

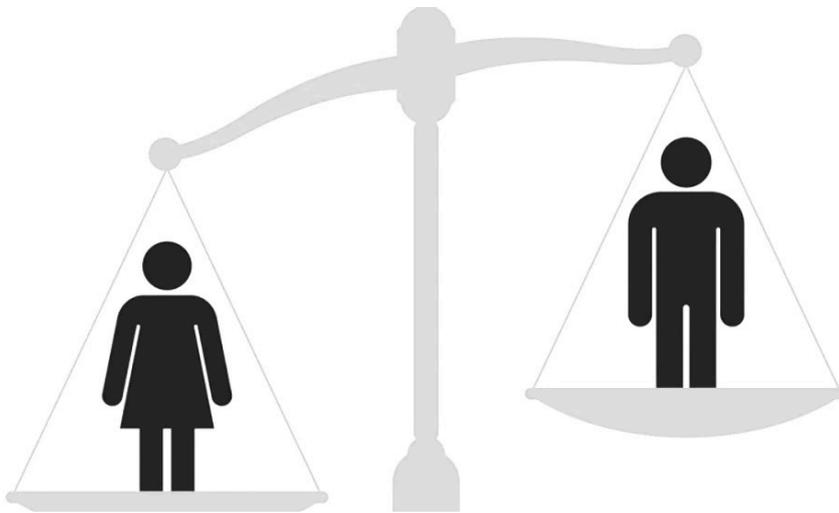


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Submission To

Women's Safety and Justice Taskforce

Discussion Paper 1: *Options for legislating against coercive control and the creation of a standalone domestic violence offence.*



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On behalf of the Red Rose Foundation

Responding to Discussion Paper 1

INTRODUCTION

The Red Rose Foundation congratulates the Queensland Government on embarking on this important review and are pleased to have the opportunity to provide a submission.

The Red Rose Foundation Australia is a national not for profit organisation based in Brisbane. Through our work, we maintain a strong focus on addressing the specific issues surrounding domestic violence deaths including homicide, suicide, premature deaths from domestic violence related injuries and accidental deaths arising from incidents and or / histories of domestic violence. Research informs that the majority of domestic violence deaths are predictable and preventable. The focus of the foundation is two fold: provide direct support to survivors of high risk -high harm domestic violence and address systemic gaps in service systems through training, education and research.

To further the mission of the Red Rose Foundation, we have:

- ✓ Established the Australian Strangulation Prevention Institute to further advance research and training on non-lethal strangulation.
- ✓ Opened Australia's first Strangulation Trauma Centre to provide a range of therapeutic supports for women experiencing high harm domestic violence.
- ✓ Deliver a range of training on high risk high harm domestic in diverse professional settings.

The Red Rose Foundation is cognisant of the strong links between domestic violence, child abuse, and sexual violence.

Violence Against Women: Rationale For Change

Violence against women is any act of gender-based violence that causes or could cause physical, sexual or psychological harm or suffering to women, including threats of harm or coercion, in public or in private life. UN Declaration

The prevalence of violence against women in Australia has been described as a national crisis. From the rape and sexual harassment of women within the confines of our national parliament to the abuse and murder of women within families and intimate relationships should concern us all.

- 1 in 3 Australian women (30.5%) has experienced physical violence since the age of 15.
- 1 in 5 Australian women (18.4%) has experienced sexual violence since the age of 15.
- 1 in 3 Australian women (34.2%) has experienced physical and/or sexual violence perpetrated by a man since the age of 15.
- 1 in 4 Australian women (23.0%) has experienced physical or sexual violence by current or former intimate partner since age 15.
- 1 in 4 Australian women (23.0%) has experienced emotional abuse by a current or former partner.
- Australian women are nearly three times more likely than men to experience violence from an intimate partner.
- Almost 10 women a day are hospitalised for assault injuries perpetrated by a spouse or domestic partner. (OurWatch, 2021)

Abuse and violence in all forms is never ok and can have long term consequences for a victim's health and well being.

- Intimate partner violence is the third greatest health risk factor for women aged 25-44.

- In 2014–15, Aboriginal and Torres Strait Islander women were 32 times as likely to be hospitalised due to family violence assaults as non-Indigenous women.
- Women who experience partner violence during pregnancy are 3 times as likely to experience depression.
- Domestic or family violence is a leading driver of homelessness for women.
(Our Watch, 2021)

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

In the first instance, we express our concern that the possible criminalising of coercive control is being considered in isolation to the broader review of women and girl's experience of the criminal justice system. We believe the consideration of any new legislation should be considered in tandem with a review of the broader criminal justice system, not separate to it.

The Red Rose Foundation would expect there to be other legislation that should be reviewed and amended so as to provide enhanced legal protection. These would include but not limited to legislation that relates to strangulation, stalking, sexual violence and torture.

The Red Rose Foundation responds to Discussion Paper 1 across several themes.

1. CONTEXT

"Context is Everything" Alvin Gouldner, 1955

The current public discussions on coercive control has focused largely on exhaustive lists of behaviours on what may or may not constitute coercive control.

An understanding of the context in which domestic violence occurs is critical for both public policy and legislative reform. Without an understanding of the context in which both domestic violence and violence perpetrated against women in the public spaces of their lives, substantial reform to address many of the systemic issues and inequalities that fail victims, will not be adequately addressed.

The notion that domestic violence relationships are underpinned by power and control tactics is not new. The Power & Control Wheel, widely used as a base curriculum in men's behaviour programs, was developed by Ellen Pence 1984. The power and control wheel describes some of the tactics that abusers can use to gain and maintain control over their victims. This power and control dynamic is at the core of all domestic violence and is what distinguishes abusive relationships from non-abusive relationships.

Domestic violence is underpinned by distorted power dynamics that see one person in the relationship holding a position of dominance and while keeping others in subordinate positions. Evan Stark (2007) suggests that it is not violence per se but the assault on autonomy, liberty and equality that distinguishes intimate partner violence.

Coercive control is not a "form" of domestic violence. It is the power base on which other abusive behaviours develop and are acted out. It is often underpinned by notions of toxic masculinity which see women at risk of violence, rape, sexual harassment and fear in both the public and private realms of their lives.

'Rather than looking at individual harms and acts of violence in isolation, coercive control considers the 'cumulative' effect of living with violence and the interplay between domination and subordination which keeps women trapped in abusive relationships.' (Stark 2007)

ANROWS 2021 agrees *“Coercive control is intrinsic to a particular manifestation of male power, where the man uses non-physical tactics and/or 1physical tactics to make the woman subordinate and maintain his dominance and control over every aspect of her life, effectively removing her personhood. The attack on the woman’s autonomy can involve strategies like physical, sexual, verbal and/or emotional abuse; psychologically controlling acts; depriving the woman of resources and other forms of financial abuse, social isolation; utilising systems, including the legal system to harm the woman deprivation of liberty; intimidation; technology-facilitated abuse; and harassment.”*

Definition

The Queensland Government definition of domestic and family violence states:

Domestic and family violence (DFV) occurs when one person in an intimate personal, family or informal carer relationship uses violence or abuse to maintain power and control over the other person.

<https://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/domestic-family-violence/what-is-domestic-and-family-violence/what-is-domestic-violence/about-domestic-and-family-violence>

The definition contained within the the DFV Risk and Safety Framework

‘ Domestic and family violence includes behavior that is physically, sexually, emotionally, psychologically, economically, spiritually or culturally abusive, threatening, coercive or aimed at controlling or dominating another person through fear. The violence or abuse can take many forms ranging from physical, emotional and sexual assault through to financial control, isolation from family and friends, threats of self-harm or harm to pets or loved ones, or constant monitoring of whereabouts or stalking.

<https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/our-progress/enhancing-service-responses/dfv-common-risk-safety-framework>

Domestic violence occurs on a continuum with a range of abusive behaviours associated with physical violence, sexual violence, financial abuse, social and cultural abuse, emotional abuse, psychological abuse, technology based abuse and spiritual abuse. Many of these forms of abuse occur simultaneously. Victims experiences of violence and abuse can vary dependent of the frequency, circumstances and impacts.

Review of homicides with a history of domestic and family violence, 2006-07 to 2018-19

The types of violence used in relationships was recorded in 153 of the 188 cases that featured domestic and family violence. Physical violence only was recorded in 39 cases (25.5%), while non-physical violence only was reported in 27 cases (17.6%). In more than one-half of cases (87; 56.9%), both physical and non-physical forms of violence were utilised. The most common forms of identified violence were:

- Physical (82.4%)
- Psychological/emotional (51.0%)
- Verbal (35.3%)
- Sexual (5.9%)
- Property damage (5.9%)
- Financial (2.6%)
- Abuse/neglect of children (2.0%)
- Pet abuse (2.0%)

Coercive Control and Potential Lethality.

In 2019-20, there were 28 DFV related homicides recorded within Queensland.

If we understand coercive control as the context in which domestic violence occurs, then yes it would be evident as a prior factor in death reviews. However it is misleading and simplistic to say it is the major cause of homicides. There are several behaviours that are evidenced based red flags to homicide which have been documented through research, domestic violence death review reports and the development of risk assessment tools.

For many perpetrators of lethal domestic violence it is the “loss of control” they experience when their partner leaves, reports to police, give strong messages the relationship is over, or begins a new relationship that increases the risk to victims, their children and others. Actions motivated by sexual jealousy and revenge are some of the more predominant signs of dangerousness.

The key risk factors evident across Qld Domestic Violence Death Review Reports include separation, strangulation, sexual violence and stalking. Based on this, Betty Taylor CEO of the Red Rose Foundation and member of the Queensland Domestic Violence Death Review Board, developed a training and education program called the Deadly S which details how these factors are high risk high harm and the strong connection between them.

Also predominant within the death review reports is the significant factor of **systemic failures**. During 2017-2018, the board reviewed 20 cases involving 30 domestic and family violence deaths. Individual service contacts for 19 of the 20 cases reviewed showed there were 536 domestic and family violence related contacts, with an average of 28.2 contacts per case. This contacts were spread across many agencies, both government and non-government.

Systemic failures are as much a risk factor than viewing one specific behaviour in isolation to the context and environment in which domestic violence related homicide and suicide occurs.
<https://www.courts.qld.gov.au/courts/coroners-court/review-of-deaths-from-domestic-and-family-violence>

The Justice System Response to Domestic & Family Violence

Existing legislative responses to domestic and family violence include both civil and criminal law. Currently the majority of domestic and family violence matters are addressed under civil law.

Civil Response

Domestic & Family Violence Protection Act 2012

Queensland has a civil legislative response to domestic violence which articulates a broad definition. *Domestic & Family Violence Protection Act 2012 Part 2 8.1 states....*

Meaning of domestic violence

(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—

(a) is physically or sexually abusive; or

(b) is emotionally or psychologically abusive; or

(c) is economically abusive; or

(d) is threatening; or

(e) is coercive; or

(f) in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else.

The Act provides examples of some of the behaviour that constitute domestic violence.

Without limiting subsection (1), domestic violence includes the following behaviour—

- a) causing personal injury to a person or threatening to do so;
- b) coercing a person to engage in sexual activity or attempting to do so;
- c) damaging a person’s property or threatening to do so;
- d) depriving a person of the person’s liberty or threatening to do so;
- e) threatening a person with the death or injury of the person, a child of the person, or someone else;
- f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
- g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
- h) unauthorised surveillance of a person;
- i) unlawfully stalking a person.

For a Protection Order to be made, the court must be satisfied that it is “probable” the violence occurred, and may occur again.

The civil law response to domestic and family violence could be considered to be working well when viewed through the lens of orders made through Qld courts.

In the 2020 – 2021 YTD (11 months) there were 47,173 orders made representing an increase of 16.8%.

Order Type	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21 YTD (to 31 May 2021)	# change 2019-20 YTD to 2020-21 YTD	% change 2019-20 YTD to 2020-21 YTD
Protection	26,669	26,496	24,828	24,976	20,966	23,211	3,966	20.6%
Temporary Protection	14,336	14,265	13,896	14,420	14,487	13,324	129	1.0%
Vary Protection	7,015	9,077	9,943	9,759	8,726	10,638	2,702	34.0%
Total	48,020	49,838	48,667	49,155	44,179	47,173	6,797	16.8%

Orders, 2020-21 YTD (to 31 May 2021)	Aggrieved Number	Aggrieved Percent	Respondent Number	Respondent Percent
Protection	3,825	16.5%	4,065	17.5%
Temporary Protection	1,781	13.4%	1,796	13.5%
Vary Protection	1,646	15.5%	1,729	16.3%
Total	7,252	15.4%	7,590	16.1%

The court data also shows a high number of orders made in respect to Aboriginal and Torres Strait Islander people who represent 15.4% of all aggrieved. The over-representation of Aboriginal and Torres Strait Islander women in domestic violence statistics needs urgent attention and the impact of any legislative change should prioritise the safety and well-being of ATSI women and communities.

A domestic violence protection order was in place at the time of the homicide in one-third (33.5%) of domestic and family violence homicides. Qld Police lodge 74.8% of all protection order applications.

Criminal Justice Responses

Data relating to specific domestic violence criminal offences is harder to source with the exception of breaches of protection orders, sexual offences and strangulation.

Convictions for Breaching Protection Orders

Penalty	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21 YTD (to 31 May 2021)
Imprisonment/Detention	4,173	4,542	4,835	4,852	4,763	5,548
Custody in the Community	56	63	71	52	52	77
Community Service Order	329	403	352	279	250	288
Probation	2,380	2,944	2,735	2,842	2,269	3,483
Monetary Order	3,763	4,049	4,132	3,986	3,331	5,516
Good behaviour/Recognisance	693	933	890	899	637	966
Other	479	598	730	790	733	945
Total	11,873	13,532	13,745	13,700	12,035	16,823

Other criminal offences relating to domestic violence are referred to as flagged offences. However Qld Court data does not describe specifically what those offence were.

In the past year, there were 11,083 flagged offences, the majority dealt with in the Magistrates Court.

Flagged offences lodged

Court	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21 YTD (to 31 May 2021)
Magistrates Court	4,319	8,765	6,889	6,164	6,565	7,126
District Court	2,023	3,039	4,030	4,349	4,304	3,749
Supreme Court	45	117	111	101	131	208
Total	6,387	11,921	11,030	10,614	11,000	11,083

Note:

1. All offences are initially lodged in the Magistrates Court. However depending on the seriousness of the offence, some charges only be dealt with on indictment in the Supreme or District Courts. Therefore the charges counted in the District and Supreme Courts are also counted in the Magistrates Court.
2. Flagged DFV offences were introduced on 1 December 2015 making 2016-17 the first full year of data.
3. Flagged offence data for all years has been recalculated due to revision of included offences under the legislation.



The criminalising of coercive control as a course of conduct crime would place an added burden on victims to collect evidence as the court must be satisfied “beyond reasonable doubt” that the violence occurred. It is a far higher threshold that must be reached. Where coercive control cannot be proven “beyond reasonable doubt”, prosecution would be unsuccessful.

The progression of criminal offences that go beyond the Magistrates Court, are often a protracted, trauma producing experiences for victims. Both the experience of interaction with the Criminal Justice System and the often failure of courts to hold offenders to account, leaves many victims more traumatised and left questioning why they began that course of action to begin with.

Predominant Aggressor Policies

Misidentification and the consequential criminalisation of victims has become a common unintended consequence of reliance on legal systems to address problems associated with domestic and family violence.

(Braaf, 2007; Durfee, 2012; Erwin, 2004; Goodmark, 2018).

Domestic violence advocates in Queensland have been lobbying for a policy and legislative response to predominant aggressor for the past 19 years.

The term predominant aggressor is used in reference to decision making within a domestic violence response. It charges police and courts with the responsibility of determining who has the most potential for doing the most harm, and what actions were done in self-defence. It encourages police to desist from responding to the domestic violence as mutual combat. Factors to consider include the history of domestic violence between the couple, threats, the fear level of each person, and whether either person acted in self-defence. These are appropriate considerations when determining who the predominant aggressor is, and therefore which of the two parties should be arrested or subject to a domestic violence order.

Main factors to be considered:

1. The intent of the law to protect domestic violence victims;
2. Who is in most need of protection.
3. Any threats, real or implied which install fear of violence by one partner toward another;
4. Any history of violence between the partners.
5. If either partner acted in self-defence.

Research literature indicates that misidentification may result in dual arrests (two or more parties being arrested for the use domestic violence), cross-orders (two or more parties being issued with civil protection orders), or the single arrest of victims. (No to Violence 2021)

Both a policy and legislative response needs to be considered to address the issue of cross applications being taken naming victims as respondents. This creates an enormous barrier for women seeking further assistance from police.

(E Taylor Churchill Fellowship Report 2002, QDVSN 2006)

How do other jurisdictions address coercive control?

England and Wales: Coercive control behaviour (CCB) offences were introduced in England and Wales in 2015. While there has been an increase in reports of domestic abuse to police, the majority of arrests for coercive control have been dropped without someone being charged, and there have been a very small number of successful prosecutions to date.

A review from the Coercive and Controlling Behaviour Offence by the Home Office found that 35% of CCB offences in 2018/19, despite the victim supporting further action being taken, sufficient evidence could not be collected to charge the suspect.

Other offences that defendants were frequently prosecuted for alongside CCB were

- Assault occasioning actual bodily harm (22% in 2018 and 27% in 2019)
- Criminal or malicious damage (17% in 2018 and 18% in 2019)
- Sexual offences (for example, rape of a female aged 16 or over – 6% in 2018 and 5% in 2019)

This suggests that where there are specific incidents of physical violence, damage or sexual assaults these tend to be charged as a distinct offence alongside CCB, instead of as part of the pattern of controlling or coercive behaviours. These data could indicate that it may be easier to prosecute CCB offences when they are charged alongside other offences that are less difficult to evidence, such as assault or criminal damage.

<https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence/review-of-the-controlling-or-coercive-behaviour-offence>

Scotland: Domestic Abuse (Scotland) Act 2018,

Description contained within the Act; Behaviour that is violent, threatening or intimidating or any behaviour that has the purpose of:

- making a domestic partner subordinate or dependent
- making a partner isolated from family, friends or a wider support network
- regulating, monitoring or controlling the day-to-day activities of a partner
- restricting a partner's freedom of action
- humiliating, frightening, degrading or punishing a partner.

As a result of the expanded definition of what constitutes domestic abuse, in the first three months of the law coming into force, more than 400 crimes were recorded by Police Scotland. It is estimated that this figure is now approaching 600. In the first three months, 190 cases had been reported to the Crown Office, resulting in 13 convictions.

It is also noted that Scotland does not have an Indigenous population, remote Indigenous communities or the geographical expanse of Queensland.

Tasmania:

Tasmania is the only State in Australia to have criminalised coercive control (in the form of emotional abuse, intimidation and economic abuse in the context of family violence), however, there have been very low numbers of convictions.

Mainstream Service Provision

Professional working in organisations providing a response to either domestic violence victims or perpetrators should already be providing a response that is trauma informed, safe and is based on a sound knowledge and understanding of the context and dynamics of domestic violence.

Service provision should be built on documented best practice, is ethical, safe and utilised evidenced base risk assessment tools. An understanding of coercive control and power dynamics is / or should be contained in all introductory training course already.

The Red Rose Foundation would not support the provision of services solely focused on coercive control. The risks associated with domestic violence are a changing dynamic. There needs to be a focus on safety and risk management at the core of all interventions.

Queensland Police Service

The Red Rose Foundation is a member of the newly founded Domestic & Family Violence Advisory Group within QPS. We look forward to working with QPS to further strengthen responses to domestic and family violence.

The DFVAG will meet quarterly and its overarching functions are to:

- Advise the Commissioner of Police on strategic domestic and family violence issues and recommend appropriate action.
- Collaboratively discuss and exchange ideas regarding policy and operational challenges/ experiences with a view of driving possible reforms across the DFV system.
- Actively promote an awareness of the role of the QPS with respect to DFV and to encourage engagement of policing responses and participation in programs and coordinated service delivery, where appropriate.
- Promote understanding of DFV within the QPS through engagement, education, training,

Recommendations.

[Criminalising of Coercive Control

The Red Rose Foundation does not support the the criminalising of coercive control in the first instance without:

- 1) Consideration of the unintended consequences for victims especially marginalised women.
- 2) Review of existing legislation which could be enhanced to improve protection to victims and their children.
- 3) Removal of barriers within the Justice System which create further mechanisms for abusers to control and intimidate their partners. Example: Defence solicitors who continually seek adjournments, subpoena of medical files which have no relevance to the case and consequently becoming a source of secondary victimisation.
- 4) Implement a risk assessment criteria for decision making with respect to all domestic matters including bail, cross applications, ouster orders, length of orders and sentencing.
- 5) The establishment of a DFV and Sexual Assault Commissioner within a legislative framework similar to the Ombudsman.

Discussion Paper 1: Options for legislating against coercive control and the creation of a standalone domestic violence offence.

The Red Rose Foundation supports the following options:

Option 1 – Utilising the existing legislation available in Queensland to be more effective.

There is existing legislation which should be reviewed with the purpose of enhancing protection to both adults and children experiencing domestic and family violence.

The newly implemented *Family Violence Legislation Reform Act 2020* in WA provides many inclusions which could be replicated into Qld legislation.

Recommendation 1:

Strangulation

That the Queensland Government review 315A of the Criminal Code Choking, suffocation or strangulation in a domestic setting with respect to:

Inclusion of a definition that states a person commits an offence if the person unlawfully impedes another person's breathing, blood circulation or both, by manually, or by using and other aid-

- a) blocking (completely or partially another person's nose, mouth, or both or***
- b) applying pressure on, or to, another person's neck.***

Adapted from Family Violence Legislation Reform Act 2020 WA

Recommendation 2:

Stalking

That the Queensland Government Review the Criminal Code 1899 - SECT 359B to include a definition of coercive control.

Recommendation 3:

The Domestic and Family Violence Protection Act 2012 to be amended to provide..

- a) an expanded definition of coercive control and to include instructions that coercive control in and of itself adequate grounds for an application for a protection order.***
- b) Remove the wording Be "Of Good Behaviour" and include Desist from all forms of domestic violence including coercively controlling behaviours.'***
- c) a definition of predominant aggressor be included within Division 2:4, Principles for the Administration of the Act.***
- d) a definition of coercive control be included in the Explanatory Notes.***

Recommendation 4:

Serial Abusers

That the Queensland Government give consideration to the inclusion with the Criminal Code, a legislative response to serial DFV offenders.

From the Family Violence Legislation Reform Act 2020 WADirect quote...

Serial family violence offenders

A court convicting an offender of a family violence offence may declare the offender to be a serial family violence offender if —

- (a) the offender has, on that conviction, been convicted of at least 2 prescribed offences which may only be tried on indictment, with at least 2 of those prescribed offences having been committed on different days; or***
- (b) the offender has, on conviction, been convicted of at least 3 prescribed offences, with at least 3 of those prescribed offences having been committed on different days.***

For the purposes of subsection (1) —

- (a) the victim of each offence may, but need not be, the same person; and***
- (b) the offences need not be the same offences; and***
- (c) the offences need not to have occurred in the State as long as 1 of them did; and***
- (d) 1 or more of the convictions may have been convictions by a court outside the State; and***
- (e) it is immaterial in which order the offences were committed; and***

Recommendation 5

Bail Act:

- a) *That the Bail Act be amended to ensure there is no police discretion where there are indictable offences involving domestic violence.*
- b) *That the undertaking of a domestic violence risk assessment be more accepted practice and form part of accepted evidence at Bail hearings.*
- c) *That the Domestic and Family Violence Protection act (release of respondents) be reviewed to ensure new provisions are developed around the release of respondents back into the community without charge. The Act needs to, as much as possible ensure respondents are not released back into the community in circumstances where it is dangerous to the victim, the victim is not in hiding or at a known address, not released in the middle of the night or early hours of the morning (that is, that consideration be given to respondents being held longer than 8 hours to ensure they are released in daylight hours or at least by 8am).*

Recommendation 6:

Domestic & Sexual Violence Commissioner

The Queensland Government establish an independent Domestic & Sexual Violence Commissioner established within a legislative framework similar to the role of the Ombudsman.

A Domestic Abuse Commissioner has been established in the UK to provide an independent voice that can speak on behalf of victims and survivors. The statutory powers of the office are set out in the Domestic Abuse Bill. The role of the Commissioner is to hold both agencies and government to account.