

**Submission
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COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Relationships Australia NSW

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Coercive Control

A response to the NSW Government's Discussion Paper

Relationships Australia NSW

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We acknowledge the traditional custodians of the land and waters on which we live and work, and pay our respects to Elders past, present and future for they carry the cultural wisdom, stories, traditions and dreaming.

Relationships Australia.
NEW SOUTH WALES

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ABOUT RELATIONSHIPS AUSTRALIA NSW

Relationships Australia NSW (RANSW) has been a leading provider of relationship support services since 1948, offering services to individuals, couples, families, communities and workplaces across NSW from 20 locations (Sydney, Northern Sydney, Northern Beaches, Hunter Region, Western Sydney, Central West NSW, Illawarra). Services are provided face to face, on the telephone and online.

We are an independent, not-for-profit organisation, dedicated to enhancing relationships within families and their communities in order to foster personal and social wellbeing. We provide services to people regardless of gender, religious or cultural background, age, sexual orientation, and family circumstance.

Our vision is of a harmonious and inclusive society, which promotes and supports respectful, resilient and healthy relationships and social connections.

Our purpose is to help forge valuable, meaningful, strong connections between people, communities and social supports, in service of their empowerment and social well-being.

We are committed to building our support for families who are in greatest need, facing complex issues and have limited access to resources and services.

RANSW is part of a federated network of Relationships Australia organisations across every state and territory in Australia.

We provide a range of services for adults, young people and children affected by domestic and family violence (DFV), including:

- Family Safety Program assists people to achieve and maintain positive family relationships, supporting the safety of all individuals affected by domestic and family violence. Group program streams are available for men (Taking Responsibility – our Men’s Behaviour Change Program), women (Women, Choice and Change) and children (KidSpace) who are experiencing domestic and family violence. These group programs are complemented by counselling, as well as programs/activities within schools and other community settings, to promote non-violent, respectful and caring relationships.
- Local Contact, Support and Case Coordination Services for Male DFV Victims provides case management and support to male victims of domestic and family violence through Safer Pathways, and represents clients at ‘Serious Threat’ at Safety Action Meetings (SAMs).
- Justice Engage provides educationally based brief intervention to defendants facing domestic and family violence charges, from point of bail to pre-sentence, with the aim of supporting rehabilitation and preventing re-offending.
- Family Advocacy Support Service works within Family Court precincts (Sydney City, Parramatta, Newcastle, Wollongong) to provide support for men appearing before the court where there are domestic and family violence allegations, working closely with the parallel service provided to women.

- Let's Talk - Mitigating the Risk and Responding Early to Elder Abuse provides counselling, mediation and case work for elder people and their families with respect to ageing related issues, including DFV.
- Building Stronger Families (BSF) - Working with Migrants and Refugees to Increase Family Safety is a partnership with Settlement Services International to develop and deliver Men's Behaviour Change Programs, as well as a range of other programs for the family, to migrants and refugees from specific cultural communities in their own language (currently Arabic, Tamil and Hazaragi).
- BAD V – Brothers Against Domestic Violence, with the Illawarra Koori Men's Support Group (IKMSG), will collaboratively develop a culturally safe Men's Behaviour Change (MBC) program for responding to the needs of local Aboriginal communities. BAD V is an existing co-designed program grounded in local culture, dreaming, history, values, community ties and relationships, and is informed by an understanding of historical trauma, its impact on identity and the importance of healing.
- Men: Choice and Change Project strengthens responses to the needs of male victims of DFV, deepening the engagement provided by Safer Pathways service and providing more holistic and sustained support over time. Casework and group participation will support clients to understand and come to terms with their experiences, and build the skills to move forward in their lives with safety and self-worth.

OVERVIEW OF OUR RESPONSE

Our response provides answers to the following Discussion Paper questions: 1-4, 7-9, and 14-15. As an organisation, our expertise is in assessing and managing risk in the context of services such as couples counselling and family mediation, providing behaviour change programs to support men who have used violence against a partner or family member to stop using violence, providing partner support, groupwork programs and individual counselling to women who have experienced DFV, and in providing one-off phone counselling and referral for male victim-survivors. We have provided a response to questions that reflect our areas of organisational expertise, but note that we are not legal experts and have not provided a response to questions that are outside our organisational remit.

RESPONSE TO THE DISCUSSION PAPER QUESTIONS

WHAT IS COERCIVE CONTROL?

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

Coercive control as a key feature of intimate partner violence has been central to practice responses to domestic and family violence (DFV) for decades, including at Relationships Australia NSW (RANSW). As an organisation that provides both DFV-specific services and broader family relationship services in which practitioners encounter adults and children impacted by DFV, we have developed a rigorous framework over more than 30 years of focused services to support staff to identify and respond to non-physical forms of abuse.

A key weakness in the existing legislative framework around DFV is its focus on incidents of violence, over recognition of a pattern of behaviour. In a 2010 paper setting out a framework for identifying non-physical abuse, RANSW's Family Safety Practice Specialist, Kerrie James, with family therapist

Laurie McKinnon, argued for three distinguishing criteria for establishing severity of non-physical abuse: length of time, the abuser's intentions, and the effects on the target person (James & McKinnon, 2010:116). Further, they argued that relationships featuring the greatest severity of psychological abuse – in line with Stark's (2007) definitions of coercion and control – are often characterised by the abuser having greater power than the target person, the target person being isolated, denial or minimisation of behaviour by the abuser, and the target person's loss of confidence and self-blaming (James & McKinnon, 2010: 120).

In addition to a pattern of abuse, described so well in Pence & Paymar's (1993) Power & Control Wheel, Stark's (2007) work to define coercive control sets out the importance of intent and impact. He argues that coercion is "the use of force or threats to compel or dispel a particular response", while control refers to "structural forms of deprivation, exploitation, and command that compel obedience indirectly" (cited in Stark & Hester, 2019). Further, as an organisation that takes a whole family approach to safety through our own RANSW Family Safety Framework, we endorse the principle that any definition enshrined in legislation should aim to shift from "safety work" to "empowerment" for vulnerable community, following Stark and Hester (2019).

Any attempt to legislate an appropriate definition of coercive control should address these three key components – length/pattern of abuse, intent of the abuser, and the impact on the victim – while also taking care to not set an unreasonable burden of proof on victims, nor conversely risk inappropriately criminalising people who are primarily victims of coercive control. Here, we share a working definition of coercive control in the context of DFV that we find relevant to our service provision:

Coercive control is a pattern of threatening or forceful behaviours against an intimate partner or family member, with the intent to create fear that limits that person's choices or actions.

We caution, however, that this has not been constructed as a legal definition, and encourage the NSW Government to test any new legislative definition with both legal experts and people who have experienced coercive control. Further, we note that while this definition is specific to DFV, coercive control is not unique to DFV and can be exercised in any relationship of power. In particular, we note the concerns of Aboriginal and Torres Strait Islander people around the use of coercive control by the state, including the police (for example, Cin Webb, Tabitha Lean and Georgia Mantle on 3CR, 2021; and Mantle and Mali Hermans in Honi Soit, 2020), and encourage the NSW Government to consider how any new legislation will mitigate the risk of survivors experiencing further coercion and control through the criminal justice system.

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

As described above, considering the intent of the person using abusive behaviours, the pattern of behaviour and the impact on the person (or people) experiencing abuse are key to distinguishing

between behaviours present in ordinary relationships and what would be considered “coercive control”.

In their conceptualization of coercive control, Dutton and Goodman (2005) further note the importance of context in making sense of a person’s behaviours and the impact those behaviours have on others: “Economic, political, cultural, familial, social, and individual factors—as well as their interactions—give meaning to an abuser’s coercive behaviour... and the partner’s responses to it” (747).

HOW IS COERCIVE CONTROL CURRENTLY ADDRESSED IN NSW?

3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

Existing criminal and civil law prioritises accountability for instances of physical and sexual violence, while failing to adequately recognise the central feature of domestic violence: a pattern of coercion and control. While policy and practice has expanded to attempt to capture these patterns, such as through use of the DVSAT, the existing legal framework ultimately seeks to deliver justice in relation to incidents of violence. Further, while tools such as the DVSAT have attempted to capture complexity in risk factors, the tool itself and risk management processes around it continue to prioritise an incident-based approach to DFV, rather than a holistic assessment of the express intent to coerce or control another.

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

As an accredited men’s behaviour change program provider, we enable men who use violence to interrogate their attitudes and beliefs about violence, and their violent behaviour towards women and children. Men are predominantly referred into our programs through contact with the criminal justice system, often as a result of police contact after an incident or incidents of violence. Working with men to build understanding about the impact of non-physical abuse on their partner and children (coercive control) is central to our work, and we can see clear benefits in having a legal framework that aligns with this approach. The assessment and social response towards coercive control has been part of men’s behaviour change assessment and practice for many years. The challenge is how this understanding can be implemented in law without creating undue distress for women and children who are likely to be further cross-examined regarding its impact on their lives.

CRIMINALISING COERCIVE CONTROL – POTENTIAL BENEFITS AND PRACTICAL CHALLENGES

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

A key advantage of a new offence would be to bring NSW law into line with what we know to be the reality of DFV: that it is not simply one-off incidents, but a pattern of behaviour that impacts every facet of victims’ lives, predominantly women and children. We have seen that legislative change can play a role in shifting social attitudes, and it is possible that creating an offence of coercive control

could support a broadening of social understandings of DFV. For some people who experience or use violence, this may help them to either identify the abuse they are experiencing or identify problems with their own behaviour, and seek support in line with their needs.

RANSW notes, however, that the advantages for creating a coercive control offence on victim safety or behaviour change are at this point not entirely clear (ANROWS 2021; Stark & Hester, 2019:87). While evidence suggests that offences in the UK and Ireland are being used, there is not yet any evidence available about whether the offence is contributing to increased safety for people experiencing coercive control – either adults or children. As an organisation committed to family safety, we believe strongly that increased safety must be a key measure of the efficacy of any new offence.

If the NSW Government moves forward with criminalising coercive control, it is imperative that this work does not divert investment from other areas of our coordinated, community response to DFV. It remains true that most people impacted by DFV do not access safety and justice through the criminal justice system, and it is important to increase investment in the areas of the system that they do access. Our response to Q15 below discusses this further.

Finally, we encourage the NSW Government to draw on evidence from other international jurisdictions with caution, in making decisions about an offence of coercive control. We note NSW, and Australia's, particular history as a colonial settler state and the systematic dispossession and criminalisation of Aboriginal and Torres Strait Islander peoples in this country. Aboriginal and Torres Strait Islander women continue to experience significantly higher rates of DFV, and yet do not experience equal safety and protection in the criminal justice system (Langton et al, 2020; Nancarrow et al, 2020). We know from our work that Aboriginal and Torres Strait Islander women are disproportionately likely to be mis-identified as primary aggressors of violence, and we echo concerns expressed elsewhere that a new offence risks exposing these women to further risk of criminalisation (ANROWS, 2021; Douglas & Fitzgerald, 2018).

8. How might the challenges of creating an offence of coercive control be overcome?

RANSW believes that the voices of people with lived experience of DFV must be at the heart of any decision-making about a new offence. We encourage the NSW Government to use both participation mechanisms and research to test the likely impacts of any changes with a diverse group of people impacted, to mitigate the risk of unintended negative consequences.

As a comparative, we note that in terms of the legislation concerning community treatment orders (CTOs), there remains concern that transparency in respect of application of any law is critical to the degree that such legislation impacts on community members who may experience multiple and compounding vulnerabilities (Light, 2019). This signals the importance of participation mechanisms both in the legislative development process, as well as through implementation.

CONSTRUCTING AN OFFENCE OF COERCIVE CONTROL

9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?

RANSW's expertise is in providing family relationship services, not in constructing appropriate legal definitions, and as such we do not wish to provide a strong direction here. However, we note that existing definitions of coercive control are founded on evidence from heterosexual, intimate partner relationships, which is only one context in which we see coercive control in our services.

In particular, we note from our work establishing men's behaviour change programs in culturally and linguistically diverse communities (Building Stronger Families), elder abuse services (Let's Talk), and Safer Pathways for Male Victims, the importance of constructing a definition that reflects coercion and control that happens in extended families, beyond the intimate relationship. Meaningful consultation will be required with a range of community members affected by abuse in extended families to better understand these dynamics of abuse and the likely impacts of criminalisation. In particular, the NSW Government must engage appropriately with culturally and linguistically diverse community members and religious and cultural groups to communicate effectively about any new legislation.

OTHER AVENUES FOR LEGISLATIVE REFORM

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

Beyond the criminal justice system, as a provider of six Family Relationship Centres, we see the family law system as a critical site for reform in its handling of coercive and controlling behaviours. Any intervention to address coercive control must reflect an understanding that these behaviours often escalate in the aftermath of a separation and continue after a relationship has ended, sometimes for many years. In particular, seeking out processes to alter, continually renegotiate and control children's contact arrangements can be a way for an abusive parent to continue to abuse and coerce their ex-partner and children, including maintaining surveillance and threats'. We encourage the NSW Government to recognise and address the potential for systems abuse (Douglas, 2018), both within the criminal and family law systems.

On a broader level, this reflects the need for community-level communication and education around coercive control. If a new offence is introduced, an education campaign will be required to introduce the new offence in order to capitalise on the potential of this change to increase safety and reduce the prevalence of DFV. Any education campaigns will need to encompass the broad range of ways that coercive control can present, including in family relationships across the lifespan, outside the context of heterosexual, intimate partner relationships. For example, in our work with older people through the Let's Talk program, we see economic coercion from children to parents as being particularly prevalent and welcome investments that are enabling Aged Crime Prevention Officers to work in partnership with Domestic Violence Liaison Officers to improve police responses to this form of abuse.

We also note that coercive control is already recognised as a feature of DFV in NSW and that this type of education could be part of reforms, regardless of whether a new offence is introduced. Education campaigns around coercive control should be targeted at both the community broadly, and at improving recognition of coercive control among professionals working in the criminal justice system (as per Walklate, Fitz-Gibbon and McCulloch, 2018).

NON-LEGISLATIVE ISSUES

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?

RANSW notes that while legislative change is important, it is only one piece of a coordinated, community response to DFV. In our own work, we see that most people affected by family violence seek support outside of the criminal justice system, and we particularly note the voices of marginalised people with lived experience of violence, particularly Aboriginal and Torres Strait Islander women, who do not find a place of safety in the Australian justice system (Langton et al, 2020).

While we are, in principle, supportive of the proposal to criminalise coercive and controlling behaviours, we strongly encourage the NSW Government to ensure that investments required to bring forward criminalisation do not happen at the expense of resourcing for critical, non-legislative measures. These include:

- Expansion of structural, social supports that enable people impacted by family violence – predominantly women and children – to escape and build safety. These include, among other things, access to safe housing, economic security, quality childcare, and respectful physical and mental healthcare.
- Increased resources for specialist, trauma-informed tertiary services for adults and children living with, and recovering from, DFV.
- Primary prevention activities, including evidence-based interventions to address community-level attitudes that enable violence against women and girls, and other forms of identity-based violence that may be used as part of coercion and control.
- Sufficient resourcing to build and maintain a workforce that can identify and respond to non-physical forms of family violence, beyond criminal justice system workers – including in family and relationship services, healthcare, and social care. In our experience as both a delivery and training organisation, we know that training professionals to the level of skill required in this complex area is not a matter of a one-off training session, but rather requires ongoing skill-building and professional supervision.
- Long-term, secure funding for men’s behaviour change and women and children’s advocacy programs, to meet any expanded demand as a result of a new offence. This includes an expanded capacity for programs to provide early intervention to allow adolescents and adults who use violence to access support to change their behaviour, before the point of contact with the criminal justice system. From our extensive work in providing men’s behaviour change programs, we know that moments of personal motivation to change are critical to our success.

Finally, if the NSW Government moves forward with criminalising coercive control, we note that significant gaps remain in knowledge and practice that will need to be addressed:

- Coercive control has now been included in NSW's definition of domestic and family violence for several years, and the DVSAT tool includes questions designed to support police to identify patterns of non-physical abuse. Despite these policy and practice changes, and training for police, officers still commonly prioritise physical incidents of abuse (Maple & Kebble, 2020). More concerningly, we note that police often struggle to identify primary aggressors of violence, resulting in men who use violence being referred to services such as our Safety Pathway for Male Victims, or women victims inappropriately charged as perpetrators of abuse. The latter presents a particular risk for women who are already disproportionately criminalised or marginalised, including Aboriginal and Torres Strait Islander women, women who use illicit substances, women living with disabilities, and women with insecure immigration status (Walklate & Fitz-Gibbon, 2019).
- A clear, funded research agenda is needed to address the substantial gaps in understanding about how coercive control operates outside of heterosexual, intimate partner relationships. At RANSW we support people impacted by family violence in its many forms – as elder abuse, in LGBTIQ relationships, adolescent violence in the family, and male victims of abuse. In our practice, we respond to coercive control in all these contexts. In their 2019 review, Stark and Hester set out a research agenda, noting the need for deeper understanding of coercive control in LGBTIQ relationships, elucidating appropriate measures of coercive control, and understanding children's experiences of control (Stark & Hester, 2019).

CONCLUSION

Relationships Australia NSW supports, in principle, the creation of a new offence of coercive control. However, we encourage the NSW Government to ensure that:

- Any work towards a new offence does not divert resources from the essential services that most people impacted by DFV will continue to use;
- The diverse voices of people impacted by DFV are at the heart of developing the new offence;
- Any new offence is supported by well-resourced training and inclusive communications campaigns to increase understanding of coercive control among professionals and the general public.

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