

The Honourable Margaret McMurdo AC
Chair
Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001

13th July 2021

Dear Chair,

RE: SUBMISSION

Thank you for the opportunity to make a submission on this important Taskforce concerning Coercive Control and other matters.

My name is Angela Lynch the current CEO of Women's Legal Service QLD (WLSQ). As I am currently on a period of extended personal leave, I am making this submission in my personal capacity, but it is informed by my 27 years working at WLSQ and my time as a member of the Queensland Domestic and Family Violence Death Review and Advisory Board (QDFVDRAB).

I acknowledge the Discussion Paper references the work of the QDFVDRAB where it is noted that coercive control is a feature of many of the deaths considered by the Board but the service system often only responds when physical violence was present and the research by the NSW Domestic Violence Death Review Board that found 111 of 112 domestic violence related deaths in that State had coercive control as a feature.

If you require any further information or would like to discuss issues raised in this submission please do not hesitate to contact me.

My response to the Discussion Paper is outlined below:

1. What other types of coercive controlling behaviours or risk behaviours used by perpetrators in domestic relationships might help identify coercive control?

https://www.irishtimes.com/news/crime-and-law/man-sentenced-to-three-years-in-prison-for-coercive-control-of-his-family-1.4596246?mode=amp&_twitter_impression=true&s=09

This case from Ireland was interesting, especially in the context of COVID as it involved the following types of behaviour that may not have been as explicitly provided for in the examples of coercive control set out on page 11 of the Discussion Paper. The article indicates that the husband did not suffer from a mental illness and was aware of his behaviour. This behaviour included:

- The husband believed in *several conspiracy theories* and his coercive control of his wife and two young children, then aged nine and seven, escalated ahead of the children's return to school last September *as he feared they would be vaccinated against Covid-19, which he believed was a hoax.*
- He also feared they would be *brain-washed by the education system and wanted to home-school them.*

(So this may be considered micromanagement however, it is a little different. It is the egocentric approach and imposition of the offender's "rules" on the household. His "unreasonable" belief system

is co-opted, as another means to control his family and obviously the failure to vaccinate against COVID 19 would have had health implications for the family members directly and broadly for the community).

- He made *veiled threats* to his wife, that he would burn down their house and the homes of her extended family without warning, resulting in the loss of 12 lives if she did not behave and do as she was told.

(It is interesting that these veiled threats are taken seriously – again, under our current approach the threats would often have to be very explicit and serious to have any chance of the system responding to them and even then it is rare for the police to take action about a “threat” in a domestic violence situation. Under a standalone coercive control offence, there is more opportunity for ‘veiled threats’ to be taken seriously because they form part of the broader pattern of abuse and their seriousness can be more easily identified and responded to by the system).

- He emailed his wife conspiracy videos, gave her literature and quizzed her about the content. He flew into rages when she refused to answer, repeatedly telling her she was “stupid”.

This is, of course an example of micromanagement but again a different example of this where the husband is using his belief system to control his wife in a threatening and abhorrent way.

Other examples include:

- being obsessively jealous and stopping women from speaking to any other men (including ex-partners, teachers, kids sports coaches);
- Being jealous of children and interfering with relationships with their children (stopping mothers from responding to a crying child (that also interferes with the mother/ child bond) and stopping them from seeing their children from a previous relationship or being violent towards their children from a previous relationship or blaming children or making them scapegoats for his violence.
- Not having a choice about sexual activity and/or not being able to say “no” because of fear of escalating violence or retribution.
- Making her watch “porn”.
- Taking away or destroying any means of her escape eg. car, phone.
- Limiting, overseeing, or disconnecting internet access.
- Hurting or threatening to hurt pets.
- Threatening suicide as a means of emotional manipulation and control.
- Using racist, sexist taunts or using her religion and/or spirituality against her (which might give her support and strength).
- Giving women STDs or exposing her to risk of STDs.
- Making her feel crazy, playing tricks on her, lying to her and gaslighting her in such a way she questions her sanity.
- Stopping women from getting medical assistance or taking necessary medication.
- Making women cover up visible injuries and lie about these to medical staff.
- Making women lie about financial issues.
- Telling her how to dress/ not dress.
- Stopping women from using contraceptive or not allowing them to, demanding they have/ not have an abortion.
- Calling her at work incessantly that impinges on her ability to do her job.
- Not allowing her to feel “safe” to end the relationship.

In answering Question 29, all these behaviours listed above are not covered or not covered adequately by existing offences in the Criminal Code.

In answering Question 30 – these types of behaviours (described above) are not stalking type behaviours and fall outside the scope of this offence. They are also not what are commonly understood or considered by the community to be “torture”. Torture does not accurately describe coercive control which acts like an omnipresent threat that controls their life and subjugates and terrifies them (often with good reason). They are aware if they say “no” or “resist” or do not comply then there will be severe consequences. Torture also does not describe the complexity of coercive control – that is, in between the ongoing threat nature of coercive control there are periods of normal family life.

Sexual Violence

One of the real positives about a coercive control offence is that it could provide some level of accountability for women who have been subjected to sexual violence in a coercive and controlling relationship. Often there is no overt threat that exists with these offence (that our criminal code requires) but it is the nature of these relationships that women have no say and it is dangerous to resist sexual activity, otherwise they or their children could be punished.

2. What aspects of women’s attempts to survive and resist abuse should be considered when examining coercive control?

Once coercive control is established, it is an important to acknowledge more broadly that women who are subjected to violence will engage in activities they would not otherwise in engage in to survive including physical violence, lashing out verbally, sometimes over disciplining or being physically abusive to their children to ensure their children to not “upset” the perpetrator or to ensure compliance with the house “rules” or “norms” and as a protection for children. That is, it is better for the children to be scolded by the mother than by the perpetrator. Women may also be worn down by the violence and have little emotional energy left to provide for their children’s emotional needs and wellbeing.

Some women, to ensure their mental wellbeing may initiate physical violence to end the mounting tension in the home (walking on eggshells) or other acts of resistant violence – where they attempt to re-establish a level of control over their lives and to send a message to the perpetrator “they are not a victim”. Any training should ensure these issues are covered.

After women separate from their abuser it is not uncommon for them to be in a situation where the children have disclosed abuse, violence or fear about having contact with the perpetrator and they may stop a contact arrangement (this may be an informal or court ordered arrangement).

It is likely the perpetrator may attempt to frame the “stopping of contact” as an act of coercive control or that the mother is emotionally abusing the father by these actions. Although a woman in this position would likely have a defence (her intention was to protect the children) it would have major repercussions in our community, if woman were criminally charged, in the first place. This type of thinking has much currency in our community and a level of sympathy, amongst the police and even the judiciary. I am aware of a case at the Women’s Legal Service involving a domestic violence protection order matter, where a woman stopped contact and the magistrate suggested this was coercive controlling behaviour. Our solicitor at the time was able to convince the magistrate she was acting protectively, however the case is an example of how entrenched this belief system is about women (wanting to interfere with the relationship between the child and their father).

I believe the coercive control offence should clearly exclude from the definition of coercive control any person acting or taking action to protect a child from harm. It is important this is on the face of the legislation to limit the impact of perpetrators threatening victims that they will call the police or have them charged. Being on the face of the legislation makes it very clear to the community, the police, and the judiciary.

Recommendation 1

That the definition of coercive control explicitly excludes a person who (honestly and reasonably) acts or threatens to act to protect a child (or other person) from harm.

Recommendation 2

That any training package covers the issue of women resisting or acting to defend themselves, especially in circumstances where there is coercive control and no physical violence.

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

Victim's Legal Service

I believe that victims of domestic violence (coercive control and sexual violence) who are utilising or thinking of utilising the criminal justice system should have better access to lawyers who specifically provide advice from a victim's perspective. That is, a victim's legal service based on a community legal centre model. Such a legal service could provide a range of services including providing legal information about the process, information about bail proceedings, interpretations of orders, parole, assist with victim's compensation applications and more broadly civil legal rights to compensation, domestic violence protection order applications to support safety especially when the victim has been misidentified and/or where there is a criminal legal process, advice, and assistance with the protection of counselling notes, the ability to intervene in the public interest in domestic violence coronial matters and any another legal matters of concern for the victim. Legal Aid Victoria has recently been funded along with community legal centres in Victoria have been funded for such a service.

Victim's Commissioner

Similarly, to other States and in the UK, Queensland should establish an independent Victim's Commissioner with resourcing to investigate individual and possibly systemic complaints against State agencies such as the police, to listen to concerns and lobby for change. The person appointed to the role should be part of the domestic violence/ sexual violence community and the confidence of victims to carry out the role effectively.

Recommendation 3

That the Queensland Government fund the establishment of a Victim's Legal Service for victims of domestic violence and sexual violence involved or considering involvement in the criminal justice system to better support their decision making, protection of their legal rights and safety.

Recommendation 4

That the Queensland Government establish and adequately fund an independent Victim's Commissioner to investigate individual and systemic issues and lobby for change. That the person appointed have the confidence of the domestic violence/ sexual violence community and victims themselves.

Specialist police, prosecutors, courts

The criminalisation of coercive control needs to be undertaken carefully. If not done well it could easily lead to the over criminalisation of relationships and the state intervening in matters where it should not which can lead to injustice and is antithetical to a free society and/or the criminalisation of vulnerable women or populations further compounding historical and current injustice.

Therefore, I believe it essential that there be specialisation in the police, prosecution, and the court to provide oversight and accountability about the law's operationalisation to ensure safe and just outcomes. I think this is particularly important in relation to the police. Not every police officer should be able to charge someone with a coercive control offence. Indeed, if done well it will generally take a long time to get the full history of violence and a statement from the victim, allowing time for specialist police oversight. These specialist police would have extra levels of training, experience and insight and be able to effectively "sign off" on the offence proceeding and the evidence gathering. It would also suit a co-responder model where police officers work closely with social workers, who have expertise in coercive control and would be able to assist with not only support but also with obtaining the full history of the violence that has occurred.

It would be a different type of offence to prosecute with a variety of evidence that would likely be available. Again, specialisation would assist at this stage as well. There is merit in considering a similar approach as occurs in sexual violence matters, that is, evidence being admitted where woman have told friends or family over the years or professionals about the coercive control they are living under, and the prosecution/ police could obtain statement to provide support to the women's claims of coercive control.

Recommendation 5

That the Queensland Government introduce and support a specialist approach to the prosecution of the offence of coercive control involving police, prosecutions, and courts. That the police only be able to proceed with a charge of coercive control after authorisation by a specialist officer who has extra levels of training, experience, insight on coercive control.

Recommendation 6

That consideration be given to amending the Evidence Act (similarly to sexual violence matters) to allow statements about coercive control made to friends/family and professionals be admitted as evidence in a coercive control criminal case.

Recommendation 7

That expert evidence that details the dynamics of coercive control be allowed to be introduced to assist the jury and court's understanding.

20. What parts of the civil protection order system under the DVFP Act could be improved to better protect women and children from coercive control?

Protecting children more fully on dvos

Magistrates under the civil protection order system are still loathed to make no contact order involving children based on exposure to coercive control. That is, even if the behaviour is highly dangerous both to the women and children the Magistrates prefer the matter be dealt with under the family law system rather than providing women and children with immediate protection for their safety. This is really a failure to properly understand their role in protecting children from domestic violence, the immediate danger children can be in. The inaccessibility of the family law system (time, expense) for many families means that the domestic violence protection order system may be the only formal court approach the family utilises. It is important that Magistrates Courts takes the opportunity to protect children as best as they can under this legislation with a focus on safe outcomes. If circumstances change or a review is required, then the family law system exists to provide later oversight.

An improved response to the person in most need of protection

A court considering an application under the current approach includes a consideration if the order is necessary or desirable to protect the aggrieved from domestic violence. In making this determination the court must consider the principles in section 4 of the Act that sets out several considerations.

One of these considerations is –

in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified.

It is common tactic for abusers to use litigation and the legal process against victims of violence. Considering this, it could be useful to improve the visibility of this section in the legislation and make it one of the key considerations in making a protection order, instead of just referring Magistrates back to the principles section.

Therefore, the court consider when making an application for a domestic violence order could determine:

1. Is there a relevant relationship?
2. Has the respondent committed an act of domestic violence?
3. Is it necessary or desirable to protect the aggrieved from domestic violence?
(Provide some legislative guidelines to assist Magistrates making this decision)
4. When there are conflicting allegations of domestic violence:
 - (i) identify who is in the most need of protection; and
 - (ii) make appropriate orders in accordance with the principles set out in Section 4 of the Act. It should be explicitly stated as an option that consistent with the principles, making an order against only one party, may be the safest and most appropriate order in the circumstances.
 - (iii) Provide legislative guidance to the court to assist it to decide who is in the most need of protection, whilst retaining overall decision-making discretion. Eg. does one party have more physical strength, more access to economic or other resources? Was this retaliatory or defensive violence? Is the violence part of a pattern of abuse or coercive control?

There are guidelines from the United States about how to determine the ‘predominant aggressor’ that could assist with the development of these legislative guidelines.

Also, importantly there is a need for more training especially about the nonphysical forms of domestic violence, coercive control, and its propensity for danger to women and children.

Recommendation 8

1. That the domestic violence legislation be amended so that when the court must be satisfied of the following issues before making a protection order:

- 1. Is there a relevant relationship?**
- 2. Has the respondent committed an act of domestic violence?**
- 3. Is it necessary or desirable to protect the aggrieved from domestic violence?
(Provide some legislative guidelines to assist Magistrates making this decision)**
- 4. When there are conflicting allegations of domestic violence:**
 - (i) identify who is in the most need of protection; and**
 - (ii) make appropriate orders in accordance with the principles set out in Section 4 of the Act. It should be explicitly stated as an option that consistent with the principles, making an order against only one party, may be the safest and most appropriate order in the circumstances.**
 - (iii) Provide legislative guidance to the court to assist it to decide who is in the most need of protection, whilst retaining overall decision-making discretion. Eg. does one party have more physical strength, more access to economic or other resources? Was this retaliatory or defensive violence? Is the violence part of a pattern of abuse or coercive control?**

2. That there be training for magistrates on coercive control and especially on the dangers of nonphysical forms of abuse including stalking.

Economic abuse – utilising the civil system to provide improved interventions.

In the 2017/18 Annual Report of the QDFVDRAB the issue of economic or financial abuse was highlighted. The Board noted in several cases considered by the Board in that year the issue of financial dependence/ financial abuse was identified as a barrier to leaving especially in regional areas with money often being tied up in assets, and partner with overwhelming control of assets.

It is a very common abusive tactic experienced by the clients of Women’s Legal Service and can be a reason contributing to domestic violence victims returning to their abuser or never separating in the first place. As the Board findings exemplify, financial abuse is extremely serious and can have deadly consequences for women.

The significance of financial abuse for women who are victims of domestic violence was also found in the AIFS research into domestic and family violence and parenting. This research also identified the compounding issue of system’s abuse.

“a significant finding from the AIFS Family Pathways part of this research program is the association, for women, between financial hardship, poor wellbeing outcomes, and family violence, at a significant level. Together, the findings provide further evidence of an association between particularly severe patterns of family violence, financial abuse, and systems abuse. (AIFS research for ANROWS (2017)

Domestic and Family Violence and Parenting: Mixed Method Insights into Impact and Support Needs: Key findings and Future Directions.”

There are some real opportunities at the civil protection order stage of magistrates making orders that could improve the safety and just outcomes of women and their children. Although the Queensland legislation has recognised economic abuse since 2012, I feel it is underutilised. The civil system could be used to improve the immediate economic plight of women after separation by recognising the financial abuse they have endured and making orders to alleviate this for example:

- An order for the respondent to sign all necessary documents to transfer a car to the aggrieved (this could make an enormous difference to women post separation especially if they have children and need the car for transport and safety)
- An order for the respondent to pay off a certain debt.
- An order for the respondent to transfer to the aggrieved a lump sum of money within eg. 5 days.

Making financial orders means that if they are breached then it becomes a criminal matter which can incentivise compliance.

It might be argued this is stepping into the property settlement realm of the family law act, however, this ignores the reality and impact of financial abuse on victim’s lives. If the criteria for making a protection order is satisfied and it is ‘necessary and desirable’ to make certain financial conditions, then with respect the court should make the orders. I predict this will be of enormous benefit for victims and indeed could be life changing as it provides very practical solutions to their predicaments.

This immediate access to some financial relief makes an enormous difference to many impoverished women who have suffered abuse and to their safety and wellbeing. Many of these women will never obtain a property settlement as they cannot afford a lawyer, are unable to self-represent against their abuser and/or there is not sufficient assets to justify the expense of a property settlement and the abuser has manipulated the situation that all the assets (if there are any are his name). The finding of financial abuse could also provide evidence to lenders and banks and would assist the women in her negotiations with them about the repayment of loans and assist the work of financial counsellors, who help women responding to debt issues.

These types of orders about economic abuse are far more common in Victoria. Victorian services have done intensive advocacy and public policy work on the issue of responding to economic abuse and therefore its service system, including the magistracy are more open to recognising the seriousness of the issue, the need for the service system, including the legal system to intervene and respond where appropriate.

Amendment would be needed to the domestic violence legislation to ‘encourage’ lawyers advocating for these types of orders and to allow magistrates to feel “comfortable” in the making types of orders.

Recommendation 9

That amendments be made to criminalise coercive control and to the domestic violence legislation and rolled out at the same time, to make them an overall “package” of reforms.

Recommendation 10

That the domestic violence protection order legislation be amended to provide clarity about the types of orders/ conditions that could be made to respond to better respond to issues of financial abuse. That is, orders could be made for example-:

- ***Acknowledging the existence of financial abuse (to assist with negotiations with banks and other lenders)***
- ***An order for the respondent to sign all necessary documents to transfer a car to the aggrieved (this could make an enormous difference to women post separation especially if they have children and need the car for transport and safety)***
- ***An order for the respondent to pay off a certain debt.***
- ***An order for the respondent to transfer to the aggrieved a lump sum of money within eg. 5 days.***

Recommendation 11

That specific training be provided to the legal profession and the judiciary about the financial amendments to the DFFV Act.

23. What coercive control behaviour would constitute an unacceptable risk of reoffending whilst on bail?

Two tragic events in South East Queensland recently (the murder of Kelly Wilkinson and the “pharmacist case” where a house was burned down with two women in it) have highlighted the need for a review of the arrest, detention and release of domestic violence offenders.

In circumstances where there is an indictable offence involving domestic violence or serious domestic violence offences there should be no police or watchhouse bail and the defendant should be held in custody to allow time for a domestic violence risk assessment be undertaken and oversight by the court.

The court should require the undertaking of a domestic violence risk assessment by the police to form part of the evidence. Aspects of concern would be if the defendant was highly controlling, micromanaging the woman’s life, sexually jealous, threatening, the level of fear of the woman, the nature and extent of past violence, concerns about child abuse (including sexual abuse of children), rape and sexual assault of the woman (including past assaults), strangulation, stalking behaviour.

New police operating procedures need to be established around the release of respondents under the Domestic and Family Violence Protection Act as police can hold respondents for up to 8 hours if the risk and safety of the victim or her property require this. In the Pharmacist case, the police seemed to have released the respondent (without charge at that stage) whilst it was still dark and in the early hours of the morning. In public statements they said they released him after 5 hours, despite having the ability to retain him for 8 hours if there were concerns about safety. This highlights the need for the police to make better and more expert assessments of dangerousness around the arrest, detention and release of perpetrators of domestic violence.

Recommendation 12

That the Bail Act be amended to ensure there is no police discretion where there are indictable offences involving domestic violence.

Recommendation 13

That the undertaking of a domestic violence risk assessment be more accepted practice and form part of accepted evidence at Bail hearings.

Recommendation 14

That the Domestic and Family Violence Protection act (release of respondents) be reviewed to ensure new provisions are developed around the release of respondents back into the community without charge. The Act needs to, as much as possible ensure respondents are not released back into the community in circumstances where it is dangerous to the victim, the victim is not in hiding or at a known address, not released in the middle of the night or early hours of the morning (that is, that consideration be given to respondents being held longer than 8 hours to ensure they are released in daylight hours or at least by 8am).

37. What amendments or changes to the law would assist to facilitate greater admission of evidence of coercive control without unfairly prejudicing an accused person's right to a fair trial?

The fact that Queensland has the least restrictive laws in Australia concerning similar fact and propensity and has not implemented the recommendation of the report of the Royal Commission into Institutional Child Sexual Abuse, is very concerning. The fact that other States have made amendments, without impeding on the right to a fair trial means that Queensland can also do the same. The recommendations should be extended to adult cases of sexual violence and coercive control. There should also be amendments to 132B of the Evidence Act to allow for greater inclusion of contextual relationship evidence specifically to sexual offences and coercive control and greater use of expert evidence to assist the juries understanding of these complex issues.

Recommendation 15

That the laws on similar fact and propensity in Queensland be amended to at least adopt the recommendation of the Royal Commission into Institutional Child Sexual Abuse and this be extended to adult cases of sexual violence and coercive control (and other relevant gender-based crimes).

Recommendation 16

That 132B of the Evidence Act be amended to allow for more contextual evidence about a relationship be utilised in criminal trials involving domestic violence and that it become routine for domestic violence expert evidence to be utilised to assist the juries understanding of these complex issues and to "myth bust" community assumptions.

46. What could be done to ensure that police officers more effectively and consistently comply with the guidance for investigation of domestic violence in the OPM?

My ideas for improvement are set out in the following recommendations.

Recommendation 17

That a specialised unit is established with the specific role of ensuring the overseeing and compliance of operating manuals and that the highest standards of practice are maintained. So, this is working proactively with practice areas and stations to ensure this occurs. There would be internal

information that would highlight concerning practice in certain regions/ stations and they may require specific targeting to better their practice.

Recommendation 18

Make the Vulnerable Person's Unit specific to domestic and family violence, removing mental health to another area. Give the unit more power and status with the employment of detectives who have power over individual station heads – so they can override station decisions. Eg. if a local station has taken the wrong determination of who is the most need of protection?

Recommendation 19

That a presumption against nominating a police job or call out as “no DV”. All domestic violence incidents should be considered “DV” and if it is scaled down from this that there be senior oversight and sign off.

Recommendation 20

Every DV incident should be considered a priority 2 – lessening police discretion when responding to the issue.

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

The training needs to be gendered and from a perspective that also includes the experiences of race, disability, sexuality etcetera. If the training is not provided from a gendered perspective, then it sends the wrong messages to police who can apply a neutral approach to their investigation which in circumstances of significant but unacknowledged power imbalance, can end in injustice. There also seems to be a need for better training around defensive wounds as the police commonly take an order out against a woman who has been strangled and he has scratches, but she was fighting for her life.

Recommendation 21

That the QPS and other training be from a gendered and intersectional perspective and better training around defensive wounds.

51. Should people with a conviction for a domestic violence offence be automatically excluded from working as a police officer in Queensland? Why/ Why not?

There should be consequences for a police officer found guilty of a domestic violence matter however, it should depend on the seriousness of the conviction to determine whether someone should lose their job as a police officer. For some convictions, there may be a requirement to move to a different role where there is no interaction with women who are victims of domestic violence/ sexual violence or vulnerable people, and/or they receive a demotion. Consideration should be given to whether the police officer admits their behaviour and seeks help via a program to change. There should be evidence from the program facilitator of appropriate engagement with the program and a shifting of attitudes. A specialised program for domestic violence perpetrators who are police officers, should be developed. In some circumstances or in cases of repeated breaches there should be a scaling up of employment impacts including the option of exclusion.

Similarly, to the legal profession, to ensure the public have confidence in the police there needs to be an independent body (such as the QCAT) to make these determinations. Please see below where QCAT removed the rights of a solicitor to practice because of a domestic violence offence.

[Legal Services Commissioner v SD \[2021\] QCAT 204 | Queensland Civil and Administrative Tribunal Caselaw \(queenslandjudgments.com.au\)](#)

Recommendation 22

That similarly to the legal profession, that police disciplinary action be outsourced to an independent body to ensure the highest standards are maintained and to restore and maintain community confidence in the police force. That a graduated approach to police be taken in relation to those who are convicted of domestic violence or whose behaviour fails to meet community standards that can include up to termination.

Legislating against coercive control – Questions 55 – 60

I agree with the NSW Law Society’s submission to their parliamentary committee quoted in the Discussion Paper, there is a gap in the current criminal law that should be filled by a specific coercive control offence rather than the expansion of other current legislation. The offence should, similarly to Scotland, be in the Criminal Code and based on the following:

- (i) Be a course of conduct.
- (ii) Be an objective test. That is, a reasonable person would consider that the course of conduct was likely to cause the partner or former partner to suffer physical, psychological, or emotional harm and
- (iii) Not require the victim to “prove” actual harm but be satisfied if the perpetrator either intends or is reckless in causing the partner to suffer (serious) physical, psychological, or emotional harm.

The criminal law is a powerful instrument in our society setting out clearly acceptable and unacceptable behaviour in our community. Criminalising coercive control sends a clear message that this behaviour is wrong and will not be tolerated. It has a strong educative value for both perpetrators and victims who can better understand the behaviour they have endured is not acceptable, give them the vocabulary to explain what they have suffered and hopefully encourage them to seek help. As has occurred in the United Kingdom it will become part of the community’s vernacular with a popular soap opera utilising the language and behaviour in a series script.

Criminalising coercive control will have a powerful educative effect on the legal system’s understanding of domestic violence as law students will learn about it in university, will be taught and therefore become aware that domestic violence is a course of conduct and involves psychological and emotional elements which will assist their practice, especially when some eventually become magistrates and judges.

The criminal law has the “power” to influence the understanding of coercive control in other areas of the law in a way that civil codes have not been able to achieve. For example, it could improve understanding in family law and child protection.

This has already occurred in England with Landmark Court of Appeal Judgement on family law concerning the court's response to coercive control.

[Landmark decision on domestic abuse allegations in Family Courts \(Mills & Reeve\) | CompanyNewsHQ](#)

It will also be able to be utilised in identifying who is the most need of protection and misidentification. Importantly it could be utilised in cases who kill their abuser in the face of life-threatening violence. This has already had "real world" impact in the UK in the case of Sally Challen and possibly for other women.

[Murder cases reopened in wake of Sally Challen appeal | Domestic violence | The Guardian](#)

It will "push lawyers" to obtain better and fuller instructions from their clients in relation to domestic violence cases or when representing domestic violence victims which can only lead to better outcomes for victims and possibly more just outcomes (as the court will have more of a detailed picture of what occurred and the circumstances and context).

A specific defence?

There is real opportunity in the introduction of a stand-alone defence of coercive control to be able to be able to provide a realistic defence for women who kill their abusive partner in Queensland. I am in favour of a standalone specific defence being introduced.

Risk in legislating – Questions 61 – 62

There are risks in relation to legislating including the over criminalisation of "toxic" but not coercive controlling relationships and overreach into policing people's private relationships. There is also a very real concern about the criminalisation of vulnerable women specifically First Nation's and CALD woman. This could either be through the stand-alone offence of coercive control or via the Domestic and Family Violence Act 2012 (step through process of mis identifying the perpetrator and then the criminal breach process). However, it also sends a clear message in these communities similarly to the rest of the community that this sort of behaviour is wrong. This could have a positive impact on women's lives.

Mitigation strategies - standalone coercive control offence

- Only specialist police should be able to "sign off" on the offence to minimise misidentification. This would mean that every constable in Queensland is unable to progress the offence without specialist oversight. Obviously, the specialist police would be senior police who have undertaken intensive and ongoing training.
- Incorporate a social worker model into policing coercive control.
- Statewide training of all police officers from a gendered perspective.
- Specialist prosecutors (including ODPP) and courts.
- Broad community information about coercive control and its serious nature.
- Have at least a 12-month lead in time for community information and training and to get the sector, courts, police ready for its introduction.
- At the same time, establish an independent Victim's Commissioner who is immediately tasked with the role of overseeing and monitoring the roll out of the legislation, keeping abreast of unintended consequences and reporting to the AG on this.
- Establish and fund a Victim's Legal Service to provide legal support and assistance to victims of coercive control and other gender based crimes. Fund this service or another to represent

female respondents in domestic violence protection order matters who may have been misidentified. WLSQ currently has a solicitor that undertakes this role. As it is outside of Legal Aid there is no requirement to meet the legal aid tests that can often exclude these women from legal aid assistance.

- Incorporate into the drafting the concept of “reasonableness” and an objective test around impact to prevent irrelevant activities being prosecuted.
- Position the coercive control offence (and other gendered crimes) under a principles and objects clause like the approach of Section 37A and 37B of the Victorian Crimes Act 1958 in relation to sexual offences. This objects clause could set out the gendered nature of the crime and other indicia such as the difficulty in reporting etcetera.
- Make it clear in the extraneous material when introduced into parliament, the gendered nature of the crime and the purpose of the legislation.
- Exclude from the definition of coercive control any acts or actions taken to protect a child from harm (to exclude any arguments by perpetrators about mother trying to alienate children from the father by stopping contact because of domestic violence or risk thereof).
- Independently review the standalone offence after 3 years of operation. (It will likely take 12 months for matters to finalise through the court system).

Mitigation - Domestic and Family Violence Protection Act 2012

- As previously stated, make the making of decisions about who is in the most need of protection more visible in the Act.
- Provide legislative guidance to the magistracy in the drafting to assist them in their decision making.
- Include the existence of ‘coercive control’ as an indicia in deciding who is in the most need of protection.
- The standalone criminal offence itself will also increase the magistrates understanding of coercive control.

Narrowing the breadth of the civil law response – Questions 69 and 70

I think the current broad definition in the DFVP Act is quite good and should not be changed to narrow its impact though it could be changed to provide more examples of coercive controlling behaviours.

As previously discussed increase the visibility of making decisions about “who is in the most need of protection” in the Act and provide legislative guidance around this.

Consideration could also be given to including in the “Principles section” a statement about the gendered nature of domestic violence and a statement about First Nation’s and CALD women.

Key Indicators of success – Question 71 and 72

This should be broader than merely how many charges and prosecutions, but the measurement tool should be broad enough to capture community understanding of coercive control, legal and police understanding. How many women are coming forward and self identifying coercive control behaviour?

How the concept has impacted on legal argument and legal outcomes including outside of the criminal law process eg. family law and child protection.

Option 7 – creating a new offence of ‘commit domestic violence’ within the DVFVA

I am strongly against the creation of such an offence because it will not be a course of conduct offence and could be taken out of context and as a result it could increase the current rate of misidentification. It would be very dangerous for women especially First Nations and CALD women. The only way this would be feasible is if the law were gendered such as the New Zealand provision “male assault female”. WLSQ obtained a research paper on this provision that would be useful for copy to be obtained by the Taskforce.

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

Yes agreed.

Option 12 – creating a post-conviction civil supervision and monitoring scheme in the Penalty and Sentences Act 1992 for serious domestic violence offenders.

Yes agreed.

Option 13 – creating a “serial family violence offenders declaration”.

Yes agreed. This should also be done nationally.

Thankyou for the opportunity to submit.

Regards,

Angela Lynch.