REPORT ON PROCEEDINGS BEFORE

JOINT SELECT COMMITTEE ON COERCIVE CONTROL

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

At Jubilee Room, Parliament House, Sydney on Monday, 22 February 2021

The Committee met at 9:50 am

PRESENT

The Hon. Natalie Ward (Chair)

Legislative Council	**Legislative Assembly**
The Hon. Rod Roberts	Mr Justin Clancy
Ms Abigail Boyd	Ms Trish Doyle (Deputy Chair)
	Mr Peter Sidgreaves

The CHAIR: Welcome to the public hearing of the Joint Select Committee on Coercive Control. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land and I pay respects to the Elders of the Eora nation, past, present and emerging, and extend that respect to other Aboriginal and Torres Strait Islander people who are present or watching via our broadcast.

It is the first day of our inquiry into coercive control in domestic relationships. We will also hold hearings tomorrow and Wednesday this week. They will also be broadcast and the public is welcome to attend or watch all of those hearings. The terms of reference for the inquiry require us to consider the New South Wales Government discussion paper on coercive control and answer the questions posed in the paper, together with the balance of the terms of reference.

We have witnesses attending in person at Parliament House and also taking part via videoconference. The hearing is being broadcast to the public on the Parliament's website. I thank everyone who is attending and appearing before the Committee today. We appreciate the flexibility of everyone involved in today's proceedings, especially those attending by videoconference. Please be aware that committee members may need to leave the room on occasion; forgive us for doing that. It should not interrupt you in any way so just continue giving your evidence to us.

RENATA FIELD, Policy and Research Manager, Domestic Violence NSW, affirmed and examined

DELIA DONOVAN, Chief Executive Officer, Domestic Violence NSW, affirmed and examined

The CHAIR: We have received your submission, thank you very much; it is comprehensive. You can take it that we have all read it. Thank you for such a comprehensive document. Do you have an opening statement that you would like to make?

Ms DONOVAN: We do. Hello, everyone. Thank you for having me. Before I begin, I would like to acknowledge the traditional owners of the land we meet on, the Gadigal people of the Eora nation, and I pay my respects to Elders, past, present and emerging. I am the CEO of Domestic Violence NSW. I am honoured to be here and welcome being the first organisation called to appear before the inquiry. We support the select committee's work and are available to assist in any way we can. Domestic Violence NSW is the peak body representing specialist domestic and family violence organisations across metro, rural and regional New South Wales. We have over 80 members covering a wide range of services including, but not limited to, specialist homelessness services, Staying Home Leaving Violence services, community legal centres, Aboriginal controlled organisations, multicultural organisations, women's domestic violence court advocacy services, specialist case management services and services delivering men's behaviour change programs. And may I add, decades and decades of experience among them.

In preparation for our consultation, we attended a wide range of forums and roundtables on the issue at a local, national and international level. We hosted a Domestic Violence NSW member roundtable, we collaborated and supported a lived expertise roundtable and, finally, surveyed both our members as well as people with lived experience. You will see the 38 member responses and 178 lived expertise responses throughout our submission. Survey findings clearly show that both our members and victim survivors only support criminalising coercive control if there is thorough consultation with the specialist domestic and family violence sector and people with lived expertise, and if there is suitable training and adequate resourcing for the sector, the police and the judiciary. Further, we want to acknowledge the incredible amount of harm that is caused by coercive control. Patterns of abuse can be perpetrated over an extensive period of time and cause immense fear, exert power and control, isolation, trauma, intimidation and destruction to both primary victims as well as their children and families.

We acknowledge too the importance of adopting an intersectional lens, noting that people from marginalised communities are more likely to experience harm as well as substantial barriers to accessing support and redress. For Domestic Violence NSW, the issue to be debated today is not whether to criminalise coercive control but how and where to criminalise it. It is paramount that anything that might sound good in theory can be safely implemented in practice. Domestic Violence NSW makes seven overarching recommendations. One, increase funding to the specialist domestic and family violence sector to ensure that people impacted by domestic violence receive effective specialist support and also include those who do not choose to use the criminal justice system, noting one in 10 victim survivors choose not to engage with the criminal justice system. We know that the sector is currently underfunded and we believe that if criminalisation of coercive control is legislated, it will see additional burden on the specialist service sector to provide support.

Two, prioritise the funding of primary prevention and early intervention programs, services and education campaigns to stop the violence before it starts and to change the culture of gendered violence in New South Wales. Our members were very clear that they believe any offence would be unsuccessful if not introduced with whole-of-community initiatives. Three, place immediate priority on working collaboratively with Aboriginal and Torres Strait Islander people and organisations. Best practice responses to coercive control must reflect views, involvement, participation and ownership by Aboriginal people, for Aboriginal people. I will now pass on to Renata Field, our Policy and Research Manager, for our final four recommendations.

Ms FIELD: Thank you for the opportunity to provide our submission. The final four recommendations are: Four, substantially increase investment in the ongoing education and training of the police and the judiciary in how to effectively and appropriately police and prosecute domestic and family violence crimes, including non-physical abuse. The implementation of current legislation is clearly an issue in New South Wales. There are significant concerns about the efficacy of introducing a new offence without addressing this issue. We can also learn from the substantial issues with implementation, which have been noted in the UK.

Five, prioritise a thorough consultation process with the specialist domestic and family violence sector, leaders and leading organisations representing marginalised groups and people with lived expertise prior to adding a separate offence of coercive control to the criminal act. We acknowledge that this inquiry is an extremely important first step; however, we believe that more consultation is necessary in order to successfully implement it. Six, within our submission we recommend amending the civil protection order legislation in the short term with a clear definition that includes coercive control and some of the more common elements of coercive control, such as financial abuse. We believe this will be more swiftly enacted and will allow victim survivors to access redress and protection in the short term whilst consultation continues. Seven, we recommend that the New South Wales Government invest in a cohesive, well-resourced, whole-of-system response to domestic and family violence.

The CHAIR: Thank you, both. I appreciate and acknowledge your recommendations on funding, which we have in writing. I want to turn to the criminal question and the specific questions in the paper, which you have addressed. Quite rightly, you have said that none of that should happen without the surrounding support infrastructure, training, education and taking our time to do this properly. I acknowledge all of that. However, I would like to go to challenges, because the overriding question is whether it should be criminalised, amongst the other things. In your initial response, you said that there should be a national definition of coercive control. One of our challenges is education and understanding what coercive control is. Firstly, can you address that issue of the definition? Secondly, how do you think the challenges of that can be overcome?

Ms DONOVAN: I guess I will start with the three main goals of a definition: It absolutely must address gaps in the current law, effectively capture behaviour that constitutes coercive control and be consulted on and tested before issued.

Ms FIELD: I add to that that there is a broader conversation about a national definition. I certainly believe that New South Wales should be part of that conversation, which is not to say that we cannot move forward with amendments in the meantime. In preparing our submission we spoke to colleagues in Queensland and Victoria. The Victorian colleagues were quite shocked that there was not a clear definition in our legislation that includes terms such as coercive control. As we recommend, we believe that starting with the civil legislation would be a good place to put that definition, which would allow people to seek redress for financial abuse, et cetera, in a way that they are currently not able to. Even though there are overriding, vague terms, it makes it challenging for the police to implement.

The CHAIR: Is it not the case that when you talk to people about coercive control they either know about it or they ask what it is? My personal view—subject to what we receive through this Committee—is that we need to start somewhere and perhaps not let the perfect be the enemy of the good; that we should start with a definition, which can be amended and worked on. I appreciate the reasons you have put forward for why we should have a national conversation, but what would you say to New South Wales leading the way on a definition, at least to start with?

Ms DONOVAN: Let us lead the way!

Ms FIELD: I think that would be great.

The CHAIR: And the challenges of doing so? Say we have it in in place, we have moved the legislation and are getting on with things, what are the challenges and how do we address them?

Ms DONOVAN: I think resourcing the sector will be a challenge: ensuring that we adequately fund the sector to respond accordingly. If we amended the Apprehended Domestic Violence Order legislation to consider coercive control, which I think is important, we can then start thinking about consultation and the journey of education with the community. Often in our sector we are talking to each other—we have worked in the space for

years and years, which means our experience is absolutely fantastic but it has to be translated into a community context. That will be paramount for us in New South Wales, because people not in the conversation have no idea about coercive control.

Ms FIELD: I would just add, to ensure that there is consultation with marginalised groups so that any definition covers distinct relationships such as carer relationships, kinship ties, et cetera.

Ms TRISH DOYLE: Thank you, Ms Donovan and Ms Field, for appearing today and to you and your team for all your incredible work in your submission. It is a long time coming. I think we need to unpack some of the ways in which the law is inadequate in terms of receiving evidence of coercive control. Aside from a definition, one of the questions that we raise in our discussion paper is: Does the law currently provide adequate ways for courts to receive it? We know that there is a simple answer there, but how are they inadequate? Could you talk to that a little and, in doing so, consideration of—as you point out in your submission—the reframing of domestic and family violence as a liberty crime?

Ms FIELD: I think that the resourcing question underpins so many things. Certainly, our members say that they find extreme challenges to the ability of police to do the amount of investigation necessary to look at the evidence that is available, particularly for crimes that include, for example, tech-facilitated abuse. Receiving all those forms of evidence can be quite costly—to be working with the tech companies. Victim-survivors often provide pages and pages of text messages but they are not necessarily able to be included as evidence because you do not know for sure who sent those messages, even though it might come up with someone's number, you cannot prove who actually sent them. So there are certainly a lot of challenges for the police. If their resourcing remains at a stable level then I cannot see a way that they will be able to look into quite complex issues. I would also raise the issue of breaches. Breaches are an interesting thing to be looking into because our members and victim-survivors find that breaches are not investigated and they do not have an effective response. Breaches are how we see our current justice system moving the civil orders into a criminal space. That demonstrates a pattern of abuse and that the evidence that has been provided is not adequate.

Ms DONOVAN: In addition, I was also going to mention breaches. Resourcing for the police is something that needs to be considered because they probably feel understaffed and under-resourced in places. Also, first respondents including police, judiciary and people who are coming into contact with people affected by coercive control, often cannot recognise the signs and symptoms, which means they cannot keep them safe. I think the education and training piece is fundamental, too.

Ms ABIGAIL BOYD: Thank you to both of you for your attendance today and your amazing submission. The way that you have got as much data as you possibly could from your members and victim-survivors to inform your submission is really impressive in the tight time frame. I particularly want to talk about the first chunk of your submission, before you get into the response to the terms of reference. It reads a little like a school card for the Government when it comes to domestic family violence and how it is dealing with it so far—with "Fs" across the board, if I may say. How much of your caution around criminalising coercive control comes from misgivings about the Government's ability to implement it properly? What are the dangers if it is criminalised and not implemented with adequate resources and funding?

Ms DONOVAN: I think it is hugely dangerous if it is not adequately resourced, and it puts a huge burden on the front line of the domestic and family violence sector because they will have to respond to people who are affected by coercive control. That will again further exhaust their services, which are already exhausted. The first part of our submission was really important to give the lay of the land. We put A Safe State campaign in place around 2018 that made 49 recommendations. I think three or four have been implemented. So it is really important that when key organisations are providing an evidence base and a theory around why recommendations exist and what they mean, that they are followed through and adhered to and that there is some level of accountability. Otherwise, we are constantly working in a new space but there is nothing underneath it. We need to be meaningful around this and be sure that we can adequately resource the sector. Otherwise, we just cannot move forward; we will fail.

Ms FIELD: I would just add that if not implemented properly you could end up with a situation like Tasmania, where you have an offence that is simply not used. That is one thing, but I think the greater danger is to have an offence that could be used as a weapon against people who experience domestic and family violence. Unfortunately, we see that in the Family Court. We see a lot of cross applications and women who are criminalised. Those tend to be women on temporary visas, Aboriginal women, women who are already marginalised and we know, unfortunately, the hugely high rates of incarcerated Aboriginal people. I think we all have a duty living on unceded Aboriginal land to ensure that we do not create further harm to the most criminalised population in the world. I think it means we cannot just take legislation from other places and transfer it here. We need to be really cognisant of what we are doing.

Ms DONOVAN: Two things if okay?

The CHAIR: Certainly.

Ms DONOVAN: Just to basically say there are huge international learnings that we can really embrace and take forward, because I think those sectors that are communicating their areas for development is where we absolutely need to be headed so we can make this really effective. Secondly, we recommend that the Aboriginal and Torres Strait Islander steering committee within Domestic Violence NSW are consulted throughout this process, and that is a key recommendation.

The CHAIR: Thank you, and I think that is key. Racing into anything unprepared is not going to equip us well; however, the conversation is starting and it is pleasing to see that we can do it in a collaborative way.

The Hon. ROD ROBERTS: Thank you, Ms Donovan and Ms Field, for attending today and for your very detailed submission. I am cognisant of the time so will go straight to the important parts. On pages 4 and 5 of your submission you talk about amending the civil protection laws that exist at the moment. Let me tell you, I am very open to that and think that is a very good suggestion. I note that you say as an interim measure, but how would you amend it? And I am assuming you are talking about changing the definition under section 13, I think it is, of the Crimes (Domestic and Personal Violence) Act to incorporate actions of coercive control. If that were the case, and as I say I am very open to that, why could we not use that as our permanent response to coercive control?

I temper that by saying the criminal justice system is an adversarial system, as you know. For it to be effective you have to have your victims to be willing participants in that system. My reading, my understanding and my life experiences are that not all victims want a criminal justice outcome. They are looking for protection, they are looking for restorative justice, perhaps. Tell me why it should not be in the civil sphere? Because, let us be honest, the onus of proof is a lot simpler, it is on probabilities, it is not adversarial, and it is certainly not beyond reasonable doubt. I have a fear that if it were to go down the criminal case, and because the burden of proof is so high, the case fails. It may disempower your victims even more. Could you comment on that?

Ms DONOVAN: I will go first. Lots of things running through my mind—that is a brilliant question. Putting it in the apprehended domestic violence order [ADVO] system to start with, we have mentioned that we really want to consult with the sector and people with lived expertise. We have an opportunity to review, monitor and evaluate that process. We have seen that often when there are breaches, as Ms Field just mentioned, that they do not always become a criminal situation, and breaches are often something that occur a lot. I also think if we look at England, Wales, Scotland and Ireland, there are barely that many prosecutions with it being an offence, so we just need to be careful around maybe putting it through the ADVO system initially, doing the consultation and then seeing how it would sit and if it should go to the criminal offence or stick within the civil.

Ms FIELD: Yes, I would certainly concur with your observations, Mr Roberts, and you certainly have much more experience in this field than I have. I certainly just agree with you that starting with the civil legislation seems like a very apt way to do it and we recommend that there is further consultation with the sector, not that it is necessarily criminalised, but we certainly respect many of our members and many people with lived expertise who are calling for this. I believe there is a space for those voices to be heard, whether or not the criminalisation is the correct place for that, because I think the systems are so broken people are really crying out for some sort of change, so that they can see safety for themselves. You and I know that maybe that is not the most effective manner to do that and as lawmakers you do not need to do something that is not going to be effective. People being heard and looking at whether or not there are more comprehensive options, such as a whole-of-government approach, which would be a possibility. Thank you.

Ms DONOVAN: We are really recommending a whole-of-government approach, and two final things just to add. We do believe that if it were criminalised, there are pros and cons, but it certainly would fill a gap within existing legislation and there would be recognition of patterns of abuse. There would be an opportunity to do that, rather than the incident-based domestic violence we tend to see through the criminal justice system.

The CHAIR: Is the number of prosecutions the only measure of success?

Ms DONOVAN: Really good question. It certainly should not be, and I think this is where we probably need to discuss the scary word "data" and all have a commitment around how we are recording impact and what outcomes are. I think that is going to be essential for this whole-of-government, whole-of-community piece of work if we do an implementation plan, is what we are recommending, that we really look at how we capture success. Again, that will be that broader community education piece, and work in schools and really looking at that primary prevention piece, which tends to sometimes sit a little bit too far down our list.

Mr PETER SIDGREAVES: I understand that this is a really sensitive matter and I am hearing loud and clear that as much consultation as possible is required, particularly for the definition around coercive control. I find that to be a foundation. Once you can actually properly define what coercive control is, I can see that you can educate, you can provide funding and so forth. My question is around how should we distinguish between behaviours that so many of us find ordinary in relationships, versus those that may be defined in a coercive control situation?

Ms DONOVAN: I think that is something that we need to be really clear about, because if we think about coercive control and those of us that are well read or have worked with clients affected by it, people who feel intimidated, controlled, overpowered, frightened, scared, feel like they are a hostage in their own home, are suffering coercive control. We know not every relationship is healthy. Again, what is normal, what is not and what can ever be called normal? Some people, again dependant on their relationship, there may be some kind of controls around finances, but that is consensual. So really ensuring the issue of consent is considered. I know that England, Wales and Scotland did not define all the behaviours and we need to be really careful not to do that because every single individual in the world is very individual, I should say, and complex. We need to really consider that as well and just see how they have worked on that list of behaviours and how that needs to be open. It is certainly a consent issue.

Mr PETER SIDGREAVES: Thank you.

Ms FIELD: The presence of fear is the essential element, which is not to say that if the elements of abuse are present and there is no fear, that they are okay. For 95 per cent of cases you will find that fear is an essential part of it.

The CHAIR: Thank you. I am conscious of time. Thank you so much for joining us today. We very much appreciate your written submissions and your assistance today. However, we will ask if you would be prepared to accept further questions in writing, if any members feel that they have those?

Ms DONOVAN: Absolutely and with pleasure.

Ms FIELD: Certainly.

Ms DONOVAN: We look forward to being engaged throughout this process.

The CHAIR: Thank you very much. Your replies will form part of your evidence and will also be made public. We will send those to you if necessary through the Committee staff.

Ms DONOVAN: Thank you so much for having us everyone.

The CHAIR: Would you be prepared to provide copies of your opening statements to the staff as well?

Ms FIELD: We will email them today.

(The witnesses withdrew.)

HEATHER NANCARROW, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, sworn and examined

The CHAIR: Dr Nancarrow, do you have any questions about the process? I am sure you are very familiar with it.

Dr NANCARROW: No.

The CHAIR: Do you have an opening statement?

Dr NANCARROW: I want to thank the Committee for the opportunity to give evidence in support of our submission but also to respond to any specific questions that you might have. In addition to the submission, I want to draw attention to my own experience in the violence-against-women sector. I am a survivor of childhood sexual abuse and domestic and family violence. So I come with personal experience but also 40 years, this year, of experience in the violence-against-women field, having worked in women's shelters and been, in the early 1980s, one of the advocates for the development of the civil domestic violence protection order system, particularly in Queensland, but of course it was a national movement at the time.

I believe that we have a lot to learn from the experience of the implementation of civil domestic violence laws, particularly those in Queensland. I will probably draw to some extent on my experience in Queensland, where the legislation itself and indeed all of the response to domestic violence was underpinned by the concept of

power and control, which we are now referring to as coercive control. So it is not a new concept and it is not new that we should be talking about legislating to address coercive control. In fact, in the 1980s there was a lot of debate about whether or not it should be a criminal offence or a civil offence. Ultimately the legislators and advocates resolved it at the civil—actually, what we ended up with is called quasi-criminal law because it bridges aspects of both civil and criminal law responses and provides exceptional power to the State to intervene in personal life.

The reason that exceptional power is justified is on the basis that patriarchal coercive control is aimed at reducing the autonomy, to deny personhood to the victim of violence. In most cases, almost exclusively, coercive control is perpetrated by men against women. So it was justified to provide these exceptional powers to the State to intervene in those circumstances. As time has gone on, we have seen that those powers are being exercised less cautiously, let us say, and in a wider range of contexts and we are seeing the criminalisation of women, as your previous witnesses have indicated, particularly Aboriginal and Torres Strait Islander women.

The last time I was in this House giving evidence to a hearing, it was in relation to the high rates of incarceration of Aboriginal and Torres Strait Islander women. We know from research that one of the primary ways in which Aboriginal and Torres Strait Islander people, particularly women, are being brought into the criminal justice system is through the inappropriate application of the civil domestic violence laws because they are no longer effective or perhaps have never been particularly effective in addressing the issue of coercive control, which, as I said, underpins these very specific and exceptional powers of the State. That is something that I think we can learn from in regard to looking at implementation or whether or not we should and, if we do implement criminal law, how that needs to be addressed.

The CHAIR: Thank you, Dr Nancarrow. I acknowledge your personal and lived experience and thank you for your long history of work in this area and assistance to the Committee today and in an ongoing sense. Thank you for your written submission, which specifically addresses the questions. We all have copies of that and have had the opportunity to read it. You said that it is not a new concept. Can I respectfully say—I am not disagreeing with you—for you and those in the sector it is not and that is well recognised. However, for the broader community it may well be a very new concept, which is why one of the questions we are asked to address is what is the definition. I note that your submission talks to that. Would you like to expand on that for us?

Dr NANCARROW: Yes. That is one of the challenges and why the quasi-civil domestic violence law in Australia has not been effectively implemented, because it is very difficult to define. I note that the Scottish legislation, which is regarded as the gold standard, defines it as a course of conduct that is either intended to cause psychological harm to the victim or that the perpetrator should have been aware that it would cause harm. I think that that is problematic because how do you define "the person should have been aware"? That is open to lots of debate about—

The CHAIR: Yes, state of mind is a very difficult, vexed and complex issue.

Dr NANCARROW: Yes, exactly. I do not think it is impossible to define coercive control. For me, when I read Evan Stark's book some time ago—I probably should have also said that my PhD research and subsequent book also goes to this issue of coercive control and the unintended consequences of domestic violence law because of the challenges of defining and implementing it accurately. But Evan Stark's conceptualisation of an attack on autonomy, liberty and quality and I am aware of the advocacy around—in fact, the legislation in the UK talks about a course of conduct or a liberty crime. If we are to move this way, we have to define it in those terms. It is a course of conduct. That was intended to be captured in the Queensland domestic violence legislation way back in 1989. It is very difficult. It has proven to be very difficult to have police move away from their training and the criminal approach to incident-based policing and even to gather the evidence around a course of conduct. That was the intention, but the law itself in the way it is written does not necessarily support that concept in its implementation.

The CHAIR: And it may not equip them with the tools to be able to do that.

Dr NANCARROW: Exactly. I know that the police argue that they are applying the law as it is written. In fact, in work published for ANROWS last year, looking at the misidentification of women as perpetrators of violence really goes to that point of the police applying the law as it is written. But when you look at the parliamentary debates and also the explanatory notes, it was intended to do something quite different.

Ms TRISH DOYLE: It is lovely to have you here. Thank you for sharing the personal and the professional and doing so in such an articulate way. I really appreciate it. I was going to put a similar question to you that I did to our last witnesses and that is around the inadequate ways that our courts and our systems receive evidence of coercive control, but look to some of the lessons that we can learn or some of the material from overseas in other areas that you would highlight for us to focus on.

Dr NANCARROW: We can look to overseas, but I think we can also look closer to home and look at the work that happened in Western Australia last year around changes to the Evidence Act based on, again, ANROWS-funded research that was produced by or led by Associate Professor Stella Tarrant. Julia Tolmie, who is an expert in this area also, produced that report for ANROWS. It was in relation to the case of a woman who had been convicted of manslaughter after killing her partner, who had been coercively controlling her and abusing her for many years. The court had not allowed expert evidence on coercive control to be given. The research and in-depth study of that particular case has resulted in changes to the Evidence Act. So it is not only about the law itself, but it is also about other aspects of the criminal justice system that need to be supporting the application of an effective definition of coercive control. As the Chair said, it is not a new concept to those working in the field but it is for the general public and therefore jurors on trials. So it is important that we have expert testimony to be able to help jurors and the general public understand what is the dynamic that is at play and that the law is trying to address.

The CHAIR: Not just as an offence but potentially a defence.

Dr NANCARROW: Yes.

Ms TRISH DOYLE: Subsequent to that question, if we are not necessarily looking at the Western Australia case but at the models that are often talked about in the public domain, is there anything in particular in terms of the law adequately receiving evidence that you can point to or highlight from overseas?

Dr NANCARROW: I am not sure exactly whether this is going to answer your question, but the Scottish model is referred to internationally as the gold standard. I think one of the reasons is not so much their definition of coercive control but that it is part of a broader system, so the four Ps: the protection, the provision of services, the participation and the prevention. I think participation is really important. I have covered that a little bit in terms of the Evidence Act, but also the law and systems that enable application of the law need to be underpinned by lived expertise—the participation of those with lived experience who can best articulate what it is. I heard the previous witnesses talk about that element of fear. In the 1980s when we were talking about it and when I was working in women's shelters, women would describe their experience as walking on eggshells. Trying to communicate that in law and enabling the criminal justice system to respond to that can be challenging. But I think it is important that there is opportunity for supporting witnesses to be able to give the evidence in a way that enables articulation of that experience. I am not sure if I have answered your question.

Ms TRISH DOYLE: That is a tough one.

The CHAIR: Thank you. No, that is terrific.

Ms ABIGAIL BOYD: I want to talk about the disadvantages of creating an offence of coercive control in your submission. Some of the other submissions have argued that, if you criminalise coercive control, that would have an educative effect and an effect on the collection of evidence that could actually alleviate some of the problems that we have in the current system, for example, the misidentification of victims as perpetrators, or experiences with taking a matter to court and not being believed or not having sufficient evidence. What is your response to that? Do you think that there is a case for bringing in coercive control as a way to actually improve the system?

Dr NANCARROW: I would have to say that I think the strongest argument for having an offence of coercive control is its symbolic power. The State is saying, "This is not tolerable. We will sanction it." On that level, I think it is appealing. Anyone who has experienced domestic violence related homicide would be drawn to the idea that this is something that could be a significant game changer and prevent further harm to women and children in particular. I remember during the development of the current National Plan to Reduce Violence against Women and their Children, the Northern Territory Government were introducing universal mandatory reporting of domestic and family violence. The argument for that was it would be an educative thing and would educate the population and that would be the end of it.

That was 2008. I do not think we have seen a significant reduction in violence against women as a result of the education that came with the universal mandatory reporting of domestic and family violence in the Northern Territory. I would love to believe that that would be the case, but I am more sceptical than others clearly are in terms of the power of that. It does not mean that we do not have the law when we have homicide laws and no-one would suggest that we get rid of homicide laws, but having a law against homicide does not stop homicide and most of us don't not kill people because it is against the law. I think there are problems with that analysis.

Ms ABIGAIL BOYD: If we imagine the ideal world, where we criminalise coercive control and then we have all of those great supports and resources and training, do you think that would help with the current system?

Dr NANCARROW: I think it would help. I think a good, clear definition and all of the resources that are required to implement it effectively—however, I think there can be unintended consequences in that regard as well, because of the standard of proof and because some victims do not want to go down that route. Even if they do, they might not get a conviction and that might in fact have the opposite effect in terms of broader community education but also the impact on an individual whose experience is invalidated because basically the system says, "No, it is not coercive control".

The Hon. ROD ROBERTS: Further to your point, the criminal justice system is fairly ineffective alone in treating chronic offenders of domestic violence. I am interested in your recommendation No. 8 where it talks about, amongst other things, "carefully considering alternatives to criminal justice approaches". My question has two parts. Why should we consider alternatives and how do we achieve that?

Dr NANCARROW: The issue of restorative justice, for example, is very controversial in the violence against women area because of the nature of coercive control or the potential for perpetrators to manipulate the system and the process. However, perpetrators clearly manipulate the criminal justice system and the civil response as well. In fact, restorative justice processes have the capacity to—because there is more flexibility—intervene and to be able to stop that behaviour happening in the process whereas the criminal justice system does not have that degree of flexibility. That would be one way. As I said, it is very controversial and I am not suggesting we rush into that any more than I would suggest that we rush into a criminal offence of coercive control. However, I think it is also about a range of other alternatives, not just justice responses but supports. The one thing I want to emphasise in this evidence is that, if we were to introduce an offence or whatever offences that we have, criminal and/or civil, we must resource them well but we must also resource a whole range of other supports for victims of violence.

A justice response alone is not going to stop violence or is not going to enable women and children to be free from violence because ultimately many of them are and remain dependent on perpetrators or other perpetrators—consecutive perpetrators, if you like. It is not that they are seeking out those perpetrators but perpetrators may be seeking them out and they are in vulnerable positions because they do not have the resources to establish their lives independently. Affordable social housing, income security, particularly for women who are on uncertain visa status, for example—and we know that coercive controlling perpetrators manipulate these systems to further abuse their partners and to retain control over them. We need a whole-system response. We cannot just put all our eggs into the criminal justice basket because it will never be sufficient to achieve real justice for victims of domestic and family violence.

Mr JUSTIN CLANCY: I want to return to the important part of your submission around identifying the person most in need of protection. You talk about moving the police and court practice from retrospective incident-based to pattern-based and future-focused. Could you elaborate on how we make that progression?

Dr NANCARROW: Yes, I think we are currently doing some work with the Queensland Government—

The CHAIR: Sorry to interrupt, Dr Nancarrow. Mr Clancy, do you mind muting at your end? We are getting feedback from you. Go ahead, Dr Nancarrow.

Dr NANCARROW: The civil domestic law, perhaps even more than the criminal law, is able to be future-focused. Even the criminal law is not focused on future protection in an individual sense but rather is punishing the past behaviour. The civil law was designed to be future-focused and aimed at protecting from further abuse by tailoring orders that met the individual circumstances of the people involved. It is difficult for police to see that they have a role in gathering evidence about the future because of what their job is designed to do and how they are trained and so on. Training is absolutely critical. It is not only training police now on coercive control—and we have to improve the civil law system, and I would be absolutely arguing that we cannot lose that if we are going to have coercive control. We must have both. Civil law will provide protection for a greater number of people. That is really important. But it is about continuous training. Police rotate—there are changes. New police come in. I think what often happens is that you have a round of training and then we move on to something else. It has got to be continuous. There has got to be support.

In our report entitled *Accurately identifying the "person most in need of protection" in domestic and family violence law* we found that many of the police in Queensland found it very helpful to have the domestic violence policy unit of the Queensland Police Service able to provide some guidance. If they were not sure when they turned up at an incident of who was the real victim and who was the perpetrator, and what was happening in regard to coercive control, they would have an opportunity to get some expert advice. We have suggested a couple of models. One would be a co-responder model where you have got somebody with the specific expertise, knowing that police have a particular job to do and cannot be experts on everything. You provide them resources and the access to expert knowledge on coercive control to assist in decision-making either at the time or immediately after. You would make provision for separation of a couple so that their safety is available immediately, but then

you provide access to expert knowledge for police to do the proper evidence-gathering assessment that is needed to assess coercive control and who is perpetrating it against whom in that particular situation.

The CHAIR: Thank you. Is that sufficient, Mr Clancy? That being so, I will hand over to Mr Sidgreaves.

Mr PETER SIDGREAVES: I do not have any questions. I would just like to thank you for your submission, which has very clearly and articulately addressed the questions within the discussion paper, and for clarifying a few points to the other members in your evidence today.

Dr NANCARROW: Thank you. It is a pleasure.

The CHAIR: I have one quick question. You talked about resources, and we have heard a bit about that. What do those resources look like? What specifically could assist police, for example, on the front line? What actual steps could be taken in a real sense?

Dr NANCARROW: In regard to improving civil law or in regard to—I guess it is probably the same answer anyway.

The CHAIR: I think it is, yes, potentially.

Dr NANCARROW: I think we need to do some sort of cost analysis of what is required for police to do this effectively—whether it is more police, whether it is specialised police. Some jurisdictions believe that it is more appropriate to have specialised police. That works well in large metropolitan areas but it does not provide equal access to justice for women in rural and remote communities. Again, it disadvantages the most marginalised. In terms of resources, I am not in a position to give any kind of dollar amount, of course, but it does mean training—

The CHAIR: No, but I am asking in the specific sense.

Dr NANCARROW: It does mean the level of resourcing: the numbers of people who can do this. I also think, as argued elsewhere, that it is almost possible if we have a clear, good definition of coercive control that is agreed—and I would be supportive of a national definition—that we could perhaps triage cases of domestic and family violence so that we are not—because I believe that we have an overburdened police and court system currently because we are treating all domestic and family violence as the same.

The CHAIR: I think you will have furious agreement from all Committee members about that.

Dr NANCARROW: Right, okay.

The CHAIR: Please continue.

Dr NANCARROW: I do think that we need to resource in terms of the expertise around—and, again, a controversial term—the typologies of violence. But I do believe that we can broadly separate coercive controlling violence from what Evan Stark and I, and others, call "fights" in families, which are obviously not appropriate behaviour but are not necessarily coercive control. I think we do need to be very cautious about how much power we give to the State to intervene in personal life, but of course it is absolutely justified when it comes to coercive control because it is basically enslavement in a personal context—and, yes, I absolutely support State intervention in that. The resourcing also needs to be—I think I have already discussed this and certainly we addressed this in our submission—not just for the policing and courts but support for victims through the process, particularly if it is going to be a criminal response. It is a very, very long process and it is a very harrowing process for victims in the criminal justice system. They will need support through the process, particularly if there is no conviction at the end of the day. They will need to have ongoing counselling and support to be able to deal with such an outcome.

The CHAIR: Indeed. I think that brings us to the end of our time. I am sorry it has been so limited but we are very appreciative of your contribution—both your written submission and your evidence today. Members of the Committee may have further questions for you that we may send to you. Would you be willing to accept those from the Committee?

Dr NANCARROW: Yes, absolutely.

The CHAIR: Your replies will form part of your evidence and will be made public. We ask that you return those to us through the Committee staff as soon as possible. They will be in touch with you shortly about that. Thank you so much for your attendance and your support. We may well be in touch with you again. Thank you again for your assistance today.

Dr NANCARROW: Thank you. It is my pleasure. I wish you all the very best with the hearings.

The CHAIR: We will now break and return at 11.00 a.m.

(The witness withdrew.)

(Short adjournment)

SIMON BRUCK, President, NSW Young Lawyers, affirmed and examined

HARRIET KETLEY, member of the Criminal Law Committee, Law Society of New South Wales, affirmed and examined

The CHAIR: Welcome, everybody, to the resumed session of our first day of hearings of the Joint Select Committee on Coercive Control. I welcome our next witnesses, from the Law Society of New South Wales and NSW Young Lawyers. Welcome. Thank you for your assistance today and for your written submissions, which members have had the opportunity to look at prior to today. Do either or both of you have an opening statement that you would like to make?

Ms KETLEY: Thank you for giving the Law Society of New South Wales the opportunity to participate in this inquiry. I will start by acknowledging the Gadigal people of the Eora nation, who are the traditional owners of the land on which we meet today. We would first like to emphasise the importance of the Joint Committee undertaking a thorough assessment of existing offences in New South Wales and how they are applied in practice, as well as an evaluation of other jurisdictions' offences and responses to coercive control, to inform a decision as to whether expansion of the criminal law is required. If legislative reform is to occur then our preferred approach would be the creation of a specific criminal offence rather than further expanding the domestic violence civil legislative scheme, which in our view would create a greater risk of net widening and would have a disproportionate impact on Indigenous and other disadvantaged communities.

Any new offence would have to be very tightly prescribed and tailored to avoid capturing behaviour that should not be criminalised and to reduce the strain on victims giving evidence. The successful introduction of a new offence would require the allocation of significant resources for police, prosecution, judicial education and training, community awareness campaigns and in particular increasing the capacity of the Local Court. The availability of such resources is a concern.

Mr BRUCK: I acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and their Elders past, present and emerging. Thank you for the opportunity to appear at this inquiry. The creation of a new offence of coercive control is supported by NSW Young Lawyers, subject to appropriate legislative safeguards. We are of the view that the introduction of the new offence should be preceded and accompanied by comprehensive education programs for police, courts and legal practitioners as well as services and agencies involved in domestic and family violence safety action meetings. This is to ensure a proper understanding of the coercive control offence and to avoid misidentification of the primary perpetrator. Non-legislative initiatives also need to accompany reform in this area. They include increased funding for domestic violence support services, including for people experiencing coercive control.

While the current law in New South Wales criminalises overt acts of physical and sexual violence as well as behaviour causing fear and intimidation, it is NSW Young Lawyers' position that the current criminal law does not adequately sanction more nuanced offending that is intended to coerce or control an intimate partner. To this end, we are of the view that an appropriate description of coercive control is a course of conduct by one person that is coercive and controlling and has a serious effect on another person with whom they have or have had a relevant relationship. We acknowledge that there are numerous difficulties in criminalising coercive and controlling behaviour in domestic relationships. Principal among those is that nonviolent behaviour may nonetheless be coercive and controlling in nuanced and subtle ways that are difficult to detect, police or appropriately capture in statutory language. Further, there are inherent difficulties in drafting an offence that appropriately distinguishes between conduct that should attract condemnation and criminal sanction and behaviour that does not warrant intervention by the criminal law but nonetheless may not be considered normal behaviour.

In order to address those difficulties, NSW Young Lawyers supports the formulation of an offence that is carefully drafted so that coercive and controlling behaviour is included where there is a course of conduct that consists of behaviour that occurs at least three times within a 12-month period and that causes a serious effect on the other person in that it causes an apprehension of violence, serious alarm or distress. The prosecution should also show that the accused person knew or ought to have known—in that a reasonable person in the same circumstances would have known—that the behaviour would have a serious effect on the other person.

The legislation should include a non-exhaustive list of behaviours that are covered in order to assist police officers, prosecutors and tribunals of fact. That list should include things such as significant denigration and humiliation, withholding financial support that the person needs to meet reasonable living expenses, unreasonably preventing the person from attending places they could otherwise attend or preventing the person from making or keeping connections with their family, friends or culture. There should also be a defence that the accused person's behaviour was carried out in the genuine belief that it was in the other person's best interests and importantly that that behaviour was reasonable. We are mindful that the criminal law can be a blunt instrument and that the success of any legislative changes in this area will depend on the extent of appropriate educational programs across society and support programs for victims as well as on the effectiveness of diversionary programs for the perpetrators of domestic and family violence.

The CHAIR: We appreciate your assistance in person. Thank you for your very specific recommendations and your suggestion of the possibility of a defence. There is concern around whether this could go too far if implemented. Where the line is drawn is obviously a bit complex. On this Committee we have a number of lawyers, former detectives and members who are familiar in different ways with this area. We all bring our own experience to this very complex area. I wondered if you might expand on that, because one of our questions to address is the challenges if this was potentially brought in and how they might be overcome. This seems to me to answer that. You suggested it have two elements: that it be in their best interests and that it be reasonable. Could you speak a little bit more on how you might have formulated that? If the Law Society also has any comment on that, I would be appreciative.

Mr BRUCK: That is right. The defence is very important in terms of preventing what is a real risk with this type of legislation, which is misidentification of the primary perpetrator. While comprehensive education of society and the criminal justice system about what is coercive control will be required, we also think a defence will be needed in the drafting. This is merely one suggestion. We think it is important to have a reasonableness element in the defence so that the courts can make an appropriate assessment of the conduct and whether or not it is reasonable in all the circumstances. In addition, putting the best interests of the person who is the target of the relevant conduct means that the courts and the police will be looking at what is in the best interests of that person. We hope that will provide some level of protection against misidentification of the primary perpetrator.

The CHAIR: Ms Ketley, did you have anything that you wanted to add to that?

Ms KETLEY: Yes. Thank you, Madam Chair. Can I add from the Law Society's perspective that, although we agree that there should be an objective element in any new offence, that should preferably form part of the actual elements of the offence that the prosecution is required to prove beyond reasonable doubt rather than a defence that has to be raised and proven by an accused. Our concern, I guess, comes from a place of great caution and concern about criminalisation, not only of victims but also simply inappropriate criminalisation to start with.

It is important to bear in mind that in New South Wales a person who is charged with a domestic violence offence, and particularly a serious domestic violence offence that includes the offence of stalk-intimidate, is faced with the test under the Bail Act of having to show cause why bail should be granted. Our concerns arise very much in the context of the very high remand rates in New South Wales and in particular the disproportionately high remand rate of Indigenous accused. Bearing that in mind, we think a very cautious approach needs to be taken. We are proposing that if an offence is recommended and is supported by Government that the safeguards need to be built into the offence as far as possible, and that includes an objective standard of reasonableness as an element of the offence.

The CHAIR: Thank you. Before I hand to my colleagues, we have been provided with a lot of information and evidence about other jurisdictions and where this has been implemented in different and varying ways. The Scottish's example is said to be the "gold standard" from one of our witnesses today and I was interested in whether you have a view about that and the implementation process where the recommendation has been a very long run-up, with a lot of resources put into education and training of front-line services and police and the rollout. Would you care to comment on that example where it has been implemented and the approach? We have heard from other witnesses that it is very important that if this is to be brought in in some form that we have a long run-up and that there is plenty of opportunity for training and education at all levels and a collaborative approach between services, including victims and perpetrators, so that we can have a holistic response rather than something that comes in that is very difficult to implement. Could you comment on that?

Ms KETLEY: Certainly. Can I say in relation to the Scottish offence, as with the other models that are available, one of our main concerns is that there is in fact as yet no publicly available clear evaluation of the efficacy of those offences. Concerns have been raised, certainly—anecdotal concerns—by those who have worked with the Scottish offence. We note that Women's Safety in Scotland has expressed concern about misidentification of perpetrators there. So, our view is that the first thing that needs to happen is there needs to be publicly available

information as to actually how it has worked. There needs to be the sort of reporting that we are fortunate enough to have in New South Wales from the Bureau of Crime Statistics and Research [BOCSAR]. We need to see what the impact of the Tasmanian offence has been.

So great caution needs to be taken to what is already out there and what evaluations have been done. We think they are simply not available at the moment. In terms of the actual—I suppose the other key factor in all this is that jurisdictions such as Scotland obviously do not have the same crisis of Indigenous incarceration that we do in New South Wales. We think that any approach to expanding the criminal law in New South Wales needs to be approached through that lens. There is already information available in relation to the impact of domestic violence laws on Indigenous people in New South Wales. BOCSAR has done a lot of work over the last few years looking at what drives incarceration rates, particularly around the existing domestic violence [DV] offences of stalk-intimidate. I urge the Committee to look at these statistics that are available. Some, just by way of example, from BOCSAR, who did a report on this in 2017, show that the number of Indigenous Australians in New South Wales imprisoned for stalk-intimidate offences was more than eight times higher in 2016 than 2012 and that that is likely to reflect changes in policing policy rather than any real increase in stalk-intimidate.

Most of the growth in Justice procedure offences coming from breach of custodial orders that cause the impact on Indigenous incarceration in New South Wales come from breach apprehended violence orders [AVOs] and stalk-intimidate. So, great caution needs to be taken when saying: Is the Scottish model appropriate? The starting point is: What is happening in New South Wales at the moment? What have we already got in terms of DV laws available to police and courts? There has been a significant number of reforms in the last decade in the DV space and I am happy to outline some of those for the Committee or to provide further detail in writing. But that is the starting point. In terms of models of a criminal law approach, the Criminal Law Committee of the Law Society has considered this issue in depth and it is difficult. There was a lot of discussion and I can say on the whole that the Irish model would appear to have, in our view, greater safeguards against over criminalisation and inappropriate criminalisation than does the Scottish offence.

The CHAIR: Thank you. I have some more questions, but we will come back. I will hand questioning over to my colleague, Deputy Chair Trish Doyle.

Ms TRISH DOYLE: A segue to the Irish MP who is going to point out that very thing. I was reading about the Irish model and appropriate safeguards. Can you elaborate on what sorts of safeguards that you may have discussed in that particular Irish model that you would highlight for us to consider with any new offence?

Ms KETLEY: Certainly. So, the Irish model—and it is on page 75 of the discussion paper—prescribes an offence where a person knowingly and persistently engages in behaviour that is coercive or controlling and has a serious effect on a relevant person and that a reasonable person considers likely to have a serious effect. We think the concept of persisently engaging carries with it an element of both intention and –reflects the behaviour of the campaign of behaviour that is appropriate to the conduct that the Committee is concerned about. The Irish model does not have a minimum number of—or does not require particularisation of a minimum number of—occasions of the conduct. That is, again, is something that has pros and cons of particularising a number of occasions. Ultimately our view is that the advantages of requiring the prosecution to actually particularise at least three occasions as part of a pattern of behaviour would give clarity to both victims and to those who have to defend charges of coercive control. That clarity is really important in terms of procedural fairness, in terms of the timely and efficient resolution of proceedings and so that all parties know, really, what they are talking about.

Mr BRUCK: I would add as well that the particularisation of particular occurrences of behaviour is an important factor in allowing a defendant to defend their case and also for the prosecution to know—to define—how to prosecute their case. In terms of the Irish model, where they talk about persistent behaviour—we do not think that is suitable—

The CHAIR: Because it is not succinct enough?

Mr BRUCK: Because it is not necessarily particularised to particular instances. In our suggestion in our submission, we have suggested that there should be three instances over 12 months, not necessarily of the same type of coercive behaviour but just three instances of behaviour that can be pointed to. Going back to the previous question from the Chair about the Scottish model and the lead time before the introduction of the offence, we agree that a significant and substantial lead time should be incorporated into the reforms, if they go ahead.

Ms ABIGAIL BOYD: I thank you both for your submissions and I thank you, Mr Bruck, for going to the effort of suggesting a particular legislative model. I have read a lot in relation to coercive control; I have seen a lot of the legislation from around the world, and this has to be the most defendant-friendly version of an offence that I have seen. I find that interesting, and there are two aspects of that that I would like you to elaborate on. Why the three incidents within 12 months? From what you were saying, I think that seems to be something that is novel

to your particular model but, with respect, does not really fit into the way that coercive control works. And can you give me a hypothetical example of the circumstances where a victim had suffered actual harm and where the defendant knew or ought to know that it would cause harm? Then it could be seen that that behaviour was in the best interests and was reasonable in order for that defendant to establish the defence, and the burden is on the victim to prove that that was not reasonable beyond reasonable doubt. Is that correct?

Mr BRUCK: I can go through that. Thank you for your question.

Ms ABIGAIL BOYD: A hypothetical example would be great.

The CHAIR: There is a lot in there. If you want to unpack parts of it, feel free.

Mr BRUCK: Okay, thank you. In terms of the course of behaviour within 12 months issue, we did debate amongst the members about how that should be framed and whether there should be a 12-month limitation. The issue that we were concerned about is if it is open-ended, then issues or occurrences of behaviour that are coercive or controlling could be taken over multiple years. Then the criminality of a course of behaviour is not really identified and we move back to that idea of incident-based policing and incident-based offences.

Ms ABIGAIL BOYD: Could I just interrupt you there and explain my concern and why I am quite alarmed by the suggestion?

Mr BRUCK: Yes.

Ms ABIGAIL BOYD: If, for example, a victim had experienced a course of coercive controlling behaviour, they had been able to actually document a couple of those incidents and then they wanted to flee—they wanted to leave their aggressor—but the prosecutor has told them, "No, no, you have got to stick around and get a third."—if you had an experience where you left and perhaps six months later you had your ex-partner come and threaten you or continue the behaviour from then, by putting this within 12 months you are really limiting the options of victims when there has clearly been a course of behaviour over a period of time. That is where I am coming from; it sounds quite dangerous to me.

Mr BRUCK: I hear what you are saying in terms of the 12 months, and I am sure there is room to discuss what appropriate safeguards there would be in a further draft of this. But the issue remains that it cannot be fully open-ended in terms of the time frame. There needs to be, we think—in terms of the criminality—a course of conduct. I also note that the conduct that is relevant should be wide. So, for instance, if there is financial control or control about the person's movement and not just an assault, then those different types of behaviour can all be included.

Ms ABIGAIL BOYD: Just to clarify: We are not talking about a victim having experienced three events, we are talking about a victim who has experienced hundreds and hundreds of events but is being required to document three of them to a standard of proof?

Mr BRUCK: Yes, that is right. Only three of them would need to be particularised.

Ms ABIGAIL BOYD: Can we turn to the defence and can you give an example of when that defence might come into play?

Mr BRUCK: The committee members were discussing what would possibly be a behaviour that, on the face of it, might look like coercive behaviour but, when investigated deeper, perhaps is not criminal. For instance, if a person has suicidal ideation and had a plan for what they were going to do to self-harm, then if the person that is prosecuted took some action to prevent that self-harm of the other person—of their partner—I do not want to go into particular examples, but if they did some harm then they would—

Ms ABIGAIL BOYD: I am sorry. I am just curious how, in that exact situation, there could be an action by a defendant that could cause actual harm as opposed to protecting the individual, and that they knew or ought to know that it would harm. What I am getting at is if you draft that offence provision tightly enough, then clearly you do not need the defence.

Mr BRUCK: It is a balancing act. The tighter that the offence is drafted in one element, then perhaps the looser it needs to be in another element. So there is a balancing act that the Committee will need to participate in.

Ms ABIGAIL BOYD: Thank you. I do appreciate the trouble you have gone to of drafting.

The Hon. ROD ROBERTS: Ms Ketley, it is very difficult to propose draft legislation, as we have seen from the conversation between Mr Bruck and Ms Abigail Boyd. I notice the difficulties in drafting legislation in your submission. I think Mr Bruck said the law is a blunt instrument, and we also know it is inflexible. Once it is in black and white legislation, it is fairly inflexible. Taking you to the top of page 4 of your submission, where

you talk about how it would be "difficult to draft" this legislation, can you please enlighten us a bit further as to the difficulties in drafting legislation that talks about dynamics inside relationships?

Ms KETLEY: The overwhelming theme of submitters to this inquiry is that the unique aspect of looking at an offence of coercive control is that the behaviour in and of itself, and taken out of context, may well be innocuous—may well be benevolent or benign. So it is very much about the context. Behaviour that may be in one relationship entirely acceptable, or if not acceptable certainly not warranting of criminal sanction—bearing in mind always that criminal sanctions are the most extreme sanction available to society that may result in deprivation of liberty. The behaviour in and of itself may not warrant criminal sanction. It is for that reason that we think the focus should be not so much on the behaviour but on the intention of the accused—or the perpetrator—and on the impact. Those two elements of the offence: actual harm and fear and specific intention are, if you like, the bookends—the safeguards—of an offence.

Where we perhaps differ from others from whom you will hear evidence in terms of what else is needed to address the risk of over-criminalisation is that we say the safeguards should be in the legislation itself and not left to police training. Yes, police training is important, as are all of the other whole-of-government responses—greater support services for women seeking to flee and support for access to social housing. The other really important element of this inquiry from our perspective is around investment and supports in terms of people who perpetrate coercive and controlling behaviour and ensuring that they too have access to appropriate supports to address the underlying causes of their behaviour.

Often something that is missing from this discussion is: What are we as a society doing to prevent this happening in terms of perpetrator interventions? There are some really good examples in New South Wales of things that actually work. I draw the Committee's attention to the great work that has been happening in Bourke under the Justice Reinvestment Program and Operation Solidarity, which is a response to domestic violence offending that is place-based; that works with both victims and perpetrators; and that when reviewed has seen something like a 25 per cent reduction in DV reoffending.

Mr JUSTIN CLANCY: Thank you both for your submissions. Ms Ketley, on page 2 of the submission of the Law Society of New South Wales it says the preferred approach "is to try to capture that which is not already covered by existing offences." It is suggested that there be an approach of looking at a clearer definition for "family violence" and "domestic violence" under the current law, and/or looking at section 13 and the definitions of "intimidation" and "stalking" under section 7 and 8. Is that an approach that could be explored?

Ms KETLEY: We do not think the model of stalk-intimidate is, from a starting point, perhaps the best model for a new offence. That model is already very broad. The definition of "stalking" was only expanded, I think, two years ago to include any contact with a victim and it has very much taken away from the original intent of the stalking legislation which was really about stalking that is an element of stealth; that is now out of that definition. But we also think that a "coercive control" definition or any new offence should require proof of actual harm, and that is not in the stalk-intimidate offence.

Mr JUSTIN CLANCY: Do you feel that it would be beneficial to look at a national definition of "family violence" and perhaps incorporate that?

Ms KETLEY: Our starting point is that we do not support expansion of the civil regime for ADVOs. We think if there is to be a legislative response, it should be by way of a very tightly prescribed and calibrated criminal law or criminal provision. I am sorry, could you just repeat the last part of your question?

Mr JUSTIN CLANCY: Again, just looking at—what you are saying—trying to cover what is not already covered by existing law, and perhaps that existing offence is not looking at a clearer definition of "domestic violence".

Ms KETLEY: Certainly there are benefits in a clear and uniform definition and it being a nationally accepted definition. There is already a definition in the Family Law Act and that would appear to cover the sorts of behaviours that are of concern. Unfortunately we have a Federal system and that means we already have different DV laws across Australia. There is a national scheme for recognition of DV orders, but obviously a uniform approach, whether it be through the State Attorneys-General working group–there are examples where jurisdictions have gone down the path of uniform legislation such as the Model Criminal Code–and we think that in an ideal world, uniformity across jurisdictions would obviously be of benefit to all parties.

The CHAIR: Just on that family law definition, is that sufficient? You said there is already a definition.

Ms KETLEY: Yes. Can I just ask, sufficient for what purpose?

The CHAIR: Part of our consideration is: What would be an appropriate definition of coercive control? Can you expand on your statement that there already is a definition?

Ms KETLEY: In a criminal offence. We think there would be benefit in having a list of prescribed behaviours to give clarity and direction to those tasked with implementing an offence, and that would be one model.

The CHAIR: Is it your intent to clarify that repeated pattern?

Ms KETLEY: Yes, to give some guidance to the sorts of behaviours, not in an exclusive fashion. We agree that because it is so contextual, the withholding of finances in one relationship may not warrant criminal sanction or may warrant no sanction whatsoever, but in other relationships it might be an entirely different sort of behaviour depending on the nature of the relationship.

Mr PETER SIDGREAVES: In your responses both of you have stated that to some extent coercive control is picked up in the current framework of the law. Given Mr Clancy and the Chair's questions, my understanding is that you believe that further work needs to be done for the exact definition of "coercive control" to be covered within the law. Is that correct or would you like to make a comment?

Mr BRUCK: Yes, that is correct. From NSW Young Lawyers' point of view, we do think there is a gap in the law that needs to be dealt with.

Ms KETLEY: I think where we respectfully differ is that we think the gap should be dealt with in terms of the criminal law rather than the civil regime. We think the civil regime is broad. A particular feature of the civil regime is police-issued orders and the fact that police have broad powers already to take out provisional orders, and that ADVOs are by nature predictive. They are based on the prediction of future conduct. Therefore, we think, where an ADVO is taken out, conditions can be appropriately tailored. If there are particular concerns around coercive and controlling behaviour then that can be dealt with by way of conditions on the ADVO.

The CHAIR: You say that as it presently stands, it is sufficient. Is it your view that it would not be assisted further by clarification and articulation of "coercive control" within the ADVO system?

Ms KETLEY: We do not think it is necessary, given the broad criteria for ADVOs for both the court and the even broader criteria for police-issued ADVOs. That is our position.

The CHAIR: Because it is already there; it is already available.

Ms KETLEY: Yes. We think the starting point is: Is it necessary? We do not think it is, in relation to the civil regime. We are also concerned that the civil regime has insufficient safeguards in relation to the accused. Our preference is not only a criminal offence but the safeguards of a criminal process in terms of onus of proof, proof beyond reasonable doubt, as opposed to the civil standard and the protections of the Evidence Act.

The Hon. ROD ROBERTS: Both of you may want to take this question on notice because it is from left field but I think you will see where I am coming from. This is something that is forgotten in this debate. What about section 545B of the Crimes Act? As I say, this is not a gotcha moment and I do not expect you to quote the Crimes Act to me, but it is a section to do with intimidation. Can we look at enhancing or tweaking that existing legislation that talks about "intimidation or annoyance by violence or otherwise" of partners? And the definition of "partner" is quite broad. Perhaps you might want to take it on notice or you might want to have a go at it now. Either way, do either of you have thoughts on that?

Ms KETLEY: I am very happy to take that question on notice, sir.

The Hon. ROD ROBERTS: Yes, sure.

Ms KETLEY: As I said, I think the starting point is looking at the legislative landscape in New South Wales first, and that would be part of it, before proceeding. I am happy to take that on notice.

The Hon. ROD ROBERTS: I will be asking this question of the police when they give their evidence as well because I think that is a section of the Crimes Act that people completely overlook or forget even exists. It is legislated already in terms of intimidation. I draw other members' attention to it and I will provide them with a copy of that section of the Act later if they wish. As I say, it is not used much because people might not know that it is there. I look forward to your comments on notice in relation to that.

Ms KETLEY: Thank you. I am happy to provide that. Can I also just say that the other reason we are particularly cautious about this issue is that the New South Wales criminal justice system has an unfortunate feature, which is the over-policing of Indigenous people. I have talked about Indigenous incarceration rates, but laws in the recent past that have been designed to address criminal behaviour of particular groups have ended up impacting disproportionately on Aboriginal people and on young people. I draw the Committee's attention to the Law Enforcement Conduct Commission [LECC] review of the consorting legislation that was designed to criminalise the behaviour of organised crime—bikie gangs—and instead, in practice, and despite training, has

ended up disproportionately criminalising Aboriginal people. It is for that reason that we are concerned about the over-policing of any new offence and that any safeguards should be in the legislation itself.

Mr BRUCK: We, likewise, are also concerned about mistargeting or over-policing of First Nations communities in Australia. It is very important that the way the offence is drafted—if a new offence of coercive control is introduced, it is very carefully drafted. Section 545B, "Intimidation or annoyance by violence or otherwise", covers things such as violence, intimidation and things that look like stalking in the colloquial sense of the word. Those things might be there, but there is still a gap, in our view, in the law for the controlling behaviour which might go beyond or might be more subtle in some ways than some of those stalking and intimidation behaviours.

The Hon. ROD ROBERTS: Certainly. I take your point, but continuing on it also says:

> (iii) hides any tools, clothes, or other property owned or used by such other person, or deprives that other person of or hinders that other person in the use thereof …

As I said to you originally, could we look at tweaking or enhancing this legislation? I did not say this legislation alone would be fit for purpose, but this legislation talks about depriving people of use of their own goods and property. It also covers areas of stalking, et cetera, violence or otherwise. Again, we do not necessarily need to see the violent side of it, but the subtle actions that are coercive control could well fit within this legislation. That is why I asked for your more detailed comments in relation to that.

Mr BRUCK: Thank you for the question. I think our view would remain that the course of conduct is the different element of criminality in this topic of coercive and controlling behaviour.

Ms ABIGAIL BOYD: Thank you, Ms Ketley, for the way that you have very clearly provided a context for your views and submission in the basic principle of putting safeguards in the legislation, which I completely understand. When we talk about First Nations communities, and Aboriginal women in particular, being subject to much higher levels of domestic abuse but also having more substantial obstacles when it comes to the policing and justice systems, if we were to look at the context and imagine that perfect world where we were properly investing in measures to improve that situation and we had got to a stage where we had empowered those local communities, would your views in relation to the necessity of putting safeguards in the legislation change? Are those safeguards based on what the current context is?

Ms KETLEY: Our view is that you need both, and that not having the safeguards from the get-go is a significant risk in how this offence would be implemented in practice. All of the elements of that ideal world that you talk about, we fully support. We are concerned that things are moving quite fast. This Committee is reporting in the next few months, in June. All of those things will not be in place before an offence is possibly introduced. So, no, we think start cautiously, start small, monitor it, review it, collect public data on it and look first at the evaluation of what is going on in other jurisdictions. It would be an enormous disappointment to everyone who is concerned about this issue if we were to look back in 10 or 20 years' time and think, "We could have done this so much better had we taken a little bit of time."

Ms ABIGAIL BOYD: I agree 100 per cent.

The CHAIR: Thank you, Ms Ketley and Mr Bruck for coming along today. That concludes your evidence. Members may have additional questions that they may wish to put to you in writing. Are you happy to accept those additional questions?

Ms KETLEY: Yes.

Mr BRUCK: Yes.

The CHAIR: Thank you. I think you took one question on notice; there may be others.

Ms KETLEY: Yes, I did.

The CHAIR: We ask that you return that within seven days. The committee staff will be in touch with you in that respect. Any answers in your replies will form part of your evidence and will be made public. We appreciate your assistance with the Committee today. Thank you for your great work on this.

(The witnesses withdrew.)

SEAN McDERMOTT, Chief Inspector, NSW Police, Manager, Domestic and Family Violence team, affirmed and examined

The CHAIR: Do you have an opening statement you would like to make?

Mr McDERMOTT: I do. Good morning, Madam Chair, and thank you and other Committee members for this opportunity to contribute to this inquiry into coercive control. To assist you in placing my contributions into context, I am the manager of the domestic and family violence team within the NSW Police Force and have been in this position for over eight years. During this time, I have been responsible for implementing multiple statewide projects and initiatives for the reform of how New South Wales police responds to domestic and family violence in the investigation of offences, presentation of evidence, support of victims and the targeting of offenders.

Prior to this role, my duties have included being a domestic violence liaison officer in south-west Sydney and I was also a prosecutor for 12 years. These years were mainly spent in the local court where I have literally prosecuted thousands of domestic violence matters. The New South Wales police respond to about 140,000 incidents of domestic violence every year and in 2020 alone we commenced over 36,600 charge files for domestic violence offences. In the same year, we made over 40,000 applications for apprehended domestic violence orders. Pertinently to this inquiry, in the last seven years we have seen a significant growth in stalking and intimidation charges and breaches of ADVO charges.

During this time, we have also moved away from a mainly reactive response towards a proactive one, with a focus on compliance with ADVOs. I note that the purpose of the inquiry is to examine how the justice system can better respond to coercive controlling behaviours and whether an improved response should include the creation of a coercive control offence. I have had the benefit of reading some, but not all, of the submissions made to the inquiry about these issues. The common thread present is the need for extreme prudence and caution when coming to any conclusions. This reflects the fact that the experience of other jurisdictions that have chosen to criminalise coercive control has not been reflective of clear success to date.

While I appreciate that success can be multifaceted, the data from England and Wales, as well as information from Ireland, point to very low prosecution and conviction rates relative to reporting rates. Where charges have proceeded, they have mainly done so as one of several charges, frequently centring around a physical violence offence. Prosecutions for standalone coercive control offences are very much the exception to the rule. In turn, this experience is reflective of a number of inherent obstacles—present not only in those jurisdictions but also here in New South Wales—to the effective investigation and prosecution of that offence type, including: the structures for an operation of police response; existing evidence-gathering tools and techniques; challenges of translating behaviours into comprehensible evidence; the difficulty of determining the difference between what is normal and what is abuse; and, lastly, the issues of consent and the process of cross-examination for victims. Those issues should give us pause for thought and suggest that alternatives to the creation of a criminal offence must be fully considered because the evidence from overseas jurisdictions and the obstacles present do not support the introduction of a coercive control offence.

In particular, it would be my submission that instead of an offence there are a number of alternative areas that should be closely examined and pursued. The first is the expansion of section 16 of the *Crimes (Domestic and Personal Violence) Act 2007* to allow a court to make an ADVO, on the specific ground that granted the protected person has been subject to coercive controlling behaviours. Second, the expanded use of context and relationship evidence, by the codification of same in the context of admitting evidence of coercive controlling behaviours during the prosecution of domestic violence offences. Ultimately, a particularly important factor to consider when coming to conclusions is the expected experience of a victim in this process and the differences that will eventuate depending on whether the civil or criminal route is taken. The nature of this type of offending will affect at what stage of the relationship police assistance will be sought and it is worth noting that the foremost priority for such victims will be protection from future violence and behaviours.

The CHAIR: Thank you for your thorough preparation, for taking the time to read other submissions and for coming along in person today. I am interested in your experience as a prosecutor as well as what you are doing. Part of our inquiry is about the prosecutorial stage. The challenge for us is how, as you say, it might translate into evidence. Given your experience could you expand on how we could tackle that if this were to come about—how that challenge might be met and what the difficulties are?

Mr McDERMOTT: I will put it in the context of our current challenges. For a breach of an apprehended domestic violence order in this State, for example, we currently have a legal action rate of around 81 per cent. So for every 10,000 people who made reports of breaches, we issued charges 8,000 times. In that time, we would

have a 77 per cent prosecution success rate. Why we generally fail with domestic violence charges in court is down to two main reasons: first, the victim failed to attend to give evidence, which is understandable for a variety of reasons and pressures they are under; second, when they do attend they come under pressure to change their story to assist the defence. There is a third reason, which is ultimately us not being able to prove a matter beyond reasonable doubt because in many situations it is effectively one on one—the evidence of the defendant versus the evidence of the victim—and we have the higher criminal standard of proof. I raised those issues about percentages before because that should give you context about what I say about overseas experience.

My reading of the statistics from England and Wales—it is too early for Scotland—I have extrapolated this from a number of sources, one of which was the actual discussion paper, which talked about 9,000 offences per annum being reported having about 1,000 prosecutions and, ultimately, somewhere between 200 and 308 convictions. Relative to reporting that is a conviction rate between 2 per cent and 4 per cent, which is poor for any sort of new legislative thing. So that contrasts with the ADVOs. With this particular matter, the actual problems of prosecuting will start earlier in the piece. The problems are essentially this: We talk about police going to domestic violence matters and a lot of our colleagues overseas have been critiqued since the introduction of the policing powers and the relevant DV legislation in the United Kingdom—England and Wales, I should say. They are saying that police are not taking the time to investigate matters and they are not being nuanced enough to unpick the behaviours. That is a fair call to say. The unfortunate thing is that it does not reflect the reality of what police are facing in a reactive mode day to day when they are going from job to job and are already under the pump. Our average lock-up/arrest/charge and whatever application for an ADVO has two officers off the street for between four and six hours already.

Trying to unpick that evidence early on in the piece is going to be very difficult for time. That is also because victims—it is not like a TV show. Victims do not vomit forth comprehensible evidence in a form that police like—you know, give me the proof of the offence. Victims' disclosures are normally nonlinear and are affected by a number of things such as trauma, the reaction they get from the police and maybe they only want to explore the current offence—the actual physical violence offence—without unpicking the whole relationship. Those are some of the issues that I see straight away. In terms of actually getting the evidence at the scene, our current approach is to use body-worn video and Domestic Violence Evidence in Chief videos to obtain statements and get that evidence, which is really compelling evidence for magistrates in court. After we introduced Domestic Violence Evidence in Chief [DVEC] on 1 June 2015, which was a world first in this State, a few months in we quickly realised that it was inapplicable to go and gather and present evidence about historical offences that were over a period of five or 10 years. We found that we could not have police obtaining a structured and comprehensive form that would be suitable to presentation in court on video because it is happening in front of you. It is actually like being filmed.

Our advice to police after that first few months was to capture the evidence of the offence you have been called to deal with now and thereafter take a statement, et cetera, in relation to the historical stuff, where you can actually structure it better. So that is why I talk about four to six hours. I know that some of the submissions talked about Tasmanian police taking 50-page statements. That is inconsistent with our reaction mode in terms of investigating offences when you are under the pump to get things done. We are also under the pump because our Law Enforcement (Powers and Responsibilities) Act places us onto the timeline of releasing or charging that offender within six hours—placing them before the court. Those sort of things militate, I would respectfully submit, against this sort of proper evidence gathering. The fundamental thing is that it will be extremely difficult to say what is normal and what is abuse. That can vary according to socio-economic, cultural and religious background. I am not saying that there should be a norm, I am just saying that, ultimately, the person who investigates it will have a different moral compass to the person who prosecutes it, and they will ultimately be judged by somebody else as well, so it is very difficult.

We talk about prosecuting matters in court. If we prepare a victim properly and tell her what is going to happen—and it invariably is a her. We run domestic violence clinics in this State to prepare victims properly for court. That is about informing them of the reality of what court will be like because sometimes it can be a very hostile environment for a variety of reasons. Even if we prepare them well—in this case they stand up well, they withhold cross-examination well—the argument of the defence will be, "How could they be coercively controlled?" Alternatively, if they crumble in cross-examination, then they agree to everything the defence says. Those are some of the issues I see as a prosecutor doing investigations and gathering evidence. I indicate that when I was listening before I heard someone mention the Irish model, which is the most defence-friendly model that I see. It is worth pointing out that while the statistics are a bit ambiguous, I read an article in *The Irish Times*, dated 23 January this year, that said—when we talk about Ireland we are talking about the Irish republic with a population of five million—they have only had two convictions.

The CHAIR: Is conviction rate the only measure of success?

Mr McDERMOTT: From a victim's perspective, I think it would be, because what would be the point of going through a whole contested court hearing? I am saying it is not the only one, but the priority one would be to be believed and to get an outcome at court. Saying that, it is important for us to think about what victims want in this. Most victims that I have dealt with, and I take it there are exceptions to the rule, but the vast majority of victims that I have dealt with, they just want the violence to stop. They are not talking about laws that go into court, in fact that is the last thing they want to do is go to court to give evidence. Most victims want the violence to stop and they will do that by contacting police for that immediate interrupter, and thereafter seeking apprehended domestic violence orders. That is reflective of our success rates at court because our failure at court when victims do not attend court is much higher than most other offences.

Ms ABIGAIL BOYD: On that statistic, the two convictions, out of how many prosecutions?

Mr McDERMOTT: That I could not tell you. I know the discussion paper referred to a lack of statistics from the Irish Republic about this particular factor, so I only sourced that from *The Irish Times*. I can give a copy to the Committee afterwards.

The CHAIR: Thank you.

Ms TRISH DOYLE: Thank you, Chief Inspector, for coming along today. I appreciate the work that you and your colleagues do in this space. For the record I note that over the past year or so as the shadow Minister for the Prevention of Domestic Violence I have attended many regional domestic violence forums and safety action meetings as well and I can commend the police for a lot of the really good work you do. I am wanting you to comment on the issue of resourcing, especially in relation to some of the comments that you have made already about attending situations, about some of your comments in relation to convictions, and then the Chair's comment is conviction the only measure of success? We need families to feel safer and to communicate to communities the fact that coercive controlling behaviour is unacceptable. I am really interested to hear your views about the police work in terms of resourcing, whether we do move towards a new criminal code, or whether we strengthen other parts of the Crimes Act?

Mr McDERMOTT: In terms of resourcing, I can simply say that currently domestic violence is very much the priority of the NSW Police Force. Even during COVID, I put together a response plan, a plan as to how we can respond to it. We doubled our ADVO compliance checks in several months during the high points or low points of COVID. Our resourcing is sufficient. It is more the case of our ability to respond to the changing environment of domestic violence, and it has changed so much in the past eight years. That is something, like every large organisation, we are trying to implement change and that is something we struggle with. At the same time, making sure that our police are up-to-date with their training as well. Look, I am sorry, there were multiple questions. I am not trying to forget the others, I am just trying to think whether you had a last question.

Ms TRISH DOYLE: I did not expect you to say "please double our numbers" but I hear from around the State that we could do with three times the amount of domestic violence liaison officers [DVLOs] now that domestic violence is part of the national conversation and that there is some good work being done. In order to have a more thorough view for us to step forward we need our police force, who are the first responders, to receive more resourcing and more training.

Mr McDERMOTT: Training, I will always agree with that. I am a big believer in training. If I had my way I would have police do a four-year degree in domestic violence, but I do not have my way. That is utopia. Something we constantly push at is training. We have a new annual regime coming out in the near future. In terms of our resourcing, what we have seen commands doing and gaining from over the last two years is increasing specialisation. They are actually utilising general duties police to set up their own de facto domestic violence teams in commands and they are very effective. Specialisation does work.

The CHAIR: Thank you. That was very helpful.

Ms ABIGAIL BOYD: Thank you, Chief Inspector. I am interested in unpicking your position that you are not in favour of a new offence and how much that is based on this lack of resourcing, as opposed to it being not worthy in its own right. Do you think there is a gap in the law?

Mr McDERMOTT: I think there is a theoretical gap in the law that could be dealt with in the civil route.

Ms ABIGAIL BOYD: Can you elaborate on that?

Mr McDERMOTT: I am talking about apprehended domestic violence orders. In my submission that would be the preferred route, for a variety of reasons. There are a number of inherent advantages to going down the route of amending domestic violence orders to include coercive control, and I refer to section 16—I think the discussion paper actually says section 19, it is actually section 16 you need to change, as well as some other small

sections as well, definitions and the like. For a start, as an apprehended domestic violence application you have a lower standard of proof, so you have balance of probabilities, which can be on a sliding scale, but that is a good thing for the prosecution and therefore to the victim. You have reduced need for particulars, as in if you particularise that a criminal offence be persistent behaviours, you have to go to the detail.

Whereas with an ADVO you can make broad ranging statements of what has occurred to you. Importantly, you actually have the application of Local Court Practice Note No. 2 of 2012. This involves a typed statement that can be tendered as their evidence. They do not have to regurgitate it. Secondly, there is an obligation on defendants to file a statement in reply. That also assists in terms of prosecution. You are limited to cross-examining on the actual statements alone. There will be no wide-ranging cross-examination of victims. Consent rate for ADVOs— and this is my anecdotal evidence—is about 80 per cent. Most people on the day, because it has no criminal ramification, do not like public speaking, do not like the whole atmosphere of court, a lot of people will consent to ADVOs on the day. I think the preventative nature of ADVOs is more consistent with this behaviour type and victim typology. I will explain what I mean by that. A lot of the times when we get called to domestic violence incidents, it may be an incident involving violence. It may be the case in many situations that the victim wants the violence to stop but has no intention of leaving that relationship. It is not for me to judge that, every dynamic is different.

I think with coercive control if you are going to tell the police that, it amounts to a repudiation of the whole dynamic of that relationship. If you are unpicking and you can say, "I am being controlled, and this is what is happening to me" it is more consistent with a victim who is either exiting or has already exited that relationship, and therefore an ADVO, being preventative, is to prevent future offending. Importantly, I am not saying that the conditions of an ADVO should be changed to include coercive controlling behaviours to be prohibited, because that would amount to the de facto criminalisation of coercive control. I am saying it should be a ground and thereafter where we have the non-contact provision, not approach, whatever the case is, that allows for protection then. And if they breach, that is much easier to prove than coercive control.

Ms ABIGAIL BOYD: If we go down that route only, of amending ADVOs, which I think we should do anyway, do you think that provides sufficient protection for victims, given the numbers of women, in particular, who had ADVOs out at the time that they were murdered—I think the statistics are 111 out of 112 of the New South Wales domestic homicides had coercive controlling behaviours as a precursor? Do you think that is the way to protect people in these relationships?

Mr McDERMOTT: I think the harsh reality is that it is really our only way of protecting them in the criminal law and the civil sphere. Effectively police, we are 50 per cent of the game. The other game is, 50 per cent are the courts. We are bail, we are ADVOs, and ultimately after, it is sentencing. Sentences expire and most people do not go to jail for domestic violence offences. That is just a fact. The ADVO represents to me the best thing that we have, so how we strengthen them, while we have such an organisational focus now of ADVO compliance, that is something we have totally focused on. Our charges for ADVO breaches have gone up 27 per cent in the last two years alone. It has overtaken common assault DV as being the second most charged offence in this State.

Ms ABIGAIL BOYD: Are those statistics statewide?

Mr McDERMOTT: Yes, they are statewide.

Ms ABIGAIL BOYD: Are they the same in regional or remote communities?

Mr McDERMOTT: No, they vary. They probably vary according to the Local Government Areas [LGAs] that you could see on the BOCSAR, our maps, where you have those hotspots of domestic violence, unfortunately, normally reflective of lower socio-economic areas. Sometimes remote Indigenous communities have higher rates as well.

The Hon. ROD ROBERTS: I do not have a lot to ask but I want to clarify some things. With the ADVO process we often hear of victim survivors that mistrust the police or are not engaged with the police. With an ADVO process in place, it is possible for a victim to initiate their own procedure via the chamber magistrate at the Local Court. Is that correct?

Mr McDERMOTT: That is correct.

The Hon. ROD ROBERTS: If we were to take coercive control and place it in the criminal law as such, it would be very difficult for a victim to commence their own—I will use the word "prosecution" for want of a better word. Would that be the case?

Mr McDERMOTT: It would be, yes.

The Hon. ROD ROBERTS: So from a user-friendly position, perhaps, keeping it in the civil realms would be beneficial?

Mr McDERMOTT: I think it is beneficial for the reasons that I articulated previously. That is mainly from the victim's perspective. I think in this State, despite the fact that the person in need of protection can initiate their own order, they rarely do so. They come to the police. We have an obligation under sections 27 and 49 of the Act, if we receive certain reports, to do certain things. So it is quite a rarity that that occurs. From a court's perspective and a victim's perspective, they will always prefer to go down the police route because we will be the prosecution. Even from the court, they like that organised approach as opposed to unrepresented litigants coming to court.

The Hon. ROD ROBERTS: I think I heard you correctly but please correct me if I am misstating it. Did you say that earlier in your career you were a DVLO yourself?

Mr McDERMOTT: Yes, I was, in Bankstown.

The Hon. ROD ROBERTS: From your practical experience, a number of victims turn to police for assistance—and rightly so—who want action taken but do not necessarily want to go down the criminal law path. They do not want to go into an adversarial court case; they do not want to go to the extent of being cross-examined; and they do want, perhaps, to run the risk of being not believed at court and the defendant being found not guilty. Is that your experience at the coalface?

Mr McDERMOTT: For sure. As I said, the number one reason why we have domestic violence charges fail is that the victims are not turning up to court to give evidence, which I understand totally, because it is a difficult experience for them. It has been made much better recently in the last few years. Even last November we had more legislation passed about the use of audiovisual links. The number one reason why we fail at court with domestic violence matters is because of that fear. They do not want to come up. Also, as I said, it might not be palatable, but sometimes they want to stay in that relationship.

The Hon. ROD ROBERTS: Certainly. Would it be correct to paraphrase, "They just want it to stop"?

Mr McDERMOTT: Yes.

Mr JUSTIN CLANCY: Thank you, Chief Inspector. DVNSW in its submission spoke about whole-of-government and a co-response model where specialist domestic violence services are collocated in police stations alongside DV teams. Given that you were talking earlier about time constraints that police face in that, do you have some thoughts around that particular model?

Mr McDERMOTT: Actually I have more than thoughts. My team is currently implementing that as a trial in four locations around the State. We are anticipating that, somewhere between May and June, we will launch a trial of that in four locations around the State. We are doing that for a variety of reasons. One of them includes that it was a recommendation from the New South Wales Domestic Violence Death Review Team.

The CHAIR: Could you perhaps provide some more information about that to the Committee?

Mr McDERMOTT: Sure. That will affect—

The CHAIR: No, not now. Just on notice. I am sorry. We are out of time, unfortunately. But if you would be happy to take that on notice, we would be very grateful.

Ms TRISH DOYLE: Can I ask also on notice, Chief Inspector, whether you could provide some statistics or a comment at least about the problem of misidentification of aggressors.

Mr McDERMOTT: Primary aggressors, yes, I can.

Ms TRISH DOYLE: Yes, primary aggressors.

Mr McDERMOTT: I will do that.

Ms TRISH DOYLE: If there any statistics that you could share with the Committee, that would be great.

The CHAIR: Thank you very much. I am afraid we will have to finish there. Our time is up. We very much appreciate you appearing before us today and assisting. We are very grateful for the work done by the NSW Police Force. We very much are aware of the challenges that you face every day and are grateful for your work in the area. Your replies will form part of your evidence but you have taken a couple of questions on notice. We ask that you provide answers through the Committee—they will be in touch with those—within seven days. They will form part of your evidence and will be made public also. We are very grateful. Thank you so much for coming along today.

(The witness withdrew.)

PETER McGRATH, Deputy Director of Public Prosecutions, Office of the Director of Public Prosecutions, before the Committee via videoconference, sworn and examined

MARIANNE CAREY, Policy and Legal Adviser, Office of the Director of Public Prosecutions, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you both. If you would like to go ahead to proceed to your opening statement, we would be grateful. Thank you.

Mr McGRATH: Very briefly, you received the office's paper in writing in response to the inquiry. It is clear that all the anecdotal and statistical indicators are that the behaviour that comes under the footprint of what might be called coercive control is very widespread in abusive domestic relationships. The office, of course, realises that this form of domestic violence, domestic abuse is very devastating. We have read the material indicating the devastating effect that coercive control behaviours have on those who are subject to such behaviours, overwhelmingly, of course, women. We note the divergence of informed views that the Committee has received about the merits of such proposed legislation and whether there ought to be such legislation. We urge the Committee, as it were, to take into account these views to ensure that cultural and other issues do not perhaps tend to criminalise behaviour that may not in fact be criminal.

But the bottom line is that the DPP gives its cautious support to the creation of such an offence. It is cautious support because it cannot be done in a vacuum. It has to be supported by education, training and publicity so that this very difficult offence—difficult to provide for in legislation and difficult to report and difficult to reflect in evidence before a court or tribunal—can be effectively prosecuted. So it is not just a showpiece; it is something that is real and that will lead to prosecutions being undertaken and hopefully to changes in behaviour. The Committee could probably learn from the experiences of other jurisdictions. It appears that in Scotland, such a legislation was not introduced in a vacuum. It was supported by a lot of training and education: police training, systems that were implementing service—I am not sure about judicial training, but that is certainly a part of it—assistance for victims and witnesses in giving evidence in court.

There appears to have been—I say "appears" because I do not have all of their statistics—a quite high take-up rate in relation to offences reported and prosecutions commenced. Perhaps it may be contrasted—and I do not mean this unfairly—with the situation in Tasmania. I am again just going off their statistics. The DPP does offer cautious support for the need for such legislation that is carefully considered and not done in a vacuum but is a package of measures that will hopefully ensure its success, not just as a prosecution tool but as a deterrent. Hopefully it will be part of a package of measures that may help to diminish and reduce such behaviours. Thank you.

The CHAIR: Thank you Mr McGrath. I should have at the outset thanked you for your written submission. It is comprehensive and it is targeted to the questions we are asked to consider. Committee members do have it. Ms Carey, do you have anything you would like to add by way of an opening statement?

Ms CAREY: No, not at this stage.

The CHAIR: I want to pick up on one aspect. We have limited time, for which I apologise. I thank you for your submission about the fact that it has to be a comprehensive package. We seem to be getting that picture from a number of witnesses and submissions and I think that is a thoughtful approach. Could you comment on that and your reference to the Scottish example, where there was other comprehensive wraparound education, training and resourcing? Why have you included that in your submission, given your task is quite clear and—narrow is not the right word but you have a very specific task. I appreciate that you have added these other things. Why did you feel compelled to do that?

Mr McGRATH: Certainly. I think Ms Carey would be better placed to take up the issue.

Ms CAREY: The first thing to note is that New South Wales is actually slightly further along in recognition of domestic violence and responding to domestic violence than Scotland was at the time it introduced this offence. Their need for education perhaps went a bit further than just education in relation to coercive control. We are a bit further on, but we do recognise that many people have great difficulty recognising, first of all, behaviour that constitutes coercive control. There is that weighing up system in that some things that some people in one relationship would consider coercive control, other people would not. That is why our suggested definition

or way to look at it would have to be that the point of the behaviour was to control. The exact words we used were "to exert or gain power, control or dominance over, and to the detriment of, a person".

The reason why we are very strong that it needs to be a considered approach, Scotland was a considered approach. They took a long time to do the work required before the legislation came on foot—that was education and that was training. As I said, perhaps they needed to do a bit more because they may have been a little bit more, for want of a better word, behind in where they viewed domestic violence. The first thing we need to do, and the reason why I have raised this is that we do not operate in a vacuum either. We do less of domestic violence matters because we do the ones that are more serious offences—so more serious physical assaults and more serious sexual violence in a domestic violence context. Police will do the majority. Police prosecutors will give the majority in the Local Court. But if are going to have an offence of coercive control, we need to fund and train the police so that their approach is different.

The police respond in what is called an incident-directed way. They get a call, they go, it is a physical assault or whatever, for example, and they respond to that incident. That is the proper way to respond because it ensures the safety of the person who is perhaps in physical danger right then and there. But the incident-led response does not really allow them, and they are not funded for, time to investigate what is behind that single incident. To investigate coercive control you need to do things like look at phone records, other types of correspondence or social media accounts. You might need to obtain a bank document or speak to other people. You also need to conduct an in-depth interview with the complainant. Police now do what is called a domestic violence evidence-in-chief recording and these are not set up again to do in-depth interviews. It would require a follow-up interview.

So when we say we have a cautious approach, it cannot be in a vacuum. It needs to start there. Police need time to, in effect, realign how they approach these incidents. Not all domestic violence incidents that police attend will feature coercive control but we know, whether it is experts in this—the DPP is not, but we know from our discussions with groups that support victims that even in small surveys almost 100 per cent of victims say that they have experienced an element of coercive control. There are also so many matters that we will not prosecute because we have no standalone effects, so there is coercive control within the context of people reporting physical or sexual violence as well. It has to be accompanied by allowing the police enough time to reorganise the way they respond to these incidents of domestic violence, to have the time and the personnel and develop the expertise to go behind the incident-led response and investigate it. That is probably one of the most important things.

The other really important thing when you talk about a vacuum is that we need to educate the community so that people realise that men and women—I am going to refer to women because we know that coercive control is a very gender-based offence and most of our victims are women—many people just accept it is a form of domestic violence and there are all the other psychological issues that go with it. But the community needs to realise, in terms of a deterrent, that that behaviour is unacceptable. Victims also need to realise what is happening to them. We are hopeful that if this offence is created with the proper education and training—not in a vacuum—that it may act as a deterrent and may also lead many victims to report behaviour and perhaps have the ability to leave violent relationships earlier than they would otherwise have done because they realise what is being done to them. It is about training for the police but also training for prosecutors, defence, and judicial officers, and education to act as a deterrent so people realise what is happening.

But also you need to consider what other legislation you may need to change to facilitate this and you need a review system. There is a certain amount now in domestic violence situations where—it is referred to as the "wrong persons charge". For example, police may attend an incident of physical violence and the person who is arrested may be the person involved in the physical violence or was the aggressor on that occasion, but they also may be the actual victim and that is just the pinnacle. We have to make sure that things like that are accounted for. I know that there are very strong feelings among people who work with Aboriginal and Torres Strait Islanders that we get the identification of the victim right and we look at the cultural practices. That is what we mean by "not in a vacuum". We need time to train DPP, the defence, the judiciary—

The CHAIR: Thank you. I might very rudely interrupt you there just so I can turn to my colleagues before they indulge me any further.

Ms TRISH DOYLE: Thank you very much, Mr McGrath and Ms Carey, for appearing today and for the work that you do. This is a vexed issue: all elements of discussing the potential of criminalising coercive control. Thank you for your comment. For the record, I acknowledge that you offer cautious support to criminalising coercive control and also, as many others have put forward, that this package of measures must not just focus on the prosecution tool element. I will ask you to comment on an array of international research that has uncovered all of the critical gaps in practice around criminalising coercive control—that is, the low levels of

charging and even lower level of decisions to prosecute. Where do you see that as being an important part of the Committee's deliberations?

Mr McGRATH: It is a great question. I think it comes back to the whole package that Ms Carey was just addressing the Committee on around education and training. It is no good having the legislation if there are all these gaps; if police do not know how to gather evidence and charge such an offence; if prosecutors do not know how to prosecute it and the sort of evidence that is needed; and if judges or magistrates cannot get a grip of it. A domestic violence offence—an assault or a series of assaults—is something that is relatively easy to conceptualise and come to grips with. It is relatively common. But the idea of a continual pattern of behaviour that may consist of a number of small things—each of them seeming relatively innocuous but when added up are a very sinister and pervasive form of abuse—is harder to present and harder to understand.

The research is there and it is good, because the research goes behind the bare statistics. Statistics of a high take-up rate, to use the phrase, may for example indicate that there was very vigorous—perhaps over-vigorous—policing; it may not, as well, but it is important to have this research. That is why, if I can generalise, I think the research that we refer to does point out the need for education, publicity and training at all levels as part of the package so that such legislation, which we cautiously accept is necessary, can be effective and have a role to play—not just prosecuting but hopefully preventing this kind of abuse and also stopping the escalation. The research indicates that in so many instances this behaviour goes on to result in a catastrophic offence, often a domestic—

Ms TRISH DOYLE: Exactly.

Mr McGRATH: Hopefully that answers the question.

Ms CAREY: I think you also just need to consider the time. You are talking about major cultural change or practice change or policy changes not only within organisations such as the NSW Police Force, the DPP or the judiciary but also within the community. Those offences are relatively new so you need time. Also, I think you cannot—there are still domestic violence offences and then are still the challenges to the victims that they also have, including with proceeding with matters in court: intimidation and pressure from the accused person or their family. All those factors are still going to be present and may affect a low level of charging or perhaps a low level of prosecution that continues. All those factors are still there. We have a pattern of violence that we can use in our "stalking or intimidation" charge under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* [DV Act], but it is not a useful section—

Ms TRISH DOYLE: I am just going to interrupt to say I was more interested in your view from a prosecution stance. I have been waiting 52 years for legislation like this. From the victim-survivor stance I completely understand all the points that you are making, but from that prosecution angle I was just interested. But I think we have to move on, Chair.

The CHAIR: I will just point out to the witnesses that you can take questions on notice and provide us with further information. If you feel inclined to do so we would be appreciative of that.

Ms ABIGAIL BOYD: Thank you both for your attendance and your excellent submission. I thoroughly enjoyed this one when I got to it on the weekend. In the interests of time I will try to be brief. You make reference to a standalone offence as basically being a valuable community education tool. How do you think that interacts with this issue we keep hearing about in relation to misidentification of who is the victim and who is the perpetrator? Taking it from Ms Carey's opening remarks, we are talking predominantly about women victims, so I think when we are talking about misidentification it is fair to say we are talking about when women in particular get mistaken as the aggressor. How do you see creating a standalone offence as actually helping that situation instead of making it worse?

Mr McGRATH: We will probably both have something brief to say. I think creating such an offence, if you like, enables the full, true picture to be placed before the court. Police are called to the flashpoint incident and it may be that the female partner has reacted to what has been going on for a long time. The police are called and she is adjudged to be the offender because she committed the act of assault, aggression or whatever it was on that occasion. The benefit of the standalone coercive control type offence is that it allows the whole picture that led up to that breaking point to be put before the court. That is why, if it is to be effective, you only need to say it to realise that it involves the collection of a lot of evidence.

Depending on the sort of behaviour that has been exhibited during the relationship it could include telephone records, bank account records or testimony from other family and friends. It is an endless source. The offence in violence is very easy to investigate. Police get called, they take a statement, they take down details and it is pretty easy to bundle up and put before the court. The big picture is difficult, but it enables the real victim to

have the case put before the court and the real perpetrator to be brought to account for what they have been doing during the course of the relationship.

Ms CAREY: This is where the training is vitally important so that the police have the time and the resources to properly investigate, as Mr McGrath said, so that the full picture is before the court. It is also vitally important that everybody understands who the people committing the offences are and how they commit the offences. There are people who currently commit offences that we would consider to be coercive control but who do not commit physical or sexual violence. Everybody knows there is a degree of manipulation and control so the training has to also understand the context in which coercive control can occur, what it really is and what the accused really does. That is what people need to be trained for.

There is a gap in the law that we need to address. Misidentification is a problem now and it is not going to go away overnight. But the better people in the criminal justice system are educated, the better the community is educated and the better the understanding we have of what constitutes coercive control and what behaviours are engaged in, the less chance accused persons have of manipulating the system. That is what they do and that misidentification is part of the victimisation. But it really gets down to training and one should not cancel out the other. Misidentification occurs. The more time, training and resources the police have, the less it will occur.

The CHAIR: I will have a question or two that I might put to you in writing in relation to the evidence gathering, because I think that seems to be a challenge, and also the threshold that you very helpfully referred to in your submission.

The Hon. ROD ROBERTS: First of all, thank you both for your submission and your time today. On page 14 of your submission at point 10 you talk about the ADVO legislation. You say that it may be expanded to include reference to coercive control. I would like to hear more on that. In particular, we talk about education and training for police and the judiciary. We perhaps also need to educate the community and offenders or potential offenders. Could changes to the DV Act perhaps be preventative or a deterrent to change behaviour?

Ms CAREY: I think that changes to the DV Act really should occur concurrent with the creation of an offence. It would be a little odd to do one without the other, but certainly at the moment there is limited scope for courts to recognise coercive control behaviour as something that would give rise to a fear within a victim seeking an AVO. That is the problem at the moment. We have stalk and intimidation offences under section 13 of the Domestic Violence Act, but that does not go far enough. It does not cover all types of behaviours that equal coercive control. The court has a limited way at this stage to recognise the scope of what could give fear to a victim. That does need to change and that could change.

We do agree with the suggestion, I think it was on page 32 of the discussion paper, that courts could take into account evidence of coercive and controlling behaviours when deciding to make an ADVO. You would need, though, to have them define that point in time in order for them to be included in AVOs and in the decision the magistrate makes, and for there to be consistency across all courts in that regard. But that is also a gap. There is no way at the moment. People can try to take account of a pattern of violence when considering stalking and intimidation but there are problems, as we have outlined, with people accepting that coercive control is violence. The use of the word "pattern" indicates the sort of conformity that is not necessarily there with coercive control. Coercive control is stackable, brick by brick, and it can involve many different behaviours. We have an issue with that as well.

The CHAIR: Thank you. If there is further information that you would like to add to any of those answers, please do so on notice. On behalf of the Committee, I very much appreciate your attendance and assistance today. I am sorry that time is now over for this session, but thank you both. I am not sure if you took anything on notice, but if you did then we ask that you respond to the Committee within seven days. Your responses will be incorporated into your evidence and made public. Thank you so very much for your assistance and your ongoing work in your area.

Mr McGRATH: Thank you for the opportunity to present to the Committee.

(The witnesses withdrew.)

BELINDA RIGG, SC, Senior Public Defender, Public Defenders New South Wales, affirmed and examined

The CHAIR: Thank you for joining us in the Committee today. We are very grateful for your written submission, which the members have. Thank you for taking the time to assist and for your work in this area. Do you have an opening statement that you would like to make to the Committee before we begin?

Ms RIGG: The Public Defenders are very conscious of the problems caused by coercive control. The way we tend to come to have knowledge of it is particularly through women who we act for who are charged with homicide after killing an abusive partner. Some women are even charged with homicide when they are responsible in some way for the killing of their child, normally in the sense of what is called gross criminal negligence manslaughter, for their failure to remove a child from danger but where they themselves have been the victim of domestic violence and coercive behaviour from the abusive partner who is the main perpetrator in relation to the death of the child. I am looking at this very issue in my capacity of involvement with the Sentencing Council at the moment because we are in the midst of preparing a report on sentencing for homicide offenders.

But apart from dealing with those women who are charged with homicide offences, we are conscious also in relation to men. These are generalisations but they tend to be the ones that come up most frequently—men who are charged with homicide of their intimate partner where there has been a background of domestic violence and coercive control in the background to the relationship. So we are very conscious of it as a social issue that needs to be changed, if at all possible.

The CHAIR: Yes. Thank you. I know that you have responded to the specific questions that the Committee has been asked to address.

Ms RIGG: Yes.

The CHAIR: You have talked about some of the challenges in there. Can you speak to that in terms of your role and some of the challenges, if this were to be implemented in some form, what they might be and what the Committee might consider as recommendations to address those challenges?

Ms RIGG: The recommendations, or the way that Ms Wasley and I have responded to the questions, tends to be more academically based in terms of the issues raised in the discussion paper and some of the literature that that is referred to that. If there was a specific criminal offence introduced it would be unlikely or reasonably uncommon for public defenders to be defending people charge with such an offence. In terms of the pattern of the type of offence that has been introduced in other jurisdictions that tends to be something that can be dealt with on indictment but is more commonly dealt with in a summary jurisdiction. The Public Defender is not generally involved at all in defending people who are charged with summary offences.

So our response has really been based from basic legal principles and by reference to the literature rather than practically anticipating for clients of ours what the difficulties would be. But I guess in terms of fundamental legal principles and some of the specific risks that have been raised, the issue of specific intent would be one that would be important to look at carefully before the introduction of a new criminal offence. A lot of the papers and issues raised in the discussion paper go through the various questions involved with that. But also, in relation to the risk of not criminalising conduct which really is not criminal but is more just a manifestation of individual choices in relationships, the issue of whether actual harm needs to be proved is probably one that is important to take into account in working out how to frame an offence.

I think one of the examples that is raised a few times is the example of where one person in a relationship controls to a significant degree the finances. That is obviously something that comes up frequently in coercive relationships but it can, as I understand it, be something that occurs quite willingly in relationships that are functional as well. So on that specific question that is asked of how to avoid the risk of over-criminalising conduct that is not in fact criminal, that is one area that I think it would be important to look at—whether actual harm would need to be proved or something that addresses that issue otherwise.

The CHAIR: And is that potentially why I read that overall what seems to be the view is that it perhaps is premature.

Ms RIGG: Yes.

The CHAIR: And you say that needs more work.

Ms RIGG: Yes.

The CHAIR: Can I ask you to elaborate for the Committee what more work looks like and using those examples; that is, the one that you have just outlined? Thank you.

Ms RIGG: Well, part of the work that I anticipate would be helpful is the research and actuarial work that is being contemplated that was contemplated by the domestic violence homicide review team and I think one of the specific recommendations of the Coroner in relation to undertaking further investigation and the BOCSAR-type investigations being undertaken. The reason that we see that as important is because, unlike some of the other jurisdictions where the coercive control specific offence has been introduced, New South Wales already has a seemingly flexible criminal regime including offences like intimidation and capacity to take into

account in apprehended domestic violence orders measurements to curtail coercive behaviour. It would seem to me that obviously with increased public education so that more people know that this is wrong to recognise in their own relationships or relationships around them specialist training for police to understand when these situations arise and the continuing review of how the existing law is used would be something that is useful to do prior to legislating for a new offence.

I was actually interested in the book with editors McMahon and McGorrery that I think it is cited in the discussion paper. This is the book that is called *Criminalising Coercive Control*. Julia Quilter's chapter in there cites some of the literature and specific examples which might suggest that simply there needs to be care before just borrowing from other jurisdictions because sometimes those other jurisdictions have not had an existing framework legally as flexible and broad as is New South Wales' might be, so there might have been different impetus and necessity to implement a specific criminal offence. I think it is really for that reason, rather than any disagreement as to the fundamental need to have it addressed, that we thought it would be better to wait for some more data in relation to how the current regime can be used to address it.

The CHAIR: We can see your reasons in your paper, thank you. It is comprehensive. I will hand to the Deputy Chair, Trish Doyle.

Ms TRISH DOYLE: Thank you, Ms Rigg, for appearing today and thank you for your work. I just wanted to, for the record, note you pointed out an interesting what I think is a gap in the reality around domestic violence in society—the risks that you see from an academic or legal perspective and the risks from what I see as not just a legislator who works with victims and those who work in that domestic violence space and how existing law is used from both those perspectives. There is a real gap.

Ms RIGG: Yes.

Ms TRISH DOYLE: It is quite disjointed, actually. How do we arrive at a place where we can actually deliberate on potentially criminalising coercive control when those two experiences are so disjointed? I was hoping you might elaborate a little on provisions for sentencing regimes in terms of the evidence you think we need to see to be convinced that criminalising coercive control is the right step to take.

Ms RIGG: Well, in terms of the studies that I understand are being undertaken, if it turned out to be the case that even with extra training now for prosecutors not laying charges in the Local Court for intimidation where there is a pattern of behaviour as distinct from discrete events where they are not seeking apprehended violence orders, or the orders are not being imposed with sufficient conditions to deal with that type of pattern of coercive conduct, then I think that would be significantly in favour of the creation of a specific criminal offence. On the other hand, if it turns out that with extra training the police and prosecutors are able to use the existing framework better to encompass that conduct, then that would be a reason against the need for a specific criminal offence, in my view.

The CHAIR: Thank you. I am sorry: Had you finished?

Ms TRISH DOYLE: That is all right.

The CHAIR: Ms Abigail Boyd.

Ms ABIGAIL BOYD: I need to clarify because I think your submission is slightly different from what I have heard you say today. Maybe it is not. I just need to have a clarification. But the submission reads very much as though you do not agree that there is a need to criminalise coercive control because it is premature. Are you saying it is premature? It needs to happen but it should not happen now because we have got lots of work to do to define it, et cetera, or are you saying that you are not convinced that it needs to happen at all?

Ms RIGG: Yes. I think more the latter. I would just like to know more as a consequence of the work that is going to be done and investigated whether it is addressed or able to be addressed using the existing framework of the law.

Ms ABIGAIL BOYD: The Domestic Violence Death Review Team's [DVDRT] review of domestic homicides found that 111 of the 112 had coercive control as an element of the relationship beforehand. Would you say that there is a gap and a need to address that in our laws?

Ms RIGG: There is a need to address it, but I am not convinced that, at this stage, it needs to be addressed by a separate criminal offence. Public awareness of it is absolutely crucial, and proper assistance and treatment regimes and the like are crucial. Some capacity for the law to intervene, to punish and to prevent is important as well, but I do not know yet enough as to whether the existing framework is capable of dealing with that.

Ms ABIGAIL BOYD: You note at one point in the submission that the "wide range of the behaviours identified as constituting coercive control are already the subject of criminal sanction in New South Wales." Presumably you mean as an individual event as opposed to a course of behaviour?

Ms RIGG: Some courses of behaviour, as I understand it, are able to be dealt with by intimidation and stalking laws. But also we have referred to fraudulent activity, misappropriation of property—that is not a single event, usually it is done—

Ms ABIGAIL BOYD: So that is part of what you want to see: an analysis of how those existing offences are used to apply to coercive controlling behaviour?

Ms RIGG: Yes.

Ms ABIGAIL BOYD: Thank you, that helps.

Mr JUSTIN CLANCY: Thank you for appearing, Ms Rigg. I am interested in talking about a level of caution and further research. Are there things that you consider that we should be doing in a more immediate or short-term sense? You just touched on public awareness, and obviously that is a critical element, but are there other elements that we should be exploring in a more immediate sense?

Ms RIGG: This is a little outside my area of expertise, but just based upon what I have read—and tying that in with what my understanding is of the significance of this problem—obviously police training and public intervention would be two things that should be dealt with reasonably quickly, I would have thought. As to how that is achieved, it is not really within my expertise to comment on that.

Mr JUSTIN CLANCY: Understood, thank you. Anything in terms of civil law? The broadening of the apprehended domestic violence orders or anything like that that would tie in there as well?

Ms RIGG: Yes. The Public Defenders do not have a great deal of experience in relation to civil law, even with ADVOs. But certainly to the extent that we have made reference to the possibility of including the coercive conduct in that which is prohibited, and the way that is able to be taken into account, is something that obviously should be utilised. I am just not sure at this stage whether anything more expansive needs to be done in relation to the ADVO ambit of powers.

Mr PETER SIDGREAVES: I understand that you have already stated numerous times that you believed further research is required to further our understanding before we start looking at, for example, whether or not coercive control stands in its own right as a law or whether or not it is made up within the *Crimes (Domestic and Personal Violence) Act 2007*. Do you have an opinion on that at this point?

Ms RIGG: The issue of whether further research is warranted? That is my opinion.

Mr PETER SIDGREAVES: I have heard that and it is plain and clear that you believe that further research is warranted.

Ms RIGG: Yes.

Mr PETER SIDGREAVES: But hypothetically, if it was to go into, for example, criminal law, do you believe that the first place where it will be is in existing law in the *Crimes (Domestic and Personal Violence) Act 2007* or should it stand alone in its own Act?

Ms RIGG: I had not really thought of that, but it may be that it is something to incorporate in the Crimes Act. If it is to be a standalone criminal offence, ultimately it may be that it is appropriate to include it in the Crimes Act with other discrete criminal offences. I do not have a decided view on that, but that would certainly be something possible.

Mr PETER SIDGREAVES: I understand. Thanks very much for your time.

Ms TRISH DOYLE: To follow on from some comments that my colleague Ms Abigail Boyd made recently—to clarify: Are you suggesting that the behaviours constituting coercive control, like property damage, misappropriation, assault et cetera, can and should be prosecuted as multiple offences rather than one single offence capturing the pattern of coercive control? Is that what you are suggesting?

Ms RIGG: What I am suggesting is what needs to be researched, as is set out in the submission and as has been referred to in the discussion paper, is whether existing criminal offences such as intimidation can take into account the pattern of behaviour which is generally regarded as coercive control and whether prosecution for intimidation is able to—that is one example, but we have referred to other examples as well—be adequately used to criminalise this behaviour. It may be that it is not, and that would be the point at which it would be, in our view, worthwhile to consider the terms of a standalone offence.

Ms TRISH DOYLE: I would beg to differ and say that there are many lifetimes of evidence and research that contribute to the need for legislative reform. Is it fair to say that, having heard your answer to a few questions, you are coming from the perspective of persons attempting to defend domestic violence offences rather than victim-survivors?

Ms RIGG: My experience is more the other way. I have probably acted for more women who are charged with homicide in relation to their partner or their child. But obviously I have had some male accused who are charged with homicide in relation to their intimate partner. Personally, that is the context in which I usually come to understand it. And, as I said at the outset, Public Defenders would not usually be involved in defending apprehended domestic violence orders nor summary offences. We do not really have any particular perspective to add in relation to that, other than the general legal principles and academic research.

The CHAIR: Thank you so much for your assistance and for your written submission. If we have further questions, we may put those to you in writing if you are willing to accept those and get them back to us. If you do, your responses will form part of your evidence and be made public. We would appreciate that opportunity if there are other things that occur to us following on from today. But otherwise, thank you very much assisting the Committee today; we appreciate it.

Ms RIGG: Thank you very much.

(The witness withdrew.)

(Luncheon adjournment)

KATHRYN GRIMSHAW, Solicitor, Shoalcoast Community Legal Centre, affirmed and examined

KIM RICHARDSON, Senior Solicitor, before the Committee via videoconference, affirmed and examined

SARAH MAY, Restorative Justice DFV, before the Committee via videoconference, affirmed and examined

YVETTE VIGNANDO, Chief Executive Officer, South West Sydney Legal Centre, before the Committee via videoconference, affirmed and examined

The CHAIR: I was remiss this morning in not acknowledging the fantastic help we have had from the committee staff. I thank them for their wonderful support and excellent work so far; we are only part way through but they have already been magnificent. We would love to hear from each of the current witnesses. Ms Grimshaw, do you have an opening statement you would like to make?

Ms GRIMSHAW: Thank you, Madam Chair. I begin by acknowledging the traditional owners of the lands on which we meet today, the Gadigal people of the Eora nation, and pay my respects to Elders, past, present and future. I thank the Committee for the opportunity to make a submission, for the invitation to be here today and for bringing much-needed attention to the complex issue of coercive control.

To provide context to our submission, Shoalcoast Community Legal Centre covers five local government areas on the South Coast of New South Wales. Primarily we provide advice in ongoing casework services and do not represent parties in court, either for the defence or for victims. We primarily advise people on matters connected with coercive control with respect to family law, family violence, victim support, the apprehended domestic violence order process, credit and debt, and some other connected areas such as care and protection.

We do not think it is controversial to say that coercive control is insidious and we see the devastating ongoing impacts it has on our clients. We very much welcome the examination of this issue by the Committee and potential implementation of measures aimed at the prevention and reduction of coercive control. It has been our experience that there are gaps in the present system that means some of our clients feel unprotected and unassisted. However, we are cautious as to whether criminalisation is the most appropriate and effective mechanism to fill these gaps and minimise harm to victims, as well as to the potential for unintended consequences.

The CHAIR: Ms Richardson?

Ms RICHARDSON: I do not have an opening statement apart from thanking the Committee for allowing us the opportunity to participate in the proceedings today.

The CHAIR: Ms May?

Ms MAY: Hi. I am currently on the land of the Darkinjung people but I live on the land of the Awabakal people. I am here today representing a group of practitioners, academics and people with lived experience. [Audio malfunction] be here. I do not have a formal opening statement. I hope that [audio malfunction] throughout the [audio malfunction].

The CHAIR: That is okay. We have your written submission which is terrific, so thank you. Ms Vignando?

Ms VIGNANDO: I would also like to acknowledge that we are meeting here today on the land of the Gadigal people of the Eora nation, the traditional custodians of this land, and I pay my respects to Elders, past and present. I will start by paraphrasing a quote from the New South Wales Coroner's Domestic Violence Death Review Team. There is a growing recognition that victims of course must continue to be supported and supported more if as a community we are going to effectively reduce domestic violence, but we need to shift our focus and concentrate more efforts in early intervention and primary prevention. South West Sydney Legal Centre welcomes this conversation and the urgent need to provide more safety and protection for victim-survivors of coercive control. We agree this is a deeply troubling issue and a serious risk factor for many women and children in particular. Our submission advocates against change without investment in the most important levers for safety for women and children, or without proper and long-term consultation and empirical study.

Our staff members' and managers' experience working with thousands of domestic and family violence survivors every year gives us a thorough knowledge and understanding of the complex nature of this and the need for additional measures to protect victim-survivors, in particular increasing safety for women and children. We acknowledge that that is the purpose of this inquiry—to increase safety. We employ over 43 women. Combined, our domestic and family violence workers offer well over 160 years of experience just at South West Sydney Legal Centre. Many of our workers have been in the sector for five, 10 and 20 years. We are members of Women's Safety NSW because we auspice for women's domestic violence court advocacy services in central Sydney and south-west Sydney. We are members of Domestic Violence NSW and Community Legal Centres NSW. Last year we assisted over 6,800 women affected by domestic and family violence.

We strongly recommend many cultural and procedural changes before the criminalisation of coercive control is considered. But at the same time in our submission we have made practical suggestions for immediate amendment of section 7 of the Crimes (Domestic and Personal Violence) Act and, following other reforms outlined in our submission and by ANROWS and the New South Wales Coroner's Domestic Violence Death Review Team, further amendments of section 13 of that Act. We strongly urge the Committee to recommend nationwide consultation of victim-survivors with a range of experience of abuse and from a range of cultural, linguistic and religious backgrounds. Given the extremely high level of knowledge and expertise of the Coroner's Domestic Violence Death Review Team, we support all of its recommendations and urge the Committee to consider those with the heaviest of weight.

Our submission recommends that a specific definition of domestic abuse encompassing non-physical abusive behaviours—and a national one would be best—comes before the Government attempts to criminalise such behaviours. As I said, we absolutely support the introduction of a national definition. Our submission, like many others, raises the important issue of misidentification of female perpetrators and other unintended consequences that could arise from the swift introduction of a new offence. We have suggested a variety of nonlegal avenues for reform. We have also provided, as I said, suggested amendments to the existing offences and sentencing approaches.

The CHAIR: At the outset I thank all of you for your written submissions, which are comprehensive and helpful, and directed to the questions and suggest other changes and proposals as well. We thank you for the time you put into those. I am interested in each of your views on what you see as the most immediate changes that can be made. For those who think that there is more work to be done first, what do you think that work is and what are the most immediate changes that might be implemented?

Ms VIGNANDO: In addition to a nationwide definition of domestic abuse, which makes complete sense, particularly given that AVOs are generally enforceable in other jurisdictions, it is extremely important that there is a nationwide conversation that explicitly includes forms of domestic abuse that are non-physical. As I said earlier, we believe there needs to be not only a wide consultation but also long consultation, particularly with victim-survivors. I acknowledge that some victim-survivors have made submissions to the inquiry but there is a very small number and we need to be talking widely across the State and across the nation. We need to be considering the needs of Aboriginal and Torres Strait Islander women and men, women from multicultural and linguistically diverse backgrounds, and diverse religious backgrounds.

CHAIR: Can I just interrupt you there to ask about timing? I think we might be getting the balance right somewhere because we are being accused in some circles of not moving too fast and in others of moving too

slowly. I am interested in your views on reaching that national approach and whether you think the delay in having that conversation—I do not mean that pejoratively, I just mean that it will take time. Is it worth that wait to achieve one cohesive national definition or do you think the imperative is to get on with this and start—to not let the perfect be the enemy of the good and have a definition from New South Wales?

Ms VIGNANDO: I think a national definition is very important. We have seen the conversation started in other States—last week or the week before Queensland started to make announcements. The time is right for that national definition. I do not think it will take a lot of time to come up with a definition if we consult experts in the sector, whether they be experts such as Chief Inspector McDermott, who gave evidence earlier, or experts like us or the respective coroners' death review teams in each State. I think it will be quite easy to come up with a slightly expanded definition of domestic abuse that would suit all circumstances. That, together with a number of other recommendations we have made and will make, is more likely to increase the safety of women and children, which is what we all desperately want to see. An example is housing, which we know is an extremely important issue for women who are escaping abusive relationships, whether those relationships are physically abusive or involve coercive control.

There is such a lack of housing that women cannot just make the choice to leave. There are not enough refuges and they are overrun. Interpreting services are very important and they do exist. The police call on them from time to time but, as Chief Inspector McDermott pointed out to the Committee, police are often under time pressures and can get called into situations of emergency. It is often difficult to involve an interpreter and sometimes an interpreter is not even available in the language required. We find that interpreters are often unavailable with our Women's Domestic Violence Court Advocacy Services. We also believe that there must be trials of other initiatives that people in the sector believe could increase the safety of women, for example, the co-location of specialist domestic and family violence services at police stations, which Chief Inspector McDermott mentioned this morning. We will probably be involved in the trial of Fairfield Police Station because we look after Fairfield, Bankstown and Liverpool.

They are just some recommendations that have been made by the sector and by experts such as the Coroner's team and Australia's National Research Organisation for Women's Safety [ANROWS]. Those initiatives need to be prioritised. We also believe that there are some pragmatic things that could be done now and that is why we mentioned the possible amendment of section 7 of the Crimes (Domestic and Personal Violence) Act as an immediate thing that could happen because, as we all know, intimidation and stalking—but particularly intimidation—are already offences under that Act. They could be beefed up to include more explicit offences that constitute subordination.

The CHAIR: Do other witnesses have views on that?

Ms MAY: Just responding to that question about whether there are other approaches to change that will take longer, again, they might do but that does not necessarily mean that a quick fix is not going to do more harm than good.

Ms GRIMSHAW: I think it is such a complex issue. Even within our own centre and our community we tried to have informal discussions with some of the frontline services we work with. There was no consistent view on what the best approach was. Some of the organisations that work with Aboriginal and Torres Strait Islander people were particularly cautious about a move to criminalisation. As I mentioned in my opening statement, we certainly find that there are clients we cannot help: there is nothing to do because they do not fall within the scope of the existing definitions or the police will not pursue it within the existing framework. I do not know if that is because the framework is insufficient or whether it is just the culture that it is too much work to pursue those more difficult matters because we are not at that end of things; we are giving advice to people who come to us because they have nowhere else to go and they just need some advice. I certainly agree with a move to a nationally recognised definition of family violence. But whether there is strengthening within the ADVO system, that might be a good first move.

The CHAIR: Would you be supportive of that?

Ms GRIMSHAW: Yes.

Ms MAY: I think as well, when you are looking at something from the bottom up it is just going to take longer. I think that Hannah Clarke kicked off this whole conversation and yet her family had no idea. It was not about centralising coercive control but the law was a barrier. It is actually a cultural understanding of what that is and that way the community can start talking about it and understanding their own experience. We have seen that in the news of change this morning about Brittany Higgins: we know that rape is not okay and is illegal yet we can still have cultures where it is not responded to appropriately. So we can have top-down solutions but how they

play out on the ground will be influenced by the cultural context that we are in, which is an environment that is patriarchal and misogynistic, so that is how it is going to play out.

Ms RICHARDSON: In terms of what we would see as some the immediate changes that need to be made, certainly following on from what Ms May said there, in terms of training and education for police. We do a lot of work in the Local Court and we have a lot of victim-survivors come to us who tell us that they have gone to police and reported incidents of domestic violence and the police have not taken any action. If there was a greater training program implemented, perhaps that would assist in allowing victim-survivors to have action taken. Also addressing the high workloads in the Local Court to allow the courts sufficient time to consider these issues before them. We operate in a number of AVO duty services throughout our region and it is very common for an AVO matter to only have one or two minutes before the magistrate. There needs to be a longer time allowed for a magistrate to fully read the application, to hear from the victim-survivor and to then make a determination. They would be some of the immediate things that could be addressed.

The CHAIR: Thank you. That is very helpful.

Ms TRISH DOYLE: Thank you all for being part of this really important Committee work. Your submissions and appearing before us are really appreciated. On behalf of the Committee as well thank you to all of those that you have liaised with and are speaking for, whose voices cannot be heard today but we hope are incorporated. I am just going to throw out a general statement and ask you to comment on that. I think that the behaviours associated with coercive control, the research, evidence of the need to do something about coercive control has been well established for decades, so we can deliberate on and we are deliberating on definitions on a national scale, but I would go to the point that my colleague in the chair made about let us come up with something here at least, perhaps the rest of the world will follow. If the current framework, whether it is practical or whether it is in the academic or legal world, needs to be improved, then what are you actually suggesting, given that there is a disconnect between the academic legal world and what is happening on the ground?

Ms GRIMSHAW: For me, I feel like it—

Ms MAY: Perhaps I should not speak above the ranks—

The CHAIR: That is all right. Go ahead, Ms May.

Ms MAY: All right. I guess it is a bit of a tangent but I want to try and get in there. If I [inaudible] about making some legislative changes, what are we facing? So why is this a deterrent? Working with the men I work with there is a whole bunch of variables that are at play in their decision-making priorities where legal consequences are really not present no matter what those legal consequences are, so whether it is functional or deterrent is not questionable. And then there is whether there is communicated some kind of shift in social values. But what I see on the ground is shift in social values are moving up here, and there is a gap, its tectonic plates, and it is not connected to what is happening down underneath. And like the men I work with think it is called common assault because it is common, and domestic violence charges do not affect them. So what it will almost certainly [inaudible]—it is like getting the shift, the shift of it being acceptable without having something more logical just stripped away from what communities find is acceptable. So, yes, I think some things are on the ground. What works.

Ms GRIMSHAW: I think my thoughts were very connected to that in terms of driving that overall change in community culture and what is acceptable, whether that is within the scope of what we can achieve, and whether that is criminalising. It is that kind of chicken and egg situation, do you criminalise and then the community acceptance of that then follows, or does the culture change come first. I am not sure which is the best approach, but I do think there has to be a shift in community attitudes and what we can do to change that. I think, and it is a point made, that criminalisation can do that. I do not know if it is the most effective, and I am not a criminologist, in terms of what are the deterrents and what does lead to a change in behaviour, but I do think we need to work on that overall culture. And we made some suggestions in our submission, but I am sure there are much more better educated people than me that have deeper thoughts on the issue. But I think it is a cultural change.

The CHAIR: No, we value your suggestions as well. Thank you.

Ms MAY: And one of them is that you have like privileged people who have a state of conformity and they can afford to get out of any type of criminal consequences because they access good solicitors. Then you have poor people who do not have a stake in conformity and they do not care about a criminal record. So either way it does not happen a lot for people.

The CHAIR: Yes.

Ms VIGNANDO: Look, I do agree with the proposition that cultural change is extremely important. Cultural change usually comes with leadership—that is political leadership, that is leadership within peak bodies, that is leadership within our organisations, and that is prioritising the voices of victim-survivors. Again, I would echo what Chief Inspector McDermott said: It is our experience of working with victim-survivors of domestic and family violence. The thing that they want the most is for the violence to stop, for the coercive and controlling behaviour to stop, for the subordination to stop. The very small amount of information we have from the overseas and Tasmanian experience is that there are some convictions, not many. It varies across jurisdictions, of course, because the laws are different, some of the laws have been in place for longer and shorter [audio malfunction] times. But there is no evidence that domestic violence laws have made women and children safer. Sorry about that.

The CHAIR: All good. Thank you.

Ms VIGNANDO: Can you still hear me?

The CHAIR: Yes, we have got you.

Ms VIGNANDO: My hotspot just [audio malfunction] and I think that when you ask the question, what are we suggesting, we are suggesting that if there are the resources and if there is the time and the political will to do things to increase the safety of women and children, in particular, but all survivors of domestic and family violence, in same-sex relationships, in heterosexual relationships, please, please listen to the recommendations from the experts, including the Coroner's Death Review Team. Please consult with Aboriginal and Torres Strait Islander groups, please think about the levers that we can use right now if the funds are available and the time is available that will immediately or very quickly increase women's safety.

That does not mean there aren't some practical things we can do right now. Chief Inspector McDermott suggested some amendments to the civil system, which we could expand definitions for. We suggest in our submissions a practical change to section 7, in particular subsection 7(2), the meaning of intimidation, to expand the meaning so that when a court is deciding whether or not a person's conduct amounts to intimidation the court can look at any pattern of violence, especially violence constituting a domestic violence offence, any pattern of abusive or controlling conduct in that person's behaviour, and any pattern of behaviour that involves an unreasonable and non-consensual denial of a financial, social or personal autonomy, for example. There are some changes that the Parliament could make, right now, without introducing a brand new offence and all the cost and consultation, et cetera and unintended consequences associated with that, as well as some of the changes that experts and we are recommending in the community, in education, in housing, in interpreting, in co-location of services. These are really, really important reforms that the sector is crying out for.

The CHAIR: Ms Richardson, did you want to add anything to that?

Ms MAY: I think—

The CHAIR: No, sorry, I will go to Ms Richardson. She has not had a chance to answer that, then I will go to Ms Boyd.

Ms RICHARDSON: Certainly, I follow on what Ms Grimshaw said. In terms of legislation, governments have been legislating in terms of domestic violence for many, many years, and there has been limited change statistically to the numbers of victims of domestic violence. Yes, if there were to be a new law introduced of coercive control, there is nothing to say that it would ultimately see a reduction in any coercive controlling behaviour that victim-survivors are affected by. There certainly needs to be a lot of education and services and resources pumped into those organisations that support victim-survivors, and also perpetrators so that this does not continue to keep happening in the future, irrespective of whether or not there is a particular offence of coercive control.

The CHAIR: Ms May, did you have something to add to that?

Ms MAY: We keep going, like, you know, is this the thing or is there a better thing? I think we can look at like, as I said before, like we do not want to do harm, and when, men, when they say, "I've done my time, so I've done all I need to do." Finished. [Inaudible] They cancel each other out, but there is still some work to do in terms of changing your acts of violence; it just was not good [inaudible]. It is not just that it is the most effective but my feel is that it can do more harm. How do we empower communities and enable them to respond to their own problems?

We talk about expanding the definition about [inaudible] yet every man I have worked with talks about being the victim of control, because they experience impingement upon their absolute right to do whatever the frig they want; they are out of control. So when we talk about, you know, you are going to get reservations when you cannot get some word. You are never going to be able to get context of that; you are never going to be able

to get context of power. Maybe she called him five times. But how is that happening? How has he totally degraded her, and debased her as a human being [audio malfunction] emotional abuse. She is calling five times. You just cannot isolate from context. So I think it is not just what can we do better. Let us not bark up the wrong tree. It is money, resourcing, time, messaging. It is [audio malfunction] out of all this other stuff that could actually make a difference.

Ms ABIGAIL BOYD: Thank you to all of you for everything you do and for your comprehensive submissions and appearance today. There seems to be a common theme of comparing the idea of criminalising coercive control and the necessary programs that would need to go around that, the education programs, the resources, the training, comparing that on the one hand and then weighing it against putting that amount of funding into all of the things that the domestic violence sector has been calling out forever—shelters and court services and everything else. But as you know, we have not experienced any significant improvement, if at all, in domestic violence rates forever. I put it to you that those two things are not both on offer because we have not seen it happen so far. There are those who believe that, by criminalising coercive control and having this discussion, we are pushing society towards accepting a greater level of funding going to the sector. What are your views on that? Do you have an absolute opposition to criminalising coercive control? Or is it just in that comparison to what else you could use the money for?

Ms VIGNANDO: I appreciate your comments in regards to what is the most important, what is going to cost the most, what should go first and asking us directly what our view is on criminalising. Our view is that you should not jump to creating a new offence in circumstances where the majority of experts—I am leaving aside victim survivors here because they are also experts in their own experience and what they need. But in a circumstance where the majority of experts say before you criminalise, take into account things like the risk of misidentification of the primary perpetrator; take into account the coercive and controlling behaviours will be used by perpetrators to prevent police from gathering the evidence that they need in order to prosecute the offence; take into account whether or not any of the perpetrators, particularly men, are likely to be, for example, jailed on a first offence of coercive control. Will there in fact be any safety increase for women and children? Take all those things into account.

Then whether you are rushing to criminalise coercive control or taking your time, you must first, please, consider some of the other more important and pressing issues. It is an easy message for all of us in the sector, not just politicians, to say we criminalised coercive control. It sounds good and it is an easy message to convey, but it does not increase the safety of women and children, and that is what we are here for. If the inquiry is going to have some real impact in the State and then, hopefully, across the nation, it needs to be making recommendations based on experts about what will increase the safety of women and children.

If education is the goal of criminalising the offence, then I beg you, please, provide that education to religious leaders, cultural leaders, politicians, magistrates, people in our sector. Educate victim survivors about what is illegal, about their rights. If education is the goal, the way to go about it is not the introduction of a new criminal offence. However, as we have said a few times, there is already an offence that is relevant to coercive and controlling behaviour. The ADVO legislation and the crimes domestic personal violence legislation already criminalise it to a point. It just needs some refinement.

Ms RICHARDSON: In terms of referencing the amount of money that has gone into the sector in order to provide services, I would say that that money has—and rightly so—gone to support victim survivors. There have been very limited amounts of money that have gone in to provide treatment or other resources to offenders, the perpetrators who commit this domestic violence. As Sarah has mentioned, a lot of perpetrators of domestic violence do not recognise that what they are doing is actually wrong or a criminal offence. They need to be educated and to have support and resources themselves so that they can learn and understand that that is not something that they should be doing, which will also have a positive impact on victims because those offenders will no longer be committing offences and those victim survivors would be not facing the same issues that they have at the moment.

Ms ABIGAIL BOYD: Ms May, did you have a comment?

Ms MAY: What was the question?

Ms ABIGAIL BOYD: The question is in the context of not looking at the choice between two things but looking at whether or not coercive control could be criminalised. Do you have an opposition to it ever being criminalised or is it just a matter of wanting to prioritise other things?

Ms MAY: I guess, because of all those concerns with the criminal justice system [audio malfunction] be criminalised. I think there are a lot of ways that we can respond by ultimately looking at survivors and the conversations that they have with their [inaudible] and hairdressers. You know, the hairdressers [audio

malfunction] and [audio malfunction], you know, "I better [audio malfunction] because my husband will be worried if I'm five minutes late." That woman is not going to [audio malfunction], "Maybe I should report this to police." She might talk to her hairdresser about it. So I think there are a lot of other things that we can do in that space to—I think we can dive into coercive control and say [audio malfunction], "Here's the problem. Let's do something about it in a myriad of ways."

For all of those reasons, I think the criminal justice system is built on a hegemonic system that has often alienated and disadvantaged marginalised voices—whether [audio malfunction] Indigenous people. I think there are problems inherent in it that will continue to be replicated. I mean, it is a coercive control system [audio malfunction] how men will use what is available to them and the more [audio malfunction] a little mallet and [audio malfunction] it disadvantages marginalised people [audio malfunction] make that bigger. It disadvantages marginalised people and also it is available to men who want to use it for systems abuse. And it is [audio malfunction] criminal justice system. I think within a community, the majority of the community would approach this as a way forward.

Ms GRIMSHAW: From my perspective, it is what is the purpose of criminalising coercive control? If the idea is to prevent coercive control and reduce it, it is not a case of what is going to cost more or what is going to benefit. Is criminalising going to achieve the objective? My perspective, and I think it could be the perspective of my colleagues, is that criminalisation alone is not going to be sufficient to prevent coercive, controlling behaviour. It is still going to occur. We feel it needs to be supported with the education and the cultural change and all those other things.

Ms ABIGAIL BOYD: I think that is different, though. I absolutely agree with that. You criminalise it, but you cannot just bring it into legislation. You need to have all the supports around it.

Ms GRIMSHAW: Yes.

Ms ABIGAIL BOYD: Is it your view that, if you did have all of those supports around it, that criminalising it would not be objectionable?

Ms GRIMSHAW: Provided there was sufficient support, as in the consultation with all the different communities that we have spoken to and doing it, I guess—

Ms ABIGAIL BOYD: Doing it properly.

Ms GRIMSHAW: —cautiously. Like safely, safely so making sure there are defences built in and you are consulting with the communities to see if there are unintended consequences and making sure that the primary aggressor is actually the one that is targeted. So I think there could be a place for it, but I do not think that criminalising it alone would be sufficient.

The Hon. ROD ROBERTS: I thank you all for your submissions. They are very detailed and in-depth, and thank you for appearing today. There is so much we need to discuss and so little time. I am going to acknowledge Ms Vignando. Your submission particularly piqued my interest in terms of changes to the existing domestic violence legislation. It is something that I am allied to in terms of changing the definition of intimidation, perhaps, enhancing it and looking further at that. Ms Richardson, in your submission on page 7 you talk about how getting involved in the criminal justice system perhaps is not what women seek and could do them further harm.

Ms May, in your submission—there are alternatives to the criminal justice system that need to be explored as well, because the criminal justice system does not necessarily lead to restoration. The criminal justice system does not necessarily lead to restoration. I thank you for that. I will ask you a question, Ms Grimshaw, because you are attending in person and your submission is very detailed as well. The top three paragraphs on page 6 of your submission, for example, highlight the risk to victims of a criminal-based coercive control. Can you talk us through what it may lead to in practical terms?

Ms GRIMSHAW: For some of our clients, they do not consider themselves victims. I think it goes back to them just wanting that behaviour to stop. We have a mix of people who come to see us. There are people who desperately need protection and support, but there are also those who want to continue the relationship with the person. So they want that behaviour to stop. I guess one of the concerns we had is that, if you do criminalise coercive control, is that then going to stop them reaching out because they fear that that partner could then be charged with an offence? Would they would be better placed with money going into, say, drug and alcohol counselling?

I talk further down in the page about the clients who come to us who want to change statements or they do not want to—whether that is because of their ongoing trauma and abuse or because of the realities of life. They have six children. They cannot care for those children. They have been isolated. They have got no family support.

So, practically, how are they going to carry on with life unless they have the support of that partner? There are concerns that by criminalising it—and that is not saying that that behaviour is okay, but the reality is that we do not have an endless bucket of money to give people affordable housing and all the other nice things that would really help and alleviate some of these problems. We do not have those, so there are some concerns about whether it would push it underground even further.

The Hon. ROD ROBERTS: Would I be fair—and please stop me if I am not—in saying that to place coercive control as a standalone offence somewhere in the criminal justice system alone is not the silver bullet or panacea to a lot of the troubles that your clients are seeing?

Ms GRIMSHAW: For some clients, it would not be. For some, it would, but for some it would not. It would not solve it for all clients. We see that though. For some of these clients they are experiencing real physical—strangulation and things like that. And they still do not want to press for ADVOs. They still do not want to. They are the—not the unfriendly witness—the hostile witness in proceedings. I think it would still continue. It is the nature of people, I think.

The Hon. ROD ROBERTS: If they do not want to pursue that, what are they really after? What would satisfy and help them as victims? Again, I am not putting words in your mouth and stop me if I am wrong. I am trying to understand and grapple with this. The mere fact that that action has stopped—the coercive control, intimidation, harassment, bullying—is that ultimately what they are after?

Ms GRIMSHAW: I think so.

Ms VIGNANDO: Yes, it is ultimately what they are after, but they also need other supports around them. They need somewhere to live. Usually the perpetrator is managing—particularly in a coercive and controlling relationship—the finances. Often the home will be in the perpetrator's name, for example. I gave an example earlier of housing. There are probably any number of other things we could be doing to increase the chance of that woman or her children being safe. But, yes, they do want the violence to stop. That is the thing that they want the most: for the coercive and controlling behaviour to stop and the violence to stop. Some women do want charges laid. Some women absolutely and adamantly do not want charges laid. But what they most want is safety for them and safety for their children. If they choose to leave the relationship—and we always respect the choice of that woman—we need to have the support services to make that possible. In a situation where there is coercive control, that is often extremely challenging. The criminal justice system is not going to solve that. It is not going to make women and children safer.

Ms MAY: I guess it is about expanding her range of choices so that she has more options. The more options she has, that imbalance of power [inaudible]. I just want to say I have totally worked with guys where she is like "Take this guy off me" and he needs the State to wrap around a big web all around him and remove him and contain him. I see that working with ADVOs because it starts from an ADVO and then it is a breach and then it is another breach and that escalates really quickly. There is already a capacity at the moment—and particularly what you are talking about—with extending the stalking relationship to coercive control. It is to come in and remove him as a burden from her. There is a little hook there with your ADVOs and pathways that follow. I think I would give it a tweak. Some women do want that. They basically go, "Take him up. I do not want him. Deal with him."

Mr JUSTIN CLANCY: This is not so much a question, but I would like to say thank you to each of you. Ms Richardson, you mentioned in your submission—and I know Rod drew on this—that the more the criminal law tries intervene, the more challenges it poses. I hear that coming through. Ms May, your comments around the health shift as well and, Ms Vignando, your comments around levers to promote increased safety for women and children—that is very well-intentioned advice. Those three themes came together, so I acknowledge those and say thank you.

Ms TRISH DOYLE: I will put a few questions to you, and you need not answer them today. I just think it is worth thinking about this: What would you say to the victim-survivor who says that they want this reform? Does leaving coercive control out of the criminal scheme actually send a message that it is less serious than physical assault? Some of the arguments that I have heard today could be used to decriminalise offences like sexual assault. As a victim-survivor, I just wanted to note that on the record.

Ms VIGNANDO: Your first question was what you would say to a victim-survivor who says that they want this kind of reform. I would say I absolutely respect your voice and I want to hear it.

Ms TRISH DOYLE: But you are not going to listen to it.

The CHAIR: Alright. We will hear from the witness.

Ms MAY: I was a victim-survivor. [REDACTED BY RESOLUTION OF THE COMMITTEE 29 MARCH 2021] I went through the criminal justice system and I did not have a good time. And I want it to be there for people as an option, but I want more options. I want more language communicated to people saying, "We believe you and we validate your experience." I think it is a cop-out to say, "We will validate your experience. We have got a piece of paper somewhere that maybe some people pay attention to." I want to validate the lived experience that coercive control is not okay much more broadly than that. We could be better.

Ms VIGNANDO: I just want to finish my point. I absolutely acknowledge what you are saying. There absolutely are victim-survivors out there who want an explicit and standalone coercive control offence. Absolutely there are, although we have not done the work to find out how many there are, what background they come from, what their experience has been, whether they are from Aboriginal and Torres Strait Islander backgrounds, or what influence their cultural, linguistic or religious diversity has when it comes to their opinions. We have not done that hard work. But, yes, the voices of victim-survivors need to be heard. What I understand is the case and I am no longer a lawyer—lawyers have told me and I have read that there is already law in place that could be used if the right education and resources were put around policing and investigation and there can be some small changes made to existing legislation to respect that point of view, which is that coercive control should be made illegal.

In fact, coercive controlling behaviour—subordinating behaviour—already is illegal. It is just not being prosecuted. It is not being investigated. That is not the fault of the police, by the way. That is a cultural problem. It is a training and education problem. It is a reporting problem. If people do not know their rights, they do not know to go to the police and say, "Look, my husband will not let me have more than $50 a week and he has a tracking device on my car and he is looking at everything I do on the computer. Can you please charge him? I believe this is intimidation or stalking." They do not know to say that because the education is not there.

I respect victims' voices wholeheartedly but I do not think we have heard the whole story. I do not believe that if, ultimately, the decision is made not to criminalise—and that is not our position; we are saying do not go there yet, do all these other things first—does it send a message that we do not care? I really hope not because across the sector we do care immensely. We care. We work with thousands of women and children every year. We care immensely and we want reforms that are going to keep women safe. As I said, we want the law that is there right now to be used properly. I think there are things that could be done right now to make that happen as well as respecting the range of wishes of victim-survivors.

The CHAIR: Thank you—

Ms MAY: If I can just add—

Ms ABIGAIL BOYD: Could I just pick you up on—sorry, Ms May—

The CHAIR: Order! I am going to ask each of you to come through the chair, if you may. We have time. Ms May, I ask you to continue your comment and then we will go to Ms Abigail Boyd.

Ms MAY: My concern is about making coercive control not acceptable rather than shifting the focus to there—rather than illegal. I mean, smoking pot is illegal and its generally acceptable, you know? [Inaudible] about it. We need to make it not okay.

The CHAIR: That is not in our terms of reference, I am saying jokingly.

Ms ABIGAIL BOYD: Ms Vignando, you said that you do not see that there is a gap and you talked before about listening to experts. We had a prior witness from the Office of the Director of Public Prosecutions. They wrote a really detailed submission. In their evidence today they said there is a gap in the law that we need to address, that the better educated we are and the better understanding we have of coercive control, the less chance a perpetrator can manipulate the system and that the victim will be misidentified. Would you view the ODPP as being an expert when it comes to these things, and why are you saying there is no gap in the law when it is clearly identifying that there is?

Ms VIGNANDO: I would view the ODPP as an expert on law, absolutely. I would not necessarily view it as an expert on making women and children safe or working with survivors of domestic and family violence. When I say that there is not a gap that is not quite correct, and maybe I misspoke. As we said in our submission, there are things that could be done within existing laws—the *Crimes (Domestic and Personal Violence) Act 2007*—that will make it patently clear to magistrates and investigating police that a certain set of subordinating behaviours is illegal. It is already illegal; it is just that it is not explicit enough. It is because we also do not have a national definition of "domestic abuse" that includes non-physical abuse and a number of other things that we have all spoken about. There is a gap, and that gap is not just a gap in the law.

Ms ABIGAIL BOYD: Sure, but you accept there is a gap in the law because in that response you then again said that it is already criminal and you could already use it if you had better resourcing. But you accept, as the ODPP says, that there is actually a gap in the law.

Ms VIGNANDO: I accept that the definition of "stalking and intimidation" in the Crimes (Domestic and Personal Violence) Act is not explicit enough to make it easier for police and magistrates to investigate and convict. That is where I see the gap is. I do not see yet that there is enough evidence that there is a gap in the criminal law as a whole that means we must as soon as possible criminalise it and make it a standalone offence. I believe there are already provisions in our criminal laws and also in our civil system that make it illegal and unacceptable for men and women to engage in coercive and controlling behaviours.

Ms MAY: I also think that police are representative of society. I think of the times that I have heard a police officer say, "Yeah, sorry mate, I would have done the same thing but now I've got to arrest you because it's a thing and I've got to do it." Police are going to represent society. Not only that, but rates of domestic violence by police officers are higher than the general public because we know that domestic violence is associated with power [inaudible]. How can we spark a system that replicates the very things of monopolies and the misogyny—it is one word, but the way that stories are interpreted, the way that actions are interpreted? I just do not see it reflected in that message that [inaudible] have to get ourselves out [inaudible].

Ms ABIGAIL BOYD: Sorry, Ms May, are you saying then that we should be decriminalising domestic violence as it is? Is the existing offence, which only covers half of the story, also something that should go?

Ms MAY: I cannot see who is talking—

Ms ABIGAIL BOYD: Sorry. It is Ms Boyd.

Ms MAY: How are you?

The CHAIR: Alright, we might take that on notice—

Ms MAY: I actually cannot see you. Sorry about that. But no, we can only speak to one person—the person in red—and I am often guessing who is talking. What was the question?

Ms ABIGAIL BOYD: The question is: Do you think we should make it so that domestic violence, which is focused on physical violence, should also not be a crime?

Ms MAY: I think that this inquiry is looking at coercive control, so let us start there.

The CHAIR: I am going to move on to Mr Roberts—he had another question—and then to Ms Doyle and we are going to wind up this session.

The Hon. ROD ROBERTS: Ms Vignando, just supporting what you said in terms of—and we do not want to see your evidence misconstrued in any way—there being no gap in the law, I think you do say that in your submission. You address that on page 10 where you make suggested amendments to section 13 of the DV Act to tighten and enhance the provisions of intimidation. I think you do go a step further and put forward a suggestion of possible changes to legislation to ensure that this is a workable piece of legislation.

Ms VIGNANDO: Yes, we do want it made clearer, and we think the definition of "intimidation" in section 7 (2) is a perfect opportunity to do that quickly and make it clearer that what is already a criminal offence consists of the following components. We have made some drafting suggestions; there are probably better suggestions from other experts in the field. We have then gone on to say that, if that is done, we then move on to some of the other pressing reforms recommended by the Coroner's office, by ANROWS, for example, and by us and a number of other people in the sector once those other initiatives are taken care of, such as interpreting, housing, co-location of services and trials of that, resourcing of police, educating of police, and educating the community, et cetera.

Then it would also be appropriate to consider amendment of section 13, which is the substantive offence of "Stalking or intimidation with intent to cause fear of physical or mental harm". We have actually made some suggestions there for the purposes of deciding whether or not a person intends to cause physical or mental harm—they might have to know that it is likely to cause that fear, or they are reckless about it. We think the reasonable person test also obviously has to be included. We also talk, just to wrap it up, about subordinating behaviours. Our submission states:

> (b) a person intends to subordinate the other person to the person's will if—

I will not go through all of them. But for example if:

> (b) a reasonable person would consider the likely consequence of the conduct is to subordinate the other person to the person's will.

But I do want to emphasise that we do not believe the amendment to section 13 that we are suggesting be considered—alongside considering coercive control being looked at as an aggravating factor, which we have addressed further in the submission—should be introduced unless we look at all these other pressing reforms for safety.

Ms TRISH DOYLE: It is Trish Doyle here, the Deputy Chair of the Committee, and shadow Minister. I just want to say that I do not think it is an either/or case. Ms Vignando, I absolutely agree with your comments about all of the various reforms that we need and the investment in an array of wraparound services across the spectrum. I have to say that I feel a little frustrated with this afternoon's session. I just wonder how widely you have all consulted with victim-survivors for your submissions.

The CHAIR: I am happy for you each to take that on notice. We are little bit over time, so if you would like to provide a response to that we would be appreciative. Ms Grimshaw, I am conscious that you have joined us in person and a lot of our questions have been directed to the screen. Is there anything you wanted to add? I thank you for coming in—

Ms MAY: Can I just say in response to that—

The CHAIR: No, just a moment. Order! The question is addressed to Ms Grimshaw.

Ms GRIMSHAW: No, it is okay. Just in terms of the earlier points you made, Ms Doyle, did you want those on notice as well?

Ms TRISH DOYLE: Yes, thank you.

The CHAIR: Thank you. If there is anything else witnesses would like to provide to the Committee I invite you to do so in writing. I am sorry but we have to finish this session now. I thank each of you for your assistance to the Committee and for your very thoughtful, considered and detailed written submissions. If there are further questions the Committee would like to put to you it will do so in writing, and I ask that you respond in writing. Your responses will form part of your evidence and will be made public. Thank you all very much for your ongoing work. We appreciate it very much. Thank you for your assistance today.

(The witnesses withdrew.)

HANNAH ROBINSON, Policy and Law Reform Solicitor, Western NSW Community Legal Centre, before the Committee via videoconference, affirmed and examined

TORI MINES, Solicitor, Western Women's Legal Support, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back to the next session of the Joint Select Committee on Coercive Control. Thank you for joining us and assisting the Committee. Thank you for your submission, which is comprehensive and has been circulated. Members have read it so you can take that as read. Would you like to make an opening statement to the Committee?

Ms ROBINSON: We do not have a full opening statement. We would just like to acknowledge that we are appearing on the unceded land of the Tubba-Gah people of the Wiradjuri Nation of the Wiradjuri Nation and pay respects to Elders past, present and emerging. We thank the Committee for the opportunity to give evidence today on our position, which is in favour of criminalisation of coercive control. The holistic approach is set out in our original submission.

The CHAIR: Thank you both. We have heard different views and there is a range of views on what we should be doing. It is a complex issue and we thank you for your assistance with it. Can I ask you to talk to the need for coercive control and your particular emphasis on regional, rural and remote communities? We know it is a different proposition to our metro friends, so could you speak to that particularly and why you think it would assist in that context?

Ms ROBINSON: Yes, I will speak to that first and then Ms Mines might jump in as well. As set out in our submission, we service a very wide geographic area. We note that looking at the witness list for the Committee over the next few days, we look to be the only voice from western New South Wales.

The CHAIR: I will interrupt you there and say that is not the case. We will be doing a site visit but we have put that to another day. We are quite comprehensive in who we are hearing from, just for the record, but that has not been publicised at this time. But thank you for your important work and for your contribution.

Ms ROBINSON: Thanks for that clarification. Family and domestic violence is a very pressing need in this region. It is stated in our submission and we have informed other government inquiries through former processes that the far west and Orana region that we service is the worst geographic region in New South Wales for family and domestic violence. In 2019-20 it had the highest rate of domestic violence related assaults of any region in New South Wales and the highest number among all regions of domestic violence related assaults occasioning grievous bodily harm. Obviously the focus of this inquiry is on coercive control. Although research is sparse on the regional prevalence of coercive control, from our experience it is a very pressing issue. As we raised in our submission, it is under-reported because of the challenges that victim-survivors face in accessing support services and speaking with police—those sorts of challenges.

In terms of our clients' experiences of coercive control, we are both a legal service and we also offer casework support. We do see victim-survivors come to our service who have no experience with physical abuse and are not engaged with police or the criminal justice system. Other legal services may not have those experiences, because for a number of community legal centres the referral is likely to come from a Women's Domestic Violence Court Advocacy Service. They are victim-survivors who police have been called to, whether because an ADVO is in place or criminal charges have been laid, but we do have a number of clients whose sole experience of family domestic abuse is non-physical. Based on that, the advice that we give to those clients is that unfortunately there is no legal recourse for them within the current system. We think that there is a need to correct that.

The CHAIR: Did you want to add to that?

Ms MINES: Obviously our stance is that we are in favour of criminalisation. However, we do say that that should be as a part of a holistic response and it is not something that should be rushed. It needs to have thoughtful consideration and consultation in terms of how that legislation or reform would look to ensure that implementation is effective and appropriate for our victim-survivors.

The CHAIR: Can I just follow up on one aspect about whether in your experience the present structure for ADVOs or the current prosecutorial framework could allow us to address some of those issues? In your experience, is that not the case? If not, why are they not utilised?

Ms ROBINSON: We did tune in to the previous panel of community legal centres [CLCs] that you heard from earlier. Obviously there are existing systems, the ADVO system and the stalking and intimidation offences in particular. For some victim-survivors those do provide some recourse, but for many victim-survivors—I believe in our submission we provide 10 examples of specific acts that are not caught under the existing provision. The other thing that needs to be borne in mind when having these discussions is that even where single acts are already caught under the existing system, there is not the scope to allow for that wider context to be taken into account. We often see victim-survivors frustrated by the process.

As stated in our submission, our clients are predominantly women and the perpetrators are predominantly men. Those women become frustrated that their partner has been charged with assault or perhaps a stalking and intimidation offence and that does not reflect the 10 years of harms they have suffered. As a result of that harm, many of our clients experience very significant mental health concerns and they have been fighting through this. They have very low self-esteem, often suffering from anxiety, depression and paranoia—and they are right. Even when those offences are prosecuted and charges are laid, the existing systems do not reflect the totality of harm that victim-survivors suffer.

The CHAIR: Thank you for those examples. I think that was helpful.

Ms MINES: I would also just like to add that without coercive control being considered or criminalised, we do often see women seeking AVOs for their protection who under the current criminal law do not fit what would ordinarily be captured by police in AVOs. This then leads to a myriad of effects. Women who are victim-survivors are then forced to approach the court in an attempt to get an AVO for themselves and in that process represent themselves. An AVO in the current form and while it is being investigated by police does not allow coercive control to be captured. We do see some of our victims being turned away from having that protection because they are unable to provide or do not have examples of physical or clear intimidation that is currently being captured.

The CHAIR: Thank you. I will hand to the Deputy Chair, Trish Doyle.

Ms TRISH DOYLE: Thank you, Hannah and thank you, Ms Mines, so much for speaking with us today, for your submission and for raising the vital point of western New South Wales being represented. As a former Riverina girl, I just wanted to say that. I think it is incredibly important to land on that holistic arrangement that we need. Many other submissions have spoken to that and witnesses have spoken to the whole array of support that we need to wrap around victim-survivors. In your experience and in particular looking at the western New

South Wales region, what are the gaps in the legal framework that you see, that you experience and that you are hearing from your clients and from victim-survivors—the gaps in the framework whereby coercive control behaviours are not identified or recorded or acknowledged?

Ms MINES: I think there are a number of things that come out for our victims with coercive control not being criminalised in the current framework. A big one that we do often see is from the lived-experiences of coercive control that do not have associated physical violence or intimidation. By virtue of that they are not entitled to a lot of Government support, including Victims Services, to enable them to have that key safety and assistance to be able to hopefully give them vital support in terms of that. Without Victim Services they are not provided with assistance to relocate or given additional security measures, given that Victims Services require an act of violence, and coercive control does not fit within that currently.

Additionally, I have already spoken to the issue of ADVOs and victim-survivors, not just women, not being able to have ADVOs for their protection or have police enforce that for them. We also see victim-survivors who, as a result, are willing to say that they do not believe they are experiencing violence because that is not culturally and criminally recognised as violent, but also because they feel when they have reached out to explore those avenues for coercive control they have been told that fundamentally that does not fit within the current criminal framework and that they do not have recourse in that regard.

Ms ROBINSON: And just following up on that, one thing that I guess is a consequence of that lack of criminalisation is that our clients often report difficulty in being able to escape that violence, which means that they are simply stuck in this relationship and there is nothing that the law—the law is not helping them. Because the law is not there to protect them or assist them in escaping that violence, when it comes, as Ms Mines said, to access that additional support—and it can also be through other Government organisations of course, including housing support—because there is no ADVO that applies to coercive control offences, they simply do not qualify for that priority assistance. So, I think when we are looking at criminalisation and we are looking at, I guess, the purposes of making something a criminal offence. We want to recognise the harm of this sort of abuse to victims.

We want to hold offenders accountable and denounce to their community that that is what that conduct is and that is what the criminal system of justice is. Also I would like to speak about the other aims of the criminal system which are specific and general deterrence and protecting the community at large. Other organisations have made submissions in terms of, I guess, cultural change being dealt with before criminalisation will achieve, I guess, those goals. But I guess from the flip side our view is that you are not going to achieve that cultural change until you do criminalise because, without the criminal offence in place, it is that non-physical abuse is always going to be viewed as lesser. It is lesser in the law. It is lesser in the community's eyes and that is why criminalisation is needed in order to achieve and as part of that holistic approach.

The CHAIR: Thank you.

Ms MINES: And additionally, because of that priority of physical abuse we do see limitations in terms of resources that could be given to support services that could be broader and go beyond just the physical assaults.

The CHAIR: Thank you. We will move on to questions from Ms Abigail Boyd.

Ms ABIGAIL BOYD: Thank you so much. It is good to see you. I think we have already talked about this couple of great points in your submission. One of them was to address coercive control we must shift this understanding and to do so we must criminalise it. I think you have just spoken a bit about that with my colleague Trish Doyle. I guess I am interested in the unique perspective that you have in a centre that is dealing with regional, rural and remote communities and the additional challenges that victim-survivors face in those circumstances. When you are reflecting on that if you could perhaps also look at the suggestions from the police this morning that amending the ADVOs would be sufficient rather than criminalising coercive control and how that would play out in that kind of rural context.

Ms ROBINSON: Yes. Thank you for the question. I think that it is very important, as we have already said at the beginning, to consult widely on this. The experience of our clients in the region is that ADVOs is still the regime and it is deemed as not sufficient to address coercive control or domestic violence in its entirety. What we do see is the difference in resourcing particularly on that issue and I think that the statistics are a couple of years old but the far-western region also has the highest number of breaches of ADVOs in regional New South Wales, with about one in four final ADVO orders being breached. Part of that reason is simply that police—there is a lack of police presence. Some police stations are not staffed 24/7 and if an ADVO is breached it is very difficult to get a next follow-up. So the civil system in itself is not protecting our clients. We are seeing those ADVOs being breached and something more is needed to protect people who are extraordinarily vulnerable and who I guess really to remove the perpetrator from that situation, and add that extra layer of protection to say,

"Well, no." Maybe making it a criminal offence and going through to increasing the criminal penalties in that sense ensures that victim-survivors in remote areas, who do not have those support services, do have protection.

Ms ABIGAIL BOYD: Thank you.

Ms MINES: I feel additionally to that—and our submission is largely focused on it—is the ability for coercive control criminalisation to provide a full context of the domestic violence. As Ms Robinson said, because of the lack of resourcing that does happen in regional towns, services that are able to provide that support, for many of our victims the system focuses on singular offences. There is a lack of being able to see the full context both in terms of police through the criminal justice system and in terms of being able to fully explore that option in their favour.

Ms ABIGAIL BOYD: Thank you.

The CHAIR: Terrific. Thank you both. I will turn to the Hon. Rod Roberts.

The Hon. ROD ROBERTS: I have no questions, Chair.

The CHAIR: Good. Thank you. Your submission is so fabulous. Online, our friends the member for Albury or member for Camden: Can I invite any questions from you? I am sure they will pipe up in a moment, if they do. If not, is there anything further you wanted to add? There you are, Mr Clancy. I have you now.

Mr JUSTIN CLANCY: No questions, thanks Chair. Thanks, Ms Mines.

The CHAIR: Thank you. There are no further questions. If there is anything further you would like to add we would love to hear from you further. If not, I think members have posed all their questions for today. I do not think you took any questions on notice, but if there are some, the Committee will be in touch. Members may have additional questions for you that they will pose in writing. I would ask that you respond to those in writing, and those responses will be part of your evidence and will be made public.

Ms TRISH DOYLE: Can I put one of those questions on notice?

The CHAIR: Certainly.

Ms TRISH DOYLE: Ms Robinson and Ms Mines, would you mind outlining, in your experience and view, which cohorts of victim-survivors you feel we need to focus on in terms of that experience in western New South Wales that is very particular to a lack of or gaps in services?

The CHAIR: If you could take that on notice and send that back to us. The Committee staff will be in touch with you. They are wonderful and very capable, and they will be in touch to follow that up with you. I thank you both for your assistance, your written submissions and your ongoing very important work in your area.

Ms ROBINSON: Thanks very much.

Ms MINES: Thank you.

(The witnesses withdrew.)

(Short adjournment)

JOPLIN-LEA HIGGINS, Director, Joplin Lawyers, before the Committee via videoconference, sworn and examined,

MARGIE O'NEILL, Director, De Saxe O'Neill Family Lawyers, sworn and examined

LYNDAL GAY GOWLAND, Principal Solicitor, Gowland Legal Family Lawyers, affirmed and examined

The CHAIR: Welcome to the final session of the first hearing of the Joint Select Committee on Coercive Control. I thank you for your written submissions and for assisting the Committee today; we very much appreciate it. We also appreciate the important work that you do in your profession; it is very important. I thank you for taking time out of your busy practices and lives to assist the Committee. I know that this is at cost to you and we are very appreciative, so thank you. Do any of you have an opening statement you would like to make to the Committee? Ms Higgins?

Ms HIGGINS: No, I do not have an opening statement.

The CHAIR: That is fine. You do not need to, there is no requirement—only if you want to say any opening words. Ms Gowland?

Ms GOWLAND: Yes, if I could. First of all, I would like to thank the Committee for inviting Gowland Legal Family Lawyers to attend today. The matter of the criminalisation of coercive control is urgent. As we sit in this room, there is at least one man out there in New South Wales—whether it be urban or regional—planning to kill his partner, his ex-partner or his children while we sit here debating how lethal coercive control is. Our submission supports the criminalisation of coercive control. The State Government is the only authority—the only mechanism—in the Constitution that can protect women and children from intimate partner abuse. Gowland Legal Family Lawyers strongly request that this Committee goes forward and criminalises coercive control.

The CHAIR: Thank you very much. You have given us some specific examples from your respective practices; could you talk to your experiences on the ground of what you are seeing and hearing as part of your practice, and how that informs your view of this proposal and the questions that this Committee has been asked to answer? Ms Higgins?

Ms HIGGINS: In 2016 I received a Westpac fellowship to go to the United States of America and study perpetrator intervention programs in relation to the potential of engaging with perpetrators to reduce family violence. Since then I have done a lot of study in relation to how—and in Australia we call them men's changing behaviour programs—they can actually reduce family violence within our communities. I live in a regional community in the Hunter Valley, but I do a lot of outreach work in areas such as Tamworth and Moree as well as the Hunter Valley. I find in my daily practice—I practise solely in family law, and in my practice on a daily basis, if I have 10 new clients each day, it would be fair to say at least nine out of those 10 clients have some form of family violence. The struggle that I have within regional New South Wales is I find the training that some of the services—and in particular the larger services such as the NSW Police Force are not equipped and do not have a culture that allows for family violence to be treated with the urgency and importance that it needs to be treated with.

My submission to you was not of a legal nature in regards to how the bill—or the legislation—should be drafted, it was about what we need to do once this legislation is a part of the criminal Act and is going to be prosecuted by the police or the Director of Public Prosecutions [DPP]. My concern is that if we do not have the appropriate training, this will have a significant effect on women in regional areas—and I am talking about regional areas because that is where I come from—just as it does at the moment because we rely heavily on the police and the services which we have in regional New South Wales, which are not many. From my perspective, it is imperative that if this legislation is passed—and it should be passed—the appropriate and intensive face-to-face training takes place with the people that are going to deal with this legislation on a daily basis, and that is the NSW Police Force, the Department of Communities and Justice, judicial officers, medical practitioners and lawyers. That, in my view, is the only way that we are going to be able to see some sort of change in awareness once this legislation is passed.

The CHAIR: Thank you. Ms O'Neill? You have given some specific examples from your practice, and thank you for those.

Ms O'NEILL: I have. I am here as a family lawyer on the northern beaches seeing this not on a daily basis but at an increasingly alarming rate. Over the last three years—and in the last year COVID made things particularly difficult for those in family law—we saw such an increase that when I saw this Committee was set up I thought, "Well, I have got to give you some examples of what we are seeing in our daily practice." I think I gave three examples, but when it got to about 12, I actually brought in a trauma expert to our practice to debrief with our staff because what we were hearing and seeing was so confronting. I agree with Ms Higgins that the response from the other service providers has not been as forthcoming as we would like when these women are seeking help. There are lots of reasons for that, I suspect, not least that it is not an offence. What the police can actually do is very limited when they report some of these scary behaviours: motion-sensored cameras in bedrooms, not letting partners leave the house with both children in case they leave forever, not providing any financial assistance at all, not allowing them their own password for the internet, changing passwords, sending emails and text messages to any male contact in their phones—and sometimes with sexual messages—and then denying that they had been sent.

It is just bizarre, and we were not seeing this once; we saw it over and over. It was these repetitive behaviours that we saw across the spectrum, and we have a practice on the northern beaches, as I said, but we see people from all over the metropolitan area. It is an issue. I do not envy you to try and find the answers to how you are going to implement it because I know that it has been done quite successfully in some countries and not quite in others. I have got a couple of issues that I will raise, but maybe it is not the time, about where I see the intersection of a criminal code, a criminal law and a national family law legislation. I think there needs to be some thought about that intersection.

The CHAIR: We will come back to that. Do not let me forget; remind me if I do. Ms Gowland?

Ms GOWLAND: I confirm exactly what my colleagues are saying. We also would have 90 to 95 per cent of our practice supporting and representing victim-survivors of domestic abuse. I have been a law reform lawyer for decades. I have worked across Australia in remote and regional areas, and so I have a lot of experience in identifying domestic abuse and supporting clients that are trying to survive or escape domestic abuse. What remains the same today as it was 20 or 30 years ago when I left my own domestic violence relationship is that there are good police that get it and there are police that need serious training and/or need to get a different job. They are just not meant to be a police officer, given that at least 70 per cent of police work is purportedly to protect women and children from domestic abuse.

This past Christmas our team attended a city police station. As I said, I consider myself an expert in domestic abuse. My assessment was that this was potentially lethal to the mother and the child. On Christmas Eve we go to the police station to try and ensure that this is not one of the women and children that fall through the gaps and ends up as a lethality statistic. The posters are all over the police station: "We take domestic violence seriously." It just looks amazing. The victims get very confused because there is this message that this is what domestic violence is and we will take it seriously. But the experience is that a young male police officer immediately talks to our client and says, "You know there are a lot of women who do this to privilege themselves in the family law." This was December 2020—a young police officer. It blew my mind that we are still facing that.

Another client of ours, who is older—probably about my age—and from a wealthy suburb, went into a local police station and she was told, "Do not tell your family lawyer that you are here because it is not going to help you." The message that she received was that she was just there to privilege herself in the Family Court. This was a matter purely about property. He was damaging her car so that she could have died in a car accident. He had sealed up all of the windows and doors in the house. One would say that is serious. But this was the message that she got from the police station. What are the chances of her going back to that police station? It is a problem that remains at its most serious, and this is why Gowland Legal family lawyers support the criminalisation of coercive control because we believe from our experience that it will make the police look at the range of behaviours.

The CHAIR: I think it is fair to say that we all view this as our shared responsibility. There are wonderful police, as you quite rightly say, doing fantastic work and they are utterly stretched and doing the best they can. Let us fast forward and say coercive control is in some legislative form. How would that help you in practice? How would that be different to today when it is not in place? Can you also comment on the ADVO scheme and whether you feel you are able to use that as an interim and why? If not, why not? Ms Higgins?

Ms HIGGINS: Over the past 12 months I have been probably amping up my affidavit material for the Federal Circuit Court and Family Court in an attempt to try and raise awareness in that jurisdiction in regard to controlling and coercive behaviour because I had found that while I was identifying this in my cases for the bench and for it to be considered as family violence, it just was not really getting much traction, unless of course there were big significant issues with regard to stalking and intimidation.

If the legislation was in place, from my firms perspective, it would probably give more credence to the allegations, which we have been making for some time within our jurisdiction of the Family Court, that this is actually happening to victims and that this is a serious issue. The good thing in the family law jurisdiction is that the judicial officers do have discretion and they can use that in regard to issues such as controlling and coercive behaviour, but I find that unless it is spelled out—and in interim applications we only have the ability to draft a 10-page affidavit—it makes it very difficult on that interim level when we are trying to portray to the court that there is a significant issue and there is significant risk to children in a matter. We are limited by 10 pages and we are limited by the fact that controlling and coercive behaviour is not always able to be established. In that way, it would be extremely helpful.

In regard to the apprehended domestic violence scheme, within the Local Court, I think I come back to the training of the police officers within our area in regard to what family violence is and for there to be training and an understanding that it is far more than physical violence. It is abuse that is not physical over a significant amount of time, it is belittling and all of the issues which are set out under coercive control. It really comes back to training. Yes, we use the apprehensive domestic violence orders to protect our clients but with the stalking and intimidation that goes on, it is not always a successful option for victims of domestic violence.

The CHAIR: There is not necessarily an incident to report, perhaps.

Ms HIGGINS: Sorry, would you like a specific incident?

The CHAIR: No, I was commenting, sorry. I will move on.

Ms HIGGINS: Sorry, but I can give you a specific incident if you would like.

The CHAIR: No, that is ok. I will move on. I was commenting. Ms O'Neill?

Ms O'NEILL: To add to my colleague's comments, I think that is the crux of the issue—that coercive and controlling violence does not show up in one specific incident. For a lot of the victims, who are mostly women from what we can see and I know that there is a lot of discussion about that, they are not taken seriously because there is not a black eye or there is not something that is going to be able to be quantified and identified.

So that will be some of the issue. It is how many incidents of control, how do you—and so we have clients keeping diaries. Some of them record their partners, which we tell them is not legal, but they do it anyway. That has to be put into an affidavit, that is then transcribed and often they will do a mea culpa and say, "He knew I was recording." It is quite palpable to hear and to see a transcript of the words that are said in some of these tirades that these people are subjected to. I agree with Ms Higgins that the Apprehended Domestic Violence Order scheme is quite nuanced because it is very much dependent on which police you go to and how busy they are and whether that person is believed and whether it is seen as a ploy to get kids away from the father or to get occupancy of the family home.

There is no doubt that as family lawyers we have seen that used. We do not do it but I know that that it sometimes seen to be a tactic. That is some of the problem that you need to unpack as well. I think the training will be a huge part of this. We are lucky that in the Sydney registry if we do have to litigate, I normally appear in front of—a lot of the judges are very well educated and if we are lucky we will get one of them if we have to bring one of these matters before them. Then we get a very different picture about how that is dealt with. Then there are others.

The CHAIR: If that were in place now and you got a listing next week in Sydney District Court, how would it change your approach?

Ms O'NEILL: With a bit of luck that judge would have taken up the specific training—because it is not mandatory—and they would have in their knowledge and language that this is a form of domestic violence and it is something that they need to take seriously along with every other. So when we file an application—and it is usually an urgent one—we have to file a notice of risk. That was updated in July. It is very extensive and allows you to identify some of those really serious behaviours. If it was a crime then that would be a red flag straightaway and, in some cases, that would then be referred to the Department of Communities and Justice for them to follow up. Just recently—for the first time in years—I had a phone call from an officer there saying, "Please tell me those children, that the father is still not in the home." Things are starting to work together but they just need a little bit more support and for there to be a process and some law for them to follow.

The CHAIR: Ms Gowland, I ask you to comment briefly on that.

Ms GOWLAND: To assist our work, coercive control, again, should be criminalised because the police are the investigative arm of the judicial system. As you were asking Ms O'Neill, if we had a matter in court this week and coercive control was a crime, we would be armed with the evidence, whether it be good or bad—in our client's favour or not—there would be the evidence able to be put before court that would allow the court to make decisions that are in the best interest of the children if it is a parenting matter. If it was a property matter, then whether one party was at risk of the other. In my view, it is the obligation of the police, as investigative arm of the legal system, to play that important role. They must be properly resourced. At this moment neither prosecutors nor police are properly resourced. I also believe that the criminalisation of this pattern of behaviour would assist in the proper resourcing of those important arms—full funding of prosecutions and police so that they can gather the evidence. These are complex cases. They are traumatic for not only the victim but also the police. We know that. There is not enough support throughout the system for all people who engage in it.

Ms TRISH DOYLE: Thank you to all of you for the work that you do with some of the most vulnerable people in the toughest of situations. We appreciate you being here and speaking about your submissions and what you are sharing with us because it is tough. My question is in relation to a point that Ms Higgins raised in her submission about the *NSW Domestic and Family Violence Blueprint for Reform 2016-2021* that is due for review this year. You comment that there is an opportunity for us to consider how coercive control may be included in that. With this blueprint—a bit of a plan in mind—and the fact that we have this national discourse at the moment about domestic violence, there is a bit of a disconnect between what is happening in the legal and academic world and what is happening on the ground and we need to change that. Did you want to comment on how we include coercive control—besides criminalising it—in the new blueprint?

Ms HIGGINS: I notice that the blueprint has more than $431 million to be invested over four years to tackle domestic and family violence by supporting the victims and survivors and making perpetrators accountable. I suppose the way that we can incorporate controlling and coercive behaviour is by having an interagency

approach. It is extremely important that the message to the broader community is one message. I think it is very important that any training or programs that are put in place in regards to controlling and coercive behaviour are also in unison around that message. If we do not have one message and one way in which we approach this in regards to training, it could get lost because it is not a black eye; it is not necessarily visible to the outside world. Family violence is behind closed doors and controlling and coercive behaviour is a quintessential element of how perpetrators function. So it is extremely important that any government money or programs have a very clear message that all services engage with and one program for how that is filtered through the community. I also think—and I have a lot of backlash in regards to this—that it has to be perpetrator-focused, because if we do not engage with perpetrators we will never fix family violence. It is like treating cancer with a Panadol. We must fix the source of where this all begins and engage with perpetrators.

Ms TRISH DOYLE: Did either Ms Gowland or Ms O'Neill want to comment on that?

Ms O'NEILL: Not specifically, except that I agree the problem that we are seeing is probably what we saw when domestic violence was extended to include other forms, not just the physical or sexual violence. It was extended in the past however many years to include financial and psychological abuse. We saw that in all the legal definitions. This is a natural extension of that but what will be important is how it is done so that it is not watered down and people do not just see it as some umbrella term that everything fits in underneath. I think engaging with perpetrators and people that work with them specifically is going to be really useful because it needs to be owned by the people that are perpetrating it. Whilst it is being denied and it is being pushed under the surface, and even the victims do not know they are victims, it is going to be really hard to actually give it a voice. I think it is going to include all the stakeholders, which I am sure you, you know.

The CHAIR: Ms Gowland, do you have anything to add before I go to Ms Boyd?

Ms GOWLAND: Perpetrators of this pattern of abuse often do not have any—usually, normally—do not have any insight into their behaviour. What I have seen over the years is that perpetrators of abuse have not changed. At serious moments in their life when one would, other people, other men would look at their behaviour, they do not change when they have had a baby, they do not change when they have formed a relationship, they do not change when their partner is threatening to leave because of the behaviour. They often manipulate counsellors. And what I think is untested, is largely untested, is the fact that the criminal law is about punishment and prevention. When women and children are getting murdered and there are men planning that as we sit here, that we cannot keep experimenting with women and children's lives.

What I have seen is, I remember one case in particular just briefly, that we back in court, back in court, estranged, AVOs, everything, nothing worked. Then the judge said, "jail". Two days he was in jail. That man's behaviour changed. There were never any more reports. And I am not an advocate of prisons. I used to work for the Aboriginal Legal Service, and proudly so. I am not an advocate, but I am a strong advocate of keeping women and children safe, and for women and children from being terrorised for their lives. That is what I think one of the perpetrator programs could be jail.

The CHAIR: To try to keep us to the terms of reference, I will gently remind, it has been a long day. I will give plenty of latitude, but we do have some terms of reference we have to address. That is to my colleagues, not to you, do not worry.

Ms TRISH DOYLE: I just wanted to clarify. Thank you each for addressing that, it was how you saw coercive control and in particular coercive control legislation fitting into the blueprint, rather than perpetrator programs. I will just make the point and you do not need to address this unless you wanted to and take it on notice, that evidence would suggest that pumping money into perpetrator programs is not proven either and what we need to do is make sure that we support women, we do not strip money from women's services. I just wanted to make that point. It is good to consider into the future how coercive control might fit into that overarching plan into the future.

The CHAIR: Thank you.

Ms GOWLAND: Would you like us to take that on notice?

Ms TRISH DOYLE: Yes.

The CHAIR: Yes, you are welcome to. The Committee staff will be in touch about that, but we do have terms of reference that we must stick to. Ms Abigail Boyd?

Ms ABIGAIL BOYD: Thank you for your attendance this afternoon. As I was reading all the submissions I think it is really clear that there are people who potentially have a lived experience of coercive control or they have worked very closely with people who have and those people seem to see coercive control as being quite easy to define. Whereas you have another bunch of people who say it is so hard, it is impossible,

people do not understand what coercive control is. From your perspective as family law practitioners, would you say that it is capable of definition? And could you explain to the Committee the predictable patterns that these cases tend to take?

Ms HIGGINS: Thank you for that question. I am currently writing a paper in regards to infidelity and how that plays out within the Family Law Court. One of the paragraphs or terms in this paper talks about how this potentially could be considered as controlling and coercive behaviour when it strips the victim's self-esteem, their belief, the emotional abuse, the often sexual abuse, and the controlling behaviours that that type of behaviour leads into. To answer your question, I actually think that there are many behaviours that we do not even consider in our daily lives to be controlling and coercive behaviour, such as perhaps an ex-marital affair. Are we going to go that far to consider that when you take into account, when they tick all the other boxes of what controlling and coercive behaviour may be, make that as an indicator?

In my view it is not an easy definition to create. However, for me in my daily job I identify it quite quickly with regards to financial abuse and stalking post separation. I think that on a practical level, yes, when we are dealing with our clients, but I think that there is a very broad stroke in regards to what controlling and coercive behaviour can be and I do not think that we should be hasty in regards to defining what it is. I think there needs to be a lot of thought in regards to what the definition of controlling and coercive behaviour is, because we do not want any of this type of behaviour to slip through the cracks.

Ms O'NEILL: Thank you, Ms Boyd. I do not completely agree with Ms Higgins because we have seen over and over matters where we have seen the same behaviours, and that is what has been so disturbing to us and they include, very clear indicators which I think Evan Stark identified and others who have written in this area, and that is isolation, surveillance, financial control, sometimes, not always. Sometimes the complete taking over of the person's life so that they will not let them speak to their family, or if they do they tell them, "Well, your family actually doesn't like you. I've spoken to them." Or, "Your friends don't like you and that's why we are not seeing them." Or when their friends come over, behaving so appallingly in front of them that those friends do not come back. We are seeing that over and over. I think the difficulty, and this is where I agree with Ms Higgins, is in itself one of those behaviours is probably not enough, so I think you need to have that combination for that to be identified. And I think, yes, they are easily identified.

Ms ABIGAIL BOYD: Thank you.

Ms GOWLAND: Yes, I agree with my friend on my right, Ms O'Neill. I think there are patterns of behaviour, financial isolation, cultural isolation, religious isolation, all those ones that we see every day, but there are also really importantly how it affects the victim is purely about her, her situation, her circumstances. We have had matters where one of the ways, one of the patterns, one of the behaviours in the patterns was that he threatened to tell everybody that she had been raped as a child. Nobody knew, but he threatened if she left him he would tell everybody that. So, how do you capture that? The rest of us would never think of those things, but how that affects a person. Other people or other victims, adult survivors of child sexual assault, it might not phase them because they have already told everybody, or they have dealt with it, whatever. But this particular situation, it kept her in this relationship. I think, yes, there are patterns of behaviour. His threats to suicide, is something that we see quite often. But how it affects her is absolutely as an individual.

Mr JUSTIN CLANCY: I have two separate questions. Ms Higgins, the basis of your submission is very much around the need for increased training across a whole of government from police to educators. I want to get your thoughts—you mentioned legal practitioners as well—about whether improvements could be made in terms of training and continuing professional development [CPD] for solicitors and legal practitioners around DV. Ms O'Neill, at the very start you touched upon an intersection with family law. I would be interested in your thoughts as to whether, with that intersection with coercive control, there is a need for a consistency of definition or are there other aspects there. Those are my two questions.

Ms HIGGINS: Yes, there has been much discussion in regard to lawyers having family violence training. Of course, I am a strong advocate for that, but there has been some pushback with commercial and banking lawyers saying, "Why should we do it? We do not deal with this." My response to that is that they potentially do deal with it when they have women signing documents and there is potentially financial abuse. They are signing documents and perhaps they are not even signing the documents. My view is that it potentially affects every part of the legal fraternity and it is something that the Law Society should get much tougher on. We most definitely should have it as compulsory CPD training and it should also be compulsory for students going through the College of Law to attend a subject or at least some sort of training in regard to family violence, because most young solicitors hit the ground running and they need to be aware of these types of factors that are going to be before them on a daily basis.

Ms O'NEILL: That was a very good segue into where I was going. One of the comments I would make is that I am really concerned that, if there is an offence of coercive control found, then—I am not sure whether everyone is aware of section 61DA of the Family Law Act, which is a presumption of equal shared parental responsibility. That means that each parent is presumed to have the right to make decisions for education, schooling, medical, dental, where their child lives, what their child's name is and what their child's religion is. A conviction of coercive control may not displace that presumption. That could be then used to continually control that person. Do you understand that? I do not know how that would work, where you have got a State-based criminal law and you have got a Federal Family Law Act.

The CHAIR: Can you expand on your last point about how that might be used as ongoing control?

Ms O'NEILL: A clever solicitor for the father would then argue that—if that finding of the offence of coercive control is found and they are then able to argue successfully in the Family Court "Yes, but he is not a danger to his children and that is not a reason to not give him those decision-making abilities", that would just extend the control he had over his former partner, because it might not displace it. One of the reasons that presumption can be displaced is family violence, but it has to be found. I think my colleagues would probably agree with me that it is hard to displace. We sometimes get it limited, where we will get a person not allowed to make decisions for medical and dental. Often in these matters we see that the father will not let the kids get psychological help. They will not take them to the doctor. They will not allow the mother to seek appropriate medical care. But you do not get all of those presumptions displaced. That is one issue—and whether there could be some thought about that being an automatic displacement of that presumption if you get a conviction.

The CHAIR: It is a very good point and we have to consider unintended consequences and the interaction with other jurisdictions. We are here to deal with our own legislation, but obviously we have to care about others, You raise a very good point. If you would like to elaborate on that further, we would love to hear from you on notice. I did want to explore some of those things because some other issues may potentially arise that we may not be aware of. We welcome your contribution if any of you have those.

Ms O'NEILL: I will quickly add one more point to Mr Clancy's question. The other area that I am potentially concerned about—and this goes to Ms Higgins' point about lawyer education. Often zealous, good lawyers doing their job will say, "Oh, that person is now not seeing their children. That is parental alienation." Then they will bring that before the court and then the victim is potentially going to be punished for trying to protect her children against someone who has perpetrated violence against her. That is just something else that I wanted to flag that I am concerned about.

The CHAIR: We may come back to it, but there is also the double-edged sword and the fear that this could be used as a weapon as well with potential false allegations. We will not go into that right now. I will turn to my colleague first.

The Hon. ROD ROBERTS: Ms Gowland, we have all heard your impassioned pleas this afternoon for something to be done about coercive control and I think I can speak on behalf of the whole Committee in that we all agree with you. It should be in the law, but we are grappling with whereabouts in the law is most appropriate for this particular offence. That will become evident as we speak this afternoon. We have heard from a number of advocacy groups via submissions and before the Committee that we are striving for the safety of women, children and, on occasion, men who are the victims of coercive control. My and others' fear is that if we go down the criminal line of it—as I say, it needs to be legislated somewhere, but if we go into the Crimes Act, what we would need at the very least for a successful prosecution is a victim that is willing to engage with the police, willing to engage with the criminal justice system and willing to be subjected to rigorous cross-examination.

Bear in mind that we are now stepping into the criminal sphere and the onus or burden of proof is "beyond reasonable doubt". We have those issues there. I put this to you: What happens if that process is followed? Bear in mind that, in some of these cases—not all—it will be a "he said, she said" situation. Because that is how surreptitious coercive control is; there are no witnesses. If there is no physical evidence to support it or documentary evidence, we are down to a "he said she said". Bearing in mind it is beyond reasonable doubt—the victim-survivor loses the case and the accused is found not guilty. Does this then empower the offender even more and disempower our victim again? Would you like to comment on that, bearing in mind the different onuses of proof and the different courts that we are going to take this into?

Ms GOWLAND: Let me start with the process. Victims are required to give evidence in many jurisdictions, as we are all aware. Family provision in the Supreme Court or Victims Services NSW in victims compensation claims require evidence. We are today well informed by trauma-informed practices in terms of working with victims so that they are not retraumatised. In fact, I have a copy here of the Family Violence Best Practice Principles on how to work with trauma victims if you would like it.

The CHAIR: We might table that for the Committee.

Ms GOWLAND: There are many examples across the laws where victims are required to give evidence: child sexual assault, paedophile cases and sexual assault. My response to that is, yes, it can be traumatic but we are now equipped with ways to make that less traumatic. This is serious. Women and children are being killed. Women and children are being terrorised, often for the entirety of their lives after the separation. It requires a serious response, and it is only the criminal law that can provide that, in my view. If the client loses, yes, of course that is again traumatic. However, our position is that there would be little chance of that.

When you recognise that domestic abuse is this pattern of behaviour the evidence is vast: bank records, or friends who can say, "How many times have I rang her and she can't come to lunch anymore?" How many times has he told her she looked like a slut or something in front of them? This is one of the benefits of this criminalisation of coercive control. The whole range of behaviour is open for the police to gather the evidence about—and there is much objective evidence, Mr Roberts. What we do nearly all day, every day is gather the evidence. The Family Court allows us to do that well. It does get over that huge problem of he-said, she-said. That is a huge problem, and this helps overcome that because there are enormous amounts of evidence out there. In that way I would say it is less likely that those cases are lost.

The CHAIR: Ms Gowland, I ask you a follow-up question on that topic about the administrative "burden". I say that in inverted commas; it is not a burden. I do not mean it in the pejorative sense but just simply the workload of gathering that evidence. A concern that has been raised is the additional work for police. It is time-consuming and resource-heavy to gather that information. Do you care to comment on that? Obviously with all the resources in the world that would not be a problem, but police are time limited. How do you see that fitting and how do you see us rising to that challenge if that were to be the case? Police have a lot of work to do in a limited time and this would be quite resource intensive, we are told. What is your view on that?

Ms GOWLAND: That domestic abuse is resource intensive now. An enormous amount of resources is used in relation to domestic abuse now.

Ms TRISH DOYLE: We need more.

Ms GOWLAND: Sorry?

Ms TRISH DOYLE: We need more.

Ms GOWLAND: We need more, yes. The criminalisation of coercive control must come with a package of resources. Like I was saying before, prosecutors have to be resourced properly. Whether there is a domestic violence specialist team—in the Family Court we have expert witnesses; we have children's lawyers. This is a serious problem that requires a serious response. We do not say bank robberies are too expensive to police. The day my team and I sat in the police station amongst these beautiful posters stating, "Domestic violence is important" we sat there and waited while a lovely Deliveroo man was complaining that somebody had pushed over his bike. The police took half an hour to take his statement. He had no witnesses but they respected that it was a problem for him. This is a serious problem. Women and children are dying. Women and children are being terrorised for the extent of their lives. This requires a State response. Only the New South Wales Government can provide that State response. It is provided by the Constitution as your job and I ask you to please do it.

The CHAIR: That is why we are here. I apologise for interrupting my colleague on that line of questioning.

The Hon. ROD ROBERTS: That is alright.

The CHAIR: Did anyone else have anything to add to that particular topic? Ms Higgins?

Ms HIGGINS: Yes, I do. Fighting terrorism is labour intensive. Women who are victims of family violence experience terror. That is not being overdramatic; that is actually what happens for these women and children. We do not have to reinvent the wheel in New South Wales. We have a phenomenal example that was done in Scotland. It has been kicking goals. They have a success rate of 92 per cent of charges related to domestic violence abuse in comparison to the 85 per cent that they had in 2013. They have done this right. We only need to mirror what they have done. We are both a part of the Commonwealth. We are both predominantly Anglo-Saxon communities. We do not need to reinvent the wheel in regards to this.

The CHAIR: Do members have any further questions? I am sure they do, but they are very conscious of the time. It has been a very long day already. I thank you all—

Ms GOWLAND: Could I say one more thing in respect of what my colleague Ms O'Neill said? With the equal shared parental responsibility we were talking about unintended consequences. Briefly for the record, I think it would support the protection of women and children in the Family Court. I do not see it as being an

unintended consequence. I think it would do nothing but support because we would be able to provide evidence on that issue.

The CHAIR: Thank you. On behalf of the Committee we really do appreciate your time today, your efforts in your written submissions and the ongoing assistance of each of you. It is a big ask to take you out of your billable hours and away from the clients who desperately need you, so thank you for the work that you are doing. We may send some further questions to you if members have additional questions in writing. The Committee staff will be in touch to do that. If anything was taken on notice we ask that you return that within seven days; the Committee staff will also contact you about that. Your replies will form part of your evidence and will be made public as well. Thank you for your assistance. That completes our hearings today. We will be back tomorrow for the second day of hearings.

Ms GOWLAND: Thank you for your time on this important issue.

(The witnesses withdrew.)

The Committee adjourned at 16:43.