

**Submission  
No 140**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Women's Legal Service NSW

**Date Received:** 19 February 2021

19 February 2021

The Hon. Natalie Ward, MLC  
Chair  
Joint Select Committee on Coercive Control

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

Dear Chair,

**Inquiry into coercive control**

Thank you for the opportunity to make a submission in response to the inquiry into coercive control in domestic relationships.

Please find our submission attached.

If you would like to discuss any aspect of this submission, please contact the signatories to this letter or Liz Snell, Law Reform and Policy Coordinator on [REDACTED]

Yours faithfully,

**Women's Legal Service NSW**

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**NSW Parliament**  
**Joint Select Committee on Coercive**  
**Control**

**Inquiry into coercive control in domestic**  
**relationships**

**19 February 2021**

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### About Women's Legal Service NSW

Women's Legal Service NSW (**WLS NSW**) is a community legal centre established over 35 years ago that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.

Since 1995 WLS NSW has provided a statewide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. We provide a First Nations legal advice line, casework services including a specialised family law service to assist First Nations women access the family law courts, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.

An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

### Acknowledgments

We acknowledge the Traditional Owners of the lands on which we work across NSW and on which we live. We pay respect to Elders past, present and emerging. Is, was and always will be Aboriginal land.

We acknowledge the many women who have experienced sexual and domestic abuse with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

### Use of language

#### *Domestic abuse*

The NSW *Crimes (Domestic and Personal Violence Act (CDPV Act)* does not include a definition of “*domestic and family violence*” or “*domestic and family abuse*.”

The use of the term “*domestic abuse*” in this submission is intended to capture behaviour perpetrated by one person against another or others within a “*domestic relationship*” that coerces or controls or causes fear. The behaviour extends to harm or threats to harm animals.

Section 5 of the *CDPV Act* provides a person has a “*domestic relationship*” with another person if they are/were:

- married, in a de facto or intimate relationship whether or not it is of a sexual nature;
- living together in the same house;
- living together in a residential facility;
- relatives by birth, marriage or adoption;

- in the case of an Aboriginal or Torres Strait Islander, part of the same extended family or kinship group;
- in a relationship involving dependence on the ongoing paid or unpaid care of the other person;
- married to, or in a de facto or intimate relationship with the same person, eg. a woman's ex-partner and current partner are in a domestic relationship with each other even if they have never met.

While all violence is unacceptable, not all violence perpetrated between people in a “*domestic relationship*” should be categorised as domestic abuse. To be described as domestic abuse the behaviour must come within the framework of coercing or controlling or causing fear.<sup>1</sup>

“*Domestic violence*” is not a term that resonates well with the women with whom we work. Instead, women talk about the many different forms of abuse they experience.

To more accurately capture victim-survivors' experiences we use the term “*domestic abuse*” in this submission. This term may also need further development to better recognise the range of relationships captured in “*domestic relationship*” and to make sexual abuse more visible. We recommend adopting the language that victim-survivors use and with which they can identify in legislation, policy and practice.

### *Gendered language*

While acknowledging that anyone can experience domestic abuse, the research and our experience over more than thirty-five years clearly highlights that domestic abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.

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<sup>1</sup> Jane Wangmann, “Incidents v Context: How Does the NSW Protection Order System Understand Intimate Partner Violence?” *Sydney Law Review* Vol 34, 2012, p 718; Jane Wangmann, “Gender and Intimate Partner Violence: A case study from NSW”, *UNSW Law Journal*, Vol 33(3), 2010, p962.

## Executive summary and recommendations

1. We warmly welcome attention on the issue of better addressing coercive and controlling abuse (domestic abuse).
2. This submission does not follow the Discussion Paper questions. Nor does it come to a position on whether or not to further criminalise domestic abuse. Rather, it raises a number of issues that need to be considered and highlights the importance of undertaking extensive consultation.
3. We make 5 recommendations - 3 of which can be implemented immediately:
  - 3.1 An immediate injection of additional funding and ongoing proper resourcing of specialist sexual and domestic abuse services, including specialist legal services, other specialist services and the broader social support service system to respond effectively to the needs of people experiencing sexual and domestic abuse, as well as proper funding for primary prevention.
  - 3.2 Building a common language and understanding of domestic abuse, including through a common definition in legislation and policy which recognises the overarching strategy or context of domestic abuse as one of coercion, control, power, domination and/or causing fear, that domestic abuse can include physical and/or non-physical abuse and include a non-exhaustive list of examples and that domestic abuse is predominantly perpetrated by men against women and children.
  - 3.3 Cultural reform within all our systems and particularly within police with a focus on better understanding, identifying and responding to domestic abuse.
4. These recommendations are practical, can start to be operationalised immediately and need to occur irrespective of whether or not we further criminalise domestic abuse (coercive and controlling abuse).
5. Coercive and controlling abuse is not new. We have long understood domestic abuse as centred around male privilege and entitlement and male power and control. Domestic abuse is predominantly perpetrated by men against women and children. The overarching framework of domestic abuse is one in which a male seeks to exert power, control and/or dominance over women and children and/or to cause them fear.
6. As Evan Stark describes:

*Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).*<sup>2</sup>
7. This abuse can take many forms, including physical and sexual abuse as well as non-physical abuse, such as psychological abuse, economic abuse, spiritual and cultural abuse. It can include the gradual isolation of a woman from her family, friends and supports; degrading put downs, humiliation and threats; gaslighting; constant surveillance of the women; micromanaging every aspect of a woman's life; restrictions on liberty.

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<sup>2</sup> Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, Oxford, 2007, p 15

8. Evan Stark describes coercive control as “*a liberty crime rather than a crime of assault*”.<sup>3</sup> It’s an attack on a woman’s “liberty,” “autonomy” and “personhood”.<sup>4</sup>
9. In 77 of the 78 domestic abuse homicides reviewed in NSW in 2015-17, the relationship between the domestic abuse victim and the male abuser (all male) was characterised by the male abuser’s use of coercive and controlling behaviours towards the victim.
10. Context is essential to understanding, identifying and responding to domestic abuse.
11. The NSW Coroner has stressed “*the importance of viewing domestic violence holistically, as episodes in a broader pattern of behaviour rather than as incidents in isolation of one another*”.<sup>5</sup>
12. The NSW Domestic Violence Death Review Team has recommended the NSW Police Force reviews how it captures data relating to domestic abuse to take better account of context.<sup>6</sup>
13. Yet our criminal justice system continues to fail to adequately consider context, instead focusing on incidents in isolation.
14. The *CDPV Act* contains a number of domestic violence offences, with a few offences intended to particularly capture non-physical forms of domestic abuse – namely stalking and intimidation.
15. There is division on the question of whether coercive and controlling abuse should be further criminalised.
16. Some are advocating for an a stand-alone offence of coercive and controlling abuse which more clearly captures the course of conduct of domestic abuse and the cumulative impact of the various forms of domestic abuse - physical and non-physical. They believe such an offence will be an important educative tool to shift culture to focus on context rather than incidents in isolation so the perpetrator of such violence will be held accountable. They acknowledge legislation of itself is insufficient – it must be accompanied by extensive education and cultural and systems reform and the social support service system must be properly and sustainably funded to support those experiencing domestic abuse.
17. Some are opposed to a new domestic abuse offence.
18. Some are raising issues that need to be considered before introducing a further criminal offence responding to domestic abuse. Some of these issues include:
  - 18.1 How are existing laws in NSW criminalising domestic abuse and particularly non-physical domestic abuse working? What behaviours are they capturing?
  - 18.2 If there is a further offence, might the higher standard of proof for criminal prosecutions mean that successful prosecutions are low and what dangerous messages might this convey to victim-survivors and perpetrators?

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<sup>3</sup> Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, Oxford, 2007, p 13

<sup>4</sup> Ibid.

<sup>5</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2015-17*, Sydney, 2017, p v.

<sup>6</sup> Ibid, Recommendation 2.1.



- 18.3 Given the high rates of misidentification of the person most in need of protection in relation to protection orders and the high rates of women's criminalisation stemming from this misidentification, how would the risk of misidentification in a new offence be addressed?
- 18.4 Given misidentification of the person most in need of protection disproportionately impacts on marginalised women and given the well-known barriers for many marginalised women in reporting domestic abuse to police, consultation with marginalised women and communities from the beginning is vital to identify concerns and listen to proposed solutions.
- 18.5 How will a new domestic abuse criminal offence increase a victim-survivor's "*safety, recovery and wellbeing*"?<sup>7</sup>
- 18.6 How will the "success" of any new criminal offence be measured and evaluated?<sup>8</sup>
- 18.7 What efforts will continue to be made to ensure the criminal justice system becomes more trauma informed and responsive?
- 18.8 How will the risk of systems abuse arising from any new offence be addressed?
- 18.9 Could a new offence limit attention and/or resources only to a criminal justice response when everyone working in all health, social services and legal systems need to get better at understanding, identifying and responding to domestic abuse? And further work in primary prevention is required to stop domestic abuse taking place in the first place.
- 18.10 Could transformative and restorative justice responses to domestic abuse be explored?
- 18.11 Might focussed deterrence be piloted in Australia?<sup>9</sup>
- 18.12 What is the evidence base that further criminalisation is effective?
19. All these questions highlight the need for a proper consultation process in which the voices of marginalised women and communities and the organisations with whom they engage are at the centre. We need to better understand any potential unintended consequences of both further criminalising and not further criminalising domestic abuse (coercive and controlling abuse), particularly for marginalised communities so as to do no harm in attempts to strengthen safety and protections for those who have experienced domestic abuse.
20. In our conversations with colleagues in Scotland a reoccurring theme has emerged – "*take the time to get it right*".
21. The Scottish legislation criminalising domestic abuse has been described as "*gold standard*". This label is relevant not only for the content of their legislation but particularly for the way it was developed – over four years of extensive consultations - with survivors' voices at the centre.

<sup>7</sup> Women's Legal Service Victoria, *Policy Brief: Justice system response to coercive control*, September 2020

<sup>8</sup> Ibid

<sup>9</sup> The authors distinguish focussed deterrence as they envisage it from existing policing strategies in NSW, such as high-risk offender teams. Anthony Morgan, Hayley Boxall, Christopher Dowling, Rick Brown "Policing repeat domestic violence: Would focused deterrence work in Australia?" *Trends & issues in crime and criminal justice* no. 593, Australian Institute of Criminology, Canberra, 2020 accessed at: <https://www.aic.gov.au/publications/tandi/tandi593>

22. While it is useful to learn from the experience of other jurisdictions it is also important to acknowledge our differences, most significantly the experiences of First Nations people in Australia.
23. It is also only early in the implementation of new criminal offences in these different jurisdictions – England and Wales (2015), Ireland (2019) and Scotland (2019).
24. Before considering the introduction of another criminal offence to seek to address domestic abuse (coercive and controlling abuse), the NSW Domestic Violence Death Review Team recommends a close examination of the existing offences - specifically an examination of the types of behaviours that make up the charge for stalking and intimidation and whether such charges are laid on their own or in combination with other offences and the relationship context of such offences.<sup>10</sup> The NSW Bureau of Crime Statistics and Research (**BoCSaR**) is currently undertaking this research. The DVDRT also recommends “*monitoring the progress and implementation of offences of coercive control and domestic abuse in other jurisdictions*”.<sup>11</sup>
25. Other actions that can be taken now include introducing a definition of domestic abuse into our *Crimes (Domestic and Personal Violence) Act (CDPV Act)* which governs our Apprehended Violence Orders (**AVOs**). This will further improve a common understanding of domestic abuse and the overarching framework of domestic abuse as one of male power, control, coercion and causing fear. Efforts to address misidentification of the person most in need of protection of an AVO can be furthered by amending the AVO legislation to stipulate orders only be made for the person “*most in need of protection*” and this also being reflected in police domestic abuse policies, Codes of Practice and prosecutorial guidelines.<sup>12</sup>
26. Irrespective of whether or not a new criminal offence is introduced what is without a doubt is that the status quo can no longer continue in NSW.
27. We need massive cultural reform to fully implement the Coroner’s recommendation of focusing on context in domestic abuse rather than incidents in isolation and to better understand, identify and respond to coercive and controlling behaviours. We all have a role to play in this cultural reform, including police, judicial officers, lawyers and other professions working across all legal systems, specialist services, health, education, social support services and systems. A whole of Government response is required.
28. This cultural reform needs to start with police who play a vital role in responding to domestic abuse. There must be more transparent accountability mechanisms with regular audits of policing of sexual and domestic abuse and “*accountability frameworks to address systematic racism*”.<sup>13</sup> Greater self-reflection within police is vital, as are steps taken to address barriers to reporting domestic abuse to police arising from bias and prejudice. More women, including First Nations women, refugee and

<sup>10</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2017-19*, Sydney, 2020, Recommendation 9.1, accessed at: [https://www.coroners.nsw.gov.au/documents/reports/2017-2019\\_DVDRT\\_Report.pdf](https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf)

<sup>11</sup> Ibid, Recommendation 9.2

<sup>12</sup> Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020; *Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service: In partnership challenging domestic abuse*, 5<sup>th</sup> ed, 2019, paragraphs 33-37 accessed at: <https://www.scotland.police.uk/spa-media/ymzlwhtwj/joint-protocol-between-police-scotland-and-copfs-in-partnership-challenging-domestic-abuse.pdf?view=Standard>

<sup>13</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report*, 2020, p 103 (105)

migrant women, women with disability and non-binary, trans and gender diverse people need to be recruited, supported and retained in leadership positions within the police.

29. Police training about domestic abuse needs to be developed and delivered with significant input from and co-facilitation with sexual and domestic abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services with a greater focus on the nature and dynamics of domestic abuse and perpetrator tactics, challenging victim-blaming attitudes, trauma informed practice, cultural safety and conscious and unconscious bias. A co-responder model with police and specialist sexual and domestic abuse workers working side-by-side will also enhance the response to domestic abuse. Police, like everyone, need to be supported to identify and act on compassion fatigue, burnout and vicarious trauma.
30. The specialist sexual and domestic abuse sector, other specialist services, broader social support system and legal assistance services must be properly and sustainably funded to support everyone experiencing domestic abuse., Failing to properly resource the specialist sexual and domestic abuse services, broader social support service system and legal assistance services to respond to domestic abuse and denying women and children access to the support they need, such as women experiencing abuse on temporary protection visas, makes governments complicit in entrapping women and children in domestic abuse.<sup>14</sup>
31. Much more can and must be done to ensure the safety and support of women and children experiencing domestic abuse. It requires strong leadership, cultural change, extensive education that is evidence-based and developed and delivered by experts, proper and sustainable funding, an integrated response, better accountability mechanisms and political will.
32. We recommend:
  - 32.1 A proper consultation process ensuring the voices of marginalised women and communities with lived experience of domestic abuse and the organisations with whom they engage are at the centre and included from the outset.
  - 32.2 An immediate injection of additional funding and ongoing proper resourcing of specialist sexual and domestic abuse services, including specialist legal services, other specialist services and the broader social support service system to respond effectively to the needs of people experiencing sexual and domestic abuse, as well as proper funding for primary prevention.
  - 32.3 Building a common language and understanding of domestic abuse, including through a common definition in legislation and policy which recognises the overarching strategy or context of domestic abuse as one of coercion, control, power, domination and/or causing fear, that domestic abuse can include physical and/or non-physical abuse and include a non-exhaustive list of examples and that domestic abuse is predominantly perpetrated by men against women and children.
  - 32.4 Cultural reform within all our systems and particularly within police with a focus on better understanding, identifying and responding to domestic abuse.

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<sup>14</sup> Stella Tarrant, Julia Tolmie & George Giudice, *Transforming legal understandings of intimate partner violence* (Research report 03/2019) ANROWS: Sydney, NSW, 2019

- 32.5 Considering the evidence base for the effectiveness of criminalisation and other responses to domestic abuse (coercive controlling abuse).

### Proper consultation

33. We warmly welcome attention on the important issue of coercive and controlling abuse. It is vital that everyone in society – first responders, all our legal, health and social support systems and community as a whole get better at identifying and responding to domestic abuse (coercive and controlling abuse).
34. From the inception of this inquiry, we have been advocating for a proper consultation process that ensures Committee members are particularly engaging with marginalised communities and with people with lived experience of domestic abuse. Thorough consultation is required to better understand any potential unintended consequences of both further criminalising and not further criminalising domestic abuse, particularly for marginalised communities so as to do no harm in attempts to strengthen protections for those who have experienced domestic abuse.
35. It is imperative to hear directly from victim-survivors and marginalised communities about what they believe will improve responses to coercive and controlling abuse and what their communities need.
36. Committee members need to consult with a range of people, communities and organisations including First Nations communities, refugee and migrant communities including women experiencing abuse on temporary protection visas, people with disability, non-binary, trans and gender diverse communities, people in regional, rural and remote areas, children and young people, older women and women with lived experience of prison.
37. We have consistently advocated for the Committee to have more time to conduct this inquiry. More time for people to make submissions. More time to better understand the effectiveness of existing domestic abuse offences, particularly those intended to capture non-physical abuse. More time to plan for and meet with a range of organisations and community members across NSW, particularly representatives from marginalised communities. More time before the Committee is required to report in June 2021.
38. Members of our Aboriginal Women's Consultation Network and our First Nations Women's Legal Program have expressed interest in participating in such community gatherings with Committee members. They too are concerned the consultation process is too short.
39. In our conversations with colleagues in Scotland a reoccurring theme emerges – take the time to get it right.
40. We strongly believe thorough consultation on whether or not to further criminalise domestic abuse in NSW is required.<sup>15</sup> We are only at the beginning of this important journey.

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<sup>15</sup> Liz Snell, Why we need a thorough consultation process on how to effectively address coercive controlling violence, 23 September 2020 accessed at: <https://www.wlsnsw.org.au/criminalising-coercive-control/>

## Systems reform

41. While we properly consider the further criminalising of domestic abuse, there are several actions that can be taken immediately.

### *Sustainable proper funding for social support service system and legal assistance sector*

42. We are very conscious that whenever there is awareness raising about domestic abuse, as has been occurring in response to increased community conversations and media attention on coercive and controlling abuse, there is an increase in women reaching out for help. While this is welcomed, it is incumbent upon Government that there be corresponding resources to respond to increasing demand. There has been no additional funding in response to this awareness raising.
43. While there has been some welcomed additional funding in the sexual, domestic and family violence and legal sectors in response to COVID-19, this funding is time-limited - mostly for 12 months. Further the social support and legal assistance sectors have been chronically underfunded and unable to meet need prior to COVID-19.
44. There is an urgent need for substantial additional ongoing and sustainable funding, so women and children have a safe place to call home and to obtain the support they need to keep safe and to help them in their recovery. These supports include case management and access to social supports and income support, access to health and legal services that are culturally safe, domestic abuse and trauma informed, non-binary, trans and gender diverse aware, disability aware and available when they need them.
45. We recommend the establishment of a specialist gendered and culturally safe criminal legal service for women that understands and seeks to challenge gender bias in the law and is trauma responsive and sexual and domestic abuse informed.
46. We further recommend early referrals to specialist gendered and culturally safe legal services for women who have experienced sexual and domestic abuse so they can have frank conversations with lawyers without fear of a mandatory report to child protection and better understand their options. Wherever possible this should happen before women give statements to police.
47. The NSW Government needs to respond with resources similar to the Victorian Government's response to their Family Violence Royal Commission. Failing to properly resource the system response to domestic abuse and denying women access to the support they need, such as women experiencing abuse on temporary protection visas, makes Governments complicit in entrapping women and children in domestic abuse.
48. The recommendations made by the NSW Women's Alliance in *A Safe State: Acting to End Sexual, Domestic and Family Violence* must be implemented.<sup>16</sup>
49. This includes proper funding of primary prevention work in NSW in line with *Our WATCH – Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* and *Changing the Picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*.

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<sup>16</sup> NSW Women's Alliance, *A Safe State: Acting to End Sexual, Domestic and Family Violence*, 2018 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/DFV-Safe-State-Platform-online-f-211118.pdf>

### Coercive and controlling abuse is not new

50. We have long had an understanding of domestic abuse as centring around male privilege and entitlement and male power and control.
51. We have also long understood that within a context of coercing, controlling, dominating or causing fear, domestic abuse may take a range of different forms of physical and non-physical abuse that may be perpetrated over many years.
52. Our understanding has developed and continues to develop about intersections of inequality – sexism, racism, ableism, socio-economic status, homophobia, biphobia, transphobia – and how these inequalities intersect with domestic abuse.
53. Evan Stark has played a key role in improving understanding of coercive and controlling abuse. He acknowledges that coercive and controlling behaviours are not a new form of domestic abuse but rather a framework to better understand domestic abuse. This framework helps us to more clearly focus on the need to consider context rather than focus on incidents of abuse (generally physical abuse) in isolation and the cumulative impact of a course of conduct. Stark frames coercive and controlling abuse as:

*an offense to liberty that prevents women from freely developing their personhood, utilizing their capacities, or practicing citizenship, consequences they experience as entrapment.*<sup>17</sup>

54. This understanding is reflected in our *Crimes (Domestic and Personal Violence) Act ((CDPV) Act)* which provides the power to make apprehended domestic violence orders (**ADVOS**).

### Current law and policy

55. The objects of the *CDPV Act* state:

*That domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years*<sup>18</sup>

and

*That domestic violence is predominantly perpetrated by men against women and children*<sup>19</sup>

56. Further, the definition of “domestic offence” includes an offence “intended to coerce or control the person ... or to cause the person to be intimidated or fearful (or both)”.<sup>20</sup>
57. The definitions of “intimidation” and “stalking” refer to having regard to “any pattern of violence”.<sup>21</sup> We again note our recommendation to substitute the word “violence” for “abuse”.
58. There are existing offences intended to capture non-physical abuse, including assault, stalking and intimidation.

<sup>17</sup> Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, Oxford, 2007, p4.

<sup>18</sup> Section 9(3)(d) of the *Crimes (Domestic and Personal Violence) Act 2007*

<sup>19</sup> Section 9(3)(b) of the *Crimes (Domestic and Personal Violence) Act 2007*

<sup>20</sup> Section 11(1)(c) of the *Crimes (Domestic and Personal Violence) Act 2007*

<sup>21</sup> Section 7(2) and Section 8(2) of the *Crimes (Domestic and Personal Violence) Act 2007*

59. Further, *The Code of Practice for the NSW Police Force response to Domestic and Family Violence (NSW Police Code of Practice)* last updated in 2018 acknowledges the context within which domestic abuse is perpetrated: a context of exerting power and control as well as the causes: gender inequality and gender stereotypes.

*[Domestic violence] is the most under reported of crimes because the perpetrator knows the victim intimately through a long-term, close or developing relationship. The perpetrator relies on developing, during the early stages, a strong bond through friendship, love, trust and loyalty to create a high degree of co-dependence. The underlying behavioural traits of power and control are then employed as tactics to commit the crime. Traditional stereotypes about gender deeply embedded in community attitudes can reinforce what is considered appropriate or normal behaviour between perpetrator and victim.<sup>22</sup>*

60. The NSW Police Code of Practice also acknowledges that domestic abuse can take many forms, including physical and non-physical abuse.<sup>23</sup>

### Introducing a definition of domestic abuse in AVO legislation

61. While existing legislation and policy in NSW seeks to capture a common understanding of domestic abuse, we do not have a definition of domestic violence in our legislation.
62. Rather than having a definition of domestic abuse in our *CDPV Act*, we have an offence-based system.
63. In 2010 the NSW Law Reform Commission and the Australian Law Reform Commission called for national consistency in understanding domestic abuse.
64. The Commissions noted:

*The NSW family violence legislation is notable in its omission to define 'domestic violence'.<sup>24</sup>*

65. The Commissions recommended all state and territories family violence legislation include a definition. The recommendations are included below.

**Recommendation 5-1** *State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:*

- a) *physical violence;*
- b) *sexual assault and other sexually abusive behaviour;*
- c) *economic abuse;*
- d) *emotional or psychological abuse;*

<sup>22</sup> *The Code of Practice for the NSW Police Force response to Domestic and Family Violence*, 2018, p 22 accessed at: [https://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/165202/Code\\_of\\_Practice\\_for\\_the\\_NSWPF\\_response\\_to\\_Domestic\\_and\\_Family\\_Violence.pdf](https://www.police.nsw.gov.au/__data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSWPF_response_to_Domestic_and_Family_Violence.pdf)

<sup>23</sup> *Ibid.*

<sup>24</sup> Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, 2010, paragraph 5.175

- e) *stalking;*
- f) *kidnapping or deprivation of liberty;*
- g) *damage to property, irrespective of whether the victim owns the property;*
- h) *causing injury or death to an animal irrespective of whether the victim owns the animal; and*
- i) *behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.*

**Recommendation 5-2** *State and territory family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate conduct that would affect—although not necessarily exclusively—certain vulnerable groups including: Indigenous persons; those from a culturally and linguistically diverse background; the aged; those with a disability; and those from the gay, lesbian, bisexual, transgender and intersex communities. In each case, state and territory family violence legislation should make it clear that such examples are illustrative and not exhaustive of the prohibited conduct.*

- 66. In making Recommendation 5-2 the Commissions emphasised the importance of examples of emotional and psychological abuse or intimidation and harassment being developed in consultation with marginalised groups.<sup>25</sup>
- 67. We strongly support a definition of domestic abuse in our *CDPV Act*.
- 68. As ANROWS advocates the “*definition of [domestic and family violence] must set the context for how to understand coercive control – that is, as a gendered, overarching context for [domestic and family violence] behaviours, rather than a tactic or an example of a [domestic and family abuse] behaviour*”.
- 69. Recent research by ANROWS highlights that more can be done in legislation and in policy and practice to limit the misidentification of the person most in need of protection. This includes a definition of domestic abuse as discussed above and amendment to legislation and policy to stipulate a protection order be made for the person “*most in need of protection*”. Other recommendations arising from ANROWS research are discussed below in the section on current problems with policing and prosecuting domestic abuse.<sup>26</sup>
- 70. We also support at a minimum the current definition of “*domestic relationship*” in section 5 of the *CDPV Act* to encapsulate the range of relationships in which domestic abuse can occur.
- 71. We note a review of offences to be included as “*domestic abuse offences*” in our *CDPV Act*, would be required, as recommended by the Commissions.<sup>27</sup>
- 72. Section 40 provides an interim AVO must be made on charge for certain offences (including domestic violence offences). “*However, the court need not make an interim court order if it is satisfied that it is not required.*”<sup>28</sup> Similarly, s39 provides a final AVO must be made on a guilty plea or finding of guilt “*However, the court need not make a final apprehended violence order if it is satisfied that it is not*

<sup>25</sup> Ibid, paragraph 5.187

<sup>26</sup> Heather Nancarrow, et al, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

<sup>27</sup> ALRC and NSWLRC *Family Violence – A National Legal Response*, 2010, paragraph 5.213

<sup>28</sup> Section 40(3) of the *Crimes (Domestic and Personal Violence) Act 2007*



required”.<sup>29</sup> In both cases the legislation provides an example that an AVO would not be required “because a final apprehended violence order has already been made against the person”. It would be useful to know if there are any other circumstances currently when an AVO is not granted pursuant to s 40 and s 39 respectively.

73. Consideration may be required about whether the court should have discretion to make an AVO.

### Current problems with policing and prosecuting domestic abuse

74. While law and policies currently recognise domestic abuse as a pattern of behaviour and taking different forms – physical and non-physical abuse - there remain significant issues with implementation.
75. Systemic issues of implementation have also been highlighted through recent high profile coronial inquests, such as the Edwards coronial inquest<sup>30</sup> as well as through the NSW Domestic Violence Death Review Team (**DVDRT**) reports. These reports most often highlight that rather than there being a gap in existing law/s, there is instead a failure to implement existing law, policies and procedures and/or a failure to provide an integrated response.
76. While we recommend a common definition of domestic abuse and extensive education to improve the common understanding of domestic abuse as an immediate action, it is also important to better understand the barriers to implementing existing laws, policies and practices and how these barriers can be addressed. This is particularly important before considering introducing a new domestic abuse offence.

### Policing of domestic abuse

77. We acknowledge the work of the many police responding to domestic abuse on a daily basis. The role of a first responder is critical. It is demanding and stressful work and comes with heavy responsibilities. It is work that can help save lives. Given 40% of the work of police in NSW is focused on responding to domestic abuse all police must be adequately supported to effectively respond to domestic abuse.
78. The experiences of many of our clients, some of which are highlighted in this submission, suggests however that police are not adequately supported in their work.
79. We are also concerned by the ongoing impacts of institutionalised and systemic racism, including in police, particularly on First Nations communities, as well as on refugee and migrant communities.

### Police failing to take action

*Many women tell us about experiencing verbal and psychological abuse most often by a controlling male partner which is often accompanied by relentless unwanted text messages. There may also be threats made to the woman or members of her family, particularly children, including on occasions threats to kill. These women are fearful. Police often respond to women's reports of such abuse by saying they are unable to take action, including taking out an AVO for the woman's protection, because they are unable to prove the text messages originated from their partner/ex-partner's phone or "he*

<sup>29</sup> Section 39(2) of the *Crimes (Domestic and Personal Violence) Act 2007*

<sup>30</sup> Women's Legal Service NSW, Community Legal Centres NSW and Domestic Violence NSW, Media Release: “Coronial inquest highlights police failings in responding to DV – an urgent inquiry into police response to DV is required”, 16 September 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Joint-Media-Release-Inquiry-into-policing-of-SDV-160920-fw.pdf>

*hasn't physically assaulted you".*

### An unwillingness to report to police

*A worker's reflections:*

*"It's the judgment and attitudes that makes it difficult for so many women to report to police. And that police often don't believe you when you tell them what you've experienced. When a woman uses force in response to being abused; or has a drug addiction because that's the way she's found to numb the pain for a short while due to all the trauma she's experienced; or police are continually called out to respond to domestic abuse perpetrated by the same abuser against the same woman and the woman may present from the police's perspective as hostile and unco-operative it seems she's written off by police, as not deserving of assistance. Some clients report being told by police to "sit down and shut up while we try to work out what has happened".*

*Police behaving in this way emboldens perpetrators.*

*Similarly, police belittling of victim-survivors, minimising abuse and victim-blaming emboldens perpetrators.*

*Police need to be better supported to be trauma informed and responsive. To understand that women who have experienced trauma after trauma may not make good historians. They are generally unable to recall events in a coherent, logical manner because of the trauma.*

*The research shows that where women deviate from the way they are expected to behave as victim-survivors, that is, they don't present as quiet and compliant and do what police tell them to do – they are treated by police with suspicion and scepticism.*

*Some women, especially those with lived experience of the criminal justice system or distrust of police related to intergenerational systemic racism, may also interpret the police attitude as an indication that they are not believed and that they may be arrested. This can be a catalyst for words and actions directed at police by the victim-survivor that may then form the basis for a charge.*

*What can be done to challenge this?*

80. The Personal Safety Survey highlights that 82% of women who have experienced violence by a current partner since the age of 15 have never contacted the police. 65% of women who have experienced violence by a former partner since the age of 15 have never contacted the police.<sup>31</sup>
81. Police acknowledge that domestic abuse is significantly underreported to them. For this to change we urgently need transformative cultural reform.
82. If a victim-survivor does not have a positive first encounter with police, they are unlikely to seek the help of police again.

<sup>31</sup> Australia's National Research Organisation for Women's Safety, *Violence against women: Accurate use of key statistics* (ANROWS Insights 05/2018) ANROWS, Sydney, NSW accessed at: [https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/01/19030556/ANROWS\\_VAW-Accurate-Use-of-Key-Statistics.1.pdf](https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/01/19030556/ANROWS_VAW-Accurate-Use-of-Key-Statistics.1.pdf)

### Misidentification of the person most in need of protection and criminalisation of women

83. Over the past few decades we have worked with many women who have been misidentified as the predominant aggressor in circumstances where they are the person most in need of protection.
84. WLS NSW undertook an exploratory study of our work representing women who were defendants in Apprehended Domestic Violence Order (**ADVO**) proceedings in 2010. The study found:
- 84.1 *Two-thirds of our clients defending ADVOs reported they were victims of violence in their relationships.*
- 84.2 *Fewer than 40% of these clients had a final ADVO made against them when the case came before the court and these ADVOs were almost all made by consent.*
- 84.3 *Many of the women defending ADVOs reported that when police had been called after a violent incident, they felt that their version of events had not been viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.*
- 84.4 *Other women reported that they believed the other party had deliberately initiated ADVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future.*
- 84.5 *In the majority of cases where women were defending ADVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.<sup>32</sup>*
85. This continues to be the experience in our practice over the past decade. We note recent research which also recognises this trend.<sup>33</sup>
86. Further, the ANROWS research found that “*police sometimes err on the side of caution in making [protection order] applications, deferring to the magistrates to determine if an order is warranted. However, magistrates in turn may rely on the initial assessment made by police, as may prosecutors*”.<sup>34</sup> ANROWS recommends greater role clarity and accountability of police and the courts with safeguards to address misidentification.<sup>35</sup> ANROWS also recommends further training for police and judicial

<sup>32</sup> Julia Mansour, *Women Defendants to AVOs: What is their experience of the justice system*, Women's Legal Service NSW, Sydney, 2014 accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/womendefAVOsreport.pdf>

<sup>33</sup> Hayley Boxall, Christopher Dowling and Anthony Morgan, “Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory behaviour”, *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology No 584, Jan 2020 accessed at [https://www.aic.gov.au/sites/default/files/2020-05/ti584\\_female\\_perpetrated\\_domestic\\_violence-v2.pdf](https://www.aic.gov.au/sites/default/files/2020-05/ti584_female_perpetrated_domestic_violence-v2.pdf); Jane Wangmann, Lesley Laing & Julie Stubbs, “Exploring gender differences in domestic violence reported to the NSW Police Force”, *Current Issues in Criminal Justice*, 2020, accessed at: <https://doi.org/10.1080/10345329.2020.1745136>; note also Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020 accessed at: <https://20ian81kynqg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2019/10/Nancarrow-PMINOP-RR.3.pdf>

<sup>34</sup> Australia's National Research Organisation for Women's Safety, *Accurately identifying the “person most in need of protection” in domestic and family violence law: Key findings and future directions* (Research to policy and practice, 23/2020) ANROWS, Sydney, 2020

<sup>35</sup> Ibid

officers and exploring a co-responder model with police and sexual and domestic abuse experts working together to enhance police response to sexual and domestic abuse.<sup>36</sup>

### Silencing of women

87. Further, in our decades long experience in working with criminalised women we find that women's criminalisation often stems from being misidentified as the predominant aggressor. These women have been silenced, firstly by the perpetrator and then by the systems which are meant to protect her.
88. This includes the police who often do not take appropriate action because the woman does not present as police might expect a victim-survivor to present. She may be seen as unwilling to "co-operate" with police, with police failing to recognise and acknowledge the role that trauma, fear, family and/or community pressures and/or past negative experiences and a lack of trust in police and the system play in a victim-survivor's life and response to abuse and police intervention. She may respond to the extensive abuse perpetrated by her male partner with violence, fighting back, not with the intent to coerce, control or cause fear, but as a survival response. She may remain with the person perpetrating the abuse for many complex reasons – because she loves him, because she fears that separation will mean the children may have to spend time alone with their father at significant risk so staying is seen as the safer and more protective option for her children, because she is not financially independent to support herself and her children, because there is no where else to go.<sup>37</sup>
89. Victim-blaming and minimising men's abuse against women and children is widespread and has a devastating impact on women. It removes accountability from where it should lie – with the predominant perpetrator - and it results in the people women turn to for safety and protection unwittingly colluding with the perpetrator.
90. First Nations women and refugee and migrant women also reflect on their experiences of systemic racism. Many First Nations women comment on the delays in police responding, feeling judged and their experiences being minimised.

#### **Experiences of systemic racism**

*One of our First Nations workers describes supporting one Aboriginal woman:*

*Police would not take a statement until we accompanied our client to the police station. Even then our client had a poor experience with police. She felt judged. She felt she was not believed. She felt small and treated as less important because she was an Aboriginal woman. She left the police station feeling worse than when she entered. This was a woman who experienced serious physical abuse and other forms of ongoing controlling abuse by her non-Aboriginal partner, including him threatening to kill her on several occasions if she left him. She used force to try and stop her partner from continuing to hit her, but she was the one who needed protection and the police were very slow to act. This is all too common for our women.*

<sup>36</sup> Heather Nancarrow, et al, *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

<sup>37</sup> This experience is also echoed in ANROWS research: Heather Nancarrow, et al, *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020

91. The silencing continues when women talk about the shame they feel for the abuse they have experienced and do not know how to tell their criminal lawyers when they are charged with an offence. Often criminal lawyers do not ask about domestic abuse, including sexual abuse.

*Women in custody have instructed us that they have not told the police or their legal representatives or the court about the violence they have experienced. This includes violence that is materially relevant to their charges and to their defence. Most commonly this is because they are not comfortable to make disclosures about sexual violence to male professionals.*

*One older Aboriginal woman told us that she was simply frozen and filled with shame at the thought of telling a young male solicitor about being raped immediately prior to her offending behaviour. The client requested that we provide this information to her lawyer, which we did, but we remained concerned that she may not be able to provide further relevant instructions.*

92. The silencing further continues with the criminal justice outcome – once a woman becomes an offender, her extensive history of sexual and domestic abuse become invisible. Further, the woman's negative experience impacts on her willingness to further engage with police and legal systems which police and legal systems may categorise as obstructionist or a failure to act protectively and may lead to the matter escalating. This could all have been avoided if the first response was one that was trauma informed, domestic abuse informed and culturally safe.

### **Cultural reform - leadership**

93. For many decades, inquiry after inquiry about domestic abuse has recommended increased training and education about domestic abuse, including for police, legal practitioners and judicial officers.
94. While training is important, of itself, it will not change attitudes and culture. It must be part of a broader strategy for cultural reform which requires strong leadership and proper resourcing.
95. While acknowledging that the policing of sexual and domestic abuse in NSW has significantly improved over time and also acknowledging the efforts of police in some areas to build trust with their local communities, much more work needs to be done.
96. We acknowledge that cultural reform is not the responsibility of just one agency or profession. We all have a role to play in promoting and supporting cultural reform and reflecting upon our own practices and biases. However, given the central and important role of police in responding to sexual and domestic abuse we believe cultural reform needs to start with police.

### **Regular review of policing of domestic abuse in the United Kingdom**

97. In September 2013, Her Majesty's Inspectorate of Constabulary was commissioned by the Home Secretary to examine the police response to domestic abuse in England and Wales. The report determined: "[d]omestic abuse is a priority on paper but, in the majority of forces, not in practice".<sup>38</sup>

<sup>38</sup> Her Majesty's Inspectorate of Constabulary (HMIC), *Everyone's business: Improving the police response to domestic abuse*, 2014, p6, accessed at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>

98. The report found:

*... alarming and unacceptable weaknesses in some core policing activity, in particular the quality of initial investigation undertaken by responding officers when they are called to a scene. The report also identifies that officers may lack the necessary supervision, knowledge and skills effectively to tackle domestic abuse, and some have poor attitudes.*<sup>39</sup>

99. Eleven recommendations were made.

100. Her Majesty's Inspectorate of Constabulary has undertaken progress reports on policing of domestic abuse and the implementing of recommendations every 2 years since: 2015, 2017, 2019. These reports are published.

### **Independent review of Victoria Police**

101. In 2014 Victoria Police engaged the Victorian Equal Opportunity and Human Rights Commission to undertake an independent review into sex discrimination and sexual harassment, including predatory behaviour, in Victoria Police. This was in response to the high rates of sex discrimination and sexual harassment within Victoria Police.<sup>40</sup>

102. In commissioning this review the Chief Commissioner of Police noted:

*There have been numerous attempts to deal with this issue in the past, but they did not achieve the change that was needed. It was clear the time had come for us to bring in an independent umpire to conduct a robust review.*<sup>41</sup>

103. Then Victorian Equal Opportunity and Human Rights Commissioner Kate Jenkins stated:

*In commissioning this Review, Victoria Police asked the Victorian Equal Opportunity and Human Right Commission to examine the prevalence, drivers and impacts of sex discrimination and sexual harassment.*

*Victoria Police also asked us to develop recommendations and a comprehensive action plan for change, and to hold them to account, assessing their progress over three years.*

*And they requested that we do this work under the spotlight of public scrutiny. This is not a response to scandal. This is a commitment from the Chief Commissioner and his leadership team to change the organisation for the better.*

*This work is about systemic change.*<sup>42</sup>

<sup>39</sup> HMIC, "The police response to domestic abuse is not good enough and must be improved, finds HMIC inspection", (Media release), 27 March 2014 accessed at: <https://www.justiceinspectorates.gov.uk/hmicfrs/news/news-feed/police-response-to-domestic-abuse/>

<sup>40</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review of Victoria Police* accessed at: <https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>

<sup>41</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review: into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Phase One Report, 2015*, p3 (5) accessed at: [https://www.humanrights.vic.gov.au/static/c6047d1e6cb4d96861b32cd9295691cd/Resource-Independent\\_Review\\_Victoria\\_Police-Phase\\_1-2015.pdf](https://www.humanrights.vic.gov.au/static/c6047d1e6cb4d96861b32cd9295691cd/Resource-Independent_Review_Victoria_Police-Phase_1-2015.pdf)

<sup>42</sup> Ibid, p2 (4)

104. Then Commissioner Jenkins emphasised the importance of this work in building rather than undermining confidence in Victoria Police. Victoria Police were owning there was a problem and committed to addressing it.<sup>43</sup>

105. In the second report Commissioner Hilton commented:

*To critically reflect, to listen to different and confronting viewpoints, and to allow yourself to be vulnerable are impressive leadership traits and essential in this kind of transformational change.*<sup>44</sup>

106. The drivers for sex discrimination and sexual harassment are the same drivers for domestic abuse –

*unequal power between men and women and rigid adherence to gender stereotypes – that are supported by structural and attitudinal barriers to gender equality.*<sup>45</sup>

107. While the audit reports acknowledge the progress made, they also acknowledge cultural change takes time and there is further work that needs to be done. The work undertaken to address sex discrimination and sexual harassment in the police force should also improve police responses to sexual and domestic abuse.

### *Review of policing of sexual and domestic violence in NSW*

108. In 1999 the NSW Ombudsman made a special report to the NSW Parliament in response to continuing community concerns about policing of domestic violence: *Policing Domestic Violence in NSW*. A key finding included that police “needed to better monitor its response to domestic violence to ensure consistency and quality across the state”.<sup>46</sup>

109. In 2006, a further review was undertaken to consider the extent to which recommendations had been implemented and the policing of domestic abuse had improved.

110. Police and victim-survivor advocates both continued to report negative police attitudes towards victim-survivors, particularly where a victim-survivor was seen as not “co-operating” with police.<sup>47</sup> Other recurring issues included: poor customer response when domestic abuse victim-survivors present at the police station; delays in police response to domestic abuse, particularly in rural and remote areas;<sup>48</sup> a need for more female Aboriginal Community Liaison Officers (**ACLOs**) and Aboriginal Family Violence Officers;<sup>49</sup> a continued need to increase the status, number, training and support for Domestic Violence Liaison Officers (**DVLOs**);<sup>50</sup> a need to review police training strategy relating to domestic abuse and to involve external agencies in the development and delivery of training.<sup>51</sup>

<sup>43</sup> Ibid.

<sup>44</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review: into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, Phase 2 Audit 2017*, p3 (5) accessed at: [https://www.humanrights.vic.gov.au/static/2f96c692561ba8a9db1176997e18fd53/Resource-Independent\\_Review\\_Victoria\\_Police-Phase\\_2-2017.pdf](https://www.humanrights.vic.gov.au/static/2f96c692561ba8a9db1176997e18fd53/Resource-Independent_Review_Victoria_Police-Phase_2-2017.pdf)

<sup>45</sup> Ibid p 10 (12)

<sup>46</sup> NSW Ombudsman, *Domestic violence: improving police practices*, 2006, p1 (25) accessed at: [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0015/3480/Domestic-violence-improving-police-practice-Special-Report-to-Parliament-December-2006-.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0015/3480/Domestic-violence-improving-police-practice-Special-Report-to-Parliament-December-2006-.pdf)

<sup>47</sup> Ibid, p13 (37)

<sup>48</sup> Ibid p15 (39)

<sup>49</sup> Ibid, Recommendation 25

<sup>50</sup> Ibid, Recommendations 5-15

<sup>51</sup> Ibid, Recommendations 27-30

111. In 2011, the NSW Ombudsman published an audit of NSW Police Force handling of domestic and family violence complaints. This report builds on the NSW Ombudsman's 2006 report and provides the NSW Ombudsman's findings arising from its 2008 audit of the NSW Police Force handling of domestic violence complaints.
112. The NSW Ombudsman recommended the NSW Police Force conduct annual audits of complaints relating to domestic abuse, including the number of complaints; what was done to remedy complaints, including training for individuals or commands; progress on implementation of Aboriginal Strategic Direction; evidence of positive relationship between police and domestic violence services.<sup>52</sup>
113. If these audits have been undertaken, to our knowledge the results have not been published.
114. In our response to the Tune Review of Police Oversight in 2015, we recommended a lower threshold of seriousness of complaint for a police complaint to be reviewed by an independent body if relating to sexual and domestic abuse and a specialist domestic and sexual abuse unit to assess the complaint.<sup>53</sup>
115. In the context of police responding to sexual and domestic abuse, what may be considered less serious, for example, complaints relating to customer service such as rudeness or delay in responding, may have lethal consequences if, for example, a victim-survivor of domestic abuse no longer reports the abuse to police nor otherwise seeks police assistance after a negative experience.<sup>54</sup>
116. We also recommended specialist sexual and domestic abuse units within police to investigate police responses to sexual and domestic abuse matters. These could be complaints referred back from the independent body that are deemed by their specialist unit "*not to be serious*" as well as police undertaking a mandatory review of police responses to sexual and domestic abuse which is published. We recommended the review happen by way of an annual audit of at least 40% of randomly selected cases involving police response to sexual and domestic abuse incidents.<sup>55</sup>
117. We believe a random audit of the policing of some sexual and domestic abuse cases will further increase confidence in policing of sexual and domestic abuse as it does not just rely on those who are willing to make a complaint. Such audits can highlight gaps in police responses and identify steps which can be taken to improve policing and ultimately, the safety of victim-survivors of such abuse. They would increase trust in police because they signal that police take seriously their responsibilities and are interested to reflect and improve practices where it is required.
118. In the face of the coronial inquests into the deaths of Jack and Jennifer Edwards who were killed by their father, we continue to recommend regular random auditing of the policing of sexual and domestic abuse.<sup>56</sup>

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<sup>52</sup> NSW Ombudsman, *Audit of NSW Police Force handling of domestic and family violence complaints*, May 2011, Recommendation 1 accessed at: [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/3476/Audit-of-NSW-Police-Force-handling-of-domestic-and-family-violence-complaints-Special-report-To-Parliament-May-2011.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0020/3476/Audit-of-NSW-Police-Force-handling-of-domestic-and-family-violence-complaints-Special-report-To-Parliament-May-2011.pdf)

<sup>53</sup> Women's Legal Services NSW, *Submission to Review of Police Oversight in NSW*, 25 June 2015 accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-review-of-police-oversight-in-NSW-a.pdf>

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Women's Legal Service NSW, Community Legal Centres NSW and Domestic Violence NSW, Media Release: "Coronial inquest highlights police failings in responding to DV – an urgent inquiry into police response to DV is required", 16 September 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Joint-Media-Release-Inquiry-into-policing-of-SDV-160920-fw.pdf>



119. We further note the national recommendations relating to policing in the *Wiyi Yani U Thangani (Women's Voices)* report.
120. This report was developed following extensive consultation that Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO, led with Aboriginal and Torres Strait Islander women and girls across Australia.
121. Recommendations relating to police included:
- 121.1 *Recruiting and retaining Aboriginal and Torres Strait Islander women in leadership roles in the police;*
  - 121.2 *Ensuring Aboriginal and Torres Strait Islander women Police Liaison Officers are available to all police forces across Australia; and*
  - 121.3 *trauma-informed and culturally responsive training, and family violence response training be embedded across all Australian police departments which include accountability frameworks to address systematic racism.*<sup>57</sup>
122. Greater self-reflection within police is critical as are steps taken to address barriers to reporting domestic abuse to police arising from bias and prejudice.

#### **Cultural reform - education and support**

123. While training has an important role to play in cultural reform, close attention needs to be paid to what training is provided, to whom, by whom, how often, in what form, how is it informed by the lived experience of victim-survivors, how often does it address victim-blaming attitudes and conscious and unconscious bias, does it encourage people to reflect on their own practice and is the training independently evaluated to measure changes in attitudes and changes in practice as a result of the training?
124. Police training about domestic abuse needs to be developed and delivered with significant input from and co-facilitation with sexual and domestic abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services.
125. Given a substantial amount of police work involves responding to sexual and domestic abuse, the training in these areas needs to be commensurate with this. It is also important that training is not limited to or primarily focused on those in domestic abuse specialist roles and teams. It must target all first responders – those who take the calls about domestic abuse, those who attend the call outs relating to domestic abuse, those at the front desk when victim-survivors come to a police station to report domestic abuse. A positive first response will determine whether or not victim-survivors report again to police.
126. The recommendations relating to education in the 2014 Review of policing in the UK included a review of existing training to determine its sufficiency and effectiveness, including in helping police to understand the nature and dynamics of domestic abuse, perpetrators tactics and different forms of domestic abuse. The review also recommended police attain professional standards in domestic abuse – foundation skills and specialist skills – and have to pass tests in order to progress up their pay scales

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<sup>57</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p 103 (105)

to “ensure that a sound professional understanding of domestic abuse becomes part of officers' continuing professional development and is embedded throughout the careers of all serving officers”.<sup>58</sup>

127. As part of the response to the 2014 report, the College of Policing and domestic abuse charity Safe Lives developed “a bespoke cultural change programme” for police in England and Wales called: Domestic Abuse Matters.<sup>59</sup> The training seeks to address “negative attitudes towards domestic abuse and to promote a cultural shift across Police Forces”.<sup>60</sup> It required a minimum of 75% of officers to be trained to “help to build momentum and to quickly and effectively bring about a cultural change”. 25% were given additional training as “Domestic Abuse Matters Champions”:

*to help sustain the change in skills, behaviour and attitudes of their peers; challenging inappropriate language and behaviour, checking service delivery, giving constructive feedback and congratulating good practice*

as well as helping police to identify and act on compassion fatigue, burnout and vicarious trauma.<sup>61</sup>

128. Further evaluation will be undertaken 6 months post training to measure the impact of the training.

### **Co-responder model**

129. A co-responder approach to responding to domestic abuse involves different disciplines working together to support the victim-survivor and hold the men using abuse accountable.

130. We support a model of co-locating police with specialist sexual and domestic abuse community-based workers so they can provide a holistic response. The benefit of co-location and a co-response is that specialist sexual and domestic abuse workers can provide police with ongoing professional development in identifying and responding to sexual and domestic abuse. Similarly, police can help the sexual and domestic abuse workers to better understand police powers, procedures and practices.

131. A co-responder model was recommended in the 2017-19 *NSW Domestic Violence Death Review Team Report*.<sup>62</sup> It is also a recommendation in ANROWS research focused on addressing misidentification of the person most in need of protection.<sup>63</sup>

132. We note the success of a co-responder model with police and specialist mental health workers responding to people in a mental health crisis in NSW. Following a successful pilot of the Police, Ambulance and Clinical Early Response program, 36 specialist mental health clinicians were employed across 10 police area commands and districts in Sydney.<sup>64</sup> It is also important that such support is available in regional, rural and remote areas.

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<sup>58</sup> Note 11, Recommendation 7.

<sup>59</sup> Safe Lives accessed at: <https://safelives.org.uk/training/police>

<sup>60</sup> Safe Lives, Domestic Abuse Matters: Police responders and Champions training accessed at: [https://safelives.org.uk/sites/default/files/resources/DA%20Matters\\_4-force%20report\\_20180423%20v0.4.pdf](https://safelives.org.uk/sites/default/files/resources/DA%20Matters_4-force%20report_20180423%20v0.4.pdf) p 3

<sup>61</sup> Ibid

<sup>62</sup> NSW Government, *NSW Domestic Violence Death Review Team Report 2017-19* (2020) Recommendation 27.1, accessed at: [https://www.coroners.nsw.gov.au/documents/reports/2017-2019\\_DVDRT\\_Report.pdf](https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf)

<sup>63</sup> Heather Nancarrow, Kate Thomas, Valerie Ringland, & Tanya Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020, p96.

<sup>64</sup> Alexandra Smith, “Mental health nurses to be based at police stations”, *SMH*, 10 June 2020 accessed at: <https://www.smh.com.au/politics/nsw/mental-health-nurses-to-be-based-at-police-stations-20200609-p550yf.html>

## Workforce development

133. All workers across all disciplines (eg health practitioners, lawyers, judicial officers, social support services, police, interpreters) should meet minimum practice standards in working with victim-survivors and those who use abuse. Meeting additional practice standards should be required for those specialising in responding to sexual and domestic abuse.
134. Training to support these practice standards must be up-to-date, evidence-based, developed by sexual and domestic abuse experts, culturally safe, disability aware, non-binary, trans and gender diverse aware and ongoing and jointly delivered by relevant agency/department and sexual and domestic abuse experts.

## Tools to better assist responding to domestic abuse

135. There are a range of tools relevant to supporting a better response to domestic abuse (coercive and controlling abuse). These tools need to be regularly reviewed and professionals should also be encouraged to use these tools in their work.

## Screening and risk assessment tools

136. The NSW Bureau of Crime Statistics and Research (**BoCSaR**) undertook a review of the effectiveness of both the police Domestic Violence Safety Assessment Tool (**DVSAT**) as well as the DVSAT used by all other workers. This tool is a screening and risk assessment tool used to help determine the seriousness of the threat to a victim-survivor. Police conduct a DVSAT when they attend a call out relating to domestic abuse or take a report of domestic abuse at the counter.<sup>65</sup> The matter is then referred to the Local Co-ordination Point (a specialist domestic and family abuse service) who undertake a further DVSAT. If a matter is assessed to be at serious risk, it is referred to a multi-agency Safety Assessment Meeting (**SAM**).
137. BoCSaR found the DVSAT to be little better than chance at identifying who is at greater risk of repeat victimisation.<sup>66</sup>
138. Both the police DVSAT and general DVSAT are currently under review.
139. ANROWS research has found “*no jurisdiction [in Australia] currently has tools for police to assess patterns of coercive control that would detect which party is the perpetrator and which is acting in self-defence or violent resistance*”.<sup>67</sup>
140. Updated screening and risk assessment tools are critical to ensure effective screening for coercive and controlling abuse and for ensuring police and others are supported to better understand the types of questions to elicit information to identify coercive and controlling behaviours.

<sup>65</sup> NSW Police Force, *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*, p19.

<sup>66</sup> Clare Ringland, *The Domestic Violence Safety Assessment Tool (DVSAT) and intimate partner repeat victimisation* (Crime and Justice Bulletin No. 213) NSW Bureau of Crime Statistics and Research, Sydney, 2018 accessed at: <https://www.bocsar.nsw.gov.au/Publications/CJB/2018-Report-Domestic-Violence-Safety-Assessment-Tool-cjb213.pdf>

<sup>67</sup> Heather Nancarrow, et al, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020) ANROWS, Sydney, 2020, p12.

### Prosecutorial Guidelines

141. The Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales (ODPP) were last revised in 2007. We understand there was a consultation process in 2018 which was considering the updating of these guidelines.
142. The ODPP Protocol for reviewing domestic violence offences is currently included as Appendix E of the Prosecution Guidelines.<sup>68</sup> Domestic abuse should be addressed in the guidelines themselves, rather than included as an appendix and include a definition of domestic abuse as discussed in this submission.
143. We note in Scotland detailed prosecution policy and guidance are published on the Crown Office and Procurator Fiscal Service website. There is a *Joint protocol between Police Scotland and the Crown Office & Procurator Fiscal Service: In partnership challenging domestic abuse* which covers a range of issues, including a section on “counter allegations” which emphasises and provides detailed guidance on the process to identify the principal perpetrator and to report both parties as the principal perpetrator only in “limited circumstances”.<sup>69</sup>
144. Statistics are regularly published on domestic abuse and stalking offences.<sup>70</sup>

### Bench Books

145. We acknowledge the importance of Bench Books in assisting judicial officers to undertake their work and the importance of ensuring they are kept up-to-date. Domestic abuse (coercive and controlling abuse) is effectively explained in the *Bench book: Equality Before the Law*.<sup>71</sup>

### What does the evidence base say in those jurisdictions which have criminalised coercive and controlling abuse?

146. While there is value in monitoring developments in other jurisdictions it is difficult to make direct comparisons as our laws and contexts are so different.

### England and Wales

147. The Domestic Violence Law Reform Campaign in England in 2014 sought to “close a legislative loophole”.<sup>72</sup> The offence of stalking applied when a relationship ended. However, there was little

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<sup>68</sup> NSW ODPP, *Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales*, 2007 accessed at: <https://www.odpp.nsw.gov.au/sites/default/files/prosecution-guidelines.pdf>

<sup>69</sup> *Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service: In partnership challenging domestic abuse*, 5<sup>th</sup> ed, 2019, paragraphs 33-37 accessed at: <https://www.scotland.police.uk/spa-media/ymzlwjw/joint-protocol-between-police-scotland-and-copfs-in-partnership-challenging-domestic-abuse.pdf?view=Standard>

<sup>70</sup> The Crown Office and Procurator Fiscal Service accessed at: <https://www.copfs.gov.uk/publications/publications>

<sup>71</sup> NSW Judicial Commission, *Equality Before the Law Bench Book*, 28 September 2020, Section 7.5 accessed at: <https://www.judcom.nsw.gov.au/publications/benchbks/equality/index.html>

<sup>72</sup> Lucy Hadley, ‘The Serious Crime Act 2015 & Coercive Control: Overcoming Challenges of Identification and Evidence’, *Westminster Insight Conference*

recourse to address stalking and harassment within an intact intimate relationship. The *Serious Crime Act 2015* (UK) which criminalised coercive and controlling abuse sought to close that loophole.<sup>73</sup>

148. The offence took effect from December 2015.
149. Early reports indicated that there have been low numbers of the offence recorded, charged and successfully prosecuted. There were 468 defendants prosecuted for coercive and controlling abuse in the year ending December 2017 with 235 convictions.<sup>74</sup>
150. In the year ending March 2018, 1.5% of the total domestic abuse-related crimes recorded by police were for offences of coercive and controlling abuse.<sup>75</sup> In the year ending March 2019 this was 2.36%.<sup>76</sup> In the year ending March 2020 this was 3.28% (noting this did not include statistics from the Greater Manchester Police).<sup>77</sup>
151. In the year ending March 2020 there was a 19% decrease in referrals of suspects of domestic abuse-flagged cases from the Police to the Crown Prosecution Services for a charging decision. There was a decrease in the charging rate (73%) compared to 74% in 2019 and 76% in 2018. The rate of prosecutions resulting in convictions was 78%, similar to levels in previous years.<sup>78</sup>
152. In the year ending March 2018, 5,674 Domestic Violence Protection Orders were sought and 4,878 granted.
153. The research undertaken so far and anecdotal reports seem to suggest that convictions typically occur where there is evidence of physical abuse too and the offence is charged with other offences rather than charged as a stand-alone offence.<sup>79</sup>
154. Some specialist services note the risk assessment tool used commonly by police and other agencies – the Domestic Abuse, Talking and Harassment and Honour-based violence risk identification, assessment and management model (**DASH**) has not been systematically evaluated since

<sup>73</sup> Lucy Hadley, 'The Serious Crime Act 2015 & Coercive Control: Overcoming Challenges of Identification and Evidence, *Westminster Insight Conference*

<sup>74</sup> Office for National Statistics, Domestic abuse in England and Wales: year ending March 2018 accessed at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018>

<sup>75</sup> 9, 053 offences of coercive and controlling abuse from 599,549 domestic abuse-related crimes recorded by police. See: Office for National Statistics, Domestic abuse in England and Wales: year ending March 2018

<sup>76</sup> 17, 616 offences of coercive and controlling abuse from 746,219 domestic abuse-related crimes recorded by police: Office for National Statistics, *Domestic abuse and the criminal justice system, England and Wales: November 2019*, accessed at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2019>

<sup>77</sup> Office for National Statistics, *Domestic abuse and the criminal justice system, England and Wales: November 2020*, p5 accessed at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2020>

<sup>78</sup> Office for National Statistics, *Domestic abuse in England and Wales overview: November 2020*, p 2 accessed at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2020>

<sup>79</sup> Lucy Hadley, 'The Serious Crime Act 2015 & Coercive Control: Overcoming Challenges of Identification and Evidence, *Westminster Insight Conference*

implementation and that it is not applied consistently by frontline police with many officers prioritising physical abuse.<sup>80</sup>

155. The proportion of domestic abuse-related crimes resulting in a charge decreased over February 2018 – March 2019 compared to February 2017 – March 2018 and the proportion that had evidential difficulties increased in that same period.<sup>81</sup>
156. Despite the findings in the HMIC 2014 report: *Everyone's business: Improving the police response to domestic abuse* and attempts to address poor attitudes and the widespread lack of understanding of the nature and dynamics of domestic abuse, these challenges remain.

### Civil protection orders

157. There are a range of protection orders for protection from intimate-partner and family violence in England and Wales. Restraining orders are civil orders granted by a judge following the conclusion of criminal proceedings. They are usually granted for between 6 to 12 months and can be extended. A breach of this order is a criminal offence.<sup>82</sup>
158. Non-molestation orders are orders the victim-survivors applies for through civil proceedings. A breach of an order is a criminal offence.
159. Domestic Violence Protection Notices and Domestic Violence Protection Orders were introduced across England and Wales on 8 March 2014.

*These notices and orders may be used following a domestic incident to provide short-term protection to the victim when arrest has not been made but positive action is required, or where an arrest has taken place but the investigation is in progress.*<sup>83</sup>

160. A Domestic Violence Protection Notice can be issued by police on the spot and must be heard by a court within 48 hours of service. A Domestic Violence Protection Order is granted by the court and lasts between 14 – 28 days. A breach of the order is not a criminal offence but a civil contempt of court.<sup>84</sup>
161. There is a Bill currently before Parliament: The Domestic Abuse Bill which seeks to improve upon the current Domestic Violence Protection Notice and Order. If the legislation passes, the Domestic Abuse Protection Order can extend beyond 28 days, can include positive obligations, such as attending a men's behaviour change program, as well as prohibitions and a breach will be a criminal offence.<sup>85</sup>

<sup>80</sup> Ibid.

<sup>81</sup> Office for National Statistics, *Domestic abuse and the criminal justice system, England and Wales: November 2019*, Figure 4

<sup>82</sup> Lis Bates and Marianne Hester, "No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales", *Journal of Social Welfare and Family Law*, 42:2, 2020, p134.

<sup>83</sup> College of Policing, *Major investigation and public protection: Using domestic violence protection notices and domestic violence protection orders to make victims safer*, accessed at: <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/domestic-violence-protection-notices-and-domestic-violence-protection-orders/>

<sup>84</sup> See sections sections 24 to 33 of the *Crime and Security Act 2010* (UK)

<sup>85</sup> Domestic Abuse Bill (UK) accessed at: [https://publications.parliament.uk/pa/bills/lbill/58-01/171/5801171\\_en\\_3.html#pt3-pb1-l1g20](https://publications.parliament.uk/pa/bills/lbill/58-01/171/5801171_en_3.html#pt3-pb1-l1g20) and Lis Bates and Marianne Hester, "No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales", *Journal of Social Welfare and Family Law*, 42:2, 2020, p135-6.

## Scotland

162. The *Domestic Abuse (Scotland) Act* was passed on 1 February 2018 but did not take effect until 14 months later on 1 April 2019 to allow sufficient time for implementation.
163. In 2019-20, 1065 charges for coercive and controlling abuse were reported, 3.5% of all domestic abuse charges reported in Scotland. Court proceedings commenced in 96% of these matters. A child aggravation was recorded in 251 (24%) of these matters. In 96% of the these matters the abuser was male.<sup>86</sup>

## Civil protection orders

164. During consultations on the Bill which criminalised coercive and controlling abuse in Scotland many in the sexual and domestic abuse sector raised gaps in protections for victim-survivors of domestic abuse, including gaps in the provision of short and long-term protection orders, for example, orders excluding a perpetrator from the home. These orders can only be obtained through the criminal justice system or if the victim-survivor applies for a civil order against the perpetrator, which involves the woman initiating civil proceedings.<sup>87</sup>
165. In the case of the criminal justice system, once an alleged perpetrator is charged with an offence, the police can release them on an “*undertaking*” prior to a bail hearing that could include a condition not to approach the person in need of protection or not to return to return to the house. At the bail hearing, if released on bail, similar bail conditions could be made.<sup>88</sup> Criminal courts also have the power to impose restrictions on the perpetrator following conviction of an offence if considered necessary.
166. In the case of a civil protection order, the person in need of protection can apply for an exclusion order or an interdict or non-harassment order for no contact.<sup>89</sup>
167. In 2018, a consultation was undertaken in Scotland to consider options for better protection for victim-survivors of domestic abuse that did not rely on the criminal justice system or have the burden fall to the person in need of protection to initiate proceedings.
168. The Domestic Abuse (Protection) (Scotland) Bill currently before the Scottish Parliament, if passed, will create two new mechanisms of protection - a domestic abuse protection notice that police can serve on the abuser to provide immediate short-term protection for the victim-survivor until their matter is heard by a court and a domestic abuse protection order. A court can make a domestic abuse protection order for up to 2 months which can be extended by a further month. This would allow time to pursue other remedies – such as an exclusion order, non-harassment order or interdict or for steps to be taken to remove the perpetrator from the tenancy.<sup>90</sup>

<sup>86</sup> Crown Officer and Procurator Fiscal Service, *Domestic abuse and stalking charges in Scotland 2019-20*, accessed at: <https://www.copfs.gov.uk/images/Documents/Statistics/Domestic%20Abuse/Domestic%20Abuse%20and%20stalki ng%202019-20.pdf>

<sup>87</sup> Scottish Government, *Scottish Government Consultation on Protective Orders for People at Risk of Domestic Abuse*, December 2018 accessed at: <https://www.gov.scot/publications/consultation-protective-orders-people-risk-domestic-abuse/pages/2/>

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> Domestic Abuse (Protection) (Scotland) Bill Explanatory Notes, 2 October 2020, accessed at: <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/domestic-abuse-protection-scotland-bill/introduced/explanatory-notes-domestic-abuse-protection-scotland-bill.pdf>

169. The Explanatory Notes state:

*The orders will provide the person at risk with some certainty about their protection which is immediate, does not require any action to be taken by the person at risk and is independent of any criminal investigation.*<sup>91</sup>

170. A breach of the order will be a criminal offence.

### **Tasmania**

171. Tasmania is the first Australian jurisdiction to introduce stand-alone offences for emotional abuse or intimidation and economic abuse. This occurred in 2004.

172. While considered innovative at the time issues with drafting, including a short limitation period (6 months, now extended to 12 months) and an inadequate implementation plan have been said to account for the low prosecution and conviction rates. By the end of 2017 only 5 cases of economic abuse had been prosecuted and 68 cases of emotional abuse.<sup>92</sup>

### **Conclusion**

173. While we believe proper consultation is required to determine whether or not to further criminalise domestic abuse (coercive and controlling abuse) there are practical actions that can be taken immediately. These actions are required irrespective of the decision about further criminalisation and should commence as soon as possible. They include:

173.1 An immediate injection of additional funding and ongoing proper resourcing of specialist sexual and domestic abuse services, including specialist legal services, other specialist services and the broader social support service system to respond effectively to the needs of people experiencing sexual and domestic abuse, as well as proper funding for primary prevention

173.2 Building a common language and understanding of domestic abuse, including through a common definition in legislation and policy.

173.3 Cultural reform within all our systems and particularly within police with a focus on better understanding, identifying and responding to domestic abuse.

174. Much more can and must be done to ensure the safety and support of women and children experiencing domestic abuse. It requires strong leadership, cultural change, extensive education that is evidence-based and developed and delivered by experts, proper and sustainable funding, an integrated response, better accountability mechanisms and political will.

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<sup>91</sup> Ibid, paragraph 6

<sup>92</sup> Karryne Barwick, Paul McGorry & Marilyn Munro, "Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia in McMahon, M. & McGorry, P (eds) *Criminalising coercive control: Family violence and the Criminal Law*, Springer, 2020 p 144-145