

**Submission
No 37**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: The National Council of Women of New South Wales Inc.

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NATIONAL COUNCIL OF WOMEN OF NEW SOUTH WALES INC.
SUBMISSION
TO THE
INQUIRY INTO COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS.

JANUARY 2021



It is with pleasure that the National Council of Women of New South Wales Inc. (NCW NSW) provides a submission to the Inquiry into Coercive Control in Domestic Relationships.

NCW NSW supports the NSW Domestic Violence Death Review Teams' (DVDRT) recommendation 9: That the Department of Communities and Justice examine the extent to which existing NSW laws (criminal and civil protection orders) respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence.

This examination should include:

1. a qualitative review conducted with NSW police about what forms of behaviour are being targeted under the offence of 'stalking or intimidation', whether such charges are laid on their own or in combination with other offences, and the relationship context of such offences; and
2. monitoring the progress and implementation of offences of coercive control and domestic abuse in other jurisdictions.¹

As an organisation that has been a voice for the status of women and children since 1896, we are particularly concerned about the destructive effects of coercive control that many women suffer from, particularly the emotional and psychological damage that this form of control brings about.

More importantly coercive control is a significant predictor of intimate partner homicide. As noted above, the DVDRT has identified evidence of sometimes long histories of other forms of coercive and controlling behaviours in the majority of cases it has reviewed. The DVDRT noted that in 111 of the 112 (99%) intimate partner domestic violence homicides that occurred in NSW between 10 March 2008 and 30 June 2016 that it had reviewed, the relationship was characterised by the abuser's use of coercive and controlling behaviours towards the victim, the majority of these victims being women.²

NCW NSW strongly believes that the government should not shy away from drafting provisions that specifically protect women from male violence. It is an object of the existing NSW domestic violence legislation that it enacts provisions that are consistent with principles underlying the *Declaration on the Elimination of Violence against Women* (DEVAW).³ Any definition of coercive control should be framed so that it specifically criminalises abuse by males directed at females. This does not suggest that other forms of abuse occurring within other domestic relationships should go without penalty, but that they should not be used to detract from the sex specific focus of this legislation and should instead be prosecuted under more appropriate sections of the general criminal law.

NCW NSW strongly believes that without explicitly framing proposed legislation concerning coercive control for the protection of women there is a high chance it will be used against them instead for their protection.

The existing domestic violence legislation recognises "that domestic violence is predominantly perpetrated by men against women and children".⁴ However, despite this recognition in the objects of the legislation, these provisions are increasingly being weaponised against women by abusive males, with regular misidentification of women as perpetrators.⁵ Although it is quite clear statistically that males are overwhelmingly the perpetrators of domestic violence, there is an increasing predilection by police to charge women for minor assaults that have occurred in a context in which they are a victim of overarching abuse. In 2019, 22 per cent of people named as defendants in proceedings for domestic assault were

¹ Domestic Violence Death Review Team, *Report 2017-2019 (2020)*, 72

² *NSW Government's Discussion Paper on Coercive Control*, October 2020, 2.7 p. 8, <www.crimeprevention.nsw.gov.au/domestic-violence/Pages/coercive-control-discussion-paper.aspx>

³ Section 9(1)(c) of the *NSW Crimes (Domestic and Personal Violence) Act 2007*.

⁴ Section 9(3)(b) of the *NSW Crimes (Domestic and Personal Violence) Act 2007*

⁵ [Equality with a Vengeance: the over-incarceration of women](#), *Precedent*, Issue 147, August 2018

women.⁶ Too often women plead guilty or consent to orders in these circumstances due to the stress and difficulty defending charges and AVO applications being instigated by their abusers.

The continued unwillingness to draft legislation that is specific to the purpose of protecting women from male violence is undermining good intentions and not only failing to protect victims but exposing them to the risk of prosecutions instigated by their abusers. The current Bills before parliament may also enable male perpetrators to circumvent the family law and simply prosecute women who impede their contact with children.

NCW NSW also strongly believes that any potential criminal offence would need to be complemented by comprehensive social services support and adequate front-line training. This is particularly relevant because of longstanding approaches to combatting domestic family violence.

Coercive control behaviours may not always be recognised as elements of coercive control, especially if the victim does not themselves appreciate the abuse that they are being subjected to. An academic study into practitioner awareness and capability in England and Wales noted that “domestic abuse that manifests as a ‘low-level’ incident could be excluded from the process because frontline officers do not recognize this behaviour as a possible expression of coercive control” and that “coercive control will be missed, and the level of risk therefore underestimated, when practitioners are attending incidents devoid of other high risk markers to ‘prime’ them to identify the coercive control”.⁷

There may be opportunities to consider how existing training could be augmented to increase its focus on identifying and responding to DFV, including coercive and controlling behaviours to facilitate earlier intervention. Such training could also ensure there is a common understanding of the dynamics of DFV and coercive control across the different services and capacity to respond appropriately.⁸

Coercive control is a complex concept, and it challenges many pre-existing beliefs and attitudes in relation to DFV, such as the view that DFV only consists of physical violence. These normative beliefs need to be transformed in order to raise awareness and shift understandings about the kind of behaviour that is coercive or controlling and therefore unacceptable. Education and awareness raising activities are critical to this effort and are necessary to embed any change in relation to coercive control.⁹

Consequently, there needs to be a significant budget allocation for training and implementation of legislation. NCW NSW would like to see specialist training from gendered organisations.

NCW NSW realises the nuanced and complex behaviours that constitute coercive control and this will present significant investigative challenges for police. Whilst victim-survivors may be able to provide police with a history of how the behaviour has affected them over time, reducing this into the form of evidence that is necessary to find a criminal prosecution will present conceptual and practical difficulties. Any criminal offence, whether it criminalises individual acts of a course of conduct, requires evidence that meets a certain standard of specificity.¹⁰

⁶ <https://www.thesaturdaypaper.com.au/news/law-crime/2020/11/07/policing-family-violence-nsw/160466760010676#hrd>

⁷ *NSW Government’s Discussion Paper on Coercive Control*, October 2020, 9.11 p. 36, <[www.crimeprevention.nsw.gov.au/domestic violence/Pages/coercive-control-discussion-paper.aspx](http://www.crimeprevention.nsw.gov.au/domestic%20violence/Pages/coercive-control-discussion-paper.aspx)>

⁸ *NSW Government’s Discussion Paper on Coercive Control*, October 2020, 9.12 p. 36, <[www.crimeprevention.nsw.gov.au/domestic violence/Pages/coercive-control-discussion-paper.aspx](http://www.crimeprevention.nsw.gov.au/domestic%20violence/Pages/coercive-control-discussion-paper.aspx)>

⁹ *NSW Government’s Discussion Paper on Coercive Control*, October 2020, 9.13 p. 37, <[www.crimeprevention.nsw.gov.au/domestic violence/Pages/coercive-control-discussion-paper.aspx](http://www.crimeprevention.nsw.gov.au/domestic%20violence/Pages/coercive-control-discussion-paper.aspx)>

¹⁰ *NSW Government’s Discussion Paper on Coercive Control*, October 2020, 6.13 p. 25, <[www.crimeprevention.nsw.gov.au/domestic violence/Pages/coercive-control-discussion-paper.aspx](http://www.crimeprevention.nsw.gov.au/domestic%20violence/Pages/coercive-control-discussion-paper.aspx)>

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