LAW REFORM PROCESSES AND CRIMINALISING COERCIVE CONTROL

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1.0 INTRODUCTION

Seventeen years ago, Reg Graycar and Jenny Morgan published 'Law Reform: What's in it for Women?'[1] in which they raised a number of issues and tensions that are faced in feminist engagements with law reform processes. Graycar and Morgan pointed to the restrictive 'ways in which law reform questions are asked and answered', the 'overemphasis on formal outcomes at the expense of attention to process', and the 'problematic' relationship that some law reform agencies have with 'research, empirical data and socio-legal methods'.[2] These issues remain central to feminist engagements with law reform processes, particularly around legal responses to gender-based harms. In this article I rely on Graycar and Morgan's work to examine three recent Australian law reform processes established to address a particular aspect of gender-based harm, coercive control:[3] the New South Wales (NSW) Joint Select Committee on Coercive Control,[4] the Queensland Women's Safety and Justice Taskforce,[5] and the exposure Bill released for comment in South Australia (SA).[6] The key question for these law reform processes was whether coercive control should be criminalised following the introduction of such offences in the United Kingdom (UK)[7] and Ireland.[8] Ultimately all three Australian processes answered this question in the affirmative. There were, however, distinct differences in the processes undertaken, the extent of participation, engagement with implementation issues, and whether the recommended new offence was positioned more critically within what we know about law reform in response to gender-based violence.

Coercive control is a term used to describe the context, pattern, and impact of intimate partner violence (IPV).[9] Coercive control may include physical violence, sexual violence, property damage, financial abuse, surveillance, isolation, denigration and many other individualised acts and behaviours. These all interact and build on each other to create the structure or architecture designed

[1] Reg Graycar and Jenny Morgan, 'Law Reform: What's in it for Women' (2005) 23 *Windsor Yearbook of Access to Justice* 393.

[2] Ibid 393.

[3] I made submissions to two of these processes: Jane Wangmann, Submission No 116, *NSW Joint Select Committee on Coercive Control* (8 February 2021); and Submission to the Queensland Taskforce Discussion Paper 1 (28 July 2021). My submissions focused on the challenge of implementation, continuing gaps in policing, the context of the Australian jurisdictions including colonisation, the risks of victims being misidentified as a perpetrator or not being identified as a victim, and the need to enhance safety for all victims.

[4] Joint Select Committee on Coercive Control, *Coercive Control in Domestic Relationships*, Report 1/57 (Parliament of NSW, 2021) (NSW Committee).

[5] Queensland Women's Safety and Justice Taskforce, *Hear Her Voice: Report One: Addressing Coercive Control and domestic and family violence in Queensland* (Queensland Taskforce, 2021) (Qld Taskforce). Published in three volumes.

[6] See <https://yoursay.sa.gov.au/control> accessed 11 May 2022. Since the completion of this article a further law reform process on this issue has commenced in Western Australia by the Commissioner for Victims of Crime, Department of Justice with submissions closing 30 July 2022. See <www.wa.gov.au/organisation/department-of-justice/commissioner-victims-of-crime/coercive-control-consultation?msclkid=20bee396d0ff11ec8797b0d96e3b3809> accessed 11 May 2022.

[7] *Serious Crimes Act 2015* (Eng and Wales) s 76; *Domestic Abuse (Scotland) Act 2018;* and the *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* s 1.

[8] *Domestic Violence Act 2018* (Ireland) s 39.

[9] Many terms are used to describe violence and abuse in personal relationships. These are often used interchangeably but have different meanings linked to whether gender is seen as central and the inclusion of broader familial relationships. See Helen MacDonald, *What's in a Name? Definitions and Domestic Violence*, Discussion Paper 1 (DVIRC, 1998). In this article, I use the term IPV because work on coercive control has largely centred on intimate partner relationships: see Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007).

to control a particular victim within the context of pervasive gendered structural inequality which legitimates and enables the abuse. The term is most commonly associated with the significant work of Evan Stark, who evocatively describes it as a 'liberty crime'.[10] Despite contemporary discussions about coercive control in the media,[11] and the recent law reform processes under discussion, this understanding of the nature of IPV, and the term itself, is not new. Considerable research and advocacy since the 1970s has emphasised that IPV is far more than physical violence and is characterised by control. In this work different terms have been used: for example, coercive control,[12] power and control,[13] and social entrapment.[14] This contextual understanding about the nature of IPV has also long been reflected in Australian policy documents, including those used by police and judicial officers,[15] and in some legislation.[16]

Despite this longstanding understanding about the nature of IPV, the criminal law has tended to respond to incidents of largely physical violence devoid of the context in which those acts and behaviours take place. In addition many forms of abuse and control, such as emotional or psychological abuse, are not currently identified as crimes. This means that much of what is experienced as IPV, and its patterned nature, is beyond the purview of the criminal law. The move to criminalise coercive control is seen as a key measure to address these limitations.[17] However, there are concerns about whether the criminal law (or law more generally) is able to do this work.[18] Or more critically whether the multitude of law reforms, substantive and procedural, to the criminal law over decades have in fact made women safer.[19] These concerns draw on longstanding and differing feminist critiques of engagement with law reform[20] about whether the law is able to 'deliver the outcomes that feminist law reformers seek because feminist objectives must be translated into legal forms and concepts, which do not adequately respond to women's concerns'.[21] Scholars have variously highlighted the limitations of the singular focus on law to bring about change in women's lives; Carol Smart famously argued for the need to 'decentre law' and not cede too much power to

[10] Stark (n 9) 16.

[11] For example, Hayley Gleeson, 'Coercive control: The "worst part" of domestic abuse is not a crime in Australia. But should it be?' *ABC News* (19 November 2019) <https://www.abc.net.au/news/2019-11-19/coercive-control-domestic-abuse-australia-criminalise/11703442> accessed 11 May 2022; Marie Claire, 'It's time to make coercive control a crime', <https://www.marieclaire.com.au/coercive-control-campaign> accessed 11 May 2022;

[12] Rebecca Dobash and Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* (Free Press, 1979) 15.

[13] Ellen Pence and Michael Paymar, *Education Groups for Men who Batter: The Duluth Model* (Springer, 1993).

[14] James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Northeastern University Press, 1999) 10; Stella Tarrant, Julia Tolmie and George Giudice, *Transforming Legal Understandings of Intimate Partner Violence* (ANROWS, 2019).

[15] For example, NSW Police Force, *Code of Practice for Responding to Domestic and Family Violence* (NSW Police Force, 2018) 2; NSW Judicial Commission, *Equality Before the Law Benchbook* <https://www.judcom.nsw.gov.au/publications/benchbks/equality/section07.html#p7.5.3> accessed 29 May 2022; Victoria Police, *Code of Practice for the Investigation of Family Violence* (Victoria Police, Ed 3 V4, 2019) 11.

[16] For example, *Family Law Act 1975* (Cth) s 4AB; *Domestic and Family Violence Protection Act 2012* (Qld) s 8; *Family Violence Protection Act 2008* (Vic) s 5.

[17] These limitations also underpinned the development of civil protection orders: see Jane Wangmann, 'Incidents v Context: How does the NSW Protection Order System Understand Intimate Partner Violence?' 34 *Sydney Law Review* 695.

[18] For example, Sandra Walklate, Kate Fitz-Gibbon and Jude McCulloch, 'Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence through the Reform of Legal Categories' (2018) 18(1) *Criminology & Criminal Justice* 115.

[19] See Leigh Goodmark, 'Gender-based Violence, Law Reform and the Criminalization of Survivors of Violence (2021) 10(4) *International Journal for Crime, Justice and Social Democracy* 13, 15.

[20] This is an extensive and diverse body of work: see, for example, Susan Armstrong, 'Is Feminist Law Reform Flawed? Absentionists and Sceptics' (2004) 20(1) *Australian Feminist Law Journal* 43; Margaret Davies, 'Legal Theory and Law Reform: Some Mainstream and Critical Approaches' (2003) 28(4) *Alternative Law Journal* 168; Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court: The Implementation of Feminist Reforms in Civil Proceedings* (Cambria Press, 2008); Rosemary Hunter and Danielle Tyson, 'The Implementation of Feminist Law Reforms: The Cast of Post-Provocation Sentencing' (2017) 26(2) *Social & Legal Studies* 129; Carol Smart 'Feminism and Law: Some Problems of Analysis and Strategy (1986) 14 *International Journal of the Sociology of Law* 109; Elizabeth Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press, 2000); Margaret Thornton, 'Feminism and the Contradictions of Law Reform' (1991) 19 *International Journal of the Sociology of Law* 453.

[21] Hunter (n 20) 7.

law.[22] Other scholars have drawn attention to the way in which law and legal practice reproduce constrained conceptions of victims and perpetrators which means that women who do not fit the idealised victim image may not obtain a legal response (or may be criminalised).[23] A key concern for feminist scholars has been the perennial challenge of implementation.[24] At the same time others have sought to emphasise, within these constraints, the capacity of law to bring about positive change for women.[25] The debate about criminalising coercive control brings these tensions about engaging in law reform to the fore. These tensions intersect with concerns about the expanding reach of the criminal law. Here important discussions by Aboriginal and Torres Strait Islander scholars and advocates highlight the coercive nature of the criminal law which has not afforded victims safety, but rather has served to over-criminalise Aboriginal and Torres Strait Islander people.[26] Discussions about abolition are controversial and challenging in the context of IPV but they are important to consider given that this traditional reliance on the criminal law has proved ineffective and harmful for some women, particularly those who are more marginalised.[27] As Tanya Serisier has argued in the context of legal responses to sexual violence:

> this does not mean invalidating or denying the experiences of women who are able to be heard and recognised by the law. Nor can it mean … expecting survivors to abandon one of the only spaces open to them and their stories. But it does mean taking seriously the other part of the feminist project of speaking out, which was to decentre the law by providing other ways of speaking and other sites of speech, and thinking seriously about the potential and limitations of that project.[28]

Similarly emphasising the need to traverse positions Graycar and Morgan, drawing on the work of Margaret Davies,[29] conclude that while they 'remain sceptical about the limits of the law reform project, we also believe that it is an essential site of engagement'.[30] The importance of Graycar and Morgan's work is that it insists that we examine and unpack the *processes* of law reform, and not just the outcomes. While outcomes are obviously critical, the processes necessarily shape what those outcomes might be, how they are articulated, and whether the outcome is seen as part of a larger project. Graycar and Morgan turn our attention to what is *in* law reform *processes*, as they are currently constructed and conducted, for women in all their diversity. Indeed it is the diversity of views around criminalisation of coercive control that meant that attention to these processes was critical, particularly for those who are most likely to experience violence and state interventions in their lives. Law reform processes are themselves an access to justice issue as they are the 'very processes that set the conditions for justice'.[31] The issue of the criminalisation of coercive control has

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[22] Carol Smart, *Feminism and the Power of Law* (Routledge, 1989) 5.

[23] For example, Renee Römkens, 'Law as a Trojan Horse: Unintended Consequences of Rights-based Interventions to Support Battered Women' (2001) 13(2) *Yale Journal of Law and Feminism* 265, 267.

[24] Hunter (n 20) 6-9.

[25] For example, Ruth Lewis and others, 'Law's Progressive Potential: The Value of Engagement with the Law for Domestic Violence' (2001) 10 *Social & Legal Studies* 105; Kelly Johnson and Clare McGlynn, *Cyberflashing: Recognising Harms, Reforming Laws* (Bristol University Press, 2021)

[26] Chelsea Watego and others, 'Carceral Feminism and Coercive Control: When Indigenous Women aren't seen as Ideal Victims, Witnesses or Women', *The Conversation* (25 May 2021) <https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091> accessed 11 May 2022; and the 2020 John Barry Memorial Lecture 'Abolition on Indigenous Land' with Tabitha Lean, Latoya Aroha Rule, Amanda Porter and Alison Whitaker <https://www.youtube.com/watch?v=peA6_WdIbtE&t=1347s> accessed 11 May 2022> accessed 19 May 2022.

[27] See Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press, 2018); and Ardath Whynacht, *Insurgent Love: Abolition and Domestic Homicide* (Fernwood Publishing, 2021).

[28] Tanya Serisier, *Speaking Out: Feminism, Rape and Narrative Politics* (Springer, 2018) 91.

[29] Davies (n 20).

[30] Graycar and Morgan (n 1) 397.

[31] Natalina Nheu and Hugh McDonald, *By the People, for the People? Community Participation in Law Reform* (Law Foundation of NSW, 2010) 281.

revealed strong (and heated) divisions within and outside the sector about the best way forward.[32] This division means that more, not less, attention to the process of hearing voices is required in the law reform context.

This article is divided into two parts. First, I briefly describe the three law reform processes that are the focus of this article. I then analyse these processes in terms of five features emphasised by Graycar and Morgan: the framing of the terms of reference; constraints on participation created by time frames; the reliance on traditional modes of gathering information; the extent to which the processes focused on 'more law' or 'gap filling' as the outcome rather than other modes of response; and the extent to which the processes engaged with existing research. The three processes examined vary enormously across these dimensions, with the Queensland Taskforce possessing a number of strengths compared to NSW and SA. The aim of this article is to explore the strengths and weaknesses of these processes and to ask questions about how well they grappled with the division and diversity of views expressed within and outside those processes. In this way, this article is not focused on canvassing the arguments for and against criminalisation,[33] but rather about whether and how views within this debate were able to be heard within these law reform processes.

2.0 OVERVIEW OF THE LAW REFORM PROCESSES ON COERCIVE CONTROL

The three processes examined in this article represent a spectrum of approaches to law reform;[34] from more formal, independent process (NSW and Queensland) to the Government initiated and controlled draft Bill approach (SA). The former are the types of law reform processes with which Graycar and Morgan were concerned.[35] They are generally seen as having more time and are associated with greater degrees of 'openness and transparency' and wider levels of consultation.[36] In contrast the SA approach can be described as a 'single-stage, executive driven' model;[37] an approach to law reform that is quicker, less transparent and less consultative. While this certainly characterises these processes, the former processes, even with longer time frames and ostensibly wider consultation, may still be seen as hurried and limited in scope. By and large the impetus for these processes was mounting community pressure, often drawing on high profile IPV homicides, to follow the example of the UK and Ireland and criminalise coercive control.[38]

[32] For example, see the provocative and unhelpful framing of this division in Paul McGorrery and others, 'Coercive Control is a form of Intimate Terrorism and must be Criminalised', *The Guardian,* (Australia 6 October 2020) <https://www.theguardian.com/commentisfree/2020/oct/06/coercive-control-is-a-form-of-intimate-terrorism-and-must-be-criminalised> accessed 24 May 2022.

[33] For some discussion of these arguments see Marilyn McMahon and Paul McGorrery (eds), *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020); Walklate, Fitz-Gibbon and McCulloch (n 18); Julia Tolmie, 'Coercive Control: To Criminalize or not to Criminalize' (2018) 18(1) *Criminology & Criminal Justice* 50.

[34] Luke McNamara and others, 'Understanding Processes of Criminalisation: Insights from an Australian Study of Criminal Law-making' (2021) 21(3) *Criminology and Criminal Justice* 387.

[35] Graycar and Morgan (n 1) 394.

[36] McNamara and others (n 34) 391.

[37] Ibid 392.

[38] See Marie Claire (n 11); Amanda Gearing, 'Queensland Moves to Criminalise Coercive Control after Murder of Hannah Clarke and her Children', *The Guardian Australia* (17 February 2021) <https://www.theguardian.com/society/2021/feb/17/queensland-moves-to-criminalise-coercive-control-after-of-hannah-clarke-and-her-children> accessed 29 May 2022.

2.1 *NSW: Joint Select Committee*

The Joint Select Committee on Coercive Control established on 21 October 2020 was tasked to 'inquire into and report on coercive control in domestic relationships' having regard to the NSW Government's discussion paper on this issue.[39] It was a traditional parliamentary inquiry with cross party membership from both houses of the NSW Parliament.[40] It had terms of reference, invited written submissions, held public hearings, and conducted a site visit to Narrandera (a regional town in south-western NSW). On 30 June 2021 the Committee tabled its final report recommending, amongst other matters, the creation of a criminal offence of coercive control. The NSW Government responded to this report on 17 December 2021 supporting 17 of the Committee's recommendations including the key recommendation to criminalise coercive control.[41]

2.2 *Queensland: Women's Safety and Justice Taskforce*

The Women's Safety and Justice Taskforce was established in March 2021 to examine 'coercive control and review the need for a specific offence' and 'the experience of women across the criminal justice system'. The Taskforce was chaired by a former judge, with 10 other members (described as 'subject matter experts')[42] from a range of services and backgrounds. They were supported by a secretariat who also contributed expertise to the work of the Taskforce.[43]

The Taskforce released two discussion papers: (1) on coercive control,[44] and (2) on women and girl's experiences of the criminal legal system.[45] Submissions were invited in response to these discussion papers and the Taskforce consulted with 'a wide range of groups and individuals' including domestic and family violence and sexual assault services, legal services, the judiciary, various advocacy groups, prosecution and policing agencies, and the 'broader Queensland community'.[46] The Queensland Taskforce also recommended criminalisation of coercive control, however, it did so with an important precondition:

> The Taskforce recommends that no new offences to criminalise domestic and family violence commence until service and justice system responses are improved. The Taskforce is satisfied that to do so would involve an unacceptable risk of unintended consequences, which could cause more harm to those whom the reforms are intended to protect, particularly First Nations peoples.[47]

The Queensland Government responded to the Taskforce report on 10 May 2022 indicating that it supported all recommendations in full or in principle.[48] On the following day the Government

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[39] NSW Government, *Coercive Control: Discussion Paper* (October 2020).

[40] NSW Committee (n 4) iii.

[41] NSW Government, 'NSW Government Response to the NSW Joint Select Committee on Coercive Control', <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Government%20response%20-%20Joint%20Select%20Committee%20on%20Coercive%20Control%20-%2017%20December%202021.pdf> accessed 11 May 2022. Recommendations were supported in full, in part, or noted.

[42] Qld Taskforce, *Hear Her Voice: Volume 1* (Women's Safety and Justice Taskforce, 2021) 272 (Qld Taskforce, Vol 1) vi-vii.

[43] Qld Taskforce, *Hear Her Voice: Volume 3* (Women's Safety and Justice Taskforce, 2021) Appendix 4 (Qld Taskforce, Vol 3).

[44] Women's Safety and Justice Taskforce, *Options for Legislating against Coercive Control and the Creation of a Standalone Domestic Violence Offence: Discussion Paper 1* (Qld Taskforce, 2021) ('Discussion Paper 1').

[45] Women's Safety and Justice Taskforce, *Discussion Paper 2: Women and Girls' Experience of the Criminal Justice System: Proposed Focus Areas* (Qld Taskforce, 2021).

[46] See <https://www.womenstaskforce.qld.gov.au/consultation/taskforce-engagement> accessed 11 May 2022 and Qld Taskforce, Vol 3 (n 43) Appendix 2.

[47] Qld Taskforce, Vol 1 (n 42) xxx. While the NSW Committee (n 4) Rec 1 also included a precondition this centred on a 'prior program of education, training and consultation' about coercive control and the new offence, not the broader operation of the criminal legal system.

[48] Queensland Government, *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce: Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (May 2022) 6.

actioned a key part of this commitment, establishing a Commission of Inquiry to Examine Queensland Police Service responses to domestic and family violence.[49]

2.3 *South Australia: Exposure Bill*

On 9 September 2021, the SA government released a draft Bill that would criminalise coercive control for public comment. Submissions closed on 2 October 2021. To participate in this process people could respond to a survey about the Bill or email a submission. A very brief summary of the feedback received (less than one page) has been made public.[50] On the 27 October 2021, a revised Bill was presented to the SA Parliament.[51]

3.0 LAW REFORM PROCESSES, STRUCTURES AND FRAMEWORK

In the remainder of this article, I draw on Graycar and Morgan's analysis of law reform processes to explore these three processes. This analysis focuses on terms of reference, participation processes, emphasis on outcomes, and the extent of reliance on existing research.

3.1 *Terms of Reference*

Graycar and Morgan note the influence of the questions that are asked in law reform processes (the terms of reference) and the way that the framing of these questions can define the 'answer'.[52] Terms of reference may be narrow or broad, open or closed. This framing influences whether the 'existing legal framework will be retained' or whether more challenging proposals are considered.[53] As Graycar and Morgan argue:

> If the terms of reference contemplate only minor re-adjustment, we may preclude the possibility of developing new and perhaps more appropriate ways of responding to a legal problem than how the problem or issue was defined in the past when women and other disadvantaged groups had no input into the parameters within which an issue or problem was placed.[54]

For all three processes the 'answer' was to be found in the criminal law, rather than other areas of law, or responses outside law. While the Queensland and NSW inquiries recognise the need for more than simply 'more law' and make broader recommendations, criminal law remains centralised. The scope of these recent inquiries can be contrasted with three other inquiries focused on IPV which had far more expansive and open terms of reference – the Victorian Royal Commission into Family Violence (RCFV) (2016), the Queensland Special Taskforce on Domestic and Family Violence (2015), and the Australian Law Reform Commission (ALRC) and NSW Law Reform Commissions (NSWLRC) work on family violence (2010). All of these broader inquiries declined to recommend a dedicated offence in this area.[55] Instead they pointed to continuing problems with the implementation of currently available criminal laws; problems unable to be addressed by adding a new offence.[56] While these

[49] Annastacia Palaszczuk (Premier and Minister for the Olympics) and Shannon Fentiman (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence), Commission of Inquiry to Examine Queensland Police Service Responses to Domestic and Family Violence' (Media Statement, 11 May 2022)

[50] Attorney-General's Department, YourSAy consultation results: Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 (October 2021). Available at <https://yoursay.sa.gov.au/control> accessed 11 May 2022.

[51] Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 (SA). This Bill did not pass parliament prior to the election on 19 March 2022 which resulted in a change of government in SA.

[52] Graycar and Morgan (n 1) 397.

[53] Ibid 398.

[54] Ibid 398.

[55] Special Taskforce on Domestic and Family Violence (Qld), *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* (Special Taskforce on Domestic and Family Violence, 2015)14-15; State of Victoria, *Royal Commission into Family Violence: Report and Recommendations*, Vol III (2016) 189 and 228; Australian Law Reform Commission (ALRC) and NSW Law Reform Commission (NSWLRC), *Family Violence: A National Legal Response*, ALRC Report 114, NSW Report 128 (Final Report, 2010) [13.85]-[13.92] .

[56] Ibid.

broader inquiries pre-date the legislative developments in the UK and Ireland, the concern about implementation and poor practices with available criminal law remain. Indeed, much of the evidence before the NSW Committee and the Queensland Taskforce documented these continuing failures.[57]

The terms of reference for the NSW Committee can be simultaneously characterised as narrow and broad. They were broad in that they included open ended clauses, such as, that the Committee was to 'inquire and report on coercive control in domestic relationships' and 'have regard to any matters the committee considers relevant'.[58] However, the tying of the Committee's work to the NSW Government's discussion paper on coercive control[59] narrowed the frame. This discussion paper posed multiple specific questions about coercive control and the legal framework overwhelmingly in the context of criminal law. Perhaps a sign of the constrained nature of the terms of reference and the accompanying discussion paper are the number of submissions that opted not to answer these questions instead providing wider content of relevance to legal and other responses to coercive control.[60] While the final report does discuss and make recommendations about the need for work beyond the criminal legal system, the focus of the inquiry was very much on the criminal law and whether there should be a dedicated offence.

The narrowness of the NSW approach can be contrasted with the broader approach in Queensland which embedded questions about criminalising coercive control within the wider frame of 'the experience of women across the criminal justice system'.[61] While this may not seem that different, the NSW inquiry was very much about 'whether there should be a new offence' and very little about how the criminal process is experienced by victims. Indeed, it is notable that the NSW Committee did not make any recommendations about improving the criminal legal system process more generally for victims. Despite an ostensibly wider approach, the terms of reference for the Queensland Taskforce have also been criticised. Sisters Inside and the Institute for Collaborative Race Research argue that, like the NSW inquiry, the terms of reference for the Taskforce were all about criminalising coercive control.[62] The terms of reference have been described as 'severely restrictive', that they 'presuppose that a carceral solution [is] the only and best response', and that they ignore the data on Aboriginal and Torres Strait Islander women and engagements with the criminal law among other concerns.[63] The Taskforce's decision to separate the issues into two discrete discussion papers was also seen as constraining the ability to explore concerns about criminalisation and the operation of the criminal legal system holistically.[64] This tying of the terms of reference to the criminal law arguably 'precluded' full engagement with submissions that drew attention to the coercive nature of the various criminal law institutions particularly in the context of settler-colonialism and arguments around alternatives to criminal law.[65] These submissions emphasised the way that the state itself, through the

[57] For example, NSW Committee (n 4) 21-22, 27, 28 and 36; Queensland Women's Safety and Justice Taskforce, *Hear Her Voice: Volume 2* (Women's Safety and Justice Taskforce, 2021) 272 (Qld Taskforce, Vol 2) 170-181.

[58] NSW Committee (n 4) 110.

[59] NSW Government (n 39).

[60] For example, Julia Tolmie, Submission No 23, *Joint Select Committee on Coercive Control* (27 January 2021); De Saxe O'Neill Family Lawyers, Submission No 31, *Joint Select Committee on Coercive Control* (27 January 2021); Jess Hill, Submission No 91, *Joint Select Committee on Coercive Control* (29 January 2021); Centre for Women's Economic Safety, Submission No 92, *Joint Select Committee on Coercive Control* (29 January 2021); ANROWS, Submission No 96, *Joint Select Committee on Coercive Control* (29 January 2021).

[61] See <https://www.justice.qld.gov.au/__data/assets/pdf_file/0010/672706/womens-safety-justice-taskforce-tor.pdf> accessed 11 May 2022.

[62] Sisters Inside and the Institute for Collaborative Race Research, Submission to the Qld Taskforce in response to Discussion Paper 1 (no date) Appendix 1 (Sisters Inside and ICRR).

[63] Ibid.

[64] Ibid.

[65] For example, Ibid; Marlene Longbottom and Amanda Porter, Submission to the Qld Taskforce in response to Discussion Paper 1 (16 July 2021).

criminal law and other institutions, perpetrates violence and control against 'racialized communities', particularly Aboriginal and Torres Strait Islander peoples, and has done so since, and through, colonisation. This is evidenced in the over-targeting of Aboriginal peoples as perpetrators of violence and the inadequate protection of Aboriginal victims, the misidentification of victims as offenders, the interactions of the criminal legal system with child protection services, and the way in which the continued emphasis on criminal law responses diverts attention from the need to address other parts of the service delivery system.[66]

The narrowest approach of all was that adopted in SA. Here all the questions were about the exposure Bill – there was no initial open question about whether criminalisation is the best or only way in which the law might respond to coercive control, nor about the perceived advantages or disadvantages of doing do – this was presumed.

Given the extent to which legal responses to IPV are fragmented across areas of law, and across jurisdictions in Australia, it seems vital that a more wide ranging approach to 'law' should have been adopted when looking at coercive control. Work by the ALRC and the NSWLRC drew attention to this fragmentation noting that 'fragmentation of the system' leads to a 'fragmentation of practice' whereby victims of IPV are required to approach different areas of law, often simultaneously, in order to gain a response leading to some victims 'fall[ing] between the gaps'.[67] It is not merely that the areas of law are fragmented but that they also position victims differently, require victims to perform differently, and they construct and see IPV in fundamentally different ways.[68] Graycar and Morgan's work on women's lives and the lack of fit with doctrinal categories of law is important here.[69] Graycar and Morgan challenged the 'categories that have been used to define legal problems' and instead sought to 'place women's lives at the centre of legal analysis' to assess whether and how the law responds.[70] Not only are doctrinal categories 'narrow', but they were developed without women and the harms they experience in mind, and were replete with stereotypical and negative images of women.[71] As Jenny Morgan noted in her work on reform to the defence of provocation, reforms that are 'driven by the social context in which the legal phenomenon of interest occurs, … [are] more likely to get progressive legal change than where reform is driven by legal categories'.[72] The 'lack of fit' with the boundaries of legal categories is revealed by the extent to which the Queensland Taskforce received submissions about family law, despite these issues being 'outside' it's terms of reference.[73] As Graycar reflected 'people do not approach lawyers and say, "I have a tort issue to discuss"…' instead they approach a lawyer and outline what has happened to them.[74] 'What happened' might cross multiple areas of law, and none might adequately address what has taken place. This is particularly the case for IPV where the intersecting areas of law not only provide different and sometimes partial responses, they may also provide contradictory and incompatible

[66] Sisters Inside and ICCR (n 62) 3-5. See also Longbottom and Porter (n 65).

[67] ALRC and NSWLRC (n 55) [2.96].

[68] See Marianne Hester, 'The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence' (2011) 41(5) *British Journal of Social Work* 837; Julie Stubbs and Jane Wangmann, 'Competing Conceptions of Victims of Domestic Violence within Legal Processes' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International contexts, local experiences* (Palgrave Macmillan, 2015).

[69] Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002).

[70] Ibid 1-2.

[71] Ibid 2.

[72] Jenny Morgan, 'Homicide Law Reform and Gender: Configuring Violence' (2012) 45(3) *Australian & New Zealand Journal of Criminology* 351, 351.

[73] Qld Taskforce, Vol 2 (n 57) 272.

[74] Reg Graycar, 'Frozen Chooks Revisited' in Rosemary Hunter and Mary Keyes (eds), *Changing Law: Rights, Regulation and Reconciliation* (Ashgate, 2005) 54.

outcomes. Family law, for example, is a key site for the continuation of coercive control. The Queensland Taskforce recognised these cross-jurisdictional issues noting the extent to which family law proceedings can manifest in the experience of coercive control,[75] including legal systems abuse,[76] and the 'disconnect between the state-based civil domestic violence system and the family law system'.[77] It is significant the extent to which the Taskforce directed recommendations to the practice of family law given the jurisdictional separation on this issue.[78]

In recommending criminalisation these law reform processes needed to consider not just how coercive control might manifest in other areas of law, but how, if a new offence is created, it will interact with intersecting areas of law. A particular concern here is for Aboriginal and Torres Strait Islander families who already face great incursions from state child protection authorities.[79] While child protection is mentioned in the NSW and Queensland reports, there is little consideration of the extent to which widening the criminal law net will have an impact here. Strikingly the Queensland Taskforce places confidence in its recommendations having 'potential flow-on effects [to reduce] … over-representation in the child protection system'.[80] Given how entrenched these issues are one might suggest that this optimism, particularly within the proposed reform timetable, is misplaced.

3.2 *Time Frames*

Time frames for law reform processes 'should be commensurate with the significance of the issue, its breadth and complexity, as well as the participation needs of stakeholders'.[81] Time frames impact the scope of the work able to be undertaken,[82] and the participation of interested individuals and groups.[83] For all three processes the time frames were limited.

In NSW the inquiry was referred to the Committee on 21 October 2020 with submissions closing on 29 January 2021 – most of this time extended over the summer holiday period, and the 16 Days of Activism Against Gender-Based Violence.[84] In their work, Graycar and Morgan drew attention to the 2002-2003 NSWLRC inquiry into Apprehended Violence Orders[85] which called for submissions over the same period, noting that:

> Australia effectively shuts down between mid-December and the end of January…and most community organisations that meet monthly do not meet in January. Therefore, the timetable was seen as precluding consultation with those most affected. The Commission eventually agreed to accept some late submissions, but many people and organisations would have been discouraged by the published deadline, or simply did not know about the project until the time for submissions had passed.[86]

[75] Qld Taskforce, Vol 2 (n 57) 272.

[76] Qld Taskforce, Vol 3 (n 43) 712.

[77] Qld Taskforce, Vol 2 (n 57) 32.

[78] Qld Taskforce, Vol 1 (n 42) Rec 42, 43, and 70.

[79] Megan Davis and Emma Buxton-Namisnyk, 'Coercive Control Could Harm the Women it's Meant to Protect', *The Sydney Morning Herald* (2 July 2021).

[80] Qld Taskforce, Vol 3 (n 43) 798.

[81] Nheu and McDonald (n 31) xxv.

[82] See Qld Taskforce, Vol 1 (n 42) xlvii; and in the context of the second part of its work see - <https://www.womenstaskforce.qld.gov.au/about-us/news/news-items/taskforce-to-examine-sexual-violence-and-women-as-offenders> accessed 11 May 2022.

[83] Nheu and McDonald (n 31) 126.

[84] Domestic Violence NSW, Submission No 132, *Joint Select Committee on Coercive Control* (12 February 2021).

[85] NSW Law Reform Commission, *Apprehended Violence Orders*, Report 103 (NSWLRC, 2003).

[86] Graycar and Morgan (n 1) 409.

A number of the submissions to the NSW Committee commented on this timing,[87] and more importantly the need for longer consultation generally, particularly for marginalised groups.[88]

It is telling that approximately 37% of the submissions (59/156) to the NSW Committee were received after the closing date. Many of these would have been granted extensions, but any extension was limited if the author wanted to potentially be invited to give evidence before the Committee.[89] Some people, particularly those who do not regularly participate in these processes, may not have known that you can seek an extension and as a result may have decided not to participate.

The Queensland Taskforce provided an even shorter period for submissions on the coercive control discussion paper;[90] from 27 May 2021 to 9 July 2021 which was extended briefly due to COVID-19. Less than a month was provided in SA for submissions, and it is unclear how widely known it was that that Government was inviting submissions on this important issue.

Organisations that are able to 'draw upon financial, human and technological resources have a higher capacity to overcome short timeframes in law reform',[91] whereas smaller services with limited funding have to try to adapt and determine who (if anyone) will juggle their workload in order to participate. The effect of this may be that participation in law reform processes is 'increasingly the domain of peak bodies, further distancing and filtering the participation' of smaller organisations and individuals.[92] The extent of participation in law reform processes is further impacted by 'submission fatigue';[93] that is, how often an area of law is reviewed. With IPV crossing multiple areas of law, many organisations and individuals are called on to participate in such processes numerous times a year.[94] Graycar and Morgan also point to 'gendered constraints that women's participation in law reform type processes'[95] and the same can be said for organisations that support women and are largely staffed by women. The time provided is more critical for victim/survivors who may want to include their personal experience where the possible trauma of reliving experiences may make shorter time frames difficult to comply with. As one person explained to the NSW Inquiry: 'I have taken longer to submit … as I have found that trying to explain my previous history of coercive abuse very confronting and upsetting'.[96]

3.3 *Processes for gathering information*

Law reform processes of the kind discussed in this article are intrinsically about seeking input from the community; those affected by a problem or with some interest in the area. Some law reform processes do this better than others, and those with limited modes of consultation 'often leave out …

[87] For example, South West Sydney Legal Centre, Submission No 77, *Joint Select Committee on Coercive Control* (29 January 2021) 4; Domestic Violence NSW (n 84).

[88] For example, Muslim Women Australia, Submission No 86, *Joint Select Committee on Coercive Control* (29 January 2021) 3; Western NSW Community Legal Centre, Submission No 122, *Joint Select Committee on Coercive Control* (11 February 2021) [2.3]; Women's Legal Services NSW, Submission No 140, *Joint Select Committee on Coercive Control* (19 February 2021) 10; Economic Abuse Reference Group, Submission No 143, *Joint Select Committee on Coercive Control* (22 February 2021) 3-4.

[89] Communication with the author when seeking an extension.

[90] Qld Taskforce, Discussion Paper 1 (n 44). See criticism of this time frame: Sisters Inside and ICRR (n 62).

[91] Nheu and McDonald (n 31) 210.

[92] Ibid xxii.

[93] Miranda Kaye, Jane Wangmann and Tracey Booth, 'Preventing Personal Cross-examination of Parties in Family Law Proceedings involving family violence' (2017) 31 *Australian Journal of Family Law* 94, 104.

[94] For example, see the submission page for Women's Legal Service NSW, <https://www.wlsnsw.org.au/law-reform/submissions/> accessed 11 May 2022; Domestic Violence NSW, <www.dvnsw.org.ai/working-for-change/submissions> accessed 11 May 2022; Djirra, <https://djirra.org.au/what-we-do/policy-and-advocacy/> accessed 11 May 2022.

[95] Graycar and Morgan, (n 1) 407.

[96] Name supressed, Submission No 123, *Joint Select Committee on Coercive Control* (9 February 2021) 1.

the concerns of those most affected'.[97] As noted earlier, participation in law reform is an access to justice issue, and the extent to which processes are able to involve those who are most disadvantaged and most likely to be impacted by the proposed law 'holds not only the promise of more inclusive democracy but also more responsive and effective law'.[98] Further, there has increasingly been emphasis on the need for any work around gender-based violence – whether research, policy, legislative reform, and service delivery – to be informed by those with lived experience.[99] Those with lived experience are an incredibly diverse group, and challenges are faced in how to ensure that law reform processes hear from people across this diversity, particularly from those who experience additional structural and institutional barriers to participation. The exclusionary nature of law reform processes in this area was reflected on in evidence before the NSW Inquiry by Moo Baulch, Director of Primary Prevention, Women and Girl's Emergency Centre:

> My concern is that the people who are locked out of the system now, the people who are disenfranchised, the people who are not accessing either the criminal, the civil justice part of the system, the people—the women who have had guns held in their mouths … will never tell anybody about what is going on. The Aboriginal women who are never going to report to police no matter how good we make the police force and how sensitive and how many multicultural liaison officers we have. ... Unfortunately, we are never going to be able to reflect every victim's voice, right? Having worked in a peak body, I know we are able to gather pretty good strong evidence around what services on the ground think and also what victim-survivors think now and I think we have come a long way but there are a whole tonne of victim-survivor's voices that we are not hearing in submissions here and we won't for those range of reasons so I think one of the first parts needs to be about actually, working out how we would do that. How do we listen to victim-survivors in a way—and incorporate what is going to be a whole plethora of different views about what should happen in terms of the system response.[100]

Without paying attention to facilitating a diversity of voices, and those with divergent opinions, in law reform processes we may end up with law reforms that are 'developed from the experiences of a generic category "battered women" … [which is more] likely to reflect the needs and experiences of more economically advantaged women and white women, and is unlikely to meet the needs of poor women and women of color'.[101]

The extent to which the three processes on coercive control did this work varied extensively. All three adopted 'fairly standard processes';[102] releasing a document for comment, inviting written submissions, and at least for two, conducting public hearings and/or holding consultations, with the Queensland Taskforce again demonstrating greater efforts to target a wide range of voices including those who were against criminalisation of coercive control.

3.3.1 *Emphasis on written submissions*

Law reform processes have traditionally called for written submissions as the primary way in which they receive evidence. This relies on people and organisations being aware that submissions are invited, having the resources available to write a submission, and importantly, from the point of view

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[97] Graycar and Morgan (n 1) 419.

[98] Nheu and McDonald (n 31) xiii.

[99] For example, see Domestic Violence Victoria and the University of Melbourne, *The Family Violence Experts by Experience Framework: Research Report and Framework* (2020) <https://safeandequal.org.au/wp-content/uploads/DVV_EBE-Framework-Report.pdf> accessed 23 May 2022; and the draft National Plan to End Violence against Women and Children 2022-2023, <https://engage.dss.gov.au/wp-content/uploads/2022/01/Draft-National-Plan-to-End-Violence-against-Women-and-Children-2022-32.pdf> accessed 23 May 2022.

[100] Evidence to the NSW Committee on Coercive Control, Sydney, 24 February 2021, 49 (Moo Baulch).

[101] Donna Coker, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4 *Buffalo Criminal Law Review* 801, 811-812.

[102] Graycar and Morgan (n 1) 406.

of victim/survivors, it relies on people seeing themselves as someone the inquiry would be interested in hearing from.

The NSW Inquiry received 156 submissions.[103] Seventy (70) were from various non-government organisations or agencies (including women's support services, peak bodies, private legal services, community legal centres, and services that support particular groups in the community), 41 were individual submissions (including from victim/survivors, those who have supported a family member or friend, members of parliament and journalists), nine were from academics (individual or joint submissions), eight were from governmental bodies including non-statutory agencies, and two were from overseas governmental organisations. Twenty-six (26) submissions were confidential and are not publicly available.

The Queensland Taskforce received 82 submissions in response to the coercive control discussion paper.[104] Of the 71 publicly available submissions, 51 were from a range of organisations (including legal services, research agencies, advocacy groups and agencies representing diverse and marginalised people), eight were from academics (individual or joint submissions), six were from individuals with professional positions, six were from Queensland government agencies, and the remaining six were from members of the general public (three from victim/survivors some of whom had also supported a friend or family member, two from people who had supported a friend or family member, and in one submission it was unclear). This is however only a small subsection of the submissions received by the Taskforce – overall 731 submissions were received,[105] with 503 of these 'from people with lived experience of domestic violence'.[106]

It is unclear how many submissions were made to the SA process; the consultation summary simply described them as a 'substantial number' and that 'many' were from victim/survivors.[107]

The emphasis on written submissions raises questions about who participates in these processes,[108] and in turn whether such inquiries have a responsibility to seek or invite others to make contributions, whether by written submission or some other format.[109] As one submission to the NSW Committee noted 'making a submission is one way to raise issues but this is not an accessible avenue for everyone'.[110] When combined with a discussion paper, or other document, that is written in 'formal and legalistic language that adopts a one-size-fits-all approach' this may operate to further limit submissions particularly from those who are more marginalised.[111]

NSW and SA did not take any steps to produce information in other formats that might have enhanced accessibility.[112] Queensland did publish an easy read document, however, this was only made available sometime after the Taskforce commenced, and was generalised to the work of the Taskforce rather than the issue of criminalising coercive control.[113] Other processes have demonstrated that

[103] NSW Committee (n 4) 120-123.

[104] Qld Taskforce, Discussion Paper 1 (n 44).

[105] Qld Taskforce, Vol 2 (n 57) 8.

[106] Ibid 12.

[107] Attorney General's Department (n 50).

[108] Graycar and Morgan (n 1) 407-408.

[109] See also Graycar (n 74) 57.

[110] Economic Abuse Reference Group (n 88) 3.

[111] Nheu and McDonald (n 31) xvii.

[112] This conclusion is based on the information available on their respective websites.

[113] See <https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0004/691681/womens-safety-and-justice-taskforce-web-accessible.pdf> accessed 11 May 2022. Available from 18 August 2021 after the Taskforce had commenced and after submissions had closed for both discussion papers.

alternative measures are necessary and possible. For example, the current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has a very expansive approach to accessibility.[114] While the Royal Commission also called for submissions they do not have to be in writing, they can be made 'by telephone, email, video or through [the] website'.[115] Links are also provided to a range of services that can assist a person to make a submission. The Royal Commission has produced a 'Sharing your experience brochure' which has been made available as an easy read document, in multiple community languages, and a dedicated brochure for First Nations people.[116] There is also a video (including in Auslan) that explains how a person can share their experience.[117] Given the extent to which women with disabilities experience IPV and other forms of gendered violence,[118] one might ask why more (or indeed any) accessibility measures were not adopted in the coercive control inquiries. It seems bizarre in 2022 to still see this type of siloing, as Graycar asked 'Why do we only use "other" processes when we are talking about "otherised" groups of the community?'.[119]

While the efficacy of simply inviting submissions, an essentially passive process, may not be a concern for all inquiries, in the context of legal responses to gender-based violence, it is critical for law reform processes to more actively consider how they access the voices of those with lived experience particularly victim/survivors who are subject to higher levels of violence in their personal lives, as well as higher levels of intervention in their lives from police and other state bodies. As Lyria Bennett Moses and colleagues note the emphasis on written submissions:

> privileges sectors of the community and economy with the skills and resources to respond. This is of particular concern in the social policy reform area where the voices of the very people whose welfare and wellbeing are being investigated could be marginalised.[120]

3.3.2 *Consultations and public hearings*

The NSW and Queensland processes extended the evidence received from written submissions by conducting public hearings (NSW), consultations and focus groups (Queensland), and site visits (NSW and Queensland). In NSW these public hearings were overwhelmingly with those who had already made a submission, rather than with people or organisations the Inquiry had not heard from.[121] In contrast, Queensland held a wide range of consultations, meetings, and focus groups beyond those who made submissions. Many of these consultations involved more marginalised groups and the services that assist them, such as Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people with disability, the LGBTIQA+ community, and young people.[122] It does not appear that SA did anything beyond inviting people to complete a survey or make a submission.

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[114] See also State of Victoria, *Royal Commission into Family Violence: Report and Recommendations*, Vol 1 (2016) 2-9; Government of Western Australia, *Legislative Responses to Coercive Control in Western Australia: Discussion Paper* (2022) 3.

[115] See <https://disability.royalcommission.gov.au/share-your-story/make-your-submission.> accessed 11 May 2022

[116] See <https://disability.royalcommission.gov.au/publications/brochure-sharing-your-experience-disability-royal-commission> accessed 11 May 2022.

[117] See <https://disability.royalcommission.gov.au/publications/sharing-your-experience-video> accessed 11 May 2022.

[118] See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Violence and Abuse of People with Disability at Home: Issues Paper* (Dec 2020) 3; People with Disability Australia and Domestic Violence NSW, *Women with Disability and Domestic and Family Violence: A Guide for Policy and Practice* (PWDA and DVNSW, 2015); and Australian Institute of Health and Welfare, *People with Disability in Australia 2020: In brief* (AIHW, 2020) 12-13.

[119] Graycar (n 74) 69.

[120] Lyria Bennett Moses, Nicola Gollan and Kieran Tranter, 'The Productivity Commission: A Different Engine for Law Reform?' (2015) 24(4) *Griffith Law Review* 657, 677-678.

[121] Four people who gave evidence did not make a written submission.

[122] See Qld Taskforce, Vol 3 (n 43) Appendix 2.

While the NSW Committee was in progress there was an extensive debate taking place led by Indigenous scholars and activists about the risks associated with criminalisation. This was largely taking place on social media and culminated in a piece written by Chelsea Watego and colleagues published approximately one month before the NSW Committee released its final report.[123] Concern was raised about the distinctly different ways in which Aboriginal and Torres Strait Islander women experience the criminal legal system, and are targeted by that system, compared to non-Indigenous women. A key issue identified was the risk that under the proposed coercive control offence Indigenous women will be misidentified as perpetrators of domestic violence.[124] However, it is important to note that the concerns raised by Indigenous scholars and advocates are much wider than this and centre on the 'extension of power by the state' that moves to criminalise coercive control represent, emphasising that 'state institutions such as police and prisons' are not places of safety nor do they necessarily offer protection from gender-based violence for Indigenous women and children.[125] None of the scholars and activists who were debating these issues made a submission to the NSW Committee, nor was the article referred to in the final report, and one might ask whether there was an obligation on the NSW Committee to seek out these voices. Submissions were, however, made to the Queensland Taskforce by Marlene Longbottom and Amanda Porter, and by Sisters Inside and the Institute for Collaborative Race Research.[126] In addition, the Taskforce consulted with Longbottom and Watego. The SA process is notable for the absence of any mention of Aboriginal and Torres Strait Islander people (or indeed any diverse or marginalised group of victim/survivors) in its summary of consultation feedback.[127]

Concerns about whose voices are heard in these processes raises questions about whether we think law reform processes have responsibilities to seek views outside those offered in submissions. In this context some submissions to the NSW Committee suggested the need to adopt different modes of gathering information – for example, 'varied and interactive methods such as roundtables',[128] and engaging with 'appropriate stakeholder groups'[129] – measures adopted in Queensland. In their submission, Longbottom and Porter advocated for greater work around engagement and dialogue with Aboriginal and Torres Strait Islander communities in Queensland.[130]

While the Queensland Taskforce evidences a serious attempt to gain input from a diverse range of victim/survivors and the organisations who support them and includes more extensive discussion about the experiences and needs of diverse groups in its report,[131] it seems odd that the Taskforce decided to title and structure its report around the notion of a singular voice: 'Her Voice'. The Taskforce adopts this approach because 'despite the diversity of her experiences, her voice is one voice – she wants to be safe'.[132] What this ignores is that what safety means for different groups of women is also diverse, divergent, and potentially conflicting. The location of the work of the

[123] Watego and others (n 26).

[124] Ibid. On misidentification also see Ellen Reeves, '"I'm not at all Protected and I think other Women should know that, that they're not protected either"; Victim's Experiences of "misidentification" in Victoria's Family Violence System' (2021) 10(2) *International Journal for Crime, Justice and Social Democracy* 13; Heather Nancarrow and others, *Accurately Identifying the "Person in Need of Protection" in Domestic and Family Violence Law* (Research Report, ANROWS, 2020); Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave Macmillan, 2019).

[125] Watego and others (n 26).

[126] Sisters Inside and ICRR (n 62); Longbottom and Porter (n 65).

[127] Attorney-General's Department (n 50).

[128] Domestic Violence NSW (n 84) 20.

[129] NSW Bar Association, Submission No 118, *Joint Select Committee on Coercive Control* (8 February 2021) [25].

[130] Longbottom and Porter (n 65). Similar calls were made in NSW by Women's Legal Service (n 88) [19].

[131] Qld Taskforce, Vol 2 (n 57) 43-54 cf the brief overview in NSW: NSW Committee (n 4) 14.

[132] Qld Taskforce, Vol 1 (n 42) xiii.

Taskforce within the criminal legal system, and the location of safety within that system, potentially obscures that for some women, particularly Aboriginal and Torres Strait Islander women, approaching the structures and institutions of the criminal law does not necessarily afford safety and, in fact, may result in the opposite. The singular voice in the title also stands in marked contrast to the plurality reflected in the Australian Human Rights Commission report, *Wiyi Yani U Thangani (Women's Voices)*.[133] The Queensland Taskforce acknowledges the serious concerns raised by Aboriginal and Torres Strait Islander people, organisations and others about the 'potential impacts on First Nations people',[134] and makes a number of important recommendations to address these concerns. However, in recommending a new criminal offence the Taskforce concludes that it 'does not accept that needed reform of the criminal justice system to improve outcomes for all women should not occur because of feared impact on First Nations people'.[135] This is one of the key tensions for law reform processes: what is to be done when submissions and consultations generate a divergent response? How are these concerns balanced? In Australia this necessarily involves an exploration of the ongoing colonial legacy and how that plays out in the operation of the criminal legal system. Many will be critical of the Taskforce's conclusion here and how this balance plays out in Queensland will be seen in the attention paid to implementation of all its recommendations.

3.4 *Level of attention to existing research*

Graycar and Morgan note that law reform processes have variable relationships with existing research – with some 'eschew[ing] research altogether … while others use empirical research as an integral part of their work' with some even commissioning their own research.[136] Once again, almost nothing is known about the SA process and whether any research guided its response. The only information available is that the draft Bill was 'modelled on the findings of the … [NSW] Committee into coercive control'.[137]

The final report of the NSW Committee rarely cites any of the existing research on legal responses to IPV, instead the report is almost entirely based on the submissions and oral evidence it received.[138] In fact there are more citations to media articles than there is to academic research.[139] While many of the submissions received by the Committee drew on and cite existing research, and some organisations conducted their own research to support their submissions,[140] this does not replace the need to engage with the existing literature. The experience with past law reforms around gender-based violence and the gap between the intention of law reform and its translation into practice 'suggests that empirical social science research might be particularly useful to navigate the gap'.[141] At the very least, it would have seemed important to engage with the small body of research emerging from the UK on their

[133] Australian Human Rights Commission, *Wiyi Yani U Thankani (Women's Voices): Securing Our Rights, Securing our Future Report* (2020).

[134] Qld Taskforce, Vol 2 (n 57) 400.

[135] Ibid.

[136] Graycar and Morgan (n 1) 411. For a discussion of the use of empirical data in reforms to the defence of provocation see Morgan (n 72).

[137] See <https://www.premier.sa.gov.au/news/media-releases/news/help-shape-new-domestic-violence-laws> accessed 11 May 2022.

[138] This is not unusual for parliamentary inquiries – but itself should raise questions about whether this is appropriate or sufficient.

[139] 15 media articles are cited (one twice), compared to 10 articles/reports/briefs by academics or research bodies such as ANROWS (with three citations) and the AIC (with three citations), eight citations to other law reform body reports (from three reports), 13 citations to one DVDRT annual report, and single citations to reports by the NSW Sentencing Council, and the Victorian Auditor General, and to statistical reports by the Australian Institute of Health and Welfare, BOCSAR and the ABS.

[140] For example, Domestic Violence NSW (n 84); Women's Safety NSW, Submission No 133, *Joint Select Committee on Coercive Control* (13 February 2021).

[141] Natalia Hanley and others, 'Improving the Law Reform Process: Opportunities for Empirical Qualitative Research' (2016) 49(4) *Australian & New Zealand Journal of Criminology* 546, 547.

experiences with the new offences of coercive control and domestic abuse,[142] yet none of that research is cited in the NSW report, despite the fact that NSW is looking to those jurisdictions as instructive.

In contrast the Queensland Taskforce report is replete with references to existing research, not merely as citations but in conjunction with the views expressed in submissions. For example: 'as noted in the literature and the submissions received',[143] and 'Submissions to the Taskforce confirmed other research…'.[144] The RCFV also explicitly acknowledged the role of existing research in its work noting that the information gathered from submissions and consultations built on 'an existing body of knowledge, research and analysis'.[145] The RCFV also commissioned its own research in order to fill some gaps in knowledge.[146] The engagement of the Queensland Taskforce and the RCFV with existing research strengthens the otherwise individualised accounts that are presented in submissions. This engagement is particularly important for law reform processes where there are divergent and oppositional views across the sector – between legal professionals, academics, support services, and among victim/survivors themselves – as is the case around criminalising coercive control. This divergence would seem to call for a greater examination of the current landscape and existing research rather than less.

Submissions received and consultations conducted are themselves evidence gathering processes or a form of 'research'. The difficulty is that such processes are rarely presented in a way that enables assessment of the methodology adopted, the representativeness of the sample,[147] and the strengths and limitations of that process.[148] The NSW Committee merely reports on how many submissions it received (156)[149] with no breakdown as to whether they were individuals with lived experience, organisations or otherwise. A similar approach is taken to those who gave evidence. To find this out you needed to do this counting yourself.[150] In contrast the Queensland Taskforce report details the number of submissions received and consultations conducted and provides some breakdown about the demographics or background of individuals. For example, it received:[151]

- 503 submissions from people with lived experience as a victim/survivor of domestic and family violence, 18 of whom identified as men;[152]
- 36 submissions from Aboriginal or Torres Strait Islander people;[153]
- 25 submissions from people with a culturally and linguistically diverse background;[154] and

[142] For example, Charlotte Barlow and others, 'Putting Coercive Control into Practice: Problems and Possibilities' (2019) 60(1) *British Journal of Criminology* 160; Charlotte Barlow and Sandra Walklate, 'Gender, Risk Assessment and Coercive Control: Contradictons in Terms?' (2021) 61(4) *British Journal of Criminology* 887; Iain Brennan and Andy Myhill, 'Policing a new Domestic Abuse Crime: Effects of Force-wide training on Arrests for Coercive Control' (2021) 31(10) *Policing and Society* 1; Paul McGorrery and Marilyn McMahon, 'Criminalising "the worst" Part: Operationalising the Offence of Coercive Control in England and Wales' (2019) 11 *Criminal Law Review* 957; Marsha Scott, 'The Making of the New "Gold Standard": The *Domestic Abuse (Scotland) Act 2018*' in McMahon and McGorrery (n 33).

[143] Qld Taskforce, Vol 2 (n 57) 12.

[144] Ibid 17.

[145] State of Victoria (n114) 2.

[146] State of Victoria, *Royal Commission into Family Violence: Commissioned Research*, Vol VII (2016).

[147] Graycar and Morgan (n 1) 407.

[148] Hanley and others (n 141) 548.

[149] NSW Committee (n 4) 119, Appendix 3.

[150] As the author did for the numbers provided at supra n 103.

[151] These categories are not exclusionary and an individual may identify across categories.

[152] Qld Taskforce, Vol 2 (n 57) 12.

[153] Ibid 43.

[154] Ibid 48.

- 27 submissions from people identifying as LGBTIQA+.[155]

Importantly, unlike other processes the Queensland Taskforce provided information about how submissions from victim/survivors were coded in terms of different forms of violence and abuse.[156] This enhances the transparency of the process. Unfortunately, this transparency in the Taskforce's work was not extended to the coding of other submissions or information gathered through consultations.

3.5 *Emphasis on legislative change as the outcome: Implementation and monitoring*

Graycar and Morgan argued that 'Australian law reform commissions, have been overly wedded to developing "proposals" for formal legal change, often in the form of statutory changes … at the expense of other ways of engaging with change'.[157] What we see, in at least two of the processes under examination, is explicit recognition that law alone is not the answer to addressing coercive control, and that a wide range of other measures are required across society and institutions more generally to effect change. For example, the first recommendation made by the NSW Committee which recommends criminalising coercive control cautions:

> However commencement of a criminal offence should not occur without a considerable prior program of education, training and consultation with police, stakeholders and the frontline sector. Following drafting and legislation of such an offence, and prior to commencement, implementation should be assisted through a multi-agency taskforce.[158]

Similarly, the SA government recognised that a range of non-legislative reforms need to take place prior to the offence becoming operative including 'training for responding professionals and agencies' and that the commencement of the Act will be delayed until this work has been completed.[159] Both the NSW and SA governments have committed to further consultation about implementation.[160]

This all sounds good, but I want to extend this and ask whether these types of 'training and education' style recommendations (which have been repeated extensively over time) are sufficient. And instead consider whether the challenges of implementation should be integrated within the law reform process itself and not seen as an 'add on'. That is to say, that there needs to be 'better integration between law reform, operational procedure and evaluation'.[161] Key here is whether implementation is viewed narrowly or expansively – where a narrow approach is centred on the implementation of the new offence, and an expansive approach considers the landscape in which the new offence is proposed to operate including procedural aspects and interactions with other domains.

I suggest that the NSW and SA processes viewed implementation narrowly. They focused on developing a 'proposal for formal legal change',[162] with measures that support that change such as training and education around the new offence. This approach effectively sidesteps ongoing problems in policing and the criminal legal system. Implementation is far more than the offence itself, but whether and how the offence operates within current structures and procedures, or whether those current structures and procedures themselves need to change in order for a proposed law reform to

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[155] Ibid 51.

[156] Qld Taskforce, Vol 3 (n 43) Appendix 3.

[157] Graycar and Morgan (n 1) 403.

[158] NSW Committee (n 4) xiv, Rec 1. Other recommendations also address implementation see xvi-xvii, Rec 19; and xvii, Rec 20.

[159] Hon Vicki Chapman (Deputy Premier, Attorney-General, Minister for Planning and Local Government), Hansard (House of Assembly SA), Wednesday 27 October 2021, p. 8108.

[160] See NSW Government (n 41). The then SA Premier also committed to this, prior to his defeat in the March 2022 election.

[161] Julia Quilter, 'Getting Consent "Right": Sexual Assault Law Reform in New South Wales' (2021) *Australian Feminist Law Journal* (online first) 5.

[162] Graycar and Morgan (n 1) 403.

achieve its aims. This involves much more than simply training and educating key players about any new offence, but more fundamentally requires shifting or transforming 'legal [and policing] culture'.[163] The approach where a new criminal offence is recommended and implementation issues are addressed afterwards falls into what Julia Quilter has described as the 'gap-filling … criminalisation paradigm'.[164] Indeed the Chair of the NSW Committee in her foreword to the report stated that the absence of a criminal offence in this area was an 'obvious gap'.[165] Quilter notes that the gap paradigm is one of the most 'powerful', and one might suggest seductive, 'tropes in criminalisation'.[166] One of the risks of seeing the new offence as *the* measure that will fill *the* gap is that it 'may impliedly endorse the idea … that physical family violence is currently well policed and adequately addressed by the criminal law'.[167] This is simply not the case and the NSW report is replete with examples that point to failures in the policing of current criminal offences, rather than gaps that can simply be filled by a new offence.[168]

Problematising implementation in the law reform process might also mean that there is some acknowledgement that the simple call for more training and education is not sufficient to ensure implementation aligns with the intention of law reform efforts. Despite significant improvements in policing and other legal responses over the last three decades, one of the most consistently repeated recommendations across IPV inquiries since the 1980s is the need for further training.[169] This repetition 'points to greater challenges … than can be satisfied through the implementation of a single offence and training about that offence'.[170] An immense amount of training and education of key players has taken place, yet we still have complaints and cases that highlight inadequacies and gaps in practice.[171] The easiest step in this process is passing legislation. Without seeing implementation as integral to the preliminary question about criminalisation these hard questions and challenges can be pushed to the side. Quilter highlights the distinction Nicola Lacey and Lucia Zedner drew between 'formal and substantive criminalisation' where formal criminalisation is the legislative change, and substantive criminalisation (that is, what is actually experienced by people) 'depends on many factors … including reporting decisions, official policing and prosecutorial practices, and exercises of various other forms of discretion'.[172]

The Queensland Taskforce report is again instructive of a different approach; one that integrates a more expansive understanding of implementation.[173] The Taskforce considered the operation of the criminal legal system beyond how a new offence would operate within that landscape, and paid attention to the 'actors' – the police, the lawyers, judicial officers. This centring of the actors is significant, as Heather Douglas noted in her work exploring women's interactions with legal systems

[163] Hunter (n 20) 6.

[164] Julia Quilter, 'Evaluating Criminalisation as a Strategy in Relation to Non-physical Family Violence' in Marilyn McMahon and Paul McGorrery (eds) (n 33) 124.

[165] NSW Committee (n 4) iv.

[166] Quilter (n 164) 124.

[167] Ibid 126.

[168] NSW Committee (n 4) 21-22, 24, 27, 28, and 36.

[169] Jane Wangmann, 'Coercive Control as the Context for Intimate Partner Violence: The Challenge for the Legal System' in McMahon and McGorrery (eds) (n 33) 230-231.

[170] Ibid 230.

[171] See NSW Domestic Violence Death Review Team, *Report 2017-2019* (NSW DVDRT, 2020) 154 and its previous reports. See also *Inquest into the deaths of John, Jack and Jennifer Edwards* (7 April 2021) Coroners Court of NSW; and *Non-inquest findings into the death of Fabiana Yuri Nakamura Palhares*, Coroners Court (Southport, Qld) 20 January 2021.

[172] Quilter (n 164) 126. References omitted.

[173] While the NSW Inquiry makes recommendations around primary prevention and community education, the way the Taskforce packages its recommendations is more detailed, cohesive, and far-reaching.

over time, 'it became clear that women's stories often focused on the individuals, or the justice actors, they dealt with in relation to the law. Law was about social relations, in particular, with child protection workers, police, lawyers, and the judges women interacted with'.[174] In a similar way Audrey Macklin pointed out that while legal professionals may think that 'law is what it says. For everyone else "Law is what it does".'[175] Macklin noted the extent to which women experiencing gender-based harms still encountered a range of barriers despite extensive law reform concluding that 'To the extent that law is only animated through the agency of police, the judiciary, lawyers and correctional officials, there is no "law" to speak of when the actors in the system fail or refuse to activate the rule on paper'.[176] The Queensland Taskforce not only saw a role for a new offence, but also that significant change needed to take place within and across the criminal legal system, not only to ensure the new offence operates as intended, but more importantly for the criminal legal system generally to become more responsive to IPV. Significantly the first recommendation addresses the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal legal system.[177]

Despite this more expansive approach to implementation and the environment in which any new offence would operate, one must ask whether the four year timetable proposed by the Taskforce realistically grapples with the extent of problems documented in its report. For example, the work on 'transforming' the police response is far more complex than the timetable suggests. The Taskforce recommended that the government:

> [E]stablish an independent commission of inquiry … to examine widespread cultural issues within the Queensland Police Service relating to the investigation of domestic and family violence, including the impact on the overrepresentation of First Nations peoples in the criminal justice system.[178]
>
> [D]evelop and implement a transformational plan to address widespread culture, values, and beliefs within the Queensland Police Service to enable the QPS to achieve better outcomes for victims of domestic and family violence (including coercive control) and better hold perpetrators to account.[179]

The complexity of the realisation of these recommendations was made explicit by the initial police response to the report which was hostile.[180] The complexity is further demonstrated in submissions to the Taskforce that emphasised the structural and intersectional challenges faced by Aboriginal and Torres Strait Islander peoples in encounters with the police and the legal system, beyond but including IPV.[181]

As noted earlier, the Queensland Government has indicated that it supports in full or in principle all 89 Taskforce recommendations,[182] including the creation of a Commission of Inquiry into policing responses to domestic and family violence. This Commission has been established with a very short timeframe (4 months commencing on 30 May 2022). It is significant that the police have now moved

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[174] Heather Douglas, *Women, Intimate Partner Violence, and the Law* (Oxford University Press, 2021) 6 references omitted.

[175] Audrey Macklin, 'Law Reform Error: Retry or Abort?' (1993) 16(2) *Dalhousie Law Journal* 395, 399.

[176] Ibid.

[177] Qld Taskforce, Vol 1 (n 42) xlvi, Rec 1.

[178] Ibid xlvi, Rec 2.

[179] Ibid lix, Rec 31. See also lix-lxii, Recs 32-37.

[180] Ben Smee, 'Women's Advocates Demand Royal Commission into "Cultural Issues" in Queensland Police' *The Guardian,* (Australia 4 December 2021) <https://www.theguardian.com/australia-news/2021/dec/04/womens-advocates-demand-royal-commission-into-cultural-issues-in-queensland-police> accessed 11 May 2022.

[181] See Sisters Inside and ICRR (n 62); Longbottom and Porter (n 65).

[182] Queensland Government, *Queensland Government Response to the Report of the Queensland Women's Safety and Justice Taskforce: Hear Her Voice – Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (May 2022) 6.

away from their initial position of hostility, indicating that they will 'co-operate fully' with this Commission acknowledging that they have not always 'gotten it right'.[183]

Implementation involves more than simply changing the law; it necessarily involves asking whether the legislative change resulted in the desired outcome.[184] The law reform processes undertaken in NSW and Queensland were conducted by non-permanent bodies separate from, and in Queensland's case entirely independent of, the Government. While there are clear benefits of this separation, the lack of permanency presents a challenge[185] – who monitors implementation, not as a tick-a-box exercise but in terms of experiences on the ground? Addressing these concerns, the Taskforce recommended that the Queensland Government 'develop and implement a government monitoring and evaluation framework' not only in terms of action on the Taskforce's recommendations but more widely.[186] This has similarities to the establishment of the Family Violence Reform Implementation Monitor, an independent statutory office, in Victoria following the RCFV.[187] In contrast the NSW Committee recommended an 'implementation taskforce' limited to 'manag[ing] the introduction of a criminal offence of coercive control' rather than the whole gamut of recommendations made in the report.[188] This recommendation is also crafted in weak language merely recommending that the government 'consider' establishing such a taskforce. Echoing that weak language, the NSW Government has stated that it supports the recommendation and 'will further consider' it.[189] No recommendations were made regarding evaluation or monitoring of the offence, despite some stakeholders recommending a statutory review process.[190] The NSW Committee appears to have adopted an approach that any risks associated with criminalisation can be addressed by attention to drafting and implementation. While this may well be the case in some areas, the more complex concerns about further criminalisation in the area of IPV are conveniently avoided. It is telling that the NSW report had a heading for the 'benefits' of criminalisation but not for any disadvantages,[191] despite this being a question posed in the government's discussion paper. The importance of a monitoring process is revealed in Victoria where the RCFV Implementation Monitor has recently released a report on the problem of the misidentification of victims as offenders of IPV,[192] an issue that has also been raised as a key risk in the criminalisation of coercive control. In 2016 the RCFV made a recommendation to address this problem[193] and in 2021 the Monitor found that despite this recommendation having ostensibly been implemented 'misidentification continues to occur, and

[183] Matt Dennien, 'Qld Orders Royal Commission into Police Response to Domestic Violence', *The Brisbane Times*, (10 May 2022) <https://www.brisbanetimes.com.au/national/queensland/qld-orders-royal-commission-into-police-response-to-domestic-violence-20220510-p5ajye.html> accessed 23 May 2022.

[184] Hunter (n 20) 8.

[185] One of the advantages of permanent law reform bodies is that they can monitor their own recommendations: Anita Mackay and Jacob McCahon, 'Comparing Commissions, Inquests and Inquiries: Lessons from Processes Concerning Family Violence and Child Protection in Victoria' (2019) 45(3) *Monash University Law Review* 531, 550.

[186] Qld Taskforce, Vol 1 (n 42) lxxxii-lxxxiv, Recs 85-89.

[187] <https://www.fvrim.vic.gov.au/family-violence-reform-implementation-monitor > accessed 11 May 2022.

[188] NSW Committee (n 4) xvii, Rec 20.

[189] NSW Government (n 41) 6.

[190] NSW Committee (n 4) [5.101]-[5.103].

[191] Ibid 79.

[192] Jan Shuard, *Monitoring Victoria's Family Violence Reforms: Accurate Identification of the Predominant Aggressor* (Office of the Family Violence Reform Implementation Monitor, 2021).

[193] State of Victoria (n 114) Rec 41.

rectification is extremely challenging'.[194] In response the Monitor made further proposals to address this problem.[195]

5.0 CONCLUSION

Feminist engagements with law reform have regularly encountered the tension of working within a system that has long found it difficult to respond effectively to gender-based harms. Despite its many limitations I agree with Graycar and Morgan that 'for all its faults, we imagine that women will continue to turn to law, as a potential site for "destabiliz[ing] and displac[ing] previously dominant meanings of gender"'.[196] In engaging in law reform, it is important to not only examine the results, but the processes themselves. These processes are important sites for access to justice; the extent to which they are expansive and accessible shape what happens next. This is about doing law reform better for all, particularly those most marginalised and most impacted by law and its institutions; those with the most to lose from any resultant reforms. It is disappointing to be writing an article 17 years after Graycar and Morgan with little having changed for some of these processes.

The vast majority of people and organisations who participated in these processes were in favour of a new offence seeing it as key to making a difference to the way that the criminal legal system responds to IPV; shifting it from an incident-based framework to one that addresses patterns and cumulative behaviours. Many of these supportive submissions emphasised the need to pay attention to the ongoing problem of implementation in legal reforms designed to address gender-based harms. However, there were also many people and organisations who made submissions who were against criminalisation, or very cautious about it, given risks of misidentifying victims as offenders, risks of not being identified as a victim, the continuing problematic response of the criminal legal system and its actors, and the trauma for victim/survivors of going through criminal processes. While all three processes in recommending a new criminal offence acknowledged the importance of implementation only one took an expansive approach. The Queensland Taskforce saw implementation beyond how a new offence translates into practice and paid attention to the experience of Aboriginal and Torres Strait Islander people in terms of their experiences of high rates of violence and over-incarceration. In this way the Taskforce appeared to take seriously the 'implementation gap' that has been highlighted in feminist analysis of past law reforms. At the same time, it is likely that scholars and advocates will dispute how seriously this was addressed when a new criminal offence was still proposed, and question whether the type of 'transformative' change recommended by the Taskforce is possible within the colonial structure of the Australian criminal law. Here the constraints created by terms of reference which limited the frame to the criminal law are underscored: To what extent do law reform processes, however constructed, see themselves as able to step outside law as the key response? This was a direct challenge presented by many commentators within and outside the submission processes.

The Queensland and NSW governments have committed to implementing the recommendation to criminalise coercive control in their respective jurisdictions, this means that the next stage is the drafting of the legislation. The consultation processes that are put in place to inform that drafting are important. The extent of division evident within and outside the processes to date necessitate that these subsequent processes attend to the matters raised in this article. Namely sufficient time for consultation, measures to enhance accessibility particularly for marginalised groups and those most likely to be impacted by the proposed law, and engagement with the extensive body of research that

[194] Shuard (n 192) 5.

[195] Ibid i.

[196] Graycar and Morgan (n 1) 395.

documents the problems of implementation and practice around law reform designed to address the problem of gender-based harm. The next stage for this critical examination of law reform processes is to assess whether and how the cautions, complexity, and risks already raised to date (both by those for and against criminalisation) is addressed in that drafting. Engagement with law reform around gender-based violence is an ongoing process, as Quilter reminds us in the context of sexual assault law reform even the best processes do not guarantee reform that reflects women's lives and experiences; such reforms necessarily come up against, and are required to operate within, the existing legal culture.[197] This means that 'implementation' must be seen as more than a tick-a-box exercise and one that examines the law as it is practiced and experienced.

[197] Quilter (n 161) 7.