

Women's Safety and Justice Taskforce

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

Discussion Paper 1

Summary

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

What is the Women’s Safety and Justice Taskforce?

The Women’s Safety and Justice Taskforce is an independent taskforce created by the Queensland Government in March 2021.

Taskforce members have wide-ranging expertise in domestic and family violence, sexual violence, support services, policing and law.

We have been asked 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.

To do this, we need to know what the Queensland community thinks.

We are committed to assessing the information we receive with an open mind in the best interests of the Queensland community.

Who do we want to hear from?

- People with lived experience of domestic and family violence
- A friend or family member
- People who work to support victim safety and hold perpetrators to account
- Lawyers with experience working in relevant areas of the law
- Members of the public

About this summary

This document is a summary of our first discussion paper, which examines options for legislating against coercive control and the creation of a standalone domestic violence offence.

It gives an overview of domestic and family violence and coercive control and outlines the risks and benefits we have so far identified of introducing new laws.

We also include the general questions from the discussion paper that we would like community feedback on. If you would like to respond to other questions, or find out more information, please read the main discussion paper.

About Discussion Paper 1

In the eyes of the law, how should the Queensland Government address coercive control? And should domestic and family violence be a standalone offence?

The focus of our first discussion paper is coercive control and domestic and family violence.

We have been asked to:

- examine how best to legislate against coercive control
- review the need for a specific offence of 'commit domestic violence'

In the discussion paper, we talk about the growing evidence relating to coercive control. We also look at how Queensland currently responds to coercive control—what works and what could be improved.

We look at how other places respond to coercive control and give 13 options about what Queensland could do next.

We’ve included lots of questions in the discussion paper as we want people to read it and tell us their thoughts.

Some of these questions are relevant to people who work to support victim safety and stop perpetrators using violence and hold them to account. This includes the police, lawyers, and service providers.

Other questions are more general, and these are the questions we’ve included in this summary paper.



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

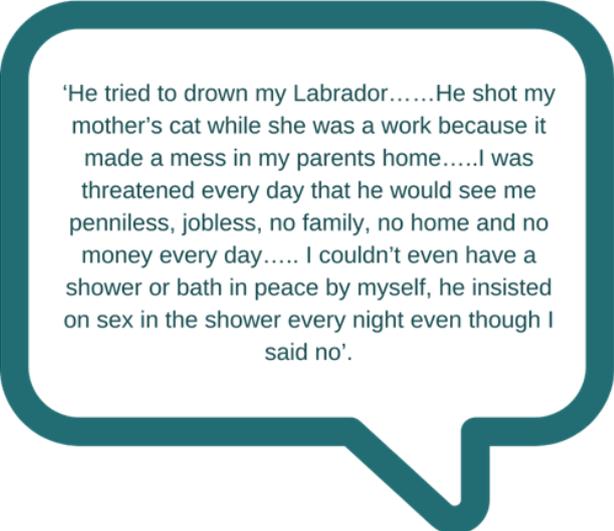
The Queensland Government’s Domestic and Family Violence Prevention Strategy 2016-2026

Domestic and family violence

The way we think about domestic and family violence is constantly changing. In the past, domestic and family violence was often seen as a 'private matter' and focused on physical violence. We now understand that not all abuse is physical, and that non-physical abuse can be just as harmful.

Our laws need to reflect this change. We all need to understand what domestic and family violence is so we can properly respond and help to prevent it.

Coercive control



'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's no single definition of coercive control, but it includes behaviours designed to control another person in a domestic relationship.

It is most often carried out against women and children and can include:

- the gradual isolation of a women from her friends, family and other supports
- degrading put downs
- humiliation and threats
- 'gaslighting'
- monitoring her movements—including through electronic devices
- use of technology and/or social media to control and manipulate
- limiting access to money
- removing reproductive control
- 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).

Women with disability may have their medication withheld or basic care requirements withdrawn.

Women who identify as LGBTIQ+ may be threatened with their sexuality or gender identity being 'outed' without their consent.

Abusers may also use physical or sexual violence, or threats of this violence, as a means of asserting control.

No member of a family experiencing coercive control escapes the effects of abuse. Abusers often use threats, assaults, neglect and torture of children and even the family pet as part of their strategy of coercive control.

An individual behaviour may appear harmless or trivial. But 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.

Coercive controlling behaviours have been associated with intimate partner homicide.

A review of domestic violence-related deaths in NSW found coercive and controlling behaviours were evident in 111 of 112 cases.



Discussion Questions

1. What other types of behaviours or risk factors used by perpetrators in domestic relationships might amount to coercive control?
2. What aspects of women's attempts to survive and resist abuse should be taken into account when considering the issue of coercive control?

Community attitudes



How well does the community understand coercive control? Do we tolerate this kind of abuse more than other kinds? These factors affect whether a person realises they are a victim of coercive control and if they are likely to ask for help.

For example, 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.

In Queensland, community attitudes about coercive control appear to be changing for the better.

In July 2020, over 90% of 3,336 Queenslanders surveyed thought coercive control behaviours such as controlling access to money or harassment were ‘very or quite serious’.

However, while 9 in 10 of the respondents thought they would do something about physical domestic and family violence involving their neighbour, only 7 in 10 would do something about non-physical domestic and family violence.

To create community change, bystanders—such as work colleagues, friends, family, social networks—need to be able to recognise and respond to domestic and family violence.

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

Mainstream services

People experiencing abuse don’t usually seek specialist domestic and family violence support straight away. Many don’t realise their experiences are coercive control. Some also feel ashamed, embarrassed, or scared to seek help.

Often the first signs are seen by, or a disclosure is made to a friend, family member, work colleague or trusted professionals, such as doctors, teachers, lawyers, accountants, hairdressers and even tattoo artists.



Discussion Question

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?

There are benefits and risks to creating new legislation. Below are some of the risks and benefits we thought the community could consider. You might think of other ones.

What would be the benefits of legislating against coercive control in Queensland?

It would improve the legal system's response to all forms of domestic and family violence

Currently, until a perpetrator of coercive control begins to stalk or physically injure others or damage property, their behaviour can not immediately be prosecuted as a criminal offence. This means that victims and their families are not always protected in the way the community expects.

The criminal justice system and police would need to move away from a 'incident' based approach to one that recognises the impact and dangers of non-physical violence.

It would also send a clear message to the community that this type of behaviour is unacceptable and will not be tolerated.

It would keep women and girls safer



Currently, Queensland police cannot take criminal action against the perpetrator of coercive control until he begins to stalk, physically injure or damage his partner or former partner's property.

A victim's safety often depends on the perpetrator's compliance with a civil protection order and the police effectively enforcing the conditions of that protection order.

If her partner doesn't comply with or the police don't enforce the conditions of the civil protection order, the consequences are serious and can far too often be fatal for a woman and her children.

It would help people to better understand what coercive control is

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

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?

Coercive control legislation would help victim-survivors, their families, services, and the community to make greater sense of its harm and potentially help others to intervene earlier.

It would fill a 'gap' in our current legal response

In the discussion paper, we talk about many discrete 'incident based' offences. There is currently no one offence that considers the many behaviours of coercive control as a pattern of abusive behaviour over time.

This means a perpetrator isn't held accountable for the collective harm caused by the combination of unlawful and otherwise lawful behaviour that coercively controls the victim.



Discussion Questions

55. Are there any other benefits in legislating against coercive control?

What are the risks in legislating against coercive control?

Net widening and overcriminalisation

It could be difficult to recognise the difference between dysfunctional, yet tolerable, intimate relationship behaviours and abusive coercively controlling relationship behaviours.

Misidentification of the person most in need of protection

Research has shown that identifying the person most in need of protection is a significant existing problem for law enforcement and legal systems in Queensland. The introduction of any new legislation to criminalise coercive control may make this issue worse.

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

Aboriginal peoples and Torres Strait Islander people are already over-represented for offences relating to breaches of domestic violence orders.

There is a risk further criminalisation of domestic and family violence behaviours could make the unacceptable level of over-representation of Aboriginal peoples and Torres Strait Islander people in Queensland's criminal justice system even worse.

Victims may be reluctant to report to the police

This could be for many reasons, including mistrust of police, a level of loyalty to the perpetrator, feelings of shame and embarrassment, and fear of losing custody of their children.

Not all victims want the perpetrator to be charged—instead preferring to see the perpetrator be given support to change their behaviour.

Increase in demand for special services

Specialist service providers have already reported difficulty meeting rising demand for services, despite additional funding.



Discussion questions

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

What are the options for legislating against coercive control?

The Taskforce is not ruling out any options for legislating against coercive control. We are even considering whether any new legislation is required at all. However, in the discussion paper we have proposed 13 different options for legislation that could address coercive control as a starting point for discussion with the community.

We will consider the risks and benefits of each of the 13 options as well as other options that may be suggested as part of this discussion.

Importantly, in Queensland, all laws are required to be interpreted by police and the courts in a way that is most compatible with the 23 human rights that are protected under the *Human Rights Act* (Qld). That means we need to consider whether any option to legislate against coercive control limits human rights. We also need to consider to what extent any limitation is reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom.

Criminal offences and circumstances of aggravation

Five of the options to legislate against coercive control are about introducing new criminal offences or amending current offences to make perpetrators of coercive control more accountable for their behaviour.

One option is to create a new offence of coercive control, like the kind of offences which have been introduced in Scotland, England & Wales, and Ireland.

Another option is to amend the existing offence of unlawful stalking.

A further option is to increase the maximum penalty for offences involving acts of domestic violence by applying a 'circumstance of aggravation' (this makes the offence more serious).

In Queensland, the current definition of domestic violence in the *Domestic and Family Violence Protection Act 2012* includes coercive and controlling behaviours.

Defences and mitigation in sentencing

We now understand that victims of coercive control sometimes commit criminal offences to escape abuse.

One of the proposals is for a new defence for victims of coercive control who use force to escape abuse. Another proposal is that a sentencing court must take coercive control suffered by a defendant into account.

Improving the understanding of coercive control in the criminal justice system

There is a proposal to amend the law so that courts and juries can hear evidence from experts in domestic and family violence about coercive control during proceedings for a criminal offence.

This proposal would also allow the jury to be given special directions by a judge that are aimed at countering myths that exist in the community about domestic violence—for example, the myth that non-physical psychological abuse is less serious or not as dangerous as physical abuse.

Post-conviction supervision for perpetrators

Three proposals consider different ways that convicted perpetrators of coercive control could be better supervised and treated in the community. This could be either as part of a community-based sentence or after they have completed their sentence in prison or the community.

One of the options is to establish a register of dangerous domestic abusers to monitor and control a convicted perpetrator's movements and activities in the community. This type of register could operate in a similar way to the register that currently exists for child sex offenders. This might include intensive supervision and monitoring of convicted perpetrators of coercive control in the community after they have been convicted or served their sentence, for example, by requiring a convicted perpetrator to wear an electronic monitoring device or to attend intensive treatment and counselling as a condition of their release into the community.

Another option is to establish a register for serious domestic violence offenders.



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 \(womenstaskforce.qld.gov.au\)](https://www.womenstaskforce.qld.gov.au)