



9 July 2021

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

By email: *via website submission*

<https://www.womenstaskforce.qld.gov.au/consultation/make-a-submission>

Dear Women's Safety and Justice Taskforce

Response to Discussion Paper 1: Options for legislating against coercive control and the creation of a standalone domestic violence offence (the Discussion Paper)

Thank you for the opportunity to make a submission in response to the Discussion Paper.

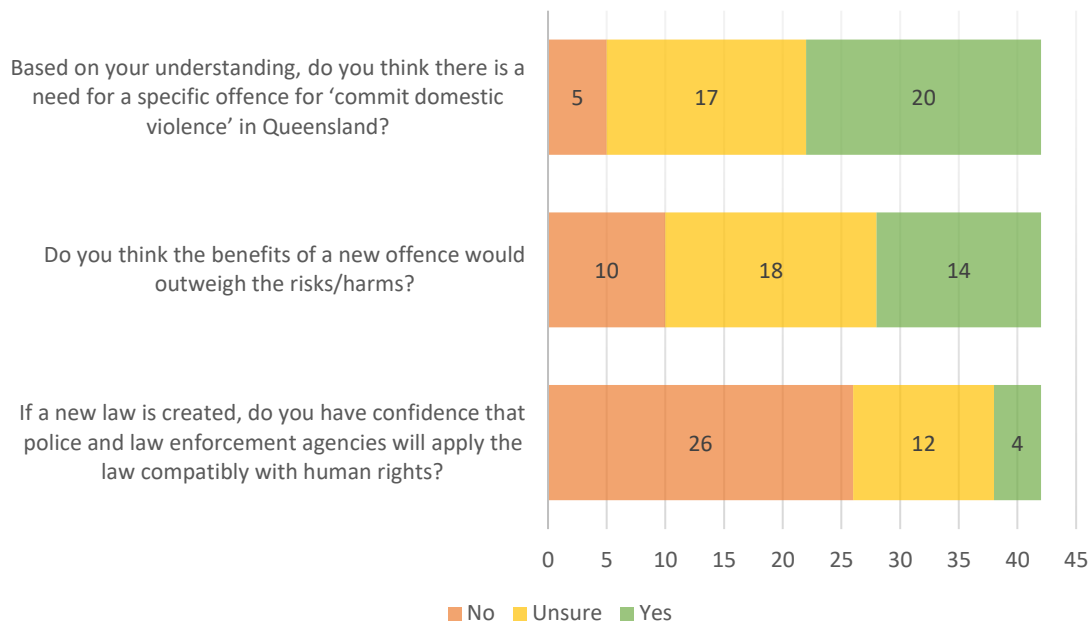
QCOSS is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

The Women's Equality Policy Network established by QCOSS works collaboratively with our members to identify challenges and solutions that will contribute to gender equality. Our engagement with our network and members, has revealed that our sector has strong and diverse views about legislating against coercive control and the creation of a standalone criminal offence for domestic violence. The purpose of our submission is to present the diverse views expressed by our members and supporters and focus on key risks and benefits to legislating against coercive control.

On 29 June 2021 QCOSS hosted a live webinar that examined proposed new coercive control laws from a human rights perspective and, in particular, from the perspectives of Aboriginal and Torres Strait Islander women and women with Culturally and Linguistically Diverse (CALD) backgrounds. The event attracted more than 260 registrants across the state and provided participants with an opportunity to hear from an expert panel with diverse experiences related to domestic and family violence (DFV) and law.

QCOSS conducted a poll during the webinar to understand the perspectives of participants (Figure 1). The poll data indicates uncertainty about the need to introduce a new offence for domestic violence, with many not sure the benefits of introducing a new offence for DFV or coercive control outweighed the costs. Further, a majority of participants did not think that police and law enforcement agencies would be able to apply the law compatibly with human rights.

Figure 1: Community sector response to QCOSS webinar polling (n=42)



Key arguments presented at the webinar are summarised as follows.

Key risks

- **Impact of legislation on First Nations women.** The experiences of First Nations women experiencing DFV and interacting with the justice system broadly and the police specifically was raised as a significant issue. Referencing issues previously raised by Sisters Inside and the Institute for Collaborative Race Research,¹ a speaker with lived experience of DFV and a First Nations woman outlined six areas of concern with the Taskforce inquiry in relation to First Nations women:
 - The taskforce proposes a carceral solution to a complex social problem. While acknowledging that the meaning of the term 'legislate' was clarified in the discussion paper to mean that the best approach could be that no new legislation was needed, the way the ToR and the discussion paper are framed, it appears the outcome of the inequity was pre-supposed with an implicit bias towards criminalising coercive control.
 - The taskforce did not reference the existing evidence relating to the violent relationship First Nations women have with the justice system. First Nations women are commonly misidentified as perpetrators of DFV and are overrepresented in the criminal justice system. Introducing legislation to criminalise coercive control comes with risks of increased incarceration for First Nations women, especially when these women, and all victims of domestic and family violence, may not be in a position to properly articulate how much danger they are in. This is becoming increasingly more prominent in instances where perpetrators start to use sophisticated tactics to gaslight, and abuse victim-survivors of DFV, such as the use of systems abuse.

- The Taskforce ToR were discriminatory, naming Aboriginal and Torres Strait Islander women as the only racialised category of women considered “both victims and offenders”.
 - The Taskforce failed to adopt a trauma-informed, human rights based and evidence based approach to the inquiry. There is a need to have these conversations at the grassroots level, by looking at how best to protect victim-survivors and prevent them from being misidentified.
 - The Taskforce did not provide conceptual clarity on the meaning of coercive control.
- **Impact of legislation on Culturally and Linguistically Diverse (CALD) communities.** Participants in the webinar also discussed the nuances of gender norms in CALD communities, which includes refugees and asylum seekers. Issues noted include:
 - 56 per cent of participants in their community based program did not understand what constituted a DFV offence.
 - Addressing the root causes of coercive control behaviours in CALD communities, perpetrators of coercive control largely fall into three groups:
 - Perpetrators who lacked the understanding that some of their behaviours were coercive control behaviours.
 - Perpetrators who are aware that their behaviour constitutes coercive control but are not aware of how to stop or change these behaviours. There were very limited programs that focused on men’s behavioural change in CALD communities.
 - Perpetrators who deliberately use coercive control and are aware of the damaging impacts on the physical and mental health of women. Creating a criminal offence of coercive control would benefit women who were victim/survivors of these deliberate behaviours.
 - CALD communities do not want all CALD men to be profiled because of differing cultural beliefs and practices. There is a need to protect people who were not educated enough, by investing a lot more resources into preventative programs and implementing nuanced and appropriately designed interventions.

Key benefits

- A speaker noted the following benefits that may potentially occur with the introduction of a new offence for DFV and coercive control:
 - Examples from other jurisdictions suggest that the creation of a new coercive control offence has resulted in changes to the way police think about domestic violence because they look beyond the obvious signs. A caveat was that good policing should be doing this anyway.
 - Introducing a new offence could be a driver of cultural change and play a role in educating victim-survivors about coercive control, where harmful behaviours are no longer contextualised as just bad relationships with some

incidents of violence. However, legislation by itself will not raise awareness and result in cultural change.

QCOSS recommendations

Apply a human rights perspective

QCOSS recommends that the Taskforce apply a human rights lens in considering the best approach to criminalising DFV and coercive control. A human rights analysis of any proposed new offence of DFV or coercive control will involve identifying human rights engaged by those laws. On the one hand, the laws may be 'rights protecting' as they may engage and protect the following human rights of victim-survivors:

- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Protection of families and children
- Right to liberty and security.

However, the potential unintended consequences of new laws may engage and limit the human rights of minority groups who are disproportionately impacted by the new offence through over policing and net-widening. All of the above rights may be limited in this way, in addition to:

- Right to recognition and equality before the law
- Cultural rights (general)
- Cultural rights Aboriginal and Torres Strait Islander peoples.

It is also important to recall that the preamble to the *Human Rights Act 2019 (Qld)* highlights the special importance of the principle of self-determination for Aboriginal and Torres Strait Islander peoples. The voices of community-controlled organisations that work to support women impacted by domestic and family violence should be prioritised at all stages of this Taskforce inquiry. Aboriginal community leaders and organisations themselves have solutions to the problem of violence that is often a result of intergenerational trauma and dispossession arising from colonialist policies.

Invest in community driven solutions

QCOSS recommends that the Taskforce engage closely with frontline service providers and staff to weigh the benefits and costs of alternate and grassroots solutions to protecting victim-survivors of DFV and coercive control. These include providing more resources to community-based organisations supporting victim-survivors of DFV and coercive control and using place-based, collaborative and co-design approaches to generate solutions.

Carefully evaluate evidence from other jurisdictions

QCOSS would like to direct the Taskforce's attention to the lack of summative evaluations or conclusive evidence from other jurisdictions of creating a new offence for domestic violence. In particular, there is sparse evidence on the unintended consequences of the legislation on CALD and marginalised communities. With such limited evidence, it is not possible to assess whether these reforms have indeed followed a 'do no harm' approach with respect to marginalised communities. We summarise below the key arguments presented by Prof.

Heather Douglas in her assessment of new legislation and recommend that the Taskforce carefully weigh these options in their recommendations to the Queensland Government:

“While it is necessary to continually improve access to support services for women who have experienced DFV, there remains an important role for criminal justice responses, both substantively in promoting community safety and symbolically in their capacity to publicly denounce DFV. Given the difficulties identified in constructing an appropriate offence that is both able to be implemented and is effective, but also avoids the problems of uncertainty and over-criminalisation, perhaps the focus should be on improving the more procedural aspects of the criminal law... Many improvements could be made to policing, prosecutorial decision-making, approaches to evidence, witness support and safety, and sentencing in relation to cases involving DFV. These improvements may offer better opportunities for women to access justice than the creation of new offences. As such, it may be that increased funding and training of police, lawyers and judges will afford better outcomes than law reform.”²

Conclusion

The community service sector has diverse views about whether the further criminalisation of DFV and coercive control is the best way to improve the safety and wellbeing of victim-survivors.

When developing a strategy to improve the safety of women, including by responding to coercive control, the human rights framework found in Queensland’s *Human Rights Act* should be applied to ensure that the reform does not unjustifiably limit human rights.

Any law reform will need to be accompanied by comprehensive and culturally appropriate community education. In addition, increased funding and capacity building for police, lawyers and judges should be prioritised including to ensure that First Nations women are not incorrectly identified as perpetrators.

Thank you again for the opportunity to provide our submission to the Taskforce.

Yours faithfully,



Aimee McVeigh
Chief Executive Office

References

1. Sisters Inside. In no uncertain terms’ the violence of criminalising coercive control. Joint statement: Sisters Inside & Institute for Collaborative Race Research. Accessed 07/07/2021, <https://www.sistersinside.com.au/in-no-uncertain-terms-the-violence-of-criminalising-coercive-control-joint-statement-sisters-inside-institute-for-collaborative-race-research/>
2. Douglas. H. DO WE NEED AN OFFENCE OF COERCIVE CONTROL? Accessed 07/07/2021, <http://classic.austlii.edu.au/au/journals/PrecedentAULA/2018/6.html>