

YOUTH ADVOCACY CENTRE INC

Submission to:

Women's Safety and Justice Taskforce

in relation to

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

JULY 2021



The Youth Advocacy Centre Inc (YAC) is a specialist community legal and social welfare agency for young people aged 10-18 generally. Our clients are predominately those who are engaged with, or at risk of engagement with, Youth Justice, child protection systems, are homeless or at risk of homelessness¹. YAC provides services for legal matters, family, homelessness and youth issues, bail and court support, and a community legal education program. YAC has worked with young people for 40 years and is regarded as having expertise in assisting young people involved in the legal system.

In October 2020 YAC commenced a domestic violence project in relation to young people aged under 18² within South East Queensland³, funded by a 12 month grant through the COVID-19 frontline legal assistance services funding. The project has a two-pronged approach; firstly, to provide legal services to young people regarding domestic violence matters, and secondly to collate qualitative and quantitative data to better understand the experiences and needs of young people who have been exposed to domestic and family violence and those perpetrating the same. For the purposes of this submission, references to 'children' and 'young person' and 'young people' will be used interchangeably to mean a person under 18 years to reflect both the terminology used by YAC and the youth sector, and the wording of the Domestic and Family Violence Protection Act (DFVPA).

Through the project, YAC observed the impacts of domestic and family violence on young people are broad. Some young people fall within the jurisdiction of the DFVPA as an aggrieved, respondent or a named person⁴. In these circumstances the young person is either an aggrieved or respondent party on Protection Orders having been in an intimate personal relationship, or a named person included on their parents' Protection Order. Young people who do not fall within the DFVPA may require assistance with child protection proceedings, interactions with the Queensland Police Service (police) and Youth Justice, accommodation and support transitioning to independent living. These young people may be victims of family violence and want to leave the family home despite Child Safety involvement, or the young person may have perpetrated violence against their parent and are then exposed to the criminal justice system. There are very limited legal services available⁵ to assist young people with their domestic violence and family violence matters and the YAC project addresses this unmet community need. However due to funding limitations, YAC's project will conclude in early October 2021.

YAC provided legal advice, information and representation to Indigenous and non-Indigenous young people in domestic violence matters where the other party was either an Indigenous or non-Indigenous young person or adult. While this submission reflects general observations of young people's interactions with the domestic violence system, YAC acknowledges the lived experience of Indigenous young people and non-Indigenous young people within this space differs given the link

¹ Assistance available to young people aged up to 25 years who are homeless or at risk of homelessness

² The project also assisted young people where the application or order was made when they were under 18 years but had turned 18 years at the time they contacted YAC for assistance

³ Between Caboolture and Southport, however advice has also been provided to young people detained in the Cleveland Youth Detention Centre in Townsville

⁴ Domestic and Family Violence Protection Act, sections 22, 24, 53 and 54. The project to date has not engaged with any young people involved in an informal care relationship under sections 20 and 22(2) of the Domestic and Family Violence Protection Act

⁵ YAC is aware that HUB Community Legal in Inala and YFS in Slacks Creek are also currently funded to provide legal advice regarding domestic violence matters to young people, although both services extend to young adults up to 25 years

between the use of violence and impact of colonisation and intergenerational trauma within Aboriginal and Torres Strait Islander communities.⁶

1. Observations

This section of the submission will detail the key issues YAC has observed when providing legal information, advice and representation to young people within the domestic violence system. These observations highlight the inadequacies of the current system when matters involve or relate to young people.

1.1 Child Aggrieved and Respondent parties

Department of Justice and Attorney-General data states between October 2019 and October 2020 there were 180 aggrieved parties under 18 years and 123 respondent parties under 18 years across the 12 courts in the South East Queensland region.⁷ The vast majority of applications YAC provided information, advice or representation on in relation to intimate person relationships were brought by police and related to young people aged between 15-17 years. A common story YAC heard was that respondent parties were informed by attending police officers that their attendance at court was not compulsory, which the young person interpreted as them not having to attend court at all. YAC observed this advice was also extended to aggrieved parties in a police application for an order, which may have been well intentioned to prevent further trauma, however removed the aggrieved's autonomy within the situation. This advice is problematic because the opportunity for the young person, whether aggrieved or respondent, to receive legal advice is lost⁸ and the court is faced with making a decision without hearing directly from the parties to better understand their background, current situation and the context of the allegations. This is of particular concern when protection orders are made for the 5 year period with conditions that may not be necessary or desirable for the aggrieved's protection given the circumstances of the parties.⁹ To address this issue and provide support to young people at this early point in time, YAC liaised with the police High Risk Team and is a service provider on their referral list, however very few referrals have come through this pathway to date.

Another common story was that, having not been present at court, the young person was either not aware of the protection order, or when served the protection order police did not explain the order to the young person in a way they understood. In some cases, the young person was not told what the document was and was simply instructed by police to read the order, assuming the young person had the ability to both read and comprehend the document. Temporary Protection Orders and Protection Orders include additional pages titled 'Explanation of Domestic Violence Order' which discuss enforceability of the orders, the meaning of domestic violence, contravention and variation, however this information and the conditions of the order are inaccessible for a young person with low levels of literacy or language barriers. YAC aspired to address this issue by incorporating aspects of graphic

⁶ Harry Blagg, Tamara Tulich, Victoria Hovane, Donella Raye, Teejay Worrigal, Suzie May, 'Understanding the Role of Law and Culture in Aboriginal and Torres Strait Islander Communities in responding to and preventing family violence' (June 2020) 19 *ANROWS Research Report*, p10

⁷ YAC able to provide a copy of this data to Taskforce

⁸ Domestic and Family Violence Protection Act, section 149

⁹ A consequence arising from this observed by YAC is that young people may struggle to access support services based on the service's interpretation of conditions imposed. For example, a no contact condition might automatically be attributed to a high risk determination by the service, which may prevent access to housing or other related service

justice¹⁰ to improve young people's understanding of the domestic violence process and the meaning of Temporary Protection Orders and Protection Orders, however this is not achievable in the current time constraints and funding limitations of the project as attempts to obtain further funding to date have been unsuccessful.

In circumstances where a young person is not aware of a Temporary Protection Order/Protection Order or does not understand the order, they are then exposed to the potential of breaching an order.¹¹ A contravention of a protection order will occur if the respondent was present in court when the order was made, if they had been served with the order or if they were 'told by a police officer of the existence of the order'.¹² As discussed above, the adequacy of service and information provided by police to young people is inconsistent across South East Queensland and this provision does not consider whether further efforts should be made when matters involve children to ensure they understand the order, particularly prior to commencing contravention proceedings. A breach of a protection order may have a lasting negative effect on a young person's future employment or ability to secure licences or accreditation, for example a blue card, a stigma which will continue with the young person despite any reformative work they may have completed to change their behaviour.

Lengthy orders with arguably onerous or unnecessary conditions are not easily changed once in place as the court requires the respondent to demonstrate that the aggrieved will be safe in the event the conditions are removed or relaxed. This presumes the acts of domestic violence occur in the same circumstances for young people as for adult and therefore requires the same response. Shorter periods of compliance with an order are more significant for a young person than an adult, however this factor is often lost with an adult perpetrator lens. For an adult, demonstrating completion of an intervention program may be a key consideration for the court in a variation application, however there is a lack of behavioural change or other intervention programs available for young people who have perpetrated intimate partner violence.

YAC understands Youth Justice are in the process of developing an domestic violence related program for young people involved in the criminal justice system.¹³ There are educational respectful relationship programs¹⁴ for young people within the South East Queensland region, run through schools or community centres, however these programs are often run according to demand and may not have consistent delivery throughout the year, which can exclude young people who are disengaged with school or other training. A young person may be initially interested in engaging with an educational program however by the time a spot in the program becomes available, it may be months down the track, by which time the young person may no longer be motivated to participate.

¹⁰ YAC encourages the Taskforce to review the Legal Aid Western Australia initiative 'Blurred Borders'

<https://blurredborders.legalaid.wa.gov.au/>

¹¹ Domestic and Family Violence Protection Act, section 177

¹² Domestic and Family Violence Protection Act, section 177(1)

¹³ YAC notes the Youth Justice Strategy Action Plan 2019-2021 references an action 'Domestic and family violence programs designed for young people including adolescents using violence towards their mothers or towards their partner' to be led by Child Safety, Youth and Women (CSYW), however YAC is not aware of any current programs of this nature run by Child Safety <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/publications/vj-strategy-action-plan-2019-2021.pdf>. YAC also notes there is no reference to this kind of program in the Youth Justice Strategy 2019-2023 <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf>

¹⁴ 'R4Respect' <http://r4respect.org/>; 'NAPCAN Love Bites' <https://www.napcan.org.au/Programs/love-bites/>

Further barriers are placed around young people in detention who have limited ability to access their court documents, seek legal advice and engage in a relevant program¹⁵ which may address the court's concerns. Caseworkers have limited access to court documents which detail the acts of domestic violence alleged or perpetrated by a young person, limiting their awareness of these issues and ability to link the young person in with appropriate support services to address these issues while the young person is in custody. As part of the scoping for the domestic violence project information from Youth Justice indicated approximately 1 in 10 young people in detention are subject to a domestic violence order. Until this project was initiated there was no ability for young people in detention to obtain legal information or advice about domestic violence matters. YAC has worked with Youth Justice to connect with young people in youth detention centres to provide this advice and information, however the issues surrounding access to other support services remains. At the conclusion of this project in October 2021 there will be no specific domestic violence legal service available for young people in detention.

YAC has observed that perpetrators of domestic violence in intimate personal relationships may be a victim of domestic violence themselves, have difficulties with emotional regulation either due to simply being a teenager, cognitive impediment or behavioural disorders¹⁶, have challenges navigating their first intimate relationship and related expectations, or are demonstrating behaviours they believe are normal due to their own life experiences and not understanding what domestic violence is. These factors are not consistently acknowledged by police who bring the applications or by the courts in making Protection Orders.¹⁷

For those young people who do attend court, a consistent theme is delays in the provision of documents to the child's parent before the matter can proceed to a final order. The DVFPA requires documents given or served on a child 'must' be given to the parent of the child.¹⁸ Failure to complete this requirement results in repeat adjournments of matters where both parties may otherwise be ready to proceed. This impacts the young person's motivation to continue to engage with the system and increases the service demands of legal representatives having multiple unnecessary appearances before a matter can progress. Young people have expressed their frustrations with this process, particularly when service of an application or order were effected in the presence of their parent, but the documents were not provided to their parent at that time. While the court may dispense with this requirement, a parent simply being aware of the matter does not trigger the court's discretion to dispense with this provision of the Act in YAC's experience.¹⁹ These delays create undue stress of aggrieved parties, potentially having to revisit traumatic events each time the matter returns to court, and risks the disengagement of respondent parties having to attend repeatedly without their matter progressing.

All applications of domestic violence proceedings are heard in the Magistrates Court, not in the Childrens Court. The repeated adjournments may mean that young people are spending significant amounts of time in court waiting areas with sometimes agitated, upset and

¹⁶ For example, Fetal Alcohol Spectrum Disorder and Attention Deficit Hyperactivity Disorder

¹⁷ This issue was acknowledged in a study conducted in Victoria, Tasmania and Western Australia which found Protection Orders were being imposed without formal requirements to assess young people's capacity to understand or comply with an order because of their age or other factors - Australia's National Research Organisation for Women's Safety, 'The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home – Key findings and future directions' (March 2020) 4 *ANROWS Research to Policy & Practice*, p9

¹⁸ Domestic and Family Violence Protection Act, sections 188(2) and 188(7)

¹⁹ Domestic and Family Violence Protection Act 2012, section 188(3)

frustrated adults who are themselves waiting for their domestic violence matters to go before the court. In speciality domestic violence courts aggrieved parties can wait in safe rooms, however these spaces are not available in every courthouse. Domestic violence court waiting areas are not child friendly and have the potential to expose young people to violence and conflict. Young people who are respondent parties are required to wait in the same space as adult respondents regardless of the courthouse. For some young people who were exposed to domestic violence growing up, seeing further violence or aggression within the community and in the courthouse reaffirms to them that violence is normal behaviour, and that this behaviour is acceptable.

Young people are limited in their ability to access legal advice and assistance as YAC's experience and anecdotally²⁰, Legal Aid Queensland (LAQ) rarely provides grants of aid, particularly to respondent parties, even when they are under 18 years. Indigenous young people may be able to access support through the Aboriginal and Torres Strait Islander Legal Service.²¹ This leaves the young person to find or be referred to one of the few community legal centres who assist young people with domestic violence matters, or to attend the duty lawyer service while at court. The duty lawyers available at domestic violence courts do not necessarily have LAQ's Youth Practitioner Certification as is required for duty lawyers in the Childrens Court and may not have experience engaging with child clients. There are also limitations on how much time a duty lawyer can spend with the young person and the type of legal support they can provide due to lengthy court lists, time demands and the nature of the service which allows for one off legal advice and court representation on the day. YAC has found that young people involved in domestic violence matters require more support than can be offered through a duty lawyer service, for example writing submissions to police, drafting Affidavit material for the return of property, arranging collection of property with police, attending with the young person to collect property²², attendance with the young person to police station to report breaches or make statements, assisting the young person to draft hearing material, arranging pro bono counsel for hearings when grants of aid were declined, being available to provide advice and information outside of court and to talk through the 'what if questions' which may arise after an advice session when the young person has had the opportunity to process the information provided to them or when new challenges arise.

The current system may prevent contact between an aggrieved and respondent who are or were in an intimate personal relationship, however it does not assist the young person, whether aggrieved or respondent, to understand what domestic violence is or to support them to develop the life skills or tools to engage in safe behaviours and respectful relationships in the future. If the intention is truly to end domestic violence, then support and resources are needed to assist young people to prevent the behaviours from escalating and continuing into adulthood.

1.2 Child as a named person

The court has the power to name a child on a protection order if they are satisfied it is necessary and desirable to protect them from associated domestic violence or exposure to

²⁰ During the life of the project YAC have assisted young people who were declined grants of aid as respondent parties and YAC is currently awaiting the review of a refusal of a grant of aid

²¹ The project has received referrals from ATSILS due to conflict issues

²² Referrals are made from the YAC legal team to YAC Support Workers to attend if the legal team is unavailable

domestic violence.²³ While the court can obtain information about a child from the chief executive (child protection)²⁴, there is no requirement to hear from the child themselves or their advocate, particularly if Child Safety is not involved with the family. If the court considers it necessary and appropriate for service of an application on a named person, the court can make this order²⁵, however none of the young people YAC engaged with received notice of an application through this pathway. Protection Orders can have a significant impact on a young person's ability to spend time with and contact their parent or family member, especially when there is no Family Court Order or other written agreement in place between their parents. This is problematic as young people are included on orders without their knowledge, consent or understanding and no information about their views and wishes is required to be considered or made available to the court when Protection Orders are being made, unlike in Family Court proceedings²⁶.

YAC has spoken with young people who do not understand what the order means for them, or they have been provided an inaccurate version of the order's effect. These young people contacted YAC independently of either parent and generally through a support service or trusted support person and were aged between 13-17 years. Some young people were in favour of the order but wanted to understand what happened during domestic violence proceedings, what the conditions meant and what would happen if the conditions were breached. These young people expressed feeling safer with the knowledge of how the order applied to real life situations after receiving independent information and advice. Some young people disagreed with the conditions of the Protection Order and were frustrated by the conditions imposed which were against their views and wishes, and lived experience of their relationship with their parents. These young people expressed their despair in not being able to connect with the respondent parent and fear that any unintended contact would result in that parent getting into trouble.

Framing issues of domestic violence with reference to 'women and their children' assumes the mother and the young person have the same views, needs and wishes. Young people have their own expertise about factors contributing to their own safety and wellbeing and should be treated as individuals with agency.²⁷

1.3 Child victims of family violence

YAC has supported young people who have left the family home due to experiencing direct family violence from a parent and have refused to return home as they have felt unsafe to do so despite a Child Safety assessment deciding the home was 'safe'. These young people felt their situation was not properly understood by the adults involved and that their concerns and fears were minimised or disregarded when they stated they did not feel safe to return.

YAC has observed barriers when young people aged 15-16 years attempted to access services and support when they were deemed to have 'self-placed' after experiencing family violence. Self-placing is often considered by the child protection system as an election of the young

²³ Domestic and Family Violence Protection Act 2012, section 53

²⁴ Domestic and Family Violence Protection Act 2012, section 55

²⁵ Domestic and Family Violence Protection Rules 2014, section 18(2) and 18(3)

²⁶ Family Law Act 1975, section 60CC(3)(a)

²⁷ Australia's National Research Organisation for Women's Safety, 'Safe & Together Addressing ComplexitY for Children (STACY for Children): Key findings and future directions' (October 2020) 22 *ANROWS Research to Policy & Practice*, p5; ANROWS National Conference, day 5, session: 'Raising the status of children as victims and survivors of DFV in their own right', 5 March 2021

person to live elsewhere, a choice, rather than an attempt to protect themselves from ongoing family violence. This results in the young person being unsupported by the child protection system and reliant on community services to bridge this gap. YAC is fortunate to have a Youth Support team who assist young people find safe accommodation and assist them with their transition to independent living despite working with finite resources.

YAC has observed that young people under the care of the child protection system are particularly vulnerable, having been exposed to or victimised by domestic violence and removed from familial environments, require a comprehensive response. As a result of disjointed attachment or perceptions of abandonment the young people can place greater importance upon relationships and the need to preserve the same with behaviours that maybe viewed as coercive or controlling. Case plans for all maturing young people should include consideration of a trauma therapeutic response and provide access to respectful relationship programs, as standard actions. YAC observes a large portion of young people brought before the Childrens Court are involved with the child protection system who do not have access to these responses.

YAC has long supported the position that children experiencing family violence is an issue that is most appropriately addressed through the child protection system and the expertise of that specialist systems which deals with the complexities of children.

1.4 Child perpetrators of family violence

Young people who have perpetrated family violence are likely to encounter the justice system and are at risk of homelessness. In YAC's experience there are a range of complex family issues associated with young people exhibiting these behaviours. The current pathway of holding the young person accountable for their actions by reporting matters to police, having the young person engage with police and potentially the courts, does not address the issues which may be causing these behaviours and does not provide the young person with the skills to engage in positive behaviours in the future. Similarly it does not provide parents with support and mechanisms to address the consequences of that behaviour.

The young person may be a victim of family violence themselves and may be demonstrating learned behaviours or behaviours they believe are normal. While childhood trauma is reported to be a major contributor to a young person's use of violence in the home²⁸ young people are required to take responsibility of their actions with no acknowledgement of this trauma. Young people may then be returned to the home where they were victimised or exposed to family violence and expected by the justice system to behave differently.

While there are programs within South East Queensland addressing male adolescent violence towards their mother²⁹ these programs are limited in geographical area and funding.³⁰ There

²⁸ Australia's National Research Organisation for Women's Safety, 'The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home – Key findings and future directions' (March 2020) 4 *ANROWS Research to Policy & Practice*, p7

²⁹ 'Side by Side' program run through YFS for mothers and sons aged 12-17 in the Logan and Beaudesert area <https://www.yfs.org.au/domestic-violence/> and 'ReNew' program run through Carinity Talera in partnership with Brisbane Domestic Violence Service for mothers and sons aged 12-17 years in the Brisbane City Council area <https://bdvs.org.au/assets/docs/BDVS-factsheets/BDVS-SFI-factsheet-v2.pdf>

³⁰ YAC acknowledges the work of counsellor and researcher Dave Burck, and the Domestic Violence Prevention Centre in this area

is however a gap with this model, as the focus of these programs is on sons and mothers, and excludes daughters who may be perpetrating or at risk of perpetrating family violence.

YAC reiterates the points raised at 1.3 regarding a comprehensive case plan response for young people, and that family violence is an issue most appropriately addressed through the child protection system and the expertise of that specialist system which deals with the complexities of children. It is acknowledged that greater resources may be required to ensure that the requisite focus can be provided by the child protection system to address this co-hort of needs.

2. Child related considerations

Young people are a highly vulnerable group and YAC has observed that there are multiple complexities regarding their involvement in the domestic violence system which are not referenced in the Taskforce's Discussion Paper 1. No distinction was drawn between adult (18 years and over) and young people involved in the domestic violence system, despite both having the capacity to be an aggrieved, respondent or named person on a Protection Order. Framing the issue with adult victim-survivors and adult perpetrators in the focus means that the vulnerabilities of young people are not considered when discussing reform and other changes within the domestic violence system.

2.1 Child development factors

The distinction between an adult and a young person is significant and therefore a different approach is required for young people. Adolescence can be a confusing time for young people who are in a key phase of emotional, psychological and physical development, and may be embarking on their first romantic or serious relationship³¹. Research regarding the development of a child into adulthood is well established and briefly referenced below:

Adolescence is a time of learning and development, from the point of view of the maturing brain but also physically and emotionally as a result of puberty. Teenagers are dealing with, not only massive hormonal shifts, but also substantial neural changes.

These changes do not happen gradually and steadily between the ages of 0–18 years. They come on in great spurts and puberty is one of the most dramatic developmental stages.³²

Further:

Because the prefrontal cortex is still developing, teenagers might rely on a part of the brain called the amygdala to make decisions and solve problems more than adults do. The amygdala is associated with emotions, impulses, aggression and instinctive behaviour. The self-monitoring, problem-solving and decision-making part of the brain – the prefrontal cortex – develops last.³³

³¹ Two thirds of young people aged 16-17 years reported having had at least one relationship according to Australian Institute of Health and Welfare, 'Australia's youth – in brief' (2021) p64, <https://www.aihw.gov.au/reports/children-youth/australias-youth-in-brief/contents/summary>

³² Sara Goudarzi, 'Study: Teenage brain lacks empathy' (9 September 2006) *NBC News* http://www.nbcnews.com/id/14738243/ns/technology_and_science-science/t/study-teenage-brain-lacks-empathy/#.X2RoGJMzYW8

³³ Raising Children Network (Australia) Limited, 'Brain development: teenagers' (2021) <https://raisingchildren.net.au/pre-teens/development/understanding-your-pre-teen/brain-development-teens>

The results of one study suggest that:

... teenagers have not yet reached maturity in either their ability to identify vocal emotions, or to express them. This means that teenagers face quite a challenge in their social spheres: they must interpret poorly expressed cues with immature recognition skills. Understanding how we learn emotional communication skills will be important to help teenagers who struggle socially.³⁴

Some young people have particular challenges with mental health issues. A 2018 study by the New South Wales Bureau of Crime Statistics and Research indicated 24.5% of perpetrators of domestic and/or family violence had a diagnosed or unspecified mental health condition.³⁵ The most common conditions were Depression/Bi-polar disorder, Attention Deficit Hyperactivity Disorder, and Autism/Asperger's Syndrome.³⁶ The same study stated that 11% of perpetrators were considered affected by alcohol or other drug at the time of the incident, with alcohol being the most common substance.³⁷ While these findings are helpful to illustrate the additional challenges young people face, there is a paucity of information that considers the impact these challenges may have on young people in domestic violence legislation.

2.2 Child perpetration of domestic and family violence

YAC has observed the majority of young people perpetrating domestic violence (intimate personal relationships) and family violence (child to parent violence) are male. When considering how to address this issue, there is limited literature available on young people's perpetration of family violence and fewer still on domestic violence in intimate personal violence.

The types of violence commonly seen by YAC in intimate personal relationships were acts of physical violence towards the aggrieved and in some cases towards property, and use of verbal abuse or threats³⁸, either in isolated incidents or over a finite period of time. What is not clear is whether these behaviours were intended to control or dominate the aggrieved party. It is possible the behaviours were learned and replicated as accepted behaviour within a relationship, or are an indication of immaturity and an inability to regulate emotions and impulses or communicate appropriately during situations of conflict³⁹, or are reflective of a mental health issue, cognitive impairment or trauma.⁴⁰

YAC has observed behaviours which were clearly intended to control and dominate an aggrieved were more apparent and frequent in domestic violence matters when the respondent was over 18 years. These observations are supported to a certain extent by recent research which indicates young women aged 18 to 24 years have a higher risk of experiencing violence (both physical and non-physical) from an intimate partner when compared with older

³⁴ Katherine Gombay, 'Teenagers have a hard time reading one another's tone of voice' (28 August 2018) *Medical Xpress* <https://medicalxpress.com/news/2018-08-teenagers-hard-tones-voice.html>

³⁵ New South Wales Bureau of Crime Statistics and Research, authored by Karen Freeman, 'Domestic and family violence by juvenile offenders: offender, victim and incident characteristics' (September 2018) 136 *Bureau Brief*, p7

³⁶ Ibid

³⁷ Ibid

³⁸ The context of the threats often appear as an act of lashing out, rather than in the context of punishment or consequence to control

³⁹ YAC has engaged with young people who describe situations where both parties (the young person and their partner, both under 18) were equally unable to communicate or behave respectfully towards each other during conflict

⁴⁰ Similar observations of young people's vulnerabilities are reflected in the National Domestic and Family Violence Bench Book, section 4.4.4 <https://dfvbenchbook.aija.org.au/vulnerable-groups/young-people/>

adults.⁴¹ However this research did not consider the situation for persons under 18 years or explore the nuances of violence in non-heterosexual relationships⁴².

It is possible coercive control behaviours were more likely to be reported in matters involving adults rather than young people. YAC has observed young people (both aggrieved and respondent) tend to have a limited understanding of what domestic violence means, associating the term with physical violence rather than non-physical acts, and therefore did not report the coercive control behaviours. Workshops with young people aged 12-17 years in the UK reported young people knew what coercive control 'felt like' but did not know how to describe it and did not recognise it as 'a thing'.⁴³ The young people also reported experiencing coercive control from family members⁴⁴ and from friends within their peer group⁴⁵. These young people stated they did not know where to seek help and were reluctant to access organisations they did not know or have a relationship with.⁴⁶

One point of clarity from emerging research is that perpetrators are 'made', not born and the use of violence is 'an outcome of widespread social conditions'.⁴⁷ However:

We do not know enough to effectively target those people at risk of perpetrating such violence. Nor do we know enough about people who are beginning to use violence and who, without intervention, might continue to perpetrate and escalate violence until they come into contact with the justice system. We do not know enough about who to target and the protective factors on which we will need to build to divert people from perpetrating.⁴⁸

YAC submits further research regarding child perpetration of domestic and family violence and engagement with young people to understand their perspectives and support needs within this area is required to inform any meaningful legislative change.

⁴¹ Christina Policastro and Mary A. Finn, 'Coercive Control in Intimate Relationships: Differences Across Age and Sex' (2021) 36(3-4) *Journal of Interpersonal Violence* 1520, p1524

⁴² Research indicates 59% of Lesbian, Gay, Bi-Sexual and Transgender youth have experienced psychological dating violence victimisation – Tyson Reuter and Sarah Whitton, 'Adolescent Dating Violence Among Lesbian, Gay, Bisexual, Transgender, and Questioning Youth' in David A. Wolfe and Jeff R. Temple (eds), *Adolescent Dating Violence: Theory, Research and Prevention* (Elsevier Science, 2018) 215, p217

⁴³ Early Action System Change Co-Design Commission, 'Youth Interventions' case study (July 2020) *Early Action System Change* p16 <https://www.tnlcommunityfund.org.uk/media/insights/documents/Early-Action-System-Change-How-can-we-prevent-coercive-control-within-adolescent-relationships-and-improve-emotional-wellbeing.pdf?mtime=20200812131140&focal=none>

⁴⁴ Early Action System Change Co-Design Commission, 'Action for Children' case study (July 2020) *Early Action System Change* p7 <https://www.tnlcommunityfund.org.uk/media/insights/documents/Early-Action-System-Change-How-can-we-prevent-coercive-control-within-adolescent-relationships-and-improve-emotional-wellbeing.pdf?mtime=20200812131140&focal=none>

⁴⁵ Early Action System Change Co-Design Commission, 'Kibble Education and Care Centre' case study (July 2020) *Early Action System Change* p11 <https://www.tnlcommunityfund.org.uk/media/insights/documents/Early-Action-System-Change-How-can-we-prevent-coercive-control-within-adolescent-relationships-and-improve-emotional-wellbeing.pdf?mtime=20200812131140&focal=none>

⁴⁶ Early Action System Change Co-Design Commission, 'Youth Interventions' case study (July 2020) *Early Action System Change* p16 <https://www.tnlcommunityfund.org.uk/media/insights/documents/Early-Action-System-Change-How-can-we-prevent-coercive-control-within-adolescent-relationships-and-improve-emotional-wellbeing.pdf?mtime=20200812131140&focal=none>

⁴⁷ Michael Flood and Lula Dembele, 'Putting Perpetrators in the Picture' (May 2021) 13 *QUT Centre for Justice Briefing Paper Series*, p2

⁴⁸ *Ibid* p3

2.3 Children and the judicial system

YAC holds concerns that the domestic violence system has powers to deal with matters involving children and to make orders restricting their life choices and potentially against their views and wishes, however is not subject to youth justice principles and is not legislatively required to consider child related factors such as those outlined in the Youth Justice Act⁴⁹, the Family Law Act⁵⁰ or the Child Protection Act⁵¹.

The Youth Justice principles acknowledge, amongst other things, a child's vulnerability when dealing with a person in authority⁵², considers diversion away from the court's criminal justice system⁵³, and recognises the child's need for guidance and assistance⁵⁴. These principles inform a child focused process for adults working within the youth justice system.

The Convention on the Rights of the Child is clear on the rights of a young person who is capable of forming their own views to express these views in matters affecting them and for these views to be given due weight in accordance with the age and maturity of the young person.⁵⁵ In addition, the child shall be provided an opportunity to be heard in any judicial and administrative proceeding affecting them directly, through a representative or appropriate body.⁵⁶

While YAC has observed some positive, child appropriate interactions between young people and police and the courts, the overall experiences reflect inadequate responses choosing to view the young person solely as a victim-survivor or perpetrator⁵⁷ with no consideration that they are also a child, and failing to hear from the young person at all when they are a named person in proceedings.

3. Options proposed in Discussion Paper 1

YAC is concerned the Discussion Paper 1 does not take into account, nor make any provision for, the challenges faced by young people within the domestic violence system, particularly as aggrieved and respondent parties. Discussion Paper 1 poses options which will layer on top of a system which is not currently functioning adequately or to its full potential, as outlined above. Therefore, it is questionable whether any of the options proposed will be successful in reaching their intended purpose without first addressing the existing structural issues.

YAC's view accords with the comments outlined in Australia's National Research Organisation for Women's Safety policy brief that:

legislative change cannot of its own transform the culture of response to DFV within and around the legal system. Effective training, models of co-response and justice reinvestment are all potential avenues that would support effective responses to coercive control.⁵⁸

⁴⁹ Youth Justice Act 1992, Schedule 1 Charter of youth justice principles

⁵⁰ Family Law Act 1975, section 60CC

⁵¹ Child Protection Act 1999, section 5E

⁵² Youth Justice Act 1992, Schedule 1, principle 4

⁵³ Youth Justice Act 1992, Schedule 1, principle 5

⁵⁴ Youth Justice Act 1992, Schedule 1, principle 9(d)

⁵⁵ Convention on the Rights of the Child, Article 12(1)

⁵⁶ Convention on the Rights of the Child, Article 12(2)

⁵⁷ Labels like 'perpetrator' can be damaging to a young person – ANROWS National Conference, day 4, session: 'Does one size fit all? Intervention with young people who use violence?', 4 March 2021

⁵⁸ Australia's National Research Organisation for Women's Safety, 2021, 'Defining and responding to coercive control: Policy Brief' (2021) 1 ANROWS Insights, p8

YAC has observed that for young people, increased education and information about domestic violence, and comprehensively funded and resourced support services (including access to legal support, therapeutic support, support to transition to independent living, intervention programs and educational programs) will have more of an impact in ending domestic violence than further criminalising young people, which will do little to divert a young person perpetrating violence away from a trajectory towards adult perpetration.

Aboriginal and Torres Strait Islander young people are currently over-represented in Queensland youth detention centres (and have been for a substantial amount of time). YAC is concerned this trend will continue unabated if the options for legislating against coercive control outlined in Discussion Paper 1 are recommended. The domestic violence system in its current form has devastating impacts on Indigenous women⁵⁹ and there is an inevitable flow on effect to Aboriginal and Torres Strait Islander young people.

Cessation of funding to YAC's current domestic violence project in October 2021 will result in no legal service designed specifically to provide advice to young people in relation to domestic violence. The absence of a service that provides wholistic legal and welfare advice and support for young people in relation to domestic violence leaves the proposed options a very blunt instrument.

YAC respectfully encourages the Taskforce to consider recommendations which:

- Require meaningful consultation and collaboration with Aboriginal and Torres Strait Islander people across Queensland
- View young people as individuals separate from their mothers with their own distinct views and support needs
- Exclude child respondents (under 18 years) from prosecution of any new domestic violence related offending⁶⁰ outlined in Discussion Paper 1, consistent with the Legal Aid NSW submission to the NSW Parliamentary Inquiry into Coercive Control, which YAC supports
- Develop intervention programs which include the ability to consider child respondent parties both as a victim-survivors of family violence and perpetrators of domestic violence (within intimate personal relationships) and family violence (within family home)
- Develop intervention programs for child aggrieved parties which include the ability to consider the young person as a victim-survivor of both family violence (within family home) and domestic violence (within intimate personal relationship)
- Use Protection Orders as a last resort for intimate personal relationships involving young people after supports are put in place and other intervention measures are undertaken appropriate to the young person's age, cognitive capacity and lived experience
- Improve police and court interactions with young people exposed to the domestic violence system as aggrieved, respondent and named person parties with a developmentally informed approach

⁵⁹ Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch, 'Carceral feminism and coercive control: when Indigenous women aren't seen as ideal victims, witnesses or women' (25 May 2021) *The Conversation* <https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091>; Sister's Inside, "In no uncertain terms' the violence of criminalising coercive control. Joint statement: Sister's Inside & Institute for Collaborative Race Research' (17 May 2021) <https://www.sistersinside.com.au/in-no-uncertain-terms-the-violence-of-criminalising-coercive-control-joint-statement-sisters-inside-institute-for-collaborative-race-research/>

⁶⁰ Legal Aid New South Wales submission to the NSW Parliamentary Inquiry into Coercive Control, 'Legal Aid NSW submission to Joint Select Committee' (19 February 2021), p7 <https://www.parliament.nsw.gov.au/ladocs/submissions/70662/Submission%20-%20139.pdf>

- Increase funding specially allocated to assist young people in domestic violence matters by providing ongoing funding for the representation of young people in domestic violence matters through community legal centres (including YAC), ATSILS and broadening LAQ threshold to aggrieved, respondent and named person parties
- Increase young people’s ability to access support and therapeutic services, when experiencing or perpetrating domestic and family violence, not only when they have been exposed to it by their parent or other family member or guardian
- Develop educational programs⁶¹, which challenge traditional views regarding gender and focus on empowering non-males to make decisions regarding their sexual and reproductive health⁶², to run in school, flexi schools, detention centres and community centres to reach as many young people as possible
- Review the Magistrates Court timetabling of domestic violence matters involving child parties to minimise interaction with adults attending court for other matters
- Commission further research into young people and domestic and family violence as victim-survivors, and as perpetrators
- Develop a specific Domestic and Family Violence Youth Justice Strategy⁶³

YAC respectfully challenges the Taskforce to think creatively about responses to stop domestic and family violence which deviate from a carceral approach.

⁶¹ YAC notes the introduction of programs to primary and secondary state schools is a recommendation yet to be effectively implemented - Queensland Government ‘Not Now, Not Ever’ Report and Recommendations, Recommendations 24-26 p22-23 <https://www.publications.qld.gov.au/dataset/not-now-not-ever/resource/533db62b-b2c9-43cc-a5ff-f9e1bc95c7c7>; Queensland Government, ‘Domestic and Family Violence Prevention Strategy 2016 – 2026’ p19 https://www.publications.qld.gov.au/dataset/not-now-not-ever/resource/008db60d-06e9-4702-bb87-48be367edf93?truncate=30&inner_span=True

⁶² Mary Ellsberg, Chelsea Ullman, Alexandra Blackwell, Amber Hill and Manuel Contreras, ‘What works to prevent adolescent intimate partner and sexual violence’ in David A. Wolfe and Jeff R. Temple (eds), *Adolescent Dating Violence: Theory, Research and Prevention* (Elsevier Science, 2018) 381, p385

⁶³ YAC notes the New South Wales Government’s Domestic and Family Violence Youth Justice Strategy 2019-2022 which intersects with their overarching strategy against Domestic and Family Violence and gives a specialised focus on improving outcomes for young people <http://www.juvenile.justice.nsw.gov.au/Documents/youth-justice-domestic-and-family-violence-strategy-2019-2022.pdf>