REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

CRIMES LEGISLATION AMENDMENT (COERCIVE CONTROL) BILL 2022

CORRECTED

At Macquarie Room, Parliament House, Sydney on Monday 31 October 2022

The Committee met at 9:15.

PRESENT

The Hon. Scott Barrett (Chair)

Ms Abigail Boyd
The Hon. Mark Buttigieg (Deputy Chair)
The Hon. Aileen MacDonald
The Hon. Shayne Mallard
The Hon. Peter Primrose

PRESENT VIA VIDEOCONFERENCE

The Hon. Penny Sharpe

The CHAIR: Good morning, and welcome to the public hearing for the Standing Committee on Social Issues inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022. Before I commence, I would like to acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connection to the lands and waters of New South Wales. I also acknowledge and pay my respects to Aboriginal and Torres Strait Islander people joining us today.

Today we will be hearing from a range of stakeholders. First up we will hear from Domestic Violence NSW and Full Stop Australia, followed by the Aboriginal Legal Service and then the New South Wales Bar Association. After lunch we welcome representatives from various women's legal services, community services and advocacy organisations. The day will conclude with evidence from psychiatrists, academics and financial abuse service representatives. The Committee is grateful to all the individuals and organisations who have made themselves available to appear at today's hearing on short notice. We thank everyone for making the time to give evidence to this important inquiry.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. The hearing is broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, the House has authorised the filming, broadcasting and photography of committee proceedings by representatives of media organisations from any position in the room and by any member of the public from any position in the audience. Any person filming or photographing proceedings must take responsibility for the proper use of that material. This is detailed in the broadcast resolution, a copy of which is available from the secretariat.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments you make to the media or others after you complete your evidence. Committee hearings are not a forum for people to make adverse comments about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have the right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses wish to hand up documents, they should do so through the Committee staff. Finally, due to the time frame for the Committee to table this report, witnesses will not be able to take questions on notice and there will be no supplementary questions.

In terms of the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. As we have a number of witnesses in person and via videoconference, it may be helpful to identify who questions are directed to and who is speaking. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

Ms RENATA FIELD, Acting Chief Executive Officer, Domestic Violence NSW, affirmed and examined

Dr BRIDGET MOTTRAM, Senior Policy Officer WDVCAS Program, Domestic Violence NSW, affirmed and examined

Ms HAYLEY FOSTER, Chief Executive Officer, Full Stop Australia, affirmed and examined

Ms ANGELA LYNCH, Advocacy Manager, Legal and Policy, Full Stop Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our first witnesses. Would anyone like to make a short opening statement?

RENATA FIELD: Good morning, Chairperson and Committee members. Thank you so much for the opportunity today to speak on the Crimes Legislation Amendment (Coercive Control) Bill. We would also like to start by acknowledging the Gadigal people of the Eora nation and acknowledging Elders past, present and emerging. We would like to begin by congratulating the New South Wales Government for their efforts in seeking to address coercive control and acknowledge the important bipartisan support in responding. We thank the members that engaged so passionately in the debate in the lower House, and we'd like to acknowledge all of the victim-survivors who have spoken out about their experiences in an effort to effect change.

Domestic Violence NSW is the State's peak body, representing over 130 specialist domestic and family violence services. DVNSW remains consistent in our stance that the justice system requires a mechanism to address coercive control and that we have a great opportunity here to reform and radically improve justice outcomes for victim-survivors. Coercive control is not simply a prevalent form of domestic and family violence but rather the foundation of domestic and family violence as we know it. This legislation could be significantly improved with a strong contextual definition which clarifies this.

So far, DVNSW has welcomed participating in two open consultations about coercive control, as well as an in-confidence consultation and today's hearing. We believe the community really values open and transparent consultation processes as explored in an open letter that DVNSW shared with the Attorney General in July, signed by more than 200 domestic and family violence specialists, calling for a further round of consultation on this bill. We can't stress enough the importance of elevating the knowledge of experts in the field: those who are working with victim-survivors in the context of the criminal legal system, people with lived expertise and academics specialising in this field. One victim-survivor told us what she believes the criminalisation of coercive control would do. She said:

> It will stop the diminishing of women's mental health and living under the conditions of constant fear. It will assist in identifying post separation abuse and alienation of children from their mother and assist in women's voices being validated in the family court. It will identify systems abuse by men who use courts, threats of reporting women to child protection, police, Centrelink etc. as a form of punishment or reprisals in their attempts to leave a violent relationship.

Presently, Domestic Violence NSW do not believe that the current bill will meet those expectations. As such, we do not support the bill in its current form.

The bill has shortcomings which we believe may have resulted from the rushed nature in which the bill was drafted compared to other jurisdictions. By contrast, the New South Wales bill has a lack of contextual definition. It excludes a significant portion of victim-survivors and demonstrates insufficient attention to how it aligns with protection orders or the ADVOs. We've also raised concerns regarding the removal of the term "recklessness" from the first draft to the current version.

BRIDGET MOTTRAM: Due to the complexity and fundamental nature of the many changes which would be required, resulting in reviewing this bill in its entirety, DVNSW recommends that this Committee focuses on achieving watertight oversight and review, providing protections to victim-survivors of coercive control who may utilise this legislation. As such, the three things Domestic Violence NSW would like to see out of this inquiry are the expansion of the task force to be independent rather than government run, to expand the representation on the task force, and to provide oversight for the full recommendations of the 2021 inquiry into coercive control; more prescriptive reporting requirements to ensure transparency and accountability, such as the inclusion of the definition within the review provisions; and an extended proclamation period. As Marsha Scott from Scottish Women's Aid states:

> Be ready to implement robustly … assess mercilessly with the input and feedback from your coalface, amend, and then try again.

Finally, we would also like to table a statement from the Domestic Violence NSW Lived Expertise Policy Advisory Group. A quote from the statement concedes:

> We are saddened that, in its current form, the bill is operationally limited due to the structural elements as it relates to intent. It was a recommendation from the Tasmanian submission that recklessness be included. It is concerning that this government may not truly

be committed to making this work for survivors, nor protecting women and children. We urge the government to include recklessness at the very least. The bill also needs to complement our protection order process, which it currently seems deficient in.

In summarising, we believe at this stage of the process the most significant and pressing concerns are robust implementation, monitoring, accountability and evaluation frameworks. It is imperative there is sufficient preparation time prior to the implementation and sufficient safeguards in place to prevent unintended consequences and limit traumatisation of victim-survivors. We look forward to working with the New South Wales Government in any way we can to evolve this legislation as guided above. Thank you.

The CHAIR: Thank you very much. Do we have a similar statement from Full Stop?

HAYLEY FOSTER: We do, thank you. I, too, would like to acknowledge that we are meeting on the land of the Gadigal and Eora nation and pay my respects to Elders past, present and emerging and extend that respect to any Aboriginal and Torres Strait Islander people in the room. As stated previously, I am the CEO of Full Stop Australia. Full Stop Australia is a national organisation that aims to put a full stop to sexual, domestic and family violence through providing crisis support and recovery support; education and training for organisations looking to prevent and respond; and also advocacy and advice to governments and decision-makers around better laws and policies to prevent and respond. We broadly support the submissions of Domestic Violence NSW, Women's Legal Service NSW, Wirringa Baiya Aboriginal Women's Legal Centre and others who are part of the NSW Women's Alliance.

Full Stop Australia's key concerns are that there is too high a bar with the requirement to prove intent and that it is not inclusive in the sense that it doesn't extend to family members as the current definition of "domestic relationships" does in the domestic violence legislation. We are really concerned about what this will mean for the norm-setting value of the legislation in the sense that survivors had called for this reform. At a previous organisation, we had surveyed survivors and 97 per cent of those who responded to the survey were in favour of this reform. They were speaking to the incredible power that that would send about the importance of their experience. We are really concerned that if we have the requirement of intent, the provision will be very under-utilised and that will send a very strong message to victim-survivors that what they are experiencing is not serious and does not meet the bar of seriousness. Of course, there is always the message it sends to people using those behaviours that they are going to be able to continue to get away with that behaviour.

Misidentification is the other key concern. We know that when victims are misidentified in the system, it has devastating consequences for the safety of themselves and any children in their care. This extends to the civil legislation as well. If somebody is subjected to a cross-application—an apprehended violence order against them—and they are the primary victim, that can have serious consequences in their ability to access safety and support, including the responses they get from the service system, like police and other counselling services. It is very dangerous and dire and it has ramifications in other legal systems and services as well, such as the family law system, the Migration Act and so on and so forth.

Fundamentally, we believe this bill in its current form doesn't adequately account for power differentials, which are at the heart of coercive control. That's why we are going to be making a couple of recommendations for minor amendments, but amendments that we think would make a significant difference. Our key recommendations will be to look to the Queensland Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill, which will, once passed, require a cross-examination only to be made in exceptional circumstances and provide legislative guidance on determining who is the person most in need of protection. It is really important that we are very careful about the circumstances upon which we allow for those cross-applications and those cross-orders because of that devastating risk to victim-survivors.

If we have time, I think we have written in our submission that Angela Lynch, who has also been heavily involved in the Women's Safety and Justice Taskforce Queensland and who is on the video conferencing there, will be able to speak to the findings that she and her colleagues made on the death review in Queensland around the implications of cross-applications for victim safety but also the homicides involved. Many—the vast majority—of those who are involved in homicides, particularly First Nations women, did have cross-applications and cross-orders made against them.

The second will be about including "recklessness" in the mens rea element. If we do that, we would also like to see a strengthening against misidentification by requiring the prosecution to convince the court that the behaviour would be likely, in all the circumstances, to cause serious adverse impacts on the other person's capacity to engage in some or all of their ordinary day-to-day activities, as well as likely causing a fear of violence. This is the only part of the provision which speaks to the power differential adequately. It is the likely impact of the conduct that is important, not the nature of that.

We refer—and we have referred before—to the kind of approach of having this shopping list of the types of abusive behaviours that might be included in the offence. When I look at the victim-survivors that present to

us who are the primary victims in a domestic violence situation characterised by coercive control, I can tick off many of those behaviours that will happen when somebody is under siege. We are seeing things like that there might be derogatory statements said about them or they might destroy things or there are other things that they can actually tick off on that list. What is important is the power differential. I really want to speak to that. We think including "recklessness" as well as "intention", as well as making it a requirement to meet both of those thresholds of likely causing fear of harm but also seriously impacting upon day-to-day activities, will go quite some way to addressing that.

I have two more key points. One point is around guiding principles to guide the court to consider the presentation and impacts of coercive control. We would invite you to look, again, to Queensland and the work that they have done there, as well as in Victoria, around setting out the context and the highly gendered nature. Really, it's about power and control. Again, that's another reason why we don't recommend that we stick to the definition of "intimate partner violence" because, although it is highly gendered, it is not always an intimate partner context.

Finally, we would like to reiterate our support for Domestic Violence NSW and other submissions around the need for independent and expert oversight of the implementation as part of a broader oversight mechanism of the way the criminal justice system responds to domestic, family and sexual violence. We also need to see—and this goes to the very heart of our submission very early on in the first inquiry—more specialisation in the actors in the criminal justice system. Ultimately, that's the greatest protection against misidentification and that's going to mean that it is implemented in line with the intent. Thank you very much.

The Hon. PETER PRIMROSE: You mentioned in your submission—and so did many submissions—that one of the key areas is the exclusion of "recklessness", which you have addressed in the mens rea element. Instead, the focus is on "intention" and the fact that this will very likely lead to very few successful prosecutions. That is the argument. I also note that in the original draft, "recklessness" was included. I was wondering if you could just address that and maybe give us some of the arguments for and against the fact that it was there and now it's not and why it should be there.

RENATA FIELD: We believe that it was first there because it does make a solid piece of legislation and it's based on other legislation we have in New South Wales. Intimidation and stalking are the course of conduct offences that we have in New South Wales. The test for stalking and intimidation includes if he or she knows that the conduct is likely to cause fear in the other person. "Recklessness" is also included in Northern Ireland and Scotland and, of course, a lot of the design for the New South Wales bill came from other jurisdictions. There has been, since the first and second draft, a lot of consultation. I believe some of that has been done with people representing defendants but also people who are concerned about the overrepresentation of Aboriginal people in the criminal justice system. We really defer to our colleagues at the Indigenous women's legal program and Wirringa Baiya this afternoon and support their evidence when they say that "recklessness" should be included because they are the specialists working with Aboriginal women in our communities.

I think that the bar is really set too high to have to prove intent. If you look at an actual relationship where people care about each other, this is where the majority of these relationships and this harm is happening. It's not happening between people who don't know each other; it's in domestic relationships. The majority may be when people have separated. We acknowledge that there's increased harm at that stage. But for many people they do actually want to stay in relationships with these people, and there is a lot of love between them, but there is harm also caused. I think setting it at a bar where you need to cause—there was an intent to that harm is really a disservice to the type of relationships in which this type of harm is occurring.

BRIDGET MOTTRAM: I think it's also really key to remember that perpetrators of this kind of violence are very manipulative and practised at explaining away their violence and make it sound incredibly reasonable. By asking them to do that in a court, we are just furthering that abuse and allowing it to happen in a courtroom. They will explain away that violence very easily and say, "I never meant to." So it's quite a key concern.

HAYLEY FOSTER: If I may just add, I think I really appreciate the move to include and require "intent". There has been a lot of fear around this legislation having unintended consequences. Certainly, the idea of including intent—it's a higher bar, so we are going to have less utilisation of it, which of course means that you're only going to see the very, very black-and-white, serious cases that are going to be heard. We saw this in Scotland. Even though Scotland actually includes "recklessness", we still see a very high bar because of the requirement around "a reasonable person" regarding it to have caused serious harm, but also the requirement around it impacting upon day-to-day activities and saying that people can't actually live their day-to-day lives. It's a high bar in Scotland already, even though it includes "recklessness".

Whilst I think it's admirable around making sure that we are having a higher bar and making sure it's not misused, I think it's a blunt way and not a very sophisticated way to address it. I think having the requirement of intent means basically it's going to not afford the protections that we're hoping it will afford across the board to so many more who do need it, but it also still doesn't address the misidentification that well because, like my colleague Bridget has explained—and I've worked in men's behaviour change—the very nature of gender-based violence is that the person using those behaviours feels very justified in it. They never sort of come across and say that they intended to coerce or control that person; they always think that they're doing it in that other person's best interest.

This is the reason why that objective standard is so important because this is the community saying, "Actually, regardless if you think it's okay to do this to somebody, it is unacceptable. The harm is too great, the risk of homicide is too great, and we as a community are saying actually it's not acceptable even if you think you didn't intend to cause harm by it." When I look at perpetrator patterns and the work that I've done with perpetrators, it is always a sense of recklessness rather than intention. So I think that is really important. There are smarter ways to have that safeguard, and I sort of spoke a little bit to that and I can speak more to it if you have any questions. But I think speaking to that power differential to make sure that it's not misused is going to be much more effective.

Ms ABIGAIL BOYD: Thank you all for putting in your submissions at short notice and appearing, and for being on this journey to try to criminalise coercive control over the last however many years. There is so much to unpick, but I think I want to go first to Ms Foster about the concept of laws setting a norm. When we had our six days of inquiry for the coercive control inquiry last year, we talked a lot about how it's not just about having a mechanism to punish perpetrators; it's about setting a standard of behaviour that tells people what is wrong in the first place. Can you explain how getting it wrong in this bit of legislation could actually harm the normative impact of this change and actually send the wrong message?

HAYLEY FOSTER: Yes, absolutely—smack bang on. We have to always think about the message that's being sent when we put in place legislation that has an impossibly high bar. What we know is that coercive control is at the heart of most domestic and family violence and, particularly, intimate partner violence. If you're setting a bar so high that the vast majority—so we're thinking of around 35,000—correct me if I'm wrong, but it's around that number of domestic violence offences in New South Wales. I think there are around 150 domestic violence incidents responded to by police. It's very similar in Scotland, who have around 33,000—they have only had just over 1,000 prosecutions of this offence. The bar is really high, and when we talk to victims-survivors in Scotland, for example, their sense is that there is no point actually even claiming it because the bar is so high. And that's in Scotland where they include recklessness.

I think the message that we send by making it so high and so out of reach is that which I outlined in my opening statement and that is that it is not important; it's not serious. We have this from clients all the time contacting our service, almost apologising for accessing our service because they are not quite sure that it's a serious—because the physical violence may not have started yet. In fact, as we all know, it could be the first act of violence that causes a fatality. I guess the other side of that is the message it's sending to perpetrators that they can continue this behaviour unabated. With all the effort and time and energy and the survivors who have stood up and told their stories to get some protection for others so that others don't have to go through what they went through, I think it would be such a terrible shame if we set the bar so high that it was out of reach.

Ms ABIGAIL BOYD: Ms Mottram, in your extensive experience dealing with these cases, can you explain to the Committee a little bit more about how the average perpetrator does not think that they are intending to "coerce or control" but are instead intending something quite different? I guess, again, that normative impact of what that will mean when you see something happening to a friend or something, and then you ask and they say, "Oh, no, I'm just looking after her." Could you talk more about that?

BRIDGET MOTTRAM: Really, what's at the heart of coercive control and domestic violence is a disrespect for women and a belief that men have the right to control women. That's what we see with clients where these behaviours become so normal in their everyday lives and we see them explain it away for the perpetrator. When we see perpetrators in court, they explain their violence as taking care of their partner. It's all in this very sort of "patriarchal care" lens, and it's down to "I can't let her have control of the money because she has a shopping addiction, and I'm really just trying to take care of her and make sure that she doesn't need to work", when really it's isolating her within the home. Going back to the specific intent, when we are requiring that specific intent and it doesn't meet that threshold of "intending to coerce or control", it's really just "intending to care"—is what we see that narrative being.

Ms ABIGAIL BOYD: Ms Field, one of the other kind of unusual aspects of this legislation, I guess, is the focus on behaviour as opposed to the effect of the behaviour. I understand from our inquiry previously and from the wonderful Professor Marilyn McMahon and Paul McGorrery that the other bits of legislation that we've

seen so far in the rest of the world criminalising coercive control have instead focused on the impact of the behaviour rather than the behaviour itself. Can you explain how that makes a difference in practice?

RENATA FIELD: Of course. In Scotland, it needs to be proven the impact of the abuse on the person who has experienced it—so how they have been harmed, what has hurt them through these patterns of abuse—whereas the legislation which is before us looks at the intent that a person has come into the situation with. I think there are pros and cons for both. Unfortunately, we don't have the evidence yet because in Scotland the legislation is yet to be reviewed. We don't know yet and we can't compare it, which is one of the reasons that we've been asking for a delay so that we can get that important evidence and draft ours in the correct fashion.

One of the reasons for the current drafting that the Attorney General said in a meeting to us was that focusing on the effects of the harm, he believed, would cause additional distress to the people who are most in need of protection that they have to demonstrate the harm that's being caused to them, and it puts the burden onto them. We, of course, also have a very different justice system to Scotland. In Scotland they need to have all the evidence available before they actually even charge, whereas in New South Wales we have a very pro-charge policy. So we're charging if there's any abuse or any concern. So it is really challenging to compare the various jurisdictions, and I'm unable to really say which works better, as I said, because there's simply a lack of evidence. But I think there are certainly pros and cons for both.

The Hon. AILEEN MacDONALD: In the past, abuse, I guess, has gone unreported in intimate relationships—maybe 27 times before it is actually reported. But we know that it doesn't just happen, that there is a cycle of violence: It starts with abuse-guilt-rationalisation-normal; and then, I guess, the honeymoon phase-planning-setup-abuse. So there is intent, in a way; it doesn't just happen. My question is with that cycle of violence, how could you put that into—there is a choice. They can choose to offend or they can choose not to. There are choices there. What would you say to that?

BRIDGET MOTTRAM: I suppose the key thing is—we all know there's intent. That's not what the question is. The question is what you can prove in court. It's proving in court beyond reasonable doubt that there has been intent. Pointing just to that cycle of violence, that we are all very aware of and very much behind, isn't enough to prove beyond reasonable doubt.

RENATA FIELD: I'd just add that more recent social work practice discusses the cycle of violence as more like a spectrum and that the cycle is a little bit limited in its suggestion that all relationships have specific focus or pattern. I think that relationships in practice are much more complex, which is why the more recent social work practice does disable that pattern of violence a little bit.

BRIDGET MOTTRAM: Ange, did you have anything you wanted to add?

ANGELA LYNCH: Yes, just really backing up what's been said in relation to the issue of intention and proving that. It is a criminal case, so it's very high bar in relation to determination and proof beyond reasonable doubt. I think that without that element of recklessness, it does open up also those men that will argue. Perhaps they've come from cultural backgrounds that are highly patriarchal. They will argue, "I didn't intend to hurt her. I didn't intend to control her. This is what my father did. This is what my community has done. This is how I've been brought up." That then goes to the intention was not to control or opens up those arguments. Whilst if you have that element of recklessness and those extra changes that Hayley has spoken to that just broaden the offence out a little bit, it will capture and it won't be so easy to make those arguments. Those arguments will still be made, but it will not be as easy to get them up. It just broadens out the perpetrators that may well be able to be charged with the offence and take it forward.

The Hon. AILEEN MacDONALD: When you say First Nations people will probably be captured within this, there's an awareness program as well. You say we can with the cultural awareness prepare for what's happening. How would you like to see that, so that that behaviour isn't seen as being normalised but that it's a choice, that you can treat your intimate partner with respect, or the other choice is you do this and you end up in the corrective services system?

HAYLEY FOSTER: I think that is a really, really important point. That's why in the six days of submissions for the first inquiry that we were very, very clear that this has to be accompanied by a public education campaign because we need to be setting those norms and expectations. It's the same when we had the image-based abuse and others introduced. We were going around school to school to try to let the young people know that these new laws were in place and what they meant. Right? But it was a very piecemeal process. Every time we went into a school classroom, there was that shock and horror and that they'd never heard of it and they didn't realise. So I think it is really, really important that we do have a public education campaign that proceeds and is there for the duration of the first implementation period.

But also, again going back to what Ms Boyd was mentioning about the norm-setting function, it is amazing how far, how quickly that spreads through the entire community when we actually have appropriate charges and appropriate convictions. Because it also provides confidence in the service system that many, many people—I think the WDVCASs see around 60,000 women in New South Wales each year after a domestic violence incident. The power of the response from the service system, the confidence in the service system when they're starting to see the appropriate prosecution and conviction for those offences, yes, it is quite palpable. And they're able to give those victim-survivors the confidence that what they're experiencing is not okay and it is actually considered a crime. So it's both actually having an effective bottom line in the law and the legislation but also having broad communication and education campaigns.

RENATA FIELD: I'd certainly very much support that. I think that we very much need to ensure that the public education campaigns are really evidence based and widespread. Which is one of the reasons we've also asked for a longer proclamation period, because we believe that we do need additional time to ensure that the community as well as the people enforcing this legislation have the skills and understanding to really make it work. That's building on the evidence given from Tasmania, who's the only other jurisdiction in Australia who have criminalised coercive control, who said not only did they need—that some of the concerns were that there was not enough public education before it came into place but also that the services to provide the support were not fully resourced and that the judiciary and the police didn't have a comprehensive enough understanding of domestic and family violence.

The Hon. AILEEN MacDONALD: I have a question in terms of the safety action meetings that are taking place. Could they have a bigger role in the rollout of behaviour change programs but also with identifying that in that cycle of violence that something's happening and be preventive?

BRIDGET MOTTRAM: The safety action meetings do that already, essentially. It's just that there isn't a criminal charge there to work with. Those behaviours and those patterns are very much picked up by the safety action meeting coordinator and the meetings themselves. This legislation wouldn't change the way that the SAMs function or are utilised. It would just be another tool in the SAMs' arsenal, essentially.

HAYLEY FOSTER: The response, the feedback that I've often heard from WDVCAS workers but also from police is that up until these conversations—it's already changing with the widespread conversations that we're having in the community about this—but they've actually felt like they've had one hand tied behind their back. Because those from the frontline, particularly domestic violence liaison officers, they do have expertise in identifying those patterns and the power differentials and abuse of power. But it's really frustrating because a lot of the evidence, where we could actually have a bit more of a preventative approach and make sure that people are protected earlier, they're not able to use that as evidence because it's just not a crime. So it is really important that we make sure that we back and support those safety action meeting processes and the actors in it. But it's not helped when the frontline police officers aren't able to collect so much of the very readily available information in these cases, which could assist with a proper charge and protection as well.

The Hon. SHAYNE MALLARD: Good morning. Thank you for coming in and your submission and the work you do in this area and the work you've done with the Parliament over a period of time. I'm a new person to this discussion. I haven't been involved in the inquiry but I spent the weekend reading up on it all. On the issue of calling for more consultation, I have looked at the Attorney General's second reading speech. He talked about over 10 overseas jurisdictions that have done this—every one of them very diverse, very different. You picked out something from Scotland a minute ago, but we have elements of Scotland in ours and the Attorney General says we have cherrypicked the best that we see. All of the submissions have different views. It is a very hard area to land on a spot.

What would you seek to achieve with further consultation and delaying the bill rather than getting the bill out there and sending a very strong message to the community that this is a serious crime, which is very powerful with just the legislation. I looked at the legislation we did on consent. Certain elements of the community, media, laughed at that legislation. That has really hit the ground, particularly with young men understanding what "consent" means. The power of the legislation is really important. Should we delay it to have more consultation? What do you want to achieve from consultation?

HAYLEY FOSTER: Can I just make a quick comment because I think this submission has mostly been made by Domestic Violence NSW and the sector more broadly under the Women's Alliance, but this is probably one area where we slightly differ. We have always made submissions that we do want to see it in place for the norm-setting value. We wouldn't be recommending that this particular bill be put into law straight away. We do think that there will be unintended consequences. We have an obligation not to cause harm and having a bar that high so that pretty much most people are going to be told what they are experiencing isn't coercive control—we think that that is going to have a damaging impact. We think that we must speak to the power differential and, if

we got that right, it could have quite a norm-setting value and push the reforms through the system. So we have had some variation in that, but we respect the peak, as they are the peak body, they are in contact with domestic violence services right across the State, so when they're saying, "Wait, hold off", then we need to respect that.

RENATA FIELD: I'm happy to table the open letter, which was shared with the Attorney General in July, for your convenience. The reason why initially the sector was calling for a delay was that we had six weeks to comment on this version of the bill, which was the first version we'd seen openly. It happened at the same time as three other major pieces of reform in the domestic and family violence sector—the sexual assault plan, the domestic and family violence plan and the core and cluster application for the new 75 refuges—so it was an extremely busy time for our services. We are also waiting on the evidence from Scotland, as I mentioned, which is seen as the gold standard internationally; however, we haven't actually got evidence to see what is working and what isn't working. And, finally, we've got the national principles. So there has been work to ensure that the criminalisation of coercive control nationally is happening in a consolidated fashion so that we can align the work across Australia. Ideally, we'd love to have abuse being abuse in every State and Territory, so that if people move across borders, if people are abused across borders, they are subject to similar legislation.

The Hon. SHAYNE MALLARD: I think I have run out of time, but we often go ahead of the pack in New South Wales. Modern slavery is an example.

RENATA FIELD: Certainly.

Ms ABIGAIL BOYD: I think the Hon. Shayne Mallard has raised a really good point here in that we have—and I have lost count of how many—organisations on the front line that have said, "Do not pass this bill." These are organisations that have, on the whole, been supporting a drive towards criminalising coercive control, and your organisations have spoken very fiercely—and, Ms Foster, in your previous role as well—in favour of criminalising coercive control. But throughout the entire time of your lobbying I have also heard you say that it must be done right, and I think you've set out very clearly how this could be harmful if done wrong. Given that we are waiting for that review data from Scotland, that we're waiting for a national definition to probably come out from the Federal side of things, do you think that an election cycle should be driving this bill, or do you think we should be waiting until next year when we can do it in a more relaxed and hopefully informed manner?

HAYLEY FOSTER: I don't have anything to add to previous. For us, I think this is really urgent and it doesn't need to have to necessarily come into place, but I do think it is urgent that we have some degree of urgency with it, and that is also with the police and frontline responders actually having some urgency with updating their systems and processes and practices. Having said that, if we're able to agree that this is coming into place and we continue to work on that, again we would back-up the peak body and support their submissions.

RENATA FIELD: Certainly I don't think that people's lives should be discussed as political footballs. We need to be focusing on the safety of women and children, and that should always be central and paramount, and for other victim-survivors. That said, at this stage I think we have cross-party support, and the importance of it is recognised, so I think at this stage, despite concerns about the bill, we do think that the importance now is to introduce safeguards, so we're really calling for that independent task force to be legislated. We would also like to table a list of review provisions, which we think would make it much more comprehensive than the current ones, so that if we do legislate imminently we can be doing that work to really create watertight oversight and accountability. I think that perhaps the ship has sailed on delaying this legislation which, as I said, was certainly the call from many in the sector, but we very much value the interest and the support from the Government and all of the MPs present to address this serious form of abuse.

Ms ABIGAIL BOYD: Okay, so it sounds to me then that we're accepting that it is going to go through, so now we try to make it the best we can so that it doesn't do harm. Can we talk about the proclamation period then? At the moment we've got between 15½ and 19½ months—I think 15 and 19 now. Is that sufficient time, do you think, to train the 18,000 police that will need to be trained, as well as the judiciary and everybody else?

RENATA FIELD: Short answer: No. This is not only a complex crime but a very different way of policing. I think if anyone can imagine rolling out training in two years to anybody on any simple topic—it takes time to make sure that your training is accredited, that it is evidence based and that it is supported by victim-survivors, that they have an input into it, and experts can create any training. We also think that training should be face-to-face because it does involve quite complex issues, so we do think that will take time. We understand that not only police but the judiciary, frontline services and the community need to all come along on this journey, and we are concerned that the proclamation period is too short to allow everyone to do that work. We are very supportive of the work that has been done in Queensland where they've got a very comprehensive four-year process to undertake these changes and we think that increasing the proclamation period would be very sensible. The other thing that we have considered in terms of safeguards is to introduce a statement that the task

force—the independent, hopefully, task force—would need to provide a report establishing that they are happy with the training that's being provided and that this bill could be proclaimed safely before it is.

Ms ABIGAIL BOYD: Ms Foster, you said in your opening statement about how basically the best protection against misidentification is proper training and education. What's your response, I guess, to the proclamation period, and ideally how long should it be?

HAYLEY FOSTER: Yes, absolutely, it is. I guess we've been briefed on the police training for domestic and family violence. We've been asking to see it for some time. We recently, a few months ago, were presented with the training and there is very little training that actually includes advice and inclusion from the experts who are on the front line, who are working with people with lived experience of sexual, domestic and family violence. There is very little training, if any, where somebody with lived experience is able to talk to police about the dynamics and the impacts and the presentations. So we do have concerns about the lack of resourcing that goes into police training—but not just that. It's about recruitment strategies. It's around who are we saying are best placed. If up to 80 per cent of police work is domestic and family violence and sexual violence, are we recruiting the right people? Are we actually putting out there the right kinds of requirements for the job? Are we actually, you know, looking at the value systems and the attributes of the people doing the work?

I think it's broader than training. It's about what are we saying the police force should be doing. We're actually co-piloting at the moment some co-locations with Women's Domestic Violence Court Advocacy Services and police to improve the response, particularly over the counter when somebody goes and makes a report around domestic violence. But we've always had a bit of discomfort about that, injecting more resources into policing to have somebody who is an expert working with survivors to sort of sit there and kind of hold their hand through the process and help to make that a trauma-informed process.

We actually think we need to require more from our frontline actors in that space, and that's not just about training and genuine training. It's about who have we got doing those roles; how are we supporting that workforce around compassion, fatigue, vicarious and secondary trauma, burnout; how are we making sure that they're supported through that process; how are we making sure that we're monitoring and providing additional supports when people are responding inappropriately? Again, that goes back to a broader issue picked up in the Ombudsman's process, picking up on this problem where police are investigating police all the time.

It is broader. Proclamation period—I think as we'd made our submission earlier, we don't have a problem so much with that. But, again, we would defer to the peak body around extending that. If I may, I just want to reiterate what we see as the biggest priority here. We already have a massive problem in our criminal justice system when it comes to misidentification, when it comes to criminalising particularly women who are in a situation where they already have difficulty with their interactions with the justice system, particularly for Aboriginal and Torres Strait Islander women, women with intellectual disability, women who speak another language other than English. We have a massive problem already and we think that there is a real potential here to do something about that.

If you are interested to hear from Angela Lynch about the experience in Queensland about why that's been so important and why there is so much excitement in the sector about the civil protections—and we're looking at the draft bill here when it comes to our protection orders. If we could make it much harder to make those cross-applications, that would—I know I'm speaking beyond your questions; I do apologise. I just wanted to reiterate that that is our key issue here because that's where most people are going to pick it up. Let's be honest, the way it's drafted, even if it was drafted like Scotland, this bill is not going to be used much. The bar is extremely high. The penalty is extremely low, so there's a disincentive for ODPP—and we've had conversations with them as well and police—for them to use this. They only want to be able to use it in cases where they're not going to be able to pin them on something else to make sure that they're protecting against that sort of fatal, homicide risk where coercive control is present and they don't have anything else that they can use. It's not going to be used a lot.

What is going to be used every day, hundreds of times a day, are the civil provisions. They're broken right now, and we think that it is really urgent that we fix them to make sure that we don't have a situation—we need to help police so that they don't have to and they're not forced to, because at the moment they're compelled to take out those cross-applications. If they go to a house and there has been 20 years of abuse and they say, "What's happened here?" And she says, "He did all these things." He says, "She slapped me." And the police say to her, "Did you slap him?" And she says, "Yes, I did, but," and then goes to explain it, they go, "That's it. My hands are tied. I have to take out cross-applications. You've just admitted to an assault. I'm now going to take out an application against you." The consequences for her and the ramifications are very, very serious. They're the women that we are in danger of losing to homicide, when we don't have a system that is going to be there to

protect them. I'm sorry to take your question a little bit differently to another angle, but that is our key concern and that's what we'd see as the key priority.

BRIDGET MOTTRAM: If I may add to what Hayley said, we also have the eight recommendations from the Auditor-General that the NSW Police Force is in the middle of implementing. We can also table the report that we have of the insights from specialist and domestic violence services on policing and domestic violence. I think it's really key to understand that the Auditor-General has asked for an entire shift in the way the NSW Police Force does domestic violence. To then put coercive control, which is again a new way of policing, on top of those recommendations is just unrealistic.

The Hon. MARK BUTTIGIEG: Thanks for appearing. It's a really interesting subject. I, like my colleague Shayne, am a little bit new to it, but I did do some reading as well. There seems to be a degree of acceptance, I suppose, that the legislation is going to go through in its current form. The argument we've heard is that one of the major defects is, with the lack of injection of the term "recklessness", the bar is too high. Can you give us some sort of practical example of where behaviour in a relationship which should otherwise be caught will not be caught as a result of that higher bar? I imagine when the Attorney General was crafting the legislation, the advice may have been, "If you include recklessness, there may be transient behaviour which can't be identified as clear intent or a pattern of behaviour to coerce, and therefore we have to leave it out." I imagine superficially that was probably the input into the argument. Can you give us an example of why that's so problematic?

BRIDGET MOTTRAM: We've touched on a couple of these things before. As Angela was saying, when we have people who are saying, "This is just part of my culture. I didn't think that was wrong," the same with the excuses that come up around financial abuse, "I'm just protecting her," it's those elements where when you break down every element of coercive control, which is what we know is going to happen in the courts to be able to prove it, you're going to be able to explain away every piece of behaviour, and so that intent won't be there.

RENATA FIELD: We had a client once whose partner weighed her before and after every meal, and that was to help her not get fat, but he was helping her. But what actually happened was that she had a huge eating disorder of course and she was very unwell. She wasn't eating enough. But he fully maintained that he was trying to help her not get fat. The versions from both sides can be quite different, but the impact, as you can see, is extremely detrimental to the people experiencing harm.

HAYLEY FOSTER: We would stick to the suggestions that we made because we're being pragmatic and we do think that this will pass, and so we have offered a couple of really small changes to the legislation to that provision to make it more available to those that we need to protect but also protect against that misidentification. I do think the reason they put intention in there is that they want a cautious approach, and I think that's the reason why they've stuck to intimate partners, because they want to test the waters and not do harm as we're going forward as we start to slowly bring this in. But as I said before, I think that we can be cautious without having that sort of blunt way of doing it.

If we were to redraft it, we would use a similar provision to the Scottish legislation and say "intention or recklessness" when it comes to causing serious psychological or physical harm or the day-to-day activities having a serious impact, adverse impact on day-to-day activities. We think that that harm, the intention around causing harm or recklessness to causing harm, is actually better because this is what it's about. You could say, "I really cared about this. I really cared about that person and that's why I did it," but we're talking about the recklessness as to the effect of that conduct, which causes serious harm. That's how we would draft it. But given its current state and the fact that we do think it is going to go through, we think it can be strengthened by the two amendments that we've suggested. Do you have anything to add there, Angela?

ANGELA LYNCH: No, think I that you covered it off. I think that by including recklessness, it does end those changes, that full stop, and puts forward those small changes that will make a dig difference. It does just take some of those arguments off the table. They will still be run or can still be run by defence counsel, but they're not going to be so easily captured. It can also be around the victim's mental health that he was just doing it for her own good. All of these things, the excuses that are given constantly in everyday life when working with perpetrators, they're going to be run in the court as well.

HAYLEY FOSTER: We don't actually have a definition of coercive control in the legislation, so we've included that in that critical mens rea element around intending to coercive control that person. That is highly problematic. It's going to be a filter to be able to go, "What is that?" Not only do we have to prove intention, but we have to prove that they understood what coercive control is, and what is that anyway? Let's sort of unpack that. It is going to be really hard to prove that and to reach that bar because there is so much room to argue about it. That's another concern. That's why, again, if we could redraft it, we would have redrafted it.

The CHAIR: Thank you very much for your time this morning. We really appreciate your insights. They have been very valuable. We will now move on to our next witness.

RENATA FIELD: Would you mind if we briefly tabled one last report which may be useful for you? As I said, there's not a lot of evidence from Scotland, but there is a report which details the experiences of victim-survivors.

The CHAIR: Thank you very much.

(The witnesses withdrew.)

Ms SARAH HOPKINS, Principal Solicitor of Justice Projects, Policy & Practice, Aboriginal Legal Service NSW/ACT, affirmed and examined

The CHAIR: I now welcome our next witness, Ms Sarah Hopkins. Would you like to start with an opening statement?

SARAH HOPKINS: I would. I thank the standing committee for the opportunity to provide evidence at today's hearing. I acknowledge the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation, and pay my respects to Elders past and present. The ALS is a proud community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in New South Wales and the ACT. We have long recognised the highly disproportionate impact of all forms of violence, including coercive control, on Aboriginal and Torres Strait Islander communities, in particular on women and children. This year, through our work on Closing the Gap and acknowledging the need for voices of Aboriginal women to guide the program of work under target 13, the ALS successfully advocated for the establishment of the Aboriginal women's advisory network and acts as co-Chair with Wirringa Baiya Aboriginal Women's Legal Centre.

Developing a response to coercive control and family violence for Aboriginal and Torres Strait Islander communities requires recognition of the intergenerational trauma that continues to impact on them—trauma stemming from grief and loss; systemic racism and disempowerment; entrenched poverty; limited education and employment; substance abuse; and mental health issues. Accordingly, we submit that the most effective way of addressing the issue of coercive control and supporting Aboriginal women and children is a whole-of-system response purposed to acknowledge and redress those very circumstances, with a focus on prevention, early intervention, healing and recovery, and that provides Aboriginal women with the cultural authority and mandate to design and deliver the systems and supports they need. However, given the Government's commitment to criminalisation, the ALS supports careful drafting to mitigate the anticipated adverse impacts and disproportionate impacts of the creation of a coercive control offence.

Those impacts include the potential for the offence to capture victim-survivors through misidentification and for the offence to contribute to the unacceptable over-representation of First Nations people in prison. We therefore support the drafting measures adopted to safeguard against overreach, including founding the mental element on a specific intent to control rather than on recklessness or on the intent to cause physical or mental harm. The ALS does not suggest that drafting alone will mitigate the risks. Given our concerns about the impact of the bill, we support calls from Wirringa Baiya and the Women's Alliance for the establishment of an independent task force to oversee the implementation, monitoring and evaluation of the legislation, and to ensure that, alongside criminalisation, there is an ongoing focus on systems reform and the implementation of community-led prevention measures.

The issue of policing is critical. Training will not by itself be sufficient to address the relationship of deep distrust between Aboriginal communities and the police. Systems reform is required. To this end, as a starting point, the ALS supports the call for the development of a co-responder model, with specialist domestic and family violence community-based workers co-located with the police. The risk that the ALS identifies is that the creation of this offence will be put forward and accepted as the solution to this insidious problem. The criminal law, as we know, is a blunt tool. What communities are calling for are measures to address the underlying causes. The Aboriginal and Torres Strait Islander community-controlled sector holds extensive expertise and professional knowledge that can drive these approaches while ensuring that the principle of self-determination is upheld.

Ms ABIGAIL BOYD: Thank you so much, Ms Hopkins, for coming in and giving us the benefit of your experience. I was looking back on the submission that the Aboriginal Legal Service made to our joint select inquiry last year. It was very much in line with your opening statement just now, which is basically opposing the introduction of a new coercive control offence. If it is to be introduced, having it in this what I would call conservative version that we now have from the Government—can I confirm that you would prefer for it not to be introduced at this time?

SARAH HOPKINS: "At this time" is the critical part of that sentence. It's a prioritisation issue. We would see that a whole-of-system response should be prioritised.

Ms ABIGAIL BOYD: When it comes to the second part of the bill, which, as I understand it, applies just to ADVOs, do you think that as a compromise we could perhaps just introduce that section to begin with, and then have the criminal offence applying much later?

SARAH HOPKINS: That is something that we support—a staged approach.

Ms ABIGAIL BOYD: If you had a magic wand and the ability to suggest the time between passing the bill and the offence being proclaimed, on the assumption that perhaps we have this independent task force working to make things better in the meantime, how long do you think that proclamation period should be?

SARAH HOPKINS: I'm not the expert on the time period. I do note, though, that there's a sentiment that the 14 to 20 months at the moment, with the commencement period—it's considered that it's not sufficient, so probably a period that's longer than that.

Ms ABIGAIL BOYD: In Queensland, they have three or four years—that sort of a time frame. When you're making those comments, is it limited to the offence as opposed to the impact on ADVOs? Would you be comfortable with the part of the bill that would apply to ADVOs being proclaimed earlier than that?

SARAH HOPKINS: Yes, that's right. It's important to say here that this is not to say that the ALS does not recognise the absolute urgency of this issue. The staged approach would be one that we would hope then would allow for the opportunity to educate on the definition but to immediately introduce a whole-of-systems response to address the issue and the underlying causes.

Ms ABIGAIL BOYD: Again, if we could make amendments to make this a little bit better—if we had an amendment that said that that task force really had to say before the offence was proclaimed that this whole-of-system approach had been implemented satisfactorily or that we had got a certain amount of training, that we had done a number of things, would you be in favour of that sort of amendment to the bill?

SARAH HOPKINS: I think that's right. Along with an accountability framework so that—we know that all these changes, these reforms that need to be made can't happen over a short period of time. But if there is a framework of accountability that is set up and there is a task force that is there to monitor and evaluate, I think that would be best practice.

Ms ABIGAIL BOYD: Given that we have the results of the review into the Scottish legislation coming up, I believe, by the end of the year and we also have a process of a national definition being discussed at Federal level, would you support the task force also having the ability to make recommendations on changes to the drafting to the Attorney General before it's commenced?

SARAH HOPKINS: Yes. I think that, if there is that delay, then there may be more information, more evidence at hand, so that would be appropriate. That said, in terms of the current drafting, the ALS supports the carefully calibrated approach.

Ms ABIGAIL BOYD: Can I just ask you then about that—because I understand from the submission that you made last year that the idea of limiting to intent was designed to prevent misidentification or to reduce misidentification. Can you talk us through why you feel that limiting it to intent rather than recklessness gets us there in reducing misidentification risk?

SARAH HOPKINS: I should say that limiting it to intent was for two purposes in terms of risk mitigation, which was the misidentification of victims as well as avoiding the compounding of the over-representation of Aboriginal people in custody. Recklessness is just a broader mental element. Founding the criminality on recklessness would just mean that it is more open to capture behaviour that doesn't really strike at the heart of the offence, which is that intent to deprive someone of their autonomy. I think this is particularly pertinent in Aboriginal communities, where the chaotic nature of existence and the endemic issues around mental health, alcohol and other drug issues would mean that there would be a real risk of capturing people, including victim-survivors, in this net of criminality.

The Hon. AILEEN MacDONALD: You were talking about a whole-of-system approach. With this legislation, given that they've talked about an awareness program, also behaviour change programs and, I guess, the introduction of the legislation, do you think that covers—so the awareness, again, taking into consideration the trauma seen by First Nations people in that they've grown up with the behaviour and they've almost normalised it. Do you see that as part of that whole-of-system approach?

SARAH HOPKINS: Yes, I think that the implementation task force, whether independent or not, should include within its remit the whole-of-systems response and I think that should be spelt out.

The Hon. AILEEN MacDONALD: Should, say, somebody who has been charged, been sentenced and then part of the behaviour change program—at the moment they're not culturally appropriate, I don't think. How would you see them becoming culturally appropriate for First Nations people?

SARAH HOPKINS: I agree. They're not culturally appropriate. I think this strikes at the very essence of what we're talking about and why criminalisation shouldn't be the priority. What we really need to be doing is looking at prevention and behaviour change. That's what communities are calling for. How that should be done

should be determined by communities. Communities hold solutions. There are a number of initiatives that communities are trying to lead but are not being adequately resourced and supported to lead. That's why I think if you have the task force looking into that and there's an accountability around that to say if this offence is criminalised and we're looking at a completely different kind of policing and police response—then alongside that there is that whole-of-systems response.

The Hon. AILEEN MacDONALD: Abuse does sometimes go unreported, as you say, because there is this distrust of the police. How can we work so that—I don't know, it won't melt away straightaway—they are working together so that there is safety of women and families?

SARAH HOPKINS: One thing we know is that training will not be enough. Training of police is not the only solution here. There needs to be systems reform in the way policing is delivered. We would support, as a starting point, a co-responder policing model so that you have domestic and family violence specialists working alongside police to really identify the coercive controlling behaviour—the coercion or controlling behaviour. I think that really what we're talking about here is changing the relationship between Aboriginal communities and the police. There has been some really constructive work done in this field.

An example is the work of the then local area commander Greg Moore in Bourke through Operation Solidarity. It was a very innovative approach at the time. He looked at a community policing model overseas and saw that, if police worked with a community organisation and regularly visited a house where there'd been a domestic violence incident—not just in a punitive way but in a way to check in with both victim and offender to see what kinds of supports were required within that household—that could result in a serious reduction in domestic and family violence reoffending. And it did do that. It wasn't then progressed and resourced so it didn't become a permanent change to the system, but there are those sorts of initiatives that have been stopped and started, started and stopped, that we should really be looking at. It's really about how do you create police-community partnerships across this critical area.

The Hon. AILEEN MacDONALD: I think that's happening in some—as you say, like in Bourke. My next question is regional versus city. Do you see a difference in how it's rolled out?

SARAH HOPKINS: It has to be place based so, yes, it's going to be completely different regional to city. It's going to be different regional to remote and from remote community to the next remote community. There are different issues facing different communities. Absolutely, it needs to be a place-based response.

The Hon. PETER PRIMROSE: The previous witnesses—and I go back to the issue of the mental element about recklessness. One of their arguments was that, unless recklessness was included in the mens rea element, it will result in very few successful prosecutions. That was a concern for them. Is it fair to say that the fact that it could result in very few successful prosecutions is an argument you have as to why it shouldn't be included?

SARAH HOPKINS: Sorry, I just couldn't understand the last part of that question.

The Hon. PETER PRIMROSE: Well, people from a number of organisations have argued that you needed to have recklessness included in the mens rea, that mental element, otherwise it will result in very few successful prosecutions. Is it fair to say that only having intent and not having recklessness, which will lead to very few successful prosecutions, is in fact an argument that you're making as a positive argument?

SARAH HOPKINS: I suppose the first thing I would say to that is I think it will be interesting to see during the review period whether that bears out. I think that this is a question of good policing and good investigation, and you are able to infer intent from the surrounding circumstances. So, if proper statements are taken and circumstances are established in cases where there is an intent to coercive control, that intent can be inferred from those circumstances. So I note that it's one of the issues to be reviewed. I think it's a sensible approach to commence the legislation confining it to intent to coercive control, confining the mental element to intent to coerce and control. If those concerns are borne out and there is evidence that serious matters of coercion and controlling behaviour are not being captured, then that is something that can be reconsidered at the appropriate time.

The Hon. MARK BUTTIGIEG: That's an interesting point that Peter raised, because it's sort of a counterpoint to the discussion we had with the previous witnesses. What would be the downside of including recklessness in a practical context? You mentioned the sort of erratic nature of some of those living arrangements and some of those communities. Presuming that the Attorney-General has left recklessness out to try to guard against some sort of transient behaviour which didn't form intent and a pattern of conscious manipulation, what would be a practical example which could give us a feel for how people might unintentionally get caught up in that definition if it were put in?

SARAH HOPKINS: If I could just go back first to the point you were making about the potential negative consequences of an offence like this if you did incorporate recklessness, I think we need to look at the experience following the introduction of the stalk and intimidate offence and the data around that. There was a 110 per cent increase in domestic-violence-related data that related to stalking and intimidation incidents, although there wasn't an increase in domestic-violence-related assault. For Aboriginal people, legal proceedings for stalk and intimidate increased between 2012 and 2021 by 274 per cent. And in 2021 Aboriginal people accounted for 52 per cent of the prison sentences for that offence. This impacts specifically on Aboriginal women, so Aboriginal women now make up 40 per cent of the female prison population, and the increase is made up mainly of intimidation and stalking offences. That is up 63 per cent. So we can see that if you don't carefully confine and define the mental element of an offence such as coercing and controlling behaviour, there is a huge risk here of an adverse impact on the over-representation of Aboriginal people in custody, including Aboriginal women.

The Hon. MARK BUTTIGIEG: This may sound very naive, but if two people are in a relationship and there's sporadic behaviour, like, for example, "I don't want you to withdraw any money from that account because we can't afford it", and this might happen on several occasions over a small period of time, would that fall into that definition of recklessness without necessarily being coercive control?

SARAH HOPKINS: Yes, I think that's right. It's going to be case to case but they're going to be looking at a course of conduct, and that course of conduct can include any number of behaviours. Particular to Aboriginal communities, where there are those just such extreme issues around mental health and drug and alcohol issues, for instance, and housing, it means that derogatory taunts, offensive language, all those sorts of things can start combining to create a basis for the charging of an offence. And so there's a real risk there, that that's going to impact disproportionately and adversely on Aboriginal communities.

The Hon. MARK BUTTIGIEG: I guess the default position of this legislation going through with a conservative threshold—on balance, is it your view that we're better to do that and then weigh it up and see whether or not a recklessness definition might be able to be inserted down the track? Also, if this is in the Scottish configuration, does the Scottish configuration bear out in practice any of your concerns because it includes recklessness?

SARAH HOPKINS: Well, it will be interesting to see the report that comes out of the Scottish experience. The answer to the first part of that question is that, yes, I think it's the right approach to commence the legislation with the current careful drafting of the mental element. In terms of the Scottish experience, I can't speak to that without having a look further into the report and the report to come.

The Hon. PETER PRIMROSE: Just to finalise this issue about recklessness, the bill has included in the statutory review a specific mandatory element of the review, the examination of the issue of recklessness in section 54J (2) (a). You would support that?

SARAH HOPKINS: I support the approach of carefully defining the mental element now. It's hard to say in the future if the Aboriginal Legal Service would support a review of that aspect of the definition.

The Hon. SHAYNE MALLARD: Thank you for coming in and giving your perspective. We need perspective in regard to the unintended consequences of including recklessness. I'm sort of the view that it is something that can be looked at and finessed in the future. In regard to your comments around policing, this Committee has done a lot of work around policing and gay-hate murders and the long road of restoring trust with police is still happening with the same-sex community. I'm interested in the co-responder model. Are you suggesting domestic violence professionals—not police—in police stations, or are they notified and converged together at the location of a problem? Is it contracted to a service or is it in the police service operation type of thing? Would you think it appropriate to at least trial that in areas where Aboriginal communities are a large concentration of the population?

SARAH HOPKINS: I think that the co-responder model needs to be co-designed with Aboriginal community controlled organisations and communities.

The Hon. SHAYNE MALLARD: Of course.

SARAH HOPKINS: I think that would involve domestic and family violence specialists, but as well as mental health workers and other specialists. So, in terms of trialling a co-responder model, I think it's often a sensible approach to trial things across different kinds of communities—remote, regional, metropolitan. I can't see that a co-responder model wouldn't benefit Mount Druitt as well as it would Moree and Bourke.

The Hon. SHAYNE MALLARD: I lost my train of thought on the second question. I just got a text saying that the Minister has co-funded a co-location trial already. I didn't know that. So that's a good sign. You've had a great influence already. Let's see how that goes. That's very good.

SARAH HOPKINS: There has been quite a lot of work done about the co-responding model. So I think it is a good time to step it up, if you like, and start looking at that model with a focus on domestic and family violence.

The Hon. SHAYNE MALLARD: What about the educative value of the legislation? I talked about this earlier, to earlier witnesses, and I referred to two things we've done in this Parliament. One is the legislation around modern slavery to teach corporations about identifying it, and that's happening. That is more educative, in my view. The other one is the laws, which some people pilloried in the media—the consent laws where we clearly defined consent, particularly for young men and young women. Do you think there's a strong educative role in this legislation to get it out there in this model as it is now and then work on it? It's a continuing work in progress, in my view. Do you think it's a really strong, powerful educative process?

SARAH HOPKINS: I think we have to be careful about using the criminal law as a tool of education. I think community education campaigns need to happen first, and I note that the plan here is for that education campaign to happen prior to commencement. Whether that's long enough, I don't know. I do think that your colleague's suggestion around a staged approach would provide that legislative education prior to criminalisation, but certainly I can see that, again, the urgency of this issue would mean that the criminal offence in itself would have some educative role. It's just about how best to use that with the best outcomes for women and children in particular.

The Hon. SHAYNE MALLARD: The last question, as brought to my mind before it slipped out, is sensitive. You did raise the fact that under the stalking legislation, one of the unintended consequences is the over-representation of Aboriginal people in the incarceration and charging. But I was quite surprised to hear that women were, I think you said, 40 per cent. Is that because of responding to domestic situations? Can you shine a light on why that occurred? We see the perpetrators as men—predominantly men, I mean. Why did that happen?

SARAH HOPKINS: There are so many underlying causes to that but, when we look at the data, what we know is that Aboriginal women who are perpetrators and in custody have generally been victims themselves.

The Hon. SHAYNE MALLARD: That's right. I thought so.

SARAH HOPKINS: Of course, it's also just all those other underlying issues around entrenched poverty, homelessness, overcrowding in houses, alcohol, mental health. It's just this spiral of factors.

The Hon. SHAYNE MALLARD: Then the police responding to a situation have to use the tools they've got to try and de-escalate the situation, so they go down the path of charging a woman even though she's been historically a victim.

SARAH HOPKINS: Yes, and policing is absolutely critical to this. Under-reporting, under-policing, over-policing—all these different issues around policing need to be addressed. Systemic racism—the stories of Aboriginal women who are charged with domestic violence offences can be horrific. We currently have a case at the Aboriginal Legal Service where a woman has been charged with a domestic violence offence, and there is a question about her capacity to even understand the legal proceedings, her cognitive disabilities are so serious. She has hearing problems and visual problems. So there's the ability of police to respond appropriately in situations that are complex, and that's why I think there needs to be really urgent consideration given to expansion of the co-responder model.

The Hon. SHAYNE MALLARD: I'm told Minister Ward has started a pilot, so that's good news there.

The CHAIR: Can I ask one statistics question? We heard earlier that about 80 per cent of police work is domestic and family violence. Have you got any gauge on what proportion of that might be around Aboriginal people?

SARAH HOPKINS: No, I don't have that data.

Ms ABIGAIL BOYD: Can I take you to two aspects of the drafting?

SARAH HOPKINS: Just on that previous question, sorry, I suppose you could look at the percentage of matters that are Aboriginal in terms of the criminal data itself. You could make some kind of supposition around that, but BOCSAR probably has that information.

Ms ABIGAIL BOYD: One of the odd aspects of this bill that hasn't been canvassed as much is something that the Deakin Law School picked up when we had our previous joint select inquiry into coercive control. I'll quote their submission because I think it's really useful. It says:

> The jurisdictions that have criminalised coercive control have, rather than focusing on the specific behaviours of the offender (which are myriad and unpredictable), instead focused on the effects that the offender's behaviour will have on the victim (which are myriad but far more predictable and consistent). The same approach should be taken in NSW.

When you answered the question that my colleague the Hon. Mark Buttigieg asked in relation to the opportunity for misidentification, a lot of that comes out of the fact that here we're focusing on the behaviours rather than the effect. Would you agree with that?

SARAH HOPKINS: I see the issue in terms of focusing on the effect—the impact of the behaviour itself. So, for instance, in terms of proof, requiring a victim to have to give evidence of the impact—

Ms ABIGAIL BOYD: No, sorry, it's not quite the same. In the other jurisdictions—well, it depends. But, for example, in Scotland no harm has to be proved. The point is that it's the intention to have the effect rather than the behaviour then with this intention to coerce control. What we have in this legislation is this very specific list of behaviours which, in and of themselves, might actually be unproblematic. We heard during the inquiry, for instance, that sometimes control is consensual, in whatever culture or whatever relationship. We don't want to criminalise those consensual forms of control but, when it comes to this legislation, it is setting out all of those things as being problematic behaviours rather than it being the impact of those behaviours on the victim that is problematic, which is what we get in the other jurisdictions. If, instead, that had been tightened up to refer to effect, would you have been more comfortable with then having recklessness involved?

SARAH HOPKINS: No. I don't think that's a way to bring in recklessness in a way that would mitigate the risks of a broader mental element.

Ms ABIGAIL BOYD: Do you think, though, that by framing the offence in that way, it adds to the risk?

SARAH HOPKINS: In the way that it is currently framed?

Ms ABIGAIL BOYD: Yes, instead of going for an effect-based—I point it out because it's quite unusual. I don't know why it has been drafted like that, but it has.

SARAH HOPKINS: In terms of the elements of the offence, it's still clear that a reasonable person would have to consider that the conduct would cause fear that violence would be used or a serious adverse impact. So even though it's an objective test, it's still pointing to the impact of the conduct.

Ms ABIGAIL BOYD: And, again, in other jurisdictions, what you see currently in clause 54D (1) (c) and (d)—those two things would be aligned. So there would be an intention to cause and a reasonable person could consider that it would cause. We have here two very different tests with the mental element and then the reasonable person test, which again is an unusual aspect of this legislation.

SARAH HOPKINS: I agree this is bespoke for this jurisdiction. As I've said, the ALS supports the drafting on the basis that the intent needs to attach to the coercion or the controlling behaviour because that lies at the heart of the offence—that intent to deprive someone of their autonomy. The impact can then be captured in that element, the objective element.

Ms ABIGAIL BOYD: Maybe I will leave that detailed drafting and pick it up with the Bar Association as well. But when we're talking about misidentification, there is already a massive problem, isn't there, with misidentification under the current domestic violence provisions as well as stalking and intimidation. One of the things we heard during the joint select inquiry was that a lot of that misidentification comes from the police and the judiciary not understanding the nature of coercive control—for example, the situation where a person has been controlled and coerced for a period of time and then lashes back out to defend themselves in the final moment of finding the ability to do that, and then the victim is then seen to be the aggressor. Do you think that the criminalisation of coercive control would, in itself, if done right, reduce the misidentification in other circumstances under other offences?

SARAH HOPKINS: Would the criminalisation of coercive control reduce the risk around the misidentification of victims in offences like stalk-intimidate?

Ms ABIGAIL BOYD: Yes.

SARAH HOPKINS: I think, if done right, with proper education and training and specialist policing practices, it can have the potential to change the way police are currently operating—and that's what needs to happen. They need to be able to look behind the specific incident that they've come to a house for and see what is the pattern of behaviour—what's the history here? In our experience, they often do know that, but it's easy just to deal with what's happening on the day. That's why we really need to bring in more specialist support and expertise into policing.

Ms ABIGAIL BOYD: Agreed.

The Hon. AILEEN MacDONALD: I have one question to do with ADVOs. Whilst they're in plain English, a lot of people, when they're given it, there's no explanation to them. It says "stalk and intimidate" but they don't know what that means. Sending a text message or getting a friend to contact that person can be considered. Should there be culturally appropriate ADVOs to explain? Because a lot of the time no-one tells them. They just get it and are told, "Off you go. Hopefully we won't see you again". They're supposed to be in plain English, but they're not really in plain English.

SARAH HOPKINS: Yes. There is an urgent need for culturally appropriate language not just in the explanation of an ADVO but also in ongoing support for victim and offender so that there are genuine efforts at prevention of a further offence or breach of an AVO. There needs to be that ongoing, plain English, culturally appropriate support, yes.

The CHAIR: Ms Hopkins, thank you very much for your time this morning. It's been invaluable. For the rest of us, we will take a short break and meet back here at 11.15 a.m.

(The witness withdrew.)

(Short adjournment)

Mr STEPHEN ODGERS, SC, Co-Chair, Criminal Law Committee, New South Wales Bar Association, affirmed and examined

Ms ROSE KHALILIZADEH, Public Defender and Member of Criminal Law Committee, New South Wales Bar Association, affirmed and examined

The CHAIR: I welcome our witnesses to the second session of the hearing. Would either or both of you like to make an opening statement?

STEPHEN ODGERS: Yes, we'll both make brief opening statements. The New South Wales Bar Association has been actively involved in the consultation process that led to the current bill and has supported the creation of a coercive control offence in principle. It is pleased that a number of suggestions that were made by the association for improvement of earlier drafts of the bill were given serious consideration by the Government and to a large extent were accepted. Of course, it is a complex area of legislative reform and there are a variety of views regarding the best way to address the issues. But the Bar Association's view is that, in general terms, it supports the current bill.

There is a need for the law to respond to patterns of behaviour that are not adequately captured by the existing law, and to a large extent this bill achieves that, we believe. But the Bar Association has always held concerns that the law could be used against already marginalised communities and persons in intimate relationships who need protection, particularly in two areas: women in remote and regional communities, including First Nations women, who are over-represented as documented victims of domestic violence—it's well documented that Aboriginal women are the most at-risk group of those who experience domestic and family violence in Australia; and also persons in intimate relationships where there is already a power imbalance, for example, where one person has a disability that may make them susceptible to abuse but also, and importantly, susceptible to being wrongly identified as a target of the law.

For this reason, safeguards are crucial. One of those in particular is the requirement that's found in the bill that the new offence only applies where an adult intends to coerce or control the other person. Domestic violence is all about power and not necessarily about causing harm. It can both commence and continue with an intention to coerce or control the other person. We need to limit the offence to conduct that carries one or other of those intentions—coercion or control—in order to limit the risk of the offence being used as a weapon against the very people it's designed to protect. It goes to the heart of what coercive control is about: an intention to dominate, to deprive of a sense of autonomy or freedom. For that reason, we support the requirement for an intention as specified in the bill. Thank you.

ROSE KHALILIZADEH: In addition to what Mr Odgers of senior counsel has said, the Bar Association has considered the legislation in terms of how it might lead to the misidentification of victims of domestic abuse as offenders, and how it might lead to some of the issues that Mr Odgers has already mentioned: the over-policing and the over-criminalisation of already marginalised groups such as First Nations people, First Nations women, women from a non-English-speaking background and those with cognitive impairments.

In that regard, we considered two aspects of the legislation as important. The first is the element of intention, as has already been mentioned, but also the aspect of the legislation that requires review. We support rigorous review of the legislation and how it takes effect by an appropriately representative body. The Bar Association has not considered whether that needs to be an independent task force or not. But the Association does support rigorous review in whatever form it ultimately takes, including the consideration of reporting statistics as to how many people are charged; whether those charges proceed; whether there are pleas of guilty or pleas of not guilty; whether the matter is ultimately resolved in some other way; and how the matters play out in court.

Now is the prime opportunity to start capturing those statistics—when I say "now" I mean once the legislation is implemented—so that those statistics can be used to inform the qualitative review that is undertaken by the ultimate body that does conduct that review. We also consider the delay in the implementation of the legislation as important because training and education is crucial to this legislation working and it's crucial to ensuring that the intent of the legislation is not undermined. So we are highly supportive of that time being taken for there to be training and education of the relevant groups and bodies, particularly of police, who are going to be the body who commence charges against people.

The Hon. SHAYNE MALLARD: Good morning and thank you for coming in today to give us your expert opinions on this very complex area. Would it be right to say that, in general, both of your views are that we've landed on a position with this legislation that is conservative but can work and we go forward with but that needs to be watched closely and reviewed?

STEPHEN ODGERS: Yes.

ROSE KHALILIZADEH: Yes.

The Hon. SHAYNE MALLARD: Thank you for that because we are keen to move forward with it as well. I would like to explore the issue of misidentification of victims. I have read some submissions that talked about how that could be a problem with the recklessness context. I think our last witness from the Aboriginal Legal Service touched on how stalking laws have picked up a lot of Aboriginal women, which it was suggested was unintended to have been the law. How could misidentification occur?

STEPHEN ODGERS: I think, just responding to the question of misidentification, it's not so much misidentification but, rather—let's assume you have a situation in which a person who is exercising coercive control makes allegations against the person who has perhaps complained and says, "No, it's them who have done it," and the police are confronted by these two conflicting positions. The problem with recklessness is that it is a relatively easy element to establish. The police will be thinking, "All you need for that is an awareness of a possibility that some outcome is going to occur," and since there is evidence that the outcome did occur—let's say there was some interference with freedom—therefore it's not going to be difficult to prove that element. Whereas if you have to prove intention to actually control, you're going to look much more closely at what the person did and you're going to be looking for a course of conduct to infer that.

I'm not suggesting that it's impossible to prove intention, but I'm just saying that it's a lot easier to prove recklessness. I'm also going to say that it doesn't really make much sense to talk about awareness of a possibility that you're going to be controlling a person because, at the end of the day, the whole purpose of this provision is to catch people who are trying to dominate and control people and that's their goal. I also say that, to the extent that there is a concern about harm being caused, some of those very people who you want to catch may not even believe that they are going to be causing harm. They may think, "This is in the best interests of my partner." They may not even contemplate the possibility of harm. In fact, the very people who you want to catch may not be caught by a recklessness test, and the people who you want to protect may be caught. This is discursive on my part, but there are a number of concerns with a recklessness focus, which we believe could have undesired outcomes.

ROSE KHALILIZADEH: To think of an example, it might be the case that a person who has been the victim of domestic and family abuse for a significant amount of time—and serious domestic and family abuse—responds to the perpetrator by name-calling. That conduct, if considered reckless as to whether it controls that other person, could constitute this offence. That's where a concern lies—that that could be the person who is charged and taken through the criminal justice process if a complaint is made against them by the other person in circumstances where they are the ongoing victim of domestic and family abuse.

The Hon. MARK BUTTIGIEG: That's interesting because that teases out—I was struggling with this a bit before about misidentification. So what would happen in that situation is the perpetrator would be able to flip the blame by using the recklessness provision?

STEPHEN ODGERS: They can attempt to flip blame and the law enforcement authorities, when they try to go through the requirements of the provision, would say, "Recklessness is relatively easy to establish because it's just an awareness of a possibility that something is going to happen," or "Something has happened, so they must have been aware of that." So they might say, "There is enough there to charge, so we will charge." There is always going to be a risk that a perpetrator is going to try to flip the blame. That's always going to be a risk. The concern is that it might work. That's the concern.

The Hon. MARK BUTTIGIEG: But how does that happen if the original charge and the original hearing was against the perpetrator?

STEPHEN ODGERS: I am anticipating situations in which a complaint is made somehow to the police, they come and investigate, they go and speak to the person against whom it is made and that person then says, "No, look what she did." It is usually a she. And there might be evidence of it—responses to a situation. Perhaps that person is now starting to assert their autonomy and they are going to start reacting and there is a concern about violence, but then the very reaction is seen as evidence to show that they themselves have committed some offence.

The CHAIR: The Opposition can keep going.

The Hon. PETER PRIMROSE: You have actually addressed my questions, which were all about recklessness and the mental element. I don't know whether Penny or Mark have some additional questions.

Ms ABIGAIL BOYD: I can jump in, if you like?

STEPHEN ODGERS: Can I just say one more thing about it that I think I need to emphasise? It is not so much the issue about misidentification or going after people who actually need help. One of the reasons the Criminal Law Committee and the Bar Association supported the intention requirement was that—and I think I said it in my introduction—if recklessness as to harm is the focus, quite a significant number of the people who you want to catch would not be caught because a lot of the mindset of a person who is exercising coercive control is that it is in the best interests of their partner. They think this is going to benefit them and, "If they just simply follow my directions, they will be happy." They don't even contemplate the possibility that they are going to be harmed by that. So, in fact, you would not get convictions.

The Hon. SHAYNE MALLARD: You are saying under law you'd have to prove that they were cognisant that they were being reckless?

STEPHEN ODGERS: If recklessness as to harm was the test, which some people have advanced.

The Hon. SHAYNE MALLARD: It's not our objective view of you being reckless; it's their view that they are being reckless.

STEPHEN ODGERS: That's right, so you may not even catch them with that test. That's the point I wanted to make.

The Hon. SHAYNE MALLARD: I can see that.

STEPHEN ODGERS: Sorry, I just wanted to throw that in and emphasise it.

The CHAIR: We might continue with this collegiate line of questioning.

The Hon. AILEEN MacDONALD: So the current laws don't capture coercive control at the moment and what we are proposing is an awareness program as well as the policing and support and then, upon conviction, behaviour change programs. Do you see it as appropriate that it is a whole-of-system approach?

STEPHEN ODGERS: Absolutely. Of course, there are civil reforms proposed that will make it easier to obtain orders from the courts in the civil context. But just because you create an offence with a maximum penalty of seven years, doesn't mean that a person is necessarily going to go to jail.

The Hon. AILEEN MacDONALD: I know.

STEPHEN ODGERS: And it may not be desirable that they go to jail. If they are dealt with in the Local Court, because presumably it is a matter that is seen at the lower end of the spectrum of seriousness, a magistrate may take the view that there are other options than full-time detention. It might be an ICO or a CCO or whatever it is, which are designed—as we know, instead of short prison terms, it is better often to have supervised release in the community, where you have addressed the issues and hopefully bring about behaviour change, which prisoners are not particularly good at doing.

The Hon. AILEEN MacDONALD: Yes, because you can have other support services to address alcohol and drug issues and whatever else is there as well. Also, I guess, in making the charge—with the DV analysis tool, would there be other questions that you would put in that assessment tool to get to the intent stage?

STEPHEN ODGERS: I think you're outside my expertise at that point.

ROSE KHALILIZADEH: Yes, sorry. I don't think we're privy to the DV analysis tool. Unfortunately, we can't comment on that.

STEPHEN ODGERS: Sorry about that.

ROSE KHALILIZADEH: If I could just go back to the question that you asked about having some of the programs and services that surround the legislation, and having behavioural change programs, for example—I think those things are really important because legislation can only go so far in addressing the complex dynamics of relationships, the complex dynamics of family, of children, of culture and of different backgrounds. Having those mechanisms around it, I think, are crucial to ensuring not only that this legislation can do what it intends to do but that we can also see less people going through the criminal justice system.

Ms ABIGAIL BOYD: Thank you to both of you for coming in and for your considered comments, not just here but also in the context of the joint select committee last year. I re-read your submission to that last night. I want to start with what I would view as a bit of an unusual provision. In 54D (1) (c) we talk about an intention to cause a course of conduct that consists of abusive behaviour. Presumably we read that back towards 54D (1) (a). The intention is not to have conducted the behaviour; the intention is to coerce or control the other person using that course of behaviour. Can we talk about how that gets proven in practice?

As we've heard, and as we know from the joint select committee, the vast majority of these perpetrators do not say, "Yes, I intended to control or coerce." That is just not something that is in their minds. I think you've said that as well. My understanding is that when you have what I understand to be a specific intent provision, in the absence of an admission from the accused, you have to establish the intention by inferences that are drawn from the facts. Can you explain how that could happen in this particular case?

STEPHEN ODGERS: I just need to make one amendment to what you said. I was actually focusing on intention to cause harm, or intention or recklessness to causing harm, and suggest that that in fact is often not the state of mind of the offender. But in these cases—I think in every case an intention to control is. It wouldn't be surprising to me if there were admissions made from time to time by somebody who was saying, "Well, she just has to do what I've told her to do and things will be fine." I don't think it's implausible that there won't be—I'll start again without double negatives. I think there is a real possibility that people will say, "My intention was to make her do (a), (b) and (c), believing that that was in her best interests."

Ms ABIGAIL BOYD: Sorry. In the Bar Association submission from last year, the Bar Association made it very clear that these laws needed to be developed taking into account the views of victim-survivors. We heard very clearly during the inquiry from victim-survivors. We've heard very clearly then, and also today, from the domestic and family violence peak bodies that this is not the ordinary course.

STEPHEN ODGERS: I think you've—

Ms ABIGAIL BOYD: Are we talking about a different thing when we're talking about intending to coerce and control?

STEPHEN ODGERS: We're looking at two different states of mind.

Ms ABIGAIL BOYD: Because that's not the usual perpetrator in these cases.

STEPHEN ODGERS: I'm stressing that original drafts of this bill required either intention to cause harm or recklessness as to the causing of harm.

Ms ABIGAIL BOYD: Okay. But in the current bill—

STEPHEN ODGERS: The current bill is focused on intention to coerce or control. And my point is that I accept it is very unlikely that anyone is going to admit, "I wanted to cause harm", or even to admit that they thought that it was likely or that there was a real risk of harm being caused. What I am saying is I'm not persuaded that you won't see many cases where people do acknowledge that their goal was to exercise some control over their partner.

Ms ABIGAIL BOYD: Maybe we have to infer that. What we heard today, and what we've heard throughout the course of our discussions over the last few years, is that, in most cases, a perpetrator is intending to care, or protect or do what they think is best for the victim.

STEPHEN ODGERS: Correct.

Ms ABIGAIL BOYD: Not to coerce or control.

STEPHEN ODGERS: With respect, what the perpetrator may be saying is "If she just did what I wanted her to do, that would be in her best interests." That is a form of an asserted desire to control. It is saying, "You do what I want and you will benefit." And that is manifesting an intention to control. I won't keep stressing the point. The original point of your question, with respect, was how do you prove it if you don't have an admission? The answer, of course, will be that if you can prove, as you must, a course of conduct which involves the exercise of control—so, objectively speaking, you can point to a whole series of acts or conduct which does involve the exercise of control—it is a normal aspect of the criminal law that one would normally infer from that, that that outcome was intended. If a person is in fact controlled—if their life is controlled in a myriad of different ways by another person—then it is not a big step to infer from that, that that outcome, which happened, was intended.

Ms ABIGAIL BOYD: Let's talk about a real-life example, then. A really good example came up this morning, where a person was being weighed incessantly by their partner. The perpetrator says, "No, she had asked me to do it", or says, "I was doing it for her good", or whatever. What are the facts that you are then looking at in the course of a prosecution to prove intent?

STEPHEN ODGERS: If it is "She asked me to do it", then that's not an admission of an intention to control, because what you're saying is "I didn't make her do it. She wanted it and I just simply assisted her."

Ms ABIGAIL BOYD: Or "I thought she wanted it because of her behaviour", or whatever.

STEPHEN ODGERS: Once you move to "It was in her best interests", then you are really implicitly acknowledging that you were making her do it. If you are making her do it, you intend to control her, and therefore that element is satisfied. The mere fact that—if you acknowledged that she did it because of your instructions, then effectively you've conceded that you intended to control.

Ms ABIGAIL BOYD: But, in these circumstances, inferences are subjective, not objective, correct?

STEPHEN ODGERS: Of course. The vast majority of serious crimes require a fault element of intention or, in some cases, recklessness. It is rarely the case that people make admissions, and it is usually the case that magistrates or juries draw an inference from what happened. It was the inevitable: This is what happened. The inevitable inference is you intended that outcome.

Ms ABIGAIL BOYD: In the Bar Association's previous submission to the joint select inquiry, one of the other things that was really focused on—and there were reservations around having an offence on this basis in that submission—was that you didn't want to re-traumatise victims.

STEPHEN ODGERS: Correct.

Ms ABIGAIL BOYD: How do you see this playing out where there is such a high bar on proving intent— on the impact that then has and the onus it then has on the victim to have to explain exactly in what way they were being controlled, and all of those facts that are needed in order to draw those inferences?

STEPHEN ODGERS: I don't accept the premise of the question. I don't accept that it is such a high bar. In my view, if you can prove that there's been a course of conduct that involves the clear exercise of control, the inference that it was intended to control is inevitable and will rarely present difficulties for a prosecution. The problem that we highlighted before the joint select committee was that if the test is based in terms of intention to cause harm, or recklessness to cause harm, that could present greater difficulties for a prosecution. But a test which is focused on where you've proved the course of conduct that involves the exercise of control—the person's life is in fact controlled—then, with respect, I just don't anticipate great difficulties in proving that that was the intention.

ROSE KHALILIZADEH: If one looks at the list of specific intent offences that are in the Crimes Act—and there are quite a number of them, I would say, in my experience and perhaps in Mr Odgers experience—and if one looks at the prosecutions that have arisen from those charges, those prosecution cases don't rise or fall on the existence of an admission from the accused.

Ms ABIGAIL BOYD: With those existing specific intent offences, how many of them don't involve evidence of physical harm? For example, murder is specific intent—you've got a dead person. In circumstances where there aren't bruises and a person is claiming coercive control, is there anything similar in our existing criminal code?

ROSE KHALILIZADEH: I would have to have a look at the list of specific intent offences. Some of them are violence offences and some of them are not. Of course, as you mentioned, stalking and intimidation is a specific intent offence as well. But not all of them are offences that necessarily involve the existence of some sort of objective evidence, like an injury, in order to demonstrate that the offence actually occurred. Even if there is evidence of the existence of an injury, that in and of itself is not evidence of intent. That might be evidence of something occurring or of an act occurring, but it is not evidence of the intent behind the alleged criminal offence.

STEPHEN ODGERS: Sorry to interrupt. I just want to also address one other aspect of your question, which was putting some kind of onus on the complainant. It won't be for the complainant to assert anything about what the intention of the alleged offender was; it will be a case of the complainant saying, "This is what's happened," and maybe A, B, C and D—all these events—have occurred. The police and prosecutors will say, "Does that manifest a clear intention on the part of the alleged offender to control a person?"

As I say, in the vast majority of cases, where there is a course of conduct which involves the clear exercise of control and loss of autonomy that we are talking about, that inference will be almost inescapable that that was the intention to control that person. Why else were you doing it than you were intending to control? So it won't be for the complainant to establish anything; it will be an inference drawn from the conduct and the course of conduct. As I say, I respectfully suggest that it will not present a particular difficulty for the prosecution. Perhaps more difficult for the prosecution will be the objective component, which is in section 54D (1) (d), which is to show that a reasonable person would consider that the course of conduct would be likely to cause the harm or the other things that are specified in paragraph (d).

Ms ABIGAIL BOYD: Following on from that, is it unusual, in your opinion, to see that disconnect between what we have there in paragraph (c) and (d) that you need to establish an intent to do one thing but then the objective test is for a completely different thing?

STEPHEN ODGERS: Is it unusual? I can't point to another provision which is similar to that. But, at the end of the day, you have to step back and say, "Has this got the right mix?" Original drafts were focusing on the fault element of intention to cause harm, recklessness to cause harm and then the objective component. I can see that they are addressing similar issues, but I have criticised the original draft and explained why we supported the current one—just because they are focused on different aspects. One is going to the coercion or control aspect and the other is going to the harm aspect. That's not inherently a flawed concept. Indeed, in this case, we say it's the right solution.

The Hon. PENNY SHARPE: I apologise. I have a very unstable internet connection. I apologise also if some of this has been covered. I have one question based off the answers from Mr Odgers from questioning by Ms Boyd. Does the way the bill is set out, as far as you are concerned, have enough protections to make sure that the wrong people don't get picked up in relation to this? Given the desire for some perpetrators to make it the victim's fault and try to point at them, is there anything else you think we could put into the bill to provide protection?

STEPHEN ODGERS: We are generally content that the formulations adopted in the present bill are designed to minimise the risk of people you don't want to be prosecuted being caught. It is a concern. I have to say that. We can't read the future so we are very keen on an effective review mechanism to really see how it plays out in practice. But the short answer that I can give—and maybe Ms Khalilizadeh can say something else—is that we can't for the moment think of anything better that should be added to prevent that outcome that you have raised.

ROSE KHALILIZADEH: I agree with that entirely. In its current form, particularly with the element of "intention", that is an appropriate element of the offence to try as best as possible to not have—if I can put it this way—the wrong people accused and to go through the criminal justice system under this particular offence. Of course, that will be something that will be important to keep in mind once the legislation is subject to review. I think it's a matter that all parties who are involved in that review should keep their eye on and make a note of to see how it plays out in practice.

The Hon. PETER PRIMROSE: Just a quick one from me. I note that in DVNSW's suggested additions for the review provisions they specifically quote the use of "defence" contained in section 54E. Is there anything particularly unusual about that in the law or is that a pretty common defence?

STEPHEN ODGERS: It is the normal position that, where the defendant or the accused raises a defence and there is some evidence to support it, it's for the prosecution to rebut it beyond reasonable doubt. That's desirable. We don't believe that it's appropriate to place any onus on the defendant to establish something here. It must be the case that if a magistrate or a tribunal of a jury is not persuaded that course of conduct was unreasonable—if they have a reasonable doubt about that or if they think it might have been reasonable in all the circumstances—then it's not appropriate to have a conviction succeed.

It's a final safeguard to ensure that we don't catch people who we don't want to catch. It would fit with much of what we have said today because if a person who is subject to a level of control responds angrily and makes threats like, "I'll call the police," or uses bad language or whatever, a tribunal might say, "That's entirely reasonable, in all the circumstances, that they reacted in that way," and would be completely wrong to say that that person should be caught by this provision. The long answer to a short question is that we think it's an appropriate defence.

The Hon. MARK BUTTIGIEG: To tease out a discussion that we germinated earlier today, one of the arguments put was that the threshold of onus is so high with the "intent" provision that it's almost going to be meaningless. That's how it was put to us. I am just reading through the Scottish Centre for Crime and Justice Research, which did a review of the Scottish system. My understanding is that the Scottish system has the "recklessness" provision in it.

STEPHEN ODGERS: "Recklessness" as to what, is my question.

Ms ABIGAIL BOYD: It is "intends or is otherwise reckless as to whether or not it causes the harm".

STEPHEN ODGERS: Right. Recklessness as to harm, yes.

The Hon. MARK BUTTIGIEG: Just quickly, their view is that, "At the time of writing, 11 charges of domestic abuse have been made. Five cases have gone to trial and two perpetrators were found guilty. However, it was not possible to establish specific crimes of which they were found guilty, only that they were related to domestic abuse." In essence, what they are saying is that since 2018 there haven't been that many convictions. But they do give the rider that COVID could have distorted the figures.

STEPHEN ODGERS: I know I'm repeating myself, but you have to focus on what it is that's being proved here. It's the intention to cause harm or an awareness of the possibility of harm. That may be very difficult to prove, but that's not what this bill does. It doesn't require any focus on the part of the offender about harm.

The Hon. MARK BUTTIGIEG: So a different objective, yes.

STEPHEN ODGERS: It's "Are you intending to control?" That will be a much easier thing to prove.

The Hon. MARK BUTTIGIEG: Thanks. That's a very helpful answer.

ROSE KHALILIZADEH: Even if it's "intending to control" in the view of that person for the best interests of the victim—

STEPHEN ODGERS: Exactly.

ROSE KHALILIZADEH: —that's still an intention to control.

STEPHEN ODGERS: Correct.

ROSE KHALILIZADEH: That still satisfies the element and it's still an offence.

The Hon. AILEEN MacDONALD: I have a question. In sentencing at court the magistrate will have criminal history, police facts and then, depending on whether the offender has pleaded guilty, a sentence assessment report will be done by Community Corrections. As part of that report, they will have interviewed the offender, family members, service providers and a few other things, and they will have done a review of the offence or mapped out the offence.

ROSE KHALILIZADEH: Yes.

The Hon. AILEEN MacDONALD: Not just the day of the offence but—

STEPHEN ODGERS: Well, it's a course of conduct. It's not a single day.

The Hon. AILEEN MacDONALD: So you can get to the attitude and the choice or intent. But if they don't plead guilty and they will have legal representation, what other sources of information would be needed in that sentencing episode?

STEPHEN ODGERS: Of course, if they're pleading not guilty, then they will have to be proved guilty. We haven't got to sentencing yet, have we? I guess I'm being a little bit repetitive. My own hunch—perhaps one based on 30 years of practice—is that you will need to prove the events, the course of conduct, which constituted the exercise of control. If you can show that there's a whole period—we've got all those examples of different kinds of what's called abusive behaviour in 54F, but let it be assumed that there are various examples of that conduct, which can be proved. That will be proved. The complainant will obviously have to give evidence of it, but there may be other witnesses who can give evidence of this conduct.

My hunch is that the inescapable inference was that the accused was intending to control, and then the real issue will be the objective test, which is whether or not it was a reasonable person, I think it was, likely to cause harm because the offender may think, "This is in the person's best interests. If only they would do what I tell them to do, their life would be good." The offender doesn't have that perception that it's going to be harmful, but an objective person looking at it reasonably would say, "This is going to lead to harm. This is going to cause a danger," the kinds of thing that we talk about—"a serious adverse impact on the capacity of the person to engage in some or all of the person's ordinary day-to-day activities"—that I think, objectively speaking, will be established if you show a substantial course of conduct which involves the loss of freedom that we are talking about. In those circumstances, I don't anticipate great difficulties in making out the offence.

ROSE KHALILIZADEH: May I also answer your question in a slightly different way? That's to deal with the scenario where someone has pleaded not guilty, is found guilty after a hearing or after a trial, and then they proceed to sentence. How does one deal with the tension? That tension does arise. It does arise in domestic violence-type offences already, and it arises in other offences as well. But in that scenario, say, where a sentencing assessment report is prepared, which often it is in domestic violence-type offending, it will still canvass the attitude towards the offending or the attitude towards the relationship.

What one might see, hypothetically speaking but we do see, where someone has pleaded not guilty is a report that might say the person did not acknowledge their conduct, they showed limited insight, and they were not able to appreciate XYZ. As a result of that, in then the sentencing proceedings before the decision-maker, that person does not have the benefit of matters such as remorse and the acceptance of responsibility, the demonstration of insight, good prospects of rehabilitation—all of those things that would then work in that person's favour or at least in some sort of mitigation when being sentenced.

They might be dealt with in a very different way to someone who has demonstrated that sort of insight and acceptance of responsibility, has started undertaking behavioural change programs or undertaking psychological assessment or family counselling, or all those other things that might be able to be done at the same time while proceedings are on foot—even after a plea of not guilty and being found guilty. At the point after the plea of guilty or being found guilty, there is still that mechanism to deal with the attitude of the person to the offending and to then factor that into the sentencing exercise and what needs that person might have and also what purposes of sentencing become highlighted or are at the forefront of the sentencing decision-maker's mind.

The Hon. AILEEN MacDONALD: You're right, because they do insight and impact, and then also suggestions on what they can do in the community if they're in the community. We heard from someone else with regard to how we would deal with offenders, say, in regional and urban areas. They said, "It should be place based." What's your feeling on that?

ROSE KHALILIZADEH: Could you just clarify the question, if that's okay?

The Hon. AILEEN MacDONALD: In support networks, behaviour change programs, preventative factors and policing.

ROSE KHALILIZADEH: I think that this is an issue that we deal with in every aspect of the criminal law and criminal law reform. There's the need for the adequate spread of resources between metropolitan and rural communities—culturally specific resources as well, particularly in remote communities. I think we do see that regional and remote communities and regional and remote courthouses and policing services and community services are underresourced, so that is something that I think needs to be kept in mind when talking about implementing behavioural change programs or implementing other ways of families working through issues together; that it's not something that requires someone to travel four hours when they can't do that or require someone to wait eight months on a waiting list to get the appropriate support that they need.

STEPHEN ODGERS: It has particular importance in this area because what's clear, it seems to me, is that locking these types of people up for months or relatively short periods of prison is not really the answer. What we need is attitude changes, and that requires resources that are directed at that and that the courts have those resources in the regional areas to be able to effect that. It is particularly important in this area. It is generally important that regional regions have the necessary resources, but this field is going to require real focus on that.

Ms ABIGAIL BOYD: I have a bit of a tech-y drafting question for you in one second. I wanted to clarify an issue because people are watching. You've referred a couple of times to name-calling—there might be an incident where suddenly someone name-calls, and then that person could be charged under this. Clearly, that can't happen because that's not a pattern of behaviour; we are talking about a one-off there. That in itself—I don't want the headline to go out that somehow this is criminalising name-calling. That's not what has happened.

STEPHEN ODGERS: Sure.

Ms ABIGAIL BOYD: The tech-y drafting thing, I think there's a drafting error and I just wanted your opinion. In schedule 2, items [3] to [5], which insert certain sections, if you look at [5], it is inserting something. It's the insertion of these three different things. One of them actually is drafted to amend something that has already come into place. But when you look at the proclamation, there's nothing to stop [4] coming in before [3] and [5]. Let me just clarify. So [3] inserts (b1), and then [5] inserts into (c)—which is in [4]. That's right. Sorry. So it's [5] and [4]. So [5] makes an amendment to a provision that is inserted by [4], on the assumption, presumably, that [5] gets proclaimed after [4]. But there's nothing to stop [5] being proclaimed before [4] when you go into the commencement provision.

STEPHEN ODGERS: It's a nerdy question.

Ms ABIGAIL BOYD: It's very nerdy, but I think it's an error and needs to be fixed, and I just wanted to check.

STEPHEN ODGERS: So this is a commencement issue—is that really the point?

Ms ABIGAIL BOYD: Yes. So [3] and [5] are specified to come in under clause 2 (3), whereas [4] in schedule 2 has a different proclamation and can come in earlier but doesn't have to. My question is what happens when or if [4] doesn't come in before [5].

STEPHEN ODGERS: I think the answer to that is you have the original 11 (1) (c) and that the words "or an offence mentioned in paragraph (b1)" are added after the words "personal violence offence" in the currently existing 11 (1) (c), which would then itself be amended at a later time. That seems to be the effect of it.

Ms ABIGAIL BOYD: What would be the impact of that then?

STEPHEN ODGERS: I don't know, because I don't know what it currently says.

Ms ABIGAIL BOYD: Okay. Well, if the AG is watching, maybe he can look into that.

The Hon. SHAYNE MALLARD: You can raise it in Committee of the Whole.

Ms ABIGAIL BOYD: I will.

The CHAIR: Thank you very much for your time this morning, Mr Odgers and Ms Khalilizadeh. The rest of us will break for lunch and return at 1.00 p.m.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms RACHAEL MARTIN, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, affirmed and examined

Ms DIXIE LINK-GORDON, Senior Community Access Officer, First Nations Women's Legal Program, Women's Legal Service NSW, affirmed and examined

Ms LIZ SNELL, Law Reform and Policy Coordinator, Women's Legal Service NSW, sworn and examined

The CHAIR: Would each organisation like to make a short opening statement?

RACHAEL MARTIN: We would like Dixie to start, please.

DIXIE LINK-GORDON: On behalf of Women's Legal Service NSW I begin by acknowledging the custodians of the land, the Gadigal people of the Eora nation, and pay respects to Elders past, present and emerging and respect to all those present on this important discussion today. I thank you for the opportunity to provide evidence. Liz and I will both provide brief statements. The First Nations Women's Legal Program at Women's Legal NSW has been operating for over 20 years. The main role of First Nations Women's Legal Program staff is to understand and respond to domestic, family violence and the abuses associated with it and sexual abuse and the profound impacts on First Nations women—our mothers, grandmothers, aunts, sisters, daughters and nieces.

The process through the legal system at times can be very unjust and difficult for victim-survivors, including the problems arising from misidentification of the predominant aggressor and the interactions with police and Health. We need to be able to access appropriate community education about the laws about coercive control. We want there to be a cultural systems reform that ensures the safety of women, including First Nations women, across New South Wales. The laws that are made through Parliament House have to be for everybody, including us First Nations women. We should be able to feel safe and understand the laws that are out there for us. Thank you.

The CHAIR: Ms Snell?

LIZ SNELL: Coercion and control is the foundation of domestic and family abuse. It is harmful and unacceptable and is endemic in so many relationships. We acknowledge the Government's commitment and work to date in seeking to address coercive control and bipartisan efforts to also address coercive control. Women's Legal Service NSW is an independent, free community legal service, established 40 years ago, that aims to achieve access to justice and a just legal system for women in New South Wales. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family abuse, sexual assault, family law, discrimination, victims' support, care and protection, human rights, discrimination, with a focus on sexual harassment, and access to justice. Dixie has shared about the work of our First Nations Women's Legal Program.

We have previously raised concerns about a number of aspects of the Crimes Legislation Amendment (Coercive Control) Bill, including removal of recklessness, limiting the offence to intimate-partner violence, a need for a contextual definition of "domestic and family abuse" in the Crimes (Domestic and Personal Violence) Act and, most importantly, to include a review provision on that definition of "domestic and family abuse". We continue to hold these concerns, but the most significant and pressing concern is robust implementation, monitoring and evaluation.

Misidentification has been raised as an issue of concern by many. We share those concerns. The bill proposes a gradual approach, limiting the application of the offence in the first instance, and to review this in a few years' time. Legislation of itself is a blunt tool. This of itself will not address the issue of misidentification in the long term, and it will not address misidentification in the context of the Crimes (Domestic and Personal Violence) Act, which governs apprehended violence orders. There is currently very little detail on what cultural and systems reform will be undertaken in New South Wales in the implementation of this offence. The Queensland task force recommended the appointment of an independent implementation supervisor "so the public will know the progress of implementation of its proposed reforms", with regular reporting to ensure "public accountability and transparency", and for the independent implementation supervisor to advise the Attorney General, Minister for Women, and Minister for the Prevention of Domestic and Family Violence when they are satisfied that implementation is complete. We believe this is a really important safeguard.

There are a number of ways to address misidentification which we think would benefit from the oversight of an independent task force. Some of those concrete things that we'd like to see to address misidentification include a contextual definition of "domestic and family abuse" that is focused on the dynamics of domestic and family abuse—that is, violent, threatening or other behaviour that coerces, controls or causes fear—and that this

be combined by looking at the behaviour of the relevant people in the context of the relationship as a whole, as has been proposed in the recent Queensland legislation.

The second thing is a legislative framework to identify the person most in need of protection. We refer to the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill that was recently introduced into Queensland as an example. I believe, if it could be tabled, we've extracted some of the provisions of that bill. Also substantial cultural and systems reform examining the root causes of misidentification—namely, accountability frameworks to address systemic discrimination, including systemic racism and sexism and other forms of discrimination, and an accountability mechanism to ensure the accurate identification of the predominant aggressor. Similarly, if it could be tabled, an extract from the Family Violence Reform Implementation Monitor in Victoria, from its report *Accurate Identification of the Predominant Aggressor*, which provides a set of actions to address systemic reform.

We need regular independent auditing of policing of sexual, domestic and family violence to help build confidence that police are reflecting on their practices, acknowledging where things are working well but also, and perhaps more importantly, acknowledging when things don't work well and addressing that so that people have confidence in reporting to police. Also the co-responder model of police co-responding with specialist sexual, domestic and family violence workers. We do acknowledge that the Government is piloting a process of this in five police stations, but it's important that that's available also outside business hours and that there's more than one specialist DV worker doing that work with police in each police pilot and, obviously, the framework of an independent implementation monitoring and evaluation task force with more detailed statutory review provisions. We refer to the joint submission that we provided that provides that in more detail. We believe the lives of victim-survivors, who are predominately women and children, depend on the implementation of all these aspects to ensure their safety.

The CHAIR: Thank you. Ms Martin, would you like to make an opening statement?

RACHAEL MARTIN: Yes, I would. Thank you. I also would like to acknowledge the traditional owners of the land, the Gadigal people of the Eora nation, and pay my respects to Elders past, present and to people in the room and who are listening online. I pay my respects to all the Aboriginal women who work in the domestic and sexual violence sector. I'm here on behalf of Wirringa Baiya Aboriginal Women's Legal Centre, an Aboriginal-controlled statewide community legal centre for Aboriginal women and children who have experienced domestic, family and sexual violence.

I'm sure I don't need to tell this Committee that Aboriginal women are significantly over-represented victims of domestic, family and sexual violence. Since our inception we have spoken to and assisted many Aboriginal women about their experiences of domestic abuse. All of our clients want the abuse to stop. Some want a criminal law response. Sometimes they report it to the police, despite the many barriers and fears of not being believed or being misidentified, despite the fear of community backlash, further violence and risking child-protection intervention. For some clients the only time they feel physically and psychologically safe is when their perpetrator is in custody.

Our centre wants Aboriginal women to be safe from domestic abuse. We want a criminal legal system that's responsive to Aboriginal women, that is respectful of them as individuals and is respectful of their cultural identity. Ultimately we think the abusive behaviour referred to as coercive control should be criminalised but not now, not before there is significant cultural and systems reform. Our concerns are that the current criminal legal system in relation to responding to domestic abuse is not a justice system. It does not treat Aboriginal women well, both in terms of misidentifying them as predominant aggressors or not taking seriously their accounts of domestic abuse.

In its attempt to minimise misidentification, the Government has drafted a complex offence so it would not be narrow in its application. We are disappointed that the offence is limited to intimate partner relationships. We are aware of coercive control behaviour occurring in family relationships in Aboriginal communities. The law does not exist in a vacuum. It is critically about implementation and, if the core issues of misidentification are not addressed through cultural and systems reform, the issue of misidentification will remain.

We, together with a number of other services and individuals working in the domestic violence sector, have raised concerns about the bill, but today what we want to press with this Committee is the establishment of an independent multi-agent task force to oversee the consultation on the implementation and ongoing review of the legislation. This task force should also have oversight of the cultural and systems reforms required. This independent task force should have appropriate time and capacity to consider the practice implications of the offence and it being used as grounds for an AVO under the Crimes (Domestic and Personal Violence) Act.

The task force must include representation from the recently established, government-funded Aboriginal Women's Advisory Network, known as AWAN, to ensure that Aboriginal women are consulted on every aspect of the implementation and review process. AWAN should be also consulted on every aspect of the cultural and systems reform required. We press that there must be accountability frameworks to identify and respond to systemic racism, sexism and other forms of discrimination. We would like legislators to walk in the shoes of Aboriginal women and their experience of engaging with police and the criminal legal system when reporting domestic abuse. We ask legislators to genuinely listen to Aboriginal women, understand and act for change.

The Hon. PETER PRIMROSE: Thank you very much for your submissions. We've heard this morning some debate relating to the mental element and the fact that it doesn't, in this current bill, include recklessness. We've heard arguments very strongly that it should and we've heard arguments from those such as the Aboriginal Legal Service and the Bar Association that it shouldn't. Now you have, I think, indicated that your view is that it should. I was wondering if you could please elaborate on your reasons for that and maybe why you believe that others, such as the Aboriginal Legal Service, for example, believe that that would actually be prejudicial to Aboriginal people.

LIZ SNELL: We are very concerned that recklessness is not included in the bill. It was included in the public consultation draft. We do note that there was a change in the framing, but we think specifically requiring the intention to coerce or control is actually a very high bar and we are concerned that, in setting the bar so high, there is a risk that it doesn't provide protection to many victim-survivors who are experiencing a course of conduct of abusive behaviour, but it would be difficult to prove the intent to coerce or control, and part of our fear is that in terms of it being so hard to prove that victim-survivors, predominantly women and children, won't have the benefit of having the perpetrator held accountable for their behaviour. In fact, there is potential that an unintended consequence is that it emboldens perpetrators to continue perpetrating their behaviour because they aren't held accountable. That is why we're very concerned that the bar is so high and we would really like recklessness to be included in the offence. We also note that in other jurisdictions, such as Scotland and Northern Ireland, they have "recklessness", and also in England and Wales "knows or ought to know" behaviour will have a serious effect. So several other jurisdictions have that provision included.

The Hon. PETER PRIMROSE: Can I ask if anyone else has any views?

RACHAEL MARTIN: We essentially agree with Women's Legal Service, and I think the Committee is familiar with the letter that was sent to all the members. There is obviously a very clear reason why it was removed. If recklessness wasn't an issue, it wouldn't have been removed ultimately from the exposure bill. We acknowledge that the Attorney General is trying to address the issue of misidentification, but we say the answer is cultural and systems reform. We understand that the Government has adopted a gradual approach. Given that, we say the focus now should be on oversight of the offence, an independent task force that will ensure that there is rigorous examination of this implementation, of all the cultural and systems reforms that need to be done to make sure that it is properly policed and that victims are properly listened to. This is why we say that the most pressing issue for us now is robust implementation, monitoring and evaluation.

LIZ SNELL: Could I just add one further thing to that? I totally support everything Ms Martin has said, but that is also why we're really wanting to see the robust implementation in the review provisions as well: In the expanded review provisions that the joint letter proposes, it is about embedding cultural and systems reform in the review mechanism so that in a couple of years' time, when we get to the review, there is that process that has been happening where you've been looking at the cultural and systems reform, because that is what we see as an unknown at the moment, because it is just not clear what cultural and systems reform is going to occur.

The Hon. MARK BUTTIGIEG: Following up on that, just to kind of test that thesis, we heard in evidence this morning from Mr Stephen Odgers, SC, that he actually thought that you could have a perverse effect if recklessness was included and his argument was that the intent provision is not a high threshold because essentially what he is saying is that if the perpetrator is essentially arguing that, "I thought it was good for my partner to do X, Y, Z", it would be quite easy to prove that there was intent and therefore it is a relatively low threshold. He didn't foresee any issues. Then he added that, if recklessness was added in, you could have the perpetrator flipping blame on to the victim in terms of their perhaps reactive behaviour, which would be characterised as reckless. I just want to get your thoughts on that view that he put.

RACHAEL MARTIN: It remains to be seen how easy the offence will be to prove. That's exactly why we want an independent task force to oversee that. If recklessness didn't make a difference to the offence, then, with respect, why did criminal lawyers' organisations, such as the Bar Association and Aboriginal Legal Service, advocate for its removal? Clearly it makes a difference. What we're saying is, if the bill is as is, let's make sure that we robustly watch it, monitor it, implement it and learn from what's happening with policing and with the courts, and constantly feed that back to Government and learn from those implementation issues and challenges.

One of the frustrations I think we've had with the discussion about coercive control and criminalisation is that there has been no opportunity for us all to sit around the table. We want to learn from what defence counsel has to say. We want to learn from what police have to say about the challenges of prosecuting this offence. We want to learn from the DPP. We want them to learn where we're coming from and what women who experience this type of behaviour are saying. We want to learn together—and that needs time. We say that there are many models to consider in terms of legislation and we want them all to be explored in detail so that we can learn from that, from each other.

LIZ SNELL: If I may just add to that, we keep coming back to the cultural and systems reform, and in terms of the comments that were made earlier by the Bar Association about the possible perverse outcomes, it again comes to policing of sexual, domestic and family violence and abuse. We refer in the documents that were tabled—in that bill in Queensland, in proposed section 22A that you have before you, that talks about identifying the person most in need of protection. It picks up on some of those issues you were talking about. The legislative guidelines say:

> (1) A person (the *first person*), who is in a relevant relationship with another person (the *second person*), is the *person most in need of protection* in the relationship if, when the behaviour of each of the persons is considered in the context of their relationship as a whole—
>
> (a) the behaviour of the second person towards the first person is, more likely than not—
>
> (i) abusive, threatening or coercive; or
>
> (ii) controlling or dominating of the first person and causing the first person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal … ; or
>
> (b) the first person's behaviour towards the second person is, more likely than not—
>
> (i) for the first person's self-protection or the protection of a child of the first person, another person or an animal … ; or
>
> (ii) in retaliation to the second person's behaviour towards the first person—

which is picking up on that comment that you raised—

> … or
>
> (iii) attributable to the cumulative effect of the second person's domestic violence towards the first person.
>
> (2) In deciding which person … is the person most in need of protection, a court must consider—
>
> (a) the history of the relevant relationship, and of domestic violence, between the persons; and
>
> (b) the nature and severity of the harm caused to each person …; and
>
> (c) the level of fear experienced by each person because of the behaviour …; and
>
> (d) which person has the capacity—
>
> (i) to seriously harm the other person; or
>
> (ii) to control or dominate the other person—

and other characteristics that may make a person vulnerable. That's what we mean by "starting the cultural and systems reform". That's a really important legislative framework to help the police, the courts and others to identify the person most in need of protection. Obviously, that is relevant also when it carries over to the criminal context. That's what we're meaning by "starting the cultural and systems reform".

Ms ABIGAIL BOYD: Thank you all for coming along and for your continued advocacy in this space. I was going through some of the submissions that we received in the joint select committee last year, including yours. It was incredibly clear during that inquiry, and as you've said today, how incredibly complex the drafting of this provision can get. It was one of the reasons why the inquiry didn't make recommendations on the drafting but rather looked at whether or not we should criminalise. It was the intention of that committee at that time that any drafting would then be done in this more consultative way. We had a recommendation to that effect that there would be a task force implemented that would then help with the drafting. Could you explain, particularly when it comes to the impact on First Nations people, the kind of consultation you would have in mind when drafting something like this in order to get it right?

DIXIE LINK-GORDON: From my experience of travelling around the State and speaking to many women in many communities about domestic violence and sexual assault, one of the first things they need to understand is what is the—it just has to be simply clear. What does sexual assault look like? What does domestic violence look like? Now it is what is coercive control going to be? It has to be really simply stated. It's a conversation where women are able to give feedback into how it may affect their lives. There's even the misrepresentation of women—or misidentification. There is a violent situation going on, and the police are called.

By the time the police come, the woman who may be the person who is having the experience of getting bashed or raped is outside the house screaming their head off, whether she's throwing bricks at the front door or whatever. Who is the first person to be arrested? The woman—the person who is outside making all the noise and disturbing the peace. They go, "She always goes off like that." Goes off about what? She's going off because she's maybe been locked in the house and maybe getting assaulted. Her first break was to come out and let everybody know what's going on.

The police being able to respond in an appropriate manner to that, and understand and have a bit of trauma-informed training around what happens in a DV situation, is really important. Having those conversations around the State and getting feedback from the women's groups and safe houses is really important to what law can change. The laws in this country have never really been made for us as First Nations people. Here is our chance around domestic violence and sexual assault to get things on par—that everybody is protected and everybody is safe. Accessible community education is really important. That may be sitting in a group of people, getting their feedback and talking about what this new law is going to look like, what it may look like, what you would like to see and what type of safety. I hope that answers it.

RACHAEL MARTIN: To follow on from what Dixie was saying, when you're consulting with Aboriginal First Nations communities across the State, that consultation needs to be genuine and meaningful. It means that legislators have to go to the communities. You can't expect people to come to Sydney; you actually have to go out there. As Dixie said, there's a lot of work that needs to be done leading up to explain that this is what we're talking about in terms of coercive control and this is the type of behaviour that we're trying to capture. It's critical to understand what policing looks like in those communities and what DV services are available to them to understand the practical implications of such an offence—if you were to hypothesise and say, "If you were to report this, what would this look like? How do you think you would be treated?"

As I referenced in my opening address, there is the establishment of an Aboriginal women's advisory network. We hope that network will do a lot of work in giving Aboriginal women across the State a voice that can be fed up, and information can be fed down. I think Dixie is quite familiar with that network. Perhaps she would like to elaborate a bit more about that. But we think that's a really good starting point to give a framework for Aboriginal women to have to be genuinely consulted and be part of the discussion from the outset.

Ms ABIGAIL BOYD: Before we leave that, Ms Martin, you spoke really clearly last time about, when you put in a coercive control offence, you don't just need substantial education of the police, but I believe you said something along the lines of "you also need to deprogram their racist views about Aboriginal people". Could you explain to the Committee how the need to understand how these laws can be applied in a racist way is vital in understanding how to frame the offence?

RACHAEL MARTIN: From a policing point of view? Is that what you mean?

Ms ABIGAIL BOYD: We sit here as legislators and we go, "That's what it says on the page." But the way that the words are then used and the law is then used to perpetuate racism is something that the Committee cannot really understand readily. It's why we need such in-depth consultation. Can you explain a little bit about that?

RACHAEL MARTIN: What we have said in our previous submissions is that, for example—I mean, racism exists. We can't ignore that. Racism exists in the general community, so it's no surprise that there are racist views held by police officers. They are part of our community. Their biases are both conscious and unconscious. When a police officer is attending an incident and, for example, a woman reports that she is being financially abused—there's a common racist stereotype that Aboriginal people are bad with money. That view is held by police officers.

When she is trying to report that this is what's going on in her relationship, and he is saying—as in the offender; I am going to use gendered people here because the reality is that we're talking about women as primarily victims and men as primarily offenders. That's not to say it can't happen in same-sex relationships, and that's not to say it can't be the other way. He is saying, "She's bad with money. She's useless with money. I am in control of the family finances here because she doesn't know what she's doing." What that is tapping into is racist views about Aboriginal people and mismanagement of funds.

The other example is that Aboriginal women are often bad—another stereotype is that they're bad parents, that they're not good with children and that they neglect their children. So he might be saying, "I need to do these things for the sake of the children, to run the household." He's coming from a racist view and what he's tapping into are racist views held by the community and racist views that could be held by police officers attending that incident. Therefore, in some cases the police officer may be more inclined to believe the man running the household here as opposed to his female partner who happens to be Aboriginal.

The Hon. SHAYNE MALLARD: When you say "racist views", you don't mean overtly acknowledged racist views but subconscious racist views in the culture?

RACHAEL MARTIN: It could be both, to be honest. It could be both. It could be overt; it could be unconscious.

The Hon. SHAYNE MALLARD: That needs to be addressed separately. You did say that too. Earlier today we had evidence from Ms Sarah Hopkins. It was pretty confronting. She put to us that broadening out the definition of coercive violence to recklessness—her view was—would have the consequence of increasing incarceration of Aboriginal men and women. Because she pointed to the laws in regard to stalking have resulted in quite a large increase of Aboriginal women in prisons. The last thing we want is to have that unintended consequence. You're putting to us the case that you think it needs to be looked at. I'm not sure you're saying that you want it added now, but we need to broaden it back out to that. How do you respond to her view from her service about that issue and the evidence from the stalking law?

RACHAEL MARTIN: We're familiar with that same BOCSAR data. Absolutely, we're worried about that. We're also very familiar with the BOCSAR data around the gross over-representation of Aboriginal women in custody. We know that. We work with Aboriginal women in custody. But primarily we're there working with them where there are civil and family law issues. We can say without question that most of the Aboriginal women that we work with in custody have experienced extensive sexual violence, domestic violence in their lives. So we share those concerns. What we've always argued from the outset is there's a whole heap of system and cultural reform that needs to happen first to address those issues. Why are so many Aboriginal people being charged with those offences? What's that about?

The Hon. SHAYNE MALLARD: We did touch on that before too.

RACHAEL MARTIN: It's very troubling. We're saying the criminal legal system needs to be reformed to address structural systemic racism that addresses systemic and structural sexism. That's what we want. We want a legal system that's fair.

The Hon. SHAYNE MALLARD: That's a big ask in terms of what we're trying to achieve. I don't know how parliaments can go there. It's a major restructuring of the whole way we approach law and justice. But we're looking at this one element of coercive control which, as we've heard, feeds into domestic violence and indeed even murder—the ultimate, horrible end of it. So am I right in interpreting all three of you saying here today—tell me if I'm wrong, if I misunderstood this—"Go ahead with the conservative law that the Government has put forward. Monitor it closely. Consider the impacts of it and then move forward with any changes in the near future cautiously"? Because this is designed to give another tool to try to save lives, basically.

LIZ SNELL: I think what we're saying is we do have concerns for the bill, which we've outlined—the recklessness, the limiting to intimate partner violence et cetera. But if the bill is going to proceed, then it is absolutely essential that there is an independent task force and that there are even more robust review provisions than what has currently been proposed by the amendment that has passed the Legislative Assembly. We've provided a joint submission, which outlines those review positions specifically. You're right. Cultural and systems reform work is hard. But that's why we have tried, through the review provisions, to try to pick up on some of those issues, because we need to embed cultural and systems reform.

We have to start somewhere. We can't push this down for a couple of years to wait for the next review for that to happen. That's why we want the independent task force to have that oversight. Importantly, if we look to what's been happening in Queensland, their framework is that they have recommended an independent implementation supervisor. That independent implementation supervisor is to report to the Attorney-General, Minister for Women and Minister for the Prevention of Domestic and Family Violence when they believe the implementation work has been achieved. At that point—is my understanding—there is still to do the criminalising of coercive control but they've started first on their cultural and systems reform work so that they're at a stage where, when they get to criminalising coercive control, they've done a significant part of that cultural and systems reform work.

The Hon. SHAYNE MALLARD: Ms Link-Gordon, would you like to contribute something? Would you like to add to that? Do you support the bill as it stands going forward—

DIXIE LINK-GORDON: I support what Liz has said on behalf of Women's Legal Service.

The Hon. SHAYNE MALLARD: That's an excellent answer.

The Hon. AILEEN MacDONALD: The current laws, as they are at the moment, do not capture coercive control as a criminal offence. In introducing this bill, since March 2020 there have been seven stages of consultation. In October 2020 a joint select committee was formed and over that nine months heard from

70 stakeholders. Where was I going with that? It's to do with Aboriginal people being the most incarcerated people on earth. So you're not wanting to continue with that. What would you see in the review period to change that if you're wanting to keep reckless—no, sorry. I'll rephrase that. Can I get back to you? I've got to think of how I phrase that question.

The Hon. SHAYNE MALLARD: It's good that Ms MacDonald outlined the level of consultation—if I can pick up on that work you just delivered to the Committee. Some earlier witnesses suggested, "Stop the bill and do another round of consultation." Do you think that would achieve any outcome other than just delaying the bill for another year or two?

LIZ SNELL: Just to clarify in terms of the consultation, from our perspective there have been two public consultations. There was the joint select committee process and then there was the public consultation on the bill. We know that there have also been other targeted consultation processes. Obviously, consultation is very important. We've heard, particularly from Dixie, about consultation in First Nations communities and that process. In terms of do you proceed with the bill, we just keep re-emphasising that if you are going to proceed with the bill, it is absolutely essential that it has that independent task force and those more extensive review provisions. Because what is not clear at the moment is the mechanism to ensure cultural and systems reform. That is fundamental to whether or not this will succeed.

We also reiterate what Marsha Scott from Scottish Women's Aid has commented. She talks about the vital importance of robust implementation, extensive monitoring and evaluation, having that feedback mechanism with the coalface and then doing it all over again—amending the legislation, reviewing it, and then amending and reviewing. But it's got to be robust. For us the robust is about the independent task force and the more detailed review provisions.

The Hon. SHAYNE MALLARD: I don't think anyone is suggesting—it was put to us before—this is a solution to the problem. This is just another tool to continue to work on this overall.

LIZ SNELL: Yes. But I guess we're just mindful of if you're just putting another tool in the toolkit for a system that is not working, then how can we expect there to be change? It has to have the cultural and systems reform. That's the part that seems not clear at the moment.

The Hon. AILEEN MacDONALD: So you're saying this evaluation task force needs to be independent. In the lead-up to the—there is an awareness program. Could that be the time where they make—so that it's culturally aware, as well as being based on evidence, of course. Would that be the time where you could introduce those measures in your consultation?

LIZ SNELL: If you're talking about systems and cultural reform, certainly awareness raising is a part of that and we know the Government has acknowledged that they intend to do that. There have also been conversations about education, education with police, judicial officers and legal practitioners. And absolutely there is a role for education, but it's about how effective is that training which is why we're talking about those specific review provisions in the expanded review provisions that look to the consent reforms and look at how effective is that education? Because if our current training was effective, we wouldn't be having the problems that we have with police, with decisions made in the court, with the legal profession—all the different systems. We wouldn't have that problem if the training was working effectively. That is why it is important to bring a critical analysis to how effective the training is or isn't.

But it's not just about training either. Whilst that is important, it is also about these other accountability mechanisms that we were talking about. Rachael was talking about the accountability mechanisms around systemic racism. This too is something that June Oscar the Aboriginal and Torres Strait Islander Social Justice Commissioner has recommended as well from having had her national tour of speaking with First Nations women and young girls across Australia. It is absolutely essential having an accountability mechanism for the correct identification of the person most in need of protection. Again, I refer to that document that we've tabled. In Victoria they've had a review and come up with, I think it is 16 concrete actions, that will help to lead to systemic change. So it has to be much more than just an awareness campaign; it has to be all these other aspects. Independent auditing of policing sexual domestic and family violence would be another.

Ms ABIGAIL BOYD: Just on that consultation, have you ever been consulted before today in this process on the terms of this bill?

LIZ SNELL: Sorry I don't understand the question.

Ms ABIGAIL BOYD: In the previous consultation period, the six weeks was in relation to a bill with different terms.

LIZ SNELL: Yes.

Ms ABIGAIL BOYD: That one had recklessness in it.

LIZ SNELL: Yes.

Ms ABIGAIL BOYD: Were you consulted again before recklessness was taken out?

LIZ SNELL: Yes.

Ms ABIGAIL BOYD: You were consulted? In what form?

LIZ SNELL: I think the Attorney General has referred in his second reading speech to targeted consultation with some groups post that, and we were involved in part of those targeted—

Ms ABIGAIL BOYD: Did you support the recklessness being taken out at that time?

LIZ SNELL: No.

Ms ABIGAIL BOYD: No. When we look at intimate partners, and that is something that was in that previous draft—I know there were a lot of submissions asking for that to be expanded—do you share the view of most of the rest of the sector as far as I can tell that that should be expanded? Can you explain why you think that should be expanded?

DIXIE LINK-GORDON: I'll take that up here in regard to First Nations people and intimate violence. The intimate relationships, everybody seems to have a say in communities right across the State, right across the country probably. And that person who is having the experience of the violence—you may call the victim—gets to be the victim of everybody else who wants to have a say. So when you report to police they say, "Why would you want to bring the police onto him?" Everybody is going to have a say in what happens around maybe the perpetrator and, unfortunately, the person who is having the experience of all the violence and abuse is silenced. It is never just going to be one on one in this whole situation. There are others who maintain that silence and the abuse is still happening and often ending in pretty tragic circumstances. I'd say specially for our First Nations communities and probably a lot of the other diverse communities across the State and the country, a whole bunch of people become involved—whether they are the people silencing the person or they are a part of the violence. So, honestly, we have to really consider that whole wording of "intimate partner" because there is more than just one on one.

Ms ABIGAIL BOYD: Thank you. Ms Martin did you want to comment on that?

RACHAEL MARTIN: No, I agree with what Dixie said. Certainly we will see coercive controlling behaviour in so many adult and child-parent relationships, particularly control of money. But I support Dixie's submission that often there's a lot of pressure put on a woman in an intimate partner relationship where there is domestic abuse or domestic violence—pressure put on her by extended members of his family or, in some cases, her family not to report or if she has reported, to withdraw. So it has an effect ultimately on the intimate partner in that relationship. Certainly all the work that we do with communities and the feedback that we're getting from communities when we tried to raise this issue about this offence, in terms of potentially criminalising this offence, is very strong feedback that they think it should be broader than intimate partner relationships. But we preface it again with all the system and cultural reform that we say needs to happen first.

Ms ABIGAIL BOYD: In relation to that much larger and, in my view, more important piece about the cultural reform, and as reflected in the joint select committee's report, the kind of education campaign that we're looking at and the kind of training required for any sort of systemic reform, I understand the Government has set aside $5.6 million, given that the Federal Government's milkshake video was $3.8 million in cost, do you think the $5.6 million is going to get anywhere near to what is required before this is proclaimed and put into effect?

LIZ SNELL: I think that's a very important initial contribution. But we would hope that there would be more funding available for training but also implementation. We keep coming back to the cultural systems reform that needs to occur and the cultural and systems reform work needs to be resourced.

The CHAIR: Opposition, any questions?

The Hon. MARK BUTTIGIEG: I am trying to digest a lot of the evidence that we have heard so far. One of the things that we have to ask ourselves is that this is a conservative presentation of the first cut, if you like. Would it be fair to say that the introduction of the legislation itself will enforce some of that discipline that you've been alluding to? To put it crudely it might concentrate a lot of people's minds on what we need to do to eventually get a better configuration. Is the net benefit to introduce the legislation in the conservative form that it is now and then try to improve on it, or would you prefer to see it delayed and fix it up to the point where it's as good as it can get before introducing? It seems to me to be kind of a weighing-up process that is going on. Clearly

the Attorney General has come to the conclusion that we're better off to introduce it now and then hopefully try to improve it. Would that be a fair statement or what is your view on that?

LIZ SNELL: I think our preference would have been if we had started with the cultural and systems reform like they have in Queensland. For example, the bill that we've tabled an extract of, that's a part of their first phase of legislating about coercive control, not from a criminalising perspective, but from addressing misidentification and other aspects. So that is part of the cultural and systems reform work and then building up to criminalising. That approach hasn't been taken here. So if it is now that we have this piece of legislation, in an ideal world it's not what we would like it to be. We're talking about all the problems that we see with it and the issues that need to be addressed but just keep coming back to if it's going to proceed. I can't emphasise enough about the importance of the independent task force and the robust monitoring and evaluation mechanisms.

The Hon. MARK BUTTIGIEG: In the absence of that, is this bill going to cause more net harm than good? That is the ultimate question, isn't it?

LIZ SNELL: I think there is the potential for it to cause harm if the bar is so hard to prove that it means victim-survivors may report to police and may expect their matter to be prosecuted but either it isn't, or it proceeds and it's withdrawn, or it goes to court processes and then it doesn't result in a conviction. We know from the evidence from Scotland—and we know they're only in their early days and it was only the one report, and it may have been tabled earlier this morning, in response to victim-survivors' experiences—that in some cases where exactly that thing has happened, either it has progressed and been withdraw or hasn't resulted in a conviction, the victim-survivors have expressed the view that they feel that the violence has worsened and that the perpetrator feels emboldened because they haven't been held to account. So there is a risk, and I know that's what all this conversation is about—that we know coercive control needs to be addressed. There's agreement on that. It's very serious. But it's about how best to do that in a way that does least harm to victim-survivors. That's one of our concerns.

RACHAEL MARTIN: I would agree with that.

The Hon. PENNY SHARPE: Apologies for my dropping in and out. I actually had two questions. One was, with the independent task force, what is the data that you believe that that task force should be collecting?

LIZ SNELL: Thank you for that question. What we'd like to see is—and this is a non-exhaustive list of further issues—that there be an assessment of the effectiveness of training and examination of transcripts, as was included in the sexual consent reforms; that the use or lack thereof of the provision by different groups of people, as both victim-survivors and accused, is collected; when a victim-survivor reports a course of conduct of abusive behaviour and police do not lay charges, and the reasons for not laying charges; the types of behaviours being captured by the offence and whether charges are being laid that concern non-physical forms of coercive control only; the extent to which the offence is used as a standalone offence or in combination with other charges; the use of the defence contained in section 54E; any variations in the use of the offence across different police areas; how often the new offence is used as grounds for an AVO. If the police do not think it meets the criminal threshold, when do they think the behaviour is sufficient to be grounds for an AVO; victim-survivors' experience of the criminal legal process when involved in offences under section 54D; the operation of the reasonable person test and whether it needs to be simplified; a review of the definition of "domestic abuse" in the Crimes (Domestic and Personal Violence) Act to assess its educative function and how the definition improves police practice in responding to domestic and family abuse; consideration of review provisions in Scotland's legislation, such as the number of cases for which criminal proceedings are undertaken, the number of convictions in criminal proceedings and the average length of time from service of the complaint to indictment to finding or verdict as to guilty, including a plea of guilty; and provide with respect to particular areas and types of court. In addition to this data being part of the statutory review process that would happen every couple of years, it would also be very useful to have annual data published as well.

The Hon. PENNY SHARPE: Great, thank you. That's really helpful. I think that what you're really pointing to is that there's much more to this than just quantitative statistics. It really is an oversight of what's happening on the ground and understanding the way in which the law is interacting to hopefully support victim-survivors. Thank you very much for that. I've got one more question, which deals with the "intimate partner" expansion and definition and how you see that interacting with possible misidentification issues.

RACHAEL MARTIN: The risk is there, absolutely. The risk is there with the Aboriginal community. But it's the same risk in relation to misidentifying primary victims and primary aggressors in intimate partner relationships.

The Hon. PENNY SHARPE: I think that's right. Thank you.

The Hon. SHAYNE MALLARD: Could I follow that up, if you don't mind, just to clarify? This is ostensibly legislation to address—I'm taking the position of my view on this. This is about domestic violence and another way to address some of the issues around domestic violence. I've been on the inquiry into elder abuse. If we open it up into the area of elder abuse and abuse of people with disabilities, at this point in time, it would take away from that primary focus, which is domestic violence. Would you not agree? And then we could look at opening it out later. Because then it would go into elder abuse, and it would go into abuse of people with disabilities, with carers or that type of situation.

LIZ SNELL: I think it's very important to recognise that domestic and family abuse occurs in a range of settings. Absolutely, intimate partner violence is one setting, but equally so too in terms of elder abuse and people with disabilities. In New South Wales, we've worked very hard to get the definition of "domestic relationship" in the Crimes (Domestic and Personal Violence) Act to be an expansive definition so there is that recognition. So we do believe that it is important that it's recognised in those different settings.

I know that we've been very much focused on the criminal offence, but the other aspect of this bill is about introducing a definition of "domestic abuse" in the Crimes (Domestic and Personal Violence) Act. It has been said that this is going to have a very important educative function. We don't really understand how it can have this educative function if it doesn't do a lot of work. It doesn't ground an AVO, and I recognise there are different views on whether or not it should do that because there's the fear of misidentification. But if it just sits there and doesn't ground an AVO, we're not sure how it can have an educative function, which is why it's so essential that it's also included as part of the review mechanism. Because it was an essential recommendation of the joint select committee that we start first with the introduction of a definition of "domestic and family abuse" in the apprehended domestic and family violence Act. But if you don't then do more work about whether the definition is effective, how it can be improved, whether it is helping with misidentification and how it is helping police to better respond to sexual, domestic and family abuse, we're missing an opportunity to continually be improving the response to domestic and family abuse.

The CHAIR: We might leave it there. Thank you very, very much for your time this afternoon.

(The witnesses withdrew.)

Ms ANNABELLE DANIEL, Chief Executive Officer, Women's Community Shelters, affirmed and examined

Ms LIBBY GAULD, Development Director, Women's Community Shelters, affirmed and examined

Ms JACQUI WATT, Chief Executive Officer, No to Violence, affirmed and examined

The CHAIR: Welcome, and thank you for attending this afternoon. We very much appreciate it. Before we get to our questions, would each organisation like to make a brief opening statement?

ANNABELLE DANIEL: Yes, I'm happy to go first.

The CHAIR: Feel free.

ANNABELLE DANIEL: Thank you. First, I'd like to acknowledge the traditional owners of the land, the Gadigal people of the Eora nation, and pay my respects to Elders past and present. I'd also like to offer my particular respects to Aboriginal and First Nations people here today and on the live stream. Women's Community Shelters works with local communities to establish new crisis accommodation shelters and transitional housing for women and children experiencing domestic and family violence and homelessness. We have nine shelters and 25 transitional homes across New South Wales. Last year we supported 746 women and children. Conversations with survivors are part of our every day. Our expertise is service delivery and support to this group.

Committee Chair and members, thank you for the opportunity to speak to this inquiry today and for considering this important legislation in this moment. This bill absolutely has my support. For the last two years the Government has consulted on this critical reform and has developed a bill that strikes a balance on what has proven to be a divisive issue. If this bill passes, which it should, coercive control—often likened to torture—will be a crime in Australia properly for the first time. Victims of family violence can point to the legal system as reflecting the abuse that they have been experiencing. Police will be better trained to look at the behaviour as a pattern and not as a series of isolated incidents, and I can tell the 200 women and children in Women's Community Shelters who we are currently supporting that coercive control is not just morally unacceptable behaviour but a crime—and have the State's backing when I say that.

Are there issues with the bill? I think there are. It could go further and capture the recklessness standard. I think many abusers are reckless and don't necessarily see themselves as intentionally abusive, and this bill won't capture them. Equally, we know from a decade of work with women and children that many of the most dangerous abusers don't bother to hide their intentions. They will tell their intimate partners outright that they will kill them, kill themselves, kill their pets, take their children or ruin them financially. We also know that the decision to move "recklessness" was a decision made to reflect the alternative views that have emerged. This compromise shows us that the Government has listened to diverse points of view in the consultations it has undertaken.

We don't really take risks in the domestic and family violence sector because almost everything we do prioritises safety. It is a mindset. It is the steady beat of our everyday drum. It is the first thing that we think of and the first principle of the support that we offer. However, we need to recognise the risks in not taking action. There is risk in not creating enough safe homes for women to go to, or in not helping them stay safe at home. There are risks in not investing in recovery for women and children after domestic and family violence. There are risks in not providing the programs that men need to help change abusive behaviour, and there are risks in not criminalising coercive control where 111 of 112 cases of domestic homicide in New South Wales since 2008 were found to be preceded by it. We may never be able to count the lives that will be saved by this legislation, but we can know for certain that there will be many.

We can no longer afford to let the perfect be the enemy of the good. We have a chance here to achieve a once-in-a-generation change to how we as a society conceptualise and respond to domestic abuse. We've seen it in England, where in the years after their new offence was introduced, hospital staff have been more alert for signs of coercive control. It's now a regular topic of discussion in the media and even soap operas run entire storylines around coercive control. Criminalisation is not the end goal; it is the platform from which we start changing our entire approach to family violence. While I might prefer some changes to the bill, I would not stand in the way of its passage because the status quo is not acceptable; because we've been promised a review where amendments can be made; because we've been promised funding to support the whole-of-system reforms that are necessary; and because we have finally been promised change. Thank you.

JACQUI WATT: Thank you for inviting No to Violence to address the Committee today and share our views. It's a privilege to be a part of this really important discussion for the New South Wales community; the victim-survivors; the families and friends affected by the men who use violence; the men who use violence, for whom interventions must improve; the specialist family violence sector working every day, as Annabelle says, to

address the use of violence, of which we are a national peak in the main space; and the New South Wales Parliament, in your endeavour to improve the overall legal response to family violence. Thank you.

Let me also acknowledge the First Nations people who are the traditional owners of the land we meet on, the Gadigal people of the Eora nation, and pay my respects to Elders past, present and emerging, and any First Nations people joining this discussion today in person or online. We also acknowledge the women who have been murdered by a partner or former partner and acknowledge the impact of violence on their families, friends and communities. As we did with the Joint Select Committee on Coercive Control in March 2021, we welcome the attention provided by this Committee and your inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022. We welcome the bill's recognition of the devastating impact of coercive control. As the Committee recognises—and it is what brings us before you today—it is an acknowledgement that coercive control is a significant issue. It's difficult to unpack for those who have not experienced its devastating consequences and it can be difficult to comprehend. We hope to inform your deliberations, and hope in doing so that the bill will pass the Parliament in as good a shape as possible so we can hold perpetrators of family violence to account and uphold the safety of women and children.

No to Violence has considerable expertise in working with perpetrators of domestic and family violence. We speak with men every single day, seven days a week, through our national call centre, the Men's Referral Service. We've been doing this work since 1992, so we know a thing or two about how coercive control is presented, the creativity of the people who use it and some of the pitfalls in trying to deal with it. We coordinate the NSW Men's Behaviour Change Network and provide training and professional development to enable best practice in service delivery. We do that with Victoria Police and ECAV in New South Wales, and we have established minimum standards and good practice to adhere to service compliance regimes. Every single thing we do every day in the task of engaging men is predicated on the need to keep women and children safe.

Coercive control is synonymous with domestic violence. It's something that the family violence sector has been addressing since its inception. It's not new; it's been around a long time. We believe that progress will not be made until we create a system of accountability for those who use violence and shift the disproportionate burden from the victim-survivors to the people using violence. We see this coercive control legislation as a part of that. No to Violence supports the creation of a standalone offence of criminalisation of coercive control. We acknowledge that this bill describes the nature of the patterns of abuse that characterise coercion and control beyond regarding family violence as a single incident. Family violence never was and never is confined to the experience of physical assault. It is characterised by the ever-present threat of perpetration, of ongoing further and more severe harm.

Fear is ever present in the experiences of victim-survivors and is a powerful tool for perpetrators. The bill recognises this, and it's one of its more important qualities, amongst others. The response from each part of the system needs to recognise this and the shift to recognising abuse beyond merely single incidents. Criminalisation alone will do little to protect victim-survivors in our communities unless it is introduced in parallel with a systemic response—culture change across the system. Other witnesses, I am sure—and Annabelle has just reiterated that—have expressed a similar sentiment. In developing our position, as detailed in our submission to the joint select committee and to this bill in particular—and I trust you have received and considered our recommendations—we held follow-on consultations with 500 experts, organisations, academics and victim-survivors from across Australia as well as conversations with colleagues in England and Scotland.

The issue was discussed even more recently at our national conference held in August this year. Dr Marsha Scott from Scottish Women's Aid, who was one of the first people I consulted on this matter, attended our conference remotely to offer an update on Scotland's experience of the operation of the legislation. That will remain an important connection going forward. We should all be reminded that the bill, as well drafted as it might be, will not eradicate coercive control. We need to tread cautiously in our implementation to guard against the unintended consequences that may arise by criminalisation and prepare for the anticipated consequences. That, I understand, will be the work of the implementation task force, and that will be very important work in the months ahead.

To make sure that we respond systematically, there needs to be adequate human and financial resourcing across the entirety of the response and service system. Support and service infrastructure is woefully under-resourced and this needs urgent redress. We welcome the national focus through the Council of Attorneys-General on drafting principles of coercive control and the four pillars contained within the newly launched national plan addressing family violence and its perpetration. But without agreed and committed funds across the forward estimates, without attention paid to the skills and terms and conditions of our highly specialist and highly qualified workers, without formal and well-financed national partnership agreements that deliver across all these plans and without strong contractual arrangements that fund ongoing and system work—not the

ongoing grants funding and 12-month pilot projects—we cannot guarantee that families in crisis will receive the support and the service they need, at the time they need it and in the way they need it.

There is a bigger reform that needs to be a part of this. In saying that, this has to change if the standalone offence is to achieve its desired objectives. However, we believe that through goodwill and collaboration these can be part of our systemic success. You know and I know the criminal justice system doesn't exist in isolation from the services and the support systems that lie beneath and beside it. This means the legal system, health, education, housing, technology, finance, the specialist non-government men's and women's crisis and emergency interventions and, of course, a much-improved policing response are elements of the service and support infrastructure and they all need additional investment. But this galvanised social infrastructure can be underpinned and must be underpinned by community awareness raising alongside the universal commitment to achieving gender equality. We think the bill is a step in the right direction for the next stage of reform to addressing coercive control.

I will now finally address a couple of specific areas in the bill. In doing so, I thank the Attorney General for his second reading speech, for his commitment to improve perpetrator responses and for upholding the safety of women and children. We appreciate the work of the Domestic Violence Death Review Team—about which Annabelle just read us a very crucial and important statistic—is an important mechanism for identifying and addressing patterns of abuse. In 99 per cent of the homicides they analysed, there was the presence of coercive control—undetected, unmanaged and not subject to being in front of the courts. I personally also wish to acknowledge the terrible loss of life of Olga Edwards and Jennifer Edwards and the work that John Edwards was able to get away with, as someone who had been identified by the Family Court as being a very coercively controlling partner but who was able to go undetected, and purchased firearms and caused the destruction and havoc that he caused. We must make sure that one of those can never happen again in New South Wales. I acknowledge too the second reading speeches of all the members of the New South Wales Parliament who spoke with passion, purpose and intent in truly addressing this most wicked of social issues.

Now to the bill. Section 54D adequately describes that a person commits an offence of coercion or control against another if that person intends to coerce or control the other. Section 54F describes abusive behaviour as "violence or threats against or intimidation" or "coercion and control of the person to whom the behaviour is directed". While this is satisfactory, we think that sexual violence could be captured along with the term violence because we also know that most sexual violence occurs between people known to each other and between intimate partners. In doing so, that could strengthen the operation of the bill. This would also create additional consistency with the operation of the bill at schedule 2 section 6A.

The meaning of abusive behaviour is described in section 54F and contains a list of nine types of behaviour that constitute coercion and control. The bill usefully, though not exhaustively, describes some of those types of behaviour. I reiterate for those who have not experienced or have no precise knowledge of that behaviour that it can be hard to describe and comprehend. For example, the exemplary notes about economic and financial abuse might be better described. The Committee might seek the views of the Centre for Women's Economic Security for alternative examples. Further, we note the meaning of course of conduct is contained at section 54G, which describes the patterns of behaviour that characterise coercive control and therefore captures the circumstances within which women and children find themselves trapped and at high risk of harm. While not a contextual or narrative definition, we note that schedule 2 section 6A contains a meaning of domestic abuse. This meaning has legal application and may be enhanced by additional amendment to Local Court bench books and the community awareness campaign signalled by the Attorney. We note that the Victoria Family Violence Protection Act 2008 contains a meaning drafted in very similar terms.

We support the establishment of the implementation task force and regard it as an important adviser to government, as detailed in the amendment passed in the Lower House. The task force will inform the Minister of the day on the range of systemic issues that need addressing to accompany this important bill, as I described earlier. No to Violence would be pleased to bring our 30 years of policy and operational expertise to the task force's efforts. At No to Violence, we welcome and support the introduction of a standalone coercive control offence because it recognises the full experience of abuse that victim-survivors experience and the range of behaviours that perpetrators engage in. In our reading and interpretation, the bill seeks to protect and uphold the safety of women and children, and hold the men who use violence to account. The bill seeks to shift the burden in doing so, and it has the added potential to create a better understanding of the impacts of violent behaviour and should create opportunities for earlier intervention to stop abuse before it causes serious adverse impact. We have a paper today that we can table with you, which summarises this statement. We look forward to being able to take your questions and be of assistance.

Ms ABIGAIL BOYD: Thank you to all of you for your continued amazing work in advocacy and for your previous contributions to the joint select inquiry. You will get no argument from me that we need to

criminalise coercive control. For me, at least, that is not up for debate. But when it comes to this particular bill in front of us, obviously there are lots of different ways that you could have drafted this and this is just one particular way. I will start with Ms Daniel. You said in your opening statement, "We can't let the perfect be the enemy of the good." I agree with you to an extent, perhaps until there is something that might be harmful. When you looked at this particular bill, what was it for you that got you over the line of, "These things were included" or "These things weren't included, but this bill for me is better than no bill"?

ANNABELLE DANIEL: For me, it was a reflection in that what had come out of the consultation had clearly been listened to and that there is a high standard in the bill that needs to be proven. Having had the benefit of listening to esteemed colleagues from the Bar Association earlier, they said it pretty well. From my point of view, that reflects a lot of what I would agree with, in much better language than I could probably explain it. I think this will require testing. My mind is very much to the review process. I would seek that we would review it after two years and that we continue consultation all the way through the process. If amendments need to be made, then we can make them.

Ms ABIGAIL BOYD: Did you make a submission on the draft that came before this one?

ANNABELLE DANIEL: No, the last submission that we did was as part of the inquiry generally.

Ms ABIGAIL BOYD: That inquiry didn't go into this level of detail. Again, because you hadn't been consulted or you hadn't put in a submission on this bill, what were you looking for when you saw the bill that would make you comfortable? Because you made the decision earlier, what was it that made you comfortable with this bill, particularly given the overwhelming majority of the sector is not as keen on the bill?

ANNABELLE DANIEL: I think, for me, that it's important that we do criminalise it and that there is that high bar there to begin with. To our experience, it is the case that a lot of perpetrators, certainly the ones that people speak to when they're talking about their experience—they do not hide their intent. They do not. And my sense is that that will capture some of the very, very worst and most dangerous perpetrators.

Ms ABIGAIL BOYD: So you were looking for it to only include intent? Was that what you were looking for in this bill?

ANNABELLE DANIEL: I don't know that I was looking for that specifically, but I think that this actually captures some of those very worst. When we look at how criminalisation has been done overseas—for example, if you look at the results of implementing in Scotland. From memory, the results of prosecutions in 2019-2020— and acknowledging that Scotland does have a recklessness standard, so that's there, but that it was something along the lines of 206 out of 246 prosecutions got over the line for an 84 per cent success rate. I think that's staggering for a new piece of legislation, and I think that, in and of itself, helps build confidence. I would also say that the building in of this standard, and the fact that there is that high bar, and that it will capture those perpetrators who do not hide their intentions, is a first step in the criminalisation.

Ms ABIGAIL BOYD: Okay, but you've just mentioned the Scottish law there. That was, and still is, regarded as the gold standard. The bill that the New South Wales Government has put up is nothing like it. If we had pushed for a more detailed consultation on this particular draft, wouldn't that have been better than just supporting this and hoping that the review will flush out the issues in a couple of years' time?

ANNABELLE DANIEL: I think there are probably two ways that you can go on that. I think it is really important to—as I've said in my statement, I'm not averse to the idea of a recklessness standard. But whether we include that now, or whether we include that in a couple of years' time, and then continue the training, and continue the updating, and continue the consultation—I think that's also a valid way to proceed.

The Hon. AILEEN MacDONALD: I quote from the Attorney General when he introduced the bill in Parliament, saying:

> We cannot in good conscience agree that it is deplorable, and then agree to do nothing, or to shift a decision down the road to the next Parliament because lives depend on this.

If we don't do something now, these offences will continue. Having said that, if the bill is passed, it's not until February 2024 minimum, so there's enough time there for the training and education and resourcing and that it's funded. What do you say with regard to that side of things?

ANNABELLE DANIEL: I think that's really interesting and I think there's been a lot of discussion. I know there's been a lot of points of view about what the length of time should be for the implementation. I think a lot of that will also depend, to a degree, on the appetite of the Government for really front-ending meaningful training, meaningful intervention, meaningful funding for all of those things. Just noting that it's actually quite extraordinary to have an effect date for legislation that actually goes beyond 12 months. A lot of law reform

commissions have actually spoken to the issue of something having to be really out of the box to take such a long period of time to actually have effect.

My mind is always to the lives that could be saved if you act sooner rather than later. But, again, I do want to acknowledge the very important points of view of others who have come forward, in both this inquiry and others, to say how important it is that we do get the cultural change right. But we can get it right with a big investment, with training that partners with the domestic and family violence sector, that uses the expertise that we have from 50 years of working in and around survivors and victims at all points of the system. Use us: That is what we're here for. I think we can get it done in a shorter period of time than, say, four years. I also worry, with that long a potential proclamation period, that political will and investment might die off in that time.

JACQUI WATT: My thoughts on that are that we, in a way, would actually begin the preparation now in our minds and in our services. For Annabelle's organisation and others, I know, the sooner we begin the preparations, the better. Ultimately, it's your decision, I guess, and your political roles, whether you vote for it or not. My feeling is that we should pass this bill. And I think, in concert with a lot of what Annabelle has said, we've got two years to review it. We can at least begin to plan for people being ready to go live on that date. It will take a lot of work. I don't think any one of us is shrinking away from the sheer amount of work it will take to get the police and the judiciary and other agencies ready for this. But I don't think we have a moment to lose. Again, I think we would urge that we think the bill really needs to be passed.

The Hon. AILEEN MacDONALD: Based on that awareness program, it shouldn't be—we heard from someone else that it should be place based, not sort of a cookie-cutter approach that the same training and awareness is rolled out. What would you say? Because regional New South Wales would be different to remote as different to city. How would you see that awareness program being rolled out?

ANNABELLE DANIEL: I think it has to be tailored to individual communities. It's not just the place base, but also culturally and linguistically diverse people and people affected by disability. Those who work in those groups are at the best place and at the front line to develop the appropriate resources to make that happen. Certainly, it's incredibly important that we listen to that frontline expertise on the ground to actually make that happen and provide the resources to make that happen.

The Hon. AILEEN MacDONALD: You mentioned intent, and that most perpetrators signal their intent. You have the cycle of violence, so that could be something. How do you think intent could be—because people are saying that it's a high bar, and you indicated that you thought you didn't. Why would you say it's not a high bar?

ANNABELLE DANIEL: I think that's a really interesting question. I just want to pick out, too: perpetrators or abusers, in the way that they behave—they are not monolithic. They are not all the same. I think it's really important that we note that. I think sometimes there's a belief that perpetrators all really believe that they're doing the right thing by the victim, and that's not necessarily the case. Some are very overt in the way that they speak. They have no shame in putting it in a text message, "I will kill you." They will do that. Others just like getting their own way and getting the power in all of the decision-making within a family or within an environment. Others just might get off on controlling other people, to put it in very blunt language.

From my point of view, and what we see in working with victim-survivors every day, that intent can be inferred over a period of time, often through something as bold as a text message, or something that they've written, or the fact that they have put a tracking device in the wheel arch of a pram, or they've jailbroken somebody's phone so they can watch their every move. Those things are very apparent in the survivors that we work with and their description of their experiences.

The Hon. PETER PRIMROSE: I have one question for whoever would like to answer it. Section 54J, review of division, subsection (2) lists five very important matters that must be reviewed. I think we've discussed those at length already, and everyone agrees that they're important. DVNSW suggested additional review provisions and lists 12 further issues that must be included in the statutory review provision. My question to you is that the five that are already there look like a terms of reference, and five will be listed and five will be reviewed. Would you be seeking to have these 12—or a version of these—included in the bill, so they're actually included in the statutory review as a requirement, as opposed to maybe an add-on later on?

ANNABELLE DANIEL: I'm broadly supportive of DVNSW's position.

The Hon. PETER PRIMROSE: So you would be looking at the 12 items listed there as being an amendment to section 54J (2) to be included as "a review under this section must consider the following"?

ANNABELLE DANIEL: I haven't had the opportunity to go through them in detail today, but I know I have seen them in the past and I am broadly supportive of DVNSW's position in that respect.

JACQUI WATT: I'll take that on notice, if that's okay, and get back to you in 24 hours.

The Hon. PETER PRIMROSE: That would be wonderful. Thank you.

The CHAIR: Unfortunately, we don't have the provision to take questions on notice at this time. I'm sorry.

The Hon. PETER PRIMROSE: What would you like to do, Ms Watt? Have you got a view on that now?

JACQUI WATT: We've not recommended any additional inclusions. We have suggested and might talk a little bit about the things you could look at to improve the definitions of the economic security on that side of things, but we've not actually asked to include any other provisions in the bill at this stage.

The Hon. MARK BUTTIGIEG: The only thing I would put would be something similar to what I put to the previous witnesses. I think you've already answered it. From what I gathered from those previous answers no-one thinks this bill is perfect. That's pretty clear. But the question is: Is there a net negative or a net positive in introducing it in its current form? Is part of that net positive the fact that the very presence of the legislation will start to engender a discipline on engaging stakeholders in how the legislation will be improved and all that prep work you were alluding to? The previous witnesses were in that space but you seem to be much more emphatic that that's the case. Would that be a fair assessment?

JACQUI WATT: Yes. I'm not sure who you are asking, but I think that would be a fair assessment. It's better to go with this and get it started than wait for—what did you say, Annabelle—that perfection is the enemy of the good?

ANNABELLE DANIEL: Yes.

JACQUI WATT: That's certainly where we sit at No to Violence. Part of that is because we do run a contract with the NSW Department of Justice through the NSW Police Force where we receive police referrals for men who are intercepted as part of the DVSAT intervention when family violence cases are called in. I can tell you that—not in this arena—we can establish which of those police areas are taking it seriously that the man needs to be referred and are completing the necessary information to enable us to complete that referral. In other words, we need to have his phone number. That needs to be passed to us before we can call him. I can also tell you the parts of New South Wales that are not doing that. I think what Annabelle said about right now women's safety is already compromised. That gives us an opportunity, if we have that data in front of us, to know where to target maybe some of those awareness campaigns and start to do the work so that the bill has a chance of making a difference from the get-go.

The Hon. MARK BUTTIGIEG: That's a good practical example of the net benefit, I guess.

ANNABELLE DANIEL: I would also say that there is a net benefit for victim-survivors of domestic and family violence in that not all of them will use the criminal legal system or the criminal justice system. Many of the women who we support do not choose to go down that pathway. However, their recovery is emboldened and supported by the knowledge that what happened to them is not okay and it's actually a crime. Sometimes that in and of itself is power enough to move forward and to use that as a basis on which to rebuild your life that this was a wrong and that our State has said it is a wrong. I don't think we can underestimate the net positive of that knowledge as well.

The Hon. MARK BUTTIGIEG: Yes, creating that new psychological paradigm around right and wrong.

ANNABELLE DANIEL: Absolutely.

Ms ABIGAIL BOYD: One of the aspects that we have been considering is the amount of time it will take for implementation and how soon we should have the offence, in particular, take effect. It's been said that there are 18,000 police to train. Do you think that the 15 months is sufficient for 18,000 police to be adequately trained in the new offence?

ANNABELLE DANIEL: I think that's a really interesting question. Obviously, the quantum of how much training and how you would like to do it is incredibly important there. We want to do this well. Given the percentage of police time that is actually devoted to responding to domestic and family violence, this is going to be a "need to train everyone" scenario as well. Obviously, there are those within the force, such as DVLOs and those more senior up the chain, who will need more intensive training and a better understanding of it.

I think that we will need to do it well. You would want to do it in person and you would want a minimum of one day for everyone. You could probably do some mathematical calculations about how long it would actually

take to do that, and do it properly. Again, I think that there is probably a period of time between that shortest period and that longest period that has been suggested that would be sufficient. But I think we need to do that training well. It needs to be ongoing and it needs to be reviewed and then we need to keep doing it, probably forever, as we update the offence. Given the amount of police time that is dedicated to this, this is a cultural and paradigm shift and we need to keep going with it.

Ms ABIGAIL BOYD: I have tried to do the maths myself and it doesn't really work out. When you think about the cover that each of those police officers would need from someone else and all of that, it seems like quite a big ask to do it so soon. Ms Watt, in your submission to the joint inquiry you commented—something that really resonated with me—that criminalisation is not really about locking a person up; criminalisation is about the way that we identify the crime and the safety impact of the social outcome from the criminalisation. Are you concerned about the limitations on the impact of this bill if we don't have enough of an education campaign or we don't have enough time for training?

JACQUI WATT: In the sense of what Annabelle just said, I completely concur with that. This is going to be ongoing. This is not about all police in New South Wales having one-day training and then that's a big tick and they understand coercive control. This is culture change that isn't just about a day's training; it's about the judicial officers understanding what's in front of them and it's about the leadership of the command structures giving very clear messages about expectations of how to record incidents. We are not trying to turn police into frontline social workers. That is not the job. But we do want them to take seriously complaints of violence. We want them to record properly. We want them to do the work that enables the courts to do their work best. It is a very big change process. If we only have 15 months to get the bill live, we will achieve a certain amount in that time but there will be longer-term planning required to make sure it's embedded.

Ms ABIGAIL BOYD: One of the recommendations of the joint select committee was that the ADVO change happened much sooner before the substantive offences introduced. The idea behind that—and what we had heard from the police—was that that would allow the police to get to understand the concept in a less pressured environment in the context of ADVOs, but also that the training could go around that and we would get feedback from the introduction of that to then input back into the training, et cetera. Do you agree that we could even bring the ADVO part of it forward but then use that experience to inform the criminalisation aspect later?

JACQUI WATT: That sounds really sensible to me.

ANNABELLE DANIEL: I would agree with that, yes.

Ms ABIGAIL BOYD: Something that we've not really talked about much so far with the witnesses is how we have defined abusive behaviour. I know that it's slightly different in both schedule 1 and schedule 2. We've not heard from anybody, really. These are quite different ways—some of them are similar to how we have seen it in other jurisdictions, but a lot of the language that is used here is quite different. You pointed out one of the things I was concerned about, which is the lack of inclusion of sexual violence. Is there anything else missing or that you think the wording should be tightened up?

JACQUI WATT: We do think that there's sufficient recognition of sexual and physical abuse. We've made the point that we think economic abuse could do with tightening up. If there are any other suggestions about how things might be improved, we would be very happy to review them with that lens on: How can this be read by a perpetrator trying to defend his actions? Maybe one of the points that I should make is that we can anticipate any new legislation will be fiercely defended because we know that part of perpetration can occur in the legal context. In other words, people use the legal system to continue to reinforce their control and to dish out abuse. That's the kind of specialist advice we could offer to you, if that was needed, of any further tweaking of what you're going to consider.

Ms ABIGAIL BOYD: So (2)(a) and (2)(b) in 54F, when we're talking about the meaning of abusive behaviour, these provisions relate to causing harm to a child or to another person, which is common in some of the other bits of legislation we've seen from around the world but the different bit here is the addition of "if a person fails to comply with demands made of the person". In your experience working with these sorts of cases, is it usually as direct as that, the idea that you're only threatening harm towards the child if the other person doesn't do something that's demanded of them, as opposed to something a bit more subtle? Do you have a view on that?

JACQUI WATT: Both happen, is the truth of it. Again, that's where it comes back to the complexity but also the importance of anyone engaging with that family—the perpetrator, the victim-survivor—be in the best position to listen and understand. We talk about his MO, his modus operandi. Like, what is his MO in this situation? Both can happen. It can be very subtle and, therefore, harder to see or comprehend. Sometimes, as Annabelle has also related to, it can be extremely explicit because the people who are doing that really don't care about the consequences and they actually don't think the law can do anything to them.

The CHAIR: I might just jump in, if I may. A couple of people have touched on expanding this beyond intimate partners. I just wondered if you had some views on that or does that fall in the category of let's get this up and, if it runs smoothly, then we look to expand it from there?

ANNABELLE DANIEL: I think we really need to knowledge that coercive control does go beyond intimate partners. We know situations where family can participate in it very strongly. But, again, the really compelling thing, which I keep coming back to and, again, comes up so often—again and again in intimate partner relationships—is that pathway. What the death review team has come up with in terms of looking at the spectrum of those domestic and intimate partner homicides over time is that the intimate partners—it is so prevalent in the lead-up to domestic and family violence homicide. From my point of view, that is very much an iteration for down the track because there is more nuance in family involvement. There can be situations with different cultures and ways of doing things and a level of nuance that we would need specific expertise and input from those groups about getting an expanded offence correct. I would see this as let's make sure this works first before we go down that path.

The CHAIR: Any different views to that?

JACQUI WATT: I would share that view as well. It's the best start you can make. There's no doubt that coercive control can happen outside of the context of intimate partner violence, so we would support that evolution down the tracks.

The CHAIR: I see Ms Sharpe is online. Acknowledging that you are coming and going at the will of your internet, would you like to take the opportunity to ask questions while you have a substantial connection?

The Hon. PENNY SHARPE: Thanks, Chair. I'm actually fine with the questions so far. I am listening, even though the video is coming on and off.

The CHAIR: We've talked a lot about the cultural change. Surely this legislation coming in assists that cultural change by bringing it to the fore. In that regard, is the sooner we get something up the better?

JACQUI WATT: Yes. I'm not sure if that was a question.

The CHAIR: That was definitely a question, yes.

JACQUI WATT: Essentially, yes. The sooner, the better. Remember, New South Wales will be ahead of the rest of Australia in this, but every jurisdiction in Australia is now looking at coercive control legislation. Needless to say, they will all have slightly different nuances, I'm sure, but everybody has been looking at Scotland and everybody is aware of the need for this. So, yes, let's crack on.

ANNABELLE DANIEL: I concur.

The Hon. SHAYNE MALLARD: Thank you for coming today. I note the organisation you represent, Women's Community Shelters. You're really at the coalface of the domestic violence horror that we deal with. When women seek your support, I imagine there is an ongoing relationship before there's a finality to it at some point. Will this coercive control legislation be something that will help you get an understanding from women about how they got to this point where they are fleeing domestic violence? That's the precursor, and will it help to form a prosecution and then protection for the victims?

ANNABELLE DANIEL: Absolutely. It's one of the really critical things that we do. Often, what we do is a bit of an education process with the women that we support. People will come to us with varying degrees of knowledge about what their legal rights are, and that can be anything from absolutely zero knowledge to a really good knowledge. Talking in and around these frameworks—what the legal framework is, what the psychological framework is, what the domestic and family violence knowledge base is—is an educative process as we are working with people through this crisis period. When they build lives independently, they might move out of one of our shelters and we will continue to support them, which would include going with them through the police and justice processes and providing ongoing support around that. We see this extraordinary growth in understanding as part of that process and as we are working through their goals and supporting them. As I said in my statement, I cannot underestimate the importance of this legislation for being able to say to people, "This is not just morally wrong what happened to you. This is a crime." That is incredibly powerful, and it is often—being able to say things like that is a lightbulb moment for women and children.

The Hon. SHAYNE MALLARD: When sitting down with a victim—not in any way to diminish physical injury, but it's not just about the physical injury—you will be able to say, "What has been happening," and identify bank accounts or whatever, if they are locked up in a house or whatever is the coercive control model.

ANNABELLE DANIEL: We do all of those kinds of things. Often it is that educative process of someone's story emerging over time. When we look at it through that coercive control lens and that framework,

we can explain to people how it fits together and their knowledge builds over time as well. It is an incredibly important part of that process of recovery to be able to put your own narrative within a broader framework and that's where this comes into play.

The Hon. SHAYNE MALLARD: Some domestic violence victims return to the domestic household quite a few times. With that knowledge, they will be more aware of "I really am the victim here." It's not just about being pushed into the cupboard or whatever is the horrible thing that happens. It's also the fact of having no money or the kids can't come to visit or whatever it is that's happening. Will that really empower them?

ANNABELLE DANIEL: Yes. I absolutely think it will. Certainly, working in domestic and family violence services at the coalface, you're really mindful that if you've got someone on the phone for 20 minutes or if you've got someone in front of you for an hour or if you've got somebody staying in the shelter for three months. All of that time is an opportunity for education, for building awareness, for building support and for being able to help someone form a framework of understanding around what they're living through. If they return, it might not be for as long next time. What you're effectively doing in working this way and with this kind of legislation is you are cracking that bubble of the relationship, which is about isolation, and it's about the takeover of an individual perspective and about the ownership of the corners of the inside of somebody's mind. You are providing an alternative world view and an alternative framework that sits outside and says, "The State, society does not think this is acceptable." That legislative framework is a powerful part of it.

The Hon. SHAYNE MALLARD: Does anyone else want to add to that?

JACQUI WATT: Yes. I think I said earlier—it may have been while you were out as well—this isn't going to cure domestic violence or end it.

The Hon. SHAYNE MALLARD: I said that earlier, too.

JACQUI WATT: There are many complex reasons why people do return to their offending partners, often to do with children, often to do with their economic situation. The evidence shows that women who do flee and stay away from their partner—economically, they're at such a disadvantage. Housing's another part of the equation. You know? Let's not try and bite off everything in this room today. That's why we talk about systemic change and how it's got to be all parties in the mix. In Victoria we're experimenting with taking the man out of the family home and offering him very short-term accommodation, subject to him being able to have a conversation with us at least, about what happened and what's gone on with him and what supports he might need or what else is happening in that family. We're always looking at it from the other end, of the person using the violence, and how can we get in earlier with that person, how can we impact earlier so children are less harmed. We're constantly searching for new ways of working to do that.

The Hon. SHAYNE MALLARD: The coercive control can be a reason why they go back.

JACQUI WATT: Of course.

The Hon. SHAYNE MALLARD: Control of the economy, control of the house, control of the children, control of the pets, whatever.

JACQUI WATT: Yes.

The CHAIR: I think, unless anyone has anything else pressing—it looks not to be the case—we might thank you very much for your time this afternoon. It's been very valuable. We appreciate you making yourself available. We'll have a short break and return at 3.15 p.m.

(The witnesses withdrew.)

(Short adjournment)

Dr KAREN WILLIAMS, Consultant Psychiatrist, Royal Australian and New Zealand College of Psychiatrists, and Founder of Doctors Against Violence Towards Women, affirmed and examined

Professor KATE FITZ-GIBBON, Director, Monash Gender and Family Violence Prevention Centre, affirmed and examined

Dr JANE WANGMANN, Associate Professor, Faculty of Law at the University of Technology Sydney, affirmed and examined

Ms GAYATRI NAIR, National Coordinator, Economic Abuse Reference Group, affirmed and examined

Ms JASMINE OPDAM, Acting Team Leader, Financial Abuse Service NSW, Redfern Legal Centre, affirmed and examined

Ms SALLY STEVENSON, Executive Director, Illawarra Women's Health Centre, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our final panel. I'll offer the opportunity for an opening statement. Because of the numbers, obviously, if we can keep that brief, that would be useful. Again, we may as well start in that same order.

KAREN WILLIAMS: Thank you. A couple of weeks ago, I was asked to assess a woman who was having flashbacks and nightmares about her ex-husband. She said, "I'm embarrassed because he wasn't that bad. I know about coercive control, and he wasn't like that. He let me go anywhere I liked. If I wanted to go out, all I had to do was make sure the house was spotless, the children fed, bathed and in their rooms and didn't come out whilst I was gone. And I had to wake him up and give him sex whenever I came back, as a reward." "What if you didn't wake him up?" I asked. "That's not an option. I was too afraid not to. Maybe I was silly for being so afraid, because he wasn't violent all of the time, but me and the kids were always scared of him in case he ever did become violent." Over the rest of the interview, it became apparent that there was significant physical, sexual and emotional abuse, as well as child abuse to all three of her children.

This patient typifies many survivors of abuse in this country. She falls into the 70 per cent of women who did not report their abuse to anyone—let alone the police. Her reasons fall in line with the most common reasons women fail to report. She did not think it was serious enough, and she did not, in fact, want to see her husband arrested. Like many other survivors, she thought the police couldn't do anything about it, which, realistically, they could not. So when opponents to this legislation say they are worried we will open the floodgates to allegations of abuse, or when supporters of this legislation deliberately write it with an intention to minimise its success, like I feel it has been now, goes against all our knowledge and all the data that we have about survivor behaviour.

We do not have a problem of over-reporting. Even when the crimes against a person are severe, women do not come forward. More often than not, despite everything that has been done to them, they do not want to see their abuser arrested. When opponents say we are incarcerating too many men, we need to remember that only 30 per cent of women go to the police after their intimate partner assaults them and even less when they are sexually assaulted. In New South Wales there were 34,000 victims of domestic violence assault who went to the police last year. Of that 34,000, only 950 men received a jail sentence. That's 2.9 per cent. So although I am grateful to see criminalisation of coercive control finally on the agenda, I want us to get it right the first time.

We do not measure the enormous impact that comes from failing to deliver justice to survivors or from failing to deter the perpetrators. It is not a neutral position to have legislation that does not work. We send a clear message, to both men and women, that women's lives and experiences do not matter. We foster a state of learned helplessness in survivors and encourage entitlement, ownership and the misuse of power in those who choose to hurt them. The legislation needs to be designed to do its job, not designed to fail, not designed with loopholes deeply embedded in its core so that perpetrators may exploit them as they exploit their partners.

The loopholes I am most concerned about are the mens rea that does not encompass recklessness, the lack of clarity in the reasonable-person defence, as well as the very complicated and restricted definitions of "abuse" that do not adequately cover important types of abuse such as psychological abuse. If done correctly, the legislation will encourage survivors who have been let down by the absence of adequate laws to finally successfully utilise the legal system and prevent perpetrators from continuing to evade justice. The presence of effective legislation supports all members of society to be able to readily identify and call out behaviours that we know put the lives of women and children at risk. Most importantly, the power of this legislation, should it be successful, will be in its capacity to influence and change a culture to one that is respectful of—and demands—autonomy, equality and freedom in all intimate relationships. Thank you.

KATE FITZ-GIBBON: Thank you, Dr Williams. I start by acknowledging the traditional owners of the lands upon which we are meeting and pay my respects to Elders past and present. I also acknowledge the incredible First Nations advocates who have contributed to debates surrounding the criminalisation of coercive control and the importance of their expertise in these conversations. As many members of this inquiry may be aware, I have urged caution before Australian States and Territories move to criminalise coercive control. I am extremely grateful that this inquiry has been set up to take the time to pause and to consider what safe implementation of the present bill will look like. It's not too late to ensure that embedded within this bill are the safeguards required to ensure safe implementation.

To focus first on the bill, the list of examples that are included within the current bill appear rushed, focus our attention yet again largely on incidents and do not reflect the way in which coercive and controlling behaviours can be differentially experienced by diverse communities of victim-survivors. The examples need much more consideration. They need to better reflect the experiences of women with disability, LGBTIQ+ victim-survivors and temporary migrants, just to name a few. The list of examples, and the guidance that we know will sit around it, must evolve with the evidence base and has to be subject to continual review.

In terms of safe implementation, I understand there is a political will to pass this legislation, but the system is not ready for it, and the whole-of-system reforms required to ensure safe implementation have not been done—and that can't be an afterthought. Significant time before proclamation is needed to embed coercive control training in frontline agencies to ensure specialisation of police officers; to develop evidence-based practice guidance and jury directions; and to develop a common risk assessment and management framework that ensures that all agencies, all practitioners across the whole of the family violence system and justice system, understand how coercive control presents, how to identify it, how it impacts risk, how to assess that and how to best respond. These aren't the nice-to-haves; they are the absolute essentials to ensure that this law, and the process of criminalisation, is effective. Improvements to women's safety will not be achieved without these reforms.

To enact this legislation without whole-of-system reforms to support it can lead to significant risks for victim-survivors who will engage with a system that is ill-equipped to meet their needs and to understand their risk. The bill should be implemented alongside the introduction of an independent ongoing monitoring role. One model to consider is the family violence implementation monitor in Victoria, which was set up in the wake of the royal commission reforms. The independent monitor could conduct whole-of-system monitoring with the rollout of training progress towards system readiness and the impact of the reforms in practice, including outcomes. The independent monitor could consult widely, including with victim-survivors, police and the specialist sector, and should produce annual public reports.

Finishing off, I'd say that many Australian States, as I'm sure you know, are looking to New South Wales to understand the process and the impacts of criminalising coercive control. It is absolutely imperative that every attempt is made here to ensure evidence-based implementation. That will take time, but I urge the inquiry to ensure that the time is built into the process to get this right. Thank you very much for the opportunity.

JANE WANGMANN: Good afternoon, Mr Chair and fellow members of the Standing Committee on Social Issues. Thank you for this invitation to give evidence on the Crimes Legislation Amendment (Coercive Control) Bill. I too begin by acknowledging the traditional custodians of this unceded land, the Gadigal people of the Eora nation, and, like Kate, I acknowledge the extensive and longstanding work that Aboriginal women have done around preventing family and domestic violence.

I have been involved in the consultations that have preceded this bill and in all of that work I have emphasised the need to pay attention to the very complex work of implementation if this reform is to deliver its promise at the same time as not further harming victim-survivors, particularly those who are more marginalised and already face considerable State intervention in their lives. So this is what I will focus on in my address this afternoon, and I do this in order to support the calls for the Government to consider a longer proclamation period as well as the urgent need for an independent task force to oversee the implementation, monitoring and evaluation of these reforms.

While how the law is drafted is important—and here the Government has adopted a very narrow approach, and of course I'm happy to take questions on that later—drafting alone will not address the concerns about misidentification and over-incarceration. In addition, the narrow drafting may well mean that some victims who approach the law for assistance will still find themselves under-protected. I draw the Committee's attention to the fact that the work of the New South Wales Domestic Violence Death Review Team, of which I'm a member, and the evidence before the joint select Committee are not just about the absence of laws to address coercive control but also very much about continuing problems with legal actors failing to address and act on currently available laws.

There is emerging research about the coercive control offence that operates in England and Wales. It has been the longest standing one. This research—and I have a list of references for the Committee—has documented continuing variability in police practices, missed opportunities to charge this offence, continuing emphasis on physical violence, and very real problems with gathering evidence to support the charge. Perhaps the most concerning has been findings from a recent study by Andy Myhill and colleagues. They have found continuing issues with police culture, which is characterised by cynicism, stereotypical understandings of gender and victims, and an approach of minimising coercive control in their work. The research team observed police failing to identify and record coercive control, making assumptions that strong women can't be victims, making assumptions about what is normal in intimate relationships, and there was particularly poor identification of sexual violence and coercion.

It is not just the police who need training. One of the strengths of the Queensland task force report was the extent to which it drew attention to other legal actors. The task force documents that lawyers can go through their university training, their practical legal training and their professional training, and not have had to undertake any content on domestic and family violence, despite the fact that this touches almost every area of law—and it is these lawyers who will be prosecuting and defending the charge of coercive control. So we do need to ask how well equipped they are to do this work and whether it is incorporated in the implementation plan. Implementation requires multiple elements. It requires a very broad approach, so not just focusing on the offence but also the need for cultural and systems reform that can address systemic racism, sexism and ongoing failures to understand the nature of domestic and family violence, and the wide range of ways in which victim-survivors in all their diversity react and respond to that violence. Thank you.

JASMINE OPDAM: Good afternoon. I too acknowledge the Gadigal of the Eora nation, the traditional custodians of this land, and pay my respects to Elders both past and present. I also acknowledge our clients and the communities whom we are appearing on behalf of today. The Economic Abuse Reference Group is an informal group of community organisations that work collectively to influence government and industry responses to reduce the financial impacts of family violence. Members include domestic and family violence services, community legal services, financial counselling services and other organisations. We have been working closely with other DV advocates who are members of the group's New South Wales chapter on this consultation, including Domestic Violence NSW, Women's Legal Service NSW and the Centre for Women's Economic Safety.

Responding to coercive control is an important reform. We recognise the cross-party support in developing a bill to respond to coercive control. But our position has always been that this legislation is too important to be rushed. We have always supported the joint select Committee's recommendation to start with a definition of "coercive control" before introducing any standalone criminal offence. While we are pleased to see that the draft bill now does include consistent examples of economic and financial abuse, those terms are still not defined. The limited examples in the legislation do not encompass the wide range of economically and financially abusive behaviours that victim-survivors experience, in particular being coerced to take on debt or liabilities in their name for the perpetrator's benefit, or being coerced to sign legal or financial documents.

The examples that we currently have in section 54F (2) (c) and 6A (2) (c) both assume that the perpetrator is the income earner and controls access to the household's money. This upholds gender norms and fails to recognise economic abuse perpetrated against higher income earners, when we know, and the statistics show, that economic abuse does not discriminate. Any examples of economic abuse need to capture the exploitation of finances as much as they capture the control of finances.

GAYATRI NAIR: Financially abusive behaviours are insidious and very difficult to identify as they are occurring. Financial abuse is not well understood by our clients who are experiencing it, let alone by the community, the police or the judiciary. Without a definition of financial and economic abuse, and more inclusive examples, we believe it will not be appropriately identified or addressed, and there is a risk of the examples having a limiting effect on decision-makers. Widespread cultural and systems reform is needed to adequately train the police, judiciary and wider community to identify financial abuse. This is also why, along with our colleagues, we have been calling for an independent task force that must be established immediately to monitor how the legislation is being used.

We already know from the evidence overseas that prosecutions of financial abuse have only ever occurred in conjunction with physical abuse. These reforms are likely to lead to many people realising that they have experienced domestic abuse and seeking help and support for the first time. This legislation must be accompanied by a significant and targeted investment in frontline services which assist victim-survivors. Whilst we appreciate the Government's willingness to work on these issues, making legislation on the run, as we are now, is not useful—not for government, not for the police, not for the judiciary, not for us as a sector and, most importantly, not for our clients, victim-survivors and the communities we serve.

The CHAIR: Thank you. Ms Stevenson?

SALLY STEVENSON: I acknowledge that I am on Dharawal land, Zooming in. I pay my respects to Aboriginal Elders past and present, and all Aboriginal and Torres Strait Islander people participating in the hearing today. This land was never ceded. It always was and always will be Aboriginal land. As mentioned before, I'm here on behalf of the Illawarra Women's Health Centre. I thank the Committee for the invitation. The Illawarra Women's Health Centre has been providing frontline services and support to women who have endured domestic and family violence for over 35 years. Over this time, we've had the privilege to hear the stories of many thousands of women who have experienced coercive control but, of course, it's only recently that we've come to more fully understand and learn how to identify this deliberate and vile form of violence and abuse.

The Illawarra Women's Health Centre also led the successful campaign to establish the Women's Trauma Recovery Centre. This success was a direct result of listening to and embedding the experiences and expertise of victim-survivors into the operational framework of the centre. The majority of trauma that we see women experience is a consequence of coercive controlling behaviour in a domestic and family environment—behaviour that, until this legislation is passed, remains largely legal. We simply cannot afford to know this as a community and continue as is, so we've campaigned for the criminalisation of coercive control for many years. We have also campaigned for legislation that provides the best chance of success. In New South Wales, we're fortunate to have gold-standard legislation we can draw upon, and we should be obliged to do so.

We've heard over the last few weeks in regards to this proposed bill that we shouldn't let the perfect get in the way of the good. I would argue, however, that we also must not let good be the cover for political expediency or complacency, legislative sloppiness or reform that is set up to fail. Victim-survivors deserve the best we can provide. We argued to the joint select committee last year that New South Wales had the opportunity to lead Australia with this legislation, but there is no point in being first if you're setting yourself up for failure. To address these concerns, we'd like the Committee to consider a number of issues. I'll first state, though, that we're not asking for more consultation per se. We're asking for changes, many of which have been voiced today, to improve the bill. One caveat on that, however, is that I note that this committee is not hearing directly from any victim-survivor representatives today. With all our knowledge and rhetoric about centring victim-survivor voices, this a sad oversight.

Having said that, we would like to bring the following concerns and considerations to the Committee's attention. Firstly, the issue of intent and recklessness must be addressed. Including intent in the legislation plays straight into the coercive control perpetrator handbook. We know that they know how to cover their behaviour. They groom friends, family, work colleagues and community members around them to believe that they're the caring, protective, charming one, that they're acting in self-defence, that they've "got the right to question her because she's a cheater" or any of the many convenient rationalisations that perpetrators use. It is classic perpetrator modus operandi. In this context, proving intent beyond reasonable doubt is setting the bar impossibly high. It undermines the protective purpose of the legislation and is likely to ensure perpetrators are not held to account. At the same time, if it is removed, it can still be inferred by the course of conduct and characterisation of coercive control. By extension, the inclusion of recklessness must be included.

Secondly, the definition of abuse is limited to intimate partner violence, thereby excluding a range of circumstances where we know coercive control takes place and creating an unacceptable hierarchy of victimhood. Thirdly, there is the potential for this legislation to harm victim-survivors and to undermine their trust in the police and criminal justice system, which, as we know, is already fragile. For example, victim-survivors, as they come to understand the situation by seeing the legislation, may wish to report but be told, "Your story isn't strong enough. Your experience isn't real enough. We can't prove that the perpetrator intended to do it and, therefore, we can't protect you." This is arguably a form of cultural gaslighting—one that we must avoid.

Fourthly, there is a need for clear evidence-based plans around the timing for proclamation; addressing the risks of misidentification; implementing systems and cultural reform; and delivering adequate and sustained community awareness campaigns as well as multi-sector training and education. For example, there is discussion around whether it's 20 months or four years, but I have yet to see a reasonable and feasible time frame that has been developed to give evidence to whatever the time frame should be. Fifthly, there is a need to properly fund frontline services, many of which are already overwhelmed, to provide adequate and proper support to victim-survivors who, again, see themselves in this legislation and want to take action. Finally, I would like to underline the majority of testimonies here today that call for the need for an independent task force to ensure a robust and trusted, publicly accountable and transparent implementation process. We really do want this legislation to be successful for victim-survivors and for our community more broadly. What we need for this to happen is strong and reflective leadership to incorporate these changes into this bill.

The CHAIR: Thank you for those statements. In a moment we are going to go to some question time, which will be divided into five-minute blocks. It will go Government, Opposition, crossbench, crossbench, Opposition, Government. There was one thing there that I wouldn't mind touching on, Ms Stevenson. There was actually a conscious decision made by the Committee not to involve victim-survivors in this inquiry. There have been a number of inquiries held in the past. Someone can correct me or reinforce this later on, but this is more about the nuts and bolts of the legislation rather than the need to have the legislation, which was unanimously supported. That was the decision around that. I will throw now to the Government for the first round of questions.

The Hon. AILEEN MacDONALD: Thank you for your attendance today. Waiting one, two or three years will not remove differences of opinion, yet lives depend on the decision that we make soon. When do you think is the right time for this bill, if it's not—

KATE FITZ-GIBBON: I'll jump in first, and then I'm sure other colleagues—

The Hon. AILEEN MacDONALD: Sorry, it was to anyone.

KATE FITZ-GIBBON: —will have an answer. Once the work has been done to make the system ready for it. As Sally so clearly showed there, we haven't seen what that looks like in evidence. When we look to jurisdictions like Scotland, they were working for over a decade to embed specialisation into the Scottish system at every level across the specialist system, police and courts. We can't wait a decade; we know that. But what we need to see is from specialist services, from New South Wales police—who I note haven't been involved in today's hearings—the executed time frame and plan of how you will train, how long it will take to train, how you will evaluate that it has been effective.

The resources and funding—when will they be made available? How will the risk assessment and management framework be developed? How will it be implemented? How will the whole-of-system practitioners be trained in that? That's the way you ensure that, no matter what door a victim-survivor goes to when they experience coercive control, they receive a specialist response, one which validates what they've experienced, and assesses their risk effectively and accurately to prevent the deaths that we know the death review committee has highlighted, and that there is an effective response. If we don't do any of that, we risk sending victim-survivors into a system that we've promised can respond to their experience of coercive control but is completely inadequately set up to do so.

JANE WANGMANN: I would agree with Kate's answer and I think Sally actually summed it up very well. We don't know anything at the moment about the Government's implementation plan. We need an evidence base to say that that 15 or 19 months is sufficient. At the moment the evidence on the ground that we've presented to you—and other people gave you evidence on today—suggests that it's a much greater issue around getting the police, legal services and judicial officers to all understand coercive control, let alone operationalise the offence. It's that evidence base that can tell us the time frame.

The Hon. AILEEN MacDONALD: Did anyone else want to answer?

JASMINE OPDAM: I'll just add that, from the perspective of victim-survivors and our clients who are trying to navigate this system, what we're talking about is expecting victim-survivors to be able to walk in the front door of a police station; tell their story to a police officer at the front desk; have that story heard, understood and validated; and an appropriate response be taken. In the work that we at Redfern Legal Centre and that other members of the Economic Abuse Reference Group do, we're often working in the legal system with victim-survivors who have not experienced physical abuse. We see their struggles convincing the police to take their experiences seriously when they've experienced economic abuse, financial abuse and other forms of coercive control—in many cases which already constitute a criminal offence. In many cases there's fraud, there's forgery, there's identity theft. They are already fighting an uphill battle to be heard and understood and to have an appropriate response taken in the existing criminal justice system. That's why we don't believe that the system is currently set up to achieve this within 15 to 19 months.

The Hon. AILEEN MacDONALD: At the moment it's not captured—coercive control. To do nothing would mean nothing would happen, but do you think with the time line that you could start that awareness program and the training so that once it is implemented—I know you've said it's not enough but surely that period of time can go some way?

GAYATRI NAIR: I guess you're asking us to give you a time frame when we don't have all the information. We were already in a position, as I think we've all been saying—that the system currently doesn't work. We see that with our clients. We've seen that from the evidence base, both here in Australia—in Tasmania, for example, when it was introduced, there were no successful prosecutions of coercive control. We've also seen that from overseas, where they've spent significantly more time implementing and understanding it and analysing

it. They still don't have an evidence base to say that it's been successful, so I guess we can't really answer how long it should be without getting more information.

KATE FITZ-GIBBON: If Committee members were to favour the introduction of an independent task force or an independent monitor, this could be one of the key points that is put to that task force or monitor: to determine when the system is ready. I think that would give a lot of people—across not only a need to report on what they're doing to get their part of the system ready but also to have an independent person evaluating that so that, if we can introduce it sooner than expected, we do. Let's not lock ourselves into a time frame that might delay it or bring it in too early.

The Hon. MARK BUTTIGIEG: Just on that theme—and we have pursued this throughout the day—what are the dangers of implementing this legislation now if it's not up to speed, so to speak? Before, we tried to get a feel for witnesses' views on whether it is a net positive on balance. One of the points that was made was that the very fact that you're introducing legislation will focus stakeholders and get everyone's attention and get things going whereas, if you keep putting it off, there's no urgency there. But presumably part of your argument is that we actually could be worse off introducing this half-baked. Did you want to elaborate on that?

JANE WANGMANN: I think one of the risks of doing it now in its current form is that it will continue to serve the women that the law serves well already. I think we have a bigger obligation to make sure that we provide a law that benefits women in all their diversity. At the moment I think the law risks fitting stereotypical conceptions of women victims as passive and submissive. I think we can do better in having a much more complex picture of coercive control that works for women in all their diversity, so that when the police attend an incident, it's not just, because she's mouthing off at them, that will mean that she doesn't get the protection of the offence. We should be able to do better. I think at the moment we have something that's just too narrow for the picture that was presented to the joint select committee.

KATE FITZ-GIBBON: I think in addition to the concerns you've heard a lot about today around criminalisation and misidentification, we also have a risk, if we don't get the drafting of this right, that we actually lower confidence in the police and the court system even further. Take, for example, the headlines we can expect—"Conviction rates for coercive control, 0 per cent, 1 per cent"—when women are calling the police and getting no response. When police are attending scenes, they haven't been trained adequately. They don't know how to identify coercive control. That woman is killed a day, a week, a month later. They're the headlines that women experiencing coercive control will see if we don't get this legislation right. That will further erode the confidence in the criminal justice system which, we have to admit, across Australia, with the work that's been done particularly through the Queensland inquiry into police culture, is already extremely low.

KAREN WILLIAMS: I'd like to talk about the psychological impacts of trying to persecute a perpetrator or trying to actually address an issue and failing at that. As anyone that works within the legal system would see, it's not something that you walk in one day and it's a failed attempt, you didn't get the outcome that you wanted. Most survivors of abuse will spend a lot of time developing their statements with police officers, with their doctors, with other support people. There are adjournments. There are costs to their life and mental health costs to going through that entire process, having your life exposed in this way and then having people shouting at you, "I put to you that you misinformed," or, "You misremember." Some of the very signs that a woman is traumatised by family violence are that she may forget certain details.

That sort of attack on her person that occurs in the criminal justice system the way it is now has a really detrimental impact on a person's psychological wellbeing and contributes to the PTSD that many of my patients suffer. I currently will have patients who are experiencing domestic violence or have been sexually assaulted and I would say to them, "I don't recommend you going through the process because it is not safe for you." I know that their mental health would not survive the system. So it's not a safe one. It's not fair to pretend to a woman, "You are going to get justice by doing this. Here's your story, take it and we're going to address it", when the evidence would suggest that you actually aren't going to do that. I would like to see protections offered to women and that there is a real plan to make sure that there is a safeguarding and consideration of the impact of what it's like to go through a court case and come out the other end without a conviction.

The CHAIR: Ms Stevenson, do you have something to add to that?

SALLY STEVENSON: We know that this bill has got cross-party support and that it is likely to be passed. I think the opportunity and the challenge here now is to make it the best one it can be and there have been a number of recommendations made just today on how it can be improved. I think it's about being pragmatic with the recommendations that have been put forward, particularly around intent and recklessness, and then working with an independent task force to monitor when implementation is most appropriate. That will require, of course, a commitment of resources for the community awareness and the training and education—beyond the

18,000 police but throughout the criminal justice system and with service providers. In being pragmatic, we know it's going to go forward, but let's fix it with the proposals that have been presented.

Ms ABIGAIL BOYD: I will just clarify that the bill does not have cross-party support. It has support from Labor and the Coalition, but The Greens obviously prefer our own bill and have significant concerns about the way that this has been brought out. Can I turn first just two things that have not really received much attention so far today? One of them is the criticism around a lack of contextual definition. Perhaps I could start with you, Dr Wangmann, as to what do people mean by that and how could we fix it with the drafting?

JANE WANGMANN: So one of the things that people have been supportive of was the joint select committee's recommendation of starting with a definition in our AVO legislation because, unlike every other jurisdiction, we don't have one. A contextual definition is one that doesn't just list the behaviours; it focuses us on how the behaviour functions in the relationship. This is a key measure against misidentification because you might have an assault or you might have property damage, but does it cause the other person to be fearful or does it coerce or control them? That contextual bit at the top is what frames the behaviours that come underneath. Without that. you do risk misidentification.

The Government has said that it looked to the definition that is in the Family Law Act. It is a contextual definition, and the Government actually hasn't followed exactly how that went. If you look at section 4AB in the Family Law Act, you'll see that subsection (1) has your contextual frame and subsection (2) lists the examples of the behaviour that you have to see within that context, and that is how it operates.

If I could add a little bit about the definition for the AVO legislation, it is unclear and I think confusing that this definition is slightly different to the definition of "abusive behaviour" for the purposes of the offence. I think this is a real problem. I think it's a real problem that sexual violence and physical violence is not named for the offence when it is named here. If I was a lawyer in a trial, I would be pointing to that silence as meaningful in prosecuting the offence because that's one of the things you would do. I know the Attorney has argued that one is for the purpose of civil legislation and one is for the purpose of criminal legislation. But if it's to serve an educative function, if that's one of the key things this law does, I would suggest that it has kind of undermined itself by having these two very different definitions.

The other thing I would point out in terms of the AVO legislation is that this definition does no work in the legislation. So it's actually unclear why it is there at all. The only thing it refers to is section 11 (1) (c) where it would become a domestic violence offence. I'm very unclear where that comes up and gets used. I have seen it in sentencing decisions because then it's a domestic violence offence. But I'm unclear how it does any real work in terms of shifting the thinking in the AVO legislation. So if this was to be an educative provision for the police, if they do not have to rely on it, if they don't have to refer to it in their work, I think it's just going to sit there in the legislation without doing the work the Government intends it to do.

Ms ABIGAIL BOYD: How do we fix that then, because that's pretty important? I thought that this would actually flow through to the ADVOs. How do we fix it?

JANE WANGMANN: I'm not going to suggest a quick fix on the run because that's against my principles. I think there is a need to look again at the AVO legislation in its total. The structure we have for AVO legislation, which is all around a domestic violence offence, is the same structure since 1983. So it gives you a bit of a picture of how that hasn't changed. The domestic violence offence is an important one because it does link across other pieces of legislation; so I understand that. We need to really have a look at whether or not it should ground an AVO. But again, this is a complex question where we need to investigate misidentification and so on that flows from that. So it's not an answer I'm going to give now. But I think we need to be very clear that this actually appears to be a superficial measure in the legislation.

Ms ABIGAIL BOYD: Another one for the Attorney General maybe to consider. I know he's watching.

The Hon. SHAYNE MALLARD: Another letter.

Ms ABIGAIL BOYD: Perhaps if you could let us know and, yes, send us another letter, that would be fantastic. Ms Stevenson, you mentioned before and we keep hearing about this perfect being the enemy of the good and, as you say, whether something is good or not also depends on the context. Is part of the problem here that the Government has given us this bill right now as opposed to a year ago or six months ago or in six months' time and it very much seems to be part of an election cycle? How could this have been done better? Do you think we should wait to actually do this in a more considered way that's not guided by an election cycle?

SALLY STEVENSON: Are you asking me that in punishment for saying it was cross-party, Abigail? I apologise for that. One of the gold standard legislation that we can draw upon is your bill you brought in last year. I did mention political expediency. The timing is interesting. I think that the legislation and victim-survivors

in our community more broadly is best served by delivering legislation that's going to work. If that takes a little bit more time, that's great. As I said, I think we need to correct this bill, and there are a number of suggestions that have been made. If that takes us a little bit longer, then I think that's worth it. Yes, there's been a year since the committee and the recommendations that were supported by the Government came out a long time ago. This could have been done earlier. It could have been done better. So let's take the time now to ensure that it is, but I'm not talking six to 12 months. There are a number of proposals that have been provided here today. It doesn't have to be complex and drawn out.

Ms ABIGAIL BOYD: Dr Williams, we spoke with some other witnesses earlier about what it means to intend to coerce or control but, more importantly, what the message sends to people when—and forgive me for trying to come around this, but we talk about situations where a perpetrator is controlling a woman normally and then perhaps her friends might say, "What are you doing there? That looks a bit", you know, and they might try and intervene. If he turns around and says, "I'm not intending to do that", what sort of message does that send to the community at large about what coercive control is? Does that have an ability to damage the campaign to educate people a bit better?

KAREN WILLIAMS: I definitely think that the legislation that has been written does not address many of the core components of coercive control. An important part of the coercive controlling hardware is a deliberate cultivation of trust for the purposes of exploiting that trust. It's a strategy that is observed in the beginning of the relationship and peppered throughout that relationship. So you can imagine if you go into a relationship with someone and he says, "I intend to stop you seeing all your friends. I intend to isolate you from your parents and I'm going to hit you occasionally and rape you", most women would walk away from that relationship pretty quickly. So the skill lies in creating and cultivating a relationship that is very trusting at the beginning and, as I said, throughout, and then one of the ways they start to introduce coercion and control is by harnessing existing inequalities in the system and culture.

For example, it's socially expected, it's accepted for a woman to be the primary stay-at-home parent for the reasons that she's frequently paid less, and it's more common for the woman to accept that role than it is for her to protest against gender inequalities that keep her pay below that of a man. So the acceptance that we have when men control women using these strategies is very damaging. It actually becomes part of our culture, these things that are framed as positives, and we don't at all acknowledge the negative impacts on her career and superannuation and ultimately her financial freedom. So, yes, I think there is a real damage that happens when we buy these excuses, when we know that those excuses are used all the time. People that work with survivors have heard them all before and that's where survivor voices, as well as those that work directly with them, could be utilised as a rich source of information as to how these behaviours are deliberately exploitative of women's inequality within the system as it stands.

Ms ABIGAIL BOYD: One of the things we discussed with the Bar Association a little bit was around this intent. But I recall from the coercive control inquiry we heard a lot about there are some men—and I say men because it's predominantly men, but I also acknowledge it's not always—some perpetrators will deliberately do this. It is quite a manipulative attempt to control. There is also a group of perpetrators who don't; it's just their way of doing things. Can you talk about that and how that might be more difficult to prove if we're only talking about intention?

KAREN WILLIAMS: The use of these tactics can be used in a sociopathic way—deliberately using the tactics to harm a person without necessarily wanting to control them but just wanting to hurt them. But certainly the attempts at controlling and coercing them are the most common form. Of course, a lot of it is embedded in culture, remembering it is a patriarchal culture where women are in a subordinate position to men, and that has to be acknowledged.

The Hon. MARK BUTTIGIEG: To follow up on my colleague Ms Abigail Boyd's question, the evidence we heard from the Bar Association from a legal perspective was that Mr Odgers thought that it wouldn't be that hard to prove, even in the scenario Abigail was pointing out whereby "I'm a very nurturing, loving person and I'm doing this for the benefit of my partner or my wife. Everyone knows I'm loving and nurturing." But, because of the sequencing and the period of time that it took, I implied from the evidence that he thought this wouldn't be a difficult thing to prove. The question is, if there's a contrary view, what's that based on? Because if you accept that legal opinion, then this could end up actually being better than the system we've got now. But I accept that the contrary evidence today has been that that is not necessarily going to work out in practice. I just want to tease that out a bit.

KAREN WILLIAMS: I don't know how they could say it's not going to be used against women when we haven't had this before. But the wording of it says, quite clearly, that in all of the circumstances, you've got to be able to see that there would be a negative impact. That's the bit that also confuses me—that in all of the

circumstances a reasonable person would see the behaviour as having a negative outcome. But many reasonable people would look at these individual incidences and say, "No. I wouldn't think that this would have a negative outcome." For me, my interest and enthusiasm about the legislation to begin with was the fact that it was a course of behaviour and that the intent was implicit in that. The fact that it was happening over and over again in a variety of circumstances should indicate that the person was intent on that behaviour.

Much like when we change other cultural norms such as, for example, having sex with your partner without her consent, which used to be a legal behaviour, and we've had to adjust our expectations and men have had to adjust their expectations upon their wives, this should be a thing where the intent shouldn't matter anymore. It's about men having to learn that this behaviour is not okay under any circumstance, and he doesn't get the right to excuse it under a whole range of social reasons.

The Hon. MARK BUTTIGIEG: Is that part of the problem of not having a strict definitional term? Does that create part of this ambiguity in interpretation, do you think, in practice?

KAREN WILLIAMS: Yes, I do. I think that trying to list individual behaviours and individual types of abuse restricts it, in the sense that this is permeating throughout the relationship in many subtle ways. Yet the overall impact should really be the—as in Scottish law, they talk about the impact being to subordinate the person. So it wouldn't matter what the behaviour was; if the impact was that the person was subordinate to the abuser or was injured by the abuser, there is evidence of it happening. The way we phrase it and not trying to pinpoint specific incidences will definitely contribute to making mistakes like that.

KATE FITZ-GIBBON: I was just going to add, when we look to some of the evidence that Dr Wangmann has tendered around international practice, we've seen in England and Wales that the offence has been used predominantly, if not exclusively, in cases that have physical violence or digital evidence, because it has been so difficult to prove behaviour that doesn't fall into those two categories. I think that's where the concerns around intention have emerged from some of that international practice that we've seen since 2015. I think the other piece of the definition is that, without having that context, you're asking for behaviour that sits within an abusive relationship that's around power and control. You end up having a tick box and a list of behaviours that you're looking for, that will feed into training and that will inform the way in which people go in looking for a coercive control. They won't be looking for a pattern of behaviours or seeking that out. They'll be looking for one of these behaviours that's listed in the legislation. I think it's important to note that COAG is currently developing the national principles on coercive control and this legislation wouldn't align with those, which all States and Territories have agreed to be part of the development of.

JANE WANGMANN: Could I add something? I think the issue is not only that intent is a high legal standard—and it is. We know that because some offences have intent and recklessness. But it's intent to coerce or control. These aren't defined in the legislation. I'm not suggesting that they necessarily should be, but using those words, "coerce or control", which is initially attractive because we're naming the offence and we're naming what it is, assumes people understand what that means. It assumes that perpetrators understand what it means, that lawyers understand it and police understand it. At a very basic level, just from the media and so on, there is not an understanding of coercive control. Over the last couple of years we've had discussions that it's just non-physical abuse. We've had the Australian Bureau of Statistics bring out a study where, again, they confused what coercive control means. The Attorney General pointed to ordinary dictionary definitions, which is your starting point for statutory interpretation. But I'm going to suggest that coercive control in the context of domestic and family violence is something different. It's a deeper understanding that we need to understand and know. This is where that training and education really needs to go to. What does it mean in a domestic and family violence context, not just as a dictionary definition?

GAYATRI NAIR: If I can add one more thing, domestic and family violence is so personal. It's so unique to each person that is in that relationship. So to have a list—you would never be able to capture all the behaviours that would happen in a relationship. That's why having a good definition is so important.

The Hon. SHAYNE MALLARD: Thank you for coming in this afternoon and offering your expertise and experience. First of all, I want to say that the Government rejects the suggestion, which has been made a few times today by Ms Boyd, that this has been rushed, or the suggestion that it's to do with an election. There is no intent to have this issue involved in an election. Earlier on today we heard from my colleague, and from the Attorney General's second reading speech, about the consultation that has occurred: nine sessions, but particularly two public ones, a draft bill, an inquiry and the legislation. The timing to this certainly centres around Minister Ward's appointment to the portfolio. Natalie Ward is a colleague of ours in the upper House.

Ms ABIGAIL BOYD: Is there a question or is this a speech?

The Hon. SHAYNE MALLARD: They created the portfolio of prevention of violence to women and that's where the focus came in with this coercive control legislation. So I just wanted to put that on the record. From that I'm going to ask you a question because I've heard from you and others today around this 14- to 19-month period before the implementation of the legislation to gear up the agencies. I'm of the view you've got to bang something in the future, legislation, that forces the agencies and the government bureaucracy—you think we run them—to get on with the job, and the Government to put the money into that too, to put the money in for the programs and the training of the judiciary, police and other services. We pass laws every week that involve changes to the crimes law, so they have to move fast all the time. Don't you think they'd be up to it?

First of all, putting that legislation there is a deadline, but do you acknowledge that is important because otherwise there would have to be a nebulous space to get ready for it. First of all, do you want to comment on that? Do you feel strongly that it is a good idea to put a deadline?

KAREN WILLIAMS: I'm not opposed to the timing as long as if we did get to the end of that time and we were not where we would have hoped to have been and the safety nets hadn't been put in and the wording was still ambiguous as it is now, then we would be given the opportunity to slow it down. So I think I agree with you that working towards a date is a good thing and there is no harm to be made in educating the Police Force and the judiciary straightaway and starting the process into education and developing resources. I think all of that is really important, but I think giving a date without any capacity to move it could be a problem.

The Hon. SHAYNE MALLARD: Interesting point.

GAYATRI NAIR: Can I just add to the finances allocated? That's one concern that we've raised and the sector has raised. I believe it was $5 million to the police. I think Queensland has suggested about $300 million. So as context for funding for this type of work, that might be useful for the Committee.

The Hon. SHAYNE MALLARD: We should note that. I mean, police training is ongoing. Hate crime is the big area of police training at the moment. All of those police officers are being brought up to speed on hate crimes, so it's always ongoing. But we will put that into the report. Any other points on that?

JANE WANGMANN: I agree that a time frame is useful, but I go back to Sally Stevenson's earlier point: What was the evidence base to determine that time frame originally? We have no information about that. The evidence that we do have suggests that it would be inadequate given the scale of things. I think Queensland is really instructive here. They are already putting things in train. The bill that is currently before Parliament there deals with issues like the person most in need of protection and some other amendments around evidence and so on, as well as the commission of inquiry into the police. They are, in fact, building their evidence base. The task force gave a time frame. They may well stick to it. I'm not suggesting that that's the time frame, but there is an evidence base for the determination of the time frame and the things that they are going to do along the way. We don't have any information about that and I think that's what's difficult here: to say, "Yes, that 15 to 19 months is appropriate."

The Hon. SHAYNE MALLARD: Maybe the Government can respond. I imagine its agency is feeding back to Cabinet through the process of the legislation being designed. I want to go to Ms Opdam and Ms Nair and your financial expertise. I heard you say you felt the legislation might not capture financial coercion, yet all today and in my mind I've been thinking that one of the big areas of coercion—we heard that very early in the day—would be financial coercion. That would be one that I would think easy to prove—you know, bank account control, no money, no ability to earn an income. Don't you think that would be picked up in that context of coercion? I see that as a major area of coercion—I might be wrong. What's your view there?

JASMINE OPDAM: You would hope that it would be picked up. Unfortunately we don't have confidence from our casework and from our clients' experiences that there is sufficient training within the police and, I would say, broadly within the legal system to identify that. In many cases where it is identified, it's identified in the wrong direction, and that goes back to what I think has been said multiple times about the lack of a contextual definition. Without recognising that a power imbalance is at the heart of coercive control and domestic abuse, many of the examples—well, the only two examples we've got of economically and financially abusive behaviours in the legislation could cut both ways. We are talking about withholding access to funds that are required to financially support someone, and many of those behaviours might be actually done by a victim-survivor in the process of escaping from an abusive relationship, leaving their partner, regaining their financial security, giving themselves access to funds or perhaps cutting off a gambling partner from using up all of the family and the household's funds so that there is no food on the table for the children.

So that is the concern we have: those behaviours of financial abuse are so limiting to start with. While we recognise that no examples will ever be exhaustive, the two examples that we've got very clearly angle in one direction and they make some very clear assumptions about the use of resources in the household and about who

the income earner is. They also can cut both ways and we are concerned that they would cut both ways when the police are interpreting those examples, particularly if you have a victim-survivor who is a First Nations woman, for example. We see that time and time again, and our colleagues at Wirringa Baiya and Women's Legal Service NSW have spoken to that today.

GAYATRI NAIR: Just to add to that, it's not just the legal actors and the police; it's also the banks and financial institutions that need to understand coercive control and need to understand financial abuse. We've been working with them, but that's still an area that needs improvement.

The Hon. SHAYNE MALLARD: We've gone through that with the inquiry into elder abuse in terms of financial institutions identifying it.

KAREN WILLIAMS: I would also comment too that it says in the example "denying a person access to basic necessities". Many perpetrators don't actually overtly deny access to money or basic necessities, but instead they require the victim to ask for money or provide a detailed explanation as to how the money is used. Sometimes they don't give much beyond the bare minimum or they make them feel guilty. I know many women who have been given access to a card that has been monitored and they are told things like, "You are allowed to buy groceries on that," or "You are allowed to buy nappies on that and that's it". If she wants to buy personal items, she can't do that, so the bank statements will show her actually having control and purchasing these things—and other women who have been given access to the card, but they are not allowed to buy toys or anything enjoyable for the children. Only he can do that and only he can deliver those toys to the children so that he is able to portray himself as the one gifting the child things. So those kinds of things wouldn't be counted in the examples given.

The Hon. MARK BUTTIGIEG: I think this is a really interesting point. Are we saying that you can't do specific examples because the list would just be—you couldn't do an exhaustive list for the reasons you were just saying. But if you had what I think you referred to as a general contextual definition, and that would be a discretionary interpretation or catch-all, is that the idea? For example, that example that you just used, Dr Williams, whereby the person exercising the coercive control—it's verbal and it's in the atmosphere of the general relationship but it's not documented, in essence, and you can't tell from credit card statements or whatever because they are spending. Are you saying that an overall, all-encompassing definition would help prosecute those sorts of things? Another example might be if I'm in a relationship where someone is coercing me and I've let them control all the bank accounts and they go and open three or four other bank accounts and I'm not even aware of where the money has gone. That wouldn't necessarily be captured either. Is that what we are saying?

KAREN WILLIAMS: Yes, that's exactly what we are saying.

Ms ABIGAIL BOYD: Just while we are on that, another example that we heard some things about during the joint select inquiry was also withholding passports and deliberately not putting someone's name on a utility bill et cetera so that they can't then open their own bank account. Do you think that that sort of circumstance is covered in here?

GAYATRI NAIR: No. One of the areas that we and others have highlighted was women on temporary visas. Immigration abuse—that's a very key area that is not really covered in this legislation and is also an issue that has come up before in terms of harmonisation because it's family law and it's immigration law, which is Federal law, and obviously it is not captured in New South Wales-based laws or ways and there are gaps. I don't know if anyone else wants to add to that.

KATE FITZ-GIBBON: I'd just add that the ways in which perpetrators coercively control their partners continuously evolve with technology and with different sites where perpetrators share tactics. I think if the bill does go down the direction of including any examples, that is something that needs to be continuously reviewed and considered to ensure that it evolves with the behaviours of perpetrators. We saw during the pandemic that perpetrators used the public health measures to enact new forms of coercive control against their partners. I was reflecting with colleagues earlier about an example in England and Wales shortly after the introduction of their coercive control offence, when I was speaking with one of the key supporters of that law at Women's Aid, and they said that they had had a client whose husband used to hide three coins every morning when he went to work somewhere in the house. If she did not find those coins that day, he said he would kill her that night. Some days she found the coins within five minutes of him going to work—and great, she can get on with her day. Other days, seven hours, eight hours later, she's madly crawling around the house, terrified for her life, trying to find those coins. How do you capture that in a list of examples? This is the nuance and the complexity of the behaviour that we're criminalising. That's why we can't rush. It's why definitions really matter.

Ms ABIGAIL BOYD: It comes back again to the point I asked a few other witnesses, which Marilyn and Paul from Deakin had raised in their submission last time. You frame the offence in relation to the effect of the behaviours, rather than providing a list of behaviours itself, because of that, right? That's the whole point.

KATE FITZ-GIBBON: It's why the education piece is really important, so we understand the impact that these behaviours have on women. We have recently completed a study where we surveyed over 1,200 Australian victim-survivors of coercive control and asked them if they supported criminalisation, which absolutely the majority did. We then asked them why and what they most wanted from criminalisation, and increased community awareness of the impacts and unacceptability of this behaviour is what they most want. A complex definition, or a definition that doesn't reflect lived experience, doesn't give that. It further muddies the waters.

Ms ABIGAIL BOYD: If you are doing something, whatever that is, that has the effect of taking away someone's liberty in that way—making that woman crawl around on the floor—it doesn't really matter what behaviour you're doing, if that's the effect and you know it's having that effect. But that's not what this legislation does.

JANE WANGMANN: If I can add on to that, that's what's so attractive about the Scottish and Northern Irish approach: They have taken the effects-based approach. They say it's any behaviour, because they recognise the perpetrators are some of the most creative people that we know and that it's about what the behaviour does. Does it dominate? Does it restrict liberty? It's not about this list, which can never be perfect. The Attorney General recognised that himself. You can't put it all there. But if you start to put it all there, you're losing sight of the effects and instead looking at these incidents again.

KAREN WILLIAMS: There is a huge amount of perpetrators that covertly destroy women's self-esteem by making them feel that they're mentally compromised or have memory problems or mental or cognitive problems. It's a really big problem that doctors in general practice will see and, of course, I see a lot of the time as well. Psychological terror and the emotional abuse is not—I don't think it is covered at all in the definitions that you've got there so far. Things like what you were talking about with the coins, deliberately tickling a woman until she wets herself, hiding around the house and jumping out at her—those sort of things that are employed by individuals—we would never get the lists to have all of that, but all of them have this impact of raising her anxiety to a point where she can't function a lot of the time. And there is a purpose for doing that, the purpose of increasing her anxiety to such a point that she can't execute any plans to escape.

All of this is designed with intent. To have a woman spending her day crawling on the floor looking for coins is going to mean that she won't plan any other way of getting out of it, other than to find the coins. She could use that energy to work her way out of the relationship, but she doesn't. She utilises her energy to find the coins. And that's the issue that comes from doing it this way. If the legal system doesn't understand that this is why the woman hasn't come forward earlier, and this is why it's coming up in the family law court—because that's often where it does come out—and he says, "Why didn't you bring this up earlier?", this is why: because her ability to plan and abstract thinking that comes when you're in a state of heightened vigilance, like these women are, is severely compromised. Nowhere in this legislation do we address the fact that it does this to women.

JASMINE OPDAM: Could I just add one point around that? All of this is so critical for the way that the police respond to victim-survivors making admissions of having experienced coercive control. We've had clients who have been laughed out of police stations because they've made allegations of fraud or identity theft against their ex-partner and the police response has been "But you were married, so what are you talking about?" And that's not an uncommon experience for women, particularly experiencing financial and economic abuse.

When you lead with those behaviours, you're giving the police and people who are responding to this behaviour the ability to look at this kind of checklist, as we've been discussing, and say, "I don't really care that you're upset by this. It doesn't really seem to fit in this list." But if you're focusing on the effect and impact, then you leave room to constantly adapt to the ever-evolving ways perpetrators use the legal system—in particular the family law system, the AVO system, even the civil law system, that we see all the time with debt recovery claims and vexatious litigation. There are limitless ways perpetrators can use our systems to continue perpetrating abuse, which is why those effects and that Scottish model of the impacts is so critical.

The Hon. AILEEN MacDONALD: I was just wondering if there are any aspects of the bill in its current form that you are supportive of. If so, what are they?

GAYATRI NAIR: We're happy to see that economic and financial abuse is recognised. That's the first time that has been recognised in New South Wales. But, as we've outlined in our submission and here today, we have concerns about that application.

KAREN WILLIAMS: I think there are a lot of good points in it. The examples that—well, the general subsections of each bit are pretty good, in general. But when there are examples that would seem to limit those subgroups is where the problem lies. For example, you've got verbal abuse, the definition there being that there's insulting the person until they—with the impact of humiliating, with the intention to humiliate or shame the person. But many perpetrators won't directly use an insult. They'll make suggestions like, "Should you really be wearing that? Maybe you should go change. I don't want to come out with you wearing that." It's not a direct insult, but it has the same impact as saying, "You look terrible." Being able to recognise that nuance seems to be limited with the examples.

The big missing bit is the psychological torture. That isn't in there at all. The gaslighting, trying to convince a woman that she's mentally unwell or brain-damaged, is very big. Any psychiatrist that you speak to will have women brought to them by their partners, saying, "She's crazy. Prove that she's crazy. Give her medications." And they try to compel us to medicate these women and then use the medications to sedate them and rape them as well. We have a big problem there that's not at all covered.

The Hon. SHAYNE MALLARD: Isn't that the problem with definitions in criminal law that allow the judges and the court cases to determine, through precedent, as it evolves, what they see it as? Psychological, to me, seems an obvious one—and financial too. Controlling reproductive health is another one I know of. A definition is almost infinite and evolving, so shouldn't we allow the courts to do that, which is the normal process?

KAREN WILLIAMS: I don't think the courts have demonstrated any expertise in family violence at all.

JANE WANGMANN: If I go back to my opening address, that depends on the lawyers being equipped to present the argument, and I'm not entirely convinced that they all are yet. You have to be a good lawyer to be able to articulate how the psychological abuse would fit this definition. It is possible, but you have to do that for the court. So there is all this work with lawyers that we need to do too.

KATE FITZ-GIBBON: And the question would be how many victim-survivors you are willing to send through the criminal justice system before lawyers have developed the skills to articulate that. In response to your question, I confess that I have focused today on what can be enhanced rather than what has gone well. This bill and this inquiry undoubtedly represent a willingness to improve a legal system's response to domestic and family violence, which we know is not working. I commend that, but I think we can do much better than this.

JANE WANGMANN: Sorry, I didn't answer the question. If I can say, I am pleased to see a definition of "domestic abuse" being inserted in the AVO legislation, with all the limitations that I mentioned. It has been much needed and it has been called for since 2003. Again, I think we can do better with it, but it is definitely a step forward. It should have come first because this should be part of the educative function to get to the criminalisation.

Ms ABIGAIL BOYD: I just quickly wanted to note that for people who are watching this some of the content may have been distressing. If anybody is needing help, the 1800RESPECT number is 1800 737 732, the NSW Domestic Violence Line is 1800 656 463 and the NSW Sexual Violence Helpline is 1800 424 017.

The CHAIR: Thank you very much for your time. On top of that, thank you very much for the work you are doing in the community. It is very much appreciated. That draws our hearing to a close.

(The witnesses withdrew.)

The Committee adjourned at 16:32.