MONASH University

MONASH GENDER AND FAMILY VIOLENCE PREVENTION CENTRE

FACULTY OF ARTS

Coercive Control Reform

Submission to the Joint Select Committee on Coercive Control, Parliament of New South Wales

8 February 2021

Prepared by members of the Monash Gender and Family Violence Prevention Centre.

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Joint Select Committee on Coercive Control: Submission on Coercive Control Reform

Thank you for the opportunity to provide a submission to the Joint Select Committee on Coercive Control. This submission has been prepared by members of the Monash Gender and Family Violence Prevention Centre (MGFVPC).

Our submission provides a response to the Government's Discussion Paper. It is structured into five main sections:

1. Defining and understanding what constitutes coercive control
2. Coercive control as a key risk factor prior to intimate partner femicide
3. The suitability of existing legal frameworks in New South Wales
4. How we can best address coercive control.
5. A whole of system responses to coercive control

Our submission makes 10 recommendations to the Committee.

The submission also provides summary details of current research led by MGFVPC researchers to improve understandings of, and responses to coercive and controlling behaviours.

Please find our submission attached to this letter.

We would welcome the opportunity to provide further detail to inform the work of the Joint Select Committee.

Kind regards,

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Table of contents

INTRODUCTION 4

DEFINING AND UNDERSTANDING WHAT CONSTITUTES COERCIVE CONTROL 4

1. DEFINING COERCIVE CONTROL IN NSW LEGISLATION 5

COERCIVE CONTROL AS A KEY RISK PRIOR TO INTIMATE PARTNER FEMICIDE 5

THE SUITABILITY OF THE EXISTING LEGAL FRAMEWORK IN NEW SOUTH WALES 6

1. CIVIL LAW 6
2. EVIDENCE LAW 7

HOW WE CAN BEST ADDRESS COERCIVE CONTROL 7

1. MORE LAW IS NOT THE ANSWER 8
2. THE RISKS OF MISIDENTIFICATION OF THE PERSON IN NEED OF PROTECTION 9
3. MORE LAW CAN MASK LEVELS OF SERIOUSNESS 11
4. LESSONS FROM INTERNATIONAL EXPERIENCES 11
5. LIMITED UNDERSTANDINGS OF THE IMPACTS FOR DIVERSE AND MARGINALISED COMMUNITIES 12

A WHOLE OF SYSTEM RESPONSE TO COERCIVE CONTROL: THE NEED FOR 'SYSTEMS READINESS' 13

1. IMPROVED COERCIVE CONTROL RISK IDENTIFICATION, ASSESSMENT AND MANAGEMENT PRACTICE 13
2. TRAINING AND WORKFORCE CAPACITY BUILDING 14
3. THE NEED FOR SPECIALISED POLICE RESPONSES TO DOMESTIC VIOLENCE 14

CONCLUSION AND SUMMARY OF RECOMMENDATIONS 15

REFERENCES 16

APPENDIX A: THE MONASH GENDER AND FAMILY VIOLENCE PREVENTION CENTRE 18

APPENDIX B: CURRENT RESEARCH ON COERCIVE CONTROL 19

Introduction

New South Wales has yet to grapple in a coordinated and meaningful way with the pervasiveness and severity of coercive control in the lives of abused Australian women. The evidence base on coercive control is well established in Australia and internationally, but it is yet to be translated into a coordinated and whole of system response. Despite significant law reform activity internationally and debate within Australia, there is as yet limited evidence to suggest that *more law* in this area will improve justice responses for victims and/or enhance perpetrator accountability. The recommendations we have made in this submission are informed by our own research and by over two decades of feminist legal and criminological research that has documented the ways in which the criminal law and the criminal justice system has served as a site of re-victimisation and injustice for women victims of domestic violence (Douglas, 2008; Goodmark, 2018; Meyer, 2011; Nancarrow, 2019). Criminal law responses to domestic and family violence are necessary but limited in effectiveness and carry significant risk of unintended impacts.

Defining and understanding what constitutes coercive control

The term, "coercive control" is used to capture the ongoing nature of domestic violence, where the abuse is not always physical but pervades a victim's daily life. It refers to a wide variety of abusive behaviours including social, financial, psychological and technology-facilitated abuse. It can include patterns of physically, socially and/ or geographically isolating a partner from their friends and family, restricting their movements, using tracking devices on their phone and controlling their appearance and access to money. It may involve strategic and ongoing threats to harm mutual children or other family members in an attempt to keep victims entrapped in the abusive relationship. Coercive control has a devastating impact on victims' independence, well-being and safety. Coercive control, then, captures both practices that may already be defined in law (as stand-alone offences, such as technology-facilitated abuse), but critically also seeks to capture the pervasive and persistent pattern of behaviour that collectively serves to undermine the autonomy, and therefore safety, of the victim.

It is well-evidenced that women with disability not only experience higher rates of family violence but that this violence is typically more severe, may be more prolonged and takes more distinct forms (McCulloch et al. 2020, 3; Didi et al., 2016: 161; RCFV, 2016: 31, 172). Disability specific abuse can include the withholding of physical or communication aides, threats of hospitalisation or institutionalisation, reproductive coercion, manipulation and control of medication, threats to withdraw, or the withdrawal of care as well as violations of privacy and independence (McCulloch et al. 2020; Didi et al., 2016: 160; Maher et al., 2018: 27; Parliament of Australia, 2015; RCFV, 2016: 31, 177). Researchers have referred to the increased risk faced by people living with disability accessing care – usually those living in institutions, though arguably this could be extended to any person with disability reliant on care – as an 'enhanced socio-relational vulnerabilit[y]' (Didi et al. 2016: 161). Recent ANROWS-funded research conducted by Centre members evidenced precisely this dynamic of forced dependency and coercive control. The women who participated in this study were acutely aware of the ways in which their dependency on intimate partners who were carers 'related to the ways violence and coercion might enter into relationships' (Maher et al. 2018, 46). Critically research has evidenced that in jurisdictions in which legal definitions of family violence can capture violence committed by a carer as family violence, civil or criminal interventions are rare as victims and carers/workers have normalised such behaviours and do not understand them as violence (Didi et al., 2016: 165; Dowse et al. 2013: 30; McCulloch et al. 2020, 4).

1. Defining coercive control in NSW legislation

New South Wales' domestic violence legislation, the *Crimes (Domestic and Personal Violence) Act 2007*, does not explicitly define domestic violence. It does, however, offer significant detail on what constitutes a domestic violence offence, and focuses on stalking and intimidation. In its definition of stalking and intimidation it acknowledges that:

> (2) For the purpose of determining whether a person's conduct amounts to stalking/intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

It is important to note that like some other jurisdictions, coercive control is acknowledged in the Act's objectives (9.3):

> d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years.

In addition to this, under section 11.1, the Act states that a domestic violence offence includes:

> c) an offence (other than a person violence offence) the commission of which is intended to coerce or control the person against who it is committed or to cause that person to be intimidated or fearful (or both).

Given this, coercive control is implicitly acknowledged in this legislation, however, the lack of a domestic violence definition that explicitly acknowledges such behaviour is a limitation that should be addressed.

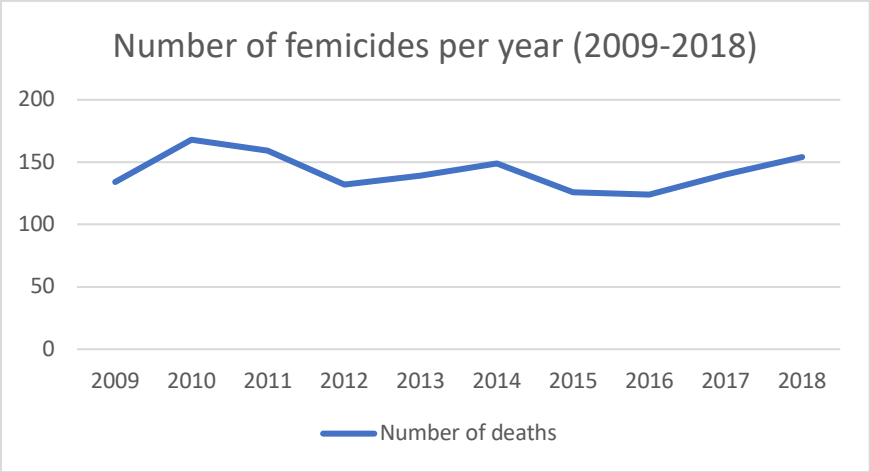
We recommend that coercive control be expressly acknowledged in the definition of domestic violence included in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Coercive control as a key risk prior to intimate partner femicide

It is well established that coercive control is a most common risk factor leading up to an intimate partner homicide. This highlights the significant need for earlier identification and effective interventions to better ensure the safety and lives of women and children experiencing coercive control. We do not believe that this is an argument which should be used in support of the introduction of a new offence. Law is not a tool for prevention or early intervention.

In recent campaigns supporting the criminalisation of coercive control the prevalence of coercive control prior to intimate partner femicide is frequently cited. It has been suggested that the introduction of a new offence would prevent future acts of femicide. To date there is no evidence to support this claim. In countries where a specific offence of coercive control has been introduced there is no evidence that this has led to a significant decline in the perpetration of intimate partner femicide. Data presented by the Femicide Census in England and Wales for the period 2009 – 2018 (see figure 1) shows that in the period immediately prior to and since 2015, when the offence was introduced in England Wales, there has been no noticeable shift in femicide prevalence rates.

Figure 1: Femicide rates in England and Wales 2009-2018[1]



Determining causative factors in the prevalence of intimate partner femicides is an extremely difficult exercise. We do not present these figures to suggest that there should have been a notable decrease in acts of femicide since the introduction of the offence of coercive and controlling behaviours – instead, **we seek to demonstrate that claims to suggest a causal link between the two are problematic.**

The suitability of the existing legal framework in New South Wales

All Australian states and territories acknowledge coercive controlling behaviour, either explicitly or implicitly within their legislation. For some, this may be in the definition of family violence provided for the purpose of civil protection orders, and for others, this may also include specific criminal offences (e.g. Tasmania). In regards to the civil legislation, many states have relatively nuanced definitions that, in various, locations, offer consideration to coercive control. However, some do not use language that specifically reflect patterns of abusive behaviours.

1. Civil law

Much of the debate surrounding the criminalisation of coercive control has gained momentum with scant regard for the role of the civil law on this issue (Walklate and Fitz-Gibbon, 2021). It is important to note that in some Australian jurisdictions there are mechanisms available in civil proceedings that recognise coercive control as grounds for action. Indeed, when viewed historically, civil law has provided a significant and important avenue through which women living in violent relationships have been afforded legal support to improve their lives and secure their safety. The largely absent consideration of existing civil law options in this debate speaks volumes about the extent to which criminalisation has become a pre-eminent policy option for those seeking to redress the consequences of the violences in women's lives.

The Crimes (Domestic and Personal Violence) Act 2007 (NSW) does not include a definition for coercive control. While some coercive and controlling behaviours are included under the Part 7 definitions for intimidation and Part 8 definitions for stalking, we believe it is essential that coercive

[1] Total counts have been taken from data presented in the *Femicide Census, UK Femicides 2009-2018*, p.4. This data includes all femicides. 8 per cent of the femicides counted were perpetrated by strangers, 60 per cent of femicides counted were perpetrated by men who were currently or previously in an intimate partner relationship with the victim.

control is expressly acknowledged and defined in this Act. Under Section 9, Part 3 the legislation lists several different aspects of domestic violence that are recognised by Parliament, we believe it is also important that this section explicitly refers to violence as a pattern of behaviours and not just a single incident.

We recommend that the Crimes (Domestic and Personal Violence) Act 2007 (NSW) be reformed to specifically recognise and define coercive control and to ensure that any new legislation expressly states that Parliament recognises that coercive control is as a pattern of behaviours.

2. Evidence law

Significant challenges would arise for women in evidencing coercive and controlling behaviours to the requisite legal standard. The difficulties women victims face in documenting their abuse should not be overlooked. An offence of coercive control necessitates a focus on a pattern of abusive behaviour. This may involve acts that are subjectively experienced as threatening and controlling—such as undermining relationships with family and friends, relocating families to regional or remote areas, monitoring spending or always keeping at least one of the children back at home when women leave the home for activities that may create opportunities for help-seeking and leaving the abusive relationship — that when viewed in isolation, are not criminal and rarely leave physical evidence. The behaviours may also not have been witnessed by any third party who can corroborate their occurrence or may mistakenly appear to an outsider to reflect an attention to parenting and/or to the partner. In some circumstances where behaviours *are* witnessed, they may also be perceived differently: close and attentive behaviour may appear to an acquaintance as loving and caring, while the meaning of patterns of behaviour in public places for women are linked to serious harm later in private if there is a misstep in her conduct. Given these challenges, a significant concern is that few cases may meet the evidentiary requirements to prove intent to harm, intimidate or isolate. Any new legislation would need to address these challenges, as victims will have to prove their accounts of abuse to the requisite legal standard.

How we can best address coercive control

We acknowledge the seriousness of this form of family violence, the importance of recognising intimate partner violence as a pattern of abusive behaviours rather than a single isolated incident, and the critical need across Australia to improve responses to, and the prevention of, all forms of coercive control. It is widely acknowledged that the criminal law, and its associated evidential requirements, is a blunt instrument when it comes to prevention.

Criminal law has consistently failed to protect many women in the context of intimate partner violence. We must recognise that this cannot simply be rectified via an additional offence of coercive control. Rather, to advance towards the safety of women and children in the NSW community we must take a more radical step of system-wide reform, following the leadership of other states in Australia who have made some steps in this direction.

We draw attention to the findings of the two landmark Australian reviews of domestic and family violence - the Victorian Royal Commission into Family Violence (RCFV, 2016) and the Queensland

Special Taskforce (2015) neither of whom recommended the introduction of a stand-alone offence of coercive control.

1. More law is not the answer

Recourse to the criminal law remains one of the central planks of policy responses to intimate partner violence. Our research demonstrates why more law of this kind is not the answer to improving those responses (Walklate, Fitz-Gibbon and McCulloch, 2018). The creation of any new offence in this field places women squarely within the domain of criminal justice. Yet, the difficulties faced by women in dealing with criminal justice systems are both well- known and profound (on this, see further Walklate and Fitz-Gibbon, 2019: 101). 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 and, as Douglas (2018) has observed, may also create new opportunities for what she has termed 'legal systems abuse': perpetrators using the legal system to further assert control over their partners.

The successful operation of an offence of coercive control would rely upon victims being willing and able to involve police. This is problematic. Research has consistently documented the many reasons why women victims of intimate partner violence are hesitant to engage police. They fear gender bias, discrimination, not being believed, that the abuse will escalate following police intervention, or that they will be blamed for the abuse committed against them. For women within a coercively controlled relationship, these barriers to seeking help are particularly insurmountable. Women who have been coercively controlled are more likely to experience isolation and to lack social support networks and independent decision-making skills (Stark, 2009). The introduction of a new offence alone is unlikely to reduce the reluctance of women victims to engage the police.

These fears arguably become more acute, the more marginalised the woman is (see, inter alia, Reeves and Meyer, 2021). For example, for women living with disabilities, the Royal Commission into Family Violence (RCFV) in the State of Victoria (Australia) reported that the 'fear of retribution or a loss of support' can be heightened if the perpetrator they are reporting is their primary carer (RCFV 2016: 31, 183). Moreover, fear of losing their children as a result of reporting violence has particular salience for women with disabilities 'because of prevailing stereotypes about their capability as parents and … because removal of children from parents with disabilities happens at a much higher rate' (ibid.). Similar barriers to reporting and subsequent unintended effects of engagement with criminal law also pertain to Aboriginal and Torres Strait Islander women (see, inter alia, Wilson, 2017, see also Nancarrow, 2019).

For migrant and refugee women there are nuanced complexities regarding reporting to police. Some of these pertain to the broader challenges that are specific to community and culture and issues pertaining to seeking support and the potential consequences of estrangement from community and family (see McCulloch et al 2016). It is well documented that the migration system has specific consequences for temporary migrant holders, when it comes to seeking support including the consequences associated with fear of being removed from Australia and/or fears of having to leave Australian-born children behind (Segrave 2017, Segrave and Pfitzner 2020; also Vaughan et al 2015). These issues cannot be addressed through a new law. More critically there are concerns that misidentification of primary aggressor may be likely in the context of coercive control legislation coming into force as some agencies have identified (InTouch 2020).

Victims who do contact the police are likely to come up against additional barriers to justice. For example, the implementation of this offence relies on a police officer's ability to identify the potential presence of coercive and controlling behaviour, elicit information from the victim and correctly assess that pattern of behaviour. This requires that officers move away from assessing a particular "incident" and instead interpret a series of interrelated events and the harm that flows from these. Effectively educating frontline police on the gender dynamics at play in coercive control situations and enhancing their ability to identify such behaviour will require a long-term commitment to specialist training. This has yet to happen in New South Wales nor in other Australian jurisdictions.

For cases that proceed beyond the policing stage and into the criminal courtroom, a key issue is how to prove coercion. The difficulties women victims face in documenting their abuse should not be overlooked. The offence of coercive control focuses on a pattern of abusive behaviour. This may involve unremarkable acts that, when viewed in isolation, are not criminal. Rather, it is about analysing behaviour that forms a pattern of abuse. As such, the very same barriers that have traditionally hindered women's access to justice are likely to persist, despite the existence of a new offence.

We recommend that the Committee cautions the NSW Government against the introduction of a stand-alone offence of coercive and controlling behaviour and instead supports a call for wider system reform towards DV informed law enforcement and judicial service responses.

2. The risks of misidentification of the person in need of protection

Whilst a coercive control offence may increase awareness in the legal system about patterns of abusive behaviour that go beyond single incidents of physical violence, we are concerned about the potential unintended consequences that such a reform may have on victim-survivors, specifically women. Research, both international and domestic, has acknowledged the misidentification of victim-survivors as 'predominant aggressors' as an issue that has emerged as a result of the criminalisation of domestic violence (Miller 2005; Dichter 2013; Nancarrow et al. 2020; Reeves 2020; Wangmann 2009). In the United States, this trend has been documented since the 1980s, following the implementation of pro and mandatory arrest policies, which saw a substantial increase in the arrest of women for domestic violence (Miller 2005). Whereas some bodies of literature attribute this rise to equal levels of perpetration by both men and women (Archer 2000), there is a much larger consensus in family violence research that evidences the cause of this increase as a misunderstanding of the different ways in which women, who are often the person most in need of protection, use violence (Larance et al. 2019). Often, women who are misidentified as predominant aggressors have used self-defence or retaliatory violence against the genuine predominant aggressor, or are framed by their abuser, who may engage in 'image management' to appear as the person most in need of protection (Nancarrow et al. 2020).

Research on misidentification has identified police practice as a key area of concern, where limited family violence training, alongside gendered assumptions about women's victimisation, may lead to incident-based practices that fail to examine specific contexts for women's presentation and possible use of violence (Reeves 2020; Wangmann 2012). Such practices may render manipulative tactics used by perpetrators of family violence successful, whereby they are able to convince responding officers that a woman victim-survivor is the predominant aggressor in the relationship – a form of 'legal systems abuse' (see The Australian Institute of Judicial Administration 2020). Recent

Australian research presents this as a significant issue in our intervention order system, with women victim-survivors being found to not uncommonly be misidentified on such orders, often those that are initiated by the police (Nancarrow et al. 2020; Ulbrick and Jago 2018). **This research demonstrates that despite significant reforms and improvements in recent years, domestic violence policing in Australia is not yet at a standard where victim-survivors safety needs are of paramount importance, and there still exists a limited understanding of domestic violence among police officers.**

In some cases, women are misidentified as predominant aggressors because responding officers have failed to consider the role of coercive control in that relationship, and the possibility that a woman's violent or aggressive reaction (to their abuser or to the police) may in fact be a response to experiences of coercive control committed against them by their partner (Nancarrow et al. 2020). These experiences have been documented as being heightened for women from marginalised or disadvantaged populations. For example, research has established that women most at risk of misidentification are women from Aboriginal and/or Torres Strait Islander backgrounds, women from culturally and linguistically diverse (CALD) backgrounds, women with disabilities and/or mental health issues, and women with substance abuse issues (Nancarrow et al. 2020; Reeves 2020; Mansour 2014; Ulbrick and Jago 2018). To better understand these experiences, it is important to consider police perceptions of victimisation, and more significantly, who they deem to be the 'ideal victim'. Some women respond to police with aggression and a lack of co-operation, which may occur for a range of reasons. As an example, our research has found that women from CALD backgrounds may harbour a fear of police due to experiences in home countries, and may fear that police involvement will jeopardise their visa status and result in deportation (Reeves 2020). In such contexts, women victim-survivors may present in ways that deviate from traditional conceptualisations of victimisation as understood by police, which may also contrast to genuine perpetrators, who may present as calm and rational – leading police to view the woman as the clear predominant aggressor. **We are very concerned that the likelihood of misidentification will only increase alongside the introduction of a stand-alone offence of coercive control.** Likewise we hold concerns that the offence will be weaponised and become an avenue through which perpetrators can further abuse their partner.

We acknowledge that a lack of focus on the role of coercive control in police responses is a key contributor to misidentification. However, we do not believe that the criminalisation of coercive control will address this particular issue. Currently, victim-survivors may be charged with a number of offences within the context of domestic violence when they are misidentified, such as assault and property damage. Additionally, they may be listed as a respondent on an intervention order. This has significant impacts, including on their access to their children, their employment, to safe housing, as well as placing them at risk of further abuse by the perpetrator (Nancarrow et al. 2020). **In legislating a specific offence of coercive control, women victim-survivors are placed at further risk of misidentification and ultimately, of criminalisation.**

We are concerned that in the absence of appropriate police training on how to identify the predominant aggressors, a new offence may make it easier for perpetrators to 'frame' woman as predominant aggressors. In Victoria, despite an increased focus on appropriately identifying the predominant aggressor, as a result of recommendations of the Royal Commission into Family Violence (RCFV 2016), there is evidence that police responses are still not to the expected standard. For example, recent research has found that police may still focus on physical incidents of abuse, may fail to interview parties separately, and may fail to obtain appropriate interpreters where needed

(Ulbrick and Jago 2018; Reeves 2020). This is mirrored in a Queensland context, a jurisdiction that has also seen a significant policy commitment to addressing domestic violence (Nancarrow et al. 2020). This demonstrates that it takes significant time and reform to address the operation, organisational and structural issues that exist within police responses to domestic violence.

Establishing new laws may be ineffective and/or dangerous where this change in police responses has not been achieved. We propose that a greater focus on improving police training and policy will be a more appropriate and effective response to coercive and controlling violence in New South Wales.

3. More law can mask levels of seriousness

Research from the United Kingdom by Barlow, Johnson, Walklate and Humphreys (2020) has found that the legislation in England and Wales has potentially led to a masking of levels of violence experienced by victims. This has occurred whereby the offence, for recording purposes, places all incidents in the 'violence against the person *without* injury' category. This raises several issues. Coercive control is widely recognised as a course of conduct: a pattern of behaviour which when taken together is designed to intimidate and entrap and is cumulatively harmful. Recording practices itemise different behaviours into different categories of lawbreaking behaviour; stalking, harassment, controlling and so on. This process of separation places some behaviours in the 'without injury' category and some behaviours in the 'with injury' category each of which in terms of sentencing outcomes can be assigned different levels of seriousness with the nature and extent of the violence, or threat of violence perpetrated as a constituent element of the controlling behaviour. This question of seriousness and harm in relation to sentencing needs careful consideration. Where a lesser seriousness can be assigned, accompanied by the lower maximum sentence, this may be used as a charge bargaining tool in turn masking the full extent and seriousness of the violence experienced. Some of these concerns may shift once the Domestic Abuse Bill, currently making its way through the legislative process in England and Wales, comes into law.

4. Lessons from international experiences

There is limited evidence about the impact of criminalising coercive control in international jurisdictions such as England and Wales, and Scotland. It is also difficult to judge the extent to which its presence and increasing use over time have improved women's safety. The legislation in England and Wales was introduced in December 2015, meaning that the offence has been in operation for only five years. The most recent statistics available relating specifically to this offence are for the year ending March 2019. These figures indicate a fourfold increase in cases of coercive control receiving a first hearing in a magistrate's court (from 309 in the year ending March 2017 to 1177 in the year ending March 2019). The figure for convictions for this offence in which coercive control was the principal offence being tried was 308 in the year ending December 2018 (Office of National Statistics 2019). Given that the police recorded 1.3 million domestic abuse-related crimes in the year ending March 2019, and in that same year the Crime Survey for England and Wales estimated that 2.4 million people experienced domestic abuse, these figures on the early uptake of the coercive control legislation offer some insight into the minimum uptake of the offence since its introduction. At this point, there are no official comparable figures from Scotland, where the criminal offence of domestic abuse came into effect less than a year ago in April 2019.

The number of charges, prosecutions and convictions in the United Kingdom is often cited as evidence of effectiveness. But the use of the offence in and of itself cannot be assumed as evidence of better outcomes for victims. We neither know, for example, what proportion of women seeking help for coercive control have their case enter court and, if doing so, achieve a conviction in these court proceedings. We also do not know if women feel safer following their partner's conviction — and whether the justice process validates their experience and achieves perpetrator accountability.

Likewise, in many jurisdictions, the legislated punishment for coercive control is significantly lower than that permitted for assault and other related offences. We do not yet know to what extent "coercive control" has been used to downgrade from other abusive behaviours that would attract a higher penalty — for example, attempted murder.

5. Limited understandings of the impacts for diverse and marginalised communities

There is presently limited understanding of how coercive control laws would impact First Nations women, culturally and linguistically diverse communities, and women with disabilities. This is a serious concern given these groups traditionally experience further harm and disempowerment when seeking help from the criminal justice system, and are also more likely to be subjected to over-policing.

Research by Maher et al. (2020, 70) for example, on women with disability and violence highlighted concerns held by service providers that the lack of disability and family violence-specific expertise in policing was resulting in a misunderstanding and ultimately misidentification of women with disability as primary aggressors. Service providers discussed the way in which women experiencing DFV may express 'higher degrees of agitation or stress, while the abuser appeared calmer, which resulted in police misidentification of the primary aggressor' (ibid). Further research building on this same data explored the misidentification of women with disability as primary aggressors in contexts of abuse and violence committed by known associates, neighbours and community members (McGowan and Elliot 2019). This research noted a similar phenomenon in which perpetrators who had been undertaking protracted campaigns of intimidation, psychological and in some cases physical abuse, frequently presented well to police 'appearing coherent and rational in comparison to women who are scared, frustrated and at their "wit's end"'(McGowan and Elliot 2019, 4). To date the impact of any new laws for women with disability has received limited attention. This research highlights the importance of carefully considering the potential unintended impacts of criminalisation in this space.

There are additional issues that impact migrant and refuge women, but also are relevant to other Australian citizens. For example, DFV can be perpetrated by multiple people in addition to, or in some cases excluding, the intimate partner: most often family in law. The applicability of the law to these contexts need careful development to enable its application without creating a definition that may be misused/applied in unintended context. Further, the Migration Regulations included a narrow definition of family violence, that does not align with more expansive definitions, and does not recognise abuse and violence perpetrated by a partner and/or a relative of the partner (see National Advocacy Group on Women on Temporary Visas Experiencing Violence, 2019). It is critical that changes to the law do not leave some groups who are excluded behind or at risk of not meeting a Commonwealth threshold for the determination of the presence of DFV.

While it is appreciated that processes such as the work of this Committee will likely improve understandings on this issue, it is essential that the adverse impacts of any news laws on diverse and marginalised communities are given significant consideration prior to introduction. There must be a consultative approach adopted to explore how best to advance a broader recognition of the significant impact of CC in a way most likely to achieve improved safety for all concerned. As Reeves and Meyer (2021) have recently argued, well intended policy and law reforms designed to address women's experiences of domestic and family violence in Australia and beyond have frequently been documented to have had significant adverse effects on the experiences and help-seeking of the most vulnerable and marginalised victim-survivors (see also Nancarrow, 2019). It is therefore critical for any government department reforming policy and legal responses to domestic and family violence to undertake a thorough, community-led consultation process that brings to the fore the voices and experiences of marginalised and often silences survivor populations and their communities.

Prior to the introduction of any new legislation, we recommend that to ensure system readiness, significant consultation is undertaken with the disability sector to better understand the context of domestic and family violence for women with disability and to consider in depth the impacts of criminalisation for this cohort.

Prior to the introduction of any new legislation, we recommend that to ensure system readiness, targeted consultation be undertaken with diverse community groups across NSW to explore strategies for communicating coercive control as a recognised form of coercive control.

A whole of system response to coercive control: the need for 'systems readiness'

We believe a whole of system reform model that combines practice reform and research would build the evidence base to better understand current responses to coercive control and to ensure that frontline responders are adequately trained to identify, assess and manage the risks associated with the full range of coercive and controlling behaviours. Here we detail three of the key features we believe is required to improve whole of system responses to coercive control in NSW.

1. Improved coercive control risk identification, assessment and management practice

There is limited understanding of how frontline practitioner identify, assess and manage coercive control. There is a need to improve both specialist and mainstream frontline and practitioner responses to coercive control. Coercive control is a key risk factor preceding intimate partner homicide and significantly restricts victims' ability to seek help and access relevant support. It is essential that all risk assessment and management frameworks used across New South Wales embed a shared language on, and an understanding of, the behaviours that constitute coercive control.

Developing practice guidance for the identification, assessment and management of risk for coercively controlled relationships is central to improving practitioners' ability to facilitate women's help seeking behaviours, meet their support needs and better identify and respond to the high level of risk that this form of family violence presents. Further, it offers a vital opportunity for affected women

and their families to have their experience acknowledged and the harm validated by a practitioner, to better understand their level of risk and their related protective and support needs. This is a powerful conversation that occurs between a practitioner and a victim-survivor and can be an important gateway to improving women's access to safety and support needs.

We recommend that the New South Wales Government build the evidence base on how frontline practitioners can effectively identify, assessment and manage risk associated with coercive control.

We recommend that there be a review and reform of all risk identification, assessment and management practices to ensure that coercive control is embedded in all domestic violence relevant risk policies and practice statewide.

2. Training and workforce capacity building

In New South Wales there is a need for comprehensive training of frontline practitioners outside the specialist family violence sector. All NSW state and territory police and related criminal justice practitioners should move to develop consistent and mandated training on identifying and responding to coercive and controlling behaviours in DFV matters. This should include education on the range of behaviours that can constitute coercive control, the impact and seriousness of coercive control, the barriers it creates to help-seeking for and disclosure of domestic violence and the need to understand domestic and family violence, and coercive control in particular, as a pattern of behaviours rather than an isolated event. This training should be targeted to specialist domestic violence and entry level police officers alongside related criminal justice practitioners, to ensure cross institutional awareness and the necessary cultural change in the understanding of how this form of domestic violence is manifested.

We recommended that New South Wales Police and related criminal justice practitioners move to develop consistent and mandated training on identifying and responding to coercive and controlling behaviours in domestic violence matters.

We recommend the Committee keeps in view the range of policy and practice reforms that can and should occur outside of and in addition to the realm of the criminal law in order to improve responses to and the prevention of coercive control across Australia.

3. The need for specialised police responses to domestic violence

Policing domestic violence in New South Wales would benefit from a significant investment in establishing specialist family violence units, with a dedicated team of officers in every station state-wide, with clear and appealing career advancement and acknowledgement for this work.

Domestic violence is an overwhelming proportion of police work, yet it remains undervalued: largely because it is complex and often involves ongoing contact, compared to other general duties activities and/or more specialised policing. In 2016 a research project with 200 police officers across Victoria (Segrave, Wilson and Fitz-Gibbon 2018) found that extra police and training is not the single answer improve outcomes for victim-survivors of family violence. There are ongoing issues regarding police practice, including police protecting other police who are known IPV offenders (see for example,

Smee 2020), and as we have documented training does not equate to changed behaviour in policing. A significant challenge for policing is the continued focus on areas of specialisation on DFV, and the tendency for this work to be devalued within the organisational setting and/or not an area that is validated and valorised for promotion and excellence in a policing career (Segrave et al 2018). This is compounded by diversity of policing cultures across local government areas and stations.

It is critical to move DFV response and ongoing contact away from general duties policing to specialised teams. Good policing requires NSW Police to work closely with local organisations and to have a deep understanding of the complexity of the issues.

We recommend that New South Wales Police commit to a significant investment in establishing specialist family violence units, with a dedicated team of officers in every station state-wide, with clear and appealing career advancement and acknowledgement for this work.

Conclusion and Summary of Recommendations

Failure to meaningfully address the risks and challenges of law, as outlined in this submission, will undermine the purpose of any legislation as women will be unable to prove their accounts of coercive control to the requisite legal standard and the legal process may serve to undermine the seriousness of what they experience and the impacts of the perpetrators' pattern of abusive behaviours. There may be a place for coercive control in criminal law, but until New South Wales has created a system that can support and effectively operationalise a new offence, we urge this Committee to focus its efforts on improving critical safety supports, accurate identification and early interventions for women and children experiencing coercive control.

That said, we also acknowledge that there is significant pressure and a groundswell of advocacy to achieve this legislative outcome. We acknowledge that these efforts are driven by a similar concern that is at the heart of this submission: to prioritise the safety of women and children in our community. We are aware that as researchers, relying on empirical, rigorous evidence, that our approach may appear cautious. This is an informed position. We strongly recommend that whether this legislation is created or not, that it is not the only action of the NSW government. As our submission details, law will not resolve the significant damage of DFV across the community, and it may have consequences that are unintended.

We call for a commitment to review any legislation three years after its implementation, and for reform as noted to be implemented, to work towards a better, more responsive systems across every sector in NSW.

This submission has made the following ten recommendations:

We recommend that coercive control be expressly acknowledged in the definition of domestic violence included in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

We recommend that the Crimes (Domestic and Personal Violence) Act 2007 (NSW) be reformed to specifically recognise and define coercive control and to ensure that any new legislation expressly states that Parliament recognises that coercive control is as a pattern of behaviours.

We recommend that the Committee cautions the NSW Government against the introduction of a stand-alone offence of coercive and controlling behaviour and instead supports a call for wider system reform towards DV informed law enforcement and judicial service responses.

Prior to the introduction of any new legislation, we recommend that to ensure system readiness, significant consultation is undertaken with the disability sector to better understand the context of domestic and family violence for women with disability and to consider in depth the impacts of criminalisation for this cohort.

Prior to the introduction of any new legislation, we recommend that to ensure system readiness, targeted consultation be undertaken with diverse community groups across NSW to explore strategies for communicating coercive control as a recognised form of coercive control.

We recommend that the New South Wales Government build the evidence base on how frontline practitioners can effectively identify, assessment and manage risk associated with coercive control.

We recommend that there be a review and reform of all risk identification, assessment and management practices to ensure that coercive control is embedded in all domestic violence relevant risk policies and practice statewide.

We recommended that New South Wales Police and related criminal justice practitioners move to develop consistent and mandated training on identifying and responding to coercive and controlling behaviours in domestic violence matters.

We recommend the Committee keeps in view the range of policy and practice reforms that can and should occur outside of and in addition to the realm of the criminal law in order to improve responses to and the prevention of coercive control across Australia.

We recommend that New South Wales Police commit to a significant investment in establishing specialist family violence units, with a dedicated team of officers in every station state-wide, with clear and appealing career advancement and acknowledgement for this work.

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Appendix A: The Monash Gender and Family Violence Prevention Centre

The Monash Gender and Family Violence Prevention Centre (MGFVPC) is at the forefront of research and education aimed at preventing family violence. The Centre is contributing to transformative social change by providing an evidence base for policy change that better supports and protects those experiencing family violence and addresses the cultural and economic drivers that underpin it. The Centre's track record includes ground-breaking research, engagement with government and civil society stakeholders, and innovative educational offerings.

The Centre's work has had a significant impact on the transformation of policy and practice and has a record of bringing together Monash and international researchers to collaborate with partners in government, social services, legal services, policing and health. Centre members have significant experience working with family violence and criminal justice stakeholders across the public sector and has advanced knowledge of the various processes involved in reviews and evaluations. The team has engaged or worked with a broad range of departments, and non-government organisations and statutory bodies.

The MGFVPC has extensive expertise and a strong track record in researching sensitive topics and engaging with hard-to-access or marginalised groups. Recently completed research projects have included Indigenous women, women from culturally and linguistically diverse communities, women with disabilities who have experienced family violence in all its forms, perpetrators of family violence, and key stakeholders from the family violence and criminal justice system service sectors. The Centre's distinctive approach engages with the full continuum of prevention, including primary prevention (preventing violence before it occurs), secondary prevention (early intervention to stop violence reoccurring), and tertiary intervention and response (to prevent long-term harm from violence). Our research is grounded in qualitative and quantitative methods, combined with a well-developed understanding of the contemporary policy landscape.

Members of the Monash Gender and Family Violence Prevention Centre are engaged in:

- **Australian Research Council funded research** – competitively awarded programs of

research that provide independent, high-quality research to advance the national interest, with MGFVPC researchers undertaking major projects on intimate partner homicide and international students and sexual and intimate partner violence
- **Contract research and consultancy** – including on all aspects of family violence, family violence prevention and responses to family violence
- **Policy development** – including on perpetration interventions, risk assessment and risk management, mapping and developing linkages, and collaborations between sectors and between multiple intersecting reforms and reform agendas
- **Evaluations of programs and reforms** – including large-scale multi-sector reforms
- **Workforce capability building** – on family violence prevention for practitioners and policy makers from a wide range of sectors
- **Expert lectures, seminars, industry briefings and opinions on gender and family violence**

For further details about current and recently completed research projects, please visit the Centre Research webpage.

Appendix B: Current research on coercive control

Members of the Monash Gender and Family Violence Prevention Centre are currently leading a range of research projects relevant to the work of this Committee. These projects are summarised here. We would be very happy to provide further project details and preliminary findings to the Committee.

The criminalisation of coercive control: a national study of victim/survivors' views on the need for, benefits, risks and impacts of criminalisation

Project leads: Kate Fitz-Gibbon, Sandra Walklate, Silke Meyer and Ellen Reeves

This project is partially funded through the Australian Institute of Criminology (AIC) Criminology Research Grants Scheme. It will commence in March 2021.

This project will be the first to conduct a national examination of victim/survivor views on the benefits, risks and impacts of the criminalisation of coercive control. The project aims to:

- Document victim/survivors' views on proposals to criminalise coercive control, including an examination of the views of victim/survivors from diverse communities,
- Provide new insights into the views of victim/survivors on the role of law, including their views on the benefits of criminalising coercive control, perceived risks, as well as the (potential) impacts of criminalisation on justice and safety outcomes for them,
- Document their experiences of current responses when reporting different forms of coercive control victimisation to identify strengths and weaknesses in current responses, training and education needs, and service gaps.
- Make policy and practice recommendations to improve criminal justice and service system responses to coercive control across Australia.

The project adopts a multi-methods research design that combines a scoping review*, victim-survivor survey, and in-depth interviews with victim-survivors*. This approach will allow the research to capture victim-survivor views and experiences and use these to develop new knowledge and policy recommendations. While the research is national in its focus, we have built in a state-based case study to take stock of victim-survivors' views and experiences of the impact of the Tasmanian 2004 reforms to criminalise emotional abuse and intimidation.

Project findings will be relevant to all Australian states and territories and to comparative international jurisdictions.

Further details about the project are available on the project website.

The misidentification of women as predominant aggressors in Victoria's family violence intervention order system

Project lead: Ellen Reeves, postgraduate researcher, Monash Gender and Family Violence Prevention Centre.

This PhD thesis explores the issue of misidentification in Victoria's family violence intervention order system. The research is focused on the policing of family violence its role in misidentification, court responses to misidentification, and the impacts of misidentification on the lives of women victim-survivors. Theoretically, the research is informed by feminist legal theory and questions the ways in which the law continues to undermine women's credibility, especially those women who may deviate from traditional understandings of femininity and victimhood. In questing this, the research purports that despite family violence law reform, some women – particularly disadvantaged and marginalised women – are still not warranted adequate protection from abusive partners, and may even be punished by the legal system for the abuse committed against them. Ellen's research is informed by data that includes interviews with 32 service system stakeholders and the accounts of 11 women who have been misidentified as predominant aggressors on a family violence intervention order in Victoria.