

**Submission
No 84**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Older Women's Network NSW

Date Received: 29 January 2021



Older Women's Network NSW

Criminalising Coercive Control

Submission to the NSW Joint Select Committee on
Coercive Control

January 29th 2021

Introduction

This submission is in response to call by the Joint Select Committee on Coercive Control established on 21 October 2020 to inquire into and report on coercive control in domestic relationships.

About Older Women's Network NSW

The Older Women's Network New South Wales (OWN) is a community-based organisation that is run by older women, for older women. Established in 1987, OWN aims to promote the rights, dignity and wellbeing of older women. Its members believe that older women have the right to be valued and recognised for their contribution to the political, social and cultural areas of life. Older women should also have the opportunity to participate in all aspects of decision-making that could affect their wellbeing. Members of our organisation are older women who have a strong interest in ensuring that all older women are able to live a life free from violence, abuse and neglect.

The Older Women's Network's interest in making this submission on coercive control arises from its advocacy and delivery of services to older women, some of whom have experienced domestic and family violence.

This submission is informed by the experience of the OWN Board, staff and consultation with our members who are working within the community sector. Factors that inform this submission include recognition that:

- Older women are also victims of coercive control
- Coercive control within domestic settings extend beyond intimate partner relationships

Coercive control is of interest to OWN because it is a phenomenon experienced by older women, but older women are rarely mentioned in the narrative around coercive control. This holds true for the 'Coercive Control' discussion paper issued by the government for the purpose of this inquiry.

OWN acknowledges that we are not a domestic violence service. However, as a mainstream community based service with membership across 17 groups in the state, we have information from our membership and beyond, to provide the perspective of older women to the Committee for consideration.

OWN NSW believes that coercive control should be criminalised, but that prior to this step being taken, a full consultation with domestic violence services (especially with Women's Safety NSW), the Seniors Rights Service, legal academics, CALD communities and disability services should take place to ensure that the new Act reflects the intent of the legislation and does not further victimize women victims/survivors. In addition, OWN NSW calls for the

necessary training of law enforcement, the judiciary and services to enable the Act to be enforced fairly and sensitively.

Background

The Invisibility of Older Women

Older Australians are a growing proportion of the total population. In 2018, 15.7% of Australians (3.9 million) were aged 65 and over, and 11.6% (2.9 million) were aged 55-64; these proportions are projected to grow steadily over the coming decades. Women make up more than half of the population in the older age groups. Up to 62% (312,000) of Australians aged 85 and over are women (Dow and Brijnath, 2019).

However, when women grow older, they are often excluded from the statistics of violence against women. This is not because they do not experience violence, but the types of violence that they face are classified as “elder abuse”, a term that often overlooks the gendered factor of structural violence and mitigates the seriousness of violence perpetrated on older women. Due to a range of structural and systemic problems, older women remain invisible on the policy agenda to reduce violence, not only in Australia but also in the world.

For older women, gender-based violence and elder abuse often form a double jeopardy (Lombard and Scott, 2011). According to the United Nations Article of the Declaration on the Elimination of Violence against Women, “violence against women means any act of gender-based violence that results in or is likely to result in physical or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty whether occurring in public or private life” (Sinha *et al.*, 2017). The types of gender-based violence is then classified into domestic violence, intimate partner violence, family violence, emotional/psychological violence, and non-partner sexual assault. In terms of elder abuse, the World Health Organisation defines this as “any act occurring within a relationship where there is an implication of trust, which results in harm to an older person” (World Health Organisation as cited in Kaspew *et al.*, 2018). Elder abuse consists of physical, sexual, financial, psychological, social abuse as well as neglect (Kaspew *et al.*, 2018). Most of the time, the perpetrators of elder abuse and violence are family members or partners of the victims, which also makes elder abuse a form of domestic violence (Our Watch, n.d.; Seniors Rights Victoria, 2018).

Despite the fact that older women are at the intersection of ageism and sexism, violence against older women is often considered a type of elder abuse and not gender-based violence, which overlooks gender dynamics, and identifies age as older women’s vulnerability to violence (Bows, 2018). With elder abuse often perceived as an intergenerational phenomenon where an adult child commits abusive or violent acts against their parents, it also excludes domestic and intimate partner violence (IPV) when the partner (often male) is the perpetrator. It also excludes other types of violence such as sexual violence which is also committed in an institutional care environment (Mann *et al.*, 2014; Bows, 2018). The invisibility of older women in gender-based violence, especially domestic and sexual violence, illustrates the conventional social norms that only younger women are susceptible to these forms of violence (Mears, 2015).

Scope of problem: Prevalence of violence against older women

Due to older women's invisibility on gender-based violence, there is no comprehensive set of data that determines the prevalence of domestic and sexual violence among older women both in Australia and worldwide. Older women fall between the data gaps as their victimisation is assessed under elder abuse (Lombard and Scott, 2011; Mann *et al.*, 2014). Their invisibility not only indicates how the human services, legal, criminal justice, and policy sectors as well as the wider community are unaware of the scope of violence against older women, but also illuminates older women's difficulties in reporting their situations and accessing support.

In Australia, the data on violence and abuse towards older women can be inferred in the data on elder abuse. Research on elder abuse helplines in Queensland, Victoria and New South Wales indicate that women make up about 70% of victims calling for help, with the majority of perpetrators being males and are often family members (Kaspew, 2018). The types of abuse that had been most reported were psychological abuse and financial abuse. In NSW, neglect, physical abuse and sexual abuse follow as the third, fourth and fifth most common forms of abuse. The prevalence of elder abuse is likely to be underreported among older women as they might suffer from aged and health related physical and mental problems and be dependent on the abusive relationship. In addition, there is also no formal or coherent reporting mechanism specifically tailored to older women, coupled with complicated procedures and the lack of obligation to report abuse in home and institutional care (Kaspew, 2018).

Official data on violence against women have a high chance of underestimating the number of older women experiencing violence. The Australian Bureau of Statistics in 2017 states that women aged 55-64 have a violence prevalence rate of over 2% and women aged 65 and above have a prevalence rate of 1.2% for the last 12 months prior to the survey. These are the lowest among all age groups and lower than the overall prevalence rate of 4.7% (Australian Bureau of Statistics, 2017). In a different government study that is concerned with IPV, the prevalence for women 50-59 experiencing IPV is 4.4%, while that for women 60 and above is 0.7%, which are also relatively low comparing to other age groups (Stavrou *et al.*, 2016) However, when adopting the lifetime prevalence method, Rees *et al.* (2011) finds that women aged 50-64 have a prevalence rate for gender-based violence of 24.31%, while women aged 60 and above still have a prevalence rate of 15.7%. In terms of sexual violence, it is known that one in five women over 45 are a victim of sexual assault, with minority and disadvantage communities (disability, indigenous, living in institution, non-heterosexual or homeless) experiencing a higher prevalence (Mann *et al.*, 2014).

There is no specific study examining the issue of coercive control experienced by older women in Australia. However, research conducted by Policastro and Finn (2017) in the USA point to the fact that older adults who experience emotional coercive control by intimate partners in their lifetime are more likely to experience physical abuse at age 60 or older. A national campaign to raise awareness of DFV of older women in the UK in 2018 noted that changing circumstances with retirement and illness could trigger abuse. The situation below

describes a woman's experience following her husband's stroke. She left her job two years before retirement to be his carer.

Her husband would pore over bank statements, demand she hand over receipts for all expenditure and raise his voice if she couldn't account for any small sums. "I paid for two cappuccinos, a juice and some cake in Starbucks, forgot to get a receipt and he accused me of lying," Burke says. "He was convinced I'd been meeting another man, not my daughter-in-law. When I texted her asking her to tell him it was true, he said I was trying to make him look mad." The controlling behaviour escalated: her trips outside of the home were timed, and all but non-essential outings were banned. Barely a day went by without her husband shouting at her, complaining about her cooking, her spending, her appearance, her housekeeping and her cooking. "He even said my breathing was too loud and kept him awake, so I slept on the sofa." (Foster, 2018)

OWN NSW conducted a qualitative research in 2020 involving nine older women from Arabic speaking communities. Of the nine women, 4 experienced DFV. These participants were randomly selected, and their stories demonstrate that abuse experienced by older women, even in CALD communities, is more common than expected. Coercive control, understood as a pattern of abusive behaviours designed to establish and maintain control and domination over another party, was obvious in the lives of the women interviewed.

"When I visited my doctor, I explained to her that I do not have money to pay for the x-ray. My doctor then brought to my attention to contact Centrelink and check if I was paid any. When I came back home and asked my husband about my payment, he took my bank card and cut it. With the help of my neighbour, I got a new bank account. Now, I do get my payments, but my husband still makes sure that I spend my money for our grocery shopping."

Another respondent recounted her situation of coming to Australia with \$10,000 which she handed to her daughter for safekeeping. She did not know that her daughter was taking the Centrelink payments meant for her. She lived with her daughter and son-in-law, and common to these situations where women are brought to Australia to care for their grandchildren, she looked after all the housework, cooking and child-minding.

"Once a friend said to me that the system of welfare in Australia is fortnightly. When I asked my daughter if I was eligible for more payments, she denied it and said not to listen to people... when I explained to my daughter and my son in law that I would like to move, my son-in-law threatened me and said, "I will break your back if you ever say you want to move out". He was screaming too loud, I was threatened. I was not sure what happened after that. I woke up finding myself in a hospital."

Coercive control and elder abuse

There is congruence between aspects of coercive control and elder abuse.

Elder abuse comprises 5 components:

- the person being abused (older person)
- the acts or omissions (single, or repeated act, or lack of appropriate action)
- the abuser (not specified in the above definition)
- the pre-conditions (any relationship where there is an expectation of trust); and
- the impact (harm or distress).

Coercive conduct legislation should be expanded to include an application to persons who, because of age, infirmity, mental or physical health are more vulnerable than others in society to being exploited or dominated. Where an offence of elder abuse is made out, it can be treated as a summary offence but increased to an indictable offence in situations of aggravation. Aggravation could include threats of physical harm to the individual, or to others to ensure compliance, psychological manipulation of the victim and using an instrument such as a power of attorney to directly benefit the perpetrator.

Identification of elder abuse

As noted above, elder abuse is a subset of family violence and therefore must be included within family violence policy reforms and service responses. A paper from the Australian Institute of Family Studies estimated the prevalence of elder abuse to be between 2% and 14%, with neglect occurring at possibly higher rates (Dow and Brijnath, 2019). The Royal Commission into Aged Care (2020) noted that the case of elder abuse in residential aged care facilities is as high as 39.2 per cent.

Data from the NSW Ageing and Disability Commissioner show that 35.8% of all allegations pertain to “Mainly verbal abuse or restricting access to family/others”, followed by 30.6% of all allegations pertaining to “Mainly financial exploitation; theft; and misuse of Power of Attorney/ Enduring POA”. Older people who are living alone or experiencing the early stages of dementia are more at risk. In the family situation, a family member who has a sense of entitlement to the older person’s property, characterised as ‘inheritance impatience’ is often a perpetrator of coercive conduct to financially abuse their relative.

Perpetrators of elder abuse tend to be known to the victim, if not actually living in the same residence. Such individuals may have a predisposition to exert their will as a result of psychological or social factors, such as mental health, gambling or drug dependence, social isolation and dependency on the older person, as well as homelessness and poverty. Caregiver stress (either paid or unpaid) can also be a risk factor in causing actual physical injury to an older person.

A typical scenario

An example provided by Seniors Rights Victoria involves an adult child returning home to stay with their older parent/s because they have nowhere else to live. Their own housing arrangements has fallen through because of a relationship breakdown or failure to pay the rent due to gambling or drug or alcohol dependence. They move in and continue to incur expenses and force the older person to disclose their banking details and steal their money; or threaten them (for example, by withholding access to grandchildren) into handing over money, assets or financial power of attorney.

Analysis of 2 years of data from Seniors Rights Victoria revealed that 92% of abuse was by a family member and 67% by an adult child. Much elder abuse goes undetected, especially neglect, which rarely comes to the attention of elder abuse services, but may be identified by health, police, local government or aged care services, especially those that go into the older person's home. Often an older person is reliant on the family member for care and therefore, is unlikely to make a complaint.

Mistreatment of residents in aged care facilities would also result in criminal prosecutions of both the employee and the facility which is currently rarely done.

OWN strongly supports the use of the NSW Government's definition of domestic and family violence (DFV) which covers "any behaviour in an intimate, family or household relationship" which is "violent, threatening, coercive or controlling, causing a person to live in fear and is usually manifested as part of a pattern of controlling or coercive behaviour".¹ We do not support the restrictive definition adopted in Scotland which limits the coercive control Act to intimate partners only. As mentioned earlier, this is because older women can experience abuse beyond their intimate partner relationships.

Proposed legislative amendments

Situations where coercive conduct may apply

- Persons can be in a de facto or married relationship
- Persons can be in a domestic relationship – not partnered but sharing a household
- Persons who previously were in a domestic relationship, or have previously shared a household
- Can be related by family ties, formal or informal, including relatives
- Can be in a caring relationship where one party is a paid or unpaid carer, formal or informal for the other including where such conduct occurs in a residential facility
- In the case of Aboriginal persons or Torres Strait Islanders, are or have been part of the extended family or kin according to the Indigenous kinship system of the person's culture

What is coercive conduct

A reasonable person would consider coercive conduct to be -

- A course of conduct that is abusive if it is likely to cause the victim to suffer physical and/or psychological harm.
- A course of conduct that takes financial advantage of the victim, whether by consent, or not.
- A course of conduct can be defined as an ongoing, regular, deliberate or undisclosed acts to the victim over a period of time which results in their financial, mental, emotional or physical detriment.
- Conduct that is reckless towards the victim causing them to suffer physical or psychological harm (including, but not limited to fear, alarm and distress).
- Conduct that is intended to dominate or intimidate the victim to acquiesce to the perpetrator's demands by imposing, rules, restrictions, limitations on the victim.

Coercive conduct may include any conduct, or a combination of conduct, that is:

- violent, threatening or intimidating
- causes the victim to be dependent on or subordinate to the perpetrator
- isolates the victim from their friends, relatives or other sources of support
- controls, regulates or monitors the victim's day to day activities
- deprives or restricts the victim's freedom of action and/or movements
- frightens, humiliates, degrades or punishes the victim.

In respect of financial matters, coercive conduct includes

- Obtaining a financial benefit without the informed consent of the victim
- Providing false or misleading information to the victim to induce consent
- Inducing the victim to consent to an action that is to their detriment by signing in writing, verbally agreeing or by acquiescence as a result of threats or intimidation
- Failing to disclose a relevant factor to the victim that would result in an alternative decision by the victim
- Withholding or controlling access to financial resources, including money, income, savings of the victim to be provided to the perpetrator
- Denying or restricting the victim's ability to manage or use their real property
- Imposing restrictions on the victim's access to health, personal support or professional advisory services

Aggravating factors when making a finding of coercive conduct:

- That the psychological, mental or physical incapacity of the victim is known to the perpetrator
- That the perpetrator made threats to harm, defame or otherwise attack third parties, including other persons, animals, or property, if the victim did not comply with their demands

- That physical force or threats of physical force was used to reinforce intimidation of the victim
- That the perpetrator and his/her family and/or associates benefited directly as a result of the coercive conduct of the victim
- That the perpetrator used psychological control and manipulation, including making the victim question their memory of events and agreements (i.e. gaslighting)

OWN NSW believes that the inclusion of specific examples of conduct which commonly amount to coercive control will be necessary in the Act. This works to signal to the community that these behaviours are unacceptable. However, it needs to also be made clear that the list is non-exhaustive because it may result in law enforcement and judicial officers discounting behaviours not listed as amounting to coercive control.

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

Advantages: OWN NSW believes that coercive control should be categorised as a criminal offence. The creation of this offence should cover situations where the abuse falls short of actual physical abuse but where the abuse causes mental and emotional harm and frequently, in cases of older women, financial advantage to the perpetrator. An offence of coercive control necessarily includes looking at behaviour over time towards a person which indicates a systematic, deliberate intention to disadvantage and/or defraud the person which requires a harsher penalty to deter similar conduct. If 99% of homicides related to domestic violence have coercive control as the common denominator in all these relationships, it signals very clearly that if there is a systemic means to deal with this crime early on in the relationship, it can save lives.

Disadvantage: In cases involving older people, it might be difficult to draw the line between what is appropriate care for a person with challenging behaviours and when that care has become abusive and controlling. What is the test to be applied in such a case? Is it the complainant's view? This may be problematic if their judgement is impaired. A solution would be to apply the reasonable person test where an external person would perceive the actions as being too restrictive, abusive and dominating. From a legislative perspective, the legislation should include a defence to such an allegation that the victim's behaviour was so extreme in itself and required an extreme response; or, that the carer's subjective circumstances were impacted by the behaviour and the consequences were unintended.

Also, it needs to be acknowledged that older people may not have the mental or physical capacity to follow their case through the judicial system. There is also great reluctance on the part of many older people to report abuse, especially if it is perpetrated by their children or primary carer. They fear the consequences of losing family ties, or of not having anyone else caring for them, thereby placing them in an even more precarious situation.

The situation of older people who come from different cultural backgrounds will also determine how they view abuse. What constitutes abuse in one culture may not be considered abusive behaviour in another, which makes it difficult to identify and address (Dow and Brijnath, 2019).

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?

OWN NSW believes that parallel to criminalising coercive control is **the fundamental need for governments at all levels to commit to a national awareness raising strategy**, much like the community education around smoking. The latest data from the National Drug Strategy Household Survey (NDSHS) estimated that 11.6% of adults smoked daily, compared to 25% in 1991 (AIHW, 2020). This decline did not come about naturally, but is a reflection of the concerted campaign, policies and spending on bringing tobacco use down. We are calling for a similar commitment to a long-term communication campaign on violence against women.

In addition to this, **specialised training will need to be rolled out** to the police, judiciary, legal professionals, court staff, support service staff and other professionals interacting with victim-survivors such as those in the health sector. This is vital because

- the primary barrier to women reporting incidents of abuse to police is that police either do not understand or are not proactive in handling domestic violence (17.1%) (Birdsey and Snowball, 2013)
- failure to adequately educate judicial officers about domestic and family violence and its impacts may lead to poor decisions that leave victims unprotected (ANROWS, 2015)

Given the problems faced by older people in CALD communities, there is a need for **further research to better understand how diverse cultural norms and expectations can affect help-seeking behaviours and the reporting of elder abuse**. This will assist in ensuring that appropriate services can be delivered to ensure the safety of older people.

There are also problems for women with disabilities in terms of access to appropriate, accessible sexual assault and domestic violence services (Frawley et al, 2017). **All initiatives developed to address coercive control must also consider the experiences of women with disabilities** in order for them to also be protected by the legislation on coercive control.

OWN NSW believes strongly that there should also be **support provided to perpetrators to engage in behaviour change programs**. Evidence has shown that it is common for perpetrators to move from one relationship to another, serially abusing their partners. The extent of the problem has even prompted MPs in the UK to call for serial domestic abusers or stalkers to be registered and monitored in the same way as serious violent and sexual offenders (Grierson, 2020).

With regards to coercive control resulting in the financial abuse of victims, it is imperative for the government to **institute a formal mechanism for staff of financial institutions such as banks to voice their concern that financial abuse might be occurring**. It is also important to ensure that support services are adequately trained and resourced to provide the assistance necessary to the victims when such cases are investigated.

Domestic violence costs Australia \$22 billion in 2015 – 2016 (KPMG, 2016). On top of the economic costs, there is the personal price paid in psychological and physical trauma. OWN

NSW is calling on the government to **fully fund and expand all services related to the prevention of violence, as well as the provision of direct services to women experiencing violence**. Bodies such as Women's Safety NSW should also be fully funded as it plays a critical role in advocating for systemic reform to increase women's safety based on evidence it collects from women's specialist domestic and family violence services in NSW.

Currently, 260 people are being turned away daily from homelessness services because there was nowhere for them to stay. More than two-thirds are women or girls (Henriques-Gomes, 2020). We know that domestic violence is the leading cause of homelessness for women and girls (Mission Australia, 2020). Given the current situation, one of the essential non-legislative actions to be taken with the criminalisation of coercive control is the **investment in building public/affordable housing, and greater support to be given to homelessness services**.

OWN NSW also calls for a **fundamental shift in conceptualising abuse and violence perpetrated against women across the ages and abilities**. The compartmentalising of violence into domestic and family violence, elder abuse and violence against women with disabilities, all handled under different jurisdictions and departments, have led to the marginalisation of the experience of abuse and violence by older women and women with disabilities. It has also led to the silencing of women in institutional settings in care homes. There should be greater inter-agency dialogue, cooperation and cross-referencing to ensure that all women can be assisted and supported, regardless of their age and abilities.

Conclusion

The 5th Sustainable Development Goal is 'Gender Equality', and one of its goals is to "Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation" (UN SDG). The year in which this is to be achieved is 2030. Here in Australia, we face a major task in changing mindsets to enable us to achieve this goal. The following statistics on the perspectives of the younger generation in Australia point to how much work there is to be done (Davey, 2019):

- One in seven young Australians believe a man would be justified in raping a woman if she initiated sex but changed her mind
- 45% of young people believe that many women exaggerate gender inequality in Australia, with young men (52%) more likely to hold this belief than young women (37%)
- 37% agreed that women make up or exaggerate claims of violence to secure advantage in custody battles
- 20% of young men did not understand that repeatedly keeping track of a partner's location was a form of violence against women
- 11% did not think stalking is a form of violence

This is the base from which we need to begin changing attitudes and thinking about gender, violence and equality. The lead researcher of this study noted, "If we don't change our world to make it more gender equal, we can't expect young people to be on board with equality" (Davey, 2019).

OWN NSW believes that criminalising coercive control is an important step in the overall strategy to end violence against women. However, as noted above, there are numerous steps which need to be taken concurrently to ensure that this legislation is effective in realising its objectives. The complications involved in drafting this legislation should not be an excuse for not proceeding with criminalising a pattern of behaviour which critically impacts on all women's safety and wellbeing.

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