Criminalising coercive control in the context of domestic and family violence: key sources

Domestic and family violence is a major social issue in Australia and a key priority for governments. The current national policy is the National Plan to Reduce Violence against Women and their Children 2010 – 2022. In August 2019, the Council of Australian Governments endorsed the Fourth Action Plan of this Plan. It explains that while there is no single central definition of domestic violence:

…the central element of domestic violence is behaviour motivated by gendered drivers of violence that can involve controlling a partner through fear, coercion and intimidation — for example by using behaviour that is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal.

The justice system responds to domestic and family violence in two ways. First, through the making of civil protection orders and their enforcement (knowingly breaching an order is a criminal offence). Second, through the prosecution of persons for other criminal offences. There is no discrete offence of domestic and family violence. Instead, perpetrators can be charged with a range of general criminal offences (e.g. assault). In most States and Territories there are no offences relating to emotional or psychological abuse except for the offence of stalking and intimidation. In Tasmania, the Family Violence Act contains offences of economic abuse, and emotional abuse and intimidation (enacted in 2004).

New offences in other countries: Three countries have recently introduced new offences to criminalise a course of behaviour involving non-physical abuse or a combination of physical and non-physical abuse. In 2015, a new offence of controlling or coercive behaviour was enacted in England (it also applies in Wales); this was followed in Ireland (2018) with the offence of coercive control; and Scotland (2018) with the offence of abusive behaviour. In the Scottish offence, examples of abusive behaviour are those that aim to: isolate the person from friends and relatives or other sources of support; control, regulate or monitor the person’s day-to-day activities; or frighten, humiliate, degrade or punish the person.

Debate in Australia: These overseas developments have led to debate about enacting a similar offence in Australia. Some academics and stakeholders support the introduction of a new offence (e.g. McGorrey and McMahon), while others have expressed concerns (e.g. Walklate and Fitz-Gibbon). Some major Australian inquiries into domestic and family violence have not recommended the creation of a
new offence: Victorian Royal Commission (2015); Queensland Special Taskforce (2015); and Australian and NSW Law Reform Commissions (2010).

**Recent NSW developments:** The NSW Domestic Violence Death Review Team’s [March 2020 report](#) recommended that the Department of Communities and Justice examine the extent to which existing NSW laws respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence (Rec 9). The [NSW Government’s July 2020 response](#) stated that the Department had commenced a review to examine reform options.

On 24 September 2020, Anna Watson MP introduced into the NSW Legislative Assembly a Private Members Bill to criminalise coercive control: [Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi’s Law) Bill 2020](#). The Bill would create an offence of coercive control in a domestic relationship, with a maximum penalty of five years imprisonment. There is also an aggravated offence where children are involved, with a maximum penalty of 10 years imprisonment.

On 13 October 2020, the NSW Attorney-General, Mark Speakman, [announced](#) that the NSW Government would move this week to establish a Parliamentary Joint Select Committee inquiry to examine coercive control. The Department of Communities and Justice also released a [discussion paper](#), which “details key issues, which the Inquiry can use as a guide”.

**Aim of this paper:** This issues backgrounder provides a list of key sources that discuss the issue of criminalising coercive control as well as some selected publications by the NSW Bureau of Crime Statistics and Research that provide useful background material. Hyperlinks are provided to the full text (for copyright reasons, some articles are restricted to Members and parliamentary staff). The sources in each section are arranged in reverse date order except for the academic commentary which is organised alphabetically by author.

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1. NEW SOUTH WALES

Legislation

*Crimes (Domestic and Personal Violence) Act 2007*. See in particular section 11 (Meaning of “domestic violence offence”) and section 13 (Stalking or intimidation with intent to cause fear of physical or mental harm).

Parliament

*Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi’s Law) Bill 2020*, [website].

Domestic Violence, *Hansard (Legislative Assembly)*, 30 July 2020.


Government

NSW Department of Communities and Justice, *Coercive control reform*, Media release, 13 October 2020.

NSW Department of Communities and Justice, *Coercive control discussion paper*, October 2020.


Statutory bodies


NSW Bureau of Crime Statistics and Research (BOCSAR), *Domestic violence statistics for NSW*, [website].


Stakeholders

Women’s Legal Service NSW, *Why we need a thorough consultation process on how to effectively address coercive controlling violence*, 23 September 2020.


2. AUSTRALIAN MEDIA ARTICLES


Baird J, *The most dangerous form of domestic abuse is not a crime in NSW, but momentum is building for change*, *Sydney Morning Herald*, 19 September 2020.

Boltje S, *NSW Labor proposal could see domestic violence perpetrators jailed for up to 10 years for coercive control*, *The Drum*, 15 September 2020.


3. MAJOR AUSTRALIAN REPORTS


Special Taskforce on Domestic and Family Violence in Queensland, Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland, 2015, Chapter 8.3.3.


4. ACADEMIC COMMENTARY

Books


Journal articles


Bettinson V, Bishop C, Is the creation of a discrete offence of coercive control necessary to combat domestic violence?, Northern Ireland Legal Quarterly, 2015, 66(2), p 179-197


Research papers


Other articles

Bishop C, *Why it’s so hard to prosecute cases of coercive or controlling behaviour*, The Conversation, 31 October 2016.
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5. COERCIVE CONTROL OFFENCES IN AUSTRALIA

Tasmania

*Family Violence Act 2004*, section 8 – offence of economic abuse; and section 9 – offence of emotional abuse and intimidation. The Tasmanian Parliament’s website has a [Bill page](#) relating to this Act.


South Australia

[Criminal Law Consolidation (Domestic Abuse) Amendment Bill 2020](#). This is a Private Member’s Bill introduced by independent MLC John Darley on 20 February 2020. The Bill proposes to create an offence of controlling or coercive behaviour in a relationship. It is currently at the first reading stage.

6. COERCIVE CONTROL OFFENCES IN UK AND IRELAND

England and Wales

Section 76(1) of the *Serious Crime Act 2015* – offence of controlling or coercive behaviour in an intimate or family relationship. The UK Parliament’s website has a [Bill page](#) relating to this Act.


Scotland

Section 1(1) of the *Domestic Abuse (Scotland) Act 2018* - offence of engaging in abusive behaviour towards a partner or ex-partner. The Scottish Parliament’s website has a [Bill page](#) relating to this Act.


Ireland

Section 39(1) of the *Domestic Violence Act 2018* – offence of coercive control. The Houses of the Oireachtas’ website has a [Bill page](#) relating to this Act.

Northern Ireland


Department of Justice, *Domestic Abuse Offence and Domestic Violence Disclosure Scheme – A Consultation – Summary of responses*, 2016.

Department of Justice, *Domestic Abuse Offence and Domestic Violence Disclosure Scheme – A Consultation*, 5 February 2016.

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For further information please contact the Research Service on 9230 2768

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