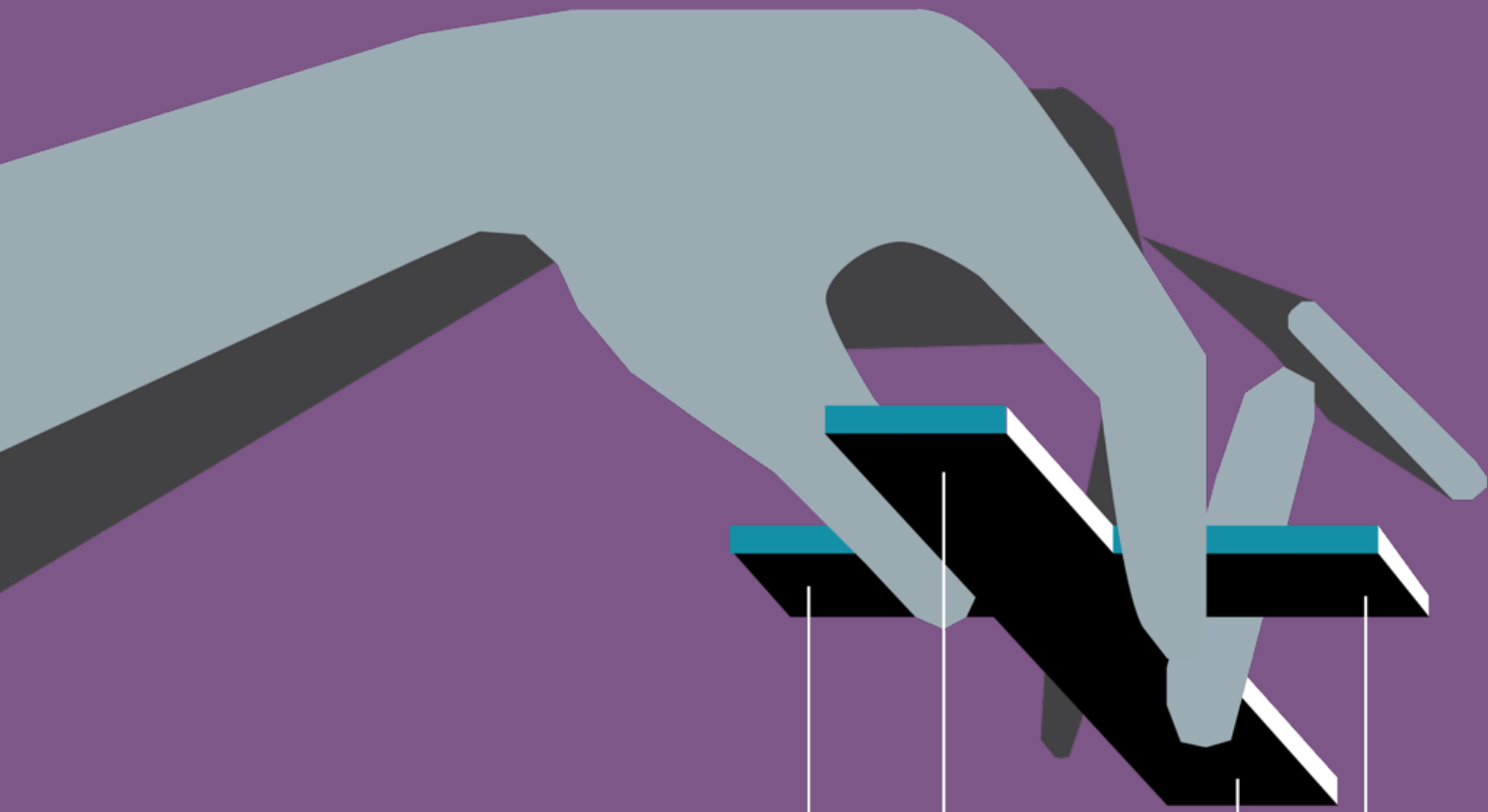


**Submission
No 126**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: No To Violence

Date Received: 11 February 2021



Submission to New South Wales Joint Select Committee on Coercive Control

 **No to Violence**
Working together to end men's family violence

Acknowledgement of Country

No to Violence acknowledges First Nations' Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present and emerging. We acknowledge a deep connection with Country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nations' land.



Acknowledgements

In recognition of the current national discussion occurring around improving responses to coercive control and the New South Wales Inquiry into Coercive Control, No to Violence held a range of forums and a National Roundtable on Coercive Controlling Violence. We have also engaged directly with No to Violence members and colleagues to formulate the responses in this submission.

The purpose of these discussions was to commence a respectful and nuanced conversation around the impacts of coercive control across communities, and hear directly from individuals and representatives of communities that may be impacted differently by changes to coercive control legislation. These included:

- First Nations' People
- LGBTIQ+ individuals and communities
- People from migrant and refugee backgrounds
- Victim survivors (two sessions).

These discussions were chaired by representatives from these communities, and No to Violence wishes to thank all Chairpersons for their dedication to fostering a respectful and engaging conversation. Thank you, Aunty Bronwyn, Aunty Christine, Michal Morris (InTouch Multicultural Centre), Rob Williams (Thorne Harbour), Talie Star, Renata Fields (DVNSW) and all the individuals and organisations that supported them.

Thank you also to the hundreds of participants who shared their knowledge, experiences and gave their time to improve our understanding of the impacts of coercive control across their communities.

About No to Violence

No to Violence is Australia's largest peak body for organisations that work with men who use family violence with advocacy, training and the Men's Referral Service.

No to Violence delivers best-practice workforce development that create social and professional practice change to help stop men using violence and keep women, children and communities safe.

No to Violence has operated the Men's Referral Service in New South Wales since 2013. Every day (bar Christmas Day), the Men's Referral Service reaches out to men who have interacted with police due their use of domestic and family violence and takes calls from men who are seeking support to change their behaviour.

Through the Men's Behaviour Change Network NSW, No to Violence provides sector development to the men's domestic and family violence sector. The Network has proactively engaged in sector development, and is committed to best practice in supporting those affected by domestic and family violence and providing opportunities for men to examine and end their use of domestic and family violence.

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

Dear Committee

Inquiry into Coercive Control

No to Violence welcomes the attention provided to the enormity of coercive control and the desire to better address it.

Coercive controlling violence interferes with a person's liberty and autonomy. It is about power and control, exercising entitlement or ownership, and it causes substantial harm. This can present in both physical and non-physical forms of violence. Whilst considerable focus has been on physical forms of family violence in decades' past, the current conversation is rightfully raising attention around the non-physical forms of coercive controlling violence.

Any behaviour that interferes substantially with a person's liberty and autonomy requires action. However, there needs to be careful consideration of what action is required to safely respond to this insidious and widespread form of abuse and better address the impacts on victim survivors

No to Violence has considerable expertise in working with perpetrators of domestic and family violence. We are Australia's largest peak body for organisations and individuals that work with men who use family violence; we work directly with perpetrators of family violence through the Men's Referral Service; we coordinate the *Men's Behaviour Change Network NSW*; and we provide training and professional development to enable best-practice service delivery.

In the development of this submission, No to Violence has held or enabled consultations with around 500 experts, organisations, academics and victim survivors from across Australia, England and Scotland. This has included victim survivors, First Nations women, LGBTIQ+ individuals and communities, and people from migrant and refugee backgrounds ([Attachment A](#)).

We have also engaged and surveyed our members and colleagues in New South Wales who work directly with men who use family violence through the Men's Behaviour Change Network ([Attachment B](#)).

Through these consultations and reflecting the views of our New South Wales members, **No to Violence's is in support of the criminalisation of coercive control in New South Wales**. However, we also consider it essential that criminalisation is not seen as the sole or end point.

As highlighted throughout this submission, criminalisation can only be seen as one tool for responding to coercive controlling violence. If someone has been charged with a coercive control offence, it means that someone has already been traumatised and impacted by this form of abuse. Although criminalisation is

highly unlikely to deter coercive control, the potential for criminalisation to raise awareness and improve systematic responses is profound. For some of the highest risk cases, there is the potential for an improved Police and justice response that saves lives. If the criminalisation of coercive control is to have profound effect, identifying and intervening earlier is critical.

No to Violence believes a number of parallel programs and policies will be essential if the New South Parliament moves to criminalise coercive control, namely:

1. **Developing options to intervene early, during and after will be essential.** The limits of a criminal justice response in preventing people from using family violence should be taken into account when decisions on resource allocation to family violence are made.
2. **Comprehensive training of people who interact with victims and perpetrators of family violence** will be critical to the success of better responding to coercive control (police, courts, the judiciary, the community and healthcare sectors as well as broader community). This includes clear processes for the identification and misidentification of predominant aggressors.
3. **Choice and control must be restored to victim survivors and built into the systemic response.** We know that there are some people who would prefer to pursue civil or service options instead – without informed choice, victim survivors will be impeded and potentially not seek support, due to a number of unintended consequences discussed throughout this submission. For those who wish to pursue criminal proceedings, legal and social supports must also be available.
4. **Legislation and responses should be co-designed and acknowledge the different experiences and backgrounds** of people across New South Wales, including First Nations' Peoples, people from migrant and refugee backgrounds, LGBTIQ+ peoples and people with disability.

Coercive control is not new. It has been around for millennia and is something the family violence sector has been addressing since its inception. However, the focus of family violence policy has traditionally been on incident based physical and visible forms, and not the forms of non-physical violence which often have more profound impacts on victim survivors' lives. It is critical to increase awareness of the patterns of behaviour (both the physical and non-physical forms of violence that make up coercive control) and embed this understanding within the skillsets of the workforces that interact and respond to family violence.

We need a whole-of-community response encapsulating government, the community sector, business, and individual communities and citizens.

Thank you for the opportunity to provide this submission. No to Violence would greatly appreciate the opportunity to discuss this matter through the hearings of the Inquiry.

Yours sincerely



Jacqui Watt
Chief Executive Officer

Summary of Recommendations

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

1. That any offence for coercive control uses the definition contained in the Scottish *Domestic Abuse Act 2018* as a baseline, ensuring it also captures coercive control in relationships beyond intimate partners such as elder abuse and carer-client contexts.
2. That unique forms of coercive control experienced by diverse communities are incorporated into any legislative approaches. This must be done through extensive community consultation with First Nations' Peoples, people from migrant and refugee backgrounds, LGBTQIA+ peoples, Older Australians and people with a disability.

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

3. Ensure that consideration is given to motive and intention of physical and non-physical forms of aggression to avoid misidentification of victims who have resisted or retaliated against their abuser. This is also the case for behaviour that may be associated with mental health and complex trauma, rather than behaviour intending to deny personhood.
4. Develop tools and training to support the Justice System (including Police, legal staff and the judiciary) to assess patterns of coercive control to determine which party is the perpetrator and which party may be using violence resistance to ongoing abuse.
5. Ensure training for police to identify the potential presence of coercive and controlling behaviour, gather information from the victim survivor on a pattern of abusive behaviour and correctly assess that behaviour.
6. Expand legal and social support to be available throughout the victim survivor's entire engagement with the legal system to support victim survivors in building their case should they wish to proceed down a criminal path.
7. Ensure in any legislative development, co-habitation is not a requirement for an offence or civil action.

Question 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?

8. Ensure that comprehensive workforce training and education of relevant workforces around identifying the patterns of behaviour that constitute coercive control, including (not limited to) shifting the criminal justice system away from an incident based system towards recognising the chronic, routine and patterned nature of coercive control.
9. Ensure specific community information campaigns around what constitutes coercive control is, and where to get support, are funded as part of any move to create an offence for coercive control.
10. Create an offence for coercive control that must include broader systematic reform of the domestic and family violence sector, including additional funding and resourcing to legal and social services that interact with victim survivors and perpetrators.
11. Strengthen civil law, to honour victim survivors' choice in how they want to pursue safety and justice.

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

12. Increase resourcing for Men's Behaviour Change Programs in New South Wales to ensure programs have the capacity to implement risk assessment and management, including information sharing and working collaboratively in order to address perpetrators patterns of coercive and controlling behaviour.
13. Increase the availability of services for perpetrators of domestic and family violence to support earlier intervention and timely responses to coercive controlling behaviour.
14. Ensure tailored interventions for perpetrators of domestic and family violence based on the culture, sexuality and co-existing needs of participants.
15. Build the capacity and increase training for all workforces that interact with victim survivors and men who use domestic and family violence to ensure they can implement appropriate risk assessment and management.

Questions 7 and 8. What are the advantages and/or disadvantages of creating an offence of coercive control? AND How might the challenges of creating an offence of coercive control be overcome?

16. Implement strategies to prevent perpetrators in all custodial settings from continuing to use tactics of coercive control to abuse victim survivors, and to address these behaviours in custodial settings.
17. Undertake comprehensive consultation around criminalisation of coercive control and system reform, with sufficient time to engage with the broader family violence sector and individual communities impacted by any reforms, in particular First Nations elders and leaders.
18. Develop and fund culturally appropriate and community-led early intervention and behaviour change programs for First Nations communities as an alternative to criminal charges where possible.
19. Leverage New South Wales' influence to advocate and ensure victim survivors from migrant and refugee communities with temporary visa status, including partner visas, are protected from deportation.
20. Increase funding for specialist multicultural family violence organisations, including for migration lawyers.
21. Resource and provide adequate support to victim survivors and perpetrators who are required to attend court. This should include provision of information prior to attending court regarding what to expect, support workers available for counselling and debriefing on the day and in the weeks following. Victim survivors should also have the choice to have multiple support persons in the court room.
22. Ensure that Men's Behaviour Change Programs and other appropriate support services are available in cases of coercive controlling violence, in particular for victim-survivors who do not want a civil or criminal justice response.
23. Develop a workforce development strategy for workers who come into contact with users of violence and victim survivors should be developed that includes training on the Risk, Safety and Support Framework to ensure comprehensive risk identification, assessment and management.
24. Collaborate with diverse communities who may be reluctant to engage with police to develop and resource alternative non-criminal responses to domestic and family violence.

Question 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?

25. A gender impact assessment should be undertaken to identify and mitigate potential unintended consequences of criminalisation on victim-survivors (including potential housing or financial impacts), and recognising gender roles and historical power imbalances between men and women and gendered dynamics in LGBTIQ+ communities.
26. Any offence or response to coercive control should
- avoid being too prescriptive in defining coercive controlling behaviours, instead, using the thresholds of intention and impact to assess if an offence has been perpetrated;
 - include intimate partner, and other close and familial relationships, not necessarily restricted to people who are cohabitating; and
 - include the requirement that the ‘offender know or ought to have seen that their behaviour would have been abusive’.
27. Multi-agency, thorough risk assessment should be undertaken by experts in coercive control and domestic and family violence prior to the release of users of violence from custody. Risk assessment information should be shared with victim survivors, local police and family violence organisations.
28. Victim survivors should receive timely information regarding parole hearings, release dates and have an opportunity to share a victim-impact statement.

Question 10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?

29. Include prohibition of acts of coercive control as a mandatory condition of all ADVOs. Specific acts can be identified further if requested by the person(s) in need of protection, but not required by the Court.
30. Recommend magistrates strongly encourage or mandate participation in a Men’s Behaviour Change intervention when granting ADVOs based on risk assessment.
31. Ensure New South Wales Police are better equipped, trained, and resourced to respond to breaches of ADVOs.
32. Ensure Courts understand the link between ADVO breaches and risk (of future violence/breaches) and consistently apply appropriate consequences (fines or imprisonment).
33. Develop short and medium term accommodation options for men who use family violence to reduce risk of ADVOs being breached, and enable interventions.

Question 12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?

34. The development of jury directions should consider the matters of:
- The definition of domestic and family violence;
 - The gendered nature of domestic and family violence;
 - The unique experiences and forms of violence for victim-survivors from diverse communities;
 - Acts of resistance; and
 - Coercive control.

Questions 14 and 15. Are there any other potential avenues for reform that are not outlined or included in the questions above? AND 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?

35. The New South Wales Government invests in a systematic whole-of-community response to addressing family violence, including primary prevention, early intervention, tertiary/crisis response and recovery.
36. Develop a primary prevention strategy addressing the attitudes, practices and power differentials in all areas of society including schools, workplaces, sports clubs, government institutions and the justice system, that lead to gender-based violence. The strategy should recognise that different messaging is required for different communities and experiences.
37. Increase opportunities for perpetrators of domestic and family violence to access interventions to address their use of violence and to keep them in view by:
 - Strengthening referral pathways to MBCP's by the Court;
 - Ensuring that people who are reported to police for using coercive control are referred to wrap around services that address their individual needs such as alcohol and drug issues, mental health, housing, access to income and appropriate family violence interventions;
 - Ensuring that perpetrators of family and domestic violence who are on parole are required to participate in a registered MBCP; and
 - Ensuring Men's Behaviour Change Programs have a coordinated responses by linking to services that address other factors like mental health and substance abuse.
38. Fund both community-specific organisations (including, but not limited to, First Nation's controlled organisations, community-led services that support multicultural, migrant and refugee populations, LGBTIQ+ led services) to deliver services; and ensure mainstream organisations also have the cultural competency to support experiences with diverse life experiences
39. Provide support for men awaiting Men's Behaviour Change and other programs with holding services that keep men engaged, including the Men's Referral Service's Brief Intervention Service.
40. Increased funding for programs that address men's use of violence to reduce current wait lists and increase availability of programs, particularly in regional areas without access to programs, and ensure that Men's Behaviour Change Programs are more responsive to the individual needs of perpetrators, based on their level of risk.
41. Expand the service response to high risk family violence perpetrators so they are able to receive intensive preparation work prior to group intervention. Enable more intensive interventions and deeper, longer group based programming with follow up responses to monitor risk.
42. Deliver extensive community education about coercive control to schools, work and other community settings.
43. Review the DVSAT to include questions to identify coercive control, and weight those responses accordingly so that the presence of coercive control elevates a victim's 'score' to 'at serious threat'.

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

‘All family violence is coercive control’ – Participant, Victim Survivor Roundtable

Across consultations which informed No to Violence’s submission (see [Attachment A](#)), many people spoke about the effects of coercive control on victim survivors and how they can be equally or, in some cases, more impactful than physical forms of violence.

We heard from many different communities who have very different experiences of coercive control. If criminalised, a definition needs to be able to incorporate these the breadth of coercive control experiences experienced across many communities.

<p>First Nations Communities</p> <ul style="list-style-type: none"> • Non-First Nations’ people preventing people engaging in culture (i.e. spiritual and cultural abuse). • Intergenerational trauma. • Differences in community make up, including extended families, mob and diversity of communities across the First Nations. 	<p>LGBTIQA+ individuals and communities</p> <ul style="list-style-type: none"> • Outing one’s sexuality or gender to friends, families, communities and workplaces (including religious institutions). • Using someone’s sexuality or gender as a way of abuse (i.e. “you’re not a real man”). • Withholding medication from trans and gender diverse peoples.
<p>People from migrant and refugee backgrounds</p> <ul style="list-style-type: none"> • Understanding of manipulation of victim survivors through using visa status (including mistruths) and threatening to ‘report them to Home Affairs’. • The potential of deportation of victim-survivors on spousal visa. • Potential for misidentification of cultural patterns. 	<p>People with disability</p> <ul style="list-style-type: none"> • Coercive control is often used by an individual’s carer (which can be a family member, friend or support worker), illustrating a horribly unique power imbalance. • The difficulties for people with communicative disability, or intellectual disability, in reporting any family violence offence (noting a pattern of behaviour being even more complicated to articulate).

Table 1: Unique forms of coercive control experiences by historically disenfranchised communities and individuals.

Framing a definition of coercive control

No to Violence is broadly supportive of the conception of coercive control contained with Evan Stark’s book on coercive control, which is preventing someone in an intimate or familial relationship from ‘freely developing their personhood, utilising their capacities, or practising citizenship, consequences they experience as entrapment’¹.

The result being one partner dominates the other through a pattern of behaviours that degrade the victims’ sense of self, agency and ability to exercise their free will (without fear for safety, retribution, or punishment). Coercive controlling behaviours instead prioritise the needs and desires of the perpetrator

¹ Evan Stark (2007), *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, New York, p.4.

of family violence and often involves the victim's isolation and/or dependence on the perpetrator for access to resources, such as income and accommodation.

This can be either physical and non-physical, or both.

The focus of the current criminal law (and often civil law) is on incident based physical forms of violence. Expanding the legislative framework to include more specific reference to the forms of non-physical violence that make up coercive control will be important.

Models for legislative definition

For the purposes of a potential criminal offence, No to Violence supports an amended definition contained in the Scottish *Domestic Abuse Act 2018* "engaging in course of abusive behaviour". This should incorporate – whether in legislation or regulations –the unique forms of coercive control experienced by diverse communities, including First Nations' Peoples, people from migrant and refugee backgrounds, LGBTIQ+ peoples, and people with disability.

Throughout our consultation, some victim survivors and community representatives – particularly from First Nations and Migrant and Refugee backgrounds – indicated that choice was critical. A definition should be consistent across any potential criminal legislation and civil legislation to ensure opportunities are available to victim survivors who do not wish to pursue criminal charges.

In the First Nations' Communities consultation, the group provided emphasis on the inclusion of spiritual abuse. Participants indicated that, particularly in metropolitan areas, many First Nations' Women are in relationships with non-First Nations men who restrict their ability to engage in the culture or traditional communities. With around a third of Australia's First Nations' population living in New South Wales², primarily in urban settings, proper consideration of the impacts and views of First Nations' Communities will be an essential precedent to set as other jurisdictions across Australia consider coercive control criminalisation.

Definition in *Domestic Abuse Act 2018 (Scotland)*

Abusive behaviour towards partner or ex-partner

(1) A person commits an offence if—

(a) the person ("A") engages in a course of behaviour which is abusive of A's partner or ex-partner ("B"), and

(b) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,

(b) that either—

(i) A intends by the course of behaviour to cause B to suffer physical or psychological harm,
or

(ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

² Australian Bureau of Statistics (2016) Estimates of Aboriginal and Torres Strait Islander Australians

(3) In the further conditions, the references to psychological harm include fear, alarm and distress.

What constitutes abusive behaviour

(1) Subsections (2) to (4) elaborate on section 1(1) as to A's behaviour.

(2) Behaviour which is abusive of B includes (in particular)—

(a) behaviour directed at B that is violent, threatening or intimidating,

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B's day-to-day activities,

(d) depriving B of, or restricting B's, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2)—

(a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,

(b) in paragraph (b), the reference to a child is to a person who is under 18 years of age

Source: <https://www.legislation.gov.uk/asp/2018/5/part/1/crossheading/engaging-in-course-of-abusive-behaviour/enacted>

Recommendations

1. That any offence for coercive control uses the definition contained in the Scottish *Domestic Abuse Act 2018* as a baseline, ensuring it also captures coercive control in relationships beyond intimate partners such as elder abuse and carer-client contexts.
2. That unique forms of coercive control experienced by diverse communities are incorporated into any legislative approaches. This must be done through extensive community consultation with First Nations' Peoples, people from migrant and refugee backgrounds, LGBTQIA+ peoples, Older Australians and people with a disability.

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

Distinguishing between ordinary relationships and patterns of abuse

An individual that is pursuing criminal or civil pathways is not likely to be in an ordinary and safe relationship.

It is important to acknowledge that most family violence goes unreported by victim survivors. This is for a number of reasons, but a major factor is the difficulties in pursuing criminal charges and continuation of trauma associated with family violence within a relationship when going through police and justice responses. The burden of proof (beyond reasonable doubt), the continued engagement and exposure to the perpetrator, and appearing in Court settings and working with people that do not understand the patterns of behaviour are contributors.

For potential legislation, regulations and implementation, No to Violence notes that this will be an important understanding to convey.

A key question to be answered when assessing whether coercive control is being perpetrated is considering whether behaviours of one party are limiting the agency and ability of the other to exercise independent choice and fully exercise their personal freedom.

The pattern of abuse: repeated and continuous

Coercive controlling violence is a pattern of behaviours. Most relationships have at times difficulties. Couples have arguments, disagreements and sometimes exhibit unhealthy behaviour, but this is not repeated and continuous.

When these activities occur on a repeated and continuous basis and become harmful to the victim-survivor, that is coercive control.

Often victim survivors feel like they are 'walking on eggshells', 'living in a constant state of fear', are made to feel like tension and circumstances are 'their fault', have limited control or autonomy over what they can do, and are terrified of making a 'wrong step' out of fear for the consequences. This this should not be how anybody lives.

The United Kingdom Home Office's Statutory Guidance Framework³ provides the following explanation of 'repeated and continuous':

'Continuously means on an ongoing basis. This could mean, but is not limited to, actions which cause the victim to change their way of living. Behaviour displayed on only one occasion would not amount to repeated or continuous behaviour and courts may look for evidence of a pattern of

³ United Kingdom Home Office (2015) Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework. Accessed online 29 January 2021:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf

behaviour established over a period of time rather than, for example, one or two isolated incidents which do not appear to establish a pattern. However, each case must be considered on an individual basis, there is no set number of incidents in which controlling or coercive behaviour has been displayed which must be proved. As much evidence as possible must be gathered to show that the behaviour is of a repetitive or continuous nature. The Act does not specify a timeframe between the incidents of the behaviour when it takes place repeatedly, therefore, the occurrences do not necessarily have to take place in immediate succession. However, two such controlling incidents taking place 10 years apart (for example) are unlikely to be sufficient, because it is unlikely that this will be considered to be behaviour that is occurring “repeatedly or continuously”.

Motive, intention and potential for misidentification of predominant aggressor

Consideration of the person using coercive controlling violence’s motive is an important part of any move to criminalise coercive control.

Throughout the consultations that have supported the development of this submission, we heard from a number of people and organisations concerned that criminalisation of coercive control could be used against people who are not the predominant aggressors of violence – particularly First Nations Women who are already overrepresented in custodial settings across Australia.

Recently released research provides a comparison of the ‘motive’ of men and women who use force⁴:

“The findings indicate that the majority of respondents considered that women’s use of force generally differed from men’s use of force in intimate relationships because it was underpinned by different motivations and dynamics...

“Women’s use of force was seen as often being a situational use of force when threatened and instrumental as a means to an end...

“This contrasts with heterosexual men’s use of violence in intimate relationships where denial and minimisation are common barriers to engagement...

“This underlines how a different assessment and intervention approach is required when working with women who use force as it is not the same as men’s use of force.”

Consideration must be given to motive and intention, in particular, if the person who is being charged is the predominant aggressor. With nearly 30 years of experience, No to Violence has consistently seen perpetrators of coercive control use litigation as a way of continuing the abuse of their victim.

If an assessment of predominant aggression is not considered, there is a distinct risk that any criminalisation will be used by perpetrators to continue their use of coercive control (i.e. a law aimed to be protect victim survivors could be more damaging).

⁴ Kartesz M, Humphries C, Isobe J et al (2020) Women who use force – Evaluation of Positive Shift, Accessed online 29 January 2021: <<https://violenceagainstwomenandchildren.com/?p=264>>

It is also important to note that many perpetrators of coercive control do not ‘intend’ or even know they are inflicting abuse – such is their sense of entitlement and social conditioning. As such, consideration also needs to be given to whether ‘they ought to know’ (see Response to [Question 9](#)).

Evidence of impact on the victim

Any criminalisation or reform around coercive controlling violence must be centred on the experience and impacts on the victim survivor. However, due to the potential of re-traumatisation through court and judicial settings, it is important that this burden isn’t compulsory.

Where victim-survivors choose to take the stand for any criminal proceedings, and in line with the recently announced changes in New South Wales to the *Criminal Procedure Act 1986*, complainants should not be personally cross-examined by self-represented defendants in domestic violence criminal proceedings. Per the *Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020*, victim survivors should be provided with the option of giving evidence in a closed court, or remotely via audio visual link.

Non-physically abusive coercive control can have profound impacts on victim-survivors, including (but not limited to)⁵:

- Fear (whether it be for their and or their children’s physical safety or wellbeing);
- Poor physical health (including hypertension, migraines, skin disorders, digestive problems, etc);
- Decline in mental health (including depression, anxiety and post-traumatic stress); and
- Loss of self-esteem and sense of self, having implications in an individual’s autonomy and ability to participate in society.

Coercive controlling abuse can trigger unhealthy coping strategies, including reliance on alcohol, medication and self-harm. The social consequences can result in isolation, losing jobs or income, finding it difficult to develop social connections, and questioning parenting capabilities.

Sufficient legal support, including additional funding for community legal services must be provided to support victim survivors in building their case should they wish to proceed down a criminal path. This also needs to be supporting in training and re-training the legal workforce and judiciary to understand the impacts of the patterns of behaviour that make up coercive controlling violence. However, even more essential are supports to address these impacts which should be provided in parallel.

Personal connection, not co-habitation

A requirement for an offence will be that the individuals know one another. However, it will be important that co-habitation will not be a requirement of any considerations and legislative development. The English law contains co-habitation at some point in the relationship within its guidance, which No to Violence considers a significant gap.

Intimate partner violence can occur without co-habitation. Abusers of people with disability are often carers, which are not always familial. Older Australians are often dependent on their family or children, which can be perpetrators of coercive control.

⁵ Women’s Aid Scotland (2017) Coercive Control. Accessed online 29 January 2021: < <https://womensaid.scot/wp-content/uploads/2017/11/CoerciveControl.pdf>>

Recommendations

3. Ensure that consideration is given to motive and intention of physical and non-physical forms of aggression to avoid misidentification of victims who have resisted or retaliated against their abuser. This is also the case for behaviour that may be associated with mental health and complex trauma, rather than behaviour intending to deny personhood.
4. Develop tools and training to support the Justice System (including Police, legal staff and the judiciary) to assess patterns of coercive control to determine which party is the perpetrator and which party may be using violence resistance to ongoing abuse.
5. Ensure training for police to identify the potential presence of coercive and controlling behaviour, gather information from the victim survivor on a pattern of abusive behaviour and correctly assess that behaviour.
6. Expand legal and social support to be available throughout the victim survivor's entire engagement with the legal system to support victim survivors in building their case should they wish to proceed down a criminal path.
7. Ensure in any legislative development, co-habitation is not a requirement for an offence or civil action.

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?

It is important to note that some behaviours which are considered coercive control are already included within current New South Wales legislation – this is mainly offences for intimidation/stalking and criminal charges for breaching civil Apprehended Domestic Violence Orders⁶.

However, consultations across the sector and with victim survivors indicate that the legislation is not inclusive enough, and that it is seldom used adequately.

There is a growing expectation that the criminalisation of coercive control would increase awareness and greater success in early identification and responses to domestic and family violence incidents. It is clear that awareness of what constitutes coercive control is insufficient and it must be coupled with appropriate levels of training across many workforces.

Having a specific offence for coercive controlling violence, if designed appropriately, could have the potential of increasing the success of prosecutions. In some cases, this could result in increased safety for victim survivors. As Women's Legal Service New South Wales highlights, 77 of the 78 domestic violence homicides reviewed in New South Wales in 2015-17, the relationship between the victim and the abuser (all male) was characterised by the abuser's use of coercive and controlling behaviours towards the victim.

However, it is important to note that throughout the consultations, considerable and greater hope for change stemmed from the potential of broader systemic reforms. Few people see criminalisation as an end goal or the only means of change – rather criminalising coercive control provides an opportunity to re-frame and significantly improve the responses to domestic and family violence service and justice response.

Many, including No to Violence, consider the current legal and social services systems under-funded and stretched, and the 'incident based' justice system unfair and often unaware of the impacts of patterns of the behaviour that make up domestic and family violence.

Criminal law

Throughout consultations, participants considered that New South Wales criminal law interprets domestic and family violence in a way that:

- primarily addresses physical violence and abuse;
- interprets violence as single incident or event against a victim-survivor;
- fails to acknowledge the severe and long-lasting impacts of more insidious forms of coercive control;
- does not acknowledge the gendered nature of domestic and family violence and the role that power dynamics play in inducing fear, intimidation and control; and
- ignores that domestic and family violence is a patterned, chronic, and routine crime that deprives the victim-survivor of their dignity and liberty.

⁶ New South Wales Government (2020) Coercive Control Discussion Paper, Accessed online 29 January 2021: <<https://bit.ly/3ovhOSV>>

Although physical assault, harassment and stalking are criminal offences that respond to some of the ways which perpetrators use to coerce and control victim survivors, there is no consistent and holistic criminal response to the patterns of behaviour that make up coercive control.

By its nature, coercive control relies on interpersonal history, identity, relationships and power dynamics to coerce, exert control, and enact fear and intimidation to have a damaging effect on a victim-survivors agency and self. The existing criminal law presently does not provide police and courts with sufficient powers to address this.

Civil

Apprehended Domestic Violence Orders (ADVOs) are an avenue of civil law that can be strengthened in addressing domestic and family violence and supporting victim survivor safety.

At present, similar to criminal legislation, ADVOs address domestic and family violence based on physical and a small spectrum of non-physical violence that can be measured in single incidents. Measures to strengthen ADVOs and their capacity to support victim survivor safety are discussed in [Question 10](#).

As mentioned above, it is important that in any moves to criminalise coercive control, it will be essential to also strengthen civil law. Participants in consultation have indicated the importance of being able to choose whether they want to use criminal or civil pathways to improve their safety and seek justice.

Recommendation:

8. Ensure that comprehensive workforce training and education of relevant workforces around identifying the patterns of behaviour that constitute coercive control, including (not limited to) shifting the criminal justice system away from an incident based system towards recognising the chronic, routine and patterned nature of coercive control.
9. Ensure specific community information campaigns around what constitutes coercive control is, and where to get support, are funded as part of any move to create an offence for coercive control.
10. Create an offence for coercive control that must include broader systematic reform of the domestic and family violence sector, including additional funding and resourcing to legal and social services that interact with victim survivors and perpetrators.
11. Strengthen civil law, to honour victim survivors' choice in how they want to pursue safety and justice.

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

This response should be read in conjunction with Questions 14 and 15, noting No to Violence's proposed additional responses to coercive control should be integrated into the broader frameworks that respond to family violence.

The current framework, including *Safer Pathways* and *It Stops Here* have been important in improving system responses to domestic and family violence, providing a consistent framework and expectations for workers and victim-survivors, and encouraging stronger collaboration between agencies. The evaluation of the [Blueprint for Reform](#) has made recommendations for further improvements and future directions for the sector in this regard.

Resourcing to better implement risk assessment and management

Timely and accurate risk assessment with victim-survivors and perpetrators of violence is vital for ensuring an appropriate system response that protects the safety of adult and child victim-survivors and holds users of violence to account. Comprehensive risk assessment with users of violence is best conducted by experienced male family violence intervention practitioners.

Men's Behaviour Change and other programs that address the violent and abusive behaviour of perpetrators and the Men's Referral Service are an essential part of holding men to account, keeping them in view, monitoring the safety of victim-survivors and support perpetrators to address and change their behaviour.

In 2020, No to Violence launched the New South Wales Risk, Safety and Support Framework: A guide for responding to men who use domestic and family violence (RSSF), which provides a consistent approach to risk assessment and risk management. The RSSF includes information on identifying, assessing and responding to all forms of domestic and family violence, including coercive control.

The RSSF is currently being implemented in Men's Behaviour Change Programs that are Registered or Provisionally Registered with the Department of Communities and Justice Practice Standards for Men's Behaviour Change Programs. However, the Men's Behaviour Change Network NSW have expressed concerns regarding their capacity to adequately implement the RSSF without an increase in resources.

Implementation of risk assessment and management across all workforces that interact with victim survivors and men who use family violence and abuse

While comprehensive risk assessment is best conducted by men's family violence intervention practitioners, identification of the presence of violence and coercive control can and must occur at all parts of the civil and criminal justice and community service systems that come into contact with victim-survivors and perpetrators.

Adaptation and implementation of the RSSF for other sectors such as child protection and health would strengthen awareness and competency of responses. This includes identifying coercive control, undertaking risk assessments with victim-survivors and users of violence and thereby increasing consistency and the likelihood that families experiencing family violence including coercive control receive a timely and appropriate response.

It is also worth mentioning that training and support has been identified as playing a pivotal role in the successful implementation and operation of coercive control legislation⁷. No to Violence are well placed to undertake this work in partnership with the Education Centre Against Violence, with support from NSW Government, and in partnership with the New South Wales domestic and family violence sector.

Availability of services for perpetrators of coercive control

Where there is access to specialist domestic and family violence services for victim survivors, there should be a corresponding response in interventions for perpetrators to address coercive control and other forms of family violence.

This may be case management, enhanced Intake and one-to-one work with appropriate referrals made for the perpetrator to address his use of family violence where the victim-survivor indicates that it is safe to do so. This is critical for preventing family violence happening again, and for monitoring risk both through monitoring of the perpetrator and through family safety contact work.

Men's Behaviour Change Programs are designed to work with men who use family violence by supporting them to become accountable for their behaviour. They work to shift the focus from seeing themselves as victims, blaming others and minimising their behaviours and work to increase awareness of how their behaviour impacts on their families. Coercive control is a core element that is addressed in programs. However, there is limited availability of programs across many areas of New South Wales.

There is also the issue of limited ability to tailor men's interventions based on the culture, background and lived experiences of participants.

For example, in the LGBTIQ+ consultation, a participant provided the anecdote that a gay male would find it very difficult to engage in a group filled with heterosexual men who often exhibit regressive masculine traits (i.e. men who hold disrespectful views of women seldom are more accepting of diverse sex, sexuality and gender). Furthermore, the unique experience of First Nations' Men, including intergeneration trauma, is not applicable to many participants of men's programs.

Greater funding, action research and sustainable funding for streams of earlier intervention and high-risk offenders is required to prevent future violence and keep victim survivors safe. Refer to [Questions 14 and 15](#) for more information around what this could look like.

Recommendations

12. Increase resourcing for Men's Behaviour Change Programs in New South Wales to ensure programs have the capacity to implement risk assessment and management, including information sharing and working collaboratively in order to address perpetrators patterns of coercive and controlling behaviour.
13. Increase the availability of services for perpetrators of domestic and family violence to support earlier intervention and timely responses to coercive controlling behaviour.

⁷ McMahon, M & McGorrery, P 2020, *Criminalising coercive control*, e-book, Springer Nature, Singapore, pg 151
Accessed online 24 December 2020: <<https://www.springer.com/gp/book/9789811506529>>

14. Ensure tailored interventions for perpetrators of domestic and family violence based on the culture, sexuality and co-existing needs of participants.

15. Build the capacity and increase training for all workforces that interact with victim survivors and men who use domestic and family violence to ensure they can implement appropriate risk assessment and management.

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

No to Violence defers to Rape and Domestic Violence Services Australia's submission to the Inquiry, specifically paragraphs 30-38.

6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings?

No to Violence defers to [Rape and Domestic Violence Services Australia's submission](#) to the Inquiry, specifically para 40-56.

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

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

In this submission, No to Violence has responded to Questions 7 and 8 combined, noting that the discussion of overcoming challenges is best considered when discussing these impacts.

Victim survivors, community sector leaders, journalists and academics have contributed to this discussion by suggesting several possible advantages and unintended consequences of criminalising coercive and controlling behaviour⁸.

Through the consultation conducted to support No to Violence’s submission, the organisation sought input from a range of people from different experiences, backgrounds and communities around key advantages and disadvantages of the criminalisation of coercive control. The draft summary report is at [Attachment A](#).

A number of key themes emerged which are explored detail in the following pages.

Advantages	Disadvantages and required mitigation
<ul style="list-style-type: none"> • Validation of victim survivor experiences • Criminalisation may be necessary to capture a pattern of abusive behaviour • Highlight the significance of non-physical forms of abuse • Provides a framework for improving the service and justice response • Potential to increase safety for highest risk victim survivors of coercive control • Opportunities to learn from advantages and shortcomings from previous legislation 	<ul style="list-style-type: none"> • Further increasing overrepresentation of First Nations People in custodial settings • Visa and migration issues present substantial risks of migrant and refugee populations • Continuation of traumatic experiences through proceedings • Some victim-survivors just want the violence to stop and want other pathways outside criminal justice responses • Criminal justice response isn’t a deterrent and has the potential to escalate violence and abuse • Reluctance to engage police amongst many victim survivors

Table 2: Comparison of advantages and disadvantages and required mitigations if a coercive control offence was established in New South Wales

⁸Walklate, S, Fitz-Gibbon, K 2019, ‘The Criminalisation of Coercive Control: The Power of Law?’, *International Journal for Crime, Justice and Social Democracy*, vol. 8, no. 4, pp. 94-108, viewed 23 December 2020 <https://search.proquest.com/docview/2328195821?accountid=12528&pq-origsite=primo>

Advantages

Validation of Victim Survivor Experiences

An important part of criminalisation is that it recognises, by law, that coercive control is not acceptable, and ‘sets the precedent for what is acceptable behaviour and what is unacceptable behaviour.’

In consultations to support the development of this submission, victim survivor participants felt that current police and court responses were designed to respond to family violence as an incident, rather than as a pattern of abusive behaviour.

As such, participants felt that this created a ‘hierarchy’ of family violence, with physical and visible forms of violence considered to be more serious than invisible violence, such as economic and emotional abuse.

Participants indicated that this devalues the realities of other women whose experiences of coercive control are not physical. Therefore, criminalisation could serve to bring the voice of victim survivors forwards and validate the diverse experiences of victim survivors of coercive control.

“I feel that I’m in a situation where I almost have to feel grateful that I had physical abuse because I could access police and court assistance. Not fair on me because I feel grateful for something no one should ever have to go through.” – Participant, Victim Survivor Forum

Criminalisation may be necessary to capture a pattern of abusive behaviour

Family violence is rarely incident-based, and instead occurs as a pattern of abusive behaviour. However, this is yet to be properly reflected in legislation⁹. Creating an offence for coercive control may be the next necessary step in allowing legislation to conceptualise family violence as a pattern of abusive behaviour¹⁰.

An offence could better reflect the nature of abusive behaviours and would allow for patterns of abuse to be recognised more easily by the law, expanding the understanding of domestic and family violence beyond being incident-based¹¹. Furthermore, an offence of coercive and controlling behaviours would generate more public awareness of the types of family violence which are not afforded significant media attention.

Criminalising coercive control also offers victim-survivors with an avenue through which they can seek recourse. By introducing an offence which encapsulates the patterns of coercive and controlling behaviours, as opposed to specific incident-based legislation, victim-survivors may have access to remedies or protections which would otherwise be inaccessible under current legislation.

⁹ Douglas, H 2017, ‘Legal systems abuse and coercive control’, *Criminology & criminal justice*, vol. 18, no. 1, pp. 84-99, viewed 24 December 2020, <https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>

¹⁰ McGorrery, P & McMahon, M 2019, ‘Its time ‘coercive control’ was made illegal in Australia’, *The Conversation*, 30 April, viewed 24 December 2020, <https://theconversation.com/its-time-coercive-control-was-made-illegal-in-australia-114817>

¹¹ Walklate, S, Fitz-Gibbon, K & 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, viewed 23 December 2020, <https://journals-sagepub-com.ezproxy.lib.monash.edu.au/doi/pdf/10.1177/1748895817728561>

Highlight the significance of non-physical forms of abuse

Types of family violence which are less visible, such as emotional, economic, cultural, spiritual and psychological abuse, are routinely disregarded as less serious and dangerous forms of violence by police, and in Court¹².

Furthermore, these types of violence can be challenging to establish under current legal paradigms, making the process traumatising for victim-survivors. An offence of coercive control would better recognise the diverse forms in which family violence can be perpetrated and would contribute to the recognition of less visible forms of violence, as serious forms of violence¹³.

Victim survivors consulted throughout the development of this submission indicated that criminalisation could increase community knowledge of coercive control and provide women who experience violence the power to identify and articulate the violent patterns of behaviour to which they are exposed. This may provide an environment where victim survivors are able to seek support and safety sooner.

Provides a framework for improving the service and justice response

“Assuming it would be an inclusive system response, it could create an opportunity to better reach into and across our communities to offer support options.” – Participant, LGBTIQ+ Roundtable

During the consultations undertaken across diverse communities, a common theme emerged that police and courts require better, evidence-based training to identify the ‘predominant aggressor’ and accordingly the ‘person most in need of protection’.

Criminalisation must be approached with the understanding that, although it could play a key role in driving social change, it cannot be the end point.

Participants also noted that Police officers require greater exposure across different communities so that training can be practically implemented.

In one consultation conversation, a facilitator asked the question whether ‘criminalisation of coercive control would improve victim safety’. The answer from most respondents was no; but it could enable a better service response.

Across the consultations, it was clear that there is a strong need for a reformed, more comprehensive, systematic response to family violence – including primary prevention, early intervention, crisis responses, and recovery.

Indeed, concerns were raised about ‘what happens after someone is charged’. One individual raised that perpetrators could still use coercive controlling tactics from prison, and it is important that there are services and supports to address this behaviour in custodial settings.

¹² *ibid*

¹³ McGorrery, P & McMahon, M 2019, ‘Its time ‘coercive control’ was made illegal in Australia’, *The Conversation*, 30 April, viewed 24 December 2020, <https://theconversation.com/its-time-coercive-control-was-made-illegal-in-australia-114817>

Potential to increase safety for highest risk victim survivors of coercive control

The primary benefits of criminalisation for the majority of victim survivors are considered to be the improved service response and community awareness of coercive controlling violence.

Criminalisation is unlikely to prevent coercive control happening – there are few cases where criminalisation has stopped people doing things. Murder, assault, sexual assault are all criminal offences and sadly continue.

However, for those at the highest risks, there is the potential that criminalisation may prevent severe escalation and potentially homicide. As has been highlighted through the advocacy of families and individuals such as Lloyd and Sue Clarke, severe forms of coercive controlling violence are major risk factors for attempts on victim survivor’s lives.

In Australia, around one woman per week is tragically and senselessly murdered. Only if the implementation of this legislation is backed with legal and social supports, and crucial training to support police, Courts and services to identify risk, there is the possibility that some of these women may be saved.

Opportunities to learn from advantages and shortcomings from previous legislation

Throughout the development of this paper, No to Violence engaged Scottish and English experts that indicated that, although in support of the criminalisation of coercive control in their respective countries, there remain ineffective systemic responses. In particular, they pointed to the low levels of successful prosecutions.

“In England, in March 2020 there were nearly 25,000 offences of coercive control recorded by police. This was a great increase from 5,000 recorded in the first year. We're seeing much greater recognition and response by police to the new offence. However, these rates pale in comparison to police recordings of 1.3 million domestic abuse incidents or crimes in same year. We are seeing only a very small total or proportion of domestic abuse being recognised as coercive control.

“More worrying is the very low number of perpetrators that are prosecuted and convicted in England. In the last year, with the figures are available we have seen just under 300 perpetrators convicted, around 500 prosecutions”

– Lucy Hadley, Head of Policy and Campaigns, Women’s Aid Federation of England

“[Responding to Ms Hadley’s statement] it's the same in Scotland... Still have majority of cases coming in through on the incident basis using previous legislation' then through new ... legislation. ... [We] would have hoped to see more investigation. Resource issues, and education, around how you investigate and prosecute a pattern of behaviour...there are still very very low conviction rates for domestic abuse.”

- Lynda Rogers, CEO, Edinburgh Women’s Aid

Table 3: Transcript of No to Violence consultation with representatives from Scotland and English Women's Aid

Scotland advanced on the United Kingdom reforms through increased levels of engagement with stakeholders, and training of their police force.

Tasmania has legislation in place which criminalises economic and emotional abuse. However, this legislation has not led to many prosecutions and has been more focused on non-physical forms of violence¹⁴. This is partly because many of the types of behaviour which are criminalised under this legislation, are already criminalised through other legislation or common law, making the new legislation complicated, confusing, and limited in application¹⁵.

Should the New South Wales Parliament proceed with making coercive control an offence, there is an opportunity to learn from the advantages and shortcomings of the legislation in Tasmania, the UK and Scotland and make necessary adaptations to create the new 'gold standard'.

Disadvantages and unintended consequences

No to Violence notes that although most New South Wales individuals and organisations consulted throughout the development of this submission were supportive of creating an offence for coercive control, there was almost universal concern about unintended consequences.

Whilst these concerns do not outweigh the advantages in a New South Wales context, it will be critical that protections and mitigation are built in to any development and implementation of an offence. This avoids it doing more damage than good for many individuals and communities that are already disenfranchised.

Further increasing overrepresentation of First Nations People in Custodial Settings

Criminalisation has the potential to put more First Nations' People in prison. This is highly problematic considering both First Nations' Men and Women are already disproportionately over represented in Australia's custodial system.

Continual removal of First Nations' Men from family and community will have a negative impact on children and the structures of families for generations to come. In this way, the criminalisation of coercive control can then serve to further perpetuate harmful impacts of colonisation on First Nations' communities.

In consultation with First Nations' Communities, participants indicated that for some women whose immediate safety is at risk "we need to resort to jail, unfortunately". However, the importance of alternative programs for addressing domestic and family violence, led by First Nations' Peoples, was seen as critical. In the face of already high incarceration rates of First Nations' Peoples, participants strongly advocate for alternative pathways to criminalisation (e.g., culturally appropriate and community led early intervention and behaviour change programs).

Participants questioned whether the legislation would address the varying intricacies faced across First Nations' communities, as needs can vary greatly based on geographical, location.

¹⁴ Walklate, S, Fitz-Gibbon, K 2019, 'The Criminalisation of Coercive Control: The Power of Law?', International Journal for Crime, Justice and Social Democracy, vol. 8, no. 4, pp. 94-108, viewed 23 December 2020, <https://search.proquest.com/docview/2328195821?accountid=12528&pq-origsite=primo>

¹⁵ ibid

Many participants asserted that legislation must be formed in consultation with First Nations' Elders and leaders – and that the current fast-tracked approach in New South Wales represented insufficient time to properly engage with First Nations' Peoples.

No to Violence considers it critical for genuine engagement with First Nations' Communities essential in the development of any offence, noting the likelihood of disproportionate unintended impacts on these communities if not done well. Adequate time to support genuine consultation is critical in this.

Visa and migration issues present substantial risks of migrant and refugee populations

“If we [criminalise] coercive control, we need to have special protection for temporary visa holders ...[to] protect women from being deported.” – Participant, Migrant and Refugee Consultation

Australian visa laws can be used as a tool for coercive control. Due to temporary and partner visa requirements, migrant and refugee victim-survivors are extremely vulnerable to this form of control.

If someone on a temporary visa is charged with a criminal offence, there are grounds to deport them to their country of origin. In the case of partner visas, there is a profound risk that this could result in the deportation of victims of family violence. No to Violence strongly believes that deporting victims of domestic and family violence is morally reprehensible. The current arrangements present a considerable risk that victims on temporary or spousal visas will not reach out for support out of fear for the immigration implications.

The lack of understanding of Australia's migration system can also be used by perpetrators to lie as a way of controlling their partner or family member. Through our work and in consultations, No to Violence has frequently heard of perpetrators lying about insecure visa status and threatening to report victim survivors if they leave or did not submit to their demands.

Whilst No to Violence notes that visa and migration issues are a matter for the Commonwealth Government, it is of critical importance to note the importance of:

- Strong advocacy from the New South Wales Government regarding reform of the visa system, to better protect victim survivors from migrant and refugee backgrounds.
- Significant funding boosts for specialist multicultural family violence organisations, including for migration lawyers.
- A system response which does not force criminal proceedings, noting in the cases of some partner visas women will be deported if their perpetrator receives a criminal conviction.

No to Violence points to the [submission of the Muslim Women's Association](#), in particular their response to Question 7 which provides powerful case studies detailing abuse in migrant and refugee communities.

Continuation of experience through proceedings

There are concerns by some that a new offence could put women and children in more danger, by allowing perpetrators more opportunities to engage with victim-survivors in Court. As noted above in Section 2 under victim experience, No to Violence considers it important that proceedings do not place further burden on victim survivors, and they are adequately supported throughout legal processes.

No to Violence also considers it important that victim-survivors are provided choice and agency over the path they wish to take – some prefer a service response, some civil, and some criminal. Having these options is important.

Perpetrators can use courts and other legal proceedings to remain in contact with, and thereby continue to control, manipulate, and abuse victim-survivors long after their relationship or connection has ended¹⁶. Victim-survivors face many challenges when going to court, including the retraumatizing experience of providing evidence and statements about their experiences of violence.

Although No to Violence notes the important changes to the *Criminal Procedure Act 1986*, it is important that processes to improve victim survivor court experiences are ongoing including the training of the broader justice system (including Judges).

Some victim-survivors just want the violence to stop

A 'black and white' response to coercive control is not in the interest of victim survivors, particularly in the case of women who 'just want their partner to change'. In consultation with victim survivors, some indicated the importance of a non-criminal response.

"Choice and agency for people who don't want to interact with CJS and for those that do." – Participant, Victim Survivor Consultation

In these cases, Men's Behaviour Change Programs (MBCP) and other support services are encouraged as an option to pursue rather than a justice response. This was echoed in other consultations, in particular with First Nations communities and services that worked with women from migrant and refugee backgrounds,

However, some victim survivors noted that in their experience this was not an appropriate response and they wish there was a criminal response to support them at the time they were in and leaving an abusive relationship. This highlights the importance of choice and agency for victim survivors about the path they choose to take.

Criminal justice response isn't a deterrent and has the potential to escalate violence and abuse

There is an extensive evidence base around criminal convictions not being an effective deterrent for crime, and can potentially have criminogenic impacts¹⁷. It is important to note that coercion and control can continue to be used from a custodial setting, and there is also a risk of escalation when a person leaves a custodial setting.

The New South Wales *Crime (Sentencing Procedures) Act 1999* states one of the purposes of sentencing is 'to promote the rehabilitation of the offender' and 'to make the offender accountable for his or her actions'. As such, any moves to criminalise coercive control must be complemented with Men's Behaviour Change and other programs in custodial settings.

In cases where prosecution is not successful - which has been very common in jurisdictions which have introduced coercive controlling offences - there are significant risks associated with escalation of domestic

¹⁶ Douglas, H 2017, 'Legal systems abuse and coercive control', *Criminology & criminal justice*, vol. 18, no. 1, pp. 84-99, viewed 24 December 2020, <https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>

¹⁷ Ritchie, D., 2011. *Sentencing matters-Does imprisonment deter. A review of the evidence. Melbourne: Sentencing Advisory Council*, Melbourne, viewed 1 February 2021. https://www.abc.net.au/mediawatch/transcripts/1128_sac.pdf

and family violence. Comprehensive risk identification, assessment and management focused on victim wellbeing and safety are key and need to be undertaken by a skilled and competent workforce.

As highlighted in Section 4, greater training around the recently released New South Wales Risk, Safety and Support Framework (RSSF) will be important to identify the predominant aggressor and assess risk for users of violence. Without greater cross sector training in risk identification, assessment and management, that monitors victim safety, the creation of an offence would be very dangerous.

Reluctance to engage police amongst many victim survivors

A significant body of research has found that victim-survivors of family violence are reluctant to engage police¹⁸. Some reasons include fear of not being believed, discrimination, and fear that police intervention will escalate the abuse¹⁹.

Furthermore, many victim-survivors report that they do not want their partner to be convicted or imprisoned; rather, they just want the violence to stop²⁰.

"I really loved my partner, I loved him as a person, I did not like the violence. I wish that stopped." – Participant, Victim Survivor Consultation

This can be particularly challenging for certain communities who experience historically difficult relationships with law enforcement, including but not limited to First Nations women, LGBTIQ+ individuals and communities, people from multicultural, migrant and refugee backgrounds, and women with disabilities.

These barriers to accessing justice not only indicate the need for culturally appropriate training across the justice and legal system but demonstrate the necessity of a response which extends beyond criminal to civil and social services.

Recommendations

16. Implement strategies to prevent perpetrators in custodial settings from continuing to use tactics of coercive control to abuse victim survivors, and to address these behaviours in custodial settings.
17. Undertake comprehensive consultation around criminalisation of coercive control and system reform, with sufficient time to engage with the broader family violence sector and individual communities impacted by any reforms, in particular First Nations elders and leaders.

¹⁸ Walklate and Fitzgibbon, 2019

¹⁹ Meyer (2011). 'Seeking Help for Intimate Partner Violence: Victims' Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction'. *Feminist Criminology* 6 (4): 268–90 viewed 5 February 2021 <https://doi.org/10.1177/1557085111414860>

²⁰ Dugan, L 2003, 'Domestic violence legislation: exploring its impact on the likelihood of domestic violence, police involvement, and arrest', *Criminology & public policy*, vol. 2, no. 2, pp. 283-312, viewed 5 February 2021 <https://onlinelibrary-wiley-com.ezproxy.lib.monash.edu.au/doi/pdfdirect/10.1111/j.1745-9133.2003.tb00126.x>

18. Develop and fund culturally appropriate and community-led early intervention and behaviour change programs for First Nations communities as an alternative to criminal charges where possible.
19. Leverage New South Wales influence to advocate and ensure victim survivors from migrant and refugee communities with temporary visa status, including partner visas, are protected from deportation.
20. Increase funding for specialist multicultural family violence organisations, including for migration lawyers.
21. Resource and provide adequate support to victim survivors and perpetrators who are required to attend court. This should include provision of information prior to attending court regarding what to expect, support workers available for counselling and debriefing on the day and in the weeks following. Victim survivors should also have the choice to have multiple support persons in the court room.
22. Ensure that Men's Behaviour Change Programs and other appropriate support services are available in cases of coercive controlling violence, in particular for victim-survivors who do not want a civil or criminal justice response.
23. Develop a workforce development strategy for workers who come into contact with users of violence and victim survivors should be developed that includes training on the Risk, Safety and Support Framework to ensure comprehensive risk identification, assessment and management.
24. Collaborate with diverse communities who may be reluctant to engage with police to develop and resource alternative non-criminal responses to domestic and family violence.

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?

No to Violence directs readers to the response for [Question 2](#), which explores components that distinguish from ordinary relationships from relationships where coercive control is present. In particular, behaviours and other factors that need to be taken into account are:

- The pattern of behaviour and abuse being repeated and continuous;
- Motive and intention;
- Training to minimise risk of misidentification of the predominant aggressor;
- Evidence of impact on the victim, whilst minimising burden on victim-survivor; and
- Personal connection, noting it should not be restricted to co-habitation.

In addition, if the New South Wales Parliament considers the development of an offence for coercive controlling violence, there are a number of other processes and considerations that should take place to ensure victim survivors are able to exercise choice and reclaim control, and the offence shouldn't have unintended consequences.

Gender informed

In line with the Scottish approach, the definition of coercive control should explicitly include gender analysis that recognises the relevance of gender roles and historical power imbalance between men and women.

Understanding the core drivers of coercive control, embedded within legislation, will offer context and will play an important part in the community education required to raise awareness of coercive control and non-physical forms of violence.

A gender impact assessment should be undertaken before any proposed legislation is brought to the New South Wales Parliament, to explore any unintended consequences of criminalisation on victim-survivors (including potential housing or financial impacts), and how to address them.

Consultation should occur with LGBTIQ+ organisations such as ACON and Intersex Human Rights Australia around inclusion of how gendered dynamics present across LGBTIQ+ communities, including people who are trans or gender diverse, or have intersex variations.

Open categories of behaviours

No to Violence supports leaving the category of behaviour open for any offence around coercive control, using intention and impact to assess if an offence has been perpetrated.

As demonstrated by online and technology facilitated abuse, particularly during the last decade, perpetrators will find new ways to perpetrate coercive control.

Recent examples include using small digital payments to stalk, harass or intimidate any person through abusive messages; social media harassment, including stalking, monitoring messages, or creating fake accounts in victim survivor names; using more readily available GPS technology to track and stalk; and stalking applications on phones. This is a small list of examples which were not even considered just five years ago.

Focusing on state of mind (see below), intention and impact rather than specific forms of behaviour will be important to ensure the legislation does not quickly become out of date.

Broader scope of relationships

No to Violence notes that coercive control can be perpetrated across many different forms of relationships, including intimate partner, and other close and familial relationships. It is important these are included within context of any offence for coercive control.

Whilst the responsibility of parents for their children who are minors indicates a power imbalance of authority over another, there are times (especially with teenage and adult children) where the means of exercising this authority may constitute coercive control. This is dependent on intent and impact.

For example, in cases where coercive and controlling behaviours are being used to discipline, abuse and restrict the liberty of adolescents or children who have 'come out' as LGBTIQ+, the intent and impacts are clearly damaging and will have long term negative consequences – this is not for the benefit of the minor. In contrast, if a child shoplifts and is grounded, this is a consequence of actions and is intended for the long-term benefit of the child.

Participants in consultations also discussed the role carers (including non-family members) for people with disability; the adult children of older Australians (particularly with powers of attorney); 'mob' in First Nations communities; 'in-laws' within migrant and refugee communities; parents of adolescent LGBTIQ+ individuals.

There are countless other examples, indicating the scope of relationships included within any offence must be broader than intimate partner or immediate family relationships, with impacts on the victim survivor and state of mind / intention being central.

No to Violence sadly notes recently uninformed and inaccurate statements by a member of the New South Wales Parliament regarding the criminalisation of coercive control, articulating this would mean that parents wouldn't be able to ground their children²¹. There is clearly no precedent for this in previous legislation or intention for this to happen.

It is important that misinformed statements and unnecessary fear mongering do not prevent certain forms of coercive control being included in any development of an offence, should the New South Wales Parliament move to make coercive control an offence.

State of mind of the offender

As an organisation that works with men who use violence every day, it is clear that many perpetrators do not know they are using family violence, including coercive control. But this does not mean it should not be prosecuted or the person provided access to interventions to reduce and stop using behaviours that are abusive.

The behaviours of coercive control are about meeting the emotional and other needs of the perpetrator and give little to no consideration of the impacts or consequences for the victim. This makes proving

²¹ Knight D (2021) Mark Latham accused of 'scaremongering' in domestic violence debate, 2GB, accessed online 25 January 2021. <https://www.2gb.com/mark-latham-accused-of-scaremongering-in-domestic-violence-debate/>

deliberate intent with a person who usually denies, minimises, distances or justifies their behaviour to themselves (and others) difficult.

Through this experience, No to Violence supports the requirement that the offender ought to have known that their behaviour would have been abusive.

Penalties and Sentencing

The penalties decided on must be relative to the seriousness of the gravity and harm done by the perpetration of coercive control.

No to Violence are not experts in penalty units and sentencing, however, we believe there are two additional considerations which the committee should consider in alignment with the *Crime (Sentencing Procedure) Act 1999*, namely:

Part 1, Section 3A(c) to protect the community from the offender

As highlighted above in **Questions 7 and 8**, in some very high-risk cases this may provide protections from severe harm, and potentially homicide. Sufficient time must be provided to protect victim-survivors from their perpetrators and establish new networks and connections in new places if they wish to.

This needs to be coupled with a multi-agency, thorough risk assessment by experts in coercive control and family violence. Noting the potential impacts to escalate violence, and the manipulative nature of many men who use coercive controlling violence, this is a critical assessment upon release. This information should be shared with local police and family violence organisations.

Victim survivors should also be made aware of any upcoming Parole hearings and be offered the option to provide a victim-impact statement if they wish to and be advised of information regarding release dates.

Part 1, Section 3A(d) to promote the rehabilitation of the offender

One of the key purposes outlined in the *Crimes (Sentencing Procedure) Act 1999* are promoting the rehabilitation of the offender. This is an optimal time, noting a literal 'captive audience'.

As highlighted in our response to Question 15, there is a need to expand the availability and scope of Men's Behaviour Change and other programs in custodial settings. Men's Behaviour Change Programs appear most successful when the participant is 'ready' to engage within a group session²², and significant case work can be required prior to participation (see Caledonian Model²³).

²² Government of Victoria, 2019 'Expert Advisory Committee on Perpetrator Interventions: final report' Accessed online 5 February 2021 <<https://apo.org.au/sites/default/files/resource-files/2019-11/apo-nid268781.pdf>>

²³ Ormston R, Mullholland C, Setterfield L. Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland. Scottish Government Social Research; 2016. Accessed online 5th February 2021 <<https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/pages/3/>>

Consultation across the correctional system and sector that works with men who use violence should occur to better streamline the availability of the service that aligns with the man's needs, as well as strengthens interactions with Post Release Programs.

Recommendations

25. A gender impact assessment should be undertaken to identify and mitigate potential unintended consequences of criminalisation on victim-survivors (including potential housing or financial impacts), and recognising gender roles and historical power imbalances between men and women and gendered dynamics in LGBTIQ+ communities.
26. Any offence or response to coercive control should
 - avoid being too prescriptive in defining coercive controlling behaviours, instead, using the thresholds of intention and impact to assess if an offence has been perpetrated;
 - include intimate partner, and other close and familial relationships, not necessarily restricted to people who are cohabitating; and
 - include the requirement that the 'offender know or ought to have seen that their behaviour would have been abusive'.
27. Multi-agency, thorough risk assessment should be undertaken by experts in coercive control and domestic and family violence prior to the release of users of violence from custody. Risk assessment information should be shared with victim survivors, local police and family violence organisations.
28. Victim survivors should receive timely information regarding parole hearings, release dates and have an opportunity to share a victim-impact statement.

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

No to Violence recognises the work of the NSW Police High Risk Domestic Violence Offender Team in proactively ensuring that users of violence are kept in view. However, victim survivors have reported that even with Apprehended Domestic Violence Orders (ADVOs) in place, they still experience coercive control that impacts their safety and wellbeing.

Using ADVOs to strongly encourage and increase uptake of behavioural change

No to Violence believes the participation in Men's Behaviour Change or other intervention programs should be expanded across conditions of ADVOs, with Magistrates provided with more information and guidance in enabling this.

This could considerably improve the safety of victim survivors, not just through attempting to change the abusive behaviours but as a mechanism for monitoring the safety of victim survivors through 'Partner Contact' work offered to victim survivors as a key part of Men's Behaviour Change Programs.

Safety planning should be undertaken, ideally by WDVCAS, to increase the safety of person in need of protections (PINOP) and support for them to manage risk. This needs to be supported by extensive professional development and training for Court staff (including Judges) and Police.

No to Violence supports the work of Insight Exchange who have developed several resources for victim-survivors, their families and service responders. *My Safety Kit* includes reflection questions about safety and wellbeing, information about what domestic violence and abuse can look like, a decision-making tool, and contact details for services across states and territories that may be able to support next steps.

Strengthen consequences of breaching conditions of ADVO

Compliance with interventions orders should be strengthened. Regardless of whether an offence is created for coercive control, ADVOs will remain a crucial part of the systemic response for improving victim survivor safety.

No to Violence understands that if a Court convicts the defendant, they can be fined up to \$5,500 and/or imprisoned for up to two years.

Noting the increased level of risk in many circumstances, consideration should be given to expanding the penalties available to the Judiciary for prosecuting ADVO breaches based on risk assessment processes. For example, in Victoria a defendant who persistently breaches a Family Violence Intervention Order can be imprisoned for a maximum five years and / or be fined up to 600 penalty units (\$93,276).

Perpetrator accommodation and support

One of the excuses put forward by perpetrators of family violence is that they do not have an alternative place to go. Faced with homelessness or couch surfing, and often driven by entitlement, the perpetrator will return to the home of the victim survivor. The pressure on victim survivors to 'take him back' because of his risk of homelessness, even if it means compromising her safety, is profound.

Short and medium-term accommodation for perpetrators could improve the effectiveness of ADVOs and reduce breaches, whilst shifting the burden of the response from the victim survivor to the perpetrator.

In response to the COVID-19 pandemic, two jurisdictions (South Australia and Victoria) have established trials around short-term accommodation and support services for men who use family violence. The intention was in part due to shift the burden from victim-survivors fleeing violent and abusive relationships where safe to do so, as well as providing accommodation options to reduce the risk of breaching their jurisdictions' equivalent to an ADVO.

Recommendation:

29. Include prohibition of acts of coercive control as a mandatory condition of all ADVOs. Specific acts can be identified further if requested by the person(s) in need of protection, but not required by the Court.
30. Recommend magistrates strongly encourage or mandate participation in a Men's Behaviour Change intervention when granting ADVOs based on risk assessment.
31. Ensure New South Wales Police are better equipped, trained, and resourced to respond to breaches of ADVOs.
32. Ensure Courts understand the link between ADVO breaches and risk (of future violence/breaches) and consistently apply appropriate consequences (fines or imprisonment).
33. Develop short and medium term accommodation options for men who use family violence to reduce risk of ADVOs being breached, and enable interventions.

11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?

No to Violence defers to Rape and Domestic Violence Services Australia's submission to the Inquiry, specifically para 30-38.

12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?

No to Violence refers also to the [submission of Rape and Domestic Violence Services Australia](#), noting their discussion in the provision of jury directions.

No to Violence does however note the complexity and relative lack of community understanding of the drivers of domestic and family violence, including coercive controlling violence. As such, we consider it important that some advice is provided ahead of any proceedings considered by a jury.

No to Violence suggests consideration of the following in any directions that are developed and note the importance of engagement across the sector prior to any development.

The definition of domestic and family violence:

Domestic and family violence is characterised by a range of behaviours intended to exert power and control that is typically experienced by victim-survivors as ongoing, cumulative, chronic and routine, rather than as a single incident of violence.

Domestic and family violence involves exploitation of power imbalances (such as between men and women or adults and children) and is characterised by ongoing patterns of coercive and controlling behaviours that aim to create fear and compliance in victim-survivors.

To remain consistent with other frameworks and because its encompassing nature, jury direction should align with the definition provided by the NSW Government's (2014) *Domestic and Family Violence Framework for Reform – It Stops Here*:

“Domestic and family violence includes behaviours that control or dominate a person, causing them to fear for their own (or someone else’s) safety. It includes behaviour that controls, intimidates, terrifies, or coerces a person. It includes physical, sexual, verbal, psychological, mental, and emotional abuse; stalking; harassment; financial abuse and manipulation; denial of freedom and choice; and control of access to family and friends.”

The gendered nature of domestic and family violence

Domestic and family violence is a gendered crime that disproportionately and overwhelmingly affects women and children. Domestic and family violence, including coercive control, are highly gendered forms of violence which are demonstrated by statistics and evidence collected over decades.

However, there remains a considerable lack of understanding of these statistics. Myths, anecdotal evidence and false statistics are often distributed, which has the potential to impact deliberations. It is critical a jury’s deliberations are backed by evidence.

Understanding domestic violence through an intersectional lens

The experience of domestic and family violence within diverse communities (including, but not limited, people with disability, First Nation’s People, LGBTIQ+ individuals and communities, multicultural communities and people from migrant and refugee backgrounds) needs to be considered in jury directions. These communities can often experience multiple challenges that heighten the likelihood, impact or severity of violence as well as experience additional barriers to seeking and obtaining support.

For people from diverse and historically disenfranchised communities, the experience of multiple and overlapping factors and experiences of discrimination and/or disadvantage related to these factors, can compound or exacerbate the impacts of domestic and family violence and contribute to specific dynamics of perpetration.

Acts of resistance and predominant aggressors of abuse and violence

Individuals and families experiencing domestic and family violence, including coercive control, can resist violence in a myriad of ways that are strategic, careful, creative, resourceful and not always socially acceptable or socially promoted behaviours.

These acts of resistance are sometimes perceived as violent responses and can often result in the victim being identified as the predominant aggressor. While no form of violence is acceptable, it is important to provide information that helps to dispel myths around victim survivors 'asking for it' or 'being just as bad as he is'.

Essential to any reform to better improve responses to coercive controlling violence is the ability to identify the predominant aggressor and subsequently the person most in need of protection. No to Violence points to a recent discussion paper²⁴ published by No to Violence, and research by ANROWS²⁵. No to Violence also notes current work with Monash University which explores this issue, using cases from No to Violence's Men's Referral Service to assist the development of a framework.

Recommendation:

34. The development of jury directions should consider the matters of:

- The definition of domestic and family violence;
- The gendered nature of domestic and family violence;
- The unique experiences and forms of violence for victim-survivors from diverse communities;
- Acts of resistance; and
- Coercive control.

²⁴ No to Violence (2019) Predominant Aggressor Identification And Victim Misidentification, Accessed online 1 February 2021: < <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>>

²⁵ Nancarrow et al (2020) Accurately identifying the 'person most in need of protection' in domestic and family violence law, Accessed online 1 February 2021: < <https://www.anrows.org.au/project/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>.

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

No to Violence defers to Rape and Domestic Violence Services Australia's submission to the Inquiry, specifically para 44-56.

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

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?

Recognition of the impacts of coercive controlling violence, including the impacts of non-physical forms of violence, is incredibly important to validate the experiences of too many people across Australia who experience this insidious pattern of harmful behaviours.

Criminalisation of coercive control has the opportunity to save the lives of some victim survivors assessed at the highest risk. It also sends a message that as a society, we are not okay with these forms of violence. It provides an opportunity to raise awareness of the behaviours, attitudes and actions that make up domestic and family violence through extensive social campaigns including primary prevention and early intervention programs.

But criminalisation is not and should not be seen as an end point.

Importantly, it provides an opportunity to properly support the needs of victim survivors across New South Wales while holding their perpetrators to account.

As has been seen in the England, Wales and Scotland, the implementation of this offence is only as effective as the justice and social services system responses.

Legislative changes to create a new offence will inevitably increase demand on domestic and family violence specialist services. The supply of services must be bolstered to meet demand, or it will not meet its intended aim to reduce domestic and family violence, particularly domestic homicide.

Systemic reforms are required to reduce the social and economic costs of domestic and family violence.

Gender-based violence, including domestic and family violence (incorporating coercive control), has huge economic costs and strains health, legal, police, community and other services. In 2016, KPMG Australia estimated the costs at \$22 billion per annum²⁶.

However, this cost in currency pales in comparison to the social impacts of the lived experiences of family violence. The use of violence, abusive and coercive control restricts the agency and livelihoods of victim-survivors.

What is needed is a whole-of-community response encapsulating government, the community sector, business, and individual communities and citizens.

²⁶ KPMG 2016. The cost of violence against women and their children in Australia. Sydney: Department of Social Services. Accessed online 5th February 2021:

<https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf>

Presently, the systemic response is weighted towards crisis. This is incredibly important in directly responding to the violence experienced by so many; however, expanding preventative and early intervention activities is needed to prevent it happening in the first place and to prevent escalation.

Primary Prevention	Early Intervention	Tertiary / crisis response	Recovery
Addressing the societal structural inequalities, behaviours and attitudes that lead to family violence.	Intervening once violent and abusive behaviours begin to present, and preventing them from escalating to crisis.	Responding to violent and significantly traumatic experiences with high levels of risk to victim safety.	Aiding recovery from crisis, and maintenance of stability / behavioural change.

Table 4: Conceptualisation of the domestic and family violence system.

Investment in primary prevention across our whole society

No to Violence congratulates New South Wales for becoming a member of Our Watch in 2019. No to Violence calls for increased investment for primary prevention across New South Wales to support its implementation, including better targeting of messages for different communities and experiences.

As highlighted by Our Watch²⁷, primary prevention should address the attitudes, practices and power differentials across the whole population to prevent gender-based violence, including non-physical forms of violence.

We know what the drivers of coercive control are, and it is critical that the focus is expanded to address them to prevent the social and economic impacts of domestic and family violence for the next generation.

These approaches need to be implemented across all areas of society, from schools, to workplaces, sports clubs, government institutions and the justice system.

Current responses to men using violence

Men’s Behaviour Change Programs (MBCP) are one point on a spectrum of opportunities for intervention and accountability work with men who use domestic and family and coercive control. MBCPs can provide a suite of intensive and ongoing interventions with men who use violence and coercive control which can engage him in change work that places accountability for his behaviours firmly with him while keeping ‘in view’ of the system.

These interventions can include group programs, one on one counselling, case management, support for men on wait lists, and follow up with men who have completed a program.

Group work is an essential component of this, as it asks the perpetrator to take accountability for their behaviour in front of a group of his peers. Taking responsibility for the harm they are causing can increase motivation and investment in the change process. The primary clientele of the programs delivered through the Men’s Behaviour Change Network NSW is those deemed medium risk, programs will often

²⁷ Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth (2015). *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch, Melbourne, Australia

increase this risk level once Partner Contact work has commenced and the extent of historical and current violence is assessed. Higher risk participants are often linked in to New South Wales Corrective Services who deliver the EQUIPS program in custodial and community settings. Unfortunately, this leads to lower risk clients often falling between the gaps.

An fundamental pillar of Men's Behaviour Change programs is partner contact work, which works with affected family members to provide appropriate referrals, monitors perpetrator behaviour and assesses ongoing risk (although often inadequately or unfunded, this is a critical component of the work). If a perpetrator is deemed at increasing risk of escalating violence, reports are made to appropriate authorities. The safety of victim survivors is central to of men's behaviour change programs and the work of No to Violence.

Referral to services to address behaviour

Currently there are two pathways into men's behaviour change programs in NSW: voluntary or mandatory referral to a community-based program, and court-mandated participation in a program through Corrective Services.

A system that recognises the harm and seriousness of coercive control must provide every opportunity for interventions (particularly early interventions) to reduce abusive behaviours, decrease the likelihood of domestic homicide, and offer recovery support for victims.

Based on consultation with the Men's Behaviour Change Network NSW and domestic and family violence peak bodies, No to Violence recommends considerations be given to:

- **Reforming bail and remand legislation** through consideration of the perpetration of coercive control in whether a defendant should receive bail for a domestic violence-related offence, or look at what conditions can be imposed for bail for a coercive control offence;
- Making it a **condition of parole for users of violence to participate in registered a men's behaviour change program**;
- Developing and **strengthening referral pathways for the Court to refer users of violence to registered men's behaviour change programs** when making a decision; and
- **All reports to police of coercive control are referred to wrap around services for people who use domestic and family violence** to assess their individual needs, including alcohol and drug, mental health, housing, access to income, appropriate specialist interventions.

There is a need for a better way of working with men who use violence

Coercive control – including physical and non-physical forms of violence - is central to Men's Behaviour Change Programs (MBCPs). MBCPs represent a way to substantially increase community safety, and better respond to the behaviours exhibited by perpetrators of coercive control.

No to Violence believes that men are not born violent. In our work, and in the work that our members do, we have seen it is possible to hold perpetrators to account and help them along the journey to a safer and more respectful life for themselves and their family.

However, we also recognise that this work is relatively new with Practice Standards and dedicated funding only occurring in recent years. There is more to do to build effective practices to intervene within the spectrum of men who use domestic and family violence.

A refined approach is needed that acknowledges that men who use violence are not a homogenous group and require different sometimes tailored approaches. Opportunities to intervene early are generally more effective and provide substantially more wrap-around guidance and support for those at the highest risk of reoffending.

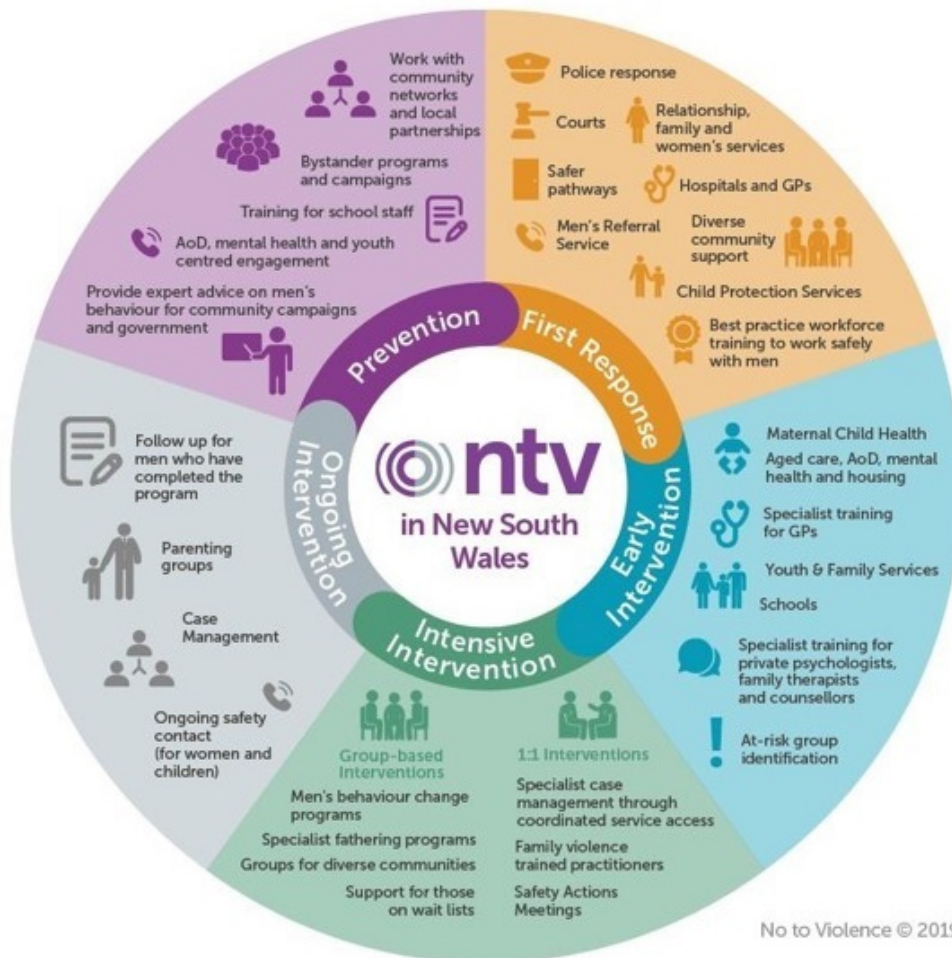


Figure 1: No to Violence’s vision of the suite of interventions required to address domestic and family violence.

Not a homogenous group

All perpetrators who go through these programs have individual experiences and backgrounds. This can be socio-economic, ethnic, cultural, regionality, etc. However, the majority of responses are not able to be tailored to individual men’s experiences.

Throughout the consultations undertaken developing this submission, particularly with First Nations’ Communities, LGBTIQ+ individuals and communities, and people from migrant and refugee backgrounds, there were calls for culturally appropriate programming to support the men in these communities to respond to their violent and abusive behaviour.

There were calls for programs to be delivered in language where required, and with an understanding of cultural backgrounds. In the case of family violence within First Nations’ Communities, an understanding of unique drivers within these communities and intergenerational trauma is essential.

“If I were a gay or trans man who was using family violence, I would find it very difficult to engage in an ordinary MBCP. The toxic masculinity that corresponds with family violence

can often include homophobia, and the experiences and drivers of these men could be very different” – Participant, LGBTIQ+ consultation

By increasing the cultural competency of groups, including engaging community members or leaders where appropriate, will be an important step to the process of addressing the behaviour of men who use violence.

Early Intervention

Early intervention is focused at preventing people from needing crisis and tertiary responses due to their experiences of violence and should be an immediate focus for preventing family violence (and the repeat offences of the men who use violence).

Throughout consultation, as well as in public discussion around this issue, the importance of raising awareness so people know what to look out for has been consistently highlighted. If done well, this in itself will enable earlier intervention.

Research indicates that men who have less interaction with police and justice responses are more successful candidates for Men’s Behaviour Change Programs²⁸. Indeed, this aligns with the experience of practitioners of the NSW Men’s Behaviour Change Network, with people who have self-referred being the most prepared to change their abusive and violent behaviour.

However, due to the limited supply of these programs and the need to prioritise men deemed at a greater risk, the majority these men are either placed on waitlists or in many cases not offered a place in program. Given the importance of this work, including keeping the perpetrator in view and monitoring risk through partner contact work (i.e. interacting with affected family member as an ongoing way of assessing risk), the men's behaviour change sector has little ability to amend processes due to current under resourcing across the sector.

Having programs which are specifically focused on intervening early will be required if we are to stop people who use family violence on their path of escalating violence. Coercive control is a key risk factor in intimate partner homicide²⁹ and early identification and intervention of coercive control may provide increased safety for victim survivors.

Improving information sharing, interagency collaboration, and risk assessment to include information about coercive control will identify users of violence and victim survivors earlier and can result in referrals to the relevant support services. This could play a key part in reducing the number of domestic homicides.

²⁸ Government of Victoria, 2019 *‘Expert Advisory Committee on Perpetrator Interventions: final report’* Accessed online 10 February 2021

²⁹ Myhill, A. and Hohl, K., 2019. The “golden thread”: Coercive control and risk assessment for domestic violence. *Journal of interpersonal violence*, 34(21-22), pp.4477-4497 viewed on 5th February 2021 <<https://pubmed.ncbi.nlm.nih.gov/27807208/>>

Linking with other relevant services:

Research has suggested that Men's Behaviour Change Programs are more effective when better linked to services addressing other factors, such as drug and alcohol abuse and mental health³⁰.

Recent analysis³¹ of New South Wales Police domestic violence records found:

"A total of 16% of domestic violence events examined had at least one mention of a mental illness for either the perpetrator or the victim. In more than three-quarters (76%) of these events, mental illness was mentioned for the perpetrator only, 17% for the victim only, and 7% for both victim and perpetrator.

"Overall, mood affective disorders, which include depression or bipolar disorder, were the most common in both victims and perpetrators.

"One key finding was a steady increase over time in domestic violence involving alcohol abuse in perpetrators aged 15-64 years. Another was the number of domestic violence cases with victims over 55 years said to have dementia.

"While the records contained many more reports of mental health issues than we might expect, this is likely a big underestimate. This is because police do not systematically seek information on people's mental health state when they attend domestic violence events."³²

Alcohol has also been found to be involved in about 1 in 3 incidents of violence from an intimate partner (34%)³³

A coordinated response, based on individual need and supported by case management, is incredibly important to improve the efficacy of programs. Sometimes this is needed before entry into Men's Behaviour Change programs, as relative stability is needed to address the fundamental issues driving violent and abusive behaviours.

This of course needs to be supported by proper evaluation so lessons can be embedded across practice.

Keeping men engaged when waiting for access to groups

Deciding to reach out for support, or admitting you have a problem with family abuse and violence, is one of the most difficult steps. With nearly 30 years' experience working directly with men, we know that the

³⁰ Meyer, S., Burley, J. and Fitz-Gibbon, K., 2020. Combining group-based interventions for intimate partner violence perpetrators with comorbid substance use: an Australian study of cross-sector practitioner views. *Journal of interpersonal violence*, viewed on 5th February 2021 <https://journals.sagepub.com/doi/10.1177/0886260516675464>

³¹ Karystianis, G., Simpson, A., Adily, A., Schofield, P., Greenberg, D., Wand, H., Nenadic, G. and Butler, T., 2020. Prevalence of mental illnesses in domestic violence police records: text mining study. *Journal of medical internet research*, 22(12), p.e23725 viewed 5th February 2021 <<https://www.jmir.org/2020/12/e23725>>

³² *ibid*

³³ Hunt, A., Webber, K., Montgomery, J. and Duong, A., 2018. *Family, domestic and sexual violence in Australia 2018*. Australian Institute of Health and Welfare. Accessed online 5th February 2021: <<https://www.aihw.gov.au/getmedia/d1a8d479-a39a-48c1-bbe2-4b27c7a321e0/aihw-fdv-02.pdf.aspx?inline=true> – [Also include in reference list](#)>

amount of time a person has to wait can be the difference between staying engaged with support or disengaging again.

No to Violence's Men's Referral Service received time-limited funding from the Commonwealth Government to establish and deliver a national brief intervention service in response to the COVID-19 pandemic. The Brief Intervention Service (BIS) is focused on the provision of time-limited, multi-session telephone support for men who are currently on a waiting list for family violence support or who are unable to access family violence support because services are not taking referrals because of COVID-19.

This is currently being evaluated, but early indications are this has been an effective way to keep men 'ready to engage' and to commence some preparatory work, readying men for MBCPs. Funding for the BIS concludes this financial year. Pending evaluation, No to Violence considers this a potential, relatively low-cost way of keeping men engaged in the system and recommends the New South Wales government considers its funding in the longer term.

High risk perpetrators

Men's Behaviour Change Programs delivered by the community sector often select participants based on 'readiness' for attending group sessions, meaning that the highest risk perpetrators are generally unable to attend. Readiness is based on ability to accept responsibility for their behaviours and be ready to discuss this in a group setting.

Some men with complex needs require additional 1:1 work to be ready for a group. Programs meeting the NSW Practice Standards are required to provide tailored responses to perpetrators, taking into account his historical use of violence, criminogenic and social needs and any learning or cultural supports to be able to fully participate in the program. The sector is yet to be funded to meet this onerous yet very important Principle within the Standards.

Although some high risk men, who have come to the attention of the justice system access groups through New South Wales Corrective Services (EQUIPS Domestic Abuse Program), there remains a need for more intensive interventions which readies them to participate in deeper and longer group based programming.

No to Violence notes that victim-survivors speak of experiencing coercive control when the user of violence is in remand, is serving a custodial sentence, or is on parole. This points to the importance of more diverse intensive interventions within custodial settings.

There are promising models for higher risk offenders where up to 6 months of preparatory one-on-one work with men is undertaken³⁴. This is about preparing them to ready themselves to take accountability within a group environment, and to try to shift their modus operandi to developing a deeper understanding the impacts their abuse and violent behaviours are having on their family .

³⁴ Ormston R, Mullholland C, Setterfield L. Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland. Scottish Government Social Research; 2016. Accessed online 5th February 2021 <https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/pages/3/>

Development of a response based on risk

No to Violence encourages the development of responses which are more reflective of the needs and individual requirements of the men who use violence, based on level of risk.

RSSF Risk	Description	Approaches to addressing behaviour
Lower risk	<p>> 1–3 high-risk factors where risk is not imminent or up to 10 general-risk factors where risk is not imminent.</p> <p>Violence does not appear as part of an ongoing pattern, perpetrator has a pro-social support system, no or minimal criminal history, and no evidence of significant mental health or substance abuse issues.</p> <p>In either case, victim-survivor fear is low. Safety plan in place/soon to be in place for adult and child victim-survivors.</p>	<ul style="list-style-type: none"> • Early intervention Men’s Behaviour Change model attended by men of similar risk category. This program could be shorter in length • Referral to complementary services (inc. mental health, alcohol and other drug, employment, housing etc) • Family safety consults. • Follow up check in with perpetrator and AFM every six months, including risk assessment to determine frequency of check-in.
Medium risk	<p>1-3 high-risk factors where risk is both imminent and history of violence and/or coercive controlling behaviour towards the victim-survivor is severe or frequent.</p> <p>> 4-6 high-risk factors where risk is either imminent, or the history of violence and/or coercive controlling behaviour towards the victim-survivor is severe or frequent.</p> <p>> Up to 10 general-risk factors where risk is either imminent or history of violence and/or coercive controlling behaviour towards the victim-survivor is severe or frequent.</p> <p>There is an identified perpetrator pattern of ongoing violent behaviour, might or might not have a pro-social support system, might have some criminal history, might be experiencing moderate degrees of substance abuse or mental health issues, and often have employment and/or financial instability. Victim-survivor fear is moderate to high. A safety plan may or may not be in place for adult and child victim-survivors.</p>	<ul style="list-style-type: none"> • Men’s Behaviour Change Program. • Regular partner contact work. • Referral to complementary services (inc. mental health, alcohol and other drug, employment, houses etc) • Follow up check in with perpetrator and affected family member every three months, including risk assessment to determine frequency of check-in.

<p>High risk</p>	<p>4+ high-risk factors where risk is imminent, and history of violence and/or coercive controlling behaviour is severe and frequent. > 10+ general-risk factors where risk is imminent, and history of violence and/or coercive controlling behaviour is severe and frequent.</p> <p>User of violence does not have a pro-social support system, is likely to have criminal histories and/or significant substance abuse or mental health issues, and often has employment and/or financial instability.</p> <p>Victim-survivor fear is high. A safety plan may or may not be in place for adult and child victims-survivors.</p>	<ul style="list-style-type: none"> • Intensive 1:1 case work to ready the man for group work and increase awareness of victim-survivor impact (up to six months). • Men’s Behaviour Change, including hybrid correctional / community model. • Referral to complementary services (inc. mental health, alcohol and other drug, employment, etc) • Regular partner contact work. • Follow up check in with perpetrator and affected family member every month, including risk assessment to determine frequency of check-in.
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Table 5: ‘Straw-person’ of risk-based approach to intervention with men who use domestic and family violence, drawing from risk definitions within RSSF.

This approach needs to be backed with long term program funding for interventions to reduce men’s use of domestic and family violence (reflecting of the research it will take generational change to reduce current rates of men’s violence against women) should be tied to legislation to ensure geographic reach across the whole state and access in a timely manner.

The workforce that responds to men’s use of family violence

A considerable increase in training and professional development is required across all sectors on identifying coercive controlling behaviour patterns.

As was the case in Scotland, significant training was undertaken to ready a justice response to addressing the complex patterns of coercive control. The following critical workforce capacity building components that are required to support a legislative response:

- **Clarity about defining the coercive control pattern** and competency in attributing the pattern to the perpetrator (identifying, linking and evidencing consistent behavioural patterns to an individual accused of a coercive control related charge).
- **Competency to engage victim-survivors** will require explaining to the complainant what this pattern is; what it means in a criminal context in order to ascertain criminality; gathering the evidence; and presenting the evidence in court and cross examination on that evidence.
- **Specialist knowledge, interview skills** to support gathering evidence, and professional confidence in the policing, judiciary, child protection, and correctional services contexts.
- **Training for all judges, magistrates, prosecutors and senior law officers** that are involved in cases of domestic and family violence (including coercive control), noting countless examples of cases where

comment from presiding judges has not been informed by evidence, best practice and an understanding of the nature of domestic and family violence.

- **Ensure the provision and access to expert specialist advice** to support the definition and specialist evidence.
- **Judiciary roles and responsibilities** will require foundational training in order to interpret the legislation.
- **Court experts need to have significant clinical front-line experience** in working directly with men using family violence, and also be sufficiently trained in presenting within a Court setting.

Investment in workforce capacity building will need to be extensive across a range of contexts and fields to support principles that do not retraumatise victim-survivors and children/young people impacted.

No to Violence has significant expertise in the delivery of professional development around working with men who use violence. This ranges from 'Everyday Conversations' which works with senior management, Human Resources and customer facing staff around what to do when you stop abusive and violent behaviour.

No to Violence also works closely with the NSW Health's Education Centre Against Violence (ECAV) to support their delivery of Men's Domestic and Family Violence portfolio of training, including a Grad Cert and four and five day courses. No to Violence likewise deliver a Graduate Certificate in Client Assessment and Case Management (Men's Family Violence) in conjunction with Swinburne University. We are well placed to be part of workforce planning, and the implementation of training to support the implementation of any coercive control legislative changes.

Community Education

As has been noted by the journalist, Jess Hill, and other prominent people in the public discussion regarding coercive control, there are examples of coercive control narratives in United Kingdom entertainment, including the soap opera '*Coronation Street*', and the legal drama '*The Split*'. This legislation has the possibility of shifting the cultural zeitgeist.

Although an important part of culture change, this in itself will not be enough to educate the broader population. Through extensive consultation, both in the preparation of this submission and previously, there have been constant calls for increased awareness of what non-physical forms of violence look like, targeted to different populations. Community education and awareness about coercive control can be delivered in school, work and community settings.

Every single person comes with a set of different experiences and background. Programs and messaging need to be able to appeal and resonate with everyone to be the most effective. Influenced by gender, sexuality, cultural heritage, familial background and many other facets in individual's lives.

As such, different messages and engagement with different communities will be required to raise awareness.

Multi-agency collaboration

It is well-established that a whole-of-system response to domestic and family violence is required to wrap around victim-survivors and remove the burden of having to protect herself and her children and placing this responsibility on the service system.

In NSW, this is achieved through *Safer Pathways*, a system-wide service system infrastructure for supporting victim-survivors of DFV. The 2019 evaluation of *Safer Pathways* found that the reform had achieved a consistent threat assessment for victim-survivors in NSW, streamlined referral pathways between NSW Police and the Coordination Points, freely sharing information to manage risk and connect with support services, and a standard level of service, including for victim-survivors at high risk who could receive consistent, coordinated response across the state and across service providers³⁵.

A significant gap in the NSW service system is a similar integrated multi-agency model that ‘pivots’ towards perpetrators of violence and works towards achieving safety for victim-survivors by ‘wrapping around’ perpetrators in order to reduce or contain their risk.

Improving Risk Assessment to Incorporate Coercive Control

The Safer Pathway framework includes the Domestic Violence Safety Assessment Tool (DVSAT) to support service providers and police to identify and assess risk of domestic and family violence harm to victim-survivors. The DVSAT is based on evidence-based risk factors and assesses victims as either ‘at threat’ or ‘at serious threat’, which then requires a response through Safer Pathway.

Currently, the DVSAT includes four questions that could give an indication of the presence of coercive controlling violence. However, these questions could be more clearly worded, and additional questions added to the tool to more accurately identify coercive control. Risk indicators to be included in a risk assessment tool that would give a better indication of the presence of coercive control could include:

- Stalking and intimidation;
- Obsessive jealousy;
- Social isolation;
- Controlling the victim-survivor’s daily activities;
- Using court and legal systems to dominate and control;
- Using the children in abusive tactics, or attacking the victim-survivor’s parenting;
- Financial abuse;
- Psychological, spiritual, or emotional abuse; and
- Technology-facilitated abuse.

Recommendations

35. The New South Wales Government invests in a systematic whole-of-community response to addressing family violence, including primary prevention, early intervention, tertiary/crisis response and recovery.

36. Develop a primary prevention strategy addressing the attitudes, practices and power differentials in all areas of society including schools, workplaces, sports clubs, government institutions and the justice system, that lead to gender-based violence. The strategy should recognise that different messaging is required for different communities and experiences.

³⁵ NSW Government, 2019, Safer Pathway Evaluation: Final Report NSW Government. Accessed online 5th February 2021: <https://www.women.nsw.gov.au/download?file=650328>

37. Increase opportunities for perpetrators of domestic and family violence to access interventions to address their use of violence and to keep them in view by:
 - Strengthening referral pathways to MBCP's by the Court;
 - Ensuring that people who are reported to police for using coercive control are referred to wrap around services that address their individual needs such as alcohol and drug issues, mental health, housing, access to income and appropriate family violence interventions;
 - Ensuring that perpetrators of family and domestic violence who are on parole are required to participate in a registered MBCP; and
 - Ensuring Men's Behaviour Change Programs have a coordinated responses by linking to services that address other factors like mental health and substance abuse.
38. Fund both community-specific organisations (including, but not limited to, First Nation's controlled organisations, community-led services that support multicultural, migrant and refugee populations, LGBTIQ+ led services) to deliver services; and ensure mainstream organisations also have the cultural competency to support experiences with diverse life experiences
39. Provide support for men awaiting Men's Behaviour Change and other programs with holding services that keep men engaged, including the Men's Referral Service's Brief Intervention Service.
40. Increased funding for programs that address men's use of violence to reduce current wait lists and increase availability of programs, particularly in regional areas without access to programs, and ensure that Men's Behaviour Change Programs are more responsive to the individual needs of perpetrators, based on their level of risk.
41. Expand the service response to high risk family violence perpetrators so they are able to receive intensive preparation work prior to group intervention. Enable more intensive interventions and deeper, longer group based programming with follow up responses to monitor risk.
42. Deliver extensive community education about coercive control to schools, work and other community settings.
43. Review the DVSAT to include questions to identify coercive control, and weight those responses accordingly so that the presence of coercive control elevates a victim's 'score' to 'at serious threat'.