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Our ref: DHS/22/08729
Your ref: 16772912



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Sent by email: michelle.lensink@parliament.sa.gov.au

Dear Ms Lensink

I refer to your application under the *Freedom of Information Act 1991 (the Act)*, received by the Department of Human Services (**DHS**) on 19 October 2022, seeking access to:

All documents (including but not limited to) hard copy or electronic briefings, minutes, reports, emails, letters, internal advice, or any other correspondence that relate to implementation of a criminal offence of coercive control. Timeframe: 1/01/2022 to 18/10/2022

I apologise that DHS did not make a determination within 30 days as required by the FOI Act. However, DHS has continued to process your application outside of this timeframe. Section 19(2)(a) of the Act provides that an agency can release documents outside of the thirty-day timeframe, and this is still taken to be a determination under the FOI Act.

An initial search identified a large number of documents falling within the scope of your request. It was therefore agreed with you on 17 November 2022 to narrow the scope of the request to the following:

All briefings, minutes, reports, and internal advice that relate to implementation of a criminal offence of coercive control. Timeframe: 1/01/2022 to 18/10/2022

Thirty-four documents were located that fit within the scope of your request and I have determined as follows:

- 23 documents are to be released in full
- eight documents are to be released in part, and
- access is refused to three documents.

Please find enclosed a copy of the documents released, and a document schedule containing a brief description of each document and determination in summary form.

Released in full

Documents 2-4, 6-8, 10, 13-15, 17, 18, 20, 21, 23-29, 33 and 34

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Released in part

Documents 1, 5, 9, 22 and 30 contain information relating to the personal affairs of third parties. I consider that it would be unreasonable to disclose this information, and determine the information exempt pursuant to clause 6(1) of Schedule 1 of the Act.

Documents 19 and 31 contain information relating to the State budget process and their release would disclose details concerning deliberations of Cabinet. I have therefore determined these documents exempt pursuant to clause 1(1)(e) of Schedule 1 to the Act.

Document 32 contains details of information discussed at the Premier's Council for Women that does not relate to the implementation of coercive control legislation. I have redacted this information as 'out of scope'.

In accordance with section 20(4) of the Act, I consider that you would wish for access to the remainder of the documents after exempt information is removed so I am releasing these documents to you in part.

Access refused

Under clause 10(1) of Schedule 1 to the Act, information is exempt from disclosure if it would be privileged from production on the ground of legal professional privilege. Documents 11, 12 and 16 contain legal advice provided to the government, information which is subject to legal professional privilege. I have therefore determined to refuse access to these documents pursuant to clause 10(1).

If you are dissatisfied with my determination, you can seek an internal review by writing to the Chief Executive, DHS, as the Principal Officer of the agency. Your request should be sent within 30 days of your receipt of this letter.

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, and the documents to which you are given access, may/will be published on the agency's disclosure log. A copy of PC045 can be found at <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>

If you have any questions in relation to this matter, please contact Fiona Braendler, Senior FOI Officer, on telephone 8413 9094 or by email at DHSFreedomofInformation@sa.gov.au. If you disagree with publication, you will need to advise the Senior FOI Officer within two weeks of the date of this determination.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized capital 'K' followed by a horizontal line extending to the right.

Kelly Biggins
ACCREDITED FREEDOM OF INFORMATION OFFICER

24 / 04/ 2023

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SCHEDULE OF DOCUMENTS – DHS/22/08729

Freedom of information application from the Hon Michelle Lensink MLC seeking access to:

All briefings, minutes, reports, and internal advice that relate to implementation of a criminal offence of coercive control.

Timeframe: 1/01/2022 to 18/10/2022

No	Author	Date	Description of document	Determination	Exemption clause
1.	Adam Kilvert, Executive Director Policy and Community Attorney General's Department (AGD)	14/01/2022	Email - FW: Input required - draft discussion paper on implementation of a coercive control offence	Released in part	Clause 6(1) – personal affairs
2.	AGD		Draft discussion paper - Coercive Control - implementation discussion paper Attachment to Document 1	Released in full	
3.	Community and Family Services Department of Human Services (DHS)	25/01/2022	Briefing - 22TCEO/010 - AGD - Input Requirement - Draft Discussion Paper	Released in full	
4.	Lois Boswell Chief Executive, DHS	25/01/2022	Letter - Response to AGD re Input to Draft Discussion Paper Attachment to Document 3	Released in full	
5.	Adam Kilvert	3/02/2022	Email - FW: Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia	Released in part	Clause 6(1) – personal affairs
6.	AGD		Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia Attachment to Document 5	Released in full	Publicly available
7.	Community and Family Services, DHS	4/03/2022	Briefing - 22TCEO/030 - AGD - Input Requirement - Published discussion paper on implementation of a coercive control offence (for attachment 1 see document 6)	Released in full	
8.	Ruth Ambler A/Chief Executive DHS	4/03/2022	Letter - Response to AGD re published discussion paper Attachment to Document 7	Released in full	

OFFICIAL**SCHEDULE OF DOCUMENTS – DHS/22/08729**

No	Author	Date	Description of document	Determination	Exemption clause
9.	Dr Sanjugta Vas Dev Director Office for Women, DHS	7/04/2022	Email: FW: Coercive Control Implementation Taskforce - Confidential Draft of Discussion Paper (for Attachment 2 see Document 2)	Released in part	Clause 6(1) – personal affairs
10.	AGD		Minutes - Coercive Control Implementation Taskforce Attachment to document 9	Released in full	
11.	Dr Sanjugta Vas Dev	3/08/2022	Email: FW: Coercive control advice and consultation	Refused in full	Clause 10(1) – legal professional privilege
12.	AGD		Minute - Election Commitment Coercive Control Legislation Attachment to Document 11	Refused in full	Clause 10(1) – legal professional privilege
13.	South Australian Labor Party		Att to minute - Policy Document on Women: Safety Wellbeing, Equality Attachment to Document 12	Released in full	Publicly available
14.			Att to minute - CLC (Coercive Control) Amendment Bill 2020 (Hildyard) Attachment to Document 12	Released in full	Publicly available
15.			Att to minute - Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 (former Government Bill) Attachment to Document 12	Released in full	Publicly available
16.			Att to minute - Table comparing three coercive control Bills Attachment to Document 12	Refused in full	Clause 10(1) – legal professional privilege
17.	Attorney General	16/08/2022	Minute: Draft National Principles to Address Coercive Control	Released in full	
18.			Consultation Draft - National Principles to Address Coercive Control Attachment to document 17	Released in full	Publicly available
19.	Community and Family Services, DHS	11/10/2022	Briefing - 22TDHS/297 - Proposed next steps on engagement for coercive control (for Attachment 3 see Document 6)	Released in part	Clause 1(1)(e) – deliberations of Cabinet
20.	Embolden SA		Attachment 1 - Position Paper - Coercive Control and the Law in South Australia Attachment to document 19	Released in full	Publicly available
21.	AGD		Attachment 2 - Coercive Control Implementation Taskforce Representatives Attachment to Document 19	Released in full	

OFFICIAL**SCHEDULE OF DOCUMENTS – DHS/22/08729**

No	Author	Date	Description of document	Determination	Exemption clause
22.	AGD		Attachment 4 - Summary of submissions re discussion paper Attachment to Document 19	Released in part	Clause 6(1) – personal affairs
23.	AGD		Attachment 5 - Key finding table from Submission report Attachment to Document 19	Released in full	Publicly available
24.	ANROWS		Attachment 6 - Coercive Control Policy Brief Attachment to Document 19	Released in full	Publicly available
25.	AGD		Attachment 7 - yourSA consultation result Attachment to Document 19	Released in full	Publicly available
26.	QLD Government		Attachment 8 – Hear Her Voice – Queensland Government Discussion Paper – Report 1 Attachment to Document 19	Released in full	Publicly available
27.	Change the Record		Attachment 9 - Pathways to Safety Attachment to Document 19	Released in full	Publicly available
28.			Attachment 10 - Coercive control consultation concept Attachment to Document 19	Released in full	
29.			Attachment 11 - Letter to key stakeholders - draft National Principles Attachment to Document 19	Released in full	
30.			Attachment 12 - Stakeholder mailing list Attachment to Document 19	Released in part	Clause 6(1) – personal affairs
31.		12/10/2022	Framework: - Planning for Coercive Control Legislation in SA in 22/23	Released in part	Clause 1(1)(e) – deliberations of Cabinet
32.	Premier's Council for Women	21/10/2022	Minutes of meeting	Released in part	Out of scope
33.	Community and Family Services	25/10/2022	Briefing - 22TDHS/780 - Final Minute - Draft National Principles to address Coercive Control	Released in full	
34.	Minister for Women and the Prevention of Domestic and Family Violence	25/10/2022	Minute - Draft National Principles to address Coercive Control Attachment to Document 33	Released in full	

Braendler, Fiona (DHS)

Subject: FW: Input required - draft discussion paper on implementation of a coercive control offence
Attachments: CONFIDENTIAL DRAFT - Coercive Control - implementation discussion paper.docx

From: Kilvert, Adam (AGD) <Adam.Kilvert@sa.gov.au>

Sent: Friday, 14 January 2022 1:27 PM

To: Boswell, Lois (DHS) <Lois.Boswell@sa.gov.au>; Vas Dev, Sanjugta (DHS) <Sanjugta.VasDev@sa.gov.au>; Hilliard, Catherine (EXT-SAPOL) <catherine.hilliard@police.sa.gov.au>; Ralphs, Paul (EXT-SAPOL) <Paul.Ralphs@dlcontact.sa.gov.au>; Virgo, Melana (CAA) <melana.virgo@courts.sa.gov.au>; Croser, Penny (CAA) <Penny.Croser@courts.sa.gov.au>; Shephard-Bayly, Darian (DCS) <Darian.Shephard-Bayly@sa.gov.au>

Cc: Mealor, Caroline (AGD) <Caroline.Mealor@sa.gov.au>; Swanson, Andrew (AGD) <Andrew.Swanson@sa.gov.au>; Schumann, Brette (AGD) <Brette.Schumann3@sa.gov.au>; Watson, Lucinda (AGD) <Lucinda.Watson@sa.gov.au>; Evans, Darren (AGD) <Darren.Evans@sa.gov.au>

Subject: FW: Input required - draft discussion paper on implementation of a coercive control offence

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Dear all

Happy new year.

As you may be aware, both the government and the opposition had Bills before Parliament to introduce a coercive control offence. The lower house of Parliament was prorogued without passing either Bill. Nevertheless, this gives a strong indication that Parliament may be asked to consider introducing the offence in the new session.

Given that indication, the Attorney-General's Department wishes to be in a position to appropriately advise on issues around the implementation of a coercive control offence if it to be progressed after the election. A coercive control implementation taskforce has been established which is comprised of service organisations primarily working in the domestic violence field, and other relevant interest groups. This taskforce will assist with understanding the practical issues facing those working to address issues like coercive control. AGD has also developed a draft discussion paper to seek public feedback on possible implementation measures (**attached**). It is intended that the paper be released for public consultation on 1 February.

There is information in the draft discussion paper that relates to the work of your agency. Given this, it would be very helpful if you could please review the draft at your earliest convenience and indicate whether there are any aspects of the paper which you wish to comment upon. Once the draft has been reviewed with your feedback in mind, it will be provided to the taskforce for their review. The paper will then be publicly released.

We appreciate that this is a very busy time for your agencies, but unfortunately, we are working towards a very tight timeframe for this piece of work. For that reason, I would be grateful if you could respond with any comments by 11 am on Wednesday, 19 January 2022.

If you would like to discuss any aspect of the paper, feel free to give me a call.

Thank you.

Adam

Adam Kilvert
 Executive Director
 Policy and Community

Attorney-General's Department

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Discussion Paper: Implementation of coercive control offences in South Australia

January 2022

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Foreword

Domestic and family violence (DFV) continues to be a blight on our community. In South Australia during 2020 there were 9,451 recorded victims of DFV related assault and sexual assaultⁱ.

Unfortunately, many more DFV behaviours go unreported to police or DFV support services. This includes coercive and controlling behaviours, such as isolating a person from their friends and family and denying financial autonomy. While these behaviours have long been recognised as an integral part of DFV, criminal justice responses have traditionally focused on physical violence.

There is growing momentum across Australia and internationally to consider new offences to criminalise coercive and controlling behaviours that are not covered within existing criminal offences. In jurisdictions where such offences exist, feedback has stressed the importance of the implementation process to ensure the offences operate effectively within the community. Key implementation measures include community awareness raising, education and training for the legal and DFV service sectors, and services for victims and perpetrators.

Currently, coercive control is not a specific criminal offence in South Australia. However, given the recent focus on this issue, the Attorney-General's Department is currently considering what implementation processes would be needed should coercive control be criminalised in South Australia.

I encourage you to consider the questions in this discussion paper and have your say to help us improve the safety and wellbeing of South Australian DFV victims and their children.

Caroline Mealor
Chief Executive, Attorney-General's Department

Introduction

Consultation on a proposed South Australian offence of coercive control was conducted during September and October 2021. There were 173 respondents to a public survey, with more detailed submissions received from 31 individuals and organisations.

The feedback noted the importance of the implementation process. Suggestions included training for enforcement agencies to identify, charge and prosecute coercive control, a public awareness campaign, wrap-around support services for victims and counselling and treatment services for perpetrators. Respondents also advocated a focus on regional and remote victims, Aboriginalⁱⁱ people, and the migrant community.

This discussion paper seeks feedback on proposed implementation measures. We seek your views on this approach and any other feedback you may have on how to support implementation of a coercive control offence, should it be introduced.

How to make a submission

This discussion paper poses a number of questions. You may wish to respond to all questions, or only those that are of interest to you. You may wish to also raise additional relevant matters. Submissions in response to this discussion paper can be made until 1 April 2022. Individuals and organisations can make a submission (confidentially if desired) by email to agdpolicyandanalytics@sa.gov.au.

What is coercive control?

Coercive control is an insidious form of DFV that involves tactics of emotional and mental abuse which undermine the victim's autonomy and sense of identity. Coercive and controlling behaviour includes isolating a person from their friends and family, controlling what a person can wear, when they can sleep, what they can eat and when they can leave the house. The NSW Parliament Joint Select Committee on Coercive Control inquiry heard that "victims often describe it as more harmful and long-lasting than physical abuse. Respondents spoke of the 'isolation, subordination, humiliation and loss of liberty occasioned by coercive control', and noted that it has been linked to psychiatric outcomes including suicidality, depression and post-traumatic stress disorder"ⁱⁱⁱ.

Disturbingly, coercive control is also a common factor in intimate partner homicides, even though this type of behaviour does not always involve physical violence. Analysis undertaken by the NSW Domestic Violence Death Review Team identified that, among 112 incidents of intimate partner homicide between June 2000 and July 2019, coercive controlling behaviour was a feature of the relationship in all but one case. A number of these cases did not have any evident history of physical abuse^{iv}.

Despite the significant harm caused by coercive and controlling behaviours, victims are unlikely to seek help if they had not also experienced physical or sexual forms of abuse. They may be prevented from seeking help because the perpetrator isolates them from friends and family and restricts access to the phone and internet^v. Some victims may not believe they are experiencing violence, or minimise their experience because non-physical violence has traditionally been viewed to be less harmful or traumatic than physical or sexual violence^{vi}.

Interstate and international approaches

In considering how to implement a new coercive control offence in South Australia it is helpful to look to the approaches taken in other Australian jurisdictions as well as overseas.

Tasmania

Tasmania is the only Australian state to currently have legislated offences relating specifically to coercive control. In 2004, the Tasmanian Government passed the *Family Violence Act 2004 (Tas)* introducing two new criminal offences – economic abuse (section 8) and emotional abuse (section 9). The Act was implemented alongside the *Safe at Home* policy – a whole of government approach coordinating criminal justice responses to DFV, with victim safety as the overarching goal^{vii}.

Tasmanian coercive control offences have not been prosecuted often. In the 12 years after commencement to the end of 2017, 73 charges had been finalised with 40 convictions. Some explanations for the low number of prosecutions include resistance from the legal profession, difficulties in obtaining evidence (because it is often undocumented and occurs within a private setting with no independent witnesses), lack of community awareness and deficiencies in training and resources provided to police^{viii}. These factors will be considered in the development of an implementation plan for South Australia.

New South Wales

The New South Wales Government is currently considering the recommendations in the June 2021 report of the NSW Parliament Joint Select Committee on Coercive Control inquiry. The Committee recommended the criminalisation of coercive control and made a number of recommendations regarding the implementation of an offence.

Of note, the Committee recommended a considerable program of education, training and consultation with police, stakeholders and the frontline sector before the commencement of a criminal offence. The Committee also recommended awareness campaigns about coercive control as a priority, and consideration of improving resources for victim housing and legal services, and behaviour change programs for perpetrators^{ix}.

England and Wales

The England and Wales *Serious Crimes Act 2015* introduced a new offence of ‘controlling or coercive behaviour in an intimate or family relationship’. The legislation refers to coercive and controlling behaviour that is repeated or continuous, moving away from incident focused behaviour to a ‘course of conduct’^x.

A key lesson for South Australia – training entitled *Domestic Abuse Matters* was delivered to 14 police forces in England and Wales in response to the criminalisation of coercive control. An evaluation of *Domestic Abuse Matters* conducted in 2020 found that targeted, in-person training, when supported through peer support networks and ongoing professional development, can assist officers to better understand, recognise and respond to signs of coercive control. Notably, the study found attendance at the coercive control training was associated with a 41% increase in arrests for coercive control, with this effect remaining for up to eight months after training was completed^{xi}.

Republic of Ireland

A coercive control offence commenced in the Republic of Ireland in January 2019. A person commits the offence if they knowingly and persistently engage in behaviour that is controlling or coercive and which a reasonable person would be likely to consider to have a serious effect on a relevant person^{xii}.

Of relevance to South Australia’s implementation approach, the first conviction for the offence occurred in February 2020, more than one year after the offence commenced^{xiii}, with lack of police training cited as one possible explanation for the delay. At the time of commencement, the Association of Garda Sergeants and Inspectors (AGSI) in the Republic of Ireland noted that its members had received no training in how best to enforce the new laws. AGSI called on the Garda Commissioner to prioritise training as a matter of urgency, stating “appropriate training delivered in advance of legislation being implemented will ensure the public receive the best possible policing service.”^{xiv}

Scotland

The Scottish *Domestic Abuse Act 2018* commenced in 2019. The Act criminalises a course of abusive behaviour by a perpetrator against their current or former partner. The offence is treated as aggravated if the behaviour is directed at a child or they make use of a child as part of the course of abusive behaviour^{xv}.

The Scottish experience is instructive for South Australia. In addition to protection under the law, a broader systemic response was implemented, including increased investment in police training, a community awareness program and training for other professionals involved in the system such as prosecutors, lawyers and judges.

The intensive police training conducted in the lead up to the commencement of the legislation included how to identify coercive and controlling behaviours, understanding and awareness of the dynamics of DFV and perpetrator tactics used to manipulate victims and first responders. The training was delivered as an interactive online learning package, with additional training for the police leadership and attitudinal change champions^{xvi}.

In the first year of operation, 246 people were prosecuted and 206 (84%) were convicted of the offence^{xvii}. This is a sharp contrast to the Republic of Ireland which had no convictions in the first year.

Engagement with victims

The feedback received stressed the importance of involving victims of DFV in any implementation process. To achieve this, victims of DFV will be separately engaged to provide a voice of lived experience.

Coercive Control Implementation Considerations

The following four areas have been identified to support a coercive control criminal offence, if it were to be introduced:

1. Awareness raising and engagement
2. Education and training
3. Supports and services for victims
4. Appropriate responses to perpetrators

The experience of coercive and controlling behaviours can be vastly different for DFV victims from CALD, Aboriginal and LGBTIQ+ communities, victims in remote and regional areas, and those living with disability. There can be a fear of discrimination and of not being believed, previous negative experiences in accessing services or reporting to police, cultural barriers, and isolation from appropriate supports. For this reason, implementation should also include a focus on inclusivity and the special needs of diverse and vulnerable groups.

Awareness raising and engagement

Coercive control is a complex concept, challenging many existing beliefs and attitudes about DFV, such as the view that it consists only of physical violence. Overwhelmingly, feedback received indicated low awareness of coercive control in the South Australian community, and the need for awareness campaigns to increase understanding and encourage victims to come forward.

Current initiatives

In South Australia, a number of campaigns have successfully raised community awareness of DFV. Using Snapchat, Instagram and TikTok, the [Break the Cycle Campaign](#) raised awareness of the different forms of abuse and told people how to get support in the first wave of COVID-19.

The [Break the Cycle](#) website was launched in June 2020 as a one-stop-shop for all DFV information in South Australia. It provides information and resources for victims and perpetrators, including topics on coercive controlling behaviours such as emotional, verbal, psychological and financial abuse. Support materials available on the website have also been translated into 25 languages^{xviii}.

A second Break the Cycle campaign ran between July and September 2021, on television, radio, digital and social media platforms. For the first time, QR codes were included on print advertising, allowing quick and direct access to support networks if needed^{xix}.

The *See it for what it is. Stop Sexual Violence* campaign was also launched at the end of 2020. The campaign was notable for its use of the dating app Tinder to send out the message that all forms of violence are unacceptable and there is help available^{xx}.

In addition to media campaigns, the *Keeping Safe: Child Protection Curriculum* child safety program is provided to children and young people from age 3 to year 12. The program teaches children to recognise abuse, and understand ways of keeping themselves safe. The curriculum includes content relevant to coercive control such as:

- Healthy and unhealthy relationships and the representation of relationships within popular media
- The social construction of gender, gender stereotypes and expectations
- The types of power and the way power is used in different contexts.

Options to target coercive control

The Legal Services Commission has been provided with additional funding of \$50,000 to develop a community awareness campaign in 2022. The campaign will provide the following information:

- i. what are coercive control behaviours and how to identify them
- ii. where to get help, including crisis support services, social support services (including legal services)
- iii. any other information that may be relevant for the purpose of raising awareness.

Recognising the diversity of languages and cultures across South Australia, information about coercive control and the new offences will be provided on multiple platforms, including social media, and in a range of formats and languages. This discussion paper seeks feedback on how we can ensure all communities in South Australia receive this important information.

Question:

1. What are the key messages that should be communicated about coercive control?
2. What are the best mediums to communicate information about coercive control to your community?

Education and training for first responders, the legal sector and service providers

A common theme in the feedback received was the importance of education and training about coercive control. Some respondents felt the South Australian legal response focused on physical violence, and lacked an understanding of the nature of coercive control and the harms it can cause. Research papers on coercive control also note the need for education and training to be delivered beyond the legal sector (police officers, prosecutors and judicial officers), to emergency workers and workers in DFV services, health care, housing, education and child protection sectors^{xxi}.

Current initiatives

DFV related training and education for the justice sector is currently conducted within SA Police and the Courts Administration Authority.

SA Police has a raft of training and practices designed to enhance the policing response to DFV. SA Police General Orders provide guidance for frontline officers about the management of a DFV incident, and the gathering of available physical evidence. This includes preserving the scene of a crime, undertaking preliminary enquiries and identifying all relevant witnesses.

The Magistrates Court holds Judicial Education Days four times per year, and an annual All Courts Judicial Development Day. In July 2020, award winning author and investigative journalist Jess Hill, author of 'See What You Made Me Do', gave a presentation to all Magistrates entitled 'Power, Control and Domestic Abuse', focused on understanding coercive control, its characteristics and impacts. The session discussed approaches and strategies to appropriately obtain evidence from a person seeking or protected by an Intervention Order who has been subjected to coercive control and to assist in identifying within a courtroom setting whether an applicant for an Intervention Order may have been a victim of coercive control.

Beyond the justice sector, the Department of Human Services has funded [No to Violence](#) to deliver workforce development sessions four times per year to frontline case workers providing support to women and children outside the DFV sector, for example, health workers or drug and alcohol workers. The sessions will help caseworkers to identify DFV perpetrators in the course of their work and respond appropriately.

Options to target coercive control

The Legal Services Commission has been provided with additional funding of \$600,000 to engage with and educate health and welfare professionals on signs of coercive control in patients and clients, with referral to relevant legal assistance providers where appropriate. This engagement will also extend to other professions, such as the South Australian Hair and Beauty Association which is the professional body for hairdressers and beauticians.

In relation to training of the justice sector, a new coercive control offence would require changes in approach to both the investigation and prosecution, for example, identifying and gathering evidence for a course of conduct rather than a single incident^{xxii}. The intensive police training process conducted in Scotland in the lead up to the commencement of their coercive control legislation is often cited as best practice.

There is also a need for extensive training on the nature of coercive and controlling behaviour and the different ways victims may respond to trauma. Research and inquiry submissions have reported concerns about possible unintended consequences of criminalising coercive control. A key concern identified is the potential for manipulation by or misidentification of the perpetrator when police first arrive at a crisis situation, leading to the victim being identified as the primary aggressor^{xxiii}. Training will include a focus on how to avoid any potential unintended consequences of the new offences^{xxiv}.

We heard that training should be developed by experts in DFV or people with lived experience and include information about the precursors of DFV, gender-based violence, the experiences of DFV across different groups within the community, such as the LGBTIQ+ community, people with disabilities, CALD communities, and Aboriginal people, how victims may respond to trauma and how perpetrators may respond to intervention. Regular refresher training should also be provided to ensure the lessons are reinforced over time and new information/approaches are communicated.

As a first step, this discussion paper seeks feedback on the current DFV education and training available and whether there are any gaps in relation to coercive control. This information will help us to identify additional education and training modules that might be needed to improve understanding of and responses to coercive control and DFV in general. It will also ensure we build on the extensive education and training already provided and avoid duplication.

Questions:

3. What education and training is needed to improve the justice sector's understanding of coercive control and detect, investigate and prosecute coercive control appropriately?
4. What education and training is needed for organisations that work with victims and perpetrators of coercive control e.g. in health, housing, education, etc.?
5. What do you consider to be potential unintended consequences of the coercive control offences, and what education or training could be provided to minimise these, particularly for vulnerable groups?

Support services for victims

The feedback received suggested the need for increased support services to DFV victims, including emotional support services and practical assistance such as accommodation services.

Current services for DFV victims

Since 2019 the Commissioner for Victims' Rights has been the central point of contact for victims, to coordinate their access to services and to support them to navigate the criminal justice system. Additionally, a new [Victims Of Crime SA website](#) was launched in October 2020 which brings together information for victims, including what to expect in the criminal justice process and information about support services. This information is also published in the 'Information for Victims of Crime' booklet which is disseminated by SA Police upon first contact with victims.

A range of services and supports are available to victims of DFV. Supports include crisis support, legal assistance, and help to navigate through the criminal justice system – from initial report and investigation to court support, victim impact statements and counselling, to parole and victim safety planning. Information about specific DFV and sexual assault support services is available from www.sa.gov.au.

Recent initiatives include:

- Opening of the seventh women's safety hub located in Whyalla, adding to existing regional hubs reaching from Mount Gambier to Berri and Port Augusta. Hubs are tailored to each region, with all providing information and referrals for DFV support, housing, police and legal matters, family intervention, financial counselling, mental health medical services or drug and alcohol services. Most also offer private drop-in spaces with phone or computer access – a vital service for women who are not able to freely seek information or access services in their own home^{xxv}
- 40 new crisis accommodation beds for South Australians leaving DFV across Adelaide and the regions, including 17 in regional areas in Limestone Coast, Murray Mallee and Eyre and Western^{xxvi}.
- The Supporting Parents' and Children's Emotions program, which provides early intervention support to young parents aged between 12 to 25 years, who are experiencing or perpetuating DFV. The program is run through the Women's and Children's Health Network, as a specialised add-on to its Young Parents Program.
- Additional funding to the Domestic Violence Disclosure Scheme (DVDS) to mid-2024. The DVDS is a free and confidential online application to help people at risk find out if their partner has a history of violent offending or other relevant information, such as previous intervention orders. Persons feeling at risk are also connected with specialist DFV support, whether or not there is information for police to disclose, providing help to make an informed safety plan. Further expanding the scheme from a 'Right to ask' to a 'Right to know' model is also being explored.^{xxvii}
- \$603,000 funding to the Department for Correctional Services (DCS) to keep high risk victims of DFV informed of changes to the circumstances of their perpetrator who is in the custody or under the supervision of DCS.

Options to target coercive control

Increased awareness of coercive and controlling behaviours will likely have an immediate impact on DFV and legal service providers.

Women's Safety Service (SA) (WSSSA) is funded to operate the 24/7 Domestic Violence Crisis line, which provides information and advice and support to develop a safety plan. Additional funding of \$600,000 has been provided to WSSSA to enhance its existing service to include a quick response coercive control assessment, and to provide information and referral to other support services.

The additional funding to WSSSA includes \$3,000 to develop a new (or amend the current) risk assessment tool to assess the coercive control risk factors of persons who contact the Crisis Line. The new tool will link with the existing common DFV Risk Assessment form, which has been used by government and non-government agencies since 2014 to determine the current level of risk to a victim and any children, and to guide decision making on the type and urgency of response required. The use of a common, agreed risk assessment means that all agencies have a uniform understanding of risk factors and risk levels, to better inform responses and support.

One of the legal remedies to support victims to mitigate or address coercive control behaviours is an Intervention Order. Victims can apply to the court to prohibit their partners from engaging in coercive or controlling behaviours against them. The Women's Domestic Violence Court Assistance Service (WDVCAS) is a statewide free legal assistance service run by the Legal Services Commission, which supports women to navigate the Magistrates Court process of applying for, varying or revoking an Intervention Order. Additional funding of \$500,000 has been provided to increase the capacity of WDVCAS to assist victims experiencing coercive control.

Properly addressing coercive control requires services to be easily accessible and visible via strong referral pathways and no red tape or duplication. This discussion paper seeks feedback on current DFV services available and their ability to respond to victims of coercive control. This information will help us to map existing services, to determine gaps, duplications and opportunities for improvements.

Questions:

6. What types of coercive control services should be prioritised?
7. Are there any gaps in the services currently available to victims of coercive control?

Appropriate responses to coercive control perpetrators

The feedback received noted the need for counselling and treatment services for perpetrators of coercive control. Respondents suggested that perpetrators may have a lack of understanding about the seriousness and impact of their behaviour.

Current services for DFV perpetrators

There are a range of services available to the Court and in the correctional system which provide therapeutic intervention to perpetrators of DFV. There is also a [dedicated phone line](#) where perpetrators, frontline workers and friends, family and community members can call when they are concerned with the perpetrator's use of violence.

Under section 13 of the *Intervention Orders (Prevention of Abuse) Act 2009*, the Magistrates Court can mandate assessment for and participation in an Abuse Prevention Program (APP) for alleged DFV offenders either as a condition of bail or an Intervention Order. During 2020-21 there were 706 referrals to the APP. Approximately \$750,000 per year is provided by the Courts Administration Authority to run:

- Face-to-face group counselling
- Weekly individual counselling for men who are not considered suitable for group participation. This includes men with cognitive impairment or low levels of English language proficiency.
- A culturally safe program for Aboriginal men.

The Department for Correctional Services operates five programs targeting perpetrators of DFV, at a cost of \$9 million per year. These are:

- The Domestic and Family Violence Intervention Program and the culturally responsive Aboriginal Men's Family Violence Program.
- A suite of Violence Prevention programs (VPP) targeting perpetrators of violent offending, such as gang violence, homicide, kidnapping and armed robbery. Each of these programs includes a focus on identifying and challenging attitudes supportive of DFV and the dynamics of intimate partner violence. The VPP for Aboriginal men includes a co-facilitation model where Aboriginal staff deliver the program alongside clinical staff from the DCS Rehabilitation Programs Branch.

- The Cross Borders Indigenous Family Violence Program (CBIFVP) operates as a tri-state partnership between South Australia, Western Australia and the Northern Territory, with funding contributed from the Australian Government. The CBIFVP receives referrals from police, courts and corrections for men who live in remote Anangu Pitjantjatjara Yankunytjatjara or Ngaanyatjarra Pitjantjatjara Yankunytjatjara communities. The program aims to reduce the incidence of DFV through culturally responsive approaches, including delivering in local language, having a cultural broker present, and challenging attitudes and behaviours in culturally appropriate ways.

Further considerations

Controlling behaviour is recognised as a foundational aspect of DFV and it is likely that it is already addressed, at least to some extent, in current perpetrator programs. It is noted, however, that the primary trigger for entry to these programs is physical violence or threat. Counselling and treatment programs aimed specifically at coercive control perpetrators who do not use physical violence may be a useful addition to the current suite of perpetrator responses.

This discussion paper seeks feedback on existing perpetrator services and programs. This will enable us to determine opportunities for improvements in the context of coercive control.

Questions:

8. What types of perpetrator services should be prioritised?
9. Are there any gaps in the services currently available to perpetrators of coercive control?

General questions:

10. Is there anything else that should be considered as part of implementing a criminal offence relating to coercive control?

ⁱ ABS Recorded Crime Victims 2020

ⁱⁱ In South Australia, Aboriginal is used to describe Aboriginal and Torres Strait Islander peoples.

ⁱⁱⁱ Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021 p 15. [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/media/media/parlmentary_documents/attachments/157/157_15.pdf)

^{iv} NSW State Coroners Court 2020.

^v Boxall H & Morgan A 2021. Experiences of coercive control among Australian women. Statistical Bulletin no. 30. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/sb78108>

^{vi} ANROWS, Attachment 1, Policy Brief: Defining and responding to coercive control, p2 in Coercive control in domestic relationships, Submission 96 to Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021 p 3. [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/media/media/parlmentary_documents/attachments/157/157_15.pdf)

^{vii} Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 4.

^{viii} Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p36

^{ix} Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021. pp xiv to xvi [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/media/media/parlmentary_documents/attachments/157/157_15.pdf)

^x Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 5

^{xi} Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p39

^{xii} Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p37

^{xiii} Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 6

- xiv <https://www.irishtimes.com/news/crime-and-law/call-for-more-garda-training-to-enforce-new-domestic-violence-laws-1.3752299> in ibid 6
- xv Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 6
- xvi Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p39)
- xvii Scottish Government 'Criminal Proceedings in Scotland, 2019-20', A National Statistics Publication for Scotland, ISBN:9781800049628, 18 May 2021, 4 in ibid, Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p36)
- xviii [QR codes to help keep DV support in the spotlight | Premier of South Australia](#) 30/6/21
- [Swipe right to combat sexual violence | Premier of South Australia](#) 26 November 2020
- xix [QR codes to help keep DV support in the spotlight | Premier of South Australia](#) 30/6/21
- xx [Swipe right to combat sexual violence | Premier of South Australia](#) 26 November 2020
- xxi Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021. pp xiv to xvi [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](#)
- xxii xxiii Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p36)
- xxiii [Push to criminalise coercive control in relationships sparks concern for migrant and refugee women \(sbs.com.au\)](#)
- xxiv [Why we need a thorough consultation process on how to effectively address coercive controlling violence \(wlsnsw.org.au\)](#)
- xxv [More DV support for regional women than ever before | Premier of South Australia](#) 12/10/21
- xxvi [Record domestic violence funding in SA | Premier of South Australia](#) 7/2/21
- xxvii [DV Disclosure Scheme records milestone | Premier of South Australia](#) 26/10/21

OFFICIAL: Sensitive

22TCEO/010




Government of South Australia
Department of Human Services

TO: CHIEF EXECUTIVE

**RE: ATTORNEY-GENERAL'S DEPARTMENT – INPUT REQUIREMENT – DRAFT
DISCUSSION PAPER ON IMPLEMENTATION OF A COERCIVE CONTROL
OFFENCE**

Decision/action required by: 18 / 01 / 2022**Reason:** Comments to Attorney-General's Department by 19 January 2022

Recommendation	Response
1. That you note the draft discussion paper on the implementation of a coercive control offence, developed by the Attorney-General's Department sent to you for comment.	Approved / Not Approved / <u>Noted</u>
2. That you note the information provided in response to the issues raised within the discussion paper, before it is released for public consultation.	Approved / Not Approved / <u>Noted</u>
3. That you approve the draft response to Mr Adam Kilvert, Executive Director, Policy and Community, Attorney-General's Department.	<u>Approved</u> / Not Approved / Noted

Comments:	 <hr/> <p>Lois Boswell Chief Executive 25 / 01 / 2022</p>
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PURPOSE

The Attorney-General's Department is seeking comment on the draft discussion paper regarding the implementation of an offence that will criminalise coercive control in South Australia.

OFFICIAL: Sensitive

KEY POINTS

- The Attorney-General's Department (AGD) is seeking comment from relevant agencies whose work interfaces with the content of the draft discussion paper on the implementation of a coercive control offence before it is released to the public.
- The discussion paper primarily seeks feedback on proposed implementation measures and views on how to support implementation of a coercive control offence, should it be introduced.
- The discussion paper defines coercive control as an insidious form of domestic and family violence (DFV) that involves tactics of emotional and mental abuse which undermine the victim's autonomy and sense of identity.
- The discussion paper covers several areas including defining coercive control, outlining interstate and international approaches and specifies four key areas to support a coercive control criminal offence, if it were to be introduced.
- The paper is targeted to individuals and organisations and contains questions related to issues such as the key messaging and communication platforms to promote information about coercive control; the best mechanism to deliver education and training for different sectors and gaps in the services currently available to both victims and perpetrators of coercive control.
- In his email to you, Mr Kilvert outlines the process for release of the discussion paper. The Office for Women recommends no changes to the discussion paper prior to its release and is supportive of the additional, non-legislative measures suggested by the AGD that are in line with research undertaken by Australia's National Research Organisation for Women's Safety (ANROWS).
- A draft response for Mr Kilvert is attached for your consideration.

RISKS/SENSITIVITIES

There is significant risk that without additional non-legislative measures to support any legislative change, the introduction of coercive control legislation will not result in a changed understanding of what constitutes domestic and family violence. This risk is mitigated by the initiatives outlined in the discussion paper.

DISCUSSION

Mr Adam Kilvert, Executive Director, Policy and Community, AGD wrote to the Department of Human Services (DHS) and other government agency representatives including from South Australia Police (SAPOL), the Department of Correctional Services (DCS) and the Courts Administration Authority (CAA) on 14 January 2022, seeking comment on the *Discussion Paper: Implementation of coercive control offences in South Australia* (attachment 1).

In his email, Mr Kilvert advises that prior to the proroguing of Parliament in 2021, both the State Government and the Opposition had coercive control bills before the Lower House, giving a strong indication that Parliament may be asked to consider introducing the offence in the new session. The AGD would therefore like to be in a position to appropriately advise on issues around the implementation of a coercive control offence should it be progressed after the 2022 State Election by either party.

Mr Kilvert asks for the selected agencies to review the draft and indicate whether there are any aspects of the paper which they wish to comment upon before it is released for public

consultation on 1 February 2022. In the discussion paper it is noted that submissions in response to this discussion paper can be made until 1 April 2022.

The introduction to the discussion paper refers back to the AGD's previous consultation on a proposed South Australian offence of coercive control conducted during September and October 2021. The discussion paper indicates that in feedback to this previous consultation, the sector noted the importance of the implementation process supporting a coercive control offence, should it be introduced.

The paper defines coercive control as an insidious form of DFV that involves tactics of emotional and mental abuse which undermine the victim's autonomy and sense of identity, and notes that it can be more harmful to victims than physical abuse and that it is a common factor in intimate partner homicides, despite the lack of prior physical violence.

It also details interstate and international approaches and subsequent application of the offence, and what South Australia can learn from the examples provided before implementing an offence. This is much broader than the NSW Government's definition in their recent Coercive Control Discussion Paper (October 2020) (p7) which holds that:

Coercive control in DFV contexts describes patterns of abusive behaviour designed to exercise domination and control over the other party to a relationship. It is often a process that happens slowly over time and can be nuanced in nature, making it difficult to identify. It can include a range of abusive behaviours – physical, psychological, emotional or financial – the cumulative effect of which over time robs victim-survivors of their autonomy and independence as an individual.

It is important to note that in its Position Paper on Coercive Control and the Law in South Australia, Embolden does not provide a clear definition of coercive control per se but does recommend that there is a national definition for DFV and for sexual assault. As part of the response to the AGD, it is suggested that they outline how the current definition has been developed.

The discussion paper outlines four key areas as important to support a coercive control criminal offence:

1. Awareness raising and engagement

The discussion paper indicates that through previous consultation, feedback received indicated low awareness of coercive control in the South Australian community, and the need for awareness campaigns to increase understanding and encourage victims to come forward.

The discussion paper highlights a range of current initiatives that have been engaged to raise community awareness of DFV including DHS led campaigns such as *Break the Cycle* which was launched in June 2020 and *See it for what it is. Stop Sexual Violence* which was launched at the end of 2020, notable for its use of Tinder to spread the message that violence is unacceptable and that there is help available.

In this section, the discussion paper notes that the experience of coercive and controlling behaviours are vastly different for DFV victims, whether they be from a culturally and linguistically diverse (CALD) background, are Aboriginal or Torres Strait Islander, or identify as LGBTIQ+ and seeks feedback on how we can ensure all communities in South Australia receive this important information.

DHS, through the Office for Women, will be able to assist in the development of targeted campaigns, in consultation with the DFV sector. OFW agrees that CALD groups will require additional, targeted efforts to educate them in culturally safe, appropriate ways that explain what coercive control is, and where to go for supports. CALD and migrant women and their children will be a focus of the new South Australian Women's Safety Strategy; ensuring that there are opportunities for women to access education and training in DFV, so they are able to support their communities.

This has been raised with the Office for Women (OFW) by the Multicultural Communities Council of SA and is the subject of ongoing conversations. Through ANROWS research and as raised in various consultations with the OFW, it is also clear that women with disability will also need to be a focus of education and training, as their abuser can often be their carer and in a position to control them financially, physically and emotionally – and raised often with OFW by women with disability and lived experience. This is an additional item that can be raised in the discussion paper.

2. Education and training

The discussion paper highlights that the common theme in feedback received from the previous AGD consultation regarding the importance of education and training, including that it must be delivered beyond the legal sector (police, prosecution and judicial officers) to emergency workers, workers in DFV services, health care, housing, education and child protection.

This is consistent with Emboldens' recommendation that whole-of-system training and awareness is essential to recognise and respond to domestic violence and sexual assault, and particularly to recognise and respond to the presence of coercive control. Embolden also suggested that community education and awareness of coercive control should also be targeted to education and care settings, workplaces, health, family and community services, public spaces, as well as justice and corrections contexts.

The discussion paper advises that the Legal Services Commission has been provided with additional funding of \$600,000 to engage with and educate health and welfare professionals on signs of coercive control in patients and clients, and that this training will also extend to other professions such as the South Australian Hair and Beauty Association, which we believe will be welcomed across the sector. Through sector consultation, OFW advises that training being developed and delivered by experts in DFV or people with lived experience will be critical in gaining the trust of the sector.

3. Supports and services for victims

AGD advises that feedback received from previous consultation has suggested the need for increased support services to victim/survivors, including counselling as well as practical assistance such as accommodation. These were themes that were also raised at the recent Committed to Safety Roundtables with sector representatives, conducted by OFW.

In its overview of supports and services for DFV victims, the paper acknowledges a range of initiatives that DHS has funded or been involved in the design of including the safety hubs, 40 new crisis accommodation beds, and additional funding to the Domestic Violence Disclosure Scheme. The questions in this section could be extended to include a question about what current specialist and mainstream providers need to improve and tailor their current services for victims of coercive control, as a form of DFVS.

4. Appropriate responses to perpetrators

The discussion paper notes that perpetrators of coercive control may have a lack of understanding about the seriousness and impact of their behaviour, and that counselling and treatment services are required. The discussion paper outlines the current services available for perpetrators, including the Statewide Perpetrator Response phoneline, and the Abuse Prevention Program (APP), whereby perpetrators can be mandated to attend the APP as a condition of bail or an Intervention Order. Other examples of current services are the Domestic and Family Violence Intervention Program, the Aboriginal Men's Family Violence Program, and the Cross Borders indigenous Family Violence Program.

While the current programs are likely to address, to some extent, controlling behaviour it is noted in the discussion paper that the primary trigger for entry into these programs is physical violence or threat.

The system will need counselling and treatment programs aimed specifically at coercive control perpetrators who do not use physical violence and a means of identifying those perpetrators without physical violence as a precursor will be required. CFS is highly supportive of a means to identify and direct coercive control perpetrators into counselling and treatment programs without physical violence as a precursor.

BUDGET

Are there financial considerations No

Is there a budget impact No

Division	Community and Family Services		
Director Office for Women	Sanjugta Vas Dev	Approved via email <i>signature</i>	18/01/2022
Executive Director Community and Family Services	Alex Reid <i>signature</i>/...../.....

ATTACHMENTS

1. Draft response to Adam Kilvert

Contact Officer:	Briana Hendry, Senior Policy Officer 8303 0599, briana.hendry@sa.gov.au
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OFFICIAL



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Mr Adam Kilvert
Executive Director – Policy and Community
Attorney General's Department
Adam.kilvert@sa.gov.au

Dear Mr Kilvert

Thank you for your email seeking comment from the Department of Human Services (DHS) on the draft discussion paper on the implementation of a coercive control offence in South Australia.

DHS welcomes the discussion paper. It is comprehensive and its recommendations are in-line with international best practice and current research undertaken by Australia's Research Organisation for Women's Safety (ANROWS). I also strongly agree that the success of such a venture will lie in the non-legislative education and training measures set out in the discussion paper. Some suggested amendments are as follows:

- Page 3 – we suggest adding further detail as to how the current definition has been developed
- Page 6 - with regards to awareness raising and engagement, please note that through ANROWS research and discussions with the sector and women with lived experience, we suggest that women with disability should also be a targeted focus for education and training, as their abuser can often be their carer and in a position to control them financially, physically and emotionally;
- Pages 9 and 10 - with regards to the respective sections about support services for victims and perpetrators, the questions in this section could be extended to include a question about what current specialist and mainstream providers need to improve and tailor their current services for victims and perpetrators of coercive control, as a form of domestic and family violence.

Thank you for providing the opportunity to comment and please continue to work with Dr Sanjutta Vas Dev at the Office for Women to explore and develop ways that we can partner to successfully implement the Bill, should it be passed in the future.

Yours sincerely

A handwritten signature in blue ink that reads 'Lois Boswell'.

Lois Boswell
CHIEF EXECUTIVE

25 / 01 / 2022

OFFICIAL

Braendler, Fiona (DHS)

From: Boswell, Lois (DHS)
Sent: Thursday, 3 February 2022 11:53 AM
To: DHS:CE Office
Subject: FW: Discussion paper: Implementation considerations should coercive control be criminalised in South Australia
Attachments: Discussion Paper_ Implementation considerations should coercive control be criminalised in South Australia.pdf
Categories: Scott

OFFICIAL

Please register and seek a briefing and reply



Lois Boswell

Chief Executive

Department of Human Services | Government of South Australia

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I acknowledge Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities.

Supporting Reconciliation



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From: AGD:Policy And Analytics <AGDPolicyAndAnalytics@sa.gov.au>
Sent: Wednesday, 2 February 2022 2:35 PM
Subject: Discussion paper: Implementation considerations should coercive control be criminalised in South Australia

OFFICIAL

Good afternoon

I write to provide you with a copy of a discussion paper seeking feedback on implementation considerations should coercive control be criminalised in South Australia, for your comment. Please see **attached**.

Consultation on a proposed South Australian offence of coercive control was conducted during September and October 2021. We received 173 responses to a public survey and more detailed submissions from 31 individuals and organisations.

The feedback noted the importance of the implementation process with suggestions including:

- training for enforcement agencies to identify, charge and prosecute coercive control
- a public awareness campaign
- wrap-around support services for victims/survivors, and
- counselling and treatment services for perpetrators.

Respondents also advocated for a focus on the different experiences of coercive control for victims/survivors living in regional and remote areas, older people, people living with disability, LGBTIQ+ people, Aboriginal peoples, and migrant communities. Respondents also stressed the importance of involving victims/survivors in any implementation process to provide a voice of lived experience.

Through this discussion paper, we seek your feedback and views on possible implementation measures and any other feedback that you may have.

We invite you to provide your feedback by Friday 1 April 2022 by emailing your written submission to agdpolicyandanalytics@sa.gov.au.

Further information is available at agd.sa.gov.au. Additional background information about the 2021 community consultation can also be found at: <https://yoursay.sa.gov.au/control>.

Kind regards

Adam

Adam Kilvert
Executive Director
Policy and Community
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Discussion Paper:
Implementation considerations
should coercive control be
criminalised in South Australia



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Foreword

Domestic and family violence (DFV) continues to be a blight on our community. In South Australia during 2020 there were 9,451 recorded victims/survivors of DFV related assault and sexual assault.ⁱ

Unfortunately, many more DFV behaviours go unreported to police or DFV support services. This includes coercive and controlling behaviours, such as isolating a person from their friends and family and denying financial autonomy. While these behaviours have long been recognised as an integral part of DFV, criminal justice responses have traditionally focused on physical violence.

There is growing momentum across Australia and internationally to consider new offences to criminalise coercive and controlling behaviours that are not covered within existing criminal offences. In jurisdictions where such offences exist, feedback has stressed the importance of the implementation process to ensure the offences operate effectively within the community. Key implementation measures include community awareness raising, education and training for the legal and DFV service sectors, and services for victims/survivors and perpetrators.

Currently, coercive control is not a specific criminal offence in South Australia. However, given the recent focus on this issue, the Attorney-General's Department is currently considering what implementation processes would be needed should coercive control be criminalised in South Australia.

I encourage you to consider the questions in this discussion paper and have your say to help us improve the safety and wellbeing of South Australian DFV victims/survivors and their children.

Caroline Mealor
Chief Executive,
Attorney-General's Department

Introduction

Consultation on a proposed South Australian offence of coercive control was conducted during September and October 2021. There were 173 respondents to a public survey, with more detailed submissions received from 31 individuals and organisations.

The feedback noted the importance of the implementation process. Suggestions included training for enforcement agencies to identify, charge and prosecute coercive control, a public awareness campaign, wrap-around support services for victims/survivors and counselling and treatment services for perpetrators. Respondents also advocated a focus on regional and remote victims/survivors, Aboriginalⁱⁱ people, and the migrant community.

This discussion paper seeks feedback on proposed implementation measures. We seek your views on this approach and any other feedback you may have on how to support implementation of a coercive control offence, should it be introduced.

How to make a submission

Submissions in response to this discussion paper can be made until 1 April 2022. Individuals and organisations can make a submission (confidentially if desired) by email to agdpolicyandanalytics@sa.gov.au.

This discussion paper poses a number of questions. You may respond to all questions, or only those that are of interest to you. You may also raise any additional relevant matters.

What is coercive control?

Coercive control has not been officially defined in South Australia. It is understood to be an insidious form of DFV that involves tactics of emotional and mental abuse which undermine the victim's autonomy and sense of identity. Coercive and controlling behaviour may include isolating a person from their friends and family, controlling finances, controlling what a person can or can't say, controlling what a person can wear, when they can sleep, what they can eat and when they can leave the house. The NSW Parliament Joint Select Committee on Coercive Control inquiry heard that "victims/survivors often describe it as more harmful and long-lasting than physical abuse. Respondents spoke of the 'isolation, subordination, humiliation and loss of liberty occasioned by coercive control' and noted that it has been linked to psychiatric outcomes including suicidality, depression and post-traumatic stress disorder".ⁱⁱⁱ

Disturbingly, coercive control is also a common factor in intimate partner homicides, even though this type of behaviour does not always involve physical violence. Analysis undertaken by the NSW Domestic Violence Death Review Team identified that, among 112 incidents of intimate partner homicide between June 2000 and July 2021, coercive control was a feature of the relationship in all but one case. A number of these cases did not have any evident history of physical abuse.^{iv}

Despite the significant harm caused by coercive and controlling behaviours, victims/survivors are unlikely to seek help if they had not also experienced physical or sexual forms of abuse. They may be prevented from seeking help because the perpetrator isolates them from friends and family and restricts access to the phone and internet.^v Some victims/survivors may not believe they are experiencing violence, or minimise their experience, because non-physical violence has traditionally been viewed to be less harmful or traumatic than physical or sexual violence.^{vi}

Case Study - Robin^{vii}

Robin has physical disability that affects her mobility and hands. Her partner started caring for her many years ago when there weren't many service options around. He tells Robin she does not have to worry about anything and that he can use her email address and phone to manage all her appointments and her finances for her. He does all her shopping for her online with her bank card and Apple Pay.

Early in the relationship Robin's partner sold their van that Robin relied on for accessible transport because he said her needs were expensive, so she

doesn't get to leave the house much. When Robin asks for a taxi or lift into town to see her sister, her partner calls her ungrateful and reminds her that none of her family are patient enough to deal with her like he is. They end up spending most days together and Robin will encourage him to purchase something special for himself the next time he goes shopping as a 'thank you'.

Interstate and international approaches

In considering how to implement a new coercive control offence in South Australia it is helpful to look to the approaches taken in other Australian jurisdictions as well as overseas.

Tasmania

Tasmania is the only Australian state to currently have legislated offences relating specifically to coercive control. In 2004, the Tasmanian Government passed the *Family Violence Act 2004* (Tas) introducing two new criminal offences – economic abuse (section 8) and emotional abuse (section 9). The Act was implemented alongside the Safe at Home Policy – a whole of government approach to coordinating criminal justice responses to DFV, with victim/survivor safety as the overarching goal.^{viii}

Tasmanian coercive control offences have not been prosecuted often. In the 12 years after commencement to the end of 2017, 73 charges had been finalised with 40 convictions. Some explanations for the low number of prosecutions include resistance from the legal profession, difficulties in obtaining evidence (because it is often undocumented and occurs within a private setting with no independent witnesses), lack of community awareness and deficiencies in training and resources provided to police.^{ix} These factors will be considered in the development of an implementation plan for South Australia.

New South Wales

The New South Wales Government is currently considering the recommendations in the June 2021 report of the NSW Parliament Joint Select Committee on Coercive Control inquiry. The Committee recommended the criminalisation of coercive control and made a number of recommendations regarding the implementation of an offence.

Of note, the Committee recommended a considerable program of education, training and consultation with police, stakeholders and the frontline sector before the commencement of a criminal offence. The Committee also recommended awareness campaigns about coercive control as a priority, and consideration of improving resources for victim/survivor housing and legal services, and behaviour change programs for perpetrators.^x

England and Wales

The England and Wales *Serious Crimes Act 2015* introduced a new offence of ‘controlling or coercive behaviour in an intimate or family relationship’. The legislation refers to coercive and controlling behaviour that is repeated or continuous, moving away from incident focused behaviour to a ‘course of conduct’.^x

Training entitled Domestic Abuse Matters was delivered to 14 police forces in England and Wales in response to the criminalisation of coercive control. An evaluation of Domestic Abuse Matters conducted in 2020 found that targeted, in-person training, when supported through peer support networks and ongoing professional development, can assist officers to better understand, recognise and respond to signs of coercive control. Notably, the study found attendance at the coercive control training was associated with a 41% increase in arrests for coercive control, with this effect remaining for up to eight months after training was completed.^{xii}

Republic of Ireland

A coercive control offence commenced in the Republic of Ireland in January 2019. A person commits the offence if they knowingly and persistently engage in behaviour that is controlling or coercive and which a reasonable person would be likely to consider to have a serious effect on a relevant person.^{xiii}

Of relevance to South Australia’s implementation approach, the first conviction for the offence occurred in February 2020, more than one year after the offence commenced,^{xiv} with lack of police training cited as one possible explanation for the delay. At the time of commencement, the Association of Garda Sergeants and Inspectors (AGSI) in the Republic of Ireland noted that its members had received no training in how best to enforce the new laws. AGSI called on the Garda Commissioner to prioritise training as a matter of urgency, stating “appropriate training delivered in advance of legislation being implemented will ensure the public receive the best possible policing service.”^{xv}

Scotland

The Scottish *Domestic Abuse Act 2018* commenced in 2019. The Act criminalises a course of abusive behaviour by a perpetrator against their current or former partner. The offence is treated as aggravated if the behaviour is directed at a child or they make use of a child as part of the course of abusive behaviour.^{xvi}

The Scottish experience is instructive for South Australia. In addition to protection under the law, a broader systemic response was implemented, including increased investment in police training, a community awareness program and training for other professionals involved in the system such as prosecutors, lawyers and judges.

The intensive police training conducted in the lead up to the commencement of the legislation included how to identify coercive and controlling behaviours, understanding and awareness of the dynamics of DFV and perpetrator tactics used to manipulate victims/survivors and first responders. The training was delivered as an interactive online learning package, with additional training for the police leadership and attitudinal change champions.^{xvii}

In the first year of operation, 246 people were prosecuted and 206 (84%) were convicted of the offence.^{xviii} This is a sharp contrast to the Republic of Ireland which had no convictions in the first year.

Coercive control implementation considerations

The following four areas have been identified to support a coercive control criminal offence, if it were to be introduced:

1. Awareness raising and engagement
2. Education and training
3. Supports and services for victims/survivors
4. Appropriate responses to and for perpetrators

The experience of coercive and controlling behaviours can be vastly different for DFV victims/survivors from CALD, Aboriginal and LGBTIQ+ communities, victims/survivors in remote and regional areas, elderly victims/survivor, and those living with disability. There can be a fear of discrimination and of not being believed, previous negative experiences in accessing services or reporting to police, cultural barriers, and isolation from appropriate supports. For this reason, implementation should also include a focus on inclusivity and the special needs of diverse and vulnerable groups.

The feedback received also stressed the importance of involving victims/survivors of DFV in any implementation process. To achieve this, victims/survivors of DFV will be separately engaged to provide a voice of lived experience.

Awareness raising and engagement

Coercive control is a complex concept, challenging many existing beliefs and attitudes about DFV, such as the view that it consists only of physical violence. Overwhelmingly, feedback received indicated low awareness of coercive control in the South Australian community, and the need for awareness campaigns to increase understanding and encourage victims/survivors to come forward.

Current initiatives

In South Australia, a number of campaigns have successfully raised community awareness of DFV. Using Snapchat, Instagram and TikTok, the [Break the Cycle Campaign](#) raised awareness of the different forms of abuse and told people how to get support in the first wave of COVID-19.

The [Break the Cycle](#) website was launched in June 2020 as a one-stop-shop for all DFV information in South Australia. It provides information and resources for victims/survivors and perpetrators, including topics on coercive controlling behaviours such as emotional, verbal, psychological and financial abuse. Support materials available on the website have also been translated into 25 languages.^{xix}

A second Break the Cycle campaign ran between July and September 2021, on television, radio, digital and social media platforms. For the first time, QR codes were included on print advertising, allowing quick and direct access to support networks if needed.^{xx}

The *See it for what it is. Stop Sexual Violence* campaign was also launched at the end of 2020. The campaign was notable for its use of the dating app Tinder to send out the message that all forms of violence are unacceptable and there is help available.^{xxi}

In addition to media campaigns, the *Keeping Safe: Child Protection Curriculum* child safety program is provided to children and young people from age 3 to year 12. The program teaches children to recognise abuse and understand ways of keeping themselves safe. The curriculum includes content relevant to coercive control such as:

- healthy and unhealthy relationships and the representation of relationships within popular media
- the social construction of gender, gender stereotypes and expectations
- the types of power and the way power is used in different contexts.

Options to target coercive control

The Legal Services Commission has been provided with additional funding of up to \$507,500 over two years to support coercive control initiatives, including \$50,000 to develop a community awareness campaign in 2022. The campaign will provide the following information:

- i. what are coercive control behaviours and how to identify them
- ii. where to get help, including crisis support services, social support services (including legal services)
- iii. any other information that may be relevant for the purpose of raising awareness.

Recognising the diversity of languages and cultures across South Australia, information about coercive control and the new offences will be provided on multiple platforms, including social media, and in a range of formats and languages. Consideration also needs to be given to the provision of information to people living with disability.

This discussion paper seeks feedback on how we can ensure all communities in South Australia receive this important information.

Questions:

1. What are the key messages that should be communicated about coercive control?
2. What are the best mediums to communicate information about coercive control to your community?

Case Study - Zara^{xxii}

Zara has been with Adam for over two years. At the beginning of their relationship they were very social, and often spent time with friends, family and colleagues. However, over time, things started to change. Adam started to monitor her whereabouts. He would get upset if she didn't constantly check in with him ... He didn't like her going out with friends because he didn't want her to talk to other men.

He would make comments about her appearance and tell her that she should be grateful to have him because no one else would want her. ... He became controlling over what she wore and wouldn't let her wear certain clothes because he didn't want other men looking at her.

Over time, Zara stopped seeing her friends and rarely saw her family. ... She stopped speaking to her colleagues at work and stopped going on work trips or nights out. She was afraid Adam would be angry if he found out she was talking to them because he said he didn't like them and said she shouldn't spend time with people like that. She felt anxious, depressed and constantly on edge. She felt like she was walking on egg shells and worried about upsetting Adam. She didn't want to tell her friends or family because she worried they wouldn't believe her. She thought that since he

wasn't physically violent, then it must not be that bad.

Education and training for first responders, the legal sector and service providers

A common theme in the feedback received was the importance of education and training about coercive control. Some respondents felt the South Australian legal response focused on physical violence and lacked an understanding of the nature of coercive control and the harms it can cause. Research papers on coercive control also note the need for education and training to be delivered beyond the legal sector (police officers, prosecutors and judicial officers), to emergency workers and workers in DFV services, health care, housing, education and child protection sectors.^{xxiii}

Current initiatives

DFV related training and education for the justice sector is currently conducted within SA Police and the Courts Administration Authority.

SA Police has a raft of training and practices designed to enhance the policing response to DFV. SA Police policies provide guidance for frontline officers about the management of a DFV incident, and the gathering of available physical evidence. This includes preserving the scene of a crime, undertaking investigations, identifying all relevant witnesses, and instigating prosecutions and intervention orders.

The Magistrates Court holds Judicial Education Days four times per year, and an annual *All Courts Judicial Development Day*. In July 2020, award winning author and investigative journalist Jess Hill, author of '*See What You Made Me Do*', gave a presentation to all Magistrates entitled '*Power, Control and Domestic Abuse*', focused on understanding coercive control, its characteristics and impacts. The session discussed approaches and strategies to appropriately obtain evidence from a person seeking, or protected by, an Intervention Order who has been subjected to coercive control and to assist in identifying within a courtroom setting whether an applicant for an Intervention Order may have been a victim/survivor of coercive control.

Beyond the justice sector, the Department of Human Services has funded [*No to Violence*](#) to deliver workforce development sessions four times per year to frontline case workers providing support outside the DFV sector, for example, health workers or drug and alcohol workers. The sessions will help caseworkers to identify DFV perpetrators in the course of their work and respond appropriately.

Options to target coercive control

Additional funding of up to \$507,500 over two years has been allocated to the Legal Services Commission for coercive control initiatives, including funding to engage with and educate health and welfare professionals on signs of coercive control in patients and clients, with referral to relevant legal assistance providers where appropriate. This engagement will also extend to other professions, such as the South Australian Hair and Beauty Association which is the professional body for hairdressers and beauticians.

In relation to training of the justice sector, a new coercive control offence would require changes in approach to both the investigation and prosecution, for example, identifying and gathering evidence for a course of conduct rather than a single incident.^{xxiv} The intensive police training process conducted in Scotland in the lead up to the commencement of their coercive control legislation is often cited as best practice.

There is also a need for extensive training on the nature of coercive and controlling behaviour and the different ways victims/survivors may respond to trauma. Research and inquiry submissions have reported concerns about possible unintended consequences of criminalising coercive control. A key concern identified is the potential for manipulation by or misidentification of the perpetrator when police first arrive at a crisis situation, leading to the victim/survivor being identified as the primary aggressor.^{xxv} Training should include a focus on how to avoid any potential unintended consequences of the new offences.^{xxvi}

We heard that training should be developed by experts in DFV including people with lived experience and include information about the precursors of DFV, gender-based violence, the experiences of DFV across different groups within the community, such as the LGBTIQ+ community, people with disabilities, CALD communities, the elderly, and Aboriginal peoples, how victims/survivors may respond to trauma and how perpetrators may respond to intervention. Regular refresher training should also be provided to ensure the lessons are reinforced over time and new information/approaches are communicated.

As a first step, this discussion paper seeks feedback on the current DFV education and training available and whether there any gaps in relation to coercive control. This information will help us to identify additional education and training modules that might be needed to improve understanding of and responses to coercive control and DFV in general. It will also ensure we build on the extensive education and training already provided and avoid duplication.

Questions:

3. How is coercive control understood by you and more broadly within your community?
4. If it were made an offence, what might this mean to you and the people around you?
5. If you were concerned about the use of coercive control as an individual, or on behalf of someone else, what systems and services would you approach for support or advice?
6. What education and training is needed to improve the justice sector's understanding of coercive control and detect, investigate and prosecute coercive control appropriately?
7. What education and training is needed for organisations that work with victims/survivors and perpetrators of coercive control e.g. in health, housing, education, etc.?

Support services for victims/survivors

The feedback received suggested the need for increased support services to DFV victims/survivors, including emotional support services and practical assistance such as accommodation services.

Current services for DFV victims/survivors

Since 2019 the Commissioner for Victims' Rights has been the central point of contact for victims/survivors, to coordinate their access to services and to support them to navigate the criminal justice system. Additionally, a new [Victims Of Crime SA website](#) was launched in October 2020 which brings together information for victims/survivors, including what to expect in the criminal justice process and information about support services. This information is also published in the '*Information for Victims of Crime*' booklet which is disseminated by SA Police upon first contact with victims/survivors.

A range of services and supports are available to victims/survivors of DFV. Supports include crisis support, legal assistance, and help to navigate through the criminal justice system – from initial report and investigation to court support, victim impact statements and counselling, to parole and victim/survivors safety planning.

Information about specific DFV and sexual assault support services is available from www.sa.gov.au.

Recent initiatives include:

Opening of the seventh women's safety hub located in Whyalla, adding to existing regional hubs reaching from Mount Gambier to Berri and Port Augusta. Hubs are tailored to each region, with all providing information and referrals for DFV support, housing, police and legal matters, family intervention, financial counselling, mental health medical services or drug and alcohol services. Most also offer private drop-in spaces with phone or computer access – a vital service for women who are not able to freely seek information or access services in their own home.^{xxvii}

31 new crisis accommodation beds for South Australians impacted by DFV across Adelaide and the regions, including 17 in regional areas in Limestone Coast, Murray Mallee and Eyre and Western.^{xxviii}

The *Supporting Parents' and Children's Emotions Program*, which provides early intervention support to young parents aged between 12 to 25 years, who are experiencing or perpetuating DFV. The program is run through the Women's and Children's Health Network, as a specialised add-on to its *Young Parents Program*.

Additional funding to the *Domestic Violence Disclosure Scheme* (DVDS) to mid-2024. The DVDS is a free and confidential online application to help people at risk find out if their partner has a history of violent offending or other relevant information, such as previous intervention orders. Persons feeling at risk are also connected with specialist DFV support, whether or not there is information for police to disclose, providing help to make an informed safety plan. Further expanding the scheme from a 'Right to ask' to a 'Right to know' model is also being explored.^{xxix}

Funding in the amount of \$603,000 has been provided to the Department for Correctional Services (DCS) to keep high risk victims/survivors of DFV informed of changes to the circumstances of their perpetrator who is in the custody or under the supervision of DCS.

Options to target coercive control

Increased awareness of coercive and controlling behaviours will likely have an immediate impact on DFV and legal service providers.

Women's Safety Service (SA) (WSSSA) is funded to operate the 24/7 Domestic Violence Crisis line, which provides information and advice and support to develop a safety plan. Additional funding of \$600,000 has been provided to WSSSA to enhance its existing service to include a quick response coercive control assessment, and to provide information and referral to other support services.

The additional funding to WSSSA includes \$3,000 to develop a new (or amend the current) risk assessment tool to assess the coercive control risk factors of persons who contact the Crisis Line. The new tool will link with the existing common DFV Risk Assessment form, which has been used by government and non-government agencies since 2014 to determine the current level of risk to a victim/survivor and any children, and to guide decision making on the type and urgency of response required. The use of a common, agreed risk assessment means that all agencies have a uniform understanding of risk factors and risk levels, to better inform responses and support.

One of the legal remedies to support victims/survivors to mitigate or address coercive control behaviours is an Intervention Order. Victims/survivors can apply to the court to prohibit the perpetrators from engaging in coercive or controlling behaviours against them. All community legal assistance providers, such as the Aboriginal Legal Rights Movement and Women's Legal Service SA, can support an individual seeking an intervention order.

The Women's Domestic Violence Court Assistance Service (WDVCAS) is a statewide free legal assistance service

run by the Legal Services Commission, dedicated to supporting women to navigate the Magistrates Court process of applying for, varying or revoking an Intervention Order. Additional funding of up to \$507,500 over two years has been allocated to the Legal Services Commission for coercive control initiatives, including funding to increase the capacity of WDVCAS to assist victims/survivors experiencing coercive control.

Properly addressing coercive control requires services to be easily accessible and visible via strong referral pathways and no red tape or duplication. This discussion paper seeks feedback on current services, including DFV services, available and their ability to respond to victims/survivors of coercive control. This information will help us to map existing services, to determine gaps, duplications and opportunities for improvements.

Questions:

8. What types of coercive control services should be prioritised?
9. Are there any gaps in the services currently available to victims/survivors of coercive control?
10. Are there any current specialist and mainstream service providers that could improve and/or tailor their current services for victims/survivors of coercive control?

Case Study - Sanaya^{xxx}

Sanaya married when she was 18 and came to Australia with her husband and young child. Sanaya's husband tells her

negative stories about other women and communities and insists Sanaya stay away from other mums who talk to her at school drop off and pick up. When Sanaya started her first job she was told to quit after only a few months. Her husband said she was failing as a mother and had abandoned their child. Now, when Sanaya goes out, her husband encourages her to send happy selfies of herself and their child to verify her location. Sanaya is aware that he uses her phone to track her location. When Sanaya arrives home, she feels interrogated about where she's been and who she's spoken with, so she prefers to only go out as a family to avoid confrontation.

Appropriate responses to and for coercive control perpetrators

The feedback received noted the need for counselling and treatment services for perpetrators of coercive control. Respondents suggested that some perpetrators may have a lack of understanding about the seriousness and impact of their behaviour.

Current services for DFV perpetrators

There are a range of services available to the Court and in the correctional system which provide therapeutic intervention to perpetrators of DFV. There is also a [dedicated phone line](#) where perpetrators, frontline workers and friends, family and community members can call when they are concerned with the perpetrator's use of violence.

Under section 13 of the *Intervention Orders (Prevention of Abuse) Act 2009*, the Magistrates Court can mandate assessment for and participation in an Abuse Prevention Program (APP) for alleged DFV offenders either as a condition of bail or an Intervention Order. During 2020-21 there were 706 referrals to the APP. Approximately \$668,400 per year is provided by the Courts Administration Authority to run:

- face-to-face group counselling.
- weekly individual counselling for men who are not considered suitable for group participation. This includes men with cognitive impairment or low levels of English language proficiency.
- a culturally safe program for Aboriginal men.

The Department for Correctional Services operates five programs targeting perpetrators of DFV, at a cost of \$9 million per year. These are:

- *The Domestic and Family Violence Intervention Program* and the culturally responsive *Aboriginal Men's Family Violence Program*.
- A suite of Violence Prevention programs (VPP) targeting perpetrators of violent offending, such as gang violence, homicide, kidnapping and armed robbery. Each of these programs includes a focus on identifying and challenging attitudes supportive of DFV and the dynamics of intimate partner violence. The VPP for Aboriginal men includes a co-facilitation model where Aboriginal staff deliver the program alongside clinical staff from

the DCS Rehabilitation Programs Branch.

- *The Cross Borders Indigenous Family Violence Program (CBIFVP)* operates as a tri-state partnership between South Australia, Western Australia and the Northern Territory, with funding contributed from the Australian Government. The CBIFVP receives referrals from police, courts and corrections for men who live in remote Anangu Pitjantjatjara Yankunytjatjara or Ngaanyatjarra Pitjantjatjara Yankunytjatjara communities. The program aims to reduce the incidence of DFV through culturally responsive approaches, including delivering in local language, having a cultural broker present, and challenging attitudes and behaviours in culturally appropriate ways.

Further considerations

Controlling behaviour is recognised as a foundational aspect of DFV and it is likely that it is already addressed, at least to some extent, in current perpetrator programs. It is noted, however, that the primary trigger for entry to these programs is physical violence or threat. Counselling and treatment programs aimed specifically at coercive control perpetrators who do not use physical violence may be a useful addition to the current suite of perpetrator responses.

This discussion paper seeks feedback on existing perpetrator services and programs. This will enable us to determine opportunities for improvements in the context of coercive control.

Questions:

11. What types of perpetrator services should be prioritised?
12. Are there any gaps in the services currently available to perpetrators of coercive control?
13. Are there any current specialist and mainstream service providers that could improve and/or tailor their current services for perpetrators of coercive control?

General questions:

14. Is there anything else that should be considered as part of implementing a criminal offence relating to coercive control?

ⁱ ABS Recorded Crime Victims 2020

ⁱⁱ In South Australia, Aboriginal is used to describe Aboriginal and Torres Strait Islander peoples.

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- iii Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021 p 15. [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](#)
- iv NSW State Coroners Court 2020
- v Boxall H & Morgan A 2021. *Experiences of coercive control among Australian women*. Statistical Bulletin no. 30. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/sb78108>
- vi ANROWS , Attachment 1, Policy Brief: Defining and responding to coercive control, p2 in Coercive control in domestic relationships, Submission 96 to Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021 p 3. [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](#)
- vii Case study provided by Disability Advocacy and Complaints Service of South Australia Inc. The case study has been de-identified and formulated for the purpose of this discussion paper and is representative of common lived experiences
- viii Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights,01/2021). Sydney: ANROWS. p 4
- ix Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p 36
- x Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021. pp xiv to xvi [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](#)
- xi Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights,01/2021). Sydney: ANROWS. p 5
- xii Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p39
- xiii Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p37
- xiv Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 6
- xv <https://www.irishtimes.com/news/crime-and-law/call-for-more-garda-training-to-enforce-new-domestic-violence-laws-1.3752299> in ibid 6

^{xvi} Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. p 6

^{xvii} Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p 39

^{xviii} Scottish Government 'Criminal Proceedings in Scotland, 2019-20', A National Statistics Publication for Scotland, ISBN:9781800049628, 18 May 2021, 4 in *ibid*, Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p 36

^{xix} [QR codes to help keep DV support in the spotlight | Premier of South Australia](#) 30/6/21

[Swipe right to combat sexual violence | Premier of South Australia](#) 26 November 2020

^{xx} [QR codes to help keep DV support in the spotlight | Premier of South Australia](#) 30/6/21

^{xxi} [Swipe right to combat sexual violence | Premier of South Australia](#) 26 November 2020

^{xxii} [Think Business, Think Equality, Domestic Abuse Case study: Coercive control \(thinkbusinessthinkequality.org.uk\)](#)

^{xxiii} Coercive control in domestic relationships Parliament of New South Wales Joint Select Committee on Coercive Control Report 1/57 June 2021. pp xiv to xvi [Report - coercive control in domestic relationships.pdf \(nsw.gov.au\)](#)

^{xxiv} Qld Women's Safety and Justice Taskforce: 1 [Options for legislating against coercive control and the creation of a standalone domestic violence offence Discussion Paper 1](#) p 36

^{xxv} [Push to criminalise coercive control in relationships sparks concern for migrant and refugee women \(sbs.com.au\)](#)

^{xxvi} [Why we need a thorough consultation process on how to effectively address coercive controlling violence \(wlsnsw.org.au\)](#)

^{xxvii} [More DV support for regional women than ever before | Premier of South Australia](#) 12/10/21

^{xxviii} [Record domestic violence funding in SA | Premier of South Australia](#) 7/2/21

^{xxix} [DV Disclosure Scheme records milestone | Premier of South Australia](#) 26/10/21

^{xxx} Case study provided by Disability Advocacy and Complaints Service of South Australia Inc. The case study has been de-identified and formulated for the purpose of this discussion paper and is representative of common lived experiences

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22TCEO/030



TO A/CHIEF EXECUTIVE

RE: ATTORNEY-GENERAL'S DEPARTMENT - INPUT REQUIREMENT - DRAFT
DISCUSSION PAPER ON IMPLEMENTATION OF A COERCIVE CONTROL
OFFENCE

Decision/action required by:...../...../.....

Reason:.....

Recommendation	Response
1. That you note the discussion paper on the implementation of a coercive control offence, previously provided to you for comment by the Attorney-General's Department, has now been released for public consultation.	Approved / Not Approved / <u>Noted</u>
2. That you note the published discussion paper has not changed significantly to the draft. The Department of Human Services' advice is unchanged and remains supportive of the proposed implementation measures.	Approved / Not Approved / <u>Noted</u>
3. That you approve and send the response to Mr Adam Kilvert, Executive Director, Policy and Community, Attorney-General's Department.	<u>Approved</u> / Not Approved / Noted

Comments:

.....

A handwritten signature in blue ink, appearing to read 'Ruth Ambler'.

Ruth Ambler
 A/Chief Executive
 04 / 03 / 2022

PURPOSE

The Attorney-General's Department (AGD) has previously sought your advice on the draft copy of the discussion paper on the implementation of an offence that will criminalise

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coercive control in South Australia. You have now been sent the published version, *Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia*, and AGD is seeking feedback on possible implementation measures that are outlined in the paper. The implementation measures suggested are the same as those contained within the draft discussion paper that you have previously noted and agreed to in correspondence with Mr Adam Kilvert.

KEY POINTS

- AGD has previously sought comment from relevant agencies on a draft discussion paper on the implementation of a coercive control offence before it was released to the public.
- The published discussion paper (attachment 1) has now been released and AGD is seeking feedback on proposed implementation measures and views on how to support implementation of a coercive control offence, should it be introduced. This is the same feedback requested previously – however, it is now being requested from a wider audience.
- The paper is available to the public on the AGD's website. Submissions can be made in response to the paper until 1 April 2022.
- The published paper includes case studies that were not in the draft and three modified questions for the reader. There are no other major changes in the published version.
- Changes suggested by the Department of Human Services (DHS) with respect to the draft paper were incorporated in the final version (see 22TCEO/010).
- The Office for Women (OFW) is supportive of the additional, non-legislative measures suggested by AGD that are in line with research undertaken by Australia's National Research Organisation for Women's Safety (ANROWS).
- A draft response for Mr Kilvert confirming that DHS is supportive of the non-legislative measures suggested by the AGD, is attached for your consideration.

RISKS/SENSITIVITIES

As previously advised, there is significant risk that without additional non-legislative measures to support any legislative change, the introduction of coercive control legislation will not result in a changed understanding of what constitutes domestic and family violence. This risk is mitigated by the initiatives outlined in the discussion paper.

DISCUSSION

Mr Adam Kilvert, Executive Director, Policy and Community, AGD, wrote to DHS and other government agency representatives - including South Australia Police (SAPOL), the Department of Correctional Services (DCS) and the Courts Administration Authority (CAA) - on 14 January 2022, seeking comment on the *Discussion Paper: Implementation of coercive control offences in South Australia* (draft).

In his email, Mr Kilvert advised that prior to the proroguing of Parliament in 2021, both the State Government and the Opposition had coercive control bills before the Lower House, giving a strong indication that Parliament may be asked to consider introducing the offence in the new session.

Mr Kilvert asked for selected agencies to review the draft and indicate whether there were any aspects of the paper they wished to comment upon before it was released for public consultation on 1 February 2022.

The discussion paper has now been published, and agencies are again asked to provide their feedback on proposed non-legislative implementation measures associated with coercive control legislation. The implementation measures suggested have not been amended or added to. The paper released for public consultation is the same as the draft except for minor wording changes, the addition of case studies and some changed questions.

Your previous response to Mr Adam Kilvert suggested a number of changes that have been incorporated into the final version:

- Further detail as to how the current definition of coercive control has been developed. This has been incorporated with AGD noting that 'coercive control has not been officially defined in South Australia' (page 3).
- That women with disability also be a targeted focus for education and training, which has been incorporated (page 10).
- The addition of a question about what current specialist and mainstream providers need to improve and/or tailor their current services for victims/survivors of coercive control, and perpetrators. This question has been incorporated twice within the published discussion paper.

Other changes include the following amended questions:

Questions 3-5 in the draft asked:

- What education and training is needed to improve the justice sector's understanding of coercive control and detect, investigate and prosecute coercive control appropriately?
- What education and training is needed for organisations that work with victims and perpetrators of coercive control e.g., in health, housing, education, etc.?
- What do you consider to be potential unintended consequences of the coercive control offences, and what education or training could be provided to minimise these, particularly for vulnerable groups?

The published discussion paper asks:

- How is coercive control understood by you and more broadly within your community?
- If it were made an offence, what might this mean to you and the people around you?
- If you were concerned about the use of coercive control as an individual, or on behalf of someone else, what systems and services would you approach for support or advice?

As there are no major changes to the discussion paper, the advice provided by OFW remains that DHS is supportive of the additional non-legislative measures suggested by the AGD to compliment any legislative change. A response to Mr Adam Kilvert is attached for your consideration.

BUDGET

Are there financial considerations

No

Division	Community and Family Services		
Executive Director	Alex Reid	Approved via email <i>signature</i>	25/02/2022

ATTACHMENTS

1. Discussion paper - Implementation of coercive control offences in South Australia.
2. Draft response to Mr Adam Kilvert.

Contact Officer:	Briana Hendry, Senior Policy Officer 8303 0599 / briana.hendry@sa.gov.au
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OFFICIAL



Ref: 22TCEO/030

Mr Adam Kilvert
Executive Director - Policy and Community
Attorney-General's Department

Email: adam.kilvert@sa.gov.au

Office of the Chief Executive

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Adelaide SA 5000

GPO Box 292
Adelaide SA 5001

DX115

Tel: 08 8413 9050

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ABN 11 525 031 744

Dear Adam

Thank you for your email seeking comment from the Department of Human Services (DHS) on the published discussion paper, 'Implementation considerations should coercive control be criminalised in South Australia'.

I note that the DHS comments on the draft discussion paper have been incorporated. I thank you for undertaking a thorough pre-consultation process and for seeking our advice on such an important matter.

I also remain in agreement with the non-legislative education and training measures set out in the published paper, which I note remain unchanged to those in the draft.

Again, thank you for providing the opportunity to comment. The Director, Office for Women, Sanjugta Vas Dev and I look forward to working with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ruth Ambler'.

Ruth Ambler
A/CHIEF EXECUTIVE

04 / 03 / 2022

OFFICIAL

Braendler, Fiona (DHS)

From: Vas Dev, Sanjugta (DHS)
Sent: Thursday, 7 April 2022 11:42 AM
To: Bisset, Amber (DHS)
Subject: FW: Coercive Control Implementation Taskforce - Confidential Draft of Discussion Paper
Attachments: Coercive Control Implementation Taskforce - Meeting Minutes 17 December 2021.pdf;
 CONFIDENTIAL DRAFT - Coercive Control - Implementation Discussion Paper (A591399).pdf

OFFICIAL

Just ignore this atm – it will make sense when I send you the brief back

Dr Sanjugta Vas Dev
Director
Office for Women
Community & Family Services
 Department of Human Services
 101 Grenfell Street, Adelaide
 T: (08) 8303 0962 / M: [REDACTED] / E: sanjugta.vasdev@sa.gov.au



From: Kilvert, Adam (AGD) <Adam.Kilvert@sa.gov.au>
Sent: Tuesday, 25 January 2022 3:21 PM
To: Vas Dev, Sanjugta (DHS) <Sanjugta.VasDev@sa.gov.au>; Killmier, Bronwyn (AGD) <Bronwyn.Killmier@sa.gov.au>; Dee, Katrina (Health) <Katrina.Dee@sa.gov.au>; jennifer@embolden.org.au; jacquiw@ntv.org.au; Jodie Sloan <jodies@womenssafetysservices.com.au>; Tina Quitadamo <tina@nungamiminar.com.au>; Craig Rigney <craig@kwy.org.au>; lgarrett@communitytransitions.com.au; Helena Kyriazopoulos <helena.kyriazopoulos@mccsa.org.au>; maggie.r@dacssa.org.au; zita <zita@wlssa.org.au>; enquiries@unitingcommunities.org; erinm@alrm.org.au; khatijaT@alrm.org.au; Gabrielle Canny <Gabrielle.Canny@lsc.sa.gov.au>; hclack@cccsa.org.au; lucy.hackworth@gmail.com
Cc: Schumann, Brette (AGD) <Brette.Schumann3@sa.gov.au>; Watson, Lucinda (AGD) <Lucinda.Watson@sa.gov.au>; Marshall, Jayne (AGD) <Jayne.Marshall@sa.gov.au>; Evans, Darren (AGD) <Darren.Evans@sa.gov.au>
Subject: Coercive Control Implementation Taskforce - Confidential Draft of Discussion Paper

OFFICIAL

Dear taskforce members

Thank you for those that were able to attend our first meeting. As foreshadowed, I **attach** a copy of the minutes from the meeting.

You will recall that an action arising from the meeting was for AGD to distribute discussion questions for the Taskforce to consider. Since the meeting, we have been able to progress the drafting of a coercive control discussion paper for public release.

This paper will be used to obtain information to help with planning an implementation model for a potential offence of coercive control, should it be progressed by an incoming government after the election.

We would like to provide you with a confidential copy of the draft paper, which is **attached**, for you to review and provide feedback on. It is proposed that this be released to the public early February. As such, we would appreciate your feedback no later than **COB Monday, 31 January 2022**.

We appreciate this is a busy time for you, however in terms of answers to the questions posed and input on the implementation issues, you will have the opportunity to respond to the discussion paper substantively yourselves once it is released. At this stage, we are most interested in your view of the content of the paper itself.

To assist us with collating the responses, could you please provide your response by email to agdpolicyandanalytics@sa.gov.au. After we receive the responses, we will review all of it and amalgamate it into a final form for public release. You will then be able to provide your input into the issues raised.

Thank you for taking the time to consider the paper and providing feedback from your perspective.

Adam

Adam Kilvert
Executive Director
Policy and Community
Attorney-General's Department
Phone: 8207 1771
Mobile: C16(1)
Email: adam.kilvert@sa.gov.au



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Coercive Control Implementation Taskforce

Meeting Date & Time: Friday, 17 December 2021 at 9.00 am

Meeting Location: Selway Room – Level 16, 10 Franklin Street, and Microsoft Teams

Chair: **Adam Kilvert** (Executive Director, Policy and Community, AGD)

Invitees: **Brette Schumann** (Director, Justice Policy and Analytics, AGD)

Lucy Watson (Manager, Justice Policy, AGD)

Darren Evans (Principal Project Officer, Justice Policy, AGD)

Jayne Marshall (Principal Policy Analyst, Justice Policy, AGD)

Erin Maher and Khatija Thomas (Aboriginal Legal Rights Movement)

Maggie Rutjens (Program Manager, Disability Advocacy and Complaint Service SA)

Gabrielle Canny (Director, Legal Services Commission)

Helena Kyriazopoulos (CEO, Multicultural Communities Council of SA)

Melanie Sheehan and Fiona Williamson (No to Violence)

Tina Quitadamo (CEO, Nungar Mi:Minar; and Embolden)

Leigh Garrett (CEO, OARS Community Transitions)

Dr Sanjuga Vas Dev (Director, Office for Women)

Sarah Cooper (WCHN - Youth and Women's Safety Wellbeing Division)

Zita Ngor (CEO, Women's Legal Service (SA))

Jodie Sloan (COO, Women's Safety Services SA)

Apologies: **Dr Jen Cleary** (CEO, Centacare Catholic Country SA)

Bronwyn Killmier (Commissioner for Victim's Rights)

Jennifer Kingwell (Policy & Communications Manager, Embolden)

Craig Rigney (CEO, Kornar Winmil Yunti Aboriginal Corporation)

Jacqui Watt (CEO, No to Violence)

Lucy Hackworth (Board Member, South Australian Rainbow Advocacy Alliance)

Simon Schrapel AM (CE, Uniting Communities)

Katrina Dee (Director, WCHN - Youth and Women's Safety Wellbeing Division)

Topic	
1.	<p>Welcome and Acknowledgement of Country</p> <p>Adam welcomed all attendees, acknowledged apologies and acknowledged that the meeting was being held on Kuarna land, as well as other lands on which members were attending by videolink. Members introduced themselves and gave a short explanation of the work of their organisation.</p>
2.	<p>Role of the Taskforce and Terms of Reference</p> <p>Adam advised that a Bill to introduce a coercive control offence was before the House of Assembly when it was adjourned. There was a significant amount of feedback from public consultation which was incorporated into the Bill, but a lot of the feedback related to implementation. The government proposed to delay the commencement of the offence to allow the implementation issues to be explored.</p> <p>Adam explained that there was also an opposition Bill to introduce a similar offence which did not</p>

	<p>pass Parliament, and so both major parties have expressed an interest in criminalising coercive control.</p> <p>Adam explained that while the work of the Taskforce is limited until after the election in March 2022, there is still policy work that can be progressed. Adam advised that approval of the terms of reference for the taskforce would be sought in 2022.</p> <p>Adam further advised that given the breadth of impact that an offence of coercive control would have, subgroups of the taskforce may be formed (for example, justice agencies, or cultural issues, might be best addressed by organisations specialising in those areas). Those subgroups will depend on what themes are identified throughout the work of the taskforce. Khatija said that an offender focussed subgroup would be helpful, so that meaningful interventions could be identified, and the legal profession can then understand the appropriate legal and other avenues for their clients.</p>
3.	<p>Preliminary implementation considerations</p> <p>Feedback on the Bill made it clear that there needs to be time for necessary supports and systems to be put in place prior to implementation of a criminal offence. Four topics were clearly identified:</p> <ul style="list-style-type: none"> • community awareness and information spreading, • education and training of justice sector agencies as well as service delivery agencies, • support for victims, and • support and interventions for perpetrators. <p>Sanjutta raised that community awareness requires more than just justice sector education. Workforce development is required in other areas such as health and education to be able to recognise and understand what coercive control is.</p> <p>Adam explained that we will need to consider viewpoints on the issues identified from all members of the taskforce and that is one of the key strengths of having the taskforce.</p> <p>Adam pointed out that unintended impacts also need to be considered, like misidentifying victims as perpetrators and creating adverse outcomes for victims.</p> <p>Tina explained that misidentification is prevalent among Aboriginal victims. Tina said that a good resource is the Pathway to Safety report which has been prepared by Aboriginal and Torres Strait Islander women, for Aboriginal and Torres Strait Islander women. She distributed the link to the report (Pathways to Safety - Report).</p> <p>Maggie said that careful consideration needs to be given to whether changes to service responses for a coercive control offence might impact existing pathways for people, for example statutory pathways for people living with disability. Maggie suggested that there needs to be very clear understanding about who is responsible and what the appropriate pathways for support are, to avoid people falling into gaps between services and support pathways.</p>
4.	<p>Next steps and close</p> <p>Adam explained that AGD is working through what work can be progressed now, and what work will need to wait for the new Parliament. Adam advised that AGD will distribute a document with some further information about the consultation themes, and questions seeking information from members and the groups that each member represents. Members of the taskforce are invited to respond to the questions, but aren't required to if they don't want to, or can't. The initial feedback received by AGD will help us to prepare for next steps.</p> <p>Next meeting: February/March 2022.</p>

Women:
Safety,
Wellbeing,
Equality

For
the
Future





Acknowledgment of country.

We acknowledge and respect the Traditional Custodians whose ancestral lands we live and work upon and we pay our respects to their Elders past and present. We acknowledge and respect their deep spiritual connection and the relationship that Aboriginal and Torres Strait Islander people have to Country. We also pay our respects to the cultural authority of Aboriginal and Torres Strait Islander people and their nations in South Australia, as well as those across Australia.

Foreword

South Australia has a proud history of being the first place in the world in which women successfully fought for the right to vote and to stand for parliament. Whilst we have continued to make advancements towards gender equality in every area of life, we still have work to do. Rights have been hard won but we are not done.

Labor is committed to achieving gender equality.

I recognise that our economy and our community are strongest when they are inclusive and fair, and when they enable equality of opportunity for all to participate and thrive.

Addressing inequality and ensuring that women and girls can equally and actively participate in our economy and in every aspect of community life is a core Labor value and integral to our state's future.

Issues which inhibit girls and women from equally participating in our community must be addressed. As must every issue that contributes to the terrible scourge of violence against women in our community and every issue that sees girls and women disadvantaged.

Labor is committed to creating a state in which your gender has no bearing on the opportunities available to you, which is renowned for equal opportunity for girls and women, that empowers women and girls to live their best possible lives and that realises the benefits for all that an equal future creates.

We are proud of the huge steps forward Labor has taken towards gender equality in our parliamentary representation and that, for the first time in South Australian history, our Shadow Cabinet has comprised 50% women. We know that achieving gender equality in public life requires implementing a clear plan that achieves change.

Having a clear plan is more important than ever as we plan for our social and economic recovery in the wake of COVID-19 – a crisis that disproportionately affected women.

Women worked at the frontline of our crisis response, industries predominantly employing women were negatively affected and jobs were lost.

Women, who are more likely to be engaged in insecure work, found themselves ineligible for income support, juggling caring, home schooling and work responsibilities and our community experienced an alarming increase in domestic violence.

Labor is committed to ensuring South Australian girls and women are safe, able to build a financially sustainable future for themselves and their families and empowered to equally and actively participate.

This reflects our core values, is a key element of our economic policy, our community policy and this women's policy, and Labor is committed to making change to achieve this.



Peter Malinauskas MP
SA Labor Leader



TIME FOR EQUALITY

Women's Economic Equality and Participation

Women are increasingly taking their rightful places as both workers and employers, but we are still some way from true equality. The recent pandemic has put further pressure on women's employment.

When all women are not able to participate fully in the labour market, everyone is worse off; children are more likely to live in poverty and our economy is robbed of talent we need for future prosperity.

Women's employment was affected by COVID-19 as work in hospitality, events and the arts disappeared. Alongside this, given the insecure nature of work in these industries, women also often could not access JobSeeker and other payments.

Australia has one of the highest levels of jobless single-parent households of children under 15 in the OECD. Australian women not being fully employed also affects the poverty levels in Australian two-parent families with children under 15. They are much more likely to have only one person working – full time or part time – than nearly every other country in the OECD.¹

Source: OECD¹

Rate of poverty among children

Children in sole parent households	44.2
Children in couple households	12.7
Children in other households	6.5
All children	17.7
All people	13.6

Rate of poverty among children – Poverty and Inequality (acoss.org.au)



Women who were working were often also at the frontline of our COVID-19 response in health and education and were often also supervising home learning during periods of lockdown.

The Working Women's Centre's recent report *Loss of Work, isolation and worry: the disproportionate impact of COVID-19 on young women* identified that since March 2020, of those who responded to their survey, 22% of young women had lost their job, 28% had their hours or pay reduced and 53% had their way of working disrupted.

The report (and the ABS, Cat 6291023a) also identified that as at November 2020, the underutilization rate was higher for female workers than male workers and that there was evidence that the male underutilization rate was returning to its pre-COVID rates whilst the female underutilization rate remained static at above 10 per cent.

The gender pay gap in South Australia persists and, as at November 2020, sat at 8.3% in South Australia.

22% of women work fewer than 20 hours a week, compared to just 10.6% of men and women are twice as likely to be engaged in insecure work than their male counterparts.

As of January 2021, 68 per cent of all part time jobs in South Australia were held by women.

Women continue to retire with less superannuation than men and remain more likely to take on caring responsibilities in the home.

The 2018 Fourth National Survey on Sexual Harassment in the Workplace identified that almost two in five women (39%) have experienced sexual harassment in the workplace in the previous five years.

Government cannot sit to one side and hope that equality will come one day.

Labor will work to achieve gender equality.

A Malinauskas Labor Government:

- ✔ Recognise that women were disproportionately affected by the pandemic and invest in those industries in which women make up a bigger share of the workforce such as tourism and the arts. Labor commits to -
 - ▶ Major event funding of \$40m over four years;
 - ▶ Increase the tourism marketing budget by \$20m over two years to ensure that South Australia has its share and more of the returning tourism boom;
 - ▶ Increase funding to the Adelaide Fringe by \$8m to ensure it retains its position as Australia's most successful and vibrant festival, and work with the Fringe to encourage community arts groups to participate and develop;
 - ▶ Increase arts grants by \$8m to ensure that as South Australia emerges from the pandemic our arts community is ready to welcome visitors and to accelerate growth.
 - ▶ Establish a \$4m grants fund for women in small business.
- ✔ Recognise that women are more likely to work in the caring professions and reintroduce aged care, disability care, child protection and child-care courses in TAFE .
- ✔ Recognise that caring for young children often keeps women out of the workplace through our ambitious early childhood strategy will not only improve the education and care offerings for young children, but will also better support women to be able to make choices.
- ✔ Encourage builders and other trades sub-contracting on public building and roads projects to employ female apprentices.
- ✔ Consult with workers, unions and businesses to expand the portable long service leave system for workers in sectors that predominantly employ women and are characterised by short-term employment conditions (\$1.506m contribution).



- ✓ Introduce Wage Theft legislation to create criminal penalties for persistent and deliberate underpayment of workers.
- ✓ Strengthen our labour hire laws to ensure that all labour firms and workers are covered by the same laws and regulations.

Labor will establish an Early Childhood Education and Care Royal Commission to plan the introduction of preschool for three-year-olds, how to improve the quality and accessibility of out of school hours care and how to best support families in the first three years of a child's life.

To achieve gender equality, a Malinauskas Labor government will:

- ✓ Introduce an Equality Bill to encourage public and private sector organisations to achieve equality and to adjust procurement and grants processes to ensure funding supports equity.
- ✓ Require all grants and procurement processes to increase gender equity.
- ✓ Review all legislation and government policy to ensure it is inclusive and enables equality of opportunity.
- ✓ Ensure all government boards comprise at least 50% women.
- ✓ Set up a Gender Pay Gap Taskforce.
- ✓ Reinstate the Premier's Women's Directory.
- ✓ Reinstate the Women in Sport Taskforce.
- ✓ Establish a Taskforce to work towards housing security for older South Australian women.



The gender pay gap in South Australia persists and, as at November 2020, sat at 8.3% in South Australia.



The 2018 Fourth National Survey on Sexual Harassment in the Workplace identified that almost two in five women (39%) have experienced sexual harassment in the workplace in the previous five years.



Women continue to retire with less superannuation than men and remain more likely to take on caring responsibilities in the home.



22%

of women work fewer than 20 hours a week, compared to just 10.6% of men and women are twice as likely to be engaged in insecure work than their male counterparts.



As of January 2021, 68% of all part time jobs in South Australia were held by women.

A Safe Community for Women and Girls

The horrific scourge of domestic violence, harassment and disrespect towards women continues. It is unacceptable. Everything that can possibly be done to prevent violence, and to address the gender inequality at its core, must be progressed.

More than one woman per week in Australia dies every year as a result of domestic violence perpetrated by a partner or former partner.

The rate of domestic violence in South Australia has significantly increased over the past year – with more than 1,100 additional domestic violence related offences reported in the 2020 SAPOL Annual Report.

This spike in incidents followed revelations during the 2020 Estimates process that, at the time of that process, the Marshall Liberal Government had provided no ongoing funding for much needed domestic violence prevention hubs.

Last year, the Multi Agency Protection Service had almost 350 cases referred to it each week.

In November 2020, the Commissioner for Aboriginal Engagement released a report criticising a lack of specific action on domestic violence, stating “a strategic and whole-of-government approach is urgently required”.

Nearly \$800,000 was cut from the Domestic Violence Court Assistance Service and the budget of the Equal Opportunity Commission was slashed.

As it was in Government, Labor has been active in its efforts to work with our community to prevent and end violence against women.

As well as working with communities and organisations across our state to raise awareness about these issues, we have continuously moved legislation to strengthen women’s safety.

From Opposition, we have led the way by introducing legislation to -

- ✓ criminalise coercive control;
- ✓ toughen penalties for breaches of domestic violence intervention orders;
- ✓ require those who are granted bail who have been charged with serious domestic violence offences to be electronically monitored as a condition of bail;
- ✓ waive fees for court initiated domestic violence intervention orders; and
- ✓ include the experience of domestic violence as a ground of discrimination in the *Equal Opportunity Act*.

Our legislation to toughen penalties for breaches of domestic violence intervention orders passed both Houses of Parliament with the support of the Cross Bench. Unfortunately, the government delayed the passage of a number of the other bills, as they did when they stalled legislation for two years that would have expeditiously rid our roads of the vile slogans on Wicked Campers vans.

We have introduced motions for the parliament to inquire into insecure work and modern slavery and slavery like practices.

Labor has been relentlessly active in the legislative space.

Labor knows that, while it is crucial to utilise every available legal measure, prevention must be at the heart of our response to domestic violence.



A Malinauskas Labor Government will:

- ✓ Restore funding cut from the Domestic Violence Court Assistance Service.
- ✓ Provide \$1 million in funding to establish a southern and northern domestic violence prevention and recovery hub to undertake work to support and empower women and raise community awareness.
- ✓ Ring-fence a proportion of Labor's public housing for women escaping domestic violence.
- ✓ Recognise that the Federal ALP has committed to 500 community sector workers to work with women at risk, ensure a fair share of those workers, in the event of a Federal Labor government, are allocated to meet the needs of women in South Australia.
- ✓ Work with the finance and real estate industries to determine how we can ensure women do not bear the brunt of mortgages, loans and rent that go unpaid as a result of domestic violence.
- ✓ Improve mechanisms to share government data and develop mechanisms to share data collected by community organisations to help prevent domestic violence.
- ✓ Introduce a serious legislative reform program, working with women's organisations, the Equal Opportunity Commissioner and the SA Police.

This legislation will cover:

- ▶ Criminalising coercive control to prevent and end this insidious form of violence.
 - ▶ Including the experience of domestic violence as a ground for discrimination in the Equal Opportunity Act 1984.
 - ▶ Including both mental health first aid training and an understanding of domestic violence in Work Health and Safety education.
 - ▶ Investigate progressing paid domestic violence leave for workers engaged pursuant to the Fair Work Act (SA.)
 - ▶ Requiring those who are granted bail who have been charged with serious domestic violence offences to be electronically monitored as a condition of bail.
 - ▶ Reviewing legislation pertaining to consent to sexual activity.
- ✓ Invest \$1 million in a grant program for women's and men's sheds, with \$120k already allocated to support the Playford Women's Shed, which is at risk of being without a home after March 2022 and urgently needs assistance.



Women in Business

It is high time that women in business are afforded the recognition they deserve and can pursue their entrepreneurial spirit without gender-related barriers

Gender disparity in business and the gender pay gap are still prevalent in the Australian community. The pay gap between working men and women, regularly discussed in the media, shows that Australian women earn 14.2 per cent less than their male counterparts.

Women continue to fight to be represented in executive positions in the workplace. For example:

- ▶ In the South Australian Parliament just over 30 per cent of Members of Parliament are female.
- ▶ In the corporate sector, female representation on ASX200 listed boards sits at 33 per cent, with only 5 per cent of women in CEO positions in those same companies.
- ▶ Across the globe, female-led businesses receive less than 5 per cent of the total venture capital money which provides the initial funding that allows start-up businesses to grow and provide good, high value jobs.



Reaching gender parity for women in South Australia is possible but requires further commitment by both the State government and the community.

South Australian entrepreneurs have been turning big ideas into big jobs and the South Australian community has benefitted from those opportunities of employment.

Well paid, high value jobs are important for the future of our economy and we know that South Australian entrepreneurs are key to building jobs for the next generation.

A Malinauskas Labor government is committed to fostering the entrepreneurial spirit in a greater proportion of the South Australian community and removing the barriers for entry for female entrepreneurs.

Just over a third of business owners in Australia are women and the number of female entrepreneurs is growing.

South Australian female entrepreneurs are taking leading roles and promoting innovation in the space industry, professional services, technology, health, and social enterprises.

Whilst these entrepreneurial women are creating jobs and growing our State's economy, women in business continue to face barriers to accessing support and venture capital to get their ideas off the ground.

Globally, female-led businesses receive less than 5 percent of the total venture capital money. Representation in ASX listed companies and workplaces such as the South Australian Parliament is lower than it ought to be.



A Malinauskas Labor Government will:

ESTABLISH THE WOMEN IN BUSINESS PROGRAM

COST: \$4 million

A \$4 million support package for female-owned businesses in South Australia.

The package will grow South Australian businesses and boost our economy, creating jobs and supporting our local entrepreneurs.

The Women in Business package will provide a suite of programs that will be made available to South Australian female-owned businesses.

Packages will be tailored to the needs of individual businesses including:

- ✓ financial literacy training;
- ✓ business mentoring;
- ✓ networking events;
- ✓ business development opportunities;
- ✓ grant writing and funding support;
- ✓ capability training;
- ✓ industry partnerships; and
- ✓ upscaling guidance.

There will be two programs available to female entrepreneurs:

Women in Business Start Up Program

The Women in Business Start Up Program will deliver capability development programs with a focus on confidence, education and skills development for women in the early stages of their business journey. Programs will include:

- ✓ a 1-hour consultation to guide female entrepreneurs through the available small business support
- ✓ mentor matching – matching the female entrepreneur to a mentor for one-on-one support
- ✓ events and webinars – providing opportunities to attend events and webinars to strengthen networks and improve business skills and knowledge.



Women in Business Advisory Board Program

The Women in Business Advisory Board Program will be focused on increasing participation rates and business skills of South Australia female entrepreneurs, with established businesses and high growth ambitions. Programs will include:

- ✓ Essentials program – group sessions designed for female business owners to facilitate the improvement of business skills and provide available support to achieve high growth aspirations
- ✓ Growth program – designed to help female-owned businesses establish best practice governance, improved strategic planning and provide the foundations to support female business owners, including access to advisory board members and business mentors.

Through the provision of upskilling and support, the Women in Business program will build resilience and strengthen innovative female-owned businesses in South Australia. This will lead to greater access to venture capital, increased growth and security of jobs for future South Australian generations.



CHANGING HER GAME

Sport is powerful. Seeing women and girls celebrating for being strong, skillful and physical can change perceptions about the role of women in our community.

Many women and girls find expression through sport and recreation activities and have gone on to achieve local, national and international success. This must continue to be supported and celebrated, and importantly we need to ensure that women and girls have access to the facilities, training and equipment they need to pursue their sporting passion.

The Marshall Liberal Government has done great damage to this by scrapping Labor's dedicated Female Facilities Fund, established to ensure local sporting clubs have access to funds to build facilities to meet the rapidly growing number of women wishing to participate in their local community sporting club.

A Malinauskas Labor government will address this by reviewing how money is invested in local sporting clubs and we will change procurement processes so that the allocation of sport and recreation funds consider whether funds are being used in a way that enables equal participation.

Labor is serious about backing women in sport and will work to ensure girls and women can equally and actively participate in the sport they love.

Additionally, we will:

- ✓ Re-establish a Women in Sport Taskforce to advise Government on issues preventing women and girls participating fully in their sporting passions.
- ✓ Link funding to state sporting organisations, clubs, leagues and association to improvements in the diversity of their decision-making bodies.



House of Assembly—No 105

As laid on the table and read a first time, 2 December 2020

South Australia

**Criminal Law Consolidation (Coercive Control)
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

- 4 Insertion of Part 3 Division 1B
 - Division 1B—Coercive control
 - 14B Interpretation
 - 14C Meaning of *conduct that constitutes coercive control*
 - 14D Meaning of *prescribed relationship*
 - 14E Coercive control
 - 14F Aggravated coercive control
 - 14G Alternative verdicts

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Coercive Control) Amendment Act 2020*.

2—Commencement

This Act comes into operation 1 month after the day on which it is assented to by the Governor.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Insertion of Part 3 Division 1B

After section 14A insert:

Division 1B—Coercive control

14B—Interpretation

In this Division—

cause—a person causes harm if the person's conduct is the sole cause of the harm, or substantially contributes to the harm;

mental harm means psychological harm and includes emotional reactions such as distress, grief, fear or anger;

reckless—a person is reckless in causing physical or mental harm to another if the person—

- (a) is aware of a substantial risk that the person's conduct could result in physical or mental harm; and
- (b) engages in the conduct despite the risk and without adequate justification.

14C—Meaning of *conduct that constitutes coercive control*

- (1) For the purposes of this Division, a person engages in **conduct that constitutes coercive control** of another if the person engages in conduct that has, or is likely to have, 1 or more of the following effects:

- (a) the conduct makes the other person dependent on, or subordinate to, the person;
- (b) the conduct isolates the other person from their friends, relatives or other sources of support;
- (c) the conduct controls, regulates or monitors the other person's day-to-day activities;
- (d) the conduct restricts the other person's freedom of movement;
- (e) the conduct restricts the other person's freedom of action;
- (f) the conduct restricts the other person's access to support services, including the services of health practitioners and legal practitioners;
- (g) the conduct frightens, humiliates, degrades or punishes the other person,

where—

- (h) the person intends the conduct to cause physical or mental harm to the other person, or is reckless as to whether the conduct may cause such harm; and
- (i) a reasonable person would consider the conduct to be likely to cause physical or mental harm to another person,

(whether or not such harm is in fact caused).

- (2) For the purposes of subsection (1), a reference to conduct includes a reference to—

- (a) an omission; and
- (b) a threat to engage in conduct; and
- (c) conduct, or a threat, directed at another person (including the offender, a family member of the victim or a third party); and

- (d) conduct, or a threat, directed at a pet or other property belonging to a person (whether the victim or otherwise).
- (3) However, conduct of the following kinds will be taken not to constitute coercive control of another:
 - (a) conduct engaged in with the lawful consent of the other person;
 - (b) conduct that lies within the limits of what would be generally accepted in the community as normal incidents of interaction within a relationship (however, this paragraph does not apply in relation to conduct where a person intended to cause physical or mental harm);
 - (c) such other conduct, or conduct of a kind, as may be prescribed by the regulations.
- (4) This section applies in relation to conduct engaged in within this State or within any other jurisdiction.
- (5) To avoid doubt, a single act may amount to conduct that constitutes the coercive control of another person.

14D—Meaning of *prescribed relationship*

For the purposes of this Division, a person is in a prescribed relationship with another person if—

- (a) they are married to each other; or
- (b) they are domestic partners; or
- (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or
- (d) they are related to each other by or through blood, marriage, a domestic partnership or adoption; or
- (e) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or
- (f) 1 is the carer (within the meaning of the *Carers Recognition Act 2005*) of the other; or
- (g) they live in the same household.

14E—Coercive control

- (1) A person who engages in conduct that constitutes the coercive control of another person with whom the person is, or was, in a prescribed relationship is guilty of an offence.
Maximum penalty: Imprisonment for 7 years.

(2) If a defendant is charged with an offence against this section in respect of a course of conduct—

(a) it is not necessary to prove that the defendant was, or ought to have been, aware that each act making up the course of conduct amounts to conduct that constitutes coercive control of another; and

(b) the information need not—

(i) allege particulars of each act with the degree of particularity that would be required if the act were charged as a separate offence; or

(ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or

(iii) identify particular acts as causing, wholly or partly, particular harm to the victim.

(3) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.

(4) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the conduct that constitutes the coercive control of another person determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the conduct that constitutes the coercive control of another person determined by the trier of fact found to be proved beyond a reasonable doubt).

14F—Aggravated coercive control

(1) A person who, in circumstances of aggravation, engages in conduct that constitutes the coercive control of another person with whom the person is, or was, in a prescribed relationship is guilty of an offence.
Maximum penalty: Imprisonment for 15 years.

(2) For the purposes of this section, a person engages in conduct that constitutes the coercive control of another person in circumstances of aggravation if—

(a) the conduct, or a threat to engage in conduct, is directed at a child of the other person; or

(b) the conduct involves directly or indirectly using a child of the other person to control the other person; or

(c) the conduct occurs within the view or hearing of a child of the other person; or

(d) the conduct involves the use of a weapon of any kind; or

- (e) the conduct involves the distribution of, or a threat to distribute, an invasive image of the other person; or
- (f) the person had, before engaging in the conduct, previously been found guilty of an offence against this section or section 14E, or a corresponding offence against the law of another State or Territory; or
- (g) the conduct occurs in any other circumstances prescribed by the regulations for the purposes of this paragraph.

(3) For the purposes of this section, if—

- (a) conduct that constitutes the coercive control of another person forms part of a course of conduct; and
- (b) 1 or more acts making up that course of conduct occurs in circumstances of aggravation,

then the course of conduct will be taken to have occurred in circumstances of aggravation.

(4) If a defendant is charged with an offence against this section in respect of a course of conduct—

- (a) it is not necessary to prove that the defendant was, or ought to have been, aware that each act making up the course of conduct amounts to conduct that constitutes coercive control of another; and
- (b) the information need not—
 - (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as a separate offence; or
 - (ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or
 - (iii) identify particular acts as causing, wholly or partly, particular harm to the victim.

(5) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.

(6) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the conduct that constitutes the coercive control of another person determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the conduct that constitutes the coercive control of another person determined by the trier of fact found to be proved beyond a reasonable doubt).

(7) In this section—

invasive image has the same meaning as in Part 5A of the *Summary Offences Act 1953*.

14G—Alternative verdicts

If—

- (a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 14E or 14F has been established; but
- (b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified offence against this or any other Act; and
- (c) the jury is satisfied beyond reasonable doubt that the specified offence has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence.

House of Assembly—No 192

As laid on the table and read a first time, 27 October 2021

South Australia

**Criminal Law Consolidation (Abusive Behaviour)
Amendment Bill 2021**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and to make related amendments to the *Evidence Act 1929*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
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Part 2—Amendment of *Criminal Law Consolidation Act 1935*

- 4 Substitution of heading
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 - 20B Abusive behaviour
 - 20C Review of section 20B

Schedule 1—Related amendment to *Evidence Act 1929*

- 1 Amendment of section 4—Interpretation
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Criminal Law Consolidation (Abusive Behaviour) Amendment Act 2021*.

2—Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Substitution of heading

Heading to Part 3 Division 7AA—delete the heading and substitute:

- 15 **Division 7AA—Relationship offences**

5—Insertion of sections 20B and 20C

After section 20A insert:

20B—Abusive behaviour

(1) A person who is, or has been, in a relationship with another person and engages in abusive behaviour in relation to that other person in circumstances where—

(a) 1 or more of the acts of abuse comprising the abusive behaviour consists of or includes behaviour, or a threat to engage in behaviour, that is directed at a child; or

(b) the person makes use of a child, or threatens to make use of a child, in 1 or more of the acts of abuse comprising the abusive behaviour; or

(c) a child sees or hears 1 or more of the acts of abuse comprising the abusive behaviour,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person who is, or has been, in a relationship with another person and engages in abusive behaviour in relation to that other person is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

(3) For the purposes of this section, a person *engages in abusive behaviour* in relation to another person if the person commits 3 or more acts of abuse (whether of the same or different kinds) in relation to the other person and—

(a) the person intends by that conduct to cause harm to the other person; or

(b) the person—

(i) is aware of a substantial risk that the conduct could result in harm to the other person; and

(ii) engages in the conduct despite the risk and without adequate justification.

(4) For the purposes of this section, the mental element referred to in subsection (3) need not be the same in respect of each act of abuse to which a charge of an offence under this section relates.

(5) In proceedings for an offence against this section—

(a) the prosecution is not required to allege the particulars of any act of abuse that would be necessary if the act of abuse were charged as a separate offence; and

(b) the trier of fact is not required to be satisfied of the particulars of any act of abuse that it would have to be satisfied of if the act of abuse were charged as a separate offence, but must be satisfied as to the general nature or character of those acts of abuse; and

(c) if the trier of fact is a jury, the members of the jury are not required to agree on which acts of abuse constitute the abusive behaviour.

(6) However, the prosecution is required to allege the particulars of the period of time over which the acts of abuse constituting the abusive behaviour occurred.

(7) In proceedings for an offence against this section in which it is material to establish whether an act was done with or without adequate justification, the onus of proving the justification lies on the defendant and in the absence of such proof it will be presumed that no such justification exists.

(8) A person who has been convicted or acquitted of an offence under this section cannot be convicted of an offence that relates to a particular act of abuse in relation to the same victim if—

(a) the act of abuse is alleged to have occurred in the course of the abusive behaviour to which the conviction or acquittal relates; and

(b) evidence of that act of abuse was adduced in the course of the proceedings in which the person was convicted or acquitted.

(9) If—

(a) a trier of fact is not satisfied beyond reasonable doubt that a charge of an offence against this section has been established; but

(b) the Judge has instructed the trier of fact that it is open on the evidence to find the defendant guilty of a specified lesser offence; and

(c) the trier of fact is satisfied beyond reasonable doubt that the specified lesser offence has been established,

the trier of fact may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified lesser offence.

(10) For the purposes of this section, 2 people are in a *relationship* if—

(a) they are married to each other; or

(b) they are domestic partners; or

(c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other.

(11) In this section—

act of abuse, in relation to a person, means—

- (a) behaviour directed towards the person that is violent, threatening, intimidating, frightening, harassing, humiliating, degrading or punishing; or
- (b) behaviour of a kind referred in paragraph (a) directed towards, or causing or threatening to cause loss to, another person who is known to the person; or
- (c) loitering outside the place of residence of the person or some other place frequented by the person; or
- (d) depriving the person of their liberty; or
- (e) damaging property belonging to the person, or in the presence of the person; or
- (f) causing death or injury to an animal, or threatening to do so (whether or not the animal belongs to the person); or
- (g) isolating the person from their friends, relatives or other sources of support; or
- (h) directly or indirectly tracking or monitoring the person's movements, activities or communications (whether by physically following the person, using technology or some other method); or
- (i) making unreasonable demands on how the person exercises their personal, social or financial autonomy (being a demand linked to a threat of negative consequences for a refusal or failure to comply with the demand); or
- (j) denying, or threatening to deny, the person access to basic necessities including food, clothing or sleep (whether or not the person would, in fact, have had access to those necessities); or
- (k) withholding, or threatening to withhold, necessary medication, medical equipment, or medical treatment from the person; or
- (l) withholding, or threatening to withhold, essential support services from the person; or
- (m) preventing the person from entering their place of residence; or
- (n) withholding, or threatening to withhold, financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses; or

- (o) preventing, or threatening to prevent, the person from having access to their financial assets (including financial assets held jointly with the defendant or another person),

but does not include an act or omission, or act or omission of a kind, declared by the regulations to be excluded from the ambit of the purposes of this definition;

cause—a person causes harm if the person's behaviour is the sole cause of the harm or substantially contributes to the harm;

child means a person under 18 years of age;

emotional or psychological harm includes—

- (a) mental illness; and
- (b) nervous shock; and
- (c) distress, anxiety, or fear, that is more than trivial;

harm means physical or emotional or psychological harm (whether temporary or permanent);

lesser offence, in relation to an offence against this section, means—

- (a) in relation to an offence against subsection (1)—
 - (i) an offence against subsection (2); or
 - (ii) another offence against this Act for which a lesser maximum penalty is prescribed; or
- (b) in relation to an offence against subsection (2)—another offence against this Act for which a lesser maximum penalty is prescribed.

20C—Review of section 20B

- (1) The Minister must cause a review of the operation of section 20B (as enacted by the *Criminal Law Consolidation (Abusive Behaviour) Amendment Act 2021*) to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed within 12 months after the third anniversary of the commencement of section 20B.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Schedule 1—Related amendment to *Evidence Act 1929*

1—Amendment of section 4—Interpretation

Section 4(1), definition of ***serious offence against the person***, (d)—after subparagraph (i) insert:

- (ia) an offence of abusive behaviour under section 20B of the *Criminal Law Consolidation Act 1935*; or



MINUTES forming ENCLOSURE to

File: A788947

To MINISTER FOR WOMEN AND THE PREVENTION OF
DOMESTIC AND FAMILY VIOLENCE

By email: Minister.Hildyard@sa.gov.au

DRAFT NATIONAL PRINCIPLES TO ADDRESS COERCIVE CONTROL

I write to provide you with a copy of the proposed consultation draft of the National Principles to Address Coercive Control ("the National Principles") (Attached).

The purpose of the National Principles is to build a common national understanding of coercive control; its nature, effects, past failures to consistently recognise it, and the importance of a coordinated approach in addressing it. They are intended to be used primarily as a resource for policy makers and service providers across government and non-government sectors.

The draft of the National Principles is set out in two parts. The first part is high level, setting out each principle and some brief supporting background text. The second part includes detailed explanatory text on each principle.

The eight National Principles can be summarised as follows:

1. Sets out common features of coercive control, and known trends in its use (such as that it is most often perpetrated by men against women; whilst acknowledging that both victims and perpetrators can be any gender);
2. Outlines the long and short term impacts of coercive control;
3. Acknowledges that coercive control has not been consistently recognised and understood by the community, legal system and law enforcement, due to a tendency to focus on physical violence and single incidents rather than a pattern of behaviour over time, and that this can create barriers to help-seeking behaviours;
4. Recognises that discrimination and inequality can impact a victim-survivor's experience of coercive control, and this must be taken into account when considering policies and solutions;
5. Recognises that the lived experience of victim-survivors should inform policies and solutions to address coercive control;
6. Recommends coordinated approaches to addressing coercive control that are based on a shared understanding of the issue. Recognises that there is no

single approach to addressing coercive control and that governments, civil society, businesses, academics, communities and families all have roles to play. Approaches to the issue should focus strongly on education and training;

7. Agrees that whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine, noting that where criminalisation occurs it is only one part of a boarder approach to addressing coercive control;
8. Recognises that, in deciding whether and how to criminalise coercive control, states and territories should take into account the potential for unintended consequences such as victims being misidentified as perpetrators (e.g. if pattern-based investigation practices are not adequately established), or victims being re-traumatised by difficult court processes.

The draft National Principles have been developed by a sub-committee of the Family Violence Working Group (which sits under the Meeting of Attorneys-General (MAG)). At the next MAG meeting on 12 August 2022, Attorneys-General will be asked to agree to publicly release the draft National Principles for consultation. Following consultation they will be refined based on stakeholder feedback and then taken back to MAG for final agreement.

If you have comments on the National Principles I would be pleased to receive them in writing, and I will direct them to the officers on the Family Violence Working Group to feed into the development of the final version of the principles.

I look forward to continuing to work together on the project to criminalise coercive control in South Australia.

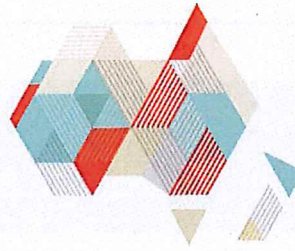


Hon Kyam Maher MLC
Attorney-General

16 August 2022

Meeting of

Attorneys-General



NATIONAL PRINCIPLES TO ADDRESS COERCIVE CONTROL

CONSULTATION DRAFT

FOREWORD BY ALL ATTORNEYS-GENERAL

[to be developed after public consultation]

[to include an acknowledgment of victim-survivors and those who have not survived]

HELP AND SUPPORT

Please refer to page 29 for [a list of support services](#).

INTRODUCTION

Each person is entitled to safety from family and domestic violence, no matter where they live in Australia.

Coercive control is a pattern of abusive behaviour that is often a significant part of a perpetrator's use of family and domestic violence. The Australian Government and state and territory governments recognise that understanding and responding to coercive control is an important part of preventing and responding to family and domestic violence.

State and territory governments have primary responsibility, and accountability, for how they respond to coercive control in their areas of Australia, including any criminal or civil laws they may choose to put in place to address coercive control. This can allow for responses to be tailored to meet the needs of the people and the communities they directly affect. The Australian Government has responsibility for the Australian family law system, which assists people to resolve the legal aspects of family relationship issues. Access to family law systems and services that enable safe and prompt resolution of family law matters is an important step to victim-survivor safety.

However, a shared consistent understanding of coercive control is an important component of supporting victim-survivor safety. This shared understanding supports:

- governments, non-government organisations, front line services, law enforcement, the judiciary, academic institutions, businesses and the community to work together to identify and address coercive control
- framing of prevention, early intervention, response and recovery approaches
- clear and consistent public messaging
- victim-survivors to recognise and describe their own experiences
- perpetrators to self-identify and take steps to address harmful behaviours
- increased understanding of the impact of gender inequality on coercive control.

Inconsistent or unclear understandings of coercive control can create confusion for victim-survivors and the broader community. It can also make it difficult for individuals and private, public and civil institutions to work together to address coercive control and support victim-survivor safety.

The National Principles help create a shared national understanding of coercive control and outline a mutual understanding across the Australian Government and state and territory governments about coercive control and how to respond to it.

The National Principles can be used by policy makers and service providers across government and non-government sectors. They provide flexibility to allow the Australian Government, state and territory governments, civil society and businesses to design their own tailored approaches to preventing and responding to coercive control.

The National Principles are also a tool to support wider awareness of coercive control by members of the broader community as well as legal professionals, police, health providers and other service providers who work with victim-survivors and perpetrators.

The knowledge base about family and domestic violence, including coercive control, is expanding all the time. These National Principles are based on the current nationally agreed understanding of coercive control, and might change in the future.

Responses to coercive control should be developed and considered within the context of broader government policy frameworks that include family and domestic violence, including the *National Plan to End Violence against Women and Children 2022–32* (the National Plan) and relevant state and territory frameworks.

This document considers coercive control in the context of family and domestic violence and therefore focuses on this behaviour within family or domestic relationships and settings. Coercive control can sometimes also be described in the context of family, domestic and sexual violence, and broader gender-based violence, both of which extend to violence outside family and domestic relationships and settings. However, this broader consideration is beyond the scope of this work.

This document recognises that there are many different forms of abusive behaviours that can form part of a perpetrator's use of family and domestic violence. These behaviours can be physical and non-physical in nature, including physical and non-physical forms of sexual abuse.

TERMINOLOGY

There is no single set of terminology that suits all situations and people. No exclusion or harm of people is intended in the terms used in this document.

The language used to describe experiences of family and domestic violence, including coercive control, is complex and continues to change.

Throughout this paper, people who use coercive control are referred to as perpetrators and people who have experienced or are experiencing coercive control are referred to as victim-survivors. The term 'victim-survivor' seeks to recognise differences in preferences around terminology held by those who have experienced or are experiencing coercive control. In using this term, it is also important to acknowledge that some people who experience coercive control do not survive.

GUIDE TO READING THE NATIONAL PRINCIPLES

This document is divided into two parts. The first part is called 'National Principles' (pages 3–10). It presents the eight National Principles together with short background sections. The second part is called 'National Principles In Depth' (pages 11–28), where the National Principles are repeated alongside detailed explanations. The background and detailed explanations help to explain each National Principle, but are not designed to provide a comprehensive summary of available evidence on coercive control.

NATIONAL PRINCIPLES

A COMMON UNDERSTANDING OF COERCIVE CONTROL AND ITS IMPACTS

NATIONAL PRINCIPLE 1: COMMON FEATURES

The Australian Government and state and territory governments recognise the following common features of coercive control:

- Coercive control is often a significant part of a person's experience of family and domestic violence.
- Coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and keeps power and dominance over another person or persons.
- As part of this pattern, perpetrators may use physical or non-physical abusive behaviours, or a combination of the two. The specific behaviours can look different in each relationship.
- In intimate partner relationships, coercive control is most often used by cisgender male perpetrators against women (both cisgender and transgender) who are their current or former partner, and their children.
- Coercive control can be used by or against people of all genders, sexual orientations, cultures and classes. People of all ages may also have coercive control perpetrated against them, including children and young people.
- Coercive control is most often identified in the context of intimate partner relationships, it can also be used by perpetrators in broader family relationships (including cultural kinship and family of choice relationships).
- Family and domestic violence, including coercive control, is driven by gender inequality within society. Gender inequality can also combine with other forms of inequality and discrimination, which can influence a victim-survivor's experience of coercive control.

It is important to understand how abusive behaviours are used as part of a pattern that results in the perpetrator having power and control over a victim-survivor. Types of behaviours that perpetrators can use as part of their patterns of abuse include physical abuse (including sexual abuse), monitoring a victim-survivor's actions, restricting a victim-survivor's freedom or independence, social abuse, using threats and intimidation, emotional or psychological abuse (including spiritual and religious abuse), financial abuse, sexual coercion, reproductive coercion, lateral violence, systems abuse, technology-facilitated abuse and animal abuse.

Coercive control may be perpetrated in current or former intimate relationship structures and broader family relationships. For example, it may be perpetrated within a marriage, de facto, dating or casual relationship, or engagement. A perpetrator may also be a parent or caregiver through birth, adoption or fostering, a grandparent, a sibling, an extended family member or an adult child. Coercive control may be perpetrated within cultural kinship connections and family of choice relationships.

Children and young people have unique experiences of coercive control and should be considered victim-survivors in their own right. They may be directly targeted, may witness abusive behaviour, or may be exploited by perpetrators as a way of asserting power and control over a parent or caregiver.

Gender inequality in public and private life is an underlying condition for violence against women to occur. Gender inequality can also combine with other forms of inequality and discrimination, including racism, ageism, classism, ableism, transphobia, biphobia and homophobia, and ongoing impacts of colonialism for Aboriginal and Torres Strait Islander communities.

[For a detailed explanation of National Principle 1, see below at page 11.](#)

NATIONAL PRINCIPLE 2: IMPACTS

The Australian Government and state and territory governments recognise that coercive control has significant short and long term harmful impacts on victim-survivors and communities.

- The effects of coercive control can build up and become worse over time.
- Coercive control can affect a victim-survivor's whole life, and take away their independence, dignity, sense of self-worth, identity, feeling of security and health and wellbeing.
- Escalation of patterns of coercive control is a significant factor in intimate partner homicide cases.
- Coercive control is one of the factors that can keep victim-survivors trapped by perpetrators in relationships.
- In an intimate partnership context, coercive control does not always end when a relationship is ended, with perpetrators' abusive behaviour at risk of increasing during and after separation.

Coercive control can contribute to poorer physical health, as well as mental illness, including anxiety, depression and post-traumatic stress disorders, and can contribute to harmful coping strategies, such as reliance on alcohol or other drugs, or self-harm.

As a result of the perpetrator's actions, victim-survivors can be isolated from family and friends, lose jobs, income and financial security and find it difficult to trust people or develop new relationships. This has a personal, as well as a broader community, impact.

The way a perpetrator uses coercive control can effectively trap a victim-survivor and make it very difficult to seek help. A person who is trying to leave a relationship with a perpetrator is at increased risk of homelessness, particularly if the perpetrator has used coercive controlling behaviours to make them financially dependent. The nature of coercive control means that the negative effects increase over time, as patterns of behaviour are established and maintained—a cumulative impact.

[For a detailed explanation of National Principle 2, see below at page 16.](#)

NATIONAL PRINCIPLE 3: COMMUNITY UNDERSTANDING

The Australian Government and state and territory governments recognise that coercive control has not been consistently recognised, understood or responded to as family and domestic violence.

- The community, legal system, law enforcement bodies and courts can have a focus on physical violence and single acts of violence, rather than a pattern of abuse over time.
- Community attitudes, and perpetrator behaviours that are controlling and isolating, can prevent victim-survivors from understanding that they are experiencing abuse or from seeking support.

All jurisdictions recognise and are actively responding to these identified gaps in understanding and response.

Misunderstanding of coercive control in the community can be a significant barrier that can prevent coercive control from being identified, reported and addressed.

The Australian community can more easily recognise visible physical violence as family and domestic violence, and can overlook or dismiss the non-physical abusive behaviours that are often part of coercive control.

The Australian Government and state and territory governments recognise that if family and domestic violence responses focus exclusively on single acts of violence and don't adequately consider the broader pattern of coercive control, individual behaviours used by perpetrators can seem less significant and may not be taken seriously.

Service providers, police and the justice system (including the family law system) are all taking steps to improve their understanding of coercive control and share best practice approaches (including the work of specialist services who have advocated for reform). While ongoing efforts are being made to address coercive control, the Australian Government and state and territory governments recognise that making incorrect assumptions about victim-survivors has led to inconsistent responses.

While victim-survivors are the experts in their own lives, some victim-survivors find it difficult to recognise that what they are experiencing is coercive control, or that it is family and domestic violence. Some people may not recognise their own experience in the way coercive control is often described.

Limited community understanding of coercive control can lead to victim-blaming attitudes and practices. This can mean that victim-survivors who *do* recognise their experience as coercive control may not tell other people about it or seek support because they are afraid of not being believed, being blamed for the perpetrator's behaviours, or having their experiences dismissed.

[For a detailed explanation of National Principle 3, see below at page 18.](#)

CONSIDERING THE IMPACTS OF DISCRIMINATION AND INEQUALITY ON DIFFERENT EXPERIENCES OF COERCIVE CONTROL

NATIONAL PRINCIPLE 4: EFFECTS OF DISCRIMINATION AND INEQUALITY

The Australian Government and state and territory governments recognise that discrimination and inequality within the practices, policies and behaviours of organisations, institutions and communities can impact a victim-survivor's experience of coercive control. These issues must be considered in any policies or solutions to address coercive control.

- Discrimination and inequality can underpin barriers that victim-survivors face in accessing justice and support, impact a victim-survivor's ability, confidence or willingness to seek help, as well as the quality of support they receive; and increase the negative effects coercive control has on victim-survivors.
- Discrimination and inequality can create an environment where perpetrators feel enabled and empowered to use coercive control.
- Discrimination and inequality can increase the likelihood of victim-survivors being misidentified as the perpetrator of family and domestic violence.

Discrimination and inequality exist in many of the practices, policies and behaviours of organisations, institutions and communities, and can occur across government, policing, medical, healthcare, legal and service responses. This means that some people can be given more advantages whereas others are unfairly disadvantaged.

While gender inequality drives family and domestic violence, including coercive control, gender inequality is not the only factor in every family and domestic violence context where a perpetrator uses coercive control.

Discrimination and inequality can be linked to many different parts of a person's identity or their circumstances, including race, ethnicity, cultural background, religion or spirituality, age, gender, sexuality, class, ability, geographical location, and migration status.

Discrimination and inequality create an environment where perpetrators feel enabled and empowered to use coercive control. They also provide additional tools that perpetrators can use as part of their pattern of behaviour. For example, perpetrators may deliberately play on a fear of racist policies that have historically supported child removal, such as from Aboriginal and Torres Strait Islander peoples, by threatening to report the victim-survivor as a neglectful parent or carer.

Discrimination and inequality in availability and accessibility of services can also increase the difficulties for victim-survivors who are trying to access justice and support. For example, some victim-survivors may not be eligible to access some supports based on factors such as visa status, or fear negative consequences from telling someone about their experience of coercive control or trying to seek justice or support.

[For a detailed explanation of National Principle 4, see below at page 20.](#)

HOLISTIC ASSESSMENT OF SYSTEMS REFORM ISSUES

NATIONAL PRINCIPLE 5: LIVED EXPERIENCE

The Australian Government and state and territory governments recognise the importance of ensuring that the lived experience of victim-survivors, including children and young people, informs policies and solutions to address coercive control.

Working with victim-survivors and listening to their voices and experiences is essential to ensure that approaches to address coercive control meet their needs effectively. This includes engaging directly with children and young people.

It is important that victim-survivors' perspectives are considered throughout every step of the process of designing, implementing and evaluating initiatives to address coercive control. They are best placed to help identify areas for system reform, service gaps, barriers, and any unintended consequences of future initiatives.

Working with victim-survivors, including children and young people, should be trauma-informed. This involves, for example, providing environments that are safe for victim-survivors to share their insights, and recognising the strength it takes for people to share personal experiences.

Incorporating the voices of victim-survivors with diverse backgrounds, identities and circumstances is critical to ensure that initiatives achieve their objectives.

Some people who have coercive control perpetrated against them do not survive. There are significant lessons learned from these deaths, including important insights from family members, and these should also inform policies and solutions to address coercive control.

NATIONAL PRINCIPLE 6: COORDINATED APPROACH TO PREVENTION, EARLY INTERVENTION, RESPONSE AND RECOVERY

The Australian Government and state and territory governments recognise the importance of coordinated approaches to addressing coercive control.

- Approaches should be based on a shared understanding of coercive control.
- Governments, civil society, businesses, academics, communities and families all have roles to play to support the safety of victim-survivors and accountability of perpetrators.
- There is no single approach to addressing coercive control, but all areas involved in addressing family and domestic violence should work together to reduce duplication and gaps in services.
- Actions should be evidence-based, trauma-informed and occur across prevention, early intervention, response and recovery.
- Approaches should focus strongly on education and training.

Addressing coercive control and creating a society that supports victim-survivor safety and perpetrator accountability needs involvement from everyone within society to be effective. Coordination across all government and non-government areas that are involved in addressing family and domestic violence is essential. The justice system alone is not sufficient to address coercive control, and needs to work with other systems involved in the lives of children, young people and adults, such as health, education and social services.

Comprehensive and connected efforts across prevention, early intervention, response and recovery are important to meet the needs of victim-survivors, perpetrators and the community.

Primary prevention involves substantial ongoing commitment to addressing the gendered drivers of family and domestic violence. This involves changing the social attitudes, structures and conditions that can influence a person's use of coercive control or enable the community to excuse this behaviour. Evidence-based primary prevention initiatives are needed to stop coercive control before it starts.

Early intervention can stop coercive control from occurring or escalating by identifying and supporting people who are more likely to use coercive control and people who are at a higher risk of having coercive control used against them by a perpetrator.

Response efforts aim to support victim-survivors and hold perpetrators accountable and can reduce the risk that perpetrators continue using coercive control against victim-survivors.

Recovery efforts go beyond the immediate threat and enable long term healing. Services that support recovery should prioritise victim-survivors feeling safe, healthy and supported as they recover from the short and long term impacts of coercive control.

Education and training initiatives are important to effectively implement prevention, early intervention, response and recovery efforts. Strong, accurate data is important to inform the shared understanding of coercive control, and to support the design and implementation of evidence-based efforts to address coercive control.

[For a detailed explanation of National Principle 6, see below at page 23.](#)

MATTERS TO CONSIDER WITH RESPECT TO ANY FUTURE CRIMINALISATION

NATIONAL PRINCIPLE 7: CRIMINALISATION OF COERCIVE CONTROL

Whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine. State and territory governments agree that the development and implementation of any specific coercive control offence should involve consideration of the National Principles to Address Coercive Control. It is also only one part of a broader approach to addressing coercive control.

All states and territories have criminal and civil laws that respond to family and domestic violence. State and territory governments are at different stages of considering whether or how to develop and implement a specific coercive control offence.

Whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine. The Australian Government cannot create a coercive control offence at the national level.

A specific coercive control offence is also only one example of a legal response to coercive control. For example, there are existing civil laws, such as protection orders, that aim to protect victim-survivors from further violence, intimidation or harassment. Legal responses must be positioned alongside non-legislative approaches, as part of a coordinated approach to addressing coercive control that spans across prevention, early intervention, response and recovery areas.

[For a detailed explanation of National Principle 7, see below at page 25.](#)

NATIONAL PRINCIPLE 8: UNINTENDED CONSEQUENCES OF CRIMINALISATION

State and territory governments agree that the decision to criminalise, and the development and implementation of any coercive control offence, should involve careful consideration of unintended consequences for victim-survivors and perpetrators, particularly those already disadvantaged by the justice system. This includes the risk of victim-survivors being misidentified as perpetrators of family and domestic violence or further traumatised through difficult criminal justice processes, and the risk of increasing the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Any coercive control offence needs to be carefully designed and implemented to identify and reduce unintended risks to victim-survivor safety. Consultation with victim-survivors and communities affected by discrimination and inequality, particularly Aboriginal and Torres Strait Islander peoples, is important.

State and territory governments recognise that there are some people who are already at a higher risk of being disadvantaged by the justice system because of discrimination and inequality. This includes, but is not limited to, Aboriginal and Torres Strait Islander peoples, LGBTQIA+ people, people with disability, mental illness or substance abuse issues, people from culturally, linguistically and faith diverse communities, people with low socio-economic status, sex-workers, and people who live in rural, regional or remote areas of Australia.

There are particular community concerns about how criminalising coercive control may increase the risks of over-incarceration, institutionalisation, or involvement with child protection for people from these groups. Any efforts to criminalise coercive control must be attentive to how criminal justice responses can create and increase risks for these groups as they increase contact with the criminal justice system.

Aboriginal and Torres Strait Islander peoples are over-represented in the criminal justice system and are particularly at risk of experiencing unintended consequences of criminalisation. Any coercive control offence must support justice for these groups, and not worsen discrimination and inequality.

State and territory governments agree that misidentification of the perpetrator of family and domestic violence is a significant potential issue that must be addressed in the design and implementation of any criminal justice response, including any new laws. Situations where misidentification can happen include when police first respond to a matter, when people go to court, or when non-specialist service providers become involved.

If developing a specific coercive control offence, state and territory governments recognise the need to consider how police and other law and justice professionals could be supported to apply the legislation. This includes training on how to recognise coercive control and accurately identify the person most in need of protection. Police, frontline services, the justice sector and other relevant professionals need to be equipped to recognise patterns of coercive control and respond effectively.

Careful consideration is also needed on how to reduce re-traumatisation for victim-survivors going through the criminal justice process.

[For a detailed explanation of National Principle 8, see below at page 27.](#)

NATIONAL PRINCIPLES IN DEPTH

A COMMON UNDERSTANDING OF COERCIVE CONTROL AND ITS IMPACTS

NATIONAL PRINCIPLE 1: COMMON FEATURES

The Australian Government and state and territory governments recognise the following common features of coercive control:

- Coercive control is often a significant part of a person's experience of family and domestic violence.
- Coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and keeps power and dominance over another person or persons.
- As part of this pattern, perpetrators may use physical or non-physical abusive behaviours, or a combination of the two. The specific behaviours can look different in each relationship.
- In intimate partner relationships, coercive control is most often used by cisgender male perpetrators against women (both cisgender and transgender) who are their current or former partner, and their children.
- Coercive control can be used by or against people of all genders, sexual orientations, cultures and classes. People of all ages may also have coercive control perpetrated against them, including children and young people.
- Coercive control is most often identified in the context of intimate partner relationships, it can also be used by perpetrators in broader family relationships (including cultural kinship and family of choice relationships).
- Family and domestic violence, including coercive control, is driven by gender inequality within society. Gender inequality can also combine with other forms of inequality and discrimination, which can influence a victim-survivor's experience of coercive control.

People who experience coercive control in a family or domestic relationship are experiencing family and domestic violence. The person who experiences coercive control is never to blame for the abuse they experience. The person using abusive behaviour makes a choice to do so and is responsible for their actions, the consequences and taking action to address their use of coercive control.

A person who uses coercive control exerts power and dominance over the person they are using their pattern of abusive behaviours against, by threatening, humiliating, undermining or isolating them.

A victim-survivor may experience coercive control regardless of whether or not a perpetrator consciously makes decisions around the selection of tactics and the reasons for using them.

Coercive control involves a person using abusive behaviours that form a pattern over time. When identifying coercive control, it is important to look at how abusive behaviours are used and repeated throughout a relationship (and after it has ended) and how these build up over time to have a controlling effect, rather than focusing on single acts of abuse. It is also important to recognise the patterns of behaviour across different relationships to understand the history of a perpetrator's behaviour.

There are many examples of individual behaviours a perpetrator may use as part of the pattern of behaviour that makes up their unique perpetration of coercive control. Examples of behaviours have been included for reference, but it is important to recognise that understanding coercive control is not only about identifying different 'types' of behaviour, but about understanding how these behaviours are used as part of a pattern of behaviour that results in the perpetrator having power and control over a victim-survivor.

When people think of family and domestic violence, they often think of physical violence such as pushing or punching. As part of their pattern of abusive behaviours, a person who uses coercive control may use physical abuse. However, patterns of behaviour may also be non-physical, or may be a combination of physical and non-physical.

Behaviours cross into multiple categories and include but are not limited to:

Physical abuse (including sexual abuse). Direct physical assault, including physical abuse, can be a part of the pattern of abuse that makes up coercive control. This might involve physical assault, including strangulation, use of weapons, or destruction of property. Physical abuse may be used early in the relationship so the victim-survivor is scared that it will happen again.

Monitoring a victim-survivor's actions. This could include things like accessing emails, text messages and social media. It could also involve having cameras or audio listening devices in the house or within items such as children's toys, using tracking apps on phones or vehicles, stalking adult or child victim-survivors, demanding victim-survivors send images of where they are at particular times, or engaging family or friends to follow a victim-survivor and report back to the perpetrator.

Restricting a victim-survivor's freedom or independence. This could include things like neglecting or withholding care, such as medication or disability aids, or preventing or restricting access to basic security, such as food, housing, medical or healthcare, or clothes. It might involve changing passwords and locking victim-survivors out of social media, email or bank accounts, hiding or destroying devices, threatening a person's visa security, or preventing the victim-survivor from learning how to drive or accessing a motor vehicle. In the case of gender diverse people, this can include restricting access to gender affirmative care or hormonal medications.

Social abuse. This includes actions by a perpetrator that isolate a victim-survivor from their social support networks. It could involve stopping or forbidding the victim-survivor from making or seeing friends, family and community, moving the victim-survivor away from friends and family to make it difficult to visit, convincing the victim-survivor that their family or friends don't want to see them, or creating an uncomfortable environment for friends and family when they visit.

Using threats and intimidation. This could include things like threatening to remove children or withhold contact, threatening to report to child safety authorities, threatening to harm children, pets, support animals or other family members, threatening to infect a victim-survivor with an infectious disease such as COVID-19, or seeking to shame or embarrass the person in their community. In the case of LGBTIQ+ people, threats to 'out' their sexuality, gender orientation, or HIV status can be used. In the case of people with disability this can include threatening to put them in an institution.

Emotional or psychological abuse, including spiritual and religious abuse. This could include things like making frequent belittling comments to or about a victim-survivor, gaslighting them (saying things to make them question their judgement or sense of reality), repeatedly texting, emailing or calling them, or highlighting and building on a victim-survivor's insecurities. It could also include things like controlling what a victim-survivor wears, eats, drinks, how they do their hair, what exercise they do, who they spend time with or controlling how they practice their culture, spirituality, sexuality or faith.

Financial abuse. This involves actions to control a victim-survivor's access to, use of, or ability to control their finances. It could include things like removing a victim-survivor's access to finances, forcing the victim-survivor to withdraw superannuation, taking out loans or maxing out credit cards in the victim-survivor's name. It could involve refusing to let someone see financial information like bank statements, not allowing them to be involved in household financial decision-making, or restricting their access to work or study. Dowry abuse, such as demands for further money or gifts from a woman and her extended family, can be a form of financial abuse in some cultural contexts.

Sexual coercion. This could include making a victim-survivor engage in sexual acts they are not comfortable with, taking explicit photos and threatening to share them publicly, forcing them to watch or engage in pornography, or coercing them to engage in sex with other people.

Reproductive coercion. This involves behaviour that interferes with a victim-survivor's freedom to make decisions about their reproductive health. This could include hiding or disposing of a victim-survivor's contraceptive, pressuring a victim-survivor into pregnancy, forcing them to continue or terminate a pregnancy, or forcing or coercing a person into sterilisation.

Lateral violence. This involves abuse used by people in positions of powerlessness as a result of disadvantage, discrimination and oppression who direct their dissatisfaction towards others within their family or community. It often occurs when a number of people work together to attack or undermine another individual. It may include a range of behaviours including gossiping, bullying, shaming, blaming others, or social exclusion.

Systems abuse. This involves misusing or manipulating services and processes, such as legal processes, child protection processes or policing. This could include threatening to make false reports to police or child protection, falsely accusing the victim-survivor of being a perpetrator, obtaining a family violence order on the basis of false accusations, applying for parenting orders for shared care or primary care as a means of controlling the victim-survivor, deliberately accessing all legal services within an area so that a victim-survivor is not able to engage any of these services, making false allegations in family law proceedings and using legal systems to prolong family law proceedings on purpose.

Technology-facilitated abuse. This involves the perpetrator using technology as a tool to further the types of abuse referenced above. Examples of behaviours include creating fake social media accounts and making hurtful posts about a victim-survivor, creating social media accounts in the victim-survivor's name, or sharing or threatening to share intimate images or videos of a person without their consent (this is known as image-based abuse).

Animal abuse. This involves the perpetrator harming, or threatening to harm, animals, most commonly where a victim-survivor has a strong emotional connection to the animal, such as a pet.

Perpetrators can choose behaviours that they think will most hurt and gain power over the person they are using them against. A perpetrator might test and use different behaviours to decide what strategies are most effective to control the person. This might change over time, as a person's circumstances change. Perpetrators might also use different behaviours when the victim-survivor is at home, at work, out in public, or using different services (for example, as part of a court process).

The behaviours a perpetrator might use can also have a specific meaning for the person they are used against that might not be obvious to others outside the relationship. For example, if someone using coercive control had previously threatened to set fire to a victim-survivor's belongings, flicking a cigarette lighter in public could be a threat but may seem harmless to people outside the relationship.

Perpetrators adapt their coercive controlling behaviours to particularly target some groups of people in the community. This can include sharing images of young women without their consent, withholding care from older Australians and people with disability, and threatening to 'out' or disclose the gender identity or sexual orientation of LGBTIQ+ people.

In intimate partner relationships, coercive control is most often used by cisgender male perpetrators and disproportionately impacts women (both cisgender and transgender) and their children.

Perpetrators can use coercive control against anyone.

1. People of all genders, including men, women and people who are transgender, gender-diverse or non-binary, may use coercive control, or have coercive control used against them.
2. Coercive control may be used in intimate partner relationships of all types, including between cisgender heterosexual men and women, in the relationships of LGBTQIA+ people of all genders, and in monogamous, polyamorous and other diverse relationship structures.
3. Coercive control may be perpetrated in a wide range of intimate relationship structures. For example, it may be perpetrated within a marriage, de facto relationship, dating partnership, casual relationship or engagement. Coercive control can be used by a perpetrator in a current or former relationship and may begin, continue, or escalate, after separation.
4. Coercive control may also be used within broader family relationships. A perpetrator may, for example, be a parent or caregiver through birth, adoption or fostering, a grandparent, a sibling, an extended family member or an adult child. Coercive control may be perpetrated within cultural kinship connections in Aboriginal and Torres Strait Islander communities and family of choice relationships, for example within LGBTQIA+ families.
5. Coercive control can be perpetrated against people of all ages. Children and young people have unique experiences of coercive control and are victim-survivors in their own right, whether they are directly targeted, have witnessed violence towards another family member or are otherwise exposed to the effects of violence.

Within each of these relationships, the behaviours used to establish power and dominance will be different. Behaviours can also be used in settings outside the home. For example, family members or intimate partners may use behaviours against victim-survivors in their workplace, or through perpetration of systems abuse.

Within different relationship contexts, there is also potential for a victim-survivor to have coercive control perpetrated against them directly by multiple perpetrators, or for there to be 'enabling' relationships, where violence by a perpetrator is condoned by others such as the parent of a spouse or a family member.

Using abusive behaviour is always a choice, but there are a range of social attitudes, structures, systems and conditions that can influence a person's use of, and experience of, family and domestic violence, including coercive control. Gender inequality in public and private life is an underlying condition for violence against women to occur. Gender inequality is expressed in four distinct but interconnected ways: condoning of violence against women, men's control of decision-making and limits to women's independence in public life and relationships, rigid gender roles and stereotyped constructions of masculinity and femininity, and male peer relations that emphasise aggression and disrespect towards women. These gendered drivers arise from discriminatory historical, economic and social structures, norms and practices. Gender inequality affects relationships between people, communities, social groups, institutions and the structures of society.

It is important to acknowledge that gender inequality also impacts LGBTQIA+ communities and influences their experience of coercive control. In particular, rigid, binary and hierarchical ideas of sex, gender and sexuality have a significant impact on the violence that is perpetrated against LGBTQIA+ people and communities.

Gender inequality is not the only, and not always the most significant factor in every family and domestic violence context where a perpetrator uses coercive control. Gender inequality can also combine with other forms of inequality and discrimination, including racism, ageism, classism, ableism, transphobia, biphobia and homophobia, and ongoing impacts of colonialism for Aboriginal and Torres Strait Islander communities. There are a range of reinforcing factors that can interact with gender inequality and other forms of inequality and discrimination, and can contribute to the likelihood, or worsen a victim-survivor's experience of, family and domestic violence, including coercive control. These reinforcing factors include, but are not limited to:

- condoning violence within communities, which can lead to a 'normalisation' of abusive behaviour
- experience of, or exposure to, family and domestic violence (particularly during childhood)
- actions that seek to uphold or re-establish gender inequality, which create an environment where there is a heightened risk of perpetrators using abusive behaviour
- factors that weaken prosocial behaviours (behaviours intended to help other people) and therefore can reduce empathy, respect and concern for victim-survivors. This includes stress, financial distress, disadvantage and isolation, natural disasters and crises (such as the COVID-19 pandemic), male-dominated settings and harmful use of alcohol and other drugs.

The presence of these reinforcing factors is associated with increased risk of coercive control being used. However, the presence of these reinforcing factors does not directly lead to coercive control and does not excuse or justify a perpetrator's behaviour.

NATIONAL PRINCIPLE 2: IMPACTS

The Australian Government and state and territory governments recognise that coercive control has significant short and long term harmful impacts on victim-survivors and communities.

- The effects of coercive control can build up and become worse over time.
- Coercive control can affect a victim-survivor's whole life, and take away their independence, dignity, sense of self-worth, identity, feeling of security and health and wellbeing.
- Escalation of patterns of coercive control is a significant factor in intimate partner homicide cases.
- Coercive control is one of the factors that can keep victim-survivors trapped by perpetrators in relationships.
- In an intimate partnership context, coercive control does not always end when a relationship is ended, with perpetrators' abusive behaviour at risk of increasing during and after separation.

Everyone has a right to live their life free from harm, violence, abuse, neglect or exploitation.

Coercive control has harmful impacts on the health and wellbeing of the person who experiences it, and can take away their independence, dignity, sense of self-worth and identity.

Coercive control can also contribute to poorer physical health, as well as mental illness, including anxiety and depression. Some victim-survivors can experience complex post-traumatic stress disorders. Coercive control can also contribute to harmful coping strategies, such as reliance on alcohol or other drugs, or self-harm.

Coercive control does not always end when an intimate partner relationship ends. It may become worse, with the perpetrators' abusive behaviour at risk of increasing both during and after separation. In current and former relationships, escalation of patterns of coercive control is a factor in intimate partner and child homicide cases.

The social consequences are often significant. As a result of the perpetrator's actions, victim-survivors can be isolated from family and friends, lose jobs, income and financial security and find it difficult to trust people or develop new relationships. This has a personal, as well as a broader community, impact.

The way a perpetrator uses coercive control can effectively trap a victim-survivor and make it very difficult for them to seek help. For example, a person who has financial abuse used against them as part of a pattern of abusive behaviour may not have access to money or a bank account, or may be prevented from accessing employment. A person who is trying to leave a relationship with a perpetrator is at increased risk of homelessness, particularly if the perpetrator has used coercive controlling behaviours to make them financially dependent.

The nature of coercive control means that the negative effects increase over time as patterns of behaviour are established and maintained. This is known as cumulative impact. For example, constant criticism of a person's friends and family may not immediately result in those relationships ending, but can damage a person's relationships over time, eventually leading to social isolation.

Coercive control can have traumatic impacts on children and young people. Trauma from coercive control can affect health, behavioural and educational outcomes, including leading to problems with mood regulation, impulse control, self-perception, attention and memory. Coercive control can also adversely impact a young

person's future relationships. For example, it can influence their ideas about gender norms and their attitudes towards the use of violence within relationships. These effects can persist in adult life.

Coercive control can also impact a victim-survivor's relationship with their children, as perpetrators may target the relationship to damage their bond with each other. The other effects of coercive control may also make it difficult for the victim-survivor to be emotionally present for their children. In addition to the personal impact of coercive control on victim-survivors, it also has a community impact, including effects on friends, family, employers and other social relationships through the effects of social isolation.

NATIONAL PRINCIPLE 3: COMMUNITY UNDERSTANDING

The Australian Government and state and territory governments recognise that coercive control has not been consistently recognised, understood or responded to as family and domestic violence.

- The community, legal system, law enforcement bodies and courts can have a focus on physical violence and single acts of violence, rather than a pattern of abuse over time.
- Community attitudes, and perpetrator behaviours that are controlling and isolating, can prevent victim-survivors from understanding that they are experiencing abuse or from seeking support.

All jurisdictions recognise and are actively responding to these identified gaps in understanding and response.

A lack of recognition or understanding of coercive control within the community, and condoning, minimising or excusing it, can be a significant barrier that can prevent coercive control from being identified, reported and addressed.

The Australian community can more easily recognise visible physical violence as family and domestic violence, and can overlook or dismiss the non-physical abusive behaviours that are often part of coercive control. A focus on physical violence can also mean people focus on *single acts* of violence, and overlook a pattern of behaviours over time.

The Australian Government and state and territory governments recognise that if family and domestic violence responses focus exclusively on single acts of violence and don't adequately consider the broader pattern of coercive control, individual behaviours used by perpetrators can seem less significant and may not be taken seriously. Incident based responses can lead to a failure to recognise when someone is using force in self-defence against a perpetrator after experiencing a long-term build-up of abusive behaviours or to protect themselves or others. This can result in those responding to coercive control, such as police or non-specialist service providers, and court officials across state and territory courts and within the family court system, having difficulties identifying the person most in need of protection, charging victim-survivors incorrectly as perpetrators, as well as other harmful, inadequate or inconsistent responses.

Service providers, police and the justice system (including the family law system) are all taking steps to improve their understanding of coercive control and share best practice approaches (including the work of specialist services who have advocated for reform). While ongoing efforts are being made to address coercive control, the Australia Government and state and territory governments recognise that making incorrect assumptions about victim-survivors has led to inconsistent responses. For example, service providers, police and court officials may believe that a victim-survivor is always passive and does not stand up to the perpetrator. When the victim-survivor does not look or act this way, for example if they use force to resist coercive control, this may result in a failure to recognise coercive control, or the victim-survivor being mistakenly identified as the perpetrator of family and domestic violence.

While victim-survivors are the experts in their own lives, some victim-survivors find it difficult to recognise that what they are experiencing is coercive control, or that it is family and domestic violence. For example, someone who is experiencing coercive control may mistake their experience as being a normal part of a relationship. This view is often influenced by the perpetrator themselves, and can also be supported by the attitudes of friends and family and reinforced by underlying social attitudes, structures, systems and conditions that support gender inequality. Some people may not recognise their own experience in the way

coercive control is often described. For example, if community awareness is only focused on coercive control perpetrated by cisgender men against cisgender women in heterosexual intimate partner relationships, or the impact of gender inequality is only discussed in the context of these dynamics, people who experience coercive control in other intimate relationship structures, and people who experience coercive control in broad family relationships, may not recognise their experience as coercive control.

Limited community understanding of coercive control can lead to victim-blaming attitudes and practices, such as thinking that a victim-survivor who does not end a relationship with a perpetrator is partly responsible for the abuse continuing (which is not true) or focusing on the actions of the victim-survivor rather than the behaviour of the perpetrator. This can mean that victim-survivors who *do* recognise their experience as coercive control may not tell other people about it or seek support because they are afraid of not being believed, being blamed for the perpetrator's behaviours, or having their experiences dismissed, excused or made to seem less important. This view is again often strengthened by perpetrators, who may try to reduce a person's confidence that anyone will believe or help them. Perpetrators are often good at hiding their abuse, blaming the victim-survivor, and being friendly to other people in the community to create a positive image of themselves.

Within some communities, victim-survivors may also feel shame about admitting to their experience of coercive control, based on harmful community attitudes such as family and domestic violence being a private matter or incorrect ideas about who can and cannot experience coercive control. They may also feel a sense of loyalty towards the perpetrator.

CONSIDERING THE IMPACTS OF DISCRIMINATION AND INEQUALITY ON DIFFERENT EXPERIENCES OF COERCIVE CONTROL

NATIONAL PRINCIPLE 4: EFFECTS OF DISCRIMINATION AND INEQUALITY

The Australian Government and state and territory governments recognise that discrimination and inequality within the practices, policies and behaviours of organisations, institutions and communities can impact a victim-survivor's experience of coercive control. These issues must be considered in any policies or solutions to address coercive control.

- Discrimination and inequality can underpin barriers that victim-survivors face in accessing justice and support, impact a victim-survivor's ability, confidence or willingness to seek help, as well as the quality of support they receive; and increase the negative effects coercive control has on victim-survivors.
- Discrimination and inequality can create an environment where perpetrators feel enabled and empowered to use coercive control.
- Discrimination and inequality can increase the likelihood of victim-survivors being misidentified as the perpetrator of family and domestic violence.

Discrimination and inequality exist in many of the practices, policies and behaviours of organisations, institutions and communities, and can occur across government, policing, medical, healthcare, legal and service responses. This means that some people can be given more advantages whereas others are unfairly disadvantaged.

While gender inequality drives family and domestic violence, including coercive control, gender inequality is not the only, and not always the most significant factor in every family and domestic violence context where a perpetrator uses coercive control. Gender inequality can also combine with other forms of inequality and discrimination to impact a victim-survivor's experience.

Discrimination and inequality can be linked to many different parts of a person's identity or their circumstances. Discrimination and inequality can be because of incorrect assumptions and beliefs about things like race, ethnicity, cultural background, religion or spirituality, age, gender, sexuality, class, ability, geographical location, and migration status. Sexism, racism, ableism, ageism, classism, transphobia and homophobia are examples of discrimination that result in inequality and disadvantage. Where a person experiences multiple forms of discrimination and inequality targeted to different aspects of their identity or circumstances, these can interact to create new and increased forms of disadvantage. This is known as intersectionality.

Discrimination and inequality particularly impact the way groups such as Aboriginal and Torres Strait Islander peoples, people who are from culturally and linguistically diverse communities, people who are migrants or refugees, people who live on temporary visas, LGBTQIA+ people, people with disability and people who live in rural, regional or remote areas of Australia experience coercive control. For example, understanding the experience of coercive control for Aboriginal and Torres Strait Islander communities requires considering the context of colonisation, intergenerational trauma, systems abuse and racist policy and practice.

Discrimination and inequality create an environment where perpetrators feel enabled and empowered to use coercive control. They also provide additional tools that perpetrators can use as part of their pattern of behaviour. For example, perpetrators may:

- deliberately play on a fear of racist policies that have historically supported child removal from Aboriginal and Torres Strait Islander peoples, by threatening to report the victim-survivor as a neglectful parent or carer
- use poor service provision in geographically isolated communities to control victim-survivors, and take advantage of inequalities in mobile phone coverage and/or landline services
- use a victim-survivor's alcohol or substance use to justify keeping them under surveillance or monitoring their whereabouts
- threaten a person's visa or migration status, for example by threatening to withdraw sponsorship or have them deported
- use community discrimination against LGBTQIA+ people, by threatening to reveal a person's gender, sexuality or HIV status, or by trying to shame, change, minimise or silence their identity
- rely on discriminatory community attitudes against victim-survivors with disability, to discredit their claims and experience, claim they will not be believed when seeking help, or may risk being institutionalised
- report victim-survivors to authorities, following through on threats such as those outlined above.

Discrimination and inequality in availability and accessibility of services can also increase the difficulties for victim-survivors who are trying to access justice and support. For example:

- Some victim-survivors may not be eligible to access some supports based on factors such as visa status or lack of income.
- Support services may be inaccessible for victim-survivors with disability.
- People living in rural, regional and remote areas may have limited or non-existent service options, as their geographical isolation has not been addressed in service responses.
- Services may not be appropriately designed or funded to cater for the needs of all victim-survivors, for example they might not be age appropriate for victim-survivors who are children, or may not include access to an interpreter.
- Non-specialist services may not be culturally safe, including for Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse communities and LGBTQIA+ people.

These barriers are often manipulated by a perpetrator to continue their abuse. The effects of coercive control build over time with the repeated pattern of behaviours, so if a person is unable to access justice and support, the long term impacts on them can be worse.

Victim-survivors may also fear other negative consequences from telling someone about their experience of coercive control or trying to seek justice or support. For example, victim-survivors may fear the involvement of child protection organisations or may fear being discriminated against by police or government agencies. This is a particular concern for Aboriginal and Torres Strait Islander communities, due to experiences of colonisation and Stolen Generations. It is also a concern for other people against whom there has been a history of discrimination, such as for LGBTQIA+ people, people with disability and people with a history of alcohol and substance misuse.

HOLISTIC ASSESSMENT OF SYSTEMS REFORM ISSUES

NATIONAL PRINCIPLE 5: LIVED EXPERIENCE

The Australian Government and state and territory governments recognise the importance of ensuring that the lived experience of victim-survivors, including children and young people, informs policies and solutions to address coercive control.

Working with victim-survivors and listening to their voices and experiences is essential to ensure that approaches to address coercive control meet their needs effectively. This includes engaging directly with children and young people.

Victim-survivors who are impacted by coercive control have specific expertise that comes from lived experience. They have first-hand knowledge of the strengths and weaknesses of systems and initiatives that are intended to support them.

One of the cross-cutting principles of the National Plan is that 'the diverse lived experiences of victim-survivors are informing policies and solutions'. It is important that victim-survivors' perspectives are considered throughout every step of the process of designing, implementing and evaluating initiatives to address coercive control. Victim-survivors are best placed to help identify areas for system reform, service gaps, barriers, and any unintended consequences of future initiatives.

Working with victim-survivors, including children and young people, should be trauma-informed, which involves:

- providing environments that are physically, psychologically, culturally and emotionally safe for victim-survivors to share their insights, and do not cause any further harm
- building trust through consistent practice, appropriate managing of expectations and being responsive to individual needs, values, concerns and wishes
- recognising the strength and courage it takes for people to share personal experiences and insights from their experiences
- recognising that people are experts in their own lives and futures
- acknowledging people's strengths, protective actions and supports, and acts of resistance
- providing equitable and inclusive access to people with diverse needs and from diverse backgrounds
- acknowledging how different aspects of people's identities or circumstances interact
- recognising that a person's ability to engage may vary across time, place or personal circumstances, including health, family responsibilities or changing risks to safety.

There is no 'one size fits all' approach to addressing coercive control. Initiatives that are informed by diverse lived experience are more likely to be culturally safe, inclusive, accessible, and tailored to the diverse needs of different communities. Incorporating the voices of victim-survivors with diverse backgrounds, identities and circumstances is critical to ensure that initiatives achieve their objectives.

Some people who have coercive control perpetrated against them do not survive. There are significant lessons learned from these deaths, including important insights from family members, and these should also inform policies and solutions to address coercive control.

NATIONAL PRINCIPLE 6: COORDINATED APPROACH TO PREVENTION, EARLY INTERVENTION, RESPONSE AND RECOVERY

The Australian Government and state and territory governments recognise the importance of coordinated approaches to addressing coercive control.

- Approaches should be based on a shared understanding of coercive control.
- Governments, civil society, businesses, academics, communities and families all have roles to play to support the safety of victim-survivors and accountability of perpetrators.
- There is no single approach to addressing coercive control, but all areas involved in addressing family and domestic violence should work together to reduce duplication and gaps in services.
- Actions should be evidence-based, trauma-informed and occur across prevention, early intervention, response and recovery.
- Approaches should focus strongly on education and training.

Addressing coercive control and creating a society that supports victim-survivor safety and perpetrator accountability needs involvement from everyone within society to be effective. Governments, civil society, businesses, academics, communities and families all have important roles to play in achieving this goal. For example, one of the key roles of government (which includes law and justice systems) is to design, implement and improve policies and services to improve safety and address coercive control. Communities and families play a powerful role in supporting the long-term cultural change that is needed to stop coercive control. Businesses can also play a critical role in supporting victim-survivors. For example, banks can implement policies to help prevent financial abuse.

There is no single approach to addressing coercive control. However, coordination across all government and non-government areas that are involved in addressing family and domestic violence is essential. The justice system alone is not sufficient to address coercive control, and needs to work with other systems involved in the lives of children, young people and adults, such as health, education and social services. Coordinating efforts, and sharing learnings, knowledge or research can help to reduce duplication and gaps in services. It is also important for breaking down some of the barriers that victim-survivors face when accessing support from legal and community services. This includes reducing the number of times victim-survivors are asked to repeat their experience.

The priority areas for action under the National Plan are evidence-based and span the continuum of prevention, early intervention, response and recovery. Comprehensive and connected efforts across these domains are important to meet the needs of victim-survivors, perpetrators and the community. All efforts to address coercive control should consistently focus on the perpetrator's pattern of behaviour and the impact it has on victim-survivors, including children.

Primary prevention involves substantial ongoing commitment to addressing the gendered drivers of family and domestic violence. This involves changing the social attitudes, structures and conditions that can influence a person's use of coercive control or enable the community to excuse this behaviour. This includes gender inequality and other forms of inequality and discrimination. Examples of primary prevention initiatives include education programs on respectful relationships and consent, particularly for young men and boys, to target the gendered drivers of violence against women. Evidence-based primary prevention initiatives are needed to stop coercive control before it starts.

MATTERS TO CONSIDER WITH RESPECT TO ANY FUTURE CRIMINALISATION

NATIONAL PRINCIPLE 7: CRIMINALISATION OF COERCIVE CONTROL

Whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine. State and territory governments agree that the development and implementation of any specific coercive control offence should involve consideration of the National Principles to Address Coercive Control. It is also only one part of a broader approach to addressing coercive control.

All states and territories have criminal and civil laws that respond to family and domestic violence. Victim-survivors who experience coercive control can use these legal mechanisms to report and seek protection from authorities. State and territory governments are at different stages of considering whether or how to develop and implement a specific coercive control offence.

Whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine. The Australian Government cannot create a coercive control offence at the national level.

Legal responses are only one part of broader efforts to address coercive control. Legal responses must be positioned alongside non-legislative approaches, as part of a coordinated approach to addressing coercive control that spans across prevention, early intervention, response and recovery areas. A specific coercive control offence is also only one example of a legal response to coercive control. For example, there are existing civil laws, such as protection orders that aim to protect victim-survivors from further violence, intimidation or harassment.

The development of any specific coercive control offence involves consideration of the following issues highlighted in the National Principles:

- **Common features** of coercive control, including how to capture patterns of behaviours and the types of relationships where coercive control can be perpetrated.
- **Impacts** of coercive control, including undermining a victim-survivor's sense of self and wellbeing, the increased risk of coercive control at the end of a relationship, and the risk that coercive control can escalate to intimate partner homicide. Legal responses to coercive control should take into account the seriousness of these impacts.
- The lack of **understanding** of coercive control by the community, law enforcement, the justice sector, and victim-survivors themselves. It is vital that legal responses to coercive control are supported by education and training initiatives to ensure that new laws are implemented effectively and consistently.
- The **effects of discrimination and inequality**, recognising that some people have an increased risk of coercive control being used against them by a perpetrator, and experience barriers to accessing justice or are more likely to be misidentified or criminalised. It is important to consider how the effects of discrimination and inequality will interact with any legal response to coercive control.
- Using victim-survivors' **lived experience** to inform the development, implementation and evaluation of any coercive control offence. Victim-survivors have a particularly important role to play in helping to identify any unintended consequences of criminal justice responses.

- **A coordinated approach** to addressing coercive control, where everyone within society has a role to play, and actions are taken across prevention, early intervention, response and recovery. This includes strengthening the evidence base to support a clear national picture of coercive control, which may involve using data to inform the design of any legal response, as well as ongoing data collection to measure its use, impact and effectiveness following implementation.
- **Potential unintended consequences** of criminalisation, including the risk of misidentification of the perpetrator, re-traumatisation of victim-survivors during the criminal justice process, or exacerbated risks to safety of victim-survivors created by their perpetrator being charged.

NATIONAL PRINCIPLE 8: UNINTENDED CONSEQUENCES OF CRIMINALISATION

State and territory governments agree that the decision to criminalise, and the development and implementation of any coercive control offence, should involve careful consideration of unintended consequences for victim-survivors and perpetrators, particularly those already disadvantaged by the justice system. This includes the risk of victim-survivors being misidentified as perpetrators of family and domestic violence or further traumatised through difficult criminal justice processes, and the risk of increasing the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Any coercive control offence needs to be carefully designed and implemented to identify and reduce unintended risks to victim-survivor safety. Consultation with victim-survivors and communities affected by discrimination and inequality, particularly Aboriginal and Torres Strait Islander peoples, is important. Without this, laws intended to protect victim-survivors could instead increase barriers to justice and worsen experiences of coercive control.

State and territory governments recognise that there are some people who are already at a higher risk of being disadvantaged by the justice system because of discrimination and inequality. This includes, but is not limited to, Aboriginal and Torres Strait Islander peoples, LGBTQIA+ people, people with disability, mental illness or substance abuse issues, people from culturally, linguistically and faith diverse communities, people with low socio-economic status, sex-workers, and people who live in rural, regional or remote areas of Australia.

There are particular community concerns about how criminalising coercive control may increase the risks of over-incarceration, institutionalisation, or involvement with child protection for victim-survivors and perpetrators from these groups. For example, perpetrators who use criminal laws against migrant and refugee women on temporary protection visas as an act of systems abuse can place the visa status of the victim-survivor in jeopardy. Victim-survivors with cognitive or mental health conditions are at increased risk of institutionalisation when engaging with the justice system, due to experiences of discrimination. This risk is enhanced when reporting non-physical forms of abuse under criminal laws. Any efforts to criminalise coercive control must be attentive to how criminal justice responses can create and increase risks for these groups as they increase contact with the criminal justice system.

Aboriginal and Torres Strait Islander peoples (both victim-survivors and perpetrators) are over-represented in the criminal justice system and are particularly at risk of experiencing unintended consequences of criminalisation. Any coercive control offence must support justice for these groups, and not worsen discrimination and inequality.

State and territory governments agree that misidentification of the perpetrator of family and domestic violence is a significant potential issue that must be addressed in the design and implementation of any criminal justice response, including any new laws. Situations where misidentification can happen include when police first respond to a matter, when people go to court, or when non-specialist service providers become involved.

Misidentification can happen when only individual behaviours or events are considered (for example, a single act of physical violence) rather than a pattern of behaviours across a relationship that amounts to coercive control. This is a key reason why having a shared understanding of coercive control is so important. Due to this focus on single acts, victim-survivors who use physical force in self-defence in response to coercive control are particularly at risk of being misidentified as the perpetrator of family and domestic violence and they may be charged with an offence.

Misidentification can also be based on other biases. For example, the victim-survivor may appear to be agitated, which is a normal response to trauma, or may appear to not be cooperative, based on prior experiences of discrimination or inequality. Perpetrators, on the other hand, may appear to be calmer, more cooperative, and more convincing. Victim-survivors from diverse groups, including Aboriginal and Torres Strait Islander, disabled, culturally and linguistically diverse and LGBTQIA+ communities, are at risk of being misidentified as the perpetrator if assessments are based on stereotypes or other incorrect understandings of coercive control. For example, it may be wrongly assumed that the physically larger of two men in a relationship is the perpetrator or that a person who is a disabled person's carer could not be a perpetrator.

Misidentification results in negative consequences for victim-survivors. This can include safety risks, involvement by child protection agencies, loss of housing and income support, mistrust of police and legal systems, long and complicated court proceedings, and negative effects on health and wellbeing.

If developing a specific coercive control offence, state and territory governments recognise the need to consider how police and other law and justice professionals could be supported to apply the legislation. This includes how to recognise coercive control and accurately identify the person most in need of protection. State and territory governments recognise the importance of ensuring the implementation of any criminal justice response, including any new offence, is supported by training, education and consideration of policies and practices to allow professionals to put this knowledge into practice. Police, frontline services, the justice sector and other relevant professionals need to be equipped to recognise patterns of coercive control and respond effectively.

State and territory governments also recognise the need to address other risks or potential negative effects on victim-survivors related to their experiences within the justice system. This should include careful consideration of how to reduce re-traumatisation for victim-survivors going through the criminal justice process (for example, when being interviewed or giving evidence in court). Training and education for judicial officers, legal practitioners and other professionals should focus on how best to protect victim-survivors and support access to justice.

HELP AND SUPPORT

The descriptions of family and domestic violence in these National Principles may be distressing to some readers. Help is available. If you, or someone else, is in immediate danger please contact Police or Ambulance on Triple Zero (000). If you, or someone you know, need help, then the following services are available to assist:

CRISIS SUPPORT AND SUICIDE PREVENTION

Lifeline	For anyone in Australia experiencing a personal crisis. Available 24/7.	13 11 14 www.lifeline.org.au
National Suicide Call Back Service	Telephone and online counselling for anyone in Australia affected by suicide.	1300 659 467 www.suicidecallbackservice.org.au

FAMILY, DOMESTIC AND SEXUAL VIOLENCE SUPPORT

1800RESPECT	National sexual assault, domestic and family violence counselling service. This service is free and confidential. Available 24/7.	1800 737 732 www.1800respect.org.au
Sexual, Domestic and Family Violence Helpline	For anyone in Australia whose life has been impacted by sexual, domestic or family violence. Available 24/7.	1800 943 539 www.fullstop.org.au
Rainbow Sexual, Domestic and Family Violence Helpline	For anyone from the LGBTIQ+ community whose life has been impacted by sexual domestic and/or family violence. Available 24/7.	1800 497 212 www.fullstop.org.au
Well Mob	Social, emotional and cultural wellbeing online resources for Aboriginal and Torres Strait Islander People.	www.wellmob.org.au
Men's Referral Service	For anyone in Australia whose life has been impacted by men's use of violence or abusive behaviours. Available 7 days.	1300 766 491 www.ntv.org.au
My Blue Sky	Provides free legal and migration advice to people in or at risk of all forms of modern slavery in Australia, including forced marriage.	(02) 9514 8115 www.mybluesky.org.au

MENTAL HEALTH SUPPORT AND ADVICE

MensLine Australia	Free telephone counselling support for men with concerns about mental health, anger management, family violence, addiction, relationship, stress and wellbeing. Available 24/7.	1300 78 99 78 www.mensline.org.au
Kids Helpline	A free counselling service for young people aged between 5 and 25. Available 24/7.	1800 55 1800 www.kidshelpline.com.au
Beyond Blue	Information and support for anxiety, depression and suicide prevention for anyone in Australia.	1300 22 4636 www.beyondblue.org.au
ReachOut	ReachOut provides mental health information, support and resources to anyone in Australia aged under 25 years.	www.au.reachout.com
1800 ELDERHelp	A free call phone number that automatically redirects callers seeking information and advice on elder abuse with the phone service in their state or territory.	1800 353 374
Open Arms – Veterans & Families Counselling	Mental health support for Navy, Army and Air Force personnel, veterans & their families. Available 24/7.	1800 011 046 www.openarms.gov.au

OTHER SUPPORT

Translating and Interpreting Service (TIS National)	Phone and on-site interpreting services in over 150 languages.	131 450 www.tisnational.gov.au/
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OFFICIAL

22TDHS/297



TO: MINISTER FOR WOMEN AND THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

RE: PROPOSED NEXT STEPS ON ENGAGEMENT FOR COERCIVE CONTROL LEGISLATION

Decision/action required by: ASAP

Reason: Timely action on next steps

RECOMMENDATIONS

It is recommended that you:		NOTED	APPROVED	NOT APPROVED
1	Note the previous consultations led by the Attorney-General's Department, regarding the introduction of coercive control legislation for South Australia and the key themes raised through this engagement by the family and domestic violence sector and the broader community.	✓		
2	Note the key findings and evidence from other jurisdictions and research bodies, that should inform the focus areas of any future consultation for South Australia.	✓		
3	Approve the attached draft letter to key stakeholders regarding the National Principles to Address Coercive Control public consultation opportunity and the continued commitment of the South Australian Government to criminalise coercive control.			✓

Approver Hon Katrine Hildyard MP Minister for Women and the Prevention of Domestic and Family Violence	Comment Thank you. Please see attached amendments to the letter. Look forward to continuing to work on the consultation plan.
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OFFICIAL

PURPOSE

To inform you about the consultation that has occurred to date regarding the proposed introduction of coercive control legislation for South Australia, as well as the key topics and issues raised through this engagement. Consultation under the previous government was led by the Attorney-General's Department (AGD) and was centred primarily around the implementation of legislation, rather than the technical aspects of a draft bill. This briefing summarises the key themes that have been raised to date and provides a consultation approach to begin the necessary groundwork that is required prior to the introduction of legislation. CI 1(1)(e) - deliberations of Cabinet

KEY POINTS

- In December 2020, you introduced the *Criminal Law Consolidation (Coercive Control) Amendment Bill 2020* while in Opposition, which aimed to create a criminal offence for coercive control. In October 2021, the previous government introduced the *Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021*.
- Neither Bill passed Parliament before both houses were prorogued.
- A number of consultations and forums commenced in 2021 that have generated important themes and feedback from the family, domestic and sexual violence (FDSV) sector as well as other key stakeholders in South Australia.
- In July 2021, Embolden, South Australia's domestic, family and sexual violence sector peak body, released a position paper, *Coercive Control and the Law in South Australia* (attachment 1) which considered national and international perspectives and experiences, as well as the limitations and risks of legislation.
- On 21 September 2021, the Office for Women (OFW) and AGD co-hosted a virtual discussion forum with the FDSV sector about the technical elements of the previous government's draft Bill.
- Also in September 2021, the AGD also released a public survey on a proposed South Australian offence of coercive control through the yourSAy Platform. This survey received 173 responses.
- In December 2021, AGD established a Coercive Control Implementation Taskforce (the taskforce) to provide advice on implementation issues. Members included government and non-government representatives. The taskforce only met once before the change of government. Taskforce representatives are listed at attachment 2.
- In February 2022, the AGD released a discussion paper titled *Implementation considerations should coercive control be criminalised in South Australia* (the discussion paper) to seek public feedback about implementation measures for a coercive control offence (attachment 3). The paper contained a range of questions about issues such as education/training and the capacity of the current specialist sector to respond to demand and responses for perpetrators, should a bill be introduced.
- In April 2022, the AGD provided DHS a summary of submissions received in response to the discussion paper (attachment 4). To date, this has not been released to the public. OFW has prepared a table summarising the key findings from the submissions received (attachment 5).
- CI 1(1)(e) - deliberations of Cabinet

RISKS/SENSITIVITIES

Previous consultation has not been targeted to specific groups or issues and has therefore not necessarily explored specific topics or concerns from key groups in depth. In addition, there have not been opportunities for face-to-face engagement with specific communities or opportunities for women who have experienced this form of violence to engage and inform the process.

This is particularly problematic where research and evidence indicates coercive control legislation may have adverse impacts on specific communities. This includes Aboriginal women and women from culturally linguistically diverse backgrounds, with a focus on newly arrived migrants and refugees. Australia's National Research Organisation for Women's Safety (ANROWS) research indicates that having a singular focus on a criminal justice approach to addressing coercive control may exclude groups of women who already face barriers to accessing justice when compared with other women, pointing to "the need for extensive cross-sector consultation with diverse groups of women and the service providers they engage with ... as well as particular consideration of approaches that are not centred solely on criminal justice."

For South Australia to successfully introduce and implement legislation to criminalise coercive control, targeted and in-depth consultation with specific groups (that also engages with regional areas) is critical.

DISCUSSION

In February 2022, the AGD released *Implementation considerations should coercive control be criminalised in South Australia* (the discussion paper) to feedback about non-legislative implementation measures for a coercive control offence (attachment 3). The discussion paper centres around growing community awareness about the issue; training and education for key workforces and service responses required should a bill be introduced. The AGD received twenty-two submissions to the discussion paper from a range of agencies and organisations, including general support services for victim-survivors and perpetrators, legal assistance services, advocacy groups, and academic and interested individuals. The consultation period closed on 1 April 2022. The summary of submissions report (attachment 4) provides a summary of the feedback against each question. OFW has developed a summary analysis table of key themes generated through this process (attachment 5).

The discussion below describes the key themes and topics that were raised through this consultation and that have emerged relatively consistently across the previous consultations described above. The analysis also refers to important sources of research and inquiry, including the ANROWS policy brief, *Defining and responding to coercive control* released in 2021 (attachment 6) and reports released by the **Queensland Women's Safety and Justice Taskforce** (the Taskforce) which was established to examine coercive control, review the need for a specific offence of domestic violence, and examine the experience of women across the criminal justice system in Queensland.

Seven key themes were prevalent across the South Australian consultations:

1. Definitions and scope

Just over a third of the twenty-two submissions to the AGD discussion paper called for a

clear definition of coercive control, with three supporting a national definition, to enable a shared understanding of the behaviour and appropriate responses. Of particular interest, some feedback noted that a nuanced definition should be adopted that reflects the range of tactics a perpetrator may use in different contexts. It was also put forward that a broader definition beyond domestic partner or former partner, including Aboriginal kinship roles and other kinds of personal relationships should be considered. Many responses noted that the offences detailed could be applied in relationships outside the family context and could be present in other dependent relationships.

Embolden, through their position paper on coercive control legislation released in September 2021, recommends the “active and immediate” support for the establishment of both a national definition for family and domestic violence and a national definition for sexual assault, but does not specify whether this should be established prior to introduction of a bill. Embolden holds that any consistent national definition for family and domestic violence (FDV) must recognise coercive control as a pattern of abuse and be developed in consultation with specialist women's and family violence services and experts by lived experience of family and domestic abuse.

The argument for a consistent definition has also been propagated by ANROWS, which argues in its brief that “responding to coercive control more effectively requires a consistent definition of FDV across legislative and policy settings, Australia-wide ...the system-wide harmonisation of definitions of FDV across Australia has been recommended for a considerable length of time” and that any revised definition of FDV must set the context for how to understand coercive control - that is, as a gendered, overarching context for FDV behaviours, rather than a tactic or an example of a FDV behaviour.

Meeting of Attorneys-General

The Attorney-General, the Hon Kyam Maher MLC, has provided you with a copy of the draft National Principles to Address Coercive Control (22TDHS/0780), which have been developed by a sub-committee of the Family Violence Working Group, which sits under the Commonwealth Meeting of Attorneys-General (MAG). The purpose of the National Principles is to build a national understanding of coercive control and a shared commitment to a coordinated approach in addressing it. A letter (attachment 11) is provided for you to notify key FDV stakeholders (attachment 12) of the draft National Principles and the current public consultation process, which commenced in September 2022. Specific dates have not been provided at this stage, however OFW understands that final agreement on the draft National Principles will be made in 2023.

2. Investment to support implementation is essential

Across all consultations, implementation has been the main source of discussion. With regards to the AGD discussion paper, a primary theme raised was that “adequate funding needs to be made available to support the implementation of a criminal offence for coercive control, as it requires a significant change in culture, understanding and ways of working for government agencies, community services, legal providers and institutions and the broader community. Without adequate funding being provided to enable training, education and cultural change, there is a substantial risk that an offence will be on the books but will be rarely used and ineffective”.

The yourSAy survey results released by AGD (attachment 7) also indicated that many respondents who were survivors of abuse, considered criminalisation an effective way to address the issue, however also acknowledged that a bill would be judged on its

implementation and supporting measures, noting the difficulty in obtaining evidence of the offending.

In its response to the first report from Queensland's Women's Safety and Justice Taskforce (the Qld Taskforce) (attachment 8), the Queensland Government has accepted that "system-wide reform is necessary *before* the new offences come into effect." To this end, the Queensland Government in its response to the Qld Taskforce, acknowledged that "in order to meet the intent of the taskforce's recommendations as they relate to legislating coercive control, we will implement the actions and initiatives proposed in the taskforce report over the medium to long term", focusing their effort and investment across specific areas including but not limited to:

- *Systemic reforms across Queensland's criminal justice system* including developing a specific strategy, co-designed in partnership with Aboriginal and Torres Strait Islander peoples, to address the over-representation issue in Queensland's criminal justice system, to avoid unintended consequences of legislation and establishing a Commission of Inquiry to examine Queensland Police Service (QPS) responses to FDV
- *Improving service system responses* with a focus on developing a five-year whole-of-government FDV service system strategic investment plan encompassing services and supports delivered and funded by Queensland Government agencies to provide a strategic and planned approach to better respond to existing and future demand in the system, and
- *Improving police responses*, concluding that current policing approaches and responses must get better at identifying FDV; responding to victim's experiences; and holding perpetrators to account as well as further building specialist expertise across the QPS to ensure state-wide capacity and capability, including within the Domestic and Family Violence and Vulnerable Persons Units.

The Queensland Government has committed to a \$363 million package to effect these reforms over five years.

3. The need for community awareness and education

The extensive need for a public awareness campaign was raised through each of the consultations noted above. Most respondents who made submissions to the AGD discussion paper were supportive of a strong community awareness campaign for coercive control in conjunction with the creation of a criminal offence. Respondents identified three key messages that should be communicated as part of any such campaign:

1. The need for the community to have a greater understanding of coercive control, to be able to recognise these behaviours and respond appropriately.
2. The need to communicate the serious impacts of coercive control on victim-survivors, to assist in the identification of this abuse and to highlight the importance of responding appropriately.
3. The need to provide information about how people can respond to coercive control – as a victim-survivor of coercive control; as an individual who may be worried about someone who might be a victim-survivor or as a perpetrator of coercive control open to changing their behaviour.

This feedback is also consistent with:

- The Embolden position paper that puts forward a priority recommendation that "Australian federal, state and territory governments commit to funding, promoting, and

supporting community education and awareness of coercive control in the context of gender-based violence, including primary prevention activities ... across settings".

- Key themes raised through the virtual discussion forum held in September 2021, where participants highlighted the need for extensive education, awareness and training for South Australians to be able to recognise these behaviours in their own relationships as well as for young people to understand respectful relationships as measures to be established in parallel or prior to the introduction of a bill.
- The Queensland Government's response to the Qld Taskforce which has made *raising awareness and understanding in the community and improving primary prevention* an area of priority action prior to introducing legislation. The Queensland Government supports the Qld Taskforce's recommendations to implement and adequately resource an overarching communication strategy to increase community awareness and understanding about the nature and impacts of family and violence including coercive control and to clearly explain changes to the law. As well as this, the Queensland Government has committed to market testing and developing tailored, accessible resources, co-designed with representatives of key audience cohorts including First Nations peoples, people from culturally and linguistically diverse backgrounds, people with disability, and LGBTIQ+ people (including in local communities).

4. Training for the justice sector

ANROWS argue that legislative change on its own is not sufficient to transform the culture of FDV responses and that effective training, models of co-response and justice reinvestment are all potential avenues that would support effective responses to coercive control. A key recommendation generated through this policy brief was to focus on improving police, and others involved in the legal system, understanding of FDV as involving behaviours that occur within a strategic context of coercive control.

These findings have been echoed through the consultations held in South Australia. Submissions to the AGD discussion paper were generally consistent in calling for justice sector education and training, that is: evidence-based, co-designed and delivered with victim-survivors; trauma informed; inclusive of cultural considerations for Aboriginal peoples and culturally and linguistically diverse communities; and focused on vulnerable victim-survivors including older persons, and people with disability. They also highlighted the need for a holistic response that is delivered across all sectors of the justice system - police, prosecution and judiciary - including both criminal and civil jurisdictions. A number of respondents called for compulsory domestic violence training for first responders, prosecutors, the judiciary and Magistrates Court staff.

5. Unintended outcomes of legislating

Concerns around misidentification and unintended consequences were also raised through:

- Members of the Coercive Control Implementation Taskforce (the taskforce) which was established under the AGD to provide advice on implementation issues. Members included government and non-government representatives. The Taskforce only met once before the change of government. Taskforce representatives are listed at attachment 2. At that meeting representatives from Aboriginal community controlled organisations (ACCOs) also highlighted their significant concern that misidentification is prevalent among Aboriginal victims.
- Responses to the AGD discussion paper, where some highlighted that a coercive control offence may contribute to the growing incarceration and criminalisation of Aboriginal women through the misidentification of victims of long-term significant violence as primary aggressors, then being defendants on reciprocal intervention orders and being

charged with assault at high rates; "this is a particular concern in small communities where there is significant bias relating to race and gender and a general misunderstanding of broader patterns of domestic and family violence."

- Respondents to this discussion paper emphasised that a coercive control offence may result in harmful unintended consequences for other victims particularly those belonging to groups disproportionately represented in the criminal justice system, including women with disability, LGBTIQ+ people, culturally and linguistically diverse communities (including migrant and refugee women) and women from lower socio-economic backgrounds.
- the *Pathways to Safety Report* (attachment 9) released in 2021 by Change the Record and the National Family Violence Prevention Legal Services Forum, which noted that "it is not safe for our women to call the police when they are in danger. Too often our cries for help are met with police hostility or dismissal. Worse, we're misidentified as the perpetrators of family violence and criminalised. We are terrorised with the threat of having our children removed."

Targeted consultation with ACCOs as well as Aboriginal women and communities must be a key area of focus for future consultation.

6. The need for further and targeted consultation

South Australian respondents to the public survey through the yourSAy Platform also noted the importance of an enhanced focus on consultation with regional and remote victim-survivors, Aboriginal people and the migrant community.

This is consistent with research generated by ANROWS, which recommended in a recent policy brief that implementation of an offence requires a strong focus strengthening systemic change to better address coercive control, with extensive cross-sector consultation with diverse groups of women and the service providers they engage with, carefully considering alternatives to criminal justice approaches. Further South Australian consultation is in development (attachment 10) to ensure that South Australia carefully targets high-risk cohorts to ensure that any legislation does not have adverse effects on vulnerable populations.

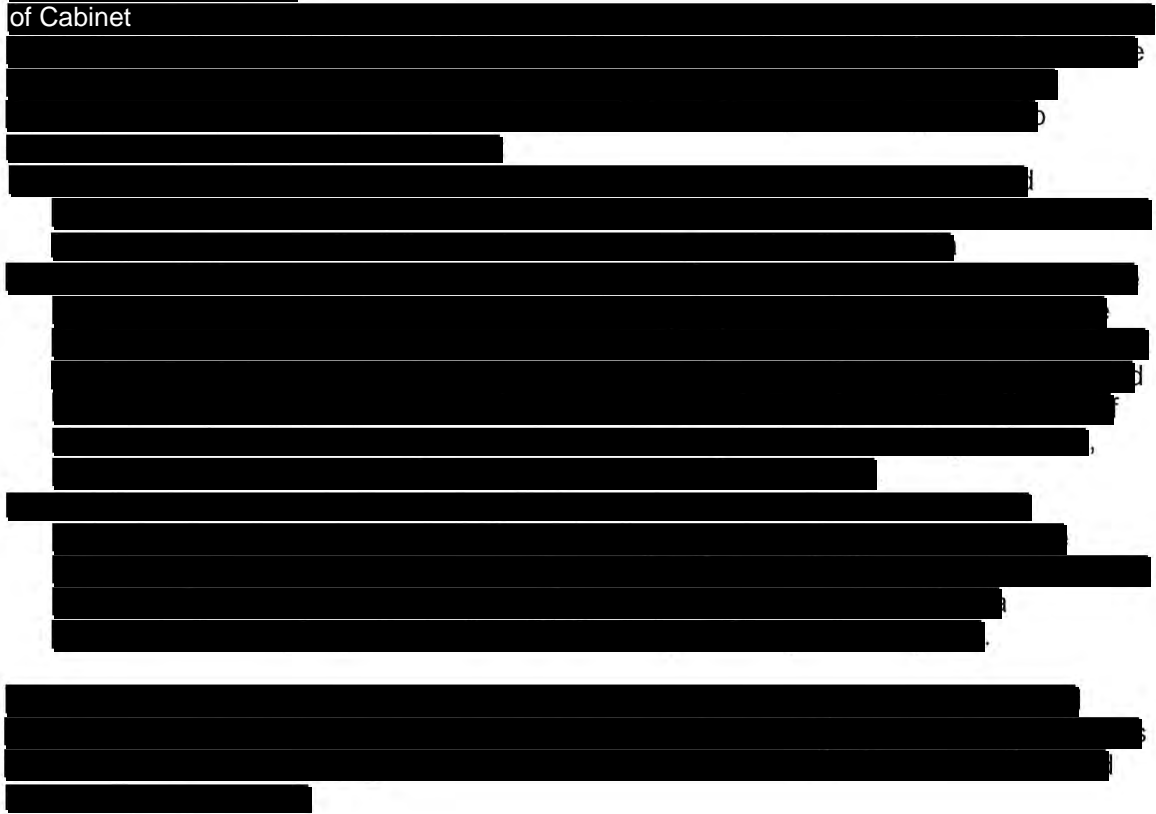
Key progress and next steps

On 31 August 2022, you met with the former Qld Taskforce members to hear key learnings about reforms required to support legislation. The Chief Executive DHS and the Director OFW also attended the meeting. Key messages from the former Qld Taskforce members included:

- That adequate time must be given for a consultation process. Queensland's consultation ran from late May to October 2021, noting however that COVID-19 proved disruptive for face-to-face engagement.
- The importance of ensuring that consultation is targeted to specific at-risk cohorts, such as young people and Aboriginal women.
- That consultations require a high level of sensitivity; women must feel safe and supported; access to counselling will be important in engagement sessions, and face to face engagement must be facilitated professionally and be accessible to different communities.
- Sequencing of reform is crucial – Queensland will introduce a bill in 2023, following a process that will strengthen and/or amend existing legislation.
- Finally, it is of the utmost importance to ensure that extensive education and training is provided – to the public, to police and to the legal and justice system. The Qld Taskforce

were clear in their advice that if legislation is introduced before this work is undertaken, it will erode community trust.

CI 1(1)(e) - deliberations
of Cabinet



BUDGET

Are there financial considerations

No

Division	Community and Family Services		
Director Office for Women	Sanjugta Vas Dev	Approved via email <i>signature</i>	10/10/2022
Executive Director Community and Family Services	Alex Reid	Approved via email <i>signature</i>	10/10/2022
Chief Executive	Lois Boswell	 <i>signature</i>	11/10/2022 <i>date</i>

ATTACHMENTS

1. Coercive Control and the Law in South Australia – Embolden position paper
2. Taskforce representatives - Coercive Control Implementation and Virtual Roundtables
3. Discussion Paper – Implementation considerations should coercive control be criminalised in South Australia
4. Discussion paper – Implementation of coercive control offences in South Australia – summary of submissions (April 2022)
5. Key findings table – Coercive Control Discussion Paper submission report
6. ANROWS Coercive Control Policy Brief
7. yourSAy findings
8. Hear Her Voice – Queensland Government Discussion Paper – Report 1
9. Pathways to Safety Report
10. South Australian Consultation Concept document
11. Letter to key stakeholders – draft National Principles
12. Stakeholder mailing list

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EMBOLDEN SA INC:

POSITION PAPER ON COERCIVE CONTROL AND THE LAW IN SOUTH AUSTRALIA

JULY 2021

About Embolden

Embolden SA Inc. is the statewide peak body of organisations working to respond to and eliminate domestic, family, and sexual violence in South Australia.

Our members provide services that promote women and their children's safety and wellbeing, and work to prevent and respond to violence against women.

We lobby and advocate for women's rights to respect, safety and self-determination, and represent providers of specialist services in the domestic, family and sexual violence and related sectors, including services that work with men who use violence against women and Aboriginal specialist services.

Acknowledgement of Country

We acknowledge and respect Aboriginal peoples as the state's first peoples and nations, and recognise Aboriginal peoples as traditional owners and occupants of land and waters in South Australia. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

We recognise that their spiritual, social, cultural and economic practices come from their traditional lands and waters, that they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance, and that they have made and continue to make a unique and irreplaceable contribution to the state.

We acknowledge that Aboriginal peoples have endured, and continue to endure, injustices and dispossession of their traditional lands and waters.

We continue to pay respect to the resilience and strengths of Ancestors and Elders past, present and those emerging.

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About this Position Paper

This position paper has been prepared by Embolden with consultation and input from its members and key stakeholders, including women with and without children who have lived experience of coercive control in the context of domestic, sexual and family violence. Our position has been developed with reference to the available literature and evidence base on coercive control and legislative measures to prevent and respond to this abuse in Australia and worldwide.

The term 'sexual and gender-based violence', used throughout this paper, allows us to encompass not only intimate partner or domestic and family violence, but also sexual violence committed outside of intimate relationships as well as violence against women committed by and within institutions. This term encompasses violence committed against women (both cis-and-transgender) as well as non-binary people, serving as "an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e., gender) differences between males and females" (UNFPA 2019, pg. v). The term 'sexual and gender-based violence' draws attention to underlying drivers of violence that are rooted in rigid and binary gender norms, gender inequality, unequal power relationships, coercion and control, and reinforced by patriarchal social constructs (UNHCR 2021, DV Vic 2020). It includes sexual violence that can occur both within and outside the context of domestic and family violence.

This position paper is published on behalf of our member organisations, including:

Bramwell House
Ceduna Regional Domestic Violence and Aboriginal Family Violence Services
Coober Pedy Regional DV & Aboriginal Family Violence Service
Cross Border/APY Lands Aboriginal Family Violence Service
Fleurieu and KI DV Service
Homelessness Gateway Service
Kornar Winmil Yunti Aboriginal Cooperation
Limestone Coast Domestic Violence Service
Murray Mallee and Adelaide Hills DV Service
Nunga Mi:Minar
OARS Community Transitions
Port Augusta Regional DV & Aboriginal Family Violence Service
Relationships Australia (SA)
Riverland Domestic Violence Service
Victim Support Service
Vinnie's Women's Crisis Centre
Whyalla Regional Domestic Violence Service
Women's Legal Service SA
Women's Safety Services SA
Yarredi Services
Yarrow Place
Yorke and Mid North Domestic Violence Service
Zahra Foundation Australia

Acronyms used

DFV	Domestic and family violence
DFSV	Domestic, family and sexual violence
FSF	Family Safety Framework
IPF	Intimate partner fatalities
IPV	Intimate partner violence
LGBTIQ+	People who are lesbian, gay, bisexual, transgender, intersex or queer
MAPS	Multi-Agency Protection Service
NGO	Non-government organisation
RRR	Rural, regional and remote areas
SAPOL	South Australian Police
SGBV	Sexual and gender-based violence
TPV	Temporary Protection Visa

Introduction

This paper details Embolden SA's position on whether new legislation should be introduced concerning the criminalisation of coercive control in South Australia. It provides recommendations on three Priority Action Areas to take immediate and long-term actions to support victim-survivors' safety, freedom and access to justice. This relates to the safety of women and their children experiencing sexual and gender-based violence (SGBV), and domestic and family violence (DFV) in particular, as the broad demographic most at risk of harm from violent, controlling perpetrators, the vast majority of which are men (ABS 2016, Boxall, Morgan & Brown 2020, Nancarrow 2019).

Over recent years, there has been growing awareness around Australia of the issue of coercive control as a distinct type of domestic, family and sexual violence (DFS), characterised by a pattern of controlling and manipulative behaviours and “acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim” (Women’s Aid 2020, pg. 1).

The brutal murder of Hannah Clarke and her three children¹ in March 2020, and subsequent advocacy by her parents² and others including the women’s safety sector, is widely acknowledged as a ‘flashpoint’ for this raised awareness, with intensified media attention and community discussions around what it is, how serious its effects, and how Australian federal and state law and justice systems may better support community safety by reviewing the issue of coercive control with regard to legislative reform. Hannah was subjected to coercive control by her (estranged at the time of death) husband, among other forms of abuse. Research from the UK suggests that the presence of coercive control in a relationship is a higher risk factor for intimate partner fatalities (IPF) than prior incidences of physical violence and that coercive control is present in the vast majority of IPF cases (Myhill & Hohl 2016, Monckton Smith 2019). These findings are supported in an Australian context, for example, by the NSW

¹ Hannah and her children Aaliyah, Laianah and Trey were murdered on 19 Feb 2020 in QLD by Rowan Baxter. He committed suicide at the scene. More at: https://en.wikipedia.org/wiki/Murder_of_Hannah_Clarke

² See: <https://smallsteps4hannah.com.au/>

Domestic Violence Death Review Team in a report on domestic violence femicides, which found that "a number of its cases... were preceded by histories of [nonphysical] forms of coercive and controlling behaviour" (NSW DVDRT 2020, p. 68).

As identified by the Australian Women Against Violence Alliance (AWAVA 2021), across the Australian women's safety landscape, there is a shared understanding of the scale and severity of coercive control's pervasiveness within abusive intimate partner and family settings, and the urgent need for action against it. However, several distinct views on how to most effectively address this issue are emerging, with strong proponents across a spectrum of informed opinion. This encompasses those calling for the criminalisation of coercive control (Women's Safety NSW 2020, InTouch 2021, Women's Legal Service Tasmania 2020) to those cautioning against, each with credible arguments to support their position (AWAVA 2021). Other suggestions include the placement of coercive control-related offences into civil, rather than criminal, legislation (Women's Legal Service Victoria 2020), or recommend a focus on systems reform (State of Victoria 2016) and building the evidence base (Women's Legal Service NSW 2020), citing gaps in research centred around victim-survivor voices and the need to consider potential harmful unintended consequences (Fitz-Gibbon, Walklate & Meyer 2020). We would emphasise that another commonality shared is the motivation by concern for women and their children's safety, and a desire to stop deaths and other harms caused by perpetrators' adherence to a "malevolent course of conduct" encompassing violation of physical integrity; denial of respect and autonomy; isolation; and ultimately stripping away all vestiges of autonomy, liberty and personhood (Stark 2009). Current to time of writing, several states are considering whether to introduce coercive control offences into the criminal code, including New South Wales, Queensland and South Australia.

Embolden is committed to partnering with the State Government, SAPOL, research bodies, other NGOs and stakeholders to improve whole-of-system responses, support and outcomes for victim-survivors of SGBV, including those at risk of; experiencing; or recovering from coercive control and related abuses.

The purpose of this paper is to:

- Offer context on the issue of coercive control's placement in law from an intersectional feminist-led perspective, with particular reference to the jurisdiction of South Australia;
- Articulate Embolden's position on this issue; and
- Provide recommendations to services, providers, governments (state and federal) and other stakeholders in determining policy and action priorities, and best practice processes and outcomes, concerning coercive control and its effects.

Summary of Priority Action Areas and Recommendations

Priority Action Area 1: DEFINE AND EDUCATE

Recommendations under Priority Action Area 1

- Establish a **national definition for family and domestic violence**
- Establish a **national definition for sexual assault**
- **Community education and awareness of coercive control**

Priority Action Area 2: CONSULT AND RESEARCH

Recommendations under Priority Action Area 2

- **Ensure best practice justice system responses** to and prevention of coercive control
- South Australian Law Reform Institute (SALRI) to **consider the matter of placement of coercive control in criminal and/or civil law in South Australia**
- **Review SA Family Safety Framework** risk assessment, practice manual and sharing protocols

Priority Action Area 3: INVEST AND TRAIN

Recommendations under Priority Action Area 3

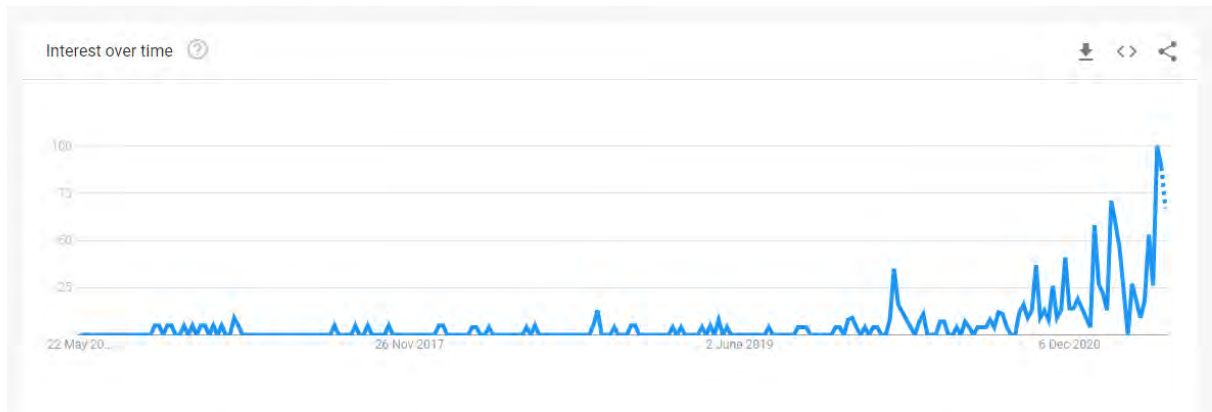
- **Invest in evidence-based responses, interventions and programs** which support women and children's safety and freedom from abuse
- **Whole-of-system training and awareness to recognise and respond to domestic violence and sexual assault**, and particularly to recognise and respond to the presence of coercive control

Discussion

The concept of coercive control as a corrosive, complex set of behaviours and actions that constitute abuse, particularly in family and intimate partner settings, has been steadily gaining momentum in Australia and internationally for over a decade since its popular definition by Evan Stark (2006, 2007), building upon the work of (amongst others) Dobash & Dobash (1979), Herman (1992), Jones (1994), Pence & Paymar (1993) and Johnson (1995). However, the rate at which awareness of this issue is spreading has increased exponentially over the past 18 months (see Fig 1).

Coercive control's implication in several recent high profile cases of domestic homicides, and concurrent work by advocates and researchers, have marked a shift in community awareness, discourse, and expectations when it comes to domestic violence – *what* it is, *why* it occurs, and *how* it should be addressed most prominently. It is cause for solemn celebration of the tireless work of advocates, survivors, researchers, and policymakers in raising awareness of the key issues; and in the strong systemic changes to improve victim-survivors access to safety, justice and freedom, that such a "wicked problem" as domestic violence (Mulayim, Jackson & Lai 2017), let alone its most sinister yet insidious manifestation of coercive control, is being recognised as one of – if not *the* – most serious and urgent sociopolitical crisis Australia is facing today. However, as almost one woman a week is known to have lost her life due to domestic violence, and one child every two weeks is killed by a parent in Australia (AIHW 2019), it is clear that much more can, and must, be done to prevent and respond to domestic and family violence. What is less clear, and currently the topic of intensive discussions across the nation, is how coercive control may be best defined, placed, and addressed within Australia's justice and legal responses to most effectively save lives and minimise harm to those affected by it.

Figure 1: Australian internet search trends for “coercive control” over five year period (2016–2021)



(Source: Google)

Coercive Control: International and National Perspective

Coercive control has been criminalised in the UK and Wales since 2015. The legislation introduced a new offence in (s76) of "controlling and coercive behaviour." In addition, the legislation moved away from focusing on single incidents of violence or abuse to looking at a pattern of behaviour. There is, however, a strong legislative focus on the impact of the behaviour on the victim. "Serious effect" has been described within the legislation as behaviour that causes the victim to fear physical violence on at least two occasions or that the behaviour causes serious alarm or distress (ANROWS 2021, p.5).

Data available on the impact of the UK and Wales legislation indicated that the number of people arrested is increasing. However, just over 700 cases had been prosecuted by 2018 (Stark & Hester 2019). The number of successful convictions was unable to be obtained.

In 2019, Ireland commenced legislation that was replicated on the UK and Wales legislation. There is no data currently available on the impact of the Irish legislation.

Scotland introduced legislation in 2018, which, whilst it does not mention the words 'coercive control', recognises and acknowledges the gendered nature pattern of

abuse, and in particular, included ex-partners within its' remit (Walklate & Fitz-Gibbon 2019). The legislation does this by focusing prosecution attention on proving that the behaviour was likely to cause physical or psychological harm to the victim rather than prove the victim suffered harm (ANROWS 2021).

The Scottish legislation was also more progressive than that of the UK and Wales. It made specific reference to and included children witnessing domestic violence against a parent/guardian as co-victims within their own right. The more nuanced understandings of the Scottish legislation was made possible through intensive consultations with relevant stakeholders (ANROWS 2021).

However, much like its UK, Wales and Irish legislative counterparts, the Scottish legislation has had limited success. Since coming into force in April 2019, 400 crimes were recorded by police, and 190 cases were referred for prosecution, but only 13 successful convictions were obtained.

Tasmania is currently the only Australian state with legislation that criminalises non-violent behaviours. The two criminal offences relate to economic abuse and emotional abuse. The legislation requires multiple incidents of abuse that must occur within a 12-month cycle (ANROWS 2021). Since its implementation in 2004, there have only been eight convictions for emotional abuse (McGorry & McMahon 2019). This low conviction rate is despite there being 68 prosecutions between 2004 and 2017 (ANROWS 2021). Only five cases of economic abuse had been prosecuted between 2004-2017, and these charges were also accompanied by the charge of emotional abuse (ANROWS 2021).

Coercive control has now garnered public attention throughout Australia at both state and national levels. In September 2020, a coercive control bill was put forward in NSW Parliament by the NSW opposition Labor Party³, and similar bills are being considered in QLD and Victoria. In October 2020, a coalition of domestic violence advocates, including White Ribbon Australia and Women's Safety NSW, launched a campaign

³ See <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3797>

calling for the national criminalisation of coercive control⁴. In June 2021, the New South Wales Joint Select Committee on Coercive Control released preliminary findings supportive of the legislative criminalisation of coercive control (Parliament of NSW 2021). However, that Joint Select Committee has also recommended further consultation to occur with Aboriginal and Torres Strait Islander communities and other vulnerable groups within the community. In South Australia, Labor's Shadow Minister for Women and Prevention of Domestic Violence, Katrine Hildyard MP, has introduced a coercive control bill "aimed at outlawing a range of intimidating, controlling and threatening behaviours" (Hildyard 2020, pg. 1).

In South Australia, the *Intervention Orders (Prevention of Abuse) Act 2009* (the Act 2009) already contains provisions relevant to coercive control, including a definition of abuse as "including [acts of] physical, sexual, emotional, psychological or economic abuse" (pg. 8). Furthermore, the examples provided in section 8(3) to (5) of the Act 2009 provide a non-exhaustive list of forms of domestic abuse that demonstrate the clear intention of the legislation to encompass not only physical abuse also coercive control. Although Intervention Orders in South Australia are civil in nature, the breach of an intervention order and offences stemming from the breach are criminal. As such, there is already recognition within the existing legislative framework for the criminalisation of coercive control. The shortcomings within the current system relate to enforcement and the need for more significant cultural change amongst the judiciary, legal profession, and law enforcement.

Concerns Regarding Criminalisation of Coercive Control

Assessments of the current legislative criminalisation of coercive control (and nonphysical elements of domestic and family violence) within various legislative systems have raised, and continue to identify, concerns regarding the implementation and enforcement of the criminalisation of coercive control. A summary of the shortcomings of the various legislative instruments concerning coercive control are listed in the following table:

⁴ See <https://www.womenssafetytynsw.org.au/impact/article/new-coalition-calls-for-immediate-action-on-criminalising-coercive-control/>

COUNTRY	CONCERNS
UK & Wales	<p>Definition</p> <ul style="list-style-type: none"> • Criminalised "controlling or coercive behaviour in an intimate or family relationship" • Legal boundary created within the legislation means that the couples who were in a prior relationship and no longer living together are not covered by the legislation <p>Enforcement</p> <ul style="list-style-type: none"> • Research found that police enforce the offence at a low rate • Also, police officers did not have the necessary understanding or tools to identify nonphysical forms of domestic/family violence • Police officers found it challenging to gather evidence of sustained coercive and controlling behaviours, leading to lower arrest and charge rates
Ireland	<p>Definition</p> <ul style="list-style-type: none"> • Irish definition closely resembles the English and Welsh legislation • Focuses on knowingly and persistently engaging in controlling or coercive behaviour and which a reasonable person would be likely to consider to have a serious effect • It requires prosecution to prove that the defendant used coercive and controlling behaviour but did not expand the meaning of what constitutes coercive and controlling behaviour • The first conviction occurred a year after the legislation came into effect <p>Enforcement</p> <ul style="list-style-type: none"> • Police have made calls for more training on identifying and responding to coercive control

Scotland	<p>Definition</p> <ul style="list-style-type: none"> Despite the progressive nature of legislation, concerns remain as to whether the legislative intent will have a meaningful impact due to the role of the courts and the legal profession in interpreting legislation
Australia (Tasmania)	<p>Definition</p> <ul style="list-style-type: none"> Criminalised economic abuse and emotional abuse Economic abuse is difficult to prosecute with respect to proving intent to cause harm. Also, proving course of conduct for economic abuse may be difficult In relation to emotional abuse, multiple incidents of emotional abuse required to meet the course of conduct of occurring within the period of a month. The Offence is also limited by the use of the word "unreasonably", which implies that there are some elements of coercive control that are acceptable (ANROWS 2021) There are overlaps between the offences and other available offences which impacts their use (Fitz-Gibbon, Walklate & Meyer 2020) <p>Enforcement</p> <ul style="list-style-type: none"> Both offences are prosecuted at a significantly lower rate than in comparison to the number of family violence incidents recorded by police Enforcement impacted by insufficient police training and investigative practices <p>Community Awareness & Education</p> <ul style="list-style-type: none"> Lack of community awareness about nonphysical forms of domestic and family violence

The brief analysis of existing legislations indicates quite strongly that:

*“Legislative changes cannot on their own lead to improvements. **Whatever laws we have will be only as effective as those who enforce, prosecute and apply them.** Improving these practices – through education, training and embedding best practices and domestic abuse expertise – is likely to be more effective than the creation of new offences alone”*

(Burman & Brooks-Hay 2018, p.78) (emphasis added)

These same sentiments are echoed in the 2021 Position Paper on the issue by InTouch, in which the organisation argues:

*“**Without implementing a whole of system change,** the impact of criminalising coercive control will be detrimental to its intent”*

(InTouch 2021, pg. 1) (emphasis added)

Key advocates, academics and expert bodies caution against uniform criminalisation of coercive control (Fitz-Gibbon, Walklate & Meyer 2020a), arguing that there is no ‘one-size-fits-all’ answer suitable across state jurisdictions in Australia, and that the evidence available does not support the need for, or clear benefit of, adopting coercive control offences (Fitz-Gibbon, Walklate & Meyer 2020b). The Victorian Royal Commission into Family Violence, for example, cautions that “introducing new offences...often has only a symbolic effect” and notes that:

*“**Whatever laws we have will be only as effective as those who enforce, prosecute and apply them.** Improving these practices – through education, training and embedding best practice and family violence expertise in the courts – is likely to be more effective than simply creating new offences”*

(State of Victoria 2016, pg. 27)

There are legitimate concerns about potentially harmful unintended consequences for victim-survivors (Maturi & Munro 2020), particularly those who already have experienced poor or otherwise compromised justice system responses, including First Nations women and their communities (Douglas & Fitzgerald 2018), women with

disabilities (McVeigh 2015), LGBTIQ+ people, CALD communities, including migrant and refugee women (Judicial College of Victoria 2011), and women from lower socio-economic backgrounds.

Concerns have also been raised about the burden of proof threshold required in the criminal code, and advocates such as Women's Legal Services Victoria have recommended that coercive control should be dealt with by the civil jurisdiction rather than bring victim-survivors into contact with the criminal justice system (WLSV 2020). The criminal threshold levels required by the criminal justice system often pose evidentiary issues for many victim-survivors. Also, additional resources would be required by police to investigate and obtain the necessary evidence so that prosecution is not solely reliant on victim-survivors' testimony.

In addition, the difficulties posed by the criminal justice for victim-survivors is well documented (Walklate & Fitz-Gibbon 2019). The law often presents additional hurdles and challenges which victim-survivors must navigate the more it tries to protect. These challenges are then often exacerbated by the intersections arising from factors such as class, race/ethnicity and culture.

Despite differences across the sector as to whether or not criminalisation of coercive control is the optimal approach, as detailed by AWAVA in its Issues Paper on coercive control (AWAVA 2020), commonalities on both sides of the debate include agreement that:

- Coercive control does belong in law (debate is centred on **where** in the law it should be situated);
- Coercive control constitutes domestic and family violence and needs to be understood as part of a pattern of violence;
- A national definition of domestic and family violence should be sought;
- Effective education and training for police and justice system officials are essential;
- A holistic response to DFSV across the whole system beyond criminalisation is required.

Therefore Embolden recommends a cautious approach with respect to the enactment or implementation of any new offences. Further consultation to better understand the needs of and impact of any proposed legislative changes on vulnerable groups is required. For many vulnerable groups including First Nations communities, there are often significant and profound unintended consequences created by the introduction of new legislative offences in this area (Walklate & Fitz-Gibbon 2019). Additionally, further research and evidence are required with respect to identifying the effectiveness of standalone offences in improving victim-survivors' safety and learning from their voices and lived experiences (Fitz-Gibbon, Walklate & Meyer 2020).

Recommendations

Embolden supports measures by governments in all jurisdictions to prioritise action under the following three Priority Action Areas:

Priority Action Area 1: DEFINE AND EDUCATE

Recommendations under Priority Action Area 1

- That Australian federal, state and territory governments actively and immediately support the establishment of a consistent **national definition for family and domestic violence**, in which coercive control is recognised as a pattern of abuse, in consultation with specialist women's and family violence services and experts by lived experience of family and domestic abuse beginning with the National Women's Safety Summit in September 2021
- That Australian federal, state and territory governments actively and immediately support the establishment of a consistent **national definition for sexual assault**, in which coercive control is recognised as a pattern of abuse, in consultation with specialist women's and sexual assault services experts by lived experience of sexual abuse beginning with the National Women's Safety Summit in September 2021
- That Australian federal, state and territory governments commit to funding, promoting and supporting **community education and awareness of coercive control** in the context of gender-based violence, including primary prevention activities across the eleven key settings, including (but not limited to) education and care settings for children and young people; workplaces; health, family and community services; public spaces; and legal, justice and corrections contexts (Our Watch, ANROWS & VicHealth 2015)

Priority Action Area 2: CONSULT AND RESEARCH

Recommendations under Priority Action Area 2

- That the South Australian government, through the Parliament of South Australia Social Development Committee, Attorney-General's Department, and Office for Women, closely consult with the community, and key stakeholders, on the steps it will take **to ensure best practice justice, legal and service system responses to and prevention of coercive control**. This includes engaging with victim-survivors and the domestic, family and sexual violence sector, with an intersectional lens that critically engages with risk and potential impact on victim-survivors and communities, including:
 - First Nation women, children and communities;
 - People living with disability;
 - Women from culturally and linguistically diverse communities, particularly migrants, refugees and those on temporary protection visas;
 - LGBTIQ+ communities, and
 - Others who are affected by gender-based violence.
- That the South Australian Attorney-General commission a report from the South Australian Law Reform Institute (SALRI) to **consider the matter of placement of coercive control in criminal and/or civil law in South Australia**, including reporting on the potential benefits, risks and other consequences of introducing new legislation, and reviewing existing legislation and processes including the efficacy of intervention orders, with clear and evidence-based recommendations and pathways to action
- That the **Multi-Agency Protection Service (MAPS) and SA Family Safety Framework (FSF) review their risk assessment, practice manual and sharing protocols** to determine whether coercive control is adequately and appropriately defined, recognised and responded to by all participating members

Priority Action Area 3: INVEST AND TRAIN

Recommendations under Priority Action Area 3

- That Federal, State, Territory and local governments invest in evidence-based responses, interventions and programs which support women and children's safety and freedom from abuse, encompassing primary prevention, intervention, crisis response and recovery, that are underpinned by an understanding of the gendered drivers of violence and advised, led or co-designed with the specialist women's safety sector and experts by experience of domestic and family violence
- That the South Australian government, SAPOL and other relevant whole-of-system bodies commit to significant training and awareness measures to recognise and respond to domestic violence and sexual assault, and particularly to recognise and respond to the presence of coercive control, for:
 - SAPOL personnel, including but not limited to frontline officers;
 - Magistrates;
 - Aboriginal Liaison Officers;
 - Corrections personnel;
 - Child Protection personnel;
 - Witness Assistance Officers, and
 - Other relevant law enforcement, healthcare and justice system officials.

Further to the above Priority Action Areas, Embolden recommends governments of all Australian jurisdictions increase funding to specialist women's and culturally specific services that meet the standards identified by the Australian Women Against Violence Alliance (AWAVA 2016) of:

- A rights-based approach
- Advancing gender equality and women's empowerment
- A client-centred approach
- Women's safety is central
- Perpetrator accountability
- Accessible culturally-appropriate and sensitive services

Conclusion

Embolden SA's position is that the existing evidence base does not currently support the introduction of new legislation regarding the criminalisation of coercive control in South Australia. Further research is needed to determine where coercive control does belong in South Australian law, whether civil, criminal, or across both codes. This research must include extensive and close consultation with victim-survivors with lived experience of coercive control, and the specialist women's safety services that support them, and should be underpinned by an intersectional feminist understanding of the gendered drivers of violence (Our Watch, ANROWS & VicHealth 2015); the expertise and leadership of Aboriginal family violence and community controlled organisations in understanding causes and contributors of family violence against Aboriginal people including gender, colonisation, discrimination and intergenerational trauma and the provision of culturally safe and specialist support services (Braybrook 2015); and a victim-survivor centred, trauma-based, empowering framework that recognises the complexity of intersectionality (AWAVA 2016), diversity of lived experience and need for appropriate, accessible and culturally safe responses, including for First Nations communities, LGBTIQ+ people, women and girls with disability, women and communities from culturally and linguistically diverse backgrounds, and remote, regional and rural communities.

South Australia is well-placed to refine and strengthen its justice and legal systems to protect the rights and safety of victim-survivors of gender-based violence by immediately prioritising best practice, training, and adherence to existing guiding principles, initiatives and legislation. This includes the National Domestic and Family Violence Bench Book and appropriate additions being made to the South Australian Criminal Trials Bench Book, SAPOL and legislature workforce training; and the Family Safety Framework as but a few examples. Such an approach would build upon the significant reform and investment by both incumbent and former governments in partnership with the sector over decades of advocacy, service response and policymaking, while identifying and addressing gaps and opportunities to improve family safety across system, service and community responses.

Embolden SA and its' members advocate for a three-pronged approach consisting of:

- Immediate action to strengthen existing supports, *while*
- Working towards national definitions and community understanding of coercive control specifically, and domestic, family and sexual violence more broadly (in consultation as described above), *alongside*
- Thorough consideration of where the issue of coercive control is to be most safely and effectively placed in South Australian law (whether criminal, civil, or both codes), to be undertaken by SALRI and in close consultation with victim-survivors, the specialist domestic, family and sexual violence sector, women's legal services, and other key stakeholders

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ATTACHMENT 2

Coercive Control Implementation Taskforce Representatives:

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Ms	Lucy	Watson	Manager, Justice Policy	AGD
Mr	Daren	Evans	Principal Project Officer, Justice Policy	AGD
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Ms	Erin	Maher		Aboriginal Legal Rights Movement
Ms	Khatija	Thomas		Aboriginal Legal Rights Movement
Ms	Maggie	Rutjens	Program Manager	Disability Advocacy and Complaint Service SA
Ms	Gabrielle	Canny	Director	Legal Services Commission
Ms	Helena	Kyriazopoulos	CEO	Multicultural Communities Council of SA
Ms	Melanie	Sheehan		No to Violence
Ms	Fiona	Williamson		No to Violence
Ms	Tina	Quitadamo	CEO	Nunga Mi:Minar; and Embolden
Mr	Leigh	Garrett	CEO	OARS Community Transitions
Dr	Sanjutta	Vas Dev	Director	Office for Women
Ms	Sarah	Cooper		WCHN – Youth and Women's Safety Wellbeing Division
Ms	Zita	Ngor	CEO	Women's Legal Service SA
Ms	Jodie	Sloan	COO	Women's Safety Services SA
Dr	Jen	Cleary	CEO	Centacare Catholic Country SA
Ms	Bronwyn	Killmier	Commissioner for Victim's Rights	
Ms	Jennifer	Kingwell	Policy and Communications Manager	Embolden
Mr	Craig	Rigney	CEO	Kornar Winmil Yunti Aboriginal Corporation
Ms	Jacqui	Watt	CEO	No to Violence
Ms	Lucy	Hackworth	Board Member	South Australian Rainbow Advocacy Alliance
Mr	Simon	Schrapel AM	CE	Uniting Communities
Ms	Katrina	Dee	Director	WCHN – Youth and Women's Safety Wellbeing Division

Virtual roundtable representatives

Attendees at the September 2021 virtual roundtable on coercive control represented a range of FDSV providers:

- Family Violence Legal Service Aboriginal Corporation
- Community Transitions (Offender Aid and Rehabilitation Services)
- National Council of Single Mothers
- No to Violence
- Centacare Catholic Family Services
- Women's Safety Services SA
- Working Women's Centre SA
- Relationships Australia SA
- Women's Legal Service SA
- Multicultural Youth SA
- St Vincent De Paul SA
- Nunga Mi:Minar
- National Council of Women SA
- Disability Advocacy and Complaints Service of SA
- Youth Affairs Council of SA

Discussion Paper: Implementation of coercive control offences in South Australia

Summary of submissions

April 2022



Government of South Australia
Attorney-General's Department

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Introduction

The Discussion Paper: Implementation of coercive control offences in South Australia was released for public consultation on 2 February 2022, to obtain feedback on fourteen questions under the themes of awareness raising, education and training, services for victim-survivors and responses to perpetrators. The consultation period closed on 1 April 2022.

The Attorney-General's Department received 22 submissions from a broad range of agencies and organisations, including general support services for victim-survivors and perpetrators, legal assistance services, advocacy groups, an academic and interested individuals. A full list of respondents is provided in Appendix 1.

This report provides a summary of the feedback provided against each question as well as additional issues raised by respondents.

Question 1: What are the key messages that should be communicated about coercive control?

Most respondents were supportive of a strong community awareness campaign for coercive control in conjunction with the creation of a criminal offence. Respondents identified three key messages that should be communicated as part of any such campaign, discussed below.

What is coercive control and what does it look like?

Respondents noted the need for the community to have a greater understanding of coercive control, to be able to recognise these behaviours and respond appropriately.

“Awareness raising and community understanding of the nature of coercive control is fundamental to the successful implementation of any legislation.”

Important messages about the nature of coercive control included:

- It is a pattern of behaviour over time rather than a single incident
- It is a key component of domestic and family violence
- It is a significant issue in Australia and prevention and response is everyone's responsibility
- It presents in many forms beyond physical aggression, and the behaviours may change over time. It may include subtle behaviours, or behaviours that may not be obvious to an external party but have a coded meaning for victim-survivors. Some groups may also experience specific forms of coercive control, such as spiritual abuse for Aboriginal peoples, threats regarding immigration status for women on temporary visas, and denial of reproductive and sexual rights for persons living with disability
- It is gender-based violence, being experienced more by women and perpetrated by men
- It can occur in different types of relationships beyond intimate partners, for example, control over a parent or of a child, between extended family members or in non-familial caring relationships
- It affects both current and former relationships, often extending beyond separation
- Children are victims of coercive control and domestic and family violence in their own right when it is perpetrated in their families
- Some people or groups can be more vulnerable to experiencing coercive control including Aboriginal women and children, people with disability, pregnant women, women with children, and older people
- Victim-survivors should not be blamed or shamed for their experiences
- Not all victims-survivors may describe that they are being coerced
- Everyone has the right to live their life free of violence and to enjoy full human rights and autonomy.

Impact of coercive control

A number of respondents felt it was important for awareness campaigns to communicate the serious impacts of coercive control on victim-survivors, to assist in the identification of this abuse and to highlight the importance of responding appropriately. Specifically, that coercive control:

- can be equally harmful to, and sometimes more harmful than, physical violence
- results in fear, isolation, loss of self-worth and dignity, loss of autonomy and loss of capacity for decision making
- can have a cumulative impact over time
- can have serious consequences for the health, emotional and psychological wellbeing of victim-survivors

“Coercive control needs to be understood by what it takes away or how it makes you feel...”

Responding to coercive control

One respondent recommended any messaging about coercive control be delivered in stages, with the initial stage describing what it looks like and why it is wrong, and a second stage about how victim-survivors, perpetrators and family members can respond. This could include information about:

- What the law says about coercive control
- The role of the new offences in providing protection from abuse
- What you can do if you are a victim-survivor of coercive control. For example, support services and maintaining documentation (to assist in future prosecution)
- What you can do if you know, or are worried about, someone who might be a victim-survivor of coercive control
- If you feel you may be perpetrating coercive control in your relationship(s), where you can talk to someone about this and what help is available.

Almost all respondents stressed the importance of messaging about coercive control that was representative of and tailored to:

- Aboriginal and Torres Strait Islander peoples and nations
- Culturally and linguistically diverse communities
- People living with disabilities
- LGBTQIA+ peoples
- Older persons
- Rural and regional communities

Other considerations

Several submissions noted that National Principles on Addressing Coercive Control are currently being developed by the Meeting of Attorneys-General upon the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs report from its Inquiry into Family, Domestic and Sexual Violence (2021). National Principles will be able to inform a common language and framework for understanding key concepts relating to coercive control, which in turn can guide education, awareness and public communication initiatives.

To avoid confusion among individuals, agencies and communities, one respondent called for caution on the development and dissemination of public communication campaigns until a common definition of coercive control is agreed.

Question 2: What are the best mediums to communicate information about coercive control to your community?

Respondents consistently reported that coercive control community awareness campaigns should include all forms of media and be available in multiple languages and formats to capture different cohorts: Specific suggestions were:

- Social media
- Television
- Radio, including community radio
- Digital platforms
- Bus stops
- Billboards
- Flyers and information available at pubs and events (e.g. music festivals, major sporting events)
- Community education delivered through community service organisations, sporting clubs, council groups and community centres
- Community speaking platforms for victim-survivors to share their lived experience

"I have also found through my experience that just talking about your experience to others who are open to listening without judgement is a form of healing whilst also educating. My friends have heard my story so far and whilst they saw some behaviours ... whilst we were married, had no idea the depth of control that went on behind closed doors."

- Dissemination of information (flyers, brochures, posters) through services and government agencies (health clinics, General Practitioners, legal support services, women's services)
- Mandatory respectful relationships programs in schools (Years 8 to 12), universities, workplaces, sporting clubs and community groups
- Age-appropriate discussions with younger children (prior to Year 8)
- Mediums specific to LGBTIQ+ South Australians such as:
 - TikTok
 - Grindr
 - Image based platforms like Instagram
 - Queer advocacy organisations like SARAA
 - Queer bars and venues
 - Community organisations like TransMasc SA, Drop in Care Centre, Queer Youth Drop In and Feast
 - Health services like SHINE SA and SAMESH
- Resources for community and business leaders
- Consider using arts and other cultural policy opportunities to promote survivor led stories
- Questionnaires that prompt increased understanding e.g. the Don't Become That Man Service questionnaire which asked the question "Are you aware of the signs" and had the reader consider several scenarios, culmination in recommending men contact the service if they had answered yes to any of the questions
- Accessible formats, including easy to read and plain English to ensure engagement with people living with disability, people of non-English speaking backgrounds, people with other literacy barriers.

Several submissions also reported the critical importance of direct consultation with victim-survivors and specific communities to determine the best ways to communicate information about coercive control.

Other considerations

One respondent requested consideration and preparation for the risk of adverse outcomes during an awareness campaign, such as escalation in the type and number of incidences of violence by perpetrators who are angered or threatened by messages.

Question 3: How is coercive control understood by you and more broadly within your community?

Respondents generally reported their understanding of coercive control in terms of a range of controlling and manipulative behaviours used by perpetrators over time (a course of conduct) to control their partners and family members. Additional comments were:

- Coercive control is not widely understood by most of the community, with even greater lack of understanding by vulnerable groups such as women living with disability. One respondent noted that their members were generally unfamiliar with the term and initially unsure of its scope, but were able to recall experiences once definitions and examples were provided.
- Coercive control is usually carried out by someone in a relationship of trust with the victim, which adds to the lack of understanding that the actions are wrong.
- Coercive control encompasses psychological, physical, sexual, financial and emotional abuse, and controlling behaviours, defined as making a person subordinate and / or dependent by isolating them from their sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday lives.
- Clause 6(1) - personal affairs

Other considerations

Definition of coercive control

Eight submissions called for a clear definition of coercive control, with three supporting a national definition, to enable a shared understanding of the behaviour and appropriate responses. As noted, National Principles on Addressing Coercive Control are currently being developed by the Meeting of Attorneys-General (MAG 2021).

Specifically, respondents noted:

- terminology and definitions are important, and it should be clear and universal what the issue is
- any definition must reflect the unique and specific forms of abuse experienced by women and girls with disability
- a nuanced definition should be adopted that reflects the range of tactics a perpetrator may use in different contexts
- a definition must take into account that:
 - abuse is not limited to physical violence but inclusive of all forms of aggression where there is a pattern of behaviour characterised by the use of force (name calling, threats, public denigration) and / or other controlling aspects (financial abuse, monitoring and surveillance) of a persistent and an emotionally abusive nature
 - the impact of the abuse on the victim-survivor (fear, isolation, loss of self-worth and dignity, loss of autonomy and capacity for decision making)
 - the intention or motivation behind the behaviour on the part of the perpetrator (subjugation, physical coercion, isolation, degradation, intimidation)
 - types of behaviour may change over time and vary in modality (e.g. in person vs online), frequency, and severity
 - current and former relationships as coercive control may extend beyond separation

One respondent recommended consideration of the Scottish Domestic Abuse Act, which uses a course of conduct model and extensively defines abusive behaviour. The respondent was supportive of a broader definition beyond domestic partner or former partner, including Aboriginal kinship roles and other kinds of personal relationships.

Another respondent expressed concern about a prescribed understanding of coercive control, arguing that it does not have a universal context or set behaviour, particularly in relation to remote Aboriginal communities. For these communities, who are using their specific strengths and understandings for solutions and decision making in relation to domestic and family violence, the respondent reported that a universal prescribed response may contribute to ongoing oppression and systematic violence against Aboriginal women, children and communities.

Question 4: If it were made an offence, what might this mean to you and the people around you?

The submissions outlined the potential for both positive and negative outcomes for victim-survivors should coercive control be made an offence, while others expressed doubts that it would have any significant impact.

Potential benefits of making coercive control an offence:

- Recognises the seriousness of the behaviour and reinforces the understanding that we do not accept or tolerate it
- Recognises the importance of maintaining a person's right and capacity to prioritise their own safety and wellbeing
- Will allow victim-survivors to be heard and have their experiences validated
- Can make a positive difference to the wellbeing, mental health and sense of self-worth of victims and assist them in seeking appropriate and prompt help much earlier in a relationship
- Perpetrators will know that their behaviour is unlawful and that they can be held accountable through a jail sentence or other penalties
- Service provider staff will have clear guidelines and boundaries about the behaviour which will assist in supporting victim-survivors and guiding responses to perpetrators
- Provides an additional safeguarding measure for vulnerable people in South Australia, including people with cognitive impairment
- Access to enhanced legal, economic and other systemic protections and outcomes.

"I believe if it were an offence the offender in my situation would have been charged and would have been forced to stop the behaviours, although if he chose to continue along the coercive control behaviours, I would have had more protection for my wellbeing and safety through police having the ability to apprehend the perpetrator."

Potential issues for a coercive control offence

- A coercive control offence may result in harmful unintended consequences for victims particularly those belonging to groups disproportionately represented in the criminal justice system, such as Aboriginal women and their communities, women with disabilities, LGBTIQ+ people, culturally and linguistically diverse communities (including migrant and refugee women) and women from lower socio-economic backgrounds.
- A coercive control offence may contribute to the growing incarceration and criminalisation of Aboriginal women through the misidentification of victims of long-term significant violence as primary aggressors, then being defendants on reciprocal intervention orders and being charged with assault at high rates. This is a particular concern in small communities where there is significant bias relating to race and gender and a general misunderstanding of broader patterns of domestic and family violence.

“The risk of disproportionate criminalisation / incarceration of perpetrators from these groups, and compounding of cascading risk (e.g. loss of housing, child protection interventions, loss of income support) needs to be considered prior to criminalisation of coercive control and implementation of legislation.”

- An unintended consequence of a coercive control offence may be that violence escalates if perpetrators are held to account

“It’s unclear, but quite likely making coercive control and offence will mean more - not less - physical violence against the people around me. There’s good reason to think charging and convicting those using coercive control will have little or no effect on reducing violence and may well escalate non-physical violence to physical violence - especially where these laws result in incarceration.”

- Potential for the offence to be used as a weapon by perpetrators, by accusing the victim-survivor of coercive control and involving them in potentially drawn-out legal matters. Legal system abuse is one of the ways perpetrators continue abuse after separation. For example, in the intervention order system, some perpetrators force a trial and then appeal the original decision.
- Difficulties in policing a coercive control offence:
 - Police first responders will not always have access to systems that look across time and will not have the ability to examine financial or technological records. Without proper training, Police may not have the expertise or the time to undertake appropriate enquiries, particularly in remote and regional areas.
 - Cultural barriers in policing domestic and family violence: whilst police have some training and general orders contain directions to provide a culturally safe response, community attitudes still reflect that there are cultural barriers in policing.
- It may be difficult for prosecutors to successfully establish an offence of coercive control. The prosecution of an offence presents a less rapid response, potentially requiring a higher standard of proof than current legislation (*Intervention Orders (Prevention of Abuse) Act 2009*). This has implications for victim-survivors who face the distressing experience of giving evidence, with a slim possibility of a meaningful result. A number of respondents noted collaborative research currently underway between Uniting Communities and UniSA, and funded by the Law Foundation of South Australia, may be helpful when considering coercive control legislation. The report: *Powerful Interventions: Improving the use and enforcement of Intervention Orders as a tool to address family and domestic violence in South Australia* is due to be published in June 2022. The research aims to clearly describe the existing legislation governing the issue, use and enforcement of intervention orders and identify potential barriers to the effectiveness of this legal framework in South Australia.
- The legal emphasis in criminalising coercive control does not recognise that some victims will not want to pursue criminal charges, but will want behavioural change, which may be achieved by alternative resolution methods such as restorative justice and counselling for partners.

- While strongly supporting criminalisation, one respondent noted that LGBTIQ+ communities will need additional, culturally appropriate support for the legislation to be used effectively in these communities. LGBTIQ+ persons are unlikely to report abuse unless they are supported to feel safe, trust they will be believed, will not face homophobia, and will be provided with appropriate responses.

No impact

Three submissions were of the view there was little evidence to suggest criminalisation, in and of itself, will have the desired impact for victims in addressing the behaviours and lowering rates of coercive control. Specifically:

- new offences will only increase ability of criminal justice systems to respond if they correctly identify non-physical abuse
- In view of limited success elsewhere, it is essential there is:
 - a significant increase in available services to support women and other victims pre and post the legal process
 - a significant increase in perpetrator services at the earliest opportunity to engage men, regardless of criminal charges or conviction being recorded.

"Is there any evidence that criminalising coercive control reduces the incidence of coercive control or physical violence in the community? ... What I do see is evidence that people are being arrested, prosecuted and convicted... But is it reasonable to assume convictions mean the laws are 'working' and reducing abusive behaviour?"

It was also noted by one respondent that how the offence is defined and the supports and training to be rolled out as part of the implementation process for the offence, will determine the potential impact for victim-survivors, perpetrators and the criminal justice system.

Question 5: If you were concerned about the use of coercive control as an individual, or on behalf of someone else, what systems and services would you approach for support or advice?

Respondents reported a wide range of services and supports that could be approached by individuals concerned about the use of coercive control.

Victim-survivors

- Friends
- Lived experience advocacy and/or support groups
- Criminal Justice / legal assistance services
 - SA Police (including specialist domestic and family violence units)
 - Domestic Violence Disclosure Scheme
 - Women's Legal Service
 - Legal Services Commission
 - Women's Domestic Violence Court Assistance Service
 - Family Law Services

- Health services
 - Hospitals and emergency departments
 - Child and family health nurses
 - Mental Health
 - Alcohol and drug
 - Aboriginal controlled health services
 - Women's health services
- Specialist Domestic and Family Violence services
- Women's safety services
- South Australian Domestic Violence Crisis Line
 - Safe at Home services (assessment, safety management planning, home security audits and coordination of security upgrades)
- 1800 RESPECT support, counselling and referrals (24 hour hotline and web-based support)
- Other telephone support services like Lifeline and Kids Helpline
- Rebuild (Counselling for Victims of Crime) and Victims of Crime SA
- Family Relationship Centres
- Homeless services
- Schools
- Child Protection services
- Multicultural services
- Hairdressers and beauticians
- Animal shelters
- Workplace programs that can identify and respond and support women in the workplace experiencing coercive control
- Community services organisations, which are key entry points for social and material support for victims
- Adult Safeguarding Unit located in the Office for Ageing Well. The Adult Safeguarding Unit supports adults vulnerable to abuse including older people, Aboriginal people and people living with a disability.
- Aged Rights Advocacy Service for older people
- Six disability advocacy services in SA for younger people
- SACAT - as a last resort - the victim-survivor is protected by coming under the guardianship of a trusted individual or the Public Advocate.

Perpetrators

- Specialist perpetrator referral and intervention services, including No to Violence Men's Referral Service and Brief Intervention Service (time limited, multi-session telephone support for men pre and post behaviour change who are currently on a waiting list for men's family support).

Question 6: What education and training is needed to improve the justice sector's understanding of coercive control and detect, investigate and prosecute coercive control appropriately?

"Any law to criminalise coercive control will only be as effective as those who enforce, prosecute, and apply it. Improving these practices through education and training and embedding best practice and expertise in domestic and family violence and disability in the courts is as important as creating the new offence."

"...any evidence-based training should encourage critical, reflective awareness of the beliefs and subjectivities officers hold and the impact these have on the judgements they may make regarding victims and cases."

Respondents were generally consistent in calling for justice sector education and training that is:

- evidence-based
- co-designed and delivered with victim-survivors
- trauma informed
- incorporates cultural considerations for Aboriginal peoples and culturally and linguistically diverse communities
- focused on vulnerable victim-survivors including older persons, and persons with disability
- delivered across all sectors of the justice system - police, prosecution and judiciary - including both criminal and civil jurisdictions
- provided on a regular and consistent basis, with refresher programs incorporating the latest evidence and best practice models.

A number of respondents called for compulsory domestic violence training for first responders, prosecutors, the judiciary and Magistrates Court staff. Most respondents provided broad suggestions, without specifying a particular branch of the justice sector.

Suggested topics for inclusion in training:

- How to recognise coercive control, including:
 - patterns of behaviour – moving from incident-based approach to an understanding of coercive control course of conduct (particularly for police)
 - impacts – isolation, fear, anxiety, harm to mental health, use of alcohol and other drugs, and impact on family relationships
 - identifying the predominant aggressor during domestic and family violence call outs
 - awareness of manipulative behaviour
 - myths and misconceptions about coercive control and how to counter them
 - in the broader context of sexual, domestic and family violence

- How to respond to a victim-survivor in a trauma informed manner
 - It was noted that victim-survivors may not respond in a manner that is deemed consistent with the stereotypical view of victims, to the extent that police may question survivor credibility. It is quite common for victims to develop maladaptive coping behaviours and may also be flat and emotionless in their retelling of incidents and / or they may have disjointed recollections, as a result of post-traumatic stress disorder.
- How to engage victim-survivors, including those from vulnerable or diverse groups:
 - awareness of cultural considerations for Aboriginal and culturally and linguistically diverse communities that might impact on the victim-survivor disclosing to police
 - understanding of what coercive control may mean for person with cognitive impairment or other disability
 - that actions do not re-victimise the victim-survivor and pressure or persuade a change in response
- How to identify and provide appropriate:
 - safety strategies for victim-survivors
 - referrals to support services
 - consequences for perpetrators to keep victims safe
- The role each agency plays in effectively addressing the issue (to ensure a coordinated and prompt safety response).

For police, it was suggested that training cover how to gather evidence for coercive control matters including:

- Initial investigation should comprise
 - Photographs of scene and injuries
 - Medical evidence of any injuries
 - Recording of emergency response call
 - Evidence from family or friends
- Specialist knowledge and interview skills to support gathering of evidence, including how to obtain statements from persons with cognitive impairment that do not disadvantage the victim-survivor.

One respondent suggested key questions to ask victim-survivors as part of the consultation process in developing training:

- What will be useful, respectful, and relevant immediate responses from the justice system?
- What steps can be implemented quickly to ensure the safety of victim-survivor and the safety of their children and other people of concern?
- What steps can be implemented quickly to ensure that the perpetrators stop using these forms of violence and abuse and are held accountable for causing the victim-survivor to experience fear and harm?
- What other relevant agencies could the justice system be liaising with for a comprehensive overview of the situation and to ensure the safety of victims/survivors, children and family members?
- What coercive control acts create fear (even if the acts may appear to be 'minimal' or 'not relevant' to issues relating to domestic and family violence)?

The following models were suggested for training programs in South Australia:

- Domestic Abuse (DA) Matters Scotland
- SafeLives UK / Police Scotland training program for law enforcement, which incorporates a 'Health Check', Train the Trainer course, Senior Leaders workshop and both intensive and on the job e-learning and face to face training for police officers and staff. The program is geared towards effecting mass behavioural change among the police force, training and deploying "Domestic Abuse Matters Champions" to lead change and support their colleagues (SafeLives 2020).

Question 7: What education and training is needed for organisations that work with victim-survivor and perpetrators of coercive control e.g. in health, housing, education, etc.?

Respondents indicated that education and training on coercive control should be delivered to a broad range of professions, including those who do not necessarily encounter domestic and family violence victim-survivors or perpetrators on a regular basis. They included:

- Frontline health workers
 - Alcohol and drug services
 - Mental health services
- Psychologists
- Child protection workers
- Social workers
- General practitioners
- Dentists
- Teachers
- Service SA front line workers
- Housing services
- Financial counsellors

Suggested topics for education and training included:

- What are coercive control signs and behaviours and how to identify them
 - A pattern of behaviour rather than a stand-alone incident
 - Understanding and awareness of tactics used to manipulate victim/survivors and responders (using case studies)
- Understanding of the legislation that criminalises coercive control
 - Why we need the laws
- How to respond when abuse is suspected (what processes to establish)
 - Where to refer to services for help for both victim-survivors and perpetrators, not just for personal support, but also for practical support such as accommodation and financial assistance and free legal services
 - Access to any funding available for support for victim-survivors such as the Escaping Domestic Violence Grants and other supports through Victims of Crime.
 - Reporting obligations and processes
 - Appropriate documentation to assist any future police investigation

- How to work with victim-survivors and perpetrators, including:
 - using a trauma informed response
 - understanding of the issues across various communities - people with a disability, people from regional, metropolitan, and remote communities, and people from Aboriginal, culturally and linguistically diverse and LGBTIQ+ communities
 - how to work with young perpetrators aged 18 to 25, who often have complex problems
- Avoiding unintended consequences of the new offences, e.g. where the perpetrator identifies the victim-survivors as the perpetrator
- Health promotion focus, reflecting the right to be safe and well.

One respondent reported that education and training about coercive control within Aboriginal communities should be based on localised understanding and local languages, noting that not one 'size' of training will fit all. Such training should include:

- uplifting stories of resistance to violence – a tool for safety used by women on the APY Lands
- a focus on historical acts of violence (embedded in story telling)
- understanding acts of violence in all their forms.

As with training and education for the justice sector, respondents also noted that training for other professionals should be developed with experts in domestic and family violence and people with lived experience. This should include experiences of vulnerable and diverse groups, including older people and people with disability.

Question 8: What types of coercive control services should be prioritised?

The responses to this question generally referred to broader domestic and family violence services rather than coercive control alone. It was noted that increased awareness of coercive control will bring an increase in service referrals, particularly if it is criminalised.

One respondent suggested that services should be mapped to identify duplication and gaps.

Two respondents identified perpetrator services as a priority, to ensure men are engaged in programs at the earliest presentation.

Identified service priorities for victim-survivors included:

- Legal support
 - Timely and accurate advice about legal rights, child support, property settlement, debts and care arrangements for children
 - Specialist women's legal services with expertise and insight into systems abuse as a common tactic used by perpetrators
 - Pre and post court appearance supports for victim-survivors to promote safety and well-being and increase the chance they will benefit from court process (for example, the Women's Legal Service SA and Women's Domestic Violence Court Assistance Service)

- Psychological support
- Financial support to assist victims in cases of financial abuse, including financial and budgeting assistance and civil or family court action
- Resources and pathways for women wishing to leave abusive relationships, or safely remain home with their children
- Recovery services to re-build confidence and self-esteem of victim-survivors
 - victims of crime counselling
 - positive peer support to build healthy relationships and support networks
 - holistic trauma informed services to victim-survivors and defendants in a health care setting (for example, the Nargneit Birrang Framework: Aboriginal Holistic Healing Framework for Family Violence).
- Early intervention supports and services

Most respondents also noted the need for accessible and inclusive services for victim-survivors including:

- Place-based services particularly supporting victim-survivors in regional, rural and remote communities
- Services accessible to people without internet access or with limited digital literacy
- Appropriate services for diverse, vulnerable and marginalised individuals and groups:
 - culturally and linguistically diverse communities
 - LGBTIQ+ groups
 - persons living with disability, including cognitive impairment
 - recognising children as victim-survivors in their own right.

Question 9: Are there any gaps in the services currently available to victim-survivor of coercive control?

Responses to this question were similar to the service priorities identified in Question 8, with most having a broader domestic and family violence focus.

In line with the service priorities noted in Question 8, gaps were identified in:

- Services for diverse, vulnerable, marginalised communities including Aboriginal peoples, LGBTIQ+ community, culturally and linguistically diverse, migrant and refugee communities (particularly for women on Temporary Protection Visas), people with disability (including cognitive impairment), children and young people, older people, and those in regional, rural and remote settings.
- One respondent specifically noted that many institutions are not safe for LGBTIQ+ people to access. Many existing services prioritise people who are heterosexual and not transgender or gender diverse, and fail to account for domestic and family violence in same sex relationships. This response suggested that all services engaged in service provision should undergo LGBTIQ+ inclusion training, most notably training based on Rainbow Tick, a national quality framework that helps health and human services organisations show they are safe, inclusive and affirming services and employers. In South Australia, SHINE SA delivers HOW2 LGBTIQ Inclusion Training, based on Rainbow Tick Accreditation.

- Services for male/victim-survivors. It was reported that male victims are discriminated against in policy and service provision, stating that government funded services are often suspicious of male perpetrators claiming to be victims. Generic support is available, but is often unaware of unique issues faced by male victims (for example, male victims are often not believed, their experiences are minimised, and they are blamed for the abuse).
- Psychological services: there are currently long waiting lists for psychological services
- Pre and post court appearance support for victim-survivors, acknowledging that court appearances can be traumatic
- Recovery services: wrap around supports, including mental health services to victim-survivors to rebuild their lives and address issues used to cope with domestic and family violence such as alcohol and drug use, gambling and self-harm. It was noted that the Child and Adolescent Mental Health Service is geared to more complex mental health issues and is not often accessible for victim-survivors and children.

“People experiencing family and domestic violence are less likely to leave abusive relationships when there is insufficient psychological support to make the decision, or without connection to safe, local services tailored to their individual need. This creates a revolving door of victims leaving and being forced to return to violent relationships, due to a lack of emotional, psychological, and practical resources. “

Additional comments reflected concerns about the type and scope of service delivery, with calls for:

- Collaborative services for victim-survivors and corresponding perpetrator interventions in a solely funded collaborative model, to maximise information sharing, risk assessment and safety planning
- Responses outside of the criminal justice system. One respondent recommended the establishment of a mediation service which provides conciliation and counselling for the victim-survivor and perpetrator – particularly for financial abuse. As the perpetrators of financial abuse against older people are often family members, many victims may not wish to report the abuse to avoid causing trouble for the family member in question. It is likely a victim-survivor of coercive control may be more willing to engage with mediation than one which escalates the issue to a criminal offence for perpetrator.

One respondent also reported a specific gap in experienced domestic and family violence support at police front counters. This response recommended trained, designated officers be present at selected police front counters to respond to victim-survivor reports and ensure a more consistent, specialist response. It was suggested this initiative should include a specific interview room for privacy, which is critical to successfully responding to victim-survivor experiences.

Question 10: Are there any current specialist and mainstream service providers that could improve and / or tailor their current services for victim-survivors of coercive control?

Responses to this question generally indicated that existing specialist and mainstream services could improve and/or tailor their current services for victim-survivors of coercive control, with adequate supports.

One respondent noted that responses to questions about service gaps and potential capability depend upon how coercive control is defined and the strength of the law. If it remains within a domestic and family violence context, then strengthening and resourcing domestic and family violence supports would be appropriate.

Another respondent commented that there is always opportunity for improvements, but this requires time, labour and resources, which are rare in the community service sector. The respondent also noted that there was a role for government in supporting and providing opportunities for enhanced collaboration with the sectors, to minimise gaps and strengthen partnerships.

Respondents specifically identified the following services that could possibly tailor their current operations to support victim-survivors of coercive control:

- Women's Legal Service Advice
- Women's Safety Services SA
- Women's Domestic Violence Court Assistance Service
- Relationships Australia South Australia
- Aboriginal community controlled family violence legal prevention units
- Aboriginal community controlled domestic and family violence services
- Financial services sector
- Adult Safeguarding Unit
- Aged Rights Advocacy Service
- Legal Services Commission
- Victims of Crime SA
- Individual disability advocacy services.

One respondent reported there are significant opportunities for all service providers to build upon the coercive control evidence base and improve current service offerings. It recommended increased funding to specialist women's and culturally specific services that meet the standards set by the Australian Women Against Violence Alliance which stipulate:

- A rights-based approach
- Advancing gender equality and women's empowerment
- A client-centred approach
- Women's safety is central
- Perpetrator accountability
- Accessible, culturally appropriate and sensitive services.

Question 11: What types of perpetrator services should be prioritised?

Most submissions responding to this question noted a critical need to expand the availability of Men's Behaviour Change Programs, and ensure they have the capacity to implement risk assessment and risk management processes. It was noted that the 2016 Victorian Royal Commission into Family Violence recommended substantial growth in the development, evaluation and delivery of perpetrator programs.

One respondent also stressed the need to evaluate perpetrator programs for effectiveness.

Respondents specified the following perpetrator services as priorities:

- Specialist perpetrator intervention services for vulnerable marginalised and diverse communities, including Aboriginal peoples, LGBTIQ+, culturally and linguistically diverse / refugee / migrant, young men, and those in rural, regional and remote locations. One respondent highlighted a need for culturally specific prevention services in Aboriginal communities that draw on community knowledge and Elders to resist drivers of violence.
- Evidence based services that adhere to the principles of the National Outcome Standards for Perpetrator Interventions. These principles include:
 - Women and children's safety is the core priority of the service
 - Perpetrators get the right interventions at the right time
 - Opportunities for early interventions prior to a criminal justice response
 - Services are connected to the specialist women's led service sector
- Men's Referral Service – expanding the service to cover the anticipated increase in number of calls following the commencement of coercive control legislation
- Partner contact services attached to Men's Behaviour Change Programs that focus on increasing the safety of women and children
- Programs aimed specifically at coercive control perpetrators who do not use physical violence, noting that entry into most Men's Behaviour Change Programs is triggered by the use of physical violence
- A fully resourced and formalised police outreach service, to directly connect men using violence to the Men's Referral Service. The service would make telephone contact with men identified as perpetrators of family violence within 48 hours of police response
- Crisis housing for perpetrators, to help keep victim-survivors safe in their homes, as part of a wider suite of perpetrator interventions. (e.g. Men's Accommodation and Counselling Service and Communicare's Breathing Space Intervention in Western Australia).

"Recidivism can be influenced not only by policing, sentencing practices and parole monitoring, but also by the quality of interactions and integration between offenders and the community-based services."

Question 12: Are there any gaps in the services currently available to perpetrators of coercive control?

Respondents consistently reported that South Australia does not have sufficient perpetrator services, with significant gaps for perpetrators of all forms of violence and control. One respondent noted that current programs have long waiting lists, with a wait of up to six months to enter a behaviour change program.

Respondents reported gaps in:

- Early intervention responses to keep perpetrators in view and prevent escalation of violence
- Age-appropriate young perpetrator programs (18 to 25 years). It was noted the Men's services sector need specialised training on working with this cohort, which often have complex problems
- Services for men who use coercive control without violence
- Services provided to fathers, addressing:
 - the controlling and violent behaviours within a family context
 - impacts on children
 - positive role-modelling
 - co-parenting
- Psychological services
- Housing and homelessness services, particularly affordable, accessible, culturally safe accommodation solutions
- Specialist services and programs for marginalised, diverse and vulnerable groups such as LGBTQIA+, culturally and linguistically diverse and migrant / refugee communities, and Aboriginal communities
- Programs for men who come forward to seek help outside of the criminal justice system, including opportunities for men to examine their use of violence in relationships in non-stigmatising processes that still emphasise accountability, responsibility, and women and children's safety
- Funding to support families and children of persons enrolled in a perpetrator program. In other jurisdictions, affected family member safety work is a foundation of Men's Behaviour Change Program practice standards, and could be used as a template for South Australia. The aim is to ensure women and children are safe and that safety and risk is always assessed and monitored.

One respondent commented that the current system is fragmented, and most programs responding to domestic and family violence do not work with perpetrators. The respondent called for an integrated Family Violence System, proposing:

- State-wide intake for perpetrators in South Australia and a system to track men from point of referral through to engagement and program completion
- Increased resourcing for Men's Behaviour change programs that are connected to where men are already engaging with services
- Development of statewide Standards and quality accreditation processes for all Men's Behaviour Change programs
- Enhanced data collection and information sharing to understand patterns of behaviour and risk.

Question 13: Are there any current specialist and mainstream service providers that could improve and / or tailor their current services for perpetrators of coercive control?

There were limited responses to this question that specified a current service. Responses included:

- One respondent supported the expansion of existing perpetrator counselling and treatment programs aimed at coercive control perpetrators, noting that such programs should take into consideration that perpetrators of coercive control span a continuum from 'malevolent sociopaths to overeager family members seeking to protect a person with cognitive impairment and who are unaware of their controlling behaviour'.
- Two respondents called for the Don't Become That Man program to be re-funded.
- One respondent nominated all perpetrator service providers and agencies across intervention systems as identified in the SA DFV Perpetrator Intervention Systems Map (Upton-Davis & Chung 2020), particularly those working within the Family Safety Framework and Multi-agency Protection Service. It was also suggested that the Centre for Restorative Justice could formulate and pilot the implementation of a trauma informed and victim-survivor led restorative conference program.
- The Court Administration Authority's Abuse Prevention Program – with more detailed case management, waitlist support and accountability for participants.
- One respondent recommended funding to develop and deliver a new suite of training packages on coercive control to the perpetrator workforce.

Question 14: Is there anything else that should be considered as part of implementing a criminal offence relating to coercive control?

"Criminalisation of coercive control must be considered as a package reform, to which extensive community and stakeholder consultation, improved sector funding of specialist services, increased awareness measures, whole-of-system training, improved community education and the establishment of national definitions will work together to help put a full stop to sexual, domestic, and family violence."

"...this is an uncomfortable conversation that everyone needs to have within their families, friends, local community and a wider audience where possible."

Comments in response to this question covered a range of issues and concerns. General comments made under other questions are also included in this section.

Respondents raised the following issues:

Development of legislation

- Respondents said there should be intensive community consultation prior to the formalisation of any offence and its implementation. Victim-survivors should be given the opportunity to engage in a truly collaborative manner with government to develop an appropriate legal response in relation to coercive control.
- Responses highlighted that how coercive control is defined will be critical to the effectiveness of the law and preventing harm due to a lack of safety or wellbeing:
 - It is important to clarify that coercive control is not just inflicted by an 'intimate partner' but can also be committed by family members, friends, people providing a service, and anyone in any form of relationship with the victim. Legislation introduced in 2021 was limited to intimate partners and does not address the vulnerability of people with disabilities to this form of abuse from a wider group of people (family members, service providers and community agencies).
- Several respondents commented that it is premature to introduce coercive control as a criminal offence, particularly prior to an agreement on national principles, which may affect the ability for national recognition of coercive control offences in South Australia.
- One respondent recommended a national approach, but if a standalone offence is introduced, there should be:
 - Broad consultation with family relationships services and other family violence practitioners, as well as with law enforcement and other government agencies to ensure resulting offences are capable of effective operationalisation and can be implemented in a way that supports, not undermines, therapeutic work with clients
 - Nationally recognised guidelines for police, prosecutors, and judicial officers as to what kind of evidence is probative of coercive control, and what constitutes a sufficient weight of evidence to clear the threshold of beyond reasonable doubt
 - Ongoing (and adequately resourced) monitoring and evaluation of the offences.
- Consideration should be given to the creation of a Domestic Abuse Act separate from the *Criminal Law Consolidation Act 1935*, saying that a separate piece of legislation emphasises the unique issues that arise in domestic violence as distinct from other offences because they take place in a "domestic setting". Separate legislation allows for the tailoring of offences and penalties to the circumstances of domestic abuse and for the creation of unique offences. A separate Act can have a potential psychological impact on those who enforce it because it creates a different policing sphere with different considerations.

Implementation

- A number of respondents raised that adequate funding needs to be made available to support the implementation of a criminal offence for coercive control, as it requires a significant change in culture, understanding and ways of working for government agencies, community services, legal providers and institutions and the broader community. Without adequate funding being provided to enable training, education and cultural change there is a substantial risk that an offence will be on the books but will be rarely used and ineffective.

- Statements from psychologists must be admissible as an explanatory supplement to victims' evidence. This provides insight into the context of the behaviour and may also help to explain retaliatory or compliant behaviour of victims who are trying to minimise the effects of the coercive controlling behaviour.

Tailored responses to specific groups and communities

- *Persons living with disability:* In implementing coercive control legislation, justice and domestic and family violence sector responses must be tailored to needs of women and girls with disability and address existing barriers they face. They have fewer pathways with first responders, including police, courts and domestic and family violence services who lack specialised knowledge in how to support women with disability. Making coercive control offences effective is reliant on victims being willing, and in a position, to engage with police and open to the potential of criminal charges. Marginalised groups (particularly women and girls with disability) may be reluctant to engage with police for fear of not being believed, fear of discrimination (ableism and sexism), fear that police intervention will escalate abuse, fear of child protection involvement and that children will be taken away.
- *Aboriginal communities:* Services for Aboriginal peoples should emphasise self-determination, innovation, localised responses and knowledge. Any decision making that includes a criminal justice response needs to include voice and agency of Anangu on the APY lands.
- *Male victims:* A significant proportion of family violence victims including coercive control are male. Many never report their victimisation or seek help, with many barriers to disclosing abuse. These include not knowing how, where to seek help, feelings that they won't be believed or understood as victims, and fear they will be falsely arrested. There are also feelings of denial, disbelief, shame and embarrassment at being unable to protect themselves, of being called weak and being ridiculed.

Managing unintended consequences

- To ensure legislative change does not result in further overrepresentation of Aboriginal people in prison, one respondent recommended:
 - the ongoing reform of police practices and procedures, as well as police culture, together with a greater commitment to the development of collaborative projects (such as justice reform initiatives), to address the over-incarceration of South Australian Aboriginal people while still supporting victim-survivors
 - A consultation process should be conducted with Aboriginal groups in South Australia to inform the legislative changes and implementation phase.

Risk assessment and data collection

- Risk assessment tools should be upgraded to reflect coercive control perpetrator behaviour. Tools currently in use often miss previous history, disability, pregnancy or new child and harm to pets.
- There should be mandatory, uniform, statewide domestic violence Routine Screening in all mainstream services, including alcohol and drugs, mental health, early childhood, hospital emergency departments and women's health centres.

- Data should be collected about domestic and family violence in LGBTIQ+ communities. The Department of Human Services recently published the 'Data Collection and Gender Guideline: Data collection and working with the LGBTIQ+ community'. This provides guidance to agencies on how to respectfully collect data about gender identity and sex in a manner inclusive of transgender and gender diverse people. One respondent strongly urged the South Australian Government to implement this guideline across government, and particularly in relation to domestic and family violence.
- Consideration should be given to the creation of a multi-agency risk assessment framework, similar to MARAM in Victoria, which requires universal and specialist services to assess for domestic and family violence and associated risk. This ensures that no matter which entry point, all services are effectively identifying, assessing and managing domestic and family violence risk.

Evaluation

- One respondent commented it is also important to consider how South Australia will measure the impact and efficacy of coercive control criminal laws in preventing escalating violence against women and girls. Where coercive control offences have been introduced in other international and Australian jurisdictions, the only measure of success has been whether the laws have been used. Data is gathered from reports of domestic abuse, arrests for coercive control, charges laid, and successful prosecutions. The respondent proposed that efficacy must be considered in terms that include the impact of the new offences on:
 - Victim survivor safety, recovery and wellbeing
 - Victim survivor experience of the court process and the justice system
 - Perpetrator accountability, reoffending and behaviour change
 - Misidentification and criminalisation of victim survivors
 - Criminalisation of marginalised population groups.

List of submissions

The Attorney-General's Department received 19 submissions representing the following organisations, services, advocacy groups and government authorities:

- The Law Society of South Australia
- Australian Psychological Society
- Commissioner for Victims' Rights
- Embolden SA Inc
- Full Stop Australia
- Legal Services Commission
- No to Violence
- NPY Women's Council
- OARS Community Transitions
- Relationships Australia SA
- South Australian Financial Counselling Association
- South Australian Rainbow Advocacy Alliance Inc
- SHINE SA
- Women's Legal Services SA
- Women's and Children's Health Network
- One in Three Campaign
- Royal Commission Response Unit, Attorney-General's Department
- Office of the Public Advocate
- Uniting Communities

A further three submissions were received from individuals, including one academic and one person with lived experience of coercive control.

22TDHS/297

Attachment 3

Key findings from the summary of submissions to the Attorney-General's Department Discussion Paper: Implementation of coercive control offences in SA

April 2022

Question 1: What are the key messages that should be communicated about coercive control?			
Recommendation	Respondent Considerations	What's happening in	Discussion Paper - Options to target coercive control
<p>Respondents were supportive of a strong community awareness campaign for coercive control that communicates three key messages:</p> <ol style="list-style-type: none"> 1. What is coercive control and what does it look like? 2. Impact of coercive control 3. Responding to coercive control 	<p>The community awareness campaign must ensure messaging is representative of and tailored to diverse, vulnerable, and marginalized groups.</p> <p><i>The National Principles on Addressing Coercive Control</i> (the National Principles) are currently being developed by the Meeting of Attorneys-General and will inform a common language for understanding key concepts relating to coercive control.</p> <p>The use of common and consistent language in public awareness campaigns is recommended.</p>	<p>As outlined on the Australian Government's Attorney-General's Department website (Development of national principles on addressing coercive control - Terms of Reference), the National Principles will consist of two parts:</p> <ul style="list-style-type: none"> - Part 1: Understanding and addressing coercive control - Part 2: Matters to consider with respect to any future criminalization. <p>Work will take place to determine how the National Principles will interact with the next <i>National Plan to End Violence against Women and Children</i>.</p>	<p>DHS will fund the <i>Break the Cycle Campaign</i> in 2022, focused on young people and coercive control.</p>

Question 2: What are the best mediums to communicate information about coercive control in your community?			
Recommendation	Respondent Considerations	What's happening	Discussion Paper - Options to target coercive control
<p>Respondents recommended the use of all forms of media to communicate</p>	<p>One respondent outlined that a coercive control awareness campaign should consider and prepare for the potential risk of adverse outcomes, including a possible</p>	<p>Since commencement in 2020, the <i>Break the Cycle Campaign</i> has used television, radio, digital and social media platforms to raise awareness of different forms of abuse.</p>	<p>The Legal Services Commission has been allocated additional funding up to \$507,500 over two years to support coercive control</p>

information about coercive control.	<p>escalation in the type and number of violent incidences by perpetrators who are angered or threatened by messaging.</p> <p>Communication and information about coercive control should be delivered in multiple languages and formats.</p> <p>Respondents also recommended direct consultation with victim-survivors and diverse, vulnerable and marginalized groups to tailor communication campaigns.</p>	<p>In June 2020, The Break the Cycle website was launched, providing DFV information and resources for victim/survivors and perpetrators in South Australia. Information available includes topics on coercive controlling behaviours, with support materials translated into 25 languages.</p> <p>The <i>See it for what it is. Stop Sexual Violence</i> campaign was launched in 2020 and used the dating app Tinder to send messages.</p> <p>The <i>Keeping Safe: Child Protection Curriculum</i> child safety program is provided to children and young people from age 3 to 12 years throughout public schools in South Australia.</p>	<p>initiatives, including \$50,000 to develop a community awareness campaign in 2022.</p> <p>DHS will fund the <i>Break the Cycle Campaign</i> in 2022, focused on young people and coercive control.</p>
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Question 3: How is coercive control understood by you and more broadly within your community?

<i>Recommendation</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
<p>Respondents reported their understanding of coercive control as a range of controlling and manipulative behaviours used by perpetrators over time.</p> <p>Respondents outlined that coercive control is not widely understood by the broader community.</p>	<p>Respondents called for a clear definition of coercive control to enable greater understanding.</p> <p>One respondent outlined a universal definition of coercive control will exclude specific cohorts, including the experience of people living in remote Aboriginal Communities.</p> <p>Understanding of coercive control must extend to understanding patterns of behaviours within the context of diverse, vulnerable, and marginalized groups.</p>	Refer to question 1 and 2.	Refer to question 1 and 2.

Question 4: If it were made an offence, what might this mean to you and the people around you?

<i>Recommendation</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents identified positive and negative impacts for victim-survivors, with some expressing doubts that a coercive control offence would have any significant impact.	<p>Respondents outlined that the misidentification of victims may lead to growing incarceration and criminalization of Aboriginal women.</p> <p>Respondents indicated a coercive control offence may lead to unintended consequences for groups disproportionately represented in the criminal justice system.</p> <p>Respondents outlined the introduction of a coercive control offence may lead to an escalation of violence, drawn out legal matters, difficulty policing a coercive control offence and difficulty for prosecutors to successfully establish an offence of coercive control.</p>	A range of services and supports are available to victim-survivors of DFV in South Australia, including crisis support, legal assistance, accommodation support and court assistance.	<p>The Domestic Violence Crisis Line operated by the Women's Safety Service South Australia, have received an additional \$600,000 to enhance its existing service to include a quick response coercive control assessment, provide information and referral.</p> <p>This funding includes \$3,000 to develop a new risk assessment tool to assess the coercive control risk.</p> <p>Victim-survivors can apply to the court for an Intervention Order, prohibiting perpetrators from engaging in coercive or controlling behaviours against them.</p> <p>Additional funding of \$507,500 over two years to the Legal Services Commission for coercive control initiatives, includes funding to increase the capacity of the Women's Domestic Violence Court Assistance Service to respond to victim-survivors experiencing coercive control.</p> <p>Attorney General's Department discussion papers have sought feedback on current services available to respond to victim-survivors of coercive control to help map existing services and identify gaps and service duplications.</p>

Question 5: If you were concerned about the use of coercive control as an individual, or on behalf of someone else, what systems and services would you approach for support or advice?

<i>Recommendation</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents were able to identify a broad range of services they could contact for victim support and No to Violence for perpetrator referral and intervention services.	<p>The list of systems and services respondents could approach for support or advice was extensive, with only two options listed for perpetrators, both from the same service (No to Violence).</p> <p>A lack of perpetrator services in South Australia has been highlighted throughout the report.</p>	<p>A range of services and supports are available to victim-survivors of DFV in South Australia, including crisis support, legal assistance, accommodation support and court assistance.</p> <p>Safety Hubs provide a safe local place where women can speak confidently to trained workers or volunteers, who can provide information, support and referral.</p> <p>Safety Hubs are available in Murray Bridge, Gawler, Mount Barker, Mount Gambier, Whyalla, Port Pirie, Goolwa, Berri, Port Augusta and Port Lincoln.</p>	<p>Refer to question 4.</p> <p>The State Government has committed \$1 million to establishing a northern and southern prevention and recovery hub, with work to support and empower women.</p>

Question 6: What education and training is needed to improve the justice sector's understanding of coercive control and detect, investigate and prosecute coercive control appropriately?

<i>Recommendation</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents called for education and training across all sectors of the justice sector that is evidence based, co designed with victim-survivors, trauma informed, incorporates cultural considerations, focuses on vulnerable victim-survivors and is provided on a regular and consistent basis.	Some respondents called for domestic violence training for different branches of the justice sector to be compulsory.	<p>DFV training and education for the justice sector is currently conducted within SA Police and the Courts Administration Authority.</p> <p>DHS fund No to Violence to deliver workforce development sessions for frontline workers, which aims to improve their ability to identify and respond to perpetrators of DFV.</p>	<p>Intensive police training conducted in Scotland in the lead up to the commencement of their coercive control legislation is often cited as best practice.</p> <p>The AGD are seeking feedback on the current DFV education and training available and whether there are any gaps in relation to coercive control.</p>

Question 7: What education and training is needed for organisations that work with victim-survivor and perpetrators of coercive control e.g. in health, housing, education, etc.?			
<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents recommended training on coercive control should be delivered to a broad range of professions.	Topics of education and training would need to be developed by experts in the domestic and family violence field, people with lived experience, and training would need to cater for the specific workforce receiving training.	As outlined above, DHS fund No to Violence to deliver workforce development with frontline workers to help identify and respond to perpetrators of DFV.	Refer to question 6.

Question 8: What types of coercive control services should be prioritized?			
<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents recommended service mapping to identify duplication of services and service gaps. Perpetrator services were also considered a priority, plus a range of accessible and inclusive services for victim survivors including legal services, psychological support, financial support, early intervention supports and services and recovery services to re-build confidence and self-esteem of victim-survivors.	<p>Respondent feedback applied to the FDSV sector more broadly, not specifically to coercive control services.</p> <p>The awareness of coercive control is expected to increase service referrals, particularly if it is criminalized.</p> <p>Appropriate services for diverse, vulnerable and marginalized individuals and groups was recommended.</p>	<p>The Office for Women are currently undertaking a service mapping project to identify service gaps in south Australia.</p> <p>Launched in 2020, the new Victims of Crime SA website provides information for victim-survivors. Information is also published in a booklet disseminated by SA Police upon first contact with victim-survivors.</p> <p>Safety Hubs provide a safe local place where women can speak confidently to trained workers or volunteers, who can provide information, support and referral.</p> <p>31 crisis accommodation beds for South Australian's impacted by DFV.</p> <p>Early intervention support is provided to young parents aged between 12 and 25 years through the <i>Supporting Parents; and Children's Emotions Program</i> who are experiencing or perpetrating DFV.</p>	Refer to question 4.

		<p>DVDS has ongoing funding to provide free and confidential online application for information and support from SA Police and a specialist FDSV support service.</p> <p>DCS have received \$603,000 in funding to keep high risk victim-survivors of DFV informed of changes to the circumstances of the perpetrator in connection with DCS.</p>	
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Question 9: Are there any gaps in the services currently available to victim-survivors of coercive control?

<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Service gaps were identified for diverse, vulnerable and marginalized communities, male/victim-survivors, psychological services, pre and post court appearances for victim-survivors and in recovery services	Responses were provided having a broader DFV focus.	The Office for Women are currently undertaking a service mapping project to identify service gaps in south Australia.	

Question 10: Are there any current specialist and mainstream service providers that could improve and / or tailor their current services for victim-survivors of coercive control?

<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Responses recommended existing specialist and mainstream services could improve and / or	<p>It may take time, labour, and resources to improve and tailor current services.</p> <p>One respondent also noted that there was a role for government in supporting and</p>	A range of services and supports are available to victim-survivors of DFV in South Australia, including crisis support, legal assistance, accommodation support and court assistance.	

tailor their current services for victim-survivors of coercive control.	providing opportunities for enhanced collaboration with the sectors, to minimize gaps and strengthen partnerships.		
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Question 11: What types of perpetrator services should be prioritized?

<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents outlined the need to expand availability of Men's Behaviour Change Programs and risk assessment and risk management processes.	<p>Respondents suggested the following perpetrator services as a priority:</p> <ul style="list-style-type: none"> - Specialist intervention services for vulnerable, marginalised and diverse communities - Evidence based services - Expanding the Men's Referral Service for an anticipated increase in the number of calls - Partner contact services attached to Men's Behaviour Change Programs - Programs aimed 	<p>Under the Intervention Orders (Prevention of Abuse) Act 2009, the Magistrates Court can mandate assessment for the participation in an Abuse Prevention Program. Approximately \$668,400 is provided by the Courts Administration Authority to run face to face group and individual counselling to men, including a culturally safe program for Aboriginal men.</p> <p>The Department for Correctional Services operates five programs targeting perpetrators of DFV at a cost of \$9 million per year, including culturally specific programs for Aboriginal men.</p> <p>DHS fund No to Violence to deliver the Statewide Perpetrator Response in South Australia. This service includes a centralized referral point for perpetrators, frontline workers, family, friends and community members to seek information and support. The service also offers four workforce development sessions per year to help improve frontline worker's ability to identify and respond to perpetrators of FDSV.</p> <p>The Domestic and Family Violence – Perpetrator Response Pilot provides short term accommodation and case management for 9 male perpetrators of domestic and family violence, so victims can remain in the family home.</p>	The Discussion Paper seeks feedback on existing perpetrator services and programs to determine opportunities for improvements in the context of coercive control.

Question 12: Are there any gaps in the services currently available to perpetrators of coercive control?			
Recommendations	Respondent Considerations	What's happening?	Discussion Paper - Options to target coercive control
<p>Respondents consistently reported that South Australia does not have sufficient perpetrator services.</p> <p>One respondent commented that the current system is fragmented, and most programs responding to domestic and family violence do not work with perpetrators.</p>	<p>Respondents reported gaps in:</p> <ul style="list-style-type: none"> - Early intervention responses - Age-appropriate young perpetrator programs - Services for men who use coercive control without violence - Services for fathers - Psychological services - Housing and homelessness services - Specialist services and programs for marginalized, diverse and vulnerable groups - Services for men outside of the criminal justice system - Funding supporting families and children of persons enrolled in a perpetrator program. <p>One respondent proposed the need for:</p> <ul style="list-style-type: none"> - Statewide intake for perpetrators in South Australia - Increased resourcing for Men's Behaviour Change Programs - Development of statewide Standards and quality accreditation processes for Men's Behaviour Change Programs <p>Enhanced data collection and information sharing</p>	<p>The OFW are undertaking service mapping work to identify service gaps in South Australia.</p> <p>Refer to question 11.</p>	<p>Refer to question 11.</p>

Question 13: Are there any current specialist and mainstream service providers that could improve and / or tailor their current services for perpetrators of coercive control?			
<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
There were limited responses to this question	Refer to question 12.	Refer to question 11.	Refer to question 11.

Question 14: Is there anything else that should be considered as part of implementing a criminal offence relating to coercive control?			
<i>Recommendations</i>	<i>Respondent Considerations</i>	<i>What's happening?</i>	<i>Discussion Paper - Options to target coercive control</i>
Respondents made recommendations about considerations before the development of legislation and implementation. They explored the need for tailored responses to specific groups and communities, managing unintended consequences and the need for risk assessment and data collection. Respondents also highlighted the need for evaluation to measure the impact and efficacy of coercive control criminal laws in preventing escalating violence against women and girls.	-	Refer to question 11.	Refer to question 11.

POLICY BRIEF

Defining and responding to coercive control

PURPOSE

This policy brief aims to assist policymakers developing legal or policy and practice frameworks to prevent or respond to coercive control in relation to domestic and family violence (DFV). It addresses three considerations emerging from current debates on this topic. The first is the need for consistent definition of coercive control and its relationship to the definition of DFV in policy and legalisation settings, Australia-wide. The second key consideration, criminalising coercive control, necessitates making an assessment of whether the existing evidence base supports the creation of a specific offence. The third involves reforming the culture of response to DFV, in and around the legal system and in other settings. In considering changes to the way we define and respond to coercive control, it is also necessary to keep front of mind the barriers that diverse groups of women face in our existing justice system, and mitigate risks and unintended consequences of legislative and policy change.

DEFINING COERCIVE CONTROL

Coercive control is a gendered pattern of abuse where one person is coerced, controlled and dominated by another. Evan Stark argues in his book, *Coercive Control: How Men Entrap Women in Personal Life*, that it is not violence per se but the assault on autonomy, liberty and equality that makes intimate partner violence (IPV) particularly insidious, and distinguishes between men's and women's violence in intimate partner relationships (Stark, 2007). Coercive control is intrinsic to a particular manifestation of male power, where the man uses non-physical tactics and/or physical tactics to make the woman subordinate and maintain his dominance and control over every aspect of her life. The attack on the woman's autonomy can involve strategies like physical, sexual, verbal and/or emotional abuse; psychologically controlling acts; depriving the woman of resources and other forms of financial abuse (see for example Cortis & Bullen, 2015); social isolation; utilising systems, including the legal system, to harm the woman (for more on systems abuse see Kaspiw et al., 2017); stalking; deprivation of liberty; intimidation; technology-facilitated abuse; and harassment.

The idea of patterns of subjugation and terror, or fear and control, in intimate relationships has been around for a considerable length of time (see for example Dobash & Dobash, 1979; Herman, 1992; Pence & Paymar, 1993; Jones, 1994). However, the work of Stark (2006; 2007) marked a significant moment in the development of the theory of coercive control as it brought to a wider audience the work of previous theorists including Ann Jones, Del Martin and Susan Schechter, and helpfully, broke down the concept of coercive control to "an attack on autonomy, liberty and equality" (Stark, 2006, p. 1023). The concept of coercive control is useful because it helps to articulate the ongoing, repetitive and cumulative nature of IPV.

Physical violence is not always present in coercive control (Buzawa, Buzawa, & Stark, 2017). When physical violence is utilised, it is often routine, minor and frequently repeated, rather than taking the form of isolated episodes of violence during fights (Stark, 2007). In examining female victims killed by a former intimate partner between 2000 and 2019, the NSW Domestic Violence Death Review Team (NSW DVDRT) found "a number of its cases were not preceded by an evident history of physical abuse—instead homicides were preceded by histories of other forms of coercive and controlling behaviour" (2020, p. 68). Despite the

ANROWS

ANROWS acknowledges the lives and experiences of the women and children affected by domestic, family and sexual violence who are represented in the research used in this policy brief. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

Caution: Some people may find parts of this content confronting or distressing. Recommended support services include 1800 RESPECT-1800 737 732 and Lifeline-13 11 14.

evidence showing coercive control is a risk factor for homicide, there is a strong tendency in legal and other settings to construct a hierarchy of violence, where physical violence and sexual violence sit at the top and forms of non-physical abuse sit below them. The non-physical behaviours are consequently viewed as less harmful or traumatic—if they are recognised as violence or abuse at all.

A hierarchical understanding of violence is also reflected in the community, as shown in the [National Community Attitudes towards Violence against Women Survey](#) (NCAS) results. The 2017 NCAS found that while most Australians understand violence against women as involving a continuum of behaviours, they are more likely to recognise forced sex and obvious physical violence than they are to understand social, emotional and financial forms of abuse and control as forms of violence against women (Webster et al., 2018). Victims/survivors can also be within the cohort of Australians who struggle to identify non-physical forms of abuse as violence against women. In its most recent report, the NSW DVDRT found that some victims in the cases they examined “did not always identify that what they were experiencing was domestic violence and abuse, instead believing that their experiences were part of ordinary relationship dynamics” (2020, p. 69).

Coercive control diminishes the woman’s ability to exercise her agency and autonomy—the very things that would enable her to leave the relationship—resulting in entrapment.

Coercive control diminishes the woman’s ability to exercise her agency and autonomy—the very things that would enable her to leave the relationship—resulting in entrapment. Entrapment is described by Buzawa et al. as “the most devastating outcome of partner abuse”, sitting alongside significant impacts to the victim’s perception, personality, sense of self, sense of worth, autonomy and feeling of security (2017, p. 106). While the 2017 NCAS demonstrates that the majority of Australians have a good level of knowledge about violence against women and support gender equality, nearly one in three Australians (32%) believe that women who do not leave a relationship in which violence is occurring hold some responsibility for the abuse continuing (Webster et al., 2018). In addition, just over one in six Australians (16%) do not agree that it is hard for women to leave violent relationships (Webster et al., 2018). By developing a clearer understanding of the pervasive nature of coercive control, Australians would be better able to recognise that there may not be periods where abuse ceases and women can realistically contemplate leaving (Elliott, 2017).

KEY CONSIDERATION 1:

Harmonise definitions of domestic and family violence and its relationship to coercive control

Responding to coercive control more effectively requires a consistent definition of DFV across legislative and policy settings, Australia-wide. The system-wide harmonisation of definitions of DFV across Australia has been recommended for a considerable length of time, including by the National Council in its report *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children 2009–2021* (Commonwealth of Australia, 2009). This revision needs to define DFV as encompassing a wide range of behaviours, paying particular attention to non-physical tactics, to help address the over-reliance on hierarchies of violence. The infrastructure to measure the success of this work is already in place, with survey instruments such as NCAS set up to monitor shifts in Australian attitudes to violence against women. The revised definition of DFV must set the context for how to understand coercive control—that is, as a gendered, overarching context for DFV behaviours, rather than a tactic or an example of a DFV behaviour. This would address some of the issues created by varying definitions of DFV in Australian legislation, which are set out below.

DEFINITIONS OF DOMESTIC AND FAMILY VIOLENCE IN AUSTRALIAN LEGISLATION

Australia’s DFV legislation has prioritised the safety, protection and wellbeing of victims/survivors and their children via the provision of civil domestic violence protection orders (these have different names in different jurisdictions). Orders can be applied for by the victim/survivor, or on their behalf by police. These extraordinary powers given to police were designed to overcome the “gendered dynamics of power and control in couple relationships” (coercive control) by allowing police to act in the interests of the woman’s safety, even against her wishes (Nancarrow, Thomas, Ringland, & Modini, 2020, p. 47). Domestic violence protection orders are a hybrid civil/criminal response: contravention of the order is what draws offenders from civil law into the criminal justice system, which has a focus on deterring or, as required, punishing antisocial acts (Douglas & Fitzgerald, 2018).

The 2010 Inquiry into family violence, jointly conducted by the Australian Law Reform Commission (ALRC) and the NSW Law Reform Commission (NSWLRC), recommended that domestic violence be contextualised as “violent or threatening behaviour, or any other form of behaviour that coerces or controls a family member or causes that family member to be fearful” (ALRC & NSWLRC, 2010, p. 246). This definition—while not entirely faithful to Stark’s (2007) gendered notion of coercive control—was adopted into the *Family Law Act 1975* (Cth) in 2011. The Act then lists examples of this behaviour, which include assaults, stalking, denying financial autonomy and repeated derogatory taunts (*Family Law Act 1975* [Cth], s 4AB).

The definition places coercive control as an overarching context for abuse, framing family violence as behaviour that coerces or controls a family member, or which causes that family member to be fearful (*Family Law Act 1975* [Cth], s 4AB). As Nancarrow (2019, p. 80) explains, the “definition in the *Family Law Act 1975* requires coercive control or fear to establish various behaviours as family violence”, and in doing so, it purposefully excludes interpersonal violence or abuse that is not intended to dominate and control and which may be characterised as fights. This is significant because of its potential to avoid inappropriate application of the quasi-criminal domestic violence law, disproportionately affecting women and especially Aboriginal and Torres Strait Islander women (Nancarrow, 2016, 2019; Nancarrow, Thomas, Ringland, Modini, 2020).

Despite the Commissions’ recommendation and the clear construction of the definition of DFV in the *Family Law Act 1975* (Cth), civil law definitions of DFV continue to vary across states and territories. Some jurisdictions, including Victoria and Queensland, have opted to directly “include coercive control and fear in a list of behaviours, as opposed to viewing it as an overarching context for abuse” (Backhouse & Toivonen, 2018, p. 2). The Victorian *Family Violence Protection Act 2008*, for example, recognises that family violence can involve coercion and emotional, psychological and economic abuse, as well as patterns of abuse over an extended period. By not making coercion and control a context for DFV, this Victorian Act paves the way for the misidentification of the person most in need of the future protection of the law, which the Women’s Legal Service Victoria (WLS Vic; 2018) reports is occurring. The tendency of police to consider whomever calls them first as the victim can be weaponised by DFV perpetrators as a form of systems abuse. This makes women who use violence in response to patterns of coercive and controlling behaviours vulnerable to being misidentified as the perpetrator and pulled into the criminal justice system via perpetrators calling the police (WLS Vic, 2018). This sits in contradiction to the stated purpose of the Act.

In Queensland, the preamble of the *Domestic and Family Violence Protection Act 2012* (Qld) states that domestic violence “usually involves an ongoing pattern of abuse over a period of time”, while s 8 states:

Domestic violence is behaviour perpetrated by one person against another, where two people are in a relevant relationship, which is: physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening; coercive, or in any other way controls or dominates the victim and causes the victim to fear for their own, or someone else’s, safety and wellbeing.

In this construction, controlling and coercive behaviours are part of a list of tactics rather than the overarching context required to consider these behaviours as DFV. This allows physically abusive behaviours—like violence during couple fights—occurring outside of an overarching strategy of control and coercion to be legitimately called DFV (Nancarrow, 2019).

In New South Wales, DFV is covered by the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) that is another hybrid criminal and civil law response, setting out both offences and protection orders

relating to people in intimate relationships. While there is no specific mention of, or offence relating to coercive control, s 9(3)(d) of the Act states that DFV “extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years”. This Act criminalises stalking and intimidation with courts to pay regard to patterns of behaviour, so it is arguable that in this state, some (but not all) aspects of coercive control are already criminalised. This was also the view of the ALRC and NSWLRC. Their final report also questioned whether an offence of economic abuse was necessary given the scope of existing laws prohibiting fraud, causing financial disadvantage and undue influence (ALRC & NSWLRC, 2010). The Commissions instead recommended that economic abuse “be expressly recognised in the definitions of family violence in the family violence legislation of each state and territory”, necessitating amendments to family violence legislation in New South Wales, Queensland and Western Australia (ALRC & NSWLRC, 2010, p. 238).

KEY CONSIDERATION 2:

Build the evidence base on the effectiveness of criminalisation and other responses to coercive control

There is limited evidence on the success of criminal justice approaches to tackling coercive control, both in Australia and internationally. While coercive control has been identified as underpinning DFV for a considerable length of time (see for example Dobash & Dobash, 1979; Herman, 1992; Pence & Paymar, 1993; Jones, 1994), it is only in recent years that a number of international jurisdictions have begun criminalising it (Douglas, 2018; McMahon & McGorrrery, 2020). Coercive and controlling behaviour that deprives the victim/survivor of her liberty and autonomy is addressed in legislation in England and Wales and, more recently, in the Republic of Ireland and Scotland. Some international jurisdictions, including the United States, have considered criminalisation but have not taken it up. All international legislation draws upon Stark’s (2007) model of coercive control as a liberty crime, and aims to move from incident-based conceptualisations of IPV toward criminalising a course of conduct that denies victims/survivors their autonomy and liberty (Nancarrow, in press).

“All international legislation draws upon Stark’s (2007) model of coercive control as a liberty crime, and aims to move from incident-based conceptualisations of IPV toward criminalising a course of conduct that denies victims/survivors their autonomy and liberty.”

(Nancarrow, in press)

Most Australian jurisdictions do not directly make DFV an offence; rather, they employ existing criminal offences—assault, indecent

assault, rape, sexual assault, attempted murder, stalking, intent to do grievous bodily harm—to deal with incidents of DFV behaviour as they occur. Sometimes the context of DFV is considered to aggravate such offences. For example, when assault is committed against a family member in South Australia, s 5AA of the *Criminal Law Consolidation Act 1935* (SA) dictates that it is an aggravated offence that attracts a more severe penalty. Preceding the more recent wave of international jurisdictions criminalising coercive control, in 2004 Tasmania criminalised emotional abuse/intimidation and economic abuse, which represented a shift away from only criminalising physical behaviours that can be employed in DFV.

Multiple Australian jurisdictions have conducted reviews considering the utility of a specific DFV or coercive control offence and have recommended against implementation, opting instead to make improvements to the existing system. In Queensland, the *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* report found that difficulties in prosecuting DFV offences using existing *Criminal Code Act 1899* (Qld) provisions would not be solved by the creation of an additional offence, because the issues related more to problems with evidence gathering, witness cooperation, police practice and court processes (State of Queensland, 2015). It was the view of the Victorian Royal Commission into Family Violence that a new offence of coercive control would only have “a symbolic effect”, as laws are only as “effective as those who enforce, prosecute and apply them”; instead it recommended practice improvements to the existing legislative system “through education, training and embedding best practice and family violence expertise in the courts” (State of Victoria, 2016, p. 27).

Stark (2020) explains that while the creation of a specific offence might be included as part of improving our response to DFV, success relies upon the adoption of a comprehensive coercive control framework, where the legislation is implemented in a way consistent with the meaning of the concept. Stark (2020, p. 35) also cautions against the wholesale adoption of even a well-crafted offence from another international jurisdiction, as it risks

prematurely fixing a statutory gaze on a crime about which relatively little is known and where the government has little direct experience in ways that foreclose the institutional learning that is essential.

This does not prevent or negate the need to gather a global evidence base on the progress and implementation of coercive control and domestic abuse offences in other jurisdictions. This task was recommended by the NSW DVDRT in its 2017–19 report, and accepted in July 2020 by the NSW Attorney-General and Minister for the Prevention of Domestic Violence, Mark Speakman (Speakman, 2020). Monitoring should include quantitative measures of successful prosecutions under the offence, as well as examination of qualitative improvements in attitudes to violence against women, such as those measured by NCAS.

The sections below outline the evidence from four jurisdictions that have implemented offences designed to criminalise domestic abuse or coercive control, or criminalise non-physical tactics of DFV.

TASMANIA

In 2004, the Tasmanian Government passed the *Family Violence Act 2004* (Tas) and introduced two new criminal offences—economic abuse (s 8) and emotional abuse (s 9)—which are not criminalised in other Australian jurisdictions. These new offences were part of a broader overhaul of legislative and systemic change in Tasmania designed to respond to critique about the way the criminal justice system responded to DFV (Barwick, McGorrrery, & McMahon, 2020; Wilcox, 2007). The Act broadened the definition of family violence to include assault, sexual assault, threats, coercion, intimidation or verbal abuse, abduction, stalking and bullying, economic abuse, emotional abuse, contravening a family violence order (FVO) and damage to property by a spouse or partner. It was implemented alongside the Safe at Home policy, a whole-of-government approach that sought to integrate criminal justice responses to family violence (Department of Justice, Government of Tasmania, 2003). Safe at Home is a pro-arrest and pro-prosecution policy with victim safety as the overarching goal. The Department of Justice is the lead agency and police intervention is the entry point for victims and families to receive a coordinated response.

For economic abuse, the *Family Violence Act 2004* (Tas) states a person must not intentionally and unreasonably control or intimidate their partner or cause their partner mental harm, apprehension or fear by pursuing a course of conduct through a number of actions related to economic abuse (s 8). These include coercing a partner to relinquish control of assets or income, preventing their equal participation in decisions over household expenses or disposal of shared property, denying them access to joint funds to pay household expenses, and withholding reasonable financial support necessary to maintain themselves or a child. There are various challenges in prosecuting economic abuse, such as proving intent to cause harm (Wilcox, 2007). Economic abuse may be perpetrated in different ways—for example, it can occur sporadically or over a cycle longer than a year (the initial statutory period of the offence was six months, amended to 12 months in 2015)—and proving a “course of conduct” may be difficult (Barwick et al., 2020). Between 2004 and 2017, five cases of economic abuse had been prosecuted, and in all of these cases the offender was also charged with emotional abuse (Barwick et al., 2020).

For emotional abuse, s 9 of the *Family Violence Act 2004* (Tas) states a person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her partner. The Act specifies that course of conduct covers restricting freedom of movement by threats or intimidation. The scope of the offence is broad, because it includes behaviour which the perpetrator knew or “ought to have known” would cause harm. The offence does not require the prosecution to prove actual harm caused, rather the likelihood of causing harm (McMahon & McGorrrery, 2016). The limitations to the structure of the offence include the word “unreasonably” which, as with the economic abuse offence, implies the possibility that some behaviour that is controlling or intimidating in relationships is “reasonable”. The offence also requires multiple incidents of emotional abuse to meet the course of conduct occurring

within a 12-month statute of limitations (which again, was initially six months, extended to 12 months in 2015; McMahon & McGorry, 2016). In comparison to the economic abuse offence, the emotional abuse offence has been used more often, with 68 prosecutions between 2004 and 2017 (Barwick et al., 2020). To date all prosecutions of economic and emotional abuse in Tasmania have involved male offenders (Barwick et al., 2020).

While the economic abuse and emotional abuse offences have seen an increase in use, with a total of 198 charges to the end of 2019 (State Prosecution Services as cited in Women's Legal Service Tasmania, 2020), usage of these offences continues to be minimal in comparison to the number of family violence incidents recorded by police. For example, in 2015–16, there were 3,174 family violence incidents where charges were laid by Tasmania Police, but only a total of eight prosecutions for these offences (Department of Justice as cited in Barwick et al., 2020). Barwick et al. (2020) attributed these low numbers to limitations in police training and investigative practices, a lack of community awareness about forms of non-physical DFV, and the initial six-month statutory time limit on pressing charges. Drawing upon more recent research conducted by police prosecutor Kerryne Barwick, which indicates there are now more than 40 successful convictions, McMahon, McGorry, and Burton (2019) argue that the change in the limitation period is showing promising improvement to the usage of these offences.

As to the notion that legislative change creates social change, NCAS data relating to the Understanding Violence Against Women Scale (UVAWS), which measures knowledge about (or awareness of) non-physical forms of violence, confirm that while Tasmanian UVAWS scores have improved over the last three waves of the survey (2009–2017), all states and territories have also seen an improvement over this time period (Webster et al., 2017). There was no statistically significant difference between Tasmania's scores relating to understanding non-physical aspects of violence and those of other states in 2017 (Webster et al., 2017).

ENGLAND AND WALES

In 2015, the *Serious Crimes Act 2015* was implemented in England and Wales. This legislation introduced a new offence, in s 76, of "controlling or coercive behaviour in an intimate or family relationship". Prior to this, England and Wales had implemented civil laws and various reforms in regard to DFV. The legislative change came about after policy advocacy, influenced by Stark's work, led to a broad consultation process in 2014 (Weiner, 2020).

The Act states:

- A person (A) commits an offence if —
- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B. (*Serious Crimes Act 2015* [England/Wales], s 76)

The offence applies to people in intimate personal relationships, or those living together as members of the same family, or those who have previously been in an intimate personal relationship, excluding parent–child relationships where the child is under 16. "Serious effect" means that the offender causes the victim to fear, on at least two occasions, that violence will be used against them, or that the offender's behaviours cause the victim serious alarm or distress, which has a substantial impact on the victim's day-to-day activities (*Serious Crimes Act 2015* [England/Wales], s 76). It is important to note this legislation, relevant only to England and Wales, is intended to work alongside other laws that criminalise other forms of DFV.

With the offence only referring to non-physical coercive behaviour such as psychological or emotional abuse, there are limits to its application (Home Office, Government of the United Kingdom, 2015). Wiener (2020), for example, suggests the legislation uses too narrow an understanding of coercive control, and does not consider how different forms of abuse, including physical violence, can be used by perpetrators as a strategy for gaining and maintaining coercive control. "The end of the relationship" is also a legal boundary within this legislation, meaning the offence does not apply to couples who were previously in a relationship but no longer live together (*Serious Crimes Act 2015* [England/Wales], s 76). Weiner (2020, p. 170) argues that using separation "to determine whether the victim is experiencing 'harassment' under the *Protection from Harassment Act 1997* (UK) or 'controlling and coercive behaviour' contrary to section 76 makes little sense".

The strengths of the legislation include the way it refers to coercive and controlling behaviour that is repeated or continuous, which moves away from incident-focused behaviour to a "course of conduct" which requires proof of two or more specific incidents (Wiener, 2020). The legislation also enables courts to consider the power imbalance in relationships where coercive control is perpetrated (Wiener, 2020). There has been no formal evaluation of the impact of s 76 of the *Serious Crimes Act 2015* (England/Wales), however there is some evidence on how the legislation is being used. Barlow, Johnson, and Walklate (2018) analysed police responses to domestic violence cases in one police area from 2016–17. They found police used the offence at a low rate, and did not recognise coercive control as occurring in DFV cases that involved more traditionally recognised offences, such as those involving physical violence. Moreover, in police investigations of coercive control, the research showed police officers found it challenging to gather evidence of sustained coercive and controlling behaviours in victims'/survivors' statements and focused instead on isolated incidents, such as a physical assault. As a result there was a lower arrest and charge rate when compared to other domestic violence offences (Barlow et al., 2018).

REPUBLIC OF IRELAND

In 2018, the Republic of Ireland introduced an offence to respond to coercive control. The Irish definition of coercive control closely resembles the English and Welsh legislation described above (Bettinson,

2020). The offence is housed in s 39 of the *Domestic Violence Act 2018* (Ireland), which commenced in January 2019. This Act was a significant piece of legislative reform for both civil and criminal matters related to domestic violence. It brought together existing provisions on domestic violence under one piece of legislation in order to make it easier to use, and introduced a number of reforms, new offences and processes. These changes included safety orders being available to persons who are in intimate relationships but do not live together; criminalising forced marriage; providing the option for victims to give evidence in court via video link; and eight-day emergency barring orders to exclude a perpetrator of domestic violence from a home shared with the victim when there is an immediate risk of harm (Department of Justice, Government of Ireland, 2018).

Similar to the offence in England and Wales, the coercive control offence in Ireland refers to knowingly and persistently engaging in behaviour that is controlling or coercive and which a reasonable person would be likely to consider to have a serious effect on a relevant person. The Act applies to intimate relationships only (marriages, civil partners or partners who are not living together). This legislation requires the prosecution to prove that the defendant used coercive or controlling behaviour (Bettinson, 2020) but does not expand on the meaning of coercive or controlling behaviour. Accompanying government documents state the offence was intended to criminalise non-violent control (Dáil Éireann, 2018 as cited in Bettinson, 2020). Providing a more detailed or clearer definition within the legislation could strengthen understanding of how to apply the law. Moreover, as with the offence in England and Wales, this Irish offence does not cater for the way physical abuse can be used as a strategy to achieve and maintain coercive control.

Since the offence of coercive control in Ireland is relatively new, it is difficult to assess its impact. The first conviction occurred in February 2020, more than a year after the Act's commencement (Ireland's National Police and Security Service, 2020) and amid calls by police for more training on identifying and responding to coercive control under the new legislation (Lally, 2019).

SCOTLAND

Scotland also introduced legislation to address coercive control in 2018. While it does not directly mention the words "coercive control", the *Domestic Abuse Act 2018* (Scotland) differs from the English and Welsh legislation by recognising the gendered pattern of abuse, making it more faithful to its foundations in Stark (2007; Walklate & Fitz-Gibbon, 2019). This Act also includes ex-partners in its remit, recognising the way that abuse can continue after separation and can take time to recognise, recover from and report. Stark has publicly referred to the Scottish Act as "a new gold standard" (Brooks, 2018; Stark, 2020). Scottish law is underpinned by "the '4Ps' approach to combatting domestic abuse: *protection* (legal remedies); *provision* (effective service delivery); *prevention* (stopping domestic abuse and reducing reoffending); and *participation* (by people who have experienced domestic abuse)" (Scottish Government and Convention

of Scottish Local Authorities, 2009 as cited in Scott, 2020, p. 181, emphases added). The Act also recognises that children witnessing DFV levelled against one of their parents are co-victims experiencing DFV in their own right.

One of the key features of the Scottish legislation is that it was co-designed with victims/survivors, including a coalition of children's charities and women's charities (Scott, 2020). This coalition was able to lobby for changes that helped to bridge the gap between criminal and civil (family law) proceedings, where sheriffs make contact decisions with little to no information about the behaviour of the offending parent. As Scott (2020, p. 188) explains:

Creating a status for children as co-victim with the non-offending parent offered the opportunity to ensure that abusive behaviours discussed in criminal cases where children were victims would have to be raised in linked civil cases where child contact discussions were being made.

The level of consultation—described as "an unprecedented amount of engagement with stakeholders"—has resulted in an Act that attempts to minimise adverse impacts to victims/survivors (Scott, 2020, p. 190). For example, by moving the focus of the prosecution from proving harm was suffered by the victim/survivor to proving that the behaviour was likely to cause either physical or psychological harm to the particular victim/survivor, the Act attempts to shift the focus from the victim/survivor to the perpetrator's behaviour (Scott, 2020). As laws are interpreted by courts and legal actors, whether this intended pivot to the perpetrator translates into court experience having less of a re-traumatising effect on victims/survivors remains to be proven.

With the Scottish Act only coming into force in April 2019, and Scottish Parliament committing to report on progress three years after implementation, it is hard to measure success at this time (Scott, 2020). Anecdotally, the BBC reports that in the first three months of the legislation, 400 crimes were recorded by Police Scotland, who began training 18,500 officers and staff online, and 7,500 in person, in December 2018—before the law came into force—to achieve this outcome. Of those 400 crimes, the BBC reports that 190 cases were referred to the Crown Office and Procurator Fiscal Service (less than 50%), with just 13 successful convictions ("New domestic abuse laws: More than 400 crimes recorded", 2019).

KEY CONSIDERATION 3:

Reform the culture of response to domestic and family violence in and around the legal system

Reforming the culture of response to DFV in and around the legal system is essential to improving our response to coercive control. Walklate, Fitz-Gibbon, and McCulloch (2018), who disagree that "more laws" are the answer, believe it will take significant reform of the

legal system before a coercive control offence could be meaningfully applied, and instead suggest it might be helpful for experts to explain the concept of coercive control in trials. The necessity of transforming legal understandings of coercive control is further evidenced in research by Tarrant, Tolmie, and Giudice (2019, p. 19), which highlights court (mis)conceptions that contextualise IPV as a “bad relationship with incidents of violence”. This evidence suggests that a way of rendering visible patterns of harmful behaviour is through the use of a social entrapment framework (Tarrant et al., 2019). A social entrapment analysis of IPV involves scrutiny at three levels:

1. documenting the full suite of coercive and controlling behaviours
2. examining the responses of family, community and agencies
3. examining structural inequities.

A social entrapment framework can help to integrate different kinds of evidence of disadvantage and barriers to help-seeking to better understand the actions of a person experiencing coercive control (Tarrant et al., 2019). This is critically important for women who fight back and aren’t “typical” or “ideal” victims—a group disproportionately made up of Aboriginal and Torres Strait Islander women (Douglas & Fitzgerald, 2018; Nancarrow, 2019). The ANROWS evidence produced by Tarrant et al. (2019) has informed new provisions (ss 37–39) in the *Western Australian Evidence Act 1906* via the *Family Violence Legislation Reform Act 2020* (WA) that gained assent on 9 July 2020. Legislating a social entrapment framework, and training all actors in and around the legal system in DFV and coercive control, would aid recognition of non-physical forms of violence as part of a strategic course of conduct to remove the woman’s autonomy.

For other experts, like Goodmark (2018), the criminal law system has failed to sufficiently deter intimate partner violence. Goodmark purports that the harms of criminalisation are so significant they “justify abandoning the use of the criminal legal system in cases of intimate partner violence” (2018, p. 12). Goodmark proposes a balanced approach that would, in general, see funds shifted away from courts, police and prosecutors and redirected into programmatic controls in communities and NGOs, under the consultation and guidance of victims/survivors (Goodmark, 2018). Nancarrow (2019) also makes a case for evidence-based justice reinvestment initiatives, with a focus on the particular case of Indigenous women. There is no doubt that, as coercive control is entrenched in gendered and sexual inequality, responding to it will require broad changes across a wide range of social, cultural and legal norms (Buzawa et al., 2017; Walklate et al., 2018).

Addressing coercive control will require effective cross-sector collaboration between a wide range of sectors and actors, including service providers, governments, and justice and health systems (Elliott, 2017). The need for a whole-of-system response to DFV is consistently repeated across the body of ANROWS research, with recommendations outlined in more detail in *Working across sectors to meet the needs of clients experiencing domestic and family violence* (ANROWS, 2020). Specific areas that the evidence identifies as requiring improvements to culture and collaboration in and around the legal system are outlined below.

REDUCE OPPORTUNITY FOR SYSTEMS ABUSE

That some offenders use the court and other processes to inflict more harm on victims—termed “systems abuse”—is well established in the literature, with concern expressed by both victims/survivors (Kaspiew et al., 2017) and the service providers working with them (Cortis & Bullen, 2016). The requirement that a specific offence of coercive control be proved to a criminal standard by referring to the psychological dimensions of the abusive relationship inside our adversarial legal system may expand opportunities for systems abuse by the perpetrator (Walklate et al., 2018). With coercive control involving uniquely tailored tactics that are developed over time by trial and error by the aggressor (Tarrant et al., 2019), it is likely that perpetrators will be able to wield them undetected in legal settings. Some of these behaviours can be subtle, and can appear non-violent to an observer: “It reached the point where it was enough for him to give her a ‘look’ and she became extremely scared and would do as he wanted (Tr, p. 1096)” (Tarrant et al., 2019). When perpetrators are enabled to commit systems abuse unchecked, the legal system is “operating, in effect, as a secondary abuser” (Douglas, 2018, p. 94).

Reducing opportunity for systems abuse would include, for example, legal actors recognising that making legal applications is not itself a neutral behaviour, and factoring this understanding into decisions relating to adjournment applications, cross-applications for protection orders, rejecting subpoenas and allowing matters to proceed (Douglas, 2018). This would include, for example, legal actors recognising ... decisions relating to adjournment applications, cross-applications for protection orders, rejecting subpoenas and allowing matters to proceed (Douglas, 2018). The impact of failing to address existing, and future, opportunities for systems abuse while creating new offences means a wider cohort of victims/survivors will be re-traumatised by their interactions with the legal system. Existing evidence already expounds that women are frequently not believed or supported when reporting abuse by an ex-partner and are often worse off financially and psychologically for their contact with the legal process (Salter et al., 2020). Feeling disempowered by the justice system can be a substantial barrier to future help-seeking, and sits at odds with trauma-informed responses that seek to reaffirm women’s agency and autonomy after IPV (Salter et al., 2020).

RESPOND TO DIVERSITY BETTER

While gender inequality is a primary driver of patriarchal coercive control against women, other forms of structural inequality and transphobia, can also be used to perpetrate violence against women. When these forms of systemic social, political and economic discrimination and disadvantage influence and intersect with gender inequality, they can, in some cases, increase the frequency, severity and prevalence of violence against women (Elliott, 2017). When designing systemic change to address coercive control, it is important to think about the ways that these changes will impact women who experience multiple, intersecting forms of structural disadvantage. Nancarrow (2019), who

agrees that achieving gender equality is significant in reducing coercive control, points out that achieving gender equality in the absence of racial equality is unlikely to have a significant impact on rates of violence against Aboriginal and Torres Strait Islander women, for example.

Having a singular focus on a criminal justice approach to addressing

When designing systemic change to address coercive control, it is important to think about the ways that these changes will impact women who experience multiple, intersecting forms of structural disadvantage.

coercive control may exclude groups of women who already face barriers to accessing justice when compared with other women. These barriers sit in addition to the difficulties women already face when reporting IPV, even for acts (usually physical) that meet the criteria for existing offences—women are still often met with failures by police and prosecution to enforce the law, and face difficulties relating to meeting the burden of proof (Tolmie, 2018). As Walklate and Fitz-Gibbon (2019, p. 102) point out, “the creation of a new offence does not deal with any of the well-documented concerns women have for not engaging with the criminal justice process”. These issues point to the need for extensive cross-sector consultation with diverse groups of women and the service providers they engage with to precede any systemic change to addressing coercive control, as well as particular consideration of approaches that are not centred solely on criminal justice.

RESOURCE AND SUPPORT PATTERN-BASED POLICING

Responding to coercive control will require police, who act as gatekeepers to the justice system (Salter et al., 2020), to move from incident-based policing to investigative policing that carefully considers patterns of behaviour. Some experts question the extent to which frontline general duties police officers can, or should be expected to be able to, understand the complexities of coercive control (Walklate et al., 2018). Implementing legislative change in this area would essentially rely upon the

police officer’s ability to identify the potential presence of coercive and controlling behaviour, elicit information on a series of abusive events from the victim and correctly assess that behaviour, in terms of laying charges. (Walklate et al., 2018, p. 121)

Multiplied across the number of domestic violence incidents police record—in New South Wales alone, this was 31,692 between July 2019 and June 2020 (NSW Bureau of Crime Statistics and Research, 2020)—it is questionable whether police are resourced and skilled, with sufficient time and expertise, to make this labour-intensive approach viable.

Recently published research, *Accurately Identifying the “Person Most in*

Need of Protection” in Domestic and Family Violence Law (Nancarrow et al., 2020), sheds more light on systems abuse and coercive control by looking at the misidentification of the aggrieved and respondent in cases of DFV. This research highlights that policing tends to be incident-based and retrospective, rather than pattern-based and future-focused (Nancarrow et al., 2020). This means that police often make fast assessments on who is the primary aggressor in a single incident, rather than considering the pattern of behaviour carefully and protecting the person most at risk of future harm (Nancarrow et al., 2020). From a policy standpoint, while all Australian jurisdictions have tools to assess risk, no jurisdiction currently has tools to help police assess patterns of coercive control that would detect which party is the perpetrator, and which party is using violent resistance to ongoing abuse (Nancarrow et al., 2020). This research also supports policing and investigation models that include specialist DFV units and co-responder models where specialists with expertise in coercive control accompany police at investigations, or otherwise support police assessments (Nancarrow et al., 2020). Reforming the way police respond to DFV has utility whether or not we adopt additional criminal offences.

Reforming the way police respond to DFV has utility whether or not we adopt additional criminal offences.

Summary

The debate in Australia around coercive control is primarily focused on criminalisation, however criminalisation alone cannot provide the nuanced response needed to address the complexities and specifics of coercive control. Definitional consistency of DFV across policy and legislation, in all Australian jurisdictions, is fundamental to setting the context for understanding coercive control, and efforts to prevent and respond to it. Legislative change cannot on its own transform the culture of response to DFV within and around the legal system. Effective training, models of co-response and justice reinvestment are all potential avenues that would support effective responses to coercive control. In light of these three key considerations, ANROWS makes the following recommendations.

Recommendations

KEY CONSIDERATION 1:

Harmonise definitions of domestic and family violence and its relationship to coercive control

RECOMMENDATION 1:

Implement system-wide harmonisation of the definition of domestic and family violence (DFV), including clearly defining the relationship between coercive control and DFV in all policy and legalisation settings, with sector-wide consultation to ensure the most accurate definition possible.

RECOMMENDATION 2:

Fund the National Community Attitudes towards Violence against Women Survey, implemented by ANROWS, beyond 2022 to monitor progress and enable continued improvement in policy and programs aiming to reduce and prevent violence against women and their children.

KEY CONSIDERATION 2:

Build the evidence base on the effectiveness of criminalisation and other responses to coercive control

RECOMMENDATION 3:

Fund research to monitor the progress and implementation of coercive control and domestic abuse offences in other jurisdictions, including unintended consequences. This should include quantitative measures of successful prosecutions under the offences, as well as examination of qualitative improvements in attitudes to violence against women, such as those measured by the National Community Attitudes towards Violence against Women Survey.

KEY CONSIDERATION 3:

Reform the culture of response to domestic and family violence in and around the legal system

RECOMMENDATION 4:

Improve police and all legal actors' understanding of DFV as involving behaviours that occur within a strategic context of coercive control.

RECOMMENDATION 5:

Strengthen systemic change to better address coercive control with extensive cross-sector consultation with diverse groups of women and the service providers they engage with, carefully considering alternatives to criminal justice approaches.

RECOMMENDATION 6:

Create a tool to help police assess patterns of coercive control that would detect which party is the perpetrator, and which party is using violent resistance to ongoing abuse.

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ACKNOWLEDGEMENT OF COUNTRY

ANROWS acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal

and Torres Strait Islander Elders past, present and future, and we value Aboriginal and Torres Strait Islander histories, cultures and knowledge. We are committed to standing and working with Aboriginal and Torres Strait Islander peoples, honouring the truths set out in the [Warawarni-gu Guma Statement](#).

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YourSay consultation results

Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021

The Government received a substantial number of responses to its consultation on the *Criminal Law Consultation (Abusive Behaviour) Amendment Bill 2021*.

Overall response

Respondents – many of whom are survivors of abuse - generally thought the Bill recognises serious abusive behaviours that are not currently covered by the criminal law.

Most people thought criminalisation was a good way to address the issue.

Respondents felt the Bill would be judged on its implementation and supporting measures, noting the difficulty in obtaining evidence of the offending. Supports for victims, so they felt confident in speaking out and reporting matters, was seen as a high priority, which would require programs to help people working in the justice system understand and identify domestic abuse and coercive control, and to understand the effects of trauma. It will also need to be accompanied by community awareness programs and education on coercive control.

Technical issues

There was concern that the definitions were too general, and more precise definitions were needed to cover the broad range of ways in which this abuse may occur.

As a result, the scope of abusive behaviour was expanded to cover a range of behaviours, including harassing

behaviours, online stalking, control of diet, threats to harm animals, and removing access to support services (such as disability support services).

In response to other concerns, amendments were made to the nature and operation of the available defences, including the removal of a defence of consent.

Respondents also noted that victims of abuse may be impacted by abusive behaviour in different ways.

Many were of the view that the offences detailed could be applied in relationships outside the family context, and could be present in other dependent relationships.

A number of submissions also highlighted the importance of protecting children from witnessing or being exposed to this kind of abusive behaviour.

PATHWAYS TO SAFETY

The case for a dedicated First Nations
Women's National Safety Plan -
written *by* Aboriginal and Torres Strait
Islander women, *for* Aboriginal and
Torres Strait Islander women.



**CHANGE
THE RECORD**

Smarter Justice. Safer Communities.

About Us

Change the Record is Australia's only national Aboriginal led justice coalition of Aboriginal peak bodies and non-Indigenous allies. We work to end the incarceration of, and family violence against, Aboriginal and Torres Strait Islander people. Everything we do is strength-based, culturally focused and grounded in Aboriginal and Torres Strait Islander self-determination and rights.

The National Family Violence Prevention and Legal Services Forum is the peak body for fourteen Family Violence Prevention Legal Service (FVPLS) member organisations across Australia that provide holistic, specialist, culturally safe legal and non-legal supports to Aboriginal and Torres Strait Islander people experiencing or at risk of family violence – predominantly women and their children.

This report is heavily informed by the work and submissions of Family Violence Prevention Legal Services, and we thank and celebrate them.

We draw substantially on the landmark whole-of-life Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report led by Social Justice Commissioner June Oscar AO, and research from Australia's National Research Organisation for Women's Safety, ANROWS.



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Executive Summary

A self-determined National Women's Safety Plan

For 233 years, Aboriginal and Torres Strait Islander women have endured and resisted colonisation, dispossession, exploitation and systemic cultural, spiritual, physical, sexual and emotional violence. The effects of historic and ongoing colonisation, racism, displacement from Country, intergenerational trauma, criminalisation, economic exploitation and fracturing of families through child removal reverberate through communities.

Successive governments' failures to address and redress these injustices sees us experience violence at starkly disproportionate rates. Nationally, Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised due to family violence than non-First Nations women, 10 times more likely to die due to assault, and 45 times more likely to experience violence. [1] This is a national crisis which demands a self-determined, community-led response by and for Aboriginal and Torres Strait Islander women.

In September 2021 the Australian government hosted the Women's Safety Summit, with a goal of establishing a new National Plan to End Violence Against Women and their Children. Previous National Plans have not centred our voices and needs and the needs of our children. They have failed to reduce family violence against Aboriginal and Torres Strait Islander women. It's long been clear that top-down, government responses to family violence make things worse, not better, for First Nations women, children and communities.

Aboriginal and Torres Strait Islander women know the causes of and solutions to the challenges we and our sisters, brothers, children and communities face. After dedicated advocacy by Aboriginal and Torres Strait Islander women and Family Violence Prevention Legal Services (FVPLS), the Australian government agreed to a key demand – a dedicated National Plan for Aboriginal and Torres Strait Islander women and children. [2]

In this report Change the Record and the National Family Violence Prevention Legal Services Forum (the Forum) expand on our call [3] for a genuinely self-determined National Plan to implement community-led responses to violence against Aboriginal and Torres Strait Islander women and children. We call on the Australian government to respect and follow the expertise and leadership of First Nations women and communities and guarantee the resources and decision-making power required to end violence against Aboriginal and Torres Strait Islander women and children.

Aboriginal and Torres Strait Islander women's experiences of violence and the barriers we face in accessing support are the products of intersecting systemic government failures. In this report we discuss how the responses of colonial, mainstream institutions to violence and disadvantage in our communities are failing, endangering and retraumatising First Nations women and children.

We consider the inappropriateness of police as the first point of contact for Aboriginal and Torres Strait Islander women experiencing violence, and examine barriers to reporting such as distrust of the state, lack of cultural competence and safety in mainstream services, fear of child removal, and fear of social and cultural isolation and economic precarity. We look at links between family violence and the disproportionate incarceration of Aboriginal and Torres Strait Islander women, and call for investment in support and services for incarcerated women.

We call for greater investment in community-based solutions that have been shown to work time and time again, and we call for secure and adequate resourcing for community-controlled services that have expertise, knowledge, cultural legitimacy and the trust of communities. We explore the work of FVPLS, which include safety interventions that do not rely on police, and culturally-safe prevention, early intervention and men's behaviour change programs.

We also call for systemic, whole-of-community reforms to keep women safe. Financial insecurity and inadequate housing create cycles of disadvantage, trapping women and children in unsafe situations. The highly conditional and discriminatory social security system drives our families into poverty. Governments have failed to live up to their responsibilities to deliver our people access to a liveable social security safety net, safe and appropriate housing, access to healthcare and culturally appropriate services, and supports for people with disability to live safely and with dignity. The National Safety Plan must include commitments to genuinely nurturing and just social policy aimed at ensuring everyone's social and economic rights are upheld.

Progressing a dedicated, self-determined National Safety Plan for Aboriginal and Torres Strait Islander women is an opportunity for governments to make good on their declarations of support for ending the disproportionate impact of family violence on First Nations communities. With Aboriginal and Torres Strait Islander women in the driver's seat, we will make sure First Nations families, children and communities are strong in our culture and Country, safe and thriving.

Recommendations

1. At all stages in developing the National Safety Plan and policy responses that affect First Nations women and children, prioritise the leadership, expertise and solutions of Aboriginal and Torres Strait Islander women and community-controlled services and organisations.
2. Increase investment in early intervention and prevention and ensure First Nations women have equal access to support whether they live in the city, towns or bush.
3. Increase investment into Family Violence Prevention and Legal Services to match demand and geographical spread, and fund our peak body the National Family Violence Prevention and Legal Services Forum.
4. Expand victim-survivor choice and control through expanded pathways for support and accountability beyond police and criminal courts, including referral to FVPLSs.
5. End the criminalisation of and over-incarceration of Aboriginal and Torres Strait Islander women, including by implementing the recommendations of Change the Record and the Human Rights Law Centre's 'Over-represented and Overlooked' report.
6. End the threat of child removals and establish a nationally consistent, mandatory Aboriginal and Torres Strait Islander child protection notification and referral system to keep families together.
7. Ensure better support for people with disability, including support to live on Country in safety and dignity.
8. Invest in culturally appropriate and community-controlled mental health and alcohol and drug treatment services.
9. Invest in evidence-based, culturally-tailored men's behaviour change programs that promote and enhance safety.
10. Resource Aboriginal community-controlled organisations to collect, own and analyse their own data to inform solutions to violence and disadvantage, and to evaluate what strategies and programs work for us.
11. Increase social security payments to ensure no one lives in poverty and remove barriers to access to payments, including partner and parental income and asset tests.
12. End welfare conditionality, including mutual obligations, compulsory income management and ParentsNext.
13. Implement economic development and poverty reduction strategies designed by Aboriginal and Torres Strait Islander people, and supported by governments, to increase employment opportunities in communities.
14. Increase funding and resourcing for community-controlled specialist homelessness services for Aboriginal and Torres Strait Islander women and children.
15. Invest in culturally appropriate, community-controlled, safe, long-term affordable housing options for women and families in cities, towns and the bush.

Introduction

Nothing about our mob, without our mob.

Recommendation: At all stages in developing the National Safety Plan and policy responses that affect First Nations women and children, prioritise the leadership, expertise and solutions of Aboriginal and Torres Strait Islander women and community-controlled services and organisations.

The drivers of violence against Aboriginal and Torres Strait Islander women require specific responses. Violence against Aboriginal and Torres Strait Islander women is perpetrated by both First Nations and non-First Nations men. Often, it “cannot be addressed as an isolated issue but needs to be understood in the whole context of all the other issues that community members are facing...such as intergenerational trauma and its many manifestations, and alcohol use.” [4] Additionally, the experience of family violence for Aboriginal and Torres Strait Islander women is also shaped by our experiences of “multiple, rather than singular, forms of domination, coercion, and conflict” [5] including the ongoing impacts of colonisation and dispossession. In this way both the drivers of violence and the impacts of family violence on Aboriginal and Torres Strait Islander women require specific solutions.

Aboriginal and Torres Strait Islander women and services know what these solutions are. In some communities we are already deploying them. In others, we lack the funding or resourcing to implement the strategies that we know work. ANROWS has documented some of the innovative strategies that First Nations women are using to tackle violence and keep us safe.[6] For example, the Kullarri Patrol in Broome is often used as an alternative to police and intervenes, deescalates and prevents family violence. In Fitzroy Crossing, our FVPLS is located within the Marninwarntikura Fitzroy Women’s Resource Centre. This is a multi-agency hub that brings together crisis support and accommodation with legal assistance, counselling and provides long term stability and casework for women. It also engages with men who want to address problems with alcohol.[7] The desire for the engagement of men in strategies for prevention, early intervention and responding to family violence is “a noticeable departure from the Western mainstream response [and] was the consistent call from women that our men need healing.” [8]

Case Study: *"The Uti Kulintjaku Watiku (UKW) Men's project is an Anangu-led initiative. It brings together a team of respected senior and younger Anangu men and non-Indigenous health professionals to focus on family violence prevention. The UKW project uses a trauma-informed approach to deliver and create innovative, place-based workshops and resources.*

The UKW project is grounded in a strong belief of Anangu culture and knowledge, and an ability to listen, understand and think clearly to find ways forward. It creates opportunity for a shared bi-cultural understanding of trauma, harmful behaviours, and healing from trauma...The UKW project sits alongside an increasing number of innovative community-led, holistic and trauma- informed programs within Aboriginal and Torres Strait Islander communities. Many such programs struggle to obtain sustainable funding, despite being aligned with current national strategies related to Indigenous family violence prevention.” [9]

Social Justice Commissioner June Oscar’s groundbreaking whole-of-life report Wiyi Yani U Thangani (Women’s Voices): Securing our Rights, Securing our Future documents the extensive calls from women and girls to be part of designing the solutions to violence in their communities. They call for safe houses, more affordable housing, men’s healing programs, activities and programs for children and young people, services to treat addictions and investment in FVPLS.

As it is in the broader community, family violence in Aboriginal and Torres Strait Islander communities is gendered. Our focus in this paper is on women’s experiences of family violence as the vast majority of victim-survivors within First Nations communities. While it’s outside the scope of this report, we are conscious of the need for better, tailored support for LGBTQIA+ peoples experiencing family violence and support calls for much better data collection on intersectional queer experiences of violence and disadvantage. We also recognise that men can be victim-survivors of family violence and their needs must not be overlooked. Our focus on Aboriginal and Torres Strait Islander women who experience violence at the hands of men is not intended to erase the experiences of other victim-survivors, but rather reflects our concern that the overwhelmingly gendered nature and impacts of family violence must be a central consideration in strategies and frameworks designed to address family violence in First Nations communities.

For a National Safety Plan to work for Aboriginal and Torres Strait Islander women, it must be self-determined, First Nations-led and driven by on-the-ground expertise and lived experience. Tragically, as rates of domestic violence escalate around the continent, the last 12-year National Action Plan has been a failure for all women, but particularly Aboriginal and Torres Strait Islander women. We need new strategies, adequate funding and an end to the policies that are harming First Nations women.

As the Wiyi Yani U Thangani report makes clear: [10]

“Women and girls have asserted that combating inequalities is fundamentally about self-determination in designing the policies and programs that respond and prevent these harms— harms which have their root causes in exclusion from the spaces of decision-making in the first instance.”

Data Sovereignty

Recommendation: Resource Aboriginal community-controlled organisations to collect, own and analyse their own data to inform solutions to violence and disadvantage, and evaluate what strategies and programs work for us.

Aboriginal and Torres Strait Islander data sovereignty is key to self-determination. We have the right to exercise authority over and govern the creation, collection, ownership and use of our data. We are best placed to define what success looks like for our communities and analyse and interpret data collected about our lived experience. It’s critical that the next National Plan recognises data sovereignty and shifts ownership of data from the Commonwealth to our community-controlled services and communities, and ensures we have the resources to do so.

Removing barriers to escaping violence

Expanding survivor choice beyond police and prison

Recommendation: Expand victim-survivor choice and control through expanded pathways for support and accountability beyond police and criminal courts, including referral to FVPLSs.

It is not safe for our women to call the police when they are in danger. Too often our cries for help are met with police hostility or dismissal. Worse, we're misidentified as the perpetrators of family violence and criminalised. We are terrorised with the threat of having our children removed. According to Co-Chair of Change the Record and the Forum Antoinette Braybrook, "We have seen a great investment from previous [government] plans go into putting more police into communities, and that's not the solution that's needed, because of the fear and the lack of trust of white authorities, the police." We need expanded pathways for support and accountability that extend beyond police and criminal courts, and are community-owned and community-driven.

The 2017 Change the Record and HRLC report 'Overlooked and Overrepresented' examines the increasing rate that Aboriginal and Torres Strait Islander women are policed and criminalised, instead of supported in the community. It notes, "while Aboriginal and Torres Strait Islander women are over-policed as perpetrators of crime, they are also under-policed and under-served by the justice system as victim-survivors of crime, including by police responses that minimise their experiences of violence." This is certainly the experience of frontline family violence prevention and legal services, who reported the following case study:

Case study: *"Ms X, sought support from one of our member organisations after she was kicked in the face by her ex- partner resulting in the loss of two teeth. Immediately following the incident, she flagged down a passing police car and reported the assault. The police officer quickly scanned the area. After failing to locate the offender, the police officer accused Ms X of being drunk, of falling over and knocking her own teeth out and of lying to police. He refused to take her statement.*

When Ms X attended the FVPLS service the following morning, they assisted her to attend the police station to make her statement. In front of general public in the reception, the same police officer from the night before stated that he remembered Ms X, called her a liar and refused to take her statement. The FVPLS service then complained to the Head of the Domestic Violence Unit who agreed to take Ms X's statement. When police finally questioned the offender about the assault, he made a full confession."

Police in/action is not only frequently ineffective, it can also be fatal. Devastatingly, a 2017 review of domestic and family violence related deaths in Queensland found that almost half of the women killed subject to the review had been identified as a respondent to a DFV protection order on at least one occasion. In the case of Aboriginal and Torres Strait Islander women, that number rose to almost 100% of deceased women recorded as “both respondent and aggrieved prior to their death.” These statistics highlight the dual failure of the criminal legal system’s response to Aboriginal and Torres Strait Islander women: it criminalises women who seek its safety, and it fails to protect even those it recognises as at risk of harm.

Victim-survivors of family violence need more, and better, options than the narrow reliance on the criminal legal system which has resoundingly failed us. These pathways must exist along the whole continuum of intervention-need - from education, early intervention and prevention through to Aboriginal-owned safe houses and homelessness crisis accommodation and services, through to kinship placements for children at risk and community-driven men’s accountability and behaviour-change programs. ANROWS research into the solutions put forward by Aboriginal and Torres Strait Islander women found their innovations to be diverse and holistic, including services which “alongside offering refuge and legal services, some family violence services in remote areas have developed a range of programs depending on local need. Innovations such as women’s night patrols, local law and justice groups, station programs for petrol sniffers, and healing camps show the ingenuity of Indigenous women.”

Solutions that are already being deployed in the community range from crisis intervention and prevention services right through to health, counselling and healing programs. On the crisis end, services such as night patrols often operate in lieu of, or in conjunction with, police, but instead of arresting and detaining they deescalate, diffuse and can take women to safe houses or alternative accommodation. However they are not given the resourcing they need to provide the services the police currently - and in our view, inadequately - provide. As one officer in Broome reportedly said, “They often sort things out without us having to intervene and arrest people or give out notices... Patrols need to be bolted on to the criminal justice system and funded like we are, not surviving on scraps.”

However, while the focus of political interventions and discourse is often focused on the crisis-intervention end of the spectrum; front line family violence and legal services have been clear that what is required to stem the tide of violence is holistic support and healing - for both men and women - that address colonial violence and its ongoing ramifications as well as requiring individual accountability and change. We will see further examples of these healing responses to systemic injustices in the later section on community solutions to family violence.

Stop criminalising First Nations women

We belong in our communities, with our children, on Country

Recommendation: End the criminalisation of and over-incarceration of Aboriginal and Torres Strait Islander women, including by implementing the recommendations of Change the Record and the Human Rights Law Centre's 'Over-represented and Overlooked' report.

Rates of family violence experienced by Aboriginal and Torres Strait Islander women have been persistently and disproportionately high - but relatively stable - since the 1990s.[18] What has increased dramatically, however, is the number of Aboriginal and Torres Strait Islander women who are being incarcerated - the majority of whom have experienced family violence themselves. This is due to a range of factors including harsher bail laws which disproportionately affect Aboriginal and Torres Strait Islander women who are incarcerated for minor offences, misidentification and increased police presence in remote and regional communities. The effect of these interventions is less safety for women, not more. Women, particularly Aboriginal and Torres Strait Islander women, are separated from their children, denied basic health care and subject to routine violence in police and prison cells. As Braybrook points out, "the over-representation of First Nations women in prison is both a cause and a consequence of family violence." [19]

In a number of jurisdictions there are government laws and policies which disproportionately criminalise Aboriginal and Torres Strait Islander women, despite their purported intention to reduce family violence. Bail laws in Victoria are a key example. In 2018, the Andrews Government introduced harsh bail laws with the intention of targeting violent men released on bail. Instead, they have disproportionately impacted Aboriginal and Torres Strait Islander women - resulting in First Nations women committing minor offences being incarcerated and held on remand.[20] Victorian Corrections data shows that since these bail laws were introduced, over half of all women in Victorian prisons are unsentenced.[21]

We have seen similar trends in other states such as Western Australia where there has been an "especially sharp and alarming" 150% growth in Aboriginal and Torres Strait Islander women being held on remand from 2009 to 2016. [22] As well as failing in their purported purpose to protect women, punitive bail laws such as these are part of the suite of law and order reforms that have resulted in somewhere between "70-90 per cent of Aboriginal and Torres Strait Islander women in prison [being women who] have experienced family violence, sexual abuse and trauma." [23]

It is well documented that Aboriginal and Torres Strait Islander women face discrimination at every stage of the criminal legal system. As the Human Rights Law Centre state in their submission to Wiyi Yani U Thangani, "Aboriginal and Torres Strait Islander women are generally forced into the legal system at an earlier age, are less likely to be granted bail, are more likely to be remanded in custody, are more likely to serve shorter sentences and are almost twice as likely to return to prison after release when compared to non-Indigenous women." [24]

Aboriginal and Torres Strait Islander women frequently live in communities which are overpoliced, therefore increasing police contact, charges and convictions for behaviour which would largely go unpoliced in other communities. Over-policing also leads to more contact with police which, on a backdrop of ongoing and historical colonial discrimination, can lead to escalating interactions with police, use of force, and more charges being laid. [25]

This high level of overrepresentation is also driven by discriminatory over-policing within urban, rural and regional communities; and specifically the increased presence in rural and remote areas driven by government policies to address family violence. As Blagg and Anthony report, "the increased police presence on remote Indigenous communities, particularly in the Northern Territory, has had the unintended consequence of widening the carceral net through the criminalisation of Indigenous "on-Country" driving once considered to be outside the scope of mainstream law...More intensive policing of driving-related offending, for example, has contributed to the increased incarceration of Indigenous women in the Northern Territory." [26]

The criminalisation of women for minor offending is, in effect, frequently the criminalisation of their status as victim-survivors of family violence. Family violence drives and entrenches poverty, homelessness, addiction and trauma - all of which lead to behaviours which are targeted criminalised by police and the criminal legal system. One stark and tragic example of the consequences of this system response is the case of 22 year old Yamatji woman Ms Dhu.

Case study: *"Ms Dhu was taken into police custody for non-payment of fines amounting to \$3,662.34. She had no realistic means of paying the fines. Despite repeatedly asking for medical help while in police custody, she was treated in an inhuman way and ultimately died of an infection flowing from a fractured rib — a family violence injury."* [27]

While imprisonment as a result of the non-payment of fines has since been abolished in Western Australia, the criminalisation of other minor offending has not.

Finally, racial stereotypes, discriminatory policing and a lack of cultural safety within mainstream institutions frequently results in the misidentification of Aboriginal and Torres Strait Islander women as the perpetrators of family violence, when they are in fact victim-survivors. Alarming but perhaps unsurprisingly, this not only contributes to the imprisonment of First Nations women, but also our preventable deaths.

The Queensland Domestic Violence Death Review and Advisory Board reported that in nearly all domestic and family violence related deaths of Aboriginal people, the deceased was recorded as both a respondent and as the victim prior to the death. [28] In almost half of all cases of women who died, the woman was identified as a respondent to a domestic and family violence on at least one occasion. FVPLSs report that the problem of misidentification is prevalent across state and territory jurisdictions, and poses a substantial barrier to Aboriginal and Torres Strait Islander women seeking safety.

ANROWS conducted research into the misidentification of Aboriginal and Torres Strait Islander women as perpetrators following the Queensland Domestic Violence Death Review findings were published. It identified both “practical and systemic barriers” that lead to police misidentifying, and therefore failing to provide a pathway to safety to, the victim of family violence. [29] ANROWS found that Aboriginal and Torres Strait Islander women were particularly at risk of encountering these barriers as we “very often do not fit the ideal victim stereotype,” were more likely than other women to engage in self-defence and often did not cooperate with police due to colonial, and ongoing, fraught relationships between First Nations peoples and police. These factors mean we are “named on DVOs, charged with contraventions of DVOs and significantly more likely than non-Indigenous people to receive a sentence of imprisonment for a contravention of a DVO, compared to non-Indigenous people ... [Aboriginal and Torres Strait Islander] women are particularly over-represented in this system.” [30]

The consequences of misidentification are far reaching. They can result in the separation of mothers from their children, homelessness, criminalisation and - most critically - the unabated danger posed to the woman experiencing family violence.

Change the Record and the Human Rights Law Centre’s 2017 ‘Over-represented and Overlooked’ report discusses these and other issues relating to criminalisation and over-incarceration of Aboriginal and Torres Strait Islander women in detail, and contains 18 recommendations aimed at reducing incarceration of First Nations women.

These recommendations should be implemented as a matter of priority.

End the threat of child removal

Don't make us choose between our safety and our children

Recommendation: End the threat of child removals and establish a nationally consistent, mandatory Aboriginal and Torres Strait Islander child protection notification and referral system to keep families together.

"Family violence is the single biggest driver of Aboriginal child removal, with 88% of Aboriginal children in care having experienced family violence. We need to see a transformation in how the system supports Aboriginal mothers experiencing family violence as a fundamental starting point in intervening earlier to keep our children safe in their family's care ... We need a system that understands both mum and children are victims of family violence—kids aren't collateral damage to violence against mum; and mums aren't to blame for the violence they endure. " [31]

Antoinette Braybrook
CEO Djirra, Co-Chair of the Forum and Change the Record

On paper, the federal government, and all states and territories, have committed to fully implementing the Aboriginal and Torres Strait Islander Child Placement Principle, and ensuring its five domains (prevention, partnership, placement, participation and connection) are integrated into child protection systems. However, the appalling and worsening rates at which Aboriginal and Torres Strait Islander children are being removed from their families, communities, culture and Country show jurisdictions aren't living up to their commitment.

Source: 2020 Family Matters Report

- 37% of children in out-of-home care are First Nations children, while making up just 6% of children in the population
- First Nations children are 9.7 times more likely to be in OOHC than non-First Nations children
- Just 43% of First Nations children in OOHC are living with First Nations carers. This is down from 53% in 2013
- 95% of First Nations children adopted from OOHC were adopted by non-First Nations carers. [32]

The over-representation of Aboriginal and Torres Strait Islander children in out-of-home care and in contact with Australian child protection systems can't be separated from the history of forced removal of First Nations children by governments on this continent.

Speaking through the Wiyi Yani U Thangani report, a grandmother tells us: [33]

"For the last 4 years I've been fighting for my 11 grandchildren and I just want to tell you about the way child safety came in and took our little kids. It just opened up old wounds of past. They just came in one day without any warning. They took them all in one fell swoop, those kids. They handcuffed my family. And they were sitting there on the ground screaming and crying for their families, handcuffed. And this young woman just threw a piece of paper at them and said 'here's your papers'. That was it. No more explanation, no care about how much trauma they were causing. This is another Stolen Generation. It is."

Statutory child protection authorities classify exposure to domestic & family violence as a notifiable factor of risk of significant harm, with mandatory reporting requirements on people working in child-related roles. Fear of child removal as a result of reporting family violence is a key contributor to Aboriginal and Torres Strait Islander women not approaching services for support. [34]

Child protection departments are a source of fear, insecurity, trauma and family breakdown in our communities. Young people leaving care experience higher rates of homelessness, family violence, incarceration and unemployment. The legacy and continuance of the Stolen Generations and over-representation of First Nations children and young people in the child protection system demands greater First Nations community oversight and accountability of statutory child protection systems. We know what's best for our children.

According to the Family Violence Prevention and Legal Services Forum: [35]

"In our frontline work we have found that one of the biggest deterrents preventing Aboriginal and Torres Strait Islander women from reporting family violence is the fear of child protection intervention and losing one's children. Family violence is a primary driver of the disproportionate and escalating rates of Aboriginal and Torres Strait Islander child removal. However, FVPLS clients frequently report being discouraged by child protection workers (either implicitly or overtly) from seeking legal advice. Additionally, FVPLS clients frequently experience inappropriately punitive responses from child protection workers which punish or blame Aboriginal and Torres Strait Islander women for the actions of those who perpetrate violence against them, instead of supporting women to safely maintain the care of their children in a home free from violence."

Case study: *National FVPLS Forum submission to WYUT report [36]*

The Aboriginal women we work with have a well- founded fear of Child Protection services. One of our member services was working with a mother of four children under the age of ten. She had recently left a violent relationship. Two of her children had significant disabilities. The mother reached out to the Department for assistance with either childcare or respite. The Department responded by removing her children and stating that she was 'failing to cope.'

A holistic approach to addressing key drivers of violence and removal of barriers to reporting is needed to end violence against First Nations women and children. Services must be properly resourced and empowered to provide culturally appropriate case planning support to children and families, provide carers with critical information and legal advice and assistance with referrals to support services, and ensure child protection systems meet their duty of care and act according to the Aboriginal and Torres Strait Islander Child Placement Principle through individual and systemic advocacy.

Governments need to make a genuine commitment to holistic prevention and early intervention and ensuring culturally competent and safe practices in services and statutory authorities. Families need to be able to access support before a crisis happens, and to ensure that children don't become lost in the out of home care system and removed from their culture, communities, families and networks of support. Crisis responses need to be tailored and culturally appropriate, with communities in charge of what happens to our children.

A nationally consistent, mandatory Aboriginal and Torres Strait Islander child protection notification and referral system to keep families together.

In addition to a genuine commitment to the Child Placement Principle and ending the disproportionate removal of Aboriginal and Torres Strait Islander children, Change the Record and the Forum call for governments to develop a nationally consistent system requiring child protection authorities in each jurisdiction to notify appropriate local First Nations community-controlled organisations about an Aboriginal and/or Torres Strait Islander child being removed from their carer.

This would include a similar system of notification and referral to Custody Notification Services, where police must make a notification to Aboriginal and Torres Strait Islander Legal Services that an Aboriginal and/or Torres Strait Islander person has been taken into custody. Statutory child protection authorities would be required to ensure children and families can access immediate specialist advice and support from First Nations services such as FVPLS and ATSILS.

Dismantle economic barriers to safety

so women are not forced to choose between violence, or poverty and homelessness.

Other significant barriers to victim-survivors of family violence accessing support are a lack of safe, appropriate and affordable housing, and systemic economic inequalities. Our social security system is characterised by inadequate payments, restrictive means testing, punitive conditionality and racist policies targeted at Aboriginal and Torres Strait Islander communities, creating barriers to financial security and safety. Disempowering 'economic development' policies have diminished self-determination and hindered community flourishing and economic participation.

The significant effect of these failures of governments and policy-makers are explored later in this report, where we also propose clear and needed policy reforms in housing, social security, and economic development policy to keep women and their children safe.

Our communities and our solutions

Recommendation: Increase investment into Family Violence Prevention Legal Services to match demand and geographical spread, and fund our peak body the National Family Violence Prevention and Legal Services Forum.

Family Violence Prevention Legal Services provide holistic, culturally safe specialist frontline legal assistance services, early intervention/prevention and community legal education to Aboriginal and Torres Strait Islander victim-survivors of family violence. Support is trauma-informed and designed to address the complex socio-economic issues underlying clients' legal issues and experiences of family violence.

FVPLSs also deliver essential Community Legal Education (CLE) and early intervention and prevention (EIP) programs. While the FVPLSs are not all gender exclusive, more than 95% of Aboriginal and Torres Strait Islander people accessing their services nationally are women and children. FVPLSs have been working with Aboriginal and Torres Strait Islander victim-survivors of family violence around the country for over twenty years. In May 2012 all 14 FVPLSs came together to establish the National FVPLS Forum. The Forum works in collaboration across its member services to increase access to justice for Aboriginal and Torres Strait Islander people experiencing or at risk of family violence, especially women and children.

In a submission to this paper, Aboriginal Family Legal Services WA details the culturally- and trauma-informed service delivery approach taken by FVPLSs.

Case study: Aboriginal Family Legal Service WA service delivery framework

'The AFLS model of providing culturally- and trauma-informed legal and non-legal services benefits clients by ensuring the demands of their culture are considered and can be addressed in their safety planning, in addition to addressing their legal and other needs.

AFLS' operational and service delivery frameworks... [are] informed by an understanding of the specific drivers of violence against Aboriginal women and children, and the broader social, cultural and political context in which violence occurs in Aboriginal communities. AFLS seeks to understand the ongoing impacts of colonisation, intergenerational trauma, socio-economic disadvantage and discrimination, and recognises that the experiences, culture and traditions of Aboriginal people vary across communities and language groups.' - AFLS, internal submission.

FVPLSs are expert organisations embedded in our communities. Cultural awareness and strength-based practices are at the heart of FVPLS service planning and delivery, and high priority is placed on collaboration with victim-survivors of family violence and communities in program design. In the words of one Forum member, “Aboriginal organisations like ours do a lot of work in community to build trust and confidence. Often the women who most need our services won’t walk straight through our door. We have to go out to our communities.” [37]

According to Djirra, an FVPLS based in Victoria, “... Without access to a trusted, culturally safe and specialist service such as Djirra, many Aboriginal women will not feel safe to disclose violence and access support.” [38]

Further, FVPLSs are models of self determination. Community controlled, they employ significant numbers of Aboriginal and Torres Strait Islander women, with specific expertise in family violence, and often with their own lived experience. They represent First Nations women empowering each other. However, despite the expertise, best practice holistic methods and community legitimacy enjoyed by FVPLSs, our services are under-resourced and undervalued by government decision-makers. FVPLSs aren’t resourced to provide national coverage and as a collective are only able to service an area covering half the Aboriginal and Torres Strait Islander population. [39] Much of the service coverage in the bush is limited, often consisting of only one or two days a month in remote areas.

In its submission to the Wiyi Yani U Thangani report, the Forum tells us “our FVPLS services are consistently working beyond their capacity. Existing resources are stretched, and there is considerable unmet need among Aboriginal and Torres Strait Islander communities, particularly for areas that are currently not serviced by FVPLSs. In 2016, some National FVPLS Forum members reported being forced to turn away approximately 30-40% of people seeking assistance due to under-resourcing.” [40]

Compounding the issue of under-resourcing, Commonwealth funding commitments at both service and program level are short-term, making long-term service planning difficult and creating an environment where programs are at perpetual risk of defunding regardless of how well their success is demonstrated or recognised in communities. When funding is uncertain, this doesn’t only mean important services are impacted, but potentially the employment of Aboriginal and Torres Strait Islander women themselves, which of course has ongoing impact for their livelihoods and families.

The Wiyi Yani U Thangani report calls explicitly for the Australian Government to increase funding and access to FVPLSs and Aboriginal Legal Services to keep women and children safe and families together. [41] Any National Safety Plan must include a commitment to increased and ongoing funding to FVPLSs, and restored funding for the National FVPLS Forum, to support our women and children to secure safety and perform systemic advocacy to ensure First Nations women's voices are heard.

Community-led early intervention and support

Recommendation: Increase investment in early intervention and prevention and ensure First Nations women have equal access to support whether they live in the city, towns or bush.

Recommendation: Invest in culturally appropriate and community-controlled mental health and alcohol and drug treatment services

Recommendation: Invest in evidence-based, culturally-tailored men's behaviour change programs that promote and enhance safety.

Despite what seems like universal agreement across communities, government and academia that early intervention and prevention services are essential in ending violence, government investment in services remains overwhelmingly focused on crisis responses. The effect of this crisis myopia is explored in the Wiyi Yani U Thangani Report. In Commissioner Oscar's words: [42]

"The women and girls I met during the Wiyi Yani U Thangani engagements talked frankly about the impact of living in a state of constant reaction to crisis, where each wave of trauma further impedes their communities' capacity to initiate and engage in proactive efforts to address the causes of crises before they develop. This creates a generalised state of vulnerability that can only be addressed at the community level through programs, activities and services which support women and their families before harm takes place."

A consistent call from participants in the Wiyi Yani U Thangani report, from FVPLSs and other First Nations community controlled organisations, and communities is for a refocusing from crisis responses to prevention, with a focus on self-determined, place-based, trauma-informed, holistic and restorative support and healing services.

Roebourne women said in consultations: [43] *"We don't necessarily need to be dependent on services to raise our kids, we just need services to support the process rather than, 'you have a problem, we need to fix you'. We don't need fixing, we need support, and we need services to not be discriminatory, not racist but to acknowledge that you just need support and stop writing about what is wrong with us."*

This deficit discourse means that Aboriginal and Torres Strait Islander people are constantly seen as a problem, without understanding the contexts and history that creates the issues, nor the fact that First Nations communities have the solutions.

The diversity of early intervention and prevention services and strategies employed by Family Violence Prevention Legal Services and other community-controlled services reflect the complexity of drivers of family violence and diversity of experiences of Aboriginal and Torres Strait Islander women and young people. With sufficient resources, this intersectional and targeted approach to early intervention and prevention can provide effective holistic, healing support to women and girls in community at all stages in their journeys toward safety and liberation, and build on individual and community resilience and strength.

The FVPLS model of service delivery: a continuum of care

The FVPLS model recognises that a combination of preventative early intervention strategies are all crucial parts of the continuum of services required to address and reduce family violence against Aboriginal and Torres Strait Islander women and children. These strategies include innovative and engaging community programs and cultural and wellbeing workshops. These programs also address and shift the particular social norms that lead to family violence in Aboriginal and Torres Strait Islander communities.

In addition to legal assistance and casework, Aboriginal and Torres Strait Islander legal services such as FVPLSs undertake important early intervention and prevention, such as women's support groups and community safety services, counselling services, support for children in family violence situations; and programs that invest in services at the front-end to build stronger and resilient families and promote healthy relationships. These vital supports and services build the strength of Aboriginal and Torres Strait Islander women and reduce their vulnerability to violence and contact with the criminal justice system. - National Family Violence Prevention Legal Services Forum submission to the Australian Human Rights Commission [44]

Across Australia, FVPLSs have demonstrated that early intervention and prevention programs achieve successful outcomes for Aboriginal and Torres Strait Islander women. FVPLSs provide a variety of programs and projects designed to prevent violence, and address early risk factors, through community education, yarning and community-building. Examples [45] include:

Northern Territory: 'Super Law' developed by Central Australian Aboriginal Family Unit. The Super Law DVD and workbook are educational tools to inform Aboriginal and Torres Strait Islander communities about laws, specifically those related to domestic and family violence.

Queensland: 'Love Bites' developed by the Queensland Indigenous Family Violence Legal Service. A prevention program delivered to high school students on healthy and unhealthy relationships, identifying domestic and family violence behaviours and their impacts.

South Australia: 'Sista 2 Sista', 'Love Colours' and 'Healthy Relationships' developed by the Family Violence Legal Service Aboriginal Corporation SA. Sista 2 Sista is a day of fun and community education for Aboriginal and Torres Strait Islander women covering domestic violence, health, mental, social, welfare and financial issues. Love Colours is a healthy relationships workshop that incorporates art activities and thoughtful discussion in a yarning circle style of delivery. Healthy Relationships is a program delivered to high school students with a focus on relationships; values and beliefs, respectful relationships and law and legal issues in relationships.

Victoria: 'Dilly Bag', 'Sister's Day Out' and 'Young Luv' developed by Djirra. Sisters Day Out is a wellbeing workshop where Aboriginal and Torres Strait Islander women enjoy a day of pampering and relaxation, with activities designed to raise awareness of family violence issues, rights and options. Dilly Bag programs are more intensive and encourage personal development through activities designed by, and for, Aboriginal and Torres Strait Islander women. Young Luv is designed for Aboriginal and Torres Strait Islander young women aged 13 to 18 and focuses on promoting healthy relationships.

Western Australia: 'Sparkle and Grow', 'Strong Girls Stronger Women' and 'Healing Hands' developed by Aboriginal Family Legal Services WA. Sparkle and Grow is a CLE and personal development program for Aboriginal and Torres Strait Islander women targeted at educating and raising awareness on family and sexual violence issues, respectful relationships, legal assistance and building participants' self-esteem. Strong Girls Stronger Women is delivered to Aboriginal and Torres Strait Islander female students identified as emotionally, physically or socially vulnerable. It provides education on safe and healthy relationships. Healing Hands is a self-care session primarily aimed at Aboriginal and Torres Strait Islander women and girls who have experienced trauma through family violence. Healing Hands raises awareness about violence and sexual abuse issues in a safe, comfortable environment.

A key finding and recommendation of Professor Marcia Langton's 2020 ANROWS research reports into practical and legal supports for Aboriginal and Torres Strait Islander women experiencing family violence, and male perpetrators of violence, is that there is a conspicuous lack of culturally specific programs for Aboriginal and Torres Strait Islander perpetrators of violence.

Professor Langton finds that mainstream men's behavioural change programs may not be appropriate for Aboriginal and Torres Strait Islander perpetrators of violence. Further, service gaps even in the mainstream support sector means many men are not able to access any behaviour change support which have any level of cultural safety.

Professor Langton's research recommends expanding local perpetrator accountability support services 'to address underlying complexities contributing to the perpetration of violence:

- therapeutic counselling and related services (both individual and group)
- Aboriginal-specific and other culturally appropriate men's behaviour change programs
- alcohol and other drugs rehabilitation and counselling
- mental health services.' [46]

There is a lack of holistic, culturally appropriate support services for both victim-survivors and perpetrators of family violence who are experiencing mental health and/or substance abuse issues. Both ANROWS research [47] and the Wiyi Yani U Thangani report [48] identify widespread unmet need for appropriate mental health and AOD support that leaves people without culturally safe tools to manage and recover from underlying issues that can contribute to family violence.

Support First Nations women with disability

Recommendation: Ensure better support for people with disabilities, including support to live on Country in safety and dignity.

First Nations women and girls with disability experience intersectional inequality and discrimination on the basis of race, gender and disability. Many Aboriginal and Torres Strait Islander women and girls are carers, and are more likely to be unpaid than non-First Nations carers. In the words of Commissioner Oscar, 'this is reflective of traditional and cultural care responsibilities, as many women regard the strength of caring to be fundamental to our identity as Aboriginal and Torres Strait Islander women.' [49]

"Aboriginal and Torres Strait Islander communities have been, and continue to be, inclusive and supportive of Aboriginal and Torres Strait Islander people with disability. Whilst many Indigenous languages do not even have a word for disability, Western perspectives of disability have marginalised Aboriginal and Torres Strait Islander people with disability, and this is reflected in their increased risk of experiencing poorer health, wellbeing and socio-economic outcomes." [50]

We know that women, Aboriginal and Torres Strait Islander peoples, and people with disability as distinct cohorts are more likely to experience violence, but we are not aware of coordinated data collection on the incidence and prevalence of violence against Aboriginal and Torres Strait Islander women and girls with disability. Materials about First Nations peoples with disability produced in 2020 for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also note that data also does not exist on the number of First Nations people with multiple disabilities, the number of people with foetal alcohol spectrum disorders (FASDs), deaths in custody of young First Nations people with disability, and First Nations people with disability in segregated environments. [51]

Efforts must be made to capture the intersectional experiences of Aboriginal and Torres Strait Islander peoples with disability in data to help us support our people to live in safety and dignity in our communities. Indigenous research methodologies, multidisciplinary First Nations-led research and data collated appropriately from truth-telling and yarning should be elevated and well-resourced, cultural competence in mainstream research and data collection should be improved, and data sovereignty should be ensured to enable us to better analyse, represent, address and redress the impacts of intersectional inequality.

Wiyi Yani U Thangani sees Aboriginal and Torres Strait Islander women and girls speak of difficulties in accessing education and employment and essential services as people with disability and as carers, [52] and the report highlights the criminalisation of Aboriginal and Torres Strait Islander women with cognitive impairment and lack of support available to incarcerated people with disability. [53] This lack of support is across-the-board, and has implications for both victim-survivors and perpetrators with disabilities. Women and girls consistently reported underdiagnosis of FASD and speech and hearing issues, compounding the difficulties and hardships faced by children and adults who need additional, culturally safe support.[54] The inadequacy of disability support services and the NDIS are also highlighted. [55]

According to the Wiyi Yani U Thangani report, the lack of self-determination in service design and barriers to access to the NDIS mean people's needs aren't being met, particularly in the bush:

Case study: NDIS and lack of community controlled services in the bush

"A significant gap in the NDIS model is having adequate services available for people living in remote and very remote parts of Australia. Disability support services must be available, accessible and culturally appropriate, regardless of location. Aboriginal and Torres Strait Islander community-controlled organisations are best positioned to provide locally tailored and culturally safe services that are grounded in Aboriginal and Torres Strait Islander perspectives and values.

"And I think about why do we have these white fella organisations coming in when we got our own organisations here. We have our own disability organisation, you know? So why should they get the funding instead of us? And we have Indigenous people in our community who can do these jobs that they're bringing in white fellas for. We get non-Indigenous people in our community making decisions and it's disrespectful. We need to move forward, we know that. We should be moving forward to 100% Aboriginal community-control. These people are in positions where they're making decisions for our community and that's not right." Yarrabah women [56]

Research by the First Peoples Disability Network into the experiences of Aboriginal and Torres Strait Islander peoples with disability has found that, though First Peoples with disability face serious and acute intersectional inequality and discrimination, 'the sole category that is an exception to the inequalities experienced by Aboriginal and Torres Strait Islander people with disability is their social participation within their own communities.

Rates of participation by Aboriginal and Torres Strait Islander people in cultural and community activities are on par with other Aboriginal and Torres Strait Islander people.' It finds that 'a culture of inclusion is a moderating force on the social health and wellbeing [of Aboriginal and Torres Strait Islander peoples with disability] and has a mitigating impact on intersectional inequality'. [57]

Our people and communities know how to care for each other. What is needed is a commitment from government to make sure we have the control and resources to ensure our people have access to self-determined, holistic and culturally safe services and support.

Whole-of-community supports

Ensure access to safe, affordable & appropriate housing

Recommendation: Increase funding and resourcing for community-controlled specialist homelessness services for Aboriginal and Torres Strait Islander women and children.

Recommendation: Invest in culturally appropriate, community-controlled, safe, long-term affordable housing options for women and families in cities, towns and the bush.

“In our frontline work, Djirra has found that housing unavailability and the prospect of homelessness acts as a dangerous deterrent to victim-survivors leaving violent relationships and accessing safety.” [58]

Case study: Djirra and homelessness

Safe, secure housing is a human right, a crucial determinant of health and wellbeing, and a strong protective factor against family violence. The importance of housing access is most acute for Aboriginal and Torres Strait Islander women experiencing and escaping family violence. A case study from FVPLS Djirra illustrates how a lack of suitable housing puts Aboriginal and Torres Strait Islander women at serious risk of harm. [59]

Aboriginal and Torres Strait Islander peoples experience homelessness and lack of access to affordable, appropriate housing at disproportionately high rates. Without significant investment in community-controlled housing, homelessness services and genuine reform of the property and rental markets, the major barrier to safety posed by a lack of secure, appropriate and affordable housing will remain.

Homelessness

Family violence is the leading cause of homelessness for women, and fear of homelessness is a major barrier to women leaving violent relationships. Research from Equity Economics in July 2021 [60] found the chronic and severe lack of social housing in Australia led to 7,690 women returning to violent homes, and 9,120 women escaping family violence becoming homeless. Further, according to the AIHW Specialist Homelessness Service (SHS) collection [61] 56% of people approaching an SHS because they were experiencing family violence had sought family violence support on a previous occasion within the last 10 years. These data sets undercount Aboriginal and Torres Strait Islander women, but discussion of this is outside the scope of this paper.

In 2019 nearly 120,000 people approaching an SHS for support were experiencing family violence. 31% of people experiencing family violence who requested crisis accommodation were turned away. One in three people experiencing domestic and family violence who approached an SHS for support needed long term housing, but only 3% of that group received it. More than two thirds of that group didn't even receive a referral for long-term housing. [62]

This clearly shows that all women in Australia are not receiving the housing support they need, when they need it. There are a number of reasons why, but immediately identifiable and easily resolved factors include that the specialist homelessness service sector is underfunded (especially First Nations-controlled services), funding cycles are dysfunctional and competition settings disempower communities.

Aboriginal and Torres Strait Islander peoples experience much higher rates of homelessness than non-First Nations people. The last census found that 1 in 28 Aboriginal and Torres Strait Islander peoples were experiencing homelessness on Census night, representing 22% of all people experiencing homelessness in Australia. More than half of Aboriginal and Torres Strait Islander peoples experiencing homelessness lived in the bush. [63] The ABS acknowledges figures about First Nations peoples' experience of homelessness are underestimations, given the undercounting of Aboriginal and/or Torres Strait Islander peoples in the census.[64]

Homelessness in First Nations communities must be understood in the context of historic and ongoing colonisation, dislocation from and dispossession of Country, intergenerational trauma and disadvantage and mass incarceration. Despite the hugely disproportionate rate of homelessness experienced by First Nations peoples, there isn't a corresponding supply of community-controlled and -delivered specialist homelessness services for First Nations peoples. In addition to the chronic inadequacy of support services overall, the lack of cultural competence and lived experience expertise in mainstream services greatly reduces the chances of Aboriginal and Torres Strait Islander people receiving the support needed to secure safe, stable and appropriate housing.

Social housing

A major concern raised by women and girls in the Wiyi Yani U Thangani consultations was inadequate maintenance and repair of social housing, particularly in the bush. [65] The report cites research findings that in 2016, 31.4% of social housing for Aboriginal and Torres Strait Islander families did not meet agreed minimum acceptable standards compared to 19.3% of all households. [66]

Commissioner Oscar finds “Inadequate housing conditions and poor maintenance leaves Aboriginal and Torres Strait Islander women and their families vulnerable to living in dangerous environments,” and that “The chronic shortage of social housing stock across Australia has left Aboriginal and Torres Strait Islander women and their families struggling in overcrowded and inadequate living conditions, unable to keep themselves and their families safe and secure, and with the constant threat of homelessness if they cannot find a way to make ends meet.” [67]

Government awareness of shortfalls in Aboriginal housing and chronic overcrowding has not translated to adequate investment in housing. In a press release following the 2020-21 NSW budget, the NSW Aboriginal Land Council noted that the shortfall in housing supply for Aboriginal households in NSW is at least 11,000, yet the budget provided for just 200 new Aboriginal homes.[68] Overcrowding in the Northern Territory remains at crisis levels and, according to the North Australian Aboriginal Family Legal Service in a submission to this paper, remains a major barrier to safety.

Case study: North Australian Aboriginal Family Legal Service

“We find that housing is a major factor in preventing women from finding safety. Chronic overcrowding means tensions are running high and there are not safe places to go to for victim-survivors or perpetrators. Courts and Police are reluctant to make or enforce orders in Domestic Violence Orders to remove perpetrators from homes because they are likely to become homeless”. - North Australian Aboriginal Family Legal Service, October 2021

Despite the Little Children Are Sacred Report highlighting the need for immediate construction of 4000 houses and an additional 400 each year over 20 years [69] in Aboriginal communities in the Northern Territory, in the first 10 years of the catastrophic Northern Territory Intervention just over 1000 homes were built. [70] This complete failure to address recognised unmet need was complemented by the Commonwealth expropriating hundreds of millions of dollars worth of housing stock and land from Aboriginal communities. [71] The sluggishness of the federal and Territory governments has not improved in recent years, with the roll-out of 2000 desperately needed dwellings in the Northern Territory facing years of delay [72] as the federal government claims no responsibility for housing provision beyond an initial funding commitment. [73]

Our community is growing but the community is not growing to accommodate all these people. We are told there will be houses come, will it be this year or will it be next year, we don't know ... and we still need more housing, you know.” [74]

- Borroloola women

Tenure

Aboriginal and Torres Strait Islander people are disproportionately renters, with home ownership rates at 38% compared with 66% of non-First Nations peoples at the last Census. First Nations households are consistently more likely than other households to live in private rental, at 32% compared with 25%. [75]

Despite the increased likelihood of needing to find accommodation in the private rental market, Aboriginal and Torres Strait Islander peoples experience significant discrimination in being able to secure tenancies. Compounding the difficulty and stress of finding secure housing in the private market is Australia's uniformly inadequate rental protections, which are some of the worst in the OECD. The proliferation of no-grounds eviction clauses across Australian jurisdictions leaves tenants insecure and vulnerable.

Case study: discrimination and renting [76]

"In some locations, women felt that real estate agents were discriminating against Aboriginal and Torres Strait Islander applicants without directly saying so, but through the constant awarding of successful applications to non-Aboriginal applicants. Some women told me they felt that the only way to secure a lease was not to identify as Aboriginal or Torres Strait Islander."

Racism is an issue in our community, definitely with real estate and housing. There is judgement. I think they lie to you, they say, 'yeah, yeah, yeah, it's going through'. And then another family comes in, and they give them the house." Kempsey women

Renting is also really hard. When people know you are Aboriginal, they won't want to rent to you. Me and my friend used to rent, and we never told the real estate that we were Aboriginal ... because we had trouble with that in the past." Nowra women and girls

Anglicare's 2021 rental affordability snapshot found that just 3 properties across Australia were affordable for a person living on the single rate of Jobseeker. [77] For a single person working full time at the minimum wage, just 1% of rental properties were affordable. [78] With the median national house price reaching \$955,927 and median national unit price reaching \$601,482 in the June 2021 quarter, [79] the chance of people on low incomes with no assets having any prospect of saving for a housing deposit is remote.

Solutions

While the disadvantage caused by Australia's highly inequitable housing system is profound, the tools needed to address its harms are known and readily available to governments if only they had the political will to implement them.

Federal, state and territory governments must immediately increase funding and resources to Aboriginal community-controlled organisations to provide crisis and transitional accommodation for Aboriginal and Torres Strait Islander women and children experiencing family violence. Funding for early intervention homelessness services and holistic wraparound services is essential in helping people experiencing or at risk of homelessness receive the support and stability needed to secure long-term appropriate housing. Where ACCOs don't currently exist, funding should be provided to bridge service gaps in consultation with communities and people accessing services and provide sector support to establish new community-controlled services.

The Wiyi Yani U Thangani report highlights that Aboriginal and Torres Strait Islander women and girls 'need more control over policy and decision-making to ensure that the Indigenous housing sector is better designed to suit us', and critiques the defunding and termination of Indigenous Community Housing Organisations following the abolition of ATSIC. [80] The report finds that 'a current lack of investment in community-controlled organisations continues to undermine Indigenous capacity to be in control of our own housing circumstances', and calls for investment in community-controlled housing. [81]

Investment in social housing stock to improve dwelling quality and accessibility is essential, as is ensuring that mainstream community housing providers and states and territories managing the tenancies of Aboriginal and Torres Strait Islander households significantly improve their cultural competence. Further, without reform of rental protections in social and private tenancies and significant government intervention in the property market to improve housing affordability and guarantee security of tenure for renters, rates of rental stress and housing poverty and insecurity experienced by Aboriginal and Torres Strait Islander peoples will continue to increase.

Systemic reform is needed to ensure housing is treated as a right, not a commodity. Policy levers for improving housing affordability and access are available to governments at all levels, but especially the federal government. At the same time as we are facing a housing affordability crisis, the conditions for government borrowing for investment in critical infrastructure like housing have never been more favourable. If the federal government chose to, it could make high quality, universally accessible, affordable, safe housing available to everyone, wherever we need it.

Unconditional, livable social security

Recommendation: Increase social security payments to ensure no one lives in poverty and remove barriers to access to payments, including partner and parental income and asset tests.

Recommendation: End welfare conditionality, including mutual obligations, compulsory income management and ParentsNext.

No one should live in poverty in a country as wealthy as Australia, yet the current social security system is a poverty trap. The federal government's introduction of the Coronavirus supplement to unemployment payments in response to the Covid pandemic in 2020 demonstrated that it has the fiscal capacity to eradicate poverty and ensure everyone in society has a liveable income. The persistence and distribution of poverty on this continent is the result of social and economic policy choices of successive governments, choices which have had a particularly devastating effect on Aboriginal and Torres Strait Islander peoples.

Australia's social security system consists of highly conditional, means-tested payments hundreds of dollars a week below the poverty line. The majority of people receiving working age payments are forced to participate in often punitive and humiliating 'mutual obligations', under threat of losing their payments. Social security recipients are surveilled by government departments and private job agencies and heavily stigmatised in mainstream media and political discourse.

In the Wiyi Yani U Thangani report Aboriginal and Torres Strait Islander women speak about the negative effects of paternalistic welfare policies on our lives and communities. Women raised concerns about unlivable rates of payment, [82] about systems not taking into account cultural considerations, [83] the punitive, discriminatory and onerous nature of 'mutual obligations' and compliance frameworks, the high proportion of Aboriginal and Torres Strait Islander social security recipients being breached and losing their payments, [84] and the racial discrimination at the heart of the Community Development Program. [85]

Understanding the historical deployment of 'welfare' in Australia as a means of controlling and assimilating Aboriginal and Torres Strait Islander peoples since invasion [86] is fundamental to creating a just social security system. Without comprehensive reform of the social security system in Australia, women from all backgrounds will continue to face enormous financial barriers to escaping violence. The National Safety Plan must include a commitment to achieving such reform as a matter of priority, and our people must be at the forefront of co-designing the systems that affect our lives and communities.

Poverty Payments

Aboriginal and Torres Strait Islander peoples are over-represented among recipients of income support payments [87] and among those living in poverty.

Markham and Biddle's 2017 analysis of Census data [88] found 31% of Aboriginal and Torres Strait Islander people were living in poverty before housing costs in 2016, based on a poverty rate of 50% of median income. The research shows that poverty is more than twice as high among First Nations peoples living in the bush (53.4%) as those living in major cities (24.4%). While poverty among First Nations peoples living in the city declined from 2006-2016 by 3.4%, they rose in remote and very remote areas over the same period (by 1.2% and 7.6% respectively). Meanwhile, the most recent ACOSS report into poverty in Australia, studying the same data, found that across the whole Australian population, the poverty rate after housing costs was 13.6%. [89] It should be noted that the disproportionate distribution of poverty is likely to be even more profound than these percentages suggest, because before-housing poverty rates are generally lower than after-housing rates. [90]

The role of financial insecurity and economic inequality in contributing to family violence, as well as preventing women from escaping it, is well-established - as are the profound and ongoing negative impacts of poverty on children. A report released by the University of Queensland's Life Course Centre in advance of the Women's Safety Summit laid bare the elevated risk of violence faced by young women experiencing financial hardship. [91] Young women in financial hardship in Australia are twice as likely to have been victims of violence perpetrated by their partners as those not in hardship, and three times as likely to have experienced severe abuse. Experiencing physical and sexual violence was also shown to significantly increase the likelihood of young women falling into financial hardship.

Without access to a reliable, adequate income, escaping violence can seem impossible. The Delegates' Statement from the National Women's Safety Summit is unequivocal that financial security for women is fundamental to keeping us safe from violence. [92]

The Coronavirus supplement

2020 saw the most profound poverty-alleviating policy intervention in memory in the form of the Coronavirus supplement to Jobseeker and related payments, which effectively doubled those income support payments.

People receiving the supplement reported being able to afford rent, bills, fresh food, medicines, essential medical, dental and mental healthcare and treats and presents for their children, which had previously been out of their reach. [93]

One parent said: "I feel like before Coronavirus we were living in poverty. Always wondering when I wasn't going to be able to scrape enough together to feed the kids again. At the moment, I can breathe and sleep a little easier knowing everything that needs to be paid is, and the kids are fed. I don't have anything left over to save but my children are eating better." [94]

According to research by the Australian National University, prior to Covid the poverty rate in single parent households was 20.2%. If the Coronavirus supplement had not been introduced, it was projected to have risen to 27.9%. In June 2020, as a result of Covid payments, the rate of poverty in single parent households was just 7.6%. [95]

A further ACOSS survey conducted in August 2020 found that 58.8% of Coronavirus supplement recipients found it easier to pay rent or be able to move into better or safer accommodation, and 51.7% were better able to save up for emergencies - key considerations for people experiencing family violence. [96]

Research has shown the positive social and economic impacts of increased and unconditional social security payments in the bush, particularly in food security and choice and in enabling greater access to Country. [97] The positive mental health impacts of increased payments and lack of mutual obligation requirements have been documented throughout the Covid-19 pandemic. Respondents to the ACOSS survey reported decreased anxiety and distress as a result of the increased payment, however they experienced significant anxiety about the impending withdrawal of the supplement. [98] This anxiety was also reflected in hundreds of responses to a March 2021 Senate inquiry into the withdrawal of Covid financial support.[99] [100]

The lesson of 2020 is that even in the midst of a public health crisis where global and domestic production plummeted, direct government financial support for people on low incomes improved wellbeing and bolstered the economy. And yet in March 2021, the government chose to withdraw the Coronavirus supplement entirely and in doing so plunged half a million people, including hundreds of thousands of children, back into poverty.

Australia's unemployment payment is currently the second-lowest in the OECD, and its mean inadequacy has been recognised for years [101] by the community, civil society, and academia, and more recently by former political leaders, the Business Council and the Governor of the Reserve Bank. [102] The federal government could choose, as it did in 2020, to lift hundreds of thousands of people out of poverty by increasing income support payments to a liveable amount above the poverty line. Freeing our people from the poverty trap created by Australia's inadequate, highly conditional social security system will go a long way towards ensuring safety for our women, children and communities.

End conditionality

A key feature of Australia's social security policy landscape is its system of 'mutual obligations' for people receiving working age payments. Rather than social security being an unconditional entitlement for people needing income support, the Australian system forces recipients to jump through hoops to receive and maintain their payments. Compulsory job searches and meetings with private job agencies, stringent reporting requirements with regular administrative failures, forced labour programs like Work for the Dole and the Community Development Program, and programs targeted at specific groups of people with punitive financial penalties for noncompliance characterise Australia's income support system. This is wrong.

In the Wiyi Yani U Thangani report, 'Women expressed serious concerns about mandatory programs, onerous mutual obligation requirements, and the punitive measures built into the social security system. They provided accounts of how suspended or cancelled payments created acute financial stress, caused severe harm to health and social wellbeing, and further perpetuated cycles of poverty.' [103]

Reflecting on consultations, Commissioner Oscar said 'I heard firsthand how social welfare frameworks like CDP and ParentsNext are not just incapable of meeting our needs in their current form, they punish us by removing basic rights that should always be guaranteed, further entrenching our people into poverty.' [104]

Particular concerns were raised in the report about the Community Development Program, a supercharged version of Work for the Dole targeted at Aboriginal communities:

"Women expressed serious concerns about the punitive compliance frameworks that have been incorporated into CDP since its inception. This is unsurprising given the disproportionate rate at which penalties have been applied to CDP participants, the majority of whom are Aboriginal and Torres Strait Islander peoples, compared with participants in other welfare schemes." [105]

"The CDP Program is not working, it's doing nothing for our people. It's a money-making business for providers" - Ceduna mums and bubs. [106]

The federal government's decision to end the CDP is an admission that paternalistic and punitive welfare policy causes harm. What replaces the CDP must be genuinely co-designed, with the design and implementation of programs led by our people. Rather than individualising unemployment and poverty and making support more difficult to access, government should be responsive to systemic issues affecting rural and remote economies and empower communities to be in control of their economic development.

"The way the government has structured CDP it's not around looking at communities as a whole — it is looking at you as the individual. It is about making sure that you go and you're keeping your appointment with Centrelink and go looking for training and all that. It is no longer as a community so government has really broken communities to the point where there is nothing going on. All the money that used to be a part of the old CDEP where community runs its own business, well that was pulled-out" - Fitzroy Crossing women. [107]

Women and girls also had strong criticisms of compulsory income management, the most recent iteration of Australian governments' practice of restricting Aboriginal and Torres Strait Islander peoples' access to our own money:

"All this stuff disempowers us so people think it is okay to include things like the cashless card, because they see us as 'the poor Aboriginal person that can't sort their own shit out so let's introduce the cashless card'. South Hedland women

Different rules for White people. They think Aboriginal people are the only people who watch porn and drink alcohol. You live in the suburbs, you don't have a Basics Card, but if you live in a Blackfulla camp, you have a Basics Card, a card where you can't even draw money out. Is that racist? Discrimination? Impacting on our human rights."
Borrooloola women

The government is engaged in coercion—promising funding for wraparound services in the community only if the trial for the Cashless Card is accepted". [108]

Women perceived cashless welfare as a blunt instrument that was impractical and ineffective in addressing the underlying causes of harmful behaviours, [109] and that it increased crime. [110]

Research from the University of Queensland found the vast majority of people on income management had no issue with alcohol (87%), drugs (95%) or gambling (91%) prior to being put on the cashless welfare cards. 87% of respondents saw no benefits in compulsory income management, while 13% thought there were some advantages. [111] The research found that having to live on the cards caused a serious decline in mental health and wellbeing across trial sites, [112] and that overall cashless welfare is disabling, compounds the problems caused by Australia's low rate of income support payments, hinders people's management of their financial affairs, 'reduced their sense of autonomy, wellbeing and overall locus of control', and 'may undermine rather than support the stated policy objectives of creating more autonomous, independent individuals who will be more likely to transition into employment.' [113]

The predictable failure of cashless welfare trials shows participation in income management schemes should be a choice, not forced on people and communities.

Finally, we call for the abolition of the flawed, punitive ParentsNext program, and its replacement with voluntary, evidence-based programs that support parents, value caring labour, and break down structural barriers Aboriginal and Torres Strait Islander parents face in the labour market.

ParentsNext is directly and indirectly discriminatory against single mothers of young children and Aboriginal and Torres Strait Islander mothers, with the program's targeting of these cohorts being acknowledged in governments' own policy documents. [114] The scheme does not acknowledge that parents are already engaged in the most important and undervalued work in the economy - that of unpaid care and social reproduction. [115]

Unfair breaches, nonsensical compliance requirements and a lack of cultural appropriateness characterise the scheme. Research by Klein finds ParentsNext also risks retraumatising victim-survivors of family violence:

“Telling is how women recovering from the trauma of domestic violence, but still put on ParentsNext, felt that ParentsNext was like entering another abusive relationship, “The conditionality is like a new violent relationship – financial and psychologically abusive”, one interviewee said. It did not provide the nurturing or caring space needed to support them from recovering from their trauma, even producing further trauma and stress.” [116]

It’s beyond the scope of this report to fully canvas the harms and injustices caused by conditionality in Australian social security policy. We have not touched on the dangers posed by means testing and eligibility criteria, for example partner income tests which prevent people from accessing income support and can pose a serious barrier to escaping violence, [117] and the policy of stripping incarcerated people of their Disability Support Pensions. [118] [119] Social security is a right, and access to it should be unconditional.

Community-led economic participation and development

Recommendation: Implement economic development and poverty reduction strategies designed by Aboriginal and Torres Strait Islander people, and supported by governments, to increase employment opportunities in communities.

Colonisation of this continent brought with it the destruction of egalitarian and sustainable First Nations economies and theft of sovereign Aboriginal and Torres Strait Islander peoples' land, labour and money. As touched on in our earlier discussions of socio-economic disadvantage in this paper, the experience and persistence of poverty, unemployment and economic inequality in our communities have to be understood and redressed in the context of invasion, expropriation, dispossession, displacement from Country and racist discrimination. Aboriginal and Torres Strait Islander women face intersecting gendered inequalities embedded in Australian society and the economy, including expropriation of our unpaid caring labour. All of these factors impact our ability to participate freely and equally in the labour market and economy, limiting our access to financial security.

Through the Wiyi Yani U Thangani report, Aboriginal and Torres Strait Islander women and girls made clear the need for an end to externally-imposed economic development initiatives and investment in community-driven and controlled development approaches. [120]

"Our economic security cannot be achieved through better social security systems and mainstream employment opportunities alone. There is a critical need for Aboriginal and Torres Strait Islander-led economic development through the establishment and growth of Aboriginal and Torres Strait Islander organisations, whether they be not-for-profit or profit-driven, to manage and leverage community-owned land and infrastructure, deliver government-funded programs and services and social enterprise initiatives, and earn profits through the market-based economy." - Commissioner June Oscar AO.

Women and girls spoke of the immense value and importance of the caring labour they perform, and their desire for 'a holistic approach that recognises and values the work they do for society.' Commissioner Oscar tells us 'this approach includes working with women to combat poverty, heal from trauma, enable their education and training, facilitate entry into employment, and invest in our businesses.' [121]

In addition to reform of the social security system to achieve economic security and safety for First Nation women and girls, the report calls for co-design of 'a new community development approach to build the skills of Aboriginal and Torres Strait Islander women and to address community-based needs on projects as decided by the community, including programs particularly around financial literacy, superannuation and navigating financial institutions.' [122] Women called for job creation in local community-controlled services and investment in growing culture- and country-based enterprise across industries, owned and operated by Aboriginal and Torres Strait Islander people.

"Women and girls are motivated for change and I am inspired by the growth of Aboriginal and Torres Strait Islander business. Through Aboriginal and Torres Strait Islander-led economic development, our people are more likely to be hired and our cultures and identities represented. Women and girls are calling for the promotion of Aboriginal and Torres Strait Islander business and dedicated strategies of support to further increase Aboriginal and Torres Strait Islander participation in the economy that generates positive outcomes for communities." - June Oscar AO [123]

For its National Safety Plan to work for us and our communities, the government needs to ensure self-determined economic and community development is supported and resourced.

We have laid out a blueprint for what's needed to reduce the disproportionate rates of violence against Aboriginal and Torres Strait Islander women. Prioritising place-based, community-controlled services designed and delivered by Aboriginal and Torres Strait Islander people can be seen as part of a holistic self-determined strategy to reduce violence and achieve healing, greater community strength and community-led economic development. A National Safety Plan for Aboriginal and Torres Strait Islander women must be one that is self-determined and community-led, appreciates and values our knowledge, strength and care, and holds our connection to culture and Country at its heart.

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Smarter Justice. Safer Communities.

22TDHS/297
ATTACHMENT 11

Coercive control consultation concept

CONSULTATION CONCEPT

Funding will be sought to contract a consultant to deliver the consultation program and provide a final consultation report.

Consultation is likely to begin in October or November 2022.

Office for Women (OFW) will organise separate sessions with the following groups:

- Aboriginal and Torres Strait Islander communities and Aboriginal Controlled Community Organisations
- Culturally and linguistically diverse communities
- Women with lived experience of domestic and family violence
- Women with disability
- People living in regional and remote communities (visiting the regions recommended)
- LGBTIQ+ people
- Older persons
- Other groups not yet identified

People and organisations to be approached are listed in the table below. This is not a definitive list and is likely to be modified prior to the sessions.

Information being sought

These groups will be asked to expand on what coercive control looks like to their cohort, how the criminalisation of coercive control could impact on that cohort, what supports will need to be in place for their cohort to understand the impact of the criminalisation of coercive control and what this means to South Australians.

Dates

Consultation is likely to begin in October or November 2022.

Sessions and reporting

The Office for Women (OFW) will organise the sessions, however a third-party consultant is preferred to lead the workshops and deliver a final report on each consultation. This approach would promote open conversation and impartial reporting. OFW and Attorney-General's Department staff would attend the sessions as observers.

A final report on the outcome of the sessions will be produced.

Topics for discussion

Topics will be slightly tailored for each session.

- Identifying key messages for your community
- Best method to reach the community (media etc)
- Perceptions of coercive control in your community
- Benefits and possible adverse impacts of legislation
- Issues with possible increase in incarceration for DFV offences and over-representation in the corrections system
- Issues with responding to perpetrators – responding to trauma
- Issues with service delivery in your community and identification of coercive control
- Identifying gaps in services
- Training and education need for frontline services
- Communicating change in legislation to community
- Issues with misidentification of the perpetrator
- Identifying coercive control in non-heterosexual, non-binary and carer relationships
- Education opportunities with young people
- Issues with the justice system and court process
- Communicating legislative change
- Appropriate governance and accountability mechanisms
- What does successful implementation look like?

Targeted stakeholders	Representatives
Aboriginal and Torres Strait Islander community and Aboriginal Controlled Community Organisations	<ul style="list-style-type: none">- KWY (Kornar Winmil Yunti)- Nunga Mi:Minar- Ninko Patpangga – Women’s Safety Services SA (WSSSA)- NPY Women’s Council- Coober Pedy Homelessness DV and Aboriginal Family Violence Support Service- Ceduna DV and Aboriginal Family Violence Service- Nerida Saunders, Aboriginal Affairs and Reconciliation and Premier’s Council for Women (PCW)- Tina Quitadamo

Targeted stakeholders	Representatives
	<ul style="list-style-type: none"> - Vicky Welgraven - Family Violence Aboriginal Legal Service - Aboriginal Legal Rights Movement - Commissioner for Aboriginal Children and Young People – April Lawrie - Aboriginal Affairs and Reconciliation (DPC)
Culturally and linguistically diverse (CALD) communities	<ul style="list-style-type: none"> - Australian Refugee Association - Multicultural Communities Council SA - Migrant Women’s Resource Centre - Multicultural Youth SA - Migrant Women’s Support Program (WSSSA) - Red Cross – Family and Domestic Violence Support Program (women on temporary visas) - Multicultural Affairs (DPC) - Shingi Mapuvire – PCW
Women with lived experience of domestic and family violence	<ul style="list-style-type: none"> - Embolden’s Voices for Change - Rachel Tattersall (as requested by Minister Hildyard) - Stacey Nelan - Nunga Mi:Minar - ARA
Women with disability	<ul style="list-style-type: none"> - Belle Owen (WWD SA) - WWD Australia – policy officer - Kendall Field – Disability Advocacy and Complaints Service of SA - NDIA representative - Women with lived experience (Voices for Change) - DHS Disability Services unit - Office of the Public Advocate – Disability Advocate
People living in regional and remote communities	<ul style="list-style-type: none"> - Zonta

Targeted stakeholders	Representatives
	<ul style="list-style-type: none"> - Soroptimist Int'l - National Rural Women's Coalition - Kornar Winmil Yunti - Uniting Communities - Centacare Catholic Country - The Haven volunteers and workers - SA DFV Alliance (regional services) - NPY Women's Council - Women's Legal Service SA - Regional services (depending on towns visited) - Fiona Dorman – PCW and National Council of Women SA
LGBTIQA+ people	<ul style="list-style-type: none"> - Shine SA - The Cottage - Rainbow Advocacy Alliance – Lucy Hackworth - SA DFV Alliance - DHS Social Inclusion unit
Older women	<ul style="list-style-type: none"> - Office for Ageing Well - COTA - Zonta - Soroptimist Int'l - DHS Social Inclusion unit - Women with lived experience

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Minister for Women and
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22TDHS/297

Name
Address
SUBURB STATE POSTCODE

Dear _____

I am writing to let you know that the Commonwealth Government has invited Australians to provide their views on draft National Principles to Address Coercive Control, which are now available for public consultation. As a key stakeholder for this Government in reducing and responding to family, domestic and sexual violence (FDSV), I consider your viewpoint important in informing the consultation.

At the recent Meeting of Attorneys-General, (now referred to as the Standing Council of Attorneys-General), all jurisdictions agreed to take collective action to address coercive control as it presents in FDSV.

The Malinauskas Government is firmly committed to eradicating the crisis of FDSV in our community. This will include the criminalisation of coercive control. However, before we embark on legislative change, it is of vital importance to ensure we have a shared national understanding of coercive control as a pattern of abuse, over time. This is critical for improving community awareness of coercive control, and supporting the safety of Australians, particularly women and children.

Progressing the National Principles is an important step towards delivering on this commitment.

The national consultation process closes on Friday 11 November 2022. To access the draft National Principles and respond to the survey, please visit the Attorney-General's Department website.

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The consultation process is open to everyone, and I encourage you to participate in the online survey, and ensure we gather a range of experiences and views. If you are aware of other organisations, groups or individuals that should provide their input as well, please pass on the details of the consultation. I am advised that the Commonwealth's consultation will also include targeted roundtable discussions and further advice from an Advisory Group comprised of victim-survivor advocates, FDSV experts, and representatives of people at increased risk of coercive control.

South Australia, through the Office for Women, will also be undertaking a targeted consultation process ensuring we hear the voices of at-risk groups, including women who live in regional areas and Aboriginal women prior to introducing legislation. I will advise you of this consultation opportunity in due course.

Yours sincerely

Hon Katrine Hildyard MP

MINISTER FOR WOMEN AND THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

/ / 2022

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NAME	SALUTATION
<p>Ms Susie Smith and Ms Maria Hagias Co-Chairs Embolden SA Inc Kaurna Country PO Box 79 HILTON SA 5033</p> <p>(c/o Jennifer Kingwell) By email: jennifer@embolden.org.au</p>	Ms Smith and Ms Hagias
<p>Ms Zita Ngor CEO Women's Legal Service SA Kaurna Country PO Box 262 Rundle Mall ADELAIDE SA 5000</p> <p>By email: admin@wlssa.org.au</p>	Ms Ngor
<p>Ms Maria Hagias Chief Executive Officer Women's Safety Services SA Kaurna Country PO Box 79, Hilton Plaza HILTON SA 5033</p> <p>By email: mariah@womenssafetyservices.com.au</p>	Ms Hagias
<p>Ms Kelly-ann Tansley General Manager Zahra Foundation Kaurna Country PO Box 3082 HILTON PLAZA SA 5033</p> <p>By email: admin@zahrafoundation.org.au</p>	Ms Tansley
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Ms Lucy Hackworth SA Rainbow Alliance Advocacy Clause 6(1) - personal affairs	Ms Hackworth
Ms Jane Mussared CEO Council of the Ageing SA Level 1/85 Hutt Street ADELAIDE SA 5000 JMussared@cotasa.org.au	Ms Mussared
Ms Ellen Fraser-Barbour Researcher and Scholarly Fellow Member for the National Disability Research Partnerships Working Party Flinders University in Disability and Community Inclusion ellen.fraserbarbour@flinders.edu.au	Ms Fraser-Barbour



Planning for Coercive Control Legislation in SA in 22/23

SA intends to introduce legislation to criminalise coercive control in 2023. In 2021 the AGD led numerous consultations and forums that generated important themes and feedback from the family, domestic and sexual violence (FDSV) sector as well as other key stakeholders in South Australia. In February 2022, the AGD released a discussion paper *Implementation considerations should coercive control be criminalised in South Australia* to obtain feedback about the implementation measures that will support a coercive control offence in South Australia. The AGD received 22 submissions to the discussion paper that generated six key themes listed below (Briefing 22TDHS297). These themes form the basis of this planning framework which will inform a more detailed project plan. The framework below is designed to commence discussions about key decisions. Further information will be added from the discussion on 12 October 22.

Coercive Control Legislation Planning Framework

Learnings and evidence



Decisions/scenarios



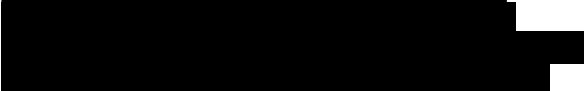

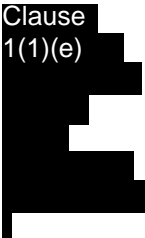
Timing and stakeholders



Key points of discussion based on 22TDHS 297: Proposed Next Steps on Engagement for Coercive Control Legislation

Action area/ milestones	Evidence through research and engagement (22TDHS297)	Decisions (D) + Scenarios (S) regarding next steps	Timeframe / key dates	Proposed Stakeholders
Drafting of legislation				
1 Analysis of related legislation which will have implications for the success of the new bill Drafting of new bill	Just over a third of the 22 submissions to the AGD discussion paper called for a clear definition of coercive control in the legislation; National Principles to Address Coercive Control have gone out for public consultation. Queensland: Women advised to review and amend current legislation before introducing new laws, as existing legislation is not working. what's not working within existing legislation; they said don't introduce a new bill until you review and fix current laws. There is significant risk that if legislation is introduced before appropriate education and training is undertaken, you risk eroding community trust, as	D: Will the definition of coercive control in the new legislation be the subject of future consultation or will it be determined by AGD legislative branch? D: Amendments to other legislation prior to introduction of new bill – what other legislation requires review and amendment? D: <u>When do we aim for the introduction of new Bill?</u> D: Timeframe between introduction of bill and passage	Cwth consultation on National principles closes 11/1122 Discussion with AG on 21/10/22	AGD legislation branch Parliamentary Counsel

Action area/ milestones	Evidence through research and engagement (22TDHS297)	Decisions (D) + Scenarios (S) regarding next steps	Timeframe / key dates	Proposed Stakeholders
	<p>women can hear about new laws, and go report and police are uneducated and unprepared to respond.</p> <p>Amend/update existing legislation first</p> <p>Qld will introduce the bill next year following strengthening/ amending existing legislation.</p>		<p>Drafting including analysis of related legislation</p> <p>November 22 – April 23</p>	
Raising awareness about the issue and the new legislation				
<p>2</p> <p>Launch of See the Signs Campaign</p> <p>Comms and Engagement to establish a project to:</p> <ul style="list-style-type: none"> - determine outcomes of public awareness/ education campaign(s) - communications methods and strategy - timing of this piece and components <p>Public forum – <i>Starting a conversation about Coercive Control in South Australia</i></p>	<p>The extensive need for a public awareness campaign was raised through previous consultations. Submissions to the AGD discussion paper were supportive of a strong community awareness campaign for coercive control in conjunction with the creation of a criminal offence.</p> <p>The Queensland Government's response to the Women's Safety and Justice Taskforce <i>made raising awareness and understanding in the community and improving primary prevention</i> as an area of priority action prior to introducing legislation.</p> <p>The Qld Government supports the Taskforce's recommendations to implement and adequately resource an overarching communication strategy to increase awareness and understanding about the nature and impacts of FDV and clearly explain legislative changes.</p>	<p>Clause 1(1)(e) - deliberations of Cabinet</p> <p>D: Lead for communications campaign?</p> <p>D: Desired outcomes/ purpose of campaign and education?</p> <p>Clause 1(1)(e) - deliberations of Cabinet</p> <p>D: What's the focus of this forum/ what do we want to achieve through this?</p>	<p>Launch of See the Signs - Nov 22</p> <p>CI 1(1)(e)</p> <p>CI 1(1)(e)</p> <p>Public forum – February 23</p>	<p>Show Pony</p> <p>OurWatch</p> <p>Premier's Council for Women</p> <p>Key sector representative for focus groups and testing including key ACCOs</p> <p>DHS Communications and Engagement Team</p>

Action area/ milestones	Evidence through research and engagement (22TDHS297)	Decisions (D) + Scenarios (S) regarding next steps	Timeframe / key dates	Proposed Stakeholders
Targeted and community-based consultation				
3 Targeted sessions with sector leaders (face to face) Session with multicultural sector leaders Session with ATSI sector leaders Session with sector reps/ leaders from other key groups	<p>South Australian respondents to the yourSAy Platform noted the importance of an enhanced focus on consultation with regional and remote victim-survivors, Aboriginal people and the migrant community.</p> <p>This is consistent with research generated by ANROWS, which recommended extensive cross-sector consultation with diverse groups of women and the service providers they engage with, carefully considering alternatives to criminal justice approaches.</p> <p>Queensland: People want to tell their individual stories; this requires extensive resourcing; risk management / managing expectation / consideration of legal obligations.</p> <p>In order not to retraumatize women, counsellors were available at live group meetings and funding was provided to Brisbane DFV service to manage additional demand.</p> <p>Many communities felt over consulted; "Report fatigue" "How many time do we have to say this?" Qld used the connection to targets 12, 13 around CTG as important for communities to own their own voice. Consultation approach with one doesn't fit all. Important to consult appropriately the first time, rather than ongoing rounds of consultation to prevent fatigue.</p>	<p>D: Timing of community consultation – pre/ post introduction of Bill?</p> <p>D: Will a next stage of consultation focus on the content of the bill - as well as implementation issues? Will AGD be responsible for legislative consultation?</p> <p>D: Will community consultations comprise public forums and or both</p> <p>Clause 1(1)(e) - deliberations of Cabinet  </p> <p>D: Can we engage DPC yourSAy Say for further support around consultation?</p> <p>D: How do we ensure women feel safe telling their stories? Role of FDV sector in SA?</p>	<p>To commence Nov 22</p> <p>Consultation can commence March 2023</p> <p>Clause 1(1)(e) </p>	<p>DHS Communications and Engagement Team</p>
Addressing the unintended outcomes of legislation				
4 Targeted consultation sessions (as above) to understand community concerns Targeted discussions with SAPOL / representatives of the justice sector	<p>Responses to the AGD discussion paper highlighted unintended outcomes of legislating i.e., that a coercive control offence may contribute to the growing incarceration and criminalisation of Aboriginal women through the misidentification of victims of long-term significant violence as primary aggressors.</p> <p>Queensland: Significant concerns about misidentification of victims raised across all communities and about adverse impacts on indigenous communities.</p> <p>AGD – petition Cwth to reconsider the Law Reform Commission report 135 Family Law for the Future to</p>	<p>D: Purpose and role of cross agency group – working groups; governance; coordination</p> <p>D: MATE training for SAPOL and investigative policing training to prevent misidentification.</p>	<p>Dec 22: Stand up cross agency group</p>	

Action area/ milestones		Evidence through research and engagement (22TDHS297)	Decisions (D) + Scenarios (S) regarding next steps	Timeframe / key dates	Proposed Stakeholders
	Set up an across agency steering group to coordinate implementation	reduce risk of misidentification in the court system and continued systems abuse by perpetrators.			
Adequate resourcing to plan and effect implementation					
5	DTF to lead investment strategy	<p>Across all consultations a primary theme raised was that "adequate funding needs to be made available to support the implementation of a criminal offence for coercive control, as it requires a significant change in culture, understanding and ways of working for government agencies, community services, legal providers and institutions and the broader community."</p> <p>Essential to plan for implementation – the system must be adequately trained, educated and prepared. Police must be ready to undertake investigative policing, not incident based policing. Courts must be simillary prepared,</p> <p>Qld: Qld Treasury worked directly with the sector to capture demand data; this will be critical to inform demand for the courts; for DPP and for the justice sector.</p>	<p>Clause 1(1)(e) - deliberations of Cabinet</p> <p>D: Who leads conversation with DTF and when?</p>		DTF
Preparing the justice and service sector for implementation of the legislation					
6		<p>ANROWS argue that legislative change on its own is not sufficient to transform the culture of FDV responses and that effective training, models of co-response and justice reinvestment are all potential avenues that would support effective responses to coercive control.</p> <p>Queensland: Lack of trust in existing system to work properly for victim-survivors "I don't trust the cops" "The magistrate isn't going to believe me".</p> <p>Police must be trained to respond and instigate investigative policing processes rather than incident based – comprehensive training for police is imperative.</p>	<p>D: Which agency can/ should lead this component? As above – centralized and whole of government approach?</p> <p>D: Much bigger than DHS component. What is AGD role and intention? Are they doing central coordination and planning for this? With each relevant agency contributing their detailed plans?</p>		<p>AGD</p> <p>Legal sector</p> <p>Courts</p>

Action area/ milestones	<i>Evidence through research and engagement (22TDHS297)</i>	Decisions (D) + Scenarios (S) regarding next steps	Timeframe / key dates	Proposed Stakeholders
	<p>An online package and face to face training designed by ANROWS will be available by June 2023.</p> <ul style="list-style-type: none"> • Courts also need to be prepared to ensure magistrates and all personnel (judicial officers; police prosecutors; defense lawyers; legal aid lawyers) have an understanding of who is most in need of protection in the relationship as a whole, as recommended by the Taskforce (Recommendation 37). 			

ATTACHMENT 1: MINUTES OF PREVIOUS MEETING

Minutes of Meeting 19 August 2022

Office for Women, Large Conference Rm, 101 Grenfell St, Adelaide.

1 Acknowledgement of country


Fiona acknowledged the Kaurna people and the First Nations people of the land where we each work and meet.

2 Welcome and apologies

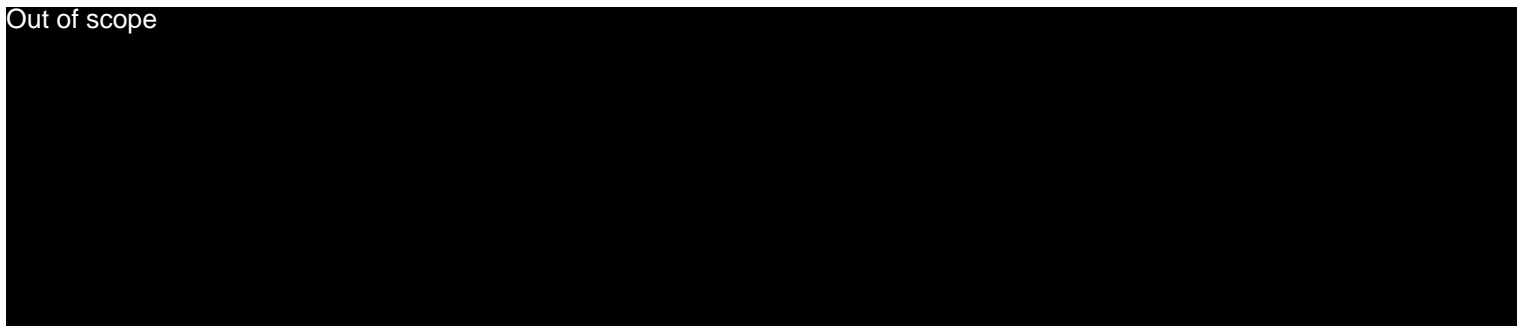
Attendees: Fiona Dorman (Chair), Shingi Mapuvire, Karen Briggs, Kirsty Mundy, Natalie Wade, Kelly Baker Jamieson, Isobel Marshall, Nerida Saunders. Sanjugta Vas Dev (OFW), Amanda Underwood (OFW), Alice Leahy (OFW).

Apologies: Maria Hagias (co-Chair), Marli Smith.

Out of scope

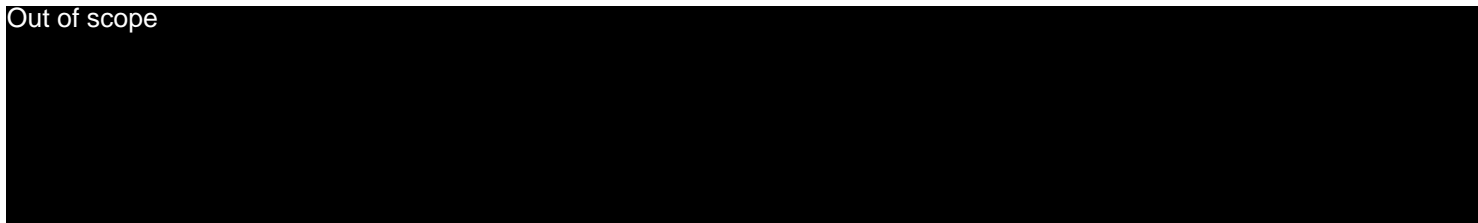


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7 OFW update

Out of scope



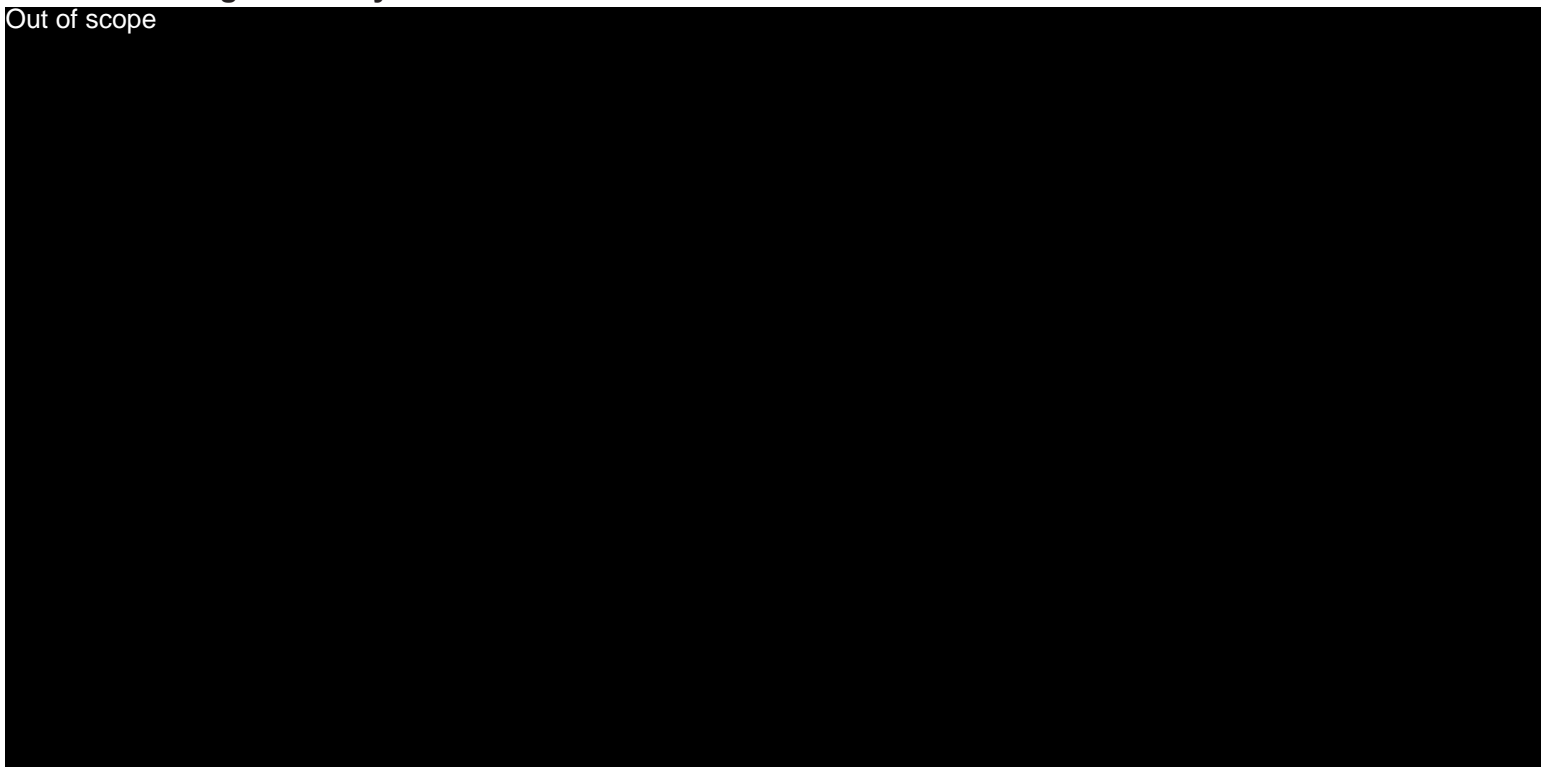
Another emerging priority for OFW is providing advice around the development of legislation against coercive control. Noting that the Minister will be attending the Council meeting in October, Sanjugta suggested the opportunity for Council to consider opportunities to draw in diverse perspectives from their communities. The importance of a considered approach to legislation and potential impact on minority groups is highlighted as a priority of the final stages of consultation. As such, consultation will be sought to seek feedback from key groups including Aboriginal and Torres Strait Islander women, women living with disability, and women from migrant and CALD communities.

The Council raised the opportunity to support consultation- potentially through the facilitation of community round table. The group discussed this opportunity and agreed to raise the issue with the Minister at the next meeting to explore further. Members also requested access to further background reading to inform their understanding ahead of the next meeting.

Sanjugta also suggested Kelly Ann Tattersley from Zahra Foundation be invited as a guest speaker to the next meeting to present on the issue.

Action – Sanjugta to email background resources on coercive control to support members understanding of the key considerations.

Out of scope



F2022005023

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22TDHS/780



TO: MINISTER FOR WOMEN AND THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

RE: FINAL MINUTE – MINISTER FOR WOMEN AND THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

Decision/action required by:...../...../.....

Reason:.....

RECOMMENDATIONS

		NOTED	APPROVED	NOT APPROVED
It is recommended that you:				
1	Note the correspondence from the Hon Kyam Maher MLC, Attorney-General, providing a copy of the draft National Principles to Address Coercive Control.	✓		
2	Note the advice in relation to the draft National Principles provided by the Department of Human Services (through the Office for Women).	✓		
3	Note that the Meeting of Attorneys-General will provide final approval of the National Principles in 2023.	✓		
4	Approve the attached Minute to the Attorney-General providing feedback on the draft National Principles.	✓		✓

Approver		Comment
Hon Katrina Hildyard MP Minister for Women and the Prevention of Domestic and Family Violence		Thank you. Please see amendments to minute.

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PURPOSE

To provide you with information and a response to the Hon Kyam Maher MLC, Attorney-General, regarding the draft National Principles to Address Coercive Control (the National Principles) that have been developed by a sub-committee of the Family Violence Working Group, which sits under the Commonwealth Meeting of Attorneys-General (MAG). The purpose of the National Principles is to build a national understanding of coercive control and a shared commitment to a coordinated approach in addressing it. You are asked to provide comment on the draft principles as part of broad consultations being undertaken by MAG from September 2022.

KEY POINTS

- There are eight draft National Principles (the draft principles) for consideration and comment.
- The Attorney-General has provided you with a copy of the draft principles.
- The draft principles are well considered, detailed and comprehensive in their explanation of coercive control, its many forms and implications, the diversity of women who experience coercive control and the work that must be undertaken by states and territories prior to, or instead of, implementing legislation.
- OFW advises on areas where the principles can be further refined and improved. This includes reconsidering the scope of the principles to recognise that coercive control as a form of abuse may extend to relationships beyond familial relationships.
- A Minute is provided (attachment 1) in response to the Attorney-General's correspondence, providing the Department of Human Services (DHS) feedback on the draft National Principles.

RISKS/SENSITIVITIES

Nil.

DISCUSSION

The purpose of the National Principles is to build a common national understanding of coercive control; its nature, effects, past failures to consistently recognise it, and the importance of a coordinated approach in addressing it.

They are intended to be used primarily as a resource for policy makers and service providers across government and non-government sectors to support designing their own approaches to prevention and responding as well as for professionals to guide their work with victims and perpetrators.

In the paper provided, there are eight draft principles that seek to define coercive control - its common features and its long and short-term impacts on victim-survivors. The draft principles acknowledge that coercive control is not consistently recognised and applied by Australian jurisdictions; that discrimination and inequality can impact a victim-survivor's experiences and that victim-survivors should play an active role in informing policy development and solutions.

The draft principles recommend that individual approaches to coercive control by jurisdictions should focus strongly on education and training, and stress that measures be put in place to



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prevent unintended consequences of enacting legislation, should a jurisdiction decide to create a criminal offence of coercive control.

The draft principles have been developed by a sub-committee of the Family Violence Working Group, which sits under the Meeting of Attorneys-General (MAG). At the most recent MAG, on 12 August 2022, Attorneys-General agreed to publicly release the draft principles for consultation and to a revised schedule of key milestones for the project. Consultation will commence from September 2022.

Following this process, the draft principles will be further defined based on stakeholder agreement, before returning to MAG for final agreement in 2023. Specific dates have not been provided at this stage.

Embolden, South Australia's peak body for domestic, family and sexual violence services, through their position paper on coercive control legislation released in September 2021 (attachment 2), recommends the 'active and immediate' support for the establishment of both a national definition for family and domestic violence and a national definition for sexual assault, but does not specify whether this should be established prior to introduction of a bill in South Australia.

Embolden holds that any consistent national definition for family and domestic violence must recognise coercive control as a pattern of abuse and be developed in consultation with specialist women's and family violence services and experts and include those with lived experience of family and domestic abuse.

The draft principles note that inconsistent or unclear understandings of coercive control can create confusion for victim-survivors and the broader community, making it difficult to address. DHS is supportive of an agreed definition of coercive control, and use of agreed definitions of family, domestic and sexual violence (FDSV) more broadly.

Commonwealth-led attempts to create nationally consistent definitions are welcomed and an important step to legislating against coercive control in South Australia.

National Principle 1: Common Features

The Office for Women (OFW) agrees with National Principle 1 and the common features of coercive control listed, including:

- it is a pattern of behaviour, over time, that creates and keeps power and dominance over a person or persons
- that there may not be any physical violence in that pattern of behaviour
- that perpetrators are most often cisgender male and that victim-survivors are most often women, cis and transgender, who are their current or former partner, and their children.

DHS considers the extended definition and explanation of what can constitute coercive control within National Principle 1 to be detailed, comprehensive and inclusive but advises that the scope of the definition should be considered outside of intimate partner relationships and family relationships, noting that this type of abuse can occur within relationships which are based on an ongoing monetary exchange (i.e. paid carers) and within friendship groups.

The Queensland Women's Safety and Justice Taskforce (the Taskforce) was established to examine coercive control, review the need for a specific offence of domestic violence and examine the experience of women across the criminal justice system in Queensland.

A key finding from the Queensland Justice Taskforce was that young people often exerted forms of coercive control within their peer and friendship groups.

National Principle 2: Impacts

National Principle 2 recognises that coercive control has significant short- and long-term harmful impacts on victim-survivors. This principle notes that the effects of coercive control can build and become worse over time and that its perpetration can take away the independence, dignity, self-worth, security, identity, health and wellbeing of a victim-survivor. It notes that escalating patterns of coercive control are a significant factor in intimate partner homicide cases.

DHS considers that National Principle 2 encompasses the wide-ranging impacts that coercive control can have on a victim-survivor and correctly describes as cumulative the escalating patterns of behaviours that constitute coercive control.

DHS also suggests that the impacts of coercive control can be complex and play out differently for victims; this should be explicitly acknowledged in the principles. It is critical to acknowledge that some women manifest the impact of this form of abuse in ways that may lead them to be misidentified as the perpetrator during police call outs.

National Principle 3: Community Understanding

National Principle 3 acknowledges that coercive control has, to date, not been consistently recognised, understood or responded to as FDV by the Commonwealth, state or territory governments, nor by the broader community, legal system or law enforcement. Single acts of physical violence are widely recognised as FDV, rather than a pattern of abuse over time.

In South Australia, the need for extensive community awareness and education has been raised in previous consultations undertaken by the Attorney-General's Department (AGD) which sought community feedback on non-legislative measures for addressing coercive control. Most respondents who made submissions to the AGD discussion paper were supportive of a strong community awareness campaign for coercive control in conjunction with the creation of a criminal offence.

The Taskforce has made *raising awareness and understanding in the community and improving primary prevention* an area of priority action *prior to* introducing legislation and has committed to supporting recommendations to implement and adequately resource an overarching communication strategy to increase community awareness and understanding about the nature and impacts of domestic and family violence including coercive control and to clearly explain changes to the law.

DHS agrees with National Principle 3 but would advise that the language be shifted from deficit focused to active language. For example, rather than the principle stating that Australian and state and territory governments "recognise that coercive control has not been consistently recognised, understood or responded to as family and domestic violence", this could instead read Australian and state and territory governments "recognise that coercive control must be consistently recognised, well understood and routinely responded to as family and domestic violence. Improving and increasing community awareness should be considered in any policies or solutions to address coercive control."

National Principle 4: Effects of Discrimination and Inequality

This principle asks that all governments recognise that discrimination and inequality within the practices, policies and behaviours of organisations, institutions and communities can impact a victim-survivor's experience of coercive control and that these issues must be considered in any policies or solutions to address coercive control. This principle also seeks to encompass the sense of entitlement and empowerment perpetrators feel, that is exacerbated by environments of discrimination and inequality.

It is unclear whether the National Principles are inclusive of coercive control in the context of a disability carer support or other paid carer relationships. The definition of coercive control is limited to the context of FDV, which means that the applicability of these principles outside of family and domestic relationships is beyond scope.

Women with disability are an example of a group at particular risk of FDV and coercive control, particularly in this context. While the National Principles state that the definition seeks to encompass domestic, dependent relationships, it does not explicitly state that women with disability can be coercively controlled by a carer.

DHS has included feedback in the Minute to the Attorney-General regarding the explicit inclusion of people with a disability experiencing coercive control by a carer who is not an intimate partner or a member of their family.

DHS also notes in the Minute that it is important to acknowledge that systemic conditions of inequality and discrimination can have adverse impacts for victim-survivors navigating any stage within the justice system, from police response to the court experience. DHS is otherwise in agreement with National Principle 4.

National Principle 5: Lived Experience

This principle seeks to ensure all governments recognise the importance of ensuring the lived experience of victim-survivors, including children and young people, and ensure that experience informs policies and solutions to address coercive control. It also notes that some people who have experienced coercive control do not survive and that significant lessons are to be learned from these deaths. DHS agrees with National Principle 5.

National Principle 6: Coordinated Approach to Prevention, Early Intervention, Response and Recovery

National Principle 6 asks that governments recognise the importance of a nationally coordinated approach, based on a shared understanding and definitions. This principle highlights the importance of evidence based, trauma informed approaches across prevention, early intervention, response and recovery.

Early intervention must identify perpetrators and victims early. Response efforts must hold perpetrators accountable and reduce the risk of re-offending and recidivation. This principle also emphasises the importance of a strong focus on education and training. DHS is in agreement with National Principle 6.

A South Australian response to coercive control must be developed and considered within the context of broader government policy frameworks, including the *National Plan to End Violence Against Women and Children 2022-32*.

National Principle 7: Criminalisation

This principle relates to each state and territory's determination as to whether to legislate against coercive control, as the Commonwealth is unable to create a coercive control offence at the national level. This principle also emphasises the importance of non-legislative approaches to addressing coercive control spanning across prevention, early intervention, response and recovery areas. DHS is supportive of the criminalisation of coercive control and the extensive education and training measures suggested above.

National Principle 8: Unintended Consequences of Criminalisation

The need to ensure that unintended consequences of legislation for victim-survivors are carefully considered is highlighted. This includes the risk of victim-survivors being misidentified as perpetrators of FDV or further traumatised through difficult criminal justice processes and the risk of further over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. DHS agrees with National Principle 8.

The Office for Women is currently preparing for the consultation process to seek insight from the domestic, family and sexual violence sector, the community and women with lived experience on introducing a criminal offence of coercive control and developing supporting frameworks to ensure the legislative change is effective. The National Principles will provide a strong reference point to inform discussion on the requirements for criminalising coercive control in South Australia.

BUDGET

Are there financial considerations No

Division	Community and Family Services		
Director Office for Women	Sanjuga Vas Dev	Approved by email	12/09/2022
Executive Director Community and Family Services	Alex Reid	Approved by email	12/09/2022

ATTACHMENTS

- Minute to the Hon Kyam Maher MP, Attorney-General

Contact Officer:	Briana Hendry, Senior Policy Officer 830 30599 / briana.hendry@sa.gov.au
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MINUTE

Government
of South Australia

The Hon Katrina Hildyard MP

MINUTES forming ENCLOSURE to

Ref: F2022005023

**TO: HON KYAM MAHER MLC
ATTORNEY-GENERAL****RE: DRAFT NATIONAL PRINCIPLES TO ADDRESS COERCIVE CONTROL**

Thank you for providing the opportunity to provide comment on the proposed consultation draft of the National Principles to Address Coercive Control ("National Principles").

As you are aware, I am highly committed to addressing this insidious form of domestic and family violence, including through the creation of a criminal offence of coercive control in South Australia. I am generally supportive of the National Principles and heartened to note that this is a concern of governments Australia-wide, and that national action is being prioritised to protect and empower victim/survivors.

The National Principles are well considered and reflective of the understanding I have of appropriate responses to coercive control and the work that must be undertaken by states and territories in implementing legislation in this space. I am pleased to note the detailed, comprehensive, and inclusive explanation of what can constitute coercive control within **National Principle 1** and recognition of the shift to understanding and responding to patterns of behavior rather than incidents only.

This should lead to effective implementation of analogous responses across Australia which will widely support women and their children experiencing coercive control. I suggest however, that the scope of the definition should be considered outside of intimate partner and family relationships, noting that this type of abuse can occur within relationships which are based on an ongoing monetary exchange (i.e., paid carers) and within friendship groups.

I note that **National Principle 2** encompasses the wide-ranging impacts that coercive control can have on a victim-survivor and correctly describes as cumulative the escalating patterns of behaviours that constitute coercive control.

As coercive control can be complex and vary widely in its impact on victim-survivors, this should be explicitly recognised in the explanation of Principle 2. It is critical, for



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of South Australia

example, to acknowledge that some women manifest the impact of this form of abuse in ways that may lead them to be misidentified as the perpetrator during police call outs.

I agree with the intent of **National Principle 3**. I suggest that the language be more active, however. For example, rather than the principle stating that Australian, state and territory governments “recognise that coercive control has not been consistently recognised, understood or responded to as family and domestic violence”, this could instead read: Australian, state and territory governments “recognise that coercive control must be consistently recognised, well understood and routinely responded to as family and domestic violence”.

National Principle 3 should also state that improving and increasing community, whole of government and all sectors’ awareness should be considered in any policies or solutions to address coercive control.

In relation to **National Principle 4**, it is not clear whether the National Principles are inclusive of coercive control in the context of a disability carer or other paid carer relationships. The definition of coercive control is limited to the context of FDV, which means that the applicability of these principles outside of family and domestic relationships is beyond scope.

Women with disability are an example of a group at particular risk of FDV and coercive control, especially in this context. I suggest greater clarity regarding the experience of coercive control by people with disability, specifically those who are in a carer relationship with someone who is not an intimate partner or a family member.

While the National Principles state they are inclusive of a ‘domestic’ relationship, I recommend this relationship be clearly stated, similarly, to section 8(8)(k) of the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*. It is important that all possible victim-survivors of coercive control are provided with protection.

It is important to acknowledge that systemic conditions of inequality and discrimination can have adverse impacts for victim-survivors navigating any stage within the justice system, from police response to the court experience. This requires acknowledgment.

In line with these experiences, it must be noted as explored in **National Principle 6 and 8** how important education and training across systems and sectors will be in ensuring the effectiveness of implementation.





**Government
of South Australia**

In general, I welcome this opportunity to feed into consultation about the National Principles and I look forward to reviewing any public responses to them.

I am pleased that work towards our Government's commitment to criminalise coercive control is underway with consultation sessions due to take place this year.

Yours sincerely

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Hon Katrine Hildyard MP

Minister for Women and the Prevention of Domestic and Family Violence

25/10/2022

