



Submission to the

Joint Select Committee on Coercive Control

Parliament of NSW

March 2021

Illawarra Women's Health Centre

[Criminalising coercive control will reduce domestic and family violence.](#)

The Joint Select Committee on Coercive Control - Parliament of NSW was established on 21 October 2020 to inquire into and report on coercive control in domestic relationships.

This submission responds to the call for submissions responding to the NSW Government discussion paper on coercive control and questions posed in the paper.

This submission is public, it is not confidential, and names need not be withheld.

For further information on this submission please contact Sally Stevenson, General Manager, at sallys@womenshealthcentre.com.au or on 4255 6800

The Illawarra Women's Health Centre

Nationally accredited, the Illawarra Women's Health Centre has a focus on mental health, women experiencing domestic and family violence and sexual assault, and sexual and reproductive health. The community-based Centre sees over 6,000 women a year and has an exceptional reputation, providing integrated care and social support to women with complex needs using a social model of health and a community development approach to service delivery.

The Centre is a women's only space, and its doctors, nurses, psychologists, counsellors and social workers are all female, experienced and trauma informed. The Centre offers specialised domestic and family violence programs for girls, boys and young women, and women with intellectual disabilities. It developed the first in Australia, Mothers and Sons Program which focuses on raising young boys into respectful men, has a comprehensive outreach program for Illawarra schools that includes a key focus on specialised domestic and family violence, consent and healthy relationships and is driving the campaign for a Women's Trauma Recovery Centre.

The Centre also runs a wide range of health and wellbeing programs and group activities. These include community led group activities, as well as structured programs on healthy relationships and self-esteem. The groups are critical to reducing social isolation (a risk factor and symptom of domestic violence) and building community cohesion and capacity.

Acknowledgement of Country

Our Centre is situated on land of the Wodi Wodi people of Warilla, part of the Dharawal Nation.

We acknowledge the traditional custodians of this land, where the Aboriginal people have performed age-old ceremonies of storytelling, music, dance and celebration.

We acknowledge and pay respect to Elders past and present, for they hold the memories, traditions and hopes of Aboriginal Australia.

We must always remember that under the concrete and asphalt, this land is, was, and always will be traditional Aboriginal land.

We acknowledge that we work in the context of generations of resilient, strengths-based, holistic resistance to violence in Aboriginal and Torres Strait Islander communities. We commit to actively supporting and promoting the voices of Aboriginal people and organisations in our work.

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1. Acknowledgement and Introduction

1.1 The Illawarra Women's Health Centre has worked with women experiencing, escaping, or recovering from domestic and family violence for over thirty years. Over this time, we have seen the devastating and long-term impact of this violence, including and especially the psychological injury that remains with women, if untreated, throughout their lives.

'Coercive control' is the term that describes both the overarching context of a relationship that sets the conditions for harm and injury, and the pattern of abuse that causes this harm.

Victim / survivors of domestic and family violence have told us, time and again, it is this pattern of preparator behaviour rather than any one incident, that is not just the most harmful component of their experience – it is at the very core of their experience.

1.2 First and foremost, we acknowledge every single one of these women in this submission. We acknowledge their trust, their pain, their never-ending resistance to violence and their **optimism** that things will, eventually, change – **and women and children will be protected** by our society. **It is in the spirit of their hope and optimism that we write this submission.**

1.3 We believe domestic and family violence is a public health emergency in Australia and demands a comprehensive and properly resourced public health response. This includes a criminal justice system that can effectively and proactively work to properly identify this abuse, hold perpetrators accountable whilst supporting victims, ensuring their safety, and wellbeing.

1.4 This submission represents an **urgent call by our Centre for deep, critical and overdue cultural change regarding perceptions and consequences of domestic and family violence in NSW.**

We believe this Committee has the opportunity - and responsibility - to enable, reflect and amplify this change by supporting the introduction of coercive control legislation *and* underwriting it by insisting on investment in sector wide change management strategies, and demonstrable political leadership.

1.5 *This is Geraldine Bilston, a victim / survivor, being interviewed on ABC Radio National about her experience of coercive control. We urge you to listen to the 13 minutes it takes Geraldine to provide **the most compelling argument** for criminalising coercive control, which sets the context for our submission.*

Our submission

We welcome the opportunity to provide comments to the NSW Government in relation to the Discussion Paper on coercive control.

It is the overall recommendation of the Illawarra Women's Health Centre that the NSW Government introduce new legislation adding a separate offence of coercive control to the Crime Act 1900 (NSW). Drawn from experience and evidence, this has been our consistent and public position since coercive control legislation was put before the NSW Parliament.

In this submission, we provide comment on the following questions in the Discussion Paper:

1. What is the definition of coercive control, and a domestic relationship?
2. What are the advantages of creating an offence of coercive control?
3. Does existing criminal and civil law provide the police and courts with sufficient powers to
4. address domestic violence, including non-physical and physical forms of abuse?
5. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly.

2. Primary recommendation

2.1 **Coercive control should be criminalised using Tasmanian and Scottish legislation as the core framework and incorporating specific conditions and protections as appropriate to NSW.**

2.2 The pattern of behaviour known as ‘coercive control’ is both at the core of domestic and family abuse, and its overarching context. It causes deep and prolonged injury to women and children, and fundamentally, is an abuse of a woman’s human rights.

2.3 Community understanding of coercive control, the manifold strategies of abuse that contribute to it and its insidious, cumulative and damaging impact is growing. As is the **expectation of the community** that the NSW Government will provide a legal framework that reflects the severity of injury it causes, and the need for adequate protections to keep women and children safe from this harm.

2.4 **Health and justice are inescapably linked.** At the heart of coercive control legislation is an informed, authentic and practical commitment to women’s psychological, physical and financial safety. A system that supports the needs of victims while holding perpetrators to account will ensure better outcomes for women and children.

2.5 The new legislation must acknowledge that coercive control is a **gendered crime**. This imbalance needs to be formally recognised in the legislation explanatory notes and education programs. Where coercive control legislation has been introduced overseas, ‘95% of recorded coercive control offenders, and between 96% and 99% of prosecuted coercive control offenders have been men, prosecuted for behaviour towards women’ (McGorrery, 2021).

2.6 The implementation process **must be informed by the needs and concerns of populations** where there is a potential risk for the legislation to be misused or misapplied; where the cultural and social context means that legislation applicable to white, abled and heteronormative societies may have unintended negative consequences for them.

This is particularly critical for Aboriginal and Torres Strait Islander people, where incarceration rates for both men and women are disproportionately high, and where coercive control may be expressed in other forms, through different mechanisms and/or different family configurations. It also includes LGBTI+ women, women with disabilities and culturally and linguistically diverse populations, and older women.

2.7 As necessary and appropriate, **protections and guidelines must be developed, enacted and implemented** to ensure any risk of an adverse impact of the legislation is minimised. It also may require the gradation of both civil and criminal responses so that concerns and risks are ameliorated. Our legal system communicates to everyone what is and what is not acceptable in our society. It is designed to evolve, reflecting and reinforcing developments in our experience and

understanding of criminal activity. Used well, with insight and compassion, it also has the potential to drive positive cultural change, including the prevention of domestic and family violence.

- 2.8 Criminalisation will also bring to the foreground of the public awareness the nature, scope and impact of coercive control. By doing so, it places victims / survivors in a place where they can be seen – indeed, where they can see themselves.

Further, if victims know what coercive control is, they can better understand what they are experiencing. If they know it is a criminal act, they can see themselves being protected by the law. The law will reflect the lives and experiences of victims, bringing understanding and hopefully, relief, as they seek to leave a coercive control relationship.

- 2.9 Change does not come without its risks; misidentification of perpetrators; inadequate application of the law; and potentially higher incarceration rates or greater neglect for ‘at risk’ populations. This should not prevent us from criminalising coercive control. Hard and complex challenges are not an argument against criminalisation. Domestic and family violence is hard and complex, and it simply requires us to tackle these issues with sensitivity and strength.
- 2.10 Further, criminalisation is not the *whole solution*, but it is the necessary ‘line in the sand’ that clearly states we as a community, do not accept or tolerate this behaviour. Tackling domestic and family violence requires a range of civil and criminal options – *it is critical that women have alternate pathways to safety to use according to their individual circumstances*. Legislation, however, will provide both the baseline and the framework from which improvements in reducing abuse are made.
- 2.11 As has been said clearly and repeatably by the domestic and family violence sector, new coercive control legislation will require substantial and sustained investment in change management across society. To be successful – to have a meaningful impact on women’s safety - the legislation must be underpinned by a comprehensive multi-sectoral and community focused awareness, education and training program that is adequately and sustainably funded. If **properly resourced and strategically implemented**, legislative change can lead and frame an invigorated system wide approach to reducing domestic and family violence.

[It is a unique and invaluable opportunity.](#)

- 2.12 Making coercive control a stand-alone crime would align NSW with world leading international jurisdictions, and growing community understanding of the true nature and scope of domestic and family violence.

Criminalising coercive control unearths a crucial bedrock understanding of domestic and family violence - it not only recognises the mental impact of non-physical violence on victims, but it places a duty to tackle perpetrators. Victims cannot wait for cultural change – they need protections now. David Challen

3. Secondary recommendations

- Recommendation 2 **Consult widely and authentically with populations at greater risk of domestic and family violence**, and at risk of experiencing unintended consequences of new coercive control legislation.
- Recommendation 3 Afford **populations at greater risk of domestic and family violence** through and by our legal, bureaucratic and social systems specific protections.
- Recommendation 4 **Ensure the burden of proof** rests on whether the perpetrator knew – or ought to have known - the behaviour would cause harm. Intent is not required, and there must be no requirement for the victim to prove harm.
- Recommendation 5 Recognise coercive control as **gendered abuse**.
- Recommendation 6 Ensure **implementation is fully resourced**, including training for all sectors within the criminal justice system, community awareness and victim/survivor support services.
- Recommendation 7 Ensure there is **ongoing and public political commitment** at the highest level.
- Recommendation 8 Define coercive control as a context for domestic and family violence which is executed using the range of behaviours as described in the Discussion Paperⁱ, noting the **list must never be considered exhaustive. Systems abuse must be explicitly included**.
- Recommendation 9 Define coercive control as an **ongoing course of conduct**.
- Recommendation 10 Ensure the **presence of children in a coercive controlling relationship** is considered either:
- an aggravating factor and/or
 - a new and separate criminal offence.
- Recommendation 11 Define a domestic relationship as outlined in s.11 of the Crimes (Domestic and Personal Violence) Act 2007.
- Recommendation 12 Determine the **harm threshold objectively**: when a reasonable person would regard the conduct of the accused as likely to cause harm to the alleged victims.
- Recommendation 13 **Allow for retrospectivity**, given patterns of behaviour may have begun before legislation enacted.
- Recommendation 14 **Exclude consent as a defence**.
- Recommendation 15 **Consider** establishing **specialised all female domestic and family violence police response teams**, or specialised female coercive control police and where possible co-located of these teams in women friendly spaces.

4. Background

- 4.1 In September 2020, Anna Watson MP (Member for Shellharbour), to the relief of advocates and domestic and family violence survivors, presented a private Members Bill, known as 'Preethi's Law' after Preethi Reddy, to the NSW Legislative Assembly. The objective of the Bill was to criminalise coercive control, addressing a crime of power and control that causes:
- significant and enduring psychological, emotional, social and economic harm; and
 - is an infringement on a victim's human right of autonomy and freedom.
- 4.2 Anna Watson's Bill was followed by Abigail Boyd's Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour Bill). Both pieces of legislation drew on what is considered the 'gold standard' legislation from Scotland as well as lessons learned from jurisdictions such as France who had criminalised psychological abuse in 2010, the UK (2015), Tasmania (2018), and Wales (2019).
- 4.3 In response to these actions, and increasing community pressure, the NSW Government established the Joint Select Committee on Coercive Control. The Committee's Terms of Reference called for responses to a discussion paper authored in October 2020. Our submission responds to those questions by drawing on our extensive experience in the sector, the voices of women with lived experience of coercive control and the increasingly clear evidence of the impact legislation can have on this crime.
- 4.4 The NSW Government Coercive Control Discussion Paper (2020) paper notes the following:
- Coercive controlling behaviours are recognised internationally in legislation that is designed to address a 'pattern of behaviour' or 'course of conduct' offence by perpetrators of a pervasive and debilitating type of violence.
 - It would be a natural progression to manage these behaviours legislatively in NSW and provide a framework that directs law enforcement to address, what has been described as the worst type of abuse by victim/survivors.
 - The safety, health and wellbeing of victims of domestic and family violence is inextricably linked to an effective legal response. Legal experts Evan Stark,ⁱⁱ Paul McGorreryⁱⁱⁱ and Patricia Easteal^{iv} all present compelling arguments in favour of criminalising 'coercive control'.
- 4.5 It is broadly agreed that the key factors of success (or failure) of any legal change are clear wording, adequate resourcing of the implementation stage, and effective development and distribution of supporting information. Additionally, legislation that drives **cultural change** must incorporate:
- broad community engagement and consultation, especially with marginalised and 'at risk' populations.

- adequate protections and guidelines for populations who experiences discrimination and abuse by systems.
- a realistic timeline for implementation;
- adequate and sustained funding to support change; and
- high level and (very) public political commitment.

5. The arguments for criminalising coercive control

Being able to name and acknowledge what you are being subjected to will mean victims find pathways to freedom before it is something they seek prosecution over. That can't be measured but is so important.

Geraldine Bilston, Victim/Survivor Advocate

5.1 Increasing domestic and family violence rates. As a society we have failed victim/survivors of domestic and family violence. We all know that women and children remain unsafe in our community because of domestic and family violence.

And across NSW, women and children are becoming more unsafe, as domestic and family violence rates increase.

- In the 2019-2020 reporting year, the NSW Bureau of Crime Statistics and Research (BOSCAR) data shows a rise of 5% in domestic and family violence across the state.
- In Warilla NSW, where we are located, rates rose from 586 per 100,000 people in 2019 to 856.5 per 100,000 people in 2020. By comparison, the NSW state average increased from 389 per 100,000 people in 2019 to 2020 398.3/100,000 in 2020.
- BOSCAR data also shows the five-year trend for stalking is up 6.4%.

There are many reasons for this: gender inequality and inequity, deep cultural ambivalence, disinterest or contempt for safety of women and children, victim blaming, lack of political leadership, lack of adequate resources to support women, lack of proportionate response and consequence for perpetrators, and the failure of our systems including the utilisation of systems to continue and/or escalate harm.

5.2 Understanding and responding to the core element of domestic and family violence, the attack on a woman's autonomy, is critical to reducing this violence. Known as 'coercive control', this attack occurs in a relationship context that enables and reinforces the stripping away of a woman's independence and dignity through patterns of behaviours that can involve strategies such as 'psychical, sexual, verbal, and/or emotional abuse, psychologically controlling acts, deprivation of resources and other forms of social abuse, social isolation, intimidation and deprivation of liberty' (ANROWS, 2021).

Psychological and economic abuse, which are central to coercive control, and occur over time, are the most common forms of coercive control (McGorrery McMahon, forthcoming). Indeed, according to the Australian Institute of Criminology study of 15,000 women in 2020, 11% experienced coercive control, 8% experienced physical abuse and 4% sexual abuse. The most common manifestations of coercive control were verbal abuse, insults, jealousy and suspicion, and monitoring of time.

- 5.3 **Coercive control leads to significant physical, mental and emotional injury, as well as poor long term health and wellbeing outcomes.** Whilst coercive control is a clear predictor of intimate partner homicide^v, and important to prevent because of this – it is equally important to understand that coercive control behaviour *in and of itself* causes immense harm. Evidence shows the health impacts of coercive control are both acute and chronic, causing significant and enduring injury to women and children.
- 5.4 At our Centre, victim/survivors consistently report that psychological abuse is worse than physical abuse. The impact is profound: the stripping away of dignity and autonomy is different to physical assault or episodic violence. They report psychological harm results in a profound loss of self-respect and self-confidence and can lead to a chronic sense of powerlessness and helplessness. And the cumulative effects of psychological abuse can result in an inability to work, homelessness and poverty.
- 5.5 In general, women who have experienced domestic and family violence have increased rates of health service access, poorer physical health, increased rates of mental health disorders including anxiety, depression, post-traumatic stress and substance use, and are over-represented in prison (Weissbecker et al., 2007, Lagdon, et al., 2014, Ellsberg et al., 2008, Hegarty et al., 2012, Loxton et al., 2017).
- 5.6 More specifically, the consequences of psychological abuse can be drastic and life changing. Stubbs and Soeke (2021), in their recently released paper *The effects of intimate partner violence on the physical health and health related behaviours of women: a systemic review of the literature* report that studies repeatedly show **psychological abuse is a significant risk factor for both chronic disease and negative health symptoms and that psychological abuse is just as harmful, if not more so than physical abuse.** They reference Al-Modallal (2016), who showed that psychological intimate partner violence was the biggest risk factor for chronic disease states – with the analysis reaching statistical significance for gastrointestinal, respiratory, urinary, and liver problems. There are multiple examples that bear this out, including data that shows 51.6% of IPV women experience fibromyalgia compared to 23.98% for non-abused women – and the risk was highest amongst women subject to psychological abuse. Research has also found there was a more consistent relationship between psychological abuse and Post Traumatic Stress Disorder than between physical violence and PTSD.
- 5.7 The evidence that women’s experiences of domestic and family violence / coercive control lead to poor health is manifold:
- At the population level, intimate partner violence has been shown to be the major contributor to disease burden (the impact of illness, disability, and premature death) among women aged 25–44 years (Australian Institute of Health and Welfare, 2019).

- The Australian Longitudinal Study on Women's Health (ALSWH, 2017) also shows women who experienced domestic and family violence had consistently poorer mental health than women who had never experienced such violence. Further, there is a *lifetime deficit in mental health associated with domestic and family violence*. This health deficit remained even after the abuse had ceased.
 - Other studies confirm that violence against women is associated with mental health consequences that often persist well into the life course, including long after the violence has stopped (Ayre et al., 2016; Moulding et al., 2020).
 - Another study of 658 Australian women who had a self-reported history of intimate partner violence found that just over half of the women (52%) reported receiving a diagnosis of mental illness. Of the women, 43 percent were diagnosed during a period when intimate partner violence was being perpetrated, and 44 percent were diagnosed after leaving the relationship. Only 13 percent of the women reported having a diagnosis of mental illness prior to the intimate partner violence occurring (Moulding et al., 2020).
- Compared to women with no abuse history, women who experienced both childhood sexual abuse and violence in adulthood were *two to three times* more likely to have poor general health, depression, and anxiety
- In addition, recent research by Signorelli et al. (2020) centred upon fear, shows that the impact of coercive control straggles such as stalking, surveillance and harassment after separation show a higher likelihood of fear of by women their ex-partner than those that remain in a relationship—from fourfold to eightfold higher—leading to longer term mental health impacts.
 - Conversely, more vulnerable women with chronic health conditions may be more likely to experience domestic violence, particularly in situations where they are reliant on others to provide support and care (Krnjacki et al. 2016; Maher & Segrave 2018; Sasseville et al. 2020).

The NSW Government has a duty of care to women experiencing domestic and family violence and to implement all possible strategies to protect their safety and their health – and that of their children. The entire response system, including current laws. If we are to truly seek to manage the safety of women and children and to **improve their lifetime health status**.

The Discussion Paper notes that one woman dies every eight days in Australia from domestic and family violence. Domestic and family violence, with coercive control at its core, is an internationally recognised health emergency and requires a public health response. As with many highly effective public health responses, that includes legislation with clear consequences for poor behaviour.

Legislative reform sets the context from which the safety and health and wellbeing of women can be better addressed.

- 5.8 **Coercive control is a breach of human rights**, as framed by the *Universal Declaration of Human Rights* (with particular reference to Articles 3, 4, 5, 7, 9, 12, 13, 17, 18, 23, 25 and 27), the *Committee on the Elimination of Discrimination Against Women* (CEDAW) and *United Nations Covenant on the Rights of the Child*, and the *International Covenant on Civil and Political Rights* to name the main treaties. These should be considered in the development of legislation relating to coercive control.

Article 7 of the Universal Declaration of Human Rights is especially pertinent to this Inquiry

All are equal before the law and are **entitled without any discrimination to equal protection of the law**. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

- As noted, in the Discussion Paper (page 22) the High Court of Australia has said that it is ‘the duty of the courts to vindicate the human dignity of victim / survivors.
- Children are particularly impacted by domestic and family violence. In 2019, the Australian Human Rights Commission stated that Australian Governments should provide child-specific therapeutic intervention, counselling, and early intervention programs for child victims of family and domestic violence, delivered across a range of services. Managing family violence at various intervention points such as police, criminal justice and supports systems is recognised a **human rights imperative**.
- In September 2020, NSW Attorney-General Mark Speakman described coercive control as a ‘form of slavery’ (refer Article 4 of the Universal Declaration of Human Rights)

- 5.9 A conservative estimate of the **economic cost** of domestic and family violence, of which over 50% is borne by the victim is \$22billion (KPMG 2016). The study identifies Women bear 52% of those costs (\$11.3 million) while the governments, federal state and local provide 19% of those costs associated with abuse.

- The ALSWH shows that women who experience domestic and family violence cost Medicare in terms of GP visits 10% more per person per year.

6. Development and introduction of coercive control legislation: key principles

To:

- **maximise** the effectiveness of coercive control legislation and materially improve women's safety and increase perpetrator accountability; and
- **minimise** the risks and any 'unintended consequences'

the following principles must actively underpin new legislation.

6.1 Do no harm. As demonstrated above, coercive control leads to significant and enduring harm, it is a breach of human rights, results in poor health and wellbeing outcomes for women and children and is an immense cost financial cost to the victim. **Not** introducing legislation to criminalise coercive control **is to support and perpetrate harm.**

6.2 It is well documented that our social and legal structures and systems can themselves replicate systems of power and abuse and are often used as weapons by perpetrators. **Populations at greater risk of domestic and family violence and abuse *through and by our legal, bureaucratic and social systems* must be afforded specific protections under the legislation. (R3)**

- These protections must be co-designed with each population to ensure they are effective, robust and culturally appropriate. This will include, in some cases, specific definitions and explanations for domestic and family relationships. The process of consultation and development of protections will take time and significant resources if it is to be done correctly.

6.3 Recognise there is a disproportionate effect of violence on those with less access to systemic resources and support. Mechanisms to ensure access to justice is enhanced for these populations, not hindered by this new legislation must be in place. This includes populations previously highlighted as well as rural women, women of low socio-economic status both older and younger women

6.4 Do not further traumatise victim/survivors. There is ample evidence that victims/survivors are currently re-traumatised by the criminal justice system, including when they give evidence and are cross-examined. New legislation must not focus on the consequences of the harm but on the **pattern of behaviour itself**, laying accountability directly at the feet of the perpetrators.

It must be sufficient that the perpetrator knew – or ought to have known - this behaviour would cause harm. There must be no requirement for the victim to prove harm. (R4)

At the same time, a victim / survivor's voice must be heard – if they so wish. This is critical to their recovery, and their right to be heard. They must not be silenced (again) by society. Victim impact statements must be an option afforded under to the legislation. **(R5)**

- 6.5 **Recognise coercive control as a gendered abuse.** Evidence shows that perpetrators of coercive control is overwhelmingly male and victims, overwhelmingly female. Any legislation must ensure adequate gender protections are in place. **(R6)**
- 6.6 **Ensure implementation is fully resourced,** allowing for:
- system wide education and training, to ensure authorities understand the strategies and nuances and impacts of coercive control
 - comprehensive social support services, significantly beyond what is currently provided. Evidence from Scotland shows that a key element of its success is the way the system is set up to connect victims to social services and economic resources. **(R7)**
- 6.7 Finally, any successful implementation of the new legislation must have ongoing and public political commitment at the highest level, including by the Premier and the Attorney General, the Commissioner of Police, and the Director of Public Prosecutions. **(R8)**

7. Definitions of coercive control

- 7.1 Firstly, any definition of coercive control in NSW needs to be consistent with a clear and well communicated **national definition. The awareness raising opportunity of this legislation, as it plays out within our community and across state jurisdictions**, must be consistent, to strengthen national communications campaigns and to avoid misunderstanding.
- 7.2 In principle, coercive control is a behaviour which, over time, strips away a women's autonomy and sense of self. As Evan Stark et al., note, it is a crime of power causing harm, **not always causing fear**, and as such has significant impact on the day to day lives of the victim. This is achieved by employing a range of strategies, individualised to each victim, in her particular environment. These behaviours include those described in the Discussion Paper, and we agree with those listed - however the **list must never be considered exhaustive**. Perpetrators constantly develop new methods as opportunities arise. For example, stalking on smart phones is relatively new. **(R9)**
- 7.3 **Abuse of systems is recognised as a form of violence**. Legal, financial, state protection and other socio-cultural systems can be used by the perpetrator to control and harm the victims. Coercive control does not necessarily end with the relationship. It continues in public and in private, often for years and very often using these systems to continue the abuse.

The National Domestic and Family Violence Bench Book (2020) notes abusers, post separation, make several applications and complaints in multiple systems relating to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim's financial resources and emotional wellbeing and adversely impacting the victim's capacity to maintain employment or to care for children.

Systems abuse must be incorporated into our understanding of coercive control strategies and recognised in law. **(R9)**

- 7.4 Most importantly, the definition must reflect coercive control as an **ongoing course of conduct** whereby the perpetrator seeks to intentionally constrain the agency of the victim. Frequency of behaviour is key (Hardesty JL, Crossman KA, Haselschwerdt ML, Raffaelli M, Ogolsky BG, Johnson MP, 2015). It is a *pattern of behaviours*, often insidious and cumulative in effect as opposed to individual high impact stand-alone incidences. **(R10)**
- 7.5 **Any definition must consider intersectionality**. It must include specific conditions that recognise the circumstances of 'at risk' populations. These include relationships that impact older people, Aboriginal and Torres Strait Islander people, LGBTI+ populations, culturally and linguistically diverse groups and women who are disabled. Overarching this, the definition must acknowledge this crime is undeniably gendered.

7.6 **The experiences of children.** Children are both victims and weapons in domestic and family violence relationships. Evidence shows that when children witness domestic and family violence, the traumatic mental and emotional impact is exactly the same, as though the abuse was directed at them: if they are a witness, they are also a **primary victim**. A definition of coercive control must recognise that if the mother is being impacted, so too the child, equally. **(R11)**

Healthy versus unhealthy relationships – there is a difference

We believe the difference between coercive control and agreed role delineation within relationships are quite stark when intimidation, control, deprivation, threats, sexual and physical violence.

Healthy relationships are interdependent, meaning you seek support from each other, but you maintain your individuality. The roles within healthy relationships naturally evolve over time. In healthy relationships there is trust, honesty, mutual agreeance, communication, compromise, and flexibility. There typically is no behaviours of intimidation, threats, or violence if outcomes don't occur as expected. There is no pattern.

In contrast, coercive control is when behaviours and actions are twisted into tools to instil fear and/or compliance. Over time, as the relationship develops, abusers take key information about the victim's insecurities, vulnerabilities and fears and slowly use these over to dominate and control their partner into compliance. Coercive control is nuanced in natural the behaviours which could comprise it are diverse and somewhat unique to each relationship. These behaviours cause harm to the victim/survivor and any definition in law must capture the diversity of coercive control for the legislation to be effective.

The pervasive actions of the abuser strip away the decision-making process, freedom, and independence of the victim/survivor. There is not flexibly within the relationship for different opinions and no equal decision making. The *threat* of violence underpins coercive control, with the victim believing they have no choice but to comply and fear that if they say no there will be violent consequences. Dutton and Goodman's (2005) states coercive control is a multidimensional and repetitive process of responses, usually in the form of demands that ultimately end in compliance because the victim believes she will experience more negative consequences for noncompliance.

8. Definition of relationship

- 8.1 We recommend the legislation include, as a minimum, the definition of a domestic relationship as outlined in s.11 of the Crimes (Domestic and Personal Violence) Act 2007, Part 1 Preliminary, 5 Meaning of 'domestic relationship, 5A Special Provisions – carers and their dependants and 6, Meaning of 'relative'. **(R12)**
- 8.2 As noted above, there may need to be special provisions or guidelines in the definition of a relationship for particular populations, including Aboriginal and Torres Strait Islanders. These must be determined through sensitive and safe community consultations.

9. Current response to coercive control

- 9.1 **Both criminal and civil law in NSW currently fail to adequately respond to domestic and family violence in all its forms, including non-physical violence and abusive patterns of behaviour.** The statistics speak for themselves: women continue to be murdered, or mentally, emotionally, socially or physically injured for life, at *increasing rates*. This is happening in the face of existing laws, including those that recognise some forms of non-physical abuse, such as stalking.
- 9.2 It is common for women who use our service not to go to police because there is a:
- Fear of retaliation by the perpetrator if they report.
 - Lack of supports either by a service or networks to manage post abuse/reporting issues.
 - Perception (based in reality) that police are reluctant to act.
 - Previous experiences where issues of abuse have been reported and the victim has not been believed of taken seriously.
 - Number of impediments in the current legal system that do not allow the police to act.
- 9.3 In fact, existing legislation *restricts* the ability of the police and the judicial system to provide adequate safety and protection for victim/survivors experiencing **non-physical forms of abuse, which are at the core of coercive control.**
- 9.4 **Most acts of coercive control are not covered in the *Crimes (Domestic and Personal Violence) Act 2007*, nor do they give rise for an application for an Apprehended Domestic Violence Orders (ADVO).** The subtle and cumulative nature of coercive control, a pattern of behaviour established by many often seemingly minor, independent behaviours is not captured in the current legislation which only allows for an incident-based response. And this, where the one incident is of significant magnitude and usually physical. This narrow focus ignores the context in which single incidents occur and therefore obscures the dynamics of control, power and gender inequity that make coercive control distinctively wrong and harmful.
- The law as it stands also sets up an abuse hierarchy, where physical abuse is considered ‘the worst’ demonstrated by it being criminalised. Other forms of non-physical abuse are given (much) less, if any weight, to the point they are not recognised - even as we know now psychological and financial abuse is more common and more harmful than physical abuse.
- 9.5 Similarly, **most acts of coercive control do not** give rise for an application for an Apprehended Domestic Violence Orders (ADVO), and so the current system of **civil orders is also seriously deficient** when it comes to protecting victims of coercive control perpetrators. Given both the subtle nature of coercive control *and* the psychological make up of coercive control perpetrators, ADVOs (which only partially cover some behaviours), are effectively meaningless. The perpetrator simply does not care about them or feel in any way constrained by them. And, ADVOs are further

undermined because breaches are rarely enforced and even if successfully prosecuted lead to low convictions, and then to minimal sentences.

- Anecdotal but repeated accounts from our clients, and our direct experience as individual advocates confirm that ADVOs are both difficult to obtain and often only issued when psychological violence is present.
- It is important to note that a conviction is for a violation of *government orders*, and not for the act of violence against the victim, thereby rendering the victim a secondary consequence of the breach. This sends an important message to victim/survivors about the level of importance their safety is given.

9.6 Our legislation and current system of ‘protection’ in fact places the **overwhelming burden on victims to provide their own safety**. Whilst unacceptable, this reality is reinforced by the continuing messages to victims, blaming them for not leaving an abusive relationship. ‘Why didn’t you leave?’ remains a familiar catch cry. Even as we know there are so many reasons a victim might stay.

9.7 An important consideration when seeking to criminalise coercive control is that an **ADVO is based on risk of future violence** and criminal law denounces and punishes past violence in the hopes of protecting the victims and deterring behaviour. The two approaches can (and should) be complementary, providing a graded response and options but it is imperative we make **clear actual behaviour that harms is criminal** and this speaks to the seriousness of coercive control.

9.8 The current response to domestic and family violence and coercive control is also **characterised by immense victim /survivor distrust**.

- There is a **disconnect between government and community messaging** that says, ‘domestic and family violence is a crime’, and the crime as it is currently defined. Although victim/survivors continually speak out about the impact of non-physical acts of domestic and family violence, and despite research recognising the psychological, social and financial consequences for victim/survivors of coercive control are catastrophic, there is no civil or criminal legislation in NSW that defines or includes these forms of abuse. So, whilst victims are encouraged through public messaging to ‘speak up’ and ‘speak out’, because help is at hand, when it comes to coercive control – no, help is actually *not* at hand. The law does not recognise it and will not protect you from it – even though we know it is at the core of domestic and family violence.
- For example, NSW Department of Communities and Justice website (2021) states:
Domestic and family violence is any behaviours in an intimate or family relationship which is violent, threatening, coercive or controlling, causing a person to live in fear.

Domestic and family violence includes different types of abuse. A person doesn't need to experience all of these types of abuse for it to be a crime under the law. The abuse can include: verbal abuse, psychological abuse, emotional abuse, financial abuse, physical abuse, sexual abuse, harassment and stalking, spiritual or religious abuse, reproductive abuse, image-based abuse

- **Abusers are very rarely charged, prosecuted or convicted** and the lengthy legal process survivors must go through can be both traumatising and fruitless. Should a conviction take place the sentencing is usually minimal, often with suspended sentences and community service orders. These do not protect the victim.
- There is the risk to a victim of misidentification as the primary perpetrator, particularly where a woman has used physical violence as a reaction or in response to ongoing violence and abuse towards her.
- We know the time of separation is an amplified period of danger for the victim/survivor. As the perpetrator feels they are losing control of the relationship, there is often an upsurge of nonphysical tactics, and separation does not bring safety or freedom from abuse. This behaviour is not captured under any law, except for stalking and harassment offences – which represent only one (of many) tool in their perpetrator arsenal.
- Perpetrators can, and frequently do use civil orders to continue to abuse their victims, especially after separation. This mechanism theoretically designed to protect is in fact used to cause further harm, leading many women to see the current system, in reality, as a risk to their safety.
- For many people who have had no previous interaction with the law, there are expectations that our legal system will both protect them and hold the perpetrator to account. When this is unable to happen, because the system doesn't recognise such abuse, a negative relationship between victim/survivor and the criminal justice system is established. And in many cases supports the perpetrators gaslighting tactics (i.e. 'No one will believe you', 'No one will help you').

9.9 There is a **cross jurisdictional consideration of Family Law** that must be considered. Our clients report a growing concern that in Family Court, domestic and family violence is minimised and seen as a barrier to relationship of the perpetrator with the children.

Elements of coercive control are recognised in the Family Law Act 1975. Section 4AB (2) outlines the following examples of behaviour that may constitute family violence (but are not limited to):

- (a) *an assault; or*
- (b) *a sexual assault or other sexually abusive behaviour; or*
- (c) *stalking; or*

- (d) repeated derogatory taunts; or*
- (e) intentionally damaging or destroying property; or*
- (f) intentionally causing death or injury to an animal; or*
- (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or*
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
- (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or*
- (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.*

For the purposes of the Act, 'a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence'.

The application of these provisions at a Federal level to protect women and children is not reported by our clients. We have observed state protection orders set aside to promote a relationship without proper consideration of the risk or the impact of trauma. It would support the interests of safety of women and children to ensure a concurrent application of coercive control laws.

9.10 **To be very clear:** there is no other behaviour in our community that this violent and such consequent harm that is not criminalised. Contextually we know this is related to anachronistic issues such as gender inequality and domestic privacy – but these cultural and social mores are outdated and are as dangerous as they have always been.

10. Advantages of coercive control legislation

Coercive control legislation is recognition that using common assault charges for domestic and family violence is the wrong strategy. This is the abuse that differentiates it from other kinds of violence - and needs its own legislation. Dr Karen Williams, Consultant Psychiatrist

Coercive control criminalisation will be a lightning rod, bringing to sharp focus and awareness teaching kids what's not acceptable, giving people a path out of pathological relationships they haven't previously had. Angelo Virgona, President NSW Branch, Royal Australian and New Zealand College of Psychiatrists

- 10.1 Fundamentally, we expect **coercive control legislation will reduce violence against women** and children. As noted above, the overriding advantage of criminalising coercive control is that it captures the full range of harmful behaviours within a domestic and family violence relationship - accurately reflecting the experiences of domestic and family violence victims/survivors *and* holding accountable the perpetrator. Further, enacting a specific and stand-alone offence will:
- Send a clear message that this is the 'line in the sand' and we as a community do not accept this behaviour.
 - Improve victims/survivor's ability to identify their own experience and encourage them to leave, seek help, or report – hopefully before the behaviours escalates causing long term damage to the victim and her children.
 - Mean greater likelihood of successful prosecution and conviction of domestic and family violence offenders as it allows for a much wider scope of evidence to be presented.
- 10.2 Those arguing against criminalising coercive control suggest that more legislation will increase the risk of misidentification for victims in general, and Aboriginal and Torres Strait Islander women in particular. We know women are **misidentified** as the primary perpetrator when there is a single incident of violence even though such violence is overwhelming known to be reactive and in a response to violence and abuse towards them or their children
- 10.3 However, when the law recognises violence and abuse as a *course of conduct* rather than a single incident the risk is lessened: far more evidence can be brought to bear on the case, and a pattern of abusive behaviour can be established that *protects* women from misidentification. Further, in and of themselves, each abusive behaviour within a coercive control relationship may not constitute a crime (eg bank transfers descriptors) but together they present a compelling picture of abuse by the real perpetrator. When multiple forms evidence, which occur over time, can be presented, and which **collectively shows a picture of coercive control then the risk of misidentification is in fact decreased.**
- 10.4 Moreover, as noted above, if the law recognises coercive control as a gendered crime and special protections are in place for at risk populations, then the risk of misidentification is significantly minimised.

- 10.5 Evidence from Scotland and other jurisdictions shows women are not being unduly criminalised. As Paul McGorry states 'there is both a logical reason to believe it will have the opposite effect, and more importantly, actual evidence in multiple overseas jurisdictions that this risk hasn't eventuated, even in England and Wales where training was initially lacklustre and inconsistent.'
- 10.6 By specifying the crime as a *course of conduct* which is coercive and controlling, it also importantly allows for each case to show an *individualised pattern of abuse*. Whilst the behaviours used by coercive control perpetrators usually fit a common set of strategies each victim's story is unique and complex. We cannot have a 'one size fit all' description of abuse for this crime, but we can have a course of conduct that reveals harm. By legislating accordingly, we are far more likely to capture the crime, hold the perpetrator accountable and keep victims safe.

Case study: 'Sarah'

Sarah is a mother of three children and has her own home after divorce. There was physical, emotional and financial abuse in the relationship with her former husband. A protection order was made by police. The 2-year protection order that was fully tested in court and granted but had recently expired so he arrived at her house which she thought was safe and unknown to him. There are orders for the children to spend time with the father which were always followed by exchanging children at McDonalds. He was directed by order not to go to the mother's home. He knocked on the door and asked his child to let him in which he did. He was asked to leave, and he complied. On camera the mother gathered evidence he was monitoring the house and driving by on regular intervals over a couple of weeks. The Police report was made, and they would not act stating to Sarah that the father was just missing his children and he didn't pose a risk at this stage.

11. Scope of new coercive control legislation

11.1 Victims/survivors **voices, interests and safety** must be at the centre of this legalisation.

We know through decades of work supporting women, that if a victim must prove harm or give evidence in a domestic and family violence case, it can be a brutal and retraumatising experience. This legislation must place the burden of responsibility on the perpetrator – by stating they *must be have known or ought to have known* the pattern of behaviours would cause harm. And the harm threshold should be determined objectively. That is, a reasonable person would regard the conduct of the accused as likely to cause harm to the alleged victims. **Harm does not need to be proven – it is enough that the behaviours occurred. (R4)**

11.2 The list of behaviours should not be exhaustive. Perpetrator’s strategies evolve over time, as technology improves, and opportunities arise. **(R9)**

11.3 Research shows that when children witness domestic and family violence, they experience it as if they were direct victims. The harm done is deep and for many, long term. The **presence of children in the coercive control relationship** must be either be:

- an aggravating factor and/or
- considered a new and separate criminal offence. **(R11)**

11.4 To provide justice to victim /survivors and enable persecution of serial offenders, there must be some **scope for retrospectivity** – despite the principle of non-retroactivity. Coercive control happens over time and for many victims the pattern will have begun before any new legislation is enacted. The pattern of behaviour prior to legalisation must be admitted as evidence. **(R13)**

11.5 It is essential that any new coercive control offence be accompanied by carefully drafted defences, especially to protect against systems abuse. This happens in cases where the victim acts to protect a child, relative, animal for harm by the abuser by ceasing or reducing contact.

11.6 At the same time, **a consent defence must not available** as it is ‘incongruous with an offence directed at the subversion of another person’s liberty/autonomy’. That is, the aim of coercive control is to strip away the autonomy and decision-making skills of the victim: in some cases the victim is either unable to resist (due to lack of autonomy), or will agree to whatever the perpetrator demands (for example, to protect herself and her children). In either case her behaviour might give the appearance of consent. However, this is part of the ‘entrapment’ process of coercive control (Hill, 2019) and can just as easily prove coercive control is taking place, as disprove it. It must therefore be removed as a potential defence. **(R14)**

12. Non-legislative activities needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly.

12.1 We know that women and children do not always feel safe reporting to and relying on the criminal justice system which is still inherently gender and culturally unsafe. Introducing new legislation offers us an opportunity to embed new understanding and practices that address the current limitations. As so many other submissions have presented in a clear and compelling way - for coercive control legislation to be successfully implemented there must be:

- Comprehensive community consultation strategies developed with **priority populations** of Indigenous women, culturally and linguistically diverse women, women with disability, rural women, LGBTIQ community and women of low socio-economic status to ensure **gender and cultural safety**.
- Comprehensive consultations with **legal and community sectors** specialising in domestic and family violence to ensure relevance and effective application of new laws.
- Comprehensive **workforce development programs** implemented to ensure police, magistrates and court staff, and the domestic and family violence community sectors can apply an understanding of coercive control in understanding violence.
- **Community education programs** developed to ensure the community can understand and apply coercive control laws.
- **Highest level government leadership**.

12.2 In parallel, we need to address the serious impediments to justice in the current management of our civil and criminal domestic abuse laws, so much so that we urge a full evaluation of the effectiveness of current practice across the state of NSW with an emphasis on lived experience. This includes interrogating the resistance within NSW Police to the introduction of this legalisation.

12.3 This also means confronting the myths and archaic misconceptions about power dynamics and abuse in families and intimate relationships, including the ludicrous idea that physical and sexual abuse are more damaging, frightening or serious than is emotional or psychological abuse.

12.4 As noted above, it is a common misunderstanding in our community that all domestic and family violence behaviours are a criminal act. There is *also* an **expectation that a woman can access services to support her** escape from a relationship or recover from the impact of her experience. Victims are directed in advertising^{xii} to 'speak out' yet support services are overwhelmed and under resourced.

- **Legislative change must be accompanied by adequate and sustained resourcing of support services**. It would be dangerous to introduce the new legislation, without the requisite services to support the victim go through the criminal justice process. If the

support services are not there, if there is nowhere to go once coercive control is identified, confidence in the system will be further undermined (and distrust will increase). **(R7)**

12.5 In addition, the NSW Government has the **opportunity demonstrate national leadership** and ‘super charge’ the opportunity for success by introducing one or all of the following **innovative practices**.

- Specialised all female domestic and family violence police response teams.
- Specialised female coercive control police which, much like specialised mental health professionals that accompany police call outs, attend domestic and family violence incidents.
- Support where possible for the co-location of these teams in women friendly spaces such as women’s health centres. **(R15)**

For more information on these, refer to an article written by Jess Hill in *Meanjin* (2021) on the fundamental shortcomings of police, where she advocates for a ‘specialised frontline police force to respond to domestic abuse, much as we have specialised firefighters for fires, and paramedics for medical emergencies. In reassessing our response to domestic abuse – the number one law and order problem in this country – we have a once-in-a-generation opportunity to redesign the systems that respond to it, instead of just settling for incremental change’.

13. Conclusion

There are no quick fixes here. This bill is just the beginning of a lengthy process of cultural change in the community, the Parliament and the legal system and judiciary.

Abigail Boyd, Member of the New South Wales Legislative Council

Making coercive control a stand-alone crime would align NSW with world leading international jurisdictions, and growing community understanding of the true nature and scope of domestic and family violence.

To be successful – to have a meaningful impact on women’s safety - the legislation must be underpinned by a comprehensive multi-sectoral and community focused awareness, education and training program that is adequately and sustainably funded. If **properly resourced and strategically implemented**, legislative change can lead and frame an invigorated system wide approach to reducing domestic and family violence.

We have a unique and invaluable opportunity to change the lives of thousands and thousands of women.

We would be negligent not to take it.

This submission is written by:

Jane Matts: Illawarra Women's Health Centre Legal Support Caseworker and family violence consultant, educator, media advisor and survivor expert. Ms Matts has recently finished working with SBS producer Tosca Looby on Jess Hill's *See What Do Made Me Do* series and has provided significant input to media in the reporting of family abuse issues. In 2020 Homelessness NSW recognised her work and the programmes she developed assisting women in crisis. She has consulted to NSW Government as it relates to DV process redesign, consulting committees, and is an active lobbyist at both state and federal Estimates hearings. She has also been a special witness to Federal Senate inquiries. Ms Matts is a founding member of the DVNSW Voices for Change program where she focuses on issues of empowerment for women especially in relation to Family Law. Ms Matts uses her business consulting experience to evaluate the impact of family abuse and design solutions to make realistic change. She initiated the 'Sisters in Law Project' to address inequities for women who try to manage complex legal systems, such the Family Court jurisdiction.

Geraldine Bilston: Special Advisor, Domestic and Family Violence (Lived Experience), to the Illawarra Women's Health Centre. Ms Bilston is a victim-survivor of family violence. In 2015 she escaped an abusive relationship. She had spent half a decade loving and living with a man who she should have felt safe, secure and happy with, but she left bruised and broken. She would spend a further two years dealing with police, courts and 'the system'.

Geraldine is determined to help make a difference to the way we approach family violence in Australia. She is currently studying for her Graduate Certificate in Family Violence and was appointed as the Deputy Chair of the Victorian Victim Survivor's Advisory Council in May 2020. She is committed to helping create better outcomes for victim survivors. A familiar face to many after sharing her experience of family violence on ABC's 'You Can't Ask That' in 2019, 'Q&A' in March 2020, and 'The Drum' in December 2020, and she has also published her own writing through the website 'Mamamia'.

Sally Stevenson AM: General Manager of the Illawarra Women's Health Centre. Ms Stevenson has worked in public health for almost 30 years. She sits the Governance Committee for Médecins sans Frontiers Australia and has been a Board member of Women's Health NSW, and Supported Accommodation & Homelessness Services Shoalhaven Illawarra (SASSHI) which is the region's specialist service for homelessness. Ms Stevenson has worked for Médecins san Frontiers, the World Health Organisation and the World Bank, and has been a member of the Independent Review Committee of the Global Alliance for Vaccines and Immunisation, the International Advisory Committee for Sexual Health and Family Planning Australia and the Human Research Ethics Committee of the University of Wollongong. She is Chief Investigator on two University of NSW projects: Transforming Domestic and Family Violence Response and Recovery Services and investigating persistent pain and trauma. She is also the Principal Investigator on two joint University of Wollongong and Illawarra Women's Health Centre research projects on domestic and family violence.

Dr Karen Williams: Special Advisor, Mental Health to the Illawarra Women's Health Centre. Dr Williams is currently a general adult Psychiatrist at South Coast Private Hospital and has a special interest in trauma and trauma focused therapy. She has extensive experience working with patients who have complex Post Traumatic Stress Disorder. In 2016 she was awarded a fellowship from the NSW Institute of Psychiatry, is a Member of the RANZCP Family Violence Psychiatry Network Committee and the founder of is a founding member of 'Doctors Against Violence Towards Women', an Australian network of doctors calling for Australia's first domestic violence trauma recovery Centre and advocating for ongoing care for victims who suffer trauma.
