A police officer must—

(a) personally serve the copy of the temporary protection order prepared under section 132(1)(a) on the respondent, together with a copy of the application for the protection order; and

Note— See section 34 (Service of application) for the obligation to serve on the respondent a copy of the application for the protection order.

(b) give a copy of the order to the aggrieved, together with a copy of the application for the protection order.

Note— See section 35 (Copy of application must be given to aggrieved) for the obligation to give to the aggrieved the copy of the application for the protection order.

(2) However, a police officer need not serve on the respondent, or give to the aggrieved, a copy of the application for the protection order if the police officer reasonably believes that a copy of the application has already been served or given.

Division 5 Power to direct person to remain, or move to and remain, at place

134 Application of division

This division applies if—

(a) a police officer reasonably suspects a person is named as a respondent in—

(i) an application for a protection order that has not been served on the person; or

(ii) a domestic violence order that has not been served on the person; or

(iii) a police protection notice that has been issued but not served on the person; or

(b) a police officer intends to issue a police protection notice against a person.

134A Power to give direction

(1) The police officer may give the person a direction under subsection (2), (4) or (6)(b) to enable the police officer to—

(a) if the police officer has a copy of the application—serve the person with the application; or

(b) if the police officer has a copy of the order—serve the person with the order; or

(c) if the police officer does not have a copy of the order—arrange for the person to be told about the existence of the order and the conditions imposed by the order; or

(d) if the police officer has a copy of the issued police protection notice—serve the person with the notice and explain the notice to the person; or

(e) if the police officer does not have a copy of the issued police protection notice—arrange for the person to be told about the existence of the notice and the conditions imposed by the notice; or

(f) if the police officer intends to issue a police protection notice to the person—issue the notice against the person, serve the person with the notice and explain the notice to the person.

(2) The police officer may direct the person to remain at an appropriate place in the person's current location.

(3) Subsection (4) applies if, in the police officer's opinion, it is contrary to the interests of the person or another person for the person to remain at the person's current location while the police officer does a thing mentioned in subsection (1).

(4) The police officer may direct the person to move to another stated location and remain at an appropriate place at the other location.

Examples of locations a police officer may direct a person to move to—

- *a police station or police beat*
- *a courthouse*

• *the premises of a community organisation that provides support services to respondents*

(5) Subsection (6) applies if the police officer gives a direction under subsection (4) and the person is to be transported by a police officer to the other location.

(6) Before the person is transported to the other location, the police officer may—

(a) search the person for anything in the person's possession that may be used to cause harm to the person or another person; and

Note— See the Police Powers and Responsibilities Act 2000, chapter 20, part 3 for safeguards that apply to a search under this paragraph.

(b) if, during the search, the police officer finds a thing mentioned in paragraph (a)—direct the person to leave the thing at the person's current location before being transported to the other location; and

(c) if, during the search, the police officer finds a thing the officer reasonably suspects is evidence of the commission of an offence—seize the thing.

(7) A thing seized under subsection (6)(c) is, for the Police Powers and Responsibilities Act 2000, section 622, taken to have been seized under that Act.

Note— See also the Police Powers and Responsibilities Act 2000, chapter 21, part 3.

(8) In giving a direction under subsection (2), (4) or (6)(b), the police officer must tell the person the following—

(a) why the person is being given the direction;

(b) if the direction includes a direction to move to another location—

(i) where the other location is; and

(ii) how the person is to move to the other location, including that a police officer will remain in the presence of the person; and

(iii) that the person may be searched before moving to the other location; and

(iv) that the person may be directed to leave, at the person's current location, anything found in the search that may be used to cause harm to the person or another person; and

(v) that anything found in the search may be seized if the officer reasonably suspects the thing may be evidence of the commission of an offence;

(c) the place, at the person's current location or the other location, where the person is to remain;

(d) how long the person may be required to remain at the place;

(e) that the person is not under arrest or in custody while complying with the direction.

(9) The police officer giving the direction must also make reasonable efforts to tell the aggrieved the matters mentioned in subsection (8).

(10) Failure to comply with subsection (9) does not invalidate or otherwise affect the direction

184 Service of order on respondent

(1) This section applies if a court—

(a) makes a domestic violence order; or

(b) varies a domestic violence order; or

(c) makes an intervention order.

(2) A police officer must personally serve the order, or the varied order, on the respondent.

(3) The clerk of the court must, as soon as reasonably practicable after the order is made or varied, give a copy of the order, or varied order, to the officer in charge of the police station nearest the place where the respondent lives or was last known to live.

(4) Subsections (2) and (3) do not apply if the respondent is present in court when the order is made or varied and the clerk of the court—

(a) gives a copy of the order, or varied order, to the respondent, or the respondent's appointee, at the court; or
(b) sends a copy of the order, or varied order, to the respondent's last known address.

(5) Also, subsection (2) does not apply—

(a) if—

(i) a police officer has told the respondent, as mentioned in section 177(1)(c), about the existence of a domestic violence order made or varied by the court; and
(ii) the order, or the varied order, has been served on the respondent other than by being personally served on the respondent; or

(b) the order is a temporary protection order that—

(i) names the same aggrieved and named persons as a police protection notice that is, or release conditions that are, in force against the respondent; and
(ii) imposes the same conditions as the notice or conditions.

(6) A temporary protection order mentioned in subsection (5)(b) is taken to have been served on the respondent when it was made.

(7) For subsection (5)(b), in deciding whether a temporary protection order imposes the same conditions as a police protection notice, a cool-down condition included in the notice is not to be taken into account.

(8) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order or an intervention order.

(9) This section is subject to section 188.

(10) In this section— appointee, of a respondent, means a person authorised in writing by the respondent to receive a copy of a domestic violence order or any other document authorised or required to be given to the respondent under this Act.

Note— See also section 85 for the requirement for a copy of a domestic violence order served on, or given or sent to, the respondent under this section to include a written explanation of the order

Appendix 3

Family Violence Act 2004 (Tas)

8. Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

(a) coercing his or her spouse or partner to relinquish control over assets or income;

(b) disposing of property owned –

(i) jointly by the person and his or her spouse or partner; or

(ii) by his or her spouse or partner; or

(iii) by an affected child –

without the consent of the spouse or partner or affected child;

(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

9. Emotional abuse or intimidation

(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

(2) In this section –

a course of conduct includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.

9A. Limitation period for offences under section 8 or 9

A complaint for an offence against section 8 or 9 must be made against a person within 12 months from the day on which the action, or the last action, that made up the course of conduct to which the matter of complaint relates, occurred.

Appendix 4

Serious Crime Act 2015 (E&W)

76 Controlling or coercive behaviour in an intimate or family relationship

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are "personally connected" if—

(a) A is in an intimate personal relationship with B, or

(b) A and B live together and—

(i) they are members of the same family, or

(ii) they have previously been in an intimate personal relationship with each other.

(3) But A does not commit an offence under this section if at the time of the behaviour in question—

(a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and

(b) B is under 16.

(4) A's behaviour has a "serious effect" on B if—

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

(5) For the purposes of subsection (1)(d) A "ought to know" that which a reasonable person in possession of the same information would know.

(6) A and B are "personally connected" if any of the following applies—

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they have agreed to marry one another (whether or not the agreement has been terminated);

(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(e) they are, or have been, in an intimate personal relationship with each other;

(f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (6A));

(g) they are relatives.

(6A) For the purposes of subsection (6)(f) a person has a parental relationship in relation to a child if—

(a) the person is a parent of the child, or

(b) the person has parental responsibility for the child."

(7) In subsection (6) and (6A)—

"civil partnership agreement" has the meaning given by section 73 of the Civil Partnership Act 2004;

"child" means a person under the age of 18 years;

"parental responsibility" has the same meaning as in the Children Act 1989;

"relative" has the meaning given by section 63(1) of the Family Law Act 1996.

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

Appendix 5

Domestic Violence Act 2018 (Ireland)

Offence of coercive control

39. (1) A person commits an offence where he or she knowingly and persistently engages in behaviour that—

(a) is controlling or coercive,

(b) has a serious effect on a relevant person, and

(c) a reasonable person would consider likely to have a serious effect on a relevant person.

(2) For the purposes of subsection (1), a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person—

(a) to fear that violence will be used against him or her, or

(b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, and

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

(4) In this section, a person is a "relevant person" in respect of another person if he or she—

(a) is the spouse or civil partner of that other person, or

(b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

Appendix 6

Domestic Abuse (Scotland) Act 2018

Engaging in course of abusive behaviour

1 Abusive behaviour towards partner or ex-partner

(1) A person commits an offence if—

(a) the person ("A") engages in a course of behaviour which is abusive of A's partner or ex-partner ("B"), and

(b) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,

(b) that either—

(i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) In the further conditions, the references to psychological harm include fear, alarm and distress.

2 What constitutes abusive behaviour

(1) Subsections (2) to (4) elaborate on section 1(1) as to A's behaviour.

(2) Behaviour which is abusive of B includes (in particular)—

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B's day-to-day activities,

(d) depriving B of, or restricting B's, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2)—

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

4 Evidence of impact on victim

(1) The commission of an offence under section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).

(2) The operation of section 2(2)(b) does not depend on behaviour directed at someone actually having on B any of the relevant effects set out in section 2(3).

(3) Nothing done by or mentioned in subsection (1) or (2) prevents evidence from being led in proceedings for an offence under section 1(1) about (as the case may be)—

(a) harm actually suffered by B as a result of the course of behaviour, or

(b) effects actually had on B of behaviour directed at someone.

5 Aggravation in relation to a child

(1) This subsection applies where it is, in proceedings for an offence under section 1(1)—

(a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and

(b) proved that the offence is so aggravated.

(2) The offence is so aggravated if, at any time in the commission of the offence—

(a) A directs behaviour at a child, or

(b) A makes use of a child in directing behaviour at B.

(3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A directs at B as part of the course of behaviour.

(4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).

(5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—

(a) has ever had any—

(i) awareness of A's behaviour, or

(ii) understanding of the nature of A's behaviour, or

(b) has ever been adversely affected by A's behaviour.

(6) Evidence from a single source is sufficient to prove that the offence is so aggravated.

(7) Where subsection (1) applies, the court must—

(a) state on conviction that the offence is so aggravated,

(b) record the conviction in a way that shows that the offence is so aggravated,

(c) take the aggravation into account in determining the appropriate sentence, and

(d) state—

(i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or

(ii) otherwise, the reasons for there being no such difference.

(8) Each of subsections (2) to (4) operates separately along with subsection (5), but subsections (2) to (4) may be used in combination along with subsection (5).

(9) Nothing in subsections (2) to (5) prevents evidence from being led about—

(a) a child's observations of, or feelings as to, A's behaviour, or

(b) a child's situation so far as arising because of A's behaviour.

(10) In subsections (4) and (5), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.

(11) In this section, the references to a child are to a person who—

(a) is not A or B, and

(b) is under 18 years of age.

6 Defence on grounds of reasonableness

(1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

(2) That is to be regarded as shown if—

(a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and

(b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

7 Presumption as to the relationship

(1) In proceedings for an offence under section 1(1), the matter of B being A's partner or ex-partner is to be taken as established—

(a) according to the stating of the matter in the charge of the offence in the complaint or indictment, and

(b) unless the matter is challenged as provided for in subsection (2).

(2) The matter is challenged—

(a) in summary proceedings, by—

(i) preliminary objection before the plea is recorded, or

(ii) later objection as the court allows in special circumstances,

(b) in proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the Criminal Procedure (Scotland) Act 1995.

8 Alternative available for conviction

(1) In proceedings for an offence under section 1(1), A may be convicted of an alternative offence if the facts proved against A—

(a) do not amount to the offence under section 1(1), but

(b) do amount to the alternative offence.

(2) An alternative offence as referred to in subsection (1) is one or other of these—

(a) an offence under section 38(1) (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010,

(b) an offence under section 39 (offence of stalking) of that Act

Appendix 7

Section 13 of the Human Rights Act 2019 (Qld)

13 Human rights may be limited

(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

(2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—

(a) the nature of the human right;

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

(e) the importance of the purpose of the limitation;

(f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;

(g) the balance between the matters mentioned in paragraphs (e) and (f).

Appendix 8

320B Cruelty – proposed draft

(1) A person who commits cruelty to another person commits a crime
Maximum Penalty – 5 years imprisonment.

(2) If the person commits cruelty to a person in a relevant relationship the offender is liable to maximum penalty of 7 years imprisonment.

(3) In this section –

Cruelty means the infliction of pain and suffering on a person by an act or a serious of acts done on 1 or more than 1 occasion.
Pain or suffering includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.
Relevant relationship means a relevant relationship under the *Domestic and Family Violence Protection Act 2012* (Qld) s. 13.

Appendix 9

Evidence Act 1906 (WA)

37. Terms used

In sections 38 to 39G —

family member has the meaning given in the *Restraining Orders Act 1997* section 4(3);

family violence has the meaning given in the *Restraining Orders Act 1997* section 5A;

help-seeking behaviour means any action undertaken by a victim of family violence to address, or attempt to address, any aspect of the family violence including (but not limited to) reporting the family violence to the police, obtaining a restraining order, finding accommodation in a refuge, separating from an abusive person, or seeking counselling or external support;

safety option, in relation to an accused person who is (or may be) a victim of family violence, means an act that may have stopped the violence, other than an act which constitutes (or allegedly constitutes) an offence with which the person is charged.

[Section 37 inserted: No. 30 of 2020 s. 94.]

38. What may constitute evidence of family violence

(1) For the purposes of sections 39 to 39G, evidence of family violence, in relation to a person, includes (but is not limited to) evidence of any of the following —

(a) the history of the relationship between the person and a family member, including violence by the family member towards the person, or by the person towards the family member, or by the family member of the person in relation to any other family member;

(b) the cumulative effect of family violence, including the psychological effect, on the person or a family member affected by that violence;

(c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;

(d) responses by family, community or agencies to family violence, including further violence that may be used by a family member to prevent, or in retaliation to, any help-seeking behaviour or use of safety options by the person;

(e) ways in which social, cultural, economic or personal factors have affected any help-seeking behaviour undertaken by the person, or the safety options realistically available to the person, in response to family violence;

(f) ways in which violence by the family member towards the person, or the lack of safety options, were exacerbated by inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;

(g) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from a person who commits family violence;

(h) the psychological effect of family violence on people who are or have been in a relationship affected by family violence;

(i) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

(2) Subsection (1) does not limit the operation of the *Restraining Orders Act 1997* section 5A(2).

[Section 38 inserted: No. 30 of 2020 s. 94.]

39. *Expert evidence of family violence*

(1) This section applies to any criminal proceedings where evidence of family violence is relevant to a fact in issue.

(2) The evidence of an expert on the subject of family violence is admissible in relation to any matter that may constitute evidence of family violence.

(3) Evidence given by the expert may include —

(a) evidence about the nature and effects of family violence on any person; and

(b) evidence about the effect of family violence on a particular person who has been the subject of family violence.

(4) For the purposes of this section, an expert on the subject of family violence includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of any matter that may constitute evidence of family violence.

[Section 39 inserted: No. 30 of 2020 s. 94.]

39A. *Evidence of family violence — general provision*

In proceedings for an offence, evidence of family violence is admissible if family violence is relevant to a fact in issue.

[Section 39A inserted: No. 30 of 2020 s. 94.]

39B. *Evidence of family violence — self-defence*

Without limiting any other evidence that may be adduced, in criminal proceedings in which self-defence in response to family violence is an issue, evidence of family violence may be relevant to determining whether —

(a) a person has a belief that an act was necessary to defend the person or another person from a harmful act, including a harmful act that was not imminent; or

(b) a person's act was a reasonable response by the person in the circumstances as the person believed them to be; or

(c) there are reasonable grounds for a particular belief by a person.

[Section 39B inserted: No. 30 of 2020 s. 94.]

39C. *Request for direction on family violence — self-defence*

(1) In criminal proceedings in which self-defence in response to family violence is an issue, defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with section 39E and all or specified parts of section 39F.

(2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.

(3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.

(4) The trial judge —

(a) must give the direction as soon as practicable after the request is made; and

(b) may give the direction before any evidence is adduced in the trial.

(5) The trial judge may repeat a direction at any time in the trial.

(6) This section, and sections 39E and 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness.

[Section 39C inserted: No. 30 of 2020 s. 94.]

39D. Request for direction on family violence — general provision

(1) In criminal proceedings in which family violence is an issue, prosecution or defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with all or specified parts of section 39F.

(2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.

(3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.

(4) The trial judge —

(a) must give the direction as soon as practicable after the request is made; and

(b) may give the direction before any evidence is adduced in the trial.

(5) The trial judge may repeat a direction at any time in the trial.

(6) This section, and section 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness.

[Section 39D inserted: No. 30 of 2020 s. 94.]

39E. Content of direction on family violence

In giving a direction under section 39C, the trial judge must inform the jury that —

(a) self-defence is, or is likely to be, an issue in the trial; and

(b) as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self-defence; and

(c) evidence in the trial is likely to include evidence of family violence committed by the victim against the accused or another person whom the accused was defending.

[Section 39E inserted: No. 30 of 2020 s. 94.]

39F. Additional matters for direction on family violence

(1) In giving a direction requested under section 39C or 39D, the trial judge may include any of the following matters in the direction —

(a) that family violence —

(i) is not limited to physical abuse and may, for example, include sexual abuse, psychological abuse or financial abuse;

(ii) may amount to violence against a person even though it is immediately directed at another person;

(iii) may consist of a single act;

(iv) may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial;

(b) if relevant, that experience shows that —

(i) people may react differently to family violence and there is no typical, proper or normal response to family violence;

(ii) it is not uncommon for a person who has been subjected to family violence to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;

(iii) it is not uncommon for a person who has been subjected to family violence not to report family violence to police or seek assistance to stop family violence;

(iv) decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by a variety of factors;

(v) it is not uncommon for a decision to leave an abusive partner, or to seek assistance, to increase apprehension about, or the actual risk of, harm;

(c) in the case of self-defence, that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self-defence in relation to the offence charged.

(2) In making a direction under subsection (1), the trial judge may also indicate that behaviour, or patterns of behaviour, that may constitute family violence may include (but are not limited to) —

(a) placing or keeping a person in a dependent or subordinate relationship;

(b) isolating a person from family, friends or other sources of support;

(c) controlling, regulating or monitoring a person's day-to-day activities;

(d) depriving or restricting a person's freedom of movement or action;

(e) restricting a person's ability to resist violence;

(f) frightening, humiliating, degrading or punishing a person, including punishing a person for resisting violence;

(g) compelling a person to engage in unlawful or harmful conduct.

(3) If the trial judge makes a direction that relates to subsection (1)(b)(iv), the trial judge may also indicate that decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by such things as the following —

(a) the family violence itself;

(b) social, cultural, economic or personal factors, or inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;

(c) responses by family, community or agencies to the family violence or to any help-seeking behaviour or use of safety options by the person;

(d) the provision of, or failure in the provision of, safety options that might realistically have provided ongoing safety to the person, and the person's perceptions of how effective those safety options might have been to prevent further harm;

(e) further violence, or the threat of further violence, used by a family member to prevent, or in retaliation to, any help-seeking behaviour or use of safety options by the person.

[Section 39F inserted: No. 30 of 2020 s. 94.]

39G. Application of s. 39E and 39F to criminal proceedings without juries

If a court is sitting without a jury, the court's reasoning with respect to any matter in relation to which sections 39E and 39F make provision must, to such extent as the court thinks fit, be consistent with how a jury would be directed in accordance with those sections in the particular case.

[Section 39G inserted: No. 30 of 2020 s. 94.]

Appendix 10

Sentencing Act 1995 (WA)

97A. Declaration of serious violent offence for purposes of Sentence Administration Act 2003 Part 5A

(8) In this section —

family relationship has the meaning given in the Restraining Orders Act 1997 section 4(1);

offence does not include an offence specified in the *High Risk Serious Offenders Act 2020* Schedule 1;

victim has the meaning given in section 13.

(2) This section applies if —

(a) a court is sentencing an offender to imprisonment for an indictable offence; and

(b) the offence —

(i) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, a firearm against another person; or

(ii) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person; or

(iii) resulted in serious harm to, or the death of, another person.

(3) The sentencing court may declare the offence committed by the offender to be a serious offence for the purposes of —

(a) the *High Risk Serious Offenders Act 2020*; and

(b) the *Sentence Administration Act 2003* Part 5A.

(4) The court must regard the existence of any of the following circumstances as an aggravating factor when deciding whether to make a declaration —

(a) the offender has a history of violent offending;

(b) the offender was in a family relationship with a victim of the offence when the offence was committed;

© a victim of the offence was under 12 years of age when the offence was committed.

(5) A declaration may be made by the court on its own initiative or on an application by the prosecutor.

(6) In addition to subsection (2), this section applies if —

(a) a court is sentencing an offender to imprisonment for an offence; and

(b) the offence is a family violence offence; and

© the offender is a serial family violence offender.

(7) In a case where subsection (6) applies, the sentencing court must make a declaration under this section.

(8) This section does not limit the ability of a court to make a declaration in relation to the same person under section 124E.

[Section 97A inserted: No. 45 of 2016 s. 20; amended: No. 6 of 2017 s. 12(2)-(4); No. 29 of 2020 s. 120(2) and (3); No. 30 of 2020 s. 24.]

Division 3 — Declarations

[Heading inserted: No. 30 of 2020 s. 29.]

124D. Terms used

In this Division —

approved expert means a person, or a person of a class of persons, approved by the CEO (corrections) as having the appropriate qualifications, skills and experience to carry out assessments under section 124E;

firearm has the meaning given in section 106(5);

prescribed offence means —

(a) a family violence offence; or

(b) an offence against a law of the Commonwealth, of another State or of a Territory, or of a place outside Australia, if the act or acts constituting the offence would, if committed in the State, constitute a family violence offence; or

(c) an attempt to commit such an offence under paragraph (a) or (b).

[Section 124D inserted: No. 30 of 2020 s. 29.]

124E. Serial family violence offenders

(1) A court convicting an offender of a family violence offence may declare the offender to be a serial family violence offender if —

(a) the offender has, on that conviction, been convicted of at least 2 prescribed offences which may only be tried on indictment, with at least 2 of those prescribed offences having been committed on different days; or

(b) the offender has, on conviction, been convicted of at least 3 prescribed offences, with at least 3 of those prescribed offences having been committed on different days.

(2) For the purposes of subsection (1) —

(a) the victim of each offence may, but need not be, the same person; and

(b) the offences need not be the same offences; and

(c) the offences need not to have occurred in the State as long as 1 of them did; and

(d) 1 or more of the convictions may have been convictions by a court outside the State; and

(e) it is immaterial in which order the offences were committed; and

(f) an offence will not be taken into account if the offence was committed by a person who, at the time of the commission of the offence, was under 18 years of age; and

(g) each of the offences taken into account must have been committed within a period of 10 years of each other unless the court is satisfied that exceptional circumstances exist that make it appropriate to make a declaration under this section (after taking into account the matters referred to in subsection (4) and such other matters as the court may consider to be relevant).

(3) A declaration may be made by the court on its own initiative or on an application by the prosecutor.

(4) Without limiting any other matter that a court dealing with an application under this section may consider to be relevant, the court must have regard to the following —

(a) the level of risk that the offender may commit another family violence offence;

(b) the offender's criminal record;

(c) the nature of the prescribed offences for which the offender has been convicted.

(5) In addition, the court may —

(a) before it makes a declaration, order an assessment of the offender by an approved expert; and

(b) take the report of that assessment into account when deciding whether to make the declaration.

(6) In connection with the operation of subsection (5) —

(a) an approved expert is authorised by this subsection to examine and assess the offender and to report in accordance with this section; and

(b) the report may indicate —

(i) the approved expert's assessment of the level of risk that the offender may commit another family violence offence; and

(ii) the reasons for this assessment;

and

(c) in preparing the report, the approved expert may —

(i) take into account any other information or report provided to, or obtained by, the approved expert; and

(ii) include in the report any other assessment or opinion, or address any other matter, that the approved expert considers to be relevant in the circumstances;

and

(d) the approved expert may prepare the report even if the offender does not cooperate, or does not fully cooperate, in any examination associated with the assessment.

[Section 124E inserted: No. 30 of 2020 s. 29.]

124F. Serial family violence offender declaration — related matters

(1) Section 124E does not limit the ability of a court to make a declaration in relation to the same person under section 97A.

(2) Except as provided in subsections (5) and (6), the declaration of a person as a serial family violence offender will have effect for an indefinite period.

(3) A person who is subject to a declaration may apply for the cancellation of the declaration if the declaration has been in effect for a period of at least 10 years.

(4) An application may be made to any court of criminal jurisdiction unless the court is an inferior court to the court that made the declaration.

(5) A court may cancel a declaration if satisfied that the declaration need no longer apply after taking into account the matters that would be taken into account by a court when considering whether to make a declaration under section 124E(1).

(6) If a person is declared to be a serial family violence offender and the person's conviction for a prescribed offence taken into account for the purposes of making the declaration is set aside or quashed, the declaration ceases to be in force at the conclusion of the proceedings in which the conviction is set aside or quashed unless there are still at least 3 other prescribed offences, or 2 other prescribed offences which may be only be tried on indictment, that qualify for the making of a declaration under section 124E(1).

[Section 124F inserted: No. 30 of 2020 s. 29.]

124G. Disqualification if declaration made

(1) If a court makes a declaration under this Division —

(a) the serial family violence offender is disqualified from —

(i) holding or obtaining a licence or permit, or an approval, for a firearm under the *Firearms Act 1973*; or

(ii) holding or obtaining a licence, permit or authorisation to hold an explosive under the *Dangerous Goods Safety Act 2004*;

and

(b) by force of this section any relevant licence, permit, approval or authorisation in relation to which a disqualification applies under paragraph (a) is cancelled; and

(c) the court must ensure that details of the declaration are made known to —

(i) the Commissioner of Police; and

(ii) the Chief Officer under the *Dangerous Goods Safety Act 2004*.

(2) The court that makes a declaration under this Division may grant an exemption from the operation of subsection (1) if it is satisfied that exceptional circumstances exist in a particular case.

[Section 124G inserted: No. 30 of 2020 s. 29.]

References

[i] Hayley Boxall, Anthony Morgan and Rick Brown, 'The prevalence of domestic violence among women during the COVID-19 pandemic' (Statistical Bulletin No. 28, Australian Institute of Criminology, Australian Government, July 2020)
[ii] *Ibid*
[iii] Kerry Carrington, Christine Morley, Shane Warren, Budget Harris, Laura Vitis, Matthew Ball, Jo Clark an Vanessa Ryan 'The impact of COVID-19 Pandemic on Domestic and Family Violence Services, Australia' (Research Report Series, Queensland University of Technology – Centre for Justice, November 2020)
[iv] 'Gaslighting' is a term comes from the title of a well-known play that was adapted into a film in 1944. Drawing on themes from the play and film adaptation it is used to describe emotional manipulation used by one person to make another person doubt their own perceptions of reality. Further information on gaslighting in intimate partner relationships can be found on the website of Relationships Australia (Queensland): What is Gaslighting | Relationships Australia QLD (raq.org.au)
[v] Fiona Buchanan and Cathy Humphreys, 'Coercive Control During Pregnancy, Birthing and Postpartum: Women's Experiences and Perspectives on Health Practioners' Reponses' (2021) 36 *Journal of Family Violence* 325
[vi] Australian Institute of Family Studies 'Intimate partner violence in Australian refugee communities' *Child Family Community Australian* Paper No.50, (2018), 13
[vii] Sue Dyson, Patsie Frawley and Sally Robinson 'Whatever it takes: Access for women with disabilities to domestic and domestic violence services: Final Report' (2017) (ANROWS Horizons, 05/2017), 6
viii Monica Campo and Sarah Tayton 'Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities – key issues' (2015) Australian Institute of Families Studies, 4
ix Lyla Coorey and Carl Cooery-Ewings 'Animal Victims of Domestic and Family Violence: Raising Youth Awareness', Animal Studies Journal, (2018) 7(1) 1, 3
x Emma Katz, Anna Nikupeteri and Merja Laitinen 'When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence' (2020) Volume 29 Child Abuse Review, 310, 312
xi Jane Monckton Smith 'Intimate partner femicide: Using Foucauldian analysis to track an eight stage progression to homicide' (2020) Vol 26 (11) Violence Against Women, 1267
[xii] NSW Coroners Court (2020). NSW Domestic Violence Death Review Team Report 2017-2019, p.325 http://www.coroners.justice.nsw.gov.au
[xiii] Domestic and Family Violence Death Review and Advisory Board (Qld), 2019-20 Annual Report, 19
[xiv] Danielle Tyson 'Coercive Control and Intimate Partner Homicide' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 73, 74
[xv] Marilyn McMahon and Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 12
[xvi] Hayley Boxall and Anthony Morgan 'Experiences of coercive control among Australian women' (Statistical Bulletin 30 Australian Institute of Criminology, Australian Government, 2021)
[xvii] Queensland Government Statisticians Office 'Queensland Social Survey – Domestic and Family Violence Survey Report', October 2020 Domestic and Family Violence Survey Report, 2020 (qgso.qld.gov.au), 1
[xviii] *Ibid* 2
[xix] Queensland Treasury 2020: Queensland Social Survey 2020, Domestic and Family Violence Survey Report; ANROWS Summary findings from the 2017 National Community Attitudes towards Violence against Women Survey
[xx] Australian Institute of Family Studies 'Intimate partner violence in Australian refugee communities', (2018)*Child Family Community Australian Paper No.50*, 4
[xxi] Yasmin Khan 'Domestic violence or domestic abuse? Why terminology matters' *Women's Agenda* (online, 18 March 2019) Domestic violence or domestic abuse? Why terminology matters (womensagenda.com.au)
[xxii] An electronic version is available online at: Common risk and safety framework (publications.qld.gov.au)
[xxiii] DFV Common risk and safety framework | Department of Justice and Attorney-General
[xxiv] Queensland Government 'Evaluation of the integrated service response and high risk teams trial summary of key findings' (2019) – available at https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/our-progress/enhancing-service-responses/integrated-service-responses
[xxv] Sandra Walklate and Kate Fitz-Gibbon 'Why Criminalise Coercive Control? The Complicity of the Criminal Law in Punishing Women Through Furthering the Power of the Sate' (2021) *International Journal for Crime Justice and Social Democracy* 1, 2
[xxvi] *Domestic and Family Violence Protection Act 2012* s 8(1)(e)
[xxvii] *Ibid* s 101(1)(a)

[xxviii] *Ibid* s 101(1)(c)
[xxix] *Ibid* s 101(1)(d)
[xxx] *Ibid* s 101(1)(e)
[xxxi] *Ibid* s 116
[xxxii] *Ibid* s 106
[xxxiii] *Ibid* s 106(c)(iii)
[xxxiv] *Ibid* s 106A
[xxxv] *Ibid* s 113(1)
[xxxvi] *Ibid* s 112
[xxxvii] *Ibid* s 113(3)
[xxxviii] Simple offences must be dealt with summarily in the Magistrates Court sometimes they are referred as 'summary offences'. The rehabilitation period for a conviction of a simple offence to be become 'spent' under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) is five years.
[xxxix] *Domestic and Family Violence Protection Act 2012* s 178
[xl] *Ibid* s 25
[xli] *Ibid* s 44
[xlii] *Ibid* s 37
[xliii] *Ibid* s 45(1)
[xliv] *Ibid* s 45(2)
[xlv] *Ibid* s 45(2)
[xlvi] *Ibid* s 56
[xlvii] *Ibid* pt 3 div 5
[xlviii] *Ibid* s 57 (3)
[xlix] *Ibid* 78
[l] *Ibid* s 177
[li] *Ibid* s 181 (2).
[lii] *Ibid* s 181 (6)
[liii] If the offence is prosecuted on indictment the relevant rehabilitation period in the *Criminal Law (Rehabilitation of Offenders) Act 1986* increases from five years to 10 years.
[liv] *Bail Act 1980* (Qld), s16 (2)(f)
[lv] *Ibid* s16 (3)(g)
[lvi] *IbidI* s 16 (6)
[lvii] Criminal Code (Qld) s 359B, 359C
[lviii] *Ibid* s 359A
[lix] *Ibid* s 359F
[lx] *Ibid* s 359F(8)
[lxi] *R v RBD* [2020] QCA 136; *R v Mcdonald* [2008] QCA 384; *R v Layfield* [2003] QCA 3
[lxii] Marilyn McMahon, Paul McGorrery and Kelly Burton 'An Alternative Means of Prosecute Non-Physical Domestic Abuse: Are Stalking Laws an Under-Utilised Resource?' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 93, 105
[lxiii] *Ibid* 106
[lxiv] Heather Douglas 'Alternative Construction of a Family Violence Offence' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 243, 247
[lxv] *Ibid,* 248-250 - Queensland cases identified are: *R v Ellis* [2018] QCA 70; *R v Peirson* [2006] QCA 251; *R v HAC [2006]* QCA 291
[lxvi] Heather Douglas 'Do we need a specific domestic violence offence?' (2015) 39 *Melbourne University Law Review* 435 https://law.unimelb.edu.au/__data/assets/pdf_file/0011/1774550/02-Douglas.pdf
[lxvii] Vanessa Bettinson 'Aligning Partial Defences to Murder with the offence of Coercive or Controlling Behaviour' (2019) 83(1) *The Journal of Criminal Law* 71, 73
[lxviii] United Kingdom Home Office, 'Controlling or Coercive Behaviour in an Intimate or Family Relationship – Statutory Guidance Framework', December 2015, 4
[lxix] Vanessa Bettinson 'Aligning Partial Defences to Murder with the offence of Coercive or Controlling Behaviour' (2019) 83(1) *The Journal of Criminal Law* 71, 78
[lxx] Chapters 5 and 6 of the *Mental Health Act 2016* (Qld)
[lxxi] Michelle Edgely and Elena Marchetti 'Women who kill their abusers: How Queensland's new abusive domestic relationships defence continues to ignore reality'(2011) Volume 13 *Flinders Law Journal* 125, 169
[lxxii] Marilyn McMahon 'Homicide, self defence and the (inchoate) criminology of battered women' (2013) Volume 37 *Criminal Law Journal*, 79, 88-91

[lxxiii] See *R v Lentini* [2018] QCA 299, [45 per Sofronoff P]
[lxxiv] See *R v Lentini* [2018] QCA 299
[lxxv] *R v Young* [2004] QCA 84, [60 per McPherson J]
[lxxvi] *R v McKenzie* [2000] QCA 324
[lxxvii] Anthony Hopkins, Anna Carline and Patricia Easteal 'Equal Consideration and Informed Imagining: Recognising and Responding to the Lived Experience of Abused Women Who Kill' *Melbourne University Law Review* (2018) Vol 41,1201, 1225
[lxxviii] *Ibid* 1226-227
[lxxix] Queensland Law Reform Commission *Provocation in Queensland* Report No 64 (2008) 217, 330.
[lxxx] *Pfenning v The Queen* (1995) 182 CLR 461
[lxxxi] Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Executive Summary and Parts 1-2* (2017) Recommendations 44-51, 128
[lxxxii] Queensland, *Hansard*, Queensland Legislative Assembly, 27 November 2019, 3876, (Yvette D'Ath, Attorney-General and Minister for Justice)
[lxxxiii] *R v PAB* [2006] QCA 212, 6 [28]
[lxxxiv] *Ramsay v Watson* (1961) 108 CLR 642
[lxxxv] *R v Hally* [1962] Qd R 214, 229 (Gibbs J)
[lxxxvi] New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory all have Evidence Acts based on the Model Uniform Evidence Bill, as endorsed by the then Standing Committee of Attorneys-General in 2007
[lxxxvii] Australian Law Reform Commission, *Evidence,* ALRC 26 (Interim) Vol 1 (1985), [743].
[lxxxviii] Recommendation 133
[lxxxix] Josie Salzman 'Taking evidence from Domestic Violence Victims' *Hearsay* (online Issue 86 August 2020) Taking Evidence from Domestic Violence Victims - Hearsay
[xc] *Domestic and Family Violence Protection Act 2012*, s 145
[xci] Recommendation 9
[xcii] Queensland Government Statistician's Office 'Queensland Treasury – Domestic and family violence calls for Police Service – Research Paper' April 2021, Domestic and family violence calls for police service (qgso.qld.gov.au), 2
[xciii] *Ibid* 3
[xciv] *Police Powers and Responsibilities Act 2002* (Qld) ss 30, 32, 40, 365, 609, 610, 611, 692
[xcv] *Domestic and Family Violence Protection Act 2012* (Qld), Division 2, Division 3 and Division 4
[xcvi] Ibid s 101(4)
[xcvii] Queensland Police Service. (2021). Operational Procedures Manual – Public Edition https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual
[xcviii] *Ibid*
[xcix] *Ibid*
[c] New Zealand Police. Family harm new risk measures https://www.police.govt.nz/sites/default/files/publications/family-harm-new-risk-measures-handout-web.pdf and Police approach to family harm https://www.police.govt.nz/sites/default/files/publications/police-approach-to-family-harm-infographic-web.pdf
[ci] Ben Smee, 'Queensland police leaders 'grappling' with the rise in officers accused of domestic violence', *The Guardian* (online, 4 May 2021) https://www.theguardian.com/australia-news/2021/may/04/queensland-police-leaders-grappling-with-rise-in-officers-accused-of-domestic-violence
[cii] Clive Emsley 'Peel's principles, police principles' in Jennifer M. Brown (Ed) *The Future of Policing* (Taylor & Francis Group, 2013), 11
[ciii] Pursuant to the Chapter 9 of the OPMs The Officer in Charge (OIC) of a region or command may make a request on behalf of a member (subject to a dv application) to the Deputy Commissioner to lawfully retain possession of weapons when on duty if the following conditions exist: The application was private and did not allege any acts of violence or threats; The private application remains unfinalized; the member has not been detained under s116 police officer may take person into custody' of the DFVPA; a PPN has not been issued; and the member is not required to surrender any other weapon or weapons licence as required under s27A of the *Weapons Act 1990* (Qld)
[civ] *Family Violence Act (2004*) (Tas).
[cv] *Ibid* s 8
[cvi] *Ibid* s 9
[cvii] Kerryn Barwick, Paul McGorrery and Marilyn McMahon 'Ahead of their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 135, 155
[cviii] *Ibid* 149-154

[cix] Cassandra Wiener 'From Social Construct to Legal Innovation: The Offence of Controlling or Coercive Behaviour in England and Wales' in in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020),159, 165
[cx] *Ibid* 165
[cxi] *Ibid* 167-168
[cxii] *Ibid* 169
[cxiii] *Domestic Violence Act 2018* (Ireland), s 39(1)
[cxiv] *Ibid* s 39(2)
[cxv] *Ibid* s 39(4)
[cxvi] Conor Lally 'At least 50 coercive control cases under investigation or with DPP for consideration', *The Irish Times* (online, 22 January 2021) At least 50 coercive control cases under investigation or with DPP for consideration (irishtimes.com)
[cxvii] Brion Hoban '10-year sentence following coercive control trial 'sends a strong message' to other women', *thejournal.ie* (online, 22 January 2021) 10-year sentence following coercive control trial 'sends a strong message' to other women (thejournal.ie)
[cxviii] *Domestic Abuse (Scotland) Act 2018*
[cxix] Marsha Scott 'The Marking of the New 'Gold Standard': The *Domestic Abuse (Scotland) Act 2018*' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 177
[cxx] *Domestic Abuse (Scotland) Act 2018* s 1
[cxxi] *Ibid* s 2
[cxxii] *Ibid* s 9
[cxxiii] *Ibid* s 5
[cxxiv] *Ibid* s 8
[cxxv] *Ibid* s 6
[cxxvi] See Scottish Government 'Improving awareness of domestic abuse' (Online, 14 August 202) Improving awareness of domestic abuse - gov.scot (www.gov.scot)
[cxxvii] Scottish Government 'Criminal Proceedings in Scotland, 2019-20', A National Statistics Publication for Scotland, ISBN:9781800049628, 18 May 2021, 4
[cxxviii] *Ibid* 60, 61
[cxxix] *Ibid* 65
[cxxx] *Ibid* 27
[cxxxi] *Domestic Violence in International Context*, pp188-200, edited by Peterson, Diana Scharff, and Julie A. Schroeder, Taylor & Francis Group, 2017. ProQuest Ebook Central, https://ebookcentral-proquest-com.libraryproxy.griffith.edu.au/lib/griffith/detail.action?docID=4771847.
cxxxii Christopher Dowling Anthony Morgan Chloe Boyd Isabella Voce, Policing domestic violence: A review of the evidence (2018) AIC reports Research Report 13 1-128; and Lanette Ruff 'Does Training Matter? Exploring Police Officer Response to Domestic Dispute Calls before and after Training on Intimate Partner Violence', (2012) 85(4), The Police Journal, 285–300. doi: 10.1350/pojo.2012.85.4.516.

[cxxxiii] Safe Lives conditions of funding to provide training: FOI release. https://www.gov.scot/publications/foi-202000016700/
[cxxxiv] DA Matters Scotland. https://safelives.org.uk/DA_Matters_Scotland
[cxxxv] University of Portsmouth. *Research highlights importance of training police to recognise coercive control and domestic abuse blog*, 22 January 2021. www.port.ac.uk
[cxxxvi] Iain Brennan, Andy Myhill, Giulia Tagliaferri & Jacki Tapley (2021) Policing a new domestic abuse crime: effects of force-wide training on arrests for coercive control, p10 *Policing and Society*, DOI: 10.1080/10439463.2020.1862838
[cxxxvii] Walker, R., Thexton, J., Wellings, E., & Foglia, R. Policing and Interdisciplinary Triage Teams. *Australasian Policing: A Journal of Professional Practice and Research, 2*(2), 34-39.
[cxxxviii] New South Wales Government 'More high risk offender teams tackling domestic violence', *Communities and Justice* (online, 8 February 2019) More high risk offender teams tackling domestic violence | Family & Community Services (nsw.gov.au)
[cxxxix] McLaughlin, H., Robbins, R., Bellamy, C., Banks, C., & Thackery, D. (2016). Adult social work and high-risk domestic violence cases. *Journal of social work: JSW, 18*(3), 288-306.
[cxl] Ibid
[cxli] Ibid
[cxlii] Tamina Alon 'Contra Costa Family Justice alliance: Six-year evaluation report *2014-2019*' (2020) https://www.familyjusticecenter.org/wp-content/uploads/2021/04/Final-Evaluation-Report_April2020.pdf
[cxliii] Kerry Carrington et.al, 'How women's only police stations empower women, widen access to justice and prevent gender violence' (2020) 9(1) *International Journal for Crime, Justice and Social Democracy*, 42-67.
[cxliv] *Ibid* 48.

[cxlv] Australia's National Research Organisation for Women's Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS, 4, 7
[cxlvi] *Ibid* 6
[cxlvii] Marilyn McMahon and Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 14
[cxlviii] Mridula Amin, 'Calls for more funding as most domestic violence victims don't go to police, says damning new report', *Australian Broadcasting Corporation* (online, 12 March 2021) Calls for more funding as most domestic violence victims don't go to police, says damning new report - ABC News
[cxlix] Heath Douglas 'Do we need an offence of coercive control' (2018) *Precedent* AULA 6
[cl]Marilyn McMahon and Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 4
[cli] Evan Stark 'The Coercive Control Framework': Making Law Work for Women' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 33, 42.
[clii] *Ibid*
[cliii] Australia's National Research Organisation for Women's Safety. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020). Sydney: ANROWS.
[cliv] Sandra Walklate, Kate FizGibbon 'Why Criminalise Coercive Control The complicity of the criminal law in punishing women through furthering the power of the state' *International Journal for Crime, Justice and Social Democracy*. Advance online publication. https://doi.org/10.5204/ijcjsd.1829
[clv] Australian Law Reform Commission *Pathways to Justice – An inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander peoples*, Report No 133 (2017) 77 [2.85]
[clvi] Australia's National Research Organisation for Women's Safety. (2020) 'Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions' (Research to policy and practice, 23/2020) ANROWS10
[clvii] Tanya Mitchell 'A dilemma at the heart of the criminal law: The summary jurisdiction, Family Violence, and the over-incarceration of Aboriginal and Torres Strait Islander Peoples' *University of Western Australia Law Review* (2019) Volume 45(2) 136
[clviii] Australia's National Research Organisation for Women's Safety. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020). Sydney: ANROWS, 11
[clix] McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 4
[clix] Sandra Walklate, Kate FizGibbon ' Why Criminalise Coercive Control The complicity of the criminal law in punishing women through furthering the power of the state'. International Journal for Crime, Justice and Social Democracy. Advance online publication. https://doi.org/10.5204/ijcjsd.1829
[clx] NSW Government. (2020). Coercive control: Discussion paper October 2020, Department of Communities and Justice, State of NSW. https://apo.org.au/node/309001
[clxi] *Ibid*
[clxii] *Ibid*
[clxiii] Christopher Dowling, Anthony Morgan, Chloe Boyd, & Isabella Voce *Policing domestic violence: a review of the evidence*, (2018). Research Report no. 13, Australian Institute of Criminology, ix. www.aic.gov.au/publications/rr/rr13
[clxiv] Maple, E., & Kebbell, M. (2020). Responding to domestic and family violence: A qualitative study on the changing perceptions of frontline police officers. Violence Against Women, 00(0), 1-22. DOI: 10.1177/10778012209755483.
[clxv] Ben Smee, 'Coercive control laws could harm vulnerable women, advocates in Queensland warn', *The Guardian* (online, 7 May 2021) Coercive control laws could harm vulnerable women, advocates in Queensland warn | Queensland | The Guardian
[clxvi] *Ibid*
[clxvii] Christopher Dowling, Anthony Morgan, Chloe Boyd, & Isabella Voce *Policing domestic violence: a review of the evidence*, (2018). Research Report no. 13, Australian Institute of Criminology, ix. www.aic.gov.au/publications/rr/rr13
[clxviii] New South Wales Government. (2020). Coercive Control: Discussion paper. http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/domestic-violence/discussion-paper-coercive-control.pdf
[clxix] Police Scotland, *Domestic Abuse Matters Evaluation Report – May 2020* (2020). Safelives.org.uk
[clxx] *Ibid*, 4
[clxxi] Ben Smee, 'Coercive control laws could harm vulnerable women, advocates in Queensland warn', *The Guardian* (online, 7 May 2021) Coercive control laws could harm vulnerable women, advocates in Queensland warn | Queensland | The Guardian

[clxxii] *DA Matters Scotland website*, training accessed 2020 from https://safelives.org.uk/DA_Matters_Scotland
Scottish Government FOI202000106685 – Information released, Funding Police Scotland for Domestic Abuse (Scotland) Act 2018 training: FOI release, published 25 Feb 2021, https://www.gov.scot/publications/foi-202000106685/
[clxxiii] Jenny Mouzos & Toni Makkai 'Women's experiences of male violence: findings from the Australian Component of the International Violence against Women Survey (IVAWS)' (2004) *Research and Public Policy Series* 56 *Australian Institute of Criminology* 105 www.aic.gov.au
[clxxiv] Jenny Mouzos & Toni Makkai 'Women's experiences of male violence: findings from the Australian Component of the International Violence against Women Survey (IVAWS)' (2004) *Research and Public Policy Series* 56 *Australian Institute of Criminology* 1-162 www.aic.gov.au
[clxxv] Liesl Mitchell 'Domestic violence in Australia – an overview of the issues' (2011), 1-42 www.parlinfo.aph.gov.au
[clxxvi] Ibid 193
[clxxvii] Christopher Dowling, Anthony Morgan, Chloe Boyd, & Isabella Voce *Policing domestic violence: a review of the evidence*, (2018). Research Report no. 13, Australian Institute of Criminology, ix. www.aic.gov.au/publications/rr/rr13
[clxxviii] Christopher Dowling Anthony Morgan Chloe Boyd Isabella Voce AIC reports Research Report 13 12 (2018) Policing domestic violence: A review of the evidence 1-129
[clxxix] Becky Antle, Anita Barbee, Pam Yankeelov & Linda Bledsoe (2010) A Qualitative Evaluation of the Effects of Mandatory Reporting of Domestic Violence on Victims and Their Children, Journal of Family Social Work, 13:1, 56-73, DOI: 10.1080/10522150903468065
clxxx Emma Pollard, 'Services to be cut and 'lives lost in Queensland's looming domestic violence funding 'catastrophe' advocates warn', Australian Broadcasting Corporation (online, 11 April 2021) Services to be cut and 'lives lost' in Queensland's looming domestic violence funding 'catastrophe', advocates warn - ABC News
[clxxxi] Heather Nancarrow 'Unintended consequences of domestic violence law: Gendered aspirations and racialised realities' Melbourne: Palgrave Macmillan; Australia's National Research Organisation for Women's Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS, 4, 7
[clxxxii] *Human Rights Act 2019* (Qld) s 38, 41
[clxxxiii] *Ibid* s 48
[clxxxiv] *Ibid* s 8 s 13
[clxxxv] *Ibid* s 13
[clxxxvi] Marilyn McMahon and Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 15
[clxxxvii] Queensland Human Rights Commission, Your Rights, QHRC : Right to life
[clxxxviii] Lexi Kehl, 'Coercive Control: Can the law fix this?...or does it go beyond legislation?' *Proctor* (online 17 February 2021 Coercive control: Can the law fix this? – Proctor (qlsproctor.com.au)
[clxxxix] *Human Rights Act 2019* (Qld) s 26 (1)
[cxc] Australia's National Research Organisation for Women's Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS, 4
[cxci] *Domestic and Family Violence Protection Act 2012* s 8
[cxcii] *Human Rights Act (2019)* (Qld) s 25
[cxciii] *Ibid* s 29
[cxciv] *Ibid* s 26
[cxcv] *Ibid* s 21
[cxcvi] *Ibid* s 16
[cxcvii] *Ibid* s 17
[cxcviii] *Ibid* s 26
[cxcix] Heather Douglas 'Alternative Construction of a Family Violence Offence' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 243,256
[cc] *Ibid*
[cci] *Ibid*
[ccii] *Ibid* 257
[cciii] *Human Rights Act 2019 (Qld)* s 29
[cciv] *Ibid* s 16
[ccv] *Ibid* s 17
[ccvi] *Ibid* s 26
[ccvii] Kerryn Barwick, Paul McGorrery and Marilyn McMahon 'Ahead of their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 135, 155

[ccviii] Cassandra Weiner 'From Social Construct to Legal Innovation: The Offence of Controlling or Coercive Behaviour in England and Wales' in Marilyn McMahon and Paul McGorrery (eds) Criminalising *Coercive Control: Family Violence and the Criminal* Law (Springer, 2020),159, 162
[ccix] Kerryn Barwick, Paul McGorrery and Marilyn McMahon 'Ahead of their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 135, 155
[ccx] *Human Rights Act 2019* (Qld) s 29
[ccxi] *Ibid* s 32
[ccxii] *Ibid* s 16
[ccxiii] *Ibid* s 17
[ccxiv] *Ibid* s 26
[ccxv] *Ibid* s 29
[ccxvi] *Ibid* s 32
[ccxvii] *Ibid* s 16
[ccxviii] *Ibid* s 17
[ccxix] *Ibid* s 26
[ccxx] Vanessa Bettinson ' A Comparative Evaluation of Offences: Criminalising Abusive Behaviour in England, Wales, Scotland, Ireland and Tasmania' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 197, 205-206
[ccxxi] Marilyn McMahon and Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) Criminalising *Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 1, 23
[ccxxii] Vanessa Bettinson ' A Comparative Evaluation of Offences: Criminalising Abusive Behaviour in England, Wales, Scotland, Ireland and Tasmania' in Maryn McMahon and Paul Paul McGorrery 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal* Law (Springer, 2020), 197, 208
[ccxxiii] *Ibid*
[ccxxiv] Kate Fitz-Gibbon, Sandra Walklate, Eilke Myer 'Australia is not ready to criminalise coercive control – here's why' October 2020 Australia is not ready to criminalise coercive control — here's why (theconversation.com)
[ccxxv] Chapter 58A (Indictable offences dealt with summarily), Queensland Criminal Code.
[ccxxvi] Queensland Government Office for Women, Report of the Taskforce on Women and the Criminal Code (2000), Rec 52.1.
[ccxxvii] Queensland Government Office for Women, Report of the Taskforce on Women and the Criminal Code (2000), Rec 52.1.
[ccxxviii] Australian Law Reform Commission, New South Wales Law Reform Commission, 2010, Family Violence - A National Legal Response, Commonwealth of Australia, p588
[ccxxix] Australian Law Reform Commission, New South Wales Law Reform Commission, 2010, Family Violence - A National Legal Response, Commonwealth of Australia, p588-9
[ccxxx] Legal Affairs and Community Safety Committee, 2014, Report Number 82: Inquiry on strategies to prevent and reduce criminal activity in Queensland, Rec 35.
[ccxxxi] *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland p301*
[ccxxxii] *Human Rights Act 2019* (Qld) s 29
[ccxxxiii] *Ibid* s 16
[ccxxxiv] *Human Rights Act (2019)* (Qld) s 17
[ccxxxv] *Ibid* s 26
[ccxxxvi] *Criminal Law Consolidation Act 1935* (SA), s 20(4)(b)
[ccxxxvii] *Ibid* s 20(4)(b)
[ccxxxviii] *Human Rights Act 2019* (Qld) s 29
[ccxxxix] *Ibid* s 22
[ccxl] *Ibid* s 25
[ccxli] *Ibid* s 26
[ccxlii] *Ibid* s 27
[ccxliii] *Ibid* 28
[ccxliv] *Ibid* s 17
[ccxlv] *Ibid* s 32
[ccxlvi] *Ibid* s 16
[ccxlvii] *Ibid* s 26

[ccxlviii] Vanessa Bettinson ' Aligning Partial Defences to Murder with the offence of Coercive or Controlling Behaviour' The Journal of Criminal Law, 2019, Vol. 83(1) 71-86, 80
[ccxlix] *Human Rights Act (2019)* (Qld) s 16
[ccl] *Ibid* s 17
[ccli] *Ibid* s 26
[cclii] *Ibid* s 16
[ccliii] Stella Tarrant, Julie Tolmie, George Giudice 'Transforming legal understandings of intimate partner violence' (2019) (Research report 03/2019). *ANROWS*
[ccliv] *Ibid* 2
[cclv] *Human Rights Act 2019* (Qld) s 29
[cclvi] *Ibid* s 32
[cclvii] *Ibid* s 21
[cclviii] *Ibid* s 16
[cclix] *Ibid* s 17
[cclx] *Ibid* s 26
[cclxi] Jessica Elgot, 'Domestic abuse bill: what amendments are peers voting on', *The Guardian* (online, 16 March 2021) Domestic abuse bill: what amendments are peers voting on? | Domestic violence | The Guardian
[cclxii] Maya Oppenheim, 'U-turn on register for serial domestic abuse and stalking perpetrators will leave 'gaping hole', government warned' *The Independent* (online, 14 April 2021) U-turn on register for serial domestic abuse and stalking perpetrators will leave 'gaping hole', government warned | The Independent
[cclxiii] https://www.police.qld.gov.au/reportable-offender-information
[cclxiv] Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme*, Report no 75, June 2017
[cclxv] *Human Rights Act 2019* (Qld) s 29
[cclxvi] *Ibid* s 19
[cclxvii] *Ibid* s 26
[cclxviii] *Ibid* s 16
[cclxix] *Human Rights Act (2019)* (Qld) s 17
[cclxx] *Ibid* s 26
[cclxxi] Queensland, Death Review and Advisory Board, Annual Report 2019-20, 9
[cclxxii] *Ibid* 78
[cclxxiii] *Anti-social Behaviour, Crime and Policing Act 2014* (England and Wales), s 22
[cclxxiv] *Ibid* s 25
[cclxxv] *Ibid*
[cclxxvi] *Anti-social Behaviour, Crime and Policing Act 2014* (England and Wales), s 22 (5)
[cclxxvii] *Ibid* s 30
[cclxxviii] *Human Rights Act 2019* (Qld) s 29
[cclxxix] *Ibid* s 22
[cclxxx] *Ibid* s 25
[cclxxxi] *Ibid* s 26
[cclxxxii] *Ibid* s 27
[cclxxxiii] *Ibid* s 28
[cclxxxiv] *Ibid* s 32
[cclxxxv] *Ibid* s 16
[cclxxxvi] *Ibid* s 17
[cclxxxvii] *Ibid* s 26
[cclxxxviii] *Sentencing Act 1995* (WA) s 124E
[cclxxxix] *Sentencing Act 1995* (WA) s 97A
[ccxc] *Human Rights Act 2019* (Qld) s 29
[ccxci] *Ibid* s 22
[ccxcii] *Ibid* s 25
[ccxciii] *Ibid* s 26
[ccxciv] *Ibid* s 27
[ccxcv] *Ibid* s 28
[ccxcvi] *Ibid* s 32
[ccxcvii] *Ibid* s 16
[ccxcviii] *Ibid* s 17
[ccxcix] *Ibid* s 26