

**Submission
No 142**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Wirringa Baiya Aboriginal Women's Legal Centre Inc.

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WIRRINGA BAIYA

ABORIGINAL WOMEN'S LEGAL CENTRE INC.

Wurringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or have been victims of violence.

19 February 2021

Parliamentary Joint Select Committee

By email: coercivecontrol@parliament.nsw.gov.au

Dear Committee Members,

Coercive Control: Discussion Paper October 2020

Wurringa Baiya Aboriginal Women's Legal Centre (Wurringa Baiya) thanks the NSW Government for the opportunity to comment on the *Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi's Law) Bill 2020*.

Wurringa Baiya is a not-for-profit organisation. It is a NSW state-wide community legal centre that provides free and confidential legal advice and representation to Aboriginal and Torres Strait Islander women and children in NSW.

We are a gender-specific service sensitive to the culturally diverse needs of Aboriginal and Torres Strait Islander women who have been victims-survivors of violence. For this reason, our submission will be focused on the possible effects any legislative change might have for many victims, but specifically Aboriginal and Torres Strait Islander women.

Although our service is available to both Aboriginal and Torres Strait Islander women, children and young people, close to 99% of our clients are Aboriginal. For this reason, throughout this submission we will refer to the issues and needs of Aboriginal women and their communities.

We welcome the increased attention on coercive controlling violence and discussion on how the law should address it. We agree that the current legislative framework does not adequately capture all the elements of coercive control. It is much broader than the criminal offences of stalking and intimidation.

We acknowledge the important symbolic role the law plays in educating the community at large about coercive control, and contributing towards social change. But changing the law will not be enough, and could lead to unintended consequences that will cause harm to our clients. Sadly, the criminal justice system does not serve Aboriginal women well, despite many improvements in policing over the years. We caution that any legislative reform should not come before other necessary structural changes to police investigations and the criminal justice response as well as significant community education and resourcing. Without this we are not in a position to support the criminalisation of coercive control for the reasons discussed below.

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What is domestic violence?

1. To propose legislative intervention in relation to domestic violence, it is fundamental to reflect upon the changing understanding of the forms of abuse that are characterised as 'domestic violence'.
2. The range of behaviour included within the term has gradually expanded. Conventionally, the term was best characterised as one that involved physical harmful violence. Over time, society has recognised that this term extends to emotional, sexual and financial abuse of a partner. In particular, a form of behaviour that has been propelled to the forefront of discussion, is coercive control.
3. As has been noted by many all forms of domestic violence is coercive control. The perpetrators are overwhelmingly men using it against women, who are, or have been intimate partners. Coercive control is the execution and maintenance of patriarchy in a relationship. The aim of domestic violence is for a perpetrator to control their victim with a range of coercive behaviours ranging from physical violence to psychological and economic abuse. But as this paper recognises many forms of non-physical behaviours including: threats, emotional denigration, humiliation, manipulation, financial control, monitoring and isolation from friends and family, are not recognised in NSW law as part of the spectrum of domestic violence. The consequence of these repeated patterns of behaviour is a loss of physical and psychological freedom for its victims. Having said that, the term 'coercive control' is currently being used to refer to those more covert and sometimes subtle forms of non-physical forms of abuse, to differentiate it from other forms of domestic violence for the purposes of this discussion.
4. In many cases, coercive control is the common or usual state of being for many women in abusive relationships. It is covert, never-ending, and can be a precursor to extreme physical violence.
5. The *Family Law Act 1975* (FLA) includes concepts of coercive control.

Coercive Control at the forefront

6. Coercive control is prevalent in almost all domestic violence homicides. In the 2017-2019 NSW Domestic Violence Death Review a number of intimate partner homicides were examined. The Review found that in 111 of 112 cases, the abuser had used 'coercive and controlling behaviours' upon their victims, prior to killing them.¹
7. People often speak of seeing or hearing the 'warning signs' in abusive domestic relationships. These relentless patterns of behaviour have been defined as mere indicators of something more sinister to come, but not an offence in itself. The

¹ Domestic Violence Death Review Team, Report 2017-2019 (2020), 68-69

relationship toward coercive controlling behaviours is detached at best. Hard to detect, difficult to explain.

8. Coercive control is not a warning that there is a risk that domestic violence will happen in the future, it is in itself domestic violence. It is our view that until such time that it is recognised as domestic violence then efforts to reduce incidents of domestic violence will be hindered or lessened.
9. In principle, we submit that the recognition of coercive control as an offence in the *Crimes (Domestic Violence and Personal Violence) Act 2007 (CPDV Act)* is a positive one, but one that cannot be taken quickly and not before adopting other important measures.
10. In the second reading speech, Ms Anna Watson provides that the purpose of the bill is to 'give victims the confidence to report what they are enduring'.² While this is encouraging, it will not be achieved solely through legislative change. There are many barriers for victims in disclosing situations of domestic violence. These barriers include fear, denial, disbelief, social isolation, stress, manipulation and 'normalisation' of violence.³ Ironically, these obstacles are the common indicators of almost all relationships where there is coercive control. Victims of coercive control will often fear consequences of all their actions and lose confidence in their decision-making ability. Their sense of autonomy and agency is often completely eroded via the systemic control deployed by their perpetrator. They may struggle to tell their friend, let alone report it to the police. In some cases the coercive control is so pervasive and long-term that a victim is unable to identify or express their experiences as coercive because it has been normalised.
11. All of the clients we work with, whom have experienced domestic violence in intimate partner relationships, have experienced coercive control. In some cases it is the main or only form of abuse they experience, but in the large majority of cases it is part of a broad range of abusive behaviour they experience, including severe physical and sexual violence. For most of our clients coercive control is used against them to stop them reporting to the police or to prevent them leaving their abusive partner.
12. A particular form of coercive control that is especially pertinent to Aboriginal women is the constant threat to take children away, or report them to the Department of Communities and Justice as abusive or negligent mothers. This is a threat that many perpetrators know is especially powerful when in a relationship with an Aboriginal woman. Many of our clients advise that they have stayed longer in abusive relationships for fear of losing their children.

² Legislative Assembly 'Crimes (Domestic and Person Violence) Amendment (Coercive Control-Preethi's Law Bill 2020, Second Reading Speech, (24 September 2020)

³ Head C, Taft A. 'A study of the beliefs and experiences of women victim/survivors and of GPs. Canberra: Department of Health, Housing and Community Services' 1995.

13. Some clients have also described abusive partners denying their right to practice their culture and spiritual beliefs, including not being able to attend important cultural and community events, or visit country. Some controlling partners will also belittle and mock cultural practices. This control will often extend to their children, downplaying or denying their Aboriginality.
14. As a community legal centre that represents and assists Aboriginal women, our focus is on the effects (intended and unintended) of any change to the law that might have on Aboriginal women.
15. It has been well documented that Aboriginal women are the most at -risk group of experiencing domestic and family violence in this country. ⁴
16. Recent findings from the Australian Bureau of Statistics indicated that more than two-third (72 per cent) of Aboriginal and Torres Strait Islander women surveyed, identified an intimate partner or family member as a perpetrator in their most recent experience of violence. ⁵ Domestic violence within these communities is complex and needs to be understood in terms of historical, cultural and social contexts.
17. Reporting domestic violence is a complicated issue, one that is exacerbated for Aboriginal women. Past personal or community experiences of Aboriginal and Torres Strait Islander people with the criminal justice system has resulted in under-reporting. ⁶
18. These factors are aggravated for women in remote and rural areas. For example, there may be a reluctance for some women to contact local police officers due to fear of not being believed or lack of available avenues to communicate with police, privately and independently from their partner.

Broadening Police investigation

19. The intended effect of the Bill is to broaden the definition and scope of domestic violence. Thereby creating greater protection for its victims. Inevitably, this will significantly increase the level of police investigation required, as is acknowledged in the discussion paper.
20. More than ever before, police will have to deal with covert, time consuming, extremely complex cases and will require a level of specialist expertise and resourcing currently not available. On an anecdotal level, police officers frequently

⁴ 'Impact of COVID-19 on Indigenous Women experiencing DVF' Report 1, Women's Safety NSW (26 June 2020)

⁵ Australian Bureau of Statistics, 'New Report about Aboriginal and Torres Strait Islander women's experience of violence' (19 February 2019)

⁶ 'Family Violence among Aboriginal and Torres Strait Islander people', Report 17, The Australian Institute of Health and Welfare (November 2006)

describe to us being pushed for time to investigate incident based reports of domestic violence. We have spoken to a number victims whom have been told by police officers to assist in gathering their own evidence, such as organising for any potential witnesses to a domestic violence incident to attend the police station to provide a statement (rather than investigating officers contacting or visiting those witnesses). Some clients have also been told to find their own IT experts when a client suspects that she has been stalked with the assistance of technology.

21. Jane Wangmann's recent case study on the misidentification of the primary victim in AVO applications is revealing.⁷ The study exposed the way many woman's use of violence had been in direct response to her own victimisation. Additionally, it alarmingly indicated the way some men were using cross applications to raise counter allegations of violence, but also as a 'bargaining tool' to characterise themselves as the abused person.⁸
22. This rings true for many Aboriginal women who are being identified as perpetrators of domestic violence on protection orders.⁹ Anecdotally, we are also aware of a number of incidents where Aboriginal women have been arrested and charged with domestic violence offences, when in fact she has been the primary victim of domestic violence for a long time.

Case Study

Lauren is an Aboriginal woman who was sexually, emotionally and physically abused by her husband, Alex for many years. Alex is a non-Aboriginal man. The abuse occurred throughout their entire relationship. Beyond the physical and sexual violence Lauren experienced, was a pattern of behaviour that was covert, manipulative, and impossible to explain.

Lauren and Alex's relationship was characterised by control and shame. Alex had access to Lauren's social media accounts, her banks accounts, her outfit choices and even tracked her location through shared tracking devices on her phone. He alleged on many occasions that she was having affairs, which she vehemently denied over and over. The control worsened once they had children and Alex became abusive towards them.

Finally, on an occasion that wasn't particularly more violent than any other time, Lauren had enough. Alex ridiculed their child and threatened physical violence. Lauren threw herself in between them and assaulted him to stop his abuse. After this occurred, he uttered the words "I've got you know". A phrase that well articulates a perpetrator's terrifying control of their victims and the sense of fear that pervades all elements of a victim's life.

Alex called the police and Lauren was arrested for assault. She spent the day in custody while Alex was left alone with the children at home. The police also took out an AVO against Lauren. Alex then drained their bank account and hired a private lawyer to initiate family law proceedings.

⁷ Wangmann, Jane. 'Gender and Intimate Partner Violence: A Case Study from NSW'. Report 33, UNSW Journal. (January 2010)

⁸ ibid

⁹ ibid

It took Lauren two weeks after this incident occurred to start talking to the police about the abuse she suffered. Lauren was worried she could not articulate what she was experiencing, and, importantly that the police would not believe her.

Lauren grew up in a large Aboriginal family where there was domestic violence, and the police were often called to the house. She recalls her mother trying to tell the police what happened but nothing happened and the abused worsened.

The childhood trauma she experienced and the repeated lack of action taken by the police has affected Lauren's capacity to trust authority figures. In effect, Lauren's experience is one of silence.

23. Many Aboriginal women we speak to are trepidatious about reporting violence to police for a myriad of reasons, including fear of retribution from the perpetrator, fear of coping alone and fear of children being removed. But equally their other fear is not being respected and believed. Many perpetrators present as the calm and rational one and thus more persuasive. The communication gap between victims of domestic violence and under-trained, time poor police can be significant, especially when a victim is highly distressed, or in shock and struggles to articulate what has happened. We have also had clients where incidents of domestic violence have been perpetrated by ex-partners but police have been persuaded by the perpetrator that there is no abuse and it is simply a dispute about contact with their children. Their call for help is consequently perceived by police to be malicious or questionable to get some type of perceived advantage in family law proceedings.
24. The communication gulf is even more pronounced between Aboriginal women and overwhelmingly white male police officers. When police attend an incident, make observations about witnesses and the surroundings, and take statements, the easiest evidence is a visible injury or property damage. But when an Aboriginal woman is uneasy or unable to persuade a police officer that she is the primary victim of physical violence what hope, or incentive is there to persuade a police officer that she has experienced ongoing psychological abuse and economic abuse? Police may not only apply their conscious and unconscious bias against a distressed woman versus an articulate 'in control' male partner but also bring with them their overt and unconscious racism about Aboriginal people being bludgers/bad with money and poor parents, especially if the other party is not Aboriginal. These racist stereotypes exist, are persistent, and are held by many parts of the non-Aboriginal community at large, so it is no surprise that that they are held by police officers with the role of deciding who is a victim or not.
25. It should be noted that Aboriginal women are the fastest growing prison population, and are imprisoned at much higher rates than non-Aboriginal women and Aboriginal men.¹⁰
26. And while all of the clients we speak to want the violence to stop, some are very concerned about what will happen to their Aboriginal partners if they are arrested

¹⁰ <https://humanrights.gov.au/about/news/imprisonment-rates-indigenous-women-national-shame>

and charged, or if they disclose to support services that lead to child protection notifications. The fear of a death in custody or involvement of child protection workers is a real barrier for some Aboriginal women. Thus, creating more offences that their partner could be charged with will be a further barrier for help-seeking and disclosures by some Aboriginal women.

27. We need to analyse more thoroughly the use of current police practice and powers before we extend those powers to areas which require a higher level of understanding coercive control and sophisticated investigation and interviewing skills. Subsequently, if and when we create a coercive control offence, there needs to be ongoing and consistent training for law enforcement that includes the detection of veiled emotional, psychological and economic abuse when investigating cases of domestic violence. But for Aboriginal women equally important is unpacking and deprogramming racist views about Aboriginal people.

Learning from other jurisdictions

28. In Tasmania, the offences of economic abuse and emotional abuse or intimidation came into force in 2005. Since this time, it has had very little sway.¹¹ There have been very few convictions, with almost all prosecutions ancillary to other domestic violence offences.¹²
29. We question whether a similar effect will follow in NSW and whether a new coercive control offence will only be successful when tagged with another offence. If so, the challenge will become addressing situations where there is only coercive control behaviour and no other offence to hang on such as physical violence or stalking.
30. This Bill has been primarily modelled on the existing Scotland provisions, which has been widely accepted as the 'gold standard'.¹³ However the success of these provisions lies in the many years of cultural reform undertaken involving work with police and the domestic violence sector. While the demographics of Scotland is not homogenous and has different communities that undoubtedly experience racism, there is no equivalent to a First Nations community that has been dispossessed, colonised and traumatised by forced removal of children, and over-policed. These colonising practices were essentially coercive control exercised by the State. It is not clear to us what are the racial and cultural demographics of the successful prosecutions of coercive control offences in Scotland to evaluate how it has addressed racist and cultural bias in policing of domestic violence.

¹¹ Sentencing Advisory Council of Tasmania, Sentencing of Adult Family Violence Offenders, Report No 5 (2015)

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¹² *ibid*

¹³ Scott, Marsha. 'The Making of the New 'Gold Standard': The Domestic Abuse (Scotland) Act 2018' Criminalising Coercive Control, pp.177-194. (February 2020)

Other avenues of legislative reform

31. It is acknowledged that a broad range of coercive control behaviour could be captured in the definition of intimidation and stalking. We understand that BOCSAR has been commissioned to do some research into these offences (as recommended by the DVDRT) to understand how police are using these offences. We need to understand if these offences are being under-utilised, if so why, and what training is needed to improve police practice. If police are not laying charges where the facts support an intimidation or stalking offence, then there is little utility introducing another offence that will be even more difficult to investigate and prove.
32. The critical issue is the deployment of coercion, in that it is one person denying the other their agency and autonomy in a systematic and ongoing way. There needs to be an intent by the perpetrator to control and an intent to cause fear of harm in the victim. It is our submission that coercion is lack of active consent, consent cannot be passive or compliant, and this will require significant skill in an investigator to understand this and prove the context of the coercion.
33. It is our submission that while we are cautious about creating a specific coercive violence offence we would support reforming the *CDPV Act* to expand the grounds for which AVO could be sought to include fearing coercive and controlling behaviours. We note that the definitions of domestic violence in a number of other states are much broader than in NSW and explicitly refer to economic abuse, emotional and psychological abuse. While there is still the risk that primary victims will be incorrectly identified as perpetrators and become defendants in an AVO, the potential consequence of such a reform is less. But we would not support any such reform without significant professional development and training of police and the judiciary, as well as resourcing, as discussed above and below.

Specialisation

34. We submit that specialisation is required by all who work in the criminal justice system when dealing with domestic violence matters. This means specialist police, specialist prosecutors, court staff and judiciary. Integral to such specialisation is a strong trauma informed practice.
35. We submit that there is a need for a specialist court that hears domestic violence matters (as well as sexual assault). While we note that there are a number of specialist court models to consider, we submit that comprehensive and holistic criminal justice support is required throughout the process, from the police investigation through the court process and post final court outcome. And for Aboriginal victims of domestic violence such support must be provided by Aboriginal specialists. We submit that services such as our Centre are well placed to provide this support, provided we are given additional resources to do so.

Improving responses to technology facilitated abuse

36. We have supported a number of clients who have been abused and stalked online by their abusive partners, or been tracked with access to cloud accounts or other tracking tools on devices. We also know anecdotally and from research that technology facilitated abuse is a significant issue for many women experiencing domestic violence. Police frequently do not have the time, nor the skill set to practically assist victims who are being abused in such ways. Victims are reliant upon domestic violence services providing some basic practical advice or, if lucky, referring them to a friendly IT expert or mechanic (for tracking devices on cars) who will assist women free of charge. We submit that the Government should fund specific programs or hubs with appropriate specialists to assist victims understand and discover how they may be stalked, to debug devices and cars, and to set up new systems to ensure they are safe from being stalked and harassed.

Community awareness

37. We submit that there needs to be a broad and comprehensive community awareness campaign about coercive control. A few advertisements on television is not enough. Any campaign must be multi-faceted including education programs from pre-school to university; health programs; parenting programs and behaviour change programs. The campaign needs to be visible in all forms of media both traditional and in social media. The campaign needs to be nuanced and adapted to the needs of different cultural groups, age groups, people with disabilities and people who identify as lesbian, gay, bisexual, transgender, intersex or queer. The campaigns need to be both at a national level and at a very local level to reach communities at the places where they gather and exchange information. In particular for Aboriginal communities the campaigns need to be developed in partnership with Aboriginal leaders and educators. We sometimes speak to Aboriginal women who do not identify physical assaults by their partner as domestic violence, therefore a campaign to raise awareness about less overt forms of control will need to be much more comprehensive and ongoing than what is currently available.

38. Work must also be done with perpetrators of domestic violence to engineer behaviour change and aim to prevent further violence. Behaviour change programs must be multi-faceted targeting perpetrators of all ages, genders, sexual orientation and cultural backgrounds.

39. Any serious commitment to raise awareness about coercive control and engineer social change needs to identify patriarchy as the core of coercive control. Ending coercive control can only be attained by dismantling patriarchy in all facets of public and private life.

40. The Government's response to domestic violence needs to be approached within a human rights framework. In particular domestic violence needs to be understood as gender-based violence, which is prohibited under international human rights law.¹⁴

¹⁴ See the *International Convention to Eliminate all forms of Discrimination Against Women* which Australia has signed and ratified.

Freedom from gender- based violence needs to be accepted as just as important as other human rights, such as the right to life, security and education. Governments must accept and take responsibility for the protection of this fundamental human right. The Government must invest in the most effective social, legal and support systems that protect women’s rights to live a life free from gender-based violence.

Support services generally

41. We submit that a number of support services are required to support a person who has experienced domestic violence to recover. This will include: immediate crisis support; ongoing therapeutic support; medical support; housing support; support for family; court support and legal support. We refer to A Safe State platform, developed by the NSW Women’s Alliance, which our Centre is a member.¹⁵ This platform makes a number of recommendations about how to improve and enhance support systems for people experiencing domestic violence, and a number of recommendations specific to the Aboriginal community.

Conclusion

42. Lastly, we commend the discussion about a coercive control offence. Coercive control is not a warning that there is a risk that an offence will happen in the future. It is an offence in itself and we think that in time should be recognised as one.

43. We agree that there is a need for legislative reform, which can and may lead to cultural reform. However, a cultural shift will not happen purely through a legislative amendment. Not only are we significantly concerned about the harms that may be caused, but we are also concerned that even after legislative change, this type of offence will sit at the bottom of the pecking order in terms of offences and few charges will actually be laid. That is, it will still be just viewed as a culmination of red flags, even to the victims themselves.

44. Shifting a cultural mindset in relation to domestic violence is a heavy task. One that cannot be rushed and done overnight.

If you have any questions about this submission please call [REDACTED] or contact Rachael Martin, principal solicitor, [REDACTED] or Christine Robinson, Coordinator, [REDACTED]

Yours faithfully,
Wirringa Baiya Aboriginal Women’s Legal Centre

Per: **Rachael Martin**
Principal Solicitor [REDACTED]

¹⁵ <https://www.safensw.org.au>