

**Submission  
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## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Women's Electoral Lobby (NSW)

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**NSW Parliamentary Joint Select Committee  
on Coercive Control  
Submission of Women's Electoral Lobby,  
New South Wales**

**January, 2021**

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Women's Electoral Lobby, established in 1972, is national, independent, non-party, feminist, political lobby group dedicated to creating a society where women's participation and their ability to fulfill their potential are unrestricted, acknowledged and respected and where women and men share equally in society's responsibilities and rewards. It is an incorporated association.

The group has worked tirelessly for nearly 50 years to improve the position of women in Australian society.

WEL applies a feminist approach to all its work from policy analysis and development to campaigning. WEL thus works within a feminist policy framework. In proposing and analyzing policy solutions, we measure fairness and justice for women and fairness and justice for society. WEL lobbies and works with governments at all levels to achieve better and fairer legislative, policy and program outcomes in order to achieve equality for all women.

WEL NSW welcomes the establishment of a Joint Select Committee on Coercive Control to report on this issue in domestic relationships as well as to respond to the 15 questions raised in the NSW Government's Discussion Paper on Coercive Control released in October, 2020 by Attorney-General, Mark Speakman.

WEL NSW supports new legislation or amendment to existing laws to criminalise coercive control. WEL NSW recognizes that there are a range of definitions extant of coercive control, including those in the Discussion Paper and one in Section 14A and B of the Bill introduced in the NSW Parliament by Anna Watson MP which proposes to amend the **Crimes (Domestic and Personal Violence) Amendment (Coercive Control – Preethi's Law) Bill 2020**.

The NSW Parliamentary Research Service in its **Issues Backgrounder**, Number 4, October 2020: *Criminalising coercive control in the context of domestic and family violence: key sources*, also provides an overview of existing laws in Australia and some coverage of laws in the United Kingdom, recently enacted.

What is important to recognize is that any law or amendment to an existing law must capture a "course of conduct" rather than an incident-based model of criminalization. Coercive control includes a range of behaviours or pattern of behaviours. The objective of such a law should be to enable earlier intervention into a domestic relationship to prevent an escalation into severe physical and sexual violence too often leading to the murder of a partner and harm to children or their murder.

There is ample coverage of these patterns of behavior in literature world-wide commencing with the work of Evan Stark in his seminal book: **Coercive Control: How Men Entrap Women in Personal Life** published in 2007.

A paper on the subject by Scottish Women's Aid ([www.womensaid.scot](http://www.womensaid.scot)) by Brenna Jessie, November, 2017 stresses that physical violence can be used by perpetrators of coercive control or may not be present. It may or may not be part of a range of tactics – isolation, mind-games, threats, regulation of everyday life. It is the deprivation of liberty and autonomy. Particular techniques are employed systematically and, over time. Surveillance occurs whether the perpetrator is present or not. The tactics sew fear and confusion and, often the subject lives in a world of daily terror.

WEL NSW does not propose to address legal questions best covered by legally qualified practitioners, women's legal and service organisations equipped with the expertise to comment. In particular, questions about the way courts receive evidence in civil or criminal proceedings; the admissibility of

evidence of coercive control in sentence proceedings; and the weight given to such evidence; nor do we propose to comment on issues relating to jury direction or common law codification.

WEL NSW does consider, given the experience in the UK, that there would be advantages in creating a specific offence of coercive control. The challenges posed by creating the offence are numerous because current laws pertaining to civil protection orders and those prosecuting domestic and family violence: **Crimes (Domestic and Personal Violence) Act 2007** Section 11 are not well enforced. Police and judicial officers need appropriate knowledge, training, skills and expertise to ensure effective and consistent law enforcement. There are many good policies, guidelines and training materials, but there is insufficient priority given and resources allocated to the continuing professional development required.

WEL NSW discussed the proposal for a law covering coercive control with former workers in women's refuges who were active in the NSW Coalition for Women's refuges. Their overwhelming response was – fine to have more specific laws and definitions of abusive and controlling behavior, but what was more urgent was adequately funded specialist domestic violence refuges, legal services and intensive training to ensure law enforcement for those at the front-line of working to prevent or punish abusers, not to mention targeted programs for behavior change.

It is to two issues that WEL NSW wishes to turn: specialist services and training for implementation. WEL NSW does not deliver front-line women's services. We are primarily a political lobby group promoting policy, programs and legislative reform or change which improves women's lives and livelihoods. We do work in cooperation and collaboration with other women's and civil society organisations. We commend the work of Women's Safety NSW and acknowledge its comprehensive position paper on this issue.

While WEL NSW supports the creation of an offence of coercive control, this measure alone will do little to reduce the prevalence of domestic violence. What is also required is a thoughtful, planned and resourced process of implementation delivered by a broad range of specially trained personnel and the necessary legal and other dedicated support services. In other words, a law alone will not be a deterrent. Its enactment needs financial commitment with strong legal and political leadership in partnership with women's specialist services.

### **Specialist Women's Domestic Violence Services**

WEL NSW with WEL Australia has campaigned around the prevention of domestic violence over the course of its history. In recent years, some of our major state campaigns focused on specialist women's DV services. As an example of poorly conceived and implemented change, WEL exposed the NSW **Going Home Staying Home** reforms which decimated 80 or more refuges rather than building on their knowledge base and improving their capacity and capability. These women's refuges had provided crisis and emergency accommodation for women and their children fleeing domestic violence since the first women's refuge was established in March, 1974 in Westmoreland Street, Glebe – Elsie Women's Refuge. They had evolved into a network embedded in their communities with extensive geographical reach. Their services, in addition to crisis accommodation, included counselling, needs and risk assessment, referral and longer term housing assistance. There were practice standards and guidelines underpinning their work and a set of competency standards published in October, 1999 for people who come into professional contact with those affected by Domestic Violence. (**Competency Standards: Research Report Stage 1. Partnerships against Domestic Violence. Commonwealth of Australia**)

The NSW reforms of 2014 and following years had a number of objectives aimed to increase the focus of the services on prevention and long-term accommodation and support, rather than, crisis intervention. They had the over-riding aim of reducing homelessness and repeat homelessness. A laudable aim in itself, but it should not have been at the cost of destroying an existing network of women's refuges.

WEL campaigned with Save our Services (SOS) and the Coalition for Women's Refuges to expose the destruction wrought on this women's services sector. WEL pressed for advice from responsible Ministers and agencies on how the regionalized, rationalized and consolidated new specialist homelessness services were going to deliver support for women and children of a diversity of backgrounds, fleeing domestic violence.

The NSW Government responded to the campaigns with some additional funding; an attempt to identify DV specific services; a recognition that the co-location of DV clients with other homelessness people was not appropriate; that DV specialization had to be re-instated and boosted with additional resources. But the loss of specialist staff; the closure of some long-standing women's refuges left many gaps in the system and newly established services were observed to be struggling. Large faith-based organisations had to scramble to secure staff with knowledge and expertise.

There are still many issues. The recent KPMG **Evaluation of the NSW DFV Blueprint for Reform 2016-2021** prepared for the Department of Communities and Justice May, 2020 of the current policies and programs in NSW highlights some of these issues. The **Blueprint**, released in 2016 had six priority areas of action:

1. Preventing DFV. 2. Intervening early with vulnerable communities. 3. Supporting victims. 4. Holding perpetrators accountable. 5. Delivering quality services. 6. Improving the system.

The **Blueprint** is to conclude in 2021. It has an accompanying Outcomes Framework, but it does not set targets or a baseline for measuring outcomes. It is intended to align with the National Plan to Reduce Violence against Women and their Children. The NSW Government has committed \$431 million over the course of the Blueprint's period of implementation across agencies, some \$70 million a year. The flagship DFV initiatives included state-wide implementation of Safer Pathway, Police High-Risk Offender Teams, Expansion of Tackling Violence and men's behavior change programs as well as a DFV Innovation Fund. In WEL's view and assessment, this is all too little funding for a very ambitious **Blueprint!**

The KPMG Evaluation reported that *the prevalence and incidence of recorded DFV related assaults in NSW had risen over the last six years from 29,083 to 30,434*. There has been "little improvement" according to the evaluation's comment on priority 3 in *the rates of re-victimisation, actual bodily harm, and the number of DFV-related death since the **Blueprint** was launched*. (See Executive Summary)

The Evaluation Report makes a number of recommendations, most of which point to the need for better, locally-managed, evidence-based and targeted approaches and a need for increased investment. The DFV sector needs increased investment, but governments are unwilling to make the necessary financial commitment. Thus, KPMG recommends *innovative finance models like a DFV impact fund and incentives for alternative approaches to finance housing associated with DFV* – read specialist women's refuges as part of the homelessness service system. WEL NSW sees it as a government responsibility to fund services adequately to save lives!

Women's Safety NSW, in its analysis of the Evaluation echoed the criticisms of WEL when it re-stated what has become a refrain from women's service providers and peak bodies, *the need for increased*

*investment for specialist homelessness services and affordable housing solutions for victim/survivors of domestic violence to ensure they have genuine options to escape violence.*

Needless to state, these are urgent demands needing immediate attention. Law reform is not amongst them. Without addressing or attending to the deficiencies in the current DFV support service system, law reform will simply add a dimension to community knowledge and understanding of the depths and extent of this serious social problem. Indeed, as the Law Society Journal article of September, 2020 by Amy Dale points out: *another substantial benefit (of new laws) is regarding community education.* (p33)

This is simply an insufficient rationale. While it may result in positive changes in community attitudes about domestic violence, it will not deter perpetrators or improve system support or improve women's safety.

### **Specialist Training for Implementation**

Evan Stark, in an article published early last year, praised Scotland's: **Domestic Abuse (Scotland) Act 2018** as setting a gold standard for this sort of legislation. He did stress that *it was a unique confluence of factors that may not be replicable*. He goes on to say that *amongst the most important of these factors were a coherent strategic framework; an articulation of the dilemma facing the justice system; centralized coordination by justice professionals; activist pressure from Women's Aid and exhibitions of political will.* (See *The Coercive Control Framework: Making Law Work for Women.* in **Criminalising Coercive Control**. February, 2020 p.34.) He named this the "coercive control framework". A new offence such as this is likely to be most effective in addressing the crime within such a framework.

WEL Australia in making its submission to another Joint Select Committee on Australia's Family Law System in December, 2019, commented on the need to improve the performance of professionals for family law work, where domestic and family violence is involved. We recommended that any training be mandatory and that there needed to be national consistency.

If the NSW Government proceeds with a Bill to pass a law to criminalise coercive control, a statewide approach to the training of police and judicial officers as well as those working in supporting professional roles will be an essential prerequisite for effective enforcement.

In April, 2020, Scottish Women's Aid marked a year since the law commenced operation in an article on its website: *One Year of the Domestic Abuse (Scotland) Act – where are we now?* The article sees the law as a work in progress with mixed reports from regions about implementation. It voices *encouragement about the way the Police and Crown Office have embraced the new legislation*, and *delight that Scotland's Sheriffs and judges have all had training on the new law, as has much of the police force*. It is early days in Scotland, but the data on prosecutions is promising, but successful implementation across the nation is *still far off*.

The article stresses that the law requires *new ways of understanding abuse*, *new ways of gathering evidence* and *a whole lot of awareness raising on their parts*, that is all personnel at all levels.

WEL NSW urges the Joint Select Committee members to consider a strategic framework for implementation of any new law as important as defining coercive control and its codification.

Successful statewide implementation requires policy, procedures, guidelines, training programs and tools, levels of specialization within an overall plan.

The Australia's National Research Organisation for Women's Safety (ANROWS) in an article recently published: *Accurately identifying the person most in need of protection in domestic and family violence law*. Issue 33, November, 2020 highlighted some implications for policy and practice for police and Courts in identifying patterns of coercive control and detailed some of the content required for effective training on the appropriate application of the law. WEL NSW recommends that its expertise and considerable resources be utilized for advice on putting the law into effect and gathering data on this effectiveness.

The NSW Education Centre Against Violence (ECAV). A unit within NSW Health has three decades of experience in workforce development in the specialist areas of prevention and response to violence, abuse and neglect, including a specific focus on Aboriginal and Culturally and Linguistically Diverse Communities. It provides face to face and online training, community awareness and development programs. WEL NSW would strongly support its enlistment and funding as a key agency in the preparation and delivery of training on coercive control.

### **Conclusion**

The criminalization of coercive control cannot simply be another legal token. It must be accorded full political and legal leadership in partnership with the many professional women's, community and legal organisations which advocate for women's safety and equality.

Criminalisation must make a material difference to people's lives. It must make a difference to victim/survivor lives. It must reduce fatalities. It must ameliorate the severity of physical and sexual violence. It must better protect children from trauma. It must aim to reduce domestic and family violence in the longer term. It must contribute to major system wide reform. It offers a generational opportunity for more effective intervention and prevention.

The NSW Government needs to seize this legislative reform opportunity to construct a strategic framework with serious resources allocated so that the laws with system change take women and children fleeing domestic violence into a safer future.