REFORMING THE LAW OF DOMESTIC AND FAMILY VIOLENCE -

AN OFFENCE OF COERCIVE CONTROL

Current Legal Issues Seminar

Supreme Court of Queensland, Banco Court

10 November 2022

The Hon Margaret McMurdo AC

Chief Justice, Your Honours, distinguished guests, all,

I warmly acknowledge the traditional custodians of this land, the Turrbal and Jagera peoples. I pay my respects to elders past and present. Long before European settlement, Christmas, jacarandas, poincianas, or poinsettias, they held gatherings here to discuss their lore, and ways to do things better in their communities. In speaking this evening, I am inspired by, and honoured to be part of, that ancient tradition that we, as Australians, are fortunate to have inherited. I hope we will soon recognise that heritage through a First Nations voice to Parliament in our constitution.

I will speak tonight about the background leading to the Queensland Women's Safety and Justice Taskforce which I had the privilege to chair; about the Taskforce, its work and its learnings; and about the Taskforce recommendations in its two reports, *Hear her voice - Addressing Coercive Control and Domestic and Family Violence in Queensland* (*Hear her voice 1*) and *Hear her voice - Women and Girls' Experiences of the Criminal Justice* System (*Hear her voice 2*). Lastly, I will discuss the implementation of those recommendations so far, with a focus on domestic and family violence and an offence of coercive control.

The Background to the Taskforce

First, a little about the background to the Taskforce.

Our community's understanding of gendered issues has improved dramatically since the 1970s when I commenced my life in the law. That could be another lecture series! Thankfully things have changed, if at a glacial pace. Maybe it is climate change and global warming, but in recent years that glacier has been causing avalanches - of change and demands for more change.

We have come to understand that domestic and family violence is not a private issue to be shut behind closed doors, but a serious crime, against both victim and the state, costing both dearly, and on so many levels. We have come to realise that, while men can be victims of domestic and family violence, overwhelmingly victims are women, so that domestic and family violence is rightly regarded as a gendered crime, with a high proportion of victims also being sexually assaulted. These days, neither a baby lawyer nor a curmudgeonly dinosaur lawyer, would dare say, in or out of court, 'It was just a domestic', a common phrase in the 1970s.

Thanks to the advocacy of domestic and family violence support organisations, national and state government efforts, and media interest, the public has grown increasingly aware of, and concerned about, Australia's high rate of domestic and family violence, particularly the killings. Australians, mostly women and their children, are dying every week through domestic and family violence, with tens of thousands more suffering serious physical and mental harm.

But it was perhaps the horrific, premeditated killing of Hannah Clarke and her three young children, Aaliyah, 6, Laianah, 4, and Trey, 3, in their car on the streets of suburban Brisbane in February

2020 that caused the greatest national community outrage. For many, this was a line-in-the-sand moment.

Simultaneously, the online, rampant spread of the *#MeToo* movement across the world exposed, and demanded accountability for, perpetrators of sexual assault and harassment.

In October 2020, investigative journalist, Louise Milligan, published her book, *Witness*, a blistering critique of how Australia's adversarial criminal justice system further traumatises victims of sexual assault. Milligan and others highlighted the need for change in the way the criminal justice system treated sexual assault victims.

In January 2021, Grace Tame became Australian of the Year for so powerfully advocating for survivors of sexual assault.

Many looked to politicians for change leadership. But later that year, the investigation of allegations from diverse women exposed a toxic, misogynistic unsafe workplace within the Australian Parliament itself.

Australian women, like their sisters throughout the Western world, had had enough. ln March 2021, Grace Tame led Hobart's *March4Justice*, with similar marches across the nation and the world, calling for equality, justice, and an end to gendered violence.

Leading up to the first anniversary of the violent killing of Hannah Clarke and her children, Hannah's inspirational and courageous parents, Sue and Lloyd Clarke (later the 2022 Queensland Australians of the Year) were determined that good would come from evil. Somehow, through their grief, they advocated for more effective controls to protect victims of coercive control and domestic and family violence.

Given all this, little wonder that the Queensland Government, in March 2021, set up the Women's Safety and Justice Taskforce.

Although I was still catching my breath from the two-year Victorian Royal Commission into the Management of Police Informants, when Attorney-General Fentiman invited me to chair this consultative and independent Taskforce, I was honoured to accept.

The Taskforce

Although without precedent, the Taskforce presented a vitally important, timely, and for me, irresistible challenge. The name of the Taskforce and its terms of reference, which were drafted by the government, not the Taskforce, were gendered. We were essentially required to do two pieces of work. The first was to report on the best legislative model against coercive control and whether domestic violence should be a stand-alone criminal offence. The second was of extremely wide remit - to report on the experience of women and girls in the criminal justice system. The Taskforce was consultative only, with none of the powers or protections of a commission of inquiry or royal commission under Queensland's *Commission of Inquiry Act 1950.*

The Taskforce had ten members in addition to me, as Chair: Dr Nora Amath, from the Islamic Women's Association of Australia; Patrick O'Leary, a professor of social work at Griffith University; Deputy Commissioner Tracy Linford, from the Queensland Police Service; Di McLeod, Deputy Chair of the Queensland Sexual Assault Network, based at the Gold Coast; Philip McCarthy KC, Deputy Director of Public Prosecutions; Gillian O'Brien, the Manager of WWILD, an organisation supporting people with intellectual or learning disabilities who have been victims of sexual violence or other crime; Alexis Oxley, the Principal Lawyer at Legal Aid Queensland's Ipswich Office; Laura Reece, a barrister in private practice, specialising in criminal trial and appellate advocacy; Thelma Schwartz, the Principal Legal Officer of the Queensland Indigenous Family Violence Legal Service, Cairns; and Kelly-ann

Tansley, former manager of Brisbane Domestic and Family Violence Service, now working in this area in South Australia. Their combined professional and personal wisdom and experience enriched the work of the Taskforce, which also had a small but incredibly talented and dedicated secretariat, most of them lawyers. I should especially mention the two lawyers leading the secretariat - the Executive Director, Megan Giles and Director, Sarah Kay, who both worked so hard and with such vision. Sarah Kay is now leading much of the work in implementing the Taskforce recommendations within the Queensland Department of Justice and Attorney-General. While the secretariat worked with me full-time plus, Taskforce members generously volunteered their time and energy on a part time basis, attending consultations and meetings when their demanding full-time roles allowed. The contribution of the Taskforce members and the secretariat was extraordinary. I salute them all. So should the people of Queensland.

The Taskforce's first published work on coercive control and domestic violence was a discussion paper which resulted in over 700 submissions from across Australia, 500 from community members who had – or who had family and friends who had – experienced coercive control. Victims were from all socio-economic backgrounds, including women barristers, solicitors, medical practitioners and other professionals. We received submissions from First Nations, culturally and linguistically diverse, and young women, those with disability, LGBTQIA+ people, and older women.

They told us that domestic and family violence involving coercive control could take many forms - physical, sexual, emotional, verbal and financial abuse, which included being stalked (in person or by spyware technology); told what to wear, eat, or even sleep; constant monitoring with emails, text messages and phone calls; threats of or actual harm to the victim, children, other loved ones, or pets; isolation from friends and family; and denying access to finance, medication, healthcare, and contraception. Victims very often experienced multiple forms of abuse.

We learned that coercive control is a person's pattern of behaviours designed to control a second person in a relationship with the first person. These coercive behaviours are usually frequent, or repetitive; used to limit the second person's freedom to make decisions. They may seem minor and inconsequential when looked at in isolation, but their impact is cumulative; and they are deliberate and rational, rather than impulsive, or erratic. No act of violence or abuse is random; each is intended to punish, hurt, or control the second person.

Time and again, consistent with the academic literature, we heard that coercive control is never a single incident, but a continuum. It starts with non-coercive controlling behaviours of mutual support and decision making, with a 'too good to be true' 'Mr Perfect', often called 'love-bombing'. Then the coercive behaviour begins, gradually at first, but steadily accelerating, isolating the victim from the outside world through psychological control and fear of physical harm, or both. Victims increasingly suffer a loss of self and are in a constant state of fear and anxiety until coercively entrapped. As one woman told us,

> 'The control happened by small degrees until I was a tiny player in my own life.'

A common question from those who do not understand the dynamics of coercive control is, 'Why doesn't she leave?'

There are many reasons. The victims' self-esteem may be so destroyed, that they believe they cannot survive, financially or emotionally, without the perpetrator and they are unable to make free and informed decisions in the best interests of themselves and their children. We heard from support workers that some victims need twelve counselling sessions, following twelve separate episodes of abuse, before they feel confident and ready to leave. This fear of leaving is entirely rational because violence and stalking often increases, sometimes to lethality, at the time and shortly after a victim leaves an abusive relationship. And when perpetrators control the finances, as they usually do, leaving mostly results in poverty and homelessness for women and children, particularly in the current housing crisis. Many women told us that they stayed because they perceived the family law courts would order joint custody

without taking into account the perpetrator's violence, and that this would make it harder for them and their children to stay safe. One escapee from a violent relationship explained,

> 'I spend my life looking over my shoulder to ensure I am not being followed and my children are safe'.

The Taskforce undertook extensive consultations right across Queensland, from the Torres Strait Islands to Cairns, Mt Isa, Townsville, Palm Island, Mackay, Brisbane, the Gold Coast and Toowoomba. I had over 125 individual meetings with stakeholders, including the Chief Justice and the senior judge administrator in the Queensland Supreme Court, the Chief Judge of the Queensland District Court, the Queensland Chief Magistrate and Deputy-Chief Magistrates, other Queensland judicial officers, and judicial officers from the Federal Circuit and Family Court of Australia. I also met with legislators on all sides of politics, the Queensland Law Society, the Bar Association of Queensland, and other lawyers. I met with First Nations and culturally and linguistically diverse women, people from the LGBTIQA+ community, young people, sex workers and women with disability. All this, and particularly the voices of the many women survivors of coercive control who so generously shared their experiences with us, informed our first report, *Hear her voice 1,* which I delivered to Attorney-General Fentiman on 30 November last year.

The Taskforce then focussed on our second role to be completed by the end of June 2022 - reporting on women and girls' experiences in the criminal justice system. Given this tight timeframe and an equally tight budget, we had to refine the focus of this work. Informed by community consultation and submissions following a second discussion paper, we decided to focus on two areas of identified community concern - women and girls' experiences in the criminal justice system, as victim-survivors of sexual violence; and as accused persons and offenders.

After a third discussion paper, further extensive submissions, and consultations, including in the Northern Peninsula Area in Cape York, Cairns, Yarrabah, Townsville, Woorabinda, Rockhampton, Cherbourg, Southeast Queensland, and in prisons and a youth detention centre in Townsville and Gatton, we delivered our second and final report, *Hear her voice 2,* with its 188 recommendations.

Both reports, two video summaries, an 'Easy Read' explanation, the three discussion papers, the submissions able to be published, and information about where to obtain help and support, are available on the Taskforce website – *womenstaskforce.qld.gov.au*. I encourage you to visit and use this excellent resource.

There are important synergies between the two reports in that so many victims of domestic and family violence are also victims of sexual assault, and almost all incarcerated women and girls have been victims of coercive control and domestic family and sexual violence.

During our consultations for both reports we received useful but concerning feedback about the criminal justice process, including 167 submissions. Of those, over half described negative experiences; only nine gave positive feedback; and 21 submissions reported mixed experiences. Typical criticisms relating to coercive control and domestic and family violence included:

> 'I have decided that the police and court will not protect us. I need to do as he says and not pursue justice for our safety.'
>
> 'Magistrates don't always acknowledge severity and impact of coercive control.'
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> 'On the day of my hearing I was told by the Magistrate – well, there aren't any bruises on you'; and
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> 'The male magistrate said [the perpetrator] was a pest and wasn't violent enough to be locked up; he breached bail and [the] DVO 7 times, and I know he's not finished with me'.

Courts not taking domestic violence order breaches seriously was a recurring complaint:

> 'I have to pay for court every time he breaches his DVO, he just gets a small fine that he can easily afford'; and

> 'My son's father was constantly breaching the DVO & didn't care because he knew he would go to court & get a fine that he will never have to pay'.

Another common complaint was that perpetrators were able to use Cross-DVO applications to continue their abuse and re-traumatise the victim. We heard:

> 'Cross-application of Domestic Violence Orders is used as a means of coercive control by a perpetrator and creates further injustices to the true victim' and

> 'He then tried to take a DVO out on me with the grounds of causing him emotional distress by reporting him to the police – the thing I don't understand is how this was ever allowed to be heard'.

Positive comments included:

> 'I was fortunate to present to [a] Magistrate court where all staff had specialty training in domestic abuse' and

> 'Caloundra Mags Court protocols and procedures to support DFV victims are good'.

The submissions about the criminal justice system from sexual assault victims also revealed deep dissatisfaction with their treatment, from first complaint to the police, during the committal proceedings, dealings with the Director of Public Prosecutions, and in the higher courts, through to verdict and sentence. Common complaints related to delay, not being kept informed about the process, and feeling disrespected and disempowered. Victims could not understand why they seemed to be the ones on trial.

The Recommendations in *Hear her voice 1*

I turn now to the recommendations in *Hear her voice 1*.

The Taskforce heard that, despite the large amounts of government funding over many years to QPS to improve their responses to domestic and family violence, and the hard work of some in the QPS senior management and specialist teams, far too many police officers were not responding appropriately to domestic and family violence victims seeking assistance; were misidentifying victims as perpetrators; and were unfairly targeting and criminalising First Nations and other vulnerable women. When domestic violence victims contacted QPS for help, we learned that they entered a raffle as to whether they would receive a response apt to keep them and their children safe and make the perpetrator accountable, or whether they would be turned away to return to dangerous – sometimes lethal – living circumstances. And consistent with the recent 'Four Corners' program, 'How many more?', we heard that this was especially common in First Nations communities.

We heard that QPS was not dealing appropriately with complaints about police handling of domestic and family violence matters, or with QPS officers themselves accused of domestic and family violence. And we heard of talented First Nations police officers who finally felt compelled to resign from QPS after years of racist treatment in their workplace.

The Taskforce had no power to investigate these claims or make findings about them, but they were so concerning, and so numerous, that the Taskforce, with only QPS's Deputy Commissioner

Linford dissenting, felt compelled to recommend a commission of inquiry, with the powers and protections the Taskforce did not have, to examine the widespread cultural problems that we heard existed within QPS.

The Taskforce learned that the misconception that only physical violence is domestic abuse is so entrenched that coercive control victims themselves often did not realise they were victims. We heard repeatedly that non-physical abuse is more damaging than physical abuse. As one woman explained,

> 'I was never hit. But I was tormented with comments. I started to go crazy, I lost myself, I wasn't me anymore'.

I expected to hear from women about their mistreatment at the hands of perpetrators. I did not expect to hear that women perceived their perpetrators to be emboldened by police, legal practitioners and judicial officers. Many felt the justice system was failing them and their children. I heard how first responders – not just police – seldom understood the effect of prolonged trauma on victims, and that perpetrators used lawyers and the court process for domestic and family violence protection, or Family Court orders to continue their coercive control and compound victims' trauma.

The Taskforce therefore recommended systems reforms to achieve more appropriate trauma-informed responses for domestic and family violence victims right across the service sectors, including better training for all law students, lawyers and judicial officers, and with higher-level training for those working directly in the field. We recommended safer courtrooms, better responses in rural and remote areas where domestic and family violence is most prevalent, and improved information-sharing and communication between agencies to identify dangerous or repeat perpetrators at the earliest possible stage. We also recommended a Queensland judicial commission to professionally train judicial officers on issues such as these, and to independently investigate complaints against them.

Many submissions articulately opposed the criminalisation of coercive control. The dominant concern was 'unintended consequences', particularly the likely detrimental impact on Queensland's already over-incarcerated First Nations peoples. But most submissions, both from legal stakeholders and victims, including most First Nations victims, supported criminalisation. Ultimately, so did the Taskforce.

Whilst not drafting the proposed legislation, the recommendations set out a legislative framework, with a detailed four stage implementation plan, from 2022 to 2024 and beyond, focussing on educating the entire community to prepare for a criminal offence of coercive control, and then careful monitoring of the offence's impacts and outcomes. Taskforce recommendations included:

- widening the existing definition of domestic and family violence in the *Domestic and Family Violence Protection Act 2012 (Qld)* to unequivocally include coercive control
- making coercive control an indictable offence, punishable by up to 14 years imprisonment, but with a defence if the controlling conduct was reasonable in the circumstances; and
- other legislative and procedural reforms to support the new offence.

Importantly, we emphasised that the offence must only be introduced with complementary safeguards against unintended consequences (principally, the further criminalisation of First Nations peoples and other at-risk cohorts).

The first recommended safeguard was a lengthy period between parliament's enactment of the offence and its coming into force, to allow for a comprehensive education program - across all service sectors and the broader community - about healthy personal relationships and the nature and impact of coercive control. In First Nations' and culturally and linguistically diverse communities, this education must be community-led. The education must be age-appropriate and tailored to those with mental or cognitive impairments.

The second recommended safeguard was to review the legislation after five years, to consider whether it is better protecting victims and making perpetrators accountable, and whether there are unintended consequences.

And the third recommended safeguard was for the Queensland Government to work with First Nations peoples to meet the Australian Government's *Closing the Gap* targets, which include reducing First Nations incarceration rates.

The Taskforce heard that many victims did not want their perpetrator to go to jail – they just wanted the violence to stop. But there is a paucity of perpetrator programs to control and support perpetrators. Those few perpetrators with insight to seek help often have to wait 9 months, or longer, to get assistance. We therefore recommended more perpetrator programs, early diversionary schemes where appropriate, and a scheme for post-conviction civil supervision and rehabilitation orders, with assessments to understand what works. These programs will assist both in rehabilitating perpetrators and in identifying concerning behaviours, so as to better protect victims.

Other recommendations included a peak body for specialist domestic and family violence services, child safety support for victims, and more co-responder models to deal with domestic violence complaints, involving a response from both QPS and domestic and family violence service providers working collaboratively. The Taskforce also recommended a review of defences under the Criminal Code, the mandatory life sentence for murder, the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, and whether the scheme under that Act should be extended to dangerous violent offenders.

Finally, the Taskforce recommended an Implementation Supervisor to independently and publicly report on the implementation of these recommendations.

The Response to the Recommendations in *Hear her voice 1*

As noted earlier, the Queensland Government announced in May this year that it supports, or supports in principle, all 89 of the report's recommendations. It also announced a $363 million funding commitment to implement the recommendations including:

- $106 million for services to improve safety for victims attending courts
- $60.4 million to improve existing court services and for new specialist Domestic and Family Violence Courts
- $26.8 million for enhanced High-Risk Teams
- $25.5 million for a state-wide network of perpetrator programs and related reforms
- $23 million to trial a co-responder model for police and domestic and family violence services
- $3.4 million to establish an inquiry to examine QPS responses to domestic and family violence
- $20 million for monitoring, data and evaluation processes and establishment of an independent implementation supervisor
- $16.3 million for a communications strategy to raise awareness about coercive control and for a primary prevention plan
- $15.5 million to bolster respectful relationships education in schools
- $9.4 million for a co-designed First Nations Strategy to address over-representation and establish a Chief First Nations Justice Office, and
- $4 million to establish a domestic and family violence peak body.

I am told that the Queensland Government has begun foundational work on establishing two, new specialist domestic and family violence courts in Brisbane and Cairns.

The first of three new High-Risk Teams will be in Townsville, enabling time-critical information sharing and safety management for victims and increased line of sight of high-risk

perpetrators in Northern Queensland. This high-risk team will join the eight existing, and generally well-regarded high-risk teams currently operating in Mount Isa, Cairns, Mackay, Caboolture, Brisbane, Ipswich, Logan, Beenleigh, and Cherbourg. They aim to provide integrated service responses and better outcomes for victim-survivors and their children through an increased focus on victim safety, increased perpetrator accountability, and formalised information sharing. Given that rates of domestic and family violence are proportionally higher in rural and remote Queensland where services are scarce, more regional high-risk teams should be a welcome development.

Commissioner, Judge Deborah Richards, has been conducting the Commission of Inquiry into QPS responses to domestic and family violence for some months. Its shocking public revelations have vindicated what was, at the time, a controversial Taskforce recommendation – at least according to the Queensland Police Union, its President, Ian Leavers, and the QPS leadership team. The Inquiry's findings are expected to be handed to the Premier, the Minister for Police, and the Attorney-General next week. The community awaits them with interest.

The Queensland Government has recently announced its plans to legislate against coercive control, commencing with the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022*. The Bill appears largely consistent with Taskforce recommendations. It proposes amendments to the *Penalties and Sentences Act 1992,* including to take into account the impact of domestic violence and coercive control on victim-offenders, to the *Criminal Code* to strengthen and modernise the offence of unlawful stalking, and to the *Evidence Act 1977, including* providing for jury directions on domestic and family violence.

Importantly, it contains wide-ranging amendments to the *Domestic and Family Violence Protection Act 2012 (Qld),* including expanding the definition of domestic violence to encompass behaviour, or a pattern of behaviour, occurring over a period of time, constituting more than one act or a series of acts, that, when considered cumulatively, is abusive, threatening or coercive, or causes fear, with the behaviour to be considered in the context of the domestic relationship as a whole.

The legal profession and the community generally, will have an opportunity to make submissions before any of these laws are enacted, as recommended by the Taskforce. I anticipate that their implementation will be supported by relevant training and education, enhanced system processes and responses, increased resourcing and the development of new programs, as recommended by the Taskforce.

I am told that the Government expects to introduce the criminal offence of coercive control into Parliament by the end of 2023, and only after consultation with stakeholders including First Nations peoples, government agencies, domestic and family violence support services and, importantly, legal professionals. If Taskforce recommendations are followed, there will be a substantial period after enactment, but before the new law becomes operational, to ensure the entire community understands it.

As to the recommended independent judicial commission for Queensland, to educate judicial officers and deal with complaints (long supported by the judges of the Supreme Court of Queensland and QLS), it is not imminent. Consultation, however, has begun on a preferred model. After I addressed the QLS Family Law Conference recently, a concerned senior practitioner told me that judicial bullying was a major cause of young practitioners - especially women - leaving the profession. He added that no one complained to jurisdiction heads for fear of further victimisation or of damaging their clients' prospects. A Queensland judicial commission is urgently needed.

What of the independent implementation supervisor? I am informed that the government has committed \$3.28 million over four years, and \$0.936 million recurrent, for the independent implementation supervisor and supporting secretariat, and is working towards making an appointment. This is a promising commitment to open and accountable government.

The legal profession's response to *Hear her voice 1's* recommendations proposing better domestic and family violence and trauma informed practice training - from law school onwards, for all lawyers and judicial officers - has been promising. As noted earlier, the recommendations arise from what victims and experts told us – that, too often, legal practitioners (barristers, solicitors, prosecutors, and judicial officers) do not understand the insidious nature and impact of non-physical coercive control in domestic and family violence; that this requires a consideration of the whole relationship and not just an individual incident to avoid misidentification of the real perpetrator; that perpetrators may use the legal system to continue their abuse; the impact of trauma and the need for victims to be treated in a trauma-informed way; where to refer victims for the most appropriate assistance; or even the applicable existing procedural and substantive law. These perceived shortcomings, if left unaddressed, are apt to offend ethical legal responsibilities and erode public confidence in the profession and the judiciary. They must be addressed.

QLS appears to have embraced these recommendations and is taking a commendable leadership role. It has publicly recognised the pivotal role of the legal profession in identifying and responding to domestic and family violence, including coercive control. In a recent article in *Proctor*, QLS President, Kara Thomson, said that QLS was 'aiming to meet and then exceed the taskforce recommendations to the greatest extent possible within the CPD framework'.

Given the spirit of the times nationally, I expect there is an Australia-wide appetite to adopt the essence of the Taskforce's recommendations about the educating the legal profession. I commend QLS for amending the mandatory core CPD areas 'Professional Skills' to include 'Family Violence and Safety', signalling that domestic and family violence is a fundamental proficiency area for solicitors. President Thomson also told *Proctor* that QLS was

> 'committed to developing comprehensive, up-to-date trauma-informed education offerings, so that Queensland solicitors can best support their clients … and will work with the Ethics Centre and Senior Counsellors to further enhance practitioner skills in DFV'.

In developing the recommended training, QLS is working with BAQ and drawing on the QLS Domestic and Family Violence Committee (chaired by Tracey de Simone, the Official Solicitor of the Office of the Child and Family, with Bond University's Professor Rachael Field as deputy chair) as well as subject experts at Legal Aid Queensland, Aboriginal and Torres Strait Islanders' Legal Service, Women's Legal Service and QPS.

QLS CEO, Ralph Moses, tells me that, with the support of Bond University, QLS is already conducting workshops to draft a domestic and family violence competency framework that may well be ground-breaking in Australia and internationally. It will deliver different levels of training according to the needs of the individual practitioner, with an introductory level for all practitioners and staff with client contact; an intermediate level for practitioners working in family law and criminal law who are therefore likely to have direct professional contact with domestic and family violence; and an advanced practitioner level for those specialising in domestic and family violence law.

Queensland judicial officers and other law schools may find it useful, when developing their own training, to look at the work being done by QLS in association with BAQ.

As recommended by the Taskforce, together with LAQ, QLS will ensure its highly-regarded *Domestic and Family Violence Best Practice Guidelines* are reviewed, updated and available on the QLS website.

QLS will use online training, its outreach through district law associations, and its newly-created domestic and family violence portal to ensure regional practitioners are supported in this important training.

I understand that QLS also supports the inclusion of advanced domestic and family violence competency requirements in the benchmark standards for specialist accreditation schemes in family law and criminal law.

As noted earlier, the Taskforce received submissions from professional women, including solicitors and barristers, who were victims of domestic and family violence. I commend QLS for adding the specialist Domestic and Family Violence Helpline to its LawCare services for members personally affected by domestic and family violence.

I also commend BAQ, the University of Queensland and the Supreme Court Library for their initiative in educating the profession through tonight's seminar.

A Brief Summary of the Recommendations in *Hear her voice 2* and their Implementation

Given that most victims of coercive control and domestic and family violence are also victims of sexual assault, and that most women and girl accused persons and offenders have been victims of coercive control and domestic family or sexual violence, I will deal briefly with the recommendations in the Taskforce's second report.

The Taskforce made 92 recommendations in *Hear her voice 2* about the experience of women and girls as victim survivors of sexual assault, taking care not to compromise accused persons' rights to a fair trial, a fundamental premise of our criminal justice system.

The recommendations reflect the voices of sexual assault victim-survivors, who told us that they want the community to be better educated about sexual assault. They want an end to rape myths and the stigma of sexual assault, which make them feel blamed and shamed and adds to their trauma, particularly in small, regional, isolated and First Nations communities. They want the law about sexual assault changed to focus not on them, but on the actions of the accused person on trial. They want police to treat them with respect and in a non-judgmental way, even when they are not the traditional, perfect victim. They need to be supported and informed, from when they first seek help until the conclusion of the court process, and beyond.

Taskforce recommendations about women and girls as victims of sexual assault canvassed:

- increased digital inclusion for more equitable access to services across Queensland,
- that forensic samples be collected quickly, and in a trauma-informed way, and then stored and analysed to ensure reliable and comprehensible DNA evidence can be given at trial,
- that voluntary intoxication not be considered when determining honest and reasonable belief as to consent,
- that an accused person's belief as to consent is not reasonable if they did not, within a reasonable time before, or at the time of the activity, say or do anything to find out whether the other person consented to the sexual activity, but with an important exception for accused persons whose communication skills may be relevantly affected by cognitive or mental impairment,
- that consent must be freely and voluntarily agreed,
- clarifying that stealthing is rape,
- that these changes not be implemented for a period after enactment, to facilitate community education,
- reviewing the legal capacity of 12-15-year-olds to consent to sexual activity, and of dated terminology like 'carnal knowledge',
- extending the admissibility of preliminary complaint evidence to coercive control and domestic-and-family-violence-related cases,
- a community education campaign about sexual violence and the proposed changes to the law
- relationships education in all Queensland schools, including addressing harmful pornography

- professional development to better understand sexual assault and its impacts on victims - for police, law students, lawyers, judicial officers, and service providers,
- reviewing the presently limited restorative justice programs available in sexual assault cases, and
- improving the experience of victims, including through victim advocates and an independent victims' commissioner.

In the interests of judicial transparency and accountability, the Taskforce also recommended improved, but still limited, media access to information about sexual assault and domestic violence cases.

The criminal justice system is also used by women and girl accused persons and offenders. Although they commit far fewer offences than men, the number of female offenders has grown by over 30%, almost four time faster than the male offender growth rate. Proportionally, Queensland has more women in prison than other states. Numbers of First Nations women in Queensland prisons have grown by 120%, and numbers of non-Indigenous women by 80%. This is in part attributable to systemic misidentification of women victims of coercive control as perpetrators.

At a cost to the community of about $120,000 a year for each prisoner, jail is costly. Imprisoning so many offenders has self-evidently not reduced recidivism, nor is it keeping our community safer. As both the Queensland and Federal productivity commissions have reported in recent years, this is a seriously flawed economic model of keeping the community safe.

The Taskforce visited women's prisons and a youth detention centre. We listened to the voices of incarcerated or recently-released women and girls, and those who work with them. All offenders were victims of domestic, family, sexual, or physical violence, and often of multiple forms of violence. We learned that, although incarcerated people have far greater physical and mental health and disability support needs than the general population, they lose their Medicare, and most aspects of their NDIS entitlements, when they are imprisoned – at what should be an opportune time to address health and disability needs and their impact on prisoners' offending. We learned how few rehabilitative, healing and education programs are available. We saw the draconian conditions of the safety and detention units. We heard heart-wrenching stories of women who had miscarried, or had still births in prison without access to adequate medical care. We learned of their low pay-rates for prison work, and the high charges for those treasured family phone calls and for personal items on their limited 'buy-up' list. We heard of the almost unsurmountable difficulties for criminalised women returning to the community to try to rebuild their lives and their damaged families. Most of these women were traumatised victims of coercive control.

There are fewer women's prisons, which means that Queensland women and girls are often detained far from family, making contact with loved ones difficult and the offender's time in custody especially onerous.

Everywhere we visited in Queensland, we learned of acute housing shortages. The parole board told us that women eligible for parole are not released because there is not a single room to accommodate them anywhere in Queensland. Victims of coercive control are returning to unsafe accommodation, with potentially lethal consequences. That is why the Taskforce recommended a housing summit.

In all, the Taskforce made 84 recommendations about women and girls as accused persons and offenders, relevantly including:

- training for police, law students, lawyers, and judicial officers on gendered issues, such as best practice in interviewing First Nations women and girls and other vulnerable cohorts, and understanding the impact of trauma and abuse on offending behaviour,

- strengthening and expanding female-focussed diversionary schemes, rehabilitative programs, pre-sentence reports, and community-based orders,
- broadening matters relevant to sentencing to include female-focussed concerns, such as the effect of trauma and the needs of dependents
- a non-partisan parliamentary committee review as to whether minor drug matters, and offences such as drunkenness, should be dealt with under the health, rather than the criminal justice system, as in many other states.

For women and girls in custody, the Taskforce recommended:

- addressing their health and well-being needs, including adequate pre-and post-natal care and birthing,
- non-invasive body-screening technology to end strip-searches of women prisoners, many of whom have been victims of sexual assault and coercive control and who are retraumatised by strip-searches,
- assisting women leaving prison to find safe housing and employment, to break the cycle of offending and better protect the community.

Finally, the Taskforce repeated its recommendation for an independent implementation supervisor, this time to report publicly on the implementation of the *Hear her voice 2* recommendations.

The Queensland Government has not yet provided its response to *Hear her voice 2*, which I delivered to the Attorney-General on 2 July this year. My enquiries elicited the response that the report's 'significant and complex findings and recommendations [are] now being carefully considered.'

Conclusion

The recommended Taskforce reforms are ground-breaking for Queensland. If successfully implemented, they will profoundly impact on personal, workplace, professional and public behaviour, including in schools, universities, law firms, barristers' chambers and the courts. As Taskforce Chair, I consider the changes are needed and that their community impact will be hugely positive. But I appreciate that, for some, particular recommendations may appear daunting. The changes proposed in the Taskforce's reports, however, reflect the current and sustained demands for change, from both women and men, throughout Australia and the Western World. I commend them to you.

Like most innovations, they will be a work in progress, requiring evidence-based assessments as to what works and what does not; the rejection of what does not work; and the tweaking and refinement of what does. The experiences and assessments of those working in these fields, and of the academy, the legal profession and the judiciary will be vital in this process.

As these recommendations are taken up, and by the time an offence of coercive control - or the proposed changes to the sexual assault laws - come into force, I am optimistic that we will have a more equitable, respectful, empathetic and educated Queensland community, with greater confidence in their justice system.

My hope is that more witnesses, more of those seeking protective court orders, and more accused persons and offenders will end their experience in the criminal justice system feeling that they have been treated fairly, regardless of the outcome of the case, whatever their cultural background, gender, sexuality, language or disability, and with improved confidence in their courts and their democracy.

I invite each of you to play your part.