20 August 2021

Justice Margaret McMurdo
Chair, Women's Safety and Justice Taskforce

Dear Justice McMurdo and Taskforce Members,

RE: CRIMINALISING COERCIVE CONTROL IN QUEENSLAND

Thank you for the invitation to make a submission in response to issues raised when we met with the Taskforce on 23 July 2021 to discuss the issue of whether Queensland criminal law should be extended to capture what is now commonly referred to as *coercive control*.

We understand the term 'coercive control' to refer to a pattern of control and domination in a domestic relationship that can include verbal, economic and psychological abuse, as well as sexual and physical violence. The term is commonly associated with the work of Evan Stark but should not be dependent on that single stream of research and advocacy. The issue of criminalising 'coercive control' is significant because many of these abusive behaviours are not yet criminalised, and those that are directly or indirectly criminalised do not adequately recognise the harms caused and/or are difficult to enforce. Significantly, taken individually – rather than as repeated behaviours, or a course of conduct - the impact of some relevant behaviours is likely to be underestimated and could appear to be something that should not be the subject of the criminal law. Criminalisation of this conduct will also afford greater recognition to the harms experienced by women, as coercive control is a gendered form of abuse, most often perpetrated by men against their female intimate partners. We believe that contemporary understandings of the non-physical aspects of domestic abuse, as well as the cumulative impact of that abuse, justifies the introduction of a new offence criminalising coercive control.

For the past five years we have researched coercive control laws and their impact in the United Kingdom and Europe. We have consistently advocated for the introduction of a similar offence in each Australian State and Territory. We base our advocacy on:

- research that establishes the prevalence of this abuse;
- the severe and adverse impact this abuse has on the health of victims as well as the multiple ways in which it breaches their fundamental human rights;
- the absence of adequate protections and remedies for victims in existing criminal and civil laws; and
- experiences relating to coercive control laws introduced in other common law countries that demonstrate that such offences can be operationalised.

We believe that a new coercive control offence could improve women's safety, legitimise victim perceptions of what they often describe as the worst part of abuse, catalyse a generational shift in how police, courts and the broader community conceptualise domestic abuse, and provide police and others in the justice system with a tangible mechanism to respond to this abusive behaviour when it is identified.

But we have some important caveats. The most important are:

(1) we do not favour a simple importation of any of the offences that have been enacted elsewhere, nor do we support any of the draft Bills introduced thus far in SA[1] or NSW[2] (though the NSW Greens' Bill is the closest to model legislation); and
(2) criminalisation should only occur if it there is a concomitant strategy of awareness-raising, education, training and adequate resourcing.

That is, we recommend not just the criminalisation of coercive control as a pattern of abusive behaviour, but criminalisation *done right*.

Outlined below are our detailed justifications for the introduction of a new standalone offence (Part I), information about the enactment and operation of coercive control offences in other common law jurisdictions (Part II) and our recommendations, including identifying critical issues in the development of a new offence (Part III). This submission largely reflects our earlier submission to the NSW parliamentary inquiry into this issue.

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PART I: WHY AN OFFENCE CRIMINALISING COERCIVE CONTROL IS NEEDED

A new, standalone offence criminalising coercive control is needed because:

- the cumulative effect of repeated abuse – physical and non-physical – results in significant harms to victims' health and human rights;
- non-physical abuse is widespread in the Australian community; and
- current laws do not adequately protect victims from either non-physical abuse or repeated abuse in general.

A. Non-physical domestic abuse is widespread

In July 2020 a large-scale survey reported the experiences of abuse of 15,000 Australian women aged 18 and over.[3] Of those women who had been in a cohabitating relationship at some point in the preceding 12 months, 11% reported having experienced coercive control (compared with 8% reporting physical violence and 4% reporting sexual violence). The most common forms of abuse experienced by those who were subject to coercive control were constant verbal abuse and insults, jealousy or suspicion about friends, and the monitoring of their time and whereabouts. This is consistent with research in other jurisdictions finding that psychological and economic abuse are the most common forms of domestic abuse.[4] Significantly, women who experienced coercive control were also likely to be subjected to *severe* physical and/or sexual abuse. With more than one in ten women in a cohabitating relationship in Australia experiencing coercive control, these results are deeply troubling.

Another troubling outcome that illustrates how coercive control permeates abusive relationships comes from findings in relation to intimate partner homicide. Research in Australia and elsewhere[5] has identified that women who are killed by their partners or ex-partners are likely to have been victims of coercive control by these men prior to their deaths. For instance, a detailed review of cases in NSW where a person killed their intimate partner revealed that in 77 of the 78 cases (99%) there had been a history of domestic violence where the male abuser had used coerciveand controlling behaviours (such as psychological and emotional abuse) towards his partner.[6] In fact, a history of coercive control in the relationship was a stronger predictor of intimate partner homicide than a disclosed history of physical assault (which was present in 86% of cases). There is also the currently under-researched issue of suicides caused by domestic abuse,which may be twice as prevalent as intimate partner homicides.[7]

Before leaving the issue of the prevalence of coercive control, we note that although we recognise that it is much more commonly perpetrated by men than women, we do not advocate for the introduction of a gendered offence. There have been a handful of cases in England and Wales in which women have been charged with or convicted of coercive control,[8] involving both male and female victims. Consequently, any legislation that is introduced should be non-gendered, such that offenders and victims can be male, female, or non-binary, and in heterosexual, homosexual or other types of domestic relationship.

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B. The effects of a repeated pattern of domestic abuse are severe

While the negative consequences of physical abuse are well-documented, accumulating research confirms the negative impact that *non-physical* abuse also has on victims. Depression, post-traumatic stress disorder, chronic stress, homelessness, an increased risk of being incarcerated, suicide attempts and high levels of substance abuse are just some of the consequences of being subjected to this form of domestic abuse.[9] Some studies have reported that psychological abuse has an even more negative impact than physical abuse, which is consistent with reports from victims.[10] In the words of one victim, '*It's the emotional scars that scar the worst, more so than the physical violence.*'[11] Currently, the effects of coercive control are largely absorbed by victims as private harms and by the community as a public health problem. It is appropriate that the criminal law is now used to protect victims from these harms.

Coercive control also breaches the fundamental human rights of victims, including their right to security, their freedom of movement, their freedom of opinion and numerous other rights. A human rights perspective informed both the development and introduction of relevant laws in the United Kingdom and Ireland. In part, those new laws were responding to an aspect of a human rights treaty: Article 33 of the *Istanbul Convention,* which requires all member states of the Councilof Europe to criminalise psychological abuse where it occurs as a course of conduct. While Australia is not a signatory to that particular treaty, the Australia Human Rights Commission has recognised that domestic and family violence breaches many of the basic human rights ofvictims.[12] Any new law addressing coercive control should be developed within the contextof seeking to protect the basic human rights of victims.

C. Existing legal mechanisms to protect victims from coercive control are inadequate

There are existing civil and criminal remedies that could arguably address coercive control. Each of these, though, even collectively, is insufficient.

i) Civil Protective Orders

Those who oppose the introduction of a coercive control offence sometimes assert that the conduct can already be prohibited through the operation of a protective order or similar. Yet the inadequacy of these orders in severe cases of domestic abuse has been recognised for many years. In summary:[13]

- not all family violence victims in need of a justice system response have an active protective order at the time of the abuse, effectively rendering much of the abuse lawful, and inhibiting police and others in the justice system from responding;
- protective orders are effective in many cases, but are routinely breached by intractable family violence perpetrators and clearly lack the effective and denunciative force required to protect all victims;

- breach offences carry low maximum penalties given the potentially serious and ongoing abuse that the contravention offence can capture (in Queensland, 3 years' imprisonment for a first offence and 5 years for a subsequent offence);
- protective orders perpetuate the excessive over-incarceration of Indigenous women in particular, with research specifically identifying this as an issue in Queensland;
- their civil nature and incident-based focus means there is a significant risk of cross-applications being made by perpetrators as a form of systems abuse;
- they can conflict with, and are subordinate to, family law orders;
- they are premised on the occurrence of individual incidents, not courses of conduct, and thereby carry a higher risk of misidentification of women as primary aggressors;
- police typically only impose these orders in situations involving alleged physical or sexual violence, leaving the financial and administrative burden of seeking a court-ordered intervention order on victims when the alleged abuse is non-physical; and
- state denunciation of domestic abuse should not depend on whether a court order was in place.

To be clear, intervention orders and criminal prosecutions for breaches of those orders have a proper role to play in the protection of victims, but it is wholly improper and inaccurate to suggest they have received 'scant regard'[14] in criminalisation debates thus far, or that they are sufficient to address the issue of non-physical abuse in domestic relationships. Further, we understand and share concerns about the potential effect of criminalising new behaviours for First Nations people in Queensland, especially women. Many of these behaviours are, though, already criminal and prosecuted when they occur in breach of an intervention order. It is that precondition to criminal justice intervention that we find unconvincing; domestic abuse must be recognised as wrong in its own right, not because a court ordered a respondent not to do it.

ii) Existing criminal offences

It should go without saying that if existing offences are capable of adequately capturing coercive control, there is no need for a new offence. There are multiple criminal offences in Queensland that could arguably be used to prosecute certain coercively controlling behaviours, such as threats to kill or seriously injure another person, actually damaging or threatening to damage another person's property, stalking, and more. These offences, however, perpetuate the current approach of viewing domestic abuse one incident at a time, inhibit the admissibility of other forms of (currently non-criminal) abuse, narrow the lens through which a sentencing court can view the abuse in context, and reduce the likelihood that victims, police and others will recognise the behaviour as coercive control. The same is true of false imprisonment offences.[15]

In particular, in Queensland it is theoretically possible to prosecute coercive control as a course of conduct using two existing offences: stalking and torture. However, shoe-horning coercive control into either of these offences is unsatisfactory for a number of reasons.

- First stalking offences will not capture many coercive controlling behaviours. Although

the Queensland offence of stalking is relatively expansively defined in that it includes causing 'detriment' (encompassing 'serious mental, psychological or emotional harm' as well as 'compulsion to do an act a person is lawfully entitled to abstain from doing'), it does not cover the entire range of behaviours that constitute coercive control (such as economic abuse and compelling a person to *refrain* from doing an act that they are lawfully entitled *to perform*). It is also unclear whether many forms of psychological abuse, such as seemingly minor conduct by a person that humiliates or treats the victim in a degrading manner, would fall under the range of behaviours prohibited by ss 359B(c)(i)-(iv) of the *Criminal Code*. Further, as we have argued elsewhere, while stalking offences in some Australian jurisdictions appear to be charged in the context of behaviours between *current* intimate partners, this does not accord with community and expert forensic understandings of the term 'stalking' and thereby inhibits reporting, detection and prosecution of coercive control where the prohibited behaviours occur between current intimate partners.[16]

- The same is true for the offence of torture (s 320A) and the proposed lesser offence of cruelty. If the offence of torture were capable of being used to prosecute coercive control, it would be a much more common offence. Instead, as we understand it, the offence is rarely prosecuted and has only been used in a family violence context in a handful of cases. This is likely due, in part, to the requirement that the 'pain or suffering' be inflicted intentionally, but also, we suggest, because the community, police and prosecutors would not immediately recognise coercive control as behaviour that could or should be charged as torture. If the government truly intends to criminalise coercive control, it should do so via a distinct and separate offence so that there is no confusion about the unacceptable nature of this pattern of behaviour.

- Finally, some coercive control behaviours are simply not criminalised. Intentional emotional abuse, for example, is a harm recognised as a tort in civil law but is not recognised as a criminaloffence *per se*.[17] Consequently, subjecting a partner to repeated and extreme degrading and humiliating abuse does not give rise *per se* to any remedy at, or protection via, criminal law.

PART II: A COERCIVE CONTROL OFFENCE CAN BE OPERATIONALISED AND WORKABLE – LESSONS FROM OTHER COMMON LAW COUNTRIES

Those who oppose the criminalisation of coercive control frequently claim that the behaviour is too hard to define for the purposes of the criminal law and/or that any relevant offence will be unworkable in practice. In this section, we highlight data from, and developments in, other jurisdictions that have criminalised repeated non-physical domestic abuse. This is important for a number of reasons. First, it demonstrates that it *is* possible to operationalise the concept of coercive control. Second, it gives us practical insights into how relevant offences that have been introduced in other jurisdictions work in practice.

A. Tasmania (2005)

In 2005 two new offences came into effect in Tasmania: emotional abuse and intimidation

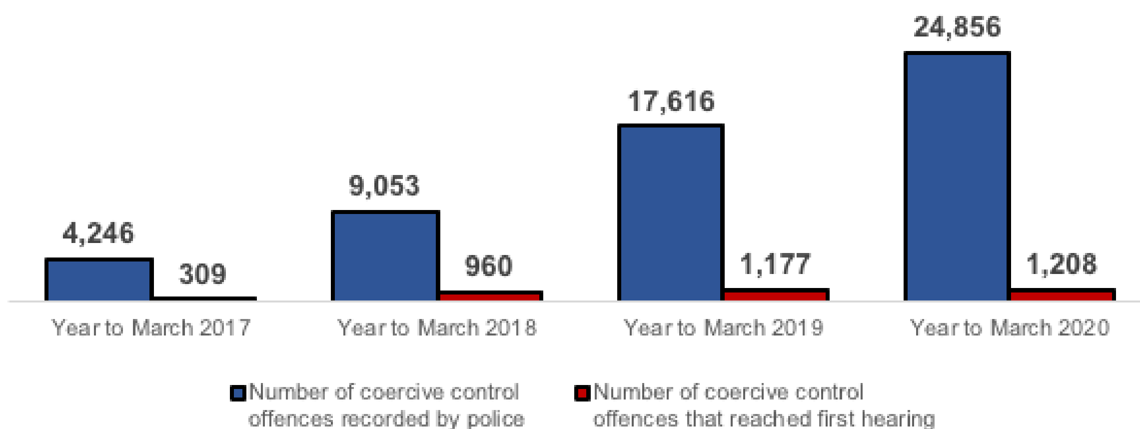
(*Family Violence Act 2004* (Tas) s 9) and economic abuse (s 8). In 2015, the Tasmanian Sentencing Advisory Council reported that there had been just 8 convictions for these offences in their first decade of operation.[18] Problems in the drafting of the offences may have contributed to the low prosecution rate,[19] although we note that there has been an increasing use of those offences in recent years.[20] The significant increase in the number of proven charges could be because of the extension of the statute of limitations (from 6 months to 12 months in October 2015), but we would attribute it to the increasing attention these offences have received, leading to greater awareness among those responsible for charging decisions.

B. England and Wales (2015)

On 29 December 2015, the offence of *controlling or coercive behaviour* came into effect in England and Wales. The first conviction was less than five months later, for a man who sent his partner photos of the women he thought looked better than her, required her to only eat tuna and beetroot, demanded she do a gruelling amount of exercise each day, and threatened to beat her if she didn't do what he said.[21]

In the year ending March 2017 police in England and Wales had recorded 4,246 coercive control offences. As shown in Figure 1 below, this has increased significantly each year since, to almost 25,000 recorded offences in the year ending March 2020.[22] Per capita this amounts to about 4 in every 10,000 people in England and Wales being recorded as having engaged in controlling or coercive behaviour in the year to March 2020.

Figure 1: Number of coercive control offences in England and Wales recorded by police each year to 31 March, and number of coercive control offences that made it to first hearing each year to 31 March 2017 to 2020



Published statistics and research indicate that the operationalisation of the offence (like the behaviour) is highly gendered. In a review of files at one police force, researchers found that 95% of recorded offenders were male.[23] In published Ministry of Justice data, of the 598 offenders who were found guilty of controlling or coercive behaviour in the three years to March 2020, 99% (591) were male and 1% (7) were female.[24] Similarly, in our own research (reviewing media reports of proven controlling or coercive behaviour cases), we found that over 99% (106 of 107) of offenders were male.[25] The one exception involving a female perpetratorand a male victim in our research was a genuine instance of coercive control.[26] Significantly,each of the exceptional cases in which women have been prosecuted appear to be

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genuine instances of coercive control rather than cases of misidentification, thereby addressing the concern that the introduction of the offence would incorrectly identify female victims as perpetrators .[27] Moreover, this gendered operationalisation occurred in a jurisdiction frequently criticised for the lack of training police received in relation to the new offence.

Sentencing outcomes in England and Wales are also illustrative. In the year ending March 2020, 70% (193 of 276) of offenders convicted of controlling or coercive behaviour received a prison sentence, while the other 30% received a suspended sentence or community order. These outcomes address a further concern voiced by critics: that the introduction of a new offence will contribute to overincarceration. As this data illustrates, criminalisation is not necessarily synonymous with incarceration. Imprisonment is just one of the many sentencing options available to courts, and in appropriate cases other sentencing orders such as an Intensive Correction Order or Community Correction Order can and should be imposed.

C. Ireland (2019)

On 2 January 2019 the offence of *coercive control* came into effect in Ireland. To date, there has been just a handful of reported convictions for the offence. The first conviction (following a guilty plea) was in February 2020, involving a man who physically assaulted his partner, made nearly 6,000 phone calls to her within a three-month period, made her take her phone with her wherever she went so that he knew where she was, burned her clothes and broke her hair straightener to deter her from leaving the house and socialising, and left threatening phone messages when she escaped to a hotel.[28]

The second conviction, in November 2020, followed a jury trial and resulted in a 10.5-year prison sentence (the accused was also found guilty of intimidation and multiple assault offences).[29] The offender had smashed his former partner's phone, cut her face and neck with a pizza slicer, taken control of her social welfare income, isolated her from friends and family, threatened to drown her, threatened to kill her family, verbally abused her (including calling her a 'disgrace' and a 'waste of space'), dragged her by her hair, punched her and stamped on her head and arm, breaking the latter.

As of August 2020, there were 'a number of additional cases … before the courts' and 'investigations were ongoing in 32 other' cases.[30] More recently, the number of cases under consideration has been estimated to be 'at least 50'.[31]

D. Scotland (2019)

On 1 April 2019 Scotland's *domestic abuse* offence came into effect. Early statistics are promising. In the first few months of operation, 'more than 400' offences had been reported to police, and 13 people were convicted.[32] In the first financial year of operation (2019–20) there were nearly 1,700 domestic abuse offences reported to police – 94% of alleged perpetrators were male and the offences had a 69% 'clear up' rate (which we understand to mean police considered there to be sufficient evidence to conclude the offence had actually occurred).[33] Also in that first year of operation, police referred 1,065 charges to the Scottish prosecution service, 96% of which resulted in criminal proceedings (including 24% of which were charged on the basis that some of the behaviour was directed towards, used, or occurred in the presence

of a child: Scottish *Domestic Abuse Act* s 5); 96% of perpetrators were male. Theconsiderable uptake of reporting, recording, and prosecuting coercive control offences in Scotland is often attributed to the careful consultation that preceded enactment of the new offence, as well as the widespread training that both preceded and followed the new offence coming into operation.[34]

E. Northern Ireland (2021)

In January 2021, Northern Ireland became the final jurisdiction in the United Kingdom to criminalise coercive control (only the formality of royal assent remains). While there is no data to call upon yet, we would encourage the members of this Taskforce to review the transcribed debates that occurred during the various stages of the Bill's passing. They demonstrate the near-unanimous cross-party support for the legislation, the value of victim-survivor input during iterative drafting of the legislation, the fundamental import of awareness-raising, training and resourcing co-occurring with criminalisation, and the need for jurisdiction-dependent sensitivity rather than the simple introduction of an offence developed elsewhere.[35]

F. Canada (2021)

While no Bill has yet been passed, earlier this year a Canadian parliamentary inquiry unanimously recommended that coercive control be criminalised (just as the cross-party NSW parliamentary inquiry did in June this year).[36] The debates leading up to, and contents of, their final report would be a useful point of reference for the Taskforce.

G. Other jurisdictions

We would also advocate those responsible for drafting any new offence to look broadly. Other countries, such as Sweden (1998: *gross violation of a woman's integrity*[37]), Portugal (2007: *mental abuses and deprivations of liberty*[38]) and France (2010: *psychological violence*[39]) have also introduced offences targeting a pattern of physical and non-physical domestic abuse.

PART III: RECOMMENDATIONS

In this section we highlight our key recommendations for this committee.

A. Draft and enact a new offence

In addition to it being critical that any legislation in Queensland does not merely copy and paste the language of legislation in another country, we also do not believe that any of the four Bills attempting to criminalise coercive control introduced thus far in other States of Australia (New South Wales and South Australia) should form the basis of a coercive control offence in Queensland. Most have substantial – or in the NSW Greens example, at least moderate – issues that would need to be addressed.

Problems in existing Bills include:

i) The Labor Bill in SA defines *mental harm* to include emotional harm in s 14B, which is discordant with that definition of that same term elsewhere in the Act (s 21 of the *Criminal Law Consolidation Act 1935* (SA); does not include physical or sexual violence, both of which are key aspects of coercive control; allows for a consent defence in s 14C(3)(a), which is incongruous with an offence directed at the subversion of another person's liberty/autonomy; applies extra-territorially as per s 14C(4), with no need for a connection to South Australia; allows a single incident to constitute coercive control in s 14C(5), whereas coercive control is inherently a *pattern* of behaviour; and on various occasions suggests that a government entity will be given the power to make regulations expanding or constraining the scope of the offence, a task we would be very wary about taking out of the hands of parliament.

ii) The Private Member's Bill in SA has an overbroad definition of *in a relationship* (yet excludes post-separation abuse) and does not define the behaviours that would constitute 'controlling or coercive behaviour'.

iii) The Labor Bill in NSW does not define the abuse as a pattern of behaviour (which is fundamental to a coercive control offence), uses an over-broad definition of *domestic relationship*, and does not specify what the mental element of the offence should be.

iv) The Greens Bill in NSW is the closest to model legislation in Australia, but there are still issues, particularly in the list of behaviours recognised as abusive. For instance, it relegates economic abuse to a subsidiary clause in s 14A(4) rather than including it as abusive behaviour directly in s 14A(2)(a)(ii), losing the signalling effect of gathering the behaviours in a single location; arguably includes an improper rebuttable presumption that a domestic relationship existed; rather than defining *violent* behaviour in s 14A(11), s 14A(2)(a)(i) could more simply read 'is menacing, intimidating, or *physically or sexually* violent' to be more clear about the inclusion of sexual violence; and by legislatively permitting courts to take judicial notice of the trauma of abusive behaviour in s 25AB of the *Sentencing Act* (i.e. 'the common experience of courts') arguably unnecessarily allows each judicial officers' anecdotal experience – as opposed to factual submissions of counsel – to play a role in their decision-making.[40]

We raise these issues not to undermine the efforts made by those who have introduced these Bills, nor those who have advised them or consulted with them. Instead, reviewing and contrasting them highlights issues for consideration that may otherwise have been missed.

B. Consult transparently and widely

In drafting a new offence, there should be wide-ranging, non-partisan, transparent and iterative consultation about any new offence. During that consultative process, the following substantive matters must be considered:

(i) What relationships are covered?

There is no consistent approach in overseas jurisdictions as to what relationships the prohibited

behaviours must occur within. While they uniformly include current intimate partners, regardless of cohabitation, they then distinguish between whether they include former partners (and if so, whether the former partners are cohabitating) or other family members (and if so, which family members). We offer no firm view on this aspect of a coercive control offence in Queensland because there are varying persuasive arguments as to where the line should be drawn. We would, though, at a minimum, include both current and former intimate partners, regardless of cohabitation. Given the relative ease of drafting a provision to exclude reasonable behaviours of parents towards their minor children, we consider any suggestion that coercive control legislation has or would necessarily capture this conduct to be wholly irresponsible.[41]

(ii) Should proof of actual harm be required?

An offence that criminalises non-physical abuse must address the foundational and distinctive issue of whether actual harm caused by the abuse must be established. Should a victim be required to give evidence of the actual effect of the abuse, perhaps supported by expert psychiatric or psychological evidence? Or is it sufficient that the behaviour of the offender would be *likely* to cause psychological harm to a reasonable person in the victim's circumstances? There is also no consistent approach to this offence element in overseas jurisdictions.

It is not necessary to prove actual harm in Tasmania or Scotland, while in Englandthe behaviour must have had a 'substantial effect' on the victim's 'day-to-day activities'. The argument in favour of requiring that actual harm be experienced by the victims is that it concretely restricts the scope of the criminal law to instances where the perpetrator has actuallycaused harm to another person. This argument is, however, in our view, outweighed by those against requiring a harm element.[42] Requiring proof of harm would mean that victims would need to testify about the extent of their psychological trauma, and then be subjected to the rigours of cross-examination. It also places the burden on the victim to have been harmed by behaviour, even if the behaviour is objectively wrongful, and this creates especial difficulties in prosecuting coercive control in relationships between those who are migrants or refugees and whose relationship predated their emigration from a patriarchal culture. There are mechanisms available for limiting the application of a coercive control offence to genuinely wrongful behaviours without requiring proof of actual harm to the victim. In particular, the offence can be premised on a subjective mental state by the perpetrator (intent or recklessnessabout causing certain harms) and an objective analysis of their behaviour (unreasonableness in all the circumstances). To that end, consideration should also be given to whether the reasonableness of the alleged offender's behaviour should be (a) an element of the offence via unreasonableness, thereby requiring proof beyond reasonable doubt (b) a defence to the offence via reasonableness, lowering the standard to a balance of probabilities, or (c) both.

(iii) What should be the maximum penalty?

What is the appropriate maximum penalty for a coercive control offence, and should it be an indictable or summary offence? The maximum penalties for coercive control offences vary considerably in jurisdictions that have criminalised it. They range from 2 years in Tasmania, to 5 years in England, Wales, and Ireland, to 14 years in Scotland and Northern Ireland. While we offer no firm views on what the exact maximum penalty should be, we do caution against it being too low. There will be a very broad spectrum of cases captured by this new offence, particularly if (as it should) it includes physical and sexual violence. A new offence will capture comparatively low-level offending (such as abuse falling in the lower end of objective seriousness occurring over a brief timespan) as well as comparatively high-level offending

(such as abuse occurring over years, even decades, underscored by a litany of psychological, economic, physical, and sexual violence). The maximum penalty must allow for those more serious cases, but not in a way that expects the average/median sentence to necessarily be that high in the majority of cases.[43]

(iv) Should there be an aggravated form of the offence?

We would also caution against having an aggravated version of the offence (not present in any other jurisdiction that has criminalised coercive control), because it can result in inconsistency due to plea negotiations and can adequately be addressed by classifying the offence as one that is indictable but triable summarily (thereby limiting the maximum penalty when it is prosecuted in a Court of summary jurisdiction).

(v) Should children who witness abuse thereby be deemed victims?

Children are witnesses to domestic abuse, weaponised for the purposes of abuse, and victims of abuse. Any coercive control offence should recognise this, taking particular guidance from the Scottish legislation.

(vi) Should companion animals be included as indirect targets of abuse?

Immense emotional and psychological harm can be done to victims by killing, torturing, or otherwise harming their companion animals. This should be acknowledged in the drafting of the offence.

(vii) Should the offence operate retroactively?

It is a fundamental tenet of the criminal law that it does not operate retroactively to punish pre-criminalisation conduct unless there is a clear legislative intention to that effect. Given that coercive control is by its nature a course of conduct offence, it is very likely that in the initial years of operation there will be many cases in which the alleged abuse straddles the time period before and after commencement of the offence. We have found a number of cases in England and Wales where this nuance, unaddressed in their legislation or statutory guidance framework, appears to have led to some offenders being convicted of pre-commencement behaviours.[44] Consideration should be given to whether an Australian offence should operate wholly retroactively (which we do not advocate), or alternatively, which of the more plausible options should be taken: no retroactive application at all, or a limited retroactive application only in instances where the alleged abuse occurs both before and after commencement of the new offence, in order to avoid the legally-desirable but factually-artificial approach of segmenting a single pattern of abuse.

(viii) Should behaviours or their effects be prohibited?

The jurisdictions that have criminalised coercive control have, rather than focusing on the specific behaviours of the offender (which are myriad and unpredictable), instead focused on the *effects* that the offender's behaviour will have on the victim (which are myriad but far more predictable and consistent). The same approach should be taken in Queensland. However, those behaviours or effects are defined, at a minimum the offence should capture actual or threatened physical or sexual violence, social isolation, humiliation and degradation, monitoring, manipulation, and economic abuse. The latter in particular has been overlooked in most other jurisdictions' legislation, despite the centrality of economic abuse in coercive control. The new offence must also, though, be drafted in a way that effectively captures genuine instances of abuse while not capturing other behaviours. The criminal law is a 'measure of last resort'[45] and

any offence that criminalises coercive control should be drafted to capture the wrongful harmsto which such an offence is directed, but no more. We would also caution against the term 'coercive control' actually appearing in the legislation itself; it is a useful shorthand during these discussions, and will be invaluable during the education and awareness-raising that should coincide with criminalisation, but using it in the legislation itself would unnecessarily tie the prohibited behaviours to a particular model. We prefer the approach taken in Northern Ireland's and Scotland's legislation, describing the offence more generally as 'abusive behaviour'.

C.Any new offence must be accompanied by extensive education and training

Thus far, the most successful operation of one of the new coercive control offences appears to have been in Scotland, which in a few short months had already seen 'more than 400' recorded offences and 13 convictions.[46] An extensive consultation process preceded the introduction of that offence. It involved extensive consultation with victim-survivors and their advocates, the driving presence of *Women's Aid Scotland*, and the engagement of police, prosecutors, and other key workers. The extensive consultation process resulted in multi-party support for the Bill, which was passed unanimously. Before the offence of domestic abuse came into effect, most Scottish police had received some training, with about one-third receiving intense training. In contrast, when the English/Welsh offence came into operation, just 8 of the 48 police forces had received training, which no doubt explains why a slow initial uptake followed by a doubling in the number of recorded offences each year. The difference that training can make is clear: In England, there were 41% more arrests for coercive control in police forces that had beentrained in the new offence compared to those that had not.[47]

Prior to the commencement of a new offence there should be full and proper training for anyone whose work will be affected by the new offence – the judiciary, prosecutors, defence lawyers, police, domestic violence service providers, and other frontline responders such as paramedics. The comparative experiences in Scotland versus England and Wales provide examples of the impact of proper pre-commencement training on the reception and operationalisation of new offences dealing with this abuse.[48] That training should then be provided on an ongoing basis. In this context, we are heartened to see the NSW Greens Bill specify that the offence would not commence until 12 months after enactment. This would allow organisations responsiblefor awareness-raising and training the necessary time to develop (and deliver) those campaigns and programs in full knowledge of the final text of the Bill. We advocate training that followsthe proven footsteps of (and perhaps even involves) organisations such as *SafeLives UK,* basedon best practice adult education methods.[49]

D.Provide the necessary resources

The effective implementation of a new coercive control offence will be largely dependent on the willingness of the Queensland government to whole-heartedly embrace this reform and resource it appropriately. This will not be a cheap endeavour in the short-term. But the investment in doing this right is not only a moral obligation, but a financially sound one. Nationally, KPMG has estimated the annual cost of violence against women and their children to be between $22 billion and $26 billion, more than $4 billion of which is borne by governments.[50] The shift in community conceptions of domestic abuse as a result of criminalising coercive control, and consequent protection of victims and deterrence of further such behaviours, has the potential to, in the medium- and long-term, significantly reduce that

figure.

E. Plan for measurement and evaluation

As a course of conduct offence, intentionally designed to include behaviours that are already criminal in addition to some that are not, measuring the prevalence of coercive control, the effect it has on recorded crime statistics for other offences, or even its own crime statistics, will be a complex exercise.[51] A single recorded offence can capture years of abuse, potentially reducing the number of recorded (for example) threat offences, even though the prevalence remains the same. The various behaviours may also be recorded by police as their individual incidents but then charged or resolved as coercive control. The value of a coercive control offence may also occur in spaces far outside police statistics, such as reduced misidentification of women as primary aggressors in response to alleged breached of intervention orders, or an unmeasurable reduction in domestic abuse consequent to increased community awareness following the introduction of a new offence. Even separate to police statistics, surveys of people's experience of coercive control may well suggest an increase in such behaviour because criminalisation will invariably improve awareness, which in turn will lead to a greater willingness to identify it and report it. We raise these potential implications only to highlight the importance of considering how to measure any new offence, and especially what the effect of a new offence will be, prior to enactment.

CONCLUSION

We recommend the criminalisation of coercive control, extensive consultation on draft legislation, and concomitant awareness-raising, education and training, and resourcing.

Kind regards,

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