Women's Safety and Justice

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

Submission by Legal Aid Queensland

TRIM no 2021/0683070

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission to the Women's Safety and Justice Task Force on options for legislating against coercive control and the creation of a standalone domestic violence offence.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997,* LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact the cost-effectiveness of LAQ's services, either directly or consequentially, through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer constructive policy input that is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals. We believe this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Family Law Services division operates the Violence Prevention and Women's Advocacy service, which is one of the leading providers of domestic and family violence legal services in Queensland. Our services include, but are not limited to:

- The Women's Domestic and Family Violence Assistance Service at Brisbane Magistrates Court
- The Application Assistance Program at Brisbane Magistrates Court
- Domestic and Family Violence duty lawyers at Magistrates Courts throughout Queensland
- Grants of aid for on-going legal representation in domestic and family violence proceedings (subject to eligibility).

LAQ's Criminal Law Services division is the largest criminal law legal practice in Queensland, providing legal advice and representation for the full range of criminal offences. These services include representation of defendants charged with domestic violence related offences, including victim defendants.

Our Family Law Services and Criminal Law Services Divisions have provided input into this submission in relation to the issues raised in the discussion paper, focusing on issues arising from their different practice areas.

Criminalising domestic and family violence (DFV), including coercive control, creates a significant risk of coercive control victims being criminalised themselves, and thereby being further isolated from supports. Legislative mechanisms intended to enhance safety must be applicable and accessible for all members of the community, which include those already at risk of marginalisation from DFV systemic interventions: Aboriginal and Torres Strait Islander women, women from

culturally and linguistically diverse backgrounds, women with a disability (including mental health conditions), women with substance abuse issues and members of LGBTIAQ+ communities.

Coercive control is a complex concept, requiring nuanced understanding to best identify and assess DFV dynamics in practice, and proceed with interventions that will enhance victim safety. LAQ submits that any implementation of a criminal response to DFV must be a long-term and targeted strategy, where a strong, evidence-based understanding is built, and practice skills are developed, so that new legal responses are actioned with limited unintended negative consequences.

The current legislative framework is broad, has the capacity to incorporate many DFV situations including coercive control and allows for the punishment of more serious incidents.

Criminalised interventions offer limited opportunity for what will actually end DFV: perpetrator accountability, attitudinal change, and behavioural change. Caution must be employed where criminal law initiatives are held up as solutions to complex societal issues.

LAQ's experience is that education and support services that assist DFV victims and perpetrators are grossly under resourced. In addition to better supporting these services, there is merit in resourcing education initiatives to help young people recognise the signs of coercive control and promote healthy relationships.

LAQ proposes that in addition to creating systems and community responses that would lead to a better comprehension of coercive control, the most suitable justice response to safely address this issue is to enhance existing civil and criminal law responses to better capture experiences of coercive control in how the laws are implemented. Any legislative change must include an in-built review process, where the impact of the law is analysed. If the populations captured by the new legislation are not reflective of DFV data risk indicators (ie gender of alleged perpetrators, over-representation of vulnerable community groups) it will be essential to review the legislation to ensure it is best meeting its purpose, and not further victimising those who have experienced DFV.

Responses to issues paper

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?

In addition to the examples cited in Discussion Paper 1, we submit the following are important to include in understandings of coercive control [1]:

- Criticism of friends or supports outside of the home
- Critical comments to undermine confidence, such as name-calling
- Lying to others about victim
- Blaming unfairly to diminish the victim
- Sabotaging relationships with others
- Criticising victim in front of children, encouraging children to join in with behaviour, turning children against other parent/victim to gain more control
- Intimidation creating fear of abusive partner's reaction, or the threatening/abusive reaction of the partner's family or community
- Denying access to transport or money to enable work outside of the home
- Ignoring of boundaries regarding privacy, checking telephone, emails, and monitoring social media, GPS tracking on mobile telephone
- Telling victim how to dress
- Control over diet, for example requiring calorie counting with meals and restricting types of food
- Enforcing rigid and unreasonable rules around household chores and duties, such as cleaning and cooking
- Making unreasonable and excessive demands on time
- Threatening to reveal private information
- Destruction of property
- Forcing involvement in criminal activity
- Threats to harm pets and/or children
- Coercing victim to take blame for offences committed by perpetrator (because they have a criminal history and the victims doesn't so they can avoid more serious penalty)
- Taking intimate photos with threats to distribute/blackmailing conduct
- Reproductive coercion[2]/pregnancy outcome coercion on a pregnant person
- Coercion into non-consensual sexual activities.

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[1] Statutory Guidance framework: controlling or coercive behaviour in an intimate or family relationship December 2015 (www.gov.uk) has useful information about understanding controlling or coercive behaviour and the types of behaviours

[2] Queensland Government, Queensland Health, February 2020, Understanding Domestic and Family Violence, page 9

LAQ supports a 'vulnerability' lens in relation to the person experiencing DFV, and a 'risk indicator' lens in relation to the person using violence. This will assist to correctly identify the person most in need of protection, and the person using violence, and best capture the dynamics indicated in contemporary research and risk indicators. [3] [4] [5] [6] [7]

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

Women may use acts of aggression in self-defence to a real or perceived threat, or to enforce boundaries if being subjected to sustained psychological abuse. Neither indicate the woman is not in need of protection, or that the dynamics of power and control have shifted or changed. Perpetrators may manipulate these uses of aggression to systemically abuse their victim further through notifications to the Queensland Police Service (QPS) or applications for protection orders.

Women who are misidentified as a perpetrator of DFV by QPS or other systemic interventions are at greater risk. Risks include isolation from system responses due to a reluctance to involve QPS again or being subjected to criminalisation through being named as a respondent in a protection order or a defendant in criminal proceedings.

Survivor adaptability will also include behaving in ways that the victim has learned will enhance her safety from the risks posed by the perpetrator. This can include refusing to engage in legal processes or providing information that minimises the violence previously disclosed to QPS or courts. Options to declare DFV victims as hostile witnesses may further discourage them from later engaging in protective systems.

Greater understanding of, and capacity to accurately assess, DFV dynamics and survival strategies by all relevant stakeholders is essential for any DFV systemic interventions to be successful. An incident-specific focus does not best allow for assessing such safety dynamics and can be dangerous for women and children.

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[3] Data and research indicate distinct gendered patterns and dynamics of DFV, where the majority or DFV is perpetrated by men against women (Queensland Government DFV prevention strategy 2016 - 2026. A gendered lens is important to assist in assessing DFV dynamics and avoid misidentifying a perpetrator as a victim which can have profound safe implications (Nancarrow, H., Thomas, K., Ringland, V., & Modni, T. (2020). *Accurately identifying the person most in need of protection in domestic and family violence law.* (Research report, 23/2020). This lens is not included to negate those whose experiences are different, but to reflect the evidence base required for quality DFV interventions

[4] The Queensland Government's current domestic and family violence risk assessment tool, the Common Risk and Safety Framework (CRASF) uses a gendered lens to assess DFV risk. In line with the Government's framework, LAQ uses the CRASF as the recommended risk assessment toll when screening for DFV risk

[5] Queensland Government, Queensland Health, February 2020, Understanding Domestic and Family Violence, page 6

[6] Queensland Law Reform Commission, Domestic Violence Disclosure Scheme Report, Report No. 75, June 2017, Chapter 2, pages 8 – 20

[7] Special Taskforce on Domestic and Family Violence in Queensland, 2015, Not Now Not Ever: Putting an End to Domestic Violence in Queensland, pages 72 - 74

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?

Australia has made laudable progress over the past decade in boosting community awareness of DFV. Continuing these awareness raising efforts in line with the evolving research of tactics, indicators and impacts is important in continuing to improve community understanding and action. All community awareness campaigns must involve (not only consult with) specialists to avoid confusing or inaccurate (or dangerous) messaging.

Regularly updated and mandatory training of first responders and key stakeholders is also essential in developing safe responses and interventions. Optional training programs for other community roles, such as hairdressers, librarians, and hospitality workers, where DFV may be disclosed or identified, would also assist a community response to DFV. Venues also need policies or protocols so they can respond or help in line with best practice when DFV is identified.

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?

Both news and entertainment media have a responsibility to report accurate representations of DFV. LAQ service delivery staff have seen cases where perpetrators have relied on ideas of romance or relationships shown in the media to excuse, justify, minimise, or blame the victim for their violence.

Following news coverage of intimate partner homicides, LAQ staff experience an increase in reports from victim survivors where their abuser has threatened to do to them what was done to the deceased in publicised cases.

Both circumstances highlight the importance of responsible reporting, using language that does not excuse or justify acts of violence (for example the subtle language highlighted in Jane Gilmore's work), or respond to intimate partner homicides as though they were unexpected. Intimate partner homicide is among the most predictable and preventable form of violence. This understanding, and the role community members can play in enhancing safety, can be spread with appropriate and careful media coverage.

The media has an opportunity to highlight that DFV goes beyond incidents of physical violence. While there is a greater need for public understanding of what coercive control is (and the impacts it can have), there are also important opportunities for modelling healthy relationships, healthy communication, and safe strategies to raise concerns about others' safety or risks posed.

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

"Coercive control" is becoming embedded language in legal, social, and health professions as well as in the community. LAQ does not support a change in terminology. A change in terminology may also place Queensland and Australia at odds with language used in other jurisdictions and create confusion. Coercive control is a challenging concept to define and understand due to the broad range of behaviours it can encompass; a language change will not assist in developing this understanding.

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?

LAQ has a commitment to ongoing professional development and training across all areas of risk and compounding vulnerability for the clients we assist. All staff are required to complete a training package on identifying and responding to DFV for clients, and for co-workers, as part of their induction to the organisation – this package is currently being reviewed and will soon be mandatory annual training. The elements of DFV covered in this training include assessing DFV dynamics (identifying the person most in need of protection, and the person using violence or control); high-risk indicators and the dynamics of coercive control; recommended practice approaches including trauma-informed practice; and working with communities experiencing compounding vulnerabilities.

LAQ also encourages staff to participate in external and internal learning opportunities. For example:

- LAQ staff in Family Law Services were able to attend "Safe & Together" training with colleagues from the Office of the Child and Family Official Solicitor (OCFOS), Director of Child Protection Litigation (DCPL) and Office of the Public Guardian (OPG) in April 2019. These two-day sessions were part of the Government Lawyers Child Protection Community of Practice training, which are opportunities for shared learning among government lawyers who work for different agencies involved in the child protection jurisdiction. The Safe & Together model is a suite of tools and interventions designed to help child welfare professionals become domestic violence informed.
- LAQ provides Continuing Professional Development sessions about DFV. Each Domestic and Family Violence Prevention Month, LAQ coordinates knowledge-building seminars, including current best practice knowledge, or experiences of DFV in vulnerable community groups (LGBTIQA+

communities, women living with a disability). Other training opportunities are provided across the state including domestic and family violence duty lawyer training (and refresher training) and other sessions that involve contributions from Magistrates and service providers.

- LAQ also provides regular training on cultural awareness for all staff and cultural safety guidelines are being developed.

- LAQ engages yearly with 16 Days of Activism against gender-based violence.

b. How are you currently supporting victims of coercive control and domestic and family violence?

LAQ is a long-standing leader in delivering innovative legal services to clients affected by DFV. In 1999, LAQ endorsed and implemented a Violence Against Women Strategy in response to concerns raised by community organisations about the way the legal system treats people who have been affected by violence. In 2000, LAQ developed a Best Practice Guidelines Framework and Best Practice Guidelines for working with clients affected by DFV. These guidelines were acknowledged favourably in the Special Taskforce on Domestic and Family Violence in Queensland report 'Not Now, Not Ever', which provided a blueprint for action for the future in 2015.

In 2020, LAQ collaborated with the Queensland Law Society (QLS) to develop an updated framework to guide and help legal and non-legal practitioners to deliver services to people affected by DFV.[8] LAQ is currently in the process of updating its Best Practice Guidelines to match the new framework.

LAQ in-house lawyers provide representation to vulnerable clients who are impacted by DFV across the DFV, family law, child protection and criminal law jurisdictions. LAQ's Violence Prevention and Women's Advocacy Teams specifically focuses on providing legal services and assistance to victims of DFV in south east Queensland in relation to matters in the DFV, family law and child protection jurisdictions

LAQ provides duty lawyer services across a number of domestic violence call-overs across Queensland. Access to information, options, and likely court outcomes can greatly enhance safety for the victim/aggrieved, but also by working with the perpetrator/respondent in having the risks of continuing to use violence outlined to them. This model aims to enhance safety through access to information, negotiation with the other party to achieve a final outcome where possible, and in-court advocacy where suitable and available. This model also advocates where system responses may have incorrectly assessed DFV dynamics, and the victim has been named as the respondent in an application. The duty lawyers work closely with the on-site supports provided by the regional DFV service to ensure safety is enhanced through other interventions and assistance. In Brisbane, this support is offered by in-house

[8] QLS and LAQ Domestic and Family Violence :Best Practice Framework for Legal and Non-Legal Practitioners

LAQ Domestic Violence Prevention Workers ensuring a strong collaborative response for victim survivors with both legal and non-legal support needs.
LAQ also provides a specialist DFV legal advice service. This service provides timely legal advice for women with concerns for their safety arising from DFV, family law or child protection legal matters.

Additionally, LAQ has a Child Protection Early Legal Service that works with clients and services when a family is flagged with Department of Children, Youth Justice and Multicultural Affairs. Many child protection interventions are instigated due to concerns regarding DFV. The aim of the Early Legal Service is to assist clients, while working with relevant DFV supports to address the child protection concerns. The aim is to prevent the need for child protection proceedings to remove children from a DFV dynamic.

In matters where child protection proceedings commence, LAQ provides Child Protection Duty Lawyer services in specific locations across Queensland. This program provides relevant legal advice, and referrals for DFV supports. The duty lawyer can also help clients to apply for domestic violence protection orders during the course of the proceedings where this would enhance safety for the woman and children.

LAQ's Family Law teams provide a Family Advocacy Support Service at the Federal Circuit and Family Court of Australia (FCFCA) to assist clients with urgent family law matters where DFV risk is a factor. This program is a collaborative service run by a lawyer and support worker, providing legal assistance, safety planning, support service referrals, and emotional support.

The in-house LAQ DFV Social Worker and Domestic Violence Prevention Workers also work to enhance safety by working directly with LAQ clients where safety concerns have arisen, or risk has elevated through the course of legal proceedings. These workers take referrals from LAQ lawyers, and provide brief intervention support to assess risk, develop safety plans (including digital, reproductive, and emotional safety), and raise awareness for women around DFV dynamics, patterns, and risks. They also run the Application Assistance Program for women who need help to complete and file applications for DFV protection orders at the Brisbane Magistrates Court. The LAQ DFV social worker and domestic violence prevention workers are increasingly supporting women where systems failures due to poor QPS responses have led to increased levels of risk. As such, they are working more with the integrated service response networks and specialist DFV services in Brisbane and making referrals to the high-risk team for targeted supports.

c. What is working well?

Duty lawyer involvement improves the court response and aims to reduce delays and ensures timely outcomes which benefits all parties and the community as a whole.

Fully integrated (civil and criminal) specialist DFV courts are currently operating at Southport, Beenleigh, Townsville, Mount Isa, and Palm Island.

Specialised legal support is provided through enhanced legal representation by duty lawyers for both victims and perpetrators in civil matters and for defendants in criminal matters (except hearings). This allows a sense of being heard and supported for both victims and perpetrators, which leads to better engagement, a higher level of understanding of court processes and orders, and hopefully a higher rate of compliance with court orders.

This service and support is available at all stages of proceedings – pre court, information available at intake, time estimates, legal advice prior to court, representation in court and referral options after court.

Having a variety of agencies, including LAQ, engaged in the operational working groups ensures continuous improvement and collaboration to provide a multi-agency response.

LAQ's experience is that there are several benefits of the combined civil/criminal list model including:

- fairer outcomes, particularly in sentencing, through having matters determined by a specialist Magistrate, cognisant of the complexities of DFV and how these complexities can contribute to criminal offending
- predictability in outcomes for clients in a specialist court
- increased efficiency of the court process and reduced trauma for users due to the combined criminal and civil lists, which minimises the requirement for multiple court appearances and/or having to retell their stories, and
- easier access to co-located support agencies for defendants in the specialist court which may not occur if defendants appear in other courtrooms/levels.

LAQ provides legal assistance to vulnerable community groups who may have faced considerable financial or social barriers in attempting to access information and advice. This information aims to assist clients to make decisions to best enhance their safety, or the other party's safety.

The collaborative model delivered between LAQ lawyers and domestic and family violence prevention workers is particularly effective in enhancing safety by providing timely legal assistance and support to plan for safety around potential court outcomes.

This collaborative intervention provides an intersection of legal advice and social support where clients are empowered to make informed choices about their safety.

LAQ has the unique model where both duty lawyer and support worker services for Brisbane Magistrates Court Domestic and Family Violence lists are provided by in-house staff. Other DFV courts have service delivery split between a legal service and a DFV support service. The benefits to having the embedded support workers is that clients can have greater continuity of responses (for example, if a female respondent needs to file a cross application, she can be referred in-house to the support workers rather than having to start over with a whole new service).

LAQ's Child Protection Early Legal Service also offers assistance to clients, in conjunction with support services, where DFV is identified as an issue of concern by Department of Children, Youth Justice and Multicultural Affairs.

LAQ has developed a set of case management standards for file work and duty lawyer services in the DFV, family law and child protection jurisdictions[9]. These standards represent the work expected to be undertaken when representing a client and specifically incorporate guidance for working with clients in matters which involve DFV.

To ensure the highest quality of service to clients, LAQ has established:

- Accreditation requirements for practitioners who provide DFV duty lawyer services. This training and accreditation process applies to all practitioners (in-house and external providers) and must be completed before undertaking duty lawyer services in either the DFV specialist courts or other Magistrates Courts. Refresher training is also provided.
- Dual accreditation for criminal lawyers available for in-house LAQ crime lawyers at this stage. The program allows for criminal duty lawyers to attain accreditation in civil DFV Duty lawyer thereby allowing them to represent clients on both matters. This has increased efficiency in court proceedings and reduced anxiety for defendants having to retell their story to two duty lawyers.
- Audit processes for in-house practitioners to ensure continued compliance with case management and duty lawyer standards.
- Continuing Professional Development sessions about DFV.

d. What could be done better?

Due to the size and scope of LAQ, the different areas of practice can develop silos, limiting opportunities to enhance knowledge and practice in DFV across all areas of practice. LAQ makes attempts to address this through access to seminars and training opportunities across the whole organisation, but options are being examined to enhance this cross-jurisdictional

[9] LAQ Case management standards — family law

knowledge sharing to ensure responses to risk and safety concerns are consistent and in line with best practice across the whole organisation.

Creating opportunities for cross sector training could help different agencies to share learning and improve understanding of roles, responsibilities, and operational challenges.

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 bene done better?

No comments in relation to these questions.

Domestic and family violence service systems response

8. What is currently being done that works well?

See response to Question 6 c.

LAQ appreciates the specialist knowledge and collaborative approach delivered by the DFV specialist courts across the state, and the enhanced safety outcomes these courts are able to offer. The expertise offered and expected by all relevant stakeholders in these specialist court models better mitigate the risks of systemic failings which can arise (victim survivors being incorrectly assessed as a respondent, breaches being handled with knowledge of DFV risk). These specialist courts can also offer referrals into an integrated service response where further supports to enhance safety are necessary, which may include referrals to review QPS intervention.

Information sharing under Part 5A *Domestic and Family Violence Protection Act 2012* (Qld) (*DFVPA*) also enables information to be shared with relevant DFV and emergency services to enhance safety and mitigate risks. Increased understanding across the sector and among key stakeholders will further improve the use of these legislative provisions within their purpose and scope. These provisions have also assisted LAQ's domestic violence prevention workers and the DFV social worker when providing facilitated referrals to partner support agencies. Having key regional agencies to connect clients with effective services works well. It simplifies where clients need to contact and the types of support they can expect. As an outside agency, this also assists in best understanding options for support for clients across Queensland.

The multiple regional high risk teams operating across the State also offer a collaborative intervention to monitor the risks posed by the perpetrator, and work to enhance safety across a range of intervention opportunities (legal, QPS, health, education, housing) and centres the accountability for the violence with the perpetrator.

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)?

LAQ is concerned about the understanding of, and systemic responses to DFV particularly where it is non-physical DFV (including coercive control). LAQ's connection with stakeholders across the

DFV court programs and the broader support sector has indicated that our concerns are not isolated to particular locations but are common across the whole state.

More rigorous, regular, and consultative mandatory training, that provides practical skills to respond, for QPS, legal practitioners and judicial officers is essential to improving current system responses. This should include guidance for QPS on evidentiary requirements and information gathering.

LAQ is particularly concerned about the increasing number of domestic violence protection order applications being taken out against victims. In initial assessments, these women may have pushed, shoved, or yelled at the other party, but brief further questioning indicates that these behaviours were in response to DFV being perpetrated by the other party. This is particularly concerning for victims who feel intimidated by QPS when asked questions about whether they did a particular action, may answer "yes" without expanding on the context. QPS must be asking further questions to ensure they have the most accurate assessment of dynamics and risk profiles as possible.

Additional service response gaps are observable when working with Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQA+ clients.

For example:

- The Domestic Violence Prevention Centre (DVPC), supported by the Department of Justice and Attorney General (DJAG), ran a pilot program at Southport for an Indigenous court support worker to be present for a number of months. This significantly increased the numbers of clients identifying as Indigenous and made "the invisible visible." There is currently no funding for this to continue.

- At the Southport courthouse, if both the victim and the perpetrator are male there is no support room for either client. Similarly, for a lesbian couple, only the aggrieved can access the support room and not the respondent female (respondent females in heterosexual couples can access the safe room).

Enhanced knowledge and practical skills in providing a culturally safe intervention are also essential.

Parties to domestic violence protection orders must be encouraged to attend their mention dates. Too frequently, aggrieved and respondents under QPS applications are told they do not need to attend and parties then miss valuable opportunities to link with legal and non-legal supports and gain an understanding of the behaviours that have led to QPS intervention, and what their options are to change.

Coercive control is unlikely to be a standalone incident, and frontline responders and justice responses must become better equipped to provide safe and helpful interventions. This includes revising the online *Application for a Domestic Violence Protection Order* forms which prompt applicants to complete the forms around a series of tangible events, and have no capacity to

include descriptions of a pattern of behaviour, which is so essential for capturing escalation of risk, and coercive control. Forms should also be updated to be gender neutral.

Ensuring services that help change the behaviours of men who use DFV is also essential. The only way to end DFV is for those who perpetrate it to stop. There are currently insufficient behaviour change groups offered to meet demand, with wait times becoming a deterrent, and few options available for LGBTIQA+ men or men reliant on an interpreter.

More resourcing for these programs is an immediate need.

Until June 2020, DVConnect Mensline provided outreach services at a number of DFV Magistrates courts across south east Queensland, providing support around experiences and use of DFV. This on-site work was particularly important in supporting men who use violence to connect with behaviour change programs and adopt an accountability framework by way of any orders made, and obligations under it. This program ceased to operate and has not been prioritised to be re-instated. This has been a grave loss to providing collaborative (and accountable) supports at DFV courts, particularly as the only real way to end DFV is to support those using DFV to change their behaviours and the attitudes that underpin them. These services should not only be re-instated but expanded to other DFV courts across Queensland as part of efforts to enhance safety.

Steps should be taken to increase the accessibility of the legal process. Considerable issues (with impacts on victim safety) arise when the QPS does not engage, and courts do not schedule, official interpreters, with further compounding issues for Auslan interpreters where interpreters may only be available during business hours. It is unacceptable for QPS to rely on one party to translate for the other party where there are concerns about DFV. It is also unacceptable for QPS to rely on children to interpret. Both of these create a risk that information may not be accurately conveyed to either party and potentially exposes a child to DFV.

Clients who require an interpreter are disproportionately affected through multiple adjournments to schedule interpreters, impacting safety (especially if a temporary order is not made, or not made when the conditions are needed), risking criminalising a respondent who may not understand conditions they are bound by under a police protection notice, or compromising engagement with the system through an inability to take further employment leave or engage with a potentially stressful process again. Clients can also feel isolated from the process where their duty lawyer may use an interpreter to provide advice and take instructions, but there is no interpreter in the courtroom so the person cannot follow what is said. If an application has been poorly particularised, a client reliant on an interpreter may not be provided with the opportunity at that mention to provide oral submissions as is often offered to English-speaking clients. Where the respondent requires an interpreter, there is a risk that attending QPS officers may not have fully explained the conditions they are bound by to them.

There are a number of ways the fully integrated (civil and criminal) specialist DFV courts could be improved.

1. Shift legal practitioners' focus from working within a traditional court model where agencies are often very siloed to a collaborative model of increased information sharing and a coordinated response.

2. In the Operational Working Group (OWG) space it has often been a challenge to find the balance between a collaborative response and respecting organisational boundaries and some professional obligations (for example, those that apply to lawyers by virtue of the Australian Solicitors Conduct Rules). Some jurisdictions have struggled with this aspect of the specialist model.

3. The Southport model has been very focussed on the victim and the model has provided an impressive wrap around service particularly for women experiencing DFV. The DVIR has now shifted some of the focus to a "pivot to the perpetrator" discussion. This focuses on what more can be done to provide support to perpetrators with the intended consequence being to increase victim safety. Suggested improvements include providing a greater level of service providers at the Southport Court for respondents – such as housing services for respondents subject to ouster orders, mental health professionals to provide support post court to reduce rates of suicide, and family law legal advice services to provide access to lawyer-assisted mediations and the family law courts for parenting orders.

There is a need for additional legal aid funding particularly in the civil hearings and criminal summary trials space to allow for greater access to representation services for both 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?

As outlined in the answer to Question 9, enhanced understanding around cultural safety in responses are essential.

Additionally:

- Greater access to technology for women to link in with services trained to respond to DFV, including coercive control, combined with training for service providers in remote and regional communities.
- Strengthening of relationships with community access points in remote communities.
- Increased resourcing for legal services in remote areas to ensure DFV duty lawyer services are provided in all court jurisdictions either through in-house LAQ practitioners or external service providers with regular training provided to these practitioners. In LAQ's experience, south east Queensland jurisdictions are generally more resourced for this when compared with a number of remote regions. For example, some communities in the Townsville region have no services at all.

In some dry communities, a victim may not contact the QPS for DFV assistance because they are worried they may be charged for empty alcohol containers. In these communities, policing priorities may contradict a need to prioritise DFV safety.

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

There is overlap in our response to this question and Questions 10 and 12.

Additionally, we highlight that there are five correctional centres in the greater Brisbane region, and nine correctional centres outside the greater Brisbane region.

Ensuring perpetrator accessibility to services would require a comprehensive mapping exercise to identify regions which are geographically aligned to the policing, judicial, legal, and social support frameworks.

To appropriately respond to this question, a response must be inclusive of services available to perpetrators who are on remand or serving a sentence.

Again, our emphasis is on the required step to appropriately identify all stakeholders to map perpetrators engagement with services which currently exist but lack the resources and investment to build a robust service delivery response. The limited resources may be overcome by a significant mapping exercise and the establishment of a stakeholder group as outlined in our answer to Question 12 below.

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 while they are on remand or after sentencing in a correctional facility?

Currently there are insufficient services available to perpetrators in custody and/or on community based/parole orders. Further, due to resourcing issues within the Parole Board of Queensland, the current waiting times on consideration of parole applications by the Parole Board of Queensland means that perpetrators are more likely to serve the majority of their sentences in prison and then only be subjected to limited community supervision upon release. This ultimately means they receive almost no exposure to programs before or after release from custody.

Consideration should be given to resourcing the following:

- access to men's behavioural change programs while in custody and while subject to parole orders, with no waiting times to start programs when released
- improved services to men subject to strict conditions on a domestic violence protection order when released from custody. (For example, where men are subject to ouster orders, support from housing services to find alternative accommodation upon release, mental health services and men's programs. A completely responsive system would be committed to making perpetrators more accountable and offering men refuge so that women can remain in the home)
- greater access for perpetrators while in custody to family law services to ensure parenting plans or family law orders are in place on release from custody.

Additionally, to better ensure access to services, all proposed interventions must firstly acknowledge:

- First Nations people are over-represented in the criminal justice, child protection and domestic violence systems
- the impact of geography in delivering services to perpetrators in regional and remote areas, on remand or after sentencing in a correctional facility
- intersectionality and how it can lead to marginalisation and discrimination.

To identify what can be 'done better' to ensure that perpetrators have access to services and culturally appropriate (and culturally safe) programs with the capability to respond to coercive control, a systematic review of the current experience of perpetrators in rural and remote settings, in remand and in a correctional setting is needed. This will:

- identify the points of service contact a perpetrator has, and at which stage of the legal and social response to domestic and family violence these are available
- understand the geographic, cultural, social, and economic dynamics that may be compounding the risk factors for those experiencing domestic and family violence
- understand the specific vulnerabilities of perpetrators such as difficulty securing long term housing, health, and substance abuse issues, mental health, and cognitive impairments.
- identify the gaps where perpetrator supports cease or are unavailable and
    - identify the contributing factors which cause the absence/under-delivery of services
    - identify what resources are required to address the absence/under-delivery of services
    - compare and contrast these factors and resources with other geographical regions to share learnings and responses that may be able to be implemented
- create a series of recommendations to assist in building a community-led framework that enhances the existing structures available to perpetrators in regional and rural settings, where they are on remand or after sentencing in a correctional facility.

The intention of conducting a systematic review is to 'map' the experience of perpetrators and their points of contact to identify when and how perpetrators engage with services and any barriers to meaningful engagement.

There are sizeable stakeholder groups required to contribute to a comprehensive mapping to improve access to services and culturally safe services. The stakeholders below (note that this is not an exhaustive list) would be the key relevant bodies to include:

- the QPS, including seven policing service regions, 14 districts and 335 stations.

- the 113 Magistrates Courts in Queensland[10] which preside over domestic violence proceedings
- the First Nations and Torres Strait Islander Nations in Queensland
- First Nations and Torres Strait Islander community-based organisations (legal, social support and health) who support perpetrators at various stages of proceedings
- community-based organisations (legal, social support and health) who deliver perpetrator programs
- Queensland Government departments who are involved in responding to domestic and family violence which includes but is not limited to the Department of Children, Youth Justice and Multicultural Affairs, the Department of Justice and Attorney-General, and Queensland Corrective Services.

It is recommended that each regional stakeholder group include:

- local elders and representatives of the Aboriginal and Torres Strait Islander communities, including members of Community Justice Groups
- legal practitioners in consultation with the local community legal services, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and LAQ (where applicable) and domestic violence duty lawyers
- QPS representatives
- representatives from the Department of Justice and Attorney-General, Department of Children, Youth Justice and Multicultural Affairs, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, the Magistrates Courts and Queensland Corrective Services, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, and Queensland Health
- Senior representatives of the Aboriginal and Torres Strait Islander Health Services and providers of men's behaviour change services.

Each stakeholder group should acknowledge intersectionality in their terms of reference. The stakeholder group must map the key roadblocks to service delivery.

It is further recommended that all stakeholders participate in regular training in First Nations cultural competency, LGBTIQA+ inclusion, gender bias and the Safe Together program.

[10] Queensland Courts, 2021. *Magistrates Court of Queensland Annual Report*. Brisbane: Queensland Courts, pages 62-65

These (and other training as deemed appropriate by the stakeholder group) should be completed annually to ensure culturally competent and inclusive practices are modelled in line with best practice frameworks and principles.

LAQ acknowledges a common anecdotal response in many communities of practice, stakeholder meetings and Regional Legal Assistance Forums (RLAF) that:

- funding of service providers is not at the requisite level that enables the providers to deliver programs in accordance with best practice
- perpetrator programs are often not culturally competent, available to women, LGBTIQA+ inclusive or accessible to perpetrators who are awaiting sentencing.

These issues may be further ventilated in each stakeholder group. It is recommended that to promote consistency in best practice that the terms of reference for each stakeholder group are consistent and peer-reviewed against best practice frameworks, while acknowledging that local community based solutions driven by locals has the best chance of success.

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

See responses to Questions 9 to 12. Gaps to address include:

- enhancing QPS and judicial responses to DFV, particularly around non-physical violence, or where QPS may have options to criminalise the victim on other unrelated matters (infringement notices etc)
- prioritising a QPS and judicial response that is trauma informed and culturally safe
- prioritising accessibility and providing interpreters as needed
- modifying forms to make them more inclusive, for example to enable nonbinary clients to identify and to feel comfortable seeking support and intervention
- sufficiently funding programs to support men using violence to address their attitudes and behaviours, such as behaviour change programs and DFV court-based support
- implementing and rolling out a less onerous men's behavioural change program for lower level offending. Currently the program is a 27-week program. For low level offenders it may be more appropriate to make available shorter, more focused programs which are likely to ensure greater compliance and carry greater relevance
- designing bail programs specifically for defendants charged with DFV-related offences – similar to the DJAG run Court Link program
- providing mental health and housing services for perpetrators
- taking a more streamlined and collaborative approach to intersecting the DFV jurisdiction with the family law jurisdiction, particularly in matters that don't currently meet necessary guidelines (for example urgency) for assistance.

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

Whether legislative changes are made, or the current framework maintained, significant co-facilitated expert training is essential to work to meaningfully enhance safety, and not further systemically victimise survivors.

All training packages must include how knowledge can be practically applied to assess and respond, as well as up-to-date risk indicators, strategies for assessing DFV dynamics, indicators of compounding vulnerabilities, and working with cultural awareness and safety.

Also see response to Question 50 (QPS training requirements).

Integrated service response and co-response models

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

An integrated service response (ISR) is the formalised coordination of services and supports across government, non-government services and community organisations. The (former) Department of Child Safety, Youth and Women (CSYW) has worked across government and community stakeholders to design, implement and test holistic and integrated approaches to improving the safety of DFV victims and their children, while holding perpetrators to account for their violence.

High risk teams (HRT) are a core component of regional ISRs. These teams consist of representatives from all agencies with a role in enhancing safety and promoting accountability including the QPS, Queensland Health, housing and DFV services who collaborate to provide integrated, culturally appropriate safety responses to victims and their children who are at high risk of serious harm or lethality.

One benefit of having the HRT is that it can provide a holistic response to DFV, as a multi-agency approach means that the person experiencing violence can be supported in different areas (such as housing and safety planning). It also offers a mechanism to monitor safety without involving the victim directly in the process (eg through linking with the perpetrator's corrections officer, or the children's wellbeing via Department of Education) which is particularly important when the victim is at risk of disengaging from supports due to fatigue or repeated poor responses.

In many cases, an aggrieved person's first day at court will be their first interaction with the legal system and support services. The ISR model allows the relevant agencies the opportunity to directly engage the client with both legal and non-legal services. This direct and focused engagement removes much of the follow up that would otherwise be required for a person experiencing violence to self-refer into these services. Often, a person experiencing violence who has either recently left, or is planning to leave an unsafe situation, will have so many things to think about and organise that safety planning and engaging legal support may fall by the wayside. This model helps to ensure that does not happen.

Also see responses to Questions 6 c. and 8.

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

Clearer referral pathways, intervention options, and aimed outcomes will assist referring agencies to better assess whether to (and how to) refer clients to integrated services.

Better articulation of how information may be shared between agencies is also important as part of client autonomy and consent. Systemic interventions should not further disempower victims of DFV by eroding choices and rights as a perpetrator has done.

There is confusion about the referral pathways to the Brisbane HRT. The Brisbane HRT only accepts referrals where there is both identified high risk domestic or family violence, a systems failure (such as poor service response), and a referrer can articulate what they are asking the HRT to do. Changes have also been made to who can make a referral, and how this can be done, which has not been clearly communicated to existing referral agencies, creating confusion and inconsistency.

Regular and standardised training for relevant stakeholders in and alongside the DFV sector would assist in how risk is assessed in line with current research.

Building upon existing integrated service responses, such as the court support and duty lawyer models at DFV courts is also important, and supporting all stakeholders to operate from trauma informed and culturally safe frameworks to practise to ensure their services are accessible and inclusive.

Consideration should also be given to a fully integrated specialist DFV court in all jurisdictions with a particular focus on greater funding for duty lawyer representation for both aggrieved and respondents. To be effective this would require significant injections of resources to not only set up the courts, but to ensure sufficient support, wrap around services and referral pathways are available for all parties.

Preferably these resources would be allocated to creating properly supported referral pathways for DFV services and police to divert both victims and perpetrators as early signs and behaviours are reported or documented. This would limit the need for courts to involve themselves at all in domestic relationships.

17. Have you had any experience with the existing integrated service responses or co-responder models operating in Brisbane, Cairns, Cherbourg, Ipswich, Logan/Beenleigh, Mackay, Moreton, and Mt Isa regions? If so:

a. What worked well?

LAQ has been fortunate to work alongside most of the formalised integrated services responses across Queensland. In Brisbane, LAQ's domestic violence prevention workers work closely with the BDVS and court-based representatives to best connect clients at imminent risk with a holistic and multi-agency response. The stipulations under *DFVPA* Part 5A have provided a clear basis as to what information can lawfully be shared.

b. What could be done better?

See response to Question 16.

c. What outcomes have been achieved?

LAQ is not notified of outcomes and as LAQ does not provide a case management service through our DFV court based supports we are not able to track this.

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

No comments in relation to this question.

Legislative response

Domestic and Family Violence Protection Act 2012

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

The *DFVPA* provides a clear framework for the application of preventative interventions (domestic violence protection orders). The preamble importantly emphasises the gendered nature of DFV (although this lens can and does get lost in the current application of the *DFVPA*) which works to enhance women's safety from coercive control. The restrictions imposed on the respondent do not unreasonably curtail their civil liberties, and the conditions available allow for tailored temporary and final orders to suit individual risk profiles and circumstances. Part 5A positively allows for lawful information sharing between key agencies and stakeholders where there are concerns about imminent risks of serious harm or homicide, further enhancing safety for women and children. The associated guidelines provide the parameters for this information sharing and encourage use of the Queensland Common Risk Assessment and Safety Framework to reach evidence-informed risk assessment conclusions. Part 6 also enhances safety through recognition of interstate and New Zealand orders, without risking safety of the aggrieved in applying for registration in their new jurisdiction and potentially notifying their abuser.

However, legislative interventions are only as strong as the capacity and willingness to enforce them. While the current legislation allows for extensive preventative interventions to be taken against perpetrators of physical and non-physical violence and control, the efficacy of these orders is compromised by QPS, courts and legal practitioners who do not respond to breaches of these orders, or minimise breaches as "technical". Non-physically violent breaches must be regarded as risk indicators of escalating harm. They may be tests by the perpetrator of what, if any, legal consequences will arise, or indicative of a disregard for legal consequences when compared to a perpetrator attitude of entitlement to continue his control and manipulation and further isolate by demonstrating how meaningless a domestic violence protection order can be when no

consequences are forthcoming. Greater knowledge and understanding by key stakeholders is essential to enable the *DFVPA* to operate as intended.

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?

An incident-focused lens is often applied to interpreting the DFVP legislation and determining the grounds for a domestic violence protection order, which reduces the legislative efficacy in responding to coercive control where distinct incidents may be difficult to demonstrate.

Explicitly defining DFV as a pattern of behaviours, or a course of conduct, rather than incident-specific behaviours may better capture experiences of coercive control. Amending the definitions to be best in line with contemporary knowledge of DFV and how power and control manifests may also assist in reducing the domestic violence protection orders taken out against victim survivors where they have used violence in self-defence.

Options to enhance the civil protection order system to better contemporary understanding and research of coercive control include the following suggested amendments to the *DFVPA*:

- s. 8(1)
  - expand "behaviour" to "behaviour, behaviours, or a pattern of behaviour"
  - add a further characteristic such as "in any other way erodes reasonable agency or autonomy"
- s. 8(2)(d)
  - expand to "depriving a person of the person's liberty or autonomy or threatening to do so"
- s. 11
  - amend example of "threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent" to include gender orientation. This example does not need to include who the disclosure audience may be, as this could be a threat utilised over someone's social media platform or workplace or professional position.

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 response?

Advantages

The existing civil law scheme aims to prevent future acts of DFV, rather than punish for past acts. This enables a systemic intervention that can encourage engagement with behaviour change for persons using violence.

Coercive control behaviours may not meet the onus of criminal proof, and a civil intervention order enables a level of protection for victims to enhance safety.

The prospect of criminalising their partner or family member can be isolating for women who may want the violence to stop, but not the relationship or connection to end. The risk of a criminal response may stop this population from connecting with QPS responses even in an emergency.

The existing civil response enables the victim to remain an active participant in the legal process – indicating preferences for conditions that will best enhance their safety – rather than a complainant who becomes a more passive witness in the legal proceeding.

We support the continued use of the existing civil protection order scheme, with additional training for relevant stakeholders, to ensure the laws and processes available are used to their best capacity.

Risks

There is no penalty imposed unless a court order is breached.

QPS should be strongly encouraged to consider criminal responses currently available to them when responding to DFV.

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

See responses to Questions 9, 20 and 50.

Bail

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

Existing laws allow for a wide range of behaviours, including coercive control behaviours, to be considered in deciding whether a defendant is an unacceptable risk of reoffending.

The assessment as to what constitutes an unacceptable risk already involves having regard to all matters appearing to be relevant, including but not limited to the factors listed in s.16(2) of the *Bail Act 1980* (Bail Act). Those factors listed in s. 16(2) include:

(a) the nature and seriousness of the offence
(b) the character antecedents, associations, home environment, employment and background of the defendant
(c) the history of any previous grants of bail to the defendant
(d) the strength of the evidence against the defendant
(e) the risk of further domestic violence or associated domestic violence being committed by the defendant if they are charged with a domestic violence offence or an offence against *DFVPA* s. 177(2).

The above factors specifically allow associations, home environment, background and behaviours to be taken into account in assessing unacceptable risk. The risk of further domestic violence is a prescribed factor relevant to risk. Coercive behaviour being included within the definition of domestic violence in *DFVPA* s. 8(1) (e) and further guidance as to specific behaviours outlined in ss. 8(2) and 8(5) ensures that an extensive range of behaviours could be considered when determining what constitutes an unacceptable risk of reoffending.

The *Bail Act* s. 15 (1)(e) allows a court to receive and take into account evidence of any kind that it considers credible or trustworthy in the circumstances which gives police and prosecutions the ability to present a wide range of evidence of past and current behaviours to ensure a court is well equipped to assess risk.

As noted in the discussion paper, riskier allegations of DFV are categorised differently in the "show cause" provisions under the *Bail Act* s. 16(3). There is a higher threshold to be met and a reversal in onus for specific behaviours; in particular where a defendant is charged with several specific indictable offences in the context of a domestic relationship, or contravention of a domestic violence order where the offence:

(a) involved the use, threatened use, or attempted use of unlawful violence to person or property, or
(b) where the defendant in the five years prior to the commission of the offence was convicted of another offence involving the use, threatened use or attempted use of unlawful violence to person or property, or
(c) the defendant, within two years before the commission of the offence, was convicted of another contravention of a domestic violence order offence.

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?

In our view, any perceived benefit from removing the power to grant bail from police is outweighed by the risks in allowing only courts to make decisions on bail with respect to a person charged with a domestic violence offence. Those risks include:

(a) the unreasonable detention of people in custody and deprivation of their liberty
(b) delays in the issue of bail
(c) watchhouse overcrowding and
(d) increased numbers of people appearing in court, leading to longer delays and potentially larger backlogs.

These factors would be exacerbated in regional and remote areas where courts may not sit regularly and/or where the defendant may not have access to legal representation. Such changes would offend without justification the right under the *Human Rights Act 2019* (HRA) to be presumed innocent[11] and the right to liberty[12].

[11] *HRA* s.32
[12] *HRA* s. 29

We do not consider there to be benefits to allowing only courts to make such decisions on bail given the restricting considerations imposed on a court regarding bail under the *Bail Act* apply equally to police, and police can grant bail with appropriate conditions to address relevant risks. Greater integration of information for police considering bail would, however, ensure the decision is an informed decision in accordance with the current laws.

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?

For the purposes of bail application, it is a matter for police and prosecutions to present evidence they consider establishes an unacceptable risk under the *Bail Act* s. 16. This is often done in the form of an "objection to bail" affidavit and/or verbal submissions based on information summarised in the initial police document outlining the allegations. The content is reliant on information obtained from the police attending on a case or investigating an alleged offence. How information is elicited and summarised by police for the prosecuting authority is therefore crucial to how the case is presented by the prosecution in the courts for a bail application.

Given the court can take into account evidence of any kind if it is credible or trustworthy under the *Bail Act* s. 15 (e), it is a matter for police and prosecutions to consider whether the evidence put before the court by them sufficiently addresses the risk they submit is unacceptable.

How information is obtained and presented in court is a matter for training for police and prosecutions. Training about the existing law, including the broader capacity to consider any evidence in the *Bail Act* s. 15 (e), the definition of domestic violence as including coercive behaviour in the *DVPA*, and the existing offence provisions (such as unlawful stalking, threats etc) may be of some benefit.

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?

See response to Question 25. Such training should be mandatory to improve understanding of bail and offence provisions.

QPS, lawyers and judicial officers should be provided with mandatory annual coercive control training, as well as ongoing supports to recognise and respond to coercive control.

Police in England and Wales were provided with coercive control training in 2015. Following an evaluation in 2020, it was found that targeted, in-person training, along with peer support networks and professional development assisted police officers in understanding, recognising and responding to coercive control. Attendance at the coercive control training was associated with an increase in interventions to protect against coercive control.

Specialist training could be rolled out in partnership with DFV services and experts by QPS, the QLS (as a component of required CPD points), and by DJAG for the judiciary and registry staff.

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?

In our view the *Bail Act* already allows a court to take into account coercive control when assessing relevant unacceptable risks under section 16. It is for prosecutions to put evidence before the court of coercive control and the nature of the circumstances which in their view creates an unacceptable risk, to allow the court to consider the relevant factors in s. 16. Our response to Question 23 details the existing law which allows a court to take into account coercive control, where relevant, in bail applications. Courts also have powers to impose conditions considered necessary to mitigate risks to an acceptable level and can impose such conditions as they consider fit to do so under s. 11.

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?

Perpetrator programs, where the behaviours of DFV are challenged and participants are encouraged to change their attitudes in order to prevent future DFV, are a useful systemic strategy in promoting accountability and reducing the incidence of DFV. While there are many options for requiring attendance at these programs, including under bail or a domestic violence prevention order, these programs require further funding and resourcing. The number of programs available across Queensland cannot meet current demands. Consideration should be given to offering more behaviour change programs, including making the programs accessible for participants requiring an interpreter. Enhancing opportunities to access these programs should also be prioritised, including the re-inclusion of DVConnect Mensline at DFV Magistrates Courts to provide behaviour change supports to men attending their application mentions.

Courts already have wide powers to impose conditions on bail to mitigate unacceptable risks to an acceptable level. This includes an ability to order a defendant to attend a perpetrator program as a condition of bail. In our view, the issue is not the court's inability to grant bail with such a condition, but the lack of programs available.

The imposition of such a bail condition should be considered on a case-by-case basis, and not mandatory across the board to all alleged perpetrators. The current programs available to perpetrators are significantly under resourced and backlogged. In many areas across the state they are simply unavailable. A mandatory requirement to attend an under-resourced or non-existent program would see defendants remanded in custody for significant periods of time. This may discourage the reporting of low-level types of behaviours often captured by the coercive control elements of the definition of DFV.

Queensland Criminal Code

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

There are a significant number of offences in the *Criminal Code* which encapsulate the more overt coercive control behaviours as outlined in the discussion paper (see for example, procuring sexual acts by coercion, and distributing or threatening to distribute intimate images etc).

A potential for weakness in existing offences is the risk that less overt coercive control behaviours such as lying to others about the victim, sabotaging relationships with others, and gaslighting behaviour, do not necessarily fall within existing *Criminal Code* offences, or the prosecution of them. That is not to say that these behaviours are not necessarily caught by offences within other pieces of legislation.

While not discussed in detail in the discussion paper, LAQ draws the taskforce's attention to *Criminal Code* s.359 namely 'Threats'. This provision is also apt to capture aspects of conduct that may constitute coercive control. It captures threats of detriment of any kind, that prevents or hinders a person from acts that they are lawfully entitled to do or abstain from doing.

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

The current definitions for the offences 'Stalking' and 'Torture' allow for the prosecution of a course of conduct that includes both coercive control and actual physical abuse.

Stalking

'Stalking' is conduct:

a) intentionally directed at a person (the **stalked person**); and
b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and
c) consisting of 1 or more acts of the following, or a similar, type –
    i. following, loitering near, watching or approaching a person;
    ii. contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;
    iii. loitering near, watching, approaching or entering a place where a person lives, works or visits;
    iv. leaving offensive material where it will be found by, given to or brought to the attention of, a person;
    v. giving offensive material to a person, directly or indirectly;
    vi. an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
    vii. an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and
d) that—
    i. 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; or
    ii. causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

Detriment is defined[13] to include:

a) apprehension or fear of violence to, or against property of, the stalked person or another person;
b) serious mental, psychological or emotional harm;

[13] *Criminal Code* s. 359A

c) prevention or hindrance from doing an act a person is lawfully entitled to do;
d) compulsion to do an act a person is lawfully entitled to abstain from doing.

The definitions for this offence are sufficiently broad to encompass the circumstances that constitute coercive control behaviours, particularly when compared to the elements of offences involving coercive control in model jurisdictions. Further, this offence does not require a specific intent to cause apprehension, fear or detriment, or that such apprehension, fear or detriment was in fact caused to the victim.[14] This can be contrasted with the Tasmanian jurisdiction, where a significant difference between the offence of emotional abuse or intimidation[15] and stalking[16] was that stalking required an actual intent.

Torture

'Torture' requires the intentional infliction of severe pain or suffering on the victim, and that pain or suffering is defined to include mental or psychological or emotional pain or suffering, whether it be temporary or permanent.

The requirement to establish that severe pain or suffering was sustained by the victim, and that there was a specific intent to do so, means that there may be some difficulty in establishing these elements to the requisite standard where there are less overt coercive control behaviours involved. However, the maximum penalty for 'Torture' is 14 years imprisonment which is reflective of the increased criminality that comes with the intentional infliction of harm.

A review of relevant Queensland Court of Appeal decisions for the offences of Torture and Stalking, generally reveal that prosecutions only occur where violent acts in addition to coercive control are featured.

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

There is no legislative barrier to using existing offences (for example, stalking) to prosecute coercively controlling behaviours. There may be other internal barriers to police and prosecutors in prosecuting this conduct, such as:

- a systemic failure to receive, review or investigate domestic violence complaints encompassing a long history of conduct rather than a single incident
- a reluctance to complain about or pursue conduct that constitutes coercive control stemming from a difficulty to identify or articulate such behaviours by the victim, particularly where language or communication barriers are involved
- a lack of awareness of the availability of charges such as unlawful stalking, due to the labels and opinions that stem from it.

[14] *Criminal Code* s. 359C
[15] *Family Violence Act 2004* (Tas) s. 9
[16] *Criminal Code Act 1*924 (Tas) s. 192

To better utilise existing offences requires a multi-pronged approach encompassing not only prosecuting bodies, but community education. Increased recognition of coercively controlling behaviours, the ability to more effectively communicate with victims to obtain a comprehensive history, and further education to police and prosecutors on the extent to which existing offences can be utilised could be very beneficial.

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?

Exculpatory provisions can apply to all defendants, including where offending is attributable to coercive control. Subject to the specific operation of the excuse or defence, the *Criminal Code* defence and exculpatory provisions generally apply across all offences in Queensland, even if they are not offences in the *Criminal Code*[17]. As such, victims of coercive control charged with offences ranging from assault to murder could avail themselves of these defences and excuses where appropriate.

Lawyers should be astute in obtaining detailed background and contextual information from a defendant such that their circumstances can properly be investigated and tested to see whether exculpatory provisions apply. In some cases, this would require detailed instructions, the engaging of experts, making Right to Information applications, and interviewing potential witnesses (including prosecution witnesses). At times in cases this has included obtaining QPS records, QPRIME reports and prosecution briefs of evidence to identify histories of DFV to explore and support applicable defences or excuses. While much of this can be explored through legally aided matters particularly in the higher courts, due to limitations on legal aid funding, there are limited options available to provide representation in summary matters.

Even when legally aided, there are often challenges for defendants in rural and regional areas in engaging experts, particularly psychiatrists and neuro psychologists, at legal aid rates.

The ability to raise certain defences is currently restricted by what a person is charged with and/or the particular factual scenario in which their offending has occurred.

One way the legal profession and judicial officers could be better educated regarding victims of coercive control being charged with offences, is to add commentary to the National Domestic Violence bench book (https://dfvbenchbook.aija.org.au/contents), to better facilitate awareness of the issues.

Below is a consideration of how some of the existing excuses and defences could be applied to circumstances in which a person's criminal offending is attributable to being a victim of coercive control:

- *Mistake of fact*: Gathering information by obtaining instructions regarding a victim defendant's honest belief at the time of the offences and investigating information regarding background and history to place actions in context and address the reasonable aspect of this excuse by explaining why a victim defendant may act in a certain way, even if mistaken at the time of the actual offence.

[17] *Criminal Code* s.12

- *Intention*: Offences such as murder, attempted murder, torture, and unlawful stalking include the establishment of intention. An inability to be able to establish intent by having regard to the context and history of a particular domestic relationship can result in an acquittal or reduction in seriousness in the charge. For example, in the case of *R v Blockey*[18] Ms Blockey was originally charged with the murder of her domestically abusive partner. Ultimately, due to negotiations having regard to the prosecution's issues with the strength of the evidence on intent, the charge was reduced to manslaughter and she pleaded guilty on the basis that she neither intended to kill or do grievous bodily harm. She stabbed her partner once, and the sentencing judge noted[19] "having regard to the applicant's history of having sustained repeated serial domestic violence, there was an increased likelihood of the applicant acting aggressively when threatened or assaulted by a domestic partner".

- *Provocation:* There may be limited circumstances in which a defence of provocation can be raised partly due to the fact that as a complete defence there is a requirement that the defendant is charged with an offence for which assault is an element of the charge and there is a requirement of an action by the perpetrator/complainant that incites the assault in circumstances where the victim is so deprived of the power of self-control and acts upon it before there is time for their passion to cool.[1] In the application of the partial defence of provocation (reducing Murder to Manslaughter) a proportionate analysis is applicable. However, information gathering, and background history investigations can assist in developing the context of the actions of an individual who has been subject to coercive control behaviours.

- *Duress*: There are also limitations in raising the excuse of duress.[3] This is because such a defence requires the person does an act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.

  This is a difficult excuse to raise when there are a number of other alternatives available, but not impossible. The relevance of the coercive controlling behaviour of the perpetrator/complainant associated with financial control, isolation, blackmail, systemic intimidation, and threats builds a context in which the person's belief is held.

- *Self defence*: In cases where there is evidence of a protracted history of domestic violence, sourced from the victim defendant, medical reports, police reports/QPRIME, counselling records, family, friends, children, and expert assessments, the defence of self defence can sometimes be successfully raised. In the case of murder, the

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[18] [2021] QCA 77.
[19] *Ibid* at [9]
[1] *Criminal Code* s. 268(1)
[3] *Ibid*, s. 31(1)(d)

information gathered may also support a conviction for a lesser charge like manslaughter as the information would also be relevant to the defences of provocation and killing in an abusive domestic relationship. The defence of self-defence is open for an offence where assault is an element or where a person is charged with unlawful killing[20]. Similarly, the defence of self-defence can only be raised where there is a need to use force to make an effectual defence from an assault.[2]

In the trial of Peta Ansford before the Mackay Supreme Court in February 2019, Ms Ansford was initially charged with the murder of her partner. She had inflicted a single fatal stab wound to her partner although she went on to call emergency services and co-operated with police. She was later tried for his manslaughter and acquitted on the basis of self-defence. There was a protracted history of domestic violence towards Ms Ansford.

Similarly in the case of Susan Falls, sufficient evidence was placed before the court in her murder trial in 2010 to allow her to rely on the defence of self defence and the partial defence of killing in an abusive relationship despite having shot her husband in a premediated fashion after drugging him. The evidence included information from Falls' family members and friends of a sustained history of physical, emotional and controlling behaviours on the part of her husband. It also included medical history and expert evidence. She was acquitted based on self-defence.

- *Killing for preservation in an abusive relationship:* This provision provides a partial defence reducing a charge from murder to manslaughter where it can be demonstrated that a deceased has committed acts of serious domestic violence against an accused in the course of an abusive domestic relationship and it is necessary for their own preservation from death or grievous bodily harm to cause a death. Importantly, domestic violence in this provision is defined consistently within the *DFVPA*, and in this regard, includes the elements of coercive control. Additionally, the history of acts of domestic violence under this provision may include acts that appear minor or trivial when considered in isolation [21]. The intent of the partial defence introduced in 2009 is set out in the Explanatory Notes to the Criminal Code (Abusive Domestic Relationship Defence and another Matter) Amendment Bill:

  > The new defence will operate to reduce a charge of murder to manslaughter. It will operate in addition to, not instead of, other defences/excuses. Therefore, a victim of abuse charged with the murder of their abuser may wish to raise the complete defence of self-defence for the purposes of an acquittal, the partial defence of diminished responsibility or provocation to reduce a charge of murder to manslaughter, as well as the new partial defence depending on the circumstances of the case. It will then be a matter for the jury having regard to all the defences/excuses left to them to determine criminal responsibility.

[20] *Ibid* ss. 271 and 272

[21] S. 304B(3) Criminal Code

As outlined above, it was a defence left to the jury in the case of Falls, although ultimately the jury relied upon self defence to acquit her entirely of all possible charges.

- *Extraordinary emergency:* S. 25 Criminal Code provides an excuse for people who commit an offence under such circumstances of sudden or extraordinary emergency such that an ordinary person possessing the ordinary power of self-control could not reasonably be expected to act otherwise. It is conceivable that this provision may apply to victims of domestic violence who are faced with a situation whereby there is a need to break the law in an emergency situation. It is likely, however, that for the circumstances to arise for this provision to apply, other exculpatory provisions would also apply, such as self-defence or duress.

- *Mental health – insanity & diminished responsibility:* LAQ has dealt with cases where the defence of insanity has been a live issue for a victim of domestic violence charged with offences of endangering a child by exposure. In this regard, the client had experienced domestic violence in the lead up to the alleged offending. The degree of their psychiatric impairment was such that they were found to be of unsound mind in relation to the offence.

  The issue was also considered in *re-JG* [2004] QMHC 025. In this case the defendant was found to be of unsound mind in relation to the offence of the murder of her seven-year-old son. The defendant was in a relationship with the father of her son for seven years. It was an extremely violent relationship and included the making of domestic violence orders. While she had not seen the father of her son for some time, she was fearful of his return. She had an extensive psychiatric history and was hospitalised for episodes of depression. At the time of the offence she was found to be suffering from chronic and major depression such that she was deprived of the capacity to know she ought not do the act.

  The defence of diminished responsibility as a partial defence reduces murder to manslaughter where a person is found to have a relevant capacity that is substantially diminished as opposed to completely deprived. This defence may be relevant in circumstances where a victim of sustained domestic violence might suffer from a mental illness as a result of the domestic violence, which also substantially deprives them of a relevant capacity.

  In relation to both these defences, evidence from the victim defendant, family, and friends, treating psychiatrists and other relevant doctors, hospital records and phone records/downloads may assist in supporting the defences. Expert opinion on the relevant connection between coercive control behaviours as well as physical abuse on the mental health of the victim defendant may be relied upon.

While the defences under the *Criminal Code* expressly apply to any act which constitutes an offence in Queensland [5] an irregularity arises in raising defences and excuses for a charge of contravening a protection order.

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[5] *Criminal Code* s. 12

Once it is established that the respondent is suitably aware of the order, it is only necessary to prove that the order was contravened. A charge of contravening a protection order does not require proof by the prosecution that the behaviour was unlawful. This may be problematic where there are cross protection orders in place within a relationship.[4]

The most common contravention is a breach of the mandatory condition that the respondent must be of good behaviour. This poses challenges for a defence lawyer as many defences (eg provocation and self-defence) do not in fact apply. It may then depend on an assessment by the court whether in the specific context of the offending it could be said that their behaviour was in contravention of the condition.

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

It is accepted that some conduct which amounts to coercive control is not captured by the *Criminal Code*. However, taking into consideration the various legislative options that incorporate consideration of coercive control, we do not consider that the current provisions in the *Criminal Code* need to be amended or added to. Case law recognises the behaviours as falling within the scope of the *DFVPA*, for example:

- *Bottoms v Rogers* [2006] QDC 080 defined "intimidation" as referring to a process where the person is made fearful or overawed, particularly with a view to influencing that person's conduct or behaviour. The case identified that it could include a single incident of conduct. "Harassment" was defined as involving a repeated or persistent form of conduct which is annoying or distressing rather than something which would incite fear. Yelling was identified as an act that could be part of a course of conduct which amounted to harassment depending on the circumstances.
- In the case of *W v D* [2008] QDC 110, the court concluded that repeated statements to the respondent that she was "sick, crazy, needed help" and so on, in the context of the relationship and the characters or personalities of the parties amounted to intimidation, and that the appellant would have been aware that this sort of language would reduce the respondent's already depleted self-confidence. The repeated uses of the demeaning references were a persistent, annoying, and distressing form of conduct and therefore also regarded as harassment.
- In the case of *N v P* [2009] QDC 69, the court concluded that frequent unwanted phone contact and attendance at home or school of children, despite a lack of interest in contact being communicated, creating a perception of stalking, was confirmed to amount to harassment.
- In the case of *BJH V CJH* [2016] QDC 27 @ [11] the court held that it was open to the Magistrate to conclude that the action of 'seizing… a mobile phone… was behaviour which in the circumstances was coercive…. Being designed to compel the aggrieved to do something she did not want to do.
- In the case of *ADH V ACH* [2017] QDC 103 at [72] the court identified no matter the motive or how justified a person considers their conduct, for one person to continually

[4] *DFVPA* s. 177

harass another person by repeated unwanted contact to make them do something, in this case to accede to the respondent's demand for custody on his terms, meets the definition of DV as its coercive behaviour and emotionally abusive, and indeed its controlling.

- The case of *MNT V MEE* [2020] QDC 126 recognised the following controlling behaviour as amounting to emotional and psychological abuse: treatment of the respondents belongings after separation; the appellant getting into bed with respondent at a time after they had commenced living apart; not getting work done on a house in circumstances where appellant was a builder leading to diminished value of assets; and an altercation which became the subject of a "recording".

The behaviours not already criminalised by the provisions of the *Criminal Code* are more appropriately addressed in forums that specialise in addressing and rehabilitating this behaviour. Victims of DFV are better serviced by an injection of resources into the DFV referral pathways and services, housing options and increasing programs for perpetrators rather than the creation of new offences.

However, if any amendment to the *Criminal Code* is to be made, it should be to introduce a new specific offence where there is an appropriate penalty commensurate with the conduct. This is in contrast to amending current provisions which, in our submission already encompass the conduct which amounts to coercive control, and in addition, carry maximum penalties of between five- and 14-years imprisonment.

If any new offence is to be created, then LAQ would like to be consulted about the elements of such an offence, and the appropriate penalty which ought to attach to it.

Admissibility of evidence about coercive control

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

Evidence of coercive control is being used to establish offences, outline a relevant history of domestic violence to support or provide context to serious indictable offences and to reveal the character of a relationship.

S. 132B of the *Evidence Act 1977* (Evidence Act) provides that relevant history of the domestic relationship between the defendant and the person against whom the offence was committed is admissible in criminal proceedings against a person for an offence in Chapters 28 – 30 of the *Criminal Code.*

Chapter 28 – homicide, suicide, concealment of birth[22]

Chapter 28A – Unlawful striking causing death

Chapter 29 – Offences endangering life

Chapter 30 – Assaults[23]

[22] For example, *R v Zingle* [2017] QCA 91*, R v Pearson* [2015] QCA 157.
[23] For example, *R v Toweel* [2019] QCA 303.

"Domestic relationship" is defined in *DFVPA* s. 13. History of the domestic relationship would obviously include coercive and controlling behaviours by one party against the other.

The sole test of admissibility of relationship evidence under *Evidence Act* s. 132B is relevance to the issues at trial[24]; it is not subject to the common law test for admissibility for "similar fact"/propensity evidence.[25]

Therefore, evidence of coercive control in a relationship is admissible where it is relevant to a fact in issue.

Witnesses such as family members, neighbours, friends, and police officers can give evidence of what they have directly observed under the current law.

The special witness provisions in the *Evidence Act* Division 4 provide protections for vulnerable witnesses including victims of domestic violence.

As noted in the discussion paper, the *Evidence Act* s. 132B does not limit the admissibility of relationship evidence for proceedings for offences not contained in *Criminal Code* Ch 28 – 30 , because it does not alter the position at common law that evidence about the relationship between the offender and complainant does not offend the rules against bad character or propensity evidence.

Evidence of the relationship between the alleged offender and the complainant is relevant as it could assist the jury to "understand the context of the incidents that were the subject of the charges"[26], and this evidence is frequently relied upon by the prosecution to provide context in relation to alleged offending of a sexual nature[27].

Evidence that the relationship was characterised by "coercive control" of the victim by the alleged offender in a charge of rape (*Criminal Code* s. 349, which does not fall within Ch 28 – 30) would also be admissible as it is relevant to the element of consent, which must be "freely and voluntarily given".

The *Evidence Act* s. 93B provides that statements attributed to a witness who is unavailable (such as a deceased person) may be admitted. Relevant history of domestic violence, which relies upon statements of the deceased, may be led against a defendant on a charge of murder.

Expert evidence which would assist in explaining behaviour of victims of domestic violence (formerly referred to as "*battered woman syndrome*") has been received at least since the High Court in *R v Osland*[28].

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

Understanding what evidence is required and having the skills to elicit the necessary information from a victim and/or witnesses is a challenge for police attending and investigating DFV. Often the first responders are junior officers, with limited work and life experience, ill-equipped to deal with victims let alone have a broader understanding of gathering evidence. It is particularly essential in

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[24] *Roach v the Queen* (2011) 242 CLR 610,622.
[25] *Pfennig v the Queen* (1995) 182 CLR 461.
[26] *Gipp v The Queen* (1998) 194 CLR 106 per McHugh and Hayne JJ
[27] For example, *PAB* (2006) QCA 212.
[28] [1998] HCA 75

cases involving coercive control where the offending is often covert, subtle and/or occurring over a period of time compared with an acute incident. We are unable to comment on the level of training offered to trainee and newly appointed police officers, or what ongoing training is offered to serving officers. Those issues would be more appropriately addressed by QPS.

From a defence perspective, it is the lawyer's role to advise a victim-defendant client of rules of evidence applicable to their case and elicit all relevant information from the client and any other witnesses, including prosecution witnesses, in the preparation of the case. The experience of circuit counsel is that there is pressure from the courts on legal representatives "to keep the list moving" particularly in regional circuit courts, where extra time and multiple conferences may be needed to gain the confidence of and obtain instructions from victim defendants, particularly those from remote communities whose first language is not English.

Obstacles in obtaining funding for expert reports and the lack of qualified experts available to prepare reports is a barrier to obtaining expert evidence about the impact of family violence on a defendant's mental state.

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

Relevant history of a domestic relationship is admissible at common law and under the *Evidence Act* s. 132B.

Under the *Evidence Act* s. 93B, where the victim is deceased, relevant statements by the victim regarding the behaviour of the offender are admissible providing the criteria in that provision are met.

If evidence of coercive control is not being led where it is relevant, then this is an issue of preparation and professional competence not a deficiency in the existing laws.

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?

Similar fact and propensity evidence

As noted in the discussion paper, the common law[29] in relation to the admission of similar fact evidence applies in Queensland.

The relevant history of the relationship between defendant and complainant is admissible and is not subject to the rules relating to propensity evidence or character evidence. (See discussion above).

In our view, the current evidentiary rules allow for the admission of probative, relevant evidence and limit unfairly prejudicing the right to a fair trial. LAQ does not support extending the rules of evidence and rendering admissible evidence of the conduct of the defendant beyond the scope of the relationship with the complainant, to demonstrate a tendency on the part of the defendant to engage in certain behaviours. Such evidence must always be subject to the basic requirement of relevance

[29] *Pfennig v The Queen* (1995) 182 CLR 461

and, because it is so prejudicial, to discretionary exclusion by the trial judge where its probative value is outweighed by its prejudicial effect, and where its admission is not in the interest of a fair trial.

Legislation that would abolish the common law principles governing admissibility of "propensity" evidence has far wider implications for the administration of criminal justice beyond offences which involve family violence, and there should be further consultation on this issue among stakeholders where the broader implications of the legislative amendments can be considered.

Body worn camera footage

This evidence is frequently relied on in criminal trials by police witnesses, including where statements against interest/admissions by a defendant are recorded.

If it is proposed that the evidence of the complainant recorded on body worn cameras at the scene were to be admissible in criminal proceedings as evidence in chief (under a provision similar to Division 4A of the *Evidence Act* for affected child witnesses) the reception of this evidence should be subject to the same rules as apply for 93A statements, in particular the right to cross examination at trial.

An untested accusation can never and must never equate to proof beyond a reasonable doubt. Such an approach would gravely impact on the entitlement to a fair trial and be inconsistent with rights outlined in the *HRA*[30].

Expert evidence

The common law does not permit "opinion" evidence to be given unless it falls within certain exceptions.

One exception is expert evidence. The expert must be appropriately qualified in a recognised body of expertise. The foundational facts upon which the opinion is based must be proved. It is **not** necessary that the expert witness observe the offence or have been on hand to observe the day-to-day interactions of the parties. For example, a psychiatrist will assess the patient and provide a report to the defendant's legal representatives, if they are being called as a witness in the trial they will have access to the evidence in the form of transcripts and to exhibits tendered by the prosecution including recordings. It is rare for the expert to be present for the entirety of the trial, although this does occur.

The discussion paper notes that at common law expert evidence cannot have the effect of taking away the functions of the judge or jury to decide the ultimate issue. The Discussion Paper suggests that this common law rule has been abolished in Australia's uniform evidence jurisdictions.

It is accepted that the uniform Evidence Acts codified evidence law in those states, and thereby *technically* abolished the above common law principle in the sense that the Acts replaced the common law.

However, the common law principle that an expert cannot usurp the functions of the judge and jury has not been abrogated by the uniform Evidence Acts.

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[30] *HRA* s. 32

One of the leading Australian textbooks on evidence law correctly states[31]:

> One fundamental requirement, still applicable to expert evidence ***whether adduced at common law or under the uniform legislation***[32] was mentioned in *Makita.* Though not explicit in the evidence statutes, the common law principle is necessitated by both the adversarial form of proceedings and the use of lay triers of fact. The principle was clearly stated in *Davie v Magistrates of Edinburgh*:
>
> > Expert witnesses however skilled or eminent can give no more than evidence. They cannot usurp the functions of the jury or Judge sitting as a jury …. Their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the Judge or jury to form their own independent judgement by the application of these criteria to the facts proved in evidence.
>
> The rules governing admissibility, as well as procedures regulating the form, of expert opinion evidence based on specialised knowledge should be applied with these issues in mind. The purpose of the expert evidence is to enhance fact finding by citizens and Judges and so opinion evidence must be presented in a manner that enables them to rationally engage with it.

Amendments to the *Evidence Act* should not be made without a broader comprehensive review of the scope of opinion evidence at common law and under the codified Evidence Acts.

Sentencing

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

The legislation as it currently stands allows for a wide range of considerations to be incorporated into the exercise of the sentencing discretion. *Criminal Code s.* 1 informs s. 12A and s. 9(10A) of the *Penalties and Sentences Act 1992* (PS Act) as to what domestic violence is and that section draws its definition of domestic violence directly from the *DFVPA*, including its reference to coercive or controlling behaviour in ss. 8(1)(e) and 8(1)(d).

In addition to those expressed sentencing factors, the *PS Act* s. 9(2)(c)(i) requires a sentencing court to consider any 'physical, mental or emotional harm done to a victim' in arriving at the appropriate sentence.

Anecdotally, sentencing courts are rarely persuaded that 'contact only' or 'non-physically violent' offending is significantly less serious than offending which includes physical violence and impose penalties commensurate with the whole of the facts alleged.

There are no examples of successful appeals by the Attorney-General or Queensland Police Service relating to inadequate sentences imposed for coercive behaviour, though *R v Samuels (a pseudonym); Ex parte Attorney-General (Qld)* [2021] QCA 107 and *R v O'Sullivan and Lee; Ex*

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[31] Australian Evidence – A Principled Approach to the Common Law and the Uniform Acts, 6th Edition, Andrew Ligertwood, Gary Edmond at paragraph 7.66
[32] Emphasis added

parte Attorney-General (Qld) (2019) 3 QR 196 consider the application of the *PS Act* s. 9(10A) in the context of physically violent offending in a domestic setting.

It was noted in *R v Blockey* (referred to under Question 32) by the Court of Appeal in quoting the original sentencing judge[33]: "the fact that you were such a victim of domestic violence as well as a perpetrator of domestic violence is, to my mind, sufficient to enable me to reach the conclusion that it is not reasonable in the present circumstances to treat the fact that your offending was a domestic violence offence as an aggravating feature".

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?

The amendments already made around DFV sentencing allow an appropriate breadth of discretion in sentencing. Options to ensure existing measures are used may include:

- practice directions in each jurisdiction aimed at ensuring that the parties raise the relevant matters at an early or stipulated stage so that they can be properly litigated before the sentencing court
- sentencing courts being required to give reasons including how their consideration of coercive behaviours is to be reflected in the sentence imposed
- checklists for sentencing courts to ensure attention is given to enlivened sentencing considerations.

While LAQ would prefer that wide scope remain to negotiate facts and charges prior to sentence, it is recognised that where conduct clearly amounts to domestic violence there may be reason to allow sentencing courts to overrule those negotiations. It is noteworthy that the *PS Act* s.12A does allow for applications by prosecution authorities to label offending as domestic violence offending following conviction and sentence.

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?

See response to Question 39.

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

Sentences that respond to the social issues that give rise to domestic violence offending would best protect the safety of women and children. That would mean incorporating well-resourced offender management and education programs into community-based orders.

[33] At [11]

Police powers under the Police Powers and Responsibilities Act 2002

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

No comments in relation to this question.

Police Powers under the Domestic and Family Violence Protection Act 2012

43. What are the benefits of personal service PPNs?

Personal service provides all parties and the court with the assurance that the respondent has been served and is aware of the PPN and the next court date. Where respondents (and aggrieved) are encouraged to attend court for mentions it also allows them to connect with advice and supports that can assist in behaviour change (and enhance safety for the victim).

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

This issue was flagged by the Queensland Council for Civil Liberties at the introduction of the *DFVPA*. It is arguably an infringement on civil liberties and human rights to be criminalised for breaching a police/court order that someone is unknowingly subject to. While this is at odds with a victim survivor's rights to live free from violence, legislation must not be made which knowingly erodes human rights. The gap created for victim safety between a domestic violence protection order application being made, and a temporary or final order being made, highlights the significant importance of a coordinated response where other non-legal services can step in to enhance safety as best as possible.

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?

Substituted service under the *DFVPA* by:

- email
- text message or
- social media messaging platform

only in circumstances where personal service is unable to be effected would assist in the efficient and effective progress of protection order applications before the court.

Personal service would still be the preferred method of service, however, there would be provision for the applicant to apply for substituted service and have the court determine this issue in

circumstances where it is impractical to personally serve the respondent, including when the respondent appears to be actively evading service.

Policies and procedures that guide the response of the Queensland Police Service

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 Operational Procedures Manual (OPM)?

Chapter 9 of the OPM should be regularly reviewed and updated to ensure that it aligns with new DFV research and best practice. Annual QPS training on DFV (see response to Question 50) should also incorporate a refresher and overview of 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?

An express provision under 9.4.2 allowing for QPS to, where practicable and where there is no clear immediate threat to safety, interview an alleged respondent where the alleged aggrieved is listed as the respondent in an existing Protection Order (temporary or final) before applying for a protection order in the current incident.

Many women accessing DFV legal advice through LAQ have previously reported their experiences of coercive control and DFV to QPS and have been reportedly advised to make their own private application. This is even in circumstances when there have been abusive or harassing text messages, emails, voice or video recordings that clearly establish that DFV has occurred. To address this, an express direction could be included in 9.4.1 for QPS to apply for a domestic violence protection order in circumstances where someone reports DFV at a police station or establishment and the officer is satisfied that DFV has occurred, an order is necessary or desirable and that there is sufficient evidence to a civil standard.

48. How could the DV-PAF (Domestic violence – protective assessment framework) be improved to ensure it is sufficiently sensitive to identify coercive control risk factors?

No comments in relation to this question.

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

No comments in relation to this question.

Training provided to members of the Queensland Police Service

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

Coercive control is a nuanced area of DFV. The risks associated from incorrect assessments or inadequate service or system responses and interventions can be grave. Given the broad range of issues the QPS must be equipped to respond to, it is understandable that they may suffer fatigue of training. However, we recommend the need for annual, mandatory DFV and coercive control training for all frontline QPS civilian and uniformed Police Prosecution Corps.

A training package that is co-developed and co-delivered by a QPS representative and DFV specialist (service, practitioner or academic) would best capture the QPS priorities, as well as ensuring that the training is consistent with current research and best practice. A partnership-training, led by QPS would also aim to make the training accessible and applicable and contribute to a culture of taking DFV seriously and making it a priority.

Any training package developed must include:

- the principles and preliminary sections of the *DFVPA*
- responding to DFV as a pattern of behaviours rather than incident-specific
- assessing DFV dynamics to determine the person most in need of protection
- identifying high risk indicators of DFV homicide
- barriers to disclosing DFV to QPS and services
- indicators of trauma, including how events may be recalled and recounted
- survivor adaptability, including why survivor engagement may change (threats, fear)
- compounding vulnerabilities and
- using interpreters.

QPS should also be provided with more support (peer and professional) to help protect against biases, compassion fatigue, and burnout, or frustration. More funding and more normalisation of debriefing and support is necessary to combat these issues and emotionally strengthen this workforce to continue to respond appropriately to DFV.

QPS may benefit from having access to in-house social work support (or other professional assistance) to assist in decision making when investigating claims of coercive control, and what actions should be taken by QPS to ensure safety.

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

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?

Yes. Due to the authority and responsibility the QPS holds to assess and respond to DFV, and the confidential information staff have access to, it is essential they have the capacity and the appearance of the capacity to respond safely and take DFV seriously. Allowing people with DFV

convictions to be part of QPS may give rise to concerns about perceptions of victims and the gravity with which they hold DFV.

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?

There can be concerns about their capacity to understand, recognise, and appropriately respond to DFV in these circumstances. This could depend on whether a "finding of fact" has been made on whether they have "committed" DFV (particularly if they weren't the "true respondent"). Also, perhaps taking into consideration their behaviour and attitudes since an order was made and if they have genuinely taken responsibility for their behaviour and made a change or if they are still breaching a DVO or otherwise denying the abuse.

There could be provisions that temporarily exclude someone from working as a member of QPS, for example, a person cannot apply within five years of an order being made.

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

No comments in relation to this question.

54. Do you have experience or knowledge of circumstances where a service 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?**

No comment about these questions.

PART 2 – HOW DO OTHER JURISDICTIONS ADDRESS COERCIVE CONTROL?

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?

The 'initial commentary' in the table below has been provided by the LAQ Criminal Law Services Division and the 'further commentary' has been provided by the LAQ Family Law Services Division.

LEGISLATION	
Tasmania	
Legislation	s. 8 (Economic abuse) and s. 9 (Emotional abuse or intimidation) *Family Violence Act 2004 (Tas)* (FVA)
Maximum Penalty	2 years imprisonment
Benefits/Risks	• *FVA s*s. 8 and 9 address economic abuse, emotional abuse and intimidation without requiring physical violence or fear of such violence. • There is a statutory limitation of 12 months for the prosecution to be commenced, which limits the number of matters that can be prosecuted. • The offences are limited to spouse or partner and do not include other family relationships. • The offences require an accused to unreasonably control or intimidate his or her spouse. There is a lack of clarity as to how reasonableness is to be constructed (ie does it take into account the characteristics of the accused). • There is overlap between the offences, in that s. 8 (economic abuse) can be subsumed within the more expansive offence in s. 9 (emotional abuse or intimidation).

	• The offences require the prosecution to prove that a person had an intention to inflict economic abuse (s. 8) or that the person knows or ought to know that their course of conduct will have certain effects (s. 9), both offences would be difficult to enforce and prove. • The fact that the Tasmanian offences have not been extensively used, supports the proposition that there are challenges with their construction and application.
Suitable for Queensland	The elements of the model that would or would not work well in Queensland are as follows: • Limiting the offence to a spouse or partner (including current and former partners) rather than a wider range of domestic relationships minimises any risks if a new offence was created. • Requiring that there be a course of conduct rather than a single incident is important, so that acts or events only become criminal when viewed as a whole. • Requiring that conduct be intentionally directed to the victim is an important safeguard to recognise the behaviour is deliberate. • Applying a statutory limit to the offence has the effect of limiting the number of offences which can be prosecuted, improves the relevance of any punishment and improves a fairness in the process for the defendant. This could also protect victim defendants from attempts by perpetrators to utilise the system to continue the abuse indirectly. • The requirement in *FVA* ss. 8 and 9 that an accused to unreasonably control or intimidate his or her spouse, lacks clarity and implies that some conduct could be reasonable. • Having a separate provision for economic abuse is unnecessary and superfluous.
<u>Further commentary</u> *Benefits:* The Tasmanian offences specify the nature and standard of proof required of two key coercive control behaviours. This detail enables clarity for police, system responses, and community members. As neither offence is required to have detriment inflicted on the victim, it does keep the focus on the perpetrator's abusive behaviours (and intent to use them, or that there ought to be an understanding of the impact) rather than the subjective focus on the victim. A victim survivor who has been long exposed to coercive control may	

assess the impact of these behaviours as negligible, where they may, objectively, be profound in the erosion of control and autonomy that they inflict.

Risks:

The risk of low prosecution rates exists. If the offences are contained with the *DFVPA* and co-exist with the broader civil protective order legislative regime, it is possible that a civil intervention is assessed as the most suitable by victims and/or responding police (for reasons outlined against criminalising DFV and coercive control) or a lack of familiarity of criminal offences outside the *Criminal Code* may deter the use of these offences. Any new regime, where the non-criminal option remains, risks that practice will continue without adjustment to the new criminal options.

Suitability for Queensland:

In creating additional offences while maintaining the existing civil protection regime (which LAQ supports continuing), the same risks of under-utilisation would exist for Queensland. As there is a strong preventative priority when responding to DFV, any changes must be accompanied by extensive awareness raising and implementation training for frontline responders, support sector workers, and the legal sector.

England and Wales	
Legislation	Section 76 *Serious Crime Act 2015* (SCA)
Maximum Penalty	5 years imprisonment on indictment or 12 months on summary conviction.
Benefits/Risks	• *SCA* s. 76 legislates against coercive behaviour in a relationship between intimate partners, former partners or family members with a focus on psychological and non-violent abuse. • The offence, while limited to controlling and coercive behaviour, is not defined and has potential to criminalise a wide range of behaviour. • The offence requires a course of conduct rather than a singular incident (*'repeatedly or continuously engages in behaviour'*). • The offence requires a personal connection between the offender and the victim (includes past relationships and family members). • The offence requires a person to know or ought to know, that their behaviour will have a serious effect on the victim. This exceeds the subjective standard of intent or recklessness.

	• There is likely to be evidentiary issues in proving knowledge that the behaviour would have a serious effect on a victim. • The offence does not apply to the behaviour of a person towards a child or young person under the age of 16 for whom that person has responsibility. • There is a limited defence in section 76(8) if an accused person believed that they were acting in the victim's best interest and their behaviour was, in all the circumstances, reasonable. • The offence relies on victims being willing to make a complaint. • There may be evidentiary issues when the harm caused is undocumented and with no independent witnesses.
Suitable for Queensland	The elements of the model that would or would not work well in Queensland are as follows: • The requirement that an accused person *repeatedly or continuously engages in behaviour* reflects and demonstrates that the offence requires a pattern of behaviour. The offence does not specify the number of instances of controlling and coercive behaviour, however, the behaviour will have a serious effect if it causes fear on at least 2 occasions. • The absence of a statutory definition for 'controlling and coercive behaviour' creates uncertainty, for example, how to distinguish between jealous and possessive conduct and controlling or coercive behaviour. • The "personal connection" requirement as set out in the section is complicated. • The mental element of "knows or ought to know" is too low a threshold and a requirement that the conduct be intentional would be more appropriate. • The requirement that the behaviour of 'A' have a 'serious effect' on a victim including fear or violence and "serious alarm or distress which has a substantial adverse effect on 'B's' usual day-to-day activities" has broad application. • While a defence to any new offence would be appropriate, the defence set out in section 76(8) (ie acting in best interests and

	reasonable in all the circumstances) is unusual for Queensland – without reasonable excuse would be more appropriate.

Further commentary

Benefits:

The coercive control offence introduced in 2015 focuses on psychological and non-physical violence and control. This focus was determined from the view that existing criminal laws sufficiently provided for instances of physical DFV.

Risks:

The relationships captured under the coercive control offence are narrow and exclude those experiencing coercive control in dating/non-de facto relationships. The de facto requirement was subsequently removed in 2021 in recognition of coercive control risks outside of de facto relationships, particularly following separation which is often the most dangerous period for victims.

Suitability for Queensland:

Care would be needed regarding the relationships captured, particularly as the existing Queensland civil legislation already does not readily capture intimate sexual relationships, where no other enmeshment may be identifiable but where extensive violence, control and coercion can occur.

The implementation of the new offences in England and Wales was also coupled with extensive training for police. Fourteen police forces were provided with specific coercive control training in 2015. A 2020 evaluation showed that targeted, in-person training, coupled with peer support networks, and ongoing professional development opportunities worked best in assisting police to understand, identify, and respond appropriately to coercive control.

If a similar offence was introduced in Queensland, continuous police training must accompany it. The evaluation of the offences in England and Wales indicated that the coercive control training was effective in police responses only up to eight months after completing the training. This is a significant training demand, but also one for which a culture of enthusiasm and engagement must be cultivated within the police force for it to be meaningful.

Ireland	
Legislation	Section 39 *Domestic Violence Act 2018* (DVA)
Maximum Penalty	On indictment 5 years imprisonment or on summary conviction 12 months imprisonment
Benefits/Risks	• *DVA* s. 39 creates an offence when a person knowingly or persistently engages in behaviour that is controlling or coercive. • The offence is limited to current and former spouses, civil partners or a person that was or is in an intimate relationship. • It requires that a person knowingly and persistently engaged in controlling or coercive behaviour, rather than a single incident. • It requires the behaviour to have a serious effect on the victim, which is a subjective standard. • Difficulties in proving knowledge that the behaviour would have a serious effect on a victim (ie requires proof of knowledge that the behaviour would cause fear of violence or serious alarm or distress which has a substantial effect on day-to-day activities). • Requires actual harm or impact on the victim to be proven. • The offence relies on victims being willing to make a complaint. • There may be evidentiary issues when the harm caused is undocumented and with no independent witnesses.
Suitable for Queensland	The elements of the model that would or would not work well in Queensland are as follows: • Limiting the offence to current and former spouses, civil partners or a person that was or is in an intimate relationship is preferred rather than a wider range of domestic relationships to minimise any risks if a new offence was created. • The requirement that an accused person *knowingly and persistently engages in behaviour* demonstrates that the offence requires a pattern of behaviour. The offence does not specify the number of instances required to amount to persistent behaviour.

	• The absence of a statutory definition for 'controlling and coercive behaviour' creates uncertainty. • The mental element of "knows or ought to know" is too low a threshold and a requirement that the conduct be intentional would be more appropriate. • The requirement that the behaviour has a "serious effect" on the victim would be difficult to prove and has broad application. The behaviour would have a serious effect if it causes a victim to fear violence being used on at least two occasions or causes a victim serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities. • The offence does not include a defence which would provide safeguards.

Further commentary

Benefits:

This model focuses on psychological and non-physical violence and allows for patterns of behaviour rather than isolated incidents.

Risks:

Behaviour causing emotional and psychological harm can still occur through a single incident and does not *need* to be part of an ongoing, or "persistent" pattern. The element of 'intent' may also be difficult to fulfill, particularly in a DFV dynamic where tactics of gaslighting may be used on the victim and the perpetrator is likely to be skilled in minimising, excusing or justifying their abuse. Further issues may arise around the elements of 'serious effect' and 'substantial adverse impact'. In instances of coercive control, and emotional and psychological abuse, evidence of impacts may be obtained from psychiatric or psychological experts which places these elements at the risks of adequate funding for expert reports.

Suitability for Queensland:

As already observable in Queensland's civil domestic violence regime, the frequent lack of evidence particularly regarding non-physically violent incidents, would compound issues around demonstrating an element of 'intent'. The challenges around establishing the impact of the psychological abuse would also be relevant for Queensland regarding expert assessments and reports (to date, not historically prioritised or funded under legal aid in DFV proceedings). This model does not appear to adequately enhance safety.

Scotland	
Legislation	Sections 1 – 8 *Domestic Abuse (Scotland) Act 2018*
Maximum Penalty	Penalty is 12 months imprisonment on summary conviction or 14 years imprisonment on conviction on indictment.
Benefits/Risks	• The Scottish provisions make it an offence to engage in a course of behaviour which is abusive of the person's partner or ex-partner. • The offence criminalises domestic abuse, encompassing both coercive control and physical and sexual violence. • A person commits an offence if the person engages in a course of behaviour which is abusive of the partner or ex-partner of that person. • The offence requires a course of behaviour on at least two occasions which is abusive, rather than a single incident. • The offence imposes an objective standard of proof when assessing harm (ie uses a reasonable person to establish whether the accused's behaviour was likely to cause physical or psychological harm). • It provides that the accused must either intend that their course of behaviour causes the complainer to suffer physical or psychological harm, or else be reckless as to whether their course of behaviour would cause such physical or psychological harm. An example of how recklessness as to course of behaviour may occur is a person who is persistently verbally abusive and demeaning towards their partner and who may claim that they did not intend that their behaviour cause psychological harm to their partner. If the court is satisfied that their behaviour was such that the accused person was, at the very least, reckless as to whether their behaviour would cause such harm, then this condition would be met. • The offence provides a description of what constitutes abusive behaviour and encompasses both coercive control and physical and sexual violence. The extension of abusive behaviour to include physical and sexual violence overlaps with other offences in the *Criminal Code*.

	• The description of abusive behaviour is non-exhaustive and it therefore remains open to the court to decide in any individual case that the accused's behaviour was abusive in some other way. • The offence includes behaviour directed towards a partner or ex-partner and also covers behaviour directed at any other person or a child. • It is not a requirement for the offence to be committed that the prosecution show that the course of behaviour actually caused physical or psychological harm (s. 4). • The provisions in relation to the circumstance of aggravation are complex. • Provides a defence on grounds of reasonableness.
Suitable for Queensland	The elements of the model that would or would not work well in Queensland are as follows: • Limiting the scope of offence to partner or ex-partner – which includes current and former spouses, civil partners or persons in intimate personal relationships. • Requiring a course of behaviour on at least 2 occasions rather than a single incident demonstrates that a pattern of behaviour is required. • Imposing an objective standard of proof when assessing harm provides safeguards. • Criminalising coercive and controlling behaviour should have a higher mental element and should require that an accused person intended their course of behaviour to cause the victim to suffer harm. • The Scottish provisions do not require evidence of the behaviour actually causing a victim to have suffered harm. The offence shifts focus from proving harm was suffered by the victim to proving that the behaviour was likely to cause harm. • Describing what constitutes abusive behaviour avoids ambiguity about what is intended to be covered.

	• A defence on the grounds of reasonableness is an appropriate safeguard. • The inclusion of physical and sexual violence is duplicitous with other offences in the Queensland Criminal Code. • The requirement of recklessness as to whether their course of behaviour would cause such physical or psychological harm is too low a threshold and a requirement that the conduct be intentional would be more appropriate. Directing coercive controlling behaviour at another person or child would be difficult to prove. • The provisions in relation to the circumstance of aggravation against children are complex.

Further commentary

Benefits:

Scotland adopted a two-tier approach in responding to coercive control. In seeking to address coercive control, the Scottish Government:

- criminalised coercive control as criminal behaviour and
- sought to develop the skills of Scotland police with particular focus 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
    - 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.

The implementation focused on building the police understanding of and response to coercive control through appropriate training and practical upskilling of first responders.

Furthermore, the model provided a non-exhaustive list of behaviours which provided examples about what coercive control can look like to assist in the classification of behaviours. In simple terms, the legislation provided a codification of the behaviours that are considered coercive control which may have given some key stakeholders in the policing and enforcement of protection orders a strong platform to respond to people using violence.

Risks:

The model is underpinned by a $1.48 million investment in training in excess of 14,000 police officers and support staff. It is unclear from the discussion paper and further

research what the impact of the legislation and prosecution has been on the culturally and linguistically diverse, LGBTIQA+ and homeless women communities.

A significant risk is that it does not need to address First Nations overrepresentation in the criminal justice and domestic violence systems. The Scotland Model, while proving the criminalisation of coercive control can be done, also highlights the need for a response to be mapped out closely with key stakeholders from the first engagement with police to the court system and future contraventions.

It is noteworthy that while 246 people were prosecuted for the offence in the first year of its operation, 206 were convicted of the offence (an 84% conviction rate). Of the 206 people convicted, 202 were men and four were women.

Suitability for Queensland:

It is suggested that:

- the codification of behaviours that are considered coercive control would assist in the identification of behaviours that place a person at risk of experiencing future domestic violence and assists in the response to these behaviours by relevant stakeholders, and
- the investment in training for the police service would assist in identifying the person most in need of protection at the earliest opportunity.

It is also recommended that the investment in training is ongoing. In accepting that the social sciences will identify new ways to understand and comprehend domestic violence and how to best respond to the vulnerable communities where DFV features in a disproportionate statistical group, ongoing training will be required.

It is unclear about what continuous learning requirements exist in Scotland.

What will not translate well is the silence on the First Nations experience of family violence. The response to First Nations overrepresentation requires specific and focused attention.

POLICE	
Canada, Scotland, England and Wales, Victoria, New South Wales, Europe, USA and South America	
Suitable for Queensland	Any attempts at criminalising coercive and controlling behaviour should be complemented with comprehensive social services support for victims and adequate frontline training. Training should include all criminal justice participants including police, prosecutors, lawyers, court staff and judicial officers. This would improve the way the justice system responds to domestic and family violence.

Canada
Further commentary *Benefits:* This policing model provided for intensive multi-day training, allowing for sufficient time to better ensure understanding of the gravity of the risks posed by coercive control. DFV training for any first responders is generally time limited, with coercive control a small component of that. Structuring a lengthier training package allows for the complexity of the topic to be better explored and explained. In-person training (as opposed to online packages) also work for greater engagement by the police officers attending. *Risks:* Any training around DFV should be part of a continuous education program, rather than an intensive one-off training. Understandings continue to evolve, and best practice recommendations are amended regularly with learnings from DFV death reviews across the world. Any intensive one-off training must be supplemented by regular (annual) ongoing education and peer support. *Suitability for Queensland:* LAQ supports further specialised training for QPS. Police-led models, where the onus is placed on QPS to be the “change agents”, would hopefully have a positive impact on police culture and how officers view and respond to DFV in Queensland. Any DFV training within QPS should be mandatory and regular for all staff. The pervasiveness of DFV means that it must be prioritised by QPS and other frontline responders to ensure their interventions are up to date with the most recent research and best practice.
Europe
Benefits: The Multi-Agency Risk Assessment Conference (MARAC) approach encourages staff to think holistically about a victim survivor’s needs and encourages multi-agency cooperation and information sharing. *Risks:* By focusing on high risk matters attention can be drawn from other DFV and experiences of victim survivors not deemed high risk may be minimised. The discretion by officers to assess whether a matter is high risk can lead to inconsistent approaches. This model also relies on victim consent, which may not be forthcoming for a variety of reasons including their own assessment of safety.

Suitability for Queensland:

This model could work well provided it is accompanied by clear training to all relevant agencies (not only those in the MARAC-style team) about how the model works and how agencies can make referrals. There would also need to be transparency and communication around what action has been taken by the MARAC team after a referral has been made. It would also be beneficial to have an integrated system on which the MARAC involvement could be indicated to the entire police force and not only the initial police station. This would work to avoid risks not being addressed appropriately with repeat offending across different policing regions.

United States and South America

Benefits:

Centres or stations specifically for women that have multi-disciplinary teams under the one roof emphasises and encourages a holistic response to a victim's needs. It also ensures that staff who specialise in DFV are acting as a first point of contact. It is hoped that this would lead to more positive and proactive first responses.

Risks:

The establishment of these centres may lead to a reduced onus on non-specialist responders to keep up to date with DFV training or offer evidence-informed interventions, thereby reducing safe and effective systemic interventions even further.

It is not practical to establish such centres in all regional, rural and remote areas, creating discrepancies in access and further widening the gap between victim safety between regional and rural areas.

Women-only centres may also further isolate people who are gender diverse, non-binary, and gender fluid. People in the LGBTIQA+ communities are particularly vulnerable to DFV, and there are already very limited LGBTIQA+ DFV specialised services and crisis responses. Specialised centre responses as a strategy to address DFV overlook these communities, and may create even further barriers to seeking assistance.

Suitability for Queensland:

Specialist centres in which police, lawyers, social workers and psychologists work together would be positive as it encourages a holistic approach, however, this would be difficult to implement in Queensland given the size of the state, and could only be offered to select hubs. There are also concerns that these centres would exclude those in rural and regional areas as well as those in the LGBTIQA+ communities.

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

a. What is the jurisdiction?
b. What is the model?
c. Why do you think the Taskforce should consider them?

Below is the domestic violence legislation in other Australian jurisdictions we have considered.

Jurisdiction	**Legislation**	**Local Name of Order**	**Sections that expressly include terms *coercion* or *control***
QLD	*Domestic and Family Violence Protection Act 2012*	Domestic Violence Order	Part 2, Division 2 - *'Operation of Act', 'Domestic Violence'*
Queensland's domestic violence legislation is comprehensive in how it defines domestic violence and aligns with the legislation from all Australian jurisdictions, in particular Victoria and South Australia.			
NSW	*Crimes (Domestic and Personal Violence) Act 2007*	Apprehended Violence Order	Section 11(1)(c)
Benefits: The DV High Risk Offender Teams proactively target persons using violence to increase accountability and reduce further use of violence and control. Through offering greater funding for QPS to run this program, and explicit guidelines around how QPS can best respond to DFV (investigating, considering legal interventions, rigorous information gathering) this Police-led response can lead to better police interventions, and incorrect use of existing legal responses (e.g. reducing victims being named as respondents under protection orders, or charged with criminal offences when further information may reveal they are *the victim).* *Risks*: If training is not repeated and updated with emerging research and understandings of DFV, this specialised police response could lose all the benefits it offers. This model requires continued additional resourcing and training. Without resourcing of perpetrator programs (i.e. behaviour change supports) or services aimed at rehabilitation, this model remains solely focused on criminalising and punishing persons using violence. This model does not offer an opportunity to connect perpetrators with supports to better reduce risks of using violence (beyond facing criminal prosecution).			

Suitability for Queensland:

This could work with appropriate resourcing which must include regular (at least annual) training on DFV dynamics, cultural awareness, and trauma, and how these factors can affect a person's engagement with legal and QPS interventions. We would encourage purposeful police-led initiatives that will encourage a stronger QPS culture to better identify, understand, and respond to DFV, and reduce systemic failings of victims being further victimised by police interventions.

VIC	*Family Violence Protection Act 2008*	Intervention Order	Part 2 – '*Interpretation*'

Benefits:

The targeted information sharing across key agencies to increase victim safety assists in the creation of a holistic intervention across legal and non-legal supports in enhancing victim safety and reducing perpetrator risk. When key agencies have access to information regarding risk, their interventions and responses can be better tailored.

Risks:

Without clear guidelines on the scope of information that can be shared, information may not be shared in ways that are meaningful, or safe. If information sharing is not carefully collated with a specialist lens and distributed across relevant agencies, the potential benefits are lost.

Suitability for Queensland:

Queensland has information sharing provisions under Part 5A of the *DFVPA 2012* as well as high risk teams, and integrated service responses across the state. The provisions provided under Queensland law provide clarity as to what detail may be shared. The collation of this information by regional high risk teams also ensures that the information is assessed carefully. Further clarity as to the scope of what high risk teams can do with this information would further enhance this model.

TAS	*Family Violence Act 2004*	Family Violence Order	Sections 7, 8 & 9
See above for commentary on Tasmania's domestic and family violence legislation.			
WA	*Restraining Orders Act 1997*	Restraining Order	Section 5A
SA	*Intervention Orders (Prevention of Abuse) Act 2009*	Intervention Order	Section 8

NT	*Domestic and Family Violence Act 2007*	Domestic Violence Order	Division 2, Subdivision 1 - *'Important Concepts', 'Concepts relating to Domestic Violence'*
ACT	*Family Violence Act 2016*	Family Violence Order	Section 8

South Australia, New South Wales, ACT, Western Australia and the Northern Territory are currently considering coercive control laws and we ask that the taskforce consider any legislation that may follow as a result.

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

a. **What is the jurisdiction?**
b. **What is the model?**
c. **Why do you think the Taskforce should consider them?**

No comments in relation to this question.

PART 3 – Legislating against coercive control

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

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

Further to the benefits outlined in Discussion Paper 1, a benefit of legislating against coercive control (criminal or otherwise) would be to refocus systemic understandings of DFV as a pattern/course of conduct.

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

Legislation provides a clear course of action for QPS, courts and legal practitioners on how to respond to coercive control. However, as stated above, given the range of behaviours encompassed under coercive control, it is a concept that is challenging to tangibly define so any legislative changes must be accompanied by thorough and regular training and skills development packages to ensure the legislation is effectively utilised without unintentionally elevating risk.

57. How will legislating against coercive control encourage greater reporting of domestic and family violence including non-physical abuse?

If coupled with a community awareness campaign, it may assist greater understanding of the complexities of DFV, including the extent of non-physical violence.

58. How will legislating against coercive control improve systemic responses to domestic and family violence?

See response to Question 56.

59. How will legislating against coercive control improve community awareness of domestic violence?

Similar to the increase in reporting, if coupled with a community awareness campaign, it may increase understanding of the warning signs of non-physical violence and encourage more community members to equip themselves with knowledge to safely identify and respond to DFV.

60. How will legislating against coercive control help stop perpetrators from using coercive control?

This is unclear. Current DFV legislation does not have a deterrent effect on those who use DFV.

However, a legislative response that facilitates an integrated service response will work towards supporting a perpetrator to change attitudes and behaviours, will offer a preventative approach to reducing future and escalating violence and control.

What are the risks in legislating against coercive control?

Legislation that would criminalise coercive control behaviours

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

Significant stakeholder and community education is required for criminalisation of coercive control to be successful in enhancing victim safety. Coercive control is a complex and nuanced concept to understand, with great variation in perpetrators' tactics. To ensure perpetrators using systems abuse are not utilising a coercive control charge to criminalise their victim, QPS and judicial officers must have a strong capacity to assess DFV dynamics and indicators to prevent such exploitation. There is a great risk of victims, particularly those with compounding vulnerabilities, being criminalised by domestic violence charges (as they are named as respondents under the

existing civil processes) if DFV and coercive control are not better understood by QPS and the legal system.

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

A gradual transition to criminalisation, where priority is given to systems and community knowledge and skills building, may best mitigate the concerns held in criminalising DFV, particularly coercive control. Increased knowledge, and an understanding of the homicide risks may also encourage a culture among QPS to respond appropriately, which would greatly enhance the implementation.

Challenges for police and prosecution if coercive control was criminalised

63. Are there any other challenges (not mentioned in the paper) for police and prosecutors?

No comments in relation to this question.

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

No comments in relation to this question.

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?

No comments in relation to this question.

Challenges for specialist service providers if coercive control was criminalised

66. Are there any other challenges (not mentioned in the paper) for specialist service providers?

Specialised service providers may also be required to undertake further systemic advocacy for victims who have been criminalised following misidentification of DFV dynamics.

67. What could be done to mitigate the challenges for specialist service providers?

No comments in relation to this question.

68. Are there other ways that specialist service providers could support implementation of legislation against coercive control?

No comments in relation to this question.

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

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?

LAQ supports the expansion of the definition of DFV. While narrowing the definition to only capture abuse in the context of coercive control, this may make DFV incidents harder to report if the coercive control context is not easily identified by QPS or a judicial officer, or even by the victim. Many victims, for many reasons including trauma and survivor adaptability, may normalise the coercive control patterns.

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

No comments in relation to this question.

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

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

No comments in relation to this question.

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

No comments in relation to this question.

Options for legislating against coercive control

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

A. What are the benefits of the proposal?

The existing legislation captures a wide range of DFV dynamics. It enables a trauma-informed response, aimed at prevention rather than punishment. Exploring opportunities to better utilise the existing legislation must include a focus and priority on better training for QPS, lawyers, judicial officers, and other relevant stakeholders. See response to Question 50.

The existing legislation also reduces the risks of victims of DFV being criminalised due to misidentification of DFV dynamics.

The benefits to this proposal are the:

- opportunity to educate the community on existing legislation
- greater utilisation of unlawful stalking for coercive control offending
- reduced costs of implementation.

Opportunity to educate community on existing legislation

Within Queensland there are two frameworks in which domestic violence is already combatted including civil protection orders and the prosecution of defendants either for contravening civil protection orders or for a range of other substantive criminal offences.

Civil

An ABC report was cited where a victim of domestic violence stated that she did not feel confident to report her abuse because there were no laws against coercive control, that she could not explain her situation and so could not communicate this to police. This is a concerning statement if it is more widely shared by other victims of domestic violence in Queensland. It is particularly concerning when, in so far as applications for protection orders, the definition of domestic violence already includes coercive and controlling behaviour.

DFVPA s. 8(2) provides specific examples of behaviour that is domestic violence. The examples of specific behaviours are not exhaustive. The examples do not fetter the discretion of a court in determining what constitutes domestic violence. This is either for the purposes of seeking a protection order or the prosecution of defendants for contravening protection orders. Because the Act does not provide such an exhaustive list or list specific behaviour that is uniquely coercive control, there is scope for greater education in the community of what is domestic violence and what current laws are designed to protect against.

If there are concerns of a lack of clear information within the Queensland community about what is known about the existing civil protection orders this is likely to translate into a lack of awareness of either (i) whether a person knows they are experiencing domestic violence or (ii) whether they can seek protection.

A campaign for greater awareness in the community of these matters will allow victims to understand that there is recourse available to them. The amendment to the existing legislation by amending *DFVPA* s 8 will not change the ability or efficacy of the courts to make protection orders.

Criminal

The proposal to introduce a specific offence of coercive control, if the purpose is to overcome a gap in the existing legislation, could only be targeted towards domestic violence perpetrators who are not the subject of a protection order. This is because a respondent to an order can be prosecuted for a contravention of it for engaging in coercive and controlling behaviour. This would not require any amendment to existing legislation.

If there are concerns raised either by an aggrieved to an order, or by police, as to what conduct can be prosecuted in breach of a protection order, there needs to be greater education and awareness that the broad definition of domestic violence will allow for prosecutions to occur for such conduct.

Greater utilisation of charge of unlawful stalking (*Criminal Code s.* 359B) for coercive control

The greater use of *Criminal Code s.* 359E by Queensland Police can, in some respects, facilitate the prosecution of coercive and controlling behaviours where there is no other mechanism to bring an offender before the court (ie contravention of a domestic violence order).

It is important to consider that *Criminal Code s.* 359B defines unlawful stalking as conduct:

(a) intentionally directed at a person (the stalked person); and

(b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and

(c) consisting of 1 or more acts of the following, or a similar, type—

(i) following, loitering near, watching or approaching a person;

(ii) contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;

(iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;

(iv) leaving offensive material where it will be found by, given to or brought to the attention of, a person;

(v) giving offensive material to a person, directly or indirectly;

(vi) an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;

(vii) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and

(d) that—

(i) 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; or

(ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

The necessary elements of the charge of unlawful stalking are analogous to those in charges of coercive control in model jurisdictions. The difference being that the charge of unlawful stalking in Queensland does not require proof of a specific intent to cause fear or detriment.

This same consideration arose when a comparison was made of the offence of emotional abuse or intimidation under s. 9 of the *Family Violence Act 2004 (Tas)* and their equivalent charge of stalking. The only apparent difference was in fact that the charge under s. 9 required proof that a defendant knew or ought to have known while the charge of stalking required proof of an actual intent.

There might also very well be a misapprehension that merely due to the title of the charge that it could not be a viable alternative or police would be hesitant to prosecute an offender for this charge given the serious nature of it when other alternatives exist.

If there is greater utilisation of this charge, there is then an effective means, not requiring substantive changes, to prosecute the behaviours sought to be targeted.

Reduced costs of implementation

If the current framework is maintained, greater education of what is available is strengthened and existing laws are enforced more rigidly, this is a largely cost-effective approach.

The costs associated with this approach would be further community education, amendment to the Police Operating Procedures Manual regarding domestic violence investigations and professional education for police regarding the alternative charges available.

B. What are the risks/possible unintended consequences of the proposal?

The risk of not changing any legislation may lead to no real change being effected in our society and the problems that victims of DFV face currently will remain. This may also foster an attitude of complacency within QPS, the legal profession and the courts as well as society at large.

The risk of maintaining the current framework is the limitation on police intervention in some restricted cases.

The possible unintended consequences are offenders being prosecuted for serious indictable offences for behaviour that is not commensurate with the crime.

Limitation on police intervention in some restricted cases

A risk of maintaining the existing framework is that where there is not a proper basis or motivation to apply or succeed upon an application for a protection order, there may not be any appropriate charge that can be pursued where it warrants prosecution.

The purpose of introducing a specific offence of coercive control is to allow a mechanism for the prosecution of serious domestic violence where a protection order is not in place and no other charge is appropriate.

This scenario can occur for a variety of reasons. An example is where an application for a protection order is made by police for the protection of an aggrieved but, due to the passage of time following the filing of an application, the court cannot be satisfied that an order is necessary or desirable. Quite often the relationship has changed drastically since the application was made. A helpful analysis of this consideration is set out in the judgment of his Honour Judge Morzone QC in the decision of *MDE v MLG & Queensland Police Service*.

Where a court makes a finding that an order ought not be made, this does not always mean that domestic violence did not occur. Where there is such a finding, it can often be because the relationship has changed so significantly that the risks are considered low. It can also be where respondents have engaged in domestic violence programs and are better equipped to manage their behaviour.

An example of this issue in practice is where a person (A) exclusively controls the finances of their partner (B). This may not be done in a way that could be defined as intimidating, harassing, or threatening to potentially pursue a charge of unlawful stalking. Also, it may not be a basis to successfully apply for a protection order. However, that does not mean that the person B is not being dominated in the relationship or there could not be a long-term psychological impact.

Prosecution of offenders for serious indictable offences for behaviour that is not commensurate with the crime

If there is greater utilisation of the charge of unlawful stalking to prosecute coercive and controlling behaviour, the possible consequence is that offenders are charged with a serious indictable offence which is not in fact commensurate with their behaviour.

As indicated above, the necessary elements to establish a charge of unlawful stalking are analogous to some specific offences of coercive control in model jurisdictions. The difference being that in Queensland there is no need to prove a specific intent to cause apprehension, fear or detriment. Also, it is not required to be proved that such apprehension, fear or detriment was in fact caused to the victim. These elements, which are not present for the charge of unlawful stalking, do appear variously in charges utilised by the model jurisdictions referred to in the discussion paper.

The concern is that if a specific offence is not introduced, offenders who engage in such coercive and controlling behaviours, albeit, not in a category of serious domestic violence, risk prosecution for a serious indictable offence. This may in fact then lend support for the introduction of a standalone offence if it meant that there was an appropriate intermediate offence to the more serious charge of unlawful stalking.

This risk is not so prevalent in so far as the charge of torture, if it is utilised to a greater extent, due to the difficulty in establishing that severe pain or suffering was sustained by the victim and that there was a specific intent to do so.

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?

The status quo would mean that those who are already identified as being at greater risk of DFV will remain at this level of risk.

Victims of domestic violence

A cohort of people potentially impacted by this approach would be victims of domestic violence. This is because there would be no mechanism for the prosecution of coercive control unless there was a basis to apply for and obtain a protection order or if the behaviour of the offender fell within the scope of an existing offence.

The question of whether there is a disproportionate adverse impact would need to be measured against the effectiveness of better education in the community and the stricter enforcement of existing offences.

D. Do you have any suggestions to improve the proposal?

There will need to be a clear outline of how the existing legislation will be utilised more effectively. Collection of relevant data may be of assistance in assessing how existing legislation is being utilised. It would also be important to have a clear review process, including a timeframe for when such review would take place and how success is to be measured.

Review of existing domestic violence investigation practices by the Queensland Police Service

If the existing framework is maintained, there needs to be a review of existing investigation methods by police into domestic violence incidents and amendment to the Operating Procedures Manual.

Often police are confronted with calls where they are tasked to resolve immediate domestic violence conflicts. Many victims of domestic violence are hesitant to disclose the extent, if anything, of other surrounding issues. If police are better resourced, either by training or the ability to provide information and/or resources, domestic violence can be detected at an earlier stage.

Inexperienced frontline police may not be aware of the extent to which existing offences are available to them due to the labels associated with certain offences (eg unlawful stalking).

Community education

There would also need to be better education and support services available in the community. The availability of these resources would allow people to recognise signs of domestic violence and the options available to them at an early stage.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

There would need to be a significant shift in the way that QPS, the courts, the legal profession, the media and society view and respond to DFV. This would include widespread and regular training for those that work in the DFV sector, as well as targeted media campaigns for the broader community.

This would include:

- Community education
- Specialist domestic violence training for police
- Consideration to variation of the Police Operations Procedures Manual.

F. What are the relevant human rights considerations for this proposal?

The following human rights are relevant:

- Right to protection from torture and cruel, unhuman or degrading treatment (*HRA* s.17)
- Property rights (*HRA* s. 24)
- Right to protection of families and children (*HRA* s. 26)
- Right to liberty and security (*HRA* s. 29).

G. Is the proposal compatible with human rights? If not, why?

In theory, the current legislative frameworks resourced with sufficient support services and programs for victims and perpetrators and coupled with extensive community awareness and education campaigns would address many of the human rights considerations that stem from this option. The utilising of existing offences under the *Criminal Code* for the sake of fitting coercive controlling behaviour into an existing provision could lead to the arrest and detention of defendants in circumstances that may outweigh their criminality and provide few long-term benefits.

H. Do you support/not support the proposal? If so, why?

There should be some legislative change to ensure that coercive control is better understood and that victims of DFV are better protected.

LAQ supports the proposal to retain the existing framework in the context of greater emphasis on the resourcing of early intervention and support services.

This approach focuses on substantive changes to the efficacy of community education, police training and changes to investigative approaches.

There are examples in the discussion paper of a misapprehension of what the current framework protects against. If that is in fact more commonly shared in Queensland, then there need to be steps taken to rectify this before consideration should be given to further amendments to the *DVFPA* and *Criminal Code*.

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?

A benefit of this proposal is the broadening of the matters that can be considered by a sentencing court. LAQ supports the ability of sentencing courts to consider a broad range of factors in mitigation. The purposes of sentencing under the current sentencing regime include that a sentence should be imposed that is just in all the circumstances (*PS Act* (s. 9(1)(a)) and to provide conditions that the court considers will help the offender to rehabilitate (*PS Act* (s. 9(1)(b)). The ability to consider the offender's position as a victim of coercive control would support both of those purposes. Additionally, while an offender's position as a victim of coercive control could be considered under matters that a sentencing court is currently entitled to take into account, the specific statement of that being a factor in mitigation in the *PS Act* s. 9 may strengthen a sentencing court's consideration of it. The existing factors in the *PS Act* s. 9(2) that may be seen as allowing a sentencing court to consider the offender's position as a victim of coercive control include the extent to which an offender is to blame for an offence (*PS Act* s. 9(1)(2)(d)), the offender's character (*PS Act* s. 9(2)(f)), the presence of any mitigating factor concerning the offender (*PS Act* s. 9(2)(g)) and any other relevant circumstance (*PS Act* s. 9(2)(r)).

B. What are the risks/possible unintended consequences of the proposal?

The broadening of matters available to be considered by sentencing courts is generally considered positive by LAQ. Unintended issues may include that proof may be required of the coercive control and its relevance to the offending and that may be difficult or impossible to provide.

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?

The creation of an explicit mitigating factor for offenders who are victims of coercive control would not have a disproportionate adverse impact on any particular cohort, except for those who may

have difficulty communicating their experiences (for example those with certain disabilities or where they have difficulties communicating in English or for cultural reasons find it difficult to communicate the details).

D. Do you have any suggestions to improve the proposal?

The proposal has limitations in that proving the nexus between the offender's suffering through coercive control and the offending for which they are to be sentenced may be difficult. A broad ability to take it into account would be rendered less useful in a practical sense if a submission about the purported coercive control suffered is not accepted by a sentencing court due to a lack of tangible proof of the nature of the coercive control. Legislative guidance about the standard of proof required may be necessary.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

As noted in the discussion paper, attention and resources should be directed to education and training of police, prosecutors, and judicial officers to recognise and understand coercive control and its impact on offending.

F. What are the relevant human rights considerations for this proposal?

The relevant human rights are identified in the discussion paper.

G. Is the proposal compatible with human rights? If not, why?

Yes.

H. Do you support/not support the proposal? If so, why?

Existing criminal and civil laws, or those amendments raised in this submission, can be raised in these instances to prevent, and impose penalties for, coercive control.

While this is acknowledged, the inclusion of this type of mitigating factor within sentencing legislation with appropriate guidelines to reduce unintended abuse of such options, would go to addressing concerns held by LAQ regarding the treatment of victim defendants and provide a more appropriate way of dealing with victims criminalised in this process.

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?

See response to Question 20 above.

B. What are the risks/possible unintended consequences of the proposal?

See response to Question 20 above.

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?

See response to Question 20 above.

D. Do you have any suggestions to improve the proposal?

See response to Question 20 above.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

See response to Question 20 above.

F. What are the relevant human rights considerations for this proposal?

See response to Question 20 above.

G. Is the proposal compatible with human rights? If not, why?

See response to Question 20 above.

H. Do you support/not support the proposal? If so, why?

LAQ recommends the expansion of the definition of DFV under the *DFVPA* to best capture and reflect updated research and understanding of DFV dynamics and tactics, as well as the scope of coercive control.

This could be achieved by the inclusion of more detailed guidelines and definitions regarding controlling behaviour and emotional harm, although the current definition already covers many behaviours that should be prohibited. Given the breadth of the current definition, with some amendments to ensure it is modernised and relevant it is more the policing and enforcement of orders that requires improvement.

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

A. What are the benefits of the proposal?

LAQ's view is that there are limited benefits in creating a new offence of 'cruelty' in the *Criminal Code* as there are existing protections and offences which could be prosecuted to capture conduct of the nature contemplated.

B. What are the risks/possible unintended consequences of the proposal?

An offence of cruelty as drafted, without an element requiring such pain and suffering to be inflicted intentionally, could inadvertently capture conduct which should not be criminalised. The offence proposed here is drafted very broadly and makes a person in a relationship liable to 7 years imprisonment for causing emotional pain to their partner, something which may occur unintentionally at times in what society would consider to be, and both parties in the relationship may consider to be, healthy relationship dynamics for the context of that relationship. Criminalising some of this behaviour particularly having regard to existing aggravating provisions for bail and sentencing in offences involving domestic violence could see an increase in people in custody on remand or serving a sentence.

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?

The proposal could lead to the charging and conviction of people for conduct which isn't intended to be captured. It is well recognised that convictions themselves can have detrimental effects on a person's social or economic wellbeing and chances of finding employment – see *PS Act* s. 12(2) and cases such as *R v. ZB* [2021] QCA 9. Extreme care should be taken to ensure offence provisions do not result in prosecution and conviction for behaviour which is not intended to be criminal, thereby potentially increasing pressures on individuals, relationships and families which

can stem from, for example, a person losing their employment or having increased difficulty obtaining employment due to having a criminal conviction. There are risks of such a proposal increasing exposure to the criminal justice system of certain vulnerable cohorts such as those with mental health issues, substance abuse issues and/or who are homeless who may struggle to moderate their behaviour in public and within relationships. The more appropriate way of moderating the risk is not through the creation of offences but ensuring support services for victims and perpetrators of DFV are available and properly resourced.

D. Do you have any suggestions to improve the proposal?

There are existing offences which could be prosecuted to capture the more serious criminal conduct of the nature contemplated.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

Community education and improved training of police, including making training mandatory about existing offence provisions which can be utilised to capture the conduct contemplated.

F. What are the relevant human rights considerations for this proposal?

The following human rights are relevant when considering this proposal:

- Right to liberty and security of person
- Right to Protection of families and children.

G. Is the proposal compatible with human rights? If not, why?

In our view, given the more serious examples of this are covered by existing legislation and the behaviour can be incorporated into orders for protection of victims under the *DFPVA,* on a cost benefit assessment, this proposal is not compatible for the reasons outlined above.

H. Do you support/not support the proposal? If so, why?

LAQ does not support this proposal. Existing criminal and civil law responses, or those amendments raised in this submission, can be raised in these instances to prevent, and impose penalties for, coercive control.

In our view the behaviours considered to be punished under such a provision are more appropriately addressed through the DFV courts, the availability of support services, and community education and awareness.

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

A. What are the benefits of the proposal?

The existing offence of stalking is summarised in *Criminal Code s.* 359B. In the civil jurisdiction, stalking is referred to in *DFVPA* s. 8 as behaviour that includes, unauthorised surveillance of a person and unlawfully stalking a person. The *DFVPA* goes on to particularise unauthorised surveillance as the "unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the persons consent, including for example by using technology".

Of increasing prevalence in the civil jurisdiction is the usage of technology to monitor victims. Victims in civil proceedings have immense difficulty in accessing technological support to provide evidence to a court to a civil standard to substantiate unreasonable monitoring. Often perpetrators are using technology such as virtual private networks and remote servers to monitor, create social media accounts used to monitor, or intimidate or control victims. All of which make it difficult to trace the perpetrator.

Examples of technological based stalking can include use of drones, key tracking tiles, location applications on technology (including phones). In some cases perpetrators have created profiles of victims on dating sites/social media sites (without knowledge of the victim), to harass or control the victim, attempt to monitor their movements, or to engage the victim further. It is difficult for the victim to provide evidence of the perpetrators activity.

Some victims have reported that they have taken their concerns to QPS to investigate these occurrences, only to be told it is impossible to trace, or it is too complicated, or time consuming to investigate or costly.

While the current definition of stalking in the Criminal Code includes unlawful intimidation, harassment or abuse and contact through the use of technology, in our experience often QPS is not resourced to investigate some of these types of complaints, particularly those relating to the use of technology by perpetrators. Victims are left with seeking assistance through civil courts to prevent this type of behaviour.

The offence of stalking has been interpreted by the courts on many occasions and is understood by the courts and practitioners. The offence by virtue of *Criminal Code* s. 359B already includes intimidating, harassing or threatening acts against a person, whether or not involving violence or a threat of violence.

Adding a circumstance of aggravation to create a higher penalty for an offence committed against a person who had a relevant relationship is consistent with some other offence provisions within criminal law. However, it already is an aggravating feature pursuant to the *PS Act* s. 9(10A) which requires the court to treat offenders convicted of a domestic violence offence as an aggravating factor unless the court considers it is not reasonable because of exceptional circumstances of the case. It is recognised in Discussion Paper 1 that research on community perceptions indicates people mistakenly believe stalking to be behaviour that occurs after a domestic relationship has ended and that unconscious mistaken beliefs held by police and prosecutors result in these

behaviours being under prosecuted for this offence. Renaming the offence so that it is better understood by the public and police could assist in reducing misunderstanding that there are not existing offence provisions to capture the type of behaviour the taskforce is concerned with.

A. What are the risks/possible unintended consequences of the proposal?

A challenge would be for QPS and courts (and the legislation) to keep up with developments in technology to bring perpetrators to justice.

Broadening the definition to 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 could inadvertently capture conduct which is acceptable within the relationship given the particular dynamics of the relationship, and which should not be criminalised.

Further, the proposal 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 is dangerous in its lack of clarity. It is not an approach we would support. While this aspect of the proposed legislation is similar to the existing approach for the offence of maintaining a sexual relationship with a child, a key distinction is that the offence of maintaining requires unlawful sexual acts, and unlawful sexual acts are clearly defined in the *Criminal Code* which reduces confusion for a jury. The offence of stalking is based on behaviours which are much more generalised in nature and not, on their face or as standalone events, necessarily easily identifiable as criminal (eg watching, approaching etc) meaning a jury member could more readily be led into error. Allowing a jury to not have to agree on the same acts to convict of stalking leads to a lowering of the bar required to convict a person of a criminal offence based on potentially singular, not necessarily clearly definable criminal conduct, and given the serious consequences which can flow from conviction, it is an approach which should not be adopted.

Similar to what is outlined in Option 4, it is well recognised that convictions themselves can have detrimental effects on a person's social or economic wellbeing and chances of finding employment – see the *PS Act* s. 12(2) and cases such as *R v. ZB* [2021] QCA 9.

Extreme care should be taken to ensure offence provisions do not result in prosecution and conviction for behaviour which is not intended to be criminal, thereby potentially increasing pressures on individuals, relationships and families which can stem from, for example, a person losing their employment or having increased difficulty obtaining employment due to having a criminal conviction. Criminalising some of this behaviour particularly having regard to existing aggravating provisions for bail and sentencing in offences involving domestic violence could see an increase in people in custody on remand or serving a sentence.

If the definition was to be broadened, QPS will need to be adequately resourced to ensure matters can be investigated and where appropriate, ultimately prosecuted.

B. 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?

The proposal could lead to the charging and conviction of people for conduct which isn't intended to be captured. There are risks of such a proposal increasing exposure to the criminal justice system of certain vulnerable cohorts such as those with mental health issues, substance abuse issues and/or who are homeless who may struggle to moderate their behaviour in public and within relationships. The more appropriate way of moderating the risk is not through the creation of offences but ensuring support services for victims and perpetrators of DFV are available and properly resourced.

C. Do you have any suggestions to improve the proposal?

There are existing offences which could be prosecuted to capture criminal conduct of the nature contemplated.

D. What resources and supports would need to be put in place to support the implementation of the proposal?

Community education and improved training of police including making training mandatory about existing offence provisions which can be utilised to capture the conduct contemplated.

E. What are the relevant human rights considerations for this proposal?

The following human rights are relevant when considering this proposal:

- Right to liberty and security of person
- Right to Protection of families and children.

F. Is the proposal compatible with human rights? If not, why?

In our view, given the more serious examples of this are covered by existing legislation and the behaviour can be incorporated into orders for protection of victims under the *DFVPA,* on a cost benefit assessment, this proposal is not compatible for the reasons outlined above.

G. Do you support/not support the proposal? If so, why?

See response in A.

Apart from the suggestion of renaming the offence, LAQ does not support the proposal. In our view, the behaviours considered to be punished under such a provision that are not already captured within the existing definition under the *Criminal Code* s. 359A are more appropriately addressed through the DFV courts, the availability of support services, and community education and awareness.

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

A. What are the benefits of the proposal?

This would send a clear message coercive control is dangerous behaviour that must be taken seriously.

LAQ acknowledges that the creation of a standalone offence of coercive control would formally recognise the detrimental nature of a predominantly non-physical form of abuse. It may facilitate further discussion and awareness raising that may initiate cultural change and facilitate earlier intervention. It has the potential to increase the chances of victims identifying their experiences as domestic violence and may prevent such behaviours from occurring. It is one way of assisting with achievement of these benefits, but not the only way. In our view the preferable way of achieving these outcomes does not involve an increase to the criminalising of behaviours, but an increase in services and supports for victims and perpetrators, improved policing methods and investigation into diversionary processes.

B. What are the risks/possible unintended consequences of the proposal?

LAQ repeats the concerns raised by community agencies that current QPS responses to reports of coercive control are not consistent or responsive. Further training is required in order for QPS to be able to adequately and reliably assess DFV dynamics and risk factors to ensure that reports of DFV to QPS are responded to adequately and safely.

An unintended consequence of a coercive control offence is that it may deter victims from reporting DFV (and thereby missing out on the opportunities of systemic supports and interventions for themselves and their abuser) due to a reluctance to criminalise their partner or family member.

Research shows that many victims do not want the relationship or connection to end; they want the violence to stop.

LAQ is aware that many victims are willing to utilise existing civil orders as a strategy to prevent (and reduce the risk of) future violence, but then feel reluctant to report breaches due to the criminal penalties.

Victim survivors who are dependent upon their abuser (for care, financially, for connection to community, for residency) may also be reluctant to pursue legal avenues that risk their abuser being imprisoned due to the consequences they may then face themselves. Criminalising coercive control may lead to similar hesitancy in reporting this behaviour, thereby missing existing valuable

opportunities to connect vulnerable clients with safety supports, and perpetrators with behaviour change programs.

LAQ submits that the risks of creating a standalone offence of coercive control outweigh its potential benefits. Similar to what is outlined above in Option 4 and 5, this proposal could inadvertently capture conduct which should not be criminalised. The offence proposed here is drafted very broadly and makes a person in a relationship liable to imprisonment for behaviours that may include voluntary choices. What may be indicative of a pattern of oppression and exploitation in one relationship may be a completely consensual position in another. The question will be where shouldthe line should be drawn.

Criminalising some of this behaviour, particularly having regard to existing aggravating provisions for bail and sentencing in offences involving domestic violence, could see an increase in people in custody on remand or serving a sentence.

There is limited understanding within the community and sometimes police responding to DFV callouts, of the way trauma makes people respond. There is a real possibility that a woman's defensive behaviour (whether it be physical resistance or retaliation) may be viewed as falling within aspects of the definition of domestic violence and therefore be treated as a perpetrator.

The higher standard required of evidence in criminal matters would result in a greater degree of exposure to the criminal justice system for the complainant, particularly given the behaviour constituting coercive control is, by definition, covert. This may result in the victim being re-traumatised. Furthermore, evidence of intent, if included as an element, would face the familiar evidentiary challenges that arise in domestic violence cases from delayed reporting, a lack of witnesses and witnesses unwilling to testify. This could be mitigated to a degree by improved policing methods and community awareness campaigns.

The creation of a new standalone offence in the absence of improved programs and support services to address the issues may not see the desired change in behaviour or address the victim's desire for the behaviour to stop while continuing in the relationship. Nor will it necessarily deal with the concerns that victims have in engaging with the criminal justice process. Given the aggravating feature that domestic violence represents in bail and sentencing considerations, it may prevent the reporting of such behaviour out of fear of the associated criminal sanctions.

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?

Aboriginal and Torres Strait Islander women are disproportionately named as respondents under existing civil Domestic Violence Protection Orders. According to the DFV Death Review and Advisory Board 2019-20 Annual Report, Aboriginal and Torres Strait Islander women who use violent resistance in self-defence or for protection against an abuser are more likely to face criminal charges. This contributes to the increasing over-representation of Aboriginal and Torres Strait Islander women in the criminal justice system, as well as fear and distrust in relation to reporting DFV to police (Australian Law Reform Commission, 2017a; Australian Law Reform Commission, 2017b).

There is a need for service providers, including QPS, to have the necessary knowledge and skills to appropriately understand the gendered nature of DFV and the factors which compound vulnerability. Additionally, it is important that service providers understand how a prior history of victimisation and trauma may impact on presentation. A lack of understanding, training and education can result in the misidentification of the person most in need of protection.

LAQ is concerned that attempts to enhance DFV safety through criminal law will further isolate Aboriginal and Torres Strait Islander women from reaching out for supports due to a risk they may be criminalised themselves.

The introduction of a new standalone "coercive control" offence may create an avenue for over-policing of vulnerable groups, particularly Aboriginal and Torres Strait Islander women, and women from migrant and refugee backgrounds where the victims may be mistaken as primary aggressors in situations where they may not present to police as "typical" or "ideal victims".

LAQ has concerns for how criminalisation would work in instances where a victim is returning to the perpetrator. As outlined above, these victims may be less inclined to disclose the abuse and seek help for fear of criminalising a current or former partner with concerns regarding the consequences of a conviction and criminal record. These same concerns are heightened for women on temporary visas where their partner is also on a temporary visa and may face deportation because of their conviction.

D. Do you have any suggestions to improve the proposal?

The risks of further criminalising vulnerable communities through misuse of such an offence outweigh the protective goals of it. We do not support legislating against DFV through further criminal offences due to the knowledge we have from the vulnerable communities we support. We do not have suggestions to improve this proposal.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

If not accompanied by significant changes in police culture and investigating methods along with statewide training for police, first responders and the community more broadly, the criminalisation of coercive control will have limited benefits and disproportionate adverse impacts on those that the legislation seeks to protect.

Successful operation of an offence of coercive control rests heavily upon victims and the police being willing and able to work collaboratively with one another. This would require police officers to be well educated on the gender dynamic of violence, to be free from prejudice against marginalised groups, and to move away from assessing an isolated "incident" and rather interpret and treat abuse as a series of interrelated events (both in the method of investigating and keeping/accessing information).

Inclusive community awareness campaigns could potentially elevate the understanding of coercive control behaviours on the social agenda and stimulate community conversation. Those

experiencing domestic violence should be addressed with supportive messages and information concerning early intervention and support groups. A recent poll found that a third of Australian men did not recognise spying, creating financial dependency and restricting access to doctors, medication and legal services as domestic violence. Therefore, men should be targeted with messages designed to help identify the existence of unacceptable behaviours to encourage self-recognition. Children should be targeted with education and messages.

Early intervention and educational programs need to be properly funded and widely accessible particularly for perpetrators. To that end, consideration should be given to requiring mandatory completion of an intervention/educational program or even a reduction on penalty if an appropriate program has been completed prior to sentencing.

F. What are the relevant human rights considerations for this proposal?

The relevant human rights considerations are:

- Recognition and equality before the law – both parties should be heard
- Protection from torture and cruel, inhumane, or degrading treatment
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Protection of families and children
- Cultural rights—generally
- Cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- Right to liberty and security of person
- Fair hearing – to be heard in court.

G. Is the proposal compatible with human rights? If not, why?

Protecting rights relevant to preserving or ensuring safety of victims is better achieved by properly resourced services, programs and improvements in methods of policing. In our view, the benefits from the legislative change alone is not reasonable or justified when balanced with the interference of rights associated with freedom, liberty and fair hearings.

H. Do you support/not support the proposal? If so, why?

LAQ does not support this option due to the risks of further criminalising those victimised by coercive control, particularly Aboriginal and Torres Strait Islander women, women with a disability, women from culturally and linguistically diverse backgrounds, and people from LGBTIQA+ communities.

LAQ acknowledges the significant and long-lasting impacts of coercive and controlling behaviour on victims of domestic and family violence. We also acknowledge that the current justice system does not adequately recognise and appropriately respond to the danger and harm posed by patterns of controlling behaviour, particularly when it is non-physical.

However, LAQ considers that at present, the risks of criminalising coercive control as a standalone offence in Queensland outweigh the benefits. Specifically, we are concerned that creating a standalone offence of coercive control, in the absence of extensive and effective education, training and community awareness campaigns could be difficult to prosecute given the complex and covert nature of the behaviour, which includes acts that in isolation may not be considered potentially criminal. We are also concerned that it would place significant burden on victims as witnesses as well as result in the over-policing of marginalised groups, particularly in our remote communities. Creating an offence for this type of behaviour in our view risks criminalising people in circumstances where the victim, person and community's interests are best served by the person rehabilitating through a domestic violence protection order.

In considering whether a new criminal offence is necessary, it is important to consider the existing legislative framework for domestic and family violence, the *DFVPA*.

The legislative framework for responding to domestic and family violence in QLD:

- already recognises both physical and non-physical forms of violence and abuse
- applies to a very broad range of domestic relationships
- recognises that any criminal offence can be recorded as a domestic violence offence if it is committed against a person with whom the perpetrator has a domestic relationship
- broadly defines 'stalking' as a criminal offence and not limited to conduct involving physical injury/harm or threats thereof. The necessary elements of the charge of unlawful stalking are analogous to those in charges of coercive control in model jurisdictions. The difference being that the charge of unlawful stalking in Queensland does not require proof of a specific intent to cause fear or detriment
- enables a court to impose a domestic violence protection order in situations of economic and emotional abuse or intimidation
- enables police to issue a police protection notice which offers immediate protection for the victim. The contravention of a domestic violence order is punishable by up to three years imprisonment. If previously convicted of a domestic violence offence within 5 years prior, the maximum penalty increases to 5 years imprisonment.

Furthermore, there are numerous State and Commonwealth offences which criminalise violent and non-violent domestic violence (for example, offences of violence including sexual offences, dishonesty offences, property damage, use of carriage service, recording/ distributing intimate images, torture) and could be utilised more frequently by police.

LAQ acknowledges that despite this legislative framework, the current justice system does not adequately recognise and appropriately respond to the harm posed by patterns of coercive and controlling behaviour. However, these shortcomings should be addressed through non-legislative measures, and that the proposal to create a standalone offence of coercive control should be revisited only after this has occurred.

Analysis of the implementation of offences of coercive control in other jurisdictions demonstrates that the creation of an offence without the adequate training and education of the relevant

stakeholders may result in limited utilisation of the offence. The same may be applicable to the existing regime in Queensland without relevant and targeted training.

- **What legislation should contain the offence**

  It is not suggested that a standalone piece of legislation like in Scotland is required if an offence of coercive control is introduced in Queensland.

  The offence could be placed in the *Criminal Code*, which would require prosecutions to prove each element of the offence beyond a reasonable doubt.

  Alternatively, the offence could be placed in the *DFVPA* which would ensure that the offence isn't being used outside of its intended scope.

- **What special features should the offence contain?**

  LAQ considers it premature to comment on the specific scope and definition of a standalone offence of coercive control. In our view it is preferable that, if there is in-principle support from the Queensland Government to create a standalone offence of coercive control after the outcome of the present inquiry, consultation should then be undertaken on the specific elements of the offence.

  However, if the Queensland Government supports immediately creating a standalone offence, our preliminary view is that it would be appropriate to have the following features:

  - It should apply to intimate partner/ex-partner relationships only.
  - To avoid the risk of criminalisation of behaviours present in ordinary relationships, the specific intent of the alleged perpetrator to criminally coercively control another should be required to be proven beyond reasonable doubt.
  - The requirement that an accused person engaged in the behaviour on more than one occasion would demonstrate that the offence requires a pattern of behaviour. This would allow a defendant to know the charge against them, and meaningfully respond to it. This reflects fundamental principles of human rights with respect to criminal proceedings.

- **Is a definition of coercive and controlling behaviours required?**

  Coercive control is an umbrella term that refers to an ongoing pattern of controlling and coercive behaviours used by perpetrators that inhibit an individual's daily life with devastating impact. There cannot be a "one size fits all" approach and the appropriate definition of coercive control depends upon the context.

Any definition should include a non-exhaustive list of behaviours that could be coercive and/or controlling and should remain open to the court to decide in any individual case that the accused's behaviour was abusive.

We acknowledge that if a new offence is created, some legislative guidance would be useful for the justice sector, and the community.

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

  Applying a statutory limitation period to the offence has the effect of limiting the number of offences which can be prosecuted.

  In Tasmania, the statutory limitation period of initiating proceedings was originally 6 months. That was increased in 2015 to 12 months.

  It is suggested that a statutory limitation period for initiating proceedings should be 12 months from the last act in the course of conduct. This would assist in ensuring defendants are in a position to reasonably respond to allegations. It would also limit the ability of perpetrators to manipulate new provisions to criminalise behaviours of victims.

- **What kind of relationships should be captured?**

  As previously stated, it should apply to intimate partner/ex-partner relationships only. LAQ has considered the potential benefits of a standalone offence applying to a wider range of domestic relationships, including victims of elder abuse and people abused by their carer. However, at this stage, we consider that the risks of capturing non-criminal behaviour and a broader range of relationships outweigh the benefits of potential criminalisation of coercive control in a broader range of exploitative relationships. This position also acknowledges that coercive control is a significant predictor of intimate partner homicide. However, without increased resources allocated to education/awareness campaigns, increasing the availability of effective culturally appropriate support services, programs and housing options, as well as for training of first responders, introducing such an offence will not prevent domestic homicides.

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

  To avoid the risk of criminalisation of behaviours present in ordinary relationships, the specific intent of the alleged perpetrator to criminally coercively control another should be required to be proven beyond reasonable doubt.

- **What would be an appropriate penalty?**

  The scope of criminal conduct that could fall within this type of offence is broad. A maximum penalty should be similar to that contained in DFVPA s. 177 for breaching a protection order, namely 120 penalty units or 3 years imprisonment. Likewise, the maximum penalty should be increased to 5 years for subsequent offending within 5 years. For more serious cases of coercive control, the prosecuting body could utilise other State and Commonwealth offences which criminalise violent and non-violent domestic violence attracting higher maximum penalties.

- **Should a specific defence be provided?**

  The inclusion of a specific defence on the grounds of reasonableness would provide safeguards against the disadvantages identified above in response to C. However please see our response to Option 9 as to the overall need and issues associated with such a proposal.

- **Should there be a provision for alternative verdicts?**

  If created as a standalone offence, there should not be provision for an alternative verdict given the maximum penalty suggested for the offence.

- **Should there be a provision for restraining orders?**

  Given the covert nature of coercive control and therefore the potential difficulty in proving it, it is recommended that there be provision for the court to impose a restraining order in the event that the accused is acquitted or the prosecution of the offence is discontinued.

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

A. What are the benefits of the proposal?

An 'umbrella' offence of commit domestic violence would allow protective bail conditions to be imposed to provide an additional level of safety to the aggrieved survivor. However, it is unclear what 'special' conditions may be imposed that are not already available as part of a bail undertaking (ie not to contact the victim or follow or approach them). These conditions are also alternatively available as part of a domestic violence protection order which can be filed by QPS when criminal charges are laid. This appears to be an overlap of protections that are already available but are not currently used to their full protective potential.

B. What are the risks/possible unintended consequences of the proposal?

There is a risk that QPS, when choosing between whether to charge for a 'commit domestic violence' offence, or a higher offence of 'assault', may prefer the domestic violence offence which may arguably carry a lower penalty and may be viewed as less serious.

It is also routine practise for prosecution and defence lawyers to engage in negotiations about charges for the purpose of resolving matters expeditiously. These negotiations can result in a charge being reduced to a 'lesser' charge and a plea of guilty being entered on the basis of negotiated and diluted facts. It is possible that by creating a lower charge, there will be even further dilution of the consequences by the time a plea is entered and a sentence given.

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?

Family Law Services holds concerns that the current common practise of both parties being named as respondents under a cross-application would be compounded under the creation of such an offence. In instances where the victim has used violent resistance, or self-defence, QPS may name them as a respondent as an 'incident' of violence has been perpetrated without giving consideration to the dynamic.

The creation of a "commit domestic violence offence" creates a risk that if QPS were to form such a view, a true aggrieved may be charged with a "commit domestic violence" offence even if the respondent were to be charged with a high offence (such as assault) arising from the same incident.

D. Do you have any suggestions to improve the proposal?

Funding for targeted community and first responder engagement and DFV education would be necessary before a 'commit domestic violence' offence could be able to be confidently used to appropriately and effectively enhance safety of victims and deter further DFV from perpetrators.

E. What resource and supports would need to be put in place to support the implementation of the proposal?

Widespread and targeted community and first responder education would be required before an offence of 'commit domestic violence' could be effectively utilised to enhance safety. This potential difficulty is demonstrated already in the barriers that QPS sometimes face in bringing successful charges of a breach of a condition which requires a respondent to be of "good behaviour".

Most notably this issue arises where the domestic violence alleged is coercive, emotional, financial, or psychological in nature as these charges are harder to prove to the criminal standard, and frequently these reports do not result in charges being brought by QPS.

F. What are the relevant human rights considerations for this proposal?

This proposal intersects with the right of an individual to be free from violence, as well as the rights to life, protection from torture and cruel, inhumane or degrading treatment, and protection of families and children. However, it also risks those if the criminal offence is not appropriately used, and becomes a tool of systems abuse as outlined in B.

G. Is the proposal compatible with human rights? If not, why?

Yes.

H. Do you support/not support the proposal? If so, why?

LAQ does not support the proposal. In addition to the reasons outlined above at B and E, in our view it is not justifiable. Statistics show that the vast majority of people who are respondents to DV orders do not breach the order. They are often the subject of intervention orders and presumably move on with their lives without committing further acts of DV. The offences of 'DV' that would fall within any standalone offence would be non-violent 'not of good behaviour' type offending. As outlined above, in our view this is better addressed through a civil DV order with well resourced, effective wrap around services for victims and perpetrators.

Currently many disputes of facts that arise in civil applications are dealt with by the respondent consenting to the order without admissions. This is not an option in criminal proceedings. Given the serious impacts that would flow from a criminal conviction of a stand-alone offence for these less serious types of offending it is likely that many of the offences will be contested. This will have significant flow on effects for the courts, prosecution, and LAQ. There will also be significant evidentiary issues for the police as the criminal standard of proof and rules of evidence are markedly different. Further, due to funding guidelines, very limited hearings in the Magistrates Court are legally aided. The contested hearings would therefore see unrepresented defendants cross-examining victims.

There is evidence to suggest that the DV scheme is currently used by litigants as an aid or even substitute to the slow-moving family law system. A standalone offence may cause the DV scheme to be utilised more frequently in this manner. If every time there is a bad relationship breakdown, the parties go through their memories and phones and drag up every argument or inappropriate text message the state could be overwhelmed with criminal lodgements. This would be of even further concern if the definition of what was domestic violence was widened. Of utmost concern is the way that perpetrators of DV could manipulate this legislation to further traumatise their victims. A victim could for years be held prisoner in a violent DV relationship. He or she finally gets the

courage and support to leave and the perpetrator goes to police armed with an offensive text from their partner sent months earlier. On the current arrangements the majority of matters will not be prosecuted in a specialist court and therefore won't be afforded the protections of the wrap around services that might identify such a misuse of the legislation by a perpetrator.

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?

The response to these questions has been combined.

The proposal would add little to the existing framework for sentencing in relevant matters. Offending by offenders in a relevant relationship with the complainant can be labelled a domestic violence offence due to the *PS Act* s. 12A and any penalty imposed must consider the aggravation provision in *PS Act* s. 12A and any penalty imposed must consider the aggravation provision in the *PS Act* s. 9(10A). This is clearly understood and was outlined in *R v O'Sullivan and Lee; Ex parte Attorney-General* (Qld) (2019) 3 QR 196:

> [91] The significance of the nature of an offence as a domestic violence offence is to bring into existence a factor in aggravation of penalty in the common law sense. It is a factor that a sentencing judge may take into account in imposing a more severe sentence than might be imposed in the absence of that factor.
>
> [92] In 2016, this consideration was expanded beyond previous convictions to specifically treat the current domestic violence offence as an aggravating factor. The Criminal Law (Domestic Violence) Amendment Act 2016 (Qld) inserted a new sub-section s 9(10A) of the Penalties and Sentences Act 1992 …
>
> [93] This sequence of legislative changes since 1997 puts it beyond question that the legislature has made a judgment about the community's attitude towards violent offences committed against children in domestic settings. The amendments constitute legislative instructions to judges to give greater weight than previously given to the aggravating effect upon a sentence that an offence was one that involved infliction of violence on a child and that the offender committed the offence within the home environment.

Further, as outlined above under Option 6, the *DFVPA* recognises repeat offending as an aggravation on the penalty for contravening orders.

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?

The proposal would disproportionately impact people with mental health issues and substance use disorders whose offending very often relates to family members. As outlined above in other proposals it may ensure greater punishment for victims who do not present to police in a stereotypical way during criminal investigations. For these reasons, a mitigating factor should be incorporated into the sentencing legislation as proposed by Option 2 to balance even the existing aggravating aspects.

D. Do you have any suggestions to improve the proposal?

No comment in relation to this question.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

If enacted, a floating circumstance of aggravation should be balanced by measures to ensure mental health and substance use disorders are properly considered in arriving at appropriate penalties. That is to say, the sentencing discretion should remain a balancing process considering all the circumstances of each case and not involving any element of mandatory sentencing.

F. What are the relevant human rights considerations for this proposal? Is the proposal compatible with human rights? If so, why?; and

G. Is the proposal compatible with human rights? If not, why?

Addressed in the discussion paper.

H. Do you support/not support the proposal? If so, why?

The proposal that there might be a 30 percent uplift in maximum penalty or some other mathematical approach to sentencing risks substituting formula for properly balanced exercise of the sentencing discretion which sentencing courts are well placed to conduct. LAQ would be disappointed to see the introduction of any mandatory sentencing measure, such as the proposal of a mandatory civil supervision order, as penalties should be arrived at through consideration of all relevant matters by courts exercising the widest possible range of sentencing discretion to ensure appropriate penalties are imposed in each case.

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

Context

The discussion paper states that to properly address coercive control it has been suggested there should be a specific defence of coercive control.

An article in the Journal of Criminal Law (UK) is referenced. The author suggests that a partial defence to murder based on the concept of coercive control may be appropriate, rather than expecting the courts to interpret the existing partial defences (of diminished responsibility or provocation) in line with the offence of coercive control. In other words, according to the author, why should a vulnerable defendant who has been psychologically abused be treated as blameworthy as others with full control of their capacity-making faculties? The author also argues that further discussion should be had about the inadequacy of general defences to accommodate abused defendants who commit crimes because of that abuse. That argument is not expanded upon.

The discussion paper, in contrast, raises the concept of a complete defence of coercive control modelled on self-defence in the *Criminal Code*.

A. What are the benefits of the proposal?

There is no benefit in enacting a specific and complete defence of coercive control which simply incorporates various self-defence provisions. Evidence of behaviour amounting to coercive control is presently admissible (assuming it is relevant) both under the common law and the *Evidence Act* s. 132B in a criminal proceeding where an accused raises self-defence as a complete defence to either an assault, the infliction of grievous bodily harm, or a homicide.

In *Osland v The Queen*, Kirby J observed that although "battered woman syndrome" does not enjoy universal support, there is considerable agreement that expert testimony about the general dynamics of abusive relationships is admissible if relevant to the issues in the trial and proved by a qualified expert. The testimony is admissible as it bears upon the legal issues in the trial such as self-defence and provocation.

In Queensland, there are no degrees of murder. All offenders convicted of murder are sentenced to mandatory life imprisonment with a mandatary non-parole period of 20 years imprisonment.

Homicides involve varying degrees of moral culpability; the partial defences to homicide act to mitigate the penalty for those offenders who are provoked (s 304 Criminal Code), or are of diminished responsibility (s 304A Criminal Code), or who act to preserve themselves from death or grievous bodily harm in an abusive domestic relationship (s 304B Criminal Code).

In the sense of recognising the reduced moral culpability of a psychologically abused defendant, there may be a benefit in enacting a partial defence of coercive control; this would mitigate the penalty in those cases in which, but for the partial defence, the conduct amounts to murder.

B. What are the risks/possible unintended consequences of the proposal?

Such a defence is contingent upon the court and the jury's understanding of coercive control which may be vastly different to specialist understanding (unless or until there is widespread community education and a shift in societal attitudes of DFV and coercive control).

There is a risk that DFV perpetrators may utilise this defence (whether partial or complete) when facing criminal charges. If a perpetrator is able to successfully argue this defence, their victim is likely to be placed at greater risk.

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?

No comment in relation to this question.

D. Do you have any suggestions to improve the proposal?

No comment in relation to this question.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

This should be accompanied by comprehensive training on coercive control among the legal profession, including the Director of Public Prosecutions (DPP) and the judiciary in order to best mitigate the chances of it being used in ways that escalate victim risks. Widespread community education would also be vital in successfully implementing this defence for the use of it during jury trials.

F. What are the relevant human rights considerations for this proposal? Is the proposal compatible with human rights? If so, why?

Addressed in the discussion paper.

G. Is the proposal compatible with human rights? If not, why?

Addressed in the discussion paper.

H. Do you support/not support the proposal? If so, why?

There is support in principle for the enactment of a partial defence of coercive control as a means of mitigating the penalty for psychologically abused defendants.

The abolition of the mandatory term of life imprisonment for murder would permit the circumstances of the offender's psychological abuse to be reflected in the punishment for that offence and achieve the same purpose as enacting a partial defence.

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?

The provisions of the *Evidence Act 1906* (WA) dealing with the reception of evidence which are under consideration could be of assistance to victim defendants.
At the risk of stating the obvious, it needs to be recognised by its proponents that not all victim defendants will be women.

B. What are the risks/possible unintended consequences of the proposal?

There are some aspects of concern for the administration of the criminal law, including the broad definition of "expert" and the weight to be given to "expert" evidence. – The definition of a person who is an expert of family violence under the *Evidence Act* s. 39(4) includes a person who can demonstrate specialised knowledge gained by training, study or experience, of any matter which may constitute evidence of family violence".

Suggestions/Comment: This definition needs to be more restrictive, considering that this evidence will potentially be received in trials for offences which carry a maximum penalty of life imprisonment. For instance, an "expert" should be an independent professional who has demonstrated specialist knowledge gained by training, study AND experience in the area of human behaviour and the impacts of family violence.

Evidence of behavioural and psychological impacts of prolonged exposure to family violence is usually given by psychiatrists or psychologists who have been trained in disciplines which require intellectual rigour and they are subject to statutory codes of ethics.

***Evidence Act* s. 39B**

Self-defence – s. 39B states the obvious that the effects of family violence may be relevant to a defendant's state of mind. A direction in the terms expressed in s. 39B

may be inconsistent with the directions required on the existing self-defence provisions (*Criminal Code* s 271(1)(2), s 272, s 273) and could be confusing to juries.

***Evidence Act* s. 39F**

This legislation effectively elevates opinion evidence on family violence and its potential impact (on the defendant) to the status of directions on the law given by a trial judge.

While this may be to the benefit of legal aid clients who are victim defendants, it could be regarded as a dangerous precedent, and may have a wider and potentially damaging impact upon the role of a jury in determining the facts of a case.
For many years now, expert evidence of the effects of family violence upon the behaviour/reactions of victim defendants has been considered relevant and admissible in criminal trials where self-defence or duress are raised. (See discussion of "battered woman syndrome" in the judgement of Kirby J in *Osland v The Queen* (1998) 197 CLR 316).

It is submitted that the matters set out in s. 39F are appropriately the subject of expert opinion evidence at trial, but that it amounts to usurpation of the function of the jury (as well as an insult to the intelligence of jurors) for a trial judge to effectively give directions "explaining" such concepts, thus giving opinion evidence the weight of judicial directions.

This is a dangerous precedent and an affront to the primacy of the jury as trier of fact.

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?

No comment in relation to this question.

D. Do you have any suggestions to improve the proposal?

No comment in relation to this question.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

No comment in relation to this question.

F. What are the relevant human rights considerations for this proposal?

No comment in relation to this question.

G. Is the proposal compatible with human rights? If not, why?

No comment in relation to this question.

H. Do you support/not support the proposal? If so, why?

No comment in relation to this question.

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

A. What are the benefits of the proposal?

One benefit of such a proposal, noting that this should not be a register generally available to the public, is that it would allow general or first responder police officers investigating what might otherwise be seen as a one off incident of domestic violence, to be aware of the need to investigate further if repeated conduct is flagged.

We note however that police systems currently already alert police to a history of domestic violence, and police already have access to criminal histories which would outline convictions for domestic violence.

This could enable the QPS to provide lawful disclosures to persons identified as at risk of serious DFV harm where QPS held relevant past or current risk information about the perpetrator of DFV.

This practice could also potentially equip victims of DFV with more information on potential risks of their partner.

B. What are the risks/possible unintended consequences of the proposal?

There is a risk of misusing of this information, or, where a perpetrator has genuinely taken steps to address their behaviour, it would be important that this register and the potential release of information didn't impact their ability to rehabilitate and reintegrate into their community, work, etc.

It is unlikely a perpetrator still using control or violence will give consent for their victim to access their information held on the registrar, so victim-led access to the registry is foreseeably rare.

This register may also give rise to a false sense of security in victims, or further compound the impacts of psychological abuse: if QPS does not provide information about risks posed by the perpetrator, a victim may assume that the violence in the relationship is only due to her (particularly if her abuser has already been blaming her for his violence). A register is also unlikely to adequately capture coercive controlling behaviours, or other indicators of escalating behaviours.

A register would need sufficient oversight to avoid privacy breaches, ensure up-to-date information, and proper monitoring of information sharing. There needs to be clarity on the length of time someone would remain on this register – would it be a lifelong registration or would a material change in circumstance allow for consideration to be given to remove someone from the register? Though the register is not meant to be public, the potential for stigma to be associated with those on a register could have the unintended consequence that the resentment created might actually lead to further offending.

If the information became publicly available, it could lead to vigilantism.

Given the clear desire and need for education, unnecessary funds could be diverted away from community education, and instead invested in an expensive (to set up and maintain) register of offenders.

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?

A register may compound the consequences for victims of being misidentified by QPS as the perpetrator in a DFV dynamic. This is of particular concern for Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women with alcohol and other drug abuse issues and mental health concerns. These groups are already over-represented as respondents under civil applications, and case stories exist (ie Jess Hill's coverage) where calls to QPS for assistance due to risks faced, can see them further penalised themselves. A register may lead to further targeting of vulnerable members of community who are charged with DFV offences resulting from their perpetrator's coercion, manipulation and systems abuse.

D. Do you have any suggestions to improve the proposal?

The current proposal only indicates disclosure options for people in intimate personal relationships. This does not account for family relationships, where the risks, particularly for elder abuse, can still be severe and life-threatening.

The timeframe someone is on the register should also be clarified, along with the process for removal from the register if they have demonstrated a sustained behavioural change such as successful completion and engagement with a behaviour change program.

There should be a clearly defined threshold for inclusion on such a register. It is noted that such a measure is intended to monitor 'dangerous domestic abusers'.

If the proposal is pursued, there should be strict legislated measures to ensure the privacy of people on the register.

There should be a legislated review of the effectiveness of such a measure after a stated period of time (for example 2 years).

E. What resources and supports would need to be put in place to support the implementation of the proposal?

Regular (at least annual) DFV training for QPS would be important. Please see the response to Question 50 regarding QPS training. Police officers should not be allowed to access this information on the register without completing this training to mitigate any potential misuse or misinterpretation of the register. Resources would also need to be allocated to training of police and auditing to further mitigate any potential misuse or misinterpretation of the register.

Considerable resources would be required to both set up and maintain such a register. This is because in order for the register to be of any use, it would need to have sufficient detail to allow police and authorities to properly investigate a complaint, and it would need to be up-to-date and the information made available in a timely way.

F. What are the relevant human rights considerations for this proposal?

The proposed register may impact the right to liberty and security of person; the right to freedom of movement; the right of protection from degrading treatment and right to privacy and protection of reputation. However, the human rights upheld by this proposal include: right to life; protection from torture and cruel, inhumane or degrading treatment; protection of families and children.

G. Is this proposal compatible with human rights? If not, why?

A person's right to liberty and security and right to privacy may be threatened by this proposal as the register would identify them as an offender and hold confidential information about their past behaviour, as well as using that information to inform future QPS responses to their behaviour. This is also information that could be provided to persons without the registrant's consent in times of severe risk. A person's right to recognition and equality before the law and a right to a fair hearing might also be compromised.

The proposal is potentially compatible with human rights in that the imposition might be considered to be reasonable and justified for the protection of people against dangerous domestic abusers. However, given the availability of some of this information through existing police systems, the less restrictive measures to access that information and the risk of breaching rights of privacy, liberty and security on balance, the proposal is not justifiable.

H. Do you support/not support the proposal? If so, why?

LAQ does not support this proposal. The risks do not seem to outweigh the benefits, nor do the benefits in our view adequately contribute to meaningfully addressing DFV risks. Further, the resources could be better directed towards education of the community and professionals.

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?

With proper implementation and resources, a post-conviction supervision order has the potential to provide a safeguard for women and children against high risk domestic violence offenders who may not be deterred by a prison sentence. It has the potential to provide ongoing rehabilitation by its requirements which could mandate individual treatment in the community.

The objects of any amendment to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) would be two-fold: to provide for the supervision of high-risk sex offenders and high-risk domestic violence offenders so as to ensure the safety and protection of the community, and to encourage those persons to undertake rehabilitation.

Engagement with perpetrators of serious domestic violence may encourage accountability and promote strategies to prevent future offending.

Interstate legislation may provide guidance in structuring such a regime. The demographics of Queenslanders, and in particular our First Nations people, must be considered in looking to interstate models.

The Northern Territory and Queensland have post-sentence detention and supervision regimes, confined to serious sex offenders only.

New South Wales, South Australia, Victoria, Western Australia and Tasmania have enacted legislation to include certain -high-risk violent offenders within that regime. Those schemes are not aimed towards the management of serious domestic violent offenders, but to a certain category of high-risk violent offender.

Relevant interstate legislation:

- Serious Offenders Act 2018 (VIC)
- Dangerous Criminals and High-Risk Offenders Act 2021 (TAS)
- High Risk Serious Offenders Act 2020 (WA)
- Criminal Law (High Risk Offenders) Act 2015 (SA)
- Crimes (High Risk Offenders) Act 2006 (NSW)

The NSW Act originally only applied to high-risk sex offenders but was amended in 2013 to include high-risk violent offenders, and renamed. In 2016, it was further amended to include violent

offences which were previously not within its ambit. These included offences of unlawful wounding with intent to cause GBH, manslaughter by unlawful and dangerous act, and murder that occurs in the course of committing another serious crime.

The NSW experience is an example of evolving legislation to meet community expectations and following detailed review. Nonetheless, the Second Reading of the Crimes (High Risk Offenders) Amendment Bill 2016, records: "The bill is not intended to result in a significant increase in the number of people who are subject to extended supervision or continued detention. The people who need to be subject to these orders to protect the community are identifiable through a risk assessment process, including consideration by the High-Risk Offender Assessment Committee established by this Government in 2014. (Legislative Assembly Hansard – 04 May 2016).

This contemplates a conservative approach, based upon risk assessment.

The *DPSOA* has as its primary objects, the protection of the community and provision of care, control and treatment to facilitate rehabilitation. Broadening the ambit might provide assurance for victims that offenders will be monitored and supervised upon release and returned to custody upon contravention. The message to the community would be clear that such offending carries severe and long-term consequences and will not be tolerated. This may assist in deconstructing social and cultural barriers to treating such offending as less serious due to its domestic context.

LAQ submits that such benefit may result, if orders are confined to those select few, and decisions that affect liberty are based upon reliable and cogent evidence. Only then can the rights of the offender and protection of the community be appropriately balanced. Such orders would be of benefit only in the most compelling of cases. The dangers of enacting such legislation would otherwise tend to outweigh any perceived benefits.

B. What are the risks/possible unintended consequences of the proposal?

Any amendments should ensure clear definitions of the category of offender to be captured within the definition to avoid gaps arising. For example, a sex offender may be assessed as a low risk of reoffending in a sexual manner but a high risk of reoffending in a violent matter. Any definition should be carefully constructed so that eligible offending conduct is properly captured across both categories of offender.

If a scheme were to only include serious domestic violent offenders, it may unintentionally exclude those convicted of more heinous offences. For example, such as child abduction and murder outside of a domestic relationship (and without a sexual offence being committed). Such offenders will not meet the definition of a serious domestic violent offender and would perversely not be captured under any supervision regime other than perhaps parole or *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOR). This could potentially lead to inconsistent outcomes.

On the other hand, a concerning danger might be the broadening of the ambit of offender to include those beyond the worst category and those who should be more justly managed under different regimes, particularly the mentally ill.

Extending the current regime to include those who have committed serious violence, would broaden the ambit of the Act significantly. This would in turn necessitate significant resourcing to effectively implement amendments.

The introduction of the *DPSOA* in 2013 was designed to address community concern regarding the most serious category of sex offender. It was parliament's intention to reserve such applications for continuing detention and supervision to those in the worst category of sexual offender. It was contemplated that only a small percentage of offenders would fall into this high-risk category. The Explanatory Notes to the *Dangerous Prisoners (Sexual Offenders) Bill 2003* record that "The number of prisoners who will be affected by these amendments is minimal and therefore the costs of continued detention and supervision will be funded from existing budget allocations."

In our experience as the legal practice representing a majority of the respondents in the Supreme Court on these matters (and Magistrates Courts on contravention offences), the applications have exceeded the anticipated number and the legislation far from being utilised to address high risk categories of offenders has been applied to main stream offenders.

The *DPSOA* permits arrest in broad circumstances: if a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the released prisoner's supervision order or interim supervision order (*DPSOA* s. 20).

Contraventions are often for relatively minor matters. They rarely involve the commission of a further serious sexual offence. This has been an argument that these orders therefore operate effectively as they should. Minor contraventions which could increase risk (especially if this is a recognised risk factor such as drug use) are detected promptly and addressed by way of arrest and return to custody. The time spent in prison awaiting the determination of a contravention often far outweighs the gravity of the contravention that has occurred.

Similar consequences could arise with a broadening of the *DPSOA*.

The definition of what constitutes a "serious danger to the community" and the test to be met, should be as precise as possible. This would contemplate an offender being an "unacceptable risk" of committing a further serious domestic violence offence. That category of offence should be clearly defined in any schedule.

The initiation of originating *DPSOA* applications, is supported by an assessment by an experienced psychiatrist, who provides a report which address risk. The findings usually summarise the risk as low, low to moderate, moderate, moderate to high or high. If the threshold test is met, risk assessment orders may then be made, appointing two psychiatrists to conduct examinations.

It is frequently the opinion of an expert psychiatrist that a sexual offender does present an unmodified risk, but with suitable monitoring and supervision, they could be managed in the community under a supervision order.

Similar findings could be made for seriously violent offenders. The difficulty exists with where that line is drawn. The definition could extend to many who may never reoffend. It may also prove no deterrent to the truly dangerous, who should be more properly dealt with under indefinite sentence provisions in the *PS Act.*

LAQ also holds concerns as to the reliability of the risk assessment process and the potential for unfairness which can arise. As per Kirby J (dissenting) in *Fardon v Attorney-General for the State of Queensland* 223 CLR 575 (Fardon) at [124]:

"Experts in law, psychology and criminology have long recognised the unreliability of predictions of criminal dangerousness",

and at [125]:

"Even with the procedures and criteria adopted, the Act ultimately deprives people such as the appellant of personal liberty , a most fundamental human right, on a prediction of dangerousness, based largely on the opinions of psychiatrists, which can only be, at best, an educated or informed "guess."

This is particularly acute in the application of the assessments to First Nations people (see below).

Due to the complexities of future risk prediction, there is the potential for a conservative approach, which could readily encompass a wide range of offenders in this category. The cost of administering the scheme would be significant.

Consideration also needs to be given to what sanctions will be available for non-compliance or contravention. Would the sanction be a civil contravention or would a new criminal offence for contravention of a post-sentence supervision order be created? (similar to *DPSOA* s. 43AA). Criminal sanction will potentially result in further imprisonment and frustration of rehabilitation goals, such as loss of stable accommodation and interruption of therapy and mental health community treatment.

Of further concern is whether any amendment will capture children. The Western Australian legislation includes in its definition of "under a custodial sentence", a sentence of detention for an offence committed after the young offender had reached 16 years of age.

The *DPSOA* specifically extends the definition of prisoner to include an offender who commits a serious sexual offence who is sentenced as a child, who was serving a period of detention in a youth detention centre and is then transferred to a correctional centre under s. 276E of the *Youth Justice Act 1992*.

LAQ does not support the inclusion of children under such a supervised regime.

LAQ considers that those offenders who are found not criminally responsible by virtue of unsoundness of mind, or of reduced capacity due to diminished responsibility in the case of murder, or are found not fit to stand trial, should be excluded from these amendments. The interests of justice require that they be dealt with outside the ambit of any such amendments. There are existing provisions under the *Mental Health Act 2000* that provide for appropriate orders in certain circumstances.

In circumstances where a prisoner is found to be unfit, or incompetent at the expiration of their sentence, separate considerations arise as to the ongoing management of their risk. In Western Australia, a supervision or detention order can be made in circumstances where an offender has been found unfit to stand trial or, if charged with an offence, would be likely to be found not mentally fit to stand trial.

A person who lacks the capacity to understand the order will be unable to comply with its requirements. Recently, two *DPSOA* matters were referred by Williams J to QCAT(*A-G for the State of Queensland v SLS* [2012] QSC 111, and *A-G for the State of Queensland v FPN* [2021] QSC 110) for determinations as to whether they have capacity to respond to the *DPSOA* proceedings. FPN is currently detained on an interim detention order past the expiration of his sentence, while this issue is determined.

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?

LAQ considers that a disproportionate adverse impact would be felt among:

- Mentally ill offenders
- First Nations offenders
- Culturally and linguistically diverse offenders
- Cognitively impaired and intellectually impaired offenders.

LAQ's experience is that there is an over-representation of First Nations offenders captured within the current post-sentence *DPSOA* regime.

There is also a proportion of offenders with the ambit of that regime who have cognitive impairments, intellectual disabilities, psychiatric and physical disabilities.

The latter are sometimes unable to participate in the usual suite of treatment programs offered with the custodial setting. A modified program, known as the *Inclusion sex offender treatment program* can be offered to those who have sufficient capacity to participate. There are gaps which can lead to unjust outcomes.

The QCS annual report for 2019/20 acknowledges the over-representation of indigenous people and those with disabilities in our criminal justice system. (pages 26 and 32).

Appropriate adjustments would need to be made to assist those respondents to comprehend the nature of the supervision order and the consequences of non-compliance. The use of plain language is essential. An example is the pro forma supervision order published in 2019 on the Queensland Courts website (Form 1). The use of visual aids for respondents is desirable to explain the requirements and assist in understanding their obligations.

Appropriate cultural engagement is also recommended for First Nations respondents. Those skilled in Aboriginal English or cultural norms/practices are crucial to assist in the taking of instructions and the preparation of these matters. These measures all serve to mitigate adverse impacts for this cohort in the community.

It is recommended that the early identification of Indigenous prisoners who may be captured by the legislation, is highly desirable. This would enable culturally appropriate programs and courses to be offered at an early stage and for important and protective community links so be established. Early intervention will assist in addressing criminogenic needs and identify any ongoing risks which still need to be addressed well in advance of the end of the sentence. These outcomes would in

turn also better inform the psychiatric assessments which may be ordered shortly prior to release. If risks are addressed at an early stage with integrated and culturally appropriate courses, there may ultimately be no need for any application under the Act or for any supervision order to eventuate.

Similarly, inmates who have disabilities would benefit from early identification so that targeted programs can be provided to them and to enable them to engage in a fair process.

Anecdotally, respondents have informed us that they shunned group therapy courses within the prisons, not appreciating that without that risk assessment tool, they can be classified as untreated and deemed an unacceptable risk. The result could be that a continuing detention order is made to enable courses to be undertaken and a risk profile to be better developed.

The risk factors in sexual offending are both static and dynamic. There are concerns raised about the application of the actuarial risk assessment tools utilised and their efficacy with respect to First Nations people. Such instruments are to be applied with caution as they are based upon samples which differ from the indigenous person who is the subject of assessment. These limitations are even more complex given that First Nations people come from many different language and family groups.

There are also difficulties in assessing dynamic risk factors when a person has been incarcerated for a long time.

Finally, First Nations offenders have been noted to experience higher rates of abuse throughout childhood, poor health outcomes and early substance abuse. Such factors are identified in risk assessments as being associated with high risks of recidivism. It follows that there is an appreciable risk of this cohort of offenders being assessed as presenting a high risk due to a prejudicial background.

D. Do you have any suggestions to improve the proposal?

LAQ considers that any such scheme should be administered in a transparent and publicly accountable manner.

LAQ considers a board, committee or authority such as the Western Australian High Risk Offenders' Board (s14 and 15, *High Risk Serious Offenders Act 2020*) or Post Sentence Authority (Victoria) be established to coordinate the management of these offenders and develop best practice standards. This will assist in the coordination across various agencies who provide support services and treatment, and to improve rehabilitation outcomes.

Applications for post-sentence orders should be brought before the Supreme Court to reflect their gravity and reasons should be given to enable scrutiny of decisions.

Suppression orders to anonymise those subject to the orders should be considered where appropriate, and in circumstances where publication could lead to the identification of a victim. Publication of an offender's name and details may be counter-productive to their ongoing rehabilitation and lead to vigilantism. Significantly, it may also result in retraumatising a victim and infringe upon their right to privacy.

If applications are brought then respondents should be given adequate time to prepare for their hearings and to instruct their legal representatives. Respondents and their legal representatives should have adequate resources to permit access to expert witnesses who can provide opinions on the applicant's expert evidence.

LAQ recommends that safeguards be put in place to alert those at the time of sentence, that they may be subject to these extraordinary provisions, in the interests of fairness and to incentivise rehabilitation. It is noted that s. 25C of the *Crimes (High Risk Offenders) Act 2006* (NSW) requires the court that sentences a person for a serious offence to be advised of the existence of that Act and its application to the sentence.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

The expansions of the *DPSOA* or introduction of new provisions into the *PS Act*, will create an increase in prison populations. Contraventions of supervision orders will result in a return to prison. Further psychiatric risk assessments will inevitably need to be conducted and this takes time, leading to months in custody prior to a hearing.

Queensland Corrective Services currently manages contingency housing for *DPSOA* respondents which is approved as suitable upon release. Similar housing will need to be built as an interim option for high risk offenders who may otherwise struggle to find accommodation that is deemed suitable by QCS.

The increase in monitoring and supervision will require significant resourcing from QCS who administer the orders and conduct regular supervision, drug testing, and case management meetings.

In addition, the cost of community psychiatric and psychological treatment will be significant. *DPSOA* orders require such treatment be adhered to, for obvious reasons.

A demand on legal services will also increase, as clients will need to access representation to respond to initiating applications and contraventions, to bring variation applications and for general advice, both prior to and while subject to an order.

There will be a higher demand on court time and court administration as applications in the civil applications list will increase.

F. What are the relevant human rights considerations for this proposal?

- *HRA s.* 19: The right to freedom of movement

  This proposal affects the right to move freely within Queensland, enter or leave Queensland, and choose where to live. It also imposes surveillance on a person.

- *HRA* s. 22: Right to peaceful assembly and freedom of association

  Every person has the right to join or form a group and to assemble. Requirements of supervision orders commonly prevent this without prior written permission being granted.

- *HRA s.* 25: Right to privacy and reputation

- *HRA* s. 26: Right to protection of families and children

  This proposal promotes that right.

- *HRA* s. 27: Cultural rights

- *HRA* s. 28: Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

  Such as regulating access to places of cultural significance, such as museums, libraries and national parks, for example to undertake traditional hunting and fishing.

- *HRA* s. 29: Right to liberty and security of person

  Every person has the right to liberty and security and to protection against the unlawful or arbitrary deprivation of liberty.

- *HRA* s. 31: The right to procedural fairness and a fair hearing
- *HRA* s. 34: Right not to be punished more than once
- *HRA* s. 35(2): Retrospective criminal laws

  A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

G. Is the proposal compatible with human rights? If not, why?

LAQ submits that a post-conviction supervision scheme, however it is introduced, is incompatible with the following provisions of the *HRA* - ss. 19, 22, 25, 27, 28, 29, 31, 34 and 35.

In 2004, the validity of the *DPSOA* was challenged in the High Court in *Fardon*.

The majority decision was that *DPSOA* s. 13 was constitutionally valid, with its primary focus of community protection and not punishment. Justice Kirby who dissented commented on future predictions of dangerousness, "based largely on the opinions of psychiatrists which can only be, at best, an educated or informed guess." Gummow J found that the *DPSOA* did not offend the principle of double jeopardy. Kirby J however was of the view that it did impose a double and retrospective punishment on the offender.

LAQ considers that these issues would arise in any such proposal for expansion of the current legislation.

LAQ submits that offenders must have adequate time to prepare for their hearings, to instruct counsel, to analyse the evidence and to make arrangements for expert witnesses to give evidence. Frequently respondents are not in local correctional centres and have limited access to their lawyers. Resources should be available to ensure legal representation and that prisoners have the opportunity to engage expert witnesses who can critically review the work of the court-appointed psychiatrists.

In the decision of *Attorney-General v Nash* [2003] QSC 377, the Supreme Court dismissed an application for orders under *DPSOA* s. 8 at preliminary hearing due to lack of procedural fairness. Per P D McMurdo J: at [12], ... "the operation of the Act must be in the context of the provision of natural justice, and in particular the requirement for adequate notice of this application."

HRA s. 25: Right to privacy and reputation

Supervision orders under the *DPSOA* generally contain a requirement that an offender disclose the nature of their past offending and existence of the order, if they have any repeated contact with a parent, guardian or parent of a child under 16. QCS is also empowered to disclose the existence of the order to any parent, guardian or caregivers that have contact with the offender, and to give personal information about them and their order to an external agency.

LAQ acknowledges that these rights are not absolute and that limitations do exist (*HRA s.* 13).

Finally, post-sentence regimes are inconsistent with the rule of law. The consequences for the respondents are akin to criminal sanction and result in significant restriction on liberty, yet are subject to a lower threshold of proof, the civil standard. The *DPSOA* permits arrest and subsequent detention in circumstances where no criminal offence may have been omitted, upon reasonable suspicion of a likely contravention or contravention of an order. This is troubling and can lead to unjust and disproportionate outcomes.

H. Do you support/not support the proposal? If so, why?

LAQ is opposed to the introduction of a post-conviction civil supervision scheme for serious domestic violence offenders.

The expansion of the eligibility criteria in the *DPSOA* to encompass serious domestic violent offenders, has the potential to cast a broader net than intended. Other Australian jurisdictions have enacted similar amendments, some quite recently. There would be benefit in a qualitative review of

these interstate schemes prior to any proposed amendments being considered. A cautious approach is recommended. This is particularly so given the potential impact on Human Rights.

Similarly, any amendment to the *PS Act* to create such a scheme, is also not supported. LAQ also considers that existing sentencing options with a strong focus on rehabilitation and community protection, could be better utilised to meet these objectives. An example is the option of an intensive corrections order with mandated treatment to address risk factors which could lead to further offending.

LAQ also submits there are more appropriate ways of addressing risk to the community upon release from custody. Parole orders could be better utilised to effectively supervise those at high risk, upon release.

It is submitted that options that allow an offender to know their sentence and the consequences of their conduct, at the time they are sentenced, and not at some future time, is preferable.

A sentencing court has a raft of sentencing options available to build a sentence that balances all relevant factors and is just in all the circumstances. In truly serious matters, a life sentence with an extended parole period can be ordered. There is also proposed legislative change set to be tabled in Queensland this year with respect to extending non-parole periods for a category of dangerous offenders.

At the time of sentence, if the legislative requirements are met, there is the option of an application for an indefinite sentence in the most serious of cases. *PS Act* Part 10, ss. 162—179 permits a sentencing court to impose an indefinite sentence. This applies to an offender who is convicted of a violent offence if the court is satisfied that the offender is a serious danger to the community. A nominal sentence must be fixed and at the end of this term, a review is held.

PS Act Part 9D has a narrow application. It allows a court to make a control order imposing conditions (under s. 161U) including restricting means of communication, association with persons, including someone with whom they have a personal relationship, and from being in or entering a stated vicinity. These orders are mandated in certain circumstances where a court sentences an offender for a prescribed offence committed with a serious organised crime circumstance of aggravation. A sentencing court has a discretion to make a control order if sentencing for an indictable offence, if satisfied the offender was, at the time the offence was committed, or at any time during the course of the commission of the offence, a participant in a criminal organisation; and the court considers it is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity (*PS Act* s. 161W).

These provisions would not ordinarily be enlivened in the course of sentencing an offender for serious domestic violence offences.

S. 18 of the *Criminal Law Amendment Act 1945* (Qld) also provides for the indefinite or continuing detention of convicted sexual offenders who are in custody. It is targeted towards those who are incapable of exercising restraint over sexual instincts, not those who choose not to do so. This provision may therefore also be of limited application in the context of this proposal.

The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOR) also provides a post sentence supervision regime for offenders not just imprisoned for sexual offending against children, but other prescribed serious offences against children, such as manslaughter.

LAQ supports an increase in resources invested in education to develop cultural change around domestic violence instead of further legislative change. This includes expert training of police officers and first responders to identify victims and perpetrators, and investment in mental health, drug and alcohol counselling and supports for all parties involved.

LAQ holds concerns that the provisions would be utilised to capture a broad range of offenders, from those in a less serious category of offending to those who are a high risk of reoffending in the absence of such order.

Supervision orders under the *DPSOA* are cast among among a wide range of sex offenders. The orders are onerous and very restrictive, often containing upwards of 50 requirements, including strict curfews. While they can have the appearance of forming a protective barrier, they also often serve to isolate perpetrators from community supports and pro-social activities. A constant tension exits between balancing the rights of the individual and community safety. Monitoring devices can alert to a location which is classed as an exclusion zone (perhaps as the perpetrator walks through a park or near a liquor store), but if an offender were inclined to commit a sexual offence, it is arguable that the installation of the device would not necessarily prevent that from occurring.

LAQ submits that the introduction of any such scheme be subject to statutory review and be no more intrusive than necessary to achieve its objectives.

Children should also be excluded from the ambit of any such amendments.

If such regime were to be implemented, it would require significant resources, training and education and infrastructure to support community accommodation and treatment. Orders that constrain movement and impose restrictions, require significant resourcing and this should be balanced against the overall benefit to the community.

LAQ considers that resources could be more appropriately allocated at the start of a sentence to address criminogenic needs. Interventions and treatment programs initiated shortly after sentence in custody, are arguably more of a protective factor for the community than any post sentence supervision or control order. A coordinated approach between stakeholders, including mental health professionals, and other treatment providers is essential to provide a holistic response to the individual's rehabilitation. Individually tailored treatment or therapy should be considered where possible, in conjunction with or instead of the standard group therapy programs.

Any proposed amendment which infringes upon human rights in such an extraordinary way should be carefully scrutinised and alternative measures preferred. LAQ favours less restrictive and more integrated ways of achieving the objectives of community protection for those affected by serious domestic violence.

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?

Other agencies may be best placed to discuss the benefit of this proposal as from LAQ's perspective, the proposal is unduly heavy-handed response that would not achieve any increased protection of women and children's safety.

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?

The response to questions B and C has been combined.

The risks of the proposal include stigmatising already disadvantaged individuals who suffer mental health issues or substance use disorders. The resourcing required means that careful consideration should be given to this proposal because failure to properly fund the preparation of expert reports may cause delay in the finalisation of matters. The current legislation allows for increased maximum penalties for offenders who repeatedly contravene domestic violence protection ordersdomestic violence protection orders and there is the capacity for sentencing courts to combine orders to allow for imprisonment and community supervision. The proposed serial family violence orders appear to largely have a punitive labelling effect rather than a focus on altering offending behaviours. LAQ's position is that any additional orders available to sentencing courts should have a focus on education and supervision.

D. Do you have any suggestions to improve the proposal?

If serial family violence offender orders are brought into effect, LAQ would suggest that they be for a period shorter than ten years or staged periods according to defined parameters like those in the *Child Protection (Offender Reporting) Act 2004*. Another suggestion is that the orders might be independently reviewable separately from the sentence imposed. S. 180 of the *Corrective Services Act 2006 or 2004?* (CSA) has the effect that a person who appeals against a sentence cannot apply for parole until their appeal is determined. A person who seeks to appeal against the imposition of a serious family violence offender order may be precluded from applying for parole until the determination of their appeal, which may be after they would otherwise be eligible for parole. Consideration should be given to dealing with this by reviewing the purpose and utility of *CSA* s.180 or developing a separate appeal or review right incorporated into the serial family violence offender order provisions.

E. What resources and supports would need to be put in place to support the implementation of the proposal?

The discussion paper recognises the 'considerable' resource impacts for the Queensland Government. Included in those resource impacts should be appropriate funding to LAQ to ensure adequate representation on such applications.

F. What are the relevant human rights considerations for this proposal?

Addressed in the Discussion Paper.

G. Is the proposal compatible with human rights? If not, why?

Addressed in the discussion paper.

H. Do you support/not support the proposal? If so, why?

The proposal is not supported by LAQ because there is adequate sentencing legislation already in place, it detracts significantly from the freedom of offenders who would likely be those with mental health and substance use disorders and because of the risk that a resourcing imbalance could be disadvantageous to clients of LAQ.