

ANROWS

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

Attention: Ms Sallie McLean

Director, Law Enforcement and Crime
Policy, Reform and Legislation Branch
Department of Communities and Justice
By email: policy@justice.nsw.gov.au

Response to the Crimes Legislation Amendment (Coercive Control Bill)

Dear Ms McLean,

Australia's National Research Organisation for Women's Safety (ANROWS) thanks you for the opportunity to make a submission in response to the Crimes Legislation Amendment (Coercive Control Bill).

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

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

This submission draws on the submissions ANROWS made to the Women's Safety and Justice Taskforce Queensland (ANROWS, 2022) and to the NSW Joint Select Committee on Coercive Control (ANROWS, 2021b).

Yours sincerely

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Chief Executive Officer

15 September 2022

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Summary of recommendations

Overarching recommendation: Ensure a long lead-in time for the introduction of the legislation

Recommendation 1: Improve police and judicial officers' understanding of domestic and family violence as involving patterns of behaviour that occur within the strategic context of coercive control, that is, tactics of physical and/or non-physical abuse that seek to deny personhood and the right to think and act independently of the perpetrator.

Recommendation 2: Provide guidance to police and judicial officers, including by developing tools to assist police, and amending relevant Bench and Handbooks for judicial officers.

Recommendation 3: Support and resource police and judicial officers to apply a nuanced understanding of domestic and family violence in their practice.

Recommendation 4: Implement the recommendations suggested in *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Nancarrow et al., 2020). This should include the provision of training for police and legal professionals; implementing alternative models of policing and investigation (including a move to a pattern-based and future-focused approach); the creation of a tool for identifying coercive control; and the clarification of court processes regarding responsibility and accountability for determining the person most in need of protection.

Recommendation 5: Defer implementation of the new offence to ensure that the legislation works in harmony with the National Coercive Control Principles.

Overarching recommendation: ANROWS supports the call from the NSW Women's Alliance for the establishment of an independent implementation taskforce

Recommendation 6: Using other jurisdictions for guidance, legislate a social entrapment framework.

Recommendation 7: Use emerging learnings from Scotland, supplemented with existing evidence on experiences of the legal system, to forecast and mitigate potential negative consequences of the introduction of the coercive control criminal offence.

Recommendation 8: Expand the offence to cover all domestic relationships in recognition of coercive control that is perpetrated outside of intimate partner relationships.

Recommendation 9: Ensure that appropriate safeguards and supports are in place to prevent young people who use violence from becoming subject to the new offence.

Recommendation 10: Ensure that any changes in language and definitions don't cause inconsistency across relevant legislation.

Recommendation 11: Reconsider the definition of "coercion and control" as one tactic in a list of potential behaviours that could constitute domestic abuse, and reframe it as the context for the abuse.

Recommendation 12: Undertake extensive cross-sector consultation with diverse groups of women and the service providers they engage with.

Recommendation 13: Facilitate strong cross-sector collaboration by enabling the development of infrastructure which supports integration, and training that builds skills in collaborative work, by implementing the recommendations set out in [*Working across sectors to meet the needs of clients experiencing domestic and family violence*](#) (ANROWS, 2020b).

Recommendation 14: Consider implementing a case management system to alleviate the difficulties and burden of navigating a fragmented and complex legal system.

Recommendation 15: Implement broader systemic reform and increased early intervention and support to ensure that women are not inappropriately subjected to the new offence.

Recommendation 16: Supplement the new offence with alternative interventions for perpetrators, and build capacity in the court to refer perpetrators to intervention programs.

Recommendation 17: Carefully consider alternatives to the criminal legal system, especially community-led alternatives for Aboriginal and Torres Strait Islander peoples.

Recommendation 18: Fund research to monitor the progress and implementation of coercive control and domestic abuse offences in NSW as well as other jurisdictions, including unintended consequences. This should include quantitative measures of successful prosecutions under the offences, as well as examination of qualitative improvements in attitudes to violence against women, such as those measured by the National Community Attitudes towards Violence against Women Survey. Ensure evaluation considers the “full journey” of a woman through the progress of an offence.

Recommendation 19: Provide continuous funding for the National Community Attitudes towards Violence against Women Survey, implemented by ANROWS, to monitor progress and enable continued improvement in policy and programs aiming to reduce and prevent violence against women and their children.

Ensure a long lead-in time for the introduction of the legislation

Undertake comprehensive training and workforce capacity building across all sectors

Provide guidance, training and capacity building for judicial officers

While ANROWS recognises the importance of judicial discretion, clear information needs to be readily available to court actors to help assess patterns of coercive control, or to assist decisions on which party is the person most in need of protection. The *National Domestic and Family Violence Benchbook* (Australasian Institute of Judicial Administration, 2022) is a useful avenue for this. ANROWS would be happy to work with the Judicial Commission of NSW to ensure the NSW Bench Books and Handbooks are updated appropriately with the introduction of the offence of coercive control.

Judicial training on coercive control and a move away from a “hierarchy” of violence (see for example ANROWS, 2021a; Nancarrow et al., 2020) will be fundamental to implementing the proposed changes effectively. Such training will assist in assessing evidence in front of the court. A nuanced understanding of coercive control will mean, for example, retaliatory violence would be recognised as such (see Nancarrow et al, 2020; ANROWS, 2020a; ANROWS, 2021a).

Additionally, effort and resourcing is needed not just for increasing understanding of violence or coercive control, but for translating that understanding into practice (see Wangmann, 2021). Much ANROWS research has pointed to this issue of being supported to implement knowledge in work practices, and the extensive resourcing required to support workers in applying learnings (see for example Nancarrow et al., 2020).

Provide guidance, training and capacity building for police officers

To improve the response to coercive control, significant reform to the way police respond to, and are supported in dealing with, DFV matters is required (see ANROWS, 2021a; Nancarrow et al., 2020; Salter et al., 2020). While the draft Bill is focused on legal reform, without significant reform to police response, legislative reform will have limited impact.

As key actors in the legal process, police will need extensive training on both the new legislative changes, and DFV more generally. This will help police to understand the courts’ jurisdiction and capabilities, ensuring they follow appropriate courses of action to allow the court to exercise its powers as intended, including gathering appropriate and sufficient evidence to assist the court in making informed decisions.

Any training will need to be accompanied by real support to enact good practice. In reviewing domestic violence and legal system reform in Queensland, the Women’s Safety Task Force (the Taskforce) found that a key issue is not necessarily the current police processes themselves, but rather that police are not doing, or are not being supported to do, what is currently required of them (Women’s Safety and Justice Taskforce, 2021). As Dr Wangmann pointed to in her submission to the Taskforce, this has also been a finding in previous death reviews (Wangmann, 2021; see for example in Queensland the Domestic and Family Violence Death Review and Advisory Board, 2021; see also Australian Domestic and Family Violence Death Review Network & ANROWS, 2022). Without

resourcing and reform in relation to policing practice, the legislative changes will not have the desired effect.

In particular, responding to coercive control more effectively necessitates a move toward pattern-based policing, where police identify the potential presence of coercive control, investigate a series of events, and correctly identify when charges should be laid or protection orders are necessary (Walklate et al., 2018). This more labour-intensive approach will be a significant time commitment given that 31,692 domestic violence incidents were recorded by NSW Police between July 2019 and June 2020 (NSW Bureau of Crime Statistics and Research, 2020). Moving police from an incident-based and retrospective approach to DFV to a pattern-based and future-focused approach will help to address issues like the misidentification of the aggrieved and respondent in cases of DFV (Nancarrow et al., 2020). Any move to a pattern-based (rather than incident-based) style of police investigation to support evidence-gathering will require significant investment as it is time intensive (ANROWS, 2021a).

Additionally, tools to assist police should be a priority. The complexity of coercive control also lends itself to policing and investigation models that incorporate people with specific DFV expertise, either as specialist DFV co-responders or as police units that either accompany police at investigations or support or review police assessments and decisions on action (Nancarrow et al., 2020).

Information on capacity building across sectors is included below (under “Implementation process: holistic and alternative approaches”).

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Ensure harmonisation with the National Coercive Control Principles

ANROWS has long advocated for a consistent national definition of coercive control and of domestic and family violence (DFV) across legislative and policy settings (ANROWS, 2021a). The National Coercive Control Principles (the Principles), expected to be put forward for endorsement at the Meeting of Attorneys-General in early 2023, provide a unique opportunity to guide standardisation of

definitions. The Principles recommend that legislative change is held over until the finalisation of the Principles so that legislation works in harmony with the Principles.

Recommendation 5: Defer implementation of the new offence to ensure that the legislation works in harmony with the National Coercive Control Principles.

ANROWS supports the call from the NSW Women’s Alliance for the establishment of an independent implementation taskforce

This taskforce would have oversight of drafting, consultation, implementation process, as well as monitoring and evaluation.

Drafting: lessons and unintended consequences

Look to other jurisdictions for guidance

Through the work of the Women’s Safety Task Force, Queensland’s approach has been to put forward a draft bill to strengthen existing legislation prior to implementing a coercive control bill. Their proposed changes work toward solidifying an understanding of DFV and codifying a more nuanced understanding of behaviours of both perpetrators and victims and survivors.

The proposed changes in Queensland include amendments to the *Evidence Act 1977* (QLD) modelled on a social entrapment framework. A social entrapment framework involves attention to three things:

1. documenting the full suite of coercive and controlling behaviours
2. examining the responses of family, community and agencies
3. examining structural inequities.

The social entrapment framework helps to integrate evidence of disadvantage and barriers to help-seeking to help understand why a person experiencing coercive control might have acted in a particular way (Tarrant et al., 2019). For women who use resistive or retaliatory violence, or who aren’t stereotypical or “ideal” victims—a group disproportionately made up of Aboriginal and Torres Strait Islander women (Douglas & Fitzgerald, 2018; Nancarrow, 2019)—this can be critically important. ANROWS research demonstrates that those proposed changes will give legal actors a much better chance at realistically assessing the nature of an abusive relationship, and thus deciding the most appropriate course of legal action (Tarrant et al., 2019). A similar approach could be considered for NSW. As the Queensland changes are modelled on Western Australian provisions (ss 37–39) in the *Evidence Act 1906* (WA) and the Victorian *Crimes Act 1958* (ss 322J, 322K, 322M), it will be instructive to also look to these jurisdictions for guidance.

Overseas jurisdictions can also provide valuable guidance on issues to avoid, many of which are highlighted in this submission. In Scotland, where a standalone offence criminalising a course of abusive behaviour has been implemented, an initial evaluation has suggested that while it is too early to evaluate the effectiveness of the legislation, there is no substantive evidence that the standalone offence has had a positive impact on practice and women’s experiences of the criminal justice system (Lombard et al., 2022). The evaluation points to procedural failings; disjoint between criminal and other courts; and women feeling unsafe, failed by the system, that their engagement was a “waste of time”, and no sense of healing or empowerment through the criminal justice process (Lombard et al., 2022). Women involved in the review stressed the need for more training throughout the criminal justice system (Lombard et al., 2022). Further, women often felt that the perpetrator maintained their control and were actively empowered by the system even when convicted (Lombard et al., 2022), underscoring the critical need for protections against systems abuse.

It is important to note that previous ANROWS research makes the evaluation results unsurprising. As indicated in ANROWS's initial submission to the Joint Select Committee on Coercive Control (ANROWS, 2021b), criminalisation of coercive control gives rise to the need for attention to:

- the potential for victims to feel their experiences are invalidated if their case cannot be prosecuted, or does not result in conviction because of the criminal standard of proof
- the potential for re-traumatisation when women are not believed or supported when reporting abuse (Salter et al., 2020). The court experience for the offence could have a high potential for re-traumatisation, including through a loss of faith in the legal system to address a wrong. When the justice system is disempowering to victims/survivors, it creates a substantial barrier to seeking help in the future (Salter et al., 2020)
- the arguments against a criminal offence of domestic violence that were mounted in the 1980s when the quasi-civil/criminal protection order system was developed, including the difficulty of achieving criminal standard of proof; slow and costly criminal law proceedings; and that victims often do not want to engage the formal criminal system because it has detrimental effects on victims/women and their children (e.g. loss of income and housing as well as the social and emotional challenges of dealing with extended family and community cultural and religious imperatives)
- the potential for misidentification of victims/women as perpetrators
- the potential for expanded opportunity for systems abuse by perpetrators: as Walklate, Fitz-Gibbon, and McCulloch (2018) point out, the requirement that a specific offence of coercive control is proved to a criminal standard by referring to the psychological dimensions of an abusive relationship within an adversarial legal system may grant the perpetrator expanded opportunity for systems abuse
- the potential for underutilisation of the offence: there is little utility in creating an offence of coercive control without ensuring the ability to sufficiently resource those tasked with investigating and prosecuting the offence, so it can be appropriately utilised.

Give attention to possible unintended consequences of definitions

ANROWS is supportive of moves to ensure greater and more nuanced understandings of DFV and understand that language can play a fundamental role. Recent ANROWS research found that young people felt that the term “domestic violence and abuse” more accurately reflects the multiple and distinct forms of violence and abuse that can co-occur as a snowballing pattern of behaviour within intimate relationships. In *“It depends on what the definition of domestic violence is”: How young Australians conceptualise domestic violence and abuse*, ANROWS recommended that a broader and more robust definition of domestic violence as violence, abuse and control be adopted in policy language, and that this definition incorporate an ongoing pattern of multiple forms of behaviour within its scope (Carlisle et al., 2022).

ANROWS also supports the recommendation from Women’s Legal Service NSW to expand the offence to cover all domestic relationships, as defined under section 5 of the *Crimes (Domestic and Personal Violence) Act*. ANROWS has previously defined coercive control as “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” (see ANROWS, 2021a).

This expanded definition recognises that coercive control occurs outside of intimate partner relationships, and particularly allows for the inclusion of extended families. ANROWS research on

support for Aboriginal and Torres Strait Islander women experiencing family violence identified “intra-kin persecution of victims” as a sometimes-forgotten aspect of family violence (Langton et al., 2020a). Similarly, research on violence against immigrant and refugee women in Australia found that women reported experiencing abuse from extended family members (Vaughan et al., 2016).

However, ANROWS also would caution that in expanding the offence, care should be taken to ensure that young people are not caught up in the legal system for behaviours that are not usually best addressed by legal systems (see ANROWS research on adolescent violence in the home, Campbell et al., 2020). Forthcoming ANROWS research also highlights the way that responses designed for addressing DFV specifically are usually not appropriate for responding to the use of violence by young people (Sutherland et al., in press).

ANROWS notes that the definition of “domestic abuse” still lists “coerces or controls a person” as one tactic in a list of potential behaviours that would constitute abuse, that is, it is not seen as the *context* for the abuse (ANROWS, 2021a).

Recommendation 6: Using other jurisdictions for guidance, legislate a social entrapment framework.

Recommendation 7: Use emerging learnings from Scotland, supplemented with existing evidence on experiences of the legal system, to forecast and mitigate potential negative consequences of the introduction of the coercive control criminal offence.

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Recommendation 11: Reconsider the definition of “coercion and control” as one tactic in a list of potential behaviours that could constitute domestic abuse and reframe it as the context for the abuse.

Consultation: undertake extensive consultation in relation to systemic barriers and structural disadvantage

ANROWS research suggests that without careful attention to intersectionality when implementing legislative change, serious unintended consequences will arise. Every change must be made with eye to how it will impact women who experience multiple and intersecting forms of structural disadvantage, and the barriers they already face in accessing the existing legal system (ANROWS, 2021a; Meyer & Reeves, 2021). It is vital to speak further with the specialist DFV sector leaders and leading organisations representing marginalised groups and people with lived expertise, prior to implementing the separate offence of coercive control.

Recommendation 12: Undertake extensive cross-sector consultation with diverse groups of women and the service providers they engage with.

Implementation process: holistic and alternative approaches

Cross-sector collaboration

As raised by the NSW Women's Alliance, everyone across all sectors and systems must be able to identify and understand coercive control and know how to respond (NSW Women's Alliance, 2022).

There is a need to improve the way we respond to DFV through strong cross-sector collaboration, by enabling the development of infrastructure which supports integration and training that capacity-builds skills in collaboration. For specific recommendations on what changes need to occur, please see [*Working across sectors to meet the needs of clients experiencing domestic and family violence*](#) (ANROWS, 2020b).

Case management system

Women experiencing DFV navigate a very complex and fragmented legal system. The proposed change increases the chances that women experiencing DFV will have contact or involvement with criminal law proceedings. A woman experiencing DFV may also be in contact with family law, the child protection system, immigration law, or social security law, both at a state or territory and federal level (Nancarrow, 2021). Each of these systems have different approaches, thresholds and enforcement arrangements that are diverse and disconnected (Nancarrow, 2021). As Nancarrow (2021) has argued, these inconsistencies result in gaps and risks to the safety of women and their children. Without further reform, or robust case management support, these risks remain (on the benefits of case management, see Wangmann et al., 2020; see also Salter et al., 2020).

Broader systemic reform

The approach taken in Scotland has shown the necessity of systemic reform. According to the Scottish model, law ("protection") is just one part of a broader systemic approach that also includes provision of services, prevention of violence against women, and participation of women with lived experience in policy and legislative reform (Nancarrow, 2021).

Research shows that there has been an inappropriate and increasing application of domestic violence law against women who use violence in response to violence perpetrated against them (see Bevis et al., 2020; Day et al., 2018; Nancarrow et al., 2020). If legal consequences for coercive control are intensified, then it will be necessary to strengthen broader support and intervention options to ensure women do not become inappropriately subject to those legal consequences. Bevis et al. (2020), for example, found that Aboriginal women imprisoned in Alice Springs were financially stressed, lacking stable and safe accommodation, living with addictions to alcohol or using other drugs, frequently negotiating family violence, and had high physical and mental health needs. This research points to both the way in which these broader issues can contribute to the likelihood of incarceration, but also the inadequacy of the legal system in addressing those underlying issues.

Meaningful interventions for perpetrators

A focus on legislative change should not come at the expense of investment in meaningful interventions for perpetrators. The Women's Safety Task Force in Queensland found that many victims and survivors stressed the need for more, and earlier, intervention programs (Women's Safety and Justice Taskforce, 2021). This is reflective of ANROWS research. Between 2018 and 2020 ANROWS commissioned and published 20 research reports focusing on perpetrators of domestic,

family and sexual violence. Several recommendations arising from this body of work related to resourcing earlier, and more holistic, interventions for perpetrators (see ANROWS, 2021c for a synthesis of findings and recommendations). A suite of reports pointed to the lack of available programs, particularly for LGBTQ people (Gray et al., 2020), men from refugee backgrounds (Fisher et al., 2020), and Aboriginal and Torres Strait Islander men (Blagg et al., 2020; Langton et al., 2020b).

Within the courts, too, there remains work to be done on building capacity to refer to perpetrator programs. In the report *The Views of Australian Judicial Officers on Domestic and Family Violence Perpetrator Interventions* (Fitz-Gibbon et al., 2020), judicial officers expressed a lack of knowledge about perpetrator program referral options, in relation to both the availability and nature of the programs. More broadly, training and resourcing is needed around aligning court decisions with broader safety goals. ANROWS research highlights that accountability for violence within the legal system does not necessarily promote personal responsibility by the perpetrator (ANROWS, 2021c), and therefore won't necessarily lead to a reduction in violent behaviour. Additionally, decisions made by the court to hold perpetrators to account may do so in ways that do not acknowledge the impact of violence on the victim, promote her safety or align with her wishes (Chung et al., 2020).

Alternatives to the criminal justice system

Directing resources into the criminal legal process– including training and implementation costs – may pull resources from the services sector and alternative safety responses (Douglas, 2021). In addition to the points above, a diversion away from community-led solutions for Aboriginal and Torres Strait Islander peoples would have profound negative consequences. Research shows that mainstream legal approaches can be a direct cause of harm for Aboriginal and Torres Strait Islander peoples and communities (Blagg et al., 2020; Langton et al., 2020b; Nancarrow et al., 2020). ANROWS research has pointed to the necessity of community-led solutions, Elder engagement in justice mechanisms, and on-country healing (Blagg et al., 2020). Aboriginal participants in *Understanding the role of law and culture in Aboriginal and/or Torres Strait Islander communities in responding to and preventing family violence* (Blagg et al., 2020) suggested that current approaches to DFV that work on an individual level (such as addressing DFV through the legal system) seem designed to “break up” Aboriginal families, rather than strengthen them, and expressed a need for men and women to work together on solutions. The Koori Court has also been highlighted as a potential promising alternative to the mainstream legal system (Langton et al., 2020b).

Recommendation 13: Facilitate strong cross-sector collaboration by enabling the development of infrastructure which supports integration, and training that builds skills in collaborative work, by implementing the recommendations set out in [Working across sectors to meet the needs of clients experiencing domestic and family violence](#) (ANROWS, 2020b).

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Recommendation 17: Carefully consider alternatives to the criminal legal system, especially community-led alternatives for Aboriginal and Torres Strait Islander peoples.

Evaluation: impact and building a global evidence base

Evaluation of legislative change and any related workforce capacity building will be critical. ANROWS has the skills and knowledge to provide a robust impact evaluation across jurisdictions, if given the resources to complete this critical work.

In their 2017–19 report, the NSW Domestic Violence Death Review Team recommended the gathering of a global evidence base on the progress and implementation of coercive control offences in other jurisdictions (2020). ANROWS supports this recommendation. In addition to focusing on quantitative measures of successful prosecutions under the offence, the evidence base should also examine qualitative improvements in attitudes to violence against women, such as those measured by the [National Community Attitudes towards Violence against Women Survey](#) (NCAS; ANROWS, 2021).

The evaluation in Scotland points out that all cases within the criminal justice system are a product of an accumulation of responses and actions of multiple actors within multiple agencies. It is therefore suggested that effective evaluation must take this into account, and include “the full journey” that a woman undergoes from reporting through to conviction (Lombard et al., 2022).

Recommendation 18: Fund research to monitor the progress and implementation of coercive control and domestic abuse offences in NSW as well as other jurisdictions, including unintended consequences. This should include quantitative measures of successful prosecutions under the offences, as well as examination of qualitative improvements in attitudes to violence against women, such as those measured by the National Community Attitudes towards Violence against Women Survey. Ensure evaluation considers the “full journey” of a woman through the progress of an offence.

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