29 June 2022

The Commission of Inquiry into Queensland Police Service responses to domestic and family violence

By email: documents@qpsdfvinquiry.qld.gov.au

Dear Commissioner

Thank you for the invitation to make a submission to this inquiry. We welcome the Queensland Government's acceptance and implementation of recommendations from the 2021 report of the Women's Safety and Justice Taskforce, 'Hear her voice'.

The work of the Relationships Australia federation

Relationships Australia contextualises its services, research and advocacy within imperatives to:

- uphold the recognition of fundamental human rights, universally and without discrimination, and

- strengthen social connections and mitigate social exclusion and isolation.

We meet those commitments through:

- advocating for legislation, policies and programmes to remove systemic and structural barriers to fully participating in society, experienced disproportionately by cohorts affected by intersecting circumstances of vulnerability and disadvantage

- ensuring that social and financial disadvantage is no barrier to accessing our services

- contributing practice evidence and skills to research projects, the development of public policy, and the provision of compassionate and effective supports to individuals, families and communities

- working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres, and

- collaborating with local and peak body organisations.

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances. Relationships Australia has, for over 70 years, provided a range of social services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victim survivors and perpetrators of family violence, and relationship and professional education. We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Contents of this submission

Relationships Australia does not necessarily have direct visibility of criminal justice engagements involving our clients and their family members. For this reason, and to ensure the safety and confidentiality of our clients, this submission offers overarching observations about how domestic and family violence (DFV), as well as abuse and neglect of older people,[1] affects our clients, and recommendations about how those of our clients who experience DFV could be better supported by the Queensland Police Service (QPS).

This submission canvasses the following issues of relevance to your Terms of Reference:

- the nature of DFV and common co-morbidities
- impact on children
- coercive controlling behaviour
- systems abuse
- our experiences with perpetrator interventions
- cultural responsiveness
- workforce planning and capability issues
- the evidence base
- the roles of police as first responders and implications for their roles as gatekeepers to the criminal justice system *and* vital social supports for victim survivors of DFV, and
- the implications of police culture in performing those roles.

We acknowledge that these issues were also the subject of consideration and recommendations in the 'Hear her voice' report.

Recommendations

The following recommendations are substantially similar to those made in other submissions concerning family violence and family law reform, and are also informed by the status of Queensland as a human rights jurisdiction.[2] These recommendations should also be read in conjunction with the *National Plan to End Violence Against Women and Children 2022-2032*.

Recommendation 1: That the Meeting of Attorneys-General progress work to harmonise definitions of family law.

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[1] The Australia Institute of Family Studies published a report in 2021 about the nature and prevalence of abuse and neglect of older people in Australia: Qu, L., Kaspiew, R., Carson, R., Roopani, D., De Maio, J., Harvey, J., Horsfall, B. (2021). *National Elder Abuse Prevalence Study: Final Report*. (Research Report). Melbourne: Australian Institute of Family Studies (Qu *et al*). This report, the largest study of elder abuse in Australia and a leading international study, found that 14.8% of people aged 65 and over had experienced one or more sub-type of abuse in the preceding 12 months. This is likely to be a substantial underestimate, since the AIFS study excluded people living in residential aged care and people living with cognitive impairment. Given this prevalence, it is reasonable to believe that there may be a proportion of police who engage in abuse or neglect of older people.

[2] See *Human Rights Act 2019* (Qld).

Recommendation 2: That the Queensland Government establish, and broadly publicise, a first point of contact for children and young people affected by family violence. Such a point of contact would, at a minimum:

- be fully independent of police and the broader criminal justice system
- have a therapeutic focus
- provide case management and warm referrals to a range of services and supports, and
- include cultural liaison officers.

Recommendation 3: That initial and regular refresher cultural safety training should be mandatory.

Recommendation 4: That initial and regular refresher training in trauma informed practices should be mandatory.

Recommendation 5: That workforce planning for Queensland's criminal justice system should identify career pathways for First Nations people across the criminal justice system.

Recommendation 6: That workforce planning for Queensland's criminal justice system should systematically identify geographic gaps and develop plans to recruit and retain suitable personnel.

Recommendation 7: That enactment of offences relating to coercive controlling behaviour should be contingent upon:
(a) developing a national definition of coercive control, to be used in all Commonwealth, State and Territory legislation, with attention also to necessary changes to existing family violence definitions in all jurisdictions.

(b) commissioning research about how children experience coercive control, to inform ongoing policy development that is inclusive of children's agency and needs, at all points of the policy, legislative, implementation and evaluation processes.

(c) better leveraging existing offences and investigative and prosecutorial powers, including through long-term, stable and adequate resourcing to enable appropriate prioritisation of investigation, prosecution and behavioural change interventions, and structured information sharing about systemic issues.

(d) providing actionable, timely and recurrent training for law enforcement officers, prosecutorial agencies and judicial officers about the nature and prevalence of coercive control.

(e) continuing federal and state efforts to reduce fragmentation and siloing, to lift from families the burden of navigating complex and fragmented systems.

(f) consulting broadly with family relationships services and other family violence practitioners, as well as with law enforcement and other government agencies to ensure the resulting offences are capable of effective operationalisation and that they can be implemented in a way that supports, not undermines, therapeutic work with our clients

(g) a common national definition of coercive control, adapted from clinical settings to the criminal justice setting, and which:

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(i) explicitly includes separated partners, and
(ii) reflects modern family formation as well as diverse cultural norms

(h) work towards nationally recognised guidelines for police, prosecutors and judicial officers as to what kind of evidence is probative of coercive control, and what constitutes a sufficient weight of evidence to clear the threshold of beyond reasonable doubt.

Recommendation 8: That the Queensland Government should fund MBCPs with regard to:

- principles of universal accessibility, geographic equity and cultural responsiveness
- sustainable funding arrangements that give certainty to clients and providers, thus fostering effective therapeutic relationships
- robust formative and summative evaluation.

Recommendation 9: That initial and regular refresher training in cultural responsiveness be mandatory, with tailoring available to respond to the demographics of specific command areas.

Recommendation 10: That the Queensland Government should establish initial and ongoing systemic workforce planning and capability mechanisms for the QPS and other elements of the DFV system (civil and criminal).

Recommendation 11: That vacancies for specialist staff (including civilian staff) working in DFV should be filled promptly.

Recommendation 12: That mandatory initial and regular refresher training in these core competencies should be required of all police officers, with tailored training available for specialist, as well as general duty, officers.

Recommendation 13: That the QPS should be sufficiently funded and staffed to enable police officers to access safe and confidential clinical supervision and peer de-briefing. For this to be effective, we acknowledge the need for cultural transformation to destigmatise help-seeking and for resourcing to ensure that clinical supervision and peer de-briefing are not 'on top of' an already extremely stressful workload.

Recommendation 14: That the Queensland Government should commission research about the prevalence and nature of DFV and of abuse and neglect of older people experienced by QPS employees and their family members.

Recommendation 15: That the Queensland Government should establish mechanisms to:

(a) ensure that investigation of alleged police perpetrators is carried out at genuine arms' length from the alleged abuser and their colleagues, by conferring appropriate powers of search, investigation, seizure, detention and prosecution on a body or person extrinsic to the QPS; perhaps along the lines of the Inspector-General of Intelligence and Security,

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which has coercive powers similar to those of a Royal Commission established under the *Royal Commissions Act 1902* (Cth)[3]

(b) re-direct service support gatekeeping to persons/bodies:

(i) who are independent of police, and

(ii) with expertise in DFV and trauma and collaborative relationships with other service providers

(c) introduce protocols about who can contact victim survivors

(d) ensure privacy and security of data and information, with meaningful and enforced sanctions attached to breaches

(e) provide more robust and independent accountability and complaints mechanisms, and

(f) establish transparent, easily accessible mechanisms for compensation, redress, and reparation for victim survivors where the QPS has not acted with legality, propriety and in accordance with the human rights of victim survivors of DFV or elder abuse/neglect perpetrated by its employees.

The nature of DFV and common co morbidities

We have provided detailed analysis of the effects of family violence in a range of submissions to inquiries about DFV and on reforming the family law system (see https://relationships.org.au/documents/?ds=&post_type=document&cat=74&tag=family-domestic-and-sexual-violence and https://relationships.org.au/documents/?ds=&post_type=document&cat=74&tag=family-law-reform).

Family violence is not a discrete phenomenon; it is generally accompanied by a constellation of complex co-morbidities.[4] A substantial proportion of Relationships Australia clients are affected by domestic and family violence (DFV), along with co-morbidities including:

- poor mental health
- misuse of alcohol and other drugs
- problematic gambling
- intergenerational trauma, including intergenerational trauma related to colonisation, dispossession and removal from culture, and
- intersecting circumstances of vulnerability, disadvantage and social exclusion.

A national study of FDR outcomes conducted by Relationships Australia involved approximately 1700 participants, of whom:
- nearly a quarter (23%) presented with high levels of psychological distress, and

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[3] See *Inspector-General of Intelligence and Security Act 1986* (Cth).

[4] See, eg, Family Law Council, Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Interim Report (2015).

- 68% reported experiencing at least one form of abuse, with verbal abuse being the most common (64%).

A large proportion (72%) of parenting participants in the Study also reported significant child exposure to verbal conflict between parents, including yelling, insulting and swearing.

Poverty and financial strain, employment precarity and housing precarity are also common threads. There is a strong negative association between poverty and children's developmental outcomes. The negative effects associated with low income and poverty carry a significant cost for individuals, families, and the broader community. There are also clear costs associated with children's development and wellbeing - the impacts of which are likely to be amplified later in life for the children who experienced poverty.[5] Relationship breakdown can be both a cause and an effect of poverty and hardship. The stress of poverty can have a negative effect on relationship quality and stability, and cause greater risk of relationship breakdown. In turn, relationship breakdown can increase the risk of poverty for both children and adults.[6]

Recommendation 1: That the Meeting of Attorneys-General progress work to harmonise definitions of family law.[7]

Impact of DFV on children

In 2018, the Australian Institute of Family Studies (AIFS) reported[8] that 50% of parents interviewed expressed safety concerns for themselves and/or children as a result of ongoing

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[5] See Barbara Broadway, Guyonne Kalb and Dhanya Maheswaran. *From Partnered to Single: Financial Security Over a Lifetime.* Melbourne Institute: Applied Economic & Social Research, The University of Melbourne. 2022. (accessible at From Partnered to Single (unimelb.edu.au). See also Warren, D, Low Income and Poverty Dynamics - Implications for Child Outcomes. Social Policy Research Paper Number 47 (2017). Available at https://www.dss.gov.au/publications-articles/research-publications/social-policyresearch-paper-series/social-policy-research-paper-number-47-low-income-and-poverty-dynamics-implicationsfor-child-outcomes. See also Joan B Kelly, 'Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research', 39 J. A M. ACAD.CHILD &ADOLESCENT PSYCHIATRY 963 (2000). Relationships Australia notes that 84% of Australian single parent families are single mother families. In 50% of single parent families with dependants, the age of the youngest child is between 0-9 years of age: Australian Bureau of Statistics (2012), Labour Force, Australia: Labour Force Status and Other Characteristics of Families, Cat. No. 6224.0.55.001.

[6] Stock, Corlyon et al, Personal Relationships and Poverty: An Evidence and Policy Review, a report prepared for the Joseph Rowntree Foundation by the Tavistock Institute of Human Relations, 2014. Data shows that it is resident mothers and children who are at greater risk of falling into persistent poverty.

[7] The Law Council of Australia has developed a proposed national model definition: see https://www.lawcouncil.asn.au/publicassets/9e1f552b-1c77-ec11-9447-005056be13b5/2021%2011%2027%20-%20LCA%20Model%20Definition%20of%20Family%20Violence.pdf.

[8] Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018). *Children and young people in separated families: Family law system experiences and needs.* Melbourne: Australian Institute of Family Studies. This study aimed to investigate the experiences and needs of young people whose parents had separated and had accessed the family law system. AIFS undertook in-depth, semi-structured interviews carried out between May 2017 and April 2018, with 61 children and young people aged between 10 years and 17 years (supplemented by interviews with 47 parents of these children). The interviews with 47 parents of these children were undertaken by telephone to enable the collection of demographic information by way of background to the data provided by the children and young people. Of the participating families, 19% were drawn from Queensland.

contact with the other parent. Children and young people also reported instances where they felt unsafe with a parent with whom they were required to spend time.[9]

The AIFS study made generous use of direct quotes from the children and young people whom they interviewed, underlining the interviewees' fear, despair and feelings of isolation in which they felt there was no one to whom they could turn for help. Other researchers have observed that

> The struggle that children have in a climate of domestic violence in just feeling safe is immense. There is physical safety… then there is psychological safety….The emotional climate and the child feeling fundamentally cared about and protected from uncertainty needs to be on a par with physical safety. There are very good data on that. This is not something that is waiting to be demonstrated. It is very clear that this kind of conflict between parents affects children in a bad way.[10] [emphasis added]

The Australian Psychological Society notes that

> …the factors predicting child wellbeing are the same for children in separated families and those in stable families. The presence of inter-parent conflict and family violence reduces child wellbeing, while responsive, warm, consistent and authoritative parenting is associated with improved outcomes for children (Sanson & McIntosh, 2018). Additionally, where there is high conflict and family violence, the capacity of parents to enact shared time increases the risk of exacerbating conflict and provides opportunities for those who use violence to continue to intimidate and cause fear to the other parent (Cashmore et al, 2010).[11]

Children and young people affected by family violence need to be able to readily identify and access a source from which they can safely seek help. Relationships Australia has made extensive submissions advocating reforms to the family law system to enable children and young people to meaningfully participate in it. This is required to comply with Australia's obligations under the Convention on the Rights of the Child.

Recommendation 2: That the Queensland Government establish, and broadly publicise, a first point of contact for children and young people affected by family violence. Such a point of contact would, at a minimum:

- **be fully independent of police and the broader criminal justice system**
- **have a therapeutic focus**
- **provide case management and warm referrals to a range of services and supports, and**
- **include cultural liaison officers.**

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[9] Carson et al, 2018, 33, 40.

[10] Zeanah, in Lieberman, A., Zeanah, C. and McIntosh, J, 'Attachment Perspectives on Domestic Violence and Family Law' (2011) 49(3) *Family Court Review*, 530-531.

[11] Submission 55 to the ALRC inquiry into the family law system, 23 (https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/submissions-7/)

First Nations women and children

First Nations people and organisations are most appropriately equipped to respond to the Terms of Reference concerning how cultural issues in the QPS have contributed to the over-representation of First Nations people in the criminal justice system – a complex matter on which there is extensive research literature and lived experience advocacy.

Accordingly, Relationships Australia's comments on this Term of Reference are confined to observations we have made as providers of therapeutic and family relationships services to people affected by DFV.

Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people to family violence and other services. Distrust of government agencies in matters relating to children is a deeply-entrenched problem, with fears of another stolen generation always present. Additionally, many of our clients suffer from intergenerational and complex trauma and, in some communities, violence has been normalised.

Relationships Australia Northern Territory employs a team of Aboriginal and Islander Cultural Advisors (AICAs) to assist clients to navigate the family dispute resolution process, which is mandatory for families bringing parenting matters before the family law courts. The AICA team has developed its own presentation around the history of colonisation, lateral violence, how trauma can impact behaviour, and reactions to address this normalisation.

Cultural safety training and trauma informed practices should be mandatory for all those involved in family violence systems. Recommendations from the Bringing them home report, the Little Children are Sacred report and the report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and many others, offer valuable insights.

Recommendation 3: That initial and regular refresher cultural safety training should be mandatory.

Recommendation 4: That initial and regular refresher training in trauma informed practices should be mandatory.

Recommendation 5: That workforce planning for Queensland's criminal justice system should identify career pathways for First Nations people across the criminal justice system.

Regional, remote and ultra remote communities

Services and supports are often made available only on short term or episodic bases (eg 'seagull' or 'FIFO' arrangements, as well as short term 'pilots'). Such arrangements undermine trust and are inimical to building strong relationships that underpin successful partnerships

between services and the communities whom they seek to serve. Lack of trust in policing services is pervasive among our First Nations clients.[12]

There are several barriers to effective access to services include difficulties recruiting suitably trained staff and the impacts of remoteness. Investment is needed to develop, support and train a workforce which is acceptable to the community and which has the specialised knowledge and skills. The costs of delivering services are prohibitive, and include travel costs, staff costs, accommodation and property expenses, and the costs of providing adequate and culturally appropriate support and development to staff in these regions.

Relationships Australia Queensland has invested in working with communities in Far North Queensland to develop culturally appropriate and responsive service delivery models. This requires community capacity-building and community development, so that communities are able to develop, deliver and maintain services that work best for them. If First Nations clients cannot see someone they recognise at the service, they will not attend that service. They need and want choice in the practitioners they see. Sometimes they will request a First Nations worker and sometimes they will request a non-First Nations worker. If they request the latter, then they are likely to want assurance that this person is trustworthy and supported by First Nations people.

First Nations community engagement and outreach are crucial to recruiting and retaining First Nations staff. The profound mistrust attached to mainstream services adds to well-recognised barriers to participation such as poverty, lack of transport, systems abuse and disengagement experienced by many disadvantaged and vulnerable client groups.

Community relationships and capacity building requires more than getting to know the community elders. It needs real and ongoing commitment to the community and supporting community elders to understand the language, evidence and messages around key social policy issues such as youth suicide and family violence. The elders can then talk within their communities and help people to access the services they need. Our services report a general level of apathy in relation to accessing services by many of the communities they visit that makes engagement difficult.

In remote areas, 'fly in, fly out' services and short-term pilots have created a perception of a lack of long-term commitment by service providers. The ability of the services to maintain an ongoing presence in the community is undermined by short funding contracts, lack of flexibility and insufficient allowance for the real costs of delivering services. For example, it can take two years to establish a service due to the time needed to build up trust and connection with a community. If the contract is only three years, at the end of the period it may look like little direct service provision was undertaken and the program was (incorrectly) assessed as a failure. The constant rolling out, by governments across Australia, of new, short-term, programs imposes significant administrative burdens and diverts funding from providing services to clients. These cycles lead to client and worker fatigue. Our First Nations workers report frustration with the lack of appropriateness in the way services are delivered, but in many cases the delivery of

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[12] And many of our other client cohorts who have experienced institutional discrimination and violence, including CALD and LGBTIQ+ clients.

programs is constrained by mainstream requirements, such as (pre-COVID-19) requiring clients to attend in person to receive a service. For example, First Nations clients will not phone if they do not have credit or come in to the service if they have no transport; poverty compounds these access barriers. There is still a great deal of stigma associated with mental health problems and education and awareness initiatives are greatly needed.

Our services report the support for First Nations families must be case managed and provided free of charge to enable access. There is also frustration with the assumed effectiveness of programs that are labelled evidence-based. These programs often work for a population similar to where they were developed, but they may not work in First Nations communities, or for different First Nations communities. What is needed is consultation with local workers and First Nations people and the flexibility to adapt the program for the local area. Many government reports have identified this as an issue, but recommendations have not been implemented.

Recommendation 6: That workforce planning for Queensland's criminal justice system should systematically identify geographic gaps and develop plans to recruit and retain suitable personnel.

Coercive controlling behaviour

Relationships Australia acknowledges that the Terms of Reference do not refer explicitly to coercive controlling behaviour and that the Queensland Government has accepted Recommendation 78 of the 'Hear her voice' report, committing to enact coercive controlling behaviour offences by 2023. However, Relationships Australia considers that enactment of such offences would be premature and have dangerous consequences if they are to be enforced by a police service that is not culturally equipped to reliably identify the person most in need of protection and ensure the safety of that person. The establishment of this Commission in itself suggests that this is currently the case in relation to the QPS.

The concept of coercive control has value in clinical settings (Stark, 2007)[13] and in civil law systems, such as the civil family violence and family law jurisdictions.[14] International evidence suggests that coercive control is experienced as grievously harmful and debilitating (see, eg, Stark, 2009, 83, and sources cited therein; Stark & Hester, 2019, 89).

However, Relationships Australia considers that the criminal justice jurisdiction, as a coercive instrument of the state, should be enlivened only with utmost circumspection and as a last resort after other, less coercive, sanctions and measures have been proven inadequate.

This threshold has not yet been met. In particular, the adequacy of existing sanctions and measures cannot properly be judged wanting, as their potential remains unrealised due to factors including:

- endemic fragmentation within and across Australian jurisdiction

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[13] See also Walklate, Fitz-Gibbon & McCulloch, 2018, for an analysis of how the concept of coercive control has travelled from its clinical origins into the law.

[14] See, for example, the *Family Law Act 1975* (Cth) and the *Family Violence Protection Act 2008* (Vic).

- chronic under-resourcing of all parts of the criminal justice system
- structural and systemic barriers to accessing support
- social and cultural mores that are thus far impervious to durable change, including:
  - gender norms and expectations, and
  - norms and practices that underpin our adversarial civil and criminal justice systems.

At this point, therefore, we encourage governments to prioritise addressing these issues, and better leveraging the powers, resources and remedies that are already on the statute books.

Relationships Australia acknowledges the current work of the Meeting of Attorneys-General to

> …co-design national principles to develop a common understanding of coercive control and matters to be considered in relation to the potential criminalisation of coercive control.[15]

Enacting standalone coercive control offences may have unintended consequences that not only do not further the objectives of safety and accountability, but that inflict further harm on survivor / complainants through the following factors.

Misidentification of victims as perpetrators

Misidentification of victims as aggressors is an ongoing challenge in policing family violence (Women's Legal Service Victoria, 2018; Nancarrow *et al*, 2020; Reeves, 2020; Reeves, 2021). This is so even in the presence of readily perceived acts of physical violence and physical injury (see Walklate, Fitz-Gibbon & McCulloch, 2018, at 122). It is also a troubling factor in domestic and international accounts of DFV where alleged perpetrators are police officers.[16] Given the subtlety and nuance of coercive controlling behaviour, and its innate dependence on context for accurate characterisation, criminalisation will put victims at greater risk of being criminalised in a legal system the underlying norms of which still privilege the 'reasonable man on the Clapham omnibus,[17]' and remain thus far undisturbed by insights from trauma-informed practice by (for example) constructing 'model victims' who are calm, measured and co-operative with authorities. When victim survivors do not fit that template, they are more likely to be misidentified as aggressors, and their abuser identified as the person most in need of protection. Victim survivors who experience intersectionality of disadvantage, who live with trauma, poor mental health, and other co-morbidities frequently do not fit the template, and are wrongly criminalised as a result.

Relationships Australia holds particular concern for victims who identify (or who are identified by the justice system) as belonging to groups that are disproportionately represented in the criminal justice and carceral systems, and victims who face structural barriers in engaging with

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[15] See https://www.ag.gov.au/families-and-marriage/publications/development-national-principles-addressing-coercive-control.

[16] See, for example, Goodmark, L, 'Hands up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse', (2015) *Faculty Scholarship* 1515.

[17] An archetype first recognised by Collins MR in *McQuire v Western Morning News* [1903] 2 KB 100, 109. see, eg, Hudson, 2006; Walklate, Fitz-Gibbon & McCulloch, 2018, 125; Walklate & Fitz-Gibbon, 2019, 104, citing Naffine, 1990

criminal and civil justice systems. These include Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, people living with disability, people who identify as belonging to LGBTIQ communities, and homeless people. Each of these groups has long and well-documented experience of being overly policed, inappropriately incarcerated, and being othered, silenced, disbelieved and erased in their attempts to engage in the justice system. Where an alleged abuser is a police officer, then two asymmetries come into play to exponentially compound their victims' disadvantage: first, asymmetry of formal and informal socio-political power and, second, asymmetry of information about how 'the system' works and how it can be deployed to entrench an abuser's power.

As noted by Women's Legal Service Victoria in their Policy Brief on criminalising coercive control

> Misidentifying victim survivors as the perpetrator of violence creates safety risks, and can lead to a series of cascading adverse consequences: loss of housing, child protection intervention, loss of income support, complex and protracted court proceedings, and considerable psycho-social and wellbeing activities over time. (at 13)

These cascades will be compounded for those who already face structural and systemic barriers in engaging with the justice system (see also Walklate, Fitz-Gibbon & McCulloch, 2018, at 120, 123; Douglas, 2015; WLSV, 2020).

Disproportionate criminalisation of perpetrators who belong to marginalised groups

In parallel, we are concerned that criminalisation of coercive control could exacerbate disproportionate criminalisation and incarceration of perpetrators from groups who face structural and systemic barriers to access to justice, while paying insufficient attention to perpetrators outside those groups.

Exacerbation of national fragmentation of family violence systems

The harms inflicted on families by fragmentation of the family law, family violence, family welfare, child support, criminal justice, and child protection systems is well-documented, as is the harm inflicted by further fragmentation within those systems.

Relationships Australia would strongly encourage the development of a nationally-recognised definition of coercive control, regardless of whether standalone offences are created, and certainly as a precondition of creating standalone offences.[18]

Evidentiary difficulties

Enacting an offence relying on understanding the context of often subtle and superficially innocuous behaviour does not necessarily enable successful operationalisation by front line law enforcement and prosecutorial agencies.

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[18] See also ANROWS, 2021, Recommendation 1.

Evidence thus far from England and Wales (which enacted a coercive control offence in 2015[19]) suggests that police and prosecutors continue to prefer to arrest, charge and prosecute on the basis of tangible evidence of injury, loss and harm (see Barlow *et al*, 2020, especially 167, Table 4, and 169-171). This hesitancy is also likely to be partly attributable to the much higher burden of proof required in the criminal courts than in civil jurisdictions.

Further, there have been issues in England and Wales with poor understanding among police and prosecutors of what coercive control is, what kind of evidence is needed to show it, and what constitutes a sufficient weight of evidence to clear the threshold of beyond reasonable doubt (and, indeed, early thresholds in the process to enliven investigative and detention powers) (see Barlow *et al*, 2020, 174) It is disturbing that Barlow *et al* identified cases in which the unmourned for doctrine requiring corroboration of rape complaints appears to be having a revival among police who are reluctant to proceed with what they consider to be 'he said, she said' matters (Barlow *et al*, 2020, 174).

The risks of failed charges and prosecutions

Given the obstacles to effective prosecutions, there are grave risks that:

- perpetrators against whom allegations of coercive control are made, but not sustained, will remain at liberty to continue to perpetrate (and very possibly escalate their conduct, buoyed by the fact that they 'escaped punishment' or 'out-smarted' the system), and
- the intended symbolic effect of deterring coercive control will be subverted, and a clear message sent to perpetrators of family violence more broadly – a message that coercive control offers a repercussion-free means of controlling and harming your partner or ex-partner.

Resourcing and prioritisation

A further challenge encountered by police and prosecutors in England, Wales and Scotland (where a similar law was enacted in 2018) has been the austerity measures applying to their agencies over recent decades. Barlow *et al*, 2020, describe this broader context in which the coercive control offence enacted in England and Wales has thus far failed to achieve safety and accountability objectives. (see, eg, at pp 170, 174-175)

Charges will not be made, evidence will not be gathered, and prosecutions not brought, if police and prosecutors consider themselves forced, by resourcing constraints, to prioritise more straightforward offences, where there is readily available (and readily interpreted) evidence, before offences that intrinsically must rely on interpretation of emotional and behavioural patterns, over an indeterminate period, that may not lead to observable harm.

Further, adequate resourcing in this context means not just numbers of police 'boots on the ground', but initial and ongoing training to adequately equip police to identify the patterns of behaviour that constitute coercive control and best leverage their evidence-gathering powers to

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[19] See Serious Crime Act 2015, available at https://www.legislation.gov.uk/ukpga/2015/9/contents/enacted ; in particular, ss 76 and 77.

support effective prosecutions. Similar considerations apply to prosecuting agencies and judicial officers.

Balancing safety and autonomy – the risk of erasing agency

Because of the adversarial nature of Australia's criminal justice systems, there is a real and substantial risk that victims of coercive control will experience enforcement of an offence as a state-endorsed continuation of coercive control. Our criminal justice systems and instruments are still (and too often) hostile and demeaning to survivors of abuse, whether in family violence settings or in other settings in which assaults, including sexual assaults, occur.[20] Rightly or wrongly, these systems are not concerned with the emotional safety of victims as they endure the appurtenances of our criminal law, such as forensic examination and cross-examination. The most empathetic of judges will be constrained by the procedural requirements of our adversarial system.

Further, criminal justice proceedings explicitly centre the accused, relegating victim survivors to the status of witnesses, notwithstanding the burden that they bear to ensure that the evidentiary thresholds are met through their direct testimony and under cross-examination. Unlike in civil courts, and unlike the alleged perpetrators, witnesses do not have ready access to legal advice and representation to support them in their roles. This, too, is an experience of disenfranchisement and disempowerment, and is contrary to the principles of trauma-informed practice that emphasise agency and voice.

Criminalising coercive control also risks undermining agency in another way. Because coercive control can be exercised through otherwise innocuous acts, how a person subjectively experiences those acts will determine if they are, indeed, innocuous, or whether a criminal offence is being committed. The maintenance of intimate relationships inherently involves many acts of compromise, even relinquishment. Criminalisation of coercive control requires police, prosecutors, judges and societies to examine and evaluate some compromises or surrenders as problematic to the point of requiring criminal sanction. If that occurs contrary to how a victim/survivor experiences these acts, then their agency is denied.[21]

The risk of erasing or de-emphasising physical violence

Relationships Australia acknowledges, and shares the concerns expressed by Walklate, Fitz-Gibbon and McCulloch, that criminalisation of coercive control will further deplete the already inadequate resources allocated to women's safety, diverting them from the enforcement of existing offences and remedies.[22]

Opportunities for legal systems abuse

Relationships Australia has previously expressed concern about the scope afforded by the family law system for perpetrators to engage in systems abuse in our submissions to family law

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[20] See also Walklate, Fitz-Gibbon & McCulloch, 2018, 122.

[21] See also Walklate, Fitz-Gibbon & McCulloch, 2018, at 119-120; Walklate & Fitz-Gibbon, 2019, 102.

[22] Walklate, Fitz-Gibbon & McCulloch, 2018, at 123; Walklate & Fitz-Gibbon, 2019, 103.

and family violence inquiries over the past years. These can be found at
https://relationships.org.au/what-we-do/submissions-and-policy-statements . For perpetrators
who are already separated from their partners, the temptations are far too good to resist, and
relatively low risk in terms of carrying real consequences.

Locating coercive control in the criminal law system, with its vital procedural safeguards for the
accused, means more opportunities for perpetrators to engage in tactics like futile procedural
applications, demanding the physical presence of their victims at court events, depleting their
victims' physical, emotional and financial resources, and harassing victims' families and friends
through spurious subpoenas. (see Douglas, 2018; Kaspiew *et al*, 2015)

Innately gendered concept – potentially excluding other communities and cultures

As conceived by Stark, and enacted in Scotland,[23] coercive control is an innately gendered
concept that relies on a society's shared understanding of particular gendered norms and
expectations in the relevant relationship. In this conceptualisation, it is characterised by
perpetrators' manipulation of gendered norms and expectations to present controlling conduct
as the conduct to be expected by society of a loving partner and parent. (Stark & Hester, 2019,
91; Walklate & Fitz-Gibbon, 2019, 95; Walklate & Fitz-Gibbon, 2019, 100, and references cited
therein).

It is currently unclear whether and how coercive control can translate into relationships
grounded in the norms and expectations of cultures beyond the common law world, or be
applied to relationships that do not conform to heterosexual norms. (see also Stark & Hester,
2019, 88, 91-93)

Such issues must be thoroughly considered before coercive control can be safely and
effectively operationalised as a criminal offence in modern Australia.

Effects on children

Care must be taken to ensure that sanctions levied against adult wrongdoers do not have
inadvertent adverse consequences for children. At present, the effects on children of coercive
control and on the potential effects of criminalising coercive control have not figured largely in
the public debate, although there has been some scholarly commentary and investigation (see
Stark & Hester, 2019, 96-98). Relationships Australia would urge all governments to ensure
that the creation of standalone offences does not avoidably diminish the safety or wellbeing of
children.

Benefits of creating a standalone offence of coercive controlling behaviour

It is widely recognised that the law, both civil and criminal, has serious substantive and
procedural limitations in recognising and remediating certain kinds of harms perpetrated in
certain kinds of ways. Substantively, for example, countries with common law heritage have

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[23] Domestic Abuse Act of 2018. Stark and Hester, 2019, commend the Scottish legislation for its coverage of former partners,
increasing criminal penalties and focusing on the intent of the offender, rather than the victim survivor's account of the harm to
them (at 88).

most readily provided redress for harms that occur in discrete, time-bound incidents and that inflict discrete, tangible and quantifiable loss, damage or injury. Procedurally, civil and criminal proceedings alike rely on adversarial processes and binary outcomes. Historically, these processes and outcomes have been crafted around the archetypal 'reasonable man on the Clapham omnibus', and their failure to deliver justice to women across the realms of family law, child protection, family violence, sexual violence, for example, is amply documented.

Advocates for offences of coercive control suggest that such offences can fix these shortcomings. What concepts of coercive control appear to offer is public recognition of and redress for harms done from patterns, created and reinforced over periods of time, of conduct and behaviour that may seem utterly innocuous, but that are rooted in gendered norms and expectations, and that have the effect of entrapping and depriving women of their autonomy and selfhood. Further, advocates point to the criminal justice systems as the most serious possible expression of public opprobrium of conduct (see Douglas, 2015), and to its consequences of incarceration as deterrents. However, research literature demonstrates that family violence offenders are not deterred by the existence of criminal sanctions (Sloan *et al*, 2013).

Decades of law reform ostensibly intended to reduce family violence does not appear to have made women safer, or transformed the behaviour of those who perpetrate violence. It is incumbent on society to consider why criminal offences of homicide, manslaughter, rape, bodily harm (in all its degrees), technology facilitated abuse, stalking and harassment have not provided sufficient opprobrium to deter perpetrators or, indeed, even to stop victim blaming among those whose responsibility it is to enforce these offences.

Nevertheless, Relationships Australia considers that the concept of coercive control has a legitimate and valuable place in Australia's legal systems to:

- enable discernment of patterns of conduct that are not otherwise actionable in the law, but that undermine safety and obscure the need for perpetrator transformation, and
- diminish reliance on discrete incidents of otherwise criminal behaviour to put in place safety measures and hold perpetrators accountable.

Evidence / measurement

England and Wales introduced standalone coercive control offences in 2015, Scotland in 2018, the Irish Republic in 2018, and Northern Ireland in 2019. Thus far, available data suggest that these offences have not fulfilled their promise of maximising safety and accountability. The majority of arrests have been dropped without charge, and there have been very few successful prosecutions.[24] Barlow *et al* note

> …national level data highlighting the low and patchy implementation of the offence nationwide [England and Wales] (Barlow *et al*, 2020, 174)

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[24] WLSV Policy Brief, at 8, citing Barlow *et al*, 2020; & Walklate, S. (n.d.) Policing Responses to Coercive Control. School of Law, Lancaster University.

Any potential that enactment of the offences would exercise a deterrent effect, as an 'ultimate' symbol of public opprobrium, might be expected to have been realised during or in the period of time closest to enactment. However, data published by the Office for National Statistics in 2019 revealed no change to the prevalence of family violence in England and Wales.

According to the Home Office's recent review of the operation of the offence in England and Wales,

> While volumes of CCB offences being recorded have increased each year, the proportion of CCB offences leading to a charge has decreased from 11% in 2017/18 to 6% in 2018/19. However, falling charge rates have been seen across many offences over the same time period, and so do not necessarily reflect specific difficulties in charging CCB. A very high proportion of offences (85% in 2018/19) were finalised due to evidential difficulties (including where victims withdrew from the process), with both the literature review and the stakeholder engagement exercise highlighting that evidencing CCB is a significant challenge for police and prosecutors, likely due to the nature of CCB as a course of conduct offence that often includes non-physical abuse. Furthermore, while the conviction ratio for prosecutions (where defendants were charged with CCB as the principal offence) increased from 38% in 2016 to 60% in 2018; it then fell to 52% in 2019.

> Most prosecutions involving CCB were for cases where there were co-occurring offences, for example, with offences of violence against the person. (at p 5; the Home Office further notes that the data comes from a subset of police forces which provided it)

It may be thought that these figures reflect the relative newness of the offence. However, given that (unlike in the Victorian Act or the Family Law Act), the England/Wales statute books were silent on coercive control before enactment of the offences, so that any number over zero could be seen as a 'result' deriving from the creation of a criminal offence. Australian jurisdictions, however, already have a range of offences on the statute books that can be applied to an array of conduct, including coercive control, and so this would not be a reasonable comparison.

In any event, we consider that numbers of complaints, charges, trials, and convictions tells us nothing about the key objectives of family violence reforms – improved safety and perpetrator accountability (including through behavioural change). The counting of complaints, charges, arrests or convictions are merely a counting of inputs, and is not a robust basis on which to run the risks identified earlier in this statement. The numbers of these inputs do not constitute meaningful proxies for assessing the benefits to victim survivors.

Finally, any measurement or evaluation will depend on a shared understanding of what coercive control is – and what it is not. There is disagreement about such fundamental matters as:

- whether coercive control is a form of family violence (for such a characterisation, see for example Douglas, 2018; ANROWS, 2021) or is a thing entirely separate from violence, as conceptualised by Stark (2007, 2009, 2018), and
- whether offences should be explicitly gendered (as in Scotland) or gender neutral (as in England and Wales).

It is difficult to support a step with as grave consequences as criminalisation in the absence of a nationally shared understanding.

Conclusion

In 2019, Stark and Hester suggested that, since 2009,

> …advocacy driven public law-making based on coercive control and the critical response have spun far ahead of evidence-based research building or testing the model. (Stark & Hester, 2019, 81.)

We agree. It is premature to criminalise coercive control. Significant work needs to be done to

- realise the full potential of already available instruments and resources to achieve better safety outcomes and perpetrator accountability and transformation
- gather and evaluate data from jurisdictions that have criminalised coercive control
- develop – if necessary – a standalone offence that can be safely and reliably operationalised and enjoy the confidence of victim survivors and the broader community, and
- develop a transparent and robust tool to measure the efficacy of new offences.

Accordingly, we offer the following recommendations to states considering criminalising coercive controlling behaviour.

Recommendation 7: That enactment of offences relating to coercive controlling behaviour should be contingent upon:

(i) **developing a national definition of coercive control, to be used in all Commonwealth, State and Territory legislation, with attention also to necessary changes to existing family violence definitions in all jurisdictions.**

(j) **commissioning research about how children experience coercive control, to inform ongoing policy development that is inclusive of children's agency and needs, at all points of the policy, legislative, implementation and evaluation processes.**

(k) **better leveraging existing offences and investigative and prosecutorial powers, including through long-term, stable and adequate resourcing to enable appropriate prioritisation of investigation, prosecution and behavioural change interventions, and structured information sharing about systemic issues.**

(l) **providing actionable, timely and recurrent training for law enforcement officers, prosecutorial agencies and judicial officers about the nature and prevalence of coercive control.**

(m) **continuing federal and state efforts to reduce fragmentation and siloing, to lift from families the burden of navigating complex and fragmented systems.**

(n) **consulting broadly with family relationships services and other family violence practitioners, as well as with law enforcement and other government agencies to ensure the resulting offences are capable of effective operationalisation and that**

they can be implemented in a way that supports, not undermines, therapeutic work with our clients

(o) a common national definition of coercive control, adapted from clinical settings to the criminal justice setting, and which:

    (i) explicitly includes separated partners, and
    (ii) reflects modern family formation as well as diverse cultural norms

(p) work towards nationally recognised guidelines for police, prosecutors and judicial officers as to what kind of evidence is probative of coercive control, and what constitutes a sufficient weight of evidence to clear the threshold of beyond reasonable doubt.

Perpetrator interventions

MCBP best practice consists of multiple components of practice that involve 1-1 casework interventions or post program work, partner support casework, group work programs for the men, and support groups for the women. As recommended by ANROWS, programs must be responsive to the provision of new initiatives (i.e. working with young people, culturally diverse communities, LGBTQ communities, Aboriginal and Torres Strait Islander communities and responding better to the impact of mental health and drug and alcohol issues).[25]

There is an emerging evidence base concerning the effectiveness of MBCPs, which offers valuable insights for policy and program development and evaluation. We commend to the Commission's attention the work undertaken over the past decade by ANROWs. Its 2019 report made 17 recommendations to support effective evaluation of MBCPs.

Flexible service delivery for emerging communities is, however, a core part of the New South Wales Compliance Standards. These Standards do not have a minimum length for the MBCP, but strongly focus on the proper assessment of everyone's situation and what is required. The use of standards often raises the bar of what is expected but it is not always accompanied by the required program funding. A key requirement for evaluating the effectiveness of MBCPs is to obtain regular feedback from men's former and current partners. While partner contact is often linked to men's involvement in the MBCP, there is a strong focus on level and severity of abusive behaviours which does not capture the context of the women's lives. It misses the significance of the controlling behaviours and its impact. Also, a women's sense of safety may differ from their sense of fear. Therefore, this results in the limited collection of longer-term impacts and outcomes data. We commend to the Inquiry the 2019 report from ANROWS, *Men's Behaviour Change Programs: Measuring outcomes and improving program quality: key findings and future directions*.

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[25] Day, A., Vlais, R., Chung, D., & Green, D. J. (2019). *Evaluation readiness, program quality and outcomes in men's behaviour change programs* (Research report, 01/2019). Sydney, NSW: ANROWS.

Case Study: Relationships Australia New South Wales analysis of its MBCP

From 2010-2013, Relationships Australia New South Wales (RANSW) completed a mixed method: quantitative and qualitative analysis of men and their partners who were part of its MBCP called *Taking Responsibility*. It involved clients completing a survey at intake, at the end of the group program, and then at a 6-month follow up. The evaluation used standardised forms that measured level of distress, mastery, self-esteem and gender equity questionnaires. Interviews with men and women occurred at the conclusion of the program. All data was triangulated with the partner feedback. (Gray, Gaffney, Broady, & Lewis, *Practice Implications Clinical Forum*, 2013).

The overall results were, at intake, the men's level of distress was higher than comparable populations and the level of self-esteem and mastery was lower than comparable populations. Their level of gender equity was lower than comparable populations, meaning that they did not support equality for women.

At the program's completion, their level of distress was reduced, compared to intake levels, and their level of self-esteem and mastery was higher. Critically, however, their level of gender equity did not change. (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013).

High support for gender equity indicates that a person believes women should possess the same rights, roles, and opportunities in society as men. Low support indicated that women's rights, roles, and opportunities should be inherently different.

Relevant literature recognises that the two strongest predictors for violence against women being maintained was the combination of low gender equity scores and being male. (Gray, Gaffney, & Broady, 2014). Feedback from the RANSW male participants identified that they:

- had difficulty maintaining weekly attendance over 18 weeks
- towards its completion - appreciated the length of the group as being necessary
- fluctuated in their motivation to complete the program
- perceived a negative stigmatisation for men attending MBCPs
- were often distressed by the change process across the program
- valued the course materials
- valued the therapeutic relationships developed with their peers and the group leaders, and
- requested aftercare support after the completion of the group

A strong correlation for improved behaviour change relies on the development of useful goals and deepening the men's motivation to attend the program.

The RANSW research found that motivation is tied to relationship status and other factors like the quality of relationship the man has to his children. Attendance is viewed as indicative of motivation. Relationships often ended during the program, which can be distressing and decrease the man's motivation for change. (Gray, Gaffney, Broady, & Lewis, *Practice Implications Clinical Forum*, 2013)

Most of the partners and former partners still in contact with MBCP participants described feeling physically safer since the program completed but, consistent with other literature, felt that other forms of abuse were ongoing: '[There is] less physical violence but at change-over that he was doing more verbal. I try to avoid eye contact. And it's safe, but I just go silent. I don't respond' (Winnie). (Gray, Gaffney, Broady, & Lewis, 2015, p. 77)

When safety is at stake in family situations, the focus on men's behaviour change is secondary to the duty of care towards the women and children who are exposed to violence and abuse. (Gray, Gaffney, Broady, & Lewis, 2015). Women's reports indicated (Gray, Gaffney, Broady, & Lewis, 2015):

- a reduction in physical abuse; however, they also reported an increase in other forms of abuse (psychological and emotional)
- that men completing a MBCP may use the changes they have experienced to put down their partner for not changing too, and
- that they doubted the sustainability of the man's changes and expressed anguish at their children's experiences.

Most of the research participants were parents (27 of 28), with the women expressing feelings of isolation and a lack of 'voice'. They valued the opportunity to provide input (through interview) and requested more therapeutic support. (Gray, Gaffney, Broady, & Lewis, 2013).

Through contact with the program, many of the women attended more groups and counselling as, prior to involvement, they had little to no previous contact with other services. They stated that they gained knowledge from this contact and were better able to make decisions about their response to the violence. They also elevated their expectations of the changes that the man was required to make. (Gray, Gaffney, Broady, & Lewis, 2013)

A qualitative analysis of the in-depth interviews with the 21 group participants who had completed the program, the participants' perception of their relationship with their children emerged as a key issue. A common theme was their significant expression of love for their children. This served as a 'motivation to stop using violence and to develop alternative ways of relating to all family members' (Gray, Gaffney, Broady, & Lewis, 2015). The research identified the potential of men's relationships with their children as powerful contexts, or points of leverage, through which the impact of their violent behaviour can be realised and confronted. It appears that men may minimise the impact of their violent behaviour. However, the opportunity still exists for men to be challenged and motivated to change through realising the impact of their behaviour on their children's wellbeing and their father-child relationships. By realising the impact that violent behaviour has on their children's wellbeing and fathers' relationship with them, it is intervention programmes can support men to develop safer and more appropriate ways of relating to their children, and thus safeguard children from potential long-term consequences of family violence. (Gray, Gaffney, Broady, & Lewis, 2015)

Common motivations for men attending MBCPs include mandated clients who need to complete the program to avoided breaking court orders, reduce the likelihood of imprisonment and further

police involvement. RANSW's research also identified that MBCPs are more likely to be successful in situations where couples want their relationship to be maintained. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014). In the RANSW research, one-third of the female partners had strong doubts about their partner's motivation, especially if his motivation depended on the women's continued engagement in the relationship. Men rarely continued attending post-separation if their motivation depended on continuation of the relationship. When the men shifted their motivation to 'doing it for the family and myself' their purpose and commitment to the program deepened with it being noticed and appreciated by the women. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014) Relationships often ended during the MBCP, particularly when the female partner felt safe enough to leave as their partner was adequately attending the program, being supported and monitored. Professionals working with men who use violence are advised to raise the topic of the client's relationship status, to prevent attrition, and work with them to broaden their motivation for involvement. (Broady, Gaffney, Lewis, Mokany, & O'Neill, 2014). Shifting this motivation from 'other centredness' to being inclusive of their 'own and other' interests is vital to retention and success. As a result of this research, the following program development changes have been made (Gray, Gaffney, Broady, & Lewis, Practice Implications Clinical Forum, 2013):

- direct focus on participants' gender attitudes

- making overt and challenging the gender narratives amongst the men

- focusing on a man's motivation to be a better father to deepen their motivation to make change a reality

- clarifying that the engagement and attendance at the group is not itself indicative of change; similarly, enhancing an individual's self-esteem may not encourage a significant behavioural change if there is no change in terms of gender equity beliefs (Gray, Gaffney, & Broady, 2014),[26] and

- making former/ current partner contact by the service compulsory.

Practitioner focus groups have identified that:

- it is challenging for practitioners to manage low levels of readiness for change
- assessment tools are often not fit for purpose
- quality of the program materials affects program integrity
- little consistency about the signposts for change
- feedback from partners is often intermittent
- there is very little window into outcomes, and
- safety planning often requires creativity.[27]

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[26] See also O'Connor *et al*, 2020, noting that, in 2015, the Council of Australian Governments recognised that outcome measures should also be considered in evaluations of such programs.

[27] Vlais, R., Ridley, S., Green, D., & Chung, D. (2017). Family and domestic violence perpetrator programs. *Issues paper of current and emerging trends, developments and expectations, Stopping Family Violence*.

Case study – Relationships Australia Victoria

Relationships Australia Victoria contracted Monash Centre of Health Research and Implementation (MCHRI) to evaluate its Men's Behaviour Change Program and Men's Case Management Pilot. The aim of these programs is to 'enhance and support women and children's safety through men's accountability and responsibility for their use of family violence. The MBCP is a 20-week group program which operates against the background of a Theory of Change and the RAV Family Safety Model, and complies with Family Safety Victoria Minimum Standards and the No to Violence Implementation Guide. It involves weekly sessions of two hours each.

The Men's Case Management Pilot is a one-on-one program which works closely with the MBCP groups and facilitators as well as the Family Safety Program.

Clients are referred to the MCMP if they are affected by additional barriers to accountability including housing and homelessness, mental health concerns, trauma and financial concerns (including unemployment). Case managers may, for example, help clients to navigate service systems (eg by attending appointments relating to health, housing and substance misuse). MCMP can be used to prepare a client for participation in the RAV MBCP or in parallel with a client's participation in the RAV MBCP. The evaluation showed that there had been significant improvements in clients':

- belief in ability to manage stressful times
- understanding of the impact of their use of violence on their ex/partner and family members, and
- skills to repair the impact of their use of violence on their ex/partner, children and family members

Trends in clients' data also indicated improvements in their:

- understanding of their own mental and emotional health
- understanding of their ex/partner and family members' needs and feelings
- relationships with their ex/partners and family members, and
- understanding that their behaviour in relationships could improve.

The evaluators identified the following key active elements of the service offerings:

- increasing men's awareness and knowledge of the impact of their use of violence
- practical strategies to manage their attitudes and behaviours
- experienced MBCP facilitators, and
- peer support.

Recommendations from the evaluation canvassed program development, staff engagement (including with recruitment for participation in future research) and ongoing research into the impact of these services on men and their families. The MCHRI also made suggestions for future evaluations.

Recommendation 8: That the Queensland Government should fund MBCPs with regard to:

> **(a) principles of universal accessibility, geographic equity and cultural responsiveness**
>
> **(b) sustainable funding arrangements that give certainty to clients and providers, thus fostering effective therapeutic relationships**
>
> **(c) robust formative and summative evaluation.**

Cultural responsiveness

It is well documented that generalised approaches are not necessarily effective in all cultural groups.[28] Queensland, like other Australian jurisdictions, is fortunate in its multicultural population. Strategies to respond to DFV must, therefore, be developed and implemented in culturally responsive ways to achieve safety objectives.

For example, the Building Stronger Families (BSF) Program is a whole of family approach to men's behaviour change developed by Relationships Australia New South Wales and Settlement Services International from 2018 onwards. It includes a men's behaviour change program and a family safety program for the women and children, along with a women's support group called Women: Choice and Change. From the experience of developing this program,

> …it is important to note 'there is insufficient evidence that any one culture or community, migrant or otherwise, is more or less violent than any other' although men from migrant and refugee communities are often portrayed in the media as more violent. (Murdolo & Quiazon, 2016, p. 5).

Violence against women by men in these communities is often explained as 'cultural' and it is assumed that non-white cultures are more tolerant of men's violence against women that white cultures. (Murdolo & Quiazon, 2016, pp. 19-20)

In 2011, Relationships Australia Victoria evaluated its program for Vietnamese men, made possible by funding from a Legal Services Board grant. The men were interviewed at three stages during the group process, as were the women (their partners) and there was a detailed analysis of the changes to the men's violent behaviour and the increase in respectful behaviour. Some men made significant changes to their violent behaviour toward their partner; some made more positive changes in their parenting. The women who were not seeing positive changes were better able to separate safely through the assistance of the partner contact worker (who worked in parallel alongside the men's program).

It is important to consider the structures and systems which these women and men occupy. When refugees and migrants settle in a new country, they often experience high levels of trauma, stress and isolation. Experience of systemic discrimination and marginalisation,

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[28] See, for example, the body of work developed by ANROWS, including the MuSeS Project: https://www.anrows.org.au/research-areas/culturally-and-linguistically-diverse-communities/.

language barriers and lack traditional support systems often accompanies migrants and refugees. These barriers increase the vulnerability of women and their children, and limit help-seeking. Also, men who use violence can exploit the 'isolation, immigration status, communication barriers, social and economic disadvantage, and other personal circumstances' of these women. (Vaughan, et al., 2016, p. 9) There is increasing evidence that the influence of male privilege exists on a continuum and depends on each man's background (family history, education, lived experience regarding work/peers/relationships). However, when refugee families arrive in Australia

> …women often learn new skills to gain independence, such as driving, budgeting finances and pursuing higher education. Men who are used to working but arrive in Australia with limited English or cannot get their qualifications recognised, struggle to find employment; this contributes to loss of power, stress, boredom and depression. This change in gender roles may lead to resentment among male family members, as they feel powerless over their everyday lives, sometimes triggering them to abuse women in order to regain this power. (ACCESS, 2017).

Children may also experience changes in family roles as they often learn English more quickly than adults do, placing them in a position of great responsibility where they are required to interpret and make decisions for their parents. This shift in power may lead to domestic and family violence from a disillusioned parent to a child, or child to parent. (ACCESS, 2017)

Recommendation 9: That initial and regular refresher training in cultural responsiveness be mandatory, with tailoring available to respond to the demographics of specific command areas.

Workforce planning and capability

Relationships Australia considers the following to be core competencies for those working with people and communities affected by DFV and abuse and neglect of older people:

- the nature and prevalence of family violence, its drivers and factors that may mitigate it
- coercive controlling behaviour, including how people who use this behaviour can engage it to subvert legal systems and other sources of help
- the nature and prevalence of abuse and neglect of older people, its drivers and factors that may mitigate it[29]
- trauma-informed practice, including how this practice can enable better identification of the person most in need of protection
- understanding of the impact on children of conflict and DFV

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[29] Noting that few older people who experience abuse or neglect will seek help from police: see https://aifs.gov.au/research?project%5B3396%5D=3396 : Qu, L., Kaspiew, R., Carson, R., Roopani, D., De Maio, J., Harvey, J., Horsfall, B. (2021). *National Elder Abuse Prevalence Study: Final Report.* (Research Report). Melbourne: Australian Institute of Family Studies.

- vicarious trauma – including in relation to how vicarious trauma may affect police officers, and sources from which they may obtain assistance

- an understanding of child abuse, including child sexual abuse and neglect, and

- cultural competence in relation to Aboriginal and Torres Strait Islander people, LGBTIQ+ families, and culturally and linguistically diverse communities.

Recommendation 10: That the Queensland Government should establish initial and ongoing systemic workforce planning and capability mechanisms for the QPS and other elements of the DFV system (civil and criminal).

Recommendation 11: That vacancies for specialist staff (including civilian staff) working in DFV should be filled promptly.

Recommendation 12: That mandatory initial and regular refresher training in these core competencies should be required of all police officers, with tailored training available for specialist, as well as general duty, officers.

Recommendation 13: That the QPS should be sufficiently funded and staffed to enable police officers to access safe and confidential clinical supervision and peer de-briefing. For this to be effective, we acknowledge the need for cultural transformation to destigmatise help-seeking and for resourcing to ensure that clinical supervision and peer de-briefing are not 'on top of' an already extremely stressful workload.

Evidence base to inform action

There appears to be little contemporary and domestic scholarship on the perpetration of DFV by Australian police officers. However, the development of effective preventative measures and responses is contingent on rigorous and focused research. Some organisations with specific cultural features have undertaken such research, which may offer insights to guide the development of research programmes for the QPS.[30]

Recommendation 14: That the Queensland Government should commission research about the prevalence and nature of DFV and of abuse and neglect of older people experienced by QPS employees and their family members.

In designing its services and programs, Relationships Australia organisations are informed by our client data, which enables us to more accurately identify risks and offer specialist wraparound services to families with complex needs, including perpetrators of family violence.

Some of our federation members use FL-DOORS,[31] which is a validated tool to screen for risk factors. In collaboration with Relationships Australia South Australia, a tailored version

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[30] See, for example, the research undertaken by the Anglican Church of Australia, reported in the *National Anglican Family Violence Research Report* (2021): https://anglican.org.au/wp-content/uploads/2021/08/1.-NAFVP-Research-Report.pdf

[31] McIntosh, 2011.

FL-DOORS is also currently being used in the Lighthouse Project being undertaken by the Federal Circuit and Family Court of Australia in registries including the Brisbane registry.[32]

It is a three-part framework to be used by frontline workers to identify, evaluate and respond to a variety of risks in separated families. The risks targeted by FL-DOORS are

> …key historic and current factors associated singly or in combination with increased risks for perpetration or victimization in domestic violence and risks to parent, infant, and children wellbeing.[33]

The universal use of such tools by family relationship service providers guards against clients underreporting risk factors.[34] Using the tool with all clients – namely, universal screening – means no client is unfairly targeted; for example, by being asked questions about risk because of gender. Importantly, all clients are asked all risks about victimisation, perpetration and harm to self and to children. Asking clients to self-report gives them permission to disclose risks and gives permission to staff to ask about risk. Skilled practitioners then explore risk with a view to promote safety and wellbeing without needing to investigate allegations, which neither federal family law courts nor service providers are equipped to do. Wells, Lee *et al*, 2018, observed that use of FL-DOORS for paired partners yielded responses that corresponded closely; ie that people gave responses about risk factors that corresponded with their partners' responses about those factors.

Police as first responders and system gatekeepers

Research literature on police perpetrators of DFV is limited, dated and not necessarily relevant to contemporary Queensland. Such literature as there is, however, tends to agree with public and media commentary that a critical issue is that of independence. Police perpetrators are often enabled in their behaviour by permissiveness arising from a conflict of interest among their colleagues and superiors. Relationships Australia notes the recent publication of a report by the New South Wales Auditor-General, which sets out current mechanisms to manage actual and perceived conflicts in the New South Wales Police Force, and proposals that are currently under consideration.[35]

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[32] See https://www.fcfcoa.gov.au/fl/fv/lighthouse

[33] Wells Y, Lee J, Li X, Tan S E and McIntosh J E, (2018) 'Re-Examination of the Family Law Detection of Overall Risk Screen (FL-DOORS): Establishing Fitness for Purpose', Psychological Assessment http://dx.doi.org/10.1037pas0000581 Factors targeted by the tool include negative emotions about separation, coping, substance use, infant and child distress, self-safety concerns, whether others are worried about the respondent's safety, whether police have been called, family violence, unemployment, financial hardship, child support, legal problems, housing issues, feelings of isolation, illness/disability, lack of access to transport. See Table 1 of Wells, Lee *et al*.

[34] See O'Doherty L, Hegarty K, Ramsay J, Davidson LL, Feder G, Taft A. Screening women for intimate partner violence in healthcare settings. Cochrane Database of Systematic Reviews 2015, Issue 7. Art. No.: CD007007. DOI: 10.1002/14651858.CD007007.pub3. Accessed 29 June 2022.*.*

[35] New South Wales Auditor-General's Report, *Police responses to domestic and family violence*, 4 April 2022, (accessible at https://www.audit.nsw.gov.au/our-work/reports/police-responses-to-domestic-and-family-violence), p 36.

The inquiry raises the perennial question of who guards the guardians? Where a police officer is a perpetrator of DFV, critical police functions are potentially compromised. These are the first responder functions (including initial making safe and evidence gathering), and key gatekeeper functions relating to both the criminal justice system and vital social supports for victim survivors.

Literature and commentary further agree that where a police officer is a perpetrator, a victim survivor can be profoundly disadvantaged by severe asymmetries, including in capacities to:

- inflict violence, including through coercive control

- 'game the system' through image management (before, during and after perpetration), exploiting relationships with other individuals and institutions in both criminal and civil justice (eg the family law) system, and exploiting positional power, and

- 'game the system' by encouraging misidentification of the victim survivor as the primary aggressor.

These asymmetries compound other intersecting disadvantages which victim survivors experience, such as complex trauma from institutional abuse and intergenerational traumas, and operate not only 'on the scene' when an incident has occurred and help is called for, but also (less visibly) to deter help-seeking by both adult and child victim survivors. Victim survivors believe that, if their perpetrator is a police officer, then either they will not be believed or, if they are believed, other police (and other elements of the criminal justice system) will, quite literally, close ranks without regard for the safety of victim survivors.

Addressing this will require concrete and credible actions that demonstrate this no longer to be the case.

Recommendation 15: That the Queensland Government should establish mechanisms to:

(g) ensure that investigation of alleged police perpetrators is carried out at genuine arms' length from the alleged abuser and their colleagues, by conferring appropriate powers of search, investigation, seizure, detention and prosecution on a body or person extrinsic to the QPS; perhaps along the lines of the Inspector-General of Intelligence and Security, which has coercive powers similar to those of a Royal Commission established under the *Royal Commissions Act 1902* (Cth)[36]

(h) re-direct service support gatekeeping to persons/bodies:

- **who are independent of police, and**

- **with expertise in DFV and trauma and collaborative relationships with other service providers**

(i) introduce protocols about who can contact victim survivors

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[36] See *Inspector-General of Intelligence and Security Act 1986* (Cth).

(j) **ensure privacy and security of data and information, with meaningful and enforced sanctions attached to breaches**

(k) **provide more robust and independent accountability and complaints mechanisms, and**

(l) **establish transparent, easily accessible mechanisms for compensation, redress, and reparation for victim survivors where the QPS has not acted with legality, propriety and in accordance with the human rights of victim survivors of DFV or elder abuse/neglect perpetrated by its employees.[37]**

In the long term, however, the most – and perhaps only – effective countermeasure will be whole-of-society transformation in terms of gendered stereotypes and expectations, and attitudes towards *all* forms of violence, including DFV and abuse and neglect of older people. Police officers are of and from the society they serve; when misogyny, racism, ageism, or other bigotry suffuses the political, economic, cultural and social fabric, no amount of police training or accountability measures will ameliorate these attributes in individuals.

Conclusion

Relationships Australia welcomes this Commission of Inquiry, and acknowledges the complex social, political and cultural interdependencies of the issues raised by the Terms of Reference. Research literature and commentary poses very hard questions for policy makers, including:

- given some data that police are four times more likely than the general population to use DFV,[38] is DFV by police officers the aberrant behaviour of a few 'bad apples' or is it a foreseeable and essentially unavoidable consequence of criminalising DFV and expecting it not to affect the cohort of people who are charged with enforcing the law, while equipped with extraordinary powers and uniquely dangerous tools and skill sets

- is a culture which encourages and enables 'cover ups' of varying degrees an inevitable 'side effect' of fostering the kind of collegiality that is necessary to do the job, and

- is there an association of DFV among police officers and the increasing militarisation of police forces in Australia, as well as overseas?

The importance of the Inquiry cannot be over-stated – if police officers use DFV with impunity, then this not only affects the confidence which victim survivors of DFV – and of other, unrelated, offences – can repose in police. It affects the confidence of the public in the justice system as a whole, and undermines the rule of law. This is not a matter, as one senior QPS officer suggested, of victim survivors fretting that the police officer they disclose to will not be 'as sympathetic and compassionate as they might be'.[39] Rather, victim survivors fear that the

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[37] These factors are analogous to those which the IGIS must consider.

[38] See, for example, Goodmark, L, 'Hands up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse', (2015) Faculty Scholarship 1515.
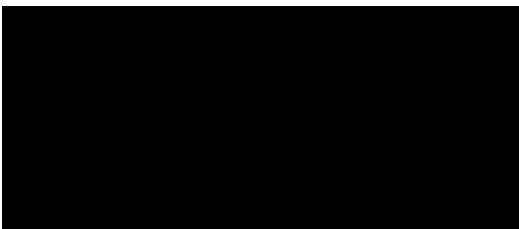
[39] Comments reportedly made by Assistant Commissioner Brian Codd: see Smee, B, 'Queensland police leaders "grappling" with rise in officers accused of domestic violence', *The Guardian*, 4 May 2021.

police officer they disclose to will not help them, or will take active steps to further endanger them, out of mateship or because the officer is themselves a perpetrator.[40]

If QPS leaders cannot squarely face up to this without minimising the gravity and legitimacy of those fears, then no amount of criminalisation of DFV, and no amount of extra funding, will help the families of police who use DFV.

Thank you for the opportunity to make a submission to this Inquiry. Should you wish for further information or clarification about any of the matters canvassed in this submission, please do not hesitate to contact me at ████████████████████████, or our National Policy Manager, Dr Susan F Cochrane at ████████████████████████. We can be contacted by telephone on ████████████

Kind regards

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Nick Tebbey
National Executive Officer

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[40] Relationships Australia notes suggestions by Mr Calvin Gnech of the Queensland Police Union of Employees, in evidence to the Senate Legal and Constitutional Affairs Legislation Committee, that there are 'multiple instances per year' in which groundless DFV applications are made against serving QPS officers: see Hansard transcript of evidence at the inquiry into the Family Law Amendment (Federal Family Violence Orders) Bill 2021 on 14 July 2021, p 18; see also the submission from the Queensland Police Union of Employees, at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Familyviolenceorders/Submissions