16 July 2021

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

Dear Women's Safety and Justice Taskforce,

Women's Legal Service wrote this submission on the lands of the Yuggera and Turrbal peoples.

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

Women's Legal Service Queensland (WLS) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic and family violence (DFV), child protection and sexual violence. WLS provides State-wide assistance through our Helpline, as well as providing a designated Rural, Regional and Remote telephone line to increase women's access to our service in non-metropolitan regions. WLS employ domestic violence social workers and a financial counsellor, who ensure a holistic response is provided for clients engaging with our service.

We provide domestic violence duty lawyer services at three courts: the Holland Park, Caboolture and Ipswich Magistrates Courts. Our specialist Domestic Violence Units in Brisbane, Southport and Caboolture provide intensive casework and court representation for our most vulnerable clients. We conduct Health Justice Partnerships with a domestic violence lawyer visiting the Gold Coast, Logan, Redlands, RBWH, PA and QEII hospital on a weekly basis. Based upon identified unmet need, we established the role of a Respondent Domestic Violence lawyer to advocate and represent women who are respondents to domestic violence orders as a result of being inaccurately identified as the respondent (aggressor) by the QPS and court.

The following is an exploration of some of the Options outlined in the Discussion paper published by the Women's Safety and Justice Task force, based upon the collective

experiences of the women who have accessed WLS over the years and the staff who work with them. We have not raised the issues related to the Human Rights that might be engaged with the proposal, as we acknowledge that the Discussion paper already explores these issues in some depth. Significantly, WLS has recently sought a review of the operation and implementation of s194(b) of the *Crimes Act 1961* (NZ), which is an explicit gendered offence of "assault by a male against a female". WLS suggests that there is merit in the Women Safety and Justice Taskforce investigating creating legislation that criminalised male violence against women, as a way of overcoming some of the potential serious unintended consequences of criminalizing "coercive control".

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

WLS supports this proposal, especially given that the existing legislation is so ineffectively utilised. Despite section 8(1)(e) and (f) of the *Domestic and Family Violence Protection Act*, clearly stating that the definition of domestic violence includes behaviour that is coercive and controlling or dominates another person, causing that person to fear for their safety or someone else's safety, in WLS experience it is uncommon for the police to apply for a domestic violence protection order on behalf of a victim who has experienced non-physical 'coercive control', or a victim of domestic violence being granted a domestic violence protection order based upon an application which identifies a course of non-physical behaviour that could be described as 'coercive control'. The prevailing attitude of the QPS, and the Court continues to be that domestic violence is incident based, and usually involves some form of physical violence or threat to cause physical harm, even though " [a] NSW study of intimate partner homicides between 2008 and 2016 demonstrated that 99% were preceded by coercive control."[1]

The very dynamic of relationships characterised by coercive control often means that victim/survivors will not feel safe to disclose the abuse until they have left the relationship / or accessed temporary safety. Unfortunately, the police are often reluctant to act on reports of threats and non-physical coercion or apply for protection orders on behalf of victim/survivors in these circumstances, due to the view that as the parties have separated, a protection order would not be considered necessary or desirable under s37(c) of the DFPV Act. This is especially the case where there is no evidence of physical harm.

The proposal to enhance the effectiveness of existing legislation might result in much needed resources being devoted to community awareness, police and judicial education and training about the reality of domestic violence. Alternative evidence based models of utilising the existing legislation may be, for example increasing the role of social

[1] https://www.miragenews.com/development-of-national-principles-to-address-593054/ 9 Jul 2021; 1:06pm

workers, or DFV support workers in the assessment and early intervention phase of a domestic violence incident, who could work side by side with Police as first responders; and the establishment of Women's Safety Hubs[2] designed to respond to gender based violence such as domestic, family and sexual violence – where specially trained female police are co-located with support services and a victim could be provided emergency referral to refuge, as well as representation to apply for and obtain a domestic violence protection order, and other client lead responses.

Most importantly, the community, police and judiciary need to be educated on the gendered nature of domestic violence as articulated by Evan Stark, when he concludes that "[C]oercive control is intrinsic to a particular manifestation of male power, where the man uses non-physical tactics and/or physical tactics to make the woman subordinate and maintain his dominance and control over every aspect of her life, effectively removing her personhood."[3]

The current civil option available to victims of DFV can cause less serious consequences to the perpetrator, and by extension, their family. Clients often state that they do not want the perpetrator to receive criminal and custodial penalties, especially if they have parenting responsibilities, and/or are the primary financial provider for the family. Maintaining the existing civil domestic violence protection order options has the advantage of being known, easy to obtain and does not carry the stigma of a criminal record, therefore making it easier for the perpetrator to "consent without admissions" without this initial legal outcome having a significant detrimental effect on his life.

As previously concluded by the *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* report, the inadequacy or failings of the existing legislation are more due to "problems with evidence gathering, witness cooperation, police practice and court processes".[4] WLS therefore supports the proposal that the existing legislation should be utilised more effectively, with greater emphasis upon police and judicial training and awareness raising, as well as in increase in perpetrator change programs and options. With recent events that have come to light from QPS members on social media platforms, it is evident that broad cultural change is urgently needed. We would anticipate that this would be a whole of police process.

Option 2 – Creating an explicit mitigating factor in the PSA 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.

[2] WLS is referring to the women's only police stations which have been found to be very successful in Argentina.
[3] Policy Brief, Defining and Responding to Coercive Control, ANROWS, 2021, pg 1.
[4] Policy Brief, Defining and Responding to Coercive Control, ANROWS, 2021, pg5

WLS supports this proposal and is aware of coercive control being attributable to some offender's criminal behaviour. Some of our clients have disclosed being "forced" to commit criminal offences, with and on behalf of a partner whose domestic violence is experienced as coercive control. The commission of criminal offences can be demanded by the perpetrator as evidence of loyalty and commitment, or as a sign of the victim's prioritisation of the relationship over and above the victim's relationship to their children. These criminal offences can include, but are not limited to, fraud, shop lifting, obtaining drugs for the perpetrator, traffic offences (e.g. being forced to make a false statement to police and take responsibility for the perpetrators driving offence). A common example of coerced criminal behaviour is Centrelink fraud where the perpetrator uses threats and intimidation to force their partner to knowingly mislead Centrelink. Typically, the perpetrator accesses the money although the victim / survivor is the party criminally liable. The fraud then becomes an effective tool for further threats and coercion (for e.g., "if you call the police / leave me / take the children...I will report you to Centrelink"), which extends the perpetrators control over the victim.

WLS supports the proposal of creating an explicit mitigating factor in the *Penalties and Sentencing 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', especially where the offender has been charged with the relatively new "section 302(1)(aa) Murder by reckless indifference", *Criminal Code Qld* offence. As the Taskforce would be aware, the inclusion of "reckless indifference" as a feature of the charge of murder was introduced by the Queensland government to respond to the community concern about child deaths, and the perception that adults who are involved, or in close contact with a child should be in a position to protect a child from violence. Research shows that, as well as the risk to the victims physical safety, the nature of 'coercive control' is the loss of a sense of agency and self determination, resulting in a form of entrapment, which undermines the victim's perception and sense of self, making rational decision making difficult and resistance or defiance of the perpetrator almost unimaginable. [5]

There is always a risk that this mitigating factor will be used by the perpetrator, in the same way that perpetrators take out domestic violence protection orders against the primary victim.

Another possible risk with this proposal is that the court might only take such mitigating factors into consideration if there is a domestic violence order in place against the offender/ victim's perpetrator. WLS queries how the evidence of 'coercive control' could be brought to the attention of the Court, and notes Option 10, as being a proposal that may compliment this proposal.

[5] Policy Brief, Defining and Responding to Coercive Control, ANROWS, 2021, pg2

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

WLS supports the definition of 'domestic violence' in the *Domestic and Family Violence Protection Act 2012* being changed to better reflect the patterned nature of 'coercive control' and the power imbalances usually present. The goal of these changes would be to reduce the risks that survivors of DFV are named as respondents by police on domestic violence protection order applications, and to increase the awareness of the community, Police and judiciary of the breadth of experiences that may be domestic violence. Changes should not narrow the definition of domestic violence to exclusively patterned behaviours, instead, any changes should be an addition to the current definition. WLS recognise that many survivors of DFV may struggle at times to articulate the pattern of coercive control that they have experienced and further barriers should not be created for people who have experienced high risk domestic violence but only disclose a single high-risk incident.

"[T]he definition in the Family Law Act 1975 requires coercive control or fear to establish various behaviours as family violence, and in doing so, it purposefully excludes interpersonal violence or abuse that is not intended to dominate and control and which may be characterised as fights."[6] This understanding of domestic violence may decrease the numbers of victims being misidentified as perpetrators by the Police and Courts, if there is a definition of domestic violence that focusses on behaviour designed to dominate, control and cause fear. As observed in the ANROWS Briefing Paper, published in 2021, commenting on the Scottish reforms, "... by moving the focus of the prosecution from proving harm was suffered by the victim/survivor to proving that the behaviour was likely to cause either physical or psychological harm to the particular victim/ survivor, the Act attempts to shift the focus from the victim/ survivor to the perpetrator's behaviour".[7] Furthermore, the change in the definition of domestic violence to one that places "coercive control" as the overarching context for abuse, may encourage police and the Courts to focus and consider the history of the relationship and move away from the existing emphasis on discrete, spontaneous, 'over-reactions'.

Furthermore, amending the definition of domestic violence within our existing *Domestic and Family Violence Protection Act 2012,* has the advantage of being able to rely upon section 3, Guiding Principles of the Act, and section 4, Main Objects of the Act, which provide the political, social context and guidance for the interpretation and implementation of the definition of 'domestic violence'.

[6] Policy Brief, Defining and Responding to Coercive Control, ANROWS, 2021, pg4
[7] Ibid pg10

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

WLS is not in a position to support this proposal and would recommend further research into this as an option to deal more effectively with 'coercive control', noting the Taskforce's comments that the elements of the charge of 'cruelty' may in fact be more easily understood and therefore utilised by the community and various stakeholders. WLS would note that covering 'coercive control' in the offence of 'cruelty', conflicts with Evan Stark's "... model of coercive control as a liberty crime, and aims to move from incident-based conceptualisations of IPV (intimate partner violence) towards criminalising a course of conduct that denies victims/survivors their autonomy and liberty".[8] Whilst the new 'cruelty' offence might be able to cover the 'course of conduct' aspects of 'coercive control', it fails to encapsulate the gendered nature of domestic and family violence, and the special vulnerability being exploited within an intimate relationship, even though the proposal recommends a higher sentence where cruelty is found to have occurred within a 'relevant relationship'.

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

WLS does not support this proposal as the community definition and idea of what constitutes 'stalking' falls into the category of objectively discrete behaviour that is part of a list of tactics. Re-working the 'unlawful stalking offence' takes the emphasis off the "patterns of behaviour" intended to curtail a victim/ survivor's freedom and independence definition. The existing "stalking" offence, and the suggested amendments proposed by the Taskforce also do not take into consideration that "coercive control is intrinsic to a particular manifestation of male power, where the man uses non-physical tactics and/or physical tactics to make the woman subordinate and maintain his dominance and control over every aspect of her life, effectively removing her personhood".[9] Amending and renaming the existing offence of 'unlawful stalking' in the criminal code, and the other suggested amendments, fail to take into consideration the gendered nature of intimate partner violence, and specifically the intimate nature of coercive control.

WLS supports the proposal of adding a circumstance of aggravation to section 359E of the *Criminal Code*, if the unlawful conduct was committed against a person who had a relevant relationship (within the meaning of section 13 of the DFVP Act with the defendant). This addition would reflect the menacing and terrorising effect upon a

[8] Policy Brief, Defining and Responding to Coercive Control, ANROWS, 2021, pg5
[9] Ibid pg 1

victim when the stalking occurs by someone who is also an intimate partner, or someone with whom the victim has a relevant relationship. The stalking conduct itself is so much more threatening when it is tailored to intimate and personal knowledge about the victim that only someone in a relevant relationship would know about the victim.

Increasing the penalty for breach of the restraining order under section 359F(9) of the *Criminal Code* to be in line with penalties for a breach of a domestic violence order and only requiring the jury to agree on the two unlawful acts taken together (and not the same two unlawful acts) is only recommended if the offence of stalking also included the incorporation of the requirement of the parties being in a 'relevant relationship'.

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

As the Taskforce Discussion paper highlights, there are many ways that coercive control could be legislated against in Queensland: within the Criminal Code; in the DFVP Act, or in a standalone piece of legislation similar to Scotland.

WLS has publicly raised the option of criminalising coercive control in some way as an appropriate response to domestic violence, especially as there is evidence that 'coercive control' is a high-risk indicator for lethality.

Imposing criminal sanctions on domestic violence generally, and 'coercive control' specifically would underscore societies disapproval of 'coercive control', and this would be especially true if the offence of 'coercive control' where contained within our Criminal Code. Based upon the "Sentencing Spotlight on... choking, suffocation or strangulation in a domestic setting" published by the Queensland Sentencing Advisory Council May 2019, "[a]lmost half of all strangulation (most serious offence) cases (49.1%) were associated with the breach of domestic violence order."[10] What this shows is that creating standalone offences for behaviours that are also domestic violence, can provide perpetrator accountability, which may have a deterrent effect, as well as providing increased safety for victims, especially if the conviction leads to penalties that change behaviour and/or remove the perpetrator's access to the victim. Like 'coercive control', "strangulation was a key predictor of domestic homicide and an appropriate penalty should be applied to account for this increased risk of subsequent escalation to the victim."[11] The proposal to criminalise 'coercive control' also focuses on the

[10] Sentencing Spotlight on...choking, suffocation or strangulation in a domestic setting", Queensland Sentencing Advisory Council, May 2019, pg 7.
[11] Sentencing Spotlight on...choking, suffocation or strangulation in a domestic setting", Queensland Sentencing Advisory Council, May 2019, pg 3

behaviour of the alleged perpetrator rather than the partner or ex-partner's reaction or the evidence of actual harm to them.[12]

WLS recognise that this is a complex area and criminalisation poses a range of unintended consequences, some of which have already been outlined in the Taskforce's discussion paper. WLS believe these must be adequately accounted for before 'coercive control' is made into a criminal offence. If these risks and unintended consequences are not addressed, then survivors of DFV may be worse-off under new legislation.

1. Misidentification of women as the primary aggressor and legal system abuse by perpetrators.[13]

Misidentification of survivors as the primary aggressor, particularly by police, is an ongoing issue staff at WLS witness. Women who are experiencing domestic violence, trying to survive and resist abuse will do and say things that should be considered when examining coercive control, and identifying who the primary aggressor is, for example:

- She may align herself with and comply with the primary aggressor in domestic violence relationships – appearing to agree with his perspectives as a way of attempting to pre-empt and diffuse conflict, especially to save the relationship in circumstances of high power imbalances – where he holds the Australian citizenship, or the financial resources in the family, or has access to damaging information about her.
- She may shift blame away from the perpetrator, making statements that minimise the impacts of the domestic violence and coercive controlling behaviour, even suggesting that the domestic violence and controlling behaviour is mutual or blaming herself and putting herself down publicly as "too critical", "nagging", and "hard to please".
- Pre-empting the explosion: After prolonged periods of feeling on edge/ anticipating an explosion from the perpetrator she might push for a fight to start (so that she has some aspect of control over the fight, and/or the tension is too unbearable or it is impacting the children). This could involve her yelling, snapping, saying "just hit me then" or "what is it now?". Clients have reported to WLS that the fights would happen in the same way, and so frequently and the client could tell when it was going to happen and that they just wanted to get it over and done with.
- Attempts to reduce unpredictability by complying with the perpetrator's demands by sharing technology passwords, allowing location sharing apps or devices, wearing what he wants, or just "giving in" to sexual demands.
- Teaching the children how to avoid pressing the perpetrator's buttons – telling the children to "be quiet", "don't do that". Her parenting may even be harsher as she attempts to protect the children from the perpetrator's attention, or the

[12] Bumana and Brooks-Hay, 2018
[13] Tolmie, 2018; Walklate et. al 2018

consequences of another attack brought about by some minor upset to do with the children's behaviour.

- Resistance – yelling, swearing at the perpetrator, telling him to leave the house, hitting, biting, or scratching in self-defence.

2. Police do not currently have the culture or skills required to assess/charge offenders of coercive control and legislation relating to coercive control would be a major expansion of police discretion.

Police are presently struggling with the existing legislation and frameworks, as evidenced in the following:

- Victim/survivors and their advocates have very little confidence in the outcome of a report to police, due to significant inconsistencies of police responses to domestic violence. This variability and unpredictability occurs within stations and across the state, whether it is seeking a protection order or reporting a breach. The 'lottery' of police response undermines victim/survivor trust in the police. Poor police responses unfortunately lead to a reluctance to involve police in future incidents, increasing risk and isolation for the victim/survivors.
- QPS officers routinely overlook non-physical behaviours which constitute domestic violence under s8 of the existing DFVP Act (such as emotional abuse) even with a civil evidentiary threshold. We acknowledge that such assessments are complex, requiring time and high level of skill. Unfortunately, we predict that QPS will face significant challenges to develop the requisite skills for holistic assessments of behavioural patterns of both perpetrators and victims over time, that meets a criminal evidentiary threshold.
- Police are increasingly misidentifying the perpetrator of domestic violence. Staff at WLS have found when this occurs it is almost impossible to change the view held by police, even when evidence emerges that contradicts the police assessment.

3. A reluctance by women to see their partners, or former partners, charged with a criminal offence and possibly being incarcerated.

This is especially true if women are still dependent upon the perpetrators – for childcare, child support or if they wish to continue the relationship. This may result in a significant decrease in women reporting domestic violence due to fear of the consequences to the aggressor and the family. It could lead to women and children being less safe, and the 'coercive control' and other forms of domestic violence being more effectively hidden due to fear of criminalising their partners. The criminalising of perpetrators also risks refugee and migrant women being 'blamed and shamed' by their community when they may already have limited choices due to visa restrictions and concern that threats may

be directed to family members living overseas that fall outside the jurisdiction of Australian law.[14]

4. Disproportionate adverse impacts on Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse Communities

Aboriginal and Torres Strait Islander women are already part of a marginalised and over-policed community. There is a very high risk that this demographic will be misidentified as the primary aggressor. As stated in the Joint Statement: Sisters Inside & Institute for Collaborative Race Research published on 17 March 2021:

> "We know that the Queensland criminal legal system is profoundly racist in its interaction with women: nearly 40% of current female prisoners are Indigenous, despite forming only 4.6% of the Queensland population. This race based hyper-incarceration has also intensified in the past decade, up from 32% of the female prison population in 2010. Unlike white women, Aboriginal and Torres Strait Islander women are seen as already culpable; domestic violence interactions with police already regularly lead to criminalisation and incarceration for Indigenous women. In this context, the vagueness of the nature of coercive control, and the difficulty demonstrating it and documenting it, makes coercive control legislation an incredibly powerful weapon in the criminalisation of Indigenous women."

Queensland has a unique experience of colonisation and systemic racism which cannot be separated from how our criminal justice system operates. WLS does not have a high proportion of Aboriginal and Torres Strait Islander women using our service, but of that small proportion, generally those women are exhausted and disempowered by the criminal justice system's involvement in their lives. Aboriginal and Torres Strait Islander women report being inaccurately identified as the primary aggressor when the police respond to domestic violence call outs – as they could challenge the notion of the how the "right victim" should look and behave, being engaged with multiple governmental organisations or not being taken seriously at all. This leads to reluctance and mistrust in the legal system. In this context, it is difficult to see how a legislative criminalisation of coercive control will not be used as a further form of state sanctioned racism and coercive control of Aboriginal and Torres Strait Islander women.

It is important to note that women from a culturally and linguistically diverse background also experience forms of coercive and controlling behaviours in other ways such as controlling behaviours from extended members of their family, in relation to dowry payments or threatening to harm their prospects of being able to remain in Australia.

WLS recognise that criminalising coercive control may seem like a safe, and reasonable suggestion for white, middle class women who may have experienced the police and the criminal justice system as upholding and protecting their human dignity. In earlier

[14] Maturi and Munro, 2020

sections of this submission, we noted many potential benefits of criminalising coercive control however WLS recognise that Aboriginal and Torres Strait Islander women may experience disproportionate harm without significant systemic and cultural changes occurring within our criminal justice system. If the coercive control legalisation is ineffective, Aboriginal and Torres Strait Islander women have the most to lose. WLS believe that Aboriginal and Torres Strait Islander women's views should be prioritised, and coercive control should only be criminalised if it is overwhelmingly supported.

5. There may be unintended impacts upon family law proceedings.

Women's experiences of violence and abuse articulated within a family law context, may be disregarded in the Family Law proceedings if there has been no criminal conviction of 'coercive control'. This is particularly concerning when coupled with the possible difficulties in evidence gathering and the need to prove not only the individual acts, but the course of conduct and behaviour over a period of time, usually after the end of the relationship. Moreover, there is a risk that the other forms of domestic violence, which are not criminal charges, could be minimised and not taken as seriously.

6. Underuse of existing offences.

Some researchers and advocates in the domestic violence sector have observed that current criminal charges, such as strangulation and stalking, have not been effectively prosecuted to date. This suggests that if a new criminal offence of 'coercive control' was incorporated into the criminal code, or even contained within its own legislation, it would be equally under prosecuted. This may be due to the reality of women being unwilling to be witnesses against partners, or former partners, and therefore, not willing to participate in the prosecution's case especially if it resulted in criminal convictions and penalties that might remove the perpetrator from the community and place him in custody.

Suggestions to improve the proposal of criminalising 'coercive control'

Education and Training

Education and training is an essential precondition for effective operation of any legislation to criminalise coercive control. The literature highlights the importance of training for police and other first responders, judiciary, legal practitioners, social workers and medical providers, to assist in the recognition of patterns of coercive and controlling behaviours and gathering of the necessary evidence.

The literature also highlights the importance of allowing long lead times for training ahead of introducing an offence:

> *"Experiences in other jurisdictions indicate this takes time and considerable effort. For example, following the introduction of coercive control laws in England and Wales, police were found to display a lack of understanding of coercive control – maintain a greater focus on physical violence consistent with standard, incident-based police responses to DFV, rather than taking into account the cumulative and often complex nature of coercive and controlling behaviours. In contrast, Scotland adopted a long lead time prior to commencement of its offence; it invested heavily in partnership with DFV specialists, and in educating the general public... the relevant uptake of the Scottish offence has been much swifter than in England and Wales."* [15]

Screening and Identification

Screening processes are likely to play an essential role in the identification of coercive control. A review of research into disclosure of DFV found that people may not make disclosures unless directly asked, highlighting the importance of screening processes.[16] One study concluded that universal screening processes were more successful in identifying DFV than reliance on professional judgement, with results indicating that clients were more likely to make disclosures when faced with a questionnaire asking behaviourally specific, direct questions, than they were during interviews with trained mediators.[17]

Policing and judicial systems

ANROWS research conducted in 2020, on investigating and presenting evidence of coercive control and violent resistance within the existing legal framework, proposed the use of specialist co-responders at the first point of contact to assist police in distinguishing between coercive control, violent resistance and fights. The ANROWS research argues that it is not reasonable to expect police to have the necessary expertise to assess tactics of coercive control, which requires careful investigation of a course of conduct within the context of a relationship that is usually private. Indeed, WLS has long advocated for specialist courts to deal with gender based crimes, and the use of expert evidence in the identification and presentation of 'coercive control' especially if this is legislated as a criminal offence.

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[15] NSW Government, 2020
[16] Dobinson and Gray, 2016
[17] Ibid

Penalties

Criminal penalties for coercive control and domestic violence offending need to be informed by the safety needs of women and children. Attendance at behaviour change programs need to be a viable option within the penalty range for the offence. Behaviour change programs need to be well resourced and properly run using evidence-based content. WLS has been advised that defendants in custody or on remand are not even eligible for behaviour change programs unless they are serving a sentence of over two months. Imprisonment alone, may decrease the safety risk to women and children, but is unlikely to lead to long term behavioural change for perpetrators of coercive control.

There also needs to be a widening of the sentencing options to include weekend detention orders, and parole orders that might include 'tracking' devices.

The goal of any policy and legislative reform should be the safety and wellbeing of women and children exposed to and living with domestic violence, including coercive control. Penalties and charges should always be negotiated with the victim of domestic violence – first responders should be guided by the needs of the victim. Does she want a domestic violence order? What conditions would ensure her safety? Does she want him charged with a criminal offence? Throughout these discussions and negotiations, the first responders need to be trained to be aware and sensitive to the competing issues impacting upon the survivor's actions, but this should not undermine her self-determination.

Option 7 – Creating a new offence of 'commit domestic violence' in the Domestic and Family Violence Protections Act 2012.

WLS supports the proposal of creating a new 'commit domestic violence' offence in the Domestic and Family Violence Protection Act 2012, however, would note that the same risks would apply to this proposal as the risks associated with criminalising 'coercive control' – see Option 6.

WLS also notes that QPS rarely charge a perpetrator with Assault or Wilful Damage, when they apply for domestic violence orders, even though the allegations and evidence may support such a charge. As the Taskforce discussion paper notes, including the offence of 'commit domestic violence' within the civil and criminal legislation may make prosecutions easier to obtain, more often, which over time could impact upon a perpetrator's bail, criminal history, and later sentencing.

Option 8 – Creating a 'floating' circumstance of aggravation in the Penalties and Sentences Act 1992 for domestic and family violence.

WLS support the proposal of creating a 'floating' circumstance of aggravation in the *Penalties and Sentences Act 1992* for domestic and family violence, noting the existing use of section 9(10A) of the PSA which requires the court to treat domestic violence as an aggravating factor when sentencing an offender convicted of a domestic violence offence. WLS further notes the conclusions found by the Queensland Sentencing Advisory Council research brief 'The impact of domestic violence as an aggravating factor on sentencing outcomes', which found that "courts are treating domestic violence offences as more serious offending, warranting the greater use of custodial penalties and longer custodial sentences." [18] By extension, WLS predicts that having a 'floating' circumstance of aggravation for domestic and family violence will reinforce the seriousness of domestic violence in our community.

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

WLS supports the proposal of creating a specific defence of 'coercive control' in the Criminal Code, seeing this as a positive evolution of section 132B Evidence of domestic violence, within the *Evidence Act,* Qld, 1977 which currently only relates to Chapter 28 to 30 of the *Criminal Code* offences.

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).

WLS supports the proposal of 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).

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

WLS is not in a position to support the creation of a legislative vehicle to establish a register of serious domestic violence offenders, however, note that perpetrators of DFV frequently have a history of multiple orders against them from different partners.

[18] Hidderly, L, Jeffs, S and Banning L, 'The impact of domestic violence as an aggravating factor on sentencing outcomes', Queensland Sentencing Advisory Council Research Brief, No 1, May 2021

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.

WLS is not in a position to support amending the *Dangerous Prisoners (Sexual Offenders) Act 2003* or creating a post-conviction civil supervision and monitoring scheme in the in the Penalties and Sentences Act 1992 for serious domestic violence offenders, however, note that such an amendment would satisfy perpetrator accountability and could potentially increase the safety of women and children.

Option 13 – Amending the Penalties and Sentences Act 1992 to create 'Serial family violence offender declarations' upon conviction based on the Western Australian model.

WLS is not in a position to support the creation of 'Serial family violence offender declarations' upon conviction, however, can appreciate it's utility as another legislative measure in relation to perpetrator accountability, and the safety of women and children.

Conclusion

WLS supports the criminalisation of 'coercive control' but only if the significant unintended consequences can also be ameliorated legislatively. Of special concern to WLS is the likely impact that misidentification of the "person in need of protection" in relation to charges of 'coercive control' could have on already marginalised, over policed and vulnerable members of our community, like women from culturally and linguistically diverse backgrounds, LGBTQI people, women with disabilities, and First Nations women.

WLS has recently commissioned a report, 'Gendered Assault Provisions' (unpublished and in draft form), undertaken by students from the Pro Bono Centre of the University of Queensland, into section 194(b) of the *Crimes Act 1961* (NZ), which makes it a crime for a male to assault a female. Preliminary findings are that this offence has been an effective measure to combat domestic violence and violence against women, because of the high percentage of offenders who are male[19]. Because of the gendered nature of the offence, WLS suggests that the current issue of misidentification of the 'person in need of protection', would be significantly reduced, and may be a good solution to obviate some of the unintended adverse consequences of criminalising "coercive control". We note that similar legislation has been repealed in other jurisdictions, however, it has been replaced by specific domestic violence assault offences. As discussed in the draft research paper, "The Select Committee's advice report on the

[19] Ministry of Justice (NZ), Data table – "Offences Related to Family Violence" www.justic.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables#offences. Table 7c. 93% of offenders convicted of the non-gendered family violence offence were male.

Family Violence Act 2018 (NZ) ("the FVA") notes that s194(b) was 'retained to ensure that the law continues to acknowledge the seriousness of gendered violence', and furthermore, it enables tracking a male offender's history of violence against women, a key risk factor in future intimate partner homicide.[20]

Ultimately, WLS acknowledges that legislative developments and reform are only one of the many factors that need to be addressed relating to domestic violence. This is a whole of community issue and therefore requires engagement of the whole community to develop lasting changes to the status quo, and ultimately the safety of women and children. WLS thanks the Women's Safety and Justice Taskforce for its continuing commitment to women's safety and justice, and look forward to further opportunities to provide input.

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[20] Ministry for Women (NZ), "Violence Against Women" www.women.govt.nz/safeety/what-violence-against-women.