

CRIMINALISATION OF COERCIVE CONTROL

Centre for Non-Violence position paper

SUMMARY

THERE has been increased public debate and conversation about coercive control following the horrific deaths of many women across Australia in 2020. Some are lobbying for all Australian states and territories to change legislation to criminalise coercive control, as we have seen in countries such as England, Wales and Scotland. Others are urging caution.

Specialist family violence response services have varying positions on whether coercive control should be criminalised – but all share the same motivation: improved safety for victim-survivors.

Centre for Non-Violence believes Australia is not ready for any change to legislation that has the potential for unintended consequences for women and children, particularly those in marginalised and disadvantaged groups. We encourage all governments considering legislative change to proceed cautiously.

We recognise the need for improved whole-of-system responses to coercive control and better outcomes through the justice system, but changes to legislation alone are not the solution.

There is no evidence to suggest such changes will increase safety for women and children.

Coercive control is a complex phenomenon that should not be seen as a stand-alone tactic, but rather a form of serious and harmful abuse that is present in almost every case of violence against women.

We need a broader social movement that will lead to a change in the behaviours that excuse and condone violence against women, while having a sharp focus on ensuring the current systemic and legal system responses are working as intended.

We have seen significant reform following the Royal Commission into Family Violence, and Victoria needs time for those reforms to be fully implemented before we can consider whether there has been adequate system-wide change.

WHAT IS COERCIVE CONTROL

Coercive control is a course of conduct aimed at dominating and controlling another (usually an intimate partner, but can be other family members) and is almost exclusively perpetrated by men against women (Johnson, 1995; Nancarrow, 2019; Pence & Dasgupta, 2006).

It is a defining feature of family violence, and includes a range of tactics and behaviours where fear is ever present.

If a person is coercive, they are demanding obedience or control over a person's mind, body and movements. A person using coercive control will create an environment that instils fear in all circumstances.

A perpetrator's pattern of behaviour means they have power and control over their victim, making it difficult for them to ever leave the relationship.

It can be difficult for others to recognise coercive control, without knowing the totality of a victim-survivor's experience.

OUR COMMITMENT

Centre for Non-Violence puts the safety of women and children at the centre of all we do. We are committed to gender and social equality in a violence-free world.

We work towards transformative social change that ensures all forms of oppression and disadvantage are challenged and eliminated. Our commitment to gender equality and ending violence against women has been resolute since we commenced operations in 1990.

As noted in the Centre for Non-Violence, Violence Against Women Framework, violence against women and their children is a prevalent, serious and preventable human rights abuse.

One woman a week is murdered by a current or former partner and thousands more are injured or living in fear. The social, health and economic costs of violence against women are enormous. Gender based violence is both a cause and consequence of gender and other social inequalities.

Whilst most of our funded work relates to what is defined as "family/domestic/intimate partner violence", we also understand we must work towards genuine social change to end not only this violence, but all forms of violence against women.

Our framework states we will work towards this in a number of ways, including partnerships and dialogue with diverse and relevant communities to enable real and transformational change to occur, being open to hearing and learning from different perspectives and approaches, even if they challenge us or make us feel uncomfortable - and continuing to develop and drive a social change agenda in our work that challenges oppression and inequality and how they intersect with preventing violence against women and their children

It is important to draw on the Centre for Non-Violence, Violence Against Women Framework when considering our position on, and contribution to, significant community conversations.

OUR POSITION

Centre for Non-Violence believes Australia is not ready for any change to legislation that has the potential for unintended consequences for women and children, particularly those in marginalised and disadvantaged groups. We encourage all governments considering legislative change to proceed cautiously.

We recognise the need for improved whole-of-system responses to coercive control and better outcomes through the justice system, but changes to legislation alone are not the solution.

We note that while there is a strong push in NSW for legislative change, the Victorian Royal Commission into Family Violence did not make such recommendations.

Instead, stating:

The Commission is not satisfied that new offences specific to family violence—either criminalising family violence generally, or specific forms of family violence—are presently necessary or appropriate to keep victims safe and hold perpetrators to account.

In the Commission's view, these are legitimate concerns which deserve a considered and effective response. Changes to the law must be avoided which, while superficially or symbolically attractive, do not actually advance the safety of victims and the community, or the accountability of perpetrators. In addition, in the absence of comprehensive sentencing data, we do not have a clear sense of whether sentences for family violence offences are more or less severe than sentences imposed in other cases. Before contemplating new laws, we must ensure that they are necessary, and that we are making the best use of the laws already in place. (P921-936)

Introducing new offences and sentencing provisions often has only a symbolic effect and does not result in changes in practice. Whatever laws we have will be only as effective as those who enforce, prosecute and apply them. Improving these practices—through education, training and embedding best practice and family violence expertise in the courts—is likely to be more effective than simply creating new offences. (Page 35)

In relation to Family Violence, the Victorian law states ‘that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time’.

We have seen significant reform following the Royal Commission into Family Violence, and Victoria needs time for those reforms to be fully implemented before we can consider whether there has been adequate system-wide and cultural change, particularly within the justice system.

We encourage the Victorian Government to consider further monitoring of the Family Violence Reforms, and work with our criminal justice system to ensure the law is being applied as intended.

While there is urgency to address justice system responses in relation to violence against women, there remains no common understanding within the criminal justice system about coercive control. Responses are inconsistent and nuances and the complexity of coercive control are often missed or overlooked. The system needs time to embed the recommendations from the Royal Commission.

Embedding those reforms, and adequate training of our police force and legal system, are vital.

If we look to change legislation criminalising coercive control before those reforms are embedded, we are concerned there will be unintended consequences for women.

Women will be burdened with the onus of proof, which in many cases involving coercive control are difficult to evidence. Often coercive control is unspoken. Unwritten. It can be something easily dismissed by outsider, who does not have a true sense of a woman’s individual experience and the pattern of abuse and tactics used by her perpetrator.

A woman herself may not even be aware she is experiencing coercive control, believing her relationship to be ‘normal’.

We see this as a further opportunity for perpetrators to use the system against women, and there is a risk of misidentifying the primary aggressor.

For example, Victoria Police has recently taken a welcomed zero-tolerance approach to breaches of intervention orders – however, we have seen women charged with aiding and abetting.

Women are in no position to resist abusive men. They are making decisions every day about how best to manage their own safety and risk, and sometimes that means agreeing to his demands if it means his behaviour will not escalate. This can be very difficult for a woman to gather evidence for.

First responders, and in particular Victoria Police, need to be well-trained to consider the victim-survivors experience and the pattern of abuse that has been perpetrated against them.

It is our view extensive consultation is required with the specialist family violence sector, and importantly victim survivors.

It is also our strong view that changes to legislation will not change behaviours.

Creating new laws will not stop abusive men trying to contact, control or intimidate women.

We know that the most dangerous time for a woman is when she ends a relationship.

Justice system responses can disrupt a perpetrator's plans or pattern of abuse, but often his behaviour will escalate and he will find new ways to terrorise his victim.

We need to stop the behaviour – which justice system responses alone will never do. It will take a social movement.

Unlike legislative changes addressing safety issues such as drink driving or not wearing seatbelts, where demonstrating need has been a relatively easy argument, many still do not believe violence against women and gender inequality is a problem.

Attitudes and beliefs that condone and excuse violence against women exist across all demographics – from perpetrators to those responding to family violence incidents, general community attitudes to the judiciary.

While these ingrained beliefs exist, women will always be disadvantaged.

Coercive control is a complex phenomenon that should not be seen as a stand-alone tactic rather than as a form of serious and harmful abuse that is present in almost every case of violence against women.

We need broader social change – for better understanding of the attitudes and beliefs that are the cause and consequence of violence against women.

Without this, and with limited evidence showing the criminalisation of coercive control has been effective elsewhere, we are deeply concerned that legislative change will result in further risk to women and children.

There is no evidence to suggest the criminalisation of coercive control has resulted in increased safety for women and children.

We have considered the voices of our sisters in the sector to help us form our view, ensuring we are particularly listening to those who are informed by the lived experience of women who may be disproportionately impacted – including Aboriginal and CALD women, women with disabilities, women in the LGBTIQ community and other marginalised groups.

We know Aboriginal women do not want their men incarcerated, because of the unfair treatment of Aboriginal people in the justice system, and disproportionate number of deaths in custody.

They don't want their men to face the legal system, they just want the abuse to stop.

There is the need to continue to advocate with and for all women to ensure their risks are appropriately managed, and that means carefully considering any changes to the legal system designed to protect them.

The systemic response to family violence needs to meet the needs of all victim-survivors, and efforts should be focused on ensuring the current system (with or without justice system involvement) is doing that.

We share the concerns of those raised in discussion papers released by Australian Women against Violence Alliance and ANROWS, and note our support of the following:

ANROWS:

Key Consideration 1: Harmonise definitions of domestic and family violence and its relationship to coercive control.

Key Consideration 2: Build the evidence base on the effectiveness of criminalisation and other responses to coercive control.

Key Consideration 3: Reform the culture of response to domestic and family violence in and around the legal system.

AWAVA:

Recommendation 1: Australian State and Territories Governments, in consultation with specialist women's and family violence services, establish a consistent national definition of family and domestic violence, in which coercive control is recognised as a pattern of abuse. This could form a part of the development of the next National Plan to Reduce Violence against Women and their Children.

Recommendation 2: That the Australian, State and Territory Governments undertake an extensive consultation and codesign of laws, plans and policies on family and domestic violence with diverse groups of women (particularly those who are victims/survivors) and with specialist women and family violence services considering the criminalisation of coercive control.

Recommendation 3: That the Australian, State and Territory Governments ensure ongoing funding and resourcing for intersectional primary prevention activities including community awareness-raising and attitudinal change in relation to all forms of sexual and gender-based violence.

Recommendation 4: That the Australian Government undertakes research and data collection about prevalence, reporting rates and experience within the justice systems in relation to sexual and gender-based violence against women from diverse backgrounds, including qualitative and quantitative research on their experiences of coercive control.

Recommendation 5: That the Australian Government works with State and Territory Governments and specialist women's and family violence services to review Federal, State and Territory family and domestic violence strategies, with a view to identifying and removing barriers to justice for diverse groups of women. This process should be co-designed with diverse cohorts and specialist women's and family violence services.

Recommendation 6: In developing new policies and legislation that will impact marginalised groups, the Australian Government undertakes a substantial intersectional gender analysis and engages these communities in co-design to ensure that proposed policies and legislation do not create further obstacles for diverse groups of women to live their life free from violence.

Recommendation 7: That police are supported with clear policies and efficient procedures that emphasise the importance of identifying the person most in need of legal protection in the context of a pattern of coercive control.

Recommendation 8: That the Australian, State and Territory Governments ensure sufficient resourcing and guidance for judicial officers to enable consistent understandings of when and how they may strike out or dismiss inappropriate applications.

Recommendation 9: That the Australian Government ensures thorough, mandatory training and ongoing professional development on the nature and dynamic of sexual and gender-based violence, trauma-informed practice, accessibility, cultural competency and inclusion to all relevant law enforcement personnel and justice system officials.

Recommendation 10: That the Australian Government appropriately tracks progress, monitors and evaluates impacts of family and domestic violence legislation, publishes evaluation results, and budgets adequate funding for data collection, monitoring and evaluation.

BACKGROUND

Following an examination of 112 intimate partner homicides between March 2008 and June 2016, the New South Wales Domestic Violence Death Review Team found that in 111 cases the abuser had used “coercive and controlling behaviours” prior to killing their victims.

The [Team’s 2017-19 Report](#) stated there was a need to improve awareness and understanding of coercive control, and included a recommendation that:

The Department of Communities and Justice examine the extent to which existing NSW laws (criminal and civil protection orders) respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence.

This examination should include: 1. a qualitative review conducted with NSW police about what forms of behaviour are being targeted under the offence of ‘stalking or intimidation’, whether such charges are laid on their own or in combination with other offences, and the relationship context of such offences; and 2. monitoring the progress and implementation of offences of coercive control and domestic abuse in other jurisdictions.

In the months that followed, and after the death of Sydney doctor Preethi Reddy, who was murdered by her former partner Dr Harshwardhan Narde, the NSW ALP proposed the [Crimes \(Domestic and Personal Violence\) Amendment \(Coercive Control—Preethi’s Law\) Bill 2020](#)

The Bills reflected similar changes to the law in Scotland — through the [Domestic Abuse \(Scotland\) Act 2018](#)

Preethi’s sister Nithya Reddy has since become a spokesperson for a high-profile campaign to criminalise coercive control.

Are Media brands *marie claire*, *The Australian Women’s Weekly* and *Better Homes & Gardens* joined with Women’s Safety NSW, White Ribbon Australia, Small Steps 4 Hannah, Queensland Women’s Legal Service, Women’s Community Shelters, Doctor’s Against Violence Towards Women and author Jess Hill in October 2020, [to launch the campaign](#) calling for coercive control to be criminalised across all Australian states and territories by mid-2021.

To help shape the legislation, they are also pushing for consultation with domestic violence workers and survivors, along with the provision of the necessary resources and reform framework to ensure the judiciary and police are equipped and trained to enforce the law as intended. More on this campaign [can be found here](#).

The campaign has resulted in many conversations across the domestic and family violence sector, with many advising governments to proceed with any changes to legislation with caution.