

**Submission  
No 52**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Anglicare Sydney

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**ANGLICARE SYDNEY SUBMISSION INTO THE  
NSW GOVERNMENT'S COERCIVE CONTROL  
DISCUSSION PAPER January 2021**

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## **OVERVIEW OF ANGLICARE SYDNEY**

Anglicare Diocese of Sydney (Anglicare Sydney) is a not-for-profit organisation of the Anglican Church and one of the largest Christian community service organisations in Australia. Anglicare Sydney exists to serve people in need in our community, enrich lives, and share the love of Jesus. We respect and value every person as made in the image of the living God. We seek to serve those who are ageing, vulnerable or marginalised by meeting material, physical, emotional, social and spiritual needs.

We operate a wide range of community and aged care programs across the Sydney Metropolitan, Illawarra, Shoalhaven, Blue Mountains and New England regions of New South Wales. Our 4,000 staff and more than 2,000 volunteers work across a diverse range of services including community education for families; youth services; foster care and adoption services; mental health services, emergency relief for people in crisis; aged care both through nursing homes and community services; opportunity shops providing low-cost clothing; emergency management services in times of disaster; and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions.

Anglicare Sydney's child, youth and family support services include two Family Relationship Centres (FRC's) in Nowra and Parramatta; Counselling, Men's Behaviour Change Program, a foster care service and an adoption service for children including those with special needs and youth support services.

Across these broad range of services DFV is pervasive impacting across all socio economic, cultural and familial backgrounds. We have observed that there are particular cohorts of the population who are particularly vulnerable – women from Aboriginal and Torres Strait Islander communities and from Culturally and Linguistically Diverse (CALD) backgrounds.

Anglicare deems that coercive controlling behaviour is a violation of human rights, that perpetrators need to be held to account and that survivor safety is of paramount importance. It is largely gender based and generates significant trauma from which longer-term recovery is difficult.

We also acknowledge that a current or former partner murders a woman approximately every week in Australia. Millions of women in Australia experience emotional abuse by a partner at some stage and that coercive controlling behaviour is a significant predictor of intimate partner homicide. It needs to be addressed in the NSW legal system, where it is currently largely absent.

## SUMMARY OF RECOMMENDATIONS

1. Any definition of coercive and controlling behaviour needs to include 'reinforce dominance and instil fear in the victim' as a primary goal of this abusive behaviour.
2. Definitions of coercive and controlling behaviour also need to account for the impact on parenting and on children.
3. There needs to be a broader criminalisation of coercive and controlling behaviour, a better recognition of resistive violence as well as a more comprehensive assessment of patterns of coercion and controlling behaviours to ensure victims are not mis-identified as perpetrators.
4. Apart from coercive and controlling behaviour being understood as a pattern of behaviour, in order for intervention and prevention to be effective the timeline of this behaviour also needs to be taken into account.
5. Legislating coercive and controlling behaviour as a criminal offence should widen the opportunities for the victim to present evidence of the pattern of abuse, which is currently not available.
6. Sentencing needs to take into account the equal nature of varying types of abuse, the relationship context of that abuse as well as the impact (level of harm and fear) on the victim and family.
7. New legislation criminalising coercive and controlling behaviour needs to be carefully drafted and subject to extensive consultation with women's groups active in this space and with victims and their families.
8. Training in coercive and controlling behaviours needs to be implemented for all key criminal justice decision makers including prosecution lawyers, judges, juries and corrections officers administering sentences. The DVSAT (NSW) standardised risk screening tool should be reviewed to ensure it can adequately guide police and other public officers to identify patterns of coercive control.
9. The range of behaviours in the pattern of controlling and coercive behaviours needs to be clearly documented and they need to be seen as part of a matrix or pattern of behaviour over time.
10. ADVO's need to be implemented in consultation with the victim to ensure the pattern of behaviours which are intimidating are recognised and considered.
11. Breached ADVO's need to be considered not as individual and isolated events but as part of a pattern of behaviour and be seen in the light of its coercive and intimidating characteristics which can be subject to criminal prosecution even in the absence of physical violence.
12. Sentencing needs to take into account the impacts on the victim and the family, especially where children are involved, giving equal significance to the physical, emotional and psychological impacts.

13. A range of non-legislative activities to address coercive and controlling violence need to be implemented including education, information sharing, community engagement and system and service supports.

## RESPONSE TO QUESTIONS

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

Anglicare Sydney considers the definition as provided in the Discussion paper (1.5) which considers the broader pattern of control and domination created through a collection of behaviours as helpful. However, the element of fear needs to be further considered. It needs to be recognised that the key component of any abusive relationship is control inducing fear where the threat of violence is seen as a tool to ensure the success of the controlling behaviours.

In the literature this behaviour has been described as a 'malign' pattern of domination. These behaviours can include physical, sexual, psychological, financial and emotional abuse and intimidation, used as tactics by a perpetrator to gain power, control and dominance over the victim-survivor. The perpetrator can use a range of physical and nonphysical tactics creating a pattern of behaviour that regulates all aspects of the victim's life, with refusals to cooperate leading to the victim being punished. These behaviours invoke fear in the victim.

*As the victim seeks to avoid repercussions, the perpetrator's rules become internalised by the victim enabling the perpetrator to ensure compliance by use of less and less punishing behaviour. This can be achieved through a gesture or a look or words that have significance to the partners but not to the outside world.<sup>1</sup>*

It is a deliberate process of intimidation. Bettinson<sup>2</sup> goes on to describe the psychological trauma this generates leading to fear, a sense of helplessness, loss of control and feelings of terror. The Scottish Government<sup>3</sup> highlights that victims of coercive control often demonstrate what is known as a 'generalised sense of fear'.

*This means they fear consequences of all their actions and therefore making every day decision-making challenging. They may demonstrate a fear of many things as they lose confidence in not just their decision making but also other people and events around them. They may be unable to understand why others don't feel the same or seem confused by decisions such as which cereal to buy in the supermarket or what to wear that day, thus making everyday tasks challenging and time-consuming.<sup>4</sup>*

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<sup>1</sup> Bettinson, V (2017) 'Criminalising Coercive Control in Domestic Violence Cases: Should Scotland Follow the path of England and Wales' P167, sighted at [https://www.researchgate.net/profile/Vanessa\\_Bettinson/publication/297161736\\_Criminalising\\_Coercive\\_Control\\_in\\_Domestic\\_Violence\\_Cases\\_Should\\_Scotland\\_Follow\\_the\\_Path\\_of\\_England\\_and\\_Wales/links/56dd58e108ae07e3f617df89.pdf](https://www.researchgate.net/profile/Vanessa_Bettinson/publication/297161736_Criminalising_Coercive_Control_in_Domestic_Violence_Cases_Should_Scotland_Follow_the_Path_of_England_and_Wales/links/56dd58e108ae07e3f617df89.pdf)

<sup>2</sup> Ibid

<sup>3</sup> Marac Guidance Scotland – Coercive Control sighted at: <https://safelives.org.uk/sites/default/files/resources/Guidance%20for%20Maracs%20-%20Corecive%20Control%20-%20Scotland.pdf>

<sup>4</sup> Ibid P1

The use of physical violence and abuse in the context of a pattern of coercive control may be infrequent, or less severe, particularly if the controlling behaviour is adequate in regulating and disempowering the victim. Often, overt acts of physical violence are mere tips of the iceberg in a deeply embedded pattern of coercive control that can be long hidden from public scrutiny. Men do not need to assault their partners in order to instil fear and cooperation, they just need for their victims to believe there will be violence if they do not cooperate.

Therefore, the definition provided in the Discussion paper needs to go further to include 'reinforce dominance and instil fear in the victim' as a primary goal of this abusive behaviour. Anglicare recognises however that translating the generation of fear as a concept into law may be challenging but notes the work of the Scottish Government in this space.

A further consideration in the definition of coercive controlling behaviour, which is not widely recognised in the literature or in the Discussion paper is that of the undermining of parenting by the abuser with a view to alienate children and have them in allegiance with the perpetrator which can then encourage the children to perpetrate violence on the victim as well. Anglicare Sydney, in research on coercive and controlling behaviour in relation to its Family Relationship Centres, found a strong association between the presence of such behaviours in the home and children's behaviour. These behaviours included physical aggression by the child; bullying others; aggression towards parents and other children and disrespect for females. Internalising behaviours were also evident such as disturbances of eating and sleeping routines. These behaviours were independent of violence directed towards children themselves.<sup>5</sup>

Anglicare is adopting the *Safe and Together*<sup>6</sup> model which clearly indicates the broader impacts of coercive control on of family functioning eg impacts of financial control on family resources, housing, and children's access to education. Other ways in which a mother's parenting capacity can be impacted would include not being allowed to work, not being allowed to drive children to various activities, forcing her into illegal behaviours etc. It is an ongoing attack against a person's autonomy and personhood which is far broader than the current legal system acknowledges.

**Recommendations:**

1. *Any definition of coercive and controlling behaviour needs to include 'reinforce dominance and instil fear in the victim' as a primary goal of this abusive behaviour.*
2. *Definitions of coercive and controlling behaviour also need to account for the impact on parenting and on children.*

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

The distinguishing factor in determining if a behaviour is part of a normal relationship and one which is coercive and controlling, is the element of fear and the level of that fear which may not be

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<sup>5</sup> Dunstan, L et al (2012) *The links between coercive controlling violence, parenting behaviours and children's behaviours among clients of the Parramatta Family Relationship Centre.*

<sup>6</sup> <https://safeandtogetherinstitute.com>

observable to an outsider. Sometimes a look or a raised eyebrow from the perpetrator will be enough to instil fear since the victim knows and understands what those signs mean. Often the victim herself does not know that this behaviour is abusive nor is it recognised in the court system or legal environment. Individual behaviours on their own do not necessarily constitute controlling behaviour, it is when these behaviours become a matrix or pattern of behaviour that instils fear, that abuse is clearly evident. Such behaviours could include for example:

- Isolating a person from friends and family
- threats to expose private photographs of their partner or ex-partner
- preventing their partner from ending the relationship by threatening to, or actually engaging in, self-harm
- Threatening to out someone's sexual identity in same sex relationships
- confiscating or destroying their partner's mobile phone
- deleting all male contacts on their partner's social media
- threatening to or actually harming their partner's pets
- demanding that their partner eat certain foods
- demanding that their partner sleep on the floor
- prohibiting their partner from seeking or continuing employment
- controlling their partner's finances, with one giving his partner an allowance out of her *own* income
- conducting regular inspections of their partner's home or body for evidence of infidelity.

Coercive controlling behaviour strips the individual of their self-worth and can critically damage their autonomy, efficacy and ability to make decisions.

#### **4. 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?**

Anglicare Sydney considers that currently the legal system and police do not have sufficient powers to address coercive and controlling behaviour. When police are confronted with a DV incident their legal role is to establish if such an incident has occurred and if so, who is responsible. They are responding to one particular incident. Without a broader criminalisation of coercive control, it cannot be used as a defence for victims of domestic violence.

Arresting officers are not privy to the pattern of behaviour which has gone on over an extended period of time, in which case the victim's actions may mistakenly get criminalised. Overseas studies suggest that police find it very difficult to recognise abuse if there is no evidence of physical violence. Similarly, the court system currently may view domestic abuse as a series of discrete and relatively minor assaults with limited recognition of the enormous impact this whole pattern of behaviour can have on women and children.

Responding to a single incident of behaviour, rather than to the pattern of behaviour which it represents, can lead to misidentification of the victim as the primary aggressor. There are a number of women currently imprisoned because they finally reacted to this ongoing pattern of malign and destructive behaviour.

In a paper published in 2018, the Women's Legal Service in Victoria observed the frequency of the rate of around 10% at which women are being misidentified as respondents in police applications for family violence intervention orders. Research has indicated that women are rarely violent towards intimate partners except where there are patterns of violence and coercive control.

Of significant concern is their finding that male perpetrators are increasingly gaming the intervention order system and the protective role of police to further their abuse. Misidentification of the abuser can generate significant traumatic consequences for the victim including criminal charges for women with no prior criminal history, separation from children and trauma to children, lack of trust in a system that is meant to protect them, loss of reputation and access to services, impacts in family law jurisdictions, economic costs and increased vulnerability to further violence. Half of the misidentified women in this study had been subject to serious historical patterns of abuse including verbal abuse, gas lighting, psychological control, sexual and economic abuse and other manipulative behaviours.<sup>7</sup>

It is being increasingly recognised that the task of identifying the primary aggressor and primary victim of family violence is complex and challenging, particularly when police cannot see the history and pattern of family violence that may have preceded the incident.

It is also important to understand the difference between reactive and resistive violence when it is evident that a pattern of violence has been ongoing. Women's use of force is not always defensive in these situations – often it is 'more aptly described as 'violent resistance' insofar as some women will respond to a violent partner with violence to stop or reduce the violence'.<sup>8</sup> Motivations for violence between perpetrator and victim also vary:

*Women's use of violence tends to be in response to their own victimisation and seek to challenge men's use of violence, while men's use of violence is more likely to be driven by entitlement and control motives (Swan et al 2008). Many of the patterns of violence men use against women (e.g. coercive control, using cognitive distortion) are covert. These psychological, coercive tactics are a distinguishing feature of family violence – but increased training can make it easier for police to identify these subtle patterns.*

*As the Family Violence Bench Book states, 'documented reactive behaviours, such as retaliating against physical or psychological violence with violent behaviour ... need to be understood as different to the primary aggressor's behaviour' (2018: 5.2.3.5). A key difference that distinguishes reactive/resistance violence from the violence perpetrated by the predominant aggressor is an absence of controlling intent.'<sup>9</sup>*

In such situations the patterns of coercive control should be considered as part of the defence when a woman reacts in a way that leads to violence against her perpetrator. These findings further highlight the need for ongoing training in this area for police and arresting officers so they can understand what is going on when summoned to an incident and arresting those they deem as responsible.

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<sup>7</sup> Women's Legal Service Victoria (2018), *Policy Paper 1*, sighted at <https://www.womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf>

<sup>8</sup> Ibid P3

<sup>9</sup> Ibid



**Recommendation:**

*3. There needs to be a broader criminalisation of coercive and controlling behaviour, a better recognition of resistive violence as well as a more comprehensive assessment of patterns of coercion and controlling behaviours to ensure victims are not mis- identified as perpetrators.*

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

The current framework needs to be underpinned not just by an understanding of the patterns of behaviour which constitutes such abuse but also by the predictability of the patterns which, when it escalates, can lead to homicide. A review of 372 intimate partner homicide in the UK uncovered an eight-stage homicide timeline.

**1) Pre-relationship history** - Perpetrator often has a history of intimate partner violence in prior relationships.

**2) Early relationship** - the relationship often moves at twice the normal speed with professions of love early in the relationship and moving in together early.

**3) Relationship** - coercive control becomes a feature of the relationship, stalking, intimidation, financial control, domestic abuse

**4) Trigger/s** - the perpetrator is triggered when he feels threatened. A key trigger is often separation.

**5) Escalation** - the perpetrator will seek to regain control.

**6) Change in thinking** - Perpetrator will decide how to deal with the loss of control they are experiencing. They may: move on with a different partner they can control, the victim may return to the relationship and the perpetrator can regain control, they may begin planning to kill the victim.

**7) Planning** - the perpetrator at this stage makes plans to kill the victim. They may check the internet for ways to kill, purchase weapons, begin planning the crime.

**8) Homicide** - the perpetrator kills the victim. The crime is normally marked by violence indicative of the rage felt by the perpetrator.

A key trigger for homicide is separation where extreme jealousy, possessiveness and rage is triggered. Also, to note where there is a cluster of three risk factors in relationships - coercive control, violence and a recent separation - women have a **900% increased risk** of intimate partner homicide (*US National Centre for Injury Prevention and Control*).

While risk of homicide is the most severe outcome for a victim of coercion and control, we acknowledge that for the majority of victims the non-lethal impacts are also devastating and debilitating, and contribute to a burden of negative impacts on health, wellbeing and psychological functioning.

If there is a predictable timeline for this pattern of behaviour which is seen as a continuum, intervention in the earlier stages where a number of precursors are present may prevent tragedy in the future.<sup>10</sup>

The ability to recognise the perpetrators pattern of coercion and control and intervene more effectively, including incarceration of the perpetrator, may well prevent tragedies such as the death of Hannah Clark and her children.

**Recommendation:**

4. *Apart from coercive and controlling behaviour being understood as a pattern of behaviour, in order for intervention and prevention to be effective the timeline of this behaviour also needs to be taken into account.*

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

Anglicare notes that there are elements in the CDVP Act which reflect the views in the NSW Government's paper *It Stops Here* recognising that coercive controlling behaviour can instil fear and that DFV extends beyond physical violence and involves abuse of power imbalances and patterns of abuse over a number of years.

However, there are no existing criminal offences which directly address coercive and controlling behaviours even though such behaviours can have deadly longer-term consequences. Early studies indicated that coercive controlling violence was more frequently associated with more frequent and physical violence, more injury, more harassment and violence after separation, higher levels of fear and perceived threat of future harm.<sup>11</sup>

More recent studies confirm these findings. A NSW coroner's review of intimate partner homicides found 99 per cent of perpetrators had committed "coercive and controlling behaviours towards the victim" before killing them. Research by Evan Stark, the sociologist who developed the concept of coercive control, found 60-80 per cent of women who seek help for abuse have experienced it and that the obsessive level of control in such relationships can often be a predictor, or precursor to extreme violence. Other evidence is also emerging:

*The NSW Domestic Violence Death Review Team's report, investigating murders between 2017 and 2019, found 77 of the 78 perpetrators used coercive control on their partner before killing them. This followed earlier research from the NSW Bureau of Crime Statistics and Research in 2016 that found women who experienced emotional abuse were 20 times more likely to subsequently suffer from physical violence.<sup>12</sup>*

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<sup>10</sup> Smith, J.M. (2019) 'Intimidate partner femicide: using Foucauldian Analysis to track an eight-stage progression to homicide', sighted at <https://journals.sagepub.com/doi/abs/10.1177/1077801219863876?journalCode=vawa&>

<sup>11</sup> Hardesty, J.L. et al (2015) "Toward a Standard Approach to Operationalizing Coercive Control and Classifying Violence Types' *Journal of Marriage and Family Relationships*, Vol 77, Issue 4, P883-843

<sup>12</sup> Dale, Amy (2020) *Criminalising Coercion*, September, sighted at <https://lsj.com.au/articles/criminalising-coercion/>

Undoubtedly the Coronavirus pandemic appears to have highlighted the prevalence of this violence.

*The Australian Institute of Criminology found between February and May of this year [2020], one in 10 women who responded to their survey had suffered domestic violence during the lockdown conditions in the form of emotionally abusive, harassing or controlling behaviour.*<sup>13</sup>

The impact of coercive controlling behaviour may also be evident in victim suicides. Stark and Flitcraft's health study found that women subject to domestic violence and/or abuse were five times more likely to attempt suicide than individuals not subjected to it.<sup>14</sup>

Tasmania is currently the only state government which has specifically addressed this issue, but the legislation has a narrower focus on financial control and behaviours which is limiting, and few cases have been prosecuted.

In NSW unless perpetrators physically injure or stalk a person, breach a domestic violence order or damage property, they're unlikely to be detected or charged. In fact, a breach of the current Apprehended Violence Order only results in a criminal offence if the breach involved physical violence or stalking. Conviction rates are very low. Legal practitioners and police often do not understand the patterns of behaviour involved in this type of abuse and often the victims of a breached AVO can go unrepresented.

A single incident, seen on its own, without the context of repeated coercive patterns of behaviour may then not present either to the police or the courts as a safety risk for the victim. The victim's statement requires a response to a specific incident but does not allow for elaboration on the nature of the pattern of behaviour and the impact it is having. Further while the DVLO's, who may have some understanding of this type of abuse, attend court to offer support they often are not available to assist when a victim presents at a police station.

There is significant need for further education of both DVLO's, police, responders, support workers and legal practitioners in order to widen and deepen the understanding of the patterns behind coercive and controlling behaviour. It is critical to build appropriate expertise in identifying, investigating, assessing, prosecuting and judging such violence in what is a highly specialised and complex field.<sup>15</sup>

**Recommendation:**

5. *Legislating coercive and controlling behaviour as a criminal offence should widen the opportunities for the victim to present evidence of the pattern of abuse, which is currently not available.*

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<sup>13</sup> Ibid

<sup>14</sup> Cited in Bettinson Vanessa, (2017), Op Cit, P168

<sup>15</sup> Ibid

**7. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings? If the answer is no to either of the above questions, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?**

Sentencing needs to take into account the equal nature of varying types of abuse, the relationship context of that abuse as well as the impact (level of harm and fear) on the victim and family.

Anglicare Sydney considers the gold standard in terms of addressing this issue in the legislative and judicial system is the legislation introduced into Scotland in April 2019. Under this legislation behaviour which results in making a partner dependant or subordinate, isolates them from family and friends, controls or regulates their daily activities, deprives their freedom of activity and frightens, humiliates, denigrates or punishes a partner constitutes coercive and controlling behaviour. All of these harms – physical, emotional, psychological and surveillance – are considered equal.

Essential in establishing the presence of coercive controlling behaviour is understanding the impacts on the victim. Such abuse can be highly contextual. Behaviours which are deemed acceptable in some relationships may well instil fear and harm in other relationships. The Scottish legislation takes into account the level of harm and fear experienced by the women that can validate their experience.

This legislation was specifically crafted with the support of various women’s organisations and in significant consultation with victims of this violence. In fact, these women were responsible for co-drafting the legislation. Within the first year of the legislation coming into force of the 1,000 cases identified, 96% were prosecuted.

To be effective education and training for all police needs to be implemented. It was noted that by August 2019 in Scotland 18,500 officers and police staff had received online training on domestic abuse and coercive controlling behaviour, and 7,500 had received enhanced training in person.<sup>16</sup>

Consideration could also be given to employing risk assessment and screening tools such as the NSW Standardised DV Screening Tool (DVSAT) to include in questions and evidence gathering in relation to identification of patterns of behaviour. Currently both Victoria and SA have more substantial screening tools than NSW.

**Recommendations:**

6. *Sentencing needs to take into account the equal nature of varying types of abuse, the relationship context of that abuse as well as the impact (level of harm and fear) on the victim and family.*
7. *New legislation criminalising coercive and controlling behaviour needs to be carefully drafted and subject to extensive consultation with women’s groups active in this space and with victims and their families.*

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<sup>16</sup> <https://www.bbc.com/news/uk-scotland-49374667>

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

There would be a number of perceived advantages in criminalising coercive and controlling behaviour.

1. It can lead to a wider community recognition that family violence involves forms of abuse other than physical violence, such as social isolation and emotional and financial abuse. This can in turn give the broader community a language and shared understanding that can lead to longer term changes in attitudes.
2. Recognising and validating women's lived experience can prevent intimate partner homicides acting as a circuit breaker as such behaviours escalate
3. It recognises that psychological intimidation and emotional manipulation can be just as abusive as physical violence
4. It would enable police officers to respond to situations where there are potentially lethal levels of psychological control but where there is no evidence of physical abuse.
5. If recognised it can support police to escalate intervention when there is repetitive low-level evidence of physical violence.
6. It legitimises the victims' perception that what they are experiencing is unacceptable, but it can also give an indication of the totality of the harm as experienced by the victim.
7. Once an offence is legislated it's a benchmark against which behaviours can be managed and there are clear consequences for breaching.
8. Such legislation would hold perpetrators to account for their behaviour and not just wait for them to commit an offence which can result in extreme violence and death.
9. Children live in these toxic environments. Recognising these patterns of behaviour as abuse can, in the longer term, also act as a protective factor for children.
10. If successful at the State level such legislation could have collateral benefit in the Family Court.
11. History is important and a particular domestic violence incident or event needs to be seen in the context of that history. In Scotland, since the history or pattern of behaviour is now being considered more evidence can be brought to court which is making it easier to substantiate.

There are also a number of challenges in criminalising coercive and controlling behaviour including:

- The current lack of understanding on the part of police, first responders, and the court system which can lead to women being misidentified as the perpetrator.
- Perpetrators have been known to 'game' the system and/or to portray themselves as the victim, and the challenge is for first responders, police and the court system to effectively assess beyond a single incident and delve more purposefully into the patterns of behaviour in order to ensure there is no misidentification of the perpetrator.

- The current criminal justice system is not designed to address coercive controlling behaviour as a criminal offence requiring a greater reliance on victim testimony. Currently the focus is on single incidents and demonstration of physical violence. As once commentator has noted:

*[Coercive controlling violence] is ... stripped of much of its overall architecture –those aspects of the pattern of abuse that are psychological and financial, for example, along with the motivations of the abuser and the cumulative effect on the victim. As a consequence, the totality and meaning of the perpetrator’s behaviour, the continuing risk he poses and the weight of harm experienced by the victim are all potentially misunderstood and minimized at every stage of the criminal justice process – investigation, charging, trial and sentencing.*<sup>17</sup>

- A significant challenge is the potential failure to enforce the new legislation and difficulties in meeting the criminal burden and standard of proof.
- As a criminal offence, coercive and controlling behaviour can prove to be complex, time consuming and difficult to successfully prosecute. If the legislation is not carefully and thoughtfully crafted it may well have negative effects on the victims.
- Recognition that every relationship is a balance between autonomy and intimacy. Appreciating coercive control within that balance can pose difficulties.
- Attention becomes focussed on the victim; their credibility becomes key and the intent on the part of the perpetrator can be difficult to prove.

[Anglicare has provided a case study as an attachment which illustrates quite clearly the way such behaviour can reduce the credibility of a victim in the court system.]

Escalating behaviours in post separation – including jealousy, possessiveness, stalking increase the risk of lethality and can be underestimated if they are not seen in the context of the history of coercion and control in the relationship (Note again the Hannah Clark case is a clear example of this)

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

In the Scottish experience the best way to ensure an effective implementation has been to ensure intensive training of police judicial officers and DVLO’s, prior to the legislation coming into effect. This has also been the experience in the UK and Wales because for this to be effective it necessitates:

*...a fundamental shift in the way the police, prosecutors and judges see domestic abuse, not as a series of separate events but more like the way victims experience it: cumulatively and comprehensively.*<sup>18</sup>

In NSW it would thus require training for all key criminal justice decision makers including prosecution lawyers, judges, juries and corrections officers administering sentences.

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<sup>17</sup> Tolmie, J.R (2018) ‘Coercive Control: To criminalize or not to criminalize?’ *Criminology and Criminal Justice*, Vol 18(1) P51-52

<sup>18</sup> <https://theconversation.com/coercive-control-is-a-key-part-of-domestic-violence-so-why-isnt-it-a-crime-across-australia-132444>

A detailed review of successful implementation in other overseas jurisdictions and learning from what works and what does not is also a key element in ensuring challenges are met and overcome. Based on this experience such legislation to be effective requires considerable thought, preparation and planning but has the power in the longer term to create generational change.

There also needs to be a wider and deeper understanding within the criminal justice system of the gendered nature of this abuse and how distribution of resources in the relationship can support patterns of power and domination.

**Recommendation:**

8. *Training in coercive and controlling behaviours needs to be implemented for all key criminal justice decision makers including prosecution lawyers, judges, juries and corrections officers administering sentences. The DVSAAT (NSW) Standardised standardised risk screening tool should be reviewed to ensure it can adequately guide police and other public officers to identify patterns of coercive control.*

**10. 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?**

As indicated earlier Anglicare Sydney considers the definition as provided in the Discussion paper (1.5) which considers the broader pattern of control and domination created through a collection of behaviours is helpful. These behaviours can include physical, sexual, psychological, financial and emotional abuse and intimidation, used as tactics by a perpetrator to gain power, control and dominance over the victim-survivor. The perpetrator can use physical and nonphysical tactics creating a pattern of behaviour that regulates all aspects of the victim's life, with refusals to cooperate leading to the victim being punished. There are a range of behaviours which could be included, as identified in other jurisdictions and literature including:

- Isolating a person from their friends and family
- Depriving them of their basic needs
- Monitoring their time
- Threatening to out sexual identity
- Monitoring a person via online communication tools or using spyware
- Taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep
- Depriving them access to support services, such as specialist support or medical services
- Repeatedly putting them down such as telling them they are worthless
- Enforcing rules and activity which humiliate, degrade or dehumanise the victim
- Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities
- Financial abuse including control of finances, such as only allowing a person a punitive allowance
- Controlling a person's ability to go to school or place of study

- Taking wages, benefits or allowances
- Threats to hurt or kill
- Threats to harm a child
- Threats to reveal or publish private information (e.g. threatening to 'out' someone or to reveal intimate photos to family or friends)
- Threats to hurt or physically harming a family pet
- Assault
- Criminal damage (such as destruction of household goods)
- Preventing a person from having access to transport or from working
- Preventing a person from being able to attend school, college or University
- Family 'dishonour'
- Reputational damage
- Disclosure of sexual orientation
- Disclosure of HIV status or other medical condition without consent
- Limiting access to family, friends and finances.

A key element in this pattern of behaviour is the level of fear experienced by the victim as well as the impacts in terms of loss of independence, autonomy, anxiety and perceived threats of future harm. These 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.

**Recommendations:**

9. *The range of behaviours in the pattern of controlling and coercive behaviours needs to be clearly documented and they need to be seen as part of a matrix or pattern of behaviour over time.*

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

There are two aspects in considering the ADVO legislation. These relate firstly to the nature of the ADVO and, also then, what happens when an ADVO is breached.

Firstly, any ADVO should take into account the pattern of behaviour to which the woman is exposed and enable her to identify the behaviours which are frightening her and ensure these are the behaviours for which she will derive protection. This requires a certain customisation of individual AVO's. Often the terms of the AVO are 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. There needs to be a range of options established in negotiation with the victim.

The second issue is of considerable concern. Breaches are frequently not addressed by the police since they are seen as minor offences and not recognised as part of a pattern of intimidation. There is often



no consequence for breaching unless physical violence has been involved. The victim therefore has no confidence in reporting them, with fear of reprisals if they do.

**Recommendations:**

10. *ADVO's need to be implemented in consultation with the victim to ensure the pattern of behaviours which are intimidating are recognised and considered.*
11. *Breached ADVO's need to be considered not as individual and isolated events but as part of a pattern of behaviour and be seen in the light of its coercive and intimidating characteristics which can be subject to criminal prosecution even in the absence of physical violence.*

**12. 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?**

In drafting legislation to cover the offence of Coercive Control consideration should be made to the law regarding tendency evidence under section 97 of the *Evidence Act 1995* (NSW) and the common law concerning admissibility of evidence.

Coercive control is an offence of repetitive behaviour and proving the offence requires evidence showing patterns of behaviour which induce fear in the victim. Legislation which addresses this offence should be framed to allow tendency evidence in order to prove the offence. Current legislation only allows tendency evidence after the requirements under the *Evidence Act* have been met (appropriate notice s 97(1)(a) and that the evidence has significant probative value s97 (1)(b)). A Coercive Control offence should allow a specific exemption under carefully drafted legislation.

**13. 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?**

Juries need to understand that this happened in the context of coercive and controlling behaviour – it is not just a one-off incident, as the behaviour does not stand alone but is part of a pattern. This is additionally helpful if it is the victim who has been misidentified as the alleged perpetrator of a crime or who has reacted violently to the ongoing intimidation. Juries should have access to prior incidents so they can understand and assess the pattern of behaviour.

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

Once legislated as a criminal offence, sentencing regimes need to take into account the variety of impacts on the victim – beyond the physical and include the psychological and emotional impacts. The Scottish system provides an excellent benchmark from which to assess the appropriate sentencing regimes and the levels of amendment required to the current system. Sentencing should be on a par with other DV incidents and behaviours.

**Recommendation:**

*12. Sentencing needs to take into account the impacts on the victim and the family, especially where children are involved, giving equal significance to the physical, emotional and psychological impacts.*

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

**16. 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?**

A range of non-legislative activities need to be considered since prevention, information and education of both individuals and the wider community are all essential elements in reducing the prevalence of such behaviour. This could include:

1. Teaching safe and healthy relationship skills for children, young people and couples
2. Engaging influential adults and peers where men and boys become allies in prevention and include family-based programs
3. Disrupting the developmental pathways towards partner violence – including intensive family support programs, home visiting, preschool enrichment with family engagements, parenting skill and family relationship programs as well as supports and treatment for at risk children, youth and families
4. Creating protective environments by improving safety in schools, workplaces and neighbourhoods
5. Strengthening economic supports for at risk families particularly in relation to enhancing financial security
6. Treatment and support for survivors through victim centred services, housing programs, first responder and civil legal protections

**Recommendations:**

*13. A range of non-legislative activities to address coercive and controlling violence need to be implemented including education, information sharing, community engagement and system and service supports.*

## **CLOSING STATEMENT**

Anglicare Sydney greatly appreciates the opportunity of providing feedback into this very important consultation. We look forward to the outcomes of such an inquiry with the possibility of improving the circumstances and experience of women experiencing coercive and controlling violence.

Bill Farrand

Chief Operating Officer – Community Services

Anglicare Sydney