ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

Women's Safety and Justice Taskforce
GPO Box 149
Brisbane QLD 4001
By email: taskforce@womenstaskforce.qld.gov.au

Re: Options for legislation against coercive control and the creation of a standalone domestic violence offence – Discussion Paper 1

Dear the Hon Margaret McMurdo AC

ANROWS thanks the Women's Safety and Justice Taskforce for the opportunity to respond to *Options for legislation against coercive control and the creation of a standalone domestic violence – Discussion Paper 1.*

ANROWS is an independent, not-for-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to provide an accessible evidence base for developments in policy and practice design for prevention and response to violence against women, nationally. Every aspect of our work is motivated by the right of women and their children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and their children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Primary (core) funding for ANROWS is jointly provided by the Commonwealth and all state and territory governments of Australia. ANROWS is also, from time to time, directly commissioned to undertake work for an individual jurisdiction, and successfully tenders for research and evaluation work. ANROWS is registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profit Commission (ACNC).

The submission provided below is focused on selected options (1, 3, 6 and 10) outlined in the discussion paper. It draws on evidence from rigorous peer-reviewed research, including relevant ANROWS-funded research. As part of our submission, we also attach a new ANROWS resource entitled *Defining and responding to coercive control: Policy brief* (2021). This resource outlines three key considerations when responding to coercive control, which we draw upon in our answers below.

We would be very pleased to assist the Taskforce further, as required.

Yours sincerely

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Response to selected options

Option 1 – Utilising the existing legislation available in Queensland more effectively

ANROWS-funded research has identified that a robust and nuanced response to coercive control is best created by using the existing legislation in Queensland more effectively. Rather than "more laws" being the answer, there is a need for significant reform to the culture of response to domestic and family violence (DFV; Walklate et al., 2018). Reforms will require a meaningful application of existing laws including the *Domestic and Family Violence Protection Act 2012* (Qld) and course of conduct laws, such as the stalking and torture provisions in the *Criminal Code Act 1899* (Qld; Douglas, 2015; Douglas, 2018). This will entail funding for cross-sector collaboration through resource sharing, support and professional development for police and courts to better respond to the complexity of the patterns of behaviour that make up coercive control.

Coercive control is not simply an action within a list of other actions that may constitute DFV. Coercive control is the context in which DFV occurs (ANROWS, 2021). In order to effectively implement systemic change to address coercive control, it is important to consider how these reforms will impact women who experience multiple and intersecting forms of structural disadvantage, and the barriers they already face in accessing our existing legal system (ANROWS, 2021; Meyer & Reeves, 2021).

Research shows that there is an inappropriate and increasing use of domestic violence law against women who use violence when they are responding to violence perpetrated against them (Bevis et al., 2020; Day et al 2018). In recently published ANROWS research, *Accurately identifying the "person most in need of protection" in domestic and family violence Law* (2020), Nancarrow et al. looked at how systems abuse (in particular, the misconceived over-use of cross-applications by the police) results in the misidentification of victims and survivors of DFV. This research indicates that police use cross-applications in cases that are "situationally ambiguous". There is a range of compounding factors (for example, notions of the "ideal victim", police culture of "covering their arses", perpetrators using their skills at "image management" when police arrive and inadequate guidance, training and availability of time for police to unpack who is the actual victim and who is the perpetrator) which results in domestic violence law being used against the women it should be supporting (Nancarrow et al., 2020).

In particular, Aboriginal and Torres Strait Islander women face significant and compounding barriers that contribute to both incarceration and re-incarceration once misidentification occurs (Nancarrow, 2019; Nancarrow et al., 2020; Nancarrow, 2021). For example, in Nancarrow's recent research (2021), the evidence indicates that Aboriginal and Torres Strait Islander women are found to be over-represented both as respondents on protection orders and in charges relating to breaches.

In order to improve our response to coercive control, there needs to be significant reform to the way police and courts respond to, and are supported in dealing with, DFV matters. Nancarrow et al.'s research (2020), for example, highlights the need to move from current practices of incident-based, retrospective policing to a pattern-based, future-focused one, where police make assessments about the patterns of behaviour rather than single acts of violence. The research also indicates that there is a need for improved and continuous professional development of police and all legal actors in DFV and the overarching pattern of coercive control. Despite police being the first point of access to the criminal justice system, no jurisdiction in Australia currently has the tools to help police assess patterns of coercive control. The provision of continuous training and support by DFV specialists with expertise in coercive control is required to help police in their assessments of DFV matters to provide a nuanced response to families who are affected by DFV (Nancarrow et al., 2020). Queensland Police Service has begun work in this area by training police officers from a "belief first" approach and using appropriate wording, language and

nuances when responding to DFV (Cassidy, 2021). At the international level, Scotland's reforms involved extensive training of police before the law came into force in 2019 (26,000 officers and staff began training in December 2018; "New domestic abuse laws: More than 400 crimes recorded", 2019).

Reforms should also clarify accountability in relation to how decisions are made about issuing protection orders. Nancarrow et al.'s research (2020) indicates that police often defer the decision of whether an application would be appropriate to the courts. However, prosecutors and magistrates often rely on the initial police assessment to make a decision, and lack guidance on how and when they can dismiss inappropriate applications and orders. This uncertainty can also mean that orders and matters are adjourned to a further hearing, which subjects the victims and survivors to prolonged involvement with the legal system (Nancarrow et al., 2020).

Alongside improving guidance for police and courts and clarifying accountability, robust and nuanced reform requires cross-sector collaboration to effectively respond to coercive control. This will include working collaboratively across a wide range of sectors including service providers, governments, and justice and health systems (ANROWS, 2020; Elliot, 2017). Cross-sector collaboration will also require extensive consultation with diverse groups of women and the service providers they engage with, and the careful consideration of alternatives to criminal justice approaches (ANROWS, 2021).

Recommendation 1: Educate and train police and all legal actors to understand domestic and family violence as involving patterns of behaviour which occur within the context of coercive control. These patterns of behaviour are made up of tactics of physical and/or non-physical abuse that seek to deny personhood and the right to think and act independently of the perpetrator.

Recommendation 2: Create a tool to help police and courts assess patterns of coercive control that would detect which party is the perpetrator and which party is using violent resistance to ongoing abuse.

Recommendation 3: Fund and facilitate strong cross-sector collaboration to provide ongoing and regularly updated support and training to help police and courts to respond to the nuances of coercive control.

Recommendation 4: Facilitate cross-sector consultation with diverse groups of women and the service providers they engage with, and carefully consider alternatives to criminal justice approaches.

Option 3 – Amending the definition of domestic violence under the *Domestic and Family Violence Protection Act 2012* (Qld)

When considering amendments to domestic violence law, it is important to understand that coercive control is the overarching, gendered context for DFV behaviour, rather than it being a separate tactic or type of DFV behaviour (ANROWS, 2021; Nancarrow et al., 2020). This approach is required to reduce the number of victims and survivors who are misidentified as the predominant aggressor.

The approach would be aided by a revised national definition of DFV, which needs to explain that DFV includes both physical and non-physical abuse. For example, physical violence is not always present in coercive control (Buzawa et al., 2017). However, as outlined in the recent ANROWS resource *Defining and responding to coercive control: Policy brief* (2021), there is evidence to show that coercive control is a risk factor for intimate partner homicide. The evidence shows that where female victims are killed by their intimate partner, many cases do not have an obvious history of physical abuse and instead homicides were preceded by other forms of coercive and controlling behaviour (NSW Domestic Violence

Death Review Team, 2020). Despite these statistics, there is often greater attention, resourcing and effort directed towards addressing physical violence. Policing practice often considers physical and sexual violence more harmful than non-physical abuse, with non-physical abuse sometimes not recognised as abuse at all (ANROWS, 2021).

Amendments to the definition of domestic violence require addressing the over-reliance on a "hierarchy" of violence which diminishes non-physical violence. It is critical that the amendments do not separate physical abuse from non-physical abuse (ANROWS, 2021).

Recommendation 5: Implement a consistent definition of coercive control and of domestic and family violence across legislative and policy settings, Australia-wide. This definition needs to position coercive control as an overarching strategy for domestic and family violence behaviours, and include a non-exhaustive list of physical and non-physical behaviours which may be a tactic of coercive control.

Option 6 – Creating a new standalone "coercive control" offence

If a new standalone offence is created in Queensland, it needs to be based on evidence and measured by how successful the law in other jurisdictions (both internationally, and locally, if this occurs) has been in reducing women's experiences of coercive control (ANROWS, 2021). Currently no Australian jurisdiction has a standalone coercive control criminal offence in place. The various jurisdictions instead employ other existing criminal offences – assault, indecent assault, rape, sexual assault, attempted murder, stalking, intent to do grievous bodily harm – to deal with incidents of DFV as they occur (ANROWS, 2021).

A standalone coercive control offence would require overcoming the inconsistencies currently in place across all states' and territories' legislation of DFV and related offences. Despite recommendations of the Australian and NSW Law Reform Commissions (2010), there is currently no shared definition of DFV that includes coercive control applicable to all jurisdictions and systems. Further compounding the inconsistencies is that not all jurisdictions have embraced the concept of coercive control as the overarching context underpinning DFV. As Douglas points out (quoted in Nancarrow, 2021), the challenge with providing a holistic response to coercive control is that the various systems and jurisdictions operate with different approaches to coercive control. For example, a woman experiencing DFV in Australia may connect with different parts of the legal system that interact with the DVO system including criminal law, family law, child protection system, immigration law, social society law and so on, both at a state or territory and federal level (Nancarrow, 2021). Each of these systems have different approaches, thresholds and enforcement arrangements which are diverse and disconnected (Nancarrow, 2021). These inconsistencies will result in gaps and risks to the safety of women and their children (Nancarrow, 2021).

With state and territory governments now taking steps to reform coercive control, the first Australian jurisdiction to implement a standalone offence will essentially be responsible for providing a model law that is appropriate for the Australian landscape. The Meeting of Attorneys-General (MAG) recently decided that national principles should be developed for the understanding of coercive control. The MAG stated:

> Participants agreed to co-design national principles to develop a common understanding of coercive control and matters to be considered in relation to potential criminalisation, and to their public release, and tasked officials to work with women's safety officials to settle the terms of

> reference, noting criminalisation ultimately remains a matter for decision by individual jurisdictions, and some jurisdictions have already criminalised coercive control. (Attorney-General's Department, 2021)

A unified national response will require recognising the institutionalised sexism and racism that operate within our legal system and society at large (Joint Select Committee on Coercive Control, 2021). Reforms need to focus on the impact of potential criminalisation on Aboriginal and Torres Strait Islander women. In particular, consideration must be made on the historically complex relationship that Aboriginal and Torres Strait Islander peoples have had (and continue to have) with our legal system and the cultural differences in the family structure which could make identifying perpetrators difficult (Nancarrow, 2021; Rosato, 2021). Creating legislation to respond to coercive control will require overcoming the mistrust of the criminal justice system that Aboriginal and Torres Strait Islander communities have and addressing the disproportionately high percentage of Aboriginal and Torres Strait Islander women in prison (Nancarrow, 2021; Rosato, 2021).

The attached ANROWS resource, *Defining and responding to coercive control: Policy brief* (2021), provides a brief examination of certain international jurisdictions' experience of criminalising coercive control. The research indicates that, despite a number of international jurisdictions moving towards criminalising coercive control and DFV (Douglas, 2018; McMahon & McGorrery, 2020), there is limited evidence on the success of instances of a standalone offence. Most of the evidence stems from quantitative measurements relating to the number of successful prosecutions, which have been low (ANROWS, 2021).

For example, despite the law in Scotland being described the "gold standard" in coercive control laws, the approach taken by the Scots would need to be adapted to the Australian landscape. The Scottish approach highlights the need for the law to be one part of a broader systemic approach based on protection (the law), provision of services, prevention of violence against women, and participation of women with lived experience in policy and legislative reform (Nancarrow, 2021). In a broadcast hosted by the Victorian Women's Trust (2021), expert advocates from the United Kingdom made the following key points relevant to the current taskforce considerations:

- Feminist advocacy for the offence of coercive control responded to the persistent focus on physical acts of abuse, which ignored the non-physical power and control dynamics that are the most insidious forms of abuse and a significant risk factor for domestic violence-related homicide.
- Women's organisations are concerned about the "de-gendering" of coercive control in the United Kingdom's coercive control law.
- The United Kingdom offences are not adequately addressing the needs of black, Asian and minority ethnic (BAME) women and advocates are concerned that the laws may represent additional means of state power and control over some groups, and facilitate systems abuse by perpetrators.
- There is insufficient evidence of how the laws are impacting LGBTQ communities.
- Despite the "gold standard" label in regard to the Scottish offence, implementation has been patchy and inconsistent.

When asked if the offences of coercive control were increasing safety for women, the UK experts responded emphatically "it's too soon to tell" (Victorian Women's Trust, 2021).

In its most recent report, the NSW Domestic Violence Death Review Team (2020) also highlighted the need for gathering evidence of the progress and implementation of coercive control offences in international jurisdictions. In addition to focusing on quantitative measures of successful prosecutions

under the offence, the report recommended that evidence should be based on examining qualitative improvements in attitudes to violence against women, such as those measured by the National Community Attitudes towards Violence against Women Survey (NCAS; ANROWS, 2021), which is funded by ANROWS.

Continued funding of research to assess attitudes to coercive control is required to be able to continue to build evidence of the effectiveness of criminalisation. For example, in Tasmania, offences relating to non-physical aspects of DFV were created in 2004. NCAS data from the Understanding Violence Against Women Scale (UVAWS), which measures knowledge about non-physical forms of violence, confirmed that while Tasmanian UVAWS scores had improved over the last three waves of the survey (2009 to 2017), there has been similar improvement in all other states and territories across this time period (Webster et al., 2017). With no statistically significant difference between Tasmania's scores relating to understanding non-physical aspects of violence and those of other states and territories, the changes to the law do not appear to have significantly influenced beliefs about violence against women (Webster et al., 2017).

The success of any reform of how we respond to coercive control – whether it involves using the current law more effectively, amending the current legislation or creating a new law – will rely on consistency across a comprehensive framework. Implementing this comprehensive framework will require significant funding into approaches both alternative and adjacent to the criminal justice system. The process needs to include extensive consultation with and guidance from victims and survivors, and a focus on the diverse and intersecting disadvantages that women face when accessing the legal system, in particular Aboriginal and Torres Strait Islander women (ANROWS, 2021; Goodmark, 2018; Nancarrow, 2019).

Recommendation 6: Fund independent 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.

Recommendation 7: Facilitate extensive cross-sector consultation with diverse groups of women, with a focus on Aboriginal and Torres Strait Islander women's experiences, along with the service providers they engage with, and carefully consider alternatives to criminal justice approaches.

Option 10 – Amending the *Evidence Act 1977* (Qld) to introduce jury directions and facilitate admissibility of evidence of coercive control in similar terms to the amendments contained in the *Family Violence Legislation Reform Act 2020* (WA)

In 2019, ANROWS-funded research into a 2016 Western Australian case of a trial of a woman charged with killing her abusive husband (Tarrant et al., 2019). The findings of the research project indicates that despite law reform, the law does not adequately allow evidence of coercive control to be taken into account in either criminal or sentencing proceedings.

The research indicates that outdated understandings of intimate partner violence (IPV) and coercive control can lead to a woman's use of defensive force being classed as "unreasonable", and therefore not considered to be self-defence (Tarrant et al., 2019). The findings highlight the necessity of transforming legal understandings of coercive control to challenge misconceptions that contextualise IPV as a "bad relationship with incidents of violence" (Tarrant et al., 2019, p. 15; see also ANROWS, 2021).

The research proposes that a way of rendering patterns of harmful behaviour visible 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 integrates different types of evidence of disadvantage and barriers for women seeking help to better understand the actions of a person experiencing coercive control (Tarrant et al., 2019). This framework is critical 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 evidence produced by Tarrant et al. (2019) informed Western Australian provisions (ss 37–39) in the *Evidence Act 1906* (WA) via the *Family Violence Legislation Reform Act 2020* (WA) which commenced on 9 July 2020. This approach is consistent with the provisions (ss 322J, 322K, 322M) of the Victorian *Crimes Act 1958*. Legislating a social entrapment framework, and training all actors in and around the legal system in DFV and coercive control, would help to identify that non-physical forms of violence can be part of a strategic course of conduct to remove a woman's autonomy (ANROWS, 2021).

Recommendation 8: Legislate a social entrapment framework, and train all actors in and around the legal system in domestic and family violence and coercive control, to aid recognition of non-physical forms of violence as part of a strategic course of conduct to deny autonomy/personhood.

Recommendations

Option 1

Recommendation 1: Educate and train police and all legal actors to understand domestic and family violence as involving patterns of behaviour which occur within the context of coercive control. These patterns of behaviour are made up of tactics of physical and/or non-physical abuse that seek to deny personhood and the right to think and act independently of the perpetrator.

Recommendation 2: Create a tool to help police and courts assess patterns of coercive control that would detect which party is the perpetrator and which party is using violent resistance to ongoing abuse.

Recommendation 3: Fund and facilitate strong cross-sector collaboration to provide continuous support and training to help police and courts to respond to the nuances of coercive control.

Recommendation 4: Facilitate cross-sector consultation with diverse groups of women and the service providers they engage with, and carefully consider alternatives to criminal justice approaches.

Option 3

Recommendation 5: Implement a consistent definition of coercive control and of domestic and family violence across legislative and policy settings, Australia-wide. This definition needs to position coercive control as an overarching strategy for domestic and family violence behaviours, and include a non-exhaustive list of physical and non-physical behaviours which may be a tactic of coercive control.

Option 6

Recommendation 6: Fund independent 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.

Recommendation 7: Facilitate extensive cross-sector consultation with diverse groups of women, with a focus on Aboriginal and Torres Strait Islander women's experiences, along with the service providers they engage with, and carefully consider alternatives to criminal justice approaches.

Option 10

Recommendation 8: Legislate a social entrapment framework, and train all actors in and around the legal system in domestic and family violence and coercive control, to aid recognition of non-physical forms of violence as part of a strategic course of conduct to deny autonomy/personhood.

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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 legislative 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 course of conduct aimed at dominating and controlling another (usually an intimate partner, but can be other family members) and is almost exclusively perpetrated by men against women (Johnson, 1995; Nancarrow, 2019; Pence & Dasgupta, 2006). Evan Stark (2007) 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. 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, effectively removing her personhood. 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 Kaspiew 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; Jones, 1994; Pence & Paymar, 1993). 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 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

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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.

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. The definition should also make clear that physical and non-physical aggression between family members is not necessarily coercive control. This is particularly important to avoid misidentification of victims of coercive control as perpetrators, because they have resisted or retaliated against their abuser. It is also relevant in regard to aggressive physical and non-physical behaviour that is not intended to deny personhood, but may be associated with other factors such as mental health and complex trauma (Campbell, Richter, Howard, & Cockburn, 2020).

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 whoever 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 family fights—occurring outside of an overarching strategy of control and coercion to be legitimately called DFV in legislation intended to address coercive controlling 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; Jones, 1994; Pence & Paymar, 1993), it is only in recent years that a number of international jurisdictions have begun criminalising it (Douglas, 2018; McMahon & McGorrery, 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).

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.

> "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)

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).[1] 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, McGorrery, & 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 & McGorrery, 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 & McGorrery, 2016). In comparison to the economic abuse offence, the emotional abuse

[1] Since that time, the NSW Parliament has established a Joint Select Committee to inquire into coercive control in the context of domestic relationships, which is due to report by 30 June 2021.

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, McGorrery, 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). 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 of 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 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

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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.

Legislation designed to address coercive control must have an explicit and nationally consistent definition distinguishing it from physical and non-physical aggression that does not seek to deny personhood. A failure to distinguish coercive control from non-coercive control in legislative definitions of domestic and family violence will increase the risk of unintended consequences for victims of coercive control.

Further, 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:
Responding to coercive control more effectively requires a consistent definition of coercive control and of domestic and family violence across legislative and policy settings, Australia-wide. This definition needs to position coercive control as an overarching strategy designed to remove personhood using a range of physical and non-physical behaviours.

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 domestic and family violence as involving patterns of behaviour that occur within the strategic context of coercive control, that is, tactics of physical and/or non-physical abuse that seek to deny personhood and the right to think and act independently of the perpetrator.

RECOMMENDATION 5:
Legislate a social entrapment framework, and train all actors in and around the legal system in domestic and family violence and coercive control, to aid recognition of non-physical forms of violence as part of a strategic course of conduct to deny autonomy/personhood.

RECOMMENDATION 6:
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 7:
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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