

Legislative Responses to Coercive Control in Western Australia.

Full Stop Australia's Submission to the Commissioner for Victims of Crime, July 2022



Full Stop Australia acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.

Introduction

Full Stop Australia (FSA) is an accredited, nationally focused, not-for-profit organisation which has been working in the field of sexual, domestic and family violence since 1971. We offer expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic or family violence, and specialist help for their supporters and those experiencing vicarious trauma. We also provide best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector. Finally, FSA advocates with governments, the media and the community to prevent and put a full stop to sexual, domestic and family violence.

FSA, as a national service, aims through its advocacy work to support our colleagues in each State and Territory who are working tirelessly on the ground to improve the lives of victim-survivors of sexual, domestic and family violence. We aim to use our experience of law reform in different jurisdictions to advocate for consistent approaches to family, domestic and sexual violence nationally. In preparing this submission, FSA consulted with our colleagues in Western Australia and we also consulted with Western Australian (WA) based survivor advocates who are members of our [National Survivor Advocate Program](#).

We thank the Western Australian Government for the opportunity to make a submission. This submission was prepared by Taran Buckby, Laura Henschke, Karina Tjeuw, Hila Tsor, John Youssef, Ruby Hartley & Genevieve Triemstra.

We would be very happy to provide any further feedback on any aspect of this submission. You can contact us at any time if you have any further questions at info@fullstop.org.au

Summary and Recommendations

Recent studies, reports and surveys have shown that the large majority of victim-survivors support the criminalisation of coercive control. For example, in their survey for the NSW Joint Select Committee, Women's Safety NSW found that 97% of survey participants supported the criminalisation of coercive control.¹ Further surveys in NSW revealed that the majority of sector workers, and victim-survivors supported the criminalisation of coercive and controlling behaviours,² arguing that the change will promote greater community understanding and increased support for victim-survivors.³

¹ Women's Safety NSW, *Submission to the NSW Joint Select Committee on Coercive Control in Domestic Relationships* (Report, February 2021), 78.

² DVNSW, *Coercive Control in Relationships* (Report, February 2021), 22.

³ Parliament of New South Wales, *Joint Select Committee on Coercive Control* (Report, June 2021), 48.

On 19 April 2021, the Western Australian chapter of the Women's March 4 Justice wrote to the Western Australian Government calling on the criminalisation of coercive control alongside a number of other important reforms to address gender-based violence in Western Australia.

A Western Australian victim-survivor from our National Survivor Advocate Program said

"I think that there needs to be a shift in the way we view domestic violence, to swing the focus away from the victims back towards the perpetrators. They need to be held accountable for their actions. There needs to be a clear message that this isn't ok and that there will be consequences for their actions. There needs to be real protection for victims, particularly when we perceive that there is risk... I just want the abuse to end and to feel safe. I don't even feel safe in my own home and I don't see a future right no[w] where that will change. I live in fear, constantly trying to push that fear away and trying to live my life as a normal person. I wonder, will today be the day that he decides to take action. Criminalising this behaviour is a key step in creating consequences for this behaviour."

FSA supports the criminalisation of coercive control in Western Australia. We support criminalisation as an important step forward in recognising and responding to the calls of victim-survivors and advocates in the sector. We are of the view that criminalisation achieves a number of important ends. Firstly, criminalisation will send an important message to perpetrators and the wider community that coercive and controlling behaviour will not be tolerated. Further, criminalisation signifies a move away from incident specific framing of gender-based violence towards a legal system which recognises patterns of violence and looks at the history of a relationship. Finally, criminalisation will be a big step forward in ensuring that the criminal law adequately captures all forms of violence, both physical and non-physical.

However, FSA also recognises that criminalisation is just one piece of a broader plan of action that **must** be implemented to properly and meaningfully respond to the scourge of coercive control. Criminalisation, in and of itself, is not a silver bullet and reforms of the criminal law **must** be accompanied by whole-of-government reforms and policies to completely transform the criminal justice system (including policing) and to increase community education and awareness of coercive control in the context of sexual, domestic and family violence.

In addition, it is critical that criminalisation is accompanied by significant increases in investments in sexual, domestic and family violence services and necessary reforms across the four pillars of the draft National Plan to End Violence Against Women and Children (ie. primary prevention, intervention, crisis response and recovery). In this regard, we note that this review is timely given the WA Government is on track to receive a \$5.7 billion operating surplus in 2021-22. In addition, it is understood that further surpluses are predicted in each of the next four years, totalling \$10.9 billion. In our view therefore, there are significant funds available to invest in the kinds of reforms being proposed here and by our colleagues in the sector.

Finally, we note that this review is also timely given the recent release of the 'Enough is Enough' report on 23 June 2022. While that inquiry does not specifically relate to coercive control, it highlights the depth and breadth of gender-based violence in Western Australia.

FSA recommends that the Western Australian Government commit to criminalising coercive control in addition to:

1. Working to improve how the criminal law currently responds to coercive control including a commitment to improving how domestic and family violence is captured in the criminal law.
2. Working with other States and Territories and the Federal Government to establish a national definition of sexual, domestic and family violence in which coercive control is recognised as a pattern of abuse.
3. Funding, promoting and supporting community education and awareness of coercive control in the context of sexual, domestic and family violence.
4. Ensuring best practice justice, legal and service system responses to and in the prevention of coercive control through close consultation with community members and key stakeholders, specifically in considering risks and potential impacts on First Nations women, children and communities, people living with a disability, LGBTIQ+ communities and people from culturally and linguistically diverse communities.
5. Investing in evidence-based and trauma-informed responses, interventions and programs which support women and children's safety and freedom from abuse, encompassing primary prevention, intervention, crisis response and recovery, which are underpinned by an understanding of the gendered drivers of violence.
6. Committing to significant training and awareness measures for the Western Australia Police Force (WAPF) and other relevant whole-of-system bodies to recognise and respond to domestic violence and sexual assault, and to recognise and respond to the presence of coercive control. Such training is essential for all relevant law enforcement, healthcare and justice system officials.

FSA also calls on the Western Australian Government to urgently increase sector funding of Western Australian sexual, domestic and family violence specialist services who work with victim-survivors of coercive control, whilst working towards national definitions and greater community understanding of coercive control more broadly.

Coercive Control

Coercive and controlling behaviour is at the core of family, domestic and sexual violence. These non-physical forms of abuse can be just as potent and damaging as physical violence, often entrenching abusive power dynamics and enabling offenders to establish control over victim-survivors. Tactics such as psychological abuse, financial control, social isolation, surveillance, and gaslighting are used by abusers to instil fear and to undermine their victim's autonomy, which impedes their ability to escape abuse. Whilst the specific term 'coercive control' was coined by sociologist Dr Evan Stark in 2008, the concept of coercive and controlling behaviours in the context of domestic and family violence has long been understood by practitioners and advocates worldwide, and fully integrated into their support service responses.⁴

Coercive and controlling behaviour has been well understood in the specialist domestic and family violence sector for many years and is well articulated in the 'Duluth Model' developed in the early 1980s. The 'Duluth Model' focused on acknowledging the way in which some men utilise violence and other means of abuse to exercise power over their partners, children and other family members. The model has been innovative in holding perpetrators accountable and keeping victim-survivors safe. Central to the model is the Power and Control Wheel,⁵ which is systematically utilised in the domestic and family violence field to understand the tactics abusers use to gain power and control over their victims.

⁴ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007) 24.

⁵Copyright by the Domestic Abuse Intervention Project 202 East Superior Street, Duluth, MN, 55802 218-722-2781



Evan Stark's later analysis of what he termed 'coercive control' is useful as a clear articulation of the phenomenon. Stark identified four categories which best encapsulates the term: "violence, intimidation (including threats, surveillance, degradation, withholding money), isolation and control (principally through the micro-regulation of everyday behaviours, and the institution of rules)".⁶ This was identified as extending to a range of behaviours, including but not limited to the following:

- Isolating the victim-survivor from their family and friends, whether this be through controlling their social media and communication, or manipulating them to believe their friends and family are no longer supportive.
- Deprivation of liberty and autonomy, such as preventing the victim-survivor from leaving the home or controlling their movements.
- Withholding access to resources, such as money.
- Monitoring and surveillance.
- Stalking and intimidation.
- Reproductive coercion, such as sabotaging victim-survivors' birth control and forcing pregnancy.
- Non-consensual intercourse and sexual touching.

⁶ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007) 24.

- Physical violence and threats of physical violence.

Through this behaviour, an abuser specifically aims to ‘undermine an[other] individual’ and ‘keep them under control’.⁷ This can be described as a form of ‘entrapment’ which renders its victim ‘hostage-like’, inflicting harm on their dignity, personhood, and physical and psychological integrity.⁸

The impacts of coercive control on the victim can be immense, with a Women’s Safety NSW survey reporting that 99% of victim-survivors regarded non-physical coercive and controlling behaviours as just as damaging as physical and or sexual abuse.⁹ Victim-survivors commented:

*“This has harmed me more than any bruise... the ongoing damage in all of us is still there. **Coercive control is not over when you leave.**”*

“I would have rather been physically assaulted than the damage he did to be mentally and psychologically... I would give anything to have the strong and confident woman I once was back again .”¹⁰

Specific impacts of coercive control on marginalised communities

The ongoing impacts and consequences of intersecting forms of discrimination including institutionalised and systemic racism, sexism, ableism and homophobia within our society, reinforce the need for marginalised communities, particularly First Nations people, culturally and linguistically diverse people, people living with a disability, older people, young people, LGBTQIA+ communities and people who live in rural and remote areas to be centred in the development of these reforms. It is essential that community consultation in Western Australia is initiated as soon as possible to ensure any criminalisation of coercive control takes an intersectional lens.

Aboriginal and Torres Strait Islander communities

Aboriginal and Torres Strait Islander communities must be thoroughly consulted in the drafting of any legislation regarding coercive control in Western Australia. As outlined by the New South Wales Joint Select Committee on Coercive Control, Aboriginal and Torres Strait Islander peoples are affected by coercive control in specific ways, making it integral for consultation to be undertaken by the Western Australian Government about how best to respond to the specific needs of victim-survivors.¹¹

⁷ Ibid.

⁸ Ibid, 41.

⁹ Women’s Safety NSW, *Submission to the NSW Joint Select Committee on Coercive Control in Domestic Relationships*, (Report, 2021) 21.

¹⁰ Ibid, 22.

¹¹ n3, 5.

One example of the ways in which Aboriginal and Torres Strait Islander peoples experience unique barriers and discrimination regarding coercive and controlling behaviour are exacerbated fears of reporting.¹² Indigenous children are more likely than non-Indigenous children to be removed from their families as a result of a call to domestic violence, and currently over 90% Indigenous women who are murdered by their partners or ex-partners have a previous arrest record for assault where the police have misidentified the victim as the perpetrator.¹³ These statistics support the deep fear that First Nations people experience which prevents them from disclosing their experiences of domestic violence.¹⁴

Advocates warn that entrenched attitudes of racism and sexism in the criminal justice system and in broader society influence police responses when arriving at domestic violence calls, something that the manipulative tactics of those who use coercive control will be able to capitalise on, by characterising Aboriginal and Torres Strait Islander women as violent, unreasonable and irresponsible.¹⁵ As such, the criminalisation of coercive control should be considered only as part of a larger integrated strategy to combat coercive control, and with extensive consultation with Aboriginal and Torres Strait Islander communities .

Culturally and linguistically diverse communities

Culturally and linguistically diverse victim-survivors also experience unique and harmful forms of coercive control such as systems abuse. Partners of culturally and linguistically diverse victim-survivors may threaten deportation, or threaten to have victim-survivors deported whilst keeping the children in Australia, in the event children are Australian citizens¹⁶. While there are domestic violence regulations in place to assist in these circumstances, their reach is limited to certain types of visas, and can only be accessed once the victim-survivor has left the relationship.¹⁷ Further, the use of these protections rests on the knowledge of domestic violence laws and provisions by the victim-survivor themselves.¹⁸

Other unique forms of coercive control include social isolation, such as restricting a victim-survivor's ability to learn English, pursue education, to learn about their rights in Australia,

¹² Ibid.

¹³ Nancarrow, H., Thomas, K., Ringland, V., & Modini, T. (2020). *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020). Sydney: ANROWS.

¹⁴ Keira Jenkins, 'Fear of child removal preventing Indigenous women from reporting family violence' *NITV News* (Melbourne, 15th December 2020).

¹⁵ 'Advocates say criminalising coercive control could have 'unintended consequences' for Aboriginal women' *SBS News* (Australia, 17th April 2021).

¹⁶ Maeve Lu and Xannel Mangahas and Jessica Nimmo, 'Domestic and Family Violence in Culturally and Linguistically Diverse (CALD) Communities' (Literature Review/Pro Bono Centre, University of Queensland Australia, 26th March 2020) 9.

¹⁷ 'Good intentions are not enough': Calls to connoisseur complex coercive control faced by migrant women' *SBS News* (Australia, 23rd February 2021).

¹⁸ Ibid, 5.

or to leave the home.¹⁹ In addition, restrictions on language can themselves create intersecting forms of compounding harm such as reproductive coercion, with a research paper detailing an alarming example of reproductive coercion where a victim-survivor was given a hysterectomy but was not informed until after the procedure.²⁰

People with disabilities

A survey conducted by Monash University found that women with disability are 15% more likely to be subjected to coercive and controlling behaviours than women without a disability.²¹ Notably, people with disabilities are also vulnerable to coercive and controlling behaviours from family members, partners and carers, particularly in an institutional setting.²² Victim-survivors with disability are more likely to experience coercive medical interventions to control their fertility, and significantly more restrictions, negative treatment, and particularly egregious violations of their sexual and reproductive rights.²³

Perpetrators of coercive control towards people with disability are often responsible for ensuring victim-survivors can access transport or mobility aids, medication and treatment, hygiene and nourishment.²⁴ They may be responsible for the care of an assistance animal that is necessary for the victim-survivor to access independence, or helping to make medical decisions around reproductive health and children.²⁵ Further, people with disability may also fear losing the care or support of the perpetrator if they sought help.²⁶

The challenges and barriers faced by people with disability impact their ability to report coercive and controlling behaviours and access justice. As such, the Western Australian Government must consult with people with disability to ensure efforts can be taken to decrease the systemic barriers faced by victim-survivors with a disability.

LGBTQIA+ communities

Finally, LGBTQIA+ victim-survivors may experience specific forms of abuse and coercive control. These include threatening to/forcibly 'out' a partner, possibly endangering, or controlling how a

¹⁹ Alissar El-Murr, 'Intimate partner violence in Australian refugee communities' (CFCA Paper n.50, Australian Institute of Family Studies, 2018) 11.

²⁰Ibid.

²¹ Jasmine McGowan and Tricia Malowney, 'The urgent need to address coercive control of women with disability' (2021) *Politics and Society*.

²² Ibid.

²³ n3, 14.

²⁴ n 21. 4.4.7.

²⁵ n 21.

²⁶ Bagshaw, Dale et al, *Reshaping Responses to Domestic Violence* (Final Report, University of South Australia, April 2000) p 29.

partner expresses their sexuality or gender identity.²⁷ Coercive control can also include medical abuse, like preventing a victim-survivor from accessing hormones.

Existing Legislation in Western Australia

In Western Australia, the *Restraining Orders Act 1997* Section 5A1(b) provides that family violence is inclusive of ‘*behaviour by the person that coerces or controls the family member or causes the member to be fearful*’.

A non-exhaustive list of the behaviours is included in Section 5A(2) include:

- (a) An assault against the family member;
- (b) A sexual assault or other sexually abusive behaviour against the family member;
- (c) Stalking or cyberstalking the family member;
- (d) Repeated derogatory remarks against the family member
- (e) Damaging or destroying property of the family member
- (f) Causing death or injury to an animal that is the property of the family member
- (g) Unreasonably denying the family member the financial autonomy that the member would otherwise have had;
- (h) Unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
- (i) Preventing the family member from making or keeping connections with the member’s family, friends or culture;
- (j) Kidnapping or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
- (k) Distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
- (l) Causing any family member who is a child to be exposed to behaviour referred to in this section.

In consulting with our colleagues in Western Australia we know that this definition requires reform. More focus must be given to the impacts of non-physical abuse, including patterns of controlling behaviour and psychologically coercive behaviour in order to cover a wider spectrum of abuse. A number of specific examples of coercive controlling behaviour are missing including (but not limited to) reproductive coercion, coercive control in a religious or cultural context, harm or threats of harm to pets, depriving access to medication, emotional abuse beyond derogatory taunts, gaslighting, blackmail and technological abuse.

Family Violence Restraining Orders

²⁷ Evan Stark and Marriane Hester, ‘Coercive Control: Update and Review’ (2019) 25 (1) *Violence Against Women* 81, 91.

A current mechanism that is available for victim-survivors is a family violence restraining order (FVRO) under the *Restraining Orders Act 1997*. However, it is clear from colleagues in the sector that FVROs are not working to keep victim-survivors safe. In our experience, protection orders place the onus on victim-survivors, who may be traumatised, to seek and initiate help.²⁸ They also rely heavily on properly trained police officers to identify coercive controlling behaviours at the scene of a domestic incident. We already know that the law does not adequately acknowledge coercive control as an ongoing pattern of harm as opposed to one-off incidents.²⁹ As such, even the most well-intentioned police officer may be hamstrung by the law's inability to recognise and respond to psychological abuse and coercive control.

We are also aware from our colleagues in Western Australia, that the persistent family violence offence in section 300 of the *Criminal Code 1900*, while successful at highlighting the alarming nature and extent of physical gender-based violence occurring in Western Australia, is still not properly capturing psychological abuse and coercive control. In addition, the law is still primarily incident based, requiring 3 separate incidents, rather than looking at the totality of the relationship as a whole. One could also argue that the high amount of prosecutions for this offence highlights the Government's failure to invest in primary prevention and early intervention in Western Australia, as we are not successfully preventing the escalation of violence before it starts.

A Western Australian victim-survivor in our National Survivor Advocate Program said

"I don't think the police currently have any effective mechanism to take action against coercive control. When I have spoken to them about it they have told me that it's very difficult to get a restraining order for emotional abuse. Due to the serious nature of his threats, I have been reporting all breaches of the restraining order in case something happens one day, at least there will be some history for them to look at."

International Approaches to Criminalisation

Scotland

The Domestic Abuse (Scotland) Act 2019 criminalises coercive control in Scotland, and has been referred to as 'a new gold standard'. Behaviour will constitute coercive control if two conditions are satisfied:

1. The perpetrator engages in a course of behaviour which is abusive of their partner or ex-partner (objective limb); and

²⁸ Stella Tarrant, Julia Tolmie and George Giudice, 'Transforming legal understandings of intimate partner violence' (Research Report 3, Australia's National Research Organisation for Women's Safety, 2019) 15.

²⁹ Ibid.

2. A reasonable person would consider the course of behaviour to likely cause the partner or ex-partner to suffer physical or psychological harm that the perpetrator either intentionally by the course of behaviour intends to cause physical or psychological harm, or is reckless as to whether the course of behaviour causes their partner or ex-partner to suffer physical or psychological harm (subjective limb).

The reference to psychological harm is broad and includes fear, alarm and distress.³⁰ The Act includes a non-exhaustive list of behaviours that constitute abusive behaviour, and can be taken for the purposes of the Act as violent, threatening or intimidating. These include:

- a. Making the partner or ex-partner dependent on, or subordinate to the perpetrator;
- b. Isolating the partner or ex-partner from friends, relatives or other sources of support;
- c. Controlling, regulating, or monitoring the partner or ex-partner's day-to-day activities; or
- d. Depriving or restricting the partner or ex-partner's freedom of action; or
- e. Frightening, humiliating, degrading or punishing the partner or ex-partner.

The offence of coercive control is strategically designed to focus on the offending conduct as opposed to the harm caused to the victim. The purpose of this approach is to relieve the evidential hurdle that victim-survivors may struggle to overcome. Hence, the commission of an offence does not depend on the course of behaviour actually causing the partner or ex-partner to suffer harm of the sort mentioned above.³¹ This approach differs from other international jurisdictions that will be discussed below. The legislation appears to be effective, with 4% of domestic violence incidents relating to controlling or coercive behaviour, and 1,461 crimes recorded.³² Furthermore, a national statistic publication for Scotland's criminal proceedings report that the increase in non-sexual crimes of violence in between 2019 and 2020 is the result of the amendments made to the *The Domestic Abuse (Scotland) Act 2019* that criminalises coercive control. The reports on offence and conviction rates highlight the success. Specifically, there were 246 people who faced proceedings, and 206 who were convicted, revealing a conviction rate of 84%. In relation to the 206 convicted, 202 (98%) were male and 4 were women.³³ The statistics reveal that the criminalisation in Scotland has been effective in allowing services to intervene and protect women who experience this form of abuse.

Regarding policing, it is important to note that Scotland enacted a lengthy period before the legislation came into force to ensure that the community, police, criminal justice system and services have been adequately prepared and educated. Scotland has allocated 1.48 million to

³⁰ *Domestic Abuse (Scotland) Act 2018* s 1.

³¹ *Ibid*, s 4.

³² The Herald, 'Domestic abuse incidents recorded by Police Scotland reach 'shameful' 20 year high' (Web Page, June 2021).
<<https://www.heraldscotland.com/politics/19390267.domestic-abuse-incidents-recorded-police-scotland-reach-shameful-20-year-high/>>.

³³ National Statistics, *Criminal Proceedings in Scotland, 2019-2020* (Scottish Government, 2020).

train 14,000 officers to ensure consistency and understanding across the criminal justice system in policing conduct that involves psychological, emotional, or financial abuse. Scotland considered the training of officers as important to allow police to identify these types of behaviours and what information to collect from the victims, witnesses, and accused.³⁴

The accused may raise the defence of reasonableness if the course of behaviour was reasonable in the particular circumstances. If the defence is raised, the prosecution must then prove beyond a reasonable doubt that it was not in all the circumstances reasonable.³⁵

Ireland

The *Domestic Violence Act 2018* criminalises coercive control in Ireland. Behaviour will constitute coercive control if a person commits an offence where he or she knowingly and persistently engages in behaviour that is:

1. Controlling or coercive;
2. Has a serious effect on a relevant person; and
3. A reasonable person would consider it likely to have a serious effect on a relevant person.

In contrast to the *Domestic Abuse (Scotland) Act 2019*, the offence requires proof of actual harm to the victim. A relevant person includes a spouse, civil partner, or someone who had an intimate relationship with the perpetrator. A behaviour will have a serious effect on a relevant person if the behaviour causes the person to fear violence will be used against them, or the relevant person experiences serious alarm or distress that has a substantial adverse impact on their usual day-to-day activities.

Northern Ireland

The *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* criminalises coercive control in Northern Ireland. Behaviour will constitute coercive control and a domestic abuse offence if four elements are satisfied:

1. The person engages in a course of behaviour that is abusive of another person;
2. The person and another person are personally connected to each other at the time;
3. That a reasonable person would consider the behaviour to be likely to cause the person to suffer physical or psychological harm; and

³⁴ Dan Rogers, 'Legislating against coercive control: Scotland's Domestic Abuse Act', *Robertson O'Gorman Solicitors* (Blog post, August 16 2021).
<<https://www.robertsonogorman.com.au/2021/august/16/legislating-against-coercive-control-scotlands-domestic-abuse-act/>>.

³⁵ n30, s 6.

4. The offender intends the course of behaviour to cause the person to suffer psychological harm, or is reckless as to whether the course of behaviour causes the person to suffer physical or psychological harm.

The section outlines the types of behaviour that will amount to violent behaviour. It includes threatening or violent behaviour including sexual or physical violence that is directed at a person, child of the person, or someone else that would be considered to have one or more of the reasonable effects. These effects include:

- a. making the person dependent on or subordinate to the perpetrator;
- b. isolating the person from friends, family members, or other sources of social interaction or support;
- c. controlling, regulating or monitoring the person's day-to-day activities;
- d. depriving the person of, or restricting the person's freedom of action;
- e. making the person feel frightened, humiliated, degraded, punished or intimidated.³⁶

United Kingdom (England and Wales)

Section 76 of the *Serious Crimes Act 2015* (UK) criminalises controlling or coercive behaviour in the United Kingdom. Controlling or coercive behaviour in an intimate or family relationship will be committed if four elements are satisfied:

1. The perpetrator repeatedly or continuously engages in behaviour towards another person that is controlling or coercive; and
2. At the time of the behaviour, the perpetrator and other person are personally connected; and
3. The behaviour has a serious side effect on the other person; and
4. The perpetrator knows or ought to know that the behaviour will have a serious side effect on the other person.

The perpetrator and the other person will be personally connected if they have had an intimate relationship, or if they are living together and part of the same family. The behaviour will have a serious side effect on the other person if on at least two occasions, they thought violence would be used against them, or the behaviour causes serious alarm or distress which has a substantial adverse effect on their day-to-day activities. These effects may include a change in the way that person socialises, physical or mental health deterioration, change in attendance, putting measures to safeguard themselves or their children, and change in employment status or patterns.³⁷

³⁶ *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* s 1-2.

³⁷ *Serious Crimes Act 2015* (UK) s 76.

The Statutory Guidance identifies what would be relevant behaviour of the perpetrator, and provides a non-exhaustive list that includes isolating the person from their friends and family, depriving them of basic needs and support services, monitoring their time, taking wages, family 'dishonour', threats to hurt or kill, or harm a child.³⁸

The accused may raise a defence that in engaging the behaviour, he or she believed they were acting in the other person's best interest and the behaviour was in all the circumstances reasonable. However, this defence is not available when threats of violence have been used against the other person on at least two occasions.

Misidentification of the perpetrator in UK and Scotland

Initial analysis of the United Kingdom and Scottish offences for criminalising coercive control suggest that the offence has not been misused as a means of legal systems abuse nor has it led to an increase in victim-survivors being misidentified as the primary aggressor.³⁹

In McGorriery and McMahon's data, 106 of the 107 offenders sentenced for controlling or coercive behaviour were male;⁴⁰ findings which are consistent with the Ministry of Justice's reporting that in the 2017 calendar year that 97% of the defendants that were charged with controlling or coercive behaviour were male.⁴¹

Additionally, McGorriery and McMahon's analysis also revealed a low rate of appeals and a high rate of guilty pleas (73%).⁴²

FSA acknowledges that of the countries that have enacted coercive control legislation, none have a continued legacy of colonisation like Australia. As such, whilst looking internationally gives Australia insight into the effectiveness and challenges of criminalising coercive control, these case studies must always be considered in the national context in which they sit. This nuance further reinforces the critical need for consultation with Aboriginal and Torres Strait Islander peoples in ensuring an inclusive and culturally-appropriate approach to criminalising coercive control.

Implementation Considerations

National Definition

³⁸ Home Office, *Statutory guidance framework: controlling or coercive behaviour in an intimate or family relationship* (December, 2015) 5.

³⁹ Paul McGorriery and Marilyn McMahon, 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence' (2019), *Criminology & Criminal Justice*.

⁴⁰ Ibid.

⁴¹ Office of National Statistics UK, 'Domestic abuse in England and Wales: year ending March 2018' (Web Page, 22 November 2018).

⁴² n 39.

FSA urges the development of a national definition of sexual, domestic and family violence in which coercive control is recognised as a pattern of abuse. A major difficulty within criminal law and sexual, domestic and family violence is the incident-specific framing of the offence and how it is perpetrated. This transactional focus frames crime in a specific way and makes it unsuitable for the prosecution of behaviour which is ongoing and continuous.⁴³ In understanding the offence as a violation of a physical boundary that takes place at a particular instant in time, the majority of harm experienced by victim-survivors is excluded altogether. By framing sexual, domestic and family violence in an incident-specific way, victim-survivors often cannot pinpoint the abuse they experienced to specific dates and thus, cannot detail which specific assaults took place at which time.⁴⁴ This presents a challenge for victim-survivors as whilst a one-off incident is memorable, dates of attacks which occur regularly are not. Consequently, victim-survivors can often generalise and summarise attacks which have blended together, making it difficult to prove such offences in court.⁴⁵

NSW Legislation

NSW recently released its exposure draft of the Crimes Legislation Amendment (Coercive Control) Bill 2022⁴⁶. In addition to releasing the exposure draft, the NSW Government also announced:

- The Department of Education will review school programs about respectful relationships to ensure these include content about coercive and controlling behaviour.
- Comprehensive training on coercive control will also be introduced across Government systems and communities.
- A public awareness campaign about coercive control will be developed and delivered in consultation with stakeholders, including with culturally and linguistically diverse and First Nations communities and organisations.
- The reforms will occur alongside already announced initiatives in the 2021-22 Budget including an extra \$60 million over two years to strengthen frontline services and an additional \$484.3 million to expand crisis accommodation, social housing and specialist wrap-around services.⁴⁷

Full Stop Australia welcomed the release of the exposure draft and the additional announcements as an important step forward in addressing coercive control in NSW and is looking forward to further consultation with the NSW Government on the draft legislation and questions of implementation. It should be noted that there have been some concerns expressed

⁴³ Cassandra Wiener, 'From Social Construct to Legal Innovation: The Offence of Controlling or Coercive Behaviour in England and Wales' (2020), *Criminalising Coercive Control* 159, 160.

⁴⁴ Ibid.

⁴⁵ Ibid, 161.

⁴⁶ See [Coercive Control Exposure Draft Bill | NSW Government](#).

⁴⁷ See NSW Government Announcement [Government to criminalise coercive control \(nsw.gov.au\)](#).

by the sector in NSW in relation to the length of public consultation (6 weeks) and the drafting of the legislation - including, that the legislation only applies to intimate personal relationships. While a public consultation on the legislation has commenced, in-depth consultation with the sector in NSW is forthcoming. As such, we recommend that the WA Government consider carefully the results of any consultation.

Education and Training

FSA submits that public education about the reforms, as well as training and guidance for justice system personnel is imperative for the effective functionality of any new legislation. In Tasmania, lack of community education, police training and guidance have been recognised as key factors resulting in the slow uptake of offences. Police officers, police prosecutors, DPP prosecutors and judicial officers must be given training and updated policies, guidelines and other resources to assist them in implementing and applying the legislation. Improvements to these bodies have been named as necessary preconditions to the effective operation of any legislation.⁴⁸

The Crown Prosecution Service (CPS) in England and Wales has issued legal guidance on the offence of controlling or coercive behaviour.⁴⁹ This publicly available guidance deals with a range of issues, including: the gendered nature of the behaviour; the elements of the offence; examples of relevant behaviour; gathering evidence and case building; selecting the most appropriate charge; taking an offender-centric approach; and the impact of coercive control on victim-survivors. The CPS's legal guidance builds upon the Home Office's Statutory Guidance which was published on commencement of the offence.⁵⁰

FSA submits that the WA Government develop detailed guidance prior to any introduction of any new offence, with regular updates to ensure they reflect the current law, legal developments and improved understandings of best practice.

However, forms of training cannot have too narrow of a focus, and these training programs alone often have minimal impact.⁵¹ A study conducted in the United Kingdom evaluated the effectiveness of specialist rape investigation training between police officers and found no

⁴⁸ Paul McGorery and Marilyn McMahon, 'Coercive control is a key part of domestic violence. So why isn't it a crime across Australia?', *The Conversation* (online, 27 February 2020) <<https://theconversation.com/coercive-control-is-a-key-part-of-domestic-violence-so-why-isnt-it-a-crime-across-australia-132444>>.

⁴⁹ Home Office, 'Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework' (December 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf>.

⁵⁰ Ibid.

⁵¹ Anthony Murphy and Benjamin Hine, 'Investigating the demographic and attitudinal predictors of rape myth acceptance in U.K. Police officers: developing an evidence base for training and professional development', (2019) 25(2) *Psychology, Crime & Law* 69-89.

differences between those who received the training and those who did not.⁵² The programs were criticised due to the narrow focus on most interventions, a failure to consider the broader context of such beliefs, and the failure to embed more reflective practices within training programs to help drive institutional change.⁵³

Improving police responses to domestic and family violence and coercive control

Police officers are frequently exposed to traumatic situations, to which ongoing exposure can often result in 'compassion fatigue' and 'vicarious trauma'.⁵⁴ This can often manifest into feelings of mistrust towards a victim or perpetrator, resulting in officers becoming less objective in their response.⁵⁵ Individuals with lived experience of domestic and family violence and coercive control have overwhelmingly described their experiences with police officers as negative.⁵⁶ Key issues include poor police culture, negative beliefs related to women and domestic and family violence, 'real victim' stereotypes, and a lack of cultural capability and understanding of coercive control.⁵⁷ As the Western Australia Police Force (WAPF) often acts as the frontline service for victim-survivors and perpetrators of domestic and family violence, it is of the utmost necessity that support, training and guidance be provided in order to address cultural attitudes, beliefs and values.

Sienna*, an Aboriginal Domestic and Family Violence Specialist in NSW (Women's Domestic Violence Court Advocacy Program) highlights common themes that exist across Australia within police practice when addressing physical and non-physical forms of abuse:

*"Unless the officer they happen to report to is educated in this space, many times they will respond with things like "he didn't threaten you though" or "he is just trying to see his kids". **The police often do not recognize the control and power the perpetrators are using on their victims.** For example, an officer wouldn't charge a perpetrator with intimidation because the messages he was sending were only of a dog. But he was sending 50 messages a day of the dog, and was doing it to make sure the woman wouldn't forget about him and would remain fearful. To the officer involved though, he wasn't doing anything "wrong"."*⁵⁸

These issues are further exacerbated for groups who already experience barriers when seeking support from police:

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Emily Maple & Mark Kebbell, Responding to domestic and family violence: A qualitative study on the changing perceptions of frontline police officers, *Violence Against Women* (2020) 4.

⁵⁵ Ibid, 11.

⁵⁶ Women's Safety and Justice Taskforce, 'Hear her voice - Addressing coercive control and domestic and family violence in Queensland' (Discussion Paper, 2021).

⁵⁷ Ibid.

⁵⁸ n1, 47. *Real names have been changed to de-identify testimonies.

“For Aboriginal clients, there is already a fear of police due to our history of being targeted and treated unfairly. Many of our Aboriginal clients have faced police who do not believe them or who are dismissive of their matters. This is even more evident when we are talking about non-physical DV. The education for police just is not there and so many of them do not recognize it. This puts Aboriginal clients in the position of having to prove that what they experienced is in fact DV and a crime, but the power imbalance means that this almost never has a positive outcome.”

Sienna*, Aboriginal Domestic and Family Violence Specialist (Women's Domestic Violence Court Advocacy Program).⁵⁹

FSA submits that the WA Government develop and implements a plan to train and build the capacity of the WAPF to respond to coercive control. FSA draws upon Recommendation 34 of the Queensland Women’s Safety and Justice Taskforce, which highlights how training must:

- be informed by the voices of people with lived experience, including Aboriginal and Torres Strait Islander peoples, people with disability, LGBTIQ+ people, and people from culturally and linguistically diverse backgrounds;
- include a focus on culturally capable, victim-centred and trauma-informed approaches and incorporate a strong understanding of the gendered nature of domestic and family violence through an intersectional lens;
- be developed and delivered in collaboration with experts from the service sector, academia, and policing; and
- focus on victim safety and holding perpetrators to account to stop the violence - include evidence-based information about perpetrator tactics, including manipulation and image management.⁶⁰

Primary Prevention

FSA submits that any criminalisation must be accompanied by an increased focus on primary prevention of domestic and family violence in Western Australia in particular in relation to community awareness of coercive control. Legislating against coercive control sends a clear message that this behaviour is not acceptable, however it only holds perpetrators accountable *after* the violence has happened. In order to prevent coercive control from occurring in the first place, it is vital that we recognise how sexual, domestic and family violence exists within a broader framework of sociocultural attitudes and beliefs.

⁵⁹ n1, 48. *Real names have been changed to de-identify testimonies.

⁶⁰ Women’s Safety and Justice Taskforce, ‘Hear her voice - Addressing coercive control and domestic and family violence in Queensland’ (Discussion Paper, 2021).

The Change the Story framework,⁶¹ outlines the drivers of violence against women, which includes:

- condoning of violence against women;
- men's control of decision-making and limiting women's independence;
- rigid gender roles and identities; and
- male peer relations that emphasise aggression and disrespect towards women.

Change the Story highlights that in order to address and prevent violence against women, we, as a community need to commit to:

- challenging the condoning of violence against women;
- promoting women's independence and decision-making;
- challenging gender stereotypes and roles;
- strengthening positive, equal, and respectful relationships; and
- promoting and normalising gender equality in public and private life.⁶²

Community awareness measures

FSA submits that it is essential for there to be a strong and holistic community awareness campaign in conjunction with the criminalisation of coercive control. Without community awareness of any new offences, legislation will not operate to the fullest extent and will be underutilised.

Evidence from Tasmania demonstrates the dangers of criminalising coercive control without implementing community awareness and education programs. In Tasmania, it took three years for charges to be brought under the new legislation, and one of the key reasons for this was the lack of community awareness about the offence.⁶³ Further, there was little media coverage in relation to the new offence and a lack of support provided to legal and non-legal services.⁶⁴ We submit that Western Australia could learn from this experience, in ensuring a comprehensive education and awareness campaign so that all the key institutions and the community more broadly obtain an understanding of this insidious aspect of domestic abuse.

The Western Australian Government should develop and resource a communication strategy that aims to increase community awareness and understanding about the nature and impacts of coercive control and to effectively explain changes to the law.

⁶¹ Our Watch, ANROWS & VicHealth, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* (Our Watch, 2015).

⁶² Ibid, 33.

⁶³ Women's Legal Service Tasmania 2020, 'Inquiry: Submission into Family, Domestic and Sexual Violence,' p.6.

⁶⁴ Ibid.

In this regard, FSA draws upon Recommendation 5 of the Queensland Women’s Safety and Justice Taskforce, which highlights how any communication strategy should incorporate:

- targeted community-specific awareness campaigns including First Nations people, people from culturally and linguistically diverse backgrounds, people with disability and LGBTIQ+ peoples;
- exploring the use of multiple channels and modes to target messages effectively to specific groups;
- developing a proactive public relations and media strategy; and
- creating accessible resources about domestic and family violence including coercive control and the new legislation, and should incorporate a standalone website with accessible information in plain English about the nature and impact of domestic and family violence and how to seek help.⁶⁵

There are high levels of community misinformation surrounding non-physical forms of abuse. ANROWS’ National Community Attitudes towards Violence Against Women survey (NCAS) found that there is a great deal of work to do in educating the community about how domestic abuse can be psychological.⁶⁶ The 2017 survey found that Australians were less likely to recognise non-physical violence as a form of domestic abuse, and 1 in 5 Australians do not believe financial control is a serious problem.⁶⁷ These results make it clear that there are still widely held beliefs in our society that domestic abuse is merely physical violence.

The communication strategy must effectively capture the complexity of coercive control. There must be clear messaging to highlight how an isolated act of coercive control may seem trivial and go unrecognised as a form of abuse by bystanders and even the victim. Furthermore, the message must illuminate how behaviours used to coercively control may also be present in toxic relationships, but used in a way that is not necessarily coercive.⁶⁸

FSA draws upon Recommendation 3 of the Queensland Women’s Safety and Justice Taskforce which highlights that any messaging must explain clearly:

- the patterned nature of coercive control — that it constitutes behaviours that form a pattern over time in the context of the relationship as a whole;
- the cumulative effect of coercive control and how it devastates victims;

⁶⁵ n56, 408.

⁶⁶ Australia’s National Research Organisation for Women’s Safety. (2018). Are we there yet? Australians’ attitudes towards violence against women & gender equality: Summary findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) (Research to policy and practice, 03/2018). Sydney, NSW: ANROWS.

⁶⁷ Ibid.

⁶⁸ n56, 409.

- what a respectful relationship looks like;
- changes to the law;
- the new facilitation offence, empowering people to say no to perpetrators who ask them to engage in conduct that might knowingly breach a Domestic Violence Order; and
- how to report coercive control and where victims and perpetrators can get support - what family members and friends can do to help.⁶⁹

This messaging must take a trauma-informed approach. The communication strategy must recognise and identify specific audiences and provide targeted campaigns accordingly.

Respectful Relationships Education

FSA considers respectful relationships education as a crucial piece of the puzzle in preventing gender-based violence before it starts,⁷⁰ with schools as key settings to promoting respectful relationships, non-violence, and gender equality.⁷¹ We note that in NSW, young people in particular are supportive of respectful relationships education forming part of any strategy to address coercive control.⁷²

FSA submits that the Western Australian Government mandate that all state and non-state schools in Western Australia provide consistent, high-quality respectful relationships education which encompasses coercive control, delivered and embedded through a whole-of-school approach.⁷³

Respectful relationships education at every school must feature core elements that address the causes of domestic, family and sexual violence and coercive control. This includes age appropriate content on respectful relationships, the impact of colonisation on First Nations peoples, cultural respect and diversity, gender equality, sexual relationships, pornography and consent, and ways to seek help. Respectful relationships education, whilst containing the minimum core elements, must also be delivered in a culturally safe way that is relevant to students' home lives and community.⁷⁴

⁶⁹ Ibid.

⁷⁰ Department of Violence and Injury Prevention and Disability, *Preventing intimate partner and sexual violence against women: Taking action and generating evidence* (World Health Organisation, 2010) <https://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf>.

⁷¹ OurWatch, *Respectful relationships education in schools: Evidence Paper* (2021).

⁷² See Youth Action Submission to the NSW Joint Select Committee Inquiry into Coercive Control [Youth Action Submission for the Inquiry into Coercive Control in Domestic Relationships \(d3n8a8pro7vhmx.cloudfront.net\)](https://www.youthaction.org.au/submitting-to-the-nsw-joint-select-committee-inquiry-into-coercive-control).

⁷³ Recommendation 10, n56.

⁷⁴ Ibid.

In relation to the core elements of respectful relationships education, FSA draws upon the recommendations of the Women’s Safety and Justice Taskforce, which highlight the following key themes:

- Gender and power: a critical analysis of gender inequality and power with an understanding of the underlying gendered drivers of violence against women
- Domestic and family violence: the different forms of domestic and family violence, both physical and non-physical
- Coercive control: pattern-based nature of coercive control and the power dynamics of coercively-controlling relationships
- Respectful relationships: what makes for healthy and respectful family, social, and intimate relationships and what does not
- Gender equality: sex discrimination, sexual harassment, unconscious bias — and promoting gender equality as a pivotal factor in reducing violence against women
- Cultural respect and diversity: an understanding of and respect for different cultures, as well as an understanding of what racism is and of the ongoing impacts of colonisation for Aboriginal and Torres Strait Islander peoples
- Gender and sexual diversity: a discussion of gender norms, the difference between sex and gender, and discrimination experienced by LGBTIQ+ individuals
- Seeking help: information about who to tell or contact when there is domestic, family or sexual violence or coercive control occurring at home or in their relationships.⁷⁵

Early intervention

FSA strongly advocates for a stronger focus on early intervention in relation to coercive control, rather than investing in crisis responses. Intervening before escalation and at a time where individuals are seeking help is likely to reduce domestic violence and its impacts.⁷⁶

Programs targeted at young people

The Western Australia Government must recognise the need for a differentiated approach towards young people who are perpetrators of domestic and family violence. This approach should aim to divert young people away from the criminal justice system and focus on addressing the underlying causes of their behaviour.

Examples of programs that exist in other jurisdictions include:

- ‘Side by Side’ run by Youth and Family Services (**YFS**): a program for young people in Queensland who may be in conflict with their protective parents. This is an attachment-based intervention that works with both the young person and the parent to

⁷⁵ Ibid, 429.

⁷⁶Ibid, 506.

establish, or rebuild a relationship of trust to counter the negative experiences of domestic and family violence.⁷⁷

- 'R4Respect' and 'Men4Respect' are also run by YFS: a program that utilises a peer-to-peer model to run an education and prevention strategy that aims to prevent anti-social behaviour and violence, including violence in personal or intimate relationships.⁷⁸

There are currently no programs in Western Australia that aim to address the needs of young people perpetrating domestic and family violence.⁷⁹ FSA strongly advocates for the development of such programs.

Recovery

The impacts of domestic and family violence are far-reaching for the individual and the community. Impacts for individuals include relationship breakdown, financial and housing insecurity, mental and physical injuries and ill health, substance abuse issues, complex trauma, and disrupted social and economic engagement.⁸⁰ For children, the impacts of being exposed to violence are magnified. Some common trauma impacts include the development of mental health issues, sleep disturbances, learning difficulties and behavioural problems. There is also evidence that living with domestic and family violence makes children more vulnerable to other forms of child abuse and neglect, including being sexually assaulted and/or using problematic and sexually harmful behaviours against other children.⁸¹

More broadly, sexual, domestic and family violence also impacts upon the wider community, placing greater strain on families, workplaces, social, health and justice service systems. Intimate partner violence is estimated to cost the Australia economy over 22 billion each year.⁸²

FSA notes that there are significant funding gaps for long-term trauma specialist counselling and care navigation services for people who have suffered from domestic and family violence in Western Australia but are no longer at crisis stage. This is reflective of a large funding gap at a

⁷⁷ Side by Side, *Who We Are* (Web Page) <<https://www.sidebysideyouth.org/>>.

⁷⁸ YFS, R4Respect & Men4Respect (Web Page) <<https://www.yfs.org.au/r4respect-and-men4respect/>>.

⁷⁹ Government of Western Australia 2017 to 2022, *Family and Domestic Violence Services and Resources* <<https://www.wa.gov.au/organisation/department-of-communities/family-and-domestic-violence-services-and-resources>>; Anglicare, *Family and Domestic Violence* (Web Page) <<https://www.anglicarewa.org.au/get-help/family-and-domestic-violence>>.

⁸⁰ AIHW, *Family, domestic and sexual violence*, Australian Institute of Health and Welfare, (16 September 2021), <<https://www.aihw.gov.au/reports/australias-welfare/family-domestic-and-sexual-violence>>.

⁸¹ AIHW, *Family, domestic and sexual violence in Australia: continuing the national story 2019*, Canberra, Australia: Australian Institute of Health and Welfare, <<https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>>.

⁸² KPMG, *The cost of violence against women and children in Australia* (Report, 2016), 4.

national level. In our view, the inclusion of recovery as a fourth pillar in the next Draft National Plan to End Violence Against Women and their Children recognises the importance of recovery in any wholistic responses to domestic and family violence, including coercive control.

In this regard, FSA strongly encourages the Western Australian Government to exercise leadership and commit to a significant investment in trauma recovery services for victim-survivors of domestic and family violence in Western Australia as part of its response to coercive control.