

SUBMISSION Marc Hogan – Response to Options 1 to 13.

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

In respect to this issue, policing, the justice system, and for that matter providers of services do not fully exploit the current capabilities and capacities of legislation.

In policing the full capacity in prosecuting for matters such as Att Murder, Deprivation of Liberty, Strangulation, Torture, Stalking and the range of serious assaults is not engaged. (See the paper re 'interpretation').

This is due to a range of reasons including culture and lack of allocation of criminal investigation resources at the front end of policing. Interpretation relates also to the failure of policing culture to recognise social positioning implications.

The application of police discretion in terms of investigation and prosecution of DFV incidences and reportings, when applied by police with little confidence or desire in prosecuting serious offences, has significant implications. Policing is not committed to crime equality, in respect of DFV crime in comparison to other crime, for example drug trafficking, organised crime, property crime. This is not unique, the same can be said largely of sex offences which is similarly complex to DFV.

Offences such as Grievous Bodily Harm or Rape for example, if committed by 'strangers' receives significantly different responses to those where the offender is known to the victim. In DFV sexual violence is a key behaviour for assessing risk and coercion and control and used by almost all serious offenders.

There exists perceptions in policing that DFV is, or should be, the responsibility of uniform police or specific small work units (including Vulnerable Persons Units) which cannot be expected to negotiate the volume or complexities of DFV, without specific job roles and descriptions which fit into a holist model for distributing responsibilities.

In many cases issues including release on undertakings are decisions made by police not trained or not willing to consider serious risk behaviors for example those linked to coercion and control.

Accountability is key to many of these issues, at times the best persons to make decisions on matters such as these are Magistrates, who in many cases deal with DFV all day every day and become well acquainted with risk, if the information is put forward in detail in policing documentation.

Leadership and risk avoidance are issues also impacting the effective application of legislation. The true intent of much of the legislation is not being facilitated.

Policing stands alone in terms of capacity and capability; it is the major stakeholder in the provision of accountability.

In policing the extent to which an issue is police is directly linked to the authority support of leadership.

**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.**

This is important, at the Gold Coast at one point after January 2016 women (4 out of 7) were prosecuted for homicide. A key factor of the taskforce was to reinvestigate matters where women were 'tagged' as offenders to identify high end image managers, 'sleeper's, or to fix police errors.

Essentially frontline police cannot all be trained to a level where extensive coercive and controlling behaviours can be, in the majority, identified, this is the responsibility of background specialisation applied by trained and experienced police, ideally investigators and intelligence officers who have the authority to disseminate operational taskings effectively.

Even when investigative resources are engaged errors occur, as for the Breeana Robinson Gold Coast matter involving Jayden Moorea an identified extreme offender (Gold Coast Taskforce). The Kelly Wilkinson matter will likely demonstrate that even with investigators involvement, the matter was not recognised as high risk, matters of coercion and control were not identified.

Coercion and control, however it is presented, will have an effect in educating police and in causing operational consideration of the elements of offences for prosecution. Police systems can be adjusted in a checkpoint concepts in support of requirements.

A further significant issue in this regard is 'volume' of reporting. In many ways it is important for police to 'do something' and then in the least, opportunity exists in systems if they are healthy, to identify high risk people and environments out of for example chronic environments.

It is important systems are not further victimising people who have been subjected to abuse and coercion and control extensively. This widely impacts, from issues of employment to issues relating to Family Court proceedings as examples, and has the potential to give further access for continuation of coercion and control through matters of child access and external mediation processes.

It has been demonstrated in academic work and in *Not Now Not Ever* Reporting (2015), victims who are not believed are less likely to report abuse and violence, leading to further victimisation. They are also less likely to receive services.

Coercion and control based systems provides opportunity for addressing 'not being believed', it would require the application of greater scrutiny by service providers for making good decisions rather than fast decisions.

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

This could be a sound option. The issue is the definitions are quite broad currently and yet the problems remain. Interpretation again is an aspect, that being failure to apply the definition to events by, for example, frontline police and child safety workers.

Police discretion on reporting DFV is broad if accountability is not being applied in systems. That policing at the Gold Coast saw around a 30% jump in crime and that the District recorded a quarter of the states assaults with DV Indicators clearly supports an argument police are not actioning DFV. When this occurred the impact was felt at the court. The reporting forces police into reporting in systems which enables oversight of decisions. It allows for comparisons of systems quickly for consistency in information sets again allowing auditing for compliance.

This is considerably influenced by the ability of police to take action by way of 'DV Application' which it can be argued as an accountability process is less significant in terms of desistence, unless for example is it accompanied by criminal offences. In most areas DFV and criminal matters linked are separated for courts (ie Southport DFV Court dealt with both and if the matter came back it would be to the same Magistrate). Decisions on double jeopardy can and should be for the Magistrate not police.

Under-reporting is not just a policing problem, it occurs across other government agencies including health and emergency service providers.

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

The fact is police do not use the charge of torture which this offence has been likened. The same can be said for the offence of stalking which essentially is not difficult to evidence from an investigative aspect.

This again gets back to police not doing what they should or are expected to be doing, the reasons operationally may exist, and arguments can be raised due to competing priorities, the fact remains it is a question of importance.

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

Much as for Option 4. However, for criminal matters frontline police in general are not skilled or confident in prosecution. When matters are reported in normal systems, they become influenced by response time and other system issues, for example files moving about in QPrime can be delayed through processing. Police do not tend to want to take on matters commenced by other police.

Further, police are required for serious criminal matters, in particular for an offence such as stalking because essentially it is a course of conduct which is required to be demonstrated, to take written statements. Frontline police do not take statements well. Front counter staff likewise. People continue to be advised they should make private applications which is not desirable.

Police need to take complaints, they need to engage with victims so that the full extent of circumstances is made known and is available for risk assessing. If a victim reports to police it is likely they have done so after a long journey and the significance of this should not be missed, in particular for people who in their lives have had no contacts with policing.

Matters which influence include; the skills and confidence of less experienced police which make up a large proportion of frontline or first responding; the availability of Criminal Investigation Branch or Child Protection Investigation officers; the time of day for the victim combined with the total circumstances including if they have children; victims who have no family support due to isolation; victims who do not have the ability to get to a police station; arranging a statement for the next shift of the officers which could be days later by which time the offender has had time to exercise coercion and control etc.

It is possible to video record statements at the time and at an incident, which would assist in dealing with matters quickly, it would give specialists opportunity to risk assess quickly through review and it would lessen complaints against police. These electronic statements would or could be used to a certain level in the justice system, to a point where if required statements or transcripts of video statements could be facilitated.

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

This is a serious option, however in terms of interpretation if those issues are not addressed this offence will fall into the same problems as have the others, in particular strangulation.

The difficulty in this lay perhaps in the levels of offending, or what it takes to reach a clear 'line in the sand' in the minds of police and individual police at that. Systems could ask questions on data input, for example coercion and control queries including; reported financial abuse, reported isolation, fear of reporting observed, living circumstances observed etc.

It depends also on how legal defenses are raised or evolve, and how this impacts on the intent of the legislation and an example of this can be found in strangulation matters.

Currently problems exist with basic underreporting of DFV and associated crime.

Coercion and control would perhaps require specialist investigation from an outset as it would require victims having to provide banking details, having phones down loaded, witness statements provided, interviews etc. These reportings would require prioritisation in systems in terms of allocation and resourcing.

(Re the Gold Coast Taskforce) Informed hindsight became associated with drawing information from the past to comprehend more accurately potential future offending. Certain reporting's were to give cause for further consideration:

- separation;
- victim isolation levels;
- freedom restrictions;
- victims reporting being owned or a possession;
- orders and rules to be followed;
- strangulation;
- use of firearms or weapons (including notably petrol);
- suicide threat (including expressed fantasy) or attempt;
- threats towards children and against family members (aggrieved) or third parties;
- threats to kill;
- gender hate (misogyny);
- violence towards or killing of animals;
- arson;
- use of listening and tracking devices;
- excessive substance abuse;
- acts or attitudes of anti-authority;
- sexual jealousy and violence;
- mental health; and
- stalking generally and using a carriage service (telephone or computer) to harass.

Consideration was given also to how many, how much and how often with checks on previous violence for understanding capacity for violence.

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

An issue with the current DFV legislation is that it provides for significant discretion around what actions should be taken. That is, police can apply a 'DV Application' solution often for situations which are very serious and which should attract serious responses.

The removal of discretion, in other words if an offence is committed of domestic violence and the requirement is police must initiate charge proceedings then the ability to ensure compliance is significantly increased. In effect it can be audited and checked.

It is clear also that at times victims do not understand the services available and or for self-protection display an attitude of not wanting action taken. There were numerous occasions where, when victims were able to be engaged alone, they indicated they needed assistance. At the Gold Coast it was desirable to get victims into the specialist court system where support existed.

There are studies which demonstrate that for many offenders, desistance is linked to transparency and early accountability.

Question: Is there opportunity to expand this type of offence, or the other options as listed, to take in aspects of disability and elder abuse occurring in domestic environments, that which occurs outside of DV relationships as defined.

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

This is an important issue within its own right, this should be applied in relation to DV offending whether other offences are created or not.

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

As for Option 2 in general.

**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).**

This is important, and is an issue backed in research in terms of attempting to address or bring clarity to the complexities of these types of behaviours and the impact it has on victims, which should be able to be demonstrated effectively in respect of impact.

It could be argued this is one reason the offence of torture is rarely engaged, the difficulties in evidence if a matter is tested.

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

This is necessary for police and other agencies and NGOs engaged in prevention of serious harm including homicide.

Extreme offenders, and these (see the paper) do exist, can be accepted as offenders who do or will not stop offending against people with whom they have had, do have, or will have relationships.

The need exists to be able to readily share information (outside of that currently legislated) with people as a duty of care in many respects. It will negate arguments around 'not being able to engage due to privacy issues'.

In turn, these offenders should be required to report, or disclose if required, information giving identification of their risk for others.

Identifying the most serious offenders is difficult in particular for 'never before seen' offenders or 'sleepers'. This is where coercion and control knowledge is of use, but should be supported in training of police in particular specialist police.

Coercion and control activities should be the subject and focus of specifically trained intelligence officers.

Equality in treating these types of offenders as very serious criminals is required, as the equality needed in the application of policing systems and processes including the full application of intelligence led policing.

**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.**

Unfortunately, the intent of this legislation has been perhaps lost or mitigated. Potential exists but it would be difficult to think the problems would not return if not rectified.

It is clear many serious and violent offenders and sex offenders are equally serious DFV offenders and yet to date this legislation has never been effective. It is difficult to determine if extreme offenders are primarily violent sex offenders or violent DFV offenders. In most cases they are one in the same.

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

I would expect this would be a consideration linked to Option 11 but more effective than Option 12.