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CREATE CHANGE

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## Submission to the Women's Safety and Justice Taskforce

### Re: Discussion Paper 1

Dear The Hon Margaret McMurdo AC,

Thank you for the opportunity to comment on the 13 Recommendations made in Discussion Paper 1 of the Taskforce's inquiry.

I am a Professor of Law at the University of Queensland. For almost 20 years, I have researched the impact of the law and legal processes on vulnerable people. My research studies have focused on issues such as homelessness, child protection, and alternatives to criminalisation. I have also recently undertaken research on adolescent family violence (with Prof Heather Douglas, University of Melbourne) and community justice initiatives (with A/Prof Robin Fitzgerald, University of Queensland).

I note that the Discussion Paper recommends a criminal law response to this complex issue. In particular, the Discussion Paper recommends the creation of a number of new offences including: cruelty; coercive control; and commit domestic violence.

There is no doubt that the safety of women and children should be a national priority. Domestic violence is a complex problem that requires broad-based solutions. It is a problem that should be addressed urgently.

**Women and children have a right to personal safety.** The UN Convention on the Rights of the Child states at Article 3 that State Parties should 'undertake to ensure the child such protection and care as is necessary for his or her well-being.' The International Covenant on Civil and Political Rights recognises at Article 3 that men and women have equal rights to 'the enjoyment of all civil and political rights' which necessarily include the right to life (article 6) and the right to be free from cruel, inhuman or degrading treatment (article 6). Women and children also have a right to be afforded dignity and respect. These rights are now recognised by our *Human Rights Act 2019* (Qld).

**However, I am not supportive of expanding the role of the criminal law in our response to domestic and family violence.** I am of the view that there will be unintended consequences should a criminal law response be relied upon to address this complex problem.

All of my research on the impact of the criminal law on vulnerable people has suggested to me that:

- the **criminal law is a blunt instrument** for resolving complex interpersonal and social problems;
- criminal law interventions have the effect of **further entrenching vulnerable people within the criminal law system**, making it more difficult for them to rebuild their lives, become productive citizens and treat others protectively and respectfully;
- criminal law interventions **often do not have a protective effect** on victims specifically, or society generally – rather they are inherently criminogenic and serve to increase the anger and frustration felt by perpetrators;
- criminal law responses are more likely to **impact negatively on Aboriginal and/or Torres Strait Islander peoples** – Indigenous people are more likely to be arrested, more likely to be charged, more likely to be convicted, and more likely to receive harsher penalties when sentenced for family violence offences;
- criminal law responses to domestic violence are likely to be **used against female victims by male perpetrators** – it is well-established that violent men frequently make allegations of violence against their female victims in retaliation, to minimise their own violence, or to gain an advantage in parenting proceedings;
- criminal law responses have the obvious effect of **increasing the prison population** – this has both social and economic costs;
- criminal law interventions can indirectly result in **deaths in custody**, even in situations where there is no evidence of misconduct on the part of police or corrective service officers – for example, when people who are intoxicated are placed in prison cells, or depressed and suicidal men are incarcerated with limited mental health support.

At a time when there is increased recognition of the importance of reducing the number of Aboriginal and/or Torres Strait Islander peoples in custody, I submit that widening the criminal law net is not an appropriate response.

My most recent research with Prof Heather Douglas has suggested that Aboriginal and/or Torres Strait Islander young people, for example, are significantly over-represented amongst young people charged with family violence offences.

In our most recent study (not yet released), we undertook a quantitative analysis of unpublished administrative data collected by the Queensland Department of Youth Justice. We were provided with information on every young person who was charged with a family violence flagged offence that was finalised between 2013/14 and 2018/19. There were 734 cases involving 270 young people during that period. We also obtained access to a random

sample of 30 of these young persons' youth justice files so that we could obtain more detailed qualitative information in relation to this sub-set of cases.

We found that:

- 60% (n=161) of the 270 young people charged with family violence offences were Aboriginal and/or Torres Strait Islander;
- 18% (n=49) of the 270 young people charged with family violence offences were female;
- 9% (n=24) of the 270 young people charged with family violence offences were Indigenous females;
- 13 of the 30 files we analysed concerned Aboriginal and/or Torres Strait Islander young people, ten of whom were male and three were female;
- Aboriginal and/or Torres Strait Islander young people were significantly more likely to be charged with more serious offences and receive a harsher penalty.

We have concluded from this research that arrests and convictions for family violence offences impact most heavily on Aboriginal and/or Torres Strait Islander young people. It appears to us that **criminal law responses to family violence are actually having the effect of entrenching Aboriginal and/or Torres Strait Islander young people – and especially Indigenous girls – in the criminal law system.**

Further research is required to determine why family violence offences tend to impact more harshly on Aboriginal and/or Torres Strait Islander people, however it is likely to be the result of:

- increased criminal law involvement generally, including increased policing of Indigenous communities;
- increased involvement of other systems with the family, including child protection, social housing and other social service system engagement;
- the ongoing legacy of colonisation and the Stolen Generations on intergenerational trauma, grief and anger.

The Royal Commission into Aboriginal Deaths in Custody recommended a health-focused response to the offending behaviour of Indigenous people with a focus on treatment, rehabilitation and 'preventative education and counselling.'

Certainly, there will always be a role for criminal law responses in addressing the problem of domestic violence. However, I would submit that the mechanisms to do this already exist in the *Domestic and Family Violence Protection Act 2012* (Qld) and the *Criminal Code*.

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I was hopeful that the Taskforce would adopt an approach that relied less on the criminal law, and more on the social service system to respond to violence against women. The areas of need that are consistently identified in my research are:

1. housing for male perpetrators to facilitate the use of ouster orders by police and courts so women and children can remain in the family home;
2. short- to medium-term housing for women and children who have escaped domestic violence to supplement and relieve existing crisis accommodation services; and
3. perpetrator programs.

**The criminal law can, itself, inflict violence on women** – by imposing inappropriate sentences on perpetrators that put women at increased risk of violence, and by mis-characterising women as perpetrators in situations where they are acting in self-defence or in resistance of male violence.

Invariably, the priority for women is achieving safety. Any legal response should focus on this goal, and the research does not suggest that the criminal law is best placed to achieve this.

Thank you for your consideration of this important issue.

Yours sincerely



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