

**Submission
No 111**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Gowland Legal Family Lawyers

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Our Ref:

Your Ref:

4 February 2021

Joint Select Committee on Coercive Control
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

[By Email: coercivecontrol@parliament.nsw.gov.au](mailto:coercivecontrol@parliament.nsw.gov.au)

Dear Committee

Response to Criminalisation of Coercive Control in NSW

Gowland Legal thanks the Parliament of New South Wales Joint Select Committee on Coercive Control for the opportunity to comment on the *Criminalisation of Coercive Control*.

Our submission is **enclosed**.

Yours faithfully

Gowland Legal

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INTRODUCTION

1. Gowland Legal thanks the Parliament of New South Wales Joint Select Committee on Coercive Control (Joint Select Committee) for the opportunity to comment on the *Criminalisation of Coercive Control*.
2. Gowland Legal Family Lawyers is a law firm in Sydney's Inner West. Our practice is committed to bringing an end to domestic violence. We are passionate about Law Reform that will better protect women and children who are subjected to domestic abuse and completely support proposals to criminalise coercive control.
3. I, Lyndal Gowland, Principal Solicitor of Gowland Legal have worked extensively with community legal centres including 5 years at Redfern Legal Centre as well as with Indigenous legal services across remote and regional Australia. I also have substantial experience of working directly with Family Dispute Resolution Practitioners (FDRPs). I was employed for 2 Years as the solicitor attached to a Family Relationship Centre to assist the FDRPs. Further, I hold a Masters in Family Law. I, and Gowland Legal, have made numerous successful law reform submissions on the issue of domestic abuse.
4. A significant proportion of the work Gowland Legal does involves providing family law services to women and children who have experienced domestic violence. We have developed our experience and expertise in this area through our years of work assisting domestic violence victim-survivors in the Family Law system.
5. The focus of this submission will be on the need to hold perpetrators of domestic abuse accountable. Domestic abuse is criminal conduct that must be stopped so women and children can live safely. We note that overwhelmingly victims of domestic violence are women.
6. We recognise coercive control is a pattern of abusive behaviour that is violent, intimidates, isolates and controls the victim. Coercive control captures the ongoing reality of domestic violence, which is not always physical but pervades a victim's daily life.
7. The statistics make it clear – the 'level of control' in abusive relationships is a predictor of severe and fatal violence, and coercive control is the most common risk factor leading up to an intimate partner homicide.
8. The NSW Government states that domestic violence is a crime. Therefore, the myriad of ways that domestic abuse can be perpetrated must be identified and treated as the criminal acts they are.
9. In this submission, based on our extensive experience with domestic violence matters, Gowland Legal will make the following recommendations regarding the criminalisation of coercive control:

Recommendation 1: That coercive control be criminalised as a matter of urgency.

Recommendation 2: That our legal response and our community perception of domestic violence is changed to reflect the reality that domestic violence is a pattern of abuse rather than an isolated event.

Recommendation 3: That the legal test of coercive control be a subjective test.

Recommendation 4: That police are required to look for acts of coercive control when investigating cases of domestic abuse and to be required to look beyond a single event to a pattern of abuse.

Recommendation 5: That New South Wales police officers are better educated and trained on how to identify coercive control and respond to domestic violence incidents.

Recommendation 6: That coercive control is criminalised to support police in correctly identifying and charging perpetrators of domestic abuse.

Recommendation 7: That coercive control is criminalised to improve the quality of life for all members of our society.

SUBMISSIONS

Recommendation 1: Matter of Urgency

10. We note that NSW Attorney General Mark Speakman stated the Government has no immediate plans to introduce new coercive control laws.¹
11. Domestic abuse is a national emergency, and the statistics continue to demonstrate that family violence is overwhelmingly perpetrated by men against women. Counting Dead Women Australia researchers of Destroy The Joint reported that in 2020 fifty-five (55) women were killed as a result of domestic violence.
12. A recent review of domestic violence-related homicides in NSW, found that in 99 per cent of cases, the relationship was characterised by the male abuser's use of coercive controlling behaviours towards the victim.²
13. We need immediate intervention to help curb domestic abuse and save lives. The criminalising of coercive control is a starting point.
14. Gowland Legal recommends that the NSW State Government criminalises coercive control as a matter of urgency, looking to the *Domestic Abuse Act 2018* (Scotland) as a model framework for use.
15. The *Domestic Abuse Act 2018* (Scotland) makes it clear that coercive and controlling behaviours are domestic abuse, recognising domestic abuse as a sustained pattern of behaviours. Gowland Legal recommends that the NSW State Government ensures when drafting legislation coercive control is distinguished as 'a course of behaviour which is abusive'.

Recommendation 2: Change of our Legal Response and Community Perception of Domestic Abuse

16. Criminalising coercive control would change our legal response and community perception of domestic violence to reflect the reality that domestic violence is a criminal-pattern of abuse rather than an isolated event. This would greatly increase community understanding of domestic abuse.
17. Gowland Legal acknowledges that increased community awareness of domestic abuse is important to increase understanding on how to recognise and stop abusive patterns and behaviours. Increased community understanding is needed to enhance women and children's safety, increase perpetrator accountability, and save lives.
18. Further, greater community understanding of domestic abuse is needed as studies highlight many women do not recognise themselves as victims of domestic abuse where there is an

¹ Amy Dale, 'Criminalising Coercive Control' *Law Society Journal*, <https://lsj.com.au/articles/criminalising-coercion/>.

² Hayley Gleeson, 'Coercive Control' *ABC NSW*, <https://www.abc.net.au/news/2019-11-19/coercive-control-domestic-abuse-australia-criminalise/11703442>.

absence physical violence. The message that power and control are at the root of domestic abuse needs to be clear.

19. Gowland Legal strongly recommends criminalising coercive control to bring about this change of community perception. The law is a reflection of our society, and criminalising coercive control would demonstrate our strongest denunciation of these behaviours, sending a message to abusers and the community that these acts are not tolerated and legitimising victims' perceptions that what they are experiencing is unacceptable.

Recommendation 3: A Subjective Test

20. Gowland Legal recommends that when the NSW State Government criminalise coercive control they omit the objective test and use only a subjective test.
21. Objective definitions of domestic abuse have been criticised by the Australian Law Reform Commission (ALRC), as it is effectively a contradiction to apply the notion of reasonableness to the experience of fear and fails to understand the psychological impact of abuse, significantly where there has been a history of control.³
22. The legal objective test in determining whether there has been coercive control would make reference to what a presumed "reasonable person" would or might think in the given situation. The legal subjective test in the same situation would be purely concerned with the abuse victim's perspective.
23. Victim-survivors of this form of abuse should not have their fear judged by a test of whether it is on reasonable grounds as this cannot be ascertained by a person who is not in their position. Often referred to as 'intimate terrorism', coercive control slowly destroys a victim's sense of self-worth, agency and autonomy through the abuser's conditioning and control. Victims often report feeling as if they had been held hostage by their abuser, constantly walking on egg-shells around them and doing everything to maintain their approval.

Recommendation 4: Police Investigation of Domestic Abuse

24. Police are the investigatory arm of the judicial system. Recognising the serious impact of domestic abuse will both require and enable police to investigate the full circumstances of an abusive relationship, which will provide more evidence to inform judicial determination.
25. Former Chief Justice of the Family Court Alistair Nicholson has spoken out in strong support for coercive control to be criminalised in all Australian states, in a bid to help curb domestic violence.⁴ Nicholson CJ presided over countless trials and appeals, dealing with every aspect of family law. His comments from his experience assessing hundreds of cases, mirror our views from our experience as Family Lawyers; coercive control often feeds into physical

³ Australian Government, 'Family Law' ALRC [67] <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/6-other-statutory-definitions-of-family-violence-2/family-law-3/>.

⁴ Madonna King, 'Ex-Family Court chief wants coercive control laws to criminalise 'intimate terrorism' *Sydney Morning Herald*, https://amp.smh.com.au/lifestyle/life-and-relationships/ex-family-court-chief-wants-coercive-control-laws-to-criminalise-intimate-terrorism-20201119-p56g4b.html?twitter_impression=true.

violence and other crimes against a victim, and that criminalisation would require police to be taught to look for covert emotional and non-physical violence when investigating cases of domestic abuse and require police to look beyond a single event to a pattern of behaviour.

26. Domestic abuse is a crime and we need to prevent it with the aim of prohibiting it.
27. We understand for police, domestic abuse incidents are highly complex and traumatic. We believe criminalising coercive control would give police the tools needed to deal with these complex problems and support and assist them in their work.

Recommendation 5: Police Education and Training

28. The offence of coercive control would provide police with the framework and opportunity to more comprehensively take into account relevant conduct on the part of offenders over time. This is crucial for the prevention of domestic abuse, however, it also relies on the education and training of responding police officers.
29. It has been reflected in research by SAGE that many NSW police appear to believe that their domestic violence related responsibilities are matters of discretion rather than obligation.⁵ This mirrors reports from victim-survivors, as many felt police had no understanding of the dynamics of domestic violence, were not trauma informed when communicating with them and had experienced hesitation from police to investigate non physical violence.⁶
30. The police role is pivotal for victims of domestic abuse. The police can only provide victims protection and access to justice if police officers are able to identify coercive and controlling behaviours, gather the right information from the victim and carry out their duties effectively when responding to domestic violence.
31. If a case of domestic abuse proceeds to court, for the offence to be made out and the safety of the victim ensured will rely on the evidence gathered by police and other first responders. In Scotland it has been reported that a year on from the introduction of their coercive control laws, in locations where police have been trained well, women are seeing a difference.
32. It is frequently reported by victim-survivors of domestic abuse that the psychological abuse inflicted on them by the criminal perpetrator causes far greater distress compared to physical acts of violence. The significance of this form of abuse is that victim-survivors self-esteem is shattered, and they remain in fear of displeasing the perpetrator for a period long after the abuse. Subsequently, victim-survivors often return to the police station following either an incident or making a report regarding their abuser, to retract their statement. Police require education surrounding the psychological impact of coercive control so they are able to understand the full circumstances of the situation and are able to support the victim-survivor, rather than get frustrated.

⁵ Jane Goodman-Delahunty and Anna Corbo Crehan, 'Enhancing Police Responses to Domestic Violence Incidents: Reports From Client Advocates in New South Wales' SAGE, <https://researchoutput.csu.edu.au/ws/portalfiles/portal/8961530/Published+article-1000005055.pdf>.

⁶ Women's Safety NSW, 'Police Domestic and Family Violence Policy and Practice', https://www.womenssafetynewsw.org.au/wp-content/uploads/2020/11/Police-Domestic-and-Family-Violence-Policy-and-Practice-Position-Paper_WSNSW_Nov-2020.pdf.

33. Gowland Legal recommends from our and our clients experience, that as a matter of priority NSW police officers are better educated and trained on how to identify coercive control and respond to domestic violence calls.

Recommendation 6: Correctly Identify Perpetrators of Domestic Abuse

34. Any report of intimate partner violence must be investigated and assessed in the framework of coercive control so that police are able to identify the criminal perpetrator who is the primary aggressor and charge as appropriate. Further, the dynamics of domestic abuse are complex, and it is crucial that police are provided with the diverse ways criminal perpetrator commit the abuse in order to properly identify domestic abuse and weed out frivolous claims.
35. When the victim is misidentified, the perpetrator is successfully using the system to further his abuse.
36. Domestic abuse is a gendered crime. Given the lethality of domestic abuse and how many women and children are killed by men every week, it is critical that police recognise the gendered nature of domestic abuse in the investigation of incidents of domestic violence.
37. Gowland Legal recommends that the NSW Government criminalises coercive control as a matter of significant importance to reduce the incidence of victims being incorrectly identified as the perpetrator of abuse. Police investigations must be able to identify coercive control behaviours and recognise the gendered nature of domestic abuse.

Recommendation 7: A Better Quality of Life for All

38. Domestic violence also comes at an enormous economic cost. Each year violence against women costs the nation approximately \$22 billion. Currently in NSW, domestic violence matters consume extensive police time and is considered a core aspect of police practise.
39. The criminalisation of coercive control will reduce the incidence of domestic violence. The burden of disease caused by domestic abuse significantly impacts upon women and children, but also our community.
40. Research shows that the compounding affects of abusive behaviours can have significant effects on the victim's quality of life, including:⁷
 - a. Increasing the risk of victims becoming homeless. Domestic violence has been cited as the most common reason for homelessness among women and children.⁸
 - b. The presence of domestic violence is one of the leading predisposing factors in those who commit suicide.

⁷ NSW Ministry of Health, The Case for Change: Integrated prevention and response to violence, abuse and neglect in NSW Health, <https://www.health.nsw.gov.au/parvan/Publications/case-for-change.pdf>.

- c. Repeated physical assaults suffered by victims of domestic violence can result in injuries and related health issues including chronic pain, broken bones, arthritis, hearing or sight deficits, seizures or frequent headaches.
 - d. Violence and abuse increase the risk of depression, post-traumatic stress disorder, sleep difficulties and insomnia, eating disorders, self harm, suicidal thoughts, anxiety, suicide and emotional distress.
 - e. Chronic health conditions can be seen in victims of abuse indirectly through long term psychological stress, include stomach ulcers, spastic colon, frequent indigestion, diarrhoea, constipation, angina, and hypertension.
 - f. Victims of abuse are much more likely to engage in higher risk activities including smoking, poor nutrition, physical inactivity, and substance misuse. These actions may be adopted as coping strategies for the victim-survivor.
 - g. Children who are exposed to domestic violence suffer long term effects to their physical, emotional, and psychological safety and are at an increased risk of maltreatment.
41. Gowland Legal recommends that coercive control should be criminalised, and domestic abuse prevented, as a matter of importance for our whole society.