



GOLD COAST CENTRE
against sexual violence inc.

Options for legislating against coercive control and the creation of a standalone domestic violence offence

Submission to Women's Safety and Justice Taskforce
GPO Box 149
BRISBANE QLD 4001
Via email taskforce@womenstaskforce.qld.gov.au

Management & staff
Contact: Director
Phone: 55911164
Email: director@stopsexualviolence.com
Date: 16 July 2021

1. Introduction	3
1.1 Gold Coast Centre Against Sexual Violence Inc.	3
2. Recommendations	4
2.1 Recommendation 1 - Definition.....	4
2.2 Recommendation 2 - Education.....	4
2.3 Recommendation 3 Police recruitment	4
2.4 Recommendation 4 - Police training	4
2.5 Recommendation 5 - Research	4
2.6 Recommendation 6 - Commissioner for domestic, family and sexual violence.....	4
3. Summary	5
4. Context - what is coercive control.....	6
5. Discussion Paper Part 1 - How is Coercive Control currently dealt with in Queensland.....	7
5.1 Community attitudes	7
5.2 Mainstream services.....	7
5.3 DFV service systems response.....	8
5.4 Integrated service response and co-response models	8
5.5 Legislative response	8
5.6 Bail	9
5.7 Queensland Criminal Code.....	10
5.8 Admissibility of evidence about coercive control	10
5.9 Sentencing.....	10
5.10 Police powers under the Police Powers and Responsibilities Act 2002.....	11
5.11 Policies and Procedures which guide the response of the QPS	11
5.12 Training provided to members of the QPS	11
5.13 Management of members of the QPS who commit /alleged to have committed DFV	12
6. Discussion Paper Part 2 - How do other jurisdictions address Coercive Control	13
7. Discussion Paper Part 3 - Legislating against Coercive Control	14
7.1 What are the possible benefits of legislating against coercive control in Queensland?	14
7.2 What are the risks in legislating against coercive control?	14
8. Options for legislating against coercive control.....	15
8.1 Option 1 – Utilising the existing legislation in Queensland more effectively.....	15
9. References.....	16

1. Introduction

The Gold Coast Centre Against Sexual Violence Inc. (GCCASV) welcomes the opportunity to make a submission to the Women's Safety and Justice Taskforce in relation to the *Options for legislating against coercive control and the creation of a standalone domestic violence offence*.

Our submission is based on GCCASV's collective knowledge and experience of counselling victim/survivors of domestic and family violence (DFV), and rape and sexual assault (SA) for over 30 years. During this time, we have provided support to complainants through the civil and criminal justice systems from seeking protection, reporting to police and progression through magistrates and district court. We support law reform with positive consequences, that makes Queensland safer for the victims of sexual, domestic, and family violence and holds offenders accountable.

We trust that our opinions will inform the outcome and final recommendations of the Taskforce.

1.1 Gold Coast Centre Against Sexual Violence Inc.

GCCASV (formerly Gold Coast Sexual Assault Support Service) was founded on the Gold Coast in 1990. The agency is a feminist community based, not for profit, charitable organisation that has been providing free, confidential, specialist sexual violence intervention and prevention programs for more than 30 years.

Our vision is safe communities free from sexual, domestic, and family violence. GCCASV provides a safe, supportive, woman-centred environment in which sexual, domestic and family violence survivors can begin their healing journey.

The organisation also provides community education and training to the public, schools, and other professionals. Since 2018 GCCASV has also delivered specialist counselling to domestic violence victim/survivors who may not have experienced sexual violence.

GCCASV's professional and qualified counsellors work with women aged 14 years and over and therefore have an eclectic and client-centred approach, which means they acknowledge that there are a variety of interventions and different approaches that will work for different people. We operate within a holistic, feminist framework, which means we always:

- Focus on the client's needs
- Work with them at their own pace to explore thoughts and feelings
- Provide a safe space to consider issues
- Respect individual coping strategies and help to find strategies not used before
- Provide choices and options when exploring any difficulties being experienced
- Help clients to gain control in your life
- Acknowledge power imbalances within society
- Acknowledge sexual violence as gender-based violence

2. Recommendations

2.1 Recommendation 1 - Definition

That the Queensland government develop a consistent definition of coercive control and its relationship to other definitions of DFV in policy and legislative settings.

2.2 Recommendation 2 - Education

That an extensive public education campaign is developed and delivered after a definition has been agreed upon.

2.3 Recommendation 3 Police recruitment

That the Queensland Police Service develop strategies to better identify appropriate attitudes and values in relation to violence against women at the point of recruitment and only induct people who meet service and community standards of behaviour.

2.4 Recommendation 4 - Police training

That Queensland Police undergo competency-based training in understanding and responding to domestic, family and sexual violence in all its forms, and that this training include a strong attitudinal component.

2.5 Recommendation 5 - Research

That the Queensland government fund research to monitor the implementation of coercive control in other similar jurisdictions to take into account convictions, unintended consequences, and any qualitative improvements in attitudes to violence against women.

2.6 Recommendation 6 - Commissioner for domestic, family and sexual violence

That the Queensland government establish a new position of Commissioner for domestic, family and sexual violence as an independent touchpoint for systemic issues and voice for victim/survivors.

3. Summary

We find the current popular opinion that criminalising coercive control will save lives to be flawed. The transformative change we are needing to effectively address injustice is not going to come via the criminalisation of coercive control.

The introduction of another piece of legislation does not in and of itself address the existing barriers for women accessing the criminal justice system. A legislative solution also fails to acknowledge the dimension of fear in help-seeking, fear of partner, fear of consequences, fear of police.

The risks outweigh the benefits in terms of access, utilisation, misidentification and criminalisation of certain vulnerable victim/survivors.

Offenders are likely to utilise new legislation to further traumatise victim/survivors in the way that systems abuse currently occurs.

We recognise that the broad community understanding of DFV is still very much associated with physical forms of abuse and visible injuries. Invisible abuse does not fit this narrative and it is important that its existence and impact is acknowledged and understood. We believe that would be better achieved through a targeted education campaign rather than legislation.

It is imperative that we clarify the definition and goals, educate broadly, and further explore unintended consequences with vulnerable groups before we consider any option to introduce more criminal legislation.

4. Context - what is coercive control

GCCASV defines coercive control as purposeful strategic oppression that is gendered in nature and most often perpetrated by men against women. This oppression sets the context of domestic violence relationships in the same way as oppression sets the context for the patriarchy. It is the context in which myriad of controlling behaviours are enacted in order to maintain power. These behaviours are not a series of one-off incidents but rather a pattern of behaviour which may include non-physical abuse such as verbal, economic, social, emotional and psychological abuse, as well as threats or actual physical and sexual violence.

However, we recognise that there are varying definitions and a lack of clarity around behaviours and framework in conceptualising coercive control. If we are to achieve effective responses, a consistent definition of coercive control and what constitutes domestic and family violence is required across all legislative and policy settings.

On its own, coercive control is not recognised as abusive by many women when they are in a relationship, it is simply their “normal”, their reality. When coercive control co-occurs with physical or sexual violence it is more likely that help will be sought (Boxall & Morgan, 2021). This is evidence for how hard it is for victims to name their experience unless it aligns with the mythology of physical violence as opposed to invisible forms of abuse.

5. Discussion Paper Part 1 - How is Coercive Control currently dealt with in Queensland

5.1 Community attitudes

We need to decide on an agreed definition first and then embark upon a public education campaign to enable all stakeholders to have a consistent understanding of what coercive control actually means.

We recognise that the media has an important role in shaping community perceptions. Unfortunately, sensationalism sells but there are always opportunities for media to improve reporting and to utilise appropriate by-lines that don't undo any ethical story. When speaking about or reporting on men's violence against women, it is important to use active language making the offender of the violence the subject and minimising the harm caused to the victim/survivor who has experienced the violence (Deathe & Rich, 2015). Changing the public conversation and focusing education efforts on perpetrator accountability could contribute greatly to understanding and reporting of coercive behaviours.

A change in terminology at this stage would serve no purpose other than further confusion for all members of our community but especially victims, and justice professionals. In recent times, the public awareness of, and use of the terminology of "coercive control" has grown, and increased awareness can only be a positive thing, however without an agreed standard definition it means different things to different people and may not result in improvement in outcomes.

5.2 Mainstream services

Currently, there are numerous opportunities for free and paid training, especially online training, for coercive control. Whilst this may be seen as progress it must be recognised that with no agreed definition there will be no consistency in the training on coercive control provided.

It is very important for individuals and organisations to have comprehensive training on the nuances of power and control in the context of DFV and see coercive control as the central component of the strategic tactics. We believe it is dangerous to separate out the context from the behaviours and coercive control training should NOT stand alone.

Since the 1970's, DV and SA workers have been making sense of intimate partner violence (IPV) through the lens of power and control. Coercive control as a concept evolved later as a way of conceptualising a pattern of behaviours (Stark, 2007). However, it is only in recent times that calls have been made to recognise coercive control within the legal context and in particular in the area of criminal law. The subject of coercive control is not new to us in the field and we

support women the same way as we have always done through counselling, advocacy and a central focus on their safety (ANROWS Insights, 2021).

5.3 DFV service systems response

What is working well in the service response area is the option for women to access telephone, video, and face to face options for support. This can assist women in regional and remote areas of Queensland have access to services with the capacity and capability to respond to DFV and patterns of coercive control.

However, when things are not working well and women seeking help want to complain about inappropriate responses, or lack of response by NGOs, police or health they currently have to raise issues with every individual organisation or agency. There is no central body providing oversight or management of complaints so currently it is up to the traumatised victim/survivor to negotiate with multiple individuals and systems. To streamline issues and complaints we believe a role such as a Domestic, Family and Sexual Violence Commissioner, similar to the UK model, would be invaluable as a central touch point. The Commissioner could be an independent voice for victim/survivors and provide support and early intervention when system responses fail - which could potentially save lives. The Queensland Domestic and Family Violence Death Review and Advisory Board Annual Report (2018) stated that murdered women had on average 28 contacts with numerous agencies prior to the homicides, indicating that these deaths were predictable and preventable.

Another opportunity worth trialling is the utilisation of technology for offender education. We understand that those on remand are currently not offered any individual or group education and believe this is a wasted opportunity. Online education options for offenders on remand or after sentencing in a correctional facility would provide a timely intervention that maximises community safety and potentially interrupts patterns of coercive control.

5.4 Integrated service response and co-response models

Research would suggest that integrated service models can be the most effective response to victim/survivors and/or offenders. With all the players at the table DFV can be approached holistically in terms of framework and behaviours. However, effectiveness will depend on a number of factors including the individual players; the intersectionality; risk assessments; information sharing; timing; and implementation (Queensland Government, 2019).

5.5 Legislative response

Currently within the civil protection order system under the DFVP Act, coercive control is named. However, most women living with a violent partner don't know what coercive control is. When victim/survivors are unable to identify and name their partner's behaviour as wrong, or dangerous they don't name it as illegal and don't disclose, seek help or report to the police.

Coercive control would be very rarely progressed as the main issue in a protection application but an “ongoing pattern of abuse over a period of time” may be noted as the context for incidents of physical or sexual violence.

In relation to civil law, if coercive control was defined and better understood it would increase the likelihood of it being described in a protection order.

In relation to criminal law, as Hanna (2009) has commented:

...the more the criminal law tries to intervene on behalf of women, the more challenges it poses for them. From the point of contact with a frontline police officer, to presenting evidence at court, to dispositions by the court— whether criminal or civil—all present a range of hurdles for women to negotiate. The nature of these experiences can be contingent on a wide range of variables, including class, ethnicity and cultural background.

Across the board there is under reporting of abuse. Aboriginal and Torres Strait Islander women also experience additional barriers including discrimination, fear of child removal, mistrust of authorities, and culturally unsafe practices implemented by mainstream services. Fear and unintended consequences for any vulnerable groups must be recognised as the barrier not a lack of legislation.

An additional issue, and one that is not working well is where cross applications are taken when police don't correctly recognise the predominant aggressor. If the victim/survivor is defending herself, police may apply for an order against her as well or criminalise her if she has no visible injuries and he has a minor injury such as a scratch. This appears to be more common for an Indigenous or a CALD women with the Queensland Death Review (DFVDRAB, 2018) finding that a high percentage of the indigenous victims of domestic homicide had been charged as the offender. In fact, there has been a groundswell of Indigenous women critiquing criminalisation fearing more women would be imprisoned rather than protected. (Sisters Inside & Institute for collaborative race research, 2021)

5.6 Bail

Watch house bail and uninformed bail decision made by the court have lead to serious harm and death of victim/survivors.

We should not take coercive control into account as a separate issue. The offending in its entirety - the sum total of behaviours plus the context of the DFV - needs to be taken into account. This will allow a more thorough assessment of the unacceptable risk that the offender would commit an offence; endanger another person's safety or welfare; or interfere with witnesses or the course of justice.

Section 16 of the Bail Act should be amended to a presumption against Bail for a domestic violence offender. Before bail is granted, a mandatory risk assessment should be conducted and then an informed decision can be made by the court on the evidence provided.

5.7 Queensland Criminal Code

The Queensland Criminal Code does not necessarily need to be amended to better capture coercive control, it is more about how the law is interpreted and applied. The existing offences in the Criminal Code at sections 359E (Unlawful stalking) and 320A (Torture) are course of conduct offences that could potentially capture aspects of coercive control.

For example, unlawful stalking acts in Chapter 33 currently include “intimidating, harassing or threatening act against a person, whether or not the act involves violence or threat of violence”. Meaningful change that prioritises victim safety could come from improving practices through education and training to understand how a stalker in residence might behave rather than waiting until after separation to apply a “traditional” stalking lens.

Defence lawyers and courts could better apply the existing defences and excuses in the Criminal Code in circumstances where a person’s criminal offending is attributable to being a victim of coercive control in the area of Duress Section 31 (1) (d).

The introduction of new offences has only a symbolic effect and whatever laws we have are only as effective as those who enforce, prosecute and apply them (Neave, Faulkner & Nicholson, 2016). Embedding best practice and expertise in the QPS and the courts is likely to be more effective than simply creating new offences.

5.8 Admissibility of evidence about coercive control

Prosecutors, defence lawyers and courts could more effectively introduce evidence of coercive control under the current law by building a better context about the incident/s that are being prosecuted and identifying retaliatory or resisting violence in the context of ongoing abuse and victimisation.

5.9 Sentencing

If an offence is recorded as a domestic violence offence it will be treated as an aggravating factor in sentencing. Furthermore, it will allow courts, police and corrective services to more easily identify offenders with a history of offending in domestic relationships.

Currently there are no specific provisions that allow the court to consider whether a person’s experience of coercive control should be used as a mitigating factor in determining an appropriate sentence. Women’s attempts to survive and resist coercive control need to be taken into account particularly where retaliatory violence is used or when they are coerced into illegal activity.

However, it is not as simple as introducing an explicit mitigating factor in the Penalties and Sentences Act 1992 (Qld) as this could have unintended consequences with the offender claiming that they were in fact the victim of coercive control.

5.10 Police powers under the Police Powers and Responsibilities Act 2002

Police have significant powers under this act to issue a PPN and to take the respondent into custody to protect the aggrieved.

One of the biggest issues is that a PPN, or a temporary protection order must be personally served and is not enforceable until this is done. Whilst the personal service of PPNs may be an opportunity to engage with the respondent and maybe de-escalate behaviour, this can take weeks and often impinges on the safety of women and children.

Instead of personal service, text or email service could be used (after discussing the process and timing with the aggrieved) to ensure offenders are aware that an order exists. Police can then commence enforcing a domestic violence order immediately, helping to keep the victim/survivor safer. This advance notice via text or email could be potentially followed up in person where resources permit.

5.11 Policies and Procedures which guide the response of the QPS

Any review of the Operational Procedures Manual (OPM) should be done by police in conjunction with key stakeholders.

There is a recognised need to review, simplify and revisit training on the DV-PAF (Domestic Violence - protective assessment framework).

5.12 Training provided to members of the QPS

Our current understanding is that approximately 40% of police callouts in the South East Region (SER) are responding to DFV. This percentage needs to be reflected as an equivalent percentage of their training.

That Queensland Police Service needs to move from knowledge based to competency-based training in understanding and responding to domestic, family and sexual violence in all its forms, and this training must include a strong attitudinal component.

Police often rely on the presence of physical violence as a means of informing their decision-making in relation to violence against women (Guthrie, 2018). However, all aspects of DFV including the gendered nature, predominant aggressor, lethality, vulnerable populations, and the context or power and control must be understood and used to actively inform investigative skills.

5.13 Management of members of the QPS who commit /alleged to have committed DFV

People with a conviction for a domestic violence offence, or a history of being named as a respondent to civil domestic violence, should be automatically excluded from working as a police officer in Queensland. This behaviour is not consistent with the Queensland Police Service's values of integrity, community, respect and fairness.

QPS could better identify people who do not meet service and community standards of behaviour at the point of recruitment. Recruits need to know that the reality of police work is much of their time will be spent policing in a DFV context. Emphasis of this during interviewing, induction, and throughout training would be more likely to ensure that only those with realistic expectations and appropriate attitudes and values graduate.

6. Discussion Paper Part 2 - How do other jurisdictions address Coercive Control

The mere introduction of legislation in other jurisdictions should not be misinterpreted as evidence of its effectiveness in practice (Walklate & Fitz-Gibbon, 2018).

The effectiveness of a criminalised offence of coercive control in other jurisdictions should be instead measured by successful prosecutions, improvements in women's safety, and improvements in attitudes to violence against women (ANROWS Insights, 2021).

To date, research on how this legislation is working in practice in other jurisdictions is hardly inspiring. There has been a low uptake of legislation in Tasmania and few convictions. Although there are higher reporting rates in England, Wales and Scotland, there is not a correspondingly high rate of convictions.

This raises serious questions about the purpose of the legislation, the accountability of offenders, and the safety of those victim/survivors who reported in good faith.

7. Discussion Paper Part 3 - Legislating against Coercive Control

7.1 What are the possible benefits of legislating against coercive control in Queensland?

Currently we do not see any benefits of legislating against coercive control that would outweigh the risks. We do not see that the introduction of legislation would improve the safety of women and children, hold offenders accountable, or improve community awareness.

7.2 What are the risks in legislating against coercive control?

Whilst overseas legislation may suit a particular country and population it is not always transposable to other jurisdictions. Queensland is a huge geographic area with a unique Indigenous population. These factors were not relevant for England, Wales, Scotland and Ireland but must be taken into account in the Queensland context.

Legislation designed to protect can often have unintended consequences. Widening the net with more legislation means more domestic violence contacts with police. These interactions for Indigenous women, CALD women, criminalised women, for drug and alcohol affected women, and those women with mental health issues often lead to their misidentification as offenders and subsequent criminalisation.

There is a risk in introducing legislation criminalising coercive control when there is no existing evidence base supporting the creation of this specific offence. In particular there is no evidence of increased convictions, improved deterrence, and enhanced victim/survivor safety.

8. Options for legislating against coercive control

8.1 Option 1 – Utilising the existing legislation in Queensland more effectively

Multiple Australian jurisdictions have conducted reviews to consider a specific DFV or coercive control offence and have recommended against implementation, opting instead to make improvements to the existing system (ANROWS Insights, 2021).

Based on the GCCASV experience in supporting women we are NOT convinced that a new criminal offence would make any difference if the actual goal is to keep victim/survivors safer and hold offenders accountable.

Reviewing our current legislation and criminal justice response is imperative before introducing anything new. Rather than adding on more legislation, we need to be cognisant of the fact that this may simply create another barrier for victims/survivors to negotiate. There could be unintended consequences of new legislation and offenders will almost certainly manipulate the intent of new legislation.

The current laws could be used more effectively to arrest, charge and convict offenders who are currently not being caught or held accountable for their abusive behaviours. The result of holding offenders accountable is a clear and unarguable increase in the safety of victim/survivors.

For this to occur, a comprehensive strategy to improve current police practice with more targeted education on primary aggressor, context and behaviours that constitute DFV would need to occur. Targeted education for all stakeholders and members of the public would also be necessary to ensure a consistent understanding of DFV including coercive control.

This option of utilising existing legislation more effectively is compatible with the Human Rights Act 2019 (Qld) in that it does not limit any human rights that are currently protected in this legislation.

9. References

- Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief. *ANROWS Insights*, 01/2021. Sydney: ANROWS.
- Boxall, H., & Morgan, A. (2021). *Experiences of coercive control among Australian women* (No. AIC Statistical Bulletin 30). Australian Institute of Criminology.
- Deathe, L. & Rich, S. (2015). *Speaking publicly about preventing men's violence against women*. Melbourne: Women's Health West.
- Domestic and Family Violence Death Review and Advisory Board. (2018). *Annual Report 2017-2018*. Brisbane: Queensland Government.
- Hanna C. (2009). The paradox of progress: translating Evan Stark's Coercive Control into legal doctrine for abused women. *Violence Against Women*;15(12):1458-1476.
- Human Rights Act 2019 (Qld)*.
- Neave, M., Faulkner, P., & Nicholson, T. (2016). *Royal commission into family violence: Summary and recommendations*. Victoria: Victorian Government Printer.
- Queensland Criminal Code Act 1899 (Qld)*.
- Queensland Government. (2019). *Evaluation of the integrated service response and high risk teams trial summary of key findings*. Brisbane: Department of Child Safety, Youth, & Women.
- Sisters Inside and the Institute for Collaborative Race Research (2021), *The State as Abuser: Coercive Control in the Colony*.
- Stark, E. (2007). *Coercive control: How men entrap women in personal life*. Oxford University Press.
- Walklate S. & Fitz-Gibbon, K. (2019). The criminalisation of coercive control: The power of law. *International Journal for Crime, Justice and Social Democracy*, 8(4): 94-108.