

No to Violence Submission to the NSW Government:

*Exposure draft Crimes Legislation Amendment
(Coercive Control) Bill 2022*



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Executive summary

No to Violence is pleased to provide feedback on the Exposure Draft of the *Crimes Legislation Amendment (Coercive Control) Bill 2022*, which aims to establish a stand-alone offence for coercive control in intimate partner relationships. We believe the proposed amendment is an important step in recognising the full experience of intimate partner violence, improving responses and services to uphold the safety of women and children, and ensuring that perpetrators are held accountable for their use of violence.

Although legal reform to capture patterns of domestic and family violence is necessary to give it appropriate recognition and response, effectively preventing and responding to coercive control is unlikely to be achieved by legislation alone. Criminalising coercive control may not lead to greater safety for women and children on its own, but it will form an important part of the overall response to domestic and family violence in NSW. Preventing and responding to patterns of behaviour will be supported by the legislation if the implementation includes a multi-faceted approach rooted in structural change. In jurisdictions where coercive control has been criminalised overseas, such as the UK, the Republic of Ireland, and Scotland, the effectiveness of coercive control legislation is arguably related to the quality of the implementation strategy.

Coercive control was defined by Evan Stark, the person who originally coined this term, as preventing someone in an intimate or familial relationship from ‘freely developing their personhood, utilising their capacities, or practising citizenship, consequences they experience as entrapment’¹. It is important that legislative definitions of coercive control reflect the range of tactics a perpetrator may use in different contexts. If legislation is to be effective, it must be supported by a comprehensive implementation strategy that includes broad community awareness raising; targeted messaging to perpetrators about seeking help to change their behaviour; capacity and capability building for police, the justice and broader service sectors; and funding for specialist services to meet the demand of new referrals.

As the peak body for organisations and individuals working with men who use domestic and family violence, No to Violence is well placed to support the implementation of coercive control legislation. No to Violence supports and advocates for the work of specialist men’s family violence in perpetrator interventions undertaken across NSW and operates the Men’s Referral Service – a helpline and referral service for men concerned about their own behaviour. This work includes, but is not limited to, Men’s Behaviour Change Programs (MBCPs), case management, individual counselling, policy development and advocacy, research and evaluation, and workforce development and capability building. All incorporate coercive control in their remit.

No to Violence supports the introduction of coercive control legislation. Its inclusion in statute has the potential to form improved responses to family and domestic violence, by better defining the extent of its totality and reflecting the lived experience of victim-survivors. However, the efficacy of a new offence will only be realised if there is adequate capacity and capability building across all sectors that provide a response to domestic and family violence, including criminal justice, the police, specialist services and all other frontline responders. Critically, the specialist family violence sector must be adequately resourced to provide connected services for victim-survivors and perpetrators.

¹ Evan Stark (2007), *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, New York, p.4.

Summary of recommendations

To improve the draft bill, strengthen its implementation and ensure it is accessible to all once in operation, No to Violence makes recommendations in three parts:

Legislative Recommendations

1. The NSW Government incorporate a more fulsome scope of domestic and family relationships in the bill to include other family members rather than confining the provision to intimate partner relationships.
2. The bill should include that not only fear of violence towards the victim, but also fear of violence or actual violence towards someone known to the victim, can be used against them.
3. The bill include an additional subsection to reflect experiences of coercive control within marginalised and diverse communities to be considered, such as faith communities, Aboriginal and Torres Strait Islander peoples, LGBTIQ+ communities and people living with disabilities.
4. The bill be amended to include 'stalk, harass or control' to be more inclusive of different forms of technology-facilitated coercive control.
5. Reproductive coercion, forced sex work, forced engagement in unlawful behaviour, and additional elements of financial abuse (e.g. dowry abuse, withholding of child support payments) be added to paragraph (g) in section 54F (2) as further examples of coercive control.

Implementation Recommendations

6. A NSW Government and Implementation Taskforce be established prior to the implementation of the offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation.
7. The implementation period for new legislation be extensive to ensure that the broader domestic and family violence sector, first responders and the communities likely to be impacted by the reforms are given sufficient time to prepare for its introduction.
8. The NSW Government and Implementation Taskforce conducts targeted consultation with Aboriginal and Torres Strait Islander, faith, migrant and refugee, LGBTIQ+, disabled and other marginalised communities to avoid unintended consequences and to ensure new laws do not contribute to the overrepresentation of vulnerable groups in the criminal justice system.
9. NSW Police are supported to enable reform of practices, procedures and culture and contribute to the development of collaborative projects and knowledge sharing to support the introduction of the new offence.
10. NSW Police receive training on assessment of the predominant aggressor.

Policy Recommendations

11. That a description of coercive control as an underlying tactic of domestic and family violence is included in supporting materials such as legal explanatory notes, risk assessments and police and community education, to ensure that coercive control is not seen as separate from or a less serious form of domestic and family violence.
12. Coercive control legislation is subject to ongoing and regular monitoring, and independent evaluation.

Background

No to Violence welcomes the opportunity to provide feedback on the Exposure Draft of the *Crimes Legislation Amendment (Coercive Control) Bill 2022*, which establishes a stand-alone offence for coercive control in intimate partner relationships. No to Violence notes the NSW Government's attention to addressing this issue, as the criminalisation of coercive control recognises its substantive impact on the liberty, autonomy, and overall well-being of victim-survivors. It also signifies further and important attempts to ensure perpetrators of violence are held accountable and kept in view of the civil and criminal justice systems.

In 2021, No to Violence made a submission to the Joint Select Committee on Coercive Control and indicated our support for the criminalisation of coercive control in NSW. This position was reached following consultations held with around 5000 experts, organisations, academics, and victim-survivors from across Australia, England and Scotland. Importantly, these consultations included significant input from victim-survivors, Aboriginal and Torres Strait Islander women, LGBTIQ+ individuals and communities, and people from migrant and refugee backgrounds.

Legislative change is a vital opportunity to reshape and reconfigure our response to the scourge of domestic and family violence. Criminalisation is likely to raise public awareness about coercive control, its devastating impact and explain why it should no longer be tolerated.² Engendering improved recognition of non-physical, patterned forms of violence and the warning signs of escalation may also result in improved criminal justice responses – especially for victim-survivors at high risk of intimate partner homicide.

While we support criminalisation, this response is one of many tools for responding to coercive and controlling violence.³ We are aware that criminalisation alone rarely results in the deterrence of violent behaviour. For instance, the number of women murdered each year by their intimate partner in the United Kingdom has remained constant despite the creation of new laws targeting domestic and family violence.⁴ It is for this very reason that we have made considered efforts to make implementation and policy recommendations to assist the Government roll out a holistic approach to coercive control. We have also included suggestions around supporting and training the sector, police, community and actors in the criminal justice system to support the aims of the legislation.

The proposed legislative amendment is an important step towards enhancing the safety of women and children and ensuring that systems better hold perpetrators to account for their use of violence. Coercive control is the bedrock of abuse, and knowledge of this behaviour transforms all understanding of domestic and family violence. It is our position that we need a whole-of-community response to coercive control that encapsulates government, the community sector, communities, and citizens.

² Douglas, H. (2018). Do we need an offence of coercive control? *Precedent* (Sydney, N.S.W.), 144, 18–21. <https://doi.org/10.3316/ielapa.429464112565714>

³ NTV Submission to NSW Joint Select Committee on Coercive Control (2021). P.28-30. <https://ntv.org.au/wp-content/uploads/2021/02/NO-TO-VIOLENCE-SUBMISSION-NSW-INQUIRY-INTO-COERCIVE-CONTROL-FINAL.pdf>

⁴ Barlow, C., & Walklate, S (2020). Policing Intimate Partner Violence: The 'Golden Thread' of Discretion. *Policing: A Journal of Policy and Practice*, 14(2), 404–413. <https://doi.org/10.1093/police/pay001>

Benefits of the Bill

Criminalisation will help to validate victim-survivors' experiences of abuse; highlight the effect of all forms of abuse; provide a framework for improving policing, criminal justice, service, and community responses; and increase the safety of victim-survivors at high risk of harm.⁵ The 2017-2019 NSW domestic violence death review team analysis found that coercive control is present in 99% of domestic homicide cases (111 of a total of 112 domestic homicide cases studied).⁶ Criminalising coercive control may increase the opportunity for early intervention in high-risk cases and, if implemented effectively, will play an important role in preventing any further domestic and family violence-related deaths.

We are pleased to note that co-habitation is not required for this offence. Non-cohabiting partners are covered in Section 54C (c) in the definition of intimate partner, which positions the term as meaning a person who has or has had an intimate personal relationship with the first person, whether the intimate relationship involves or has involved a relationship of a sexual nature. This definition provides good recognition of how coercive control often persists and escalates following separation and/or the end of an intimate relationship.⁷

No to Violence is also in favour of the penalty attached to the offence, which is a maximum of seven years. This penalty sufficiently recognises the harm of coercive control and its significant impact on the ongoing safety of victim-survivors. It also demonstrates a step towards ensuring that perpetrators are held accountable for their behaviour through appropriate sanction. We would, however, stress the importance of ensuring that those who are sentenced for their use of coercive control are provided opportunities to take responsibility for their behaviour and stop their use of violence – for example, by being mandated to attend Men's Behavioural Change Programs.

Finally, No to Violence notes the introduction of a definition of 'domestic abuse' to the *Crimes (Domestic and Personal Violence) Act 2007* as it provides necessary clarification on what a family and domestic violence offence is and the context it occurs in, which may help inform improved responses to experiences of domestic violence and abuse. We further note that this is in line with Scotland's approach to criminalisation which prohibits behaviours that are abusive, accompanied by a non-exhaustive list of behaviours, where all forms of abuse are considered part of the behaviours used to control a victim-survivor.⁸

⁵ NTV Submission to NSW Joint Select Committee on Coercive Control (2021). P.28-30.

<https://ntv.org.au/wp-content/uploads/2021/02/NO-TO-VIOLENCE-SUBMISSION-NSW-Inquiry-into-Coercive-Control-FINAL.pdf>

⁶ NSW Domestic Violence Death Review Team (2020). 'Report 2017-2019.' P. 154.

<https://www.coroners.nsw.gov.au/coroners-court/resources/domestic-violence-death-review.html>

⁷ Johnson, H., Eriksson, L., Mazerolle, P., & Wortley, R. (2019). Intimate femicide: The role of coercive control. *Feminist Criminology*, 14(1), 3-23.

⁸ Bettison, V. (2020). 'A Comparative Evaluation of Offences Criminalising Abusive Behaviour in England, Wales, Scotland, Ireland and Tasmania'. In *Criminalising Coercive Control: Family Violence and the Law*, eds. M. McMahon & P. McGorrey (pp.197-218). Springer.

Legislative recommendations

While No to Violence supports the criminalisation of coercive control in principle, the efficacy of a new offence will depend on the legislation being fit for purpose, meaningful, and inclusive. The safety and wellbeing of victim-survivors is paramount in a legislative response, as is responsibility and accountability for perpetrators. Coercive control, as a concept, is deeply complex and requires a level of nuance in its understanding. The complexities need to be recognised and responded to within the legislation. Furthermore, the legislation should be responsive to the way that coercive control is perpetrated against the most vulnerable and marginalised victim-survivor populations if we are to limit unintended consequences and plan appropriately for anticipated consequences.

Narrow focus on intimate partner relationships

The NSW Government response to the NSW Parliament's Joint Select Committee report specifically committed to criminalising coercive control between *current or former intimate partners*.⁹ This scope aligns with the offence used to criminalise coercive control in Scotland,¹⁰ and is reflected in Schedule 1 54D of the draft *Crimes Legislation Amendment (Coercive Control) Bill 2022*. However No to Violence urges the NSW Government to include broader relationships in the new offence for several reasons.

The family and domestic violence sector has long been critical of legislative responses to domestic and family violence that do not consider the specific needs or agency of children and young people as victim-survivors in their own right. Generally, child victim-survivors are only ever included in responses that involve the victimised parent. This approach does not recognise that children and young people experience specific developmental impacts due to domestic and family violence, or that domestic and family violence can often restrict the ability of an adult victim-survivor to engage in supportive parenting.¹¹ Further, the first finding of the Joint Select Committee was that “coercive control is a factor and red flag for the horrific and preventable murder deaths of Australian women and children”, highlighting the role of children as victims of coercive control¹². For these reasons we feel strongly that children and young people who are victim-survivors of coercive control should be able to seek redress through any new standalone offence for coercive control in their own right, without the law intruding on parenting and behaviour that does not warrant state intervention.

No to Violence is also concerned that the narrow focus on intimate partner relationships in the proposed bill is not suited to the Australian setting, since it is not sensitive to patterns of domestic and family violence occurring within Aboriginal and Torres Strait Islander communities. Domestic and family violence in Aboriginal communities includes a broad range of marital and kin relationships in which violence may occur.¹³ Aboriginal and Torres Strait Islander people conceptualise domestic and

⁹ NSW Government Response to Joint Select Committee on Coercive Control (June 2021) <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf> (accessed 18 August 2022)

¹⁰ Section 1(1)(a), Domestic Abuse (Scotland) Act 2018 (Scotland)

¹¹ For instance, see Hooker, L., Kaspiew, R., & Taft, A. (2016). Domestic and family violence and parenting: Mixed methods insights into impact and support needs. Australia's National Research Organisation for Women's Safety.

¹² Joint Select Committee on Coercive Control. New South Wales Parliament. Report 1/57 – June 2021. Coercive control in domestic relationships. Pp192.

¹³ Macdonald H 2001. Defining 'domestic violence' and 'homelessness'. Parity (supplement) 14: 15–16.

family violence as occurring between members of their larger family network including aunts, uncles, grandparents, cousins and others in the wider community.¹⁴

While Scotland's efforts to criminalise coercive control have not included coercive control perpetrated against extended family members,¹⁵ we note that Scotland does not have a significant Indigenous population. Correspondingly, we cannot implement something in line with this "gold standard" without ensuring there are significant adaptations to suit a country where colonisation has – and continues – to significantly impact rates of violence within Indigenous communities.

The NSW domestic and family violence sector is concerned the sole focus on intimate partners in the proposed bill does not include a broad range of relationships that have particular implications for coercive control perpetrated against some groups, for example carer-disabled person relationships, in-law relationships, and parent - child relationships. The latter would open up the legislation to include forms of coercive control such as financial abuse perpetrated against elderly parents (the most common form of elder abuse in Australia),¹⁶¹⁷ and family of origin abuse perpetrated against the LGBTIQ+ community. Excluding family relationships beyond intimate partners from the legislation will create a situation in which coercive control in these contexts is made invisible, and correspondingly, unlikely to receive an adequate or informed response.

No to Violence encourages the NSW Government to incorporate a more fulsome scope of domestic and family relationships within the proposed legislation by extending 54D 1b) in the draft bill to include a wider range of familial and non-familial relationships. It is noted that England and Wales' coercive control legislation are inclusive of family members beyond intimate partners.

Recommendation 1

The NSW Government incorporate a more fulsome scope of domestic and family relationships within the new legislation to include other family members rather than confining the provision to intimate partner relationships.

Fear of violence and actual violence against others should also be captured

Perpetrators of coercive control often threaten their victim by threatening violence or enacting violence against the victim's children or other loved ones. The Baxter coronial inquiry provided examples of this, including that Rowan Baxter kidnapped and punished his shared children with Hannah Clarke as part of his enduring pattern of coercive control.¹⁸ To ensure this behaviour is captured in the legislation, we recommend section 54D (1)(d)(i) is amended to read "*Fear that violence towards the other person or someone they know will be used against the other person.*"

¹⁴ Al-Yaman F, Van Doeland M & Wallis M 2006. Family violence among Aboriginal and Torres Strait Islander peoples. Cat. no. IHW 17. Canberra: AIHW.

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¹⁶ Elder Abuse Prevention Unit. (2018). Year in review. Brisbane: UnitingCare.

¹⁷ Joosten, M., Dow, B., & Blakey, J. (2015). Profile of elder abuse in Victoria: Analysis of data about people seeking help from Seniors Rights Victoria. Summary report. Melbourne: National Ageing Research Institute and Seniors Rights Victoria.

¹⁸ Coroners Court of Queensland. Findings of inquest into the death of Hannah Ashlie Clarke, Aaliyah Anne Baxter, Laianah Grace Baxter, Trey Rowan Charles Baxter, and Rowan Charles Baxter. June 2022.

https://www.courts.qld.gov.au/__data/assets/pdf_file/0010/723664/cif-hannah-clarke-aaliyah-baxter-laianah-baxter-trey-baxter-and-rowan-baxter.pdf (accessed 29/8/22).

Recommendation 2

The bill should include that not only fear of violence towards the victim, but also fear of violence or actual violence towards someone known to the victim, can be used against them.

Exclusion of diverse experiences and forms of coercive control

After 30 years of working with men, No to Violence knows that the diversity of experiences and forms of coercive control should be incorporated into any proposed offence. This is a point that strongly emerged in our consultations with victim-survivors from diverse communities. We are concerned this is not sufficiently reflected within the draft legislation, which could lead to courts having limited scope to consider these circumstances. For example, many communities experience coercion and control differently, including (but not limited to) people practicing faith, Aboriginal peoples, LGBTIQ+ communities and people living with disabilities.

While we note the inclusion of cultural and spiritual abuse within the definition of domestic abuse (Schedule 2, 6A (2)), we suggest the NSW Government seeks further consultation to ensure the breadth of experiences and forms of coercive control experienced by victim-survivors is better represented within the proposed bill.

We recommend that 6A (2) definition of the legislation includes an additional subsection (k) – ‘other forms of abuse that may specifically impact marginalised and diverse communities.’ We feel this will give police and courts the ability to take into account evidence of the forms of coercion which may be perpetrated and experienced within specific communities.

Recommendation 3

The bill includes an additional subsection to provide the ability for experiences of coercive control within marginalised and diverse communities to be considered, such as faith communities, Aboriginal and Torres Strait Islander peoples, LGBTIQ+ communities and people living with disabilities.

Technology facilitated abuse

Technology-facilitated abuse is an insidious form of gendered violence, and its use has increased markedly in recent years. Research produced by ANROWS in 2021 found that women are overwhelmingly the target of online forms of abuse, and that technology-facilitated abuse is a growing concern for people experiencing family violence. Technology-facilitated abuse includes but is not limited to receiving abusive messages or calls; account take-overs and user misrepresentation; image-based abuse; fake social media accounts being used to harass or intimidate a person; and being stalked or tracked through a phone or device using spyware or other GPS technology.

There is an urgent need to carefully consider the role technology-facilitated abuse can play in coercive control, especially as new opportunities for abuse are created in a constantly evolving digital landscape. For example, harassing and repeated text messaging is now a common feature of controlling behaviour in abusive relationships. One such case is the murder of Doreen Langham by her ex-partner Gary Hely in February 2021, which was preceded by her receiving in excess of 70 abusive

and threatening messages per day.¹⁹ This behaviour was not correctly identified as cause for concern and no police intervention was enacted, despite the coronial report finding that it was clear Hely posed a significant threat to Langham's safety. This devastating outcome provides an important example of how technology-facilitated abuse can be part of a pattern of coercive control, and why comprehensive reference to its various forms should be considered in legislation criminalising this behaviour.

We recommend amending Sch2 6A (2)(j) to include the words 'stalk, harass, control' so the subsection reads 'use of technology or other means to stalk, harass, control or unreasonably monitor or track the second person's activities, communication or movement'.

Recommendation 4

That the bill be amended to include 'stalk, harass, control' to be more inclusive of different forms of technology-facilitated coercive control.

Extension of examples provided in Schedule 1 54F(2)g

No to Violence suggests that a number of additional examples be included in the examples listed for paragraph (g) in section 54F (2), in order to capture a more complete (although not exhaustive) range of abusive behaviours that describe coercive control. We recommend these examples are included in supporting materials such as Bench Books and explanatory notes, risk assessments and the like to guide response and practice.

Firstly, we recommend including the word 'forcing' alongside 'withholding' and 'preventing'; for example, 'forcing' access to financial assets or 'forcing' a person's engagement in religious or cultural pursuits. The inclusion of this additional term recognises that forcing a person to engage in an activity against their own will, constitutes as a clear loss of agency directly related to a perpetrator's coercion.

Secondly, reproductive coercion and enforced sex work as specific forms of abuse should be acknowledged. Coercive control can include perpetrators forcing a victim with whom they are in an intimate relationship, to engage in sex work through which he derives financial gain. Research by Schultz et al (2020) found that for women who choose to exit the sex work industry, many had been coerced into doing this work by their intimate partners for financial reasons.²⁰

Similarly, three broad behaviours under the umbrella term of reproductive coercion describe the controlling tactics used by men against their partners. This includes pregnancy coercion (where a woman is pressured or forced to become pregnant against her will); contraceptive sabotage (deliberately damaging, hiding, or otherwise interfering with birth control); and controlling the outcome of a pregnancy (forcing a woman to terminate or continue a pregnancy against her will).²¹ While arguably reproductive coercion may be included within 'making unreasonable demands on how

¹⁹ Coroners Court of Queensland Findings of Inquest. Inquest into the deaths of Doreen Gail Langham and Gary Matthew Hely. June 2022. Pp154.

²⁰ Schultz, Tammy; Callender, Aimee A.; Schwer Canning, Sally; and Collins, Jacey (2020) "Women Exiting Prostitution: Reports of Coercive Control in Intimate Relationships," *Dignity: A Journal of Analysis of Exploitation and Violence*: Vol. 5: Iss. 3, Article 8. <https://doi.org/10.23860/dignity.2020.05.03.08>

²¹ Tarzia, L., Wellington, M., Marino, J., & Hegarty, K. (2019). "A huge, hidden problem": Australian health practitioners' views and understandings of reproductive coercion. *Qualitative health research*, 29(10), 1395.

a person exercises the person's... sexual... autonomy', clarification is required to demonstrate that these acts are not often sexually motivated and instead reflect specific reproductive intent.²²

Coercive control can include forcing a victim to engage in illegal activities against their will, which should be covered within an example that refers to 'forced engagement in unlawful behaviour'. This might include for example being forced to engage in activities such as drug activity, misrepresenting hardship to access a partner's superannuation or gain social security or other government payments.

Finally, we recommend that financial abuse including dowry abuse or the non-payment of child support are captured in the examples.

Recommendation 5

Reproductive coercion, forced sex work, forced engagement in unlawful behaviour and additional elements of financial abuse (e.g. dowry abuse, withholding of child support payments) be added to paragraph (g) in section 54F (2) as further examples of coercive control.

Additional drafting note

We note that there appears to be a simple drafting error in section 45(2)(D): the word 'repeated' is used within the context of 'repeated derogatory taunts'. As section 54G describes a course of conduct as engaging in behaviour repeatedly or continuously, the inclusion of 'repeated' in section 45(2)(D) seems tautologous and may become a point of confusion. We suggest that the word 'repeated' is omitted from section 45(2)(D).

Implementation recommendations

Need for an implementation taskforce

We recommend that an implementation taskforce be established prior to the introduction of the proposed coercive control offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation and to mitigate any unintended consequences that arise. No to Violence welcomes the opportunity to be involved in this taskforce, noting that we are a member of the National Plan Advisory Group and the NSW Ministerial Council on Domestic, Family and Sexual Violence; we set service, educational and workforce development standards; we operate the Men's Referral Service; we support the Automate Referral Pathway; and we also provide governance and member support to the NSW Men's Behaviour Change Network.

As part of the monitoring and evaluation of the legislation and to continue to identify patterns and contributing factors in domestic violence homicides, the Government might consider expanding the NSW Domestic Violence Homicide Death Review Team's membership to include No to Violence. We suggest this to enhance the team's excellent work by including subject matter expertise on the tactics

²² Tarzia, L., Srinivasan, S., Marino, J., & Hegarty, K. (2020). Exploring the grey areas between "stealth" and reproductive coercion and abuse. *Women & health, 60*(10), 1174-1184.

and nuances of domestic and family violence perpetration. This would help identify a broader range of improved service and other responses and shape the policy frameworks for ending men's use of family and domestic violence.

Recommendation 6

A taskforce be established prior to the implementation of the offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation.

Appropriate time for implementation

We recommend that the implementation period be extensive, allowing time for the domestic and family violence workforce and services, first responders, courts administration and community to undertake necessary preparations and refine their responses. This is important as the introduction of a coercive control offence requires significant structural transformation to ensure its effectiveness and its operation as envisaged. The implementation period must allow sufficient time to engage and ready the broader domestic and family violence sector, first responders and the communities likely to be impacted by the reforms, in particular Aboriginal and Torres Strait Islander communities.

Recommendation 7

The implementation period for new legislation be extensive to ensure that the broader domestic and family violence sector, first responders and the communities likely to be impacted by the reforms are given sufficient time to prepare for its introduction.

Avoiding unintended consequences for marginalised communities

No to Violence urges that the introduction of coercive control legislation must thoroughly consider clear, actionable strategies to mitigate unintended consequences for marginalised communities.

We echo concerns held by our colleagues in the wider NSW domestic and family violence sector about the potential for the criminalisation of coercive control to further contribute to the under-policing of some communities and the over-policing and overcriminalisation of others living in NSW. For instance, research demonstrates that family and domestic violence law serves as a vehicle for ongoing engagement in the criminal justice systems for Aboriginal and Torres Strait Islander peoples, resulting in their higher rates of incarceration.²³

No to Violence and our allies are concerned that groups who have historically faced significant barriers to engaging in political processes may not be well represented in this submission process and that the legislative changes may result in further overrepresentation of Aboriginal and Torres Strait Islander people in prisons. We have included our recommendations in the forthcoming section on police responses, as these issues must be addressed through reform in police practices and procedures, as well as police culture. This is due to the role of racism in victim-misidentification of

²³ Douglas, H., & Fitzgerald, R. (2018). The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People. *International Journal for Crime, Justice and Social Democracy*, 7(3), 41-57. <https://doi.org/10.5204/ijcjsd.v7i3.49>

Aboriginal women, and the historical role of the police in systematically oppressing Aboriginal people.²⁴

Consideration should also be given to addressing any unintended consequences of domestic and family violence legislation on victim-survivors on temporary and partner visas. People on temporary visas already face restrictions on their ability to seek and receive help and forms of government assistance. They may face deportation if charged with a criminal offence, and perpetrators are able to use the threat of deportation to control their partners, and to deter victim-survivors from reporting abuse. In the case of partner visas, there is a risk that victims of family violence could be deported. The precarious nature of temporary visas means that victims will not reach out for support out of fear of the consequences for their residential status. NSW must do more to provide support and assistance and encourage their residents to report abuse safely, without undermining their visa status. We encourage NSW to continue to address this issue.

The impact of the proposed legislation on other marginalised communities such as LGBTIQ+ communities and people with disabilities should also be given further consideration through consultation directly with these communities.

Recommendation 8

The implementation taskforce conducts targeted consultation with Aboriginal and Torres Strait Islander, faith, migrant and refugee, LGBTIQ+, disabled and other marginalised communities to ensure that new laws do not contribute to their overrepresentation in the criminal justice system.

Police reform and education

No to Violence is concerned that the proposed legislation may detrimentally impact communities that are already overpoliced and over-represented within the wider criminal justice system, such as Aboriginal and Torres Strait Islander people, and migrant, refugee, and culturally and linguistically diverse communities.

No to Violence understands the barriers and difficulties of changing police culture and practice, noting these in our submissions to the Inquiry into Queensland police culture and the Auditor General's inquiry into Police responses to domestic and family violence. No to Violence also provided expert advice on inclusions for the recently updated Victorian Code of Practice for the Investigation of Family Violence. While acknowledging the complexities of operational policing, we recommend the ongoing reform of police practices, procedures, and culture. We should strive to build within systemic responses a greater commitment to the development of collaborative projects (such as justice reform initiatives) to address the policing response to domestic and family violence for vulnerable communities whilst ensuring the ongoing support and safety of victim survivors and the accountability of perpetrators.

No to Violence notes that the introduction of any new criminal law brings with it the potential for unintended consequences. As raised in submissions and hearings by the Joint Select Committee, this includes the opportunities seized by perpetrators of domestic and family violence to manipulate,

²⁴ Buxon-Manisnyk, E., Gibson, A. and MacGillivray, P. (2022). 'Unintended but not unanticipated: coercive control will disadvantage First Nations women'. *The Conversation*. <https://theconversation.com/unintended-but-not-unanticipated-coercive-control-laws-will-disadvantage-first-nations-women-188285-go>

mislead and deceive police, leading to victim-survivors being misidentified as the predominant aggressor.²⁵ This is a significant issue of concern for Aboriginal and Torres Strait Islander women in particular.²⁶ We recommend NSW police receive specialised training on assessment of the predominant aggressor. It is also possible that the ‘course of conduct’ that will be reflected in policy procedures and risk assessments will have the opposite effect and may lessen the risk of misidentification because judgments will be required to be made less on the presentation of an ‘incident’ and more on the presentation and context of the ‘course of conduct’ of the behaviour occurring within that intimate partner relationship. Evidence needs to be captured, monitored and evaluated from the commencement of the legislation.

Recommendations 9 and 10

- NSW Police are supported to enable reform of practices, procedures and culture and contribute to the development of collaborative projects and knowledge sharing to support the introduction of the new offence.
- NSW Police receive training on assessment of the predominant aggressor.

Policy Recommendations

Ensure that coercive control is described as an underlying tactic of domestic and family violence within supporting documentation

Coercive control is the underlying tactic used by perpetrators of domestic and family violence and because it is often insidious, it is crucial that those implementing the law are literate in the dynamics in which it operates. We want to ensure that the proposed legislative approach to coercive control does not encourage any conceptual separation of this from other forms of domestic violence and in turn result in coercive control being misinterpreted as a ‘less serious’ form of ‘non-physical’ domestic and family violence.

Therefore, we recommend concerted effort is taken to ensure those operating within the criminal justice system have a working definition of domestic and family violence that confirms that coercive control is not separate from, or a less serious form of, domestic and family violence. We recommend that the definition of domestic and family violence is supported by ensuring police and courts take into account the many forms that coercion and control may take, including detailing its effect on the overall physical and mental health and wellbeing of victim-survivors.

²⁵ Predominant aggressor refers to the person who is exerting the greatest amount of harm and control over their partner or family member through any number of abusive behaviours including physical and sexual violence, threats, intimidation, emotional abuse, stalking and isolation. Definition from No to Violence (2019). Predominant Aggressor Identification and Victim Misidentification. Discussion Paper, pp26.

²⁶ Buxton-Namisnyk Emma, Gibson Althea and MacGillvray Peta (2022). The Conversation. Unintended, but not unanticipated: coercive control laws will disadvantage First Nations women. <https://theconversation.com/unintended-but-not-unanticipated-coercive-control-laws-will-disadvantage-first-nations-women-188285>. (Accessed 29/8/22).

Recommendation 11

That a description of coercive control as an underlying tactic of domestic and family violence is included in supporting materials such as the legal explanatory notes, risk assessments and in police and community education, to ensure that coercive control is not seen as separate from or a less serious form of domestic and family violence.

Monitoring and evaluating the legislation

No to Violence believes that ongoing monitoring of the new offence after implementation will be needed to ensure that unintended impacts to victim-survivors are identified and addressed swiftly and to confirm that the offence is operating as intended. As previously mentioned, in particular, we are concerned about the heightened risk of misidentification of the predominant aggressor, given what we know about perpetrators' use of systems to abuse and to mislead police in domestic and family violence cases,²⁷ and any further potential for the over-representation of Aboriginal and Torres Strait Islander people, who are already disproportionately involved in domestic and family violence protection orders in Australia.²⁸

We suggest as part of the monitoring effort, NSW Bureau of Crime Statistics and Research monitor use of the new offence and share this information with relevant stakeholders. Further, we recommend that the Government support an independent evaluation of the operation of the offence to ensure its efficacy. Any monitoring, evaluation or review must be done in consultation with vulnerable communities.

Recommendation 12

Coercive control legislation is subject to ongoing and regular monitoring, and independent evaluation.

Additional commentary

No to Violence suggests the Government provide additional clarity on the operation of the new offence with existing offences. Specifically, it seems that more work is needed to harmonise the proposed coercive control offence with existing offences that address stalking, sexual assault and physical violence to reduce the likelihood for confusion over the circumstances in which to apply certain categories of offences, and what might take precedence. For example, it is not clear whether in a circumstance in which physical violence and coercive control are co-occurring which would require a priority response by attending police. Clarification is further sought on the inclusion of the

²⁷ Australia's National Research Organisation for Women's Safety. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions. Sydney: ANROWS. <https://20ian81kynng38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/ANROWS-RtPP-Nancarrow-PMINOP.pdf>

²⁸ Ibid, 5.

offence as grounds for the application of an Apprehended Domestic Violence Order. The period prior to commencement should be used to clarify and resolve these tensions.

Additionally, clarification in the use of language to describe coercive control as ‘non physical violence’ may invoke a hierarchical approach to application of the law. If there is not significant understanding of coercive control as an underpinning tactic of domestic and family violence, and not a type of violence, there is a significant risk that it will be deemed less serious, as in the case of Doreen Langham cited above. If this occurs, it is likely that the police and judiciary will continue to view physical forms of violence and abuse as being the most serious and requiring intervention and continue to downplay and misunderstand the risk posed by coercive control. This may lead to both the underutilisation of the new offence, and a failure to protect victim-survivors experiencing high levels of risk, and especially in the escalation of violence to acts of homicide.

Similar issues have occurred in jurisdictions that have already criminalised coercive control. Analysis of UK police data found that while coercive control cases did capture forms of abuse that were not criminalised prior to the introduction of this offence, many cases still included behaviours that could have been responded to with existing legislation.²⁹ For example, physical assault was reported in 63% of coercive control case files; however, the number of charges for coercive control was still vastly outweighed by charges for other incident-based offences.³⁰ Overall, the data implies that law enforcers faced significant confusion in how to apply coercive control legislation and indicates the critical need for enhanced systems responses.

Supporting and training the sector, community, and criminal justice system

Perpetrator accountability

The implementation of coercive control legislation should include enhanced opportunities for men to address their use of violence and for services to better respond to perpetrators. This could be achieved through strengthening Courts’ referrals to MBCPs and requiring perpetrators of domestic and family violence who are on parole to participate in a registered MBCP. It is also important that MBCPs have coordinated responses with other services that can provide additional support where required, including alcohol and other drug, mental health, housing, and financial services.

Working with men who use violence requires a specific skillset and training, and it is important that the specialist men’s domestic and family violence workforce is adequately resourced to meet demand and provide high quality interventions. There is a specific need to expand the service response to high-risk domestic and family violence perpetrators, so that they are able to receive intensive preparation work prior to group intervention. It is also important that men on waiting lists for MBCPs are provided with an interim counselling service to keep them engaged, such as No to Violence’s Brief Intervention Service.

²⁹ Barlow, C., Johnson, K., Walklate, S., & Humphreys, L. (2020). Putting Coercive Control into Practice: Problems and Possibilities. *The British Journal of Criminology*, 60(1), 168. <https://doi.org/10.1093/bjc/azz041>

³⁰ Ibid, 169.

Supporting processes for implementation

- A. That implementation is accompanied by increased opportunities for men to address their use of domestic and family violence and for services to keep perpetrators in view.
- B. That MBCPs have coordinated responses with other services that can provide perpetrators with additional support, as required.
- C. That service responses are expanded to respond to high-risk domestic and family violence perpetrators, so that they are able to receive intensive preparation work prior to group intervention.
- D. The Men's Referral Service should be listed wherever and whenever 1800 Respect is listed, especially in tandem with public awareness raising campaigns, to ensure we reach more men who are concerned about their use of violence.
- E. That men on waiting lists for MBCPs are provided with an interim counselling service, such as the Brief Intervention Service offered by No to Violence.

Victim-survivor safety and agency

To increase victim-survivor safety, the NSW Government should consider the development and rollout of a multi-agency risk assessment and management framework, similar to the MARAM Framework in Victoria, prior to the introduction of coercive control legislation. The ability of the justice system to respond to domestic and family violence is commensurate with the ability of the component parts of the system to correctly identify patterns of coercion and controlling behaviours. Effective implementation requires a framework for identifying and managing risk across specialist domestic and family violence, criminal justice, and universal and community services.

Legal and social supports for victim-survivors should be expanded, to enable them to pursue legal action, should they choose to do so. Substantive investment in court services is required to ensure that victim-survivors have access to information prior to attending court regarding what to expect, and legal supports available for counselling and debriefing on the day and in the weeks following their hearing. Furthermore, strategies should be implemented to prevent perpetrators in custodial settings from continuing to use tactics of coercive control towards victim-survivors.

Social supports such as counselling and case management and non-criminal justice measures should also be expanded to support victim-survivors who do not want to engage in legal action.

Supporting processes for implementation

- F. That a multi-agency risk assessment and management framework is developed and introduced as soon as possible to support the sector to identify and manage risk across the system.
- G. That legal supports for victim-survivors are expanded to enable them to pursue legal action for the domestic and family violence they have experienced.
- H. That social support services for all victim-survivors are expanded regardless of whether they choose to pursue legal action.

Training and education

a) Justice services

We recommend the development of resources and training to support the justice system (including police, legal staff, and the judiciary) to assess patterns of coercive control. This should include how to determine which person is the predominant aggressor and which person may be using tactics of resistance to respond to ongoing abuse. Police should receive training in how to gather evidence of pattern-based offending in coercive and controlling relationships.

We note that one-off training is not sufficient for justice services; it must be ongoing and cover the gendered nature of domestic and family violence, systems abuse tactics used by perpetrators, and the cumulative impact of all forms of violence and abuse. We recommend that training is delivered by specialist domestic and family violence professionals and involve co-production between victim-survivors, the sector, and police.

The criminalisation of coercive control needs to be implemented carefully. If not, it might easily lead to the over criminalisation of relationships and the state intervening in matters where it should not. This could further compound historical and current injustice, including through the wrongful criminalisation of victim-survivors and the overrepresentation of specific communities within the criminal justice system.

The NSW Police must be required to establish a specialist domestic and family violence command, to provide oversight and accountability about the law's operationalisation to ensure safe and just outcomes. The proposed command structure (which all other major crime categories have) would include specialist investigators and civilian support staff to investigate and prosecute coercive control offences. Non-government specialist organisations could work as advisors to the command and with their extensive knowledge be able to assist with obtaining full and appropriate histories of violence to support the presentation of briefs. This would ensure specialist officer training, data gathering and analysis, and courts administration were aligned to perpetrator accountability and victim safety.

b) Specialist DFV services

The specialist domestic and family violence workforce should receive training in what the legislative changes will mean for their services, including how to safely share information with justice services and when to report perpetrators to police. Specialist domestic and family violence services should also be trained in, and involved in the rollout of, the development of a multi-agency risk assessment and management framework.

c) Universal services

Universal services should receive comprehensive workforce training and education in identifying patterns of behaviour that constitute coercive control, including how and where to refer families where domestic and family violence is suspected. We must build the capacity and knowledge of all workforces to identify and respond appropriately (particularly as by-standers) to victim-survivors and men who use violence, and ensure they can implement appropriate risk assessment and management. Again, this training should be in line with the multi-agency risk assessment and management framework suggested in Process F.

d) Community education

We recommend funding the development of primary prevention initiatives, including community information campaigns about coercive control, and information on where to access support for both victim-survivors and men who are worried about their behaviour. Campaigns should address the attitudes, practices, and power dynamics that enable and exacerbate gender-based violence. Furthermore, these campaigns should also be developed and tailored to diverse communities' experiences of domestic and family violence, to ensure that all communities are well-informed. Community education about domestic and family violence should also be rolled out through schools, workplaces, sporting and other community groups.

Supporting processes for implementation

- I. That specialist DFV services receive training in how legislative changes will affect their services, including how to safely share information with justice services and when to report perpetrators to police.
- J. That justice services receive comprehensive and ongoing training in how to identify and respond to coercive control. Training should be delivered by specialist DFV professionals and co-produced by victim-survivors, the sector, and police
- K. That universal services receive comprehensive training and education in how to identify patterns of coercive control and how and where to refer families where domestic and family violence is suspected.
- L. That primary prevention initiatives are funded and delivered across diverse communities, so that communities have an awareness of the behaviours that constitute coercive control, including the attitudes, practices and power dynamics that enable and exacerbate gender-based violence.

Sector resourcing

Successful implementation of coercive control legislation requires a significant increase in funding to the specialist domestic and family violence sector. Services that work with men who use domestic and family violence must be adequately resourced to address current waitlists and increase the availability of programs, particularly in regional and rural areas with limited access to services. We urge the Government to invest in enhancing the ability of MBCPs to maintain the safety of women and children and hold perpetrators to account for their use of domestic and family violence.³¹ This includes a request for funding to develop, deliver and evaluate specialised MBCPs for community sector groups, including Aboriginal and Torres Strait Islander communities, LGBTIQ+ communities, and migrant and refugee communities so that coercive control can be appropriately identified and responded to in all communities and across all diverse forms of perpetration.

³¹ No to Violence. (2022). NSW Pre-budget Submission. <https://ntv.org.au/wp-content/uploads/2022/02/FINAL-No-to-Violence-and-NSW-MBCN-NSW-Budget-Submission-2022-23.pdf>

Supporting processes for implementation

- M. That implementation of coercive control legislation is accompanied by a significant increase in funding to the specialist DFV sector.
- N. That services working with men who use domestic and family violence are adequately resourced to address current waitlists and increase the availability of programs, particularly in regional and remote areas with limited access to services.
- O. That funding is provided to develop specialised MBCPs for community sector groups, including Aboriginal and Torres Strait Islander communities, LGBTIQ+ communities, and migrant and refugee communities.

Feedback on the consultation process

No to Violence is concerned that the amount of time provided for consultation and feedback on the draft bill was not reflective of the needs of our sector or the people we support. The six-week period restricted our ability to consult with our members and communities of interest, especially impacting particularly vulnerable communities (as described above), those that are smaller and less resourced, those located in regional and remote areas and those working with and representing Aboriginal and Torres Strait Islander communities.

As we have seen in the jurisdictions which have criminalised coercive control, it is important to ensure that any legal reform is accompanied by a thorough consultation process.³² Due to the nature of coercive control, its use as a tactic of manipulation by perpetrators and its ongoing impact on victim-survivors, there is a need for respectful and meaningful consultation – and this process ultimately requires significant time and investment. Without this thorough approach, there is a greater risk of overlooking the unintended consequences of the implementation and a failure to address other barriers to successful implementation.

³² For instance, Dr Marsha Scott (CEO of Scottish Women’s Aid) said in her comments to the Joint Select Committee on Coercive Control that a key learning from the implementation of a coercive control offence in Scotland was that an “iterative consultation process with survivors and stakeholders” was critical for ensuring the legislation delivered the outcomes that were wanted. These comments were made on Tuesday 30 March 2021.

Concluding statement

No to Violence welcomes the opportunity to provide our experience and expertise in the consideration of the NSW Exposure draft *Crimes Legislation Amendment (Coercive Control) Bill 2022*. While we support the criminalisation of coercive control, criminalisation will not in and of itself end men's use of family violence. This is why we support strong implementation measures. We can only hope to end men's use of family violence, in all its forms, when we have a holistic and responsive service system that supports men in all their diversity to change their attitudes and behaviours while simultaneously keeping women and children safe.

Criminalisation of coercive control without other simultaneous systems reforms risks further marginalising already marginalised communities who experience higher rates of domestic and family violence and may not be connected to the service system. This could result in even longer waiting periods for men to enter into behavioural change programs and other vital interventions. In introducing a standalone offence for coercive control it is important to consider ways of ensuring we do not inadvertently discourage victim-survivors from seeking help. We stand ready to work with the NSW Government to consider its implementation plan as a member of its proposed Taskforce and welcome the opportunity to discuss our feedback in more detail.

Appendix A: Diverse forms and experiences of abuse

Spiritual abuse

Spiritual abuse or coercion is of particular concern for Aboriginal communities, but also for any victim-survivors who engage in spiritual or religious practices. During our consultation with Aboriginal representatives and members, the idea of spiritual abuse and/or coercion was emphasised as particularly important. Examples included threatening to remove an Aboriginal woman from Country or preventing her from accessing Country or cultural events. For non-Indigenous Australians, spiritual coercion may include being prevented from attending places of worship or from engaging in specific practices or rituals (eg. prayer). Spiritual abuse must be included in a complete definition of an act of abuse, as it is a clear establishment of control over a victim-survivor's spiritual or religious life.

Aboriginal people's specific experiences of abuse

Coercive control legislation must recognise Aboriginal peoples' specific and varied experiences of abuse. Participants in the No to Violence Aboriginal and Torres Strait Islander forum emphasised the complex and varied nature of abuse in their communities, including situations where an abuser excludes the victim-survivor from fully engaging within their community.

Deprivation of liberty within a cultural context

People from migrant and refugee backgrounds experience targeted forms of coercive control that deprive them of their liberty and agency and must be understood and factored into any formulation of a legislative solution. Participants in No to Violence's migrant and refugee forum on coercive control stated that victim-survivors experience coercive control in unique ways that impact their overall agency. Such experiences include dowry control; weaponizing visa status (including mistrusts) and threats to 'report them to Home Affairs' to control their behaviour; and the use of extended family and community to perpetuate forms of abuse (eg. isolation). The threat of deportation of victim-survivors on a spousal visa was suggested as being a particular concern for victim-survivors in these communities. Importantly, participants believe the result of coercive control is significant 'psychological damage' and 'damage to sense of self'.

Abuse specific to LGBTIQ+ communities

LGBTIQ+ communities similarly experience specific forms of coercive control that, while broadly covered in the proposed legislation, require more nuanced explanation. For example, in No to Violence's Roundtable that discussed the impacts of coercive control for LGBTIQ+ communities, participants identified several abusive behaviours specific to LGBTIQ+ relationships: body shaming around the presentation and expression of gender identity; vilification of diverse gender expression; threats to out a person's gender identity, sexual orientation or HIV status; using the lack of LGBTIQ+ support services to undermine a partner; asexual experiences of "coerced consent" around undesired sexual interactions; and medical coercion such as someone pressuring their asexual partner to 'fix' their asexuality through medical intervention. Consequently, the proposed legislation must identify patterns of abuse that recognise and respond to these diverse experiences in LGBTIQ+ relationships.

Abuse specific for people living with disabilities and their families

People living with disability are at a heightened risk of experiencing coercive control from their intimate partners and family members. They are more likely to experience all forms of physical, psychological and sexualised violence, as well as unique forms of violence, than are experienced by people who do not live with disability, including specific acts such as withholding of important medications, restricted access to mobility aids and communication devices, as well as neglect and poor care. Participants in No to Violence's consultation forum on coercive control with people living with disability spoke about abuse specific to their community. Emphasis was placed on the institutions and organisations that enable and house abusers, especially by positioning perpetrators as a person's primary carer, or as partner to the primary carer (ie, when the primary carer is a biological mother, and a father/boyfriend/partner is the abuser). The proposed legislation must specifically acknowledge the unique forms of violence perpetrated against people with disabilities.

Technology-facilitated abuse

Technology-facilitated abuse is an increasingly insidious form of gendered violence. Recent research produced by ANROWS in 2021 demonstrates that women are overwhelmingly the target of online forms of abuse, and that technology-facilitated abuse is a growing concern for people experiencing family violence. Technology-facilitated abuse includes but is not limited to receiving abusive messages or calls; account take-overs; image-based abuse; fake social media accounts being used to harass or intimidate a person; and, being tracked through a phone or device using spyware or other GPS technology. There is a pressing need to carefully consider the role technology-facilitated abuse can play in coercive control, especially as new opportunities for abuse are created in our changing digital landscape. For example, harassing and repeated text messaging is now a common feature of controlling behaviour in abusive relationships. In one particularly illustrative case from Queensland, a woman contacted police after receiving in excess of 300 messages from her partner during a 12-hour period. This behaviour was not correctly identified as cause for concern and no police intervention was made. The perpetrator's abusive behaviour escalated, and he ultimately murdered his partner. This devastating outcome provides an important example of how technology-facilitated abuse can be part of patterns of coercive control, and why it should be considered in legislation criminalising this behaviour.

Threatening or attempting suicide or self-harm

Threatening or attempting suicide is a common feature in many cases of coercive and controlling behaviour. Men often use such threats to deter their partners from leaving; from reporting their violence; or from seeking help or community. Embedding this in legislation would enable family violence services to better establish patterns of behaviour.