Submission No 77

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: South West Sydney Legal Centre

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South West Sydney
LEGAL CENTRE

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Submission to the NSW Government's Joint Select Committee on Coercive Control

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Table of Contents

Re: Joint Select Committee inquiry into coercive control in domestic relationships **3**

South West Sydney Legal Centre 3

Executive summary 3

Consultation period 4

Position 5

Discussion Questions **6**

1. What would be an appropriate definition of coercive control? 6

2. How should it [definition of control] distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse? 7

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour in civil and criminal proceedings? 8

   (a) Definition of DFV 8

   (b) Monitoring overseas offences 8

   (c) Suggested Amendments to S7—Meaning of "Intimidation" 9

   (d) Suggested amendments to S13—Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm 10

   (e) Aggravating factor 11

7. What are the advantages and/or disadvantages of creating an offence of coercive control? 13

   (a) Advantages 13

   (b) Disadvantages 13

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? 19

References **21**

To the Chair and Joint Select Committee Members

Re: Joint Select Committee inquiry into coercive control in domestic relationships

Acknowledgment of country

South West Sydney Legal Centre acknowledges the traditional owners of country throughout Australia and their continuing connection to land, waters and community. Our head office is located on land that is traditionally the home of the Cabrogal Clan of the Darug nation. We pay our respects to Aboriginal and Torres Strait Islander people and their cultures, and to their elders past, present and future.

South West Sydney Legal Centre

SWSLC has been in operation since 1986 and is one of the largest domestic and family violence **(DFV)** providers in the state. We provide free legal services, support and advocacy in many areas of the law, but in particular for women affected by DFV. In addition to our legal service, which has a specialisation in DFV related law, we run:

1. South West Sydney Women's Domestic Violence Court Advocacy Service **(WDVCAS)**
2. Sydney Women's Domestic Violence Court Advocacy Service and Sydney Family Advocacy Support Service **(FASS)**
3. Bankstown Domestic Violence Service
4. Liverpool and Fairfield Staying Home Leaving Violence Service

Our services support many thousands of clients every year, and in particular serve some of the state's most disadvantaged local government areas. In 2019-20 our legal service received 302 DFV client referrals; 36% of our legal services related to family law issues or to clients affected by DFV. Our WDVCAS and FASS teams assisted 6,624 women in 2019-20 and our DFV case management services supported 249 women.

With multiple services, SWSLC aims to provide a holistic service for our clients with specialised and multidisciplinary expertise. The combined experience of our staff has been valuable in community education and law reform, and in particular, our staff from the WDVCAS assisted the Domestic Violence Death Review Team in preparing its findings. This submission includes case studies from our specialist work at SWSLC to assist the Committee in illustrating particular issues.

Executive summary

Ultimately, this submission advocates against the creation of a new, stand-alone coercive control offence in New South Wales at this time. Our submission focusses on a limited number of discussion questions, on which we believe our expertise will be of value to the Committee. We also submit that so far, there has been insufficient consultation for the Committee to be in a position to recommend the creation of a new offence.

In summary, in this submission SWSLC:

1. Does not support the creation of a new coercive control offence in New South Wales at this time. We submit that there are many cultural and procedural changes that are required before the criminalisation of coercive control should be considered
2. Advocates against rapid change without proper consultation and empirical study
3. Puts forth a definition of coercive control based on the clinical definition of coercive control
4. Raises the issue of misidentification of female perpetrators, highlighting a concern that women, particularly Indigenous women, will bear any unintended consequences of criminalisation
5. Discusses how amendments can be made to existing offences in NSW
6. Suggests non-legal avenues for reform

As a caveat, this submission generally positions women as victim-survivors of DFV and men as perpetrators. This is not to imply that men and people of diverse gender expression do not experience DFV, or that DFV is not present in LGBTQIA+ relationships. These issues are part of a larger conversation to be had, however for simplicity, consistency with the research and data about DFV and from our organisation's experience, this submission adopts that general language.

Consultation period

Our experience working with thousands of victim-survivors every year gives us a thorough understanding of the complex nature of DFV and the need for additional provision to protect victim-survivors of DFV. SWSLC welcomes the conversation and renewed interest in protecting victim-survivors of coercive control. We agree that coercive control is a deeply troubling issue and a serious risk factor for many women.

Our submission does not support criminalising coercive control at this time and we highlight a primary concern of SWSLC about the mandated consultation period. In December 2020, along with other organisations in our sector, we made an unsuccessful attempt to persuade the Committee to extend the timeframe for consultation. We were offered the possibility of applying for an extension of time closer to the due date, but with no guarantee of that extension.

We respectfully submit that a consultation period that included time over the Christmas and New Year shutdown deprived the Committee of considered responses by professionals in the DFV space. Many in our organisation have expressed deep reservations about approaching an issue as nuanced and endemic as coercive control this quickly, risking quality of the chosen response. Reforms took place in Scotland, after months of widespread stakeholder engagement coupled with police training, testing proposals with victim-survivor groups and an extensive implementation plan to ensure a holistic approach.

The impetus behind the NSW Government's interest in considering the criminalisation of coercive control and being proactive against serious forms of non-physical violence is understandable. Creating an offence with a ten-year maximum penalty would send a strong message that controlling behaviour in domestic relationships is unacceptable, and this would be an appealing message to communicate to the community. Yet punitive legislation without extensive work to improve the criminal justice system risks being reactionary and ineffective, especially if the primary motivation is prevention of offences and protection of women. Legislation must also guarantee improved outcomes for victim-survivors.

This issue is discussed at length by Snell (2020 p. 3), who states:

> A thorough consultation on how to most effectively respond to coercive controlling violence, including considering criminalising such behaviour and reviewing the criminal justice response to gendered violence, is an essential step in this journey.

In coming to this conclusion, Snell states that the criminalisation of coercive control requires an entire cultural shift, not just within police and courts, but with paramedics, hospital staff, care and protection workers, legal representatives, and within the community as a whole. Snell (2020) discusses the dangers of rushing this legislation (discussed in depth throughout this submission), and advises that a number of supports need to occur alongside any legislative reform. This submission is fully supportive of the implementation of these 'supports' and agrees with Snell that it may be dangerous for the NSW Government to enact legislation criminalising coercive control before the appropriate consultation and extensive training at almost every level is complete.

BOCSAR has been commissioned to undertake research into the utilisation of stalking and intimidation offences; these offences are relevant to many of the behaviours described as being part of coercive control. As at the date of this submission, that research is not yet published and may not be published until March 2021. This is of particular concern to our organisation, as SWSLC's services and advocacy are informed by the needs of our local communities. Our legal and DFV teams serve some of the state's most disadvantaged local government areas: Canterbury-Bankstown, Fairfield and Liverpool, and disadvantaged areas in Inner Sydney. South West Sydney is one of the most culturally diverse and fastest growing regions of Australia. Demographic and statistical information from BOCSAR may have been relevant to the preparation of submissions to assist the Committee, however, SWSLC has not had the opportunity to view the research.

Position

Further, this submission refers to the NSW Domestic Violence Death Review Team's (DVDRT) lack of recommendation to introduce an offence of coercive control. In their most recent 2017-2019 report, the DVDRT's ninth recommendation is,

> 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 changes 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.

While the DVDRT found coercive control to be present in 111 out of 112 (99%) of the cases reviewed, they do not propose the introduction of new legislation. Rather, the Team suggested a closer examination of the current legislation criminalising stalking and intimidation, as well as monitoring the progress of the new coercive control legislation overseas. Given the extremely high level of knowledge and expertise of the DVDRT, this submission supports any recommendations proposed by the DVDRT and submits that they should be considered with the heaviest of weight. The DVDRT (2020, p. 69) also echoes Snell's (2020) recommendation of public education at a Commonwealth level, "aimed at increasing public awareness of non-physical manifestations of violence and abuse".

Similarly, in 2015, neither the *Queensland Special Taskforce* nor the *Victorian Royal Commission into Family Violence* recommended a stand-alone offence of coercive control (Queensland Government 2015; Victorian Royal Commission into Family Violence 2016).

Discussion Questions

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

This submission supports the clinical definition of coercive control provided on page 7 of the NSW Government Discussion Paper, including the heavy reliance on the pioneering work of Evan Stark. This submission relies on Stark's (2007, p. 15) definition, that is, coercive control is a,

> course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation) and appropriating or denying them access to the resources required for personhood and citizenship (control).

However, this submission refers to Waltlake, Fitz-Gibbon and McCullock (2018), who discuss the difficulties of translating the clinical understanding of coercive control into a criminal offence. This submission does not argue against the usefulness of the concept of coercive control in clinical practice, but rather "how to translate an understanding of coercive and controlling behaviour and its consequences for women (and children) into something *actionable* in law" (Waltlake, Fitz-Gibbon and McCullock 2018, p. 118).

Evan Stark's work focuses exclusively on men's violence against women. Stark's work is entirely gendered, examining how men weaponise patriarchy as an avenue through which they're able to control their partner (Barlow et al. 2020). The gender-neutral language used in all current coercive control legislation departs from Stark's gendered theory, and forms the basis for SWSLC's concerns regarding unintended consequences (explored further below). As discussed by Tolmie (2018, p. 61), gender roles are incredibly relevant in the law, particularly when "assertive behaviour by women readily buys into stereotypes of women as demanding and aggressive". Further, coercive control is a gendered crime, with Stark (2007) pointing out that generally, women don't have the gendered power to be able to engage in coercive control, even if they were so inclined.

So far, all legislation criminalising coercive control has been gender-neutral, clearly taking the formal equality route (Barlow et al. 2020). This is as opposed to substantive equality, which attempts to address dominance within the legal system, and compensate for structural and institutional inequalities that lead to criminal offending and victimisation (for further discussion on formal vs substantive equality under the law, see Diduck and O'Donovan 2006; Graycar and Morgan 2004; MacKinnon 1983; Naffine 1990; Nicolson and Bibbings 2000; Smart 1989). However, Douglas (2015) discusses the possibility of gender being an aggravating circumstance in sentencing, specifically for the offence of common assault in the Northern Territory. In the NT, the maximum penalty for common assault is one year incarceration. However, if the perpetrator is a male and the victim is a female, this increases to five years. It is an interesting concept to consider, however the 'backlash politics' that never fail to accompany such gendered discussions of the law would undoubtably be strong, if not insurmountable (see Faludi 1991; MacKinnon 1983; Smart 1989; Summers 1975 for further on backlash politics).

As stated above, this submission does not support the introduction of a new offence of coercive control at this time. However, SWSLC submits that, if a new offence was introduced in the future, it should include a number of elements.

- Similar to Scotland, the offence should use the objective test of 'reasonable person', rather than requiring actual harm or impact, as detailed in the England and Wales legislation;
- Similar to Scotland, the offence should include the subjective test of intent or recklessness;
- Similar to Tasmania, the offence should speak to 'unreasonable' control. While on the surface it could be seen as problematic to suggest that any control of one person by another is reasonable, the concept complements the objective test, as well as serving as a protection against the concerns discussed in this submission;
- A sustained pattern should be established; and
- Elements of the offence must be proven beyond reasonable doubt.

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

While this submission supports the clinical definition of coercive control, as stated in the above response to Question 1, the issue of behaviours that may be present in ordinary relationships is one that causes concern. Put simply, the answer to Question 2 is 'It cannot.' To explore this in more detail, this submission will examine the concepts of 'normal', cultural considerations, and the concept of coercion more widely.

As examined by Waltlake, Fitz-Gibbon and McCullock (2018, p. 119), "the 'normal' is open to contestation". The authors examine how what is 'normal' is different for every relationship, and the way in which the line that is required to be drawn by the law, that one is coerced or is not, is problematic. They provide the example that it is 'normal' for someone in a relationship to want to know what the other person is doing, but it becomes much more complex when this is constructed more as surveillance.

For example, many couples have each other's phones tracked on 'Find My Friend' and other similar location apps. This is useful in a number of non-coercive ways, such as checking if your partner has left work or not and whether they're stuck in traffic, so you know when they're going to be home for dinner. However, this behaviour may be framed as more coercive when it becomes more about surveillance or stalking. This may be further complicated in an example where one partner is a chronic gambler who has previously lost significant amounts of the couple's money. The other partner may check their location at times they're likely to frequent gambling venues, to be able to take action if they find their partner is present at one of these venues. While this is certainly surveillance, it is not coercive or done in an attempt to create fear. It is done in an effort to ensure the couple are financially secure.

Further, coercive control operates in the context and dynamics of a particular relationship. As such, past experiences of a victim-survivor in that particular relationship may mean there are specific behavioural triggers that cause them fear. Importantly, these are not clear lines. They are messy, often blurred lines, that frequently rely on what is 'normal' in any one relationship. Not only does this change from relationship to relationship, it can also be impacted by a number of factors, such as ethnicity, culture, gender, and socio-economic status. As such, we are left with an incredibly difficult concept that is very useful in a clinical context, but fraught with problems when attempting to translate into legislation.

Question 2 is requesting stakeholders to translate a complex clinical concept and something which we intuitively feel as human beings, into a legal format. However, the concept of coercion cannot necessarily be clearly defined. Most people have an understanding of what coercion feels like; there are elements of coercion in our everyday lives. For example, there is always an implicit threat of being fired. This doesn't mean you're being coerced into doing something every time your boss asks you to do something, but there are a number of things we wouldn't do on a daily basis if we weren't fearful of being fired. Another example is the implicit threat of divorce if you cheat on your spouse. Does this mean that we are being coerced into being faithful? The vast majority of people would say not. However, the issue at hand is how to legislate these nuances. As such, translating this into a legal definition, without adequate consultation, training, and resourcing, will result in legislation that is difficult to understand, charge with, and prosecute, and which will be misused.

It is this messiness and lack of clear boundaries that make criminalising coercive control dangerous, if not applied correctly. As addressed in responses below, there are many cultural and procedural changes that are required, before the criminalisation of coercive control should be considered. It is for these reasons that, in the interim, this submission suggests the amendment of legislation surrounding intimidation offences instead of the criminalisation of coercive control.

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour in civil and criminal proceedings?

This submission suggests that there are three core improvements that could be made to the current framework that would better address patters of coercive and controlling behaviour in civil and criminal proceedings. These suggestions are also all recommendations put forward by the NSW Domestic Violence Death Review Team (DVDRT) in their most recent 2017-2019 report. This submission suggests that a definition of DFV needs to be added into the *Crimes Act (NSW) 1900;* that NSW continue to closely monitor the quantitative and qualitative outcomes of the new offences in Scotland, England and Wales, and Ireland for unintended consequences; and that the NSW Government ultimately revise the current offence of S13 – Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm. An alternative is also offered to the latter, through adding coercive control as an aggravating factor in sentencing.

(a) Definition of DFV

The NSW DVDRT (2020, p. 71) states,

> A further legislative issue the Team considered in discussing the public policy profile of non-physical violence for this report was the lack of definition of domestic and family violence in the Crimes (Domestic and Personal Violence) Act 2007 (NSW) (the Crimes (DPV) Act). It was noted that in other jurisdictions, such as Victoria and Tasmania, definitions of domestic and family violence are provided in legislation, and those definitions include non-physical manifestations of violence.

The Team go on to state that, while there is a broad statement in section 9(3) of the *Crimes (DPV) Act* about Domestic and Family Violence extending beyond physical abuse, they also note that "few people are likely to read these sections". A review was conducted on the matter during the 2015 statutory review of the *Crimes (DFV) Act* and a decision was made to not amend any definition. This was due to concerns about uncertainty around the degrees of behaviour that would warrant intervention, and a concern that the difficulty in defining such behaviours would "create complexity for police and courts when making orders" (DVDRT 2020, p. 71).

However, this submission recommends that a specific definition of DFV, encompassing non-physical abusive behaviours, comes before the government attempts to criminalise such behaviours. We strongly recommend that stakeholder concerns around thresholds created by the definition are addressed before a separate offence is created to criminalise these behaviours.

(b) Monitoring overseas offences

Following on from the NSW DVDRT's recommendation regarding a specific definition, this submission notes the second part of Recommendation Nine from the NSW DVDRT's most recent 2017-2019 report:

> 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.

The second point of this recommendation advises that the progress and implementation of coercive control and domestic abuse in other jurisdictions should be monitored at this stage. Given the Scottish legislation has been in effect for less than two years, the full extent of the effects of these laws are likely yet to be realised (Snell 2020). As such, this submission supports and echoes the NSW DVDRT's recommendation to monitor overseas and interstate legislation, learning where possible from the gaps and pitfalls that come to light. The time period required for this monitoring is difficult to predict, due to a number of factors. It is important to note that the England and Wales offence had a very slow uptake in the first 1-2 years, resulting in a lack of statistical data being readily available. In order to monitor Scotland's new offences, it would be important to not only have time to collate relevant government statistics, but also allow for peer reviewed qualitative research to be performed, published, and analysed. As such, it would be the recommendation of this submission that a minimum 2–3-year monitoring period would be required.

(c) Suggested amendments to S7—meaning of "Intimidation"

Rather than criminalising coercive control, we recommend immediately amending S7 of the *Crimes (DFV) Act,* being the meaning of "Intimidation", relevant to the establishment of Intimidation under S13 Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm. Currently, Intimidation is defined as,

> 7 MEANING OF "INTIMIDATION"
>
> (1) For the purposes of this Act, **"intimidation"** of a person means—
>
> (a) conduct (including cyberbullying) amounting to harassment or molestation of the person, or
> Note: An example of cyberbullying may be the bullying of a person by publication or transmission of offensive material over social media or via email.
>
> (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or.
>
> (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.
>
> (2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

Subsection (2) states that a court can have regard to a pattern of *violence*. As coercive control behaviours are more nuanced and do not necessarily involve violence, the utility of this judicial discretion when convicting under S13 is limited within the context of an abusive relationship that includes coercive control. We recommend that S7(2) be amended to the following,

> (2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to:
>
> (i) any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour;
>
> (ii) any pattern of abusive or controlling conduct in that person's behaviour
>
> (iii) any pattern of behaviour that involves an unreasonable and non-consensual denial of financial, social or personal autonomy

While the amendment to the S7 definition of Intimidation will not change the current focus of the S13 offence of Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm, it would permit courts to take into account non-violent coercive and controlling conduct to determine if behaviour constitutes Intimidation.

This submission makes further non-legislative recommendations. It is important to note, we submit that it would be irresponsible for the NSW Government to make any further amendments to legislation past those suggested above, before comprehensively canvassing and implementing the non-legislative recommendations of this submission. However, if the NSW Government adopted those non-legislative recommendations, then SWSLC would recommend further legislative amendments to S13 of the *Crimes (DFV) Act*.

(d) Suggested amendments to S13—Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm

If the NSW Government adopted the non-legislative recommendations in the rest of this submission, then SWSLC would recommend the expansion of the offence of Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm under S13 of the Crimes (DFV) Act. S13 states as follows:

> 13 STALKING OR INTIMIDATION WITH INTENT TO CAUSE FEAR OF PHYSICAL OR MENTAL HARM
>
> (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.
>
> : Maximum penalty--Imprisonment for 5 years or 50 penalty units, or both.
>
> (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.
>
> (3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.
>
> (4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.
>
> (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

This offence is predicated on the essential elements of *intent to cause fear of physical or mental harm*. Many of the behaviours that are understood, in a clinical context, to constitute coercive control may not necessarily result in fear of physical or mental harm, nor be considered to be carried out with an intention to cause such fear. As such, including coercive control behaviours within S7 only, risks maintaining focus on intent to cause physical or mental harm, rather than intent to control and subordinate. To overcome this, we recommend amending the premise of S13, with the appropriate supports and training in place. Below are the suggested amendments for S13, primarily focused around an intent to subordinate.

> 13 STALKING OR INTIMIDATION WITH INTENT TO CAUSE FEAR OF PHYSICAL OR MENTAL HARM OR WITH INTENT TO SUBORDINATE
>
> (1) A person who stalks or intimidates another person with the intention of:
>
> (a) causing the other person to fear physical or mental harm; or
>
> (b) subordinating the other person to the person's will
> is guilty of an offence
>
> : Maximum penalty--Imprisonment for 5 years or 50 penalty units, or both.
>
> (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.
>
> (3) For the purposes of this section:
>
> (a) a person intends to cause fear of physical or mental harm if:
>
> i. he or she knows that the conduct is likely to cause fear in the other person; or
>
> ii. (a) he or she is reckless as to whether the conduct is likely to cause fear in the other person; and
>
> (b) a reasonable person would consider the conduct to be likely to cause fear in the other person.

(b) a person intends to subordinate the other person to the person's will if:

i. he or she knows that the likely consequence of the conduct is to subordinate the other person to the person's will; or

ii. (a) he or she is reckless as to whether the likely consequence of the conduct is to subordinate the other person to the person's will; and

(b) a reasonable person would consider the likely consequence of the conduct is to subordinate the other person to the person's will

(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.

(5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

These amendments would be beneficial in legally acknowledging and addressing coercive control, while avoiding many of the concerns raised regarding a separate offence. Further, the offence of Stalking or Intimidation with Intent to Cause Fear of Physical or Mental Harm is well known by police, prosecutors, and magistrates. This would allow for coercive control to be addressed in the criminal justice system within an already established offence that is supported by case law, and within the context of our recommended further consultation, training, and resource management.

(e) Aggravating factor

When a criminal charge proceeds to sentence in court, the court must take into account a number of aggravating factors when deciding the appropriate sentence. These are contained in Section 21A(2) of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*. While they are lengthy and exhaustive, currently none of these provisions reference any kind of coercive or controlling behaviour as an aggravating factor of the offence. As one alternative to amending S7 or S13, as suggested on pp. 33-34 of the Discussion Paper, inserting an amendment on coercive and controlling behaviour to Section 21A(2) would require a court to take it into account, across all offences proceeding to sentence rather than a select few. This would then allow the court to impose a more serious penalty against the offender. In order to examine this option, this submission relies upon the example of Breaking etc into any House etc and Committing Serious Indictable Offence under S112 of the *Crimes Act 1900 (NSW)*. Currently, the legislation states,

112 Breaking etc into any house etc and committing serious indictable offence

(1) A person who—

(a) breaks and enters any dwelling-house or other building and commits any serious indictable offence therein, or

(b being in any dwelling-house or other building commits any serious indictable offence therein and breaks out of the dwelling-house or other building,

is guilty of an offence and liable to imprisonment for 14 years.

(2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 20 years.

(3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 25 years.

In s112, we see circumstances of aggravation and special aggravation which give rise to much more serious penalties. As such, this submission suggests that Section 21A(2) could be amended to allow for circumstances of aggravation or special aggravation, in recognition of the ongoing abuse of coercion by the defendant on the victim. It may look something like this:

> 21A Aggravating, mitigating and other factors in sentencing
>
> (2) Aggravating factors: The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows--
>
> (o) the offence involved an unreasonable and non-consensual denial by the offender of the victim's financial, social or personal autonomy.

This recommendation is based on the core concern of this submission, being that female victims of DFV will be wrongly identified as perpetrating coercive control by their abusive partners. Conversely, in their review of the coercive control legislation in England and Wales, Barlow et. al (2020, p. 169) identified that "victims rarely contacted the police to specifically report sustained domestic abuse (or 'coercive control') and were more likely to report a different offence, more commonly assault or criminal damage". As such, there may be fewer unintended consequences if other offences were able to be aggravated by coercive control, such as assault offences, larceny offences, sexual touching, and sexual assault offences.

If we take the latter as an example, we could consider a defendant who coerces their partner into having sex with them through a pattern of demeaning and seemingly minor threats to destroy the victim's character in their local community. In such a scenario, it would be difficult to demonstrate, to a criminal standard, that consent was not given if the victim gives into the coercion and "voluntarily" engages with the defendant. If coercion can be considered as an aggravating feature of the index sexual assault offence, a jury (or Magistrate in the Local Court) would be able to consider the evidence of coercion in determining whether consent was given, making it much more likely for that more serious offence (with aggravation) to be provable and appropriate.

This is supported by Barlow et al. (2020), who found that many behaviours present in coercive control cases could have been responded to with existing legislation, such as false imprisonment, criminal damage, and sexual and physical assault. They did find many abusive behaviours present in these cases that may not have been criminalised prior to the coercive control offence, such as use of digital surveillance, verbal threats and abuse, image-based abuse, isolation, deprivation, and economic abuse. However, some of these offences are criminalised in the NSW context already, in particular imaged based abuse. Further, we argue that verbal threats and abuse are also criminalised, under the current (and suggested amended) intimidation legislation *if properly policed and the law properly applied.* As such, after coercion is identified and established as an ongoing pattern of abuse, it can be denounced and criminalised through a process of aggravating the index offence.

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

(a) Advantages

This submission does not state that there would not be advantages in criminalising coercive control. The criminalisation of coercive control would be one way to allow for the complex and insidious nature of domestic violence to be further recognised by law and prosecuted. As Tolmie (2018) states, the criminalisation of coercive control would be important for victims who are subject to extreme psychological control, but whose partner does not employ much, or any, physical violence. The offence would also assist police in having the power to act on DFV matters that may become lethal without any prior physical abuse (Tolmie 2018).

New legislation would bring the law closer to aligning with academic research and frontline experiences of the reality of domestic violence. This includes the prosecution's ability to present the broader context of the relationship to the court, as opposed to being restricted to one particular fragment, being one particular incident (Tolmie 2018). Further, the context of the abusive relationship is likely to add context to other offences, such as assaults, restricting alternative explanations for assaults, such as intoxication or a lone example of a loss of self-control (Tolmie 2018).

Finally, the criminalisation of coercive control may send a message to the wider community that this behaviour is not only unacceptable, but criminal, as well as providing victim-survivors with a better understanding of their victimisation. However, while acknowledging this, we note that one of the key reasons suggested by Barwick, McGorrey and McMahon (2020) for the slow uptake in the two Tasmanian offences for non-physical domestic violence is a lack of community awareness. As Barlow et al. (2020) state, domestic violence, including coercive control, does not operate in a vacuum. The current political climate, broader community education and knowledge, and policing policy, practice and training are perhaps more important factors than legislation. These are issues that must be addressed before the introduction of new legislation, and are the issues that this submission will now turn to.

(b) Disadvantages

This submission argues that the disadvantages of creating an offence of coercive control far outweigh the advantages. As pointed out in our submission on Question 1, the translation of Stark's theory of coercive control from clinical to legal is problematic. Stark's work is entirely gendered, examining men's violence against women. However, the legislation in other countries, and proposed in Australia is gender neutral (Barlow et al. 2020), and is being introduced into a patriarchal legal system.

1) Gendered nature of the criminal justice system

The core concerns of this submission are the unintended consequences of such legislation, primarily the ways in which it could be used against female victim-survivors. In order to demonstrate this, consider a hypothetical scenario using the Scottish legislation. Let us say that a woman's male partner is tasked with two unpaid domestic labour tasks in his day: picking the children up from school on time, and unpacking the dishwasher. The man frequently both picks the children up from school late, and forgets to unpack the dishwasher. Frustrated, the woman uses the only bargaining chip she has, and advises the man that, until he can do these two simple domestic tasks properly, she will be withholding sex. This meets two of the behaviours under the Scottish legislation: it controls the victim's day to day activities, and is arguably humiliating, degrading, and punishing the victim. As a result, this could see women charged with coercive control. This sentiment is echoed by Waltlake, Fitz-Gibbon and McCullock (2018), who discuss the dangers of women being charged with 'nagging'.

This scenario, as well as the concept of 'nagging', also raises the concept of law as gendered. Waltlake, Fitz-Gibbon and McCullock (2018) explore how a 1960's publication, discussing how coercion is more broad than physical violence, uses the *exact example* of a 'nagging wife' to demonstrate coercion. While this reference is 60 years old, it is the historical foundation for the legal system that is still in place. As such, it is important to acknowledge feminist jurisprudence arguments pertaining to the ways in which the law is innately male, and the concept that the reasonable person really still means the reasonable man (Naffine 1987, 1990; Papathanasiou and Easteal 1999; Tyson 2012).

This submission is not addressing the need for a complete overhaul of the criminal justice system and its patriarchal foundations. However, it is important to understand how concerns could be raised regarding the 'reasonable person' element of a gender-neutral offence, that criminalises overtly gendered behaviour, in a patriarchal criminal justice system. It is in this way that coercive control legislation is structurally dangerous for women.

2) Misidentification of the primary perpetrator

The misidentification of the primary perpetrator is an issue that services within SWSLC deal with on a daily basis, has been identified across the sector as a significant problem (Barlow et al. 2020; Mansour 2014; Nancarrow et al. 2020), and is the core concern of this submission. In a highly anticipated research report by ANROWS, Nancarrow et al. (2020) address the problem extensively, examining the many structural and situational barriers to the accurate identification of the primary perpetrator. This submission will focus on three main facets of this research: current police policy requiring identification of the primary perpetrator per incident only; lack of training, time, and resources for police to accurately identify the primary perpetrator and, in turn, coercive control; and the feedback loop between Officers in Charge (OICs), prosecutors, and magistrates.

Current policing policy, as with the wider criminal justice system, is firmly incident based. The only matters where courses of conduct are currently taken into account are in AVO applications and stalk/intimidate charges. However, even these matters are, realistically, based on a series of individual incidents, as opposed to a course of conduct. As a result, while the current NSWPF Code of Practice states that police must attempt to establish the primary perpetrator, the Domestic and Family Violence policy clarify that this is *per incident,*

> When police attend a domestic and family violence incident they will investigate the incident with a view to identifying the alleged victim in the incident together with the person of interest. To make an informed decision the process will involve looking at all the circumstances of the incident, the history of domestic violence between the parties and forming an opinion on the basis of the information at hand.
>
> (NSW Police Force 2018)

It is important to note here that the policy states that police must look at the history of domestic violence, but that the only information that can be considered is that which is 'at hand'. When responding to a domestic violence incident, the 'information at hand' may be incredibly scant, and there is little to work off for police other than the scene before them. Other times, even when the tools to check violent history are available, time and resourcing issues override the ability for responding police to investigate holistically enough to identify coercive control, as explained by a participant in Nancarrow et al.'s (2020, p. 72) study, who stated "we don't have the 3 hours to sit down with her and get a history". As such, this submission will now turn to lack of training, time, and resources for police to accurately identify the primary perpetrator.

As identified by Nancarrow et al. (2020, p.12),

> While all jurisdictions have risk assessment tools, no jurisdiction currently has tools for police to assess patterns of coercive control that would detect which party is the perpetrator and which I acting in self-defence or violent resistance.

This statement is aligned with calls for standardised risk assessment tools, across and between sectors (Nancarrow et al. 2020; Snell 2020). While the DVSAT is an excellent start to this process, it is currently undergoing review, and cannot lift the entire risk assessment load alone. Further to the lack of a sufficient tool for police, the primary objective of police when arriving at a scene is to establish safety. When there is a victim-survivor who is actively violently resisting, this may mean, in that moment, containing *her.* In order to provide a more trauma-informed response in policing, this submission echoes the calls of Nancarrow et al. and the NSW DVDRC for co-location or co-response of domestic violence services, as explored in question 15.

Issues surrounding police training, time, and resources heavily formed the outcomes of Nancarrow et al.'s (2020) research. The authors explain that NSW Police General Duties (GDs) are heavily constrained by lack of resourcing, stress, high volumes of incidents they must attend, extensive and onerous paperwork, inexperienced officers, and unhelpful policies, procedures, and systems of review. It is no surprise, then, that the expectation that they should also now identify the primary perpetrator in the relationship in its entirety, as well as identify the complexities of coercive control, all while receiving no extra resources, has not been met with great enthusiasm. In fact, a lack of any extra resourcing and training has been pointed out by Barlow et al. (2020) as a significant contributing factor to the slow uptake of coercive control offences in England and Wales, with similar results found by Barwick, McGorrery and McMahon (2020) in the Tasmanian uptake of new offences.

In their analysis of police court files, Barlow et al. (2020) found that 30% of cases of coercive control offences alone (without an accompanying additional charge such as an assault charge) were recorded as no further action due to evidentiary difficulties. However, due to a lack of training, the authors identified a range of evidential sources that officers failed to investigate further. As such, the authors recommended that officers would benefit from additional training in investigations of coercive control cases.

Further, in 87% of intimate partner violence cases, coercive control was evident, but never pursued, often in cases where a victim-survivor primarily approached police in order to report an assault. While Barlow et al. (2020, p. 169) concede that the pursual of the assault charge, being the primary report, is understandable, they also identified that police were "missing key opportunities for identifying patterned abuse and indicate that he coercive control offence is not being used to its full potential". We submit that the incredibly short consultation period afforded by the NSW Government will inevitably lead to the repetition of these problems in the NSW context, as the appropriate police training and resourcing required, as demonstrated in evidence from other jurisdictions, cannot possibly be carried out in this time.

When speaking with frontline police, Nancarrow et. al (2020) found that the concern of police needing to 'cover [their] ass' was expressed in every focus group, and it was identified as a fundamental barrier to police identifying the primary victim. Nancarrow et. al (2020) documented the concern that police expressed about being in Coroner's Court. This concern has been further compounded by the recent Sydney Morning Herald report recognising the widespread 'weaponising' of the internal complaints process by senior police (Gladstone 2020a, 2020b), and LECC's Operation Tabarca investigation regarding the extreme bullying and harassment that can be ongoing and unchecked by the NSWPF. This problematic culture could result in GDs Police charging victim-survivors for coercive control in order to avoid a complaint. This could be a particular danger in areas of high socio-economic status, where some perpetrators have an excellent understanding of the law, and will attempt to manipulate it to further the abuse of their partner.

The concerns of frontline police around liability also manifests in a judicial feedback loop, or pinball effect, where Nancarrow et al. (2020) found a lack of clarity and responsibility at every level. Responding frontline police, in the first instance, may take out an AVO and criminally charge one or both parties if they are unsure of the primary perpetrator, preferring to "leave the determination to the courts" (Nancarrow et al. 2020, p 80). The matter then moves on to the prosecutors. At this level, some prosecutors in Nancarrow et al.'s (2020) study found themselves to be the point in the process where inappropriate applications were dismissed. However, it was later shown that, if prosecutors were unsure, they would often defer back to the responding frontline officer's decision on the day, and participants in focus groups admitted that applications were rarely withdrawn at this level. The matter is then seen as best determined by a magistrate, however the magistrates in Nancarrow et al.'s (2020) study advised that they can only operate from the information tendered by the prosecution, which is comprised of the responding frontline officer's material. As such, Nancarrow et al. (2020) describes a 'pinball' effect, where responsibility and determination of the person in most need of protection gets pushed on to the next person in line in the system, and misidentification may never be rectified.

If a woman were to be convicted of coercive control, the consequences could be much more dire for her than a man, due to the female dominated industries in which having a criminal record could be career ending, such as nursing, teaching, social work etc (Huppatz 2012; Mansour 2014; Ross-Smith and Huppatz 2010). If the woman is a victim-survivor and her partner has been able to convince police, prosecutors and the courts that he is the primary victim, and she loses her job, she is now *further* dependant on her abuser. As such, the criminalisation of coercive control could operate as a further opportunity for men to weaponise systems against their victim. A conviction for female victim-survivors also causes even more wide-ranging problems, such as custody and family law issues, immigration and visa issues, and accommodation restrictions, including refusal from some emergency accommodation services (Braaf and Sneedon 2007; Burgess-Proctor 2012; Comach, Chopyk and Wood 2000; Larsen and Guggisberg 2009; Miller 2001). This is indicative of the wider systems abuse that is well documented in the domestic violence sector (Nancarrow 2020; Waltlake, Fitz-Gibbon and McCullock 2018).

Further, coercive control legislation is even more dangerous for Indigenous and multicultural women, women of a lower socio-economic status, and women with disabilities (Waltlake, Fitz-Gibbon and McCullock 2018). Given the limited time provided for submissions, SWSLC has chosen to focus on Australia's Aboriginal population, as evidence demonstrates they are likely to be the most affected by the suggested legislative changes.

3) Impact on First Nations people and communities

We note that the Discussion Paper refers to coercive control offences in other jurisdictions; we are cautious about putting too much weight on these examples. Developments in Scotland, England and Wales, and Ireland are all relatively recent, having introduced coercive control measures in 2015 (the UK) and Ireland in 2019, and as such have produced limited data.

A significant distinction SWSLC wishes to highlight is the position of New South Wales as a settler colony. Comparisons with international systems end when considering Australia's population comprises a First Nations people, who make up some of the most over-policed and over-incarcerated communities globally. Baldry and Cunneen's (2014) work argues that in order to understand the contemporary relationship between Aboriginal women and the carceral system and its 'severity and excess' against these women, it is necessary to acknowledge the dynamics of colonisation.

As to Tasmania, despite having introduced coercive control legislation in 2004, our organisation found a dearth of research in relation to how these offences have affected marginalised groups. This is alarming when considering evidence that the consequences of criminalisation and imprisonment, when used as a 'tool of social policy', are borne by marginalised groups (Baldry and Cunneen 2014 p. 276). The absence of research and inquiry about the effect of the Tasmanian offence on Indigenous people is notable, and demonstrates a lack of engagement with these community groups or assessment of how the new laws may be adversely affecting our most vulnerable populations.

It is well documented that Aboriginal people are drastically overrepresented in the criminal justice system at every level. A concern of this submission is the unequal manner in which any new or amended legislation would adversely affect Aboriginal communities. Aboriginal women are 35-80 times more likely to experience domestic violence than white women depending on their area of residence, and are 32 times more likely to be hospitalised for domestic violence assaults than white women (ABS 2017). Most of this violence will go unreported.

Aboriginal people form 27% of the adult prison population nationally, while comprising 2% of the general population, and this rate increased by 41% between 2006 and 2016 (ALRC 2018). It is clear that in particular, Indigenous people and women are experiencing 'rapidly expanding imprisonment rates' (Baldry and Cunneen 2014 p. 276). Data shows that this is not attributable to an increase in crime, rather an increase of imprisonment as the response method, in the form of longer remand periods, more frequent carceral punishment and longer prison sentences (Fitzgerald 2009). We submit that criminalising coercive control risks unacceptably increasing these already too-high incarceration rates.

It is vital that the criminal justice system interjects, for the protection of women and children. We submit that new or amended legislation, if used in the correct manner and in conjunction with education, could be a turning point for Aboriginal communities. As a part of the wider recommendation of this submission on community education, education on coercive control also needs to be extended to Aboriginal communities. However, more importantly, this submission suggests that sentencing reforms could include the diversion of perpetrators away from the criminal justice system and towards elder-run programs on country.

Programs such as MERIT and ReINVEST attempt to divert perpetrators away from the full punishment of the system by taking into account the detrimental effects of alcohol, drugs, and poor impulse control. The inter-generational and early childhood trauma experienced by many in the Aboriginal community, often manifesting in alcohol dependency and poor emotional regulation in later life, requires specific intervention. The development of a program, similar to MERIT and REINVEST, should be developed 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. Again, in a similar vein to MERIT and ReINVEST, this would not result in an absence of other legal action. However, if completed successfully, it would result in a lesser sentence, whilst also working on the broader social issues that lead to violence.

4) Case studies

To demonstrate the ways in which SWSLC suggests that new legislation, without proper consultation and resourcing, may adversely affect female victim-survivors at an unacceptably high rate, this submission will now turn to three case studies where identifying information has been changed.

Amrita

Amrita moved to Australia with her husband so that she could study. Due to a domestic violence incident, she was forced to move out of their home. Amrita was referred to us from South West Sydney Domestic Violence Court Advocacy Service.

Police attended the couple's home following a 000 call regarding a domestic incident. Amrita's husband was arrested and charged with assaulting her. Upon his arrest, Amrita's husband claimed that she had previously assaulted him. The police subsequently arrested and charged Amrita with Assault Occasioning Actual Bodily Harm. If proven guilty, there was a possibility that Amrita could go to jail. A criminal conviction would also affect Amrita's ability to work and remain in Australia to complete her studies.

Amrita maintained she never assaulted her husband. We entered a plea of not guilty to the charges and the matter was set down for a hearing. Prior to the hearing, we reviewed the evidence. We found inaccuracies that were confusing and difficult to comprehend in the husband's statement. Before the hearing, we approached the prosecution and asked if they would consider dropping the charges, due to the husband's unreliable statement. The prosecution refused.

During the hearing, the police presented their case, including evidence from the officer in charge and Amrita's husband. We were able to cross-examine the husband regarding his evidence of the incident. We submitted to the court that the evidence against Amrita was inconsistent and that she should be found not guilty. The court agreed and Amrita was found not guilty of the charge.

Amrita was very pleased with the outcome, and indicated that she was happy that she could now focus on her studies and picking up the pieces of her life, following her separation.

Binh

Binh is a single mother. Binh has been a victim of domestic violence for many years at the hands of her estranged husband. As a result of this abuse, Binh suffers from depression and insomnia for which she takes medication. Since the COVID-19 pandemic, Binh has been unable to work and she has been receiving JobKeeper payments.

Binh was referred to us from the Legal Aid Domestic Violence Unit in circumstances where Legal Aid was unable to assist her. Binh was charged with common assault and the police filed an ADVO against her following an argument with her husband. The matter exacerbated her mental health issues, which affected her ability to care and provide for her children.

We assisted Binh by preparing all of the necessary court documentation, including preparing character references, obtaining a support letter from South West Sydney Women's Domestic Violence Court Advocacy Service, filing a subpoena to obtain access to NSW police reports and drafting a written submission. We also represented and advocated for Binh in court.

The Magistrate agreed that Binh's actions were at the lowest end of objective seriousness and that she had been a victim of ongoing domestic violence for many years. The Magistrate did not record a conviction and the final application for an ADVO was dismissed. Binh was only ordered to good behaviour for 12 months.

Without the effective representation of SWSLC, there was a real possibility that Binh would have been convicted and had a final ADVO made against her, which would have exposed her to greater harassment and exertion of control by her abusive husband. The outcome was a huge relief for Binh and she could now focus all of her energy on caring for her children.

Claire

The following statement is from Claire, who was assisted by one of our senior solicitors to make a Victim Services application. While SWSLC did not represent this client in her misidentification as a primary perpetrator, the effects of such treatment were nonetheless clear.

> *I was in a relationship with the perpetrator for 2 years. He was extremely violent towards me throughout our relationship and had choked me, hit me and made threats to kill me. The perpetrator trapped me in a room. The police attended and misidentified me as the attacker and charged me with offences which are currently being resolved. An ADVO was issued with the perpetrator as the protected person. For approximately 9 months, the perpetrator used the ADVO to try to manipulate me and threatened to lock me up if I didn't comply. I then took out an ADVO against the perpetrator. He has breached it approximately 4 or 5 times by stalking me and watching me. I now suffer from severe anxiety, depression and PTSD. I also have physical injuries directly as a result of the violence, a cauliflower ear from being hit by the perpetrator.*

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?

Non-legislative activities constitute the bulk of SWSLC's recommendations. As pointed out by Barlow et al. (2020), as well as many others in the sector, the focus surrounding coercive control needs to have a holistic approach.

In additional to the recommendations made above in this submission, SWSLC supports many of the recommendations of Nancarrow et al. (2020) and the NSW DVDRT. First, police resourcing, training, policies, and procedures around domestic violence and the identification of the primary perpetrator need to be revised, and more time and resources afforded towards the frontline police who respond to the domestic violence calls that victims make. Given Nancarrow et al.'s (2020) findings regarding how much the process 'pinballs' back to the responding officer's account, it is clearly more important than ever to be providing these first responding officers with the time and resources required to respond to domestic violence effectively. Further, when faced with complex and ambiguous situations, frontline police should be supported with "clear policies and efficient procedures that emphasise the importance of identifying the person most in need of legal protection in the context of a pattern of coercive control" (Nancarrow et al. 2020). This submission acknowledges that this recommendation is no small feat; it will take significant time and resources. However, the interrogation of police resourcing, training, policies, and procedures around domestic violence and the identification of the primary perpetrator are desperately required if any criminalisation of coercive control was going to be effective.

Second, this submission supports Nancarrow et al.'s (2020) recommendation of clarification around AVO processes, dismissals, and concerns around the loop of responsibility, in particular when magistrates can and should be dismissing inappropriate applications. The responsibility for identifying the primary perpetrator cannot, and should not, lie solely with police, many of whom are not trained in specialist areas such as domestic violence.

Third, this submission echoes the recommendations of Nancarrow et al. (2020), the Australian and New South Wales Law Reform Commissions, and the NSW DVDRT in calling for the consideration of co-location and/or co-response of specialist domestic violence services. As per the NSW DVDRT (2020 p. 136) recommendation (emphasis added):

> 27.1 That the NSW Police Force consider opportunities to provide enhanced support to domestic violence victims who approach police stations, and other actions to improve responses to initial approaches for assistance, **including to consider the co-location of specialist domestic violence services at police stations.** Any co-location initiatives should be developed in partnership with local domestic violence specialist services, including Aboriginal services.

The NSW DVDRT outlines numerous ways in which this will be efficient and helpful for victims of domestic violence, including everyday training and networking with police; the ability to triage matters, responding to matters that require a social services response more than a criminal justice response; collaboration between sectors; assisting with police workload; and building upon the networks created by Safer Pathways.

This recommendation is echoed by Nancarrow et al. (2020, p. 100), who suggest that co-responder models be examined, "as police participants in particular expressed support for specialist and co-responder models as strategies to improve policing responses, especially where GDOs are resource-constrained". This conclusion is reached due to frontline police stating they "don't have 3 hours to sit down with her and get a history" and that they're "not a relationship counsellor, [they] should be expected to be" (p. 79). As the authors state, the latter is certainly true. This was recognised by the Australian and New South Wales Law Reform Commissions (ALRC & NSWLRC 2010), who recommended that highly skilled counsellors co-respond to domestic violence incidents. Nancarrow (2019) builds on this recommendation, stating that it is not realistic to expect police, who are not specialist-trained in domestic violence and are not equipped with the expertise of the domestic violence sector, to be able to identify and assess the tactics of coercive control.

Further, we recommend that the Women's Domestic Violence Services (WDVCASs) should be provided funding to pilot this initiative. This suggestion speaks to the NSW DVDRT's report (2020, p. 133), which states,

> workers from domestic violence support services already have strong relationships with DVLOs but the co-location of support services at police stations may assist to build and strengthen relationships with general duties police, increase communication and gain a greater understanding of each other's work.

Given the close professional relationships of WDVCAS workers with local DVLOs, intimate understanding of what the criminal justice system can and cannot do compared to social services, and their direct work with the Safer Pathways model, this would be a logical way to fill this well-identified gap. This also feeds into a wider recommendation of this submission, being allocating resources to women's services and other social services at the frontline of domestic violence. We submit that the funds that would be required to establish a new criminal offence and then pay for the consequences of incarceration and other monitoring, would be far better spent on assisting victim-survivors when and where they need it.

Finally, SWSLC recommends extensive education at all levels. Community education is paramount, and would begin to address one of the arguments for criminalising coercive control, that is, to send a message to the wider community that this is not acceptable behaviour. This education needs to be wide-ranging and adapted for different populations, such as ATSI, CALD, LGBTQI, disability, and elderly communities. Further, education is required at every level of the criminal justice system, from frontline police, to supervising police, to prosecutors, to magistrates. In regards to the latter, there is a significant disparity evident to legal practitioners between the decisions of magistrates. Coercive control is an issue of identification that must be addressed at the lowest and highest levels of law, and consistency is desperately required. Finally, the current men's behaviour programs offered as diversionary programs in the criminal justice system, such as ReINVEST and ENGAGE, are woefully inadequate. This education needs to be much further reaching and comprehensive if it is to have any effect, and if we wish to see change in the men perpetrating this violence.

If you would like further information or input on matters raised in this submission, please contact the CEO of South West Sydney Legal Centre, Yvette Vignando at yvette@swslc.org.au.

References

Australian Bureau of Statistics (ABS) 2017, *Personal Safety, Australia, 2016,* cat no. 4906.0, Australian Bureau of Statistics.

Australia Law Reform Commission (ALRC) 2018, *Over-representation,* viewed 21st January 2021, https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/3-incidence/over-representation/#_ftnref25.

Australia Law Reform Commission & New South Wales Law Reform Commission (ALRC&NSWLRC) 2010, *Family violence: A national legal response,* Sydney.

Baldry, E, Cunneen, C 2014, 'Imprisoned Indigenous women and the shadow of colonial patriarchy', *Australian & New Zealand Journal of Criminology,* vol. 47, no. 2, pp.276-298.

Barlow C, Johnson K, Walklate S, Humphreys L 2020, 'Putting coercive control into practice: Problems and possibilities', *The British Journal of Criminology,* vol 60, no. 1, pp.160-179.

Barwick K, McGorrery P, and McMahon M 2020, 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' In McMahon M, McGorrery P (eds) Criminalising Coercive Control, pp. 135-158, Springer, Singapore.

Braaf, R & Sneddon, C 2007, Arresting practices: Exploring issues of dual arrest for domestic violence, Australian Domestic and Family Violence Clearinghouse, UNSW.

Burgess-Proctor, A 2012, 'Backfire: Lessons learned when the criminal justice system fails help-seeking battered women', *Journal of Crime and Justice,* vol 35, no. 1, pp.68-92.

Comack, E, Chopyk, V & Wood, L 2000, 'Mean Streets?', The Social Locations, Gender Dynamics, and Patterns of Violent Crime in Winnipeg, Canadian Centre for Policy Alternatives (Manitoba), Ottawa, Ontario.

Diduck, A & O'Donovan, K 2006, Feminist Perspectives on Family Law, Routledge Cavendish.

Douglas H 2015, 'Do we need a specific domestic violence offence', *Melbourne University Law Review,* vol. 39, pp. 434-470

Faludi, S 1992, 'Backlash: the undeclared war against women, Chatto & Windus, London.

Fitzgerald J 2009, 'Why are Indigenous imprisonment rates rising?', *Crime and justice statistics,* NSW Bureau of Crime Statistics and Research, Sydney

Gladstone, N 2020a, 'Cops and complains: officers speak out on policing and the police', *Sydney Morning Herald,* 8 November, viewed 26th December 2020, Sydney Morning Herald Achieves database.

Gladstone, N 2020b, 'Toxic force: police claim bosses use complaints to target them', *Sydney Morning Herald,* 16 December, viewed 26th December 2020, Sydney Morning Herald Achieves database.

Graycar, R & Morgan, J 2004, 'Examining understandings of equality: One step forward, two steps back?', Australian Feminist Law Journal, vol. 20, no. 1, pp. 23-42.

Huppatz, K 2012, 'Gender and Class in Four Occupations', in Gender Capital at Work, Springer, pp. 32-49.

Larsen, A-C & Guggisberg, M 2009, 'Police officers, women and intimate partner violence: giving primacy to social context'.

MacKinnon, CA 1983, 'Feminism, Marxism, method, and the state: Toward feminist jurisprudence', Signs: Journal of Women in Culture and Society, vol. 8, no. 4, pp. 635-58.

Mansour, J 2014, 'Women defendants to AVOs: What is their experience of the justice system', Women's Legal Services NSW.

Miller, J 2001, One of the guys: Girls, gangs, and gender, Oxford University Press New York.

Naffine, N 1987, Female crime: The construct of women in criminology, Allen and Allen, Sydney.

—— 1990, Law and the sexes: Explorations in feminist jurisprudence, Allen & Unwin, Sydney.

Nancarrow, H 2019, *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities.* Palgrave Macmillan, Cham, Switzerland.

Nancarrow, H, Thomas, K, Ringland, V, Modini, T 2020, 'Accurately identifying the "person most in need of protection" in domestic and family violence law', *Australia's National Research Organisation for Women's Safety,* no. 23.

Nicolson, D & Bibbings, L 2000, Feminist Perspectives on Criminal Law, vol. 10, Cavendish Publishing

New South Wales Domestic Violence Death Review Team, 2020, *Report 2017-2019,* viewed 13th December 2020, https://www.parliament.nsw.gov.au/lc/tabledpapers/Pages/tabled-paper-details.aspx?pk=77348&houseCode=lc.

NSW Police Force 2018, Code of Practice for the NSW Response to Domestic and Family Violence, viewed 1st July 2020, https://www.police.nsw.gov.au/__data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSWPF_response_to_Domestic_and_Family_Violence.pdf.

Papathanasiou, P & Easteal, P 1999, 'The Ordinary Person in Provocation Law: Is the Objective Standard Objective', Current Issues in Crim. Just., vol. 11, p. 53.

Queensland Government 2015, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland,* viewed 21st January 2021, https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/dfv-report-vol-one.pdf.

Ross-Smith, A & Huppatz, K 2010, 'Management, women and gender capital', Gender, Work & Organization, vol. 17, no. 5, pp. 547-66.

Smart, C 1989, 'Feminism and the Power of Law', Routledge.

Snell, L 2020, 'Why we need a thorough consultation process on how to effectively address coercive controlling violence', Women's Legal Service, https://www.wlsnsw.org.au/criminalising-coercive-control.

Stark 2007, Coercive control: The entrapment of women in personal life, Oxford University Press.

Summers, A 2002, Damned whores and God's police, Penguin Books.

Tolmie JR 2018, 'Coercive control: To criminalize or not to criminalize?', *Criminology & Criminal Justice,* vol. 18, no. 1, pp. 50-66.

Tyson, D 2012, Sex, culpability and the defence of provocation, Routledge.

Victorian Royal Commission into Family Violence 2016, *Summary and Recommendations,* viewed 21st January 2021, http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html.

Walklate S, Fitz-Gibbon K, and McCulloch J 2018, 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' Criminology & Criminal Justice, vol 18, no. 1, pp. 115-131.