

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



**Queensland
Council of Unions**

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Introduction

The Queensland Council of Unions (QCU) is the peak union organisation in Queensland representing twenty-six affiliated unions and the voices of more than 350,000 Queensland union members. Two of our key affiliates represent service providers and frontline police responders in the space of domestic and family violence (DFV), being The Services Union and the Queensland Police Union.

In addition to advocating for industrial and political reform, the QCU also advocates around a range of social issues, including reforms to reduce and ultimately eliminate gender-based violence both within workplaces and in our community.

In this context, the QCU wrote to the Queensland Premier during the October 2020 state election supporting the creation of a standalone domestic violence offence and reform in this area, and for the provision of specific funding and resources to train and resource police and community services to ensure the effective implementation of any new laws, and to provide ongoing education and support services for the community. The QCU therefore welcomes and supports the establishment of the Women's Safety and Justice Taskforce to consider options for legislating against coercive control and the creation of a standalone domestic violence offence.

Queensland has led by example in important reforms to family and domestic violence, more recently through the 2015 *Not Now, Not Ever Report* and subsequent legislative reforms around DFV. However, it is clear that there is further work to be undertaken to significantly reduce gender-based violence, DFV offences and coercive control.

Every worker, every community member, every member of our society has a right to live and work with dignity and respect. Being subjected to any form of gender-based violence, including coercive control, is counter to these essential rights of all members of our communities and workplaces.

Additionally, while coercive controlling behaviours often occur in homes and within family relationships, coercive control, just like other forms of DFV, can also spill over into the workplaces of victims, affecting them as well as at times their co-workers.

It is for these reasons set out above that the QCU is making submission to the Taskforce.

Why is Coercive Control such a Problem?

The *Not Now, Not Ever Report* of 2015,¹ identified that there were 66,016 occurrences of reported domestic and family violence incidents in the 2013-14 period, equating to over 180 DFV incidents

¹ Queensland Government (2015) *Not Now, Not Ever 'Putting an End to Domestic and Family Violence in Queensland'* (the '*Not Now, Not Ever Report*').

being reported across Queensland every day. Sadly, 17 murders relating to DFV occurred in Queensland during 2012-13.²

In the context of coercive control, while 13.1 per cent of women in a current, cohabiting, heterosexual intimate partner relationship had been sexually assaulted, 33 per cent had been subjected to non-physical abuse by their current partner,³ perhaps an indicator of the size of coercive control compared to reported physical acts of DFV.

Despite the improvements recommended and implemented in that Report, six years on, Queenslanders continue to experience DFV,⁴ including coercive control, at alarming rates. Distressingly, it would appear that some incidents resulting in outright murder are also escalating. For example, the violent murder of Hannah Clarke and her three children in February 2021, and the similar murders of Doreen Langham in February 2021, and Kelly Wilkinson in April 2021.

For unions representing both frontline responders and support workers, it is despairing that these women and other sufferers of DFV continue to be murdered in such violent circumstances, and in circumstances where there is often no previous recorded history or interaction with the DFV or criminal system, but as has come to light afterwards, had evidenced previous patterns of coercive controlling behaviours.

Legislative Options for Coercive Control

While the Taskforce Discussion Paper outlines a number of options for legislative reform, the QCU prefers to make general comments in this regard. **The QCU is supportive of a multi-faceted approach to regulating and criminalising certain aspects of DFV as not every incident of DFV is the same.** For instance, police are often called to an incident in a person's home where there has been a triple zero call made and there is a recent or imminent and immediate threat of physical violence to a person(s) and/or property.

This may include police identifying whether a physical act has occurred or a threat of a physical act. However, identifying aspects of coercive control are much more complex and potentially nuanced, as this generally involves being able to identify a pattern of repeated behaviours either in the current relationship, or in a previous relationship(s). There may also be other criminal behaviours such as unlawful stalking that are also difficult to pinpoint at the point of the intervention when police arrive at a home.

² *Not Now, Not Ever* 6.

³ *Ibid.*

⁴ The QCU recognises that, while both women and men are subjected to DFV, the overwhelmingly pattern is of abuse by men against women.

On that basis, it is recognised that **police and victims need to have a suite of options available to them in order to better respond from a safety, efficacy, and prevention perspective.**

Legislating for a coercive control offence

Coercive control is currently covered as a form of domestic violence in the *Domestic and Family Violence Protection Act 2012* (Qld) (the *DFVP Act*). Domestic violence includes, among other things, emotional or psychological abuse, economic abuse, or coercion.⁵ Coercion means a person has compelled, or forced another person to do, or refrain from doing, something.⁶

However, while not limiting these definitions of domestic violence, the examples of domestic violence cited in the Act primarily refer to coercion or other behaviour in the context of physical acts, or threats relating to physical acts.⁷

Some of these behaviours are also criminal offences under the Queensland Criminal Code such as assault, threats of assault, strangulation, and unlawful stalking.

As can be seen, the intersection of different offences and laws as well as between the civil and criminal jurisdictions means this can be a complicated space for police to attend to within the context of a single incident response.

Internationally, legislative reform which focuses on the criminalisation of coercive aspects of DFV has occurred, notably in the United Kingdom and most recently in Scotland. In Scotland, a specific offence of ‘domestic abuse’ was created covering physical, psychological and emotional behaviours.

Under Scottish law, a person is taken to have committed an offence if –

- a person (A) engages in a course of behaviour which is abusive of A’s partner or ex-partner B; and
- a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm; and either
 - A intends by the course of behaviour to cause B to suffer physical or psychological harm; or
 - A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.⁸

Psychological harm includes fear, alarm, and distress.

⁵ *DFVP Act* s 8(1).

⁶ *Ibid* s 8(5).

⁷ *Ibid* s 8(2).

⁸ Domestic Abuse (Scotland) Act 2018.

Abusive behaviour is defined as violent, threatening or intimidating at the person, their child, or another person that has the purpose of or is reckless in resulting in physical or psychological behaviour that has the effect, or is likely to have the effect of:

- making B dependent on, or subordinate to A;
- isolating B from friends, relatives, or other sources of support;
- controlling, regulating, or monitoring B's day-to-day activities;
- depriving B of, or restricting B's freedom of action;
- frightening, humiliating, degrading, or punishing of B.⁹

Violent behaviour includes sexual and physical violence.

The offence of domestic abuse as outlined in this legislation clearly encompasses that of 'coercive control', in particular the ways in which a perpetrator may go about intentionally or recklessly inflicting psychological harm upon another person. It is considered to be a good example of how Queensland legislation could be drafted.

Consideration should also be given to other reforms to the *DFVP Act*. For instance, currently when police issue an ouster notice to a perpetrator the person is initially removed from a location, but is also able to, and often does go straight back to the property. In some cases, this results in further and amplified violence occurring. Stronger powers should be considered to enable police to detain perpetrators where they assess the risk of such behaviour is significant and to ensure victims are kept safe.

Unintended Consequences

Currently, attempts to survive or resist DFV may result in criminal charges being laid against a long-term victim of DFV. However, this is often difficult to ascertain when police are responding to a stand-alone incident of DFV. Where these types of allegations are made, it is considered that these are more appropriately dealt with by other team members who have the time and expertise to interview and assess a situation that may involve coercive control and long term DFV.

Additionally, in any criminal offence for domestic abuse or violence, specific regard needs to be factored in to establish defences that consider the nature and degree of harm or injury, longer term repeating and cumulative controlling behaviours, and where one party is in a significantly different position of power and control.

⁹ Ibid s 2(3).

DFV is not just about a criminal charge. It needs to be considered from the perspective of power and controlling behaviours that have often developed and occurred over a period of time.

Resourcing and Co Responder Model

It is understood that up to forty per cent of frontline policing time is currently spent in relation to DFV matters. A very real and practical element of applying existing, and prospective new laws in this space should therefore be the workload that accompanies them. The QCU believes that where any efficiencies can be identified in policing roles and activities, support should be considered to better enable response and follow up times for all elements of DFV by police and other support officers.

For example, current evidentiary requirements which require police to provide a written report of the incident when in some cases, body camera recordings of interviews with the parties and/or witnesses may suffice in civil matters where the courts are able to relax formal evidentiary rules.

In addition, indications from police are that in response to an emergency incident involving allegations of DFV, first responders are focused by necessity on an immediate and imminent risk to a person or property. **Their approach is to triage their response based on the immediate safety of the persons and the environment they are facing.** Clearly, this will not necessarily identify any previous behaviours or other patterns of non-physical abuse such as coercive control.

Police have also indicated that there are issues with the processes under the *DFVP Act* for civil orders which take up significant time of officers. One suggestion which the QCU believes has merit has been to review the current orders is for police to be able to issue an on-the-spot infringement notice for minor civil DFV offences, which can then be challenged by perpetrators in the Magistrate's Court. This of course would accompany any other charges that may also be made of a criminal nature such as the proposed coercive control/domestic abuse offence if they are evident.

It is considered that this process would significantly reduce the amount of time frontline police officers are faced with in terms of responding to incidents of DFV, currently taken up with processing paperwork and in time spent attending in the civil courts.

Where there are other identified factors that are considered a risk within a risk assessment framework, the adoption of a 'Co-Responder' model including a multi-disciplinary team of social workers, counsellors and other experts should be adopted. Specific non frontline police officers with expertise can then take over specific investigations into matters when an assessment has been made there is a high risk of coercive control, such as currently applies in child protection matters.

Given the significant resourcing of this type of model, it is suggested that consideration is given to a dual pilot of this Co-Responder model in a Brisbane region and a more regional or rural/remote region in Queensland to review the efficacy of the model in different environments.

Training

Training around DFV and coercive control should be mandatory for all Queensland police officers. Induction and ongoing training needs to be provided by experts in domestic and family violence who also have an understanding of coercive control in an ongoing manner. This is best delivered in a face to face environment because it is about educating all police about causes, drivers and behaviours relating to DFV and coercive control in order for all officers to better understand and identify particular risk factors involved in a DFV incident.

In this context, any training around DFV needs to be considered from a number of perspectives including that DFV forms part of gender-based violence within the community and disproportionately affects women and other groups within the community such as the LGBTIQ community, people with disabilities, some CALD communities, and indigenous persons in order to better understand the drivers and responses to instances of DFV, including coercive control.

Media

Current media reporting about DFV incidents needs significant redress. For instance, consider how many DFV murders of women are categorised as someone dying or being killed, at the same time as the predominantly male perpetrator is portrayed as the 'loving Dad who was just pushed too far'.

On a more positive note, recent media stories in magazines and some papers has sought to highlight what coercive control is. This should be commended.

In addition, overseas experiences where modern soap TV shows have incorporated story lines involving coercive control have also proven useful to increase the community's awareness about coercive control and to better assist with changing cultural attitudes. These should also be strongly encouraged within Australia.

Evidence

Potential evidence that is currently gathered by police body camera recordings should be considered within the scope of the *DVFP Act* where it is relevant to an incident. If a model for infringement notices for minor offences is adopted, this would be also useful information for a Court to consider in documenting at least the initial interviews conducted by police after their arrival at an incident.

The QCU supports the adoption of this specific recommendation of the *Not Now, Not Ever Report* for admissibility of body worn camera video recordings made at the time of the initial police

intervention in a criminal offence so as to limit the need for a victim to give evidence in Court and be re-traumatised over again.

If a coercive control/domestic abuse criminal offence is introduced, then consideration should also be given to admissibility of this evidence (where relevant) that also negates the current similar fact and propensity and hearsay evidential rules. This should enable their use in situations such as:

- when a victim is too traumatised to provide evidence,
- when a victim is in fear of their safety if they give evidence, or
- when a victim has changed their version of events.

Post Offence Monitoring and Supervision

The QCU believes that there is also value in monitoring and where relevant supervising perpetrators of DFV after an offence has been found to have been committed similar to existing community service orders. This should extend to where PPNs have been issued. Similar to the issue of police resourcing, however, it may be more appropriate that this function is given to correctional services officers who already provide similar functions, but who would also need to be provided with specific training and resources to understand the context and risk factors for reoffending in matters of DFV and coercive control. For example, training in undertaking a risk assessment and specific risk factors. Consideration should also be given to mandatory training programs for perpetrators around causes and drivers of gender-based violence, which also incorporates learnings from particular segments of the community around DFV, coercive control/domestic abuse, such as LGBTIQ people, indigenous, some CALD groups, people with a disability etc.

Impact on Workplaces

DFV impacts not just on individuals, their families, and the community, it also intersects with Queensland workplaces. Currently, only state public sector and local government employees receive access to ten days paid domestic and family violence leave under the provisions of the *Industrial Relations Act 2016* (Qld). Long term casuals only have access to two days unpaid leave.

No such provision exists under the *Fair Work Act 2009* (Cth) which applies to all other employees in Queensland.

In response, many unions have sought and continue to seek agreement from employers to paid family and domestic violence leave. The QCU notes that the Victorian Government has recently updated its paid leave arrangements to give access to up to 20 days paid DFV leave.

Many women workers in particular, are disproportionately employed within long term insecure work arrangements and do not have access to any of these type of leave arrangements, which can then exacerbate their financial situation.

Clearly, when victims of DFV are subject to coercive controlling behaviours such as control over behaviour and economic independence, access to paid leave to move home, attend court etcetera helps to enable and re-empower them to some extent.

However, more education needs to occur about the drivers and impact of DFV on different cohorts within our community within workplaces to increase awareness and practical support measures employers can provide.

It should also be noted that many frontline workers – responders and support officers are often subject to direct and indirect vicarious trauma and suffer from PTSD injuries from their involvement with DFV offences and incidents. Improvements within the community can only help to alleviate these issues as a serious workplace and community issue.

Summary

The QCU supports the Queensland Government's announcement in October 2020 to legislate to outlaw coercive control in a comprehensive response to a common but often hidden form of domestic and family violence.

Within this context, the QCU is supportive of an appropriate and holistic legislative response to DFV, coercive control and/or domestic abuse. To be effective, any legislative approach must be accompanied by education and information resources developed and delivered to police, other responders, service providers, and to the broader community, including within workplaces.

It is clear that the current coverage of coercive control within the *DFVP Act* is not sufficient or fit for purpose when we are considering a pattern of coercive behaviours, occurring over a period of time and used to control or dominate another person within a relationship. This is different to domestic and family violence, which may refer to a single event, and is often singled out as involving physical abuse or threatened physical abuse.

The QCU believes that after consultation with our key affiliates in this space, that a Co-Responder model to DFV/coercive control should be considered, as well as to on-the-spot infringement notices for more minor civil offences. This should be considered in order to enable frontline police to respond more effectively to and triage the safety of people and property from an incident perspective. It should also enable specialist resources to assist in terms of any other identified risk factors such as coercive controlling behaviours or defensive behaviours of victims.

Given the additional resources this would require, the QCU strongly recommends that consideration is given to this model, but adopting it as a one to two year trial within a Brisbane based region and within a regional, rural or remote area to consider the efficacy of its application.

Finally, consideration should be given to ongoing monitoring of persons who have had a PPN notice issued under the *DFVP Act* or indeed a criminal charge relating to DFV and/or coercive control/domestic abuse, and that this should be provided by correctional officers who are also provided with specialist training in assessing risk factors for non-compliance.