



Parliament of New South Wales

# Joint Select Committee on Coercive Control

Report 1/57 – June 2021

Coercive control in domestic relationships



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

		<b>Total attendances</b>
<b>Chair</b>	The Hon. Natalie Ward MLC	10
<b>Deputy Chair</b>	Ms Trish Doyle MP	9
<b>Members</b>	Ms Abigail Boyd MLC	10
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	Ms Steph Cooke MP	9
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## Chair's foreword

The enormity of this task and expectations of those with interest have weighed on me heavily, perhaps more than any other task I have been humbled to have been entrusted to undertake in this role. It has affected me deeply.

While so much of the work of parliamentary committees affects our citizens' lives, it is often process driven and at a distance. As we heard the evidence of terror, of murder, of heartbreak, and of bare survival in the lives of women and children, right here in our first-world peaceful nation of Australia, in this year 2021, it became apparent that the evidence demonstrated we have an obligation to do more to address a very obvious gap.

Our deepest appreciation is extended to the brave souls who took the time to prepare written submissions, who shared their experiences, and had the guts to re-open their wounds in order to educate us. To those who work in, care for and provide services for victim survivors, and families of those who haven't survived, including Police, we thank you for your persistence.

My parliamentary colleagues have brought brilliant, patient, balanced and deeply heartfelt energy to this Inquiry. I thank them for their different perspectives and the magnanimous way they have worked together to hear and understand all of the evidence. It is overwhelming. Their constructive dedication throughout the process, even from very different and sometimes opposed perspectives, demonstrates their genuine commitment to this bipartisan challenge and the best aspects of the parliamentary inquiry process.

More important than any of us, are the women and children who walk among us and are barely surviving the domestic terrorism of coercive control every day. It is no exaggeration, it is a silent, hidden and deadly pandemic. Like a canary in a coal mine, the statistics are our warning that we have an opportunity to act.

Those advocates who have worked indefatigably for decades, those who were concerned enough to boldly disagree and those who have quietly persisted despite the complexity, brought uncensored depth to the evidence we received. We are grateful.

Most importantly of all, are the eyes of children growing up in and out of homes where domestic abuse hangs as a silent, terrifying and deadly ticking bomb. They deserve better.

This is a complex, difficult problem. No legislator has an easy task trying to adapt black letter law to the inconsistent complexity of real life. To be absolutely clear, we do not want to impose in otherwise loving, respectful, consensual relationships or the lives of families who have a normal healthy and occasional consensual disagreement. To assert so, is mere scaremongering.

We also know that criminalising coercive control will not immediately end all domestic abuse. Nor will it result in thousands of arrests and convictions. But in my modest submission, these should not be the measures of success.

We will never know of the murders that did not occur, as a result of prevention.

But lives just might be saved, if we take the small but significant step of recognising that certain patterns of non-consensual behaviour must be seen together, because very often they

are actually a system of entrapment and a siren warning of the potential for preventable and recognisable death by murder.

Our strongly held unanimous Committee view is that implementation of a change to the lens through which we view domestic abuse, by legislating to criminally recognise coercive control as other jurisdictions do, is needed in this term of Parliament, but could only be undertaken with an extensive implementation process, which includes consultation, education, resources and lead-time, if it is to succeed.

I sincerely thank all stakeholders for the enormous privilege of leading this inquiry, particularly the diligent and ever supportive staff – Clara Hawker, Dora Oravecz, Sally Kirk, Abigail Turingan, Ilana Chaffey, and Derya Sekmen, whose professionalism, diligence and commitment raises us all.

I commend the report to the Parliament and thank it for the privilege of our opportunity for service.



**The Hon Natalie Ward MLC**  
Chair

## Summary

"Women who are victims of family violence experience terror."<sup>1</sup>

"If there was a medical condition that posed as much risk, the status quo would not be to accept it."<sup>2</sup>

Coercive control is a form of domestic abuse. Perpetrators aim to take away their partner's autonomy and freedom. They do this by using a gradual escalation of tactics like isolating their partner from their family and friends, humiliating them and putting them down, controlling and tracking their movements, and taking away their ability to make decisions about things like what they wear and how they spend their money. While coercive control does not always involve physical violence, it is a common factor in intimate partner homicides. Victims often say that the effects of coercive control last longer than the wounds inflicted by physical violence.

The Committee found that while it does not support intervention in ordinary consensual relationships, nonetheless NSW laws do not respond well to coercive control as a type of abuse, and there is poor understanding of it in our community. The Inquiry looked at ways to better respond to the phenomenon of coercive control.

### **Improving current domestic violence laws**

While NSW domestic violence laws cover some types of coercive and controlling behaviour, the justice system is geared to respond to individual incidents of physical violence. This makes it harder to detect and punish perpetrators who use a complex pattern of behaviour to abuse their partners. The Inquiry heard that this leaves victim survivors feeling helpless and trapped in abusive relationships, and police are unable to intervene as a crime hasn't been committed under the law.

The Committee has recommended changes to make it clear that coercive control is a form of domestic abuse, including:

- a clear and accessible definition of domestic violence, including coercive and controlling behaviour;
- higher maximum penalties for breaching apprehended domestic violence orders;
- removing specific intent from the stalking and intimidation offence; and
- making coercive and controlling behaviour an aggravating factor in sentencing.

The Inquiry heard that inconsistent domestic violence laws and poor coordination between states can be an extra barrier for victims of domestic abuse who live in border areas. The Committee has recommended that the Government works with other states to develop a

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<sup>1</sup> Joplin-Lea Higgins, Director, Joplin Lawyers, Transcript of evidence, 22 February 2021, p 49

<sup>2</sup> Dr Nithya Reddy, Transcript of evidence, 30 March 2021, p 22.

nationally consistent definition of domestic violence, and to set up a national database of domestic violence orders.

### **Public education about all forms of domestic abuse**

The Inquiry heard that wider changes are needed to support victim survivors of domestic abuse. A community education campaign is needed to improve understanding that domestic abuse is more than physical or sexual assault. The Committee recommends that this include targeted campaigns for LGBTQ, Aboriginal and Torres Strait Islander and culturally and linguistically diverse people, and those with a disability. Coercive control affects these communities in different ways and it is important that awareness campaigns are designed to reach everyone in our diverse community.

Young people also need a better understanding of coercive and controlling behaviour, as part of school programs on respectful relationships.

### **More funding for domestic abuse and housing services**

Domestic abuse service providers and housing providers offer vital services that can help victims escape abuse and rebuild their lives. The Committee found that these services need more resources to better support victims. This will be particularly important once there is wider public awareness of coercive control and more victims come forward seeking help. Women's domestic violence court advocacy services also require more resourcing to help victims get access to justice.

The Committee recommends that evidence-based behaviour change programs should be made available to all domestic violence offenders. Higher demand for behaviour change programs will mean that service providers who run the programs will need more resources. The Inquiry heard that different programs are needed for perpetrators from different communities. Funding should also be provided to research how effective programs are in changing the behaviour of perpetrators.

To improve the coordination of services for victims, the Committee recommends the pilot of triage and referral hubs, where domestic abuse victims can get advice and referrals for different services, either in person or remotely. This would serve as an especially helpful triage and referral tool for GPs, concerned friends and family of coercive control victims, service providers and police. It will not replace police but would complement their work, and would include information in relation to legal resources, housing, health, counselling and other services.

### **Improving the policing of domestic abuse**

Domestic abuse takes up a large part of day to day police work. To better support police, the Committee recommends that workers from domestic abuse services work with police to help victims who report domestic abuse at police stations. This would give police officers access to expert advice on domestic abuse and reduce their workload. Trials of this approach are

starting this year, and the Committee expects that they will be used more widely, including in rural and regional areas.

The Domestic Violence Safety Assessment Tool is a series of questions that aim to identify the risk of harm faced by victims who report domestic violence to police, and service providers. The Committee recommends that more questions be added to the DVSAT to cover patterns of coercive and controlling behaviour. The Inquiry heard that there are not enough questions on behaviour that can indicate coercive control, making it harder to detect this type of abuse. Changing the DVSAT could make it more effective in assessing risk, and improve the safety of victim survivors.

### **Education and training for frontline staff**

Training for frontline workers on recognising and responding to coercive control is another element of improving support for victims. Educating frontline workers will help to improve their awareness of non-physical forms of violence, including coercive and controlling behaviour. The Committee recommends that training be provided to police, judges and prosecutors, and workers in the domestic abuse, health care, housing, disability, education and child protection sectors. It's important that training be tailored for the type of work undertaken by frontline workers, and repeated regularly.

### **Oversight of domestic abuse laws and services**

The systemic reforms recommended by the Committee should be overseen by the Secretary of the Department of Communities and Justice. This would allow reforms to be monitored over time to ensure they are effective. The Secretary of the Department of Communities and Justice could also have a role in public education and improving service delivery for victims. The Inquiry heard that a whole of government focus on domestic abuse is needed. The Committee considers that the Secretary of the Department of Communities and Justice could coordinate this approach and oversee its implementation.

### **Implementing a criminal offence of coercive control**

The Committee has recommended that the Government criminalises coercive control, but with safeguards. The Inquiry heard that criminalising coercive control would have a number of benefits, including:

- educating the public about coercive control
- preventing intimate partner homicides
- making it easier for victims to get help, and access legal protections
- improving the enforcement and prosecution of domestic abuse
- specific penalties for the offence in sentencing.

The criminal offence should only commence after considerable education, training and consultation with police, stakeholders and the frontline sector. An implementation taskforce should be set up to manage the introduction of the offence. Delayed commencement and the

wider reforms recommended by the Committee will address many of the potential challenges with a coercive control offence.

The Inquiry heard evidence on the possible elements of a coercive control offence. While the Committee expresses views on some of these elements, others should be a matter for the Government when proposing any draft legislation.

### **A note on terminology**

In this report, the Committee has preferred to use the term ‘domestic abuse’, where possible, instead of the term ‘domestic violence’. This recognises the fact that patterns of domestic abuse do not always involve physical acts of violence. In fact, ‘in some of the worst abusive relationships, physical violence is rare, minor or barely present.’<sup>3</sup>

Failing to reckon with this fact has contributed to the overly incident-based nature of our current legal system, and the failure to protect victims who are most at risk.

As British author and activist Yasmin Khan writes, ‘[o]nce we refer to it as domestic abuse, we can easily link in all the other forms of abuse, including coercive control which highlights a pattern of behaviour rather than the isolated or rare (if at all) incidence of violence.’<sup>4</sup>

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<sup>3</sup> Jess Hill, *See What You Made Me Do*, Black Inc Books, 2019, p 9.

<sup>4</sup> Yasmin Khan, ‘[Domestic violence or domestic abuse? Why terminology matters](#)’, *Women’s Agenda*, 18 March 2019, accessed 22 June 2021.

# Answers to questions – coercive control discussion paper

## **1. What would be an appropriate definition of coercive control?**

Chapter 2 gives an overview of the nature of coercive control, with examples from inquiry participants (see [2.1]-[2.19]).

Chapter 3 discusses the need for a statutory definition of domestic abuse that includes coercive control, which could be based on examples in Queensland and Victoria (see [3.48]-[3.61]). It also discusses the need to work towards a nationally consistent definition of domestic abuse (see [3.98]-[3.105]).

Chapter 5 outlines how a criminal offence of coercive control should be defined, with reference to examples in Scotland, Northern Ireland, England and Tasmania (see [5.36]-[5.100]).

## **2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?**

Chapter 5 highlights the need to avoid criminalising ordinary relationships, which should inform the way an offence of coercive control is framed. For example, inquiry participants emphasised the potential role of specific intent, a ‘reasonable person’ test, and/or proof of harm as elements that could reduce the risk of over-criminalisation (see [5.38]-[5.100]).

## **3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?**

Chapter 3 discusses the limits of current laws, in particular, the inability of police and courts to address domestic abuse without tangible evidence of physical violence (see [3.1]-[3.28]).

## **4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?**

Chapters 3 and 5 discuss how the legislative framework around domestic abuse could be improved, in relation to:

- The grounds for making apprehended domestic violence orders (ADVOs) (see answer to question 10).
- The scope of the stalking and intimidation offence (see [3.79]-[3.85])
- Sentencing for domestic violence offences (see answer to question 13).
- Introducing a criminal offence of coercive control (see answer to question 9).
- Admitting evidence of coercive control in criminal proceedings (see answer to question 11).

**5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?**

The law does not currently provide adequate ways for courts to receive evidence of patterns of abuse, particularly coercive control (see [3.11]).

**6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings?**

Although evidence of coercive control is sometimes taken into account in sentencing decisions, this is not done consistently. There are examples of magistrates describing violence as an ‘isolated’ incident even where there is evidence of non-physical abuse (see [3.86]-[3.90], [5.145]-[5.148]).

**If the answer is no to questions 5 or 6, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?**

Creating a specific offence for domestic abuse, similar to the offences in Scotland and Northern Ireland, will allow courts to receive evidence of coercive and controlling behaviours (see [5.120]).

For other improvements that could be made – see answer to question 11 (codification of context and relationship evidence) and question 13 (changes to sentencing).

**7. What are the advantages and/or disadvantages of creating an offence of coercive control?**

Chapter 5 outlines the benefits and challenges of creating an offence of coercive control (see [5.1]-[5.16], [5.32]).

**8. How might the challenges of creating an offence of coercive control be overcome?**

A taskforce should lead the implementation of an offence, including by overseeing public awareness campaigns and rolling out training for the police, judiciary, and other frontline workers (see [5.17]-[5.32]).

The taskforce’s work would address many of the challenges of a new offence, including the risk of slow uptake, inadequate resourcing, misidentification of victims, and over-criminalisation (especially for Aboriginal and Torres Strait Islander people) (see [5.32]).

**9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?**

Chapter 5 discusses the possible elements of an offence. While the Committee expresses views on some of these elements – such as the exclusion of any time limitation, and the types of relationships that an offence should include – it considers that others should be a matter for the NSW Government when proposing any draft legislation (see [5.38]-[5.100]).

**10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?**

Chapter 3 outlines shortcomings of the ADVO regime, including that it is too incident-based, that the wording of the legislation is confusing for ordinary readers, that ADVOs are less effective for victims in regional areas, that they do not deter severe abuse, that

they are not available to victims of non-physical abuse, and that breaches are often dismissed or receive light penalties (see [3.18]-[3.23], [3.29]-[3.42], [3.70]-[3.76]).

Chapter 3 outlines possible amendments to the ADVO regime, including:

- Making the grounds for obtaining an ADVO based on a clear definition of domestic abuse, similar to examples in other states and territories (see [3.48]-[3.55]).
- Requiring the court to consider any evidence of coercive control in deciding whether to make an ADVO, and what conditions to impose (see [3.64]).
- Requiring the court to consider the victim's wishes in deciding the terms of an ADVO (see [3.65]).
- Prohibiting technology-facilitated abuse, and/or other types of coercive and controlling behaviour, as a standard condition for ADVOs (see [3.68]-[3.69]).
- Increasing penalties for ADVO breaches (see [3.77]-[3.78]).

**11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?**

Chapter 5 outlines evidence about codifying common law principles on the admissibility of context and relationship evidence. The NSW Government should consider this as part of implementing any proposed new offence (see [5.110]-[5.121]).

**12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?**

Chapter 5 discusses codifying jury directions in legislation, or including suggested directions in a bench book. The NSW Government should consider this as part of implementing any proposed new offence (see [4.122]-[4.138]).

**13. Should provisions with respect to sentencing regimes be amended? If so, how?**

Chapters 3 and 5 outline changes the NSW Government should consider proposing to sentencing laws:

- Legislating aggravating factors that are specific to domestic violence offences (see [3.86]-[3.97]).
- Developing sentencing guidelines specific to domestic violence offences (see [5.139]-[5.152]).
- Amending legislation about the contents of victim impact statements used in sentencing for domestic violence offences (see [5.153]-[5.161]).

**14. Are there any other potential avenues for reform that are not outlined or included in the questions above?**

See responses to questions above.

**15. 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?**

Chapter 4 covers the need for a whole of government, whole of community approach to domestic abuse. Non-legislative activities the NSW Government could undertake include:

- Creating a national database of ADVOs, and improving coordination between state and territory police departments when responding to domestic abuse (see [3.106]-[3.113]).
- Investing in community education about coercive control, including school programs and targeted awareness campaigns for diverse and marginalised communities (see [4.16]-[4.37]).
- Investing in emergency as well as ongoing support services for victims of domestic abuse (see [4.38]-[4.60]).
- Investing in evidence-based behaviour change programs for perpetrators of domestic abuse, evaluating their effectiveness, and researching best practices (see [4.61]-[4.90]).
- Updating risk assessment tools used by police and service providers (see [4.126]-[4.130]).
- Investing in training about identifying and responding to coercive control for police, judges, prosecutors and frontline workers (see [4.131]-[4.148]).
- Funding trials of:
  - regional and metropolitan hubs where victims of domestic abuse can access co-located support services, either remotely or in person (see [4.91]-[4.109]).
  - co-locating domestic abuse services with police stations (see [4.110]-[4.125]).

# Findings and recommendations

## Chapter One – Why does it matter?

### Finding 1 \_\_\_\_\_ 1

The pandemic of domestic abuse evidenced through statistics cannot be ignored. It is clear that coercive control is a factor and red flag for the horrific and preventable murder deaths of Australian women and children – some 29 murders in 2020 alone in NSW.

### Finding 2 \_\_\_\_\_ 1

It is not the role of government to intervene in the daily lives of ordinary, consensual, healthy domestic relationships.

However it is incumbent on government, police, frontline services, family law and the criminal justice system to intervene where criminal behaviour exists that breaches human rights and is known to be a factor in potentially preventable domestic abuse related homicide deaths.

### Recommendation 1 \_\_\_\_\_ 1

That the NSW Government should respond to the Domestic Violence Death Review Team evidence, by criminalising coercive control. 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.

## Chapter Three – Do current laws effectively address coercive and controlling behaviour?

### Finding 3 \_\_\_\_\_ 18

Current laws do not adequately cover coercive and controlling behaviour. This means that police and the courts cannot address this type of abuse and victim survivors are not adequately protected.

### Finding 4 \_\_\_\_\_ 25

Changing current legislation to include coercive and controlling behaviour would improve the safety of victim survivors by making it clear that coercive control is domestic abuse.

### Recommendation 2 \_\_\_\_\_ 25

That the NSW Government should propose amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to create a clear and accessible definition of domestic abuse, which includes coercive and controlling behaviour. This should be done as a priority, before criminalising coercive control.

### Recommendation 3 \_\_\_\_\_ 33

That the NSW Government should seek to increase the maximum penalty for contravening an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* to better protect victims.

**Recommendation 4** \_\_\_\_\_ **35**

That the NSW Government should propose amendments to section 13(3) of the *Crimes (Domestic and Personal Violence) Act 2007* to provide that a person can be liable for stalking and intimidation if the person intends to cause, or is reckless as to whether their conduct causes, the other person to suffer physical or mental harm.

**Recommendation 5** \_\_\_\_\_ **37**

That the NSW Government should amend section 21A of the *Crimes (Sentencing Procedure) Act 1995* to include, as an aggravating factor in sentencing, that the offender was in an intimate personal relationship with the victim, and the offender previously engaged in coercive and controlling behaviour towards the victim.

**Recommendation 6** \_\_\_\_\_ **39**

That the NSW Government should advocate through the National Federation Reform Council for a nationally consistent definition of domestic abuse that includes coercive and controlling behaviour.

**Recommendation 7** \_\_\_\_\_ **41**

That the NSW Government should advocate through the National Federation Reform Council for a national electronic database of domestic abuse orders, which includes provisional, interim, and final orders, and breaches of orders.

**Chapter Four – What other reforms are needed to better respond to all types of domestic abuse?****Finding 5** \_\_\_\_\_ **44**

Systemic, whole of government reforms are needed to effectively implement changes to domestic abuse laws, and adequately support victims.

**Recommendation 8** \_\_\_\_\_ **44**

The Secretary of the Department of Communities and Justice should work together with a range of public bodies including NSW Police, Health, Education, Justice, Housing and Indigenous agencies to prevent domestic abuse, with the aim of reducing the numbers of victims and perpetrators of abuse. This represents a critical opportunity to implement an early intervention and public health-focused approach, rather than relying solely on traditional criminal justice levers, which only come into play in the aftermath of an offence.

**Finding 6** \_\_\_\_\_ **48**

Better awareness of coercive control is needed to improve community understanding of this type of abuse and the harm suffered by victim survivors.

**Recommendation 9** \_\_\_\_\_ **48**

That the NSW Government should run awareness campaigns about coercive control as a priority and regardless of whether or not a specific coercive control offence is legislated. This should include targeted campaigns developed with the Aboriginal and Torres Strait Islander community, culturally and linguistically diverse communities, the LGBTQ community, people with disability, and rural and remote communities.

- Recommendation 10** \_\_\_\_\_ **51**  
 That the NSW Government ensures that content about coercive and controlling behaviour is included in school programs about respectful relationships.
- Recommendation 11** \_\_\_\_\_ **54**  
 That the NSW Government gives consideration to improving resources for domestic abuse service providers and housing service providers so that victim survivors of coercive control have adequate support.
- Recommendation 12** \_\_\_\_\_ **54**  
 That the NSW Government gives consideration to improving resources for women’s domestic violence court advocacy services, including in rural and regional areas.
- Recommendation 13** \_\_\_\_\_ **59**  
 That the NSW Government gives consideration to improving resources for behaviour change programs, including programs for culturally and linguistically diverse communities, the LGBTQ community and the Aboriginal and Torres Strait Islander community, and research into the efficacy of behaviour change programs in Australia and overseas.
- Recommendation 14** \_\_\_\_\_ **64**  
 That the NSW Government gives consideration to a pilot of triage and referral hubs in regional and metropolitan NSW, which can be accessed in person or remotely by clients affected by domestic abuse.
- Recommendation 15** \_\_\_\_\_ **65**  
 That the NSW Government gives consideration to adopting a Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) to ensure services are effectively identifying, assessing and managing family violence risk.
- Recommendation 16** \_\_\_\_\_ **69**  
 That the NSW Government should co-locate domestic abuse services with police stations, and continue its pilot programs to better support police and better respond to victims of domestic abuse, including in rural and regional areas.
- Recommendation 17** \_\_\_\_\_ **69**  
 That the NSW Government should consult with stakeholders including domestic abuse service providers, the Aboriginal and Torres Strait Islander community, and NSW Police about how to better respond to the needs of domestic abuse victim survivors in rural and remote areas.
- Recommendation 18** \_\_\_\_\_ **73**  
 That the NSW Government should urgently update the Domestic Violence Safety Assessment Tool to improve risk assessment of victims experiencing coercive control.
- Recommendation 19** \_\_\_\_\_ **74**  
 That the NSW Government implements tailored training on identifying, recording and responding to coercive control for police officers, judicial officers and prosecutors, and

workers in the domestic abuse, health care, housing, education and child protection sectors. The training should be repeated regularly.

## **Chapter Five – How could a coercive control offence be implemented?**

### **Recommendation 20 \_\_\_\_\_ 83**

That the NSW Government gives consideration to establishing an implementation taskforce to manage the introduction of a criminal offence of coercive control. The taskforce should consult with stakeholders including NSW Police, victim survivors, the domestic abuse sector, disability advocacy organisations, and representatives of culturally and linguistically diverse, Aboriginal and Torres Strait Islander and LGBTQ communities.

### **Recommendation 21 \_\_\_\_\_ 83**

That the NSW Government releases an exposure draft of legislation for a coercive control offence as a priority, with proposal of final legislation following further consultation through the implementation taskforce.

### **Recommendation 22 \_\_\_\_\_ 83**

That in considering implementation of the coercive control offence, the taskforce should consult with stakeholders on how to optimise implementation via the following aspects of the offence:

- Education and training in relation to the elements of the offence.
- Education and training of the judiciary and legal profession on jury directions to address domestic abuse.

### **Recommendation 23 \_\_\_\_\_ 87**

That in drafting a proposed criminal offence of coercive control, the NSW Government gives consideration to:

- What elements the offence should have.
- Codifying common law principles on context and relationship evidence in legislation.
- Legislating jury directions for domestic violence offences, or including suggested directions in a bench book.
- Developing sentencing guidelines for domestic violence offences.
- Amendments to victim impact statements.
- The fact of victim survivor resistance (misidentification of aggressor/victim)

# Chapter One – Why does it matter?

There were 29 victims of domestic-violence related murder in NSW in 2020. Intimate partner violence causes more illness, disability and deaths than any other risk factor for women aged 25 to 44.<sup>5</sup>

## The facts and evidence the Committee can't ignore

### Finding 1

**The pandemic of domestic abuse evidenced through statistics cannot be ignored. It is clear that coercive control is a factor and red flag for the horrific and preventable murder deaths of Australian women and children – some 29 murders in 2020 alone in NSW.**

### Finding 2

**It is not the role of government to intervene in the daily lives of ordinary, consensual, healthy domestic relationships.**

**However it is incumbent on government, police, frontline services, family law and the criminal justice system to intervene where criminal behaviour exists that breaches human rights and is known to be a factor in potentially preventable domestic abuse related homicide deaths.**

### Recommendation 1

**That the NSW Government should respond to the Domestic Violence Death Review Team evidence, by criminalising coercive control. 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.**

## Domestic abuse does not always involve physical violence

- 1.1 During this Inquiry, many stakeholders emphasised that coercive control is not just a red flag for future abuse – it IS domestic abuse.<sup>6</sup>
- 1.2 Physical violence is not always present in coercive and controlling relationships. Australia's National Research Organisation for Women's Safety (ANROWS) told the Committee that, when physical violence is used, 'it is often routine, minor

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<sup>5</sup> Data to December 2020, NSW Bureau of Crime Statistics and Research, [Domestic Violence-related murder in NSW](#), accessed 22 June 2021; Australian Institute of Health and Welfare, [Family, domestic and sexual violence in Australia, 2018: Summary](#), accessed 22 June 2021

<sup>6</sup> Submission 140, Women's Safety NSW, p 15

and frequently repeated, rather than taking the form of isolated episodes of violence during fights.<sup>7</sup>

- 1.3 In early 2021, the Australian Institute of Criminology surveyed 1,023 Australian women who had recently experienced coercive control by their current or former partner, such as financial abuse or monitoring their movements. Fifty-four per cent also reported experiencing physical forms of abuse, and a third reported experiencing sexual violence.<sup>8</sup>

### **Domestic abuse is not incident based – it is a subtle, complex and interwoven pattern of behaviour**

- 1.4 The NSW Coroner has stressed 'the importance of viewing domestic violence holistically, as episodes in a broader pattern of behaviour rather than as incidents in isolation of one another'.<sup>9</sup>
- 1.5 The Inquiry heard that the Australian Institute of Criminology has found that behaviours that form a pattern of coercive control tend to 'coalesce around a number of consistent themes: jealousy, monitoring of movements, economic abuse, emotional abuse and social restriction and threats'.<sup>10</sup>

### **Coercive control can be even more damaging than physical violence**

- 1.6 Many victim survivors describe coercive control as the 'worst part' of domestic violence – more damaging than physical violence and more difficult to recover from.<sup>11</sup> Professor Patricia Easteal stated that most survivors she has spoken to over the years 'found non-physical control to be more injurious over time, given its more subtle and longer lasting nature'.<sup>12</sup>

### **99 per cent of domestic violence murders are preceded by coercive control**

- 1.7 As the eSafety Commissioner told the Committee, while coercive and controlling behaviour 'may not leave significant scars we ... know that it is a red flag to future catastrophic harm'.<sup>13</sup>
- 1.8 The Domestic Violence Death Review Team has reported that 99 percent of domestic violence homicides between 2008 and 2016 (111 out of 112) were

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<sup>7</sup> Submission 96, Australia's National Research Organisation for Women's Safety (ANROWS), Attachment 1, *Policy Brief: Defining and responding to coercive control*, p 1.

<sup>8</sup> Australian Institute of Criminology, [Experiences of coercive control among Australian women](#), 11 March 2021, accessed 22 June 2021.

<sup>9</sup> Submission 140, Women's Legal Service NSW, p 6.

<sup>10</sup> Submission 96, ANROWS, p 2.

<sup>11</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), p 7; Submission 91, Jess Hill, Attachment 1, 'A Thin Blue Line: Is domestic-abuse policing fit for purpose', *Meanjin*, Summer 2020, p 45; Hayley Gleeson, '[Coercive control: The 'worst part' of domestic abuse is not a crime in Australia. But should it be?](#)', *ABC News*, 19 November 2020, accessed 22 June 2021; Submission 109, Professor Marilyn McMahon and Paul McGorry, pp 2, 4.

<sup>12</sup> Submission 2, Professor Patricia Easteal, p 2. See also: Submission 21, Professor Heather Douglas, p 11.

<sup>13</sup> Julie Inman-Grant, eSafety Commissioner, Transcript of evidence, 30 March 2021, p 6. See also: Submission 78, Enough is Enough Anti-Violence Movement, p 2.

preceded by coercive control.<sup>14</sup>

- 1.9 Almost all of these cases involved persistent verbal abuse, over half involved social abuse (such as preventing the victim from seeing friends and family), and 43 per cent involved financial abuse (such as withholding access to bank accounts, or preventing the victim from working). Eighty per cent involved physical abuse before the homicide.<sup>15</sup>
- 1.10 However, many domestic violence homicides are not preceded by a history of physical abuse at all – but by a pattern of other forms of coercive and controlling behaviour. In a number of cases, perpetrators deliberately refrained from using physical violence to avoid police intervention. In such situations, victims of coercive control did not always realise that they were experiencing domestic abuse, and the relationship may have appeared ‘normal’ from the outside.<sup>16</sup>
- 1.11 The role of coercive control is even more stark in intimate partner murder-suicide cases in NSW. The Domestic Violence Death Review Team found that there was evidence of physical violence before the fatal assault in less than half of all domestic violence murder-suicides in the past 18 years. Coercive and controlling behaviours ‘were the most common domestic violence behaviours used by the perpetrator towards the victim prior to the fatal event.’<sup>17</sup>

#### **Coercive control is not recognised as domestic violence, or as a risk factor for homicide**

- 1.12 Despite the fact that coercive control is a clear risk factor for intimate partner homicide, ANROWS told the Inquiry that ‘there is a strong tendency in legal and other settings to construct a hierarchy of violence, where physical violence and sexual violence sit at the top and forms of non-physical violence sit below them. The non-physical behaviours are consequently viewed as less harmful or traumatic – if they are recognised as violence or abuse at all.’<sup>18</sup>

#### **A large amount of police work relates to domestic abuse, but victims are reluctant to report abuse**

- 1.13 NSW Police respond to about 140,000 incidents of domestic violence every year. The Inquiry heard that 40 per cent of police work in NSW is focused on responding to domestic abuse.<sup>19</sup>
- 1.14 Despite the prevalence of domestic abuse in our society, most victims do not report their experiences to the police.<sup>20</sup> There are a range of reasons why victims

<sup>14</sup> Submission 24, Domestic Violence Death Review Team, p 2; NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 154.

<sup>15</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 154-155.

<sup>16</sup> Submission 24, Domestic Violence Death Review Team, p 2; NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 68-69.

<sup>17</sup> Submission 24, Domestic Violence Death Review Team, p 2.

<sup>18</sup> Submission 96, ANROWS, Attachment 1, *Policy Brief: Defining and responding to coercive control*, p 2.

<sup>19</sup> Chief Inspector Sean McDermott, Manager, Domestic and Family Violence Team, NSW Police, Transcript of evidence, 22 February 2021, p 17.

<sup>20</sup> NSW Police Force, [What is domestic violence?](#), accessed 23 June 2021; Submission 140, Women's Legal Service NSW, p 16.

may not report abuse – such as fearing that they will not be believed, and that abuse will escalate.<sup>21</sup>

- 1.15 This is particularly true for victims of coercive control. In some cases, victims may be prevented from seeking help, because the perpetrator isolates them from friends and family, tracks their movements, and restricts their access to the phone and internet.<sup>22</sup>
- 1.16 The Australian Institute of Criminology has reported that women who experience coercive control are unlikely to seek advice or support – whether from police or elsewhere – unless they have also experienced some form of physical or sexual violence.<sup>23</sup>

### **New South Wales is behind other jurisdictions in its response to domestic abuse**

- 1.17 NSW is the only state or territory in Australia that does not have a definition of domestic violence in its domestic violence legislation. This has implications, discussed later in this report, for the availability of apprehended domestic violence orders (ADVOs).
- 1.18 This shortcoming has been commented on by the Domestic Violence Death Review Team and the NSW and Australian Law Reform Commissions.<sup>24</sup>
- 1.19 Following its Royal Commission into Family Violence in 2015, Victoria introduced a range of reforms relating to domestic abuse. Victoria has recently been praised for developing a new risk assessment tool, which more accurately captures experiences of coercive control.<sup>25</sup>

### **There is no simple solution – our state’s unique characteristics, including our diverse population, complicate the path to reform**

- 1.20 There is an urgent need to protect victims of domestic abuse, by recognising the role that non-physical abuse plays, and acknowledging it as the red flag for homicide it really is.
- 1.21 For this reason, the Committee is recommending that the NSW Government criminalises coercive control, as other jurisdictions like Scotland, England and Northern Ireland have done in recent years.

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<sup>21</sup> Submission 46, The Salvation Army Australia, p 7.

<sup>22</sup> Australian Institute of Criminology, [Statistical Bulletin 30: Experiences of coercive control among Australian women](#), March 2021, p 7, accessed 22 June 2021.

<sup>23</sup> Australian Institute of Criminology, [Statistical Bulletin 30: Experiences of coercive control among Australian women](#), March 2021, p 11, accessed 22 June 2021.

<sup>24</sup> Submission 35, Rape and Domestic Violence Services Australia, pp 2-3; NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 71-72; Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response (ALRC Report 114; NSWLRC Report 128)*, October 2010, [recommendation 5-1](#), accessed on 4 June 2021.

<sup>25</sup> Hayley Gleeson, [‘The 39-question tool transforming the way Victoria Police assesses family violence risk’](#), *ABC News*, 17 May 2021, accessed 22 June 2021.

- 1.22 The Committee cannot ignore the unique dynamics of NSW as an Australian state. NSW has the highest population of Aboriginal Australians in the country.<sup>26</sup> Evidence from Aboriginal and culturally and linguistically diverse (CALD) communities indicated a reluctance to criminalise coercive control unless and until consultation has taken place to take account of the challenges these communities face to accessing justice.
- 1.23 Participants in this Inquiry also stressed that NSW cannot simply take legislation from other states or countries and transplant it here. Ongoing consultation with local experts – including victim survivors, members of the police and judiciary, service providers, and Aboriginal and CALD community representatives – is essential, to ensure that new laws are effective, and do not disadvantage those who are already marginalised.

#### Case study 1: Hannah Clarke<sup>27</sup>

*Rowan Baxter has become an exemplar for coercive control, because he's shown exactly how dangerous controlling and degrading abuse can be, even where physical violence is absent. This ... has really exemplified just how dangerous controlling/paranoid behaviour can be, because in lieu of physical violence, the focus has moved to the other behaviours that are so typical of coercive control.*

*There was a searing interview with Hannah Clarke's parents in the Guardian last year. In it, they list the coercive controlling behaviours Rowan Baxter exhibited, which include:*

*He isolated Hannah from her family and friends and limited her access to them.*

*He deprived Hannah of basic needs such as food, clothing and sleep.*

*He controlled her daily life: where she could go, who she could see, what she must wear.*

*He prevented her from attending doctors for her medical needs.*

*He belittled Hannah with insults about her figure and her mothering ability.*

*He made up rules for her to obey and punished her for disobeying his rules.*

*He stalked her, monitoring her location using mobile phone tracking software and devices and followed her to different locations.*

*He tracked other members of her family, spied on them and confronted them in public places.*

*He had threatened to kill his previous wife and son.*

*He threatened to kill himself as a means of trying to force Hannah to stay with him.*

*He printed and shared intimate photos of Hannah.*

*He destroyed mobile phones and his children's watches.*

<sup>26</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 93.

<sup>27</sup> Submission 91, Jess Hill, pp 3-4. See also Amanda Gearing, [Lloyd and Sue Clarke: 'Coercive control laws could have saved Hannah and her three children'](#), *The Guardian*, 17 November 2021, accessed 21 June 2021.

*He destroyed household goods; he threw away toys belonging to his children as punishment for not putting them away.*

*These are not just red flags for physical violence or domestic homicide – they are incredibly harmful forms of abuse in their own right.*

## Chapter Two – What is coercive control?

"There are all these little humiliations, and you may not want to confess to friends or family because it is humiliating that that is what is going on. It is kind of death by a thousand cuts – all of the small ways in which, if you do not have material resources, you are not really fully participating in life as a citizen."<sup>28</sup>

"Ultimately, domestic abuse and coercive control is not a form of abuse defined by incidents. It is a pattern of entrapment."<sup>29</sup>

### 'It is kind of death by a thousand cuts'

#### Summary

Coercive control is a pattern of abuse that degrades, humiliates and isolates victims, and takes away their freedom and autonomy. It has severe psychological impacts on victims. While it does not always involve physical violence, it is a common factor in intimate partner homicides.

This section is relevant to questions 7 and 8 in the NSW Government's discussion paper on coercive control.

- 2.1 Coercive control is a pattern of behaviour that aims to dominate and degrade a person and deprive them of their freedom and sense of autonomy. It usually involves a man abusing by controlling their female partner or ex-partner, but it also occurs in same sex relationships, and there are cases of female perpetrators abusing by controlling their male partners.
- 2.2 Most concerningly, the Inquiry heard evidence of the prevalence of coercive and controlling behaviour in intimate partner murders, highlighted in the work of the Domestic Violence Death Review Team. The Team's review of intimate partner homicides from March 2008 to June 2016 showed that in 99 per cent of cases (111 out of 112 cases), 'the relationship between the domestic violence victim and the domestic violence abuser was characterised by the abuser's use of coercive and controlling behaviours towards the victim. In each of these cases the domestic violence abuser (all male) perpetrated various forms of abuse against the victim, including psychological abuse and emotional abuse.'<sup>30</sup>
- 2.3 The Western NSW Community Legal Centre described coercive control as 'the pattern of exerting power to control, coerce and isolate another person over a prolonged period of time'. Through this process a perpetrator 'methodically

<sup>28</sup> Rebecca Glenn, Founder, Centre for Women's Economic Safety, Transcript of evidence, 30 March 2021, p 12.

<sup>29</sup> Submission 91, Jess Hill, p 7.

<sup>30</sup> Submission 24, Domestic Violence Death Review Team, p 2; NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 154.

erodes another person's autonomy, independence, dignity and identity. It has been described as being akin to torture and terrorism.<sup>31</sup>

- 2.4 Coercive control does not always involve incidents of physical violence. Journalist and author Jess Hill told the Inquiry that behaviours commonly used by perpetrators can include 'isolating a person from friends and family, depriving them of basic needs, monitoring them through online communication tools or spyware, taking wages and benefits, threats to reveal or publish personal information, threats to harm a child, threats to hurt or kill, criminal damage like destruction of property'.<sup>32</sup>

#### Case study 2: Preethi Reddy<sup>33</sup>

Dr Nithya Reddy's sister, Preethi Reddy, was murdered by her ex-partner in 2019.

Dr Reddy told the Inquiry that in that relationship, there had not been any physical violence – only coercive control. Because of this, before Preethi's death, neither she nor the people around her realised she was in any danger. They didn't recognise the red flags.

Preethi's story demonstrates that coercive control is bespoke – every perpetrator will target their coercive and controlling behaviours to the victim. Preethi was financially independent, and had her own career. She never lived with her ex-partner, but he was still able to isolate and control her psychologically. He used the fact that he had more experience as a dentist to undermine her confidence, and to manipulate her, under the guise of helping her set up a dental practice.

At the time of her murder, Preethi and her ex-partner were no longer together. She had moved on with her life, and planned to move to Melbourne with a new partner. However, Preethi's ex-partner was still contacting her – messaging her repeatedly, and trying to blame her for his sadness about the end of their relationship, and disappointments in his own career. He tried to appeal to her sense of empathy and compassion, and felt entitled to her time and attention.

The Coroner found that, on the night Preethi was killed, she had agreed to meet up with her ex-partner to try to give him closure on their ended relationship. After Preethi's death, he continued to manipulate her friends and family, pretending not to know what had happened to her, before committing suicide.

- 2.5 Jess Hill told the Inquiry that the methods used by coercive controllers are similar to techniques used to encourage compliance in prisoners of war. She referred to a study on the stages of coercive control in different contexts including domestic abuse, cults, trafficking and kidnapping scenarios:

<sup>31</sup> Submission 122, Western NSW Community Legal Centre, p 6.

<sup>32</sup> Jess Hill, author and journalist, Transcript of evidence, 24 February 2021, p 1; Submission 12, Professor Evan Stark and Cassandra Wiener, p 4; Submission, 45, Our Watch, pp 8-9; Submission 2, Professor Patricia Easteal, pp 3-5; Submission 145, Name suppressed, pp 4-7.

<sup>33</sup> Dr Nithya Reddy, Transcript of evidence, 30 March 2021, pp 21-22; Georgina Mitchell, '[Heinous act': Preethi Reddy was murdered by her ex-partner](#), coroner finds, *Sydney Morning Herald*, 24 June 2020, accessed 21 June 2021; Lucy Cormack, '[Preethi Reddy's sister Nithya on life after tragedy and the phone calls from her sister's killer](#)', *Sydney Morning Herald*, 29 September 2020, accessed 21 June 2021.

... coercive control followed a particular pattern: Isolation, Monopolisation of Perception, Enforcing Trivial Demands, Inducing Debility and Exhaustion, Demonstrating Omnipotence, Alternating Punishments with Rewards, Degradation, and Threats.<sup>34</sup>

- 2.6 Coercive control is often not recognised as abuse. As the NSW Office of the Director of Public Prosecutions (ODPP) told the Inquiry, ‘many people have great difficulty recognising ... behaviour that constitutes coercive control.’<sup>35</sup> In particular, the Inquiry heard that ‘[e]conomic abuse is an under-recognised form of domestic and family violence yet it is often hiding in plain sight, underpinning other forms of abuse and interconnected with them.’<sup>36</sup>
- 2.7 The Domestic Violence Death Review Team has highlighted the prevalence of coercive control in intimate partner homicides. The Team noted that ‘in many cases the relationship between the perpetrator and victim appeared to be “normal” from the outside (for instance, to friends and relatives) despite perpetrators using a range of controlling, but not physically abusive, behaviours against the victim prior to the fatal episode.’<sup>37</sup>
- 2.8 The description below from psychiatrist Dr Karen Williams illustrates the escalation of coercive control.

#### **The escalation of coercive control**<sup>38</sup>

*... they start with a pattern of making you trust them, making you love them, making you think that they are these really wonderful people and that is the goal of a controller right at the beginning. They convince the woman that they are actually better than they deserve and it is even more effective of a tool if the abuser can make everyone around them think that they are also really wonderful people too.*

*Then ... they try to make the person dependent on them. So that is where they start to break down all the support networks that she might have. So that is banning her friends directly or by saying that her friends are not trustworthy and turning her against the people in her life, isolating her from her family and then ... introducing the financial dependence on him by not allowing her to work or giving her an allowance. That sort of behaviour is insidious and slow to build up, but it is actually seen in all of these patterns. ...*

*Then ... you have to make the person believe that they are completely dependent on you and that they would never survive without them. So beyond being financially dependent on them, it is this sort of slipping in of derogatory remarks and it starts off again like a little bit, how ugly they are, how stupid they are and then that increases more and more as her self-esteem deteriorates further. The controller wants the person to be fearful of them ... or of a consequence. So not necessarily a physical consequence but of a consequence. So there are these ongoing threats to*

<sup>34</sup> Submission 91, Jess Hill, pp 9-13.

<sup>35</sup> Marianne Carey, Policy and Legal Adviser, Office of the Director of Public Prosecutions, Transcript of evidence, 22 February 2021, p 22.

<sup>36</sup> Rebecca Glenn, Transcript of evidence, 30 March 2021, p 11

<sup>37</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 69.

<sup>38</sup> Dr Karen Williams, Consultant Psychiatrist, Royal Australian and New Zealand College of Psychiatrists, Transcript of evidence, 23 February 2021, p 27.

*the woman as well as the children and her family and then a punishment that comes with that.*

*Then that behaviour as it is going on, it is causing—it is an ongoing injury. So what is happening to her on a biological level is what happens to any animal under threat and it is a state of hypervigilance which is orchestrated by the nervous system. High levels of cortisol. So in the face of that predator, she tries to get into his mind to understand what she has to do to keep him happy and to stop him from hurting her further. So she is trying desperately to think of what she needs to do to avoid getting hurt herself or her children getting hurt. So controllers, they use really simple conditioning methods. ... she is rewarded for behaviour that he likes—‘I am so glad you are not like those other women’—and then punished for behaviours that he does not like—‘why are you wearing that, you look disgusting’. So after a while, her own needs and desires become lost because she is too busy trying to survive by meeting his, and where he ends and she starts, it begins to blur.*

## Biderman’s Chart of Coercion

- 2.9 In her submission, Jess Hill referred to Biderman’s Chart of Coercion. This was a framework developed in the 1950s to describe techniques used to control prisoners of war. It has since been used to explain the techniques used by perpetrators of domestic abuse.

**Biderman’s Chart of Coercion: Acts of cruelty that appear isolated are actually connected. Only when these acts are seen together does the devastating picture of coercive control become visible<sup>39</sup>**

*Perhaps one of the most confounding aspects of coercive control is that it is observed not just in intimate relationships, but in practically any situation of captivity: kidnappers, hostage-takers, pimps, cult leaders. Amnesty International has declared the techniques of coercive control ‘**the universal tools of coercion and torture.**’ And as the Harvard psychiatrist Judith Herman has written, ‘The [coercive] methods that enable one human being to enslave another are remarkably consistent.’*

*In fact, it was in a situation of literal entrapment – the prisoner of war camps in North Korea in the 1950s – that sociologists first learned exactly what coercive control was, how it worked, and the effect it could have even on people trained to resist torture.*

*... In the late 1950s, after the end of the Korean War, America learned that many of the American soldiers who were taken prisoners had cooperated with the enemy in unprecedented ways: informing on fellow prisoners, making false confessions to made-up atrocities, even defecting to China after they were released.*

*The reaction in America was swift and heated: these soldiers had been brainwashed. People at the highest positions of government, including the head of the CIA, were convinced that the Communists had some fancy brainwashing machine that literally emptied out a man’s mind, and installed new thoughts and memories on it.*

*But there was one man who was not convinced: Albert Biderman, a social scientist with the US Air Force.*

<sup>39</sup> Submission 91, Jess Hill, pp 7-8 (bold emphasis added).

*He wanted to get to the bottom of what had happened. So he conducted extensive interviews with returned POWs, and his suspicions were confirmed: there was no magic mind control. In fact, there was nothing fancy about these techniques – they had been used for centuries. They were the universal methods of **training compliance, eradicating autonomy and overriding an individual's sense of self.***

*To win the soldier's 'hearts and minds', the Communists induced what Biderman called DDD: **Dependency, Debility and Dread ... He had no category for physical abuse; actual violence wasn't 'a necessary nor particularly effective method' in getting a prisoner to be compliant. They only needed to instil the fear of violence.***

*What Biderman's Chart of Coercion showed was that **acts of cruelty that appeared to be isolated were actually connected.** Only when these acts were seen together did the devastating picture of coercive control become visible.*

*People could barely believe it when Biderman started testifying to congressional committees about this. They were shocked that people could be manipulated so easily. But Biderman was clear: **it was not the physical torture that was most pernicious about these camps.***

*This Chart of Coercion became quite famous in the 1970s, when Amnesty published it as [showing] the universal techniques of coercion. In the 1980s, Diana Russell – basing her analysis on the enormous collection of testimonies gathered from women who had fled to the recently opened refuges – showed that **the basic techniques used by in POW camps were virtually identical to those used by perpetrators of domestic abuse.***

*What we know now is that this model of coercive control – the same one that is used in domestic abuse – is deployed by practically anyone who trades in captivity: kidnappers, hostage-takers, pimps, cult leaders. None of these perpetrators go to 'abuse school', and yet, time and again, they spontaneously recreate the techniques of coercive control.*

## The steps to coercive control

- 2.10 The Committee heard from Jess Hill about the gradual steps used to establish coercive control in abusive intimate partner relationships.

### The steps to coercive control<sup>40</sup>

***Establishing trust** is the initial stage of coercive control. As Biderman observed, the 'most insidious' and effective technique the communists used in the North Korean POW camps was what he called 'false friendship'. 'When an American soldier was captured by the Chinese, he was given a vigorous handshake and a pat on the back.' The enemy 'introduced himself as a friend of the "workers" of America . . . This display of friendship caught most Americans totally off-guard.' Once the victim's guard is down and trust is established, the abusive process can begin. In domestic abuse, this is often referred to as '**love-bombing**' – a whirlwind romance that gets serious very quickly, and may start out like a fairytale. Even in the absence of this, there is generally a period in the relationships where intimacy and trust is established.*

<sup>40</sup> Submission 91, Jess Hill, pp 9-12.

After that, the first step is **ISOLATION**. There are obvious elements to this – cutting the victim off from supportive family and friends, or setting up a worldview that pits him and her against the world, and denigrates her friends and family as outsiders who will never understand what they have. Alternatively he may collude with her family, especially if there's a fractured family relationship to exploit. They may even testify on his behalf. This isolates the victim entirely, because who's going to believe her when her own family says she's crazy? Would you believe her?

Then he **MONOPOLISES HER PERCEPTION**. He redirects her attention away from his abuse to her faults: if she wasn't so this, he wouldn't be so that. This can make a lot of sense to her, especially if, like many perpetrators, he seems to love and care for friends and family. If she's the only one he's attacking, it must be she who is provoking him. She's so busy trying to figure out what she is doing wrong – or how she can help him – she doesn't notice what he's doing to her. As one advocate said in that British study, victims get to the point where they start to believe that they are the cause of the abuse so wholeheartedly that they find it hard to see him as being guilty of any crime, even when clear crimes – like physical violence – are committed. Evan Stark describes it as 'creating a patriarchy in miniature'... in the 19th century, women's obedience to men was divinely ordained – if women disobeyed, it followed on logically that they should be punished. That was just the logic of the time – the natural way of things. Coercive control establishes this same kind of logic, only it operates like a bubble inside the relationship, contrary to the social norms outside it. The victim starts to live in a kind of altered reality – one that is constructed and continually reinforced by the perpetrator. That's why isolation is so essential – supportive connections may challenge this phony logic. They must be removed or degraded to the point where the victim no longer trusts their observations.

Coercive controllers **INDUCE DEBILITY AND EXHAUSTION**. Most insidiously, this is done through gaslighting. For the uninitiated, gaslighting a term for when an abuser denies, fabricates and manipulates situations to make his partner doubt her own memory and perception. As she becomes more confused and anxious, she starts to believe his interpretations of events are more reliable than her own. Some perpetrators will go to extreme measures – moving keys and money, so the victim feels she is going insane. Another common way of inducing debility by coercing or even forcing the victim to take pain medication or illegal drugs. What better way to reduce a person to compliance, make it harder for them to leave and render her testimony utterly unbelievable? Alternatively, victim-survivors may be literally kept awake at night, berated over perceived wrongdoing, even kicked out of bed in the middle of the night by their partner, who has been lying in the dark stewing over some betrayal, real or imagined.

Then, in order to train their partner to be compliant, the abuser starts to **ENFORCE TRIVIAL DEMANDS**. He might forbid her from wearing skirts or speaking to other men. In that British study I mentioned earlier, one perpetrator hid gold coins around the house for his partner to 'discover' as she did the housework. When he got home from work in the evening he would hold out his hand for the coins. If she had not found the correct number of coins, it would mean she had not cleaned properly, and he would punish her. In this way, demands may be woven into the everyday fabric of life, in which even the most bizarre demands soon become seen as normal. But other demands may be arbitrary and spontaneous; these rules are ever-changing and often contradictory; but to avoid punishment, she must know them by heart. The effect of this is different – it doesn't just lower standards, it makes victims

*hypervigilant, and trains them to ditch their own perspective, and see the world through the perpetrator's eyes. Children too must know these rules – in a coercive control environment, they are often subject to the same processes as their victim parent. One nine-year-old, who was a keen gamer, told me that he learned to read his father's face like an algorithm, to predict when his father was in a dangerous mood. 'It was really random. If the sky wasn't blue enough, he'd get angry... The rules would be valid for ten seconds, and you'd be abiding by them, but then the new rule would state that you're doing something wrong, just so he could get mad at you.' Victims obey perpetrator's demands not because they are weak or flawed or co-dependent, but because they are rightly fearful of what will happen if they don't.*

*To make resistance seem futile, the coercive controller must prove that no matter what the victim does, escape is impossible. To do this, he must demonstrate his **OMNIPOTENCE**. He may subject her to relentless monitoring, install cameras around the house, or even install surveillance software on her phone, and literally spy on her conversations and track her movements. Surveillance is incredibly common – one private security group that works with refuges to sweep women's cars and checks phones for spyware said that at one refuge in Victoria, around 85 per cent of the women there were being tracked in some way. As one survivor told the BBC this week, 'He would drop snippets into conversations, such as knowing about a friend's baby. Really private things that he shouldn't have known about. If I asked him how he knew these things, he'd say I told him and accuse me of losing it.' All of this is done to make her feel like no matter what the victim does, he will always be right behind her, and she will never be safe. This can make victims sound crazy, and further isolate them from support or help. As coercive control escalates, each abusive strand is woven so tightly and imperceptibly that it's almost impossible to actually describe what's happening to outsiders. Without proof, it's her word against his – and her story is so crazy, it sounds implausible.*

*One of the most important and dangerous elements of coercive control is not abusive at all. This is what Biderman called '**ALTERNATING PUNISHMENTS WITH REWARDS**'. Aside from extreme situations, in which the abuse is unrelenting, the perpetrator will at times profess their love, offer gifts, show kindness and express remorse. Periods of kindness, no matter how short, bond the victim to her abuser. Even if she is reminded only momentarily of the man she fell in love with, she may be duped into letting her guard down, and sharing things – perhaps even erotic photographs – that the abuser may later use against her: perhaps by threatening to publish them online, or threatening to present them in court.*

*There are two more techniques: **THREATS** and **DEGRADATION**.*

***THREATS** are the binding element of coercive control. They are what render a woman captive and tell her that if she leaves, she will be putting not only herself, but possibly her friends, family and children in danger. It's an atmosphere of threat they create, but they may never make those threats directly – which makes those threats even more difficult to explain, especially in court.*

*Lastly, the victim is **DEGRADED**. Sometimes degradation goes so far, it reaches a level of dehumanisation. Evan Stark explains that women in his practice 'have been forced to eat off the floor, wear a leash, bark when they wanted supper, or beg for favours on their knees'. In many of these sickening scenarios, both the perpetrator and their victim were known to friends and families as friendly, regular people.*

## Cultural and other differences

- 2.11 Victims from different age and cultural groups can be abused and controlled in different ways. For instance, women from some cultural backgrounds may experience dowry stealing, family pressure, early or forced marriage, financial control by extended family members, restriction of movement, and threats to visa or migration status. The Inquiry also heard that young women are more likely to experience image-based abuse, and stalking, intimidation and other forms of harassment.<sup>41</sup>

### Case study 3: Coercive control in culturally diverse communities<sup>42</sup>

Deepti married an Australian citizen and moved to Australia on a partner visa. At first her husband was caring and attentive. But he was unhappy with the dowry he received. He constantly reminded Deepti that he expected more, and then demanded \$75,000 more for dowry. Deepti's father in India couldn't meet this demand, so her husband said that she had to earn it. He forced Deepti to do humiliating things, and if she didn't, he would beat her and deprive her of food. He broke her phone and stopped her contacting her family. Deepti was finally allowed to get a job, and her salary went directly to her husband. After two years, Deepti was eligible for permanent residency. Her husband delayed the process and demanded Deepti's father sell his land in India and pay him \$50,000 in dowry. When Deepti's father refused, Deepti's husband withdrew his sponsorship for her permanent residency.

- 2.12 Our Watch told the Inquiry that women and girls with disability are more likely to experience 'coercive medical interventions to control their fertility, and ... significantly more restrictions, negative treatment, and particularly egregious violations of their sexual and reproductive rights'.<sup>43</sup>
- 2.13 The Wirringa Baiya Aboriginal Women's Legal Centre said that perpetrators will use threats to take children away from Aboriginal women, or report them as neglectful or abusive mothers. Some perpetrators will stop women attending cultural and community events, or visiting country, and belittle cultural practices.<sup>44</sup>
- 2.14 Specific types of abuse in the LGBTQ community include identity-based abuse such as threatening to out somebody or controlling their gender expression.<sup>45</sup>

<sup>41</sup> Submission 45, Our Watch, p 10; Submission 126, No to Violence, p 31; Submission 46, The Salvation Army Australia, p 4; Submission 50, Ethnic Communities' Council of NSW, p 1; Submission 126, Women's Safety NSW, p 118; Submission 100, Indian (Sub-Cont) Crisis & Support Agency, pp 10-14.

<sup>42</sup> Submission 100, Indian (Sub-Cont) Crisis & Support Agency, pp 13-14.

<sup>43</sup> Submission 45, Our Watch, p 11; Submission 87, Marie Stopes Australia, p 2.

<sup>44</sup> Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, pp 3-4. See also: Submission 2, Patricia Eastal, p 4.

<sup>45</sup> Eloise Layard, Program Coordinator, Sexual, Domestic and Family Violence, ACON, Transcript of evidence, 23 February 2021, p 2; Submission 81, ACON, p 18.

## The impacts of coercive control

- 2.15 Inquiry participants told the Inquiry about the serious impacts of coercive control. The Inquiry heard that victim survivors often describe it as more harmful and long-lasting than physical abuse. Professor Evan Stark and Cassandra Wiener spoke of the 'isolation, subordination, humiliation and loss of liberty occasioned by coercive control', and noted that it has been linked to psychiatric outcomes including suicidality, depression and post-traumatic stress disorder (PTSD).<sup>46</sup>
- 2.16 Professor Patricia Easteal described the growing fear that victims experience as coercive control escalates: 'Anxiety and discomfort slowly transition to fear. Due to the unpredictable nature of the violence ... victims are extremely fearful, not knowing what will trigger abusive behaviour.'<sup>47</sup>
- 2.17 Women who experience coercive control can develop symptoms that are similar to PTSD suffered by first responders and defence personnel – poor sleep, loss of creativity and executive function. Other possible symptoms and impacts are depression, anxiety, eating disorders, panic disorders, loss of self-esteem, self-worth and identity, suicidality, and physical injuries.<sup>48</sup>

### Case study 4: Long-term effects of psychological abuse<sup>49</sup>

At night, Sam's partner secretly placed an electronic sound device under the house. When Sam tried to sleep she could hear noises, knocking, ringing, a baby crying, someone trying to break in. When she asked her partner about it, he said she was crazy. He said she shouldn't see her friends or family because they would judge her – 'nobody wants to be friends with a crazy person'. Sam suffered severe paranoia and anxiety.

...

Ange's partner would intentionally wake her in the middle of the night – often between five and ten times – by pushing her out of bed, pulling her hair or pouring a bucket of freezing water on her. As a result, Ange was in a constant state of physical and mental exhaustion and couldn't function. She lost her job and stopped seeing family and friends.

<sup>46</sup> Submission 12, Professor Evan Stark and Cassandra Wiener, p 6; Submission 35, Rape and Domestic Violence Services Australia, p 19; Submission 63, Name suppressed, p 4.

<sup>47</sup> Submission 2, Professor Patricia Easteal, p 6. See also: Submission 52, Anglicare Sydney, p 4; Submission 79, White Ribbon Australia, p 3.

<sup>48</sup> Dr Karen Williams, Transcript of evidence, 23 February 2021, p 27; Dr Anita Hutchison, Doctors Against Violence Towards Women, Transcript of evidence, 29 March 2021, p 15; Submission 122, Western NSW Community Legal Centre, p 11; Submission 35, Rape and Domestic Violence Services Australia, pp 19-20; Submission 111, Gowland Legal Family Lawyers, pp 7-8; Submission 117, Office of the Children's Guardian, p 1; Submission 123, Name suppressed, p 1; Submission 100, Indian (Sub-Cont) Crisis & Support Agency, p 9; Submission 144, Professor Brin Grenyer, p 3.

<sup>49</sup> Submission 122, Western NSW Community Legal Centre, p 14.

**Case study 5: Long-term effects of economic abuse<sup>50</sup>**

Ben came from a high income family. His parents were very loving and supportive until he came out to them as gay. Their relationship became rocky and he moved out of home.

Ben met a partner who was initially supportive of him. However, behind closed doors, his partner 'lied, slandered and coerced me into doing things that I never would have done'. Ben's partner stole large amounts of money from him. He refused to work, and would use Ben's name and money to apply for credit cards, loans and phone plans online. Ben felt that his financial autonomy was being stolen from him.

When Ben's partner found out that Ben had hidden some money from him, he beat him. During their relationship, Ben 'prayed every night that I wished to die. The emotional abuse was unbearable ... I had no friends. I had no family. I had no faith.'

Ben went to the police for help, but was told that nothing could be done. He suspected this was because he was in a same-sex relationship, and was expected to defend himself. They said things like: 'You will need to learn to live with each other.'

He was eventually able to get an ADVO against his partner, but the police were reluctant to acknowledge breaches. Ben said that 'breaches are a sign that individuals are not scared of the law' and they 'often lead to acts that are more sinister, more severe, and reckless.'

Nine months after leaving his partner, Ben is still in debt, and said he is still psychologically scarred: 'I am scared. Scared that he will continue to taunt and haunt me for the remainder of my life. Worried that he will blackmail me into his demands with threats of slander and abuse.'

- 2.18 Coercive and controlling behaviours, like tracking and threatening victims, socially isolating them, and limiting their income, also make it much harder for victims to leave abusive relationships.<sup>51</sup>

**Case study 6: Isolation and financial dependence<sup>52</sup>**

Talia was financially independent before she met her partner. Soon after forming a relationship with her partner, he expressed concern about the men in her workplace and made her reduce her work hours. He then started to drop her off and pick her up from work, insisting that it was for her protection. He eventually convinced Talia to quit her job and prohibited her from working altogether. Talia became financially dependent on him and felt she could never leave the relationship.

**Case study 7: Using temporary visa status to control victim<sup>53</sup>**

Miriam and her two children were dependents of her husband, Sam's, employer-sponsored temporary work visa. His employer later sponsored his application for a permanent visa. One day, Sam got drunk and physically assaulted Miriam in front of

<sup>50</sup> Submission 94, Name suppressed, pp 5-7, 12-13, 19.

<sup>51</sup> Submission 2, Professor Patricia Easteal, p 8; Submission 143, Economic Abuse Reference Group, p 2.

<sup>52</sup> Submission 122, Western NSW Community Legal Centre, p 15.

<sup>53</sup> Submission 151, Immigration Advice & Rights Centre, p 7.

their children. Miriam left their home with the children and stayed with a friend. Sam threatened to tell the Department of Home Affairs that their relationship was over and have her visa cancelled if she didn't go back home with the children. Miriam feared going home as her husband's violence could escalate. But if Miriam returned to her home country with her children, she risked losing custody to Sam's family under that country's laws.

- 2.19 Children who experience domestic violence can develop anxiety, depressive and behaviour disorders and developmental difficulties and later, anxiety and trauma disorders. Symptoms can include bedwetting, sleep disorders, aggressive behaviour, and drug and alcohol abuse in adolescence. Dr Angelo Virgona from the Royal Australian and New Zealand College of Psychiatrists told the Inquiry about 'the corrosive effects on self-worth and self-esteem linked to passivity, submission, loss of autonomy and agency and the inevitability of persisting depressive disorders'.<sup>54</sup>

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<sup>54</sup> Dr Angelo Virgona, Chair, New South Wales Branch, Royal Australian and New Zealand College of Psychiatrists, Transcript of evidence, 23 February 2021, p 23; Dr Anita Hutchison, Transcript of evidence, 29 March 2021, pp 15-16; Submission 52, Anglicare, p 5; Submission 71, Youth Action, p 7.

## Chapter Three – Do current laws effectively address coercive and controlling behaviour?

### Current laws are not effective for coercive and controlling behaviour

#### Summary

Current laws do not capture coercive and controlling behaviour, as they focus on **incidents** of physical violence. Police cannot charge offenders, which leaves victims vulnerable to further abuse.

This section is relevant to questions 3, 4, 5 and 6 in the NSW Government's discussion paper.

#### Finding 3

**Current laws do not adequately cover coercive and controlling behaviour. This means that police and the courts cannot address this type of abuse and victim survivors are not adequately protected.**

- 3.1 During the hearings, the Inquiry heard that laws in NSW are not effectively capturing coercive control, as the NSW criminal law is designed to respond to **incidents** of physical violence, rather than **patterns of behaviour** that do not always involve violence. Police are trained to investigate individual incidents of violence, and victims are often told that what they are experiencing 'isn't a crime'. Community beliefs about domestic violence define it as a crime of physical violence, and victims of coercive control often do not realise that they are experiencing a type of domestic abuse.
- 3.2 The ODPP told the Inquiry that domestic violence laws are complex due to their 'piecemeal evolution, the need to cover the full gamut of modern domestic relationships, the intersection, often incompatibly, with family and child protection laws, and because of the nature of domestic violence itself and the effect such violence has on its victims.'<sup>55</sup>
- 3.3 The *Crimes Act 1900* contains criminal offences relevant to domestic violence, including assault, sexual assault and homicide. Other criminal offences that are relevant to coercive control include malicious damage, cruelty to animals, unlawful deprivation of liberty, and recording and distributing intimate images of a person without consent.<sup>56</sup>
- 3.4 The *Crimes (Domestic and Personal Violence) Act 2007* (CDPV Act) contains provisions for ADVOs, and the criminal offence of stalking or intimidation with intent to cause fear of physical or mental harm. The definitions of 'intimidation'

<sup>55</sup> Submission 89, Office of the Director of Public Prosecutions, p 6.

<sup>56</sup> Submission 89, Office of the Director of Public Prosecutions, p 5.

Do current laws effectively address coercive and controlling behaviour?

and 'stalking' provide that the court may have regard to any pattern of violence in determining whether the conduct is stalking or intimidation.<sup>57</sup>

*Not all types of coercive and controlling behaviour are covered*

- 3.5 Inquiry participants told the Inquiry that current laws do not adequately capture coercive and controlling behaviour. The NSW Young Lawyers said that there is a gap in our criminal law, which 'does not adequately sanction more nuanced offending that is intended to coerce or control an intimate partner'.<sup>58</sup>
- 3.6 The ODPP noted that police and the courts have the power to address criminal behaviour involving physical/sexual violence and non-physical abuse like stalking or intimidation, but 'the existing criminal law is less well equipped to address more nuanced forms of non-physical abuse, such as behaviours amounting to coercive control'.<sup>59</sup>
- 3.7 NSW Young Lawyers noted that ADVOs can prohibit some coercive and controlling behaviour. However they argued that it is unsatisfactory that 'rather than the coercive and controlling behaviour itself being criminalised, such behaviour is only criminalised to the extent that it forms part of any ADVO conditions that are breached'.<sup>60</sup>
- 3.8 The Inquiry also heard that the stalking or intimidation offence under the CDPV Act prohibits some forms of coercive control, but it does not cover all types of coercive and controlling behaviour.<sup>61</sup>
- 3.9 The Committee notes that the Domestic Violence Death Review Team's reports have raised concern about the operation of the stalking and intimidation offence, 'highlighting that the current provisions may be ineffective for victims of domestic violence seeking criminal redress'. This led the Team to recommend a review of how adequately existing laws respond to non-physical forms of domestic violence, and patterns of violence.<sup>62</sup>

*Patterns of behaviour involving non-physical abuse are not covered*

- 3.10 The current incident-based approach to domestic violence makes it difficult to address coercive control. The ODPP said that this approach means that police 'are not "set-up" to investigate domestic violence that involves patterns of non-physical behaviour, even where there is an accompanying incident of physical or sexual violence to trigger Police involvement'.<sup>63</sup>

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<sup>57</sup> *Crimes (Domestic and Personal Violence) Act 2007* (CDPV Act) ss 7 & 8, 13, 14 to 17. Part 8 provides for the content and effect of apprehended violence orders.

<sup>58</sup> Simon Bruck, President, NSW Young Lawyers, Transcript of evidence, 22 February 2021, p 10; Submission 112, NSW Young Lawyers, p 6.

<sup>59</sup> Submission 89, Office of the Director of Public Prosecutions, p 6.

<sup>60</sup> Submission 112, NSW Young Lawyers, p 7.

<sup>61</sup> Submission 89, Office of the Director of Public Prosecutions, p 5; Marianne Carey, Transcript of evidence, 22 February 2021, pp 24, 25.

<sup>62</sup> Submission 24, Domestic Violence Death Review Team, p 6.

<sup>63</sup> Submission 89, Office of the Director of Public Prosecutions, p 6.

## Do current laws effectively address coercive and controlling behaviour?

- 3.11 Witnesses told the Inquiry that the current law does not allow the full scope of coercive and controlling behaviours to be taken into account.<sup>64</sup> Victim survivors perceive that charging perpetrators for single acts does not reflect the significant harm they suffer **over many years** of coercive control. The Inquiry heard that 'the law does not currently provide adequate ways for courts to receive evidence of **prolonged histories of abuse**, particularly coercive control.'<sup>65</sup> (emphasis added)
- 3.12 Good Shepherd Australia New Zealand argued that there is a 'a need to shift away from the incident-based framework, with its enduring focus on discrete and acute acts of physical violence, which are more easily evidencable, towards greater recognition of evidence demonstrating a broader ongoing pattern of coercive control.'<sup>66</sup>
- 3.13 The Inquiry heard that current laws are not adequate for victim survivors who experience a pattern of coercive and controlling behaviour with no physical abuse.<sup>67</sup> The Western NSW Community Legal Centre told the Inquiry that 'domestic abuse is only a prosecutable criminal offence if there is a discrete physical threat within a domestic relationship (such as an assault, damage to property, or incident of stalking or intimidation) which already amounts to an offence under existing criminal law.'<sup>68</sup>
- 3.14 The Western NSW Community Legal Centre gave examples of clients experiencing social isolation, financial abuse, psychological control and gaslighting, and deprivation of liberty and noted that 'in none of these cases was the conduct described prosecuted by NSW Police.'<sup>69</sup>
- 3.15 Women's Safety NSW surveyed victim survivors on the adequacy of existing laws empowering police and the courts to address domestic violence. Respondents said:

It feels like there has to be physical tangible evidence, I have to have physical injuries. That my psychological ones don't count or are too hard to "prove" ...

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<sup>64</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, pp 5-6; Dr Anita Hutchison, Transcript of evidence, 29 March 2021, p 16; Submission 92, Centre for Women's Economic Safety, p 5; Submission 52, Anglicare Sydney, p 4; Submission 132, Domestic Violence NSW, p 32; Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 2.

<sup>65</sup> Hannah Robinson, Policy and Law Reform Solicitor, Western NSW Community Legal Centre, Transcript of evidence, 22 February 2021, p 40 and Submission 122, Western NSW Community Legal Centre, p 18; Lynda Dunstan, Family and Domestic Violence Advisor, Anglicare, Transcript of evidence, 24 February 2021, pp 20-21.

<sup>66</sup> Submission 59, Good Shepherd Australia New Zealand, pp 15-16.

<sup>67</sup> Laura Vidal, Head of Social Policy, Good Shepherd NSW, Transcript of evidence, 24 February 2021, p 17; Submission 52, Anglicare, pp 10, 13; Professor Marilyn McMahon, Professor of Criminal Law and Deputy Dean, Deakin Law School, Transcript of evidence, 24 February 2021, p 42; Submission 92, Centre for Women's Economic Safety, p 5; Submission 24, Domestic Violence Death Review Team, pp 5-6; Submission 126, Not to violence, pp 20-21; Jane Matts, Survivor advocate and board member, Victims of Crime Assistance League (Hunter) NSW, Transcript of evidence, 30 March 2021, p 29; Submission 53, Feminist Legal Clinic, p 4; Submission 56, Doctors Against Violence Towards Women, p 1; Submission 141, Women's Community Shelters, p 2; Submission 78, Enough is Enough Anti-Violence Movement, p 2; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 3; Submission 93, Name suppressed, p 2.

<sup>68</sup> Submission 122, Western NSW Community Legal Centre, p 12.

<sup>69</sup> Submission 122, Western NSW Community Legal Centre, pp 13-17. See also: Submission 128, Women's and Girls' Emergency Centre (WAGEC), p 6; Submission 32, Debra Gillick, pp 2-4.

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For non-physical abuse, they have almost no power. And basing it on individual incidents makes it impossible to understand the whole relationship and its patterns. We were together for 20 years! - you can't possibly illustrate the level of control and abuse in that relationship from a single incident.<sup>70</sup>

- 3.16 The Inquiry heard that failing to recognise non-physical violence as a crime can have a negative impact on victims, as they do not believe that they are experiencing violence:

victim-survivors ... do not themselves recognise financial, emotional and/or psychological abuse for what it is and [this] assists perpetrators to justify their behaviour.<sup>71</sup>

- 3.17 Another weakness in the current system for those experiencing coercive control without physical violence is the lack of access to support services. The Western Sydney Community Legal Centre gave examples of clients who suffered psychological abuse that wasn't captured by current criminal offences, and observed that these clients 'are ineligible for a range of services and support for victim survivors of family and domestic abuse, including financial support through NSW Victims' Services scheme and housing support.' This can limit victims' options to escape the abuse they're suffering.<sup>72</sup>

- 3.18 The Committee was concerned to hear that that ADVOs can be less effective for victim survivors in rural and regional areas. Many remote towns do not have a permanently staffed police station, or have one officer. This can delay police responses and undermine the effectiveness of ADVOs, as police are not present to enforce the orders.<sup>73</sup>

- 3.19 This is particularly concerning given the higher rates of domestic violence and ADVO breaches in some rural and regional areas. The Western NSW Community Legal Centre noted that the Far West and Orana region had the highest proportion of breaches, with almost one in four final orders made between July 2013 and June 2014 being breached by 30 June 2015. The Country Women's Association cited research by the NSW Bureau of Crime Statistics and Research showing that in June 2020 the rate of domestic violence-related assault in western New South Wales was 3.6 times the state average.<sup>74</sup>

**Case study 9: Enforcement of ADVOs in regional NSW<sup>75</sup>**

The Hume Riverina Community Legal Service told the Inquiry about a client who obtained a full protection order against her ex-partner. He had also been charged

<sup>70</sup> Submission 133, Women's Safety NSW, pp 41-42, 44-45.

<sup>71</sup> Submission 122, Western NSW Community Legal Centre, p 18; Tori Mines, Solicitor, Western Women's Legal Support, Transcript of evidence, 22 February 2021, p 41.

<sup>72</sup> Submission 122, Western NSW Community Legal Centre, pp 14-15, 18; Tori Mines, Transcript of evidence, 22 February 2021, p 41; Submission 92, Centre for Women's Economic Safety, p 8.

<sup>73</sup> Submission 122, Western NSW Community Legal Centre, pp 9-10; Hannah Robinson, Transcript of evidence, 22 February 2021, pp 41-42; Submission 110, Country Women's Association, p 2.

<sup>74</sup> Submission 122, Western NSW Community Legal Centre, pp 9-10; Hannah Robinson, Transcript of evidence, 22 February 2021, pp 41-42; Danica Leys, Chief Executive Officer, Country Women's Association of NSW, Transcript of evidence, 29 March 2021, p 23.

<sup>75</sup> Submission 130, Hume Riverina Community Legal Service, p 9.

with assaulting her after he strangled her in front of their two children. She had lived in fear from him for 11 years.

After breaching the protection order, her ex-partner was held on remand. She contacted the police on the day of his hearing and they told her they would get back to her. She waited nervously by the phone but the police didn't call. She called the next day and after several calls was told he had been released the day before.

The client also tried to report breaches of the protection order by her ex-partner calling on a no caller ID and was told: 'It'd make your life, and ours, a whole lot easier if you just changed your number.' The police wouldn't take her statement. She felt the police didn't understand what she was going through, and that simply changing her number wouldn't stop her ex-partner's behaviour. She told her lawyer that she wasn't taken seriously by police and wouldn't report to them again.

*Apprehended violence orders are not effective for severe abuse*

- 3.20 During the hearings the Committee heard many examples of victims of coercive control being unable to obtain ADVOs.
- 3.21 The Inquiry also heard that severe abusers are not deterred by ADVOs. Professor Marilyn McMahon and Paul McGorrery told the Inquiry that 'the inadequacy of these orders in severe cases of domestic abuse has been recognised for many years.'<sup>76</sup>
- 3.22 Professor McMahon and Mr McGorrery argued that ADVOs are often breached by 'intractable family violence perpetrators and clearly lack the denunciative force required to protect all victims.'<sup>77</sup> They also noted that the maximum penalty for ADVO breaches is very low given the serious and continuing abuse the offence aims to capture:

... the Bureau of Crime Statistics and Research in New South Wales estimated that 20 per cent of final apprehended violence orders issued in New South Wales were breached. BOCSAR also reported that nearly 80 per cent of these orders, where there had been a breach, the most serious penalty was either a bond, a fine or a community service order. Research in Victoria by the Crime Statistics Agency gives us some more detailed information into who are breaching these orders.

The agency identified that a small group of recidivist family violence perpetrators, about seven per cent of all family violence perpetrators, account for nearly one-third of family violence incidents reported by police. Those repeat family violence perpetrators were likely to be recorded by police as being controlling or jealous in relation to their victim. They were likely to have committed crimes against other persons and to have been substance-affected at the time of the family violence breaches. Also disturbing was the fact that the proportion of offenders who engaged in breaching these orders appeared to be increasing.<sup>78</sup>

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<sup>76</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, pp 4-5; Professor Marilyn McMahon, Transcript of evidence, 24 February 2021, p 42.

<sup>77</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, p 4.

<sup>78</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, pp 4-5; Professor Marilyn McMahon, Transcript of evidence, 24 February 2021, p 44.

## Do current laws effectively address coercive and controlling behaviour?

- 3.23 Mr McGorrery, and other inquiry participants, also pointed to the risk of women being wrongly identified as the aggressor, as ADVOs are based on individual incidents.<sup>79</sup> The Inquiry heard that ADVOS can 'perpetuate the excessive over-incarceration of Indigenous women in particular'.<sup>80</sup>

*Marginalised groups face barriers to accessing justice*

- 3.24 The Inquiry heard that marginalised victims face particular challenges and barriers in accessing justice and support. For CALD, Aboriginal and LGBTQ victims, and those with a disability, there can be a fear of discrimination and of not being believed, previous negative experiences, cultural barriers, and a lack of trust in police.
- 3.25 The Australian Bureau of Statistics has reported that Aboriginal women who have experienced family and domestic violence have lower levels of trust in police and hospitals, compared to Aboriginal women who have not experienced any physical violence.<sup>81</sup>
- 3.26 The Inquiry also heard that women with disability who have experienced violence face additional barriers to accessing justice and being believed.<sup>82</sup>
- 3.27 The Salvation Army said that many CALD women 'do not know their legal rights in Australia and face significant barriers in engaging with support services, especially if they are not provided access to interpreting services'. They may also lack support networks in the local community, making it easier for their perpetrators to isolate and entrap them, and harder for them to report abuse.<sup>83</sup>
- 3.28 Changes to current laws to better respond to coercive control are discussed in the section below. The benefits of a specific coercive control offence and how it could be implemented is discussed in chapter 5.

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<sup>79</sup> Paul McGorrery, Transcript of evidence, 24 February 2021, p 45; Answers to questions on notice, Lou's Place, p 1; Jess Hill, Transcript of evidence, 24 February 2021, p 6.

<sup>80</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, p 5; Submission 140, Women's Legal Service NSW, pp 17-18.

<sup>81</sup> Submission 45, Our Watch, p 17; Submission 126, No to Violence, p 34, citing Australian Bureau of Statistics, [National Aboriginal and Torres Strait Islander Social Survey 2014-15: Aboriginal and Torres Strait Islander Women's Experiences of Family and Domestic Violence](#), 19 February 2019. Also see, on lack of trust and reluctance to report to police, particularly in diverse communities: Submission 46, The Salvation Army Australia, p 11; Eloise Layard, Transcript of evidence, 22 February 2021, p 3; Nemat Kharboutli, Strategic Support, Muslim Women Australia, Transcript of evidence, 23 February 2021, p 32; Sera Yilmaz, Systemic Advocate and Policy Officer, Disability Royal Commission Advocate, Multicultural Disability Advocacy Association of NSW, Transcript of evidence, 23 February 2021, p 39; Philippa Davis, Principal Solicitor, Women's Legal Service NSW, Transcript of evidence, 23 February 2021, p 42; Dixie Link-Gordon, Senior Community Access Worker, First Nations Women's Legal Program, Women's Legal Service NSW, Transcript of evidence, 23 February 2021, p 44; Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, pp 4, 6; Submission 128, WAGEC, p 7; Answers to questions on notice, Western NSW Community Legal Centre, p 4.

<sup>82</sup> Submission 45, Our Watch, p 17; Kathryn McKenzie, Director, Operations, NSW Ageing and Disability Commission, Transcript of evidence, 23 February 2021, p 39.

<sup>83</sup> Submission 46, The Salvation Army Australia, p 12; Submission 17a, Women's Electoral Lobby (NSW), p 3; Submission 72, Dr Supriya Singh, pp 3-4; Submission 131, Women's Health NSW, pp 6-8; Submission 151, Immigration Advice and Rights Centre, pp 1-2; Answers to questions on notice, Western NSW Community Legal Centre, p 3.

**Case study 10: Controlling behaviour before intimate partner homicide<sup>84</sup>**

Brooke was an Aboriginal woman in her 50s who was in a de facto relationship with Adam, a non-Aboriginal man in his 40s. Brooke had experienced extreme violence from several intimate partners since she was a teenager. She had her first child when she was 18 years old, and her children were also abused by her partners. Both Brooke and Adam had epilepsy and were on disability support pensions. Neighbours said they would often see Brooke with facial and head injuries, and broken bones and teeth, as a result of being assaulted by Adam.

Brooke reported several episodes of non-fatal strangulation to police and hospital staff. Despite numerous witnesses and reports to police and healthcare providers, there was little police engagement or intervention. Adam had never been charged with a domestic violence offence and no ADVO was applied for to protect Brooke from Adam. When Brooke disclosed episodes of violence, even with many serious and visible injuries, she was often not believed and considered to 'lack credibility' due to her mental health issues and/or substance misuse. Adam was also very controlling of Brooke and wouldn't let her access her finances, food or a mobile phone. When Brooke was referred to services, the contact number she gave would always be for the phone that they shared.

Adam killed Brooke and was convicted of murder, but he died of natural causes in custody before he was sentenced.

**Case study 11: Higher risk of abuse for people with disabilities<sup>85</sup>**

Craig was hospitalised for two months for viral encephalitis. He had to re-learn how to walk, talk, eat, use cutlery and shower, and had to use a wheelchair. Out of work due to his condition, he asked his wife for money so he could buy their children presents for Christmas. She replied, 'A real man wouldn't be begging his wife for money but would be out working instead of ... lying flat on your back for two months doing nothing.'

Craig's wife refused to let him use a shower chair, telling him that 'real men don't sit in the shower'. He had to sit on the shower floor to wash himself.

While he was on the floor, she would tell him: 'Why don't you do everyone a favour and kill yourself?' She sharpened knives in the kitchen, threatening to stab him if he didn't go back to work.

When Craig won a competition to write a chapter for a book, his wife made fun of him and cancelled the internet to prevent him from working.

Craig's wife slapped and punched him, and told him his family wanted nothing to do with him. When he called the NSW Domestic Violence hotline, he was unable to get any support. The only service offered to him was an anger management course.

When Craig left his wife, he was homeless, and forced to live in his car. Years later, he is now on a disability pension, and has remarried. However, his ex-wife's emotional abuse has continued, including by repeatedly calling their children when they stay with Craig, and pressuring them to come home.

<sup>84</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 27.

<sup>85</sup> Craig Bennett, One in Three Campaign, Transcript of evidence, 29 March 2021, p 41.

## Changing current laws to include coercive and controlling behaviour

### Summary

NSW laws need to be updated to address coercive control. This should begin with introducing a clear definition of domestic violence in NSW ADVO legislation, which could be modelled on legislation in Queensland and Victoria.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

### A clear definition of domestic abuse

#### Finding 4

**Changing current legislation to include coercive and controlling behaviour would improve the safety of victim survivors by making it clear that coercive control is domestic abuse.**

#### Recommendation 2

**That the NSW Government should propose amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to create a clear and accessible definition of domestic abuse, which includes coercive and controlling behaviour. This should be done as a priority, before criminalising coercive control.**

- 3.29 There was widespread support from participants in the Inquiry for a clear statutory definition of domestic abuse that includes coercive and controlling behaviour.<sup>86</sup>
- 3.30 As some pointed out, this issue was the subject of a joint inquiry between the Australian and NSW Law Reform Commissions. In 2010, the Commissions said NSW was 'notable' in omitting to define domestic abuse in the CDPV Act. They recommended that NSW legislate a definition of domestic abuse that refers to coercive control, including physical, economic, emotional and psychological abuse.<sup>87</sup>
- 3.31 Professor Heather Douglas told the Inquiry that a statutory definition could be used in health, education, child protection, policing, corrections and legal processes. She said that a single, clear definition used across all services would help to ensure 'agreement and broader understanding about the definition. It

<sup>86</sup> Associate Professor Kate Fitz-Gibbon, Director, Monash University Gender and Family Violence Prevention Centre, Transcript of evidence, 24 February 2021, pp 35-36; Submission 21, Professor Heather Douglas, p 5; Submission 114, St Vincent de Paul Society NSW, p 4; Submission 59, Good Shepherd Australia/New Zealand, p 27; Submission 76, Men and Family Centre, p 1; Submission 131, Women's Health NSW, p 3; Submission 2, Professor Patricia Easteal, p 9; Answers to questions on notice, De Saxe O'Neill Family Lawyers, p 1.

<sup>87</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response (ALRC Report 114; NSWLRC Report 128)*, [Chapter 5 – A Common Interpretative Framework – Definitions in Family Violence Legislation – Commission's views](#), October 2010, see [5.175]-[5.176] and recommendation 5-1, accessed on 4 June 2021. Referred to in Submission 35, Rape and Domestic Violence Services Australia, p 3; Professor Heather Douglas, Submission 21, p 5.

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would assist in campaigns around broader public education and in professional training.<sup>188</sup>

- 3.32 Similarly, Liz Snell from Women’s Legal Service NSW emphasised the value of having ‘a common language and understanding of domestic abuse .... across all our systems’ including ‘family law, care and protection, domestic violence, housing, victims support, immigration, income support, et cetera.’<sup>89</sup>

*The current apprehended domestic violence order regime*

- 3.33 NSW is the only state or territory that does not define domestic violence in its family and domestic violence legislation.<sup>90</sup> Instead, the CDPV Act is based on the concept of a ‘domestic violence offence’.<sup>91</sup>

- 3.34 Under the CDPV Act, a court can grant an ADVO if satisfied, on the balance of probabilities, that a person has reasonable grounds to fear that another person will commit a ‘domestic violence offence’ or engage in stalking and intimidating conduct.<sup>92</sup>

- 3.35 A ‘domestic violence offence’ is defined, by several cross-references in the Act, to mean:

- A list of offences under the *Crimes Act 1900*, if occurring in the context of a ‘domestic relationship’, including assault, murder, manslaughter, reckless or intentional wounding or grievous bodily harm, female genital mutilation, sexual assault, distributing intimate images without consent, and kidnapping.
- Another offence, if ‘intended to coerce or control’ a person, or cause them to be ‘intimidated or fearful’.<sup>93</sup>

- 3.36 A ‘domestic relationship’ includes:

- People who are or have been married, in a de facto partnership, or in an intimate personal relationship.
- People who live or have lived in the same household or residential facility.
- People who have a relationship involving dependence on paid or unpaid care.

<sup>88</sup> Submission 21, Professor Heather Douglas, p 5.

<sup>89</sup> Liz Snell, Law Reform and Policy Coordinator, Women’s Legal Service NSW, Transcript of evidence, 23 February 2021, p 42. See also: Submission 128, WAGEC, p 5.

<sup>90</sup> See: *Family Violence Protection Act 2008* (Vic), sections 5-7 (definition of ‘family violence’, ‘economic abuse’ and ‘emotional and psychological abuse’); *Domestic and Family Violence Protection Act 2012* (Qld), section 8 (definition of ‘domestic violence’); *Restraining Orders Act 1997* (WA), section 5A (definition of ‘family violence’); *Family Violence Act 2004* (Tas), sections 7-9 (definition of ‘family violence’, ‘economic abuse’ and ‘emotional abuse or intimidation’); *Intervention Orders (Prevention of Abuse) Act 2009* (SA), section 8 (definition of ‘abuse’ including ‘domestic abuse’); *Domestic and Family Violence Act 2007* (NT), sections 5-8 (definition of ‘domestic violence’, ‘intimidation’, ‘stalking’ and ‘economic abuse’); *Family Violence Act 2016* (ACT), section 8 (definition of ‘family violence’).

<sup>91</sup> Submission 140, Women’s Legal Service NSW, pp 13-14.

<sup>92</sup> CDPV Act, section 16(1), and see definitions of ‘stalking’ and ‘intimidation’ in sections 7 and 8.

<sup>93</sup> CDPV Act, sections 4, 11.

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- Relatives.
- For Aboriginal and Torres Strait Islander people, extended family and kinship relationships.<sup>94</sup>

- 3.37 The Committee is concerned by the confusing structure of this part of the CDPV Act. It would be very difficult for an ordinary person to understand what a 'domestic violence offence' means, and in what circumstances an ADVO can be made. Inquiry participants, including legal academics, described the Act as 'incredibly complex', 'convoluted', 'inaccessible', and 'difficult to read'.<sup>95</sup>
- 3.38 The Inquiry also heard that the limits of the legislation mean that victims seeking ADVOs are turned away by police and courts 'because they are unable to provide or do not have examples of physical [abuse] or clear intimidation'.<sup>96</sup>

**Case study 12: Technology facilitated abuse<sup>97</sup>**

Anna has been separated from her ex-boyfriend for three years, but he keeps contacting her via telephone and social media. She has blocked his phone number and blocked him on social media, but he keeps creating new accounts and using different names to contact her.

When she reported this to police, they told her to 'just block him'. Because he hasn't made any explicit threats, the police say they cannot do anything about it.

While her ex-partner keeps trying to contact her, she's afraid he may appear suddenly out of nowhere and do something to harm her. As a result, she lives in fear and constantly watches her surroundings when she leaves the house.

**Case study 13: Financial abuse<sup>98</sup>**

Georgia's partner controlled all aspects of her life. Recently, she left him and bought a property in her own name with inheritance money. Soon after, Georgia's partner manipulated her to let him move in by making allegations of unfit parenting, threatening to have the Department of Communities and Justice remove the kids, threatening that she would never see the kids again, and that he would commit suicide. Through intimidation and emotional manipulation, he forced Georgia to

<sup>94</sup> CDPV Act, section 5.

<sup>95</sup> Natalie Gouda, Legal and Policy Officer, Rape and Domestic Violence Services Australia, Transcript of evidence, 23 February 2021, p 16; Professor Heather Douglas, Professor of Law, Melbourne Law School, Transcript of evidence, 24 February 2021, p 39; Submission 21, Professor Heather Douglas, p 15; Submission 35, Rape and Domestic Violence Services Australia, p 2.

<sup>96</sup> Tori Mines, Transcript of evidence, 22 February 2021, p 40. Also see: Hannah Robinson, Transcript of evidence, 22 February 2021, p 41; Kelsie Hedge, Manager, St Vincent de Paul Society, Transcript of evidence, 24 February 2021, p 21; Dr Anita Hutchinson, Transcript of evidence, 29 March 2021, p 16; Sally Grimsley-Ballard, General Manager, Domestic Violence Service Management, Transcript of evidence, 24 February 2021, p 53; Submission 130, Hume Riverina Community Legal Service, p 8; Submission 80, Lisa Harnum Foundation, p 2; Submission 140, Women's Legal Service NSW, pp 15-16; Submission 122, Western NSW Community Legal Centre, pp 14-17; Submission 32, Debra Gillick, p 5; Submission 66, Australian Psychological Society, p 3; Submission 14, Name suppressed, p 3; Submission 93, Name suppressed, p 2.

<sup>97</sup> Submission 103, Multicultural Disability Advocacy Association of NSW, p 6.

<sup>98</sup> Submission 122, Western NSW Community Legal Centre, p 15.

leave the property. Georgia and her three kids are now homeless. Police told Georgia there is no immediate threat and this is a family/civil matter.

**Case study 14: Non-physical abuse<sup>99</sup>**

Mary's husband has engaged in a pattern of non-physical abuse towards her and their children over many years.

His behaviour involves swearing, insults, derogatory put downs, threatening to physically assault Mary or the children, spitting on her, forming his fingers into the shape of a gun and banging on the windows while she and her children barricade themselves in the car.

Mary has contacted police several times, but they haven't applied for an ADVO or made a provisional order, contacted her after call outs, or returned her calls when she tried to reach them.

- 3.39 As the eSafety Commissioner told the Inquiry, when it comes to obtaining ADVOs, 'too often, when women are being gaslit, surveilled or literally terrorised and trapped by technology, it really is not recognised as a significant harm.'<sup>100</sup>
- 3.40 At best, the current ADVO regime is unclear, and at worst, it is failing to provide victims of coercive control with adequate protection. The fact that the legislation is offence-based shows the legal system's incident-focused approach to domestic violence. The Inquiry heard that this narrow approach endangers victims' lives.
- 3.41 When victims are unable to obtain ADVOs for coercive and controlling behaviours, 'an opportunity to intervene early, before the point of crisis, and before the violence escalates, is lost.'<sup>101</sup>
- 3.42 Further, as the Australasian Centre for Human Rights and Health submitted:
- The lack of [an] accurate, clear and uniform legal definition of family domestic violence, and lack of effective punishment, is helping the perpetrator to use the justice system to further abuse their victims.<sup>102</sup>

*The need to reform our ADVO legislation*

- 3.43 Many inquiry participants supported broadening the availability of ADVOs under the CDPV Act. Some saw this as an alternative to criminalising coercive control,<sup>103</sup> while others advocated for ADVO reform in addition to criminalisation, providing another option for victims.<sup>104</sup>

<sup>99</sup> Submission 139, Legal Aid NSW, p 8.

<sup>100</sup> Julie Inman-Grant, eSafety Commissioner, Transcript of evidence, 30 March 2021, p 6. See also: Submission 78, Enough is Enough Anti-Violence Movement, p 2.

<sup>101</sup> Submission 59, Good Shepherd Australia/New Zealand, p 16.

<sup>102</sup> Submission 4, Australasian Centre for Human Rights and Health, p 4.

<sup>103</sup> Chief Inspector Sean McDermott, Transcript of evidence, 22 February 2021, p 17; Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, Transcript of evidence, 29 March 2021, p 8; Answers to questions on notice, Professor Julia Tolmie, p 1.

<sup>104</sup> Marianne Carey, Transcript of evidence, 22 February 2021, p 25; Submission 2, Professor Patricia Easteal, p 9.

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- 3.44 Many suggested that ADVO legislation should be expanded as a priority, while consultation is ongoing in relation to introducing a criminal offence.<sup>105</sup> Even participants with reservations about introducing an offence described this as a ‘good first move’, and a step that could be taken ‘fairly swiftly’.<sup>106</sup> The Committee supports this approach, and recommends that the NSW Government should amend the CDPV Act as a matter of urgency.
- 3.45 Another advantage of reforming the civil regime first is that ADVO applications have a lower standard of proof. To obtain an ADVO, applicants need to show that it is necessary on the balance of probabilities – not beyond reasonable doubt. As NSW Police told the Inquiry, there is also a ‘reduced need for particulars’, victims can provide a typed statement of evidence, and there is no ‘wide ranging cross-examination’ as compared to a criminal trial. Anecdotally, the consent rate for ADVOs is about 80 per cent.<sup>107</sup>
- 3.46 Amending the definition of domestic violence to include coercive control, together with the measures discussed in chapter 4 will ensure that when a criminal offence is introduced, the legal system is prepared to implement it.
- 3.47 After an offence of coercive control is enacted, clearer and broader ADVO laws will be another option for victims seeking protection from domestic violence. As many participants emphasised, some victims do not want their perpetrator to be jailed, and may even want to continue the relationship – they just want the abuse to stop.<sup>108</sup>

*How should the ADVO regime be changed?*

- 3.48 Inserting a definition of domestic violence in the CDPV Act would mean that coercive and controlling behaviours are clear grounds to obtain an ADVO.<sup>109</sup>
- 3.49 Many stakeholders referred to the ADVO regimes in Queensland and Victoria as models for how the CDPV Act could be reformed. The Centre for Women’s Economic Safety described the Victorian Act as a ‘national benchmark’.<sup>110</sup>

<sup>105</sup> Delia Donovan, Chief Executive Officer, Domestic Violence NSW, Transcript of evidence, 22 February 2021, pp 2, 4; Submission 132, Domestic Violence NSW, p 48; Liz Snell, Transcript of evidence, 23 February 2021, p 42.

<sup>106</sup> Kathryn Grimshaw, Solicitor, Shoalcoast Community Legal Centre, Transcript of evidence, 22 February 2021, p 31; Natalie Gouda, Transcript of evidence, 23 February 2021, p 18; Liz Snell, Transcript of evidence, 23 February 2021, p 44; Laura Vidal, Transcript of evidence, 24 February 2021, pp 17-18.

<sup>107</sup> Chief Inspector Sean McDermott, Transcript of evidence, 22 February 2021, pp 19-20.

<sup>108</sup> Sarah May, Restorative Justice DFV, Transcript of evidence, 22 February 2021, p 36; Yvette Vignando, Chief Executive Officer, South West Sydney Legal Centre, Transcript of evidence, 22 February 2021, p 36.

<sup>109</sup> Chief Inspector Sean McDermott, Transcript of evidence, 22 February 2021, pp 17, 19-20; Natalie Gouda, Transcript of evidence, 23 February 2021, pp 16, 18, 21; Marianne Carey, Transcript of evidence, 22 February 2021, p 25; Submission 89, Office of the Director of Public Prosecutions (NSW), p 14; Submission 119, Monash Gender and Family Violence Prevention Centre, pp 6-7, 15; Submission 21, Professor Heather Douglas, p 15; Submission 35, Rape and Domestic Violence Services Australia, p 2; Submission 53, Feminist Legal Clinic, p 3; Submission 59, Good Shepherd Australian/New Zealand, pp 7, 9, 13, 26-28; Submission 114, St Vincent de Paul Society NSW, pp 2, 4; Submission 142, Wirringa Baiya Aboriginal Women’s Legal Centre, p 8; Submission 129, Australian Association of Social Workers, p 5.

<sup>110</sup> Natalie Gouda, Transcript of evidence, 23 February 2021, p 19; Submission 92, Centre for Women’s Economic Safety, p 3; Dr Heather Nancarrow, Chief Executive Officer, ANROWS, Transcript of evidence, 22 February 2021, pp 5-6.

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- 3.50 These schemes base obtaining interim and final ADVOs on a central definition of domestic violence or family violence (depending on the Act) which includes physical and non-physical abuse.
- 3.51 For example, the Victorian Act provides that a court can make a final ADVO if satisfied that the respondent has committed family violence against an ‘affected family member’ and is likely to continue to do so or do so again.<sup>111</sup> Even more broadly, interim ADVOs can be made if the court is satisfied that it is necessary ‘to ensure the safety’ or ‘preserve any property’ of an affected family member.<sup>112</sup>
- 3.52 Similarly, the Queensland Act provides that a court can make an ADVO if satisfied that the respondent has committed domestic violence against the ‘aggrieved’, and an ADVO is ‘necessary or desirable to protect [them] from domestic violence’.<sup>113</sup>
- 3.53 In both Acts, domestic or family violence is defined to include behaviour that is:
- physically or sexually abusive,
  - emotionally or psychologically abusive,
  - economically abusive,
  - threatening or coercive, or
  - in any other way controls or dominates a person, and causes them to fear for their or someone else’s safety.<sup>114</sup>
- 3.54 As Rape and Domestic Violence Services Australia told the Inquiry, many jurisdictions not only define domestic violence to include non-physical types of abuse, and base ADVOs on that definition, but also give examples of that abuse, such as:<sup>115</sup>
- Stopping a person from visiting or having contact with family or friends.<sup>116</sup>
  - Forcing a person to claim social security payments.<sup>117</sup>
  - Stopping a person from engaging in cultural or spiritual practices.<sup>118</sup>

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<sup>111</sup> *Family Violence Protection Act 2008* (Vic), section 74(1).

<sup>112</sup> *Family Violence Protection Act 2008* (Vic), section 53(1).

<sup>113</sup> *Domestic and Family Violence Protection Act 2012* (Qld), section 37(1).

<sup>114</sup> *Domestic and Family Violence Protection Act 2012* (Qld), section 8(1); *Family Violence Protection Act 2008* (Vic), section 5(1).

<sup>115</sup> Submission 35, Rape and Domestic Violence Services Australia, pp 4-6; Submission 132, Domestic Violence NSW, p 49.

<sup>116</sup> *Family Violence Act 2016* (ACT), section 8(3).

<sup>117</sup> *Family Violence Act 2016* (ACT), section 8(3); *Intervention Orders (Prevention of Abuse) Act 2009* (SA), section 8(5)(e)(ii).

<sup>118</sup> *Family Violence Act 2016* (ACT), section 8(3).

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- Unreasonably stopping a person from taking part in decisions about household expenditure or the disposition of joint property.<sup>119</sup>
- Using a GPS [global positioning system] device to track a person's movements.<sup>120</sup>
- Preventing a person from seeking or keeping employment.<sup>121</sup>
- Threatening to withhold a person's medication.<sup>122</sup>
- Threatening to commit suicide or self-harm to torment, intimidate or frighten a person.<sup>123</sup>
- Using coercion, threats, physical abuse or emotional or psychological abuse to cause someone to get married, or to demand or receive dowry.<sup>124</sup>
- Threatening to injure an animal, whether or not it belongs to another person, to control, dominate or coerce that person.<sup>125</sup>

3.55 The Victorian Act also provides that 'behaviour may constitute family violence even if the behaviour would not constitute a criminal offence'.<sup>126</sup> Until a coercive control offence is introduced in NSW, the Committee recommends that a similar provision should be included in the CDPV Act, so that victims of coercive control can seek protection via the ADVO regime.

*Opposition to amending the ADVO scheme*

- 3.56 Some stakeholders told the Inquiry that the grounds for obtaining an ADVO in NSW are sufficiently broad.
- 3.57 The Law Society of NSW argued that it is unnecessary to amend ADVO legislation, given the broad criteria for both court and police-issued ADVOS, and that ADVO conditions can be tailored to deal with concerns around coercive and controlling behaviour.<sup>127</sup>
- 3.58 Legal Aid NSW noted that the objects of the CDPV Act recognise that 'domestic violence extends beyond physical violence and may involve exploitation of power imbalances and patterns of abuse over many years'. However, Legal Aid

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<sup>119</sup> *Domestic and Family Violence Act 2007* (NT), section 8(c).

<sup>120</sup> *Domestic and Family Violence Act 2012* (Qld), section 8(5).

<sup>121</sup> *Intervention Orders (Prevention of Abuse) Act 2009* (SA), section 8(5)(d).

<sup>122</sup> *Family Violence Protection Act 2008* (Vic), section 7.

<sup>123</sup> *Domestic and Family Violence Act 2012* (Qld), section 8(2).

<sup>124</sup> *Family Violence Protection Act 2008* (Vic), section 5(1).

<sup>125</sup> *Family Violence Protection Act 2008* (Vic), section 5(2)(e); *Domestic and Family Violence Act 2012* (Qld), section 8(2)(g); *Family Violence Act 2016* (ACT), section 8(2)(c); *Domestic and Family Violence Act 2007* (NT), section 8(b)(ii).

<sup>126</sup> *Family Violence Protection Act 2008* (Vic), section 5(3).

<sup>127</sup> Harriet Ketley, member of the Criminal Law Committee, Law Society of NSW, Transcript of evidence, 22 February 2021, pp 14-15; Submission 18, Law Society of NSW, p 5. See also: Submission 97, Public Defenders (NSW), p 7; Submission 148, Aboriginal Legal Service NSW/ACT, pp 2, 4; Submission 10, Name suppressed, p 1.

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conceded that the way the Act is applied in practice does not reflect this principle.<sup>128</sup>

- 3.59 The Inquiry heard from Lou’s Place that, although a pattern of coercive control may occasionally be enough to obtain an ADVO, victims’ experience is that this rarely happens in practice.<sup>129</sup>
- 3.60 Inquiry participants were also concerned about the risk of over-criminalisation that could come with broadening ADVOs, particularly for Aboriginal and Torres Strait Islander communities, who are already overrepresented in the criminal justice system.<sup>130</sup>
- 3.61 While acknowledging these concerns, the Committee considers that expanding and clarifying the grounds for obtaining an ADVO will:
- allow for more consistency across all courts dealing with domestic violence matters in NSW, as well as interstate courts,
  - make the civil regime less incident-based, and
  - allow victims to get protection from coercive and controlling behaviours, even before an offence is introduced.

*Other possible reforms to ADVOs*

- 3.62 Some participants also suggested amending other sections of the CDPV Act to acknowledge the seriousness of coercive control.
- 3.63 Section 17 provides that, in deciding whether or not to make an ADVO, the court must consider the safety and protection of the person in need of protection (PINOP) and any child affected by the defendant’s alleged conduct. In doing so, the court must consider matters such as the accommodation needs of the parties, and the hardship that may be caused by making or not making the order.
- 3.64 Weave Youth and Community Services submitted that ‘conduct amounting to coercive control’ should be added as a matter that courts must consider when deciding whether to make an ADVO, and what conditions to impose. This could go some way to improving awareness of coercive control in court and police practices, whereby they are ‘required to check with victims whether they are experiencing ... coercive strategies’.<sup>131</sup>
- 3.65 Anglicare Sydney also told the Inquiry that the terms of ADVOs are often ‘not established in consultation with the woman but provided by the police and the court system with little flexibility as to what can be considered a breach.’<sup>132</sup> This

<sup>128</sup> Ann-Marie Lumsden, Director, Criminal Law Division, Legal Aid NSW, Transcript of evidence, 29 March 2021, pp 6-7; Submission 139, Legal Aid NSW, p 8.

<sup>129</sup> Submission 74, Lou’s Place, p 6.

<sup>130</sup> Ann-Marie Lumsden, Transcript of evidence, 29 March 2021, p 5.

<sup>131</sup> Submission 82, Weave Youth and Community Services, p 4.

<sup>132</sup> Submission 52, Anglicare Sydney, p 15.

could be remedied by amending section 17 to require that the PINOP's wishes are one of the 'matters' the court must consider.

- 3.66 Section 36 sets out mandatory conditions that apply to every ADVO, including prohibitions on assaulting, threatening, stalking, harassing, intimidating, or damaging the property of the PINOP.
- 3.67 In addition, section 35(1) provides that a court can impose any further prohibitions or restrictions on the defendant's behaviour as necessary or desirable, particularly to protect the PINOP and any children. This may include restricting the defendant from approaching the PINOP, restricting access to the PINOP's home or work, prohibiting the defendant from possessing firearms, and prohibiting behaviour that might 'affect' the PINOP.
- 3.68 The eSafety Commissioner recommended prohibiting technology-facilitated abuse as a standard condition for ADVOs. Such a condition could be that the defendant '[m]ust not send abusive messages via phone, email, social media or other electronic communication, or share, or threaten to share, intimate images or videos of the person in need of protection.'<sup>133</sup>
- 3.69 While courts' discretion to craft conditions for ADVOs is already quite broad, the Committee agrees that adding conditions focused on specific coercive and controlling behaviours would better protect victims.

### Penalties for breaching apprehended violence orders

#### Summary

Breaches of ADVOs attract minimal penalties, and are often not acted on by police. To help address this, the Committee recommends increasing the maximum penalty for breaching an ADVO.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

#### Recommendation 3

**That the NSW Government should seek to increase the maximum penalty for contravening an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* to better protect victims.**

- 3.70 Penalties for domestic violence offences should aim to protect victims' safety. This includes both specific and general deterrence of abusive behaviours, and ensuring that penalties reflect the seriousness of the offence. Failing to take ADVO breaches seriously can damage victims' trust in the police, and make them less likely to report breaches or abuse in the future.
- 3.71 Inquiry participants pointed to low penalties for breaching ADVOs, offering insufficient protection for victims. The maximum penalty for contravening an

<sup>133</sup> Julie Inman-Grant, Transcript of evidence, 30 March 2021, p 9; Submission 73, eSafety Commissioner, p 14. Also see: Submission 124, Victims of Crime Assistance League (Hunter) NSW (VOCAL), p 2; Submission 2, Professor Patricia Easta, pp 3, 9.

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ADVO under the CDPV Act is two years imprisonment and/or 50 penalty units (a \$5,500 fine).<sup>134</sup>

- 3.72 The Inquiry heard that ADVO breaches are often seen as ‘minor offences and not recognised as part of a pattern of intimidation’. This means there is often ‘no consequence for breaching [them] unless physical violence has been involved.’<sup>135</sup>
- 3.73 The Illawarra Women’s Health Centre told the Inquiry that breaches of ADVOs are ‘rarely enforced and even if successfully prosecuted lead to low convictions, and then to minimal sentences.’ For domestic violence offences in general, they told the Inquiry that ‘[a]busers are very rarely charged, prosecuted or convicted’, and when a conviction is secured, ‘the sentencing is usually minimal, often with suspended sentences and community service orders’, which do not protect the victim.<sup>136</sup>
- 3.74 Professor Marilyn McMahon referred to a BOCSAR study in 2016 which estimated that 20 per cent of final ADVOs in NSW were breached, and that in nearly 80 per cent of those breaches, the most serious penalty was a bond, fine, or community service order.<sup>137</sup>
- 3.75 The NSW Police told the Inquiry that ‘most people do not go to jail for domestic violence offences. That is just a fact.’<sup>138</sup> The Committee was especially concerned to hear, from Dr Karen Williams, that some women consider the consequences for breaking ADVOs to be so minor that it is safer for them to stay in an abusive relationship than to leave and get an ADVO.<sup>139</sup>
- 3.76 The Hume Riverina Community Legal Service told the Inquiry that victims are often made to ‘feel foolish or like they are being a burden’ when they report breaches of ADVOs. When police are dismissive of ‘clear breaches’, victim survivors become more ‘reluctant to report to the police the full extent of the family violence and coercive control’ they experience.<sup>140</sup>
- 3.77 As a result, some inquiry participants advocated for increasing penalties for persistent breaches of ADVOs, to make clear the seriousness of that offence.<sup>141</sup>
- 3.78 The Committee notes that the police training recommended in chapter 4 will also assist police to recognise and respond to coercive control, and provide trauma-informed support to victims of domestic abuse.

<sup>134</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW), section 14(1).

<sup>135</sup> Submission 52, Anglicare Sydney, pp 15-16. See also: Submission 32, Debra Gillick, p 5; Submission 94, Name suppressed, p 13.

<sup>136</sup> Submission 149, Illawarra Women’s Health Centre, pp 20-21. Also see Submission 52, Anglicare Sydney, p 10.

<sup>137</sup> Professor Marilyn McMahon, Transcript of evidence, 24 February 2021, p 44.

<sup>138</sup> Chief Inspector Sean McDermott, Transcript of evidence, 22 February 2021, p 20. Also see: Sally Stevenson, General Manager, Illawarra Women’s Health Centre, Transcript of evidence, 29 March 2021, p 28.

<sup>139</sup> Dr Karen Williams, Transcript of evidence, 23 February 2021, p 28. See also: Submission 153, Name suppressed, p 5.

<sup>140</sup> Submission 130, Hume Riverina Community Legal Service, pp 8-9. See also: Submission 78, Enough is Enough Anti-Violence Movement, p 2.

<sup>141</sup> Domestic Violence NSW, pp 62, 114, 124.

## The mental element for stalking and intimidation

### Summary

Changing the mental element for the 'stalking and intimidation' offence would make it easier to prosecute. However, this should not be done before reviewing BOCSAR's findings about how the offence is used now. For a specific offence of coercive control to be introduced, the government will need to review the stalking and intimidation offence to minimise any inappropriate overlap.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

### Recommendation 4

**That the NSW Government should propose amendments to section 13(3) of the *Crimes (Domestic and Personal Violence) Act 2007* to provide that a person can be liable for stalking and intimidation if the person intends to cause, or is reckless as to whether their conduct causes, the other person to suffer physical or mental harm.**

- 3.79 The Inquiry heard support from some participants for broadening the existing stalk and intimidate offence in the CDPV Act.<sup>142</sup>
- 3.80 Professor Heather Douglas told the Inquiry that, as section 13(1) requires 'specific intent' to cause fear of physical or mental harm, it is not enough to prove, for example, that the accused intended to upset a victim:
- ... while the behaviours of stalking and intimidation are defined quite widely and cover many forms of non-physical behaviour often associated with domestic violence (like sending numerous text messages or 'any conduct that causes a reasonable apprehension of injury' or watching or following a person), the intent requirements make this offence difficult to prove.<sup>143</sup>
- 3.81 Some witnesses supported amending the mental element in section 13 to remove specific intent. This would mean that an accused could be liable if they are reckless about the effect of their conduct, or if a 'reasonable person would consider the likely consequence' of the conduct to cause physical or mental harm.<sup>144</sup>
- 3.82 However, the Committee notes that BOCSAR will release findings later this year on how police are using the stalk and intimidate offence. The NSW Government should carefully consider these findings before proposing amendments to section 13.
- 3.83 Some inquiry participants noted that there may be some overlap between section 13 of the CDPV Act and any new coercive control offence.

<sup>142</sup> Nemat Kharboutli, Transcript of evidence, 23 February 2021, pp 34-35.

<sup>143</sup> Submission 21, Professor Heather Douglas, p 4. See also: Submission 75, Young Liberal Movement of Australia (NSW Division), p 4.

<sup>144</sup> Yvette Vignando, Transcript of evidence, 22 February 2021, pp 38-39; Submission 77, South West Sydney Legal Centre, p 10.

Do current laws effectively address coercive and controlling behaviour?

- 3.84 The Committee considers that section 13 should be retained. If a coercive control offence is introduced, and limited to partners and ex-partners, section 13 would remain useful as it applies to a wider class of relationships.
- 3.85 However, if a coercive control offence is implemented, the definition and scope of the stalking and intimidation offence should be reviewed to ensure that it does not inappropriately overlap with the new offence.<sup>145</sup>

#### **Case study 15: Monitoring ex-partner not recognised as stalking and intimidation<sup>146</sup>**

Sarah is a mother of three children and has her own home after divorcing her ex-husband. There was physical, emotional and financial abuse in the relationship with her former husband. She received an ADVO, but it expired after two years. Sarah's ex-husband came to her house, which she thought was safe and unknown to him. He knocked on the door and asked his child to let him in, which they did. He was asked to leave, and he complied. Sarah had photographic evidence he was monitoring the house and drove by regularly over a couple of weeks. She reported this to the police, but they told her that he was just missing his children and he didn't pose a risk.

#### **Case study 16: Monitoring ex-partner not recognised as stalking and intimidation<sup>147</sup>**

One client told the Victims of Crime Assistance League:

*'I did not tell him where I was moving to once I ended the relationship. Somehow he found out where I was living and he began driving past my house, revving his car, slow down or repeatedly press the car horn. This would occur day or night and I felt it was his way of saying "I know where you live now". His behaviours continued and I started to feel unsafe and worried – especially at night. I was aware his behaviour was unpredictable and this scared me. I went to the police and they advised me to get cameras at the home. I did this. The next time he drove past I took the footage to the police. They said that despite me knowing it was his car I could not prove he was the person driving. Another time I reported the same behaviours and was told "maybe he needs to drive past your house to get to work." I didn't report again.'*

### **Aggravating factors in sentencing**

#### **Summary**

While coercive control is a significant part of victims' experiences of domestic abuse, it is often not considered in sentencing decisions. Sentencing laws should be changed to include specific aggravating factors for domestic violence offences.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

<sup>145</sup> Submission 139, Legal Aid, p 10.

<sup>146</sup> Submission 149, Illawarra Women's Health Centre, p 25.

<sup>147</sup> Submission 124, VOCAL, p 12.

## Recommendation 5

**That the NSW Government should amend section 21A of the *Crimes (Sentencing Procedure) Act 1995* to include, as an aggravating factor in sentencing, that the offender was in an intimate personal relationship with the victim, and the offender previously engaged in coercive and controlling behaviour towards the victim.**

- 3.86 While coercive control is sometimes taken into account as an aggravating factor in sentencing for domestic violence offences, this is not consistently applied. Legislating aggravating factors that are specific to domestic violence offences could provide more consistent sentencing decisions, and help protect victims of domestic abuse.
- 3.87 Section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSP Act) sets out mitigating and aggravating factors that a court must take into account when determining the appropriate sentence for an offence. This list is not exhaustive, as the section also requires the court to consider ‘any other objective or subjective factor that affects the relative seriousness of the offence.’
- 3.88 Some of the provisions in section 21A relate to specific offences – such as prescribed driving offences and child sex offences. However, there is no reference to domestic violence offences, or to coercive or controlling behaviour as an aggravating factor.<sup>148</sup>
- 3.89 Some of the aggravating factors in section 21A(2) could apply to a domestically violent relationship – such as offences ‘committed in the home of the victim’, ‘committed in the presence of a child’, involving abuse of a ‘position of trust or authority’, or involving threats of violence.
- 3.90 The Court of Criminal Appeal has recognised abuse and control in a domestic relationship as an aggravating factor on a number of occasions, despite it not being included in section 21A.<sup>149</sup>
- 3.91 Inquiry participants suggested that section 21A should address the impact of domestic abuse on victims, particularly the seriousness of coercive control. Like changes to the ADVO regime, this could be implemented before a specific coercive control offence is introduced.
- 3.92 The NSW ODPP told the Inquiry that ‘a specific aggravating factor would allow the Courts to also consider the varying degrees of the [offender’s] behaviour when assessing the objective seriousness of an offence and when imposing an appropriate sentence with both general and specific deterrence in mind.’<sup>150</sup>

<sup>148</sup> Submission 77, South West Sydney Legal Centre, p 11.

<sup>149</sup> Submission 139, Legal Aid NSW, pp 13-14, citing *R v Hamid* [2006] NSWCCA 302 at [74]-[77]; *R v Ball* [2013] NSWCCA 126 at [98]; *Jibrán v R* [2020] NSWCCA 86 at [185]. Also see NSW Sentencing Council, [Report: Sentencing for domestic violence offences](#), February 2016, p 15, accessed 27 May 2021, citing *R v Burton* [2008] NSWCCA 128 at [95].

<sup>150</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 17-18.

- 3.93 The Inquiry heard a range of options for aggravating factors that could be added to the CSP Act, including:
- Where the offence involved domestic abuse. This means that any offence may be aggravated if it involves domestic abuse, similar to legislation recently introduced in Northern Ireland. This could apply whether or not the offence is directed at the victim – for example, if the accused vandalises the victim’s parents’ car.<sup>151</sup>
  - Where the offender is or was in a domestic relationship with the victim. This could be limited to certain offences such as stalking and intimidation or assault, similar to legislation in South Australia.<sup>152</sup>
  - Where an offender has prior convictions for domestic violence offences.<sup>153</sup>
  - Where an offender has previously engaged in coercive and controlling behaviour towards the victim.<sup>154</sup>
  - When the offence occurred in a domestically violent relationship, defined to include coercive control.<sup>155</sup>
  - Where the offender prevented the victim from reporting domestic abuse, or seeking help.<sup>156</sup>
- 3.94 The Committee acknowledges that some inquiry participants opposed changes to aggravating factors. Women’s Safety NSW told the Inquiry that additional aggravating factors relating to coercive control would be unnecessary if a coercive control offence is introduced, as this would have its own penalty.<sup>157</sup>
- 3.95 Some legal stakeholders submitted that the current sentencing framework already captures aggravating factors relating to coercive control. Further, NSW Young Lawyers was concerned that adding aggravating factors could create undue focus on whether characteristics of a domestic violence offence are ‘double counted’.<sup>158</sup>

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<sup>151</sup> Submission 22, Office of the Justice Minister, Department of Justice, Northern Ireland, pp 5-6; Dr Veronica Holland, Head of the Violence Against the Person Branch, Department of Justice of Northern Ireland, Transcript of evidence, 30 March 2021, pp 40-42.

<sup>152</sup> Submission 124, VOCAL, pp 11-13; Submission 96, ANROWS, see attached document – ANROWS, *Policy brief: defining and responding to coercive control*, January 2021, p 3. Also see *Criminal Law Consolidation Act 1935* (SA), section 5AA.

<sup>153</sup> Submission 35, Rape and Domestic Violence Services Australia, p 18; Submission 89, Office of the Director of Public Prosecutions (NSW), pp 17-18.

<sup>154</sup> Submission 50, Ethnic Communities’ Council of NSW, p 2; Submission 77, South West Sydney Legal Centre, pp 11-12; Submission 75, Young Liberal Movement of Australia (NSW Division), p 6; Yvette Vignando, Transcript of evidence, 22 February 2021, p 39.

<sup>155</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 17-18.

<sup>156</sup> Sentencing Council of England and Wales, [Overarching principles: domestic abuse](#), 24 May 2018, accessed 4 June 2021.

<sup>157</sup> Submission 18, Law Society of NSW, p 6; Submission 133, Women’s Safety NSW, p141.

<sup>158</sup> Submission 139, Legal Aid NSW, pp 13-14; Submission 18, Law Society of NSW, pp3, 6; Submission 97, Public Defenders (NSW), pp 5-6; Submission 112, NSW Young Lawyers, pp 3, 10.

- 3.96 The Committee acknowledges these concerns. However, given that some courts already treat domestic relationships and/or coercive and controlling behaviour as aggravating factors in sentencing, the Committee believes that including these in section 21A would lead to more consistency. This will address concerns about light sentencing for domestic violence offenders, and better protect victims.
- 3.97 The NSW Government should consider which, if any, of the suggestions above would be most appropriate to add to the list of aggravating factors in the CSP Act.

## Working towards national consistency

### Summary

A national definition of domestic abuse would resolve inconsistent policy approaches in different states and territories. This would reduce confusion and barriers to accessing legal protection for victims, particularly those living in cross-border communities.

This section is relevant to questions 1 and 4 in the NSW Government's discussion paper.

### Recommendation 6

**That the NSW Government should advocate through the National Federation Reform Council for a nationally consistent definition of domestic abuse that includes coercive and controlling behaviour.**

#### A national definition of domestic abuse

- 3.98 Many stakeholders emphasised the need for a uniform national definition of domestic abuse.<sup>159</sup>
- 3.99 For example, the Salvation Army submitted that a nationally consistent approach will improve community understanding of all forms of domestic abuse and allow a consistent response to victims and perpetrators:
- .... a nationally consistent approach to family and domestic violence will help avoid ongoing confusion within the community as to what 'defines' both physical and non-physical forms of violence; facilitates consistent responses to perpetrator accountability (eg. compliance with orders); and facilitates referral pathways and trauma-informed support that ensures that victim-survivors are not disadvantaged due to locality or situation.<sup>160</sup>
- 3.100 The Committee notes that a federal parliamentary inquiry recently recommended that the Australian Government work with state and territory

<sup>159</sup> Professor Julia Tolmie, Transcript of evidence, 24 February 2021, p 34; Submission 21, Professor Heather Douglas, p 5; Associate Professor Kate Fitz-Gibbon, Transcript of evidence, 24 February 2021, p 30; Amanda Cohn, Chair, Border Domestic Violence Network, Transcript of evidence, 29 March 2021, p 25; Jamal Hakim, Managing Director, Marie Stopes Australia, Transcript of evidence, 30 March 2021, p 12; Submission 46, The Salvation Army Australia, pp 4-5; Submission 124, VOCAL, p 14; Submission 4, Australasian Centre for Human Rights and Health, p 4; Submission 21, Professor Heather Douglas, pp 5, 15; Submission 31, De Saxe O'Neill Family Lawyers, p 3; Submission 59, Good Shepherd Australia/New Zealand, p 6; Submission 92, Centre for Women's Economic Safety, p 5; Submission 96, ANROWS, p 1; Submission 128, WAGEC, p 9; Submission 68, Insight Exchange (Domestic Violence Service Management), p 2.

<sup>160</sup> Submission 46, The Salvation Army Australia, p 5.

governments to adopt a uniform definition of family, domestic and sexual violence, which:

- Reflects a common understanding of the features and dynamics of such violence and the breadth of relationships in which it can occur.
- Covers a broad range of violence, including coercive control, reproductive coercion, economic abuse, and complex forms of violence, like forced marriage, female genital mutilation and dowry abuse.
- Recognises the diversity of victim survivors and perpetrators and the vulnerability of certain groups.<sup>161</sup>

- 3.101 The Committee wants to emphasise the importance of NSW engaging in this consultation process. The NSW Government should prioritise engaging with neighbouring states, to resolve inconsistent legislative and policy responses to domestic abuse.
- 3.102 The Inquiry heard that the lack of a consistent approach between NSW and neighbouring states causes confusion, and can jeopardise victims' ability to seek protection from domestic abuse in cross-border communities.
- 3.103 As the NSW and Australian Law Reform Commissions stated in 2010, 'it is unacceptable that victims suffering similar experiences of abuse in different jurisdictions may have varying chances of obtaining a protection order based on the legislative threshold for the granting of orders in their jurisdiction.'<sup>162</sup>
- 3.104 Historically, ADVOs could not be enforced across state and territory borders. The National Domestic Violence Order Scheme now requires ADVOs made in an Australian state or territory to be automatically recognised and enforced across Australia. However, cross-border regions still have issues stemming from the 'complexity of different jurisdictions' service funding models, referral pathways and legislation', particularly when the victim and perpetrator live in different states.<sup>163</sup>
- 3.105 The Hume Riverina Community Legal Service told the Inquiry about the difficulties faced by victims who live in border communities:

One significant issue that faces victim-survivors in border communities such as Albury-Wodonga is the substantial differences in legislation and processes between the States. For example, there are stark differences between the legislation in relation to protection orders in NSW and in Victoria, including the definition of family violence, the way applications are usually applied for, being mostly by the

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<sup>161</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, [Inquiry into family, domestic and sexual violence](#), March 2021, see recommendation 1.

<sup>162</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response (ALRC Report 114; NSWLRC Report 128)*, '[Chapter 7 – Other Aspects of a Common Interpretative Framework – Grounds of Obtaining a Protection Order](#)', October 2010, see [7.116]. Cited in Submission 35, Rape and Domestic Violence Services Australia, p 8.

<sup>163</sup> Submission 125, Border Domestic Violence Network, pp 1-2.

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Police in NSW and by victim-survivors themselves in Victoria, as well as different court processes.<sup>164</sup>

#### Case study 17: Cross-border challenges in enforcing ADVOs<sup>165</sup>

A client of the Hume Riverina Community Legal Service lived with her partner in Albury in NSW before moving a couple of kilometres south to Wodonga in Victoria. While in Albury, she was assaulted by her partner and NSW Police applied for an ADVO for her protection. Before leaving Albury, her ex-partner breached the protection order four times and each time she reported to a different police officer. She fled Albury with the help of a local family violence service, but her ex-partner found her and assaulted her in her home.

The client reported this to Victoria Police and asked to change her protection order to include her infant son, who was at home during the assault. Victoria Police told her she had to speak to NSW Police. NSW Police told her it was now a Victoria Police matter. After several weeks of trying to get help from the police, she applied to vary the protection order herself with help from the Hume Riverina Community Legal Service. Her ex-partner was charged in Victoria with assault but NSW Police took carriage of the breach of the ADVO from the same incident. The client was exhausted and overwhelmed at the number of police officers she had to deal with and the complexity of these cross-border issues.

### A national database of domestic abuse orders

#### Summary

Effective communication between state and territory police forces is needed to reduce barriers for victims moving between states, especially those living in cross-border communities. This could be assisted by a national database of ADVOs.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

#### Recommendation 7

**That the NSW Government should advocate through the National Federation Reform Council for a national electronic database of domestic abuse orders, which includes provisional, interim, and final orders, and breaches of orders.**

- 3.106 Discussions about national consistency should also include access to offenders' convictions and ADVO histories, and collaboration between police across state and territory borders.
- 3.107 This would improve protection for victims who move between states, and live in cross-border communities. It could also reduce misidentification of victims in situations where the perpetrator has previously been the subject of an ADVO.
- 3.108 A federal parliamentary inquiry recently recommended that the Australian Government work with state and territory governments to implement a national

<sup>164</sup> Submission 130, Hume Riverina Community Legal Service, p 10.

<sup>165</sup> Submission 130, Hume Riverina Community Legal Service, p 10.

electronic database of domestic abuse orders. This database should include provisional, interim, and final orders and breaches of orders.<sup>166</sup>

- 3.109 A victim survivor, who told the Inquiry about her experience of domestic abuse in Victoria, said that a national database could prevent misidentification of victims as perpetrators by police who do not have access to domestic abuse records in another state:

I believe there should be a national database of records where Police have attended a potential or labelled domestic violence incident and all intervention orders (historically accessible from when records started) from ALL jurisdictions within Australia. This would allow Police to look up all persons involved in any domestic violence incident and if the Police are called to a potential domestic violence incident it would allow them to immediately see if there have been Police reports or intervention orders against any of the persons in this incident from any jurisdiction within Australia in the past .... Perpetrators often reoffend, and they can move between jurisdictions, so if they have appeared in court before this incident, this would come up in a search and help the Police to have a greater understanding of any individuals who they search and hopefully the Police would be less likely to be caught up in perpetrators 'stories' when they arrive at a property.

The Police may think that they are being called to a property for a 'minor' domestic violence incident but if they can see one of the persons involved has had allegations of assault made against them in the past and /or there was previous Police or Court intervention, they may have a more open mind about what allegations they are hearing.<sup>167</sup>

- 3.110 The Committee agrees that the NSW Government should advocate for a national database of ADVOs. It should also prioritise improving communications between police in NSW and neighbouring states.
- 3.111 On the Inquiry site visit to Narrandera, the Committee heard about the difficulties survivors face, stemming from flawed communication between NSW and Victorian police forces.
- 3.112 The Hume Riverina Legal Service told the Inquiry that its clients 'are often unsure of whether to report ... family violence to Police in NSW or Victoria, and are often referred to the other State by members of the Police, which is frustrating and unhelpful.'<sup>168</sup>
- 3.113 The Border Domestic Violence Network suggested that the NSW Government implement:
- A 'memorandum of understanding' with Victoria, on how information is shared between police, hospitals and child protection, as well as service providers funded by the states.

<sup>166</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, [Inquiry into family, domestic and sexual violence](#), March 2021, see recommendation 81.

<sup>167</sup> Submission 101, Chloe McCardel, pp 10-11; Chloe McCardel, Transcript of evidence, 30 March 2021, pp 35-36. See also: Submission 15, Name suppressed, p 7.

<sup>168</sup> Submission 130, Hume Riverina Community Legal Service, p 10.

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- A NSW/Victoria Joint Family Violence Police Unit, located in Albury/Wodonga, and modelled on existing health sector arrangements for policies, procedures and resource-sharing in that area.<sup>169</sup>

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<sup>169</sup> Submission 125, Border Domestic Violence Network, Attachment 1, *Report from the Family Violence: Cross Border Issues and Solutions Forum*, July 2020, p 11.

## Chapter Four – What other reforms are needed to better respond to all types of domestic abuse?

"So when a man hits his partner ... it is very different from when a stranger punches an innocent bystander. It is much more complex. The innocent bystander does not share a bank account with a person who hurt them. The innocent bystander can stand up in court and report what happened freely, knowing that the person who hurt them has no reason to hurt them again. The innocent bystander has not spent years being threatened and degraded by the person sitting opposite them. The innocent bystander does not have to leave their children with someone they know to be dangerous."<sup>170</sup>

### Ensuring a whole of government approach

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#### Summary

Rather than relying on the criminal justice system alone to address domestic abuse, a whole of government response is needed. This could be led by the Secretary of the Department of Communities and Justice.

This section is relevant to question 15 in the NSW Government's discussion paper.

#### Finding 5

**Systemic, whole of government reforms are needed to effectively implement changes to domestic abuse laws, and adequately support victims.**

#### Recommendation 8

**The Secretary of the Department of Communities and Justice should work together with a range of public bodies including NSW Police, Health, Education, Justice, Housing and Indigenous agencies to prevent domestic abuse, with the aim of reducing the numbers of victims and perpetrators of abuse. This represents a critical opportunity to implement an early intervention and public health-focused approach, rather than relying solely on traditional criminal justice levers, which only come into play in the aftermath of an offence.**

- 4.1 While inquiry participants differed on the law reforms needed to protect victims of coercive control, they agreed that a criminal justice response will not be enough. Rather, a whole of government response is essential – including community education, training for the police and judiciary, funding for service providers and better access to government supports. If new laws are introduced,

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<sup>170</sup> Dr Williams, Transcript of evidence, 23 February 2021, p 22

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the government must monitor their implementation to assess their effectiveness, and whether further support or amendment is needed.

### A whole of government response

- 4.2 During the inquiry, the Committee heard calls for a whole of government, whole of community focus on domestic abuse. Laws alone cannot stop violence against women, and it cannot be left to the police and criminal justice system to address.<sup>171</sup>
- 4.3 Inquiry participants told the Committee that ‘criminalisation should be considered only as part of a larger integrated strategy to combat coercive control.’ This message was particularly stark from advocates of Aboriginal and Torres Strait Islander, CALD and LGBTQ communities.<sup>172</sup>
- 4.4 As well as implementing law reforms, a whole of government approach should focus on prevention and early intervention in abusive behaviours, as well as emergency and longer-term support services for victim survivors of domestic abuse. Effective change requires investment in non-legal responses and non-legislative mechanisms to achieve remedy, recovery and justice for victim survivors.<sup>173</sup>
- 4.5 The Inquiry heard that this, aside from legislation, is what sets Scotland apart from other jurisdictions as the ‘gold standard’.<sup>174</sup> ANROWS submitted that the Scottish domestic abuse law ‘is underpinned by the four pillars of a system’s response ... protection (legal remedies); provision (effective service delivery); prevention (strategies for stopping domestic abuse and reducing reoffending); and participation (by those who have experienced domestic abuse).’<sup>175</sup>
- 4.6 Stewart Prins, from the Men and Family Centre, said that he hoped the Inquiry would mark a ‘turning point in our societal approach to domestic violence’ in NSW. He urged the Inquiry to ‘take a comprehensive approach’ and ‘consider

<sup>171</sup> Associate Professor Kate Fitz-Gibbon, Transcript of evidence, 24 February 2021, pp 30-31; Helen Silvia, Chief Executive Officer, WAGEC, Transcript of evidence, 24 February 2021, pp 48, 50; Laura Vidal, Transcript of evidence, 24 February 2021, p 15; Kate Munro, Chief Executive Officer, Youth Action, Transcript of evidence, 24 February 2021, p 7; Petra Jenkins, State Manager Family Violence, The Salvation Army Australia, Transcript of evidence, 24 February 2021, p 17; Professor Marilyn McMahon, Transcript of evidence, 24 February 2021, p 42; Brianna Attard, Case Manager, Lou’s Place, Transcript of evidence, 24 February 2021, p 54; Danica Leys, Transcript of evidence, 29 March 2021, p 24; Submission 71, Youth Action, p 14, Submission 79, White Ribbon Australia, p 6; Submission 128, WAGEC, pp 5, 9; Submission 20, Joplin Lawyers, p 6; Submission 119, Monash Gender and Family Violence Prevention Centre, p 13; Submission 129, Australian Association of Social Workers, p 5.

<sup>172</sup> Menaka Cooke, NSW Executive Member, Women’s Electoral Lobby, Transcript of evidence, 23 February 2021, p 30; Patty Kinnersly, Chief Executive Officer, Our Watch, Transcript of evidence, 23 February 2021, p 15; Nemat Kharboutli, Transcript of evidence, 23 February 2021, p 30; Hayley Foster, Chief Executive Officer, Women’s Safety NSW, Transcript of evidence, 24 February 2021, p 59; Rachael Martin, Transcript of evidence, 29 March 2021, p 6; Jessica Schulman, Senior Solicitor, Immigration Advice and Rights Centre, Transcript of evidence, 29 March 2021, p 35; Submission 81, ACON, p 4; Submission 86, Muslim Women Australia, p 4.

<sup>173</sup> Laura Vidal, Transcript of evidence, 24 February 2021, p 12; Associate Professor Kate Fitz-Gibbon, Transcript of evidence, 24 February 2021, p 31.

<sup>174</sup> Dr Nithya Reddy, Transcript of evidence, 30 March 2021, p 23.

<sup>175</sup> Submission 96, ANROWS, p 8; Dr Heather Nancarrow, Transcript of evidence, 22 February 2021, p 7. See also: Professor Evan Stark, Transcript of evidence, 29 March 2021, p 4; Submission 12, Evan Stark and Cassandra Wiener, p 1.

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criminalisation of coercive control as part of a much broader commitment to addressing the drivers of domestic and family violence.<sup>176</sup>

- 4.7 No to Violence said that the systemic response in NSW is currently ‘weighted towards crisis’. While this is ‘incredibly important in directly responding to the violence experienced by so many ... expanding preventative and early intervention activities is needed to prevent it happening in the first place and to prevent escalation.’<sup>177</sup>
- 4.8 This means working with government and non-government organisations, including GPs, hospitals, financial services, maternal, sexual, reproductive and women’s health settings and other areas where women are likely to disclose abuse, to better understand and respond to all forms of violence against women, including coercive control.<sup>178</sup>
- 4.9 A system-wide approach should take particular account of service providers in regional areas. ANROWS told the Inquiry that ‘an integrated approach can decrease the systemic barriers faced by women who seek support’, particularly ‘women in rural and regional areas, women with disability, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women’.<sup>179</sup>
- 4.10 YES Unlimited Albury emphasised the need for central services, such as state-wide domestic abuse helplines, to integrate with local organisations, like emergency housing providers. They told the Inquiry of the lack of formal coordination between providers.<sup>180</sup>
- 4.11 Currently, victims are faced with a ‘fragmented service system, where they may find themselves ineligible for services they approach, while telling their story repeatedly.’<sup>181</sup> Better coordination among government agencies and non-government service providers, as opposed to organisations working in siloes, could reduce the burden on victims accessing support. Where local organisations have found ways to share information effectively, research is needed into how this can be better supported by the NSW Government, and replicated across the state.
- 4.12 In some circumstances, this will mean looking at solutions to ‘fill in the gaps’ in legal and service responses, while others may involve ‘question[ing] whether... it is gap-filling ... or if it’s overhaul that we want to be doing.’<sup>182</sup>

<sup>176</sup> Stewart Prins, President, Men and Family Centre, Transcript of evidence, 23 February 2021, pp 7-8. Also see: Laura Vidal, Transcript of evidence, 24 February 2021, pp 14, 16.

<sup>177</sup> Submission 126, No to Violence, pp 46-47.

<sup>178</sup> Submission 45, Our Watch, p 16. Also see: Patty Kinnersly, Transcript of evidence, 23 February 2021, p 15; Submission 102, Australian Medical Association (NSW), p 2.

<sup>179</sup> Submission 96, Australia's National Research Organisation for Women's Safety (ANROWS), p 3.

<sup>180</sup> Answers to written questions, YES Unlimited Albury, pp 1-2.

<sup>181</sup> Submission 59, Good Shepherd, p 29. Also see: Submission 118, Bar Association NSW, p 24; Submission 15, Name suppressed, p 7.

<sup>182</sup> Laura Vidal, Transcript of evidence, 24 February 2021, p 16.

What other reforms are needed to better respond to all types of domestic abuse?

- 4.13 Where changes are made to ADVO and sentencing legislation, and an offence of coercive control is introduced, it will be necessary to closely monitor the effectiveness of the reforms. The Inquiry heard that the NSW Government should monitor changes in community awareness of domestic abuse, the number of charges and convictions for a new offence, and the experiences of victim survivors, law enforcement and judicial officers, and support services.<sup>183</sup> A review mechanism for a coercive control offence is discussed in chapter 5.
- 4.14 In relation to the implementation of a coercive control offence and related reforms, the Secretary for the Department of Communities and Justice could undertake the following:
- Overseeing the taskforce which will consult with stakeholders about implementing a coercive control offence (discussed in chapter 5).
  - Overseeing training and education programs, before the rollout of a coercive control offence.
  - Monitoring the rollout of changes to ADVO and sentencing legislation.
  - Monitoring the rollout of a coercive control offence, including by collaborating with BOCSAR to collect statistics on charges, prosecutions, guilty pleas and convictions.
  - Consulting with NSW Police, service providers, court advocates and BOCSAR about how to measure misidentification of victims of domestic abuse.
  - Funding and coordinating research into best practices for perpetrator intervention programs, in Australia and overseas.
  - Funding and coordinating research to 'build understanding of LGBTQ people's experiences of the family violence system, barriers and service gaps'.<sup>184</sup>
  - Identifying gaps in domestic abuse services in regional areas, and for marginalised communities.
  - Identifying and seeking to address obstacles to justice for Aboriginal and Torres Strait Islander victim survivors of domestic abuse.
- 4.15 The Secretary could also lead the following primary prevention opportunities identified in the NSW Government's discussion paper on coercive control:
- Opportunities for primary prevention to be included in the revised NSW Domestic and Family Violence Blueprint for reform, including community, victim and workforce awareness and education about coercive control.

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<sup>183</sup> Submission 133, Women's Safety NSW, p 133. Also see: Submission 46, The Salvation Army Australia, p 8; Submission 35, Rape and Domestic Violence Services Australia, p 29; Delia Donovan, Transcript of evidence, 22 February 2021, p 4; Natalie Gouda, Transcript of evidence, 23 February 2021, p 16.

<sup>184</sup> Submission 81, ACON, p 14; Submission 121, Relationships Australia NSW, p 10.

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- Whole-of-population community awareness campaigns and targeted approaches to address attitudes and beliefs about domestic abuse (for example, that it is limited to physical violence).
- Greater focus on the complex nature of domestic abuse, including coercive and controlling behaviours as part of primary prevention.
- Prevention strategies and awareness raising campaigns that engage with underlying drivers of behaviour.<sup>185</sup>

## Raising community awareness

### Summary

Better community awareness of coercive control will help prevent domestic abuse and increase uptake of a new coercive control offence. Awareness campaigns should educate the community about different types of non-physical abuse, be delivered on multiple platforms, and be adapted for diverse communities.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Broad-based and targeted awareness campaigns

#### Finding 6

**Better awareness of coercive control is needed to improve community understanding of this type of abuse and the harm suffered by victim survivors.**

#### Recommendation 9

**That the NSW Government should run awareness campaigns about coercive control as a priority and regardless of whether or not a specific coercive control offence is legislated. This should include targeted campaigns developed with the Aboriginal and Torres Strait Islander community, culturally and linguistically diverse communities, the LGBTQ community, people with disability, and rural and remote communities.**

- 4.16 Wider community understanding of coercive control is vital to preventing, identifying, and enabling victims to escape this type of abuse. The Committee recommends an awareness campaign that targets all members of our community, including Aboriginal and Torres Strait Islanders, CALD communities, the LGBTQ community and people with disability. The Inquiry heard that it is important that awareness campaigns are designed for our diverse community to ensure that they have a wide reach and do not exclude particular communities.
- 4.17 The Women's Legal Service NSW told the Inquiry that comprehensive community education gives people access to a common language when talking about different types of domestic abuse:

Community-based education is very, very valuable. People having access to what the common languages around violence, domestic violence abuse, financial violence

<sup>185</sup> NSW Government, [Coercive control – discussion paper](#), October 2020, pp 35-37.

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abuse, verbal abuse. All that has to be a common language between what the legal people are doing, what community services are doing and what people—just your average person who is not—may not be particularly working in those fields but may have the experience of being abused on some level.<sup>186</sup>

- 4.18 The Inquiry heard that community awareness has improved in England since coercive control was criminalised. An example of this is stories about coercive control on soap operas like *East Enders* and *Coronation Street*. White Ribbon Australia submitted that the collective understanding of domestic abuse has changed from only seeing single incidents of physical violence to recognising patterns of behaviour: 'that has been a net positive for victims and survivors and for ... the collective consciousness of understanding family and domestic violence'.<sup>187</sup>
- 4.19 Inquiry participants supported a public awareness campaign to raise awareness of coercive control in NSW, regardless of whether or not a coercive control offence is legislated. The Catholic Women's League told the Inquiry that a campaign would help people understand coercive control and how to identify it. This will 'better equip both victims and perpetrators to reflect on their relationship(s), identifying unhealthy relationship behaviours and make choices to protect or remove themselves, including reporting or seeking help at an earlier point before escalation'.<sup>188</sup>
- 4.20 As Weave Youth and Community Services submitted, this will contribute to increased use of a new coercive control offence when introduced, as education will empower victims to come forward.<sup>189</sup>
- 4.21 Inquiry participants told the Inquiry that there is a need for better public awareness of non-physical types of domestic abuse. Our Watch referred to a national community attitudes survey which showed that most Australians 'are more likely to recognise forced sex and obvious physical violence than they are to understand social, emotional and financial forms of abuse and control as forms of violence against women'.<sup>190</sup>
- 4.22 Our Watch said that prevention efforts will require investment in awareness raising and campaigns that inform the public about new laws, as well as increasing understanding of non-physical forms of violence, and power and control in relationships. They observed that 'it is crucial that awareness is translated into knowledge and skills for taking action to address the issue, including by promoting gender equality'.<sup>191</sup>

<sup>186</sup> Dixie Link-Gordon, Transcript of evidence, 23 February 2021, p 41.

<sup>187</sup> Brad Chilcott, Executive Director, White Ribbon Australia, Transcript of evidence, 23 February 2021, p 17; Submission 126, No to Violence, p 55; Submission 15, Name suppressed, pp 4-5.

<sup>188</sup> Submission 57, Catholic Women's League, pp 2, 5. See also: Submission 95, NSW Liberal Women's Council, p 9; Submission 108, NSW Ageing and Disability Commission, p 3; Submission 15, Name suppressed, pp 3, 6-7; Submission 32, Debra Gillick, p 8; Submission 38, Maria Girdler, p 1; Submission 131, Women's Health NSW, p 4.

<sup>189</sup> Submission 82, Weave Youth and Community Services, p 4.

<sup>190</sup> Submission 45, Our Watch, pp 27-28. See also: Submission 94, Name suppressed, p 11.

<sup>191</sup> Submission 45, Our Watch, pp 27-28.

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- 4.23 White Ribbon Australia submitted that public education campaigns should use online, print, radio and television media. They should be research-based, and designed for all key demographic audiences – including being delivered in multiple languages.<sup>192</sup>
- 4.24 The Inquiry heard that along with broad-based community awareness campaigns targeting violence against women, targeted campaigns on different types of violence are needed. Our Watch suggested specific campaigns about:
- Financial abuse, with targeted messaging for those under 30 (most common first age of experience) and 40 year olds (most likely to experience).
  - Stalking and intimidation, with targeted messaging and strategies aimed at young women's experiences.
  - Coercive control experienced by women living with disability.
  - Improving young men's understanding and recognition of coercive and controlling behaviours.<sup>193</sup>
- 4.25 Inquiry participants also stressed the importance of targeting community awareness to population groups including the CALD, LGBTQ, and Aboriginal and Torres Strait Islander communities, and people with disability. This could be done by developing targeted campaigns for different communities.
- 4.26 No to Violence told the Inquiry that each person's experiences and backgrounds are different, and programs and messaging need to resonate with everyone to be effective. They said that different messages and engagement with different communities will be needed to raise awareness.<sup>194</sup>
- 4.27 Women's Safety NSW stressed the need to resource and support awareness raising at the community level, noting that 'only community leaders themselves, in families, schools, workplaces, sporting club and religious and cultural institutions ... can generate significant and lasting understanding and cultural change.' They suggested engaging with state and local community organisations, including Indigenous, multicultural, disability, LGBTIQ, youth and older persons to ensure widespread understanding and empowerment.<sup>195</sup>
- 4.28 ACON told the Inquiry that LGBTQ people in community organisations should 'really be at the table when those campaigns are developed', so that LGBTQ people are included in campaign stories. Campaigns that focus only on heterosexual men's violence against women can leave LGBTQ communities feeling invisible:
- ... we are so used to not being included that if we are not really specifically named and if our experiences are not explicitly spelled out, ... we will assume that these messages are not relevant for us. So it is really about taking those messages and

<sup>192</sup> Submission 79, White Ribbon Australia, p 7; Submission 17a, Women's Electoral Lobby (NSW), p 4.

<sup>193</sup> Submission 45, Our Watch, p 29.

<sup>194</sup> Submission 126, No to Violence, p 55.

<sup>195</sup> Submission 133, Women's Safety NSW, p 155.

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making sure that they resonate with communities, they feature a diversity of identities, and yes, highlight those diversity of stories.<sup>196</sup>

- 4.29 The Inquiry also heard that language-specific campaigns are essential as many members of the CALD community will not find English language material as accessible.<sup>197</sup>
- 4.30 The Ethnic Communities' Council of NSW suggested that messaging for CALD communities could have specific content on individuals' financial rights including the right to control their own money and establish their own bank account. This would 'prove significant in tackling many of the issues raised by this Inquiry.'<sup>198</sup>
- 4.31 The Wirringa Baiya Aboriginal Women's Legal Centre told the Inquiry that campaigns for Aboriginal communities should be developed in partnership with Aboriginal leaders and educators. A comprehensive and ongoing campaign will be needed to raise Aboriginal women's awareness of less overt types of control.<sup>199</sup>

### School programs covering coercive and controlling behaviour

#### Summary

Young people need to be educated about coercive control. Education about respectful relationships should start at an early age, and be treated as an ongoing conversation. Programs should teach students about technology-facilitated abuse, and the importance of online safety.

This section is relevant to question 15 in the NSW Government's discussion paper.

#### Recommendation 10

**That the NSW Government ensures that content about coercive and controlling behaviour is included in school programs about respectful relationships.**

- 4.32 The Committee considers that there is a need to better educate young people about coercive and controlling behaviour as part of programs on respectful relationships. The Inquiry heard that education in primary and secondary schools is important to ensure that young people develop an understanding of healthy relationships, and can navigate online relationships.
- 4.33 Youth Action recommended that an education campaign on coercive control be launched in NSW schools. This would encourage healthy and respectful relationships, help young people to identify abusive behaviour and access support services, and combat stereotypes and stigma around relationships and abuse.<sup>200</sup> There was positive feedback about some existing programs, like Love

<sup>196</sup> Sarah Lambert, Director, Community Health and Regional Services, ACON, Transcript of evidence, 23 February 2021, pp 3-4.

<sup>197</sup> Submission 50, Ethnic Communities' Council of NSW, pp 1-2; Submission 14, Name suppressed, p 7.

<sup>198</sup> Submission 50, Ethnic Communities' Council of NSW, pp 1-2.

<sup>199</sup> Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 9.

<sup>200</sup> Submission 71, Youth Action, pp 5, 13-14. See also: Submission 79, White Ribbon Australia, p 7; Submission 87, Marie Stopes Australia, p 3; Submission 15, Name suppressed, p 6; Submission 64, Name suppressed, p 2.

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Bites, which the NSW Government could review, adapt, and expand to address coercive control.

- 4.34 The Salvation Army told the Inquiry that 'education on healthy relationships particularly in relation to respectful youth relationships within primary schools and healthy peer to peer and early intimate relationships in high schools is critical.' They stressed the need to educate young people on technology facilitated abuse and the use of social media, noting its ability to 'blur young people's ability to navigate online peer relationships and the appropriate use of technology.'<sup>201</sup>
- 4.35 The eSafety Commissioner also emphasised the importance of teaching kids about online safety, along with respectful relationships, submitting that the curriculum should reflect 'the four Rs of online safety' (respect, responsibility, resilience and reasoning). The Commissioner stressed the need for targeted and tailored programs for boys, saying: 'As an early intervention [and] prevention measure, this can help challenge and change the stereotypes and beliefs that underpin sexist attitudes and lead to gender-based violence.'<sup>202</sup>
- 4.36 It is important that education starts at the primary school level. Youth Action said young people are asking for 'more than standalone, late high-school years programs.' They told the Inquiry that young people are seeking a sustained conversation over time. Social media is effective at reaching young people, and peer education is a successful model:
- ... So, if we teach young people how to have conversations around this, then that will have a lasting impact. If there are young people in schools who feel comfortable having these conversations, that's going to flow into their peer groups, to their friend groups, through into their community, outside their school group.<sup>203</sup>
- 4.37 The case study below provides an example of culturally-specific education for young Aboriginal men, dealing with respectful relationships. As this is an intensive residential program, a shorter-term program could be rolled out in NSW schools, focusing on schools in regional areas.

**Case study 18: Tirkandi Inaburra education program for Aboriginal boys<sup>204</sup>**

Tirkandi Inaburra is a 10-week program for young Aboriginal boys, located in Wiradjuri Country, in south-west NSW.

Tirkandi is an evidence-based, trauma-focused program that 'helps young fellas make better life decisions, remain engaged in full-time school, study or work, and minimise the risk to involvement with the criminal justice system.' It is funded by the Department of Communities and Justice.

During the site visit to Narrandera, participants referred to this program as an example of culturally-specific education for young Aboriginal men. The Inquiry heard

<sup>201</sup> Submission 46, The Salvation Army Australia, p 12.

<sup>202</sup> Submission 73, eSafety Commissioner, p 17.

<sup>203</sup> Kate Munro, Transcript of evidence, 24 February 2021, p 9. See also: Submission 75, Young Liberal Movement of Australia (NSW Division), p 6.

<sup>204</sup> [Tirkandi Inaburra Cultural and Development Centre Inc](#), accessed 9 June 2021.

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that the program gives young men a chance to learn about respectful relationships while building support structures and developing knowledge of language and culture.

During the program, participants:

- Build cultural knowledge, by learning Aboriginal dance and the Wiradjuri language, going on walks and exploring culturally significant sites with elders, and learning to identify native plants and animal tracks.
- Improve physical wellbeing, through sport and exercise, learning about nutrition, and getting dental, sight and hearing checks.
- Improve emotional wellbeing, by learning about life choices, respect, peer pressure, gender fairness, culture and goals. This includes one-on-one counselling sessions and team building activities.
- Develop life skills, such as cooking, gardening, tidying, water safety and personal hygiene.
- Improve learning, with tutoring for reading, writing and mathematics.

While the program is free for participants, there is sometimes a waiting list, and the program is not funded to give follow-up support to participants.

#### **Case study 19: Love Bites school education program<sup>205</sup>**

Love Bites is a Respectful Relationships Education Program for young people aged 15-17 years. It consists of two interactive workshops: one on Relationship Violence, and one on Sex and Relationships, followed by creative workshops and community campaigns. The program has a flexible model with options for a full day or multi session delivery.

Love Bites aims to give young people a safe environment to examine, discuss and explore respectful relationships. It aims to give young people the knowledge needed to have respectful relationships, encourage and develop critical thinking skills and help them to problem solve and communicate effectively.

There is also an associated program for 11-14 year olds, called Love Bites Junior. This consists of three programs:

- #friends (Year 7) covers warning signs of abusive behaviour, power in relationships, rights and responsibilities in relation to sharing sexualised images, and seeking help.
- Respectful Relationships, Bullying and Gender (Year 8) covers respect in relationships, gender roles and stereotypes, gender and relationships, and seeking help.
- Relationships, Love and Control (Year 9) covers gender expectations and relationships, responding to jealous feelings, love and control, warning signs of a controlling/abusive relationship, supporting friends, breaking up with respect, and seeking help.

Over 10,000 students in NSW participate in Love Bites each year.

<sup>205</sup> NAPCAN, [Love Bites – Respectful Relationships Program](#), accessed 9 June 2021.

## Resourcing for domestic abuse and housing services

### Summary

Changes to legislation will not be effective without wraparound supports for victim survivors trying to leave abusive relationships. Demand for services is likely to increase when community awareness campaigns and a new offence are rolled out. Legal and non-legal service providers need more resources to respond to crises, and to address the long term effects of coercive control on victims.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Recommendation 11

**That the NSW Government gives consideration to improving resources for domestic abuse service providers and housing service providers so that victim survivors of coercive control have adequate support.**

### Recommendation 12

**That the NSW Government gives consideration to improving resources for women's domestic violence court advocacy services, including in rural and regional areas.**

### Increased, secure funding for specialist domestic abuse service providers

- 4.38 Together with emphasising a whole of government approach to domestic abuse, participants stressed that law reforms should not be rolled out without necessary supports for victim survivors. This means providing more resources for specialist domestic abuse service providers, including court advocacy services, medical and housing services and counselling services.<sup>206</sup>
- 4.39 The Inquiry heard about concerns that, where awareness campaigns about coercive control are successful, and where coercive control is criminalised, demand for support services is likely to increase. Implementing a new offence without sufficient funding for services could create more danger for victims who want to leave an abusive relationship, or make a complaint to police.<sup>207</sup>
- 4.40 Dr Angelo Virgona told the Inquiry that legislation and education won't be

<sup>206</sup> Delia Donovan, Transcript of evidence, 22 February 2021, p 1; Simon Bruck, Transcript of evidence, 22 February 2021, p 10; Liz Snell, Transcript of evidence, 23 February 2021, p 42; Petra Jenkins, Transcript of evidence, 24 February 2021, p 17; Lynda Dunstan, Transcript of evidence, 24 February 2021, p 19; Danica Leys, Transcript of evidence, 29 March 2021, p 26; Gayatri Nair, Member, Economic Abuse Reference Group NSW, Transcript of evidence, 30 March 2021, pp 11-12; Rebecca Glenn, Transcript of evidence, 30 March 2021, p 11; Submission 136, Shoalcoast Community Legal Centre, pp 3, 13; Submission 140, Women's Legal Service NSW, pp 6, 9; Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 10; Submission 86, Muslim Women Australia, p 17; Submission 74, Lou's Place, p 9; Submission 17, Women's Electoral Lobby (NSW), p 3; Submission 110, Country Women's Association, pp 2-3, Submission 15, Name suppressed, p 6; Submission 56, Doctors Against Violence Towards Women, p 4.

<sup>207</sup> Delia Donovan, Transcript of evidence, 22 February 2021, pp 1, 3; Michelle Lyons, Program Delivery Officer, Men and Family Centre, Transcript of evidence, 23 February 2021, p 8; Nemat Kharboutli, Transcript of evidence, 23 February 2021, p 30; Sally Stevenson, Transcript of evidence, 29 March 2021, p 26; Submission 140, Women's Legal Service NSW, p 11.

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effective without properly funded, wraparound services:

For people to escape and survive such relationships, they need packages of support that are accessible. Not waiting lists, not bouncing endlessly between services and falling through cracks. If not, the financial necessity will see people remain in these relationships, imprisoned in them with the inevitable consequences.<sup>208</sup>

- 4.41 Funding needs to be secure and long-term. Several stakeholders, in hearings and during the Narrandera site visit, said that short-term contracts and one-off injections of funding are not adequate, and do not allow for change to be embedded in the sector.<sup>209</sup>

### Courts and legal services

- 4.42 The NSW Bar Association told the Inquiry, ‘the law is .... of no effect if victim-survivors cannot access or afford to access justice services to enforce their legal rights and protect their safety in a timely manner.’ Many victims cannot afford legal representation in criminal, civil or family law matters, and rely on services provided by community legal centres and Legal Aid (including Women’s Domestic Violence Court Advocacy Services).<sup>210</sup>
- 4.43 The Bar Association said that, despite some injections of funding by Commonwealth and State governments in recent years, the community legal sector is chronically underfunded. This means that victims who need legal help are often turned away.<sup>211</sup>
- 4.44 As the Hume Riverina Community Legal Service told the Inquiry, increasing funding for legal services would also result in better outcomes for women who face multiple issues as a result of their abuse, such as tenancy, debts and consumer issues.<sup>212</sup>
- 4.45 The Bar Association also emphasised the need to increase funding for courts, submitting that backlogs for domestic abuse matters have an adverse impact on victims, and ‘may also deter other victim-survivors from coming forward to seek safety and protection.’<sup>213</sup>

### Case study 20: Importance of legal representation for victims of coercive control who respond with violence<sup>214</sup>

The South West Sydney Legal Centre (SWSLC) told the Inquiry about a client who was prosecuted for assaulting her abusive, estranged husband.

<sup>208</sup> Dr Angelo Virgona, Transcript of evidence, 23 February 2021, p 23.

<sup>209</sup> Sarah Lambert, Transcript of evidence, 23 February 2021, p 4; Yumi Lee, Manager, Older Women’s Network NSW, Transcript of evidence, 23 February 2021, p 49; Jessica Schulman, Transcript of evidence, 29 March 2021, p 35; Submission 151, Immigration Advice & Rights Centre, pp 2-3; Submission 129, Australian Association of Social Workers, p 5.

<sup>210</sup> Submission 118, NSW Bar Association, pp 18, 26-27.

<sup>211</sup> Submission 118, NSW Bar Association, pp 18, 26-27.

<sup>212</sup> Submission 130, Hume Riverina Community Legal Service, p 11.

<sup>213</sup> Submission 118, NSW Bar Association, p 19.

<sup>214</sup> Submission 77, South West Sydney Legal Centre, p 18.

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Binh was a victim of domestic abuse for many years at the hands of her husband. As a result, she suffers from depression and insomnia. Since the COVID-19 pandemic, Binh hasn't been able to work and has been receiving JobKeeper payments.

Binh was referred to the SWSLC by Legal Aid as they couldn't help her. She was charged with common assault and the police filed an ADVO against her after an argument with her husband. This made her mental health issues worse, which affected her ability to care and provide for her children.

SWSLC helped Binh prepare for court, and represented and advocated for her in court.

The Magistrate agreed that Binh's actions were not serious and that she was a victim of ongoing domestic abuse for many years. The Magistrate didn't record a conviction and the final application for an ADVO was dismissed. Binh was only ordered to good behaviour for 12 months.

Without representation by SWSLC, Binh could have been convicted and had a final ADVO made against her. This would have exposed her to greater harassment and control by her abusive husband. The outcome was a relief for Binh and she can now focus on caring for her children.

#### Funding for non-legal supports

- 4.46 The government should also consider investing more in non-legal services for victims. These can create pathways to safety for victims who choose not to engage with the criminal justice system.<sup>215</sup>
- 4.47 The Immigration Advice and Rights Centre told the Inquiry that victims are more likely to leave abusive relationships, and report their abuse, if they are well supported.<sup>216</sup>
- 4.48 The Inquiry heard several accounts from providers who are anxious about needing to 'cobble together' funding year on year, to continue supporting their clients.<sup>217</sup>
- 4.49 Sally Stevenson told the Inquiry that, at the Illawarra Women's Health Centre, '[w]e continuously see women seeking support from us for coercive and controlling behaviours and the impact that has on their health and wellbeing, but we are absolutely unable to respond to that adequately because of limited funding.'<sup>218</sup>
- 4.50 Service providers should have the funds to react to crises (for example, when a victim needs emergency accommodation), but also to provide support for the long-term effects of coercive control on victims. Ms Stevenson told the Inquiry

<sup>215</sup> Jess Hill, Transcript of evidence, 24 February 2021, p 2.

<sup>216</sup> Submission 151, Immigration Advice & Rights Centre, p 3.

<sup>217</sup> Elisabeth Shaw, Chief Executive Officer, Relationships Australia NSW, Transcript of evidence, 29 March 2021, p 11. See also: Answers to questions on notice, Professor Marilyn McMahon and Paul McGorrery, p 1.

<sup>218</sup> Sally Stevenson, Transcript of evidence, 29 March 2021, p 26.

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that complex trauma ‘is not going to be treated within six months or 12 months’, but takes years of high-quality, best-practice support.<sup>219</sup>

- 4.51 The Older Women’s Network NSW referred to the large number of women turned away from homelessness services due to undersupply. They told the Inquiry that funding for crisis accommodation, homelessness services and longer-term affordable housing is essential to help victims escape and recover from abusive relationships.<sup>220</sup>
- 4.52 The Committee is persuaded by proposals from participants for the NSW Government to fund ‘specific programs or hubs with appropriate specialists to assist victims [to] understand and discover how they may be stalked, to debug devices and cars, and to set up new systems to ensure they are safe from being stalked and harassed.’<sup>221</sup>

**Case study 21: Importance of legal and non-legal supports for victims leaving domestic abuse<sup>222</sup>**

The Muslim Women’s Association (MWA) told the Inquiry about two clients they supported to leave abusive partners.

Pat experienced physical, sexual and emotional abuse by her husband.

COVID-19 changed her working conditions and she had to work remotely. The abuse escalated while Pat was working from home. COVID-19 pushed her to flee for safety. As a result of his abuse, Pat was hospitalised and her husband accused her of trying to commit suicide.

An ADVO was sought and Pat and her son entered crisis accommodation, deeply depressed and highly emotional.

Pat’s husband is known to sue all services he comes into contact with, trying to access her health and housing records. She continues to struggle, trying to end the lease that is in her name, re-register her car, sort out her finances, and deal with the complaints her husband has made about her to different services.

MWA provided Pat and her son with housing, legal, financial and parenting support which saw them move to temporary accommodation to keep rebuilding and focussing on becoming self-sufficient and safe.

**Case study 22: Importance of legal and non-legal supports for victims leaving domestic abuse<sup>223</sup>**

Di experienced domestic abuse from her husband, who was on a skilled visa. She is a refugee on a bridging visa, has one child and is pregnant with another. She left her husband, and obtained an ADVO against him.

<sup>219</sup> Sally Stevenson, Transcript of evidence, 29 March 2021, p 26. See also: Danica Leys, Transcript of evidence, 29 March 2021, p 26; Submission 14, Name suppressed, p 6.

<sup>220</sup> Submission 84, Older Women’s Network NSW, p 11.

<sup>221</sup> Submission 142, Wirringa Baiya Aboriginal Women’s Legal Centre, p 9.

<sup>222</sup> Submission 86, Muslim Women’s Association, p 15.

<sup>223</sup> Submission 86, Muslim Women’s Association, p 15.

What other reforms are needed to better respond to all types of domestic abuse?

MWA provided Di and her child with crisis accommodation. She is now in MWA's transitional property, and is getting help with:

- advocacy for her protection visa.
- financial and psychological support.
- antenatal planning.
- medical support for her child's hearing, psychology and speech pathologist.

### Specific services for diverse and marginalised communities

- 4.53 As with education campaigns and perpetrator intervention programs (discussed below), victim support services should be tailored and available to Aboriginal and Torres Strait Islander, CALD and LGBTQ communities, people with disabilities, and people in regional and rural areas.
- 4.54 The Inquiry heard that 'there are systemic gaps in support for culturally and linguistically diverse people', and that migrant and refugee women, in particular, are 'often at risk because of insecure visa status and lack of access to State support.'<sup>224</sup>
- 4.55 The NSW Government should consider dedicating specific funding to support migrant and refugee women to leave situations of coercive control, including women on temporary visas. This includes ensuring that services are accessible in multiple languages, provided in a culturally competent manner, and do not exclude women on temporary visas.<sup>225</sup>
- 4.56 As Muslim Women Australia told the Inquiry:
- ... specialisation in DFV in CALD and faith-based communities is necessary due to victims in these communities navigating concurrent processes when seeking help ... [V]ictims from CALD and Muslim backgrounds tend to engage with informal community, religious or cultural avenues of dispute resolution before, in addition to or instead of reporting violence to the police.<sup>226</sup>

### Services in rural and regional areas

- 4.57 At the site visit to Narrandera, the Inquiry heard that access to domestic abuse services is a significant issue in regional areas. Narrandera itself has no specialist domestic abuse services. While victims can travel to Wagga Wagga or Griffith to access a women's shelter, health centre or legal centre, they cannot get support in their own town. Even victims trying to escape relationships in regional centres like Griffith are often unable to get a place in their local shelter. While shelters may have funds to house victims in motels, these are often booked out, and unavailable when needed.

<sup>224</sup> Elisabeth Shaw, Transcript of evidence, 29 March 2021, pp 10-11; Submission 17a, Women's Electoral Lobby (NSW), p 2; Submission 131, Women's Health NSW, pp 6-8.

<sup>225</sup> Submission 138, Settlement Services International, p 14; Submission 140, Women's Legal Service, p 11; Submission 86, Muslim Women Australia, pp 17, 19, 21; Submission 73, eSafety Commissioner, p 8; Submission 17a, Women's Electoral Lobby (NSW), p 5.

<sup>226</sup> Submission 86, Muslim Women Australia, p 18.

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- 4.58 Danica Leys from the Country Women’s Association of NSW told the Inquiry that needing to travel for an hour or two to get help is a ‘very large barrier to accessing services’. This is especially the case for victims whose movements are being monitored or restricted by their partners, or who have children who need to go to school. The situation is worse for women living on farms, who may be 20 kilometres or so away from the nearest town.<sup>227</sup>
- 4.59 The Inquiry heard that the government should invest in services and supports for victims of economic abuse in regional areas. Gayatri Nair from the Economic Abuse Reference Group submitted that ‘rural and remote areas .... are often not supported well enough in this space’, and ‘a lot of work ... needs to be done in accessing those communities and ensuring outreach is provided to them.’<sup>228</sup>
- 4.60 The government should consider expanding ‘telehealth’ domestic abuse services as a tool for victims in regional areas who cannot reach out or attend a clinic.<sup>229</sup> However, as YES Unlimited emphasised, it is important that centralised telephone referral services link with local services, and can trigger local system responses. Further, centralisation should not come at the expense of a personalised response, where a caller is connected to a worker who can check in with them after their first contact.<sup>230</sup>

## Resourcing for prevention and early intervention programs

### Summary

More resourcing is needed for evidence-based perpetrator intervention programs, including men’s behaviour change programs. Programs should be available for perpetrators at different risk levels, from different cultural backgrounds, and of different genders and sexualities. Investment is also needed to monitor program outcomes, and research best practices.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Recommendation 13

**That the NSW Government gives consideration to improving resources for behaviour change programs, including programs for culturally and linguistically diverse communities, the LGBTQ community and the Aboriginal and Torres Strait Islander community, and research into the efficacy of behaviour change programs in Australia and overseas.**

- 4.61 A policy framework to address violence against women and their children must include an integrated system for perpetrator intervention and behaviour change.<sup>231</sup>

<sup>227</sup> Danica Leys, Transcript of evidence, 29 March 2021, p 27. See also: Jane Matts, Transcript of evidence, 30 March 2021, p 29; Submission 110, Country Women’s Association, p 1.

<sup>228</sup> Gayatri Nair, Transcript of evidence, 30 March 2021, p 13.

<sup>229</sup> Jamal Hakim, Transcript of evidence, 30 March 2021, p 15.

<sup>230</sup> Answers to written questions, YES Unlimited Albury, pp 1-3.

<sup>231</sup> Submission 133, Women’s Safety NSW, p 98.

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- 4.62 It is also important that behaviour change programs are evaluated. The NSW Government should consult ANROWS, No to Violence and other providers about how best to measure the success of behaviour change programs, and what funding commitments may be sought.
- 4.63 During the inquiry, the Committee heard from numerous registered providers of men's behaviour change programs (MBCPs). The consistent message was that, to be effective, MBCPs need to be better funded. This means more funding for programs to meet government standards, provided as part of and outside of criminal justice responses, and adapted to meet the needs of regional, Aboriginal and Torres Strait Islander, CALD and LGBTQ communities.<sup>232</sup>
- 4.64 In particular, the Men and Family Centre stressed the need for funding security, noting that rolling contract extensions for government funding limit providers' ability to enter leases, employ staff, and assure clients that they will be able to give them long-term support.<sup>233</sup> Relationships Australia also spoke of the need for '[l]ong-term, secure funding' for MBCPs to 'meet any expanded demand as a result of a new offence.'<sup>234</sup>
- 4.65 The Committee notes that a federal parliamentary inquiry into family, domestic and sexual violence recently recommended that federal, state and territory governments 'provide additional dedicated funding for perpetrator intervention programs', including 'funding to trial new perpetrator intervention models', and specialised programs for people of diverse backgrounds. That federal committee also recommended integrating programs with specialist domestic violence services, and including an evaluation component.<sup>235</sup>
- 4.66 Like the federal committee, this Committee believes it is important that increased funding for MBCPs should not come at the expense of funding services for victim survivors. The Committee also recommends that care be taken to ensure that the risk to victim-survivors is not increased as a result of such programs.

#### **Perpetrators at different 'risk levels'**

- 4.67 Funding needs to be provided, and MBCPs tailored for perpetrators of varying 'risk' levels. Waiting times for self-referrals to MBCPs – which have the highest chance of success – should be minimised as much as possible.<sup>236</sup>
- 4.68 While the Men's Behaviour Change Network NSW generally works with 'medium risk' clients, 'high risk participants' are serviced by the EQUIPS Domestic Abuse

<sup>232</sup> Also see: Submission 125, Attachment 1, *Report from the Family Violence: Cross Border Issues and Solutions Forum*, July 2020, p 11; Submission 136, Shoalcoast Community Legal Centre, p 13; Submission 139, Legal Aid NSW, p 15.

<sup>233</sup> Submission 76, Men and Family Centre, p 3; Stewart Prins, Transcript of evidence, 23 February 2021, p 11; Answers to questions on notice, Men and Family Centre, p 1.

<sup>234</sup> Submission 121, Relationships Australia NSW, p 9.

<sup>235</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, [Inquiry into family, domestic and sexual violence](#), March 2021, see recommendation 65.

<sup>236</sup> Submission 126, No to Violence, p 12.

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program, delivered by NSW Corrective Services in custodial settings. This division can lead to 'lower risk clients ... falling between the gaps.'<sup>237</sup>

- 4.69 More funding is needed for programs to engage with perpetrators before they come into contact with the criminal justice system.<sup>238</sup>
- 4.70 As No to Violence told us, perpetrators who voluntarily seek treatment are typically more successful candidates for behaviour change, as they tend to be 'the most prepared to change their abusive and violent behaviour.' However, 'due to the limited supply of these programs and the need to prioritise men deemed at a greater risk, the majority [of] these men are either placed on waitlists or in many cases not offered a place in [a] program.'<sup>239</sup>
- 4.71 Equally, very high-risk perpetrators are often unable to attend programs delivered by the community sector, which choose participants who are ready to accept responsibility for their behaviours, and to discuss them in group sessions. Although some high-risk men are serviced through EQUIPS, there is a need for 'more intensive interventions', such as one-on-one work, to prepare some perpetrators to participate in group-based programs.<sup>240</sup>
- 4.72 Joplin Lawyers referred to overseas programs which are court mandated, run for over a year, target individual offenders' needs, and are delivered in residential facilities. In contrast, they told the Inquiry that programs in Australia typically employ a 'one size fits all' approach. The average program runs for 12 weeks, which is not enough to support substantial and long term change.<sup>241</sup>

#### **Perpetrators with diverse backgrounds**

- 4.73 Under the NSW Practice Standards, MBCPs have to 'respond to the diverse needs of ... participants', including by 'ensuring that programs are culturally safe, language barriers are addressed, program content and materials are respectful and inclusive and appropriate referral pathways are in place.'<sup>242</sup> However, No to Violence told the Inquiry that '[t]he sector is yet to be funded to meet this onerous yet very important Principle.'<sup>243</sup>
- 4.74 The Inquiry heard from witnesses about the need for MBCPs to be 'culturally appropriate', and tailored for perpetrators with different backgrounds – especially men in the Aboriginal and Torres Strait Islander community, and from migrant and refugee backgrounds. This includes programs being 'delivered in language where required, and with an understanding of cultural backgrounds.'<sup>244</sup>

<sup>237</sup> Submission 126, No to Violence, pp 47-48.

<sup>238</sup> Submission 121, Relationships Australia NSW, p 9.

<sup>239</sup> Submission 126, No to Violence, p 50.

<sup>240</sup> Submission 126, No to Violence, p 52.

<sup>241</sup> Answers to questions on notice, Joplin Lawyers, pp 1-2.

<sup>242</sup> NSW Government, Justice Strategy and Policy, [Practice Standards for Men's Domestic Violence Behaviour Change Programs](#), November 2017, accessed 7 June 2021.

<sup>243</sup> Submission 126, No to Violence, p 52.

<sup>244</sup> Submission 138, Settlement Services International, p 13.

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- 4.75 Elisabeth Shaw from Relationships Australia told the Inquiry that ‘existing interventions are mostly only available to English speakers’, leaving ‘systemic gaps in support for culturally and linguistically diverse people.’ Ms Shaw said that her organisation is developing a specific program for CALD perpetrators, through an innovation grant. This project is aimed at ‘genuine adaption’, not just replicating the same programs in different languages.<sup>245</sup>
- 4.76 For Aboriginal and Torres Strait Islander communities, ‘an understanding of unique drivers within these communities and intergenerational trauma is essential.’<sup>246</sup> South West Sydney Legal Centre recommended developing Aboriginal and Torres Strait Islander-specific intervention programs together ‘with elders and secured cultural centres across the state, aiming to reunite perpetrators with their country and culture. Subject to strict conditions and supervision, perpetrators of violence would be required to engage with their culture and community, actively working to heal trauma in a culturally-appropriate manner.’ Successful participation in such programs could be taken into account to reduce prison sentences.<sup>247</sup>
- 4.77 The Inquiry also heard evidence about the need for well-funded perpetrator intervention programs that cater to other genders, including those in the LGBTQ community.
- 4.78 Sarah Lambert told the Inquiry that ACON has received funding to run pilot programs looking at ‘more inclusive behaviour change interventions’, recognising that mainstream MBCPs may be unsafe for gay and bisexual men, and are unavailable to female, trans and non-binary perpetrators.<sup>248</sup>
- 4.79 For example, ACON’s ‘Proud Partners’ – a 10-week program based on self-referrals – has seen ‘a lot of success’, and is able to include ‘specific content’ addressing the nuances of relationships in the LGBTQ community.<sup>249</sup>
- 4.80 Apart from this program, all NSW perpetrator intervention programs target cisgender heterosexual men. ACON has funding to run Proud Partners programs in 2021 and 2022, but like other stakeholders, emphasised the need for ‘long-term, sustainable funding to build referral pathways within the DFV sector.’<sup>250</sup>
- 4.81 Further, ACON noted that the NSW Practice Standards are explicitly focused on men’s behaviour change, excluding non-male perpetrators. They suggested that these could be updated to include all genders.<sup>251</sup>

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<sup>245</sup> Elisabeth Shaw, Transcript of evidence, 29 March 2021, pp 10-11.

<sup>246</sup> Submission 126, No to Violence, pp 49-50. Also see: Submission 77, South West Sydney Legal Centre, p 17.

<sup>247</sup> Submission 77, South West Sydney Legal Centre, p 17. See also: Submission 105, Restorative Justice DFV, p 2; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 6.

<sup>248</sup> Sarah Lambert, Transcript of evidence, 23 February 2021, p 6.

<sup>249</sup> Sarah Lambert, Transcript of evidence, 23 February 2021, p 6; Submission 81, ACON, pp 22-23.

<sup>250</sup> Submission 81, ACON, pp 11, 23.

<sup>251</sup> Submission 81, ACON, pp 23-24.

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### Perpetrators in regional areas

- 4.82 MBCPs also need to be available and adapted for delivery in rural and regional areas.<sup>252</sup>
- 4.83 Elizabeth Evatt Legal Centre told the Inquiry that many men who reach out for help, especially in rural and regional NSW, are ‘likely to not find any programs operating in their local area.’<sup>253</sup>
- 4.84 On the positive side, engaging with local communities can provide unique opportunities for innovation in the delivery of MBCPs. Examples of successful, localised programs that participants pointed to were:
- Communicare’s Breathing Space in Western Australia, an intensive residential MBCP which provides an alternative to removing women and children from their family homes.<sup>254</sup>
  - The Maranguka Justice Reinvestment Program and Operation Solidarity in Bourke. This is ‘a response to domestic abuse offending that is place-based; that works with both victims and perpetrators; and that when reviewed has seen something like a 25 per cent reduction in DV reoffending.’<sup>255</sup>

### Research on best practices

- 4.85 Finally, the Committee is persuaded that NSW Government should consider investing in researching ‘best practices’ for delivering MBCPs, and measuring the effectiveness of programs in Australia and overseas.
- 4.86 Michelle Lyons, from the Men and Family Centre, acknowledged the difficulty of evaluating the efficacy of MBCPs.<sup>256</sup> Similarly, Elisabeth Shaw told the Inquiry that Relationships Australia lacks funding to routinely measure post-program outcomes.<sup>257</sup>
- 4.87 Research overseas and in Australia has found that MBCPs can be around 50 per cent effective in addressing physical assault. While this success rate could be higher, addressing and measuring outcomes for psychological and emotional abuse is even more challenging.<sup>258</sup>
- 4.88 Shannon Harvey, a researcher at Relationships Australia, referred the Inquiry to a UK study which reviewed 11 accredited domestic abuse perpetrator intervention programs between 2009 and 2015:

<sup>252</sup> Submission 126, No to Violence, p 12; Submission 130, Hume Riverina Community Legal Service, p 6.

<sup>253</sup> Submission 106, Elizabeth Evatt Community Legal Centre, p 9.

<sup>254</sup> Submission 106, Elizabeth Evatt Community Legal Centre, pp 9-10, citing Communicare: Creating Futures, [Communicare Breathing Space](#), accessed 7 June 2021.

<sup>255</sup> Harriet Ketley, Transcript of evidence, 22 February 2021, p 14. See also: Aboriginal Legal Service NSW/ACT, [‘What is Maranguka?’](#), accessed 7 June 2021; Kathleen Ferguson, [‘Bourke police helping reduce domestic violence with Operation Solidarity’](#), ABC News, 19 September 2017, accessed 7 June 2021.

<sup>256</sup> Michelle Lyons, Transcript of evidence, 23 February 2021, p 12. See also: Submission 15, Name suppressed, p 8.

<sup>257</sup> Elisabeth Shaw, Transcript of evidence, 29 March 2021, pp 12-13.

<sup>258</sup> Elisabeth Shaw, Transcript of evidence, 29 March 2021, p 11.

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That [study] found good outcomes—particularly for reduction in physical and sexual violence—which is in line with what we see in our programs as well. But they still found up to 12 months 50 per cent of women were saying they were still experiencing being insulted by their partner and being afraid of their partner, and that is not good enough. What we really need here is at least a similar study in Australia, particularly if we are thinking about new legislation, to understand what is working in men's behaviour-change programs and where do we need to increase investment.<sup>259</sup>

- 4.89 In 2019, ANROWS published a report on measuring outcomes and improving the quality of MBCPs. It acknowledged there is limited evidence about the effectiveness of MBCPs, noting that evaluations often focus on 'outputs' (i.e. numbers of participants completing programs) rather than 'outcomes' (i.e. improvements in victims' safety, and reduction in abusive behaviours). To address this, ANROWS recommended that MBCPs should be funded to 'articulate their program logic models', develop evaluation plans, and engage with partners of program participants.<sup>260</sup>
- 4.90 Relationships Australia also referred to engaging with partners of perpetrators as an important way to bolster and measure the effectiveness of MBCPs. If service providers only talk to perpetrators, it can be impossible to know the true extent of their abusive behaviour, or of any behaviour change. Although 'partner contact' work is critical to monitoring perpetrators' behaviour and assessing ongoing risk to victims, it is typically underfunded.<sup>261</sup>

## Piloting triage and referral hubs

### Summary

Victims of domestic abuse often need multiple kinds of legal and non-legal support, and do not know where to go to get help. This could be addressed by co-locating core services in a triage and referral centre, where the process of seeking support can safely and reliably be streamlined. Examples in Victoria and Western Australia provide a useful model for how this could be trialled.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Recommendation 14

**That the NSW Government gives consideration to a pilot of triage and referral hubs in regional and metropolitan NSW, which can be accessed in person or remotely by clients affected by domestic abuse.**

<sup>259</sup> Shannon Harvey, Senior Research Officer, Relationships Australia NSW, Transcript of evidence, 29 March 2021, p 13; Liz Kelly and Nicole Westmarland, [Project Mirabel: Final Report](#), January 2015, accessed 7 June 2021.

<sup>260</sup> ANROWS, [Men's behaviour change programs: Measuring outcomes and improving program quality: Key findings and future directions](#), April 2019, see pp 2, 6, accessed 7 June 2021; Answers to questions on notice, Joplin Lawyers, pp 1-2.

<sup>261</sup> Elisabeth Shaw, Transcript of evidence, 29 March 2021, p 12; Submission 126, No to Violence, p 48.

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## Recommendation 15

**That the NSW Government gives consideration to adopting a Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) to ensure services are effectively identifying, assessing and managing family violence risk.**

### Piloting regional and metropolitan triage and referral hubs

- 4.91 In moving to a whole of system approach to addressing domestic abuse, the NSW Government should consider strategies to improve communication and coordination between government and non-government agencies, to ensure that victims of domestic abuse do not 'fall through the cracks'.
- 4.92 As part of this, the Government should consider piloting metropolitan and regional 'hubs', which act as coordination points for government and non-government services. The hubs could triage victims by assessing their needs, for example, whether they need financial support, legal advice, counselling or emergency accommodation. Case workers could maintain ongoing relationships with victims, and support them through reporting their abuse to police, if they choose to do so.
- 4.93 While remote access to the hubs should be available to anyone in NSW, they should be able to provide specific referrals to local service providers, so that victims can make phone, video or in-person appointments to see specialised counsellors, and get the support they need.
- 4.94 Case workers at these hubs should also be able to follow-up with victims, to ensure they are receiving the support they need.
- 4.95 The hubs should aim for consistent service delivery for victims of domestic abuse across NSW, while also adapting to unique local needs and opportunities for collaboration.

### Learning from interstate examples

- 4.96 The Committee considers that Victoria's Safety and Support Hubs, discussed below, would be a useful model for NSW – while learning from the Victorian implementation process. In its most recent report, the Domestic Violence Death Review Team recommended that the NSW Government consider whether a similar model to the Victorian example should be adopted in NSW.<sup>262</sup>
- 4.97 The Government should consider piloting hubs in one or two regions of NSW. Hubs should not open until they are fully staffed, and have consulted with local service providers. Although victims are in urgent need of accessible support services, it is crucial that these services are reliable, and that victims are not further endangered by long wait times.

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<sup>262</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), p 136.

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- 4.98 The Western Australian model, also discussed below, should be considered as an example of local co-design, acknowledging that not all communities in NSW are the same.
- 4.99 Wide consultation will be needed with stakeholders across NSW, to ensure that hubs help coordinate, rather than interfere with the provision of services in regional areas. As the Committee heard at the site visit to Narrandera, service providers in many regional communities already have informal information-sharing and referral strategies, which the NSW Government should aim to support.
- 4.100 Many agencies in NSW have already 'mapped' the services in their region, to simplify the process of seeking support for victims of domestic abuse. Where possible, the NSW Government should take advantage of these existing resources.
- 4.101 For example, in 2018, the Central Coast Domestic Violence Committee brought together representatives from the community services sector to map out the domestic violence service system on the Central Coast. They created the 'Central Coast Domestic Violence Resource', a database of services providing information, counselling and support to victims of domestic abuse in the region. The resource is available in a range of community organisations, including community centres and GP clinics.<sup>263</sup>

#### **Improving coordination and accessibility of support services**

- 4.102 As highlighted throughout this report, combatting domestic abuse is not just a task for the police and the legal system. Reforms to the criminal law will not be effective without wraparound supports for victims who choose to report their abuse.
- 4.103 During the inquiry, the Committee heard that victims of domestic abuse struggle to know where to go for help, particularly if they are unwilling to go to the police.
- 4.104 At the Committee's site visit, some participants emphasised that there should be 'no wrong door' for victims of abuse to seek support. While this is a concept that has been around for decades, too often, it is not how things work in practice. Victims of abuse who disclose their experiences to police or another government or non-government agency, and are dismissed or inadequately supported, may be reticent to seek help again.
- 4.105 This is especially an issue in regional and rural areas, where communities are tight knit, and there is often stigma around domestic abuse. During the site visit, the Committee heard that people often disclose their experiences of abuse to their GPs or hairdressers, who may not have the training or resources to provide support, or refer them to appropriate services.
- 4.106 YES Unlimited Albury stressed the need for central services, such as existing domestic violence helplines, to integrate with local organisations like emergency

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<sup>263</sup> Community Council Central Coast, [Resources](#), accessed 21 June 2021; Community Council Central Coast, [Domestic Violence Brochure](#), accessed 21 June 2021.

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housing providers. They told the Inquiry of the lack of formal coordination between providers:

Each of [the DFV services in Albury] is funded by different government departments, have different targets and programs specifications and structurally have no obligation or process for how they work with each other. While we work hard at local level to collaborate and coordinate, there is no structural mechanism to underpin how each 'piece' fits together meaning it is largely based on goodwill and relationships.<sup>264</sup>

- 4.107 YES Unlimited emphasised that '[i]ntegrated services make for more accessible services'. When victims present to a service provider, they may need legal support, counselling, or practical support, such as childcare or financial help. Most require a mixture of these. Given this, 'it is critical that differing components of support are highly integrated at both a systemic and practice level'.<sup>265</sup>
- 4.108 It should not be the case that victims who approach a health or housing provider first are unable to be referred to additional services, or are referred, but have to retell their story repeatedly, without an integrated service response.
- 4.109 YES Unlimited recommended that the Government dedicates resources to formalising collaboration between agencies, and invests in 'centralised access points'.<sup>266</sup>

#### Case study 23: Western Australia's 'One Stop Hubs'<sup>267</sup>

Western Australia launched two specialist domestic and family violence hubs in December 2020. The 'One Stop Hubs' are designed to make it easier for victims of domestic abuse, by providing a range of services in one location.

The Mara Pirni Health Place in Kalgoorlie and the Naala Djookan Healing Centre in Mirrabooka provide trauma-informed services for victims of domestic abuse, including alcohol and drug counselling, mental health support, housing, legal and financial support, and parenting support. Both also provide off-site services for men.

The hubs were developed through a localised 'co-design' process, which included Aboriginal elders, victim survivors, service providers and other community members.

Individuals can self-refer to a hub, or be referred by another agency. At the point of first contact, the client is assessed by a 'specialist interviewer'. In high risk situations, the interviewer can triage an immediate safety response. After the assessment, the client is allocated to a case coordinator, who works with them to develop and implement an 'intervention plan'. This can include referral to off-site services, such as refuges or health services.

<sup>264</sup> Answers to written questions, YES Unlimited Albury, pp 1-2.

<sup>265</sup> Answers to written questions, YES Unlimited Albury, pp 1-2.

<sup>266</sup> Answers to written questions, YES Unlimited Albury, pp 1-2.

<sup>267</sup> Government of Western Australia, [Department of Communities, One Stop Hubs – Where services come together](#), accessed 21 June 2021; City of Stirling, [Naala Djookan Healing Centre](#); Government of Western Australia, Department of Communities, [One Stop Hubs Stakeholder Engagement and Co-design](#); Curtin University, [Research for the development of two 'One Stop Hubs' – Executive Summary](#), 2018, pp 12-14, accessed 21 June 2021.

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#### Case study 24: Victoria's Support and Safety Hubs – 'The Orange Door'<sup>268</sup>

Participants in the Committee's meetings in Narrandera agreed that, compared to NSW, support services in Victoria tend to be more streamlined, with clearer access points for victims.

Victoria's 2015 Royal Commission into Family Violence recommended creating government-funded 'Support and Safety Hubs' around the state, that would:

- receive referrals from police and non-family violence services, and self-referrals, including from family and friends.
- provide a single, area-based entry point into local specialist family violence services, perpetrator programs and Integrated Family Services and link people to other support services.
- perform risk and needs assessments and safety planning.
- provide direct assistance until the victim, perpetrator and any children are linked to services for longer term support.
- book victims into emergency accommodation and crisis accommodation.
- provide secondary consultation services to universal or non-family violence services.
- offer a basis for co-location of other services likely to be needed by victims and any children.

Eight hubs have been established in Victoria, with more to open by the end of 2022. Hubs, called 'The Orange Door', have opened in Bendigo, Geelong and Shepparton. The hubs are a partnership between Family Safety Victoria, the Department of Health and Human Services, and local service providers including domestic violence services, perpetrator services, child and family services, and Aboriginal services.

The hubs aim to give clients simpler referral paths and coordinated support. Services can be accessed in person or over the phone. People who contact a hub are screened and triaged, with priority based on the complexity of their situation. They are allocated a case worker who works with them on crisis intervention, safety planning and targeted referrals.

According to the NSW Domestic Violence Death Review Team, the Victorian hubs have been designed 'to make the client experience safe, welcoming and positive, and importantly, have been designed in consultation with people who have lived experiences of family violence, as well as responders. There is a strong but discreet security presence, child friendly areas, and culturally appropriate features.'

In May 2020, the Victorian Auditor-General reported that the hubs were not 'realising their full potential to improve the lives of people affected by family

<sup>268</sup> Victorian Government, [Support and Safety Hubs in the 17 Department of Health and Human Services regions](#), accessed 21 June 2021; Victorian Auditor-General's Office, [Managing Support and Safety Hubs – Independent assurance report to Parliament](#), May 2020, p 9, accessed 21 June 2021; The Orange Door, [Find a service near you](#), accessed 21 June 2021; The Orange Door, [What is the Orange Door?](#), accessed 21 June 2021; Rochelle Kirkham, [Orange Door family violence service opens in Ballarat](#), *The Courier*, 13 October 2020, accessed 21 June 2021; Natalie Croxon, [Bendigo's Orange Door family violence safety hub opens](#), *Bendigo Advertiser*, 29 October 2020, accessed 21 June 2021; NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 134-136.

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violence', as service coordination was not 'consistently effective or efficient'. This was partly due to a 'rushed implementation schedule and a lack of detailed project planning', with the first hubs opening before they had the 'infrastructure, processes or staff needed to meet demand'.

## Supporting the police response

### Summary

The Committee recognises that police are extremely busy, time poor, work from an incident-based framework and have limited resources. Police are the frontline response to domestic abuse and violence and often have complex dynamics to deal with. Police would benefit from education and training around coercive control.

To improve the police response to domestic abuse, domestic abuse service providers should be co-located within police stations. Along with new training programs, this will help build expertise in the police force. Co-location is already being trialled in NSW. This trial must be adequately funded.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Specialist domestic abuse workers working with police

#### Recommendation 16

**That the NSW Government should co-locate domestic abuse services with police stations, and continue its pilot programs to better support police and better respond to victims of domestic abuse, including in rural and regional areas.**

#### Recommendation 17

**That the NSW Government should consult with stakeholders including domestic abuse service providers, the Aboriginal and Torres Strait Islander community, and NSW Police about how to better respond to the needs of domestic abuse victim survivors in rural and remote areas.**

- 4.110 The Committee considers that the police response to domestic abuse should be supported through the involvement of domestic abuse service providers in a co-located response. The potential benefits of this approach were highlighted by the Domestic Violence Death Review Team. Giving officers access to the expertise of specialist domestic abuse service providers could improve police understanding of domestic abuse, foster cooperation and provide better outcomes for victim survivors. It could also reduce the already enormous workload of police.
- 4.111 Co-locating domestic abuse staff in police stations should be considered for regional areas, to improve services for victim survivors. The Inquiry heard that services in these areas are limited, and victim survivors face additional barriers in getting support. The Government should also consult with stakeholders on other ways to improve services for victim survivors in rural and remote areas.
- 4.112 Inquiry participants told the Committee that 40 per cent of police work is based on responding to reports of domestic violence. The NSW Police said that each

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year they respond to about 140,000 incidents of domestic violence. In 2020 they commenced over 36,600 charge files for domestic violence offences, and made more than 40,000 applications for ADVOs.<sup>269</sup>

- 4.113 The Women's Legal Service NSW observed that 'the role of a first responder is critical. It is demanding and stressful work and comes with heavy responsibilities. It is work that can help save lives.' They noted that given the importance of this work, 'police must be adequately supported to effectively respond to domestic abuse'.<sup>270</sup>
- 4.114 Working closely with domestic abuse service providers could help police move to a pattern-based approach to domestic abuse. ANROWS observed that responding effectively to coercive control would be time-consuming and labour-intensive, requiring police to 'identify the potential presence of coercive control, investigate a series of events, and correctly identify when charges should be laid or protection orders are necessary.' They noted that the complexity of coercive control makes it suitable for policing and investigation that incorporates people with domestic abuse expertise 'either as specialist DFV co-responders or as police units that either accompany police at investigations or support or review police assessments and decisions on action.'<sup>271</sup>
- 4.115 The Women's Legal Service NSW supported co-locating police with domestic abuse community-based workers. They told the Inquiry that specialist domestic abuse workers can give police 'ongoing professional development in identifying and responding to sexual and domestic abuse', while police can help domestic abuse workers better understand police powers, processes and practices.<sup>272</sup>
- 4.116 The Domestic Violence Death Review Team has noted issues for domestic abuse victims who report violence at a police station, including: information or complaints not being recorded correctly (in some cases not recorded at all); victims getting incorrect advice; and the way victims were treated by some officers leading them to not report future violence.<sup>273</sup>
- 4.117 The Team acknowledged that officers on front counter duties have considerable administrative, public and phone duties. While the environment may not be conducive for victims to report violence, many of the Team's cases showed that it is the preferred way for some women to engage with police.<sup>274</sup>
- 4.118 The Team observed that service gaps could be addressed by including specialist domestic abuse support services in police stations. Co-locating services (police and specialist domestic and family violence) could have other functions including: support workers helping police to triage reports made at the station; building stronger relationships with general duties police and increasing communication

<sup>269</sup> Submission 140, Women's Legal Service NSW, p 15; Chief Inspector Sean McDermott, Transcript of evidence, 22 February 2021, p 17.

<sup>270</sup> Submission 140, Women's Legal Service NSW, p 15.

<sup>271</sup> Submission 96, ANROWS, pp 2, 7.

<sup>272</sup> Submission 140, Women's Legal Service NSW, p 24.

<sup>273</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 132-133.

<sup>274</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 132-133.

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and understanding of each other's work; and reducing the workload of front desk officers. Specialist workers could also help administer the Domestic Violence Safety Assessment Tool (DVSAT) and referrals to the Safer Pathway program, which helps victims of domestic and family violence access services and support.<sup>275</sup>

4.119 The Committee heard evidence that the introduction of a coercive control offence may facilitate a more efficient use of police resources. For example, Evan Stark and Cassandra Wiener noted:

Practically, creating an offence of coercive control offers solutions to police and prosecutors. Firstly, it enables the police to take action in the face of serious harm (such as psychological abuse and control) that have not hitherto been actionable. Secondly, it allows police to treat repeated offenses against a victim as a serious crime even when the individual acts themselves may not appear serious. Police and prosecutors respond positively to the opportunity to take the chronic offenders in their caseloads off the streets. As well as enabling prosecution, creating an offence makes the investigation and prosecution of existing crimes (such as stalking or sexual assault) easier by identifying a common context for these criminal acts and brings them under the umbrella of a single serious offence. Prosecution is also facilitated by the creation of a class of new evidence (such as diaries, cell calls, photos, personal notes and statements) which also validate victim experiences of coping with coercive control.

As well as facilitating prosecution, prosecuting coercive control allows for better safeguarding practice. It enables the separation of a class of serious offenders on the basis of factors shown to predict the worst outcomes, providing a basis for designating a class of offenders as less serious for triage into community management, thus encouraging better and more reliable risk assessment practice by the police.<sup>276</sup>

4.120 The NSW Police are trialling co-location. The NSW Police told the Inquiry that the trial aims to get a better understanding of the number of victims who report domestic abuse at a police station and give them information, advice, support, and protection through an integrated cross-agency service model. The Women's Domestic Violence Court Advocacy Program (WDVCAP) and the NSW Police Force Domestic and Family Violence Team have identified five possible sites for the trial and were working towards a launch in May-June 2021.<sup>277</sup>

4.121 The trial's outcomes are to:

- Develop a co-located service model that can adapt to local needs, including co-located WDVCAS specialist workers.
- Develop a dataset to better understand the number of victims who attend a police station for assistance and support.

<sup>275</sup> NSW Domestic Violence Death Review Team, [Report 2017-2019](#), pp 132-133; Department of Communities and Justice, [What is Safer Pathway?](#), accessed 5 June 2021.

<sup>276</sup> Submission 12, Professor Evan Stark and Cassandra Wiener, p 2.

<sup>277</sup> Answers to questions on notice, NSW Police, pp 2-3.

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- Increase the number of victims who attend police stations in relation to their experience of domestic abuse.
- Improve the response to victims who attend a police station to report domestic abuse or seek information about domestic abuse.
- Improve outcomes for victims through streamlined access to safety and support.
- Build an understanding of factors influencing victims' reporting pathway choice to inform the system response.<sup>278</sup>

- 4.122 The trial's costs were to be met out of existing resources. NSW Police told the Inquiry that some issues have been identified and the scope and location of the trial may need to be changed before it starts.<sup>279</sup>
- 4.123 The Committee is persuaded that the trial should be adequately funded. This initiative could reduce the burden on police, and improve the response to victim survivors who attend police stations. However, the Committee cautions that the co-location model is not intended as a replacement of stand-alone domestic abuse services in a particular location.
- 4.124 Some Inquiry participants referred to women's police stations as a method of responding to domestic abuse that could potentially be explored in NSW.<sup>280</sup>
- 4.125 Women's police stations were introduced in Argentina in the 1980s and were specifically designed to respond to victims of gender-based violence. There are 128 women's police stations in Buenos Aires with more than 2,000 women's police officers working in the stations.<sup>281</sup>

## Updating the Domestic Violence Safety Assessment Tool

### Summary

Screening tools to assess the risk level of victims of domestic abuse should be reviewed and updated to ensure they capture coercive control. These tools assist police and service providers to intervene and protect victims from serious abuse.

This section is relevant to question 15 in the NSW Government's discussion paper.

<sup>278</sup> Answers to questions on notice, NSW Police, pp 2-3.

<sup>279</sup> Answers to questions on notice, NSW Police, pp 2-3.

<sup>280</sup> Submission 91, Jess Hill, p 20 and Attachment 1, 'A Thin Blue Line: Is domestic-abuse policing fit for purpose', *Meanjin*, Summer 2020, p 43; Submission 95, NSW Liberal Women's Council, p 10; Submission 53, Feminist Legal Clinic, p 7; Professor Heather Douglas, [Policing Domestic and Family Violence](#), *International Journal for Crime, Justice and Social Democracy*, 2019, Volume 8(2), pp 44-45, accessed 22 June 2021.

<sup>281</sup> K Carrington, M Sozzo & V Ryan, [Briefing paper: What Australia can learn from women's police stations to prevent gender violence](#), Queensland University of Technology Centre for Justice, July 2020, Issue 6, p 1; Submission 91, Jess Hill, Attachment 1, p 44.

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## Recommendation 18

**That the NSW Government should urgently update the Domestic Violence Safety Assessment Tool to improve risk assessment of victims experiencing coercive control.**

- 4.126 An important element of the police response to domestic abuse is risk-assessment of victims. Updating the screening tools used by police and service providers to include coercive and controlling behaviour is an important part of improving the capacity of police to recognise this form of domestic abuse.
- 4.127 Police and support services use the DVSAT to identify and assess risk of harm to domestic abuse victim survivors. The DVSAT is based on evidence-based risk factors, and assesses victims as either 'at threat' or 'at serious threat', which determines the response through the Safer Pathway framework. Police conduct a DVSAT when they attend call outs about domestic abuse, or take reports at a police station. The matter is then referred to the Local Co-ordination Point (a specialist domestic abuse service) who will do another DVSAT. Serious risk matters are referred to a multi-agency Safety Assessment Meeting (SAM).<sup>282</sup>
- 4.128 Inquiry participants gave evidence that the DVSAT needs to be updated to adequately capture patterns of coercive control.<sup>283</sup> The Inquiry heard that the tool has four questions that could indicate coercive controlling violence. No to Violence suggested the questions could be worded more clearly, and more questions added, to identify coercive control more accurately. Responses to questions should be weighted so that the presence of coercive control elevates a victim's 'score' to 'at serious threat'.<sup>284</sup>
- 4.129 No to Violence identified risk indicators that would show the presence of coercive control: stalking and intimidation; obsessive jealousy; social isolation; controlling the victim's daily activities; using court and legal systems to dominate and control; using children in abusive tactics, or attacking the victim's parenting; financial abuse; psychological, spiritual, or emotional abuse; and technology-facilitated abuse.<sup>285</sup>
- 4.130 The Women's Legal Service NSW cited BOCSAR research on the effectiveness of DVSATs used by police and all other workers, which found that the tool was 'little better than chance at identifying who is at greater risk of repeat victimisation.' The DVSAT is currently under review. Women's Legal Service NSW said that updated risk assessment tools are vital for effective screening, and for police and others to 'better understand the types of questions to elicit information to identify coercive and controlling behaviours.'<sup>286</sup>

<sup>282</sup> Submission 140, Women's Legal Service NSW, p 25.

<sup>283</sup> Submission 52, Anglicare Sydney, p 3; Submission 133, Women's Safety NSW, pp 151-152.

<sup>284</sup> Submission 126, No to Violence, pp 56-57. See also: Submission 64, Name suppressed, pp 3-4; Submission 91, Jess Hill, pp 14-15.

<sup>285</sup> Submission 126, No to Violence, pp 56-57.

<sup>286</sup> Submission 140, Women's Legal Service NSW, p 25.

## Education and training for frontline staff

### Summary

Continuous and specialised education and training is needed for frontline workers on responding to all forms of domestic abuse, including coercive control. Training should be given to police, judges and prosecutors, and workers in the domestic abuse, health care, housing, disability, education and child protection sectors.

This section is relevant to question 15 in the NSW Government's discussion paper.

### Recommendation 19

**That the NSW Government implements tailored training on identifying, recording and responding to coercive control for police officers, judicial officers and prosecutors, and workers in the domestic abuse, health care, housing, education and child protection sectors. The training should be repeated regularly.**

- 4.131 Training for frontline staff on recognising and responding to coercive control is an essential part of the reforms recommended by this Inquiry. The Committee heard that there is a gap in understanding about this form of domestic abuse, with many in the community and in frontline services not having sufficient training, education and awareness to understand and appreciate that it is just as harmful as physical forms of abuse. In order to improve the response to domestic abuse and coercive control, our frontline staff must be given the tools to respond effectively. Training should be given to police, judges and prosecutors, and workers in the domestic abuse, health care, housing, education and child protection sectors.
- 4.132 This training will be crucial for these organisations to effectively implement changes to the civil and criminal law relating to domestic abuse.

### Training for all frontline responders

- 4.133 There was wide support from inquiry participants for training to better recognise and respond to all forms of domestic abuse, including coercive control.<sup>287</sup> Good Shepherd told the Inquiry that 'embedding career long training of professionals both within the specialist family violence sector as well as in other industries

<sup>287</sup> Submission 46, The Salvation Army Australia, p 13; Renata Field, Policy and Research Manager, Domestic Violence NSW, Transcript of evidence, 22 February 2021, p 2; Simon Bruck, Transcript of evidence, 22 February 2021, p 10; Peter McGrath, Deputy Director of Public Prosecutions, Office of the Director of Public Prosecutions, Transcript of evidence, 22 February 2021, pp 22-24; Marianne Carey, Transcript of evidence, 22 February 2021, p 25; Joplin-Lea Higgins, Transcript of evidence, 22 February 2021, p 43; Brad Chilcott, Transcript of evidence, 23 February 2021, p 14; Natalie Gouda, Transcript of evidence, 23 February 2021, p 16; Associate Professor Kate Fitz-Gibbon, Transcript of evidence, 24 February 2021, pp 31, 35; Submission 66, Australian Psychological Society, p 6; Submission 31, De Saxe O'Neill Family Lawyers, p 3; Submission 79, White Ribbon Australia, p 6; Submission 111, Gowland Legal Family Lawyer, pp 6-7; Submission 20, Joplin Lawyers, p 1; Submission 38, Maria Girdler, p 1; Submission 49, Name suppressed, p 1; Submission 93, Name suppressed, p 4, Submission 94, Name suppressed, p 12; Submission 98, Name suppressed, p 4; Submission 119, Monash Gender and Family Violence Prevention Centre, p 14; Submission 129, Australian Association of Social Workers, p 5.

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across society would improve the early identification of coercive control.<sup>1288</sup>

- 4.134 The Salvation Army observed that police won't always be the first responders for victims of domestic abuse. This means that all frontline staff need access to specialised training 'to correctly identify the person/s in need of protection and respond with meaningful support options for both the adult and child victim-survivor/s and the perpetrator.'<sup>289</sup>
- 4.135 The Inquiry heard that legislation to criminalise coercive control can only be effective if it is introduced with comprehensive education for workers in emergency response and service sectors. Our Watch noted that education and capacity building to improve understanding of all types of violence is needed for workers to whom women are likely to first report, including police, ambulance and other first responders, health settings, legal services, emergency and crisis accommodation services, disability support services, and financial services.<sup>290</sup>
- 4.136 The Domestic Violence Death Review Team submitted that even without legislative change, it is important to train responders involved in tertiary responses, and primary prevention and early intervention, along with educating the community on the seriousness of coercive and controlling behaviours, and support and services for victims. The Team stressed that 'embedding law and policy requires regular, repeated, innovative and routine training, as well as training and education that combats pre-existing attitudes or stereotypes that responders may have as members of society'.<sup>291</sup> Other stakeholders also stressed the need for continuous training, noting that police rotate and leave, and new staff join the organisation.<sup>292</sup>
- 4.137 Women's Safety NSW said that experience from other jurisdictions shows that coercive control legislation may be underused without adequate training for police and judicial officers. They also noted that lack of education and training 'could pose a risk of system abuse by perpetrators and thus a lack of safety in the legal process for victims'.<sup>293</sup> For example, insufficient training can lead to misidentification of primary victims, and ADVOs being granted against victims instead of perpetrators.<sup>294</sup>
- 4.138 Witnesses told the Inquiry that training should be supported by updated policies, guidelines and resources to help police, prosecutors and judicial officers

<sup>288</sup> Submission 59, Good Shepherd, p 18.

<sup>289</sup> Submission 46, The Salvation Army Australia, p 13. See also: Submission 102, Australian Medical Association (NSW), p 1; Submission 56, Doctors Against Violence Towards Women, p 2; Submission 144, Professor Brin Grenyer, p 3; Answers to questions on notice, Professor Marilyn McMahon and Paul McGorrery, p 1; Answers to questions on notice, Australian Psychological Society, p 2.

<sup>290</sup> Submission 45, Our Watch, pp 16-17; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 7.

<sup>291</sup> Submission 24, Domestic Violence Death Review Team, p 7.

<sup>292</sup> Dr Heather Nancarrow, Transcript of evidence, 22 February 2021, p 8; Submission 64, Name suppressed, p 3.

<sup>293</sup> Submission 133, Women's Safety NSW, pp 145-150.

<sup>294</sup> Answers to questions on notice, Lou's Place, p 1; Answers to questions on notice, Shoalcoast Community Legal Centre, pp 1-2.

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implement and apply new legislation.<sup>295</sup>

4.139 The Inquiry heard that training will need to cover the process of gathering evidence in relation to a course of conduct as opposed to a single incident, and training should be given on interviewing victims and perpetrators. No to Violence outlined the elements needed to build workforce capacity to support a legislative response:

- Clarity about defining the coercive control pattern and competency in attributing it to the perpetrator – identifying, linking and evidencing consistent behavioural patterns to an individual accused of a coercive control related charge.
- Competency to engage victim survivors – explaining to a complainant what the pattern is; what it means in a criminal context to establish criminality; gathering evidence and presenting it in court; and cross examination on the evidence.
- Specialist knowledge, interview skills – to support gathering evidence, and professional confidence in the police, judiciary, child protection, and correctional services.
- Training for all judges, magistrates, prosecutors and senior law officers involved in domestic violence cases (including coercive control), noting examples where judges have not been informed by evidence, best practice and an understanding of the nature of domestic abuse.
- Judiciary roles and responsibilities will require foundational training to interpret the legislation.
- Court experts need significant clinical front-line experience in working with men using family violence, and sufficient training on presenting in court.<sup>296</sup>

4.140 It is important that training covers how domestic abuse and coercive control affect all members of our community including Aboriginal and Torres Strait Islander people, the CALD community, the LGBTQ community, and people with disability. Women's Legal Service NSW suggested that police training be developed and delivered with input from, and co-facilitated with, sexual and domestic abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services.<sup>297</sup>

### Training in other jurisdictions

4.141 Inquiry participants noted that significant training has been a key part of

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<sup>295</sup> Submission 35, Rape and Domestic Violence Services Australia, p 26; Submission 133, Women's Safety NSW, pp 142-143, 151-153.

<sup>296</sup> Submission 126, No to Violence, pp 54-55. See also: Submission 20, Joplin Lawyers, pp 4-5.

<sup>297</sup> Submission 140, Women's Legal Service NSW, p 23; Submission 133, Women's Safety NSW, p 146; Eloise Layard, Transcript of evidence, 22 February 2021, pp 2, 4-5.

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successfully implementing coercive control legislation in other jurisdictions.<sup>298</sup>

- 4.142 The *Domestic Abuse (Scotland) Act 2018* was enacted on 1 April 2019, criminalising coercive and controlling behaviours for the first time in Scotland. Police Scotland told the Inquiry that the Scottish Government provided them with significant funding to develop and implement training to support the rollout of the Act.<sup>299</sup>
- 4.143 Training began in November 2018, before the legislation was enacted. It covered practical issues like evidence gathering and reporting of coercive and controlling behaviours, and was designed to improve officers' knowledge of the dynamics of power and control in abusive relationships and tackle myths and misconceptions. It included guidance for police officers about responding to reports of domestic abuse, how to determine the identity of the principal perpetrator, and tactics perpetrators may use to manipulate officers and present themselves as the victim.<sup>300</sup>
- 4.144 The training was developed in partnership with a UK charity committed to ending domestic abuse, and other partners including service providers.<sup>301</sup>
- 4.145 Fourteen thousand officers and staff had face to face training, in the following areas:
- 13 Local Policing Divisions, officers up to and including the rank of Chief Inspector.
  - Public enquiry and support assistants
  - Contact, Command and Control Division officers and staff, up to and including the rank of Inspector or equivalent.
  - Criminal Justice Division.<sup>302</sup>
- 4.146 An e-learning package was also created to improve understanding of domestic abuse and cover key parts of the new legislation. It was completed by over 90 per cent of Police Scotland's workforce.<sup>303</sup>
- 4.147 Widely implemented training can have a significant impact on the police response to coercive control. Professor Iain Brennan told the Inquiry that an evaluation showed that training a very large proportion of police officers – over 75 per cent – was associated with a 40 per cent increase in coercive control

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<sup>298</sup> Professor Marilyn McMahon, Transcript of evidence, 24 February 2021, p 43; Professor Evan Stark, Transcript of evidence, 29 March 2021, p 3; Liz Snell, Transcript of evidence, 23 February 2021, p 42; Submission 15, Name suppressed, p 4; Submission 20, Joplin Lawyers, pp 2-3.

<sup>299</sup> Submission 146, Police Scotland, pp 1-2.

<sup>300</sup> Submission 146, Police Scotland, pp 1-2; Answers to written questions, Police Scotland, pp 1-2.

<sup>301</sup> Submission 146, Police Scotland, p 2.

<sup>302</sup> Submission 146, Police Scotland, p 2.

<sup>303</sup> Submission 146, Police Scotland, p 2.

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arrests in England and Wales. This effect lasted around eight months.<sup>304</sup>

- 4.148 The case study below outlines the Domestic Abuse Matters training that was provided for police in England and Wales.

**Case study 25: Domestic Abuse Matters training program**<sup>305</sup>

The Domestic Abuse Matters program aims to improve the police response to domestic abuse, including the investigation of coercive control offences and to achieve consistency in the service police provide to people experiencing domestic abuse. The training aims to do this by increasing officers' knowledge and understanding, raising awareness of physical and non-physical forms of domestic abuse, and providing strategies and skills for police officers and staff to improve outcomes for victims.

The program includes an assessment of organisation policies on domestic abuse (a 'health check'), one-day training, enhanced training for a small number of 'champions' and follow-up support through an online forum and continuous professional development events. The most substantial component is one-day training, designed for officers who deal with domestic abuse in their daily role, mainly 'first responders'. However, the training is open to all officers and staff. The program seeks to train a minimum 75 per cent of first responders, but in many forces, most staff attend regardless of their roles. Training such a large proportion of staff is expensive, disruptive and, as a result, unusual in policing.

The one-day training has several aims, including identifying coercive control and understanding its impact on victims. Key elements include: understanding coercive and controlling behaviour; abuser tactics in controlling victims and manipulating police; understanding victim decision-making and behaviour; strategies to interview victims; gathering and recording evidence on coercive and controlling behaviour and other forms of domestic abuse; the impact of domestic abuse on families; and strategies for victim safeguarding. Police trainers and domestic abuse practitioners conduct the training in a classroom setting of up to 25 participants, using single-person delivery, audio-visual material, group discussion, and activities and personal reflection.

Testimonials emphasised the emotionally evocative nature of the content and audio-visual material, which features a long recording of a domestic abuse incident. By (i) emphasising gender and overcoming stereotypical or naïve thinking about victim behaviour; (ii) teaching skills to recognise, collect and record evidence about coercive control; and (iii) supplementing training with the organisational 'health check', the program addresses many of the limits of typical police domestic abuse training.

<sup>304</sup> Submission 55, Professor Iain Brennan, pp 2, 5; Professor Iain Brennan, Transcript of evidence, 30 March 2021, pp 37, 39-40.

<sup>305</sup> Submission 55, Professor Iain Brennan, pp 4-5.

## Chapter Five – How could a coercive control offence be implemented?

"While criminalising coercive control will not magically fix our deeply flawed justice system ... it will replace the broken lens we have on domestic abuse.

Instead of seeing a collection of incidents, it will make visible the system of abuse that endangers, and even kills, so many women and children ...

The need to understand and detect coercive control is urgent. Not just because of the immeasurable impact it's having on hundreds of thousands of Australians, but because controlling behaviour is typical in men who murder their wives and kids."<sup>306</sup>

### Benefits of creating a coercive control offence

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#### Summary

Criminalising coercive control has a range of educative and practical benefits. It increases the ability of the criminal justice system to respond to non-physical forms of domestic abuse, and to protect victims from that abuse. It may also help reduce misidentification of victims as perpetrators, as police responses to domestic abuse will be less incident-focused.

This section is relevant to questions 7 and 8 in the NSW Government's discussion paper on coercive control.

- 5.1 During the inquiry the Committee heard evidence from witnesses that a criminal offence of coercive control would have a number of benefits. Stakeholders also raised some challenges with implementing the offence. While the Committee believes that recommendations for systemic change will address many of these challenges, it is acknowledged that the implementation of a criminal offence should be carefully considered.
- 5.2 Women's Safety NSW conducted a survey of victim survivors and frontline domestic abuse workers, asking about the potential benefits of criminalising coercive control (along with system reforms, training, professional development and community education). The survey responses cover the main benefits that inquiry participants raised during our inquiry:
- Raising awareness and promoting education about coercive control in the community.

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<sup>306</sup> Jess Hill, quoted in Natalie Brown, [Hannah Clarke's devastating question before murder](#), *The Bulletin*, 19 May 2021, accessed 21 June 2021.

- Evidence of coercive and controlling behaviours being admissible in court.
- Preventing intimate partner homicides.
- The law more accurately reflecting victim survivors' experiences.
- Making it easier for victim survivors to seek help, and access the protection of the law.
- Making victim survivors feel more heard and validated in relation to the abuse they experienced.
- Catching abusive behaviours that are outside the scope of the law.
- Improving police responses to domestic and family violence.
- Sending a message to abusers that the behaviour won't be tolerated by society.
- A specific penalty for the offence in sentencing.
- Reducing the likelihood of victim survivors being criminalised by being misidentified as the primary aggressor.
- Earlier diversion of abusers to rehabilitation and behaviour change programs.<sup>307</sup>

5.3 Scotland Police told the Inquiry that it welcomed the introduction of the Scottish offence, and outlined similar benefits to criminalisation, including:

- Acknowledging the true impact and consequences of all types of abusive behaviours including non-physical tactics of control and abuse.
- Declaring without ambiguity that this conduct is not acceptable and will be met with the full force of the law, including imposing criminal sanctions.
- Effective enforcement and prosecution is critical to the success of a wider prevention strategy.
- Prosecution can disrupt the abuse, enable physical separation and give victims breathing space.
- Conviction can lay a marker of abusive behaviour and provide an opportunity for intervention.
- Prosecution can help stop further abuse.
- Prosecution can help educate the public and change cultural attitudes

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<sup>307</sup> Submission 133, Women's Safety NSW, pp 77-78. Forty-six frontline domestic and family violence specialists and seventy two victim survivors took part in the survey.

towards domestic abuse.<sup>308</sup>

- 5.4 The Committee heard that a criminal offence would allow our system to deal with patterns of controlling behaviour, as opposed to individual incidents of physical violence. Stakeholders observed that this would match the reality of domestic abuse, which often involves a pattern of behaviour over time.<sup>309</sup>
- 5.5 Creating an offence would improve victim survivors' access to justice and protection. Police would be able to take action in cases involving serious non-violent abuse, investigating and gathering evidence about a wider range of abuse. Professor Evan Stark and Cassandra Wiener told the Inquiry that a criminal offence would identify a common context for criminal acts, including existing offences like stalking, and bring 'them under the umbrella of a single serious offence'.<sup>310</sup>
- 5.6 The Inquiry heard that criminalisation could improve the safety of victims who are at the highest risk. No to Violence noted that severe coercive control is a major risk factor for attempts on victims' lives, and said that 'criminalisation may prevent severe escalation and potentially homicide'.<sup>311</sup>
- 5.7 Our Watch told the Inquiry that 'coercive control laws also present an opportunity for more effective early intervention work, which has the potential to arrest trajectories of violence and abuse before they escalate further or lead to homicide'.<sup>312</sup>
- 5.8 Prosecuting offenders could enable better risk assessment and a range of responses depending on the seriousness of the offence, including community corrections orders and requiring attendance at behaviour change programs.<sup>313</sup>
- 5.9 Women's Safety NSW observed that wider services for victims would also improve as 'child protection, health, ageing, disability, education, housing, social, legal, youth and family services, will update their own definitions, policies, practices and procedures, which will increase the safety and accessibility of these services for victims of domestic and family violence'.<sup>314</sup>
- 5.10 Inquiry participants told the Inquiry that criminalisation would have public education benefits, by sending a message to perpetrators, victims, and the wider

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<sup>308</sup> Answers to questions on notice, Police Scotland, p 3.

<sup>309</sup> Submission 35, Rape and Domestic Violence Services Australia, p 19; Jacqui Watt, Chief Executive Officer, No to Violence, Transcript of evidence, 22 February 2021, p 31; Submission 132, Domestic Violence NSW, p 32; Brad Chilcott, Transcript of evidence, 23 February 2021, p 14; Submission 15, Name suppressed, p 6.

<sup>310</sup> Submission 133, Women's Safety NSW, p 85; Submission 12, Professor Evan Stark and Cassandra Wiener, pp 1-2; Submission 45, Our Watch, pp 15-16; Submission 132, Domestic Violence NSW, p 34; Submission 145, Name suppressed, pp 2-3.

<sup>311</sup> Submission 126, No to Violence, p 30. See also: Submission 15, Name suppressed, pp 3-4; Submission 16, Min Grob, pp 1-2.

<sup>312</sup> Submission 45, Our Watch, p 15. See also: Submission 102, Australian Medical Association (NSW), p 1; Submission 93, Name suppressed, p 2.

<sup>313</sup> Submission 12, Professor Evan Stark and Cassandra Wiener, pp 1-2; Jacqui Watt, Transcript of evidence, 22 February 2021, p 31.

<sup>314</sup> Submission 133, Women's Safety NSW, p 86.

community, that this type of behaviour is 'unacceptable, harmful and not a normal part of relationships'.<sup>315</sup>

- 5.11 The Western NSW Community Legal Centre argued that without a criminal offence, the community and the legal system will continue to view non-physical abuse as less serious than physical violence.<sup>316</sup>
- 5.12 The ODPP said that the lack of recognition by the community that non-physical violence is a form of domestic abuse means victims stay silent: 'this gap in community understanding places the lives of women and children (coercive control perpetrators are almost universally male) at risk'.<sup>317</sup>
- 5.13 Apart from improving public awareness, criminalisation would also help victims, by recognising what they experience as abuse. The Inquiry heard that this validation is important for victim survivors, as 'being able to frame what has happened to them as a serious crime is an essential factor in their recovery process'.<sup>318</sup>
- 5.14 Inquiry participants also observed that criminalisation may help prevent victims being misidentified as the aggressor and criminalised. An incident-based response to domestic abuse creates a risk that a victim can appear to be the main aggressor, for example, if they act in self-defence. Victims can then become the subject of an ADVO, or be charged with a criminal offence. The Inquiry heard that this is more common for First Nations women, women from non-English speaking backgrounds, and women with cognitive or intellectual disabilities.<sup>319</sup>
- 5.15 Another benefit of criminalisation is more consistent domestic abuse legislation in Australia. Our Watch noted that criminalisation could bring NSW in line with other states that have a criminal offence, or have wider definitions of domestic violence.<sup>320</sup>
- 5.16 Tasmania is the only state to currently have legislated offences relating specifically to coercive control. However, Queensland's domestic violence taskforce recently outlined options for reform, including creating a standalone coercive control offence or a broader offence of domestic violence. The South Australian, Northern Territory and ACT governments are also considering similar

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<sup>315</sup> Submission 35, Rape and Domestic Violence Services Australia, p 19; Submission 126, No to Violence, p 46; Submission 59, Good Shepherd, p 21; Brad Chilcott, Transcript of evidence, 23 February 2021, p 14; Submission 71, Youth Action, p 7; Submission 95, NSW Liberal Women's Council, p 9; Submission 111, Gowland Legal Family Lawyers, p 5; Submission 32, Debra Gillick, p 8; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 4; Submission 65, Geraldine Bilston, p 5; Submission 72, Dr Supriya Singh, p 2; Submission 93, Name suppressed, p 3.

<sup>316</sup> Hannah Robinson, Transcript of evidence, 22 February 2021, p 41; Dr Marsha Scott, Chief Executive Officer, Scottish Women's Aid, Transcript of evidence, 30 March 2021, p 3; Submission 16, Min Grob, pp 1-2.

<sup>317</sup> Submission 89, Office of the Director of Public Prosecutions, pp 7, 8.

<sup>318</sup> Submission 12, Professor Evan Stark and Cassandra Wiener, pp 1-2; Submission 126, No to Violence, pp 28, 29; Submission 72, Dr Supriya Singh, p 2; Submission 98, Name suppressed, p 3.

<sup>319</sup> Submission 133, Women's Safety NSW, pp 87-90; Submission 111, Gowland Legal Family Lawyers, p 7.

<sup>320</sup> Submission 45, Our Watch, p 14.

reforms.<sup>321</sup>

## A taskforce to implement a coercive control offence

### Summary

More consultation is needed on how the offence should be implemented. This should be done by an inclusive multi-agency taskforce. This could potentially be led by the Secretary of the Department of Communities and Justice.

The taskforce should engage with stakeholders about education and implementation of the elements of a NSW offence, balancing the need to protect victims of coercive control, with fairness for the accused.

This section is relevant to questions 7 and 8 in the NSW Government's discussion paper on coercive control.

### Recommendation 20

**That the NSW Government gives consideration to establishing an implementation taskforce to manage the introduction of a criminal offence of coercive control. The taskforce should consult with stakeholders including NSW Police, victim survivors, the domestic abuse sector, disability advocacy organisations, and representatives of culturally and linguistically diverse, Aboriginal and Torres Strait Islander and LGBTQ communities.**

### Recommendation 21

**That the NSW Government releases an exposure draft of legislation for a coercive control offence as a priority, with proposal of final legislation following further consultation through the implementation taskforce.**

### Recommendation 22

**That in considering implementation of the coercive control offence, the taskforce should consult with stakeholders on how to optimise implementation via the following aspects of the offence:**

- **Education and training in relation to the elements of the offence.**
- **Education and training of the judiciary and legal profession on jury directions to address domestic abuse.**

5.17 The Committee recommends that the NSW Government gives consideration to establishing a taskforce to formulate and implement preparation for and oversee the introduction of a criminal offence of coercive control. The Committee

<sup>321</sup> Women's Safety and Justice Taskforce, [Options for legislating against coercive control and the creation of a standalone domestic violence offence – Discussion Paper 1](#), pp 51-55; Lia Walsh, [Queensland domestic violence taskforce proposes 13 changes to legislation including electronic monitoring](#), *ABC News*, 27 May 2021, accessed 10 June 2021; Steven Marshall, Premier of South Australia, [Media release: Liberal women consider coercive control crackdown](#), 8 November 2020, accessed 10 June 2021; Dominic Gianni, [ACT Government provides in-principle support to criminalise coercive control](#), *The RiotACT*, 23 February 2021, accessed 10 June 2021; House of Representatives Standing Committee on Social Policy and Legal Affairs, [Inquiry into family, domestic and sexual violence](#), March 2021, at [4.56].

strongly believes that a careful and considered approach with a long lead-in time is needed to effectively implement an offence. This will enable many of the systemic reforms that are needed alongside criminalisation to be implemented, in order to optimise the effectiveness and preventative intention of the offence. Actions such as training and education for frontline workers, and additional resourcing for support services, are essential to ensure a framework is in place to support the introduction of the offence.

- 5.18 The taskforce could be led by the Secretary of the Department of Communities and Justice. Its structure could be modelled on the Queensland Women’s Safety and Justice Taskforce, which is chaired by a former judge.<sup>322</sup>
- 5.19 The Committee supports the strong message from inquiry participants that consulting with victim survivors, the domestic abuse sector, NSW Police, disability advocacy organisations, and representatives of CALD, Aboriginal and Torres Strait Islander and LGBTQ communities will be critical to the implementation of a criminal offence.<sup>323</sup> Disadvantaged and marginalised communities face significant barriers in reporting domestic abuse, and it is vital to obtain their trust and input on how the offence can improve the safety of victim survivors.
- 5.20 Our Watch recommended that any proposed legislation and an implementation plan 'be developed through a collaborative, multi-sector design and drafting process', to identify possible risks, impacts and unintended consequences, and develop strategies to reduce harm. They suggested that specialist domestic and family violence services, women’s legal services, Aboriginal and Torres Strait Islander family violence and legal services, and representatives from groups that work with migrants and refugees, along with members of the police and justice representatives should be involved in the process.<sup>324</sup>
- 5.21 Police Scotland told the Inquiry that advocacy and support services for victims of domestic abuse were ‘fully engaged’ in the Scottish consultation process, and ‘instrumental in ensuring that the legislation adequately covered the lived experience of many victims.’<sup>325</sup>
- 5.22 The Inquiry heard that a detailed implementation plan should be developed so that education, training and support services are introduced in a staggered approach to ensure effective implementation of the offence. Our Watch told the Inquiry that 'legislative mechanisms need to be supported through a detailed

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<sup>322</sup> Women’s Safety and Justice Taskforce, [Taskforce members](#), accessed 10 June 2021; Rachel Riga, [Queensland’s domestic violence taskforce head wants to hear women’s stories of reporting abuse](#), *ABC News*, 29 April 2021, accessed 10 June 2021.

<sup>323</sup> Delia Donovan, Transcript of evidence, 22 February 2021, p 2; Natalie Gouda, Transcript of evidence, 23 February 2021, p 16; Alexandra Burkitt, Solicitor, Aboriginal Legal Service NSW, Transcript of evidence, 29 March 2021, p 6; Submission 45, Our Watch, pp 13-14; Submission 35, Rape and Domestic Violence Services Australia, p 21; Submission 52, Anglicare Sydney, pp 3, 11; Submission 74, Lou’s Place, p 3; Submission 76, Men and Family Centre, p 2; Submission 71, Youth Action, p 8; Submission 79, White Ribbon Australia, p 6; Submission 114, St Vincent de Paul Society NSW, pp 4-6; Submission 140, Women’s Legal Service NSW, p 10; Submission 141, Women’s Community Shelters, p 2; Answers to questions on notice, Shoalcoast Community Legal Centre, pp 3-4.

<sup>324</sup> Submission 45, Our Watch, pp 13-14; Submission 132, Domestic Violence NSW, p 21; Patty Kinnerly, Transcript of evidence, 23 February 2021, p 15; Submission 129, Australian Association of Social Workers, p 5; Submission 131, Women’s Health NSW, pp 3, 5-6.

<sup>325</sup> Answers to written questions, Police Scotland, 9 June 2021, p 5.

implementation plan that carefully considers and sequences supporting and complementary activities across the spectrum from prevention to response.<sup>1326</sup>

- 5.23 Women's Safety NSW recommended a 12 month lead in time 'from when the law is passed to when it comes into effect so as to allow time to develop and implement the system reforms and deliver community education'.<sup>327</sup>
- 5.24 Inquiry participants submitted that NSW can learn from the experience of other jurisdictions which have implemented a coercive control offence. No to Violence said that 'there is an opportunity to learn from the advantages and shortcomings of the legislation in Tasmania, the UK and Scotland and make necessary adaptations to create the new 'gold standard'.<sup>328</sup>
- 5.25 The Inquiry heard that Scotland's approach to developing an offence involved consultation, review and redrafting of legislation. Inquiry participants supported the long lead time and extensive consultation that took place before the Scottish offence was introduced.<sup>329</sup>
- 5.26 While it is useful to learn from other jurisdictions, the Committee notes that the context in NSW is different. Stakeholders observed that England, Scotland and Wales have different legislative processes and different communities. Our Watch noted that overseas jurisdictions do not have First Nations peoples, which means they 'provide no evidence on how these laws may potentially impact or have unintended negative consequences for Aboriginal and Torres Strait Islander peoples'.<sup>1330</sup>
- 5.27 Harriet Ketley from the Law Society of NSW said that 'jurisdictions such as Scotland obviously do not have the same crisis of Indigenous incarceration that we do in New South Wales', and 'any approach to expanding the criminal law in New South Wales needs to be approached through that lens'.<sup>331</sup>
- 5.28 Considering ways to prevent possible unintended consequences for different communities will be an important part of the work of any potential implementation taskforce. It is important that all victims benefit from criminalising coercive control, and the wider reforms the Inquiry recommends.
- 5.29 Consulting with the stakeholder groups as identified will be essential to manage the risks and challenges of criminalisation. The potential implementation

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<sup>326</sup> Submission 45, Our Watch, p 23.

<sup>327</sup> Submission 133, Women's Safety NSW, p 135; Submission 79, White Ribbon Australia, p 6.

<sup>328</sup> Submission 126, No to Violence, p 31; Submission 59, Good Shepherd, p 24.

<sup>329</sup> Submission 45, Our Watch, p 13; Submission 57, Catholic Women's League, p 5; Submission 140, Women's Legal Service NSW, p 7; Dr Marsha Scott, Transcript of evidence, 30 March 2021, pp 2, 3; Submission 141, Women's Community Shelters, p 2; Submission 79, White Ribbon Australia, p 6; Submission 143, Economic Abuse Reference Group, p 3.

<sup>330</sup> Submission 45, Our Watch, pp 13-14; Submission 140, Women's Legal Service NSW, pp 7-8; Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 7; Renata Field, Transcript of evidence, 22 February 2021, p 3.

<sup>331</sup> Harriet Ketley, Transcript of evidence, 22 February 2021, p 12. See also: Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 7; Submission 56, Doctors Against Violence Towards Women, p 4.

taskforce's plan should identify risks and develop strategies and safeguards to manage these risks.<sup>332</sup>

- 5.30 Inquiry participants emphasised the need to allow enough time for adequate consultation. No to Violence recommended 'comprehensive consultation around criminalisation of coercive control and system reform, with sufficient time to engage with the broader family violence sector and individual communities impacted by any reforms, in particular First Nations elders and leaders.'<sup>333</sup>
- 5.31 Any potential taskforce should consult with victim survivors, service providers and police from across NSW to ensure that the unique barriers faced by communities in different parts of our state are considered as part of the implementation plan.
- 5.32 The Committee believes that a potential taskforce would address many of the challenges identified by stakeholders who took part in the Inquiry. The main challenges are outlined below:
- The scope and operation of the offence in the current legal framework and how it will be interpreted by investigators, prosecutors and the courts.<sup>334</sup>
  - Resourcing for police, prosecution services and courts to use the offence effectively and respond to possible increased demand.<sup>335</sup>
  - Victim survivors' ability and willingness to report offences and engage with the criminal justice system.<sup>336</sup>
  - Increasing the barriers that diverse groups of women already experience with accessing the criminal justice system.<sup>337</sup>
  - The risk of unintended consequences, including misidentification of victims as perpetrators and more opportunities for systems abuse by perpetrators.<sup>338</sup>

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<sup>332</sup> Submission 45, Our Watch, p 19.

<sup>333</sup> Submission 126, No to Violence, pp 31-32, 34.

<sup>334</sup> Submission 35, Rape and Domestic Violence Services Australia, p 20.

<sup>335</sup> Submission 35, Rape and Domestic Violence Services Australia, p 20; Submission 96, ANROWS, p 5; Submission 118, NSW Bar Association, p 14 (and see pp 12-15 on insufficient training and education in the criminal justice system generally).

<sup>336</sup> Submission 119, Monash Gender and Family Violence Prevention Centre, pp 8-9; Submission 35, Rape and Domestic Violence Services Australia, p 20; Submission 126, No to Violence, p 34; Submission 46, The Salvation Army Australia, pp 7-8; Submission 132, Domestic Violence NSW, pp 37-38.

<sup>337</sup> Submission 119, Monash Gender and Family Violence Prevention Centre, pp 8, 12-13; Submission 96, ANROWS, p 5; Submission 132, Domestic Violence NSW, pp 40-41. See also: Submission 126, No to Violence, p 32 (on the vulnerability of women on temporary visas); Submission 105, Restorative Justice DFV, p 3 (on potential negative impacts for marginalised communities).

<sup>338</sup> Submission 119, Monash Gender and Family Violence Prevention Centre, pp 9-11; Submission 35, Rape and Domestic Violence Services Australia, p 20; Submission 96, ANROWS, p 5; Submission 24, Domestic Violence Death Review Team, p 6; Submission 59, Good Shepherd, p 23; Submission 132, Domestic Violence NSW, pp 37-39; Submission 148, Aboriginal Legal Service NSW/ACT, p 3; Submission 128, WAGEC, p 8; Submission 23, Professor Julia Tolmie, pp 2-3; Submission 32, Debra Gillick, p 7.

- The risk of over-criminalisation and regulatory overreach.<sup>339</sup>
- Increasing overrepresentation of Aboriginal and Torres Strait Islander people in custody.<sup>340</sup>
- Limited evidence about the impact of the introduction of offences in other jurisdictions.<sup>341</sup>

## Elements of a coercive control offence

### Summary

In drafting a proposed coercive control offence, the NSW Government should consider how to balance the need to protect victims of domestic abuse with the risk of over-criminalisation.

The Government should also consider whether new or amended legislation about jury directions, evidence law and sentencing would improve the criminal justice system's ability to protect victims.

This section is relevant to questions 1, 2, 9, 11, 12 and 13 in the NSW Government's discussion paper on coercive control.

### Recommendation 23

**That in drafting a proposed criminal offence of coercive control, the NSW Government gives consideration to:**

- **What elements the offence should have.**
- **Codifying common law principles on context and relationship evidence in legislation.**
- **Legislating jury directions for domestic violence offences, or including suggested directions in a bench book.**
- **Developing sentencing guidelines for domestic violence offences.**
- **Amendments to victim impact statements.**
- **The fact of victim survivor resistance (misidentification of aggressor/victim)**

<sup>339</sup> Submission 118, NSW Bar Association, p 17; Submission 132, Domestic Violence NSW, p 36; Submission 148, Aboriginal Legal Service NSW/ACT, p 3; Submission 6, Dr David Thorp, p 1; Submission 10, Name suppressed, p 1; Submission 30, Dr Rosemary Ac, p 1; Submission 43, Name suppressed, pp 1-3.

<sup>340</sup> Submission 126, No to Violence, pp 31-32; Submission 59, Good Shepherd, p 22; Submission 132, Domestic Violence NSW, p 37; Submission 148, Aboriginal Legal Service NSW/ACT, pp 3-4; Submission 105, Restorative Justice DFV, p 3; Harriet Ketley, Transcript of evidence, 22 February 2021, pp 15-16; Submission 99, Name suppressed, pp 1-2.

<sup>341</sup> Submission 119, Monash Gender and Family Violence Prevention Centre, pp 11-12; Submission 35, Rape and Domestic Violence Services Australia, p 20; Submission 105, Restorative Justice DFV, pp 3-4. See also: Submission 13, The Hon Mark Latham MLC, pp 1, 11-16.

- 5.33 During the inquiry, the Committee heard about what elements the NSW Government should consider in drafting a NSW offence. Core issues were:
- Whether the offence should cover physical as well as non-physical types of domestic abuse.
  - How the behaviours prohibited by the offence should be described.
  - Whether the accused should have a ‘specific intent’ to harm the victim.
  - Whether proof of harm should be required.
  - The extent to which behaviour should need to be ‘particularised’.
  - What relationships should be captured.
  - Whether any aggravating factors should be included.
  - Whether a non-exhaustive list of examples of abusive behaviour should be included.
  - Whether there should be a defence.
  - Whether there should be a statutory limitation period.
  - Whether a review mechanism should be included.

- 5.34 The Committee also heard evidence about possible reforms to jury directions, context and relationship evidence, victim impact statements and sentencing in proceedings for domestic violence offences. The Committee believes these issues require further consideration, particularly with experts and advocates in the legal community, and members of the judiciary.

### **Context and the fact of victim survivor resistance or mistaken perpetrator reporting**

- 5.35 The Inquiry heard from Jess Hill, in relation to the defensive techniques of victim survivors, that:

**Mothers who are being abused will frequently risk their lives to defend their children.** But others may be so thoroughly dominated that they allow or enable the abuse of their children, or even punish them for trying to defend themselves. This is why it is especially important, in situations where a victim of abuse has also victimised their child, **to identify whether they were doing so in the context of coercive control.**

How much agency did they have? Why did they do it? Evan Stark talks about sitting down with a mother and son, who told him about the time she held his hand on the stove. The father had threatened her, that if she didn’t do it, he would do worse. Both mother and son knew what she had done was the best action possible. But what might a court think? What might child protection think? What would you think? Many women will spend months or years trying to rationalise the insane abuse being perpetrated against them. Even after the abuse becomes extreme – even when it becomes physical – they may not actually see that they are a victim of

domestic abuse. They may, in fact, regard themselves as the strong one – the only one who can help a troubled man face his demons.

Women stay in coercive control relationships for a multitude of reasons. Because they want to fix their partner. Because they can't afford to leave. Because they are afraid of what he'll do once he's out of her line of sight – once she loses that umbilical, almost psychic connection to him. Because they are afraid that they and their children will be impoverished as a result. Because they cannot bring themselves to wait in a boarding house or motel for the several days it can take to get a bed in a refuge. Because they love him and believe he will change.

**But even when it looks like they are just staying, women are almost never passive in the face of their abuse. Most women push and fight back against their abusers, even in the face of terrifying consequences. Even when they feel like they've surrendered their agency, they are still constantly strategizing; the minute-to-minute calculations required to survive can take every last ounce of mental energy they have. Resistance doesn't disqualify them from being a victim – it is a basic survival instinct.**

**The fact of victim-survivor resistance must be accounted for in any legislation to criminalise coercive control.**<sup>342</sup>

### Offences in other jurisdictions

5.36 This section refers to offences in other jurisdictions, including:

- The *Serious Crime Act 2015* (UK), section 76 – an offence of 'controlling or coercive behaviour in an intimate or family relationship'.
- The *Domestic Abuse (Scotland) Act 2018* – an offence of 'domestic abuse' towards a partner or ex-partner.
- The *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* – an offence of 'domestic abuse' very similar to the Scottish example, but applying to a broader class of relationships.
- The *Family Violence Act 2004* (Tas), sections 8 and 9 – separate offences of 'economic abuse' and 'emotional abuse or intimidation'.

5.37 Extracts from this legislation are at appendix 2.

### Whether the offence should cover physical and non-physical types of domestic abuse

5.38 The Committee believes that an offence should capture *all* forms of domestic abuse – physical and non-physical – to accurately reflect the experiences of victims.

5.39 A key difference between approaches in other jurisdictions, is that the Scottish and Northern Ireland offences cover all kinds of domestic abuse, while the UK and Tasmanian offences are limited to non-physical abuse.<sup>343</sup>

<sup>342</sup> Submission 91, Jess Hill, pp 12-13 (bold emphasis added).

<sup>343</sup> Cassandra Wiener, Transcript of evidence, 29 March 2021, p 2.

- 5.40 Many inquiry participants supported an overarching offence similar to the Scottish example, as this is more in line with victims' experiences of abuse.<sup>344</sup> For example, Jess Hill submitted that including all potential harms in one charge reflects the pattern of coercive and controlling abuse:

... coercive control may include physical and sexual violence and that can be sadistic in its extremes. These physical assaults are also included in the Scottish legislation. All of the potential harms of coercive control are listed in the one charge and that is the genius of it, according to the former Scottish Police Head for Domestic Abuse. They are all considered, because that is how the victim-survivor experiences it .... [I]t's not just for the effectiveness of prosecution, it's for understanding that each technique, each behaviour, is a strand of the cobweb being pulled tighter and tighter. It is not until you see these written out and presented before you that you start to understand how this becomes a system of entrapment.<sup>345</sup>

- 5.41 Similarly, Madeleine Figg from the Tasmanian ODPP told the Inquiry that coercive control is not isolated from other acts of family violence:

... these coercive and controlling type behaviours do not occur in a vacuum from other acts of family violence unfortunately. When you are looking at trying to criminalise or address a continuous course of conduct so that a court is given a truer and fuller picture of offending behaviour, then it can be quite useful to be able to incorporate ... these types of behaviours into particulars of a crime such as a persistent family violence charge.<sup>346</sup>

- 5.42 Evan Stark and Cassandra Wiener also submitted that a bespoke offence, which criminalises all aspects of coercive control in one provision, avoids police having to pursue 'fragmented' charges for physical and non-physical offences, as has happened in the UK.<sup>347</sup>

- 5.43 Good Shepherd NSW advocated for a general offence of domestic abuse, to 'avoid the pitfalls of particularism' which does not 'reflect the continuum of harms experienced by many victims of family violence and, more worryingly, may operate to minimise the criminal justice response to domestic violence.'<sup>348</sup>

#### How the offence should be described

- 5.44 Many inquiry participants told the Inquiry that ordinary readers should be able to understand the wording of a coercive control offence. This may mean avoiding the phrase 'coercive control' altogether, in favour of plain English words like 'abuse', and focusing on its effects on the victim – for example, threatening, intimidating, isolating, monitoring, humiliating and restricting freedom.<sup>349</sup>

<sup>344</sup> Submission 2, Professor Patricia Easteal, p 9.

<sup>345</sup> Jess Hill, Transcript of evidence, 24 February 2021, pp 2-3. Also see: Submission 91, Jess Hill, p 18.

<sup>346</sup> Madeleine Figg, Crown Counsel, Office of the Director of Public Prosecutions (Tasmania), Transcript of evidence, 30 March 2021, p 18. Also see *Criminal Code 1924 (Tas)*, section 170A.

<sup>347</sup> Submission 12, Evan Stark and Cassandra Wiener, p 4.

<sup>348</sup> Laura Vidal, Transcript of evidence, 24 February 2021, p 13; Submission 59, Good Shepherd NSW, p 20.

<sup>349</sup> Submission 136, Shoalcoast Community Legal Centre, p 8; Submission 21, Professor Heather Douglas, p 13. See also: Submission 111, Gowland Legal Family Lawyers, p 4; Submission 14, Name suppressed, pp 1-2, Submission 64, Name suppressed, p 2.

- 5.45 Professor Heather Douglas pointed to the wording of the Scottish offence as ‘less technical and complicated’ and ‘easier to understand’ than ‘coercive control’, while still ‘captur[ing] the ongoing nature of domestic violence’.<sup>350</sup>
- 5.46 The Northern Ireland Department of Justice decided not to use the phrase ‘coercive control’, instead adopting the terminology of ‘abusive behaviour’ used in the Scottish legislation.<sup>351</sup>
- 5.47 Other participants referred to the Scottish offence as a guide that reflects behaviours that comprise coercive control – isolation, deprivation, humiliation.<sup>352</sup>
- 5.48 Ordinary readers’ understanding of the offence could also be helped by including a non-exhaustive list of examples of abusive behaviours – discussed below.

#### **Intent, recklessness, and/or a ‘reasonable person’ test**

- 5.49 Organisations which were concerned about the risk of over-criminalisation, particularly of ATSI communities, stressed the need to require specific intent. The NSW Law Society described this as an ‘important safeguard’.<sup>353</sup>
- 5.50 Other inquiry participants supported an objective standard, as opposed to subjective intent. This requires that the accused either knew or *ought to have known* the effect their behaviour would have on the victim, meaning that a reasonable person in the same circumstances would have known.<sup>354</sup>
- 5.51 Supporters of this approach told the Inquiry that some perpetrators of domestic abuse ‘do not know they are using family violence, including coercive control’, but that this does not lessen the criminality of their actions, or the impact on the victim.<sup>355</sup>
- 5.52 Disability and older people’s advocacy groups supported the objective ‘reasonable person’ test.<sup>356</sup> For example, the Ageing and Disability Commission submitted that having to demonstrate subjective intent is ‘too high a threshold and would unfairly disadvantage the vulnerable ... individuals and communities that we receive reports about and support.’<sup>357</sup>

<sup>350</sup> Submission 21, Professor Heather Douglas, p 13.

<sup>351</sup> Dr Veronica Holland, Transcript of evidence, 30 March 2021, p 42.

<sup>352</sup> Submission 74, Lou’s Place, pp 2-3. Also see: Submission 82, Weave Youth and Community Services, p 1; Submission 100, Indian (Sub-Cont) Crisis and Support Agency, p 15.

<sup>353</sup> Submission 18, NSW Law Society, p 4; Submission 97, Public Defenders (NSW), p 2; Alexandra Burkitt, Transcript of evidence, 29 March 2021, p 9; Submission 148, Aboriginal Legal Service, pp 4-5; Submission 139, Legal Aid NSW, p 6.

<sup>354</sup> Simon Bruck, Transcript of evidence, 22 February 2021, p 10; Submission 92, Centre for Women’s Economic Safety, p 3; Submission 7, Australian Brotherhood of Fathers, p 5; Answers to questions on notice, Australian Brotherhood of Fathers, p 10; Submission 149, Illawarra Women’s Health Centre, pp 8, 26; Submission 124, VOCAL, p 3; Submission 32, Debra Gillick, p 7; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 3; Submission 94, Name suppressed, p 21.

<sup>355</sup> Submission 126, No to Violence, pp 17-18, 37-38; Submission 50, Ethnic Communities’ Council of NSW, p 3.

<sup>356</sup> Margaret Duckett, Board Chair and President, Seniors Rights Service, Transcript of evidence, 23 February 2021, p 47; Submission 127, Seniors Rights Service, p 2.

<sup>357</sup> Kathryn McKenzie, Transcript of evidence, 23 February 2021, p 39; Submission 108, NSW Ageing and Disability Commission, pp 11, 14, 26.

- 5.53 Although agreeing with a ‘reasonable person’ test, Settlement Services International highlighted the need to be aware of ‘intersectionality and complex identify factors in assessing harm to the victim survivor’. They cautioned against perpetuating myths of an ‘ideal victim’, or implying that victims who experience more distress due to cultural factors are less ‘reasonable’ and less deserving of protection. Muslim Women Australia recommended an objective test, but warned that the interpretation of ‘reasonableness’ could be affected by unconscious bias against marginalised communities.<sup>358</sup>
- 5.54 Women’s Safety NSW recommended ‘careful consideration’ of whether the mental element of the offence should be satisfied by knowledge or constructive knowledge of harm, as opposed to intent.<sup>359</sup>
- 5.55 The Tasmanian ODPP told the Inquiry that the subjective mental elements in the Tasmanian offences have been an obstacle to successful prosecutions, which are limited to ‘cases where it is clear that the particular behaviour would be obvious to the offender that it would be likely to cause fear, apprehension, harm et cetera for the complainant.’<sup>360</sup>

#### **Proof of harm or fear**

- 5.56 The Inquiry heard that a key element of coercive control, distinguishing it from ‘normal’ or ‘healthy’ relationships, is the ‘level of fear experienced by the victim’ and their ‘loss of independence [and] autonomy’.<sup>361</sup>
- 5.57 However, there was disagreement about whether an offence should require proof of the actual harm suffered by the victim. Proof of harm, or a ‘serious effect’ on the victim is required in the UK, but not in Scotland. In Scotland, the prosecution must prove that the accused intended, or that a reasonable person would have known, that the behaviour would have a ‘relevant effect’ on the victim (such as isolating them or controlling them), but not that the behaviour actually had that effect.
- 5.58 Some inquiry participants supported making proof of harm an element of a NSW offence.<sup>362</sup> The Public Defender emphasised this as an important issue, closely tied to the question of how to avoid over-criminalisation.<sup>363</sup>
- 5.59 Other participants strongly opposed requiring proof of harm.<sup>364</sup> Many argued that the need for victims to participate in the criminal justice process should be

<sup>358</sup> Submission 138, Settlement Services International, pp 7-8; Submission 86, Muslim Women Australia, pp 11-12; Submission 21, Professor Heather Douglas, p 3.

<sup>359</sup> Submission 133, Women’s Safety NSW, pp 124-125.

<sup>360</sup> Madeleine Figg, Transcript of evidence, 30 March 2021, p 18.

<sup>361</sup> Submission 52, Anglicare Sydney, pp 4, 15; Submission 149, Illawarra Women’s Health Centre, p 18; Submission 115, Domestic Violence Service Management, p 4; Submission 68, Insight Exchange (Domestic Violence Service Management), p 2.

<sup>362</sup> Harriet Ketley, Transcript of evidence, 22 February 2021, p 14; Submission 18, Law Society of NSW, p 4; Submission 139, Legal Aid NSW, p 6; Submission 75, Young Liberal Movement of Australia (NSW Division), p 3; Submission 86, Muslim Women Australia, pp 11-12.

<sup>363</sup> Belinda Rigg SC, Senior Public Defender, Public Defenders NSW, Transcript of evidence, 22 February 2021, p 26.

<sup>364</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), p 14; Submission 77, South West Sydney Legal Centre, p 6; Submission 35, Rape and Domestic Violence Services Australia, pp 22-23; Submission 82, Weave

minimised, due to the risk of re-traumatisation. Evan Stark and Cassandra Wiener emphasised the need to weigh the benefits of giving victims a voice in criminal proceedings against the further harm that victims may face in that process.<sup>365</sup>

- 5.60 Professor Marilyn McMahon suggested that the offence shouldn't increase the need for victims to relive their experience in court:

.... requiring actual proof of psychological harm in the victim ... may involve victims having to go to court to give evidence about the effects on them, and in an adversarial criminal justice system, that could be again a significantly re-traumatising experience. One that we want to avoid. So ... a particular aspect might be then not to require actual proof of harm but make the offence based on a likelihood that harm would occur through the behaviour of the perpetrator.<sup>366</sup>

- 5.61 Equally, as Ms Wiener pointed out, requiring proof of harm can penalise resilient victims:

The first challenge we have found in England and Wales is that [it] penalises what I might refer to as the resilient victim ... who, against the odds, has managed to carry on with her life, who has not let the control affect her, who still gets her kids to school. It is very difficult for the judiciary to advise the jury to convict in that situation. There are a couple of examples of ... judges saying we find that you are too strong to be a victim of coercive control.<sup>367</sup>

- 5.62 The NSW Ageing and Disability Commission submitted that some vulnerable victims, such as adults with cognitive impairments or older people, may not be able to give evidence about the effects of abuse.<sup>368</sup> The Hume Riverina Community Legal Service noted that victims in CALD communities may initially see their perpetrator's behaviour as culturally acceptable, and take some time to recognise they are experiencing domestic abuse. In those circumstances, providing evidence of the harm they have suffered can be very difficult.<sup>369</sup>

### Particularisation

- 5.63 Another issue the Inquiry heard differing views on was the extent to which prosecutors should need to particularise instances of coercive and controlling behaviour. This is tied to the nature of coercive control as a 'course of conduct' offence, but also to concerns about over-criminalisation, and the need to ensure procedural fairness for defendants.

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Youth and Community Services, p 2; Submission 108, NSW Ageing and Disability Commission, p 11; Submission 109, Marilyn McMahon and Paul McGorrery, p 11; Submission 130, Hume Riverina Community Legal Service, pp 4-5; Submission 149, Illawarra Women's Health Centre, p 15; Submission 78, Enough is Enough Anti-Violence Movement, p 2; Submission 145, Name suppressed, p 8.

<sup>365</sup> Submission 12, Evan Stark and Cassandra Wiener, pp 5-6. See also: Submission 36, Royal Australian and New Zealand College of Psychiatrists, pp 4-5; Submission 93, Name suppressed, p 4.

<sup>366</sup> Professor Marilyn McMahon, Transcript, 24 February 2021, p 45.

<sup>367</sup> Cassandra Wiener, Transcript of evidence, 29 March 2021, p 2. Also see: Submission 12, Evan Stark and Cassandra Wiener, p 5.

<sup>368</sup> Submission 108, NSW Ageing and Disability Commission, p 11. Also see Submission 127, Seniors Rights Service, pp 2-3.

<sup>369</sup> Submission 130, Hume Riverina Community Legal Service, pp 4-5.

- 5.64 Both the Scottish and Northern Ireland offences define a ‘course of behaviour’ as involving behaviour on at least two occasions.<sup>370</sup> The UK provides that behaviour has a ‘serious effect’ if a person is caused to fear that violence will be used against them on at least two occasions.<sup>371</sup>
- 5.65 Legal Aid NSW submitted that prosecutors should have to specify a minimum number of incidents of behaviour to ensure procedural fairness for the accused:
- ... a minimum number of incidents [should] be specified, so that a defendant can know the charge against them, and meaningfully respond to it. This reflects fundamental principles of natural justice and procedural fairness to an accused in criminal proceedings.<sup>372</sup>
- 5.66 NSW Young Lawyers and the Law Society of NSW agreed that requiring proof of particular occurrences of behaviour, as part of a wider pattern of behaviour, would provide clarity for victims, prosecutors, and defendants.<sup>373</sup>
- 5.67 The Law Society described particularisation as an ‘important procedural fairness safeguard in any new offence’, and referred to anecdotal evidence from defence lawyers in the UK that a lack of particulars makes ‘trying to respond (from a defence perspective) ... near to impossible’.<sup>374</sup>
- 5.68 The Inquiry heard suggestions about what a minimum number of occasions should be. Some Inquiry participants suggested a threshold of three instances of coercive and controlling behaviour, while others suggested two.<sup>375</sup>
- 5.69 The NSW ODPD stressed that these should be able to be comprised of the same or different types of behaviour. It agreed that conduct should be particularised, but warned that it may be ‘difficult for victim survivors to provide enough specificity, particularly where the acts represent an escalation of one type of controlling behaviour, such as gradually isolating the victim from different family members or different groups of people, or where the acts are particularly nuanced.’<sup>376</sup>
- 5.70 This goes to the heart of many participants’ concerns about particularisation – that requiring victims to specify discrete incidents of abuse goes against the nature of coercive control. Many inquiry participants said that one of the core issues with our legal system, when it comes to dealing with coercive control, is that it is too incident-focused.<sup>377</sup>

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<sup>370</sup> *Domestic Abuse (Scotland) Act 2018*, section 10(4); *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021*, section 4(4). Also see Dr Veronica Holland, Transcript of evidence, 30 March 2021, p 43.

<sup>371</sup> *Serious Crime Act 2015* (UK), section 76(4)(a).

<sup>372</sup> Submission 139, Legal Aid NSW, p 6.

<sup>373</sup> Simon Bruck, Transcript of evidence, 22 February 2021, pp 10, 12-13.

<sup>374</sup> Harriet Ketley, Transcript of evidence, 22 February 2021, p 12; Submission 18, Law Society of NSW, p 5.

<sup>375</sup> Submission 86, Muslim Women Australia, p 11; Simon Bruck, Transcript of evidence, 22 February 2021, pp 10, 12-13; Submission 18, Law Society of NSW, p 5; Submission 148, Aboriginal Legal Service, p 5; Answers to questions on notice, Australian Brotherhood of Fathers, p 10.

<sup>376</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), p 13.

<sup>377</sup> Submission 79, White Ribbon Australia, p 4; Submission 133, Women’s Safety NSW, pp 97-98; Submission 149, Illawarra Women’s Health Centre, p 20; Submission 140, Women’s Legal Service NSW, p 6.

- 5.71 Anglicare Sydney said that individual behaviours ‘need to be understood in the context of the relationship as a pattern of behaviour rather than a series of discrete and unrelated incidents.’<sup>378</sup>
- 5.72 Some participants suggested that the offence include words like ‘pattern’, ‘repeated’ or ‘persistent’ (similar to the existing offence of ‘persistent sexual abuse of a child’).<sup>379</sup>

### Relationships included in the offence

- 5.73 The provisions in the CDPV Act – including for ADVOs and stalking and intimidation – apply to all ‘domestic relationships’. This term is defined broadly to include partners, ex-partners, people living in the same household, relatives, and Indigenous kinship connections.<sup>380</sup>
- 5.74 Some inquiry participants suggested that a coercive control offence should only apply to current and former intimate personal relationships – similar to the Scottish offence.<sup>381</sup> While acknowledging that abuse also occurs in other relationships, Shoalcoast Community Legal Centre noted that ‘the escalation to more serious harm (such as murder-suicide) generally occurs in the context of intimate partners’.<sup>382</sup>
- 5.75 Others argued that the offence should be broader, and apply to all ‘domestic relationships’ currently captured in the CDPV Act.<sup>383</sup>
- 5.76 CALD, disability and older people’s advocacy groups submitted that a tightly defined offence could exclude victims in vulnerable communities.<sup>384</sup>
- 5.77 For example, the NSW Ageing and Disability Commission said that women with disability and older women regularly experience coercive control in family relationships and intimate partner relationships, and they should be covered by an offence:

[I]t should not be that if you are subject to coercive control by an intimate partner ... that is recognised as being an offence and you have access to protections. But if you

<sup>378</sup> Submission 52, Anglicare Sydney, p 15. Also see: Submission 66, Australian Psychological Society, p 5.

<sup>379</sup> Submission 18, Law Society of NSW, p 5. See also: Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 3; *Crimes Act 1900* (NSW), section 66EA.

<sup>380</sup> *Crimes (Domestic and Personal Violence) Act 2007*, section 5.

<sup>381</sup> Submission 139, Legal Aid NSW, p 6.

<sup>382</sup> Submission 136, Shoalcoast Community Legal Centre, pp 7-8.

<sup>383</sup> Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 6; Submission 89, Office of the Director of Public Prosecutions (NSW), pp 12-13; Submission 127, Seniors Rights Service, p 3; Submission 21, Professor Heather Douglas, p 2; Submission 92, Centre for Women’s Economic Safety, pp 1, 6; Submission 126, No to Violence, p 37; Submission 93, Name suppressed, p 4; Submission 132, Domestic Violence NSW, p 37. See also: Submission 123, Name suppressed, p 1; Submission 7, Australian Brotherhood of Fathers, p 5; Answers to questions on notice, Australian Brotherhood of Fathers, p 10.

<sup>384</sup> Submission 138, Settlement Services International, pp 4-5; Submission 86, Muslim Women Australia, pp 6-7; Submission 84, Older Women’s Network NSW, p 7.

are subject to those exact same behaviours in your home by a family member or other party, you do not.<sup>385</sup>

- 5.78 The Older Women’s Network of NSW argued that older women often experience coercive control outside intimate partner relationships, and ‘[t]he fear, anxiety, trauma and stress caused is no less than that experienced by younger women at the hands of their intimate partner.’<sup>386</sup>
- 5.79 Many who argued for a wider application to domestic relationships acknowledged that parent-child relationships should be excluded, to avoid criminalising parental discipline.<sup>387</sup>
- 5.80 However, some inquiry participants suggested that, while the offence may be limited to intimate partner relationships, it should recognise that third parties, like children and pets, are often used as ‘weapons’ to coerce and control victims (for example, children may be used to help gaslight or monitor a parent).<sup>388</sup>
- 5.81 The Inquiry heard evidence that, to avoid the risks of over-criminalisation, the offence should be limited to intimate partner relationships. However, other participants expressed opposing views. This issue requires further consideration.

#### **Non-exhaustive list of behaviours**

- 5.82 Many inquiry participants suggested the offence should include a non-exhaustive list of behaviours, in the legislation or in an explanatory note.<sup>389</sup>
- 5.83 In chapter 3, the Committee recommended that examples of coercive and controlling behaviour should be included in the definition of domestic violence in the CDPV Act. In considering the drafting of a coercive control offence, regard should be given to including a similar list.
- 5.84 Inquiry participants supported the offence explicitly covering different types of abuse – such as technology facilitated abuse, economic abuse and reproductive coercion.<sup>390</sup>
- 5.85 The offence could also cover behaviour that affects specific communities. A non-exhaustive list could include:

<sup>385</sup> Kathryn McKenzie, Transcript of evidence, 23 February 2021, pp 36-37, 39; Submission 108, NSW Ageing and Disability Commission, pp 2, 11.

<sup>386</sup> Yumi Lee, Transcript of evidence, 23 February 2021, p 46.

<sup>387</sup> Kathryn McKenzie, Transcript of evidence, 23 February 2021, pp 36-37, 39. Also see: Submission 13, the Hon Mark Latham MLC, pp 17-18.

<sup>388</sup> Submission 82, Weave Youth and Community Services, pp 1-2; Submission 124, VOCAL, p 5; Submission 52, Anglicare Sydney, p 5. Also see: Submission 100, Indian (Sub-Cont) Crisis and Support Agency, p 15; Submission 61, The Hon Emma Hurst MLC, pp 2, 8-10; Submission 117, Office of the Children’s Guardian, p 1.

<sup>389</sup> Simon Bruck, Transcript of evidence, 22 February 2021, p 11; Harriet Ketley, Transcript of evidence, 22 February 2021, p 15; Submission 139, Legal Aid NSW, p 6; Submission 52, Anglicare Sydney, pp 14-15.

<sup>390</sup> Julie Inman-Grant, Transcript of evidence, 30 March 2021, pp 6, 8; Gayatri Nair, Transcript of evidence, 30 March 2021, pp 11, 13; Rebecca Glenn, Transcript of evidence, 30 March 2021, p 14; Submission 72, Dr Supriya Singh, p 1; Submission 73, eSafety Commissioner, p 11; Submission 92, Centre for Women’s Economic Safety, p 7; Submission 87, Marie Stopes Australia, p 2.

- Identity-based abuse in LGBTQ relationships, such as intentionally misgendering a partner, or threatening to disclose a person's sexual orientation, HIV status, or other medical condition without consent.<sup>391</sup>
- Dowry abuse and threats to visa status for women in CALD communities.<sup>392</sup>
- Abuse of women with disabilities and older women, such as depriving them of access to medication or support services, or inducing consent to a financial action that is to their detriment.<sup>393</sup>
- Denying a person's right to practise their culture or spiritual beliefs, for example, stopping them from visiting country, belittling cultural practices, or downplaying or mocking their Aboriginality (or the Aboriginality of their children).<sup>394</sup>

5.86 The Centre for Women's Economic Safety stressed the importance of a list of behaviours being 'illustrative and expressly not exhaustive', as '[m]any perpetrators adapt quickly to new laws, new products, and new guidance, with new tactics to overcome safeguards'.<sup>395</sup> Jess Hill also pointed out that 'coercive control is bespoke to each relationship', so that behaviours and techniques may vary, even though the 'overarching structure' of abuse is the same.<sup>396</sup>

### Aggravating factors

- 5.87 In chapter 3, the Committee recommended that the CSP Act be amended to include domestic relationships, and coercive and controlling behaviours, as aggravating factors for existing offences.
- 5.88 In considering how to draft a coercive control offence, consideration could be given to whether to include aggravating factors that are specific to that offence.
- 5.89 Although victims under the Scottish offence are limited to partners and ex-partners, the offence is aggravated if a perpetrator directs behaviour at a child or uses a child to direct behaviour towards the victim.<sup>397</sup>
- 5.90 The Northern Ireland offence includes similar factors, adding that the offence is aggravated if a child is present during or hears abusive behaviour, or a reasonable

<sup>391</sup> Submission 81, ACON, pp 25-27; Submission 52, Anglicare Sydney, pp 14-15; Answers to questions on notice, ACON, pp 1-2.

<sup>392</sup> Submission 4, Australasian Centre for Human Rights & Health, p 3; Submission 151, Immigration Rights and Advice Centre, p 2; Submission 81, ACON, p 6; Submission 17a, Women's Electoral Lobby (NSW), p 4.

<sup>393</sup> Submission 52, Anglicare Sydney, p 14; Submission 84, Older Women's Network NSW, p 8.

<sup>394</sup> Submission 142, Wirringa Baiya Aboriginal Women's Legal Centre, p 4.

<sup>395</sup> Submission 92, Centre for Women's Economic Safety, p 7. See also: Submission 130, Hume Riverina Community Legal Service, p 4; Submission 126, No to Violence, pp 36-37; Submission 68, Insight Exchange (Domestic Violence Service Management), p 3.

<sup>396</sup> Submission 91, Jess Hill, p 17. Also see: Submission 14, Name suppressed, p 6; Submission 93, Name suppressed, p 3.

<sup>397</sup> *Domestic Abuse (Scotland) Act 2018*, section 5.

person would consider the behaviour is likely to adversely affect the child.<sup>398</sup>

- 5.91 The CSP Act already includes, as an aggravating factor for any offence, that it ‘was committed in the presence of a child under 18 years of age’.<sup>399</sup> However, this could be extended to include aggravating factors similar to the Scottish and Northern Ireland offences, specific to domestic abuse.<sup>400</sup>
- 5.92 The Older Women’s Network NSW suggested that a coercive control offence committed against a vulnerable person should be aggravated if ‘the psychological, mental or physical incapacity of the victim is known to the perpetrator’.<sup>401</sup>

### Defences

- 5.93 In Scotland, it is a defence if the accused can show that their behaviour was reasonable in the circumstances.<sup>402</sup> Under the UK legislation, it is a defence if the accused was acting in the other person’s best interests, *and* the behaviour was reasonable in the circumstances.<sup>403</sup>
- 5.94 NSW Young Lawyers supported a similar defence to the UK for a NSW offence.<sup>404</sup> The ODPP also submitted that the ‘defence of reasonableness’ should be available, with the ‘evidentiary burden’ on the accused.<sup>405</sup> This means that the accused must point to evidence raising a reasonable possibility that their conduct was reasonable. The burden then shifts to the prosecution to show, beyond reasonable doubt, that the conduct was not reasonable.<sup>406</sup>
- 5.95 The NSW Ageing and Disability Commission opposed a defence that refers to a victim’s ‘best interests’, as it risks perpetrators using the disability or vulnerability of a person as justification, which may be too readily accepted by ‘external parties’ such as the police. The Commission noted that the disability sector has moved away from the concept of ‘best interests’ to a ‘rights-based’ approach.<sup>407</sup>
- 5.96 The Aboriginal Legal Service and the Law Society of NSW argued that, rather than being relegated to a defence, the offence itself should require that behaviour is unreasonable in the circumstances.<sup>408</sup> If the drafters of the offence decide that an element of ‘reasonableness’ is appropriate, consideration should be given to

<sup>398</sup> *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021*, section 9; Submission 22, Office of the Justice Minister, Department of Justice, Northern Ireland, pp 4-5; Dr Veronica Holland, Transcript of evidence, 30 March 2021, p 40.

<sup>399</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW), section 21A(2)(ea).

<sup>400</sup> Submission 93, Name suppressed, p 4.

<sup>401</sup> Submission 84, Older Women’s Network NSW, pp 8-9.

<sup>402</sup> *Domestic Abuse (Scotland) Act 2018*, section 6.

<sup>403</sup> *Serious Crime Act 2015* (UK), section 76(8)

<sup>404</sup> Simon Bruck, Transcript of evidence, 22 February 2021, p 11.

<sup>405</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), p 14.

<sup>406</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachment by Commonwealth Laws (ALRC Interim Report 127)*, 3 August 2015, ‘Burden of proof’, [11.10-11.15](#).

<sup>407</sup> Kathryn McKenzie, Transcript of evidence, 23 February 2021, pp 39-40; Submission 108, NSW Ageing and Disability Commission, pp 11-12.

<sup>408</sup> Harriet Ketley, Transcript of evidence, 22 February 2021, p 11; Submission 5, Aboriginal Legal Service NSW/ACT, p 5.

whether it is best placed in the offence itself, or as a defence to be raised by the accused.<sup>409</sup>

### Time limitation

- 5.97 NSW Young Lawyers suggested that a coercive control offence should only capture behaviours occurring within a 12 month period. The Aboriginal Legal Service agreed that this would ‘support the definition of coercive control as a more frequent pattern of behaviour and not separate and distinct incidents over a long period of time.’<sup>410</sup>
- 5.98 However, the ODPP strongly opposed putting any limitations on ‘the length of time the pattern of behaviour lasts, the length of time between behaviours within the pattern period, and the length of time until complaint is made’, submitting that:
- Coercive control is insidious and most usually happens slowly over time, the individual behaviours will be separated by various time periods, and victims will delay complaint, even once they have recognised the behaviour for what it is.<sup>411</sup>
- 5.99 It is notable that the initial six month limit in Tasmania contributed to the low uptake of the offences. The limitation period was extended from six to twelve months in 2015, leading to an increase in prosecutions and convictions. However, use of the Tasmanian offences remains limited, with only 253 charges laid, and 104 convictions secured, since 2008.<sup>412</sup>
- 5.100 For this reason, the Committee would caution against including a time limitation in the offence which may present an insurmountable barrier preventing victims of coercive control from accessing justice. However, the Committee acknowledges that coercive control is a pattern of behaviour, not isolated incidents. Any proposed legislation must ensure that reported incidents evidence a pattern of conduct.

### Statutory review of the offence

- 5.101 Some witnesses suggested a statutory review mechanism should be included in any coercive control offence, in order to facilitate analysis of how the offence is working.<sup>413</sup>
- 5.102 Rape and Domestic Violence Services Australia said this will be ‘crucial to understand the effectiveness of the reforms, identify gaps and determine whether the legislation is achieving its intended purposes.’ They emphasised that, as part of a review, ‘detailed data must be collected from the date of

<sup>409</sup> Submission 109, Professor Marilyn McMahon and Paul McGorrery, p 11.

<sup>410</sup> Simon Bruck, Transcript of evidence, 22 February 2021, pp 10, 12-13; Submission 148, Aboriginal Legal Service NSW/ACT, p 5.

<sup>411</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), p 13. Also see: Submission 68, Insight Exchange (DVSIM), p 3; Submission 14, Name suppressed, p 1.

<sup>412</sup> Acting Commander Jason Elmer, Tasmania Police, Transcript of evidence, 30 March 2021, pp 16-17; Submission 19, Tasmania Police, p 1; Answers to questions on notice, Tasmania Police, p 1.

<sup>413</sup> Rebecca Glenn, Transcript of evidence, 30 March 2021, p 11; Submission 92, Centre for Women’s Economic Safety, p 1; Submission 18, Law Society of NSW, p 5.

commencement to identify the characteristics of complainants and defendants, the basis of the charges and the outcomes of prosecutions.<sup>414</sup>

- 5.103 While data collection should be ongoing, the Committee believes any statutory review of the offence should not commence before at least three years after the legislation commences. This is in order to allow time for police investigation of offences, prosecution to proceed through courts or otherwise to resolution, in order for statistics to be available.

### Maximum penalty and penalty options

- 5.104 As highlighted in chapters 1 and 2, coercive control is a common predictor of intimate partner homicide, and has been linked to victim survivor suicidality, depression and PTSD.<sup>415</sup> As a result, many inquiry participants cautioned against a maximum penalty that is too low.
- 5.105 The Committee acknowledges that coercive control is a serious crime meriting a substantial maximum sentence. However, as Professor Marilyn McMahon and Paul McGorrery noted, a coercive control offence is likely to capture a ‘broad spectrum of cases’, including comparatively low-level and high-level offending, occurring over different periods of time. The maximum penalty ‘must allow for those more serious cases, but not in a way that expects the average/median sentence to necessarily be that high in the majority of cases.’<sup>416</sup>
- 5.106 Given the range of offending the offence could cover, the Committee notes importance of courts having a range of penalties available – as discussed in chapter 3.<sup>417</sup>
- 5.107 The maximum penalty for the Scottish offences is 14 years imprisonment, compared to only five years in the UK. This is partly because the UK offence is separate to physical violence offences, while the Scottish offence includes both physical and non-physical abusive behaviours.<sup>418</sup> Further, as Evan Stark and Cassandra Wiener noted, the maximum penalty for the Scottish offence recognises that domestic abuse ‘is a serious crime on the level of ... other serious offences.’<sup>419</sup>
- 5.108 The Committee acknowledge that some witnesses supported a lower penalty, citing concerns that harsh punishments, such as long prison sentences, do not deter violence.<sup>420</sup>

<sup>414</sup> Submission 35, Rape and Domestic Violence Services Australia, p 29.

<sup>415</sup> Submission 12, Evan Stark and Cassandra Wiener, p 6; Submission 74, Lou’s Place, p 8; Submission 77, South West Sydney Legal Centre, p 4; Submission 126, No to Violence, p 38; Submission 133, Women’s Safety NSW, p 130.

<sup>416</sup> Submission 109, Paul McGorrery and Professor Marilyn McMahon, p 12.

<sup>417</sup> Submission 18, Law Society of NSW, p 5; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 6.

<sup>418</sup> Submission 12, Evan Stark and Cassandra Wiener, p 6.

<sup>419</sup> Professor Evan Stark, Transcript of evidence, 29 March 2021, p 3.

<sup>420</sup> Submission 57, Catholic Women’s League Australia – NSW, p 4; Submission 7, Australian Brotherhood of Fathers, pp 5, 23; Submission 66, Australian Psychological Society, p 6; Submission 148, Aboriginal Legal Service (NSW/ACT), p 5.

- 5.109 Women’s Safety NSW acknowledged the need to strike a balance between penalties that are strong enough to protect victim survivors, without being so high that prosecutors will be deterred from using the offence. To that end, Women’s Safety NSW proposed a lower maximum penalty for a summary offence as compared with the penalty for an indictable offence.<sup>421</sup>

## Changes to evidence, sentencing and jury directions

### Codifying common law principles of context and relationship evidence

- 5.110 It is important that victim survivors are able to give a full picture of their experiences of abuse if they go to court. The Inquiry heard conflicting evidence about whether the admissibility of context and relationship evidence should be expanded in criminal proceedings involving domestic abuse, and whether the rules of admissibility should be codified.
- 5.111 In addition to considering the elements of a coercive control offence, the NSW Government should:
- Investigate how evidence of coercive control is currently admitted in proceedings for domestic violence offences.
  - Consider whether introducing a coercive control offence, and training for police in evidence-gathering, will sufficiently expand the circumstances in which evidence of coercive control can be admitted.
  - Consider whether changes to established rules of evidence could have unintended consequences.
- 5.112 Context and relationship evidence can be admitted in criminal proceedings to explain the conduct of the accused or another person (usually the alleged victim) relating to the offence charged.<sup>422</sup>
- 5.113 While the *Evidence Act 1995* (NSW) contains rules about evidence, the admissibility of context and relationship evidence is governed by the common law. The *Criminal Trial Courts Bench Book* gives guidance on applying common law principles, including suggested jury directions for how context and relationship evidence can be used.<sup>423</sup>
- 5.114 According to Dr Jane Wangmann, relationship evidence can reveal the context of an otherwise ‘isolated incident’, and can therefore be important to successfully prosecuting a case. In particular, ‘an understanding of coercive control introduced through relationship evidence can be critical to countering arguments that an assault, for example, was fanciful or uncharacteristic behaviour on the part of the accused.’<sup>424</sup>
- 5.115 However, many inquiry participants, including the NSW ODP, highlighted the

<sup>421</sup> Submission 133, Women’s Safety NSW, p 130.

<sup>422</sup> NSW Judicial Commission, *Criminal Trials Bench Book*, ‘Tendency, coincidence and background evidence’, [4-200]-[4-222], accessed 20 May 2021.

<sup>423</sup> NSW Judicial Commission, *Criminal Trials Bench Book*, [4-200]-[4-222], accessed 20 May 2021.

<sup>424</sup> Submission 116, Dr Jane Wangmann, p 15.

practical difficulty of getting evidence of coercive and controlling behaviours admitted in domestic abuse cases.<sup>425</sup>

5.116 To address this, some witnesses supported codifying the common law rules about context and relationship evidence in domestic abuse cases. This could improve access to justice for victims, by allowing a fuller picture of their experiences of abuse to be presented to the jury.<sup>426</sup>

5.117 For example, witnesses suggested amending the Evidence Act to:

- Provide that evidence is admissible in proceedings for domestic violence offences if it relates to the domestic relationship, or relates to conduct during the relationship which a reasonable person would consider likely to cause physical or psychological harm.<sup>427</sup>
- Include a non-exhaustive list of what may constitute ‘evidence of family violence’.<sup>428</sup>
- Provide that evidence of family violence is admissible if it is relevant to a fact in issue.<sup>429</sup>
- Provide that evidence of family violence is admissible if it is relevant to determining whether a person acted in self-defence or under duress.<sup>430</sup>
- Provide that, in proceedings for homicide, assaults, and offences endangering the victim’s life or health, ‘relevant evidence of the history of the domestic relationship between the defendant and the [victim] is admissible in evidence’.<sup>431</sup>
- Provide that, in proceedings for ADVO breaches or other domestic violence offences, ‘consideration may be given to a pattern of conduct (especially domestic violence) in the person’s behaviour’.<sup>432</sup>

5.118 However, many inquiry participants did not support codification, noting that the common law rules are sufficient and well understood by prosecutors and the judiciary. Many were concerned that codification could create a more restrictive

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<sup>425</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 9-10; Submission 116, Dr Jane Wangmann, p 15; Submission 133, Women’s Safety NSW, pp 50-51; Submission 145, Name suppressed, p 10 .

<sup>426</sup> Chief Inspector McDermott, Transcript of evidence, 22 February 2021, p 17; Submission 89, Office of the Director of Public Prosecutions (NSW), pp 14-15; Submission 133, Women’s Safety NSW, pp 137-138; Submission 21, Professor Heather Douglas, p16; Natalie Gouda, Transcript of evidence, 23 February 2021, pp 16, 21; Submission 32, Debra Gillick, p 7; Answers to questions on notice, Professor Julia Tolmie, p 2.

<sup>427</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 14-15.

<sup>428</sup> *Crimes Act 1958* (Vic), section 322J; *Evidence Act 1906* (WA), section 38; Submission 21, Professor Heather Douglas, pp 16-17.

<sup>429</sup> *Evidence Act 1906* (WA), section 39A.

<sup>430</sup> *Crimes Act 1958* (Vic), sections 322M and 322P.

<sup>431</sup> *Evidence Act 1977* (Qld), section 132B(2); Australian Law Reform Commission, *Family Violence – A National Legal Response* (ALRC Report 114), ‘Chapter 13 – Recognising family violence in criminal offences’, [\[13.40\]-\[13.43\]](#), accessed 20 May 2021.

<sup>432</sup> *Domestic and Family Violence Act 2007* (NT), section 6(2); Submission 35, Rape and Domestic Violence Services Australia, p 10.

regime, or have unintended consequences (such as reducing guilty pleas, or the likelihood that parties will reach an agreed set of facts on sentencing).<sup>433</sup>

- 5.119 Domestic Violence NSW told the Inquiry that well-established common law on context and relationship evidence does not need to be codified, given the difficulties with codification and the problems it could create.<sup>434</sup>
- 5.120 Inquiry witnesses also noted that, if an offence of coercive control is introduced, prosecutors will be able to adduce evidence of coercive and controlling behaviours without needing to show that they provide ‘context’ for other domestic violence offences.<sup>435</sup> The Committee acknowledges that this would be a significant advantage of creating a new offence.
- 5.121 Instead of codifying common law rules, the Law Society of NSW preferred additions to the bench book and training for magistrates about domestic abuse.<sup>436</sup> Given the limited guidance about evidence of domestic abuse in the NSW bench book, the Committee strongly endorses consideration of this approach.

#### **Codifying jury directions**

- 5.122 Legislating jury directions could help juries in proceedings for domestic violence offences be better informed about coercive control. However, the Inquiry received conflicting evidence about what form jury directions should take, when they should be available, and whether they should be included in a bench book.
- 5.123 Accordingly the Committee endorses an approach of seeking further consideration and consultation on how to update jury directions about domestic abuse in NSW. This should include considering:
- Whether jury directions should be legislated and/or contained in bench book guidance.
  - Whether they should be suggested or mandatory.
  - What they should contain, including whether any interstate provisions or bench books should be used as a model.
  - When they should be available (for example, whether they should be limited to cases involving self-defence, when the defence requests them, or when judges consider appropriate).
- 5.124 In drafting an offence, consultation should be held with the judiciary and regard should be given to the experiences of other jurisdictions in Australia that have

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<sup>433</sup> Submission 18, Law Society of NSW, p 5; Submission 35, Rape and Domestic Violence Services Australia, p 12; Submission 97, Public Defenders, pp 5, 7; Submission 112, NSW Young Lawyers, pp 21-22; Submission 132, Domestic Violence NSW, pp 49-50; Submission 139, Legal Aid, p 12; Submission 148, Aboriginal Legal Service, p 2.

<sup>434</sup> Submission 132, Domestic Violence NSW, pp 49-50.

<sup>435</sup> Submission 52, Anglicare Sydney, pp 10, 12; Submission 86, Muslim Women Australia, p 13; Submission 112, NSW Young Lawyers, p 22; Submission 89, Office of the Director of Public Prosecutions (NSW), pp 9-10; Submission 133, Women’s Safety, pp 65, 75-79; Submission 36, Royal Australian and New Zealand College of Psychiatrists, p 4.

<sup>436</sup> Submission 18, Law Society of NSW, p 5.

legislated domestic violence jury directions, as well as overseas jurisdictions that have introduced coercive control laws.

- 5.125 In NSW, some jury directions are contained in the *Criminal Procedure Act 1986* (NSW) (the CPA). For example, section 306ZR provides that, in certain circumstances, the judge must warn the jury that the absence of complaint, or delay in making a complaint, about a domestic violence offence does not mean the complaint is false, and inform the jury that there ‘may be good reasons’ why a victim of domestic abuse might delay or refrain from making a complaint.<sup>437</sup>
- 5.126 The *Equality before the Law Bench Book* also contains information for judges about domestic violence, including coercive control, and ‘points to consider’ in sentencing, writing judgments, and making jury directions. For example, it suggests that judges should, ‘[i]f circumstances require ... explain what needs to be taken into account in relation to the long-term abuse of a woman by her partner and the defences of duress and/or self-defence’. However, there are no suggestions about jury directions for domestic violence offences.<sup>438</sup>
- 5.127 The Inquiry heard submissions from a number of stakeholders that NSW should introduce a jury direction about the impact of domestic abuse, and particularly coercive control, on victim survivors.<sup>439</sup>
- 5.128 Rape and Domestic Services Australia emphasised the prevalence of misconceptions about domestic abuse in the community, and noted that specific jury directions could help to address this.<sup>440</sup> Lou’s Place described jury directions as an ‘opportunity for education’ and ‘dispel[ling] domestic violence myths’ to ‘ensure that ... jurors are applying the law to the facts in a way that ... promotes justice for victim-survivors’.<sup>441</sup>
- 5.129 However, some witnesses said that legislating jury directions is unnecessary, and an inflexible way to inform juries about domestic abuse. Further, it could ‘unsettle and complicate law which has developed over many years.’<sup>442</sup>
- 5.130 The Committee acknowledges that attempting to correct jurors’ misconceptions about domestic abuse is complex and difficult.<sup>443</sup> However, the Committee is also concerned about the impact of community attitudes on victims’ safety when it comes to securing convictions against perpetrators.
- 5.131 Examples of things that could be clarified through jury directions include:

<sup>437</sup> *Criminal Procedure Act 1986* (NSW), section 306ZR; Submission 133, Women’s Safety NSW, p 139.

<sup>438</sup> NSW Judicial Commission, *Equality before the Law Bench Book*, ‘[Chapter 7.5 – Violence against women](#)’ and ‘[Chapter 7.7 – Practical considerations](#)’, accessed 21 May 2021.

<sup>439</sup> Submission 132, Domestic Violence NSW, p 51; Submission 73, eSafety Commissioner, pp 15-16; Submission 133, Women’s Safety NSW, pp 139-140; Submission 35, Rape and Domestic Violence Services Australia, p 13; Submission 52, Anglicare Sydney, p 16; Submission 66, Australian Psychological Society, p 6; Submission 39, Office of the Director of Public Prosecutions (NSW), p 15.

<sup>440</sup> Submission 35, Rape and Domestic Violence Services Australia, p 14.

<sup>441</sup> Brianna Attard, Transcript of evidence, 24 February 2021, p 56.

<sup>442</sup> Submission 18, Law Society of NSW, p 6; Submission 139, Legal Aid NSW, pp 12-13; Submission 53, Feminist Legal Clinic Inc, pp 7-8.

<sup>443</sup> Submission 132, Domestic Violence NSW, p 51.

- contesting ‘rape myths and victim blaming’.<sup>444</sup>
- the fact that domestic abuse is ‘not just physical’.<sup>445</sup>
- the ‘impact of coercion and controlling behaviour’.<sup>446</sup>
- information about ‘what acts of resistance might look like’.<sup>447</sup>
- how trauma could affect victim survivors' appearance as a witness (including its impact on memory and credibility).<sup>448</sup>

- 5.132 Some inquiry participants suggested that legislation in Victoria or Western Australia (WA) could be considered for NSW. In both states, a defendant can ask for a jury direction about family violence if self-defence or duress is an issue in the trial. In WA, if family violence is an issue in a trial, directions about family violence can be made if requested by either party, or if the judge thinks it is in the ‘interests of justice’.<sup>449</sup>
- 5.133 Directions under both Acts can include informing the jury that family violence ‘is not limited to physical abuse’, that it may be a single act or a pattern of behaviour, that people may react differently to family violence, and that a victim of family violence may stay with an abusive partner or not report the violence.<sup>450</sup>
- 5.134 The WA legislation also includes a list of behaviours that may constitute family violence, such as controlling someone’s day to day activities, humiliating or degrading them, and isolating them from friends and family.<sup>451</sup>
- 5.135 The NSW ODPD suggested that the current direction NSW courts use for context and relationship evidence could be adapted. This would advise jurors that evidence of coercive and controlling conduct can be used to ‘place the complainant’s evidence in a realistic and intelligible context’, but not to ‘establish a tendency’ of the accused to commit domestic violence offences, or to make up for a lack of evidence for those offences.<sup>452</sup>
- 5.136 The eSafety Commissioner referred to section 293A of the CPA, which allows a judge to give a direction where there are gaps, differences or inconsistencies in a complainant’s account of a sexual offence. The direction includes warning jurors that trauma affects people differently, including how they recall events, that it is

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<sup>444</sup> Submission 132, Domestic Violence NSW, p 50.

<sup>445</sup> Brianna Attard, Transcript of evidence, 24 February 2021, p 56.

<sup>446</sup> Submission 132, Domestic Violence NSW, p 50.

<sup>447</sup> Brianna Attard, Transcript of evidence, 24 February 2021, p 56; Submission 74, Lou’s Place, p 8.

<sup>448</sup> Brianna Attard, Transcript of evidence, 24 February 2021, p 56; Submission 73, eSafety Commissioner, p 16; Submission 66, Australian Psychological Society, p 6.

<sup>449</sup> *Jury Directions Act 2015* (Vic), Part 6; *Evidence Act 1906* (WA), sections 39C and 39D; Submission 35, Rape and Domestic Violence Services Australia, p 13; Submission 73, eSafety Commissioner, p 15; Submission 21, Professor Heather Douglas, p 17; Submission 132, Domestic Violence NSW, p 51.

<sup>450</sup> *Jury Directions Act 2015* (Vic), section 60; *Evidence Act 1906* (WA), section 39F(1).

<sup>451</sup> *Evidence Act 1906* (WA), section 39F(2).

<sup>452</sup> Submission 89, NSW Office of the Director of Public Prosecutions, p 15; see general direction about context and relationship evidence in the *Criminal Trial Courts Bench Book*, ‘Tendency, coincidence and background evidence’, [4-215] and [4-222], accessed 21 May 2021.

common for there to be differences in accounts of a sexual offence, and that both truthful and untruthful accounts may contain differences. The eSafety Commissioner suggested that a similar provision could be introduced for victims of coercive control.<sup>453</sup>

- 5.137 A possible alternative to legislating jury directions would be to update the bench books used in NSW courts, or develop a domestic abuse-specific bench book like that used in Victoria.<sup>454</sup> This allows directions to be updated more easily, and adapted by judges for individual cases.<sup>455</sup>
- 5.138 A domestic abuse-specific bench book could include suggested jury directions, information about the impact of complex trauma on witnesses, myths about domestic abuse, the seriousness of coercive control, and its impact on victims.

### Developing sentencing guidelines

- 5.139 The Inquiry heard that sentencing for domestic violence offences in NSW is inconsistent. This is particularly true when it comes to patterns of coercive and controlling behaviours. The NSW Government should consider developing sentencing guidelines for domestic violence offences, either within or in addition to the existing statutory and bench book framework.
- 5.140 The CSP Act sets out principles and rules for sentencing, including provisions about sentencing for domestic violence offences.<sup>456</sup>
- 5.141 The NSW *Sentencing Bench Book* gives guidance on sentencing for domestic violence offences, for example, noting that a domestic violence offence is ‘usually part of a larger picture of physical and mental violence in which the offender exercises power and control over the victim’.<sup>457</sup>
- 5.142 The NSW Court of Criminal Appeal can also make sentencing guideline judgments, on its own motion, or when requested by the Attorney-General.<sup>458</sup> No guideline judgments have been made on domestic violence.
- 5.143 The Inquiry heard a range of views on how sentencing guidance for domestic violence offences could be improved.
- 5.144 Associate Professor Kate Fitz-gibbon, from the Monash Gender and Family Violence Prevention Centre, observed that sentencing guidelines should ‘ensure that the full pattern of behaviours that constitute domestic violence can be recognised throughout criminal justice system interventions.’<sup>459</sup>

<sup>453</sup> Submission 73, eSafety Commissioner, pp 15-16. Also see Julie Inman Grant, Transcript of evidence, 30 March 2021, p 6.

<sup>454</sup> Judicial College Victoria, [Family Violence Bench Book](#), accessed 21 May 2021.

<sup>455</sup> Submission 139, Legal Aid NSW, p 13. Also see Submission 18, Law Society of NSW, p 6.

<sup>456</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW), sections 4A, 4B.

<sup>457</sup> NSW Judicial Commission, *Sentencing Bench Book – Particular offences*, ‘Domestic violence offences’, [\[63-500\]-\[63-520\]](#).

<sup>458</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW), Part 3, Division 4 – Sentencing guidelines. Also see: NSW Judicial Commission, *Sentencing Bench Book – Sentencing procedures generally*, ‘Sentencing guidelines’, [\[13-600\]-\[13-640\]](#).

<sup>459</sup> Associate Professor Kate Fitz-Gibbon, Transcript of evidence, 24 February 2021, p 35.

- 5.145 The Inquiry heard that sentencing courts have begun to recognise the seriousness of domestic abuse.<sup>460</sup>
- 5.146 Rape and Domestic Violence Services Australia pointed to some sentencing judgments in which ‘the courts have specifically recognised the coercive and controlling nature of the relationship as a matter relevant to the assessment of the objective seriousness of an offence.’<sup>461</sup>
- 5.147 However, the Inquiry also heard that whether evidence of coercive control is considered in sentencing often depends on the magistrate on the day, and on whether parties are legally represented.<sup>462</sup> In a survey of frontline domestic violence service providers, 64 per cent told Women’s Safety NSW that evidence of non-physical coercive and controlling behaviours was ‘rarely’ or ‘never’ taken into account during sentencing.<sup>463</sup>
- 5.148 The Domestic Violence Death Review Team has highlighted sentencing remarks that an abuser’s behaviour was ‘uncharacteristic’, or that a domestic violence homicide was a ‘one-off incident’, even where there was evidence of domestic abuse – particularly non-physical.<sup>464</sup>
- 5.149 Dr Jane Wangmann observed that considering contextual evidence, including coercive and controlling behaviours, can ‘play an important role in sentencing in countering the view of the incident as one-off and isolated.’<sup>465</sup>
- 5.150 Admitting evidence of coercive control also makes it more likely that sentencing decisions will reflect the ‘objective criminality’ of offender, and impact of an offence on the victim.<sup>466</sup> On the other hand, a lack of context can result in light sentences, and jeopardise victim safety.<sup>467</sup>
- 5.151 Professor Heather Douglas suggested that, ‘[w]hile there are some judicial officers who recognise the patterns and dynamics of domestic and family violence there may be more consistency if there was specific recognition of coercive control in sentencing guidance’.<sup>468</sup>
- 5.152 Examples of sentencing guidelines for family and domestic abuse which the government could consider may include:
- *Victoria’s Family Violence Bench Book*, which outlines ‘principles when sentencing for other criminal offences which occur in the context of family

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<sup>460</sup> Submission 35, Rape and Domestic Violence Services Australia, p 14; Submission 126, No to Violence, p 26; Natalie Gouda, Transcript of evidence, 23 February 2021, p 21.

<sup>461</sup> Submission 35, Rape and Domestic Violence Services Australia, p 16. Also see Submission 21, Professor Heather Douglas, pp 5-7.

<sup>462</sup> Submission 100, Indian (Sub-Cont) Crisis and Support Agency, p10; Submission 133, Women’s Safety NSW, p 51.

<sup>463</sup> Submission 133, Women’s Safety NSW, p 74.

<sup>464</sup> Domestic Violence Death Review Team, [Report 2017-2019](#), p 147; Submission 35, Rape and Domestic Violence Services Australia, p 16.

<sup>465</sup> Submission 116, Dr Jane Wangmann, p 15.

<sup>466</sup> Natalie Gouda, Transcript of evidence, 23 February 2021, pp 16, 21.

<sup>467</sup> Submission 145, Name suppressed, pp 10-11.

<sup>468</sup> Submission 21, Professor Heather Douglas, p 7.

violence’ and for breaches of ADVOs.<sup>469</sup>

- Victoria’s Sentencing Advisory Council guidelines on sentencing for breaches of ADVOs.<sup>470</sup>
- Sentencing Council for England and Wales guidelines on:
  - ‘Overarching principles’ for sentencing cases involving domestic abuse.<sup>471</sup>
  - Sentencing for the UK coercive control offence. This sets out graded ‘offence categories’ based on culpability and harm, lists aggravating factors, and refers to sentencing options including community orders and custodial sentences.<sup>472</sup>

### Victim impact statements

- 5.153 Witnesses had different views about whether there should be wider use of victim impact statements (VIS) in sentencing proceedings for domestic violence offences.
- 5.154 Section 28 of the CSP Act provides that VIS can contain details of harms suffered as a direct result of an offence, including any:
- personal harm,
  - emotional suffering or distress,
  - harm to relationships, or
  - economic loss or harm arising from the above.
- 5.155 Section 28 is broad, and includes many harms associated with coercive control.<sup>473</sup> However, requiring the harms to come as a ‘direct result’ of an offence may exclude information about the impacts of coercive control when the offender is being sentenced for a physical violence offence.
- 5.156 The NSW ODPP gave examples of cases where sentencing judges have declined to consider ‘any portion of the VIS tendered that referred to the relationship history between the victim and the offender and which did not refer specifically to the harm, suffering, distress etc. that was a direct result of the offences.’ This can cause further trauma to victims, leaving them feeling ‘silenced’ by the sentencing

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<sup>469</sup> Judicial Commission of Victoria, *Family Violence Bench Book*, ‘Criminal offences in the context of family violence’, at [4.2], accessed 4 June 2021; Judicial Commission of Victoria, *Family Violence Bench Book*, ‘Sentencing contravention offences’, at [4.1.1.2], accessed 4 June 2021.

<sup>470</sup> Sentencing Advisory Council Victoria, *Guiding Principles of Sentencing Contraventions of Family Violence Intervention Orders*, 4 September 2009, accessed 4 June 2021.

<sup>471</sup> Sentencing Council for England and Wales, *Overarching principles: domestic abuse*, 24 May 2018, accessed 4 May 2021.

<sup>472</sup> Sentencing Council for England and Wales, *Controlling or coercive behaviour in an intimate or family relationship*, 1 October 2018, accessed 4 June 2021.

<sup>473</sup> Submission 133, Women’s Safety, p141.

process.<sup>474</sup>

- 5.157 The ODPP argued that section 28 should be expanded ‘to include context evidence’. This would benefit courts and victim survivors because ‘the Court is given the proper complexion of the relationship between the victim and the offender and the victim is afforded the opportunity for catharsis in terms of the impact the entire relationship may have had upon them.’<sup>475</sup>
- 5.158 Some witnesses did not support expanding the use of VIS. Legal Aid NSW supported the current position that sentencing courts should only take into account the impact of the charged offence, and not any surrounding behaviours for procedural fairness reasons.<sup>476</sup>
- 5.159 Lou’s Place supported a legislative approach that ‘minimises the victim/survivor’s role in the proceedings’, as ‘[m]any women find the court system far too re-traumatising for the penalty the perpetrator receives’.<sup>477</sup>
- 5.160 While the Committee acknowledges these concerns, nonetheless victims of domestic abuse should be able to take part in the sentencing process if they choose to. There is scope for VIS to include the context of domestic violence offences, particularly when it involves coercive control.
- 5.161 Other suggestions that legislative drafters may consider are:
- Prosecutors consulting victims to ensure that a statement of agreed facts used in sentencing reflects the true criminality and context of the offences.<sup>478</sup>
  - When an offender receives a custodial sentence, victims should be told about release dates and parole hearings, and given the option to provide a VIS.<sup>479</sup>

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<sup>474</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 17-18.

<sup>475</sup> Submission 89, Office of the Director of Public Prosecutions (NSW), pp 17-18. Also see: Submission 133, Women’s Safety NSW, pp 105, 141-142.

<sup>476</sup> Submission 139, Legal Aid NSW, p 10.

<sup>477</sup> Submission 74, Lou’s Place, pp 6-7.

<sup>478</sup> Submission 35, Rape and Domestic Violence Services Australia, p 17.

<sup>479</sup> Submission 126, No to Violence, p 38.

## Appendix One – Terms of reference

That:

1. The committee inquire and report on coercive control in domestic relationships.
2. The committee, in undertaking this, will:
  - a) have regard to the discussion paper entitled Coercive Control issued by the Government on 13 October 2020;
  - b) answer the questions posed in the discussion paper;
  - c) have regard to any matters the committee considers relevant; and
  - d) make such recommendations as the committee considers appropriate.
3. The Committee report by 30 June 2021.

## Appendix Two – Relevant legislation in other jurisdictions

### Scotland

#### [Domestic Abuse \(Scotland\) Act 2018](#)

#### Elements of the offence

##### Section 1: Abusive behaviour towards partner or ex-partner

- 1) A person commits an offence if—
  - a) the person (“A”) engages in a course of behaviour which is abusive of A's partner or ex-partner (“B”), and
  - b) both of the further conditions are met.
- 2) The further conditions are—
  - a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
  - b) that either—
    - i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
    - ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.
- 3) In the further conditions, the references to psychological harm include fear, alarm and distress.

##### Section 2: What constitutes abusive behaviour

- 1) Subsections (2) to (4) elaborate on section 1(1) as to A's behaviour.
- 2) Behaviour which is abusive of B includes (in particular)—
  - a) behaviour directed at B that is violent, threatening or intimidating,
  - b) behaviour directed at B, at a child of B or at another person that either—
    - i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
    - ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).
- 3) The relevant effects are of—
  - a) making B dependent on, or subordinate to, A,
  - b) isolating B from friends, relatives or other sources of support,
  - c) controlling, regulating or monitoring B's day-to-day activities,
  - d) depriving B of, or restricting B's, freedom of action,
  - e) frightening, humiliating, degrading or punishing B.
- 4) In subsection (2)—
  - a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,
  - b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

**Section 4: Evidence of impact on victim**

- 1) The commission of an offence under section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).
- 2) The operation of section 2(2)(b) does not depend on behaviour directed at someone actually having on B any of the relevant effects set out in section 2(3).
- 3) Nothing done by or mentioned in subsection (1) or (2) prevents evidence from being led in proceedings for an offence under section 1(1) about (as the case may be)—
  - a) harm actually suffered by B as a result of the course of behaviour, or
  - b) effects actually had on B of behaviour directed at someone.

**Aggravating factors****Section 5: Aggravation in relation to a child**

- 1) This subsection applies where it is, in proceedings for an offence under section 1(1)—
  - a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and
  - b) proved that the offence is so aggravated.
- 2) The offence is so aggravated if, at any time in the commission of the offence—
  - a) A directs behaviour at a child, or
  - b) A makes use of a child in directing behaviour at B.
- 3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A directs at B as part of the course of behaviour.
- 4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).
- 5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—
  - a) has ever had any—
    - i) awareness of A's behaviour, or
    - ii) understanding of the nature of A's behaviour, or
  - b) has ever been adversely affected by A's behaviour.
- 6) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- 7) Where subsection (1) applies, the court must—
  - a) state on conviction that the offence is so aggravated,
  - b) record the conviction in a way that shows that the offence is so aggravated,
  - c) take the aggravation into account in determining the appropriate sentence, and
  - d) state—
    - i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
    - ii) otherwise, the reasons for there being no such difference.
- 8) Each of subsections (2) to (4) operates separately along with subsection (5), but subsections (2) to (4) may be used in combination along with subsection (5).
- 9) Nothing in subsections (2) to (5) prevents evidence from being led about—
  - a) a child's observations of, or feelings as to, A's behaviour, or
  - b) a child's situation so far as arising because of A's behaviour.
- 10) In subsections (4) and (5), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.

- 11) In this section, the references to a child are to a person who—
  - a) is not A or B, and
  - b) (b)is under 18 years of age.

## Statutory defence

### Section 6: Defence on grounds of reasonableness

- 1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.
- 2) That is to be regarded as shown if—
  - a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and
  - b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

## England and Wales

### [Serious Crime Act 2015](#)

### Section 76: Controlling or coercive behaviour in an intimate or family relationship

#### Elements of the offence

- 1) A person (A) commits an offence if—
  - a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
  - b) at the time of the behaviour, A and B are personally connected,
  - c) the behaviour has a serious effect on B, and
  - d) A knows or ought to know that the behaviour will have a serious effect on B.
- 2) A and B are “personally connected” if—
  - a) A is in an intimate personal relationship with B, or
  - b) A and B live together and—
    - i) they are members of the same family, or
    - ii) they have previously been in an intimate personal relationship with each other.
- 3) But A does not commit an offence under this section if at the time of the behaviour in question—
  - a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
  - b) B is under 16.
- 4) A's behaviour has a “serious effect” on B if—
  - a) it causes B to fear, on at least two occasions, that violence will be used against B, or
  - b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.
- 5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.
- 6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
  - a) they are, or have been, married to each other;

- b) they are, or have been, civil partners of each other;
  - c) they are relatives;
  - d) they have agreed to marry one another (whether or not the agreement has been terminated);
  - e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
  - f) they are both parents of the same child;
  - g) they have, or have had, parental responsibility for the same child.
- 7) In subsection (6)—
- “civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;
  - “child” means a person under the age of 18 years;
  - “parental responsibility” has the same meaning as in the Children Act 1989;
  - “relative” has the meaning given by section 63(1) of the Family Law Act 1996.

### Statutory defence

- 8) In proceedings for an offence under this section it is a defence for A to show that—
- a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
  - b) the behaviour was in all the circumstances reasonable.
- 9) A is to be taken to have shown the facts mentioned in subsection (8) if—
- a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
  - b) the contrary is not proved beyond reasonable doubt.
- 10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

### Northern Ireland

[\*Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021\*](#)

### Elements of the offence

**PART 1 Domestic abuse: offence and aggravation**

**CHAPTER 1 Offence of domestic abuse - Course of abusive behaviour**

#### Section 1: The domestic abuse offence

- 1) A person (“A”) commits an offence if—
- a) A engages in a course of behaviour that is abusive of another person (“B”),
  - b) A and B are personally connected to each other at the time, and
  - c) both of the further conditions are met.
- 2) The further conditions are—
- a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and
  - b) that A—
    - i) intends the course of behaviour to cause B to suffer physical or psychological harm, or
    - ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

- 3) The references in this section to psychological harm include fear, alarm and distress.
- 4) The offence under this section is to be known as the domestic abuse offence.

### **Section 2: What amounts to abusive behaviour**

- 1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person (“A”) is abusive of another person (“B”).
- 2) Behaviour that is abusive of B includes (in particular)—
  - a) behaviour directed at B that is violent,
  - b) behaviour directed at B that is threatening,
  - c) behaviour directed at B, at a child of B or at someone else that—
    - i) has as its purpose (or among its purposes) one or more of the relevant effects, or
    - ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.
- 3) The relevant effects are of—
  - a) making B dependent on, or subordinate to, A,
  - b) isolating B from friends, family members or other sources of social interaction or support,
  - c) controlling, regulating or monitoring B’s day-to-day activities,
  - d) depriving B of, or restricting B’s, freedom of action,
  - e) making B feel frightened, humiliated, degraded, punished or intimidated.
- 4) In subsection (2)—
  - a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,
  - b) in paragraph (c), “child” means a person under 18 years of age.
- 5) None of the paragraphs of subsection (2) or (as the case may be) (3) is to be taken to limit the meaning of any of the other paragraphs of that subsection.

### **Section 3: Impact of behaviour on victim**

- (1) The domestic abuse offence can be committed whether or not A’s behaviour actually causes B to suffer harm of the sort referred to in section 1(2).
- (2) A’s behaviour can be abusive of B by virtue of section 2(2)(c) whether or not A’s behaviour actually has one or more of the relevant effects set out in section 2(3).
- (3) Nothing in this Chapter prevents evidence from being led in proceedings for the domestic abuse offence about—
  - a) harm actually suffered by B as a result of A’s behaviour,
  - b) effects which A’s behaviour actually had on B.
  - c) In this section, “A” and “B” are as referred to in section 1 or (as the case may be) 2.

### **Section 4: Meaning of behaviour etc.**

- (1) This section has effect for the purposes of this Chapter.
- (2) Behaviour is behaviour of any kind, including (for example)—
  - a) saying or otherwise communicating something as well as doing something,
  - b) intentionally failing—
    - i) to do something, or
    - ii) to say or otherwise communicate something.

- (3) Behaviour is directed at a person if it is directed at the person in any way, including (for example)—
  - a) through—
    - i) conduct relating to the person’s ability to acquire, use or maintain money or other property or the person’s ability to obtain goods or services, or
    - ii) other conduct concerning or towards property, or
  - b) by making use of a third party, as well as in a personal or direct manner.
- (4) A course of behaviour involves behaviour on at least two occasions.

### **Personal connection**

#### **Section 5: Meaning of personal connection**

- 1) This section has effect for the purposes of this Chapter.
- 2) Two people (“A” and “B”) are personally connected to each other if any of these applies—
  - a) they are, or have been, married to each other,
  - b) they are, or have been, civil partners of each other,
  - c) they are living together, or have lived together, as if spouses of each other,
  - d) they are, or have been, otherwise in an intimate personal relationship with each other, or
  - e) they are members of the same family.
- 3) They are members of the same family—
  - a) if B is A’s parent, grandparent, child, grandchild, brother or sister, or
  - b) if—
    - i) one of them is in a relevant relationship with someone else (“C”), and
    - ii) the other of them is C’s parent, grandparent, child, grandchild, brother or sister.
- 4) One person is in a relevant relationship with someone else if—
  - a) they are married to, or are civil partners of, each other, or
  - b) they are living together as if spouses of each other.
- 5) In determining family membership—
  - a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and
  - b) a stepchild of a person is to be treated as the person’s child.

#### **Section 6: Establishing connection by notice**

- 1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, the prosecutor may serve notice on A or A’s solicitor proposing that the matter of A and B being personally connected as required for proof of the charge is to be taken as established for the purposes of the proceedings.

### **Aggravating factors**

#### **Section 8: Aggravation where victim is under 18**

- 1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of the person in

relation to whom the offence is alleged to have been committed (“B”) having been under 18 years of age at the time of any of the behaviour by virtue of which the offence is constituted.

- 2) Subsection (3) applies where—
  - a) an allegation of aggravation is specified as mentioned in subsection (1), and
  - b) the aggravation as well as the charge is proved.
- 3) The court must—
  - a) state on conviction that the offence is aggravated by reason of B having been under 18 years of age at the relevant time,
  - b) record the conviction in a way that shows that the offence is so aggravated,
  - c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
  - d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.
- 4) However, if—
  - a) the charge is proved, but
  - b) the aggravation is not proved,

A’s conviction is as if there were no reference to the aggravation alongside the charge.

### **Section 9: Aggravation where relevant child is involved**

- 1) It may be specified as an allegation alongside a charge of the domestic abuse offence against a person (“A”) that the offence is aggravated by reason of involving a relevant child.
- 2) For the purposes of subsection (1), the domestic abuse offence is aggravated by reason of involving a relevant child if (any or all)—
  - a) at any time in the commission of the offence—
    - i) A directed, or threatened to direct, behaviour at the child, or
    - ii) A made use of the child in directing behaviour at B, or
  - b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour, or
  - c) a reasonable person would consider the course of behaviour, or an incident of A’s behaviour that forms part of the course of behaviour, to be likely to adversely affect the child.
- 3) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—
  - a) has ever had any awareness or understanding of A’s behaviour, or
  - b) has ever been adversely affected by A’s behaviour.
- 4) Nothing in this section prevents evidence from being led about—
  - a) a child’s observations of, or feelings as to, A’s behaviour, or
  - b) a child’s situation so far as arising because of A’s behaviour.
- 5) Subsection (6) applies where—
  - a) an allegation of aggravation is specified as mentioned in subsection (1), and
  - b) the aggravation as well as the charge is proved.
- 6) The court must—
  - a) state on conviction that the offence is aggravated by reason of involving a relevant child,
  - b) record the conviction in a way that shows that the offence is so aggravated,
  - c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and

- d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.
- 7) However, if—
  - a) the charge is proved, but
  - b) the aggravation is not proved,
 A's conviction is as if there were no reference to the aggravation alongside the charge.
- 8) In this section—
  - a) "relevant child" means a person under 18 years of age who is not A or B,
  - b) "B" is the person in relation to whom the offence is alleged to have been committed.

## Tasmania

### [Family Violence Act 2004](#)

#### Section 8: Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

- a) coercing his or her spouse or partner to relinquish control over assets or income;
- b) disposing of property owned –
  - i) jointly by the person and his or her spouse or partner; or
  - ii) by his or her spouse or partner; or
  - iii) by an affected child –
 without the consent of the spouse or partner or affected child;
- c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;
- d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;
- e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.

#### Section 9: Emotional abuse or intimidation

- 1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.
- 2) In this section –
 

**a course of conduct** includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.

## Appendix Three – Conduct of inquiry

### **Inquiry referral**

On 21 October 2020, the Legislative Assembly resolved on the motion of the Hon Mark Speakman MP (Attorney General, and Minister for Prevention of Domestic and Sexual Violence) to appoint a Joint Select Committee on Coercive Control, to inquire and report on coercive control in domestic relationships, answering the questions posed in the NSW Government's discussion paper entitled 'Coercive Control'.

The Legislative Council resolved to agree to the Assembly's resolution on 22 October 2020.

### **Call for submissions**

The Committee issued a media release on 12 November 2020 and wrote to key stakeholders inviting them to make a submission to the inquiry.

Submissions closed on 29 January 2021. A total of 156 submissions were received from victim survivors, advocacy groups, medical professionals, academics and legal experts, and members of the general public.

A list of submissions is at Appendix Four. Submissions are available on the Committee [webpage](#).

### **Briefings**

On 16 November 2020 the Committee held a private briefing with representatives of the Department of Communities and Justice.

On 29 March 2021 the Committee held a private briefing with representatives of the Bureau of Crime Statistics and Research, and the Domestic Violence Death Review Team.

### **Hearings**

The Committee held three public hearing in February and two in March 2021 at Parliament House. Representatives of advocacy groups, medical professionals, academics and legal experts appeared in person and via videoconference and teleconference; people with lived experience of coercive control appeared in public and in camera.

A list of witnesses is at Appendix Five. Transcripts of evidence taken at the hearings are available on the Committee's [webpage](#).

### **Site visit**

On 22 April 2021, the Committee held meetings with a range of stakeholders from the areas surrounding Narrandera – including healthcare, housing and other service providers, advocacy groups, and victim survivors of coercive control.

Details of the site visit are at Appendix Six.

## Appendix Four – Submissions

1	Mr Julian Roberts
2	Professor Patricia Easteal
3	Name suppressed
4	Australasian Centre for Human Rights and Health
5	Confidential
6	Dr David Thorp
7	Australian Brotherhood of Fathers
8	Mr John Stagg
9	Confidential
10	Name suppressed
11	Name suppressed
12	Evan Stark and Cassandra Wiener
13	The Hon. Mark Latham MLC
14	Name suppressed
15	Name suppressed
16	Ms Min Grob
17	Women's Electoral Lobby (NSW)
17a	Women's Electoral Lobby (NSW)
18	The Law Society of New South Wales
19	Tasmania Police
20	Joplin Lawyers
21	Professor Heather Douglas
22	Office of the Justice Minister, Department of Justice, Northern Ireland
23	Professor Julia Tolmie
24	Domestic Violence Death Review Team
25	Name suppressed
26	Confidential
27	Confidential
28	Name suppressed
29	Confidential
30	Dr Rosemary Ac
31	De Saxe O'Neill Family Lawyers
32	Ms Debra Gillick
33	Confidential
34	One in Three Campaign
35	Rape and Domestic Violence Service Australia
36	Royal Australian and New Zealand College of Psychiatrists
37	The National Council of Women of New South Wales Inc.
38	Ms Maria Girdler
39	Confidential

40	Name suppressed
41	Name suppressed
42	Mr Anthony Langford
43	Name suppressed
44	Confidential
45	Our Watch
46	The Salvation Army Australia
47	Confidential
48	Confidential
49	Name suppressed
50	Ethnic Communities' Council of NSW
51	Mr Wayne Guy
52	Anglicare Sydney
53	Feminist Legal Clinic Inc.
54	Name suppressed
55	Professor Iain Brennan
56	Doctors Against Violence Towards Women
57	Catholic Women's League Australia – New South Wales Inc
58	Name suppressed
59	Good Shepherd Australia New Zealand
60	Confidential
61	The Hon. Emma Hurst MLC
62	Confidential
63	Name suppressed
64	Name suppressed
65	Ms Geraldine Bilston
66	Australian Psychological Society
67	Confidential
68	Insight Exchange (Domestic Violence Management Service)
69	Mr Kim Garling
70	Confidential
71	Youth Action
72	Dr Supriya Singh
73	eSafety Commissioner
74	Lou's Place
75	Young Liberal Movement of Australia (NSW Division)
76	Men and Family Centre
77	South West Sydney Legal Centre
78	Enough is Enough Anti-Violence Movement
79	White Ribbon Australia
80	Lisa Harnum Foundation
81	ACON
82	Weave Youth and Community Services
83	Confidential

84	Older Women's Network NSW
85	Confidential
86	Muslim Women Australia
87	Marie Stopes Australia
88	Name Suppressed
89	Office of the Director of Public Prosecutions (NSW)
90	Confidential
91	Ms Jess Hill
92	Centre for Women's Economic Safety
93	Name suppressed
94	Name suppressed
95	NSW Liberal Women's Council
96	Australia's National Research Organisation for Women's Safety (ANROWS)
97	Public Defenders (NSW)
98	Name suppressed
99	Name suppressed
100	Indian (Sub-Cont) Crisis & Support Agency
101	Ms Chloe McCardel
102	Australian Medical Association (NSW)
103	Multicultural Disability Advocacy Association of NSW Inc.
104	Confidential
105	Restorative Justice DFV
106	Elizabeth Evatt Community Legal Centre
107	Name suppressed
108	NSW Ageing and Disability Commission
109	Professor Marilyn McMahon and Mr Paul McGorrery
110	Country Women's Association of NSW
111	Gowland Legal Family Lawyers
112	NSW Young Lawyers
113	Office of the Director of Public Prosecutions (Tasmania)
114	St Vincent de Paul Society NSW
115	Domestic Violence Service Management
116	Dr Jane Wangmann
117	Office of the Children' Guardian
118	The New South Wales Bar Association
119	Monash Gender and Family Violence Prevention Centre
120	Confidential
121	Relationships Australia NSW
122	Western NSW Community Legal Centre
123	Name suppressed
124	Victims of Crime Assistance League (Hunter) NSW
125	Border Domestic Violence Network
126	No To Violence
127	Seniors Rights Service

128	Women's and Girls' Emergency Centre (WAGEC)
129	Australian Association of Social Workers
130	Hume Riverina Community Legal Service
131	Women's Health NSW
132	Domestic Violence NSW
133	Women's Safety NSW
134	Ms Jewell Drury and Mr Adam Tate
135	Confidential
136	Shoalcoast Community Legal Centre Inc
137	Confidential
138	Settlement Services International
139	Legal Aid NSW
140	Women's Legal Service NSW
141	Women's Community Shelters
142	Wirringa Baiya Aboriginal Women's Legal Centre Inc.
143	Economic Abuse Reference Group
144	Professor Brin Grenyer
145	Name suppressed
146	Police Scotland
147	Confidential
148	Aboriginal Legal Service (NSW/ACT) Limited
149	Illawarra Women's Health Centre
150	Confidential
151	Immigration Advice and Rights Centre
152	Confidential
153	Name suppressed
154	Ms Corinne Lindsell
155	Confidential
156	Confidential

## Appendix Five – Witnesses

Monday 22 February 2021, Jubilee Room Parliament House

Witness	Organisation
Ms Delia Donovan Chief Executive Officer	Domestic Violence NSW
Ms Renata Field Policy and Research Manager	
Dr Heather Nancarrow Chief Executive Officer	Australia's National Research Organisation for Women's Safety
Ms Harriet Ketley Member of the Criminal Law Committee	Law Society of NSW
Mr Simon Bruck President	NSW Young Lawyers
Chief Inspector Sean McDermott Manager – Domestic and Family Violence Team	NSW Police
Mr Peter McGrath SC Deputy Director of Public Prosecutions	Office of the Director of Public Prosecutions NSW
Ms Marianne Carey Policy and Legal Adviser	
Ms Belinda Rigg SC Senior Public Defender	Public Defenders NSW
Ms Kim Richardson Senior Solicitor	Hunter Community Legal Centre
Ms Sarah May	Restorative Justice DFV
Ms Yvette Vignando Chief Executive Officer	South West Sydney Legal Centre
Ms Kathryn Grimshaw Solicitor	Shoalcoast Community Legal Centre
Ms Hannah Robinson Policy and Law Reform Solicitor	Western NSW Community Legal Centre
Ms Tori Mines Solicitor	Western Women's Legal Support
Ms Joplin-Lea Higgins Director	Joplin Lawyers
Ms Margie O'Neill Director	De Saxe O'Neill Family Lawyers
Ms Lyndal Gowland Principal Solicitor	Gowland Legal Family Lawyers

## Tuesday 23 February 2021, Macquarie Room Parliament House

Witness	Organisation
Ms Eloise Layard Program Coordinator, Sexual, Domestic and Family Violence	ACON
Ms Sarah Lambert Director Community Health and Regional Services	
Mr Stewart Prins President	Men and Family Centre
Ms Mardi Wilson Family Advocate & Support	
Ms Michelle Lyons Program Delivery Officer	
Ms Natalie Gouda Legal Policy Officer	Rape and Domestic Violence Services Australia
Ms Patty Kinnersly Chief Executive Officer	Our Watch
Mr Brad Chilcott Executive Director	White Ribbon Australia
Dr Karen Williams Consultant Psychiatrist	Royal Australian and New Zealand College of Psychiatrists
Dr Angelo Virgona Chair of NSW Branch	
Ms Kylie Coventry Senior Policy Advisor	Australian Psychological Society
Dr Manjula O'Connor Executive Director	Australasian Centre for Human Rights & Health
Mr Peter Doukas OAM Chair	Ethnic Communities' Council of NSW
Ms Nemat Kharbouti Manager, Strategic Support	Muslim Women Australia
Ms Menaka Cooke NSW Executive Member	Women's Electoral Lobby
Ms Sera Yilmaz Systemic Advocate and Policy Officer, Disability Royal Commission Advocate	Multicultural Disability Advocacy Association of NSW
Ms Mely Mackey	
Ms Kathryn McKenzie Director, Operations	NSW Ageing and Disability Commission
Ms Dixie Link-Gordon Senior Community Access Worker, First Nations Women's Legal Program	Women's Legal Service NSW
Ms Pip Davis Principal Solicitor	

<b>Witness</b>	<b>Organisation</b>
Ms Liz Snell Law Reform and Policy Coordinator	
Ms Margaret Duckett President	Senior Rights Service
Ms Yumi Lee Manager	Older Women's Network

**Wednesday 24 February, Macquarie Room Parliament House**

<b>Witness</b>	<b>Organisation</b>
Ms Jess Hill Journalist and Author	
Ms Kate Munro Chief Executive Officer	Youth Action
Ms Siobhan Bryson Chief Executive Officer, Weave Women and Children's Centre	Weave Youth & Community Services
Ms Petra Jenkins State Manager Family Violence	The Salvation Army
Ms Laura Vidal Head of Social Policy	Good Shepherd NSW
Ms Lynda Dunstan Family and Domestic Violence Advisor	Anglicare
Miss Ann Pereira President	Catholic Women's League Australia
Ms Kelsie Hedge Manager, Homelessness & Housing, St George Sutherland	St Vincent de Paul Society
Mr Leith Erikson Founder	Australian Brotherhood of Fathers
Mr Cody Beck Principal Solicitor	
Mr Michael Jose Research Consultant	
Associate Professor Kate Fitz-Gibbon Director	Monash University Gender and Family Violence Prevention Centre
Professor Julia Tolmie Criminal Law, Faculty of Law, University of Auckland	
Professor Heather Douglas Professor of Law, Melbourne Law School	
Dr Jane Wangmann Senior Lecturer, Faculty of Law, University of Technology Sydney	

<b>Witness</b>	<b>Organisation</b>
Professor Marilyn McMahon Deputy Dean, Deakin Law School	
Mr Paul McGorrery Lawyer and Researcher, Deakin Law School	
Ms Helen Silvia Chief Executive Officer	Women's and Girls' Emergency Centre (WAGEC)
Ms Moo Baulch Director of Primary Prevention	
Ms Sally Grimsley-Ballard General Manager	Domestic Violence Service Management
Ms Brianna Attard Case Manager	Lou's Place
Ms Hayley Foster Chief Executive Officer	Women's Safety NSW

**Monday 29 March 2021, Jubilee Room Parliament House**

<b>Witness</b>	<b>Organisation</b>
Professor Evan Stark Professor Emeritus, Rutgers University	
Ms Cassandra Wiener, Doctoral Researchers, University of Sussex	
Ms Annmarie Lumsden Director, Criminal Law Division	Legal Aid NSW
Ms Rachael Martin Principal Solicitor	Wirringa Baiya Aboriginal Women's Legal Centre
Ms Alexandra Burkitt Solicitor	Aboriginal Legal Service NSW
Ms Elisabeth Shaw Chief Executive Officer	Relationships Australia NSW
Ms Megan Solomon General Manager, Practice Quality and Innovation	
Ms Shannon Harvey Senior Research Officer	
Dr Anita Hutchinson	Doctors Against Violence Towards Women
Ms Denele Crozier Chief Executive Officer	Women's Health NSW
Dr Amanda Cohn Chair	Border Domestic Violence Network
Ms Sally Stevenson General Manager	Illawarra Women's Health Centre

<b>Witness</b>	<b>Organisation</b>
Ms Danica Leys Chief Executive Officer	Country Women's Association of NSW
Ms Jacqui Watt Chief Executive Officer	No to Violence
Mr Russell Hooper Head of Advocacy	
Dr Astrid Perry Manager Strategy Policy	Settlement Services International
Ms Jessica Shulman Senior Solicitor	Immigration Advice and Rights Centre
Ms Kittu Randhawa Project Leader	Indian (Sub-Cont) Crisis & Support Agency
Mr Greg Andersen Senior Researcher	One in Three Campaign
Mr Craig Bennett	

**Tuesday 30 March 2021, Macquarie Room Parliament House**

<b>Witness</b>	<b>Organisation</b>
Dr Marsha Scott Chief Executive Officer	Scottish Women's Aid
Ms Julie Inman Grant eSafety Commissioner	eSafety Commissioner
Ms Sharon Trotter Acting Executive Manager, Prevention and Inclusion	
Mr Jamal Hakim Managing Director	Marie Stopes Australia
Ms Gayatri Nair Member of Economic Abuse Reference Group	Economic Abuse Reference Group NSW
Ms Rebecca Glenn Founder	Centre for Women's Economic Safety
Acting Commander Jason Elmer	Tasmania Police
Acting Inspector Penelope Reardon	
Ms Madeleine Figg Crown Counsel	Office of the Director of Public Prosecutions (Tasmania)
Dr Nithya Reddy	
Ms Kay Shubach	
Ms Kerrie Thompson Chief Executive Officer, Victim Support Unit	Victims of Crime Assistance League (VOCAL) (Hunter) NSW
Ms Jane Matts Survivor Advocate and Board Member	
Ms Chloe McCardel	

Witness	Organisation
Professor Iain Brennan Department of Criminology and Sociology, University of Hull	
Dr Veronica Holland Head of Violence Against the Person Branch	Department of Justice, Northern Ireland

## Appendix Six – Site visit

### Thursday 22 April 2021

The Committee held meetings with local stakeholders from the areas surrounding Narrandera – including healthcare, housing and other service providers, advocacy groups, and victim survivors of coercive control. Meetings were held in Criterion Hall at Narrandera CRC.

**Members in attendance:** Natalie Ward (Chair), Trish Doyle (Deputy Chair), Justin Clancy, Abigail Boyd, Steph Cooke.

#### Other attendees:

- Neville Kschenka – Narrandera Mayor

#### Meeting 1

- Clr Vanessa Keenan – Management Committee Member, Wagga Women’s Health Centre
- Trevor Murphy – Chairperson of the Narrandera Domestic Violence Awareness Committee
- Tracey Lewis – Member of the Narrandera Domestic Violence Awareness Committee
- Sharron Dean – Manager of collaboration between Headspace and Centacare Griffith

#### Meeting 2

- Alice Watts – Griffith Representative, Aboriginal Community Working Party
- George Broome – Social Worker, Griffith Aboriginal Medical Service
- Tamara McPherson – Trainee Mental Health Worker, Griffith Aboriginal Medical Service

#### Meeting 3

- Kira Pace – Program Manager, YES Unlimited Albury
- Katrina Warnock – Domestic Violence Case Manager, YES Unlimited Albury
- Tammy Marks – Senior Case Manager, Sisters Housing Enterprises Wagga Wagga
- Michelle Kilgower – Crisis Centre Manager, Murrumbidgee Accommodation & Housing Service
- Briana Bryon – Case Manager, Murrumbidgee Accommodation & Housing Service
- Yvonne Wilson – Chief Executive Officer, Linking Communities Network Griffith
- Kirrilly Salvestro – Deputy Chief Executive Officer, Linking Communities Network Griffith

#### Meeting 4

- Emma Bromham – Manager, Riverina Women’s Domestic Violence Court Advocacy Service
- Stacey Kilgour – Domestic Family Violence Case Worker, Riverina Women’s Domestic Violence Court Advocacy Service
- Ann Jones – Manager, Murrumbidgee Women’s Domestic Violence Court Advocacy Service

- Jassmine Leigh-Smith, Domestic Family Violence Specialist Worker / Aboriginal Focused, Murrumbidgee Women's Domestic Violence Court Advocacy Service

The following issues were discussed:

#### Barriers to reporting domestic violence

##### *Stigma and lack of awareness*

Everybody knows each other in small towns. This plays a big role in victims not reporting abuse, and is part of why abuse goes on for so long. Victims can feel embarrassed, and don't want everyone in the community to know what's happening to them.

Victims of coercive control also have a lot of self-doubt. Over time, they develop a different perception of reality – their mindset is influenced by the perpetrator.

Often, victims don't realise what's happening to them until they see a list of behaviours written down on a piece of paper. Manipulative behaviours start off small, and then gradually become worse, until they dominate the victim's day to day life.

##### *Additional barriers for CALD victims*

Some regional towns like Griffith have large CALD populations. CALD victims face particular issues with accessing services, and reporting domestic violence. They can be less likely to disclose abuse if they are on a temporary visa, have limited English, or depend on the perpetrator for housing and financial support.

##### *Distrust of police*

Victims who try to report abuse to police, and feel they are not listened to, or are misidentified as perpetrators, develop a mistrust of authority. This means they are less likely to report future incidents of abuse. Victims may not report things like harassing text messages because they don't think they will be taken seriously, or it seems like 'too much effort'. They are also concerned that, if they do report abuse and the police do nothing, the perpetrator will retaliate.

Poor responses from government authorities – such as police or FACS – can reinforce ideas that a perpetrator has impressed on a victim, for example, that they're a bad parent.

#### Barriers to accessing services

##### *Distance to services*

Narrandera is captured in funding for Griffith and Wagga Wagga. Some organisations provide 'outreach services', and will visit Narrandera a few times a year.

Developing specialised skills in regional areas can be very difficult, particularly when there is limited funding to attract and retain specialist domestic violence workers.

Accessibility is even worse for farming communities, who are very isolated, and even further away from DV services. Victims living on farms can't just pack up and leave their homes – they risk losing everything, including their livelihood. They may not be eligible for government financial support, because they are asset-rich, but cash-poor.

#### *Lack of awareness of where to go for support*

One of the biggest barriers for victims in a small community like Narrandera is reaching out to someone to find out where to go. No services are based there. People are hesitant to go to another service to ask for a referral – risk of vulnerability, stigma, rumours.

Wagga Wagga Women's Health Centre recently did a survey asking where respondents would go for help if they or someone they knew was facing domestic violence. Many people were unsure where to go, and many listed their GP.

There are problems with disclosing abuse to GPs. People from lower SES areas don't always have a GP. Many GPs don't know what to do when it comes to domestic violence. They are not trained to make appropriate referrals.

Ideally, NSW should be promoting the concept of 'no wrong door' – i.e. if you go to the 'wrong' person for help, they can still be an access point, and direct you to appropriate services. However, this often doesn't happen in practice.

Some women won't approach a service that is labelled as a 'DV service'. Services directed more broadly at women's health issues can be a 'soft entry' to DV services. Linking Communities Network (LCN) has had some success in identifying and supporting victims of domestic violence through its 'sustaining tenancies in social housing' program.

LCN told the Committee that, when they first started an outreach service in West Wyalong, people were not receptive, and denied that domestic violence was an issue in the community.

#### *Need ongoing case workers for victims who report domestic violence*

Once victims report domestic violence, they need consistent support. Otherwise, they are passed between government and non-government service providers, having to relive their experience again and again, and can risk falling through the cracks.

It would be good to have case workers who have the time to sit down, listen, and build trust with victims over time. They should have an understanding of how police and legal processes work, and be able to support victims through those processes.

This can be provided by Women's Domestic Violence Court Advocacy Services, who can get referrals for clients directly from police. However, these services lack secure funding. They may also be unable to help women who have been misidentified as perpetrators.

#### Support services for perpetrators

Centacare offers provides anger management and behaviour change programs for men. However, these are voluntary – someone has to come forward. This means they need to want to change, and also need to know that the program exists.

A coercive control law could make these programs part of the mandatory conditions for an offender not going to jail. This gives perpetrators an opportunity to change. This is not about 'going easy' on the perpetrator. Victims often don't want their partner to go to jail, they just want them to stop doing what they're doing. There needs to be a range of options for victims, while still making clear that abusive behaviour is unacceptable.

### Impact on children

The worst part about domestic violence is how it affects the children. Children don't feel safe at school to say what's happening – they fear that FACS will come and remove them. They still love their mum and dad, and don't want anything to happen to them.

Children are often manipulated to participate in the perpetrator's abuse. Domestic violence can cause intergenerational trauma, and affect how children behave when they become adults.

There are problems with access to children's services in regional areas. Many located in regional centres won't come to places like Narrandera. Different organisations have various limits – for example, they don't talk to kids of certain ages, or don't travel to certain areas.

### Policing

Police need to move from an incident based approach to one that looks at the whole picture. Embedding coercive control laws in policing could help this shift.

When police respond to domestic violence call outs, there is no opportunity for them to record the context of the relationship – to properly listen to the experiences of both people involved. This means that if a victim retaliates with violence, after suffering domestic abuse over a long period, police may misidentify them as the primary perpetrator.

Police in regional communities lack resources to deal with domestic violence. In some towns, police aren't available 24/7, and perpetrators take advantage of this. There's only one domestic violence liaison officer (DVLO) in Griffith, and two in the Cootamundra electorate. The Committee heard that trained DVLOs are needed in every town. However, training about domestic violence is needed for all police officers – not just DVLOs.

Police often struggle to recognise coercive control. Some of this is due to the gap in the law, and some is due to limited training. For example, police will often tell victims to block the perpetrator's number, to prevent abusive messages and phone calls. It could be the fourth breach of an ADVO, and it's still not really recognised – at most, it's a slap on the wrist.

Police respond well to physical assaults. They will usually complete a DVSAT risk assessment. Some questions in the DVSAT are related to coercive control, but it still often goes undetected. The DVSAT is being reworked, following consultation in 2020.

While coercive control causes long term trauma, its symptoms are not as visible as the cuts and bruises that come from a physical assault. Police are only looking for what they can charge.

Similarly, when evidence of coercive control makes its way into court, magistrates often don't recognise it as a pattern of domestic violence.

### Education

#### *The need to educate people about what coercive control is*

Many people think that domestic violence means physical violence. Victims of coercive control often don't realise that what is happening to them is domestic violence. Centacare's experience is that, for young people who are victims of domestic violence, it's getting counselling for other things that makes them realise what's happening.

Education should start early, similar to how kids learn that smoking is bad at an early age. The Committee heard about two existing programs for young people – '[Love Bites](#)', which is delivered in schools, and [Tirkandi Inaburra](#), which is aimed at young Aboriginal boys. It would be good if respectful relationships education could be taught more broadly in schools.

Education needs to be backed up with accessible domestic violence services for local communities. Victims should be able to reach out to somebody who can confidentially connect them to other services.

Part of successful community education will be ensuring that a definition of coercive control is introduced in legislation, and that it's understandable for the average person.

#### *The need to tailor education to different regions and communities*

NSW is very diverse. Each regional centre has its own issues. Education campaigns should be tailored to address different communities. For example, the Wagga Wagga Women's Health Centre conducted a survey in 2017 about local attitudes to domestic violence. It then partnered with the local council to run primary prevention programs. Wagga Wagga has run two public awareness campaigns about domestic violence – '[Reflect Respect](#)' and '[We Do Respect, Do You?](#)'. Reflect Respect was developed by the Wagga Wagga and Wodonga councils, together with the Wodonga Family Violence Taskforce and the Wagga Wagga Women's Health Centre, and was funded by the NSW and Victorian state governments.

### Cross-border issues

YES Unlimited sees a disjointed response between NSW and Victorian police and service providers. Clients generally feel the response in Victoria is better, and access points are clearer than in NSW.

The general view is that Victoria Police can often access information from NSW Police, but not vice versa. Victorian support services were streamlined and police responses improved after the Victorian Royal Commission into Family Violence. NSW has taken up some reforms from Victoria, but not as comprehensively.

Victims often attempt to flee interstate from domestic violence, but are forced to return because of family court rulings.

### **Meeting with victim survivors**

The Committee also met with a number of victim survivors from the local area, whose names are confidential to the Committee. These meetings were facilitated by Jane Matts, founder of the Sisters in Law Project, who previously gave evidence to the Committee on behalf of VOCAL.

These meeting participants emphasised the difficulties that victims of domestic violence face in navigating the family court system, getting and enforcing ADVOs, navigating crossover of responsibilities between NSW and Victoria Police, and protecting themselves from ongoing abuse after leaving a relationship.

## Appendix Seven – Extracts from minutes

### **MINUTES OF MEETING No 1**

1.01 pm, 9 November 2020

Room 1254 and videoconference

#### **Members present**

Ms Ward (Chair), Mr Clancy, Ms Cooke, Ms Doyle, Mr Roberts, Ms Boyd, Mr Sidgreaves  
Ms Watson (via teleconference)

#### **Officers in attendance**

Clara Hawker, Dora Oravec, Ilana Chaffey  
Stephanie Mulvey, Abigail Turingan (via videoconference)

### **1. Appointment of Committee**

The Chair opened the meeting and noted the following extracts from the Votes and Proceedings and Minutes:

#### **Legislative Assembly Votes and Proceedings, 21 October 2020, entry no 4**

4 Joint Select Committee on Coercive Control

Mr Mark Speakman moved, by leave, That:

- (1) A Joint Select Committee, to be known as the Joint Select Committee on Coercive Control be appointed.
- (2) The Committee inquire and report on coercive control in domestic relationships.
- (3) The Committee, in undertaking (2), will:
  - (a) Have regard to the discussion paper entitled 'Coercive Control' issued by the Government on 13 October 2020;
  - (b) Answer the questions posed in the discussion paper;
  - (c) Have regard to any matters the Committee considers relevant; and
  - (d) Make such recommendations as the Committee considers appropriate.
- (4) The Committee will consult with key stakeholders as required.
- (5) The Committee to consist of:
  - (a) Five members of the Legislative Assembly, namely Mr Justin Clancy MP, Ms Trish Doyle MP, Mr Peter Sidgreaves MP, Ms Steph Cooke MP and Ms Anna Watson MP; and
  - (b) Three members of the Legislative Council, namely the Hon Natalie Ward MLC (Chair), the Hon Abigail Boyd MLC, and the Hon Rod Roberts MLC.
- (6) The Committee report by 30 June 2021.
- (7) A message be sent to the Legislative Council requesting the Legislative Council agree to the resolution, and to fix a time and place for the first meeting.

Question put and passed.

#### **Legislative Council Minutes, 22 October 2020, entry no 13**

### 13 Joint Select Committee On Coercive Control—Membership

On the order of the day for consideration of the Legislative Assembly's message of 21 October 2020 being read, Mr Tudehope moved:

(1) That this House agrees to the resolution in the Legislative Assembly's message of Wednesday 22 October 2020 relating to the appointment of a Joint Select Committee on Coercive Control.

(2) That the time and place for the first meeting be advised once it has been determined.

Debate ensued.

Question put and passed.

Mr Tudehope then moved: That the following message be forwarded to the Legislative Assembly:

Madam SPEAKER

The Legislative Council desires to inform the Legislative Assembly that it has this day agreed to the following resolution:

(1) That this House agrees to the resolution in the Legislative Assembly's message of Wednesday 22 October 2020 relating to the appointment of a Joint Select Committee on Coercive Control.

(2) That the time and place for the first meeting be advised once it has been determined.

Question put and passed.

### **2. Election of Deputy Chair**

Resolved, on the motion of Mr Sidgreaves, seconded Ms Cooke: That Ms Doyle be elected Deputy Chair of the Committee.

### **3. Staffing arrangements**

The Chair introduced the Committee staff supporting the inquiry.

### **4. Standard procedural motions**

Resolved, on the motion of Mr Clancy, seconded Ms Doyle:

1. That if the committee is meeting and a division or quorum is called in either House, the meeting will be suspended until the committee regains its quorum.
2. That draft reports, evidence, transcripts, submissions and other committee documents are not to be disclosed or published by a committee member or any other person unless authorised by the committee or the House.
3. That media statements on behalf of the committee can only be made by the Chair.
4. That the Chair and Committee Director seek the Speaker's approval, through the Clerk of the Legislative Assembly, for funding of visits of inspection, consultancies and other committee expenses.
5. That all committee expenditure comply with Legislative Assembly policies.
6. That the Chair and committee staff arrange advertising of the inquiry, contacting interested parties requesting submissions, calling witnesses, and arranging visits of

inspection, in accordance with the decisions of the Committee on the conduct of the inquiry.

7. That witnesses appearing before the committee will not be represented by a legal professional or other advocate unless authorised by the committee.

## **5. Inquiry into coercive control in domestic relationships**

### **5.1 Inquiry timeline**

The Committee noted the indicative timeline for the inquiry.

Discussion ensued.

### **5.2 Call for submissions**

The Committee considered the draft list of stakeholders.

Discussion ensued.

The Committee agreed to add police and prosecution authorities from other Australian jurisdictions such as Queensland, Victoria, Western Australia and South Australia, and Ireland.

The Committee discussed the closing date for submissions.

Resolved, on the motion of Mr Roberts, seconded Mr Sidgreaves: That the Chair writes to Domestic Violence NSW to seek their views and assistance on how best to gather evidence from remote Aboriginal communities in this inquiry.

Resolved, on the motion of Ms Cooke, seconded Mr Clancy: That the Committee calls for submissions to be received by 29 January 2021 and writes to the listed stakeholders. Members may nominate additional stakeholders directly to committee staff by email.

### **5.3 Briefing for members**

The Committee discussed seeking a briefing from staff of the Department of Communities and Justice on the coercive control discussion paper.

Resolved, on the motion of Ms Doyle, seconded Mr Sidgreaves: That the Committee Chair writes to the Secretary of the Department of Communities and Justice to request a briefing from departmental staff on the Coercive control discussion paper.

The Committee tentatively agreed to hold the briefing on Monday, 16 November at 2.30pm.

## **6. General business**

Resolved, on the motion of Ms Boyd, seconded Ms Doyle: That Committee members' staff be provided with meeting papers and related material unless members notify committee staff that they wish to opt out of this arrangement.

## **7. Next meeting**

The meeting adjourned at 1.41 pm until a date to be determined.

## **MINUTES OF MEETING No 2**

10.05 am, 21 December 2020

Room 1254 and teleconference

### **Members present**

Ms Ward (Chair), Mr Clancy, Ms Cooke, Mr Roberts, Ms Boyd (via teleconference)

### **Apologies**

Ms Doyle, Mr Sidgreaves, Ms Watson

### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk

#### **1. Confirmation of minutes**

Resolved, on the motion of Ms Boyd, seconded Mr Clancy: That the minutes of the meeting of 9 November 2020 be confirmed.

The Chair noted the briefing received on 16 November 2020 from the Department of Communities and Justice regarding the Coercive Control Discussion Paper, and thanked the Department representatives for their assistance.

#### **2. Inquiry into coercive control in domestic relationships**

##### **2.1 \*\*\***

##### **2.2 Extension requests**

The Committee considered requests for an extension from the following stakeholders:

- Domestic Violence NSW – 2 weeks
- Legal Aid NSW – 26 February
- Economic Abuse Reference Group – 22 February
- Illawarra Women's Health Centre – end of March

Discussion ensued.

Resolved, on the motion of Ms Ward, seconded Ms Boyd:

- That the Committee approves requests for extensions of time by Domestic Violence NSW, Legal Aid NSW, the Economic Abuse Reference Group and Illawarra Women's Health Centre.
- That the Committee approves the Chair responding to further extension requests without the need for an additional committee meeting, with members to be informed of stakeholders to whom extensions have been granted.

##### **2.3 Hearings and site visit**

Resolved, on the motion of Ms Boyd, seconded Mr Roberts: That the Committee holds public hearings and a site visit on 22 February, 23 February, 24 February, 29 March, 30 March and 31 March 2021. Witnesses and the site visit location will be agreed closer to these dates.

#### **3. Next meeting**

The meeting adjourned at 10.24 am until a date to be determined.

### **MINUTES OF MEETING No 3**

12.32 pm, 4 February 2021

Room 1254 and teleconference

### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd

Mr Clancy, Ms Cooke, Ms Doyle, Mr Sidgreaves (via teleconference)

### **Apologies**

Ms Watson

**Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Ilana Chaffey, Abigail Turingan

**1. Confirmation of minutes**

Resolved, on the motion of Ms Boyd, seconded Mr Clancy: That the minutes of the meeting of 20 December 2020 be confirmed.

**2. Inquiry into coercive control in domestic relationships**

**2.1 \*\*\***

**2.2 Extension requests**

The Committee noted that extension requests had been granted to stakeholders on the list circulated to members.

**2.3 Publishing submissions**

Resolved, on the motion of Mr Roberts: That the Committee publishes submissions 1 to 2, 4, 6 to 8, 12 to 13, 16 to 17, 18 to 21, 23 to 24, 30 to 32, 34 to 38, 42, 45 to 46, 50 to 51, 53, 55 to 57, 59, 61, 65 to 69, 71 to 82, 84, 86 to 87, 89, 91 to 92, 95 to 97, 100, 102 to 103, 105 to 106, and 108 in full.

Resolved, on the motion of Ms Boyd: That the Committee publishes submissions 3, 10, 11, 25, 28, 40, 41, 43, 49, 54, 58, 93, and 107 with the authors' names suppressed.

Resolved, on the motion of Ms Cooke: That the Committee publishes submission 14 with the author's name partially suppressed.

Resolved, on the motion of Mr Sidgreaves: That the Committee publishes submission 15 with the author's name suppressed and the attachment redacted.

Resolved, on the motion of Ms Cooke: That the Committee publishes submission 17a with pages 6 to 8 redacted.

Resolved, on the motion of Mr Clancy: That the Committee publishes submission 52 with the attachment redacted.

Resolved, on the motion of Ms Boyd: That the Committee publishes submission 63 with the author's name suppressed, and the date at the end of paragraph 7 on page 1, the last paragraph on page 1, the first and third paragraphs on page 2, pages 4 to 6, the last paragraph of page 7, page 8, the last three paragraphs and images on page 9, the first paragraph on page 10, and all attachments redacted.

Resolved, on the motion of Mr Roberts: That the Committee publishes submission 64 with the author's name suppressed, and the section titled 'reason behind the thinking' on page 2, the sections titled 'reason behind the thinking' and 'police aspect' on page 3, the section below 5A on page 4, the section below 6A on page 5, the sentence after 7A on page 6, and all attachments redacted.

Resolved, on the motion of Mr Clancy: That the Committee publishes submission 88 with the author's name suppressed and names on the first and second lines of the submission redacted.

Resolved, on the motion of Mr Roberts: That the Committee publishes submission 98 with the author's name suppressed and the text starting below the third paragraph on page 1 and ending above the final paragraph on page 3 redacted.

Resolved, on the motion of Ms Doyle: That the Committee publishes submission 99 with the author's name suppressed and the second paragraph and heading above the paragraph on page 1 redacted.

Resolved, on the motion of Mr Sidgreaves: That the Committee publishes submission 101 with page 12 and all attachments redacted.

Resolved, on the motion of Mr Clancy: That submissions 5, 9, 22, 26, 27, 29, 33, 39, 44, 47, 48, 60, 62, 70, 83, 85, 90, 94 and 104 remain confidential to the Committee and not be published.

Resolved, on the motion of Ms Cooke: That the published book included with submission 91 be listed at the end of the submission, and not be published.

#### **2.4 Witness list**

The Committee noted the list of suggested witnesses to appear at the public hearings to be held on 22 February, 23 February and 24 February.

Discussion ensued.

Mr Roberts expressed concern about the limited time members had to review submissions before considering which witnesses to invite to give evidence at public hearings.

Members asked committee staff to circulate a list of suggested witnesses for the hearings scheduled for 29 March and 30 March.

Resolved, on the motion of Ms Doyle: That the Committee invites the listed witnesses to give evidence at public hearings to be held on Monday 22 February, Tuesday 23 February and Wednesday 24 February.

Members were asked to advise committee staff of additional witnesses by Monday 8 February.

#### **2.5 Site visit**

The Committee discussed the location and arrangements for the site visit to be held on 31 March.

Resolved on the motion of Ms Cooke: That the Committee seeks the Speaker's approval for funding for Committee members and Committee staff to attend a site visit to Narrandera on Wednesday 31 March to consult with relevant stakeholders and obtain information relevant to the inquiry.

### **3. \*\*\***

#### **4. Next meeting**

The meeting adjourned at 1.07 pm until a date to be determined.

### **MINUTES OF MEETING No 4**

9.43 am, 22 February 2021

Jubilee Room and videoconference

#### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd, Ms Doyle, Mr Sidgreaves  
Mr Clancy (by videoconference)

#### **Apologies**

Ms Cooke, Ms Watson

**Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abigail Turingan

**1. Deliberative meeting**

**1.1 Confirmation of minutes**

Resolved on the motion of Ms Boyd: That the minutes of the meeting of 4 February 2021 be confirmed.

**1.2 \*\*\***

**1.3 Media orders**

Resolved on the motion of Mr Roberts: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearings on 22, 23 and 24 February 2021, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

**1.4 Answers to questions taken on notice**

Resolved on the motion of Mr Sidgreaves: That witnesses be requested to return answers to questions taken on notice and supplementary questions within one week of the date on which the questions are forwarded to the witnesses.

**1.5 Publishing submissions**

Resolved on the motion of Mr Roberts:

That the Committee publishes submissions 22, 109 to 119, 121 to 122, 124 to 129, 131 to 134, and 136 in full.

That the Committee publishes submissions 94 and 123 with the author's name suppressed and identifying and personal details redacted.

That submissions 120, 130 and 135 remain confidential to the Committee and not be published.

**1.6 Publication orders**

Resolved on the motion of Ms Boyd: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

The meeting concluded at 9.47 am.

**2. Public hearing: Inquiry into coercive control in domestic relationships**

Witnesses were admitted. The Chair opened the public hearing at 9.48 am and made a short opening statement.

Ms Delia Donovan, Chief Executive Officer, Domestic Violence NSW, was affirmed and examined.

Ms Renata Field, Policy and Research, Manager, Domestic Violence NSW, was affirmed and examined.

Dr Heather Nancarrow, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, was sworn and examined.

Ms Harriet Ketley, member of the Criminal Law Committee Law Society of NSW, was affirmed and examined.

Mr Simon Bruck, President NSW Young Lawyers, was affirmed and examined.

Chief Inspector Sean McDermott, Manager – Domestic and Family Violence team, NSW Police, was affirmed and examined.

Mr Peter McGrath SC, Deputy Director of Public Prosecutions, Office of the Director of Public Prosecutions NSW, was sworn and examined by videoconference

Ms Marianne Carey, Policy and Legal, Adviser, Office of the Director of Public Prosecutions NSW, was affirmed and examined by videoconference.

Ms Belinda Rigg SC, Senior Public Defender, Public Defenders NSW, was affirmed and examined.

Ms Kim Richardson, Senior Solicitor, Hunter Community Legal Centre, was affirmed and examined by videoconference.

Ms Sarah May, Restorative Justice DFV, was affirmed and examined by videoconference.

Ms Yvette Vignando, Chief Executive Officer, South-West Sydney Legal Centre, was affirmed and examined by videoconference.

Ms Kathryn Grimshaw, Solicitor, Shoalcoast Community Legal, Centre, was affirmed and examined.

Ms Hannah Robinson, Policy and Law Reform Solicitor, Western NSW Community Legal Centre, was affirmed and examined by videoconference.

Ms Tori Mines, Solicitor, Western Women's Legal Support, was affirmed and examined by videoconference.

Ms Joplin-Lea Higgins, Director, Joplin Lawyers, was sworn and examined by videoconference.

Ms Margie O'Neill, Director, De Saxe O'Neill Family Lawyers, was sworn and examined.

Ms Lyndal Gowland, Principal Solicitor, Gowland Legal Family Lawyers, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.44 pm.

### **3. Deliberative meeting**

The Committee commenced a deliberative meeting at 4.45 pm.

#### **3.1 Accepting tendered document**

Resolved on the motion of Ms Doyle: That the Committee accepts the following document tendered by Ms Gowland:

- Family Court of Australia, *Family violence best practice principles*, December 2016.

#### **3.2 General business**

The Committee discussed the witness schedule for Wednesday 24 February.

#### **3.3 Next meeting**

The meeting adjourned at 4.48 pm until 9.30 am on 23 February 2021 in the Macquarie Room.

## **MINUTES OF MEETING No 5**

9.29 am, 23 February 2021

Macquarie Room and videoconference

### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd, Ms Doyle, Ms Watson

Mr Clancy, Ms Cooke, Mr Sidgreaves (by videoconference)

### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abigail Turingan

## **1. Deliberative meeting**

### **Publishing submissions**

Resolved on the motion of Ms Doyle: That the Committee publishes submission 140 in full.

The meeting concluded at 9.29 am.

## **2. Public hearing: Inquiry into coercive control in domestic relationships**

Witnesses were admitted. The Chair opened the public hearing at 9.30 am and made a short opening statement.

Ms Eloise Layard, Program Coordinator, Sexual, Domestic and Family Violence, ACON, was affirmed and examined.

Ms Sarah Lambert, Director Community Health and Regional Services, ACON, was affirmed and examined.

Mr Stewart Prins, President, Men and Family Centre, was affirmed and examined.

Ms Mardi Wilson, Family Advocate & Support, Men and Family Centre, was affirmed and examined.

Ms Michelle Lyons, Program Delivery Officer, Men and Family Centre, was affirmed and examined.

Ms Natalie Gouda, Legal and Policy Officer, Rape and Domestic Violence Services Australia Inc, was affirmed and examined.

Ms Patty Kinnersly, CEO, Our Watch, was affirmed and examined.

Mr Brad Chilcott, Executive Director, White Ribbon Australia, was affirmed and examined.

Dr Karen Williams, Consultant Psychiatrist, Royal Australian and New Zealand College of Psychiatrists, was affirmed and examined.

Dr Angelo Virgona, Chair of NSW Branch, Royal Australian and New Zealand College of Psychiatrists, was affirmed and examined by videoconference.

Ms Kylie Coventry, Senior Policy Advisor, Australian Psychological Society, was affirmed and examined by videoconference.

Dr Manjula O'Connor, Executive Director, Australasian Centre for Human Rights & Health, was affirmed and examined by videoconference.

Mr Peter Doukas OAM, Chair Ethnic Communities' Council of NSW, was sworn and examined.

Ms Nemat Kharboutli, Manager, Strategic Support Muslim Women Australia, was sworn and examined.

Ms Menaka Cooke, NSW Executive Member Women's Electoral Lobby, was affirmed and examined.

The public hearing adjourned at 2.27 pm.

### **3. Deliberative meeting**

The Committee commenced a deliberative meeting at 2.29 pm.

Resolved on the motion of Ms Watson: That the Committee takes evidence from a witness in camera.

### **4. In camera evidence**

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### **5. Public hearing**

The public hearing resumed at 2.47 pm.

Ms Sera Yilmaz, Systemic Advocate and Policy Officer, Disability Royal Commission Advocate, Multicultural Disability Advocacy Association of NSW, was sworn and examined.

Ms Kathryn McKenzie, Director, Operations NSW Ageing and Disability Commission, was affirmed and examined.

Ms Dixie Link-Gordon, Senior Community Access Worker, First Nations Women's Legal Program, Women's Legal Service NSW, was affirmed and examined by videoconference

Ms Pip Davis, Principal Solicitor, Women's Legal Service NSW, was affirmed and examined by videoconference

Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, was sworn and examined by videoconference.

Ms Margaret Duckett, President Seniors Rights Service, was affirmed and examined by videoconference.

Ms Yumi Lee, Manager Older Women's Network, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.34 pm.

### **6. Deliberative meeting**

The Committee commenced a deliberative meeting at 4.35 pm.

#### **6.1 Publication orders**

Resolved on the motion of Ms Doyle: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

#### **6.2 General business**

Resolved on the motion of Ms Ward: That the Committee thanks Committee staff for their work.

#### **6.3 Next meeting**

The meeting adjourned at 4.36 pm until 9.00 am on 24 February 2021 in the Macquarie Room.

## **MINUTES OF MEETING No 6**

9.00 am, 24 February 2021

Macquarie Room and videoconference

### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd, Ms Doyle  
Mr Sidgreaves, Mr Clancy, Ms Cooke (by videoconference)

### **Apologies**

Ms Watson

### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abegail Turingan

## **1. Public hearing: Inquiry into coercive control in domestic relationships**

Witnesses were admitted. The Chair opened the public hearing at 9.02 am and made a short opening statement.

Ms Jess Hill, was affirmed and examined.

Ms Kate Munro, Chief Executive Officer Youth Action, was affirmed and examined.

Ms Siobhan Bryson, Chief Executive Officer, Weave Women and Children's Centre, Weave Youth & Community Services, was affirmed and examined.

Ms Petra Jenkins, State Manager Family Violence, The Salvation Army, was sworn and examined.

Ms Laura Vidal, Head of Social Policy Good Shepherd NSW, was affirmed and examined.

Ms Lynda Dunstan, Family and Domestic Violence Advisor Anglicare, was sworn and examined by videoconference.

Miss Ann Pereira, President Catholic Women's League Australia, was sworn and examined.

Ms Kelsie Hedge, Manager, Homelessness & Housing, St George Sutherland, St Vincent de Paul Society, was sworn and examined by videoconference.

Mr Leith Erikson, Founder, Australian Brotherhood of Fathers, was sworn and examined by videoconference.

Mr Cody Beck, Principal Lawyer, Australian Brotherhood of Fathers, was sworn and examined by videoconference.

Mr Michael Jose, Research Consultant, Australian Brotherhood of Fathers, was affirmed and examined by videoconference.

Associate Professor Kate Fitz-Gibbon, Director, Monash University Gender and Family Violence Prevention Centre, was affirmed and examined.

Professor Julia Tolmie, Criminal Law, Faculty of Law, University of Auckland, was affirmed and examined by videoconference.

Professor Heather Douglas, Professor of Law, Melbourne Law School, was affirmed and examined by videoconference.

Dr Jane Wangmann, Senior Lecturer, Faculty of Law, University of Technology, Sydney, was affirmed and examined by videoconference.

The public hearing adjourned at 2.41 pm.

## **2. Deliberative meeting**

The Committee commenced a deliberative meeting at 2.43 pm.

### **2.1 Publishing submissions**

Resolved on the motion of Ms Doyle:

That the Committee publishes submissions 138 to 139 and 141 to 144 in full.

That the Committee publishes submission 145 with the author's name suppressed and identifying and personal details redacted.

That submission 137 remains confidential to the Committee and not be published.

### **2.2 Publication orders**

Resolved on the motion of Mr Sidgreaves: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

The Chair noted that members could submit additional questions for witnesses to committee staff, once the transcript was available.

### **2.3 Witness list**

Resolved on the motion of Ms Boyd: That the Committee invites the listed witnesses to give evidence at public hearings to be held on Monday 29 March and Tuesday 30 March.

### **2.4 Site visit**

The Committee agreed to defer the site visit until late April, with the date to be confirmed subject to members' availability.

The deliberative meeting concluded at 2.50 pm.

## **3. Public hearing**

The public hearing resumed at 3.06 pm.

Professor Marilyn McMahon, Deputy Dean, Deakin Law School, was affirmed and examined by videoconference.

Mr Paul McGorrery, Lawyer and Researcher, Deakin Law School, was affirmed and examined by videoconference.

Ms Helen Silvia, CEO, Women's and Girls' Emergency Centre Inc, was affirmed and examined.

Ms Moo Baulch, Director of Primary Prevention, Women's and Girls' Emergency Centre Inc, was affirmed and examined.

Ms Sally Grimsley-Ballard, General Manager, Domestic Violence Service Management, was affirmed and examined.

Ms Brianna Attard, Case Manager, Lou's Place, was affirmed and examined by videoconference.

Ms Hayley Foster, CEO, Women's Safety NSW, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.16 pm.

#### **4. Deliberative meeting**

The Committee commenced a deliberative meeting at 5.16 pm.

##### **4.1 Accepting tendered documents**

Resolved on the motion of Roberts: That the Committee accepts the following documents tendered by Ms Grimsley-Ballard:

- Domestic Violence Service Management, *Follow my lead*
- Domestic Violence Service Management, *My safety kit*.

##### **4.2 Next meeting**

The meeting adjourned at 5.17 pm until a date to be determined.

### **MINUTES OF MEETING No 7**

9.02 am, 29 March 2021

Jubilee Room and videoconference

#### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd, Ms Doyle, Mr Sidgreaves  
Ms Cooke, Ms Watson (until 12.30 pm) (by videoconference)

#### **Apologies**

Mr Clancy

#### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abegail Turingan, Derya Sekmen

### **1. Deliberative meeting**

#### **1.1 Confirmation of minutes**

Resolved on the motion of Ms Doyle: That the minutes of the meetings of 22, 23 and 24 February 2021 be confirmed.

#### **1.2 Media orders**

Resolved on the motion of Ms Boyd: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearings on 29 and 30 March 2021, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

#### **1.3 Answers to questions taken on notice**

Resolved on the motion of Ms Doyle: That witnesses be requested to return answers to questions taken on notice and supplementary questions within one week of the date on which the questions are forwarded to the witnesses.

#### **1.4 Publishing submissions**

Resolved on the motion of Mr Roberts:

That the Committee publishes submissions 148, 149 and 151 in full.

That the Committee publishes submission 146 with the redactions requested by the submission author.

That submissions 147, 150 and 152 remain confidential to the Committee and not be published.

The meeting concluded at 9.08 am.

## **2. Public hearing: Inquiry into coercive control in domestic relationships**

Witnesses were admitted. The Chair opened the public hearing at 9.10 am and made a short opening statement.

Ms Cassandra Wiener, Doctoral Researcher, University of Sussex, was sworn and examined by videoconference.

Professor Evan Stark, Professor Emeritus, Rutgers University, was affirmed and examined by videoconference.

Ms Annmarie Lumsden, Director, Criminal Law Division, Legal Aid NSW, was affirmed and examined.

Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, was affirmed and examined.

Ms Alexandra Burkitt, Solicitor, Aboriginal Legal Service NSW, was affirmed and examined.

Ms Elisabeth Shaw, Chief Executive Officer, Relationships Australia NSW, was affirmed and examined.

Ms Megan Solomon, General Manager, Practice Quality and Innovation, Relationships Australia NSW, was affirmed and examined.

Ms Sharon Harvey, Senior Research Officer, Relationships Australia NSW, was affirmed and examined.

Dr Anita Hutchison, Doctors Against Violence Towards Women, was sworn and examined by videoconference by videoconference.

Ms Denele Crozier, Chief Executive Officer, Women's Health NSW, was affirmed and examined by videoconference.

Dr Amanda Cohn, Chair, Border Domestic Violence Network, was affirmed and examined by videoconference.

Ms Sally Stevenson, General Manager, Illawarra Women's Health Centre, was affirmed and examined.

Ms Danica Leys, Chief Executive Officer, Country Women's Association of NSW, was sworn and examined.

Ms Jacqui Watt, Chief Executive Officer, No to Violence, was affirmed and examined.

Mr Russell Hooper, Head of Advocacy, No to Violence, was affirmed and examined.

Dr Astrid Perry, Manager Strategic Policy, Settlement Services International, was affirmed and examined.

Ms Jessica Schulman, Senior Solicitor, Immigration Advice and Rights Centre, was affirmed and examined.

Ms Kittu Randhawa, Project Leader, Indian (Sub-Cont) Crisis & Support Agency, was sworn and examined.

Mr Greg Andresen, Senior Researcher, One in Three Campaign, was affirmed and examined by teleconference.

Mr Craig Bennett, was affirmed and examined by teleconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.15 pm.

### **3. Deliberative meeting**

The Committee commenced a deliberative meeting at 3.17 pm.

#### **3.1 Publication orders**

Resolved on the motion of Mr Roberts: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

#### **3.2 Accepting and publishing tendered document**

Resolved on the motion of Ms Doyle: That the Committee accepts and publishes the following document tendered by Ms Lumsden, LegalAid NSW:

- Stalk and intimidate offences in NSW – summary of BOCSAR findings.

#### **3.3 \*\*\***

#### **3.4 Requested redaction – 22 February transcript**

Resolved on the motion of Ms Boyd: That the sentence following 'I was a victim survivor' on page 36 of the transcript of the public hearing on 22 February 2021 be redacted prior to publication of the transcript.

#### **3.5 Publishing answers to question on notice**

Resolved on the motion of Ms Doyle: That the Committee publishes answers to questions on notice received from the following organisations:

- Western NSW Community Legal Centre & Women's Legal Support
- Shoalcoast Community Legal Centre
- Law Society of NSW
- Rape and Domestic Violence Services Australia
- Women's and Girls' Emergency Centre
- NSW Police
- Australian Psychological Society
- ACON
- Men and Family Centre
- De Saxe O'Neill Family Lawyers
- Joplin Lawyers
- Professor Marilyn McMahon & Mr Paul McGorrery.

The meeting concluded at 3.19 pm.

#### **3.6 Private briefings**

The Committee conducted private briefings with:

- Ms Jackie Fitzgerald, Executive Director, Bureau of Crime Statistics and Research

- Ms Suzanne Poynton, Research Director, Bureau of Crime Statistics and Research
- Mr Min-Taec Kim, Researcher, Bureau of Crime Statistics and Research
- Her Honour Magistrate Teresa O'Sullivan, State Coroner, Convenor of Domestic Violence Death Review Team
- Ms Anna Butler, Manager, Domestic Violence Death Review Team

### **3.7 Next meeting**

The meeting adjourned at 4.48 pm until 9.00 am on 30 March 2021 in the Macquarie Room.

## **MINUTES OF MEETING No 8**

9.05 am, 30 March 2021

Macquarie Room and videoconference

### **Members present**

Ms Ward (Chair), Mr Roberts, Ms Boyd, Ms Doyle, Mr Sidgreaves (until 4.02 pm)  
Ms Cooke, Mr Clancy, (by videoconference)

### **Apologies**

Ms Watson

### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abigail Turingan, Derya Sekmen

## **1. Public hearing: Inquiry into coercive control in domestic relationships**

Witnesses were admitted. The Chair opened the public hearing at 9.05 am and made a short opening statement.

Dr Marsha Scott, Chief Executive Officer, Scottish Women's Aid, was affirmed and examined by videoconference.

Ms Julie Inman Grant, eSafety Commissioner, was sworn and examined

Ms Sharon Trotter, Acting Executive Manager, Prevention and Inclusion, eSafety Commissioner, was sworn and examined.

Mr Jamal Hakim, Managing Director, Marie Stopes Australia, was affirmed and examined by videoconference.

Ms Gayatri Nair, Member of Economic Abuse Reference Group, Economic Abuse Reference Group NSW, was affirmed and examined.

Ms Rebecca Glenn, Founder, Centre for Women's Economic Safety, was affirmed and examined.

Acting Commander Jason Elmer, Tasmania Police, was sworn and examined by videoconference.

Acting Inspector Penelope Reardon, Tasmania Police, was sworn and examined by videoconference.

Ms Madeleine Figg, Crown Counsel, Office of the Director of Public Prosecutions, Tasmania, was affirmed and examined by videoconference.

Dr Nithya Reddy, was affirmed and examined.

Ms Kay Schubach, was sworn and examined.

Ms Kerrie Thompson, Chief Executive Officer, Victim Support Unit, Victims of Crime Assistance League (VOCAL) Hunter NSW, was affirmed and examined.

Ms Jane Matts, Survivor Advocate and Board Member, Victims of Crime Assistance League (VOCAL) Hunter NSW, was affirmed and examined.

Ms Chloe McCardel, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.55 pm.

## **2. Deliberative meeting**

The Committee commenced a deliberative meeting at 2.57 pm.

Resolved on the motion of Mr Sidgreaves: That the Committee takes evidence from two witnesses in camera.

## **3. In camera evidence**

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## **4. Deliberative meeting**

The Committee commenced a deliberative meeting at 4.00 pm.

### **4.1 Publication orders**

Resolved on the motion of Ms Doyle: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

### **4.2 Accepting tendered documents provided during in camera evidence**

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### **4.3 General business**

The Committee discussed arrangements for the site visit to Narrandera on 21 and 22 April.

The meeting concluded at 4.02 pm.

## **5. Public hearing**

The public hearing resumed at 7.02 pm.

Professor Iain Brennan, Department of Criminology and Sociology, University of Hull, was sworn and examined.

Dr Veronica Holland, Head of Violence Against the Person Branch Department of Justice, Northern Ireland, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 8pm.

## **6. Next meeting**

The meeting adjourned at 8.00 pm until a date to be determined.

## **MINUTES OF MEETING No 9**

10.06 am, 20 May 2021

Room 1043 and videoconference

### **Members present**

Ms Ward (Chair), Ms Doyle, Ms Cooke (until 10.08 am), Ms Watson (by videoconference)

Ms Boyd (in person)

### **Apologies**

Mr Clancy, Mr Sidgreaves, Mr Roberts

### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abigail Turingan

## **1. Confirmation of minutes**

Resolved on the motion of Ms Boyd, seconded Ms Doyle: That the minutes of the meetings of 29 and 30 March be confirmed.

## **2. Inquiry into coercive control in domestic relationships**

### **2.1 \*\*\***

### **2.2 Suggested redaction – 30 March transcript**

The Committee discussed redacting a name from evidence given on 30 March 2021.

Resolved on the motion of Ms Doyle: That both references to the name of a police officer on page 33 of the transcript of the public hearing on 30 March 2021 be redacted prior to publication of the transcript.

### **2.3 Publishing submission 153**

Resolved on the motion of Ms Boyd, seconded Ms Doyle: That the Committee publishes submission 153 with the author's name suppressed.

### **2.4 Publishing answers to questions on notice**

Resolved on the motion of Ms Watson: That the Committee publishes answers to questions on notice from:

- Professor Julia Tolmie
- Australian Brotherhood of Fathers
- Doctors against violence towards women
- One in Three campaign
- Border Domestic Violence Network
- Centre for Women's Economic Safety
- Tasmania Police
- Lou's Place
- Scottish Women's Aid.

## **3. General business**

The Chair noted that due to difficulties with arranging a hearing with Police Scotland, she proposed to send the questions that were previously circulated to members to Police Scotland.

Resolved on the motion of Ms Doyle: That the Committee sends the questions that were circulated to members to Scotland Police, along with any further questions members may have.

The Chair noted that Committee staff would contact members' offices to arrange a roundtable meeting to discuss the Committee's report, during the week beginning 24 May.

#### **4. Next meeting**

The meeting adjourned at 10.27 am until a date to be determined.

### **UNCONFIRMED MINUTES OF MEETING No 10**

10.18 am, 28 June 2021

Videoconference

#### **Members present**

Ms Ward (Chair), Ms Doyle, Ms Cooke, Ms Boyd, Ms Watson, Mr Clancy, Mr Sidgreaves, Mr Roberts

#### **Officers in attendance**

Clara Hawker, Dora Oravec, Sally Kirk, Abigail Turingan, Derya Sekmen

#### **1. Confirmation of minutes**

Resolved on the motion of Ms Boyd: That the minutes of the meetings of 20 May be confirmed.

#### **2. Inquiry into coercive control in domestic relationships**

##### **2.1 Answers to written questions**

Resolved on the motion of Ms Doyle:

- Yes Unlimited Albury
- Police Scotland.

##### **2.2 Publishing submissions**

Resolved on the motion of Ms Doyle:

That the Committee publishes submission 154 in full.

That submissions 155 and 156 remain confidential to the Committee and not be published.

##### **2.3 Request to make submission confidential**

Resolved on the motion of Ms Doyle, seconded Mr Sidgreaves: That submission 67 be confidential to the Committee and be removed from the Committee webpage.

##### **2.4 Consideration of chair's draft report**

The Committee agreed to consider the report paragraph by paragraph.

Resolved, on the motion of Ms Boyd: That the last paragraph on page v be amended by omitting:

- "and our laws apply to this form of abuse" after "a form of domestic abuse".

- the third bullet point – "penalty options to include referral to a behaviour change program".

Resolved on the motion of Ms Boyd: That the first paragraph on page vi be amended by omitting:

- "just" before "physical or sexual assault".
- "recommends that this include specific campaigns to target" and inserting "recommends that this included targeted campaigns for".

Resolved on the motion of Ms Boyd: That the first line of the fourth paragraph on page vi be amended by omitting "The Committee recommends that behaviour change programs should be part of the penalty options for domestic violence offences." and inserting instead "The Committee recommends that evidence-based behaviour change programs should be made available to all domestic violence offences offenders."

Resolved on the motion of Ms Boyd: That the first line of the last paragraph on page vii be amended by inserting "by" before "the Secretary".

Resolved on the motion of Ms Boyd: That the third paragraph on page viii be amended by adding "when proposing any draft legislation" after "Government".

Resolved on the motion of Ms Ward: That "5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?" on page ix be moved to the top of page x.

Resolved on the motion of Ms Ward: That "Recommendation 3" on page xiii be moved to the top of page xiv.

Resolved on the motion of Ms Ward: That all references to "us" be omitted and "the Inquiry" be inserted instead.

Resolved on the motion of Ms Ward: That all references to "we" be omitted and "the Committee" be inserted instead.

Resolved on the motion of Ms Boyd: That the last line of the paragraph under question 9 on page x be amended by adding "when proposing any draft legislation" after "Government".

Resolved on the motion of Ms Boyd: That the paragraph under question 11 on page xi be amended by omitting "a new offence" and inserting instead "any proposed new offence".

Resolved on the motion of Ms Boyd: That the paragraph under question 12 on page xi be amended by omitting "a new offence" and inserting instead "any proposed new offence".

Resolved on the motion of Ms Boyd: That the first line of the paragraph under question 13 on page xi be amended by inserting "proposing" after "consider"

Resolved on the motion of Ms Boyd: That the first bullet point under question 13 on page xi be omitted: "Expanding penalty options for domestic violence offences to include mandatory behaviour change programs (see [3.86]-[3.93])."

Resolved on the motion of Ms Boyd: That "See responses to questions above" be inserted below question 14 on page xi.

Resolved on the motion of Ms Boyd: That the fourth bullet point on page xii be amended by inserting "emergency as well as ongoing" before "support services".

Resolved on the motion of Ms Boyd: That the fifth bullet point on page xii be amended by inserting "evidence-based" before "behaviour change programs".

Resolved on the motion of Ms Boyd: That the first sentence in Finding 2 be amended by omitting "which exist in the majority of Australian households" after "domestic relationships".

Resolved on the motion of Ms Ward: That the second sentence of Finding 2 be amended by omitting "criminal behaviour exists that is not consensual" and inserting instead "behaviour exists that is criminal".

Resolved on the motion of Ms Boyd: That the last sentence of Finding 2 be omitted: "If 20 women had died from Coronavirus-19 in the past year, action taken to prevent further deaths would not have been in question".

Resolved on the motion of Ms Boyd: That the last sentence of Recommendation 1 be amended by omitting "legislation of any such offence" and inserting instead "legislation of such an offence".

Resolved on the motion of Ms Boyd: That Recommendation 2 be amended by inserting "non-" before "physical".

Resolved on the motion of Mr Roberts: That the quote in paragraph 1.12 be amended to omit "forms of physical violence" and insert instead "forms of non-physical abuse".

Resolved on the motion of Mr Roberts: That paragraph 1.13 be omitted:

- 1.13 Police tend to respond to individual incidents of violence, without recognising the pattern of coercive control that may surround them. This incident-based approach means that first responders do not recognise the seriousness of a victim's situation, and may miss the opportunity to intervene before it is too late.

Resolved on the motion of Ms Boyd: That the last sentence in paragraph 1.24 be amended by omitting "leaders" after "Aboriginal and CALD community", and inserting instead "representatives".

Resolved on the motion of Ms Boyd: That the quote below the heading to Chapter 2 be amended by inserting a space between "cuts" and "all".

Resolved on the motion of Ms Boyd: That the third sentence in the summary box above paragraph 2.1 be amended to insert "physical" before "violence".

Resolved on the motion of Ms Ward: That the first sentence of paragraph 2.17 be amended by omitting "Most concerning" and inserting instead "Most concerningly, the inquiry heard evidence of".

Resolved on the motion of Ms Ward that paragraph 2.17 be inserted after paragraph 2.1, to become the new paragraph 2.2.

Resolved on the motion of Ms Ward: That a new heading "Biderman's Chart of Coercion" be inserted before paragraph 2.8, and the text in the box after paragraph 2.17, titled "Biderman's Chart of Coercion", be inserted under the heading to become paragraph 2.8.

Resolved on the motion of Ms Ward: That a new heading "The steps to coercive control" be inserted below the box titled "The escalation of coercive control", and the following be inserted below the heading:

2.9 The committee heard from author Jess Hill about the gradual steps used to establish coercive control:

Establishing trust is the initial stage of coercive control. As Biderman observed, the 'most insidious' and effective technique the communists used in the North Korean POW camps was what he called 'false friendship'. 'When an American soldier was captured by the Chinese, he was given a vigorous handshake and a pat on the back.' The enemy 'introduced himself as a friend of the "workers" of America ... This display of friendship caught most Americans totally off-guard.' Once the victim's guard is down and trust is established, the abusive process can begin. In domestic abuse, this is often referred to as 'love-bombing' – a whirlwind romance that gets serious very quickly, and may start out like a fairytale. Even in the absence of this, there is generally a period in the relationships where intimacy and trust is established.

After that, the first step is ISOLATION. There are obvious elements to this – cutting the victim off from supportive family and friends, or setting up a worldview that pits him and her against the world, and denigrates her friends and family as outsiders who will never understand what they have. Alternatively he may collude with her family, especially if there's a fractured family relationship to exploit. They may even testify on his behalf. This isolates the victim entirely, because who's going to believe her when her own family says she's crazy? Would you believe her?

Then he MONOPOLISES HER PERCEPTION. He redirects her attention away from his abuse to her faults: if she wasn't so this, he wouldn't be so that. This can make a lot of sense to her, especially if, like many perpetrators, he seems to love and care for friends and family. If she's the only one he's attacking, it must be she who is provoking him. She's so busy trying to figure out what she is doing wrong – or how she can help him – she doesn't notice what he's doing to her. As one advocate said in that British study, victims get to the point where they start to believe that they are the cause of the abuse so wholeheartedly that they find it hard to see him as being guilty of any crime, even when clear crimes – like physical violence – are committed. Evan Stark describes it as 'creating a patriarchy in miniature'... in the 19th century, women's obedience to men was divinely ordained – if women disobeyed, it followed on logically that they should be punished. That was just the logic of the time – the natural way of things. Coercive control establishes this same kind of logic, only it operates like a bubble inside the relationship, contrary to the social norms outside it. The victim starts to live in a kind of altered reality – one that is constructed and continually reinforced by the perpetrator. That's why isolation is so essential – supportive connections may challenge this phony logic. They must be removed

or degraded to the point where the victim no longer trusts their observations.

Coercive controllers INDUCE DEBILITY AND EXHAUSTION. Most insidiously, this is done through gaslighting. For the uninitiated, gaslighting a term for when an abuser denies, fabricates and manipulates situations to make his partner doubt her own memory and perception. As she becomes more confused and anxious, she starts to believe his interpretations of events are more reliable than her own. Some perpetrators will go to extreme measures – moving keys and money, so the victim feels she is going insane. Another common way of inducing debility by coercing or even forcing the victim to take pain medication or illegal drugs. What better way to reduce a person to compliance, make it harder for them to leave and render her testimony utterly unbelievable? Alternatively, victim-survivors may be literally kept awake at night, berated over perceived wrongdoing, even kicked out of bed in the middle of the night by their partner, who has been lying in the dark stewing over some betrayal, real or imagined.

Then, in order to train their partner to be compliant, the abuser starts to ENFORCE TRIVIAL DEMANDS. He might forbid her from wearing skirts or speaking to other men. In that British study I mentioned earlier, one perpetrator hid gold coins around the house for his partner to 'discover' as she did the housework. When he got home from work in the evening he would hold out his hand for the coins. If she had not found the correct number of coins, it would mean she had not cleaned properly, and he would punish her. In this way, demands may be woven into the everyday fabric of life, in which even the most bizarre demands soon become seen as normal. But other demands may be arbitrary and spontaneous; these rules are ever-changing and often contradictory; but to avoid punishment, she must know them by heart. The effect of this is different – it doesn't just lower standards, it makes victims hypervigilant, and trains them to ditch their own perspective, and see the world through the perpetrator's eyes. Children too must know these rules – in a coercive control environment, they are often subject to the same processes as their victim parent. One nine-year-old, who was a keen gamer, told me that he learned to read his father's face like an algorithm, to predict when his father was in a dangerous mood. 'It was really random. If the sky wasn't blue enough, he'd get angry... The rules would be valid for ten seconds, and you'd be abiding by them, but then the new rule would state that you're doing something wrong, just so he could get mad at you.' Victims obey perpetrator's demands not because they are weak or flawed or co-dependent, but because they are rightly fearful of what will happen if they don't.

To make resistance seem futile, the coercive controller must prove that no matter what the victim does, escape is impossible. To do this, he must demonstrate his OMNIPOTENCE. He may subject her to relentless monitoring, install cameras around the house, or even install surveillance software on her phone, and literally spy on her

conversations and track her movements. Surveillance is incredibly common – one private security group that works with refugees to sweep women’s cars and checks phones for spyware said that at one refuge in Victoria, around 85 per cent of the women there were being tracked in some way. As one survivor told the BBC this week, ‘He would drop snippets into conversations, such as knowing about a friend’s baby. Really private things that he shouldn’t have known about. If I asked him how he knew these things, he’d say I told him and accuse me of losing it.’ All of this is done to make her feel like no matter what the victim does, he will always be right behind her, and she will never be safe. This can make victims sound crazy, and further isolate them from support or help. As coercive control escalates, each abusive strand is woven so tightly and imperceptibly that it’s almost impossible to actually describe what’s happening to outsiders. Without proof, it’s her word against his – and her story is so crazy, it sounds implausible.

One of the most important and dangerous elements of coercive control is not abusive at all. This is what Biderman called ‘ALTERNATING PUNISHMENTS WITH REWARDS’. Aside from extreme situations, in which the abuse is unrelenting, the perpetrator will at times profess their love, offer gifts, show kindness and express remorse. Periods of kindness, no matter how short, bond the victim to her abuser. Even if she is reminded only momentarily of the man she fell in love with, she may be duped into letting her guard down, and sharing things –perhaps even erotic photographs – that the abuser may later use against her: perhaps by threatening to publish them online, or threatening to present them in court.

There are two more techniques: THREATS and DEGRADATION.

THREATS are the binding element of coercive control. They are what render a woman captive and tell her that if she leaves, she will be putting not only herself, but possibly her friends, family and children in danger. It’s an atmosphere of threat they create, but they may never make those threats directly – which makes those threats even more difficult to explain, especially in court.

Lastly, the victim is DEGRADED. Sometimes degradation goes so far, it reaches a level of dehumanisation. Evan Stark explains that women in his practice ‘have been forced to eat off the floor, wear a leash, bark when they wanted supper, or beg for favours on their knees’. In many of these sickening scenarios, both the perpetrator and their victim were known to friends and families as friendly, regular people.

[Footnote: Submission 91, Jess Hill, pp 9-12.]

Resolved on the motion of Ms Ward: That a new heading "Cultural and other differences" be inserted above paragraph 2.8.

Resolved on the motion of Ms Boyd: That paragraph 3.24 be amended by inserting “previous negative experiences,” after “fear of discrimination and of not being believed,”.

Resolved on the motion of Ms Boyd: That paragraph 3.43 be amended by:

- inserting “as” before “an alternative”.
- omitting “an” before “another option”.

Resolved on the motion of Ms Boyd: That paragraph 3.44 be amended by omitting “with” before “this approach”.

Resolved on the motion of Ms Boyd: That Recommendation 3 be amended by omitting “the NSW Government should increase” and inserting instead “the NSW Government should seek to increase”.

Resolved on the motion of Ms Boyd: That paragraph 3.78 be amended by omitting “domestic violence” and inserting instead “domestic abuse”.

Resolved on the motion of Mr Roberts: That the quote under paragraph 3.80 be amended by omitting “test” and inserting instead “text”.

Resolved on the motion of Ms Boyd: That paragraph 3.82 be amended by:

- omitting “BOSCAR” and inserting instead “BOCSAR”.
- omitting “before amending section 13” and inserting instead “before proposing amendments to section 13”.

Resolved on the motion of Ms Boyd: That paragraph 4.17 be amended by omitting “BOSCAR” and inserting instead “BOCSAR”.

Resolved on the motion of Ms Boyd: that paragraph 3.84 be amended by omitting “the NSW Government should retain section 13” and inserting instead “section 13 should be retained”.

Resolved on the motion of Ms Boyd: That the section titled “A ‘graded’ or ‘tiered’ penalty regime” ending at paragraph 3.93 be omitted:

#### **A ‘graded’ or ‘tiered’ penalty regime**

##### **Summary**

Sentencing for domestic violence offences should aim to protect victims and reduce domestic abuse. Courts should be able to choose from a range of penalties for perpetrators, including mandatory participation in behaviour change programs. These should be available in addition to or instead of custodial sentences.

This section is relevant to questions 1 and 10 in the NSW Government's discussion paper.

##### **Recommendation 5**

That NSW Government gives consideration to increasing the penalty options for domestic violence offences to include referral to a behaviour change program for offenders.

- 3.86 Any law reform in this area should focus on promoting victims’ safety and reducing domestic abuse – not just punishing perpetrators. As part of this, many inquiry participants suggested that sentencing for domestic abuse and violence offences should come with a range of penalty options, including referral to behaviour change programs. This allows offenders to be identified and rehabilitated, while not immediately receiving a custodial sentence – depending on the severity of the offence.

- 3.87 The Crimes (Sentencing Procedure) Act 1999 (NSW) (CSP Act) states that one of the purposes of sentencing is 'to promote the rehabilitation of the offender' and 'to make the offender accountable for his or her actions'.
- 3.88 Under the CSP Act, a person convicted of a domestic violence offence can receive a 'supervised order', meaning an order that is subject to a supervision condition. Conditions can include home detention, electronic monitoring, curfews, community service work, abstaining from alcohol or drugs, non-association requirements, place-restrictions, and rehabilitation and treatment requirements.
- 3.89 Many inquiry participants recommended increasing the availability of counselling and restorative justice programs as alternative sentencing options for less serious offences. They supported including accredited behaviour change programs as part of sentencing outcomes – either alongside or instead of custodial sentences, or as part of bail conditions.
- 3.90 No to Violence told the Inquiry that victims commonly experience ongoing coercive control while their perpetrator is in custody or on parole, 'point[ing] to the importance of more diverse intensive interventions within custodial settings.'
- 3.91 The Committee is persuaded that perpetrator intervention programs, including men's behaviour change programs, should be a central part of tertiary prevention strategies and sentencing for all offences involving domestic abuse.
- 3.92 Intervention programs should be sensitive to diverse cultural needs – particularly those of Aboriginal and Torres Strait Islander communities. Related to this is the need for intervention programs to have adequate and secure funding – discussed in chapter 4.
- 3.93 When considering what sentence to impose, courts should be required to consider how best to ensure victims' safety, and the safety of any children involved. Decisions should also be influenced by the seriousness, frequency and duration of abuse, and the offender's history of coercive and controlling behaviours. To this end, amendments to 'aggravating factors' in the CSP Act are discussed in the next section.

Resolved on the motion of Ms Boyd: That Recommendation 6 be amended by omitting "should amend" and inserting instead "should propose amendments to".

Resolved on the motion of Ms Boyd: That the heading "Creating a Domestic Abuse Commissioner" be omitted and the heading "Whole of government response" inserted instead.

Resolved on the motion of Mr Roberts: That the section under the amended heading "Whole of government response" and ending at paragraph 4.29 be amended to omit references to a Domestic Abuse Commissioner, by:

- omitting ", or a Domestic Abuse Commissioner with statutory powers and duties, similar to the approach taken in England and Wales." from the summary.

- amending Recommendation 9 to omit "That the NSW Government should have regard to the UK model and give consideration to utilising the Secretary of the Department of Communities and Justice or establishing a Domestic Abuse Commissioner to guide implementation of coercive control reforms, monitor reforms to domestic abuse services, oversee the provision of domestic abuse services and raise public awareness.

The Secretary of the Department of Communities and Justice or a Commissioner should be required to work together with a range of public bodies including NSW Police, Health, Education, Justice and Indigenous agencies to prevent domestic abuse, with the aim of reducing the numbers of victims and perpetrators of abuse. This represents a critical opportunity to implement an early intervention and public health-focused approach, rather than relying solely on traditional criminal justice levers, which only come into play in the aftermath of an offence."

And inserting instead

"The Secretary of the Department of Communities and Justice should work together with a range of public bodies including NSW Police, Health, Education, Justice and Indigenous agencies to prevent domestic abuse, with the aim of reducing the numbers of victims and perpetrators of abuse. This represents a critical opportunity to implement an early intervention and public health-focused approach, rather than relying solely on traditional criminal justice levers, which only come into play in the aftermath of an offence."

- omitting paragraph 4.2: "The Committee considers that the Domestic Abuse Commissioner recently introduced in the United Kingdom provides a useful model for how the NSW Government could coordinate this system-wide response."
- omitting:

#### **Potential role of a NSW Domestic Abuse Commissioner**

4.14 A NSW Domestic Abuse Commissioner could provide the governance structure and leadership needed to review, reform and coordinate legal and non-legal responses to domestic abuse in NSW.

4.15 A permanent statutory position would ensure long-term bipartisan commitment to and investment in domestic abuse prevention. As Professor Evan Stark submitted, without this commitment, new laws could 'serve as a form of disguised betrayal to victims and survivors'.

- Amending 4.17 paragraph by omitting "The Commissioner's functions could include:" and inserting instead "In relation to the implementation of a coercive control offence and related reforms, the Secretary for the Department of Communities and Justice could undertake the following:"
- omitting:
- 4.19 To help promote a government-wide response to domestic abuse, the Commissioner should have similar reporting and advice-giving functions to the UK Domestic Abuse Commissioner, with a corresponding duty for agencies to respond to its recommendations. This could include giving

advice, on request or on its own motion, to government ministers and authorities such as:

- The Attorney-General and Minister for Prevention of Domestic and Sexual Violence, on law reform issues.
  - The Minister for Water, Property and Housing, on provision of crisis accommodation.
  - The Minister for Police and Emergency Services, on law enforcement issues.
- omitting:

#### **Role of the Domestic Abuse Commissioner for England and Wales**

4.20 The Domestic Abuse Commissioner is a statutory officer holder, appointed to assist victims of domestic abuse, raise public awareness, conduct research, monitor service delivery and make recommendations for reform to government agencies.

4.21 In his second reading speech, the Secretary of State for Justice told the House of Commons that the Commissioner would ‘help drive consistency and better performance in the response to domestic abuse right across the relevant local and national agencies.’

4.22 Under the Domestic Abuse Act 2021 (UK), the Commissioner must encourage ‘good practice’ in:

- preventing domestic abuse.
- preventing, detecting, investigating and prosecuting offences involving domestic abuse.
- identifying victims, perpetrators, and children affected by domestic abuse.
- providing protection and support to people affected by domestic abuse.

4.23 In pursuing this duty, the Commissioner’s functions include:

- assessing, monitoring, and publishing information about services to people affected by domestic abuse.
- making recommendations to public authorities about the exercise of their functions.
- undertaking or supporting (financially or otherwise) the carrying out of research.
- providing information, education or training.
- taking other steps to increase public awareness of domestic abuse.
- consulting, cooperating and working with public authorities, voluntary organisations and others.

4.24 The Commissioner can publish reports on domestic abuse, which are tabled in Parliament. It can also advise the Secretary of State and other organisations (such as government agencies or service providers) on functions and activities relating to people affected by domestic abuse.

4.25 Within the first year of the Act, the Commissioner must publish a report about the need for and provision of domestic abuse services in England – including advice, advocacy and counselling services, and specific services for LGBTQ victims and victims with disabilities.

- 4.26 Public authorities have a duty to cooperate with the Commissioner. If the Commissioner makes recommendations to a public authority or government department, they must respond within 56 days, setting out the actions they have taken or will take in response to the recommendation, or the reasons why they have not taken or will not take any action.
- 4.27 The Commissioner also receives the results of domestic homicide reviews conducted in England and Wales.
- 4.28 These functions are similar to statutory office holders in Australia, like the Sex Discrimination Commissioner and the eSafety Commissioner (though these are both federal appointments, and also have complaints handling functions).
- 4.29 They are also similar to the ACT's Domestic Violence Prevention Council, an independent statutory body that advises the Minister for the Prevention of Domestic and Family Violence on domestic violence. The Council is led by a Domestic Violence Project Coordinator (also the Victims of Crime Commissioner), who has statutory functions such as:
- monitoring and promoting compliance with government policies.
  - assisting law enforcement and community service providers to provide services of a high standard.
  - assisting services to agencies and organisations to provide educational programs.
  - facilitating interagency cooperation.

Resolved on the motion of Ms Boyd: That Recommendation 9 be amended by inserting "Housing" after "Justice".

Resolved on the motion of Ms Boyd: That paragraph 4.5 be amended by inserting ", as well as emergency and longer-term support services for victim-survivors of domestic abuse" at the end of the first sentence.

Resolved on the motion of Ms Ward: That paragraph 4.15 be amended by omitting "bi-partisan" and inserting instead "multi-partisan".

Resolved on the motion of Ms Boyd: That paragraph 4.17 be amended by inserting a bullet point "Identifying and seeking to address obstacles to justice for Aboriginal and Torres Strait Islander victim-survivors of domestic abuse".

Resolved on the motion of Ms Boyd: That recommendation 10 be amended by inserting:

- "Whether or not a specific coercive control offence is legislated" at end of the first sentence.
- "rural and remote communities" in the second sentence.

Resolved on the motion of Ms Boyd: That paragraph 4.33 be amended by inserting ", regardless of whether or not a coercive control offence is legislated" at end of the first sentence.

Ms Boyd moved: That Recommendations 12, 13 and 14 be amended by omitting "gives consideration to increasing resources" and inserting instead "increase resources and provide secure long-term funding".

Ms Watson moved an amendment to Ms Boyd's amendment to omit "provide secure long-term funding" and insert "provide recurrent funding".

Resolved on the motion of Ms Boyd: That Recommendations 12, 13 and 14 be amended by omitting "gives consideration to increasing resources" and inserting instead "gives consideration to improving resources".

Resolved on the motion of Ms Boyd: That paragraph 4.66 be amended to omit "is persuaded by" and insert instead "supports".

Resolved on the motion of Ms Boyd: That paragraph 4.68 be amended to omit the inverted commas before "migrant and refugee women".

Resolved on the motion of Ms Boyd: That paragraph 4.69 be amended to insert ", including women on temporary visas" at the end of the first sentence.

Resolved on the motion of Ms Boyd: That paragraph 4.72 be amended to omit "way" in and insert instead "away" in the last line.

Resolved on the motion of Ms Boyd: That the summary box under the heading "Resourcing for prevention and early intervention" be amended to insert "evidence-based" before "perpetrator intervention programs".

Resolved on the motion of Ms Boyd: That paragraph 4.80 be amended to insert "The Committee also recommends that care be taken to ensure that the risk to victim-survivors is not increased as a result of such programs." at the end of the paragraph.

Resolved on the motion of Ms Boyd: That the last sentence in paragraph 4.81 be omitted: "The Committee notes that the recommendation in chapter 3 to include MBCPs as part of sentencing will increase demand, and require significant investment to ensure capacity in the sector."

Resolved on the motion of Ms Boyd: That the first sentence in paragraph 4.83 be omitted: "As well as integrating MBCPs with sentences for domestic violence offenders".

Resolved on the motion of Ms Boyd: That the last sentence in paragraph 4.90 be amended by omitting "Participation" and inserting instead "Successful participation".

Resolved on the motion of Mr Clancy: That a new recommendation be inserted below recommendation 15:

"That the NSW Government give consideration to adopting a Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) to ensure services are effectively identifying, assessing and managing family violence risk."

Mr Roberts moved: That "regional" be omitted from the heading "Trialling regional triage and referral hubs".

Resolved on the motion of Ms Ward: That "and metropolitan" be inserted after "regional" in the heading "Trialling regional triage and referral hubs"

Resolved on the motion of Ms Watson: That the heading as amended "Trialling regional and metropolitan triage and referral hubs" be omitted and "Piloting regional and metropolitan triage and referral hubs" be inserted instead.

Resolved, on the motion of Ms Boyd: That the following be inserted as a new paragraph below paragraph 4.132:

The Committee heard evidence that the introduction of a coercive control offence may facilitate a more efficient use of police resources. For example, Evan Stark and Cassandra Wiener noted:

Practically, creating an offence of coercive control offers solutions to police and prosecutors. Firstly, it enables the police to take action in the face of serious harm (such as psychological abuse and control) that have not hitherto been actionable. Secondly, it allows police to treat repeated offenses against a victim as a serious crime even when the individual acts themselves may not appear serious. Police and prosecutors respond positively to the opportunity to take the chronic offenders in their caseloads off the streets As well as enabling prosecution, creating an offence makes the investigation and prosecution of existing crimes (such as stalking or sexual assault) easier by identifying a common context for these criminal acts and brings them under the umbrella of a single serious offence. Prosecution is also facilitated by the creation of a class of new evidence (such as diaries, cell calls, photos, personal notes and statements) which also validate victim experiences of coping with coercive control.

As well as facilitating prosecution, prosecuting coercive control allows for better safeguarding practice. It enables the separation of a class of serious offenders on the basis of factors shown to predict the worst outcomes, providing a basis for designating a class of offenders as less serious for triage into community management, thus encouraging better and more reliable risk assessment practice by the police.

[Footnote: Submission 12, Professor Evan Stark and Cassandra Wiener, p 2]

Resolved on the motion of Ms Boyd: That paragraph 4.136 be amended by inserting "The Committee cautioned, however, that the co-location model is not however intended as a replacement of stand-alone domestic abuse services in a particular location." at the end of the paragraph.

Resolved on the motion of Mr Roberts: That the section titled "Trialling a specialist women's police station" ending at the heading "Education and training for frontline staff" be omitted:

### **Trialling a specialist women's police station**

#### **Summary**

Specialised police stations staffed by multi-disciplinary teams can increase victim's access to justice and prevent domestic abuse and family violence. The Committee recommends a trial of a specialised police women's station be undertaken as a pilot and to assess its feasibility.

This section is relevant to question 15 in the NSW Government's discussion paper.

#### **Recommendation 19**

That the NSW Government has regard to the international model of specialised women's police stations and gives consideration to a pilot trial of a women's police station specialising in crimes with female victims.

- 4.142 The Committee is encouraged by the results of research on international models of specialist women's police stations. In particular, there is compelling evidence of the potential to provide a multi-disciplinary response and a more accessible environment for victims to report domestic abuse. The Committee considers that specialised women's police stations, comprised of officers with training in and understanding of domestic abuse and family violence, could reduce the burden on the wider police force.
- 4.143 Jess Hill advocated for a specialised frontline police force to respond to domestic abuse. Akin to specialised firefighters for fires and paramedics for medical emergencies, this force comprises police officers that have a complex understanding of domestic abuse and family violence.
- 4.144 There is precedent for this model of policing domestic abuse and family violence. Known as 'women's police stations', these specialised forces have been operating in some countries for over 30 years.
- 4.145 The NSW Liberal Women's Council and Feminist Legal Clinic both referred to women's police stations as a method of responding to domestic violence that should be explored in NSW. Professor Heather Douglas has also written about this as a way to improve victims' access to justice.
- 4.146 Women's police stations were introduced in Argentina in the 1980s and were specifically designed to respond to victims of gender-based violence. There are 128 women's police stations in Buenos Aires with more than 2,000 women's police officers working in the stations. Some of these officers are men but a female officer is the head of each station.
- 4.147 A recent study of women's police stations in Argentina outlined the characteristics of these forces. Similar to traditional policing, women's police stations provide an emergency response and operate 24 hours a day. They also have the same powers as traditional police such as conducting investigations and powers of arrest.
- 4.148 However, there are features that distinguish them from traditional policing models. For example, women's police stations work in multi-disciplinary teams with police officers, social workers, lawyers and counsellors in the same building. This multi-disciplinary approach acts as a 'gateway for integrated services in policing, legal support, counselling, and housing and financial advice.'
- 4.149 Women's police stations do not prioritise a criminal justice response. Jess Hill commented that the main purpose of women's police officers is not to enforce the law, but to protect victims. They are guided by what the victim wants, which may or may not involve pursuing a criminal justice response.
- 4.150 The appearance of women's police stations is another distinguishing feature. They have welcoming reception rooms, child care services and spaces for children to play. They are designed to receive victims and encourage visibility and enhanced reporting.

- 4.151 Women's police stations can also engage in education and prevention activities in the community. Stations in Buenos Aires are mandated to participate in community prevention activities and engage with religious organisations, women's groups, schools, hospitals and neighbourhood groups at least once a month.
- 4.152 The study of women's police stations in Argentina found that specialised women's police forces increase women's access to justice and prevent gender violence.
- 4.153 In a further study which looked at what Australia could learn from women's police stations, researchers found that specialised police stations offering a multi-disciplinary response to gender-based violence would 'ameliorate some of the systemic problems with traditional policing approaches to domestic and family violence.'
- 4.154 The study surveyed people who work, conduct research or volunteer in the domestic abuse sector across Australia. A majority of both community and workforce survey respondents thought that Australia could benefit from implementing the following aspects of how women's police stations operate:
- Working in multi-disciplinary teams with lawyers, counsellors and social workers.
  - Collaborating with local agencies to prevent gender violence.
  - Providing emergency support to victims of violence.
  - Designing police stations to receive victims.
  - Providing childcare and a space for children.
  - Undertaking violence prevention work in the local community.
  - Providing specifically designed interview rooms for victims.
  - Working with offenders to break the cycle of violence.
- 4.155 The study also noted that if specialised police stations are staffed by Indigenous and non-Indigenous multi-disciplinary teams, they could enhance the policing of domestic abuse across Australia.

Resolved on the motion of Ms Ward: That the following paragraphs be inserted below 4.136:

Some Inquiry participants referred to women's police stations as a method of responding to domestic abuse that could potentially be explored in NSW.

Women's police stations were introduced in Argentina in the 1980s and were specifically designed to respond to victims of gender-based violence. There are 128 women's police stations in Buenos Aires with more than 2,000 women's police officers working in the stations.

At 12.10pm the Committee agreed to reconvene at 5pm to continue considering the draft report.

The Committee reconvened at 5.01pm.

Resolved on the motion of Ms Boyd: That the summary box under the heading "Education and training for frontline staff" be amended by inserting "Continuous and specialised" before "education and training" in the first sentence.

Resolved on the motion of Ms Boyd: That paragraph 4.158 be amended by inserting “told” after “Shepherd”.

Resolved on the motion of Ms Boyd: That Recommendation 21 be amended by inserting “disability advocacy organisations” in the list of stakeholders to be consulted.

Ms Boyd moved: That the following new recommendation be inserted after Recommendation 21:

The Committee recommends that the NSW Government release an exposure draft of legislation for a coercive control offence by the end of 2021, with enactment of final legislation following further consultation through the implementation taskforce planned for no later than 30 June 2022.

Resolved on the motion of Ms Ward: That Ms Boyd’s proposed recommendation be amended by:

- omitting “by the end of 2021” and inserting instead “as a priority”
- omitting “planned for no later than 30 June 2021”

Resolved on the motion of Ms Ward: That paragraph 5.18 be amended by omitting the following:

Its members include:

- a Deputy Commissioner of Queensland Police
- the Deputy Director of Public Prosecutions
- Representatives of advocacy organisations similar to Women’s Safety NSW Domestic Violence NSW and Rape and Domestic Violence Services Australia
- Members of the legal profession, including solicitors for Legal Aid and the Queensland Indigenous Family Violence Legal Service
- An academic and former social worker
- Representatives of CALD and disability advocacy organisations.

Resolved on the motion of Ms Ward: That Recommendation 16 be amended by inserting “and continue its pilot programs” before “to better support police”.

Resolved on the motion of Ms Ward: That Recommendation 21 be amended by omitting “establishes” and inserting instead “gives consideration to establishing”.

Resolved on the motion of Ms Boyd: That paragraph 5.19 be amended by inserting “disability advocacy organisations” in the list of stakeholders to be consulted.

Resolved on the motion of Ms Boyd: That the summary box under the heading “Elements of a coercive control offence” be amended by inserting “proposed” before “coercive control offence” in the first sentence.

Ms Ward moved: That Recommendation 23 be amended by inserting “The fact of victim survivor resistance” as an additional bullet point below “Amendments to victim impact statements”.

Resolved on the motion of Ms Doyle: That Ms Ward’s proposed amendment to Recommendation 23 be amended to insert “(misidentification of aggressor/victim)” after “The fact of victim survivor resistance”.

Resolved on the motion of Ms Boyd: That Recommendation 23 be amended by inserting “proposed” before “criminal offence of coercive control”.

Resolved on the motion of Ms Boyd: That the first bullet point in paragraph 5.33 be amended by omitting “and non-physical” and inserting “as well as non-physical”.

Resolved on the motion of Ms Ward: That “Context and the fact of victim survivor resistance” be inserted as a new heading below paragraph 5.34, and that the following be inserted as a new paragraph 5.35:

The Inquiry heard from Author Jess Hill in relation to the defensive techniques of victim survivors that:

Mothers who are being abused will frequently risk their lives to defend their children. But others may be so thoroughly dominated that they allow or enable the abuse of their children, or even punish them for trying to defend themselves. This is why it is especially important, in situations where a victim of abuse has also victimized their child, to identify whether they were doing so in the context of coercive control.

How much agency did they have? Why did they do it? Evan Stark talks about sitting down with a mother and son, who told him about the time she held his hand on the stove. The father had threatened her, that if she didn't do it, he would do worse. Both mother and son knew what she had done was the best action possible. But what might a court think? What might child protection think? What would you think? Many women will spend months or years trying to rationalise the insane abuse being perpetrated against them. Even after the abuse becomes extreme – even when it becomes physical - they may not actually see that they are a victim of domestic abuse. They may, in fact, regard themselves as the strong one – the only one who can help a troubled man face his demons.

Women stay in coercive control relationships for a multitude of reasons. Because they want to fix their partner. Because they can't afford to leave. Because they are afraid of what he'll do once he's out of her line of sight – once she loses that umbilical, almost psychic connection to him. Because they are afraid that they and their children will be impoverished as a result. Because they cannot bring themselves to wait in a boarding house or motel for the several days it can take to get a bed in a refuge. Because they love him and believe he will change.

But even when it looks like they are just staying, women are almost never passive in the face of their abuse. Most women push and fight back against their abusers, even in the face of terrifying consequences. Even when they feel like they've surrendered their agency, they are still constantly strategizing; the minute-to-minute calculations required to survive can take every last ounce of mental energy they have. Resistance doesn't disqualify them from being a victim – it is a basic survival instinct.

The fact of victim-survivor resistance must be accounted for in any legislation to criminalise coercive control.

[Submission 91, Jess Hill, pp 12-13]

Resolved on the motion of Ms Ward: That a new heading “Offences in other jurisdictions” be inserted above paragraph 5.35.

Resolved on the motion of Ms Boyd: That paragraph 5.67 be amended to omit “Inquiry participants suggested a threshold of three instances of coercive and

controlling behaviour” and insert instead “Some Inquiry participants suggested a threshold of three instances of coercive and controlling behaviour, while others suggested two.”

Ms Boyd moved: That paragraph 5.80 be omitted.

5.80 The Committee considers that, to avoid the risks of over-criminalisation, the offence should be limited to intimate partner relationships.

Resolved on the motion of Ms Ward that Ms Boyd’s amendment be amended: That paragraph 5.80 not be omitted, but that the paragraph be amended to omit “The Committee considers that” and insert instead “The Inquiry heard evidence that”.

Resolved on the motion of Ms Boyd that paragraph 5.80 as amended be further amended by inserting: “However, other participants expressed opposing views.” after “, the offence should be limited to intimate partner relationships.”

Resolved on the motion of Ms Doyle that paragraph 5.80 as amended be further amended by inserting: “This issue requires further exploration.” after “However, other participants expressed opposing views.”

Resolved, on the motion of Ms Boyd: That the last bullet point in paragraph 5.84 be amended to omit “practice” and insert “practise”.

Resolved, on the motion of Ms Boyd: That the heading above paragraph 5.96 be amended to omit “Statutory limitation period” and insert “Time limitation”.

Mr Roberts moved: That paragraph 5.99 be amended to insert “However, the Committee acknowledges that coercive control is a pattern of behaviour, not isolated incidents. Any proposed legislation must ensure there is a causal link between reported incidents to ensure a pattern of conduct is identified.” as a second sentence.

Resolved on the motion of Ms Boyd: That the amendment proposed by Mr Roberts to paragraph 5.99 be amended by omitting “Any proposed legislation must ensure there is a causal link between reported incidents to ensure a pattern of conduct is identified” and inserting instead “Any proposed legislation must ensure that reported incidents evidence a pattern of conduct.”

Resolved, on the motion of Ms Boyd: That paragraph 5.103 be amended to insert “victim survivor” before “suicidality, depression and PTSD”.

Resolved, on the motion of Ms Boyd: That paragraph 5.108 be amended to omit “The Feminist Legal Clinic warned that, if a ‘draconian sentencing regime’ is imposed, it could result in ‘reluctance by police to charge and unwillingness for magistrates to convict or sentence’ perpetrators of coercive control.” and insert instead “To that end, Women’s Safety NSW proposed a lower maximum penalty for a summary offence as compared with the penalty for an indictable offence.”

Resolved, on the motion of Ms Boyd: That paragraph 5.130 be amended to omit “domestic violence” and insert instead “domestic abuse” in the second bullet point.

Resolved, on the motion of Ms Boyd: That paragraph 5.130 be amended to insert footnotes at the end of each bullet point, instead of at the end of the last bullet point.

Resolved, on the motion of Ms Boyd: That paragraphs 5.136 and 5.137 be amended to omit “domestic violence” and insert instead “domestic abuse” where mentioned.

Resolved, on the motion of Ms Boyd: That paragraph 5.158 be omitted.

5.158 Other participants were concerned about potential negative impacts on victims. For example, the Feminist Legal Clinic noted that it could be 'counterproductive in domestic violence matters where victims are already regularly placed under duress to provide supportive statements during sentencing.

Resolved on the motion of Ms Doyle: That the draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the House.

Resolved on the motion of Ms Boyd: That the Chair and committee staff be permitted to correct stylistic, typographical, grammatical and footnote errors.

Resolved on the motion of Ms Cooke: That, once tabled, the report be posted on the Committee's website.

### **3. General business**

The Chair advised that the report would be tabled electronically with the Clerks on Wednesday 30 June.

The meeting adjourned at 6.13 pm.