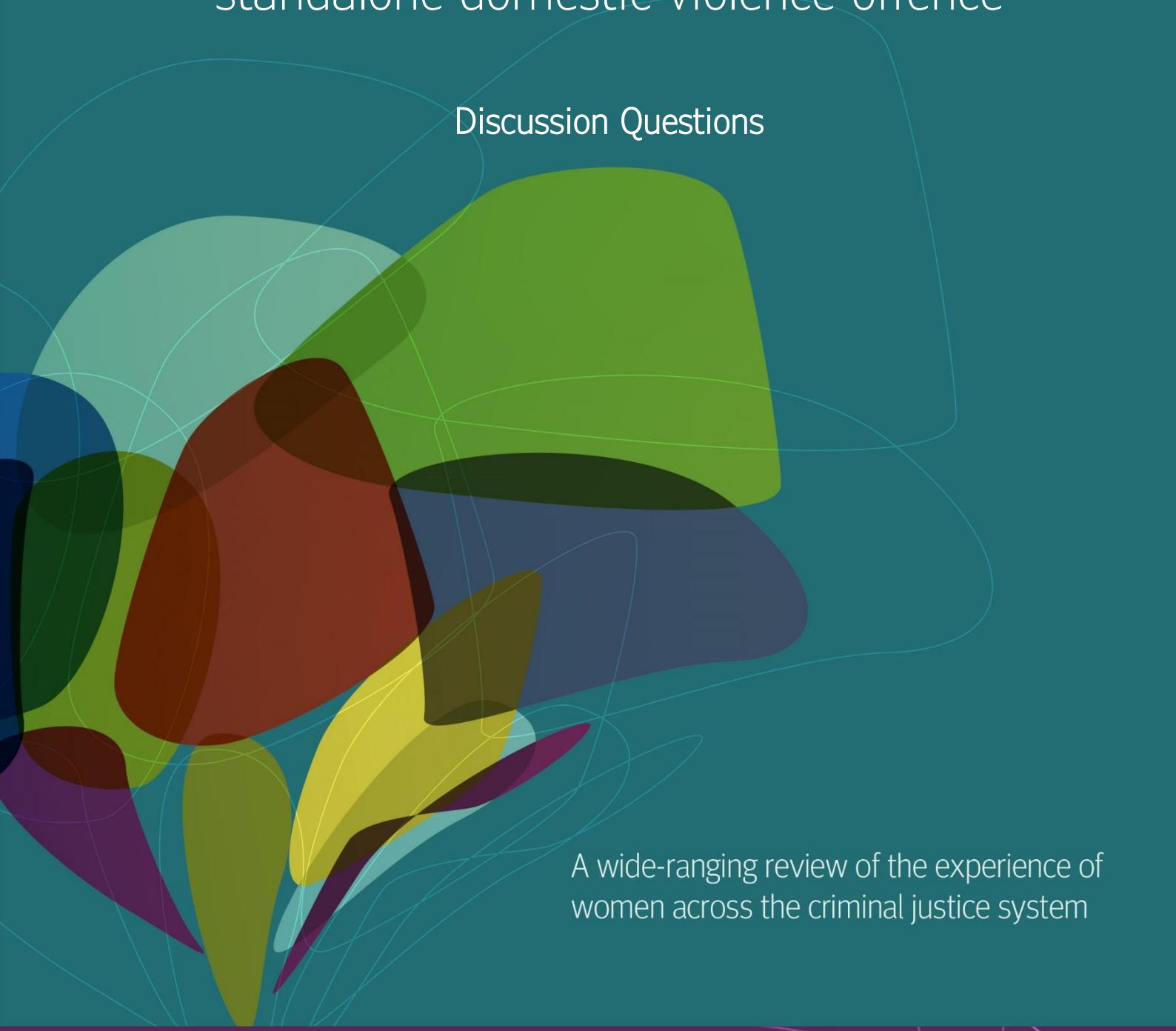


# **Women's** Safety and Justice Taskforce

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

## Discussion Questions



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

## Discussion Questions



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

#### Discussion Paper 1

##### Context

###### What is 'coercive control'?

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

###### Community attitudes

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

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**

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 and co-response models**

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?

## **Legislative response**

### ***Domestic and Family Violence Protection Act 2012***

18. What is working in the civil protection order system under the DFVP Act to protect women and children from coercive control?
19. What parts of the civil protection order system under the DFVP Act could be improved to better protect women and children from coercive control?
20. 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?
21. 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**

22. What coercive control behaviours would constitute an unacceptable risk of reoffending while on bail?
23. 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?
24. 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?
25. 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?
26. 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?
27. 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***

28. What types of coercive control behaviours aren't currently criminalised by existing offences in the Criminal Code?
29. In what ways do the existing offences in the Criminal Code at sections 359E (Unlawful stalking) and 320A (Torture) not adequately capture coercive control?

30. How could police and prosecutors in Queensland utilise the current offences in the Criminal Code more effectively to prosecute coercive control?
  
31. 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?
  
32. 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***

33. How is evidence of coercive control being used in criminal proceedings currently?
  
34. What, if any, are the non-legislative barriers to the use of this evidence?
  
35. How could prosecutors, defence lawyers and courts more effectively introduce evidence of coercive control under the current law?
  
36. 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***

37. How are sentencing courts currently taking coercive control into account as both an aggravating or a mitigating factor?
  
38. 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?
  
39. 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?
  
40. How could sentences given to perpetrators of coercive control be structured to better protect the safety of women and children?

#### ***Police Powers under the Police Powers and Responsibilities Act 2002***

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

## ***Police Powers under the Domestic and Family Violence Protection Act 2012***

42. What are the benefits of personal service of PPNs?
43. What would be the risks of enforcing PPN immediately, even though the perpetrator is not yet aware it exists?
44. 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 which guide the response of the Queensland Police Service***

45. What could be done to ensure that police officers more effectively and consistently comply with the guidance for investigation of domestic violence in the Operational Procedures Manual (OPM)?
46. 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?
47. How could the DV-PAF (Domestic violence - protective assessment framework) be improved to ensure it is sufficiently sensitive to identify coercive control risk factors?
48. How could police officers use the DV-PAF or other tools more effectively?

## ***Training provided to members of the Queensland Police Service***

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

## ***Management of members of the Queensland Police Service who commit or are alleged to have committed domestic violence***

50. Should people with a conviction for a domestic violence offence be automatically excluded from working as a police officer in Queensland? Why/Why not?
51. 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?
52. What could QPS do differently to better identify people who do not meet service and community standards of behaviour?

53. 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?

This part of the paper examines:

- **legislation** operating in:
  - Tasmania
  - England and Wales
  - Ireland
  - Scotland
- **police responses** operating in:
  - Canada
  - Scotland
  - England and Wales
  - Victoria
  - New South Wales
  - Europe
  - USA and South America

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

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

## Part 3 – Legislating against coercive control

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

54. Are there any other benefits (not mentioned in the paper) in legislating against coercive control?

55. How will legislating against coercive control improve the safety of women and children?

56. How will legislating against coercive control encourage greater reporting of domestic and family violence including non-physical abuse?
57. How will legislating against coercive control improve systemic responses to domestic and family violence?
58. How will legislating against coercive control improve community awareness of domestic violence?
59. 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***

60. What other risks (not mentioned in the paper) are there in implementing legislation to criminalise coercive control?
61. 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***

62. Are there any other challenges (not mentioned in the paper) for police and prosecutors?
63. What could be done to mitigate the challenges for police and prosecutors identified above?
64. 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***

65. Are there any other challenges (not mentioned in the paper) for specialist service providers?
66. What could be done to mitigate the challenges for specialist service providers?
67. 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***

68. 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?
69. 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 legislation against coercive control be measured?***

70. What should be key indicators of success when measuring the impact of legislation against coercive control?
71. What other factors should be considered in relation to assessing impact?

### ***Options for legislating against coercive control***

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

- 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 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***

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

- 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 4 – Creating a new offence of ‘cruelty’ in the Criminal Code***

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

- 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 6 – Creating a new standalone ‘coercive control’ offence**

- 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?

**Please note that for this option the Taskforce is also seeking feedback on specific issues relating to this offence including:**

- What legislation should contain the offence?
- What special features should the offence contain?
- Is a definition of coercive and controlling behaviours required?
- Should there be a time limit on when prosecutions can be brought?
- What kind of relationships should be captured?
- Should proof of harm to the victim or intention to harm the victim be necessary?
- What would be an appropriate penalty?
- Should a specific defence be provided?
- Should there be provision for alternative verdicts?
- Should there be provision for restraining orders?

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

- 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 8 – Creating a ‘floating’ circumstance of aggravation in the Penalties and Sentences Act 1992 for domestic and family violence**

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

- 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 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)**

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

- 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 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***

- 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 13 – Amending the Penalties and Sentences Act 1992 to create ‘Serial family violence offender declarations’ upon conviction based on the Western Australian model***

- 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?



## 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://womenstaskforce.qld.gov.au)